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**A5-0211/2004**

19 March 2004

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## **REPORT**

on the initiative of the Kingdom of Spain with a view to the adoption of a Council directive on the obligation of carriers to communicate passenger data (6620/2004 – C5-0111/2004 – 2003/0809(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Ingo Schmitt

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

By letter of 3 April 2003 the Council consulted Parliament, pursuant to Article 67 of the EC Treaty, on the initiative of the Kingdom of Spain with a view to the adoption of a Council directive on the obligation of carriers to communicate passenger data (7161/2003 – 2003/0809(CNS)).

At the sitting of 10 April 2003 the President of Parliament announced that he had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Regional Policy, Transport and Tourism for its opinion (C5-0164/2003).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Ingo Schmitt rapporteur at its meeting of 23 April 2003.

By letter of 26 February 2004, the Council forwarded to the European Parliament document 6620/2004 of 23 February 2004 for information.

At the sitting of 8 March 2004, the President of Parliament announced that he had referred the amended initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Regional Policy, Transport and Tourism for its opinion (C5-0111/2004).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs decided on 9 March 2004 pursuant to Rule 61(4) of the Rules of Procedure to use this amended initiative of the Kingdom of Spain as the basic document.

The committee considered Council texts 7161/2003 of 25 March 2003 and 6620/2004 of 23 February 2004 and the draft reports at its meetings of 19 May 2003, 12 June 2003, 18 February 2004, 9 March 2004 and 18 March 2004.

At the last meeting it rejected the Spanish initiative by 20 votes to 4, with 9 abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Robert J.E. Evans and Giacomo Santini (vice-chairmen), Ingo Schmitt (rapporteur), Regina Bastos (for Mary Elizabeth Banotti pursuant to Rule 153(2)), María Luisa Bergaz Conesa (for Ilka Schröder pursuant to Rule 153(2)), Christian Ulrik von Boetticher, Mario Borghezio, Alima Boumediene-Thiery, Kathalijne Maria Buitenweg (for Heide Rühle), Giorgio Calò (for Baroness Ludford pursuant to Rule 153(2)), Charlotte Cederschiöld, Ozan Ceyhan, Gérard M.J. Deprez, Antonio Di Pietro (for Francesco Rutelli), Timothy Kirkhope, Helmuth Markov (for Fodé Sylla pursuant to Rule 153(2)), Pasqualina Napoletano (for Adeline Hazan pursuant to Rule 153(2)), Marcelino Oreja Arburúa, Josu Ortuondo Larrea (for Pierre Jonckheer pursuant to Rule 153(2)), Elena Ornella Paciotti, Fernando Pérez Royo (for Margot Keßler pursuant to Rule 153(2)), Hubert Pirker, José Ribeiro e Castro, Martine Roure, Olle Schmidt (for Johanna L.A. Boogerd-Quaak), Ole Sørensen (for Bill Newton Dunn), Patsy Sørensen, María Sornosa Martínez (for Sérgio Sousa Pinto pursuant to Rule 153(2)), The Earl of Stockton (for Eva Klant), Joke Swiebel, Anna Terrón i Cusí and Maurizio Turco.

The opinion of the Committee on Regional Policy, Transport and Tourism is attached.

The report was tabled on 19 March 2004.

## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the initiative of the Kingdom of Spain with a view to the adoption of a Council directive on the obligation of carriers to communicate passenger data (6620/2004 – C5-0111/2004 – 2003/0809(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the initiative of the Kingdom of Spain (7161/2003)<sup>1</sup> and the amended initiative of the Kingdom of Spain (6620/2004)<sup>2</sup>,
  - having regard to Article 62(2) and Article 63(3) of the EC Treaty,
  - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C5-0111/2004),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of the Committee on Regional Policy, Transport and Tourism (A5-0211/2004),
1. Rejects the initiative of the Kingdom of Spain;
  2. Calls on the Kingdom of Spain to withdraw its initiative and submit a new one;
  3. Instructs its President to forward its position to the Council and Commission, and the government of the Kingdom of Spain.

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<sup>1</sup> OJ C 82, 5.4.2003, p. 23.

<sup>2</sup> Not yet published in OJ.

18 March 2004

## **OPINION OF THE COMMITTEE ON REGIONAL POLICY, TRANSPORT AND TOURISM**

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the draft Council Directive on the obligation of carriers to communicate passenger data  
(6620/2004 – C5-0111/2004 – 2003/0809(CNS))

Draftsman: Rijk van Dam

### **PROCEDURE**

The Committee on Regional Policy, Transport and Tourism appointed Rijk van Dam draftsman at its meeting of 24 April 2003.

It considered the draft opinion at its meetings of 12 June 2003 and 17 March 2004.

At the last meeting it adopted the following amendments by 25 votes to 2, with 1 abstention.

The following were present for the vote: Paolo Costa (chairman), Helmuth Markov (vice-chairman), Rolf Berend, Giorgio Calò (for Herman Vermeer), Felipe Camisón Asensio, Luigi Cocilovo, Christine de Veyrac, Giovanni Claudio Fava, Jacqueline Foster, Mathieu J.H. Grosch, Ewa Hedkvist Petersen, Juan de Dios Izquierdo Collado, Karsten Knolle (for Renate Sommer), Dieter-Lebrecht Koch, Erik Meijer, James Nicholson, Camilo Nogueira Román, Peter Pex, Wilhelm Ernst Piecyk, Samuli Pohjamo, José Javier Pomés Ruiz, Alonso José Puerta, Reinhard Rack, Ingo Schmitt, Elisabeth Schroedter (for Nelly Maes), Brian Simpson, Ulrich Stockmann, Joaquim Vairinhos and Mark Francis Watts.

## SHORT JUSTIFICATION

The Spanish proposal to the Council aims to reduce illegal immigration in the Community. Its main component is the requirement for carriers to communicate certain items of passenger data – in the framework of regular transport services – to the relevant authorities in the Member States.

The proposal requires carriers to communicate passenger data on two occasions to the Member State authorities responsible for border controls. First, they must communicate a certain amount of personal data at the time of boarding (before departure). Second, the carrier must inform the Member State authorities responsible for border controls if a passenger did not travel back on the planned date for the return journey or if s/he travelled on to a third country.

To encourage compliance with these requirements, minimum and maximum levels of financial penalty are laid down. The Member States are free to introduce additional enforcement measures and sanctions.

The authorities responsible for border controls in the Member States are required to destroy the data after use.

### **Rapporteur's remarks**

The intentions behind the Spanish proposal deserve to be supported. There is a risk that illegal immigration in the Community will lead to increasingly significant social and personal problems.

However, it is doubtful whether the proposal in its present form can make a useful contribution to reducing illegal immigration. First because of certain judicial and legal aspects, and second because of its practical feasibility and the expected results. So there are questions as to the subsidiarity and proportionality of the proposal.

One fundamental question relates to the responsibilities of Member States and carriers. While it is the task of the carrier to transport (identifiable) passengers, border control is a job for the Member States. In the light of this, it is very questionable whether the distribution of data collection roles in this proposal is justified. Furthermore, transmitting such data is an added burden for carriers in terms of human and financial resources. If Member States required these data, suitable recompense should be given.

Another important question relates to the role of the Member States in enforcing the legislation and the system of penalties applied. The differences between the legal systems and judicial practice of the Member States suggest it would be better for enforcement measures and sanctions to be taken at national level. It is best to give a number of possible penalties.

Existing illegal immigration takes place mainly via air transport, given the places of origin of many illegal immigrants. Other modes of transport play only a very peripheral role in this phenomenon. Many measures which should help to curb the phenomenon have already been taken, or are in the pipeline, in air transport. One result of this is that certain of passengers' personal data items are already known to the carrier. Transmission of these data is relatively



simple. In order to make this possible in other modes of transport too, substantial measures would have to be taken. It is doubtful whether the advantages would justify the effort involved.

The proposal stipulates that a number of specific items of personal data must be transmitted at certain times. In view of the aim of the proposal, it is enough simply to transmit the passenger data already used. With a view to completeness and efficiency, this should be done within an hour of departure. The obligation for carriers to inform Member States of their customers' travel plans must be removed. This is not a job for carriers, but for the Member States and the police and border control authorities. It is up to the carriers, on the other hand, to provide information as to which foreigners are on flights from and to the Community, so that the authorities know who has and has not entered Community territory and who has left it.

In order to make it clearer to whom and to what the proposal applies, three definitions need to be added.

Finally, - partly with an eye to European legislation in this area – account must be taken of passengers' right to personal data protection. Used data should therefore be destroyed immediately.

On the basis of these considerations your rapporteur proposes a number of amendments which should guarantee a proper distribution of roles – between the Community, the Member States and carriers – and practical workability.

## AMENDMENTS

The Committee on Regional Policy, Transport and Tourism calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

| Text proposed by the Council <sup>1</sup>  | Amendments by Parliament  |
|--|---|
| Amendment 1<br>Recital 1   |   |
| <p>(1) In order to combat illegal immigration effectively, it is essential that all Member States introduce provisions laying down obligations of carriers transporting third country nationals into the territory of the Member States. <b><i>In addition, in order to ensure the greater effectiveness of this objective, the financial penalties currently provided for by the Member States for cases where carriers fail to meet their obligations should be harmonised to the extent possible, taking into account</i></b> the differences in legal systems and practices between the Member States.</p> | <p>(1) In order to combat illegal immigration effectively, it is essential that all Member States introduce provisions laying down obligations of carriers transporting third country nationals into the territory of the Member States. <b><i>In implementing and enforcing these provisions, account must be taken of</i></b> the differences in legal systems and practices between the Member States.</p> |
| <i>Justification</i>   |   |
| <p><i>Given the different enforcement and legal systems in the Community, it is more logical to leave enforcement – and the instruments and penalties used in this process – to the individual Member States.</i></p>  |   |
| Amendment 2<br>Recital 3 a   |   |
| <p>(3a) The freedom of the Member States to retain or introduce <b><i>additional</i></b> obligations <b><i>for all carriers or some categories of other carriers, including information or data in relation to return tickets</i></b>, whether referred to in this Directive or not, should not be affected.</p>   | <p>(3a) The freedom of the Member States to retain or introduce obligations, whether referred to in this Directive or not, should not be affected.</p>  |

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<sup>1</sup> Not yet published in the OJ.

*Justification*

*Editorial change*

Amendment 3  
Article 1

This directive aims at improving border controls and combating illegal immigration by the transmission of advance *passengers* data by carriers to the competent national authorities.

This directive aims at improving border controls and combating illegal immigration by the transmission of advance *passenger* data *for third-country nationals* by carriers to the competent national authorities.

*Justification*

*The proposal relates only to passengers from third countries.*

Amendment 4  
Article 4, paragraph 1

1. Member States shall take the necessary measures *to ensure that the sanctions applicable to carriers* are dissuasive, effective and proportionate *and that either*:

1. Member States shall take the necessary measures to *guarantee compliance with this directive. Any sanctions must be* dissuasive, effective and proportionate.

*(a) the maximum amount of such sanctions is not less than EUR 5 000, or than the equivalent national currency at the rate of exchange published in the Official Journal on ..... for each journey for which passenger data were not communicated or were communicated incorrectly, or*

*(b) the minimum amount of such sanctions is not less than EUR 3 000, or than the equivalent national currency at the rate of exchange published in the Official Journal on ..... for each journey for which passenger data were not communicated or were communicated incorrectly.*

*Justification*

*Given the different enforcement and legal systems in the Community, it is more logical to leave enforcement – and the instruments and penalties used in the process – to the individual Member States.*

Amendment 5  
Article 4, paragraph 2

**2. This Directive shall not prevent Member States from adopting or retaining, for carriers which infringe very seriously** the obligations arising from the provisions of this Directive, other sanctions, such as immobilisation, seizure and confiscation of the means of transport, or temporary suspension or withdrawal of the operating licence.

**2. In the event of non-compliance with** the obligations arising from the provisions of this Directive, **Member States may impose** other sanctions, such as immobilisation, seizure and confiscation of the means of transport, or temporary suspension or withdrawal of the operating licence.

*Justification*

*In order to avoid excessively large differences between systems of sanctions, it is useful to give a number of options.*

Amendment 6  
Article 6, paragraph 2 a (new)

**2 a. The costs arising from compliance with this directive shall be refunded to affected carriers by the Member States in their entirety within one month.**

*Justification*

*In practice this proposal means that something which is in fact the job of the Member States devolves on carriers. The Member States should therefore refund to carriers all the costs of compliance with this directive.*