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LIMITE

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COMIX 602**

NOTE

from: General Secretariat
to: Strategic Committee on Immigration, Frontiers and Asylum

No. prev. doc.: 11406/03 FRONT 97 COMIX 449

Subject: Compilation of replies to the questionnaire on the Initiative of the Kingdom of Spain with a view to adopting a Council Directive on the obligation of carriers to communicate passenger data (Telex No 4154 of 25 September 2003)

Delegations will find attached the replies from Belgium, Denmark, Germany, Greece, France, Ireland, the Netherlands, Portugal, Sweden, the United Kingdom, Iceland, Norway, Hungary and Latvia.

QUESTIONNAIRE CONCERNING THE INITIATIVE OF THE KINGDOM OF SPAIN
WITH A VIEW TO ADOPTING A COUNCIL DIRECTIVE ON THE OBLIGATION
OF CARRIERS TO COMMUNICATE PASSENGER DATA

In order to prepare for the next meeting of the Strategic Committee on Immigration, Frontiers and Asylum/ Mixed Committee on 28 October 2003, delegations were requested to send any additional comments on the above-mentioned initiative, as set out in doc. 11406/03 FRONT 97 COMIX 449, and, in particular, those concerning the scope of this directive.

BELGIUM

- Belgium remains reticent, as stated in its reply to telex No 2831, about the Spanish initiative, particularly as regards use of the return ticket and imposition of an additional workload and penalties on carriers. Some of the criticisms levelled by the IATA/AEA following the latest SCIFA meeting certainly have a point.
- Belgium does, however, see a need for comprehensive arrangements for management and exchange of information in order to control migration flows and combat illegal immigration and terrorism. The considerable importance of passenger data for this purpose cannot now be denied.
- It is also necessary to accommodate the US authorities' request for access to European airlines' advance passenger information system (APIS)/passenger name record (PNR) data. That request is currently under negotiation between the European Commission and the US authorities and is being carefully considered at European level (in the Article 31 Committee and the forum for the prevention of organised crime). The US request raises fundamental problems for Europe, however, including as regards data protection safeguards. Yet Europe cannot afford to turn a deaf ear to the US request (and to those from other countries) and has to try and come up with alternatives.
- Against that background, it therefore seems worth giving further consideration to the Spanish initiative. It might even be usable as a fresh basis for discussions in negotiations with the US authorities. Under that proposal, it would in fact be the European authorities which collect data; this would oblige the US authorities to address themselves to those authorities, instead of directly to European airlines. The Spanish initiative would also address the Australian and Canadian requests; a consensus in this area might prompt the US authorities to adjust their request accordingly.

- Such an approach, of course, goes well beyond the scope of asylum and immigration bodies. Further consideration should thus be given to the feasibility, opportunities and limitations of that approach (combining the Spanish initiative with the broader issue of exchanging international passenger data) in the relevant working parties and committees (on transport, justice, data protection, terrorism etc.).

DENMARK

As stated in a previous response, the Danish delegation agrees in principle with the aim of streamlining and making more effective the entry control procedures, as well as the aim of securing a better management of migration flows. Denmark agrees with the scope of the initiative, which is to counter illegal migration flows.

Denmark agrees with the concern expressed by other delegations concerning data protection issues, which must be dealt with appropriately.

Before any further steps are taken, it is therefore necessary that the initiative is studied by the relevant Council working groups on Justice and Home Affairs and on Transport, Telecommunication and Energy, as well as of relevant fora concerning data protection issues, in order to ensure that the various elements of the initiative are given the consideration they deserve.

GERMANY

I. General comments

1. The Spanish initiative is intended to provide a further instrument to curb migratory flows and combat illegal immigration. Germany unreservedly supports that goal.

The Spanish proposal should be extended against the background of the terrorist threat, which has increased considerably, particularly since 11 September 2001. In view of the great expense involved in recording, communicating and processing personal data on travel by third-country nationals, Germany is considering, with the Spanish initiative as a starting point, making the data to be exchanged under this Directive accessible for purposes of combating terrorism. However, such a proposal should not be dealt with under the first pillar (SCIFA), but should be referred to the Article 36 Committee or the Council Working Party on Terrorism.

2. In the process of implementing the Spanish proposals, some considerable cost would be incurred, particularly for airlines, in order to create the conditions for communicating the personal data in question. The Presidency is asked to ascertain – with the involvement of the Commission – whether the European Union can provide financial help for this purpose.
3. Because of the specific provisions and rules which apply to air carriers, Germany suggests involving the Council Working Party on Aviation and the Working Party on Data Protection set up under Article 29 in drafting the Directive.
4. In addition, it should be guaranteed that the Directive will not be applied to nationals of an EU Member State who, at the same time, possess the nationality of a third State.

II. Comments on the document

Re the recitals

The German delegation proposes that the second recital should not be limited to curbing migratory flows and combating illegal immigration, but that the measure should also cover combating cross-border crime. If the measure remained limited as at present, it would, for example, not be possible in practice to check for criminals for whom alerts had been entered in the Schengen Information System, even though it would be technically perfectly possible. With such a limitation, the Member States would fall short of effective crime control, despite substantial investment in terms of equipment, finance and staff.

The introductory clause could be worded as follows:

"This measure forms part of the general provisions aimed at curbing migratory flows and combating illegal immigration and cross-border crime."

Re Article 1

Since in essence the Article contains rules for the transmission of data, Germany suggests changing the heading from "aim" to "data transmission". To ensure consistency of terminology, in paragraph 1, the wording "authorities responsible for carrying out border checks" should be replaced by "the authorities responsible for carrying out checks on persons at external borders".

In view of the proposed extension of the second recital, the definition of the purpose should also be amplified as followed:

"for the sole purpose of facilitating the performance of such checks, including the checking of third-country nationals for criminal records."

Re Article 1(1)(a)

Within the EU, personal data relating to third-country nationals are always to be transmitted to the border authorities responsible for carrying out checks on persons at the airport of destination, even if the route includes intermediate landings in other Member States.

If the destination of the third-country national is outside the EU and the itinerary includes intermediate landings in EU Member States, the data in question are to be transmitted to the border authority responsible for carrying out checks on persons in the Member State of first landing.

This procedure is intended to avoid multiple transmission of personal data and the considerable additional expenditure which this would bring with it. Germany suggests adapting Article 1(1)(a) accordingly.

The special cases of ETIX ticket holders and standby passengers and the problems surrounding transfer passengers should be raised again at working party level.

Re Article 1(1)(b), first and second sentences

The German delegation feels that the requirement mentioned in this provision could not be implemented without considerable cost to the airlines. Deletion should be considered.

Re Article 1(1)(b), third sentence

Germany suggests listing the data to be transmitted at the end. Since the place of birth does not figure in the machine-readable part of travel documents and would have to be written in by hand, Germany recommends deleting this phrase. It also suggests including organisational details, such as flight number, departure and arrival times and the total number of passengers carried. These data would make it possible to identify transmission errors (e.g. parts of lists untranscribed) and achieve a clear classification.

Re Article 1(2)

Germany suggests looking into the possibility of extension to sea carriers.

Re Article 2(1)

Germany takes the view that sanctions should be imposed only if erroneous or incomplete data transmission is the fault of the carrier. Moreover, it still needs to be ascertained whether defining the type and amount of the sanctions is permissible from the point of view of the legal division of competence, since it would lead de facto to encroachment on criminal law systems, particularly those of the Member States. Germany believes it is necessary to give up the idea of coordinating the amounts of the financial penalties in the planned Directive, in particular as regards the framework of penalties. Article 2(1) could be worded as follows for this purpose:

"Member States shall take the necessary measures to ensure that where, as the result of fault, incomplete or false data have been transmitted, the sanctions applicable to carriers are dissuasive, effective and proportionate."

Re Article 2(2)

If the proposed amendments to Article 2(1) outlined above are accepted, paragraph 2 could be deleted. The deletion of subparagraphs (a) and (b) of paragraph 1 would render this provision redundant.

However, if the existing version of paragraph 1 is retained, the wording of paragraph 2 in the German language version needs to be amended. The phrases "*(Untersagung der) Fortsetzung der Fahrt*" and "*zeitweilige Aussetzung oder Entzug (immobilisation) der Betriebsgenehmigung*" (temporary suspension or withdrawal of the operating licence) should be changed to "*(Untersagung der) Fortsetzung des Fluges*" and "*zeitweilige Aussetzung oder Entzug der Landerechte*".

Re Article 3

If appeal proceedings are already catered for in the legal systems of the participating Member States, Article 3 could be dispensed with.

Re Article 4

Germany suggests that greater account be taken of data protection aspects in paragraph 2 by rewording it as follows:

"After passengers have entered, the authorities responsible for carrying out border checks shall immediately delete the personal data transmitted by the carrier."

In order to establish an obligation to delete personal data for carriers as well, a new paragraph 3 is proposed:

"Within 24 hours of the arrival of the aircraft pursuant to Article 1(1)(a), the carrier shall delete the personal data it has collected and transmitted to the border authorities."

Such data should be collected, transmitted and stored solely for the purpose stated in Article 1 of this Directive.

GREECE

1. Taking account of the way in which the Spanish initiative will be implemented at operational level, it should be noted that:
 - (a) Passengers subject to these arrangements will undergo a double check, i.e. prior to their arrival at the airport in one of the Member States and upon arrival at that airport.
 - (b) For carrying out the check in the national database and in the Schengen Information System (SIS), more staff will be needed so that the remaining officials responsible for border controls can concentrate on verifying the entry credentials of passengers on other flights who have already arrived at the air border entry point.
 - (c) Any measures that may be imposed on passengers whom it is discovered are entered in the national database or in the Schengen Information System will be taken when they reach the point of entry and not at the airport of origin.
 - (d) Despite the provision to the effect that records containing the identity details of passengers on flights from third countries will be deleted, it will not be possible to delete such information from existing databases used for enquiries into the existence of any measures.
 - (e) The identity details of passengers will be entered twice, without there being any real reason for this.

2. In the light of the above, it would seem that the implementation of the initiative in question would not really provide any added value, at least at technical level, as regards the effectiveness of checks, since the proposed "check", as a procedure, must be carried out when foreign nationals arrive at an air border entry point in the Member States, in accordance with the general provisions of the Schengen Convention and the relevant provisions of the Common Manual.

3. Furthermore, to ensure the legality of each instance of processing of personal details, it will be necessary in Greece, in accordance with existing national law on the protection of personal data, for the following conditions to be met:
 - (a) The data must be collected for clear, legitimate purposes and processing must take place in the furtherance of those purposes.
 - (b) Data must not be collected more than once for the purposes of processing.
4. With regard to the above conditions, it seems clear from the text of the draft Directive that the purpose of the proposed processing is not established and that data are collected more than once for the purposes of the check on entry which foreign nationals must in any event undergo on arrival at the border entry point.
5. In view of the above, the Greek delegation feels it is premature to begin examining any legal text on this subject and, in order to make progress, proposes that first of all agreement be sought among delegations on the added value of this initiative and that once there is unanimous recognition of its worth, that any legal text relating to the initiative be examined and discussed: any such text will in any case have to take account of the particular difficulties which Member States may face regarding the collection and processing of the data concerned.

FRANCE

In general terms, combating illegal immigration is a concern shared by the French authorities. France is therefore in favour of any new instrument enabling that aim to be achieved. The draft Directive addresses that aim, but should be fleshed out and improved in order to make it more effective. In so doing, it needs in particular to be given a clear legal framework respecting basic individual freedoms. Its practical added value has also to be set against the constraints and costs to which its implementation may give rise both for border control authorities and for carriers. Nor would it seem possible to consider the matter in isolation from the negotiations in progress between the Community and the USA on the advance passenger information system (APIS) and passenger name record (PNR) issue, which raises similar questions.

As regards working methods, France would also point out that requirements for carriers to supply information to administrative authorities (in Europe or the USA) are being discussed in rather a wide range of bodies (the Working Party on Aviation, the Committee set up under Article 31 of Directive 95/46/EC and the Working Party on Frontiers), with no real consistency as a result. It is therefore essential for proceedings to be streamlined, at Coreper level, if a consistent approach is to be taken on the two issues.

Recitals

There is a compelling need for a reference to data protection Directive 95/46/EC in the recitals. The addition of the following first recital is therefore proposed:

"Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data should be observed by Member States under the provisions on air carriers' obligations to border control authorities."

Reference should also be made to any national provisions on protection of individuals with regard to processing of personal data which apply to processing of such data by border control authorities, as Directive 95/46/EC applies only to processing by carriers (see Article 3 of that Directive); processing by border control authorities, too, comes under the proposal.

Misuse of information supplied by carriers should also be referred to in the recitals. The following new second recital is proposed:

"Member States should make provision for penalties to be imposed in the event of use for purposes other than those laid down."

Recitals 1 to 7 in the draft would accordingly be renumbered 3 to 9.

The scope of the draft Directive is confined to curbing migration flows and combating illegal immigration. It would seem worth highlighting the political priority attached to this by the Union through the addition of the following passage in the fourth (ex-second) recital:

"External border control is one of the Union's priorities. It is therefore in all Member States' mutual interest to be able to avail themselves of further swift, practical means of preventing the unlawful crossing of the European Union's external borders."

Article 1 (Aim)

The draft omits to give a number of definitions, which could be combined in one specific article. The term "carriers" also needs to be clarified, as the draft refers in some places to carriers generally and in others specifically to air carriers. France would like to see the text confined to air transport.

Definition of "external borders": this should specify whether it is the Union's external borders or the Schengen area's external borders that are meant.

Definition of "foreign national": "anyone other than nationals of European Union Member States". It should be pointed out that one of the objectives identified by the European Council at its meeting in Tampere, as subsequently worked towards and reiterated at its meeting in Thessaloniki in June 2003, was to confer rights and obligations comparable to those of European Union citizens on third-country nationals holding a permanent residence permit. The questions therefore arises of whether third-country nationals lawfully resident within the Union are to be subject to the Directive's provisions, given that the aim of the proposal is to combat illegal immigration.

Definition of "border check": "a check carried out at borders, irrespective of any other reason, on grounds of mere intent to cross the border".

Definition of "border crossing point": for the purposes of the Directive, this means any point authorised by the competent authorities for the crossing of external air borders.

The terms "personal data", "processing of personal data" and "personal data filing system" should be defined by reference to Article 2 of the Directive of 24 October 1995 referred to above.

Article 1(a)

The draft does not specify whether all flights entering the Union are covered. It should therefore be made clear whether flights merely passing through the Union are subject to the reporting requirement or whether it applies only to flights having a Member State as their final destination. If the procedure is to be fully effective, it should cover both kinds of flight, as there is a real risk of illegal immigration during transit through the Union.

There would seem a need for the type of "information concerning the foreign nationals" to be tightly and exhaustively defined, as the French language version refers only to a non-exhaustive list ("*Parmi ces renseignements figurent ...*" [The information referred to above shall include ...]). The information supplied will in any event have to be relevant, appropriate and not excessive for the purpose for which it is required.

Article 1(b)

France fails to see the point of this subparagraph or how it is to be implemented in law. By means of such provisions, EU Member States would partly escape their duty to control migration flows by passing it on to air carriers, who would be required to keep a large amount of data on passengers flying with them, until those passengers had left the Union. We would suggest deleting this subparagraph, whose practical value is dubious (there is nothing to prevent travellers from changing their return travel arrangements). How is a carrier to know if passengers have not returned to their country of origin or have not travelled on to a country outside the European Union?

France would point out that the information required from air carriers under this Directive would differ in part from the APIS and PNR data sought by the US authorities, on which negotiations are currently under way.

Supplying the date of birth (which is not always given in travel documents) and the point of entry into the Union might thus call for additional manual input by carriers. This will have an impact on the cost of the system and on the time taken by carriers' pre-boarding checks.

Article 2 (Sanctions)

All definitions could be combined in a new version of this article (see the comment on Article 1).

Article 4 (Data processing)

Precise rules should be laid down on the collection, supply, recording, keeping (even on a temporary basis) and deletion of such data.

The following paragraphs could be added to the draft Directive:

"The data in question shall be collected by air carriers and supplied electronically to the authorities responsible for border checks at the first authorised border crossing point via which a foreign national is to enter Member States' territory.

The data shall be kept by those authorities in a temporary filing system for only as long as is necessary for the purposes of such checks.

Once border checks on passengers have been completed, Member States shall immediately delete the data supplied by the carrier."

Two new articles should also be added to the draft Directive

The first one would deal with liability on the part of carriers and Member States. There is a need for specific provisions on cases in which air carriers and Member States respectively may be held liable in the implementation of the system.

For air carriers, this would apply in the event of errors in supplying data.

For Member States, it would apply as regards access to and use of data.

The second article should specify the extent of the data subject's rights in respect of the information and refer to the other safeguards laid down by Directive 95/46/EC, including (but not confined to) the right of access and rectification and the right to a remedy for processing by carriers, as laid down in particular in Articles 10, 11, 12, 22 and 28 of Directive 95/46/EC. The Community provisions stipulate that any data subject must, at the time of collection of data, be informed by the data collector, in this case the carrier, of the identity of the controller and the purpose for which the data are being collected. Data subjects must also, "having regard to the specific circumstances" be provided with "further information" (Articles 10 and 11 of Directive 95/46/EC), which should be specified in the draft Directive, e.g. "the recipients", in this case the border control authority, "the existence of the right of access to and the right to rectify" processed data concerning them, so as to ensure in particular that data are correct, and details of how to exercise their right to a remedy.

The second article should also mention similar safeguards available to data subjects for processing by border control authorities, by means of a reference to any national law on protection of individuals with regard to processing of personal data which is applicable to those authorities. While Directive 95/46/EC does not apply to border control authorities, which are here acting in a public security role (see Article 3 of that Directive), all Member States covered by this proposal have adopted such legislation, including some exceptions or special arrangements, especially as regards access, on public security grounds.

With particular regard to the requirement to be informed by carriers, in order to facilitate its implementation, the Working Party set up under Article 29 of Directive 95/46/EC, representing national personal-data-protection authorities, which is to meet on 20 and 21 November 2003, could be asked to contribute to the Directive's uniform application, as is its role, by proposing as suitable and as concise as possible a format for providing information in this instance.

IRELAND

Ireland is in favour of increased passenger checks to assist in preventing illegal immigration. Ireland therefore supports the principle of the proposed Directive. Subject to Parliamentary approval, Ireland would intend to exercise its option to participate in the proposed Directive.

Ireland notes that the proposed Directive has its basis in Article 62(2)(a) and 63(3)(b) of the Treaty establishing the European Community, and Recital 2 states that this measure forms part of the general provisions aimed at curbing migratory flows and combating illegal immigration.

Ireland's view is that this measure has a basis in Title IV of the TEC and could also have a basis in Articles 26 and 27 of the Schengen Convention, articles in which Ireland has sought to participate. Ireland views this measure as an important one in ensuring that carriers undertake their obligations and in strengthening the application of carriers sanctions. It regards this proposal as one in which Ireland should be allowed to participate and would request that the appropriate recital be added to reflect its position under the fourth Protocol (on the position of the United Kingdom and Ireland).

With regard to the details of the proposal, Ireland submits the following observations:

- To enable Member States to focus on high-risk flights, Ireland would like to add the text "at the request of" to Article 1(1) as follows:

Member States shall take the necessary steps to establish an obligation for carriers to transmit **at the request of** ~~to~~ the authorities responsible for carrying out border checks.

- To assist in the provision of information to relevant Member States where third-country nationals transit through one or more Member States, Ireland would like to add the text "or point of transit" and "or transit to another Member State" to Article 1(1)(a) as follows:

at the end of the boarding checks, information concerning the foreign nationals they will carry to an authorised border crossing point **or point of transit** through which these persons will enter Member States' territory, **or transit to another Member State**.

- Ireland continues to maintain our reservation on Article 1(1)(b) and wish to have the practicalities of implementing this considered.
- To facilitate the provision of relevant information, Ireland would like to add the text "the initial point of embarkation" and "and details of any transit arrangements to any other Member States" into the final paragraph of Article 1, as follows:

The information referred to above shall comprise **the initial point of embarkation**, the number of the passport or travel document used, nationality, first name and family name(s), the date and place of birth, ~~and~~ the border crossing point of entry into the territory of the Member States, **and details of any transit arrangements to any other Member State**.

- Ireland would prefer if Article 3 did not specify where the right of defence should be included in national legislation and would delete the text "that their laws, regulations and administrative provisions stipulate", as follows:

Member States shall ensure ~~that their laws, regulations and administrative provisions stipulate~~ that carriers against which proceedings are brought with a view to imposing penalties have effective rights of defence and appeal.

- To further facilitate the provision of relevant information on transit passengers, Ireland would like to insert a paragraph after the existing Article 4(1) with the following text:

Where a third-country national is transiting through a Member State to another Member State, the information received in respect of that passenger referred to in Article 1 shall be transmitted by the authorities responsible for carrying out border checks on persons in the first Member State to the Member State of final destination and all other transit Member States.

NETHERLANDS

From the point of view of combating terrorism, the Netherlands would like to make the following comments on the proposal:

Widening the objective of the proposal to include terrorism holds promise. The Netherlands takes the view that this proposal must be discussed in the appropriate working party. The Working Party on Aviation must also be able to give its opinion on the proposal. If the measure is to have sufficient added value, attention will in any event have to be focused on biometric features, which create a link between the holder of the travel document and the person producing it for inspection. In addition, the storage time limit for the collected data requires further examination. Lastly, the question of who is meant by the term carrier needs to be considered. A clearer definition is essential here.

The feasibility of the measure as it is now proposed gives the Netherlands cause for concern. The large quantity of data supplied will mean a greatly increased workload for the operational services. Consideration could be given to storing data on passengers on risk flights only.

From the point of view of combating illegal immigration, the Netherlands maintains its position that there is no added value to be seen in the proposal.

PORTUGAL

Portugal supports the initiative of the Kingdom of Spain with a view to adopting a Council Directive on the obligation of carriers to communicate passenger data.

With regard to the substance of the document and taking into account the issues raised at the meeting of the Strategic Committee on Immigration, Frontiers and Asylum, held in Rome on 23 September, Portugal's comments are as follows:

1. The aims and scope of the initiative should refer only to the fight against illegal immigration and not to the fight against terrorism. The improvement of checks at the external borders in itself already constitutes a counter-measure which may prove effective in combating terrorism. Portugal considers a reference to the fight against terrorism unnecessary since that is not the main aim of the instrument for adoption. Furthermore, competence for adopting a legislative instrument which includes provisions on the fight against terrorism would not, in Portugal's view, fall within the ambit of the current Title IV of the European Community Treaty so that Articles 62 and 63 TEC could not be used as the legal basis, as it is clear that the instrument for adoption would not be of the same binding nature.
2. The preamble to the document should state whether or not the instrument applies to the United Kingdom and to Ireland, and should refer to Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, published in Official Journal L187 of 10 July 2001.
3. Article 1 should include a paragraph laying down a period (six months is proposed) during which airlines should keep the available passenger data and at the end of which they could destroy it.
4. As regards the passenger data to be supplied, Portugal takes the view that name, date of birth, nationality, passport number and flight origin should be required.

SWEDEN

According to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Member States shall provide that personal data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed. Sweden is not convinced that a routine-like collection of data of foreign nationals, according to the draft directive, can be considered not to be excessive in relation to the purposes for which they are collected and/or further processed. Furthermore, Sweden notes that the draft directive does not contain any provisions on data protection.

The implementation of article 1.1 b would lead to a lot of work but not much added value. For instance, a lot of passengers do not use their return reservations for various reasons. It is one thing to set up certain demands on the airlines when a person is entering the European Union but another thing when a person is leaving. The idea would violate passengers' rights to privacy. Further, this system would require development of surveillance systems administered by carriers. It is also important to note that the article is not coherent with Directive 95/46/EC. Therefore, article 1.1 b should be deleted.

Article 2 of the draft directive states that Member States shall take the necessary measures to ensure that the sanctions applicable to carriers are dissuasive, effective and proportionate. Will sanctions be automatically imposed in all cases or will there be certain exceptions? What exactly shall be the task for a court to decide? Shall the court only consider whether the information has been sent or not, or do they need to take other things into consideration as well? Sweden believes that the article needs to be complemented with a text stating that it can be accepted that information is not sent in certain specific cases, e.g. due to technical problems. Especially in this article, Member States have to consider the principle of proportionality. Consequently, the article needs to be amended.

In accordance with Article 4 of the draft directive, personal data shall be communicated to the authorities responsible for carrying out checks on persons at external borders for the sole purpose of facilitating the performance of such checks. Despite this, Article 1.1 b states that competent authorities after a request can get information on foreign nationals who, on the date stipulated on the travel ticket, have not returned to their country of origin or have not continued their journey to a third country. Sweden is of the opinion that the latter information, according to Article 1.1 b, is not falling within the purpose mentioned in Article 4.

UNITED KINGDOM

During the recent SCIFA meeting of 22-23 September, Member States were asked to consider whether the scope of the information obtained should be broadened to include data for combating criminality and terrorism. This is something the UK would support.

As we have said before, the UK supports the Spanish initiative in principle, but we continue to have concerns with the current text. At the Frontiers meeting in July 2003, the Spanish delegation stated they would submit a revised text, but the UK is of the view that parts of the text still require substantial reconsideration.

The proposal suggests collecting information once a passenger manifest is closed and the flight has departed. This does not support the board/not board principle of the UK "Authority to Carry" scheme, which is currently being developed and for which there is already a provision in UK legislation. It relies on carriers transmitting passenger information at the time of check-in and will enable a check to be made against Home Office (Interior Ministry) databases and, in the event that the passenger is identified as a known security or immigration risk, may result in authority to carry passenger being denied. Transmitting information once boarding is closed is too late if the control authority receives information on a passenger to whom they wish to deny boarding.

The draft Directive also specifies the information to be transmitted as first names, date and place of birth, nationality, passport or travel document number. With the exception of place of birth, this information is wholly consistent with UK domestic legislation, the Immigration (Passenger Information) Order 2000. With the exception of place of birth, the data proposed is contained in the machine-readable zone of a passport or travel document. The UK feels it is important that any proposals in this area comply with global guidelines being developed by ICAO/IATA.

The UK is of the view that the second part of the proposal, that carriers should advise authorities of passengers who do not travel as per their return booking, has no added value and is wholly unworkable. There are many reasons why passengers change their booking. And in the UK permission to enter is generally given for a longer period than that sought by a passenger and enforcement action may not be appropriate in the majority of instances. However, in order not to constrain other Member States' ambitions, it may be helpful if the Directive states that, in the absence of alternative arrangements between carriers and Member States, carriers will advise authorities of any passengers who have not departed in accordance with their ticketing.

The Directive in its current form also requires Member States to impose sanctions on carriers who fail to meet their obligations. The UK supports in general the approach taken on sanctions, but has yet to fully consider our position on this latter issue of "levels of accuracy" penalties. The reliability of passenger information is key to pre-screening and the Directive provides carriers with an incentive to provide accurate and complete information. UK legislation currently allows sanctions to be imposed on carriers who fail to comply without reasonable excuse with a request for passenger information. However, the additional sanctions proposed in the Directive, such as seizure and confiscation of the means of transport, are in our view disproportionate to the actual offence.

In summary, the UK, as we have previously stated, supports this initiative in principle, but is of the opinion that modifications to the text are required to make the proposal as effective and beneficial as possible. It is the UK's view that progress urgently needs to be made on this initiative, and discussions should now focus on the detail of the text.

ICELAND

Iceland can support the proposal and can agree with the view expressed by the Spanish delegation that no more time should be spent on its examination. Rather, an end to the discussion should be sought.

Iceland finds that there is one fundamental flaw in the proposal as it now stands:

In Art. 1.1.b, there is a proposal to oblige carriers to transmit information on foreign nationals that have not returned to their country of origin on the day stipulated on their travel ticket. Apparently, this information could prove useful to Police and other authorities tasked with fighting illegal immigration within the borders of the Member States. It is, on the other hand, hard to see how this information might benefit the border guards in performing their duties. However, in Art. 4. of the proposal, it is clearly stipulated that this information shall be reserved for the authorities responsible for carrying out checks on persons at external borders.

It appears that an agreement has to be found on whether to abandon the strict principle of Art. 4 or to delete Art. 1.1.b. It hardly seems feasible to carry on this work without addressing that question. Iceland stands willing to consider both options favourably.

NORWAY

It is an important task to formulate ambitious directives in order to combat illegal immigration and terrorism effectively. Norway, like all the other member countries, is eager to take part and contribute to the work against illegal immigration and terrorism. Thus, Norway supports the intention and idea of the initiative. As regards to the concrete proposal, Norway has, however, some considerations.

Article 1(a)

The obligation of carriers to transmit information concerning the foreign nationals they will carry, should enter into force at the request of the competent authorities. If the information is sent at the request of the competent authorities, each Member State can define individually high-risk flights and therefore combat illegal immigration and terrorism more effectively.

Article 1 (b)

An issue like protection of privacy should be discussed further before such a legal act enters into force. Travellers can extend their visit by legal means after arrival on the territory, or purchase two round-trip tickets within different itineraries to gain greater flexibility at lower overall cost.

Norway would also like to emphasise the need to analyse further the economical, technical and administrative challenges and consequences.

HUNGARY

According to Hungary, the initiative of the Kingdom of Spain in this form is not a suitable tool to reduce or stop illegal migration and is not in line with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Chapter II, Article 6.1(c)).

In respect of data protection, it would also be necessary to complement the text by specifying exactly how the transmitted data will be handled (Directive 95/46/EC, Chapter II, Article 6.1(b)).

At border crossing points, dealing with hundreds of thousands or millions of daily border crossings, it seems to be very difficult to handle this kind of list: i.e. to obtain passengers' data before they arrive and then to check it.

Carriers and authorities responsible for border control do not possess the necessary infrastructure, organisation and personnel for these checks. That is why Hungary deems it necessary to reconsider whether the invested amount of money, time and energy are in line with the growth of security available with this provision.

Article 1.1(a)

Passengers from third countries who were checked when they started their journey, will go, upon arrival, through the external border control procedure necessary for the entry to the territory of the Member States of the European Union. The fulfilment of the requirements of legal entry and residence will also be examined. That is why it seems redundant to transmit the data, which are included in the valid travel documents, as the officer controlling the passenger will examine them.

Article 1.1(b)

The date stipulated on the travel ticket to return or continue the journey to a third country can change within the confines of the legal residence. This means that, according to the main rules, a change of dates of the journey does not in itself confirm the fact of illegal residence.

It is not clear from what sources of information the authorities controlling the passengers can receive notice that a third-country national did not return to the country of origin or did not continue the journey to a third country.

Article 1.2

It is also not defined why the initiative refers only to data regarding passengers transported by air, as a large number of third-country nationals arrive on the territory of the Member States by ship or by bus.

Article 4

The initiative should determine how long the data transmitted according to point 1(b) of Article 1 can be processed and when it should be deleted.

LATVIA

In general, Latvia supports the draft directive. It has, however, some additional comments:

1. Latvia is not going to request information on all flights and from all air companies, but only following requests by border authorities or by agreement with air companies on specific flights, airports, etc. (Article 1).
2. Latvia supports the introduction of sanctions on carriers when passenger data are not communicated or are communicated incorrectly (Article 2).
3. Latvia suggests reducing the time for transmitting information to 24 hours (instead of 48 hours) from the time of the request of the competent authorities (Article 1, point b).

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