

**5183/04**

**LIMITE**

**FRONT 5  
COMIX 19**

**NOTE**

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from :	Presidency
to :	Strategic Committee on Immigration, Frontiers and Asylum
No. prev. doc. :	16119/03 FRONT 184 COMIX 767
Subject :	Initiative of the Kingdom of Spain with a view to adopting a Council Directive on the obligation of carriers to communicate passenger data

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The Irish Presidency has considered the discussion of this initiative at a number of meetings of the Strategic Committee on Immigration, Frontiers and Asylum, most recently those held on 17-18 November 2003 and on 10 December 2003.

The Presidency is advised that in view of the timescales contained in Article 67(1) of the Treaty of Amsterdam, Member State initiatives under Title IV of the TEC must be formally adopted by 30 April 2004, otherwise they will expire. Having regard to the fact that significant differences remain on the scope and details of this proposal, the Irish Presidency puts forward its proposal for the completion of this initiative within this timescale.

In addressing the main elements of difference, a compromise proposal is suggested based on the following elements :

- to limit the application in the first instance to air and sea carriers,
- to make optional the provision in relation to the use of return tickets,
- to exclude the use of biometric data at this time,
- to exclude a provision requiring details of transit arrangements to be provided,
- to deal with data protection issue in the light of discussions at the SCIFA meeting of 10 December 2003.

The text of the proposal based on this approach is contained in the annex.

It is recognised that such a proposal falls short of the expectations of a number of Member States. However, it does allow for the core of the proposal to be adopted in a reasonable timeframe and will allow for further development of the system in the future. Such future development could address the issues of the application of the measure to other carriers, the use of biometric data and the inclusion of data on transit arrangements. It would be possible to make reference to the need for such future development of the system in the preamble to the Directive or by way of a statement in the Council minutes.

**COUNCIL DIRECTIVE 2003/ /EC**  
**of**

on the obligation of carriers to communicate  
passenger data

Article 1

Objective

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.

Article 2

Definitions

For the purpose of this directive:

- a) "carrier" shall mean any natural or legal person whose occupation it is to provide passenger transport by air or sea
- b) "external borders" shall mean the external borders of the Member States
- c) "third country national" shall mean any person other than a citizen of the European Union.
- d) "border control" shall mean a check carried out at a border in response exclusively to an intention to cross that border, regardless of any other consideration.
- e) "border crossing point" shall mean any crossing point authorised by the competent authorities for crossing external borders.
- f) "personal data", " processing of personal data" and "personal data filing system" shall have the meaning as stipulated under Article 2 of Directive 95/46/EC of 24 October 1995.

### Article 3

#### Data transmission

1. Member States shall take the necessary steps to establish an obligation for carriers to transmit at the request of the authorities responsible for carrying out checks on persons at external borders, in advance of departure, information concerning the passengers they will carry to an authorised border crossing point through which these persons will enter Member States' territory.
2. The information referred to above shall comprise:
  - the number and type of travel document used,
  - nationality,
  - full names,
  - the date of birth,
  - the border crossing point of entry into the territory of the Member States,
  - code of transport ,
  - departure and arrival time of the transportation,
  - total number of passengers carried on that transport,
  - the initial point of embarkation.
3. In any case the transmission of the above mentioned data does not discharge the obligations and responsibilities laid down in Article 26 of the Schengen Convention for carriers.
4. Member States may establish, in accordance with their national legislation, an obligation for carriers to transmit in particular cases at the request of the authorities responsible for combating illegal immigration, information on third country nationals carried by them to the territory of the Member States and 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. The request of the national authorities responsible for combating illegal immigration shall be based on a national risk assessment. The request shall be transmitted to the carrier within 24 hours after the end of boarding. The information on third country nationals shall comprise:

- full names,
- the border crossing point of exit from the Member States' territory,
- code of transport,
- date and departure time of the transportation.

#### Article 4

#### Sanctions

1. Member States shall impose sanctions on carriers which, as a result of fault, have not transmitted data or have transmitted incomplete or false data. These sanctions shall be dissuasive, effective and proportionate and that either:
  - (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.
  - (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.
  - (c) the maximum amount of the penalty imposed as a lump sum for each infringement is not less than EUR 500.000 or than the equivalent national currency at the rate of exchange published in the Official Journal on....., irrespective of the number of persons carried.

2. Member States may adopt or retain, 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.

#### Article 5

#### Proceedings

Member States shall ensure that carriers against which proceedings are brought with a view to imposing penalties have effective rights of defence and appeal.

#### Article 6

#### Data processing

1. The personal data referred to in Article 3.1 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.

Member States shall ensure that these data are collected by the carriers and transmitted electronically or, in case of failure, by any other appropriate means to the authorities responsible for carrying out border checks at the first authorised border crossing point through which the foreign national will enter Member States' territory. The authorities responsible for carrying out checks on persons at external borders shall save the data in a temporary file.

After passengers have entered, these authorities shall immediately delete the data transmitted by the carrier. Member States shall take the necessary measures to oblige carriers to delete the personal data they have collected and transmitted to the border authorities within 24 hours of the arrival of the mean of transportation pursuant to Article 3.1.

2. The personal data referred to in Article 3.4. shall be communicated to the authorities responsible for combating illegal immigration for the sole purpose of combating illegal immigration.

Member States shall ensure that these data are collected by the carriers and transmitted electronically or, in case of failure, by any other appropriate means to the competent authorities. The authorities responsible for combating illegal immigration shall save the data in a temporary file.

The carrier shall delete the personal data it has collected and transmitted to the authorities responsible for combating illegal immigration immediately after transmission.

The authorities responsible for combating illegal immigration shall save the data in a temporary file. These authorities shall delete the data within 24 hours after transmission unless the data are needed later for criminal prosecution or execution of measures to end illegal presence in the territory of the Member States. Member States shall take the necessary measures to oblige the carriers to delete the personal data they have collected and transmitted to the authorities responsible for combating illegal immigration immediately after transmission.

3. Member States shall take the necessary measures to oblige the carriers to inform the passengers in accordance with the provisions laid down in the Directive 95/46/EC. This shall comprise the information referred to in Article 10.c and Article 11.1.c of the Directive 95/46/EC.

Article 7

Transposal

1. Member States shall take the necessary measures to comply with this Directive not later than ..... They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate the main provisions of national law which they adopt in the field covered by this Directive to the Commission.

Article 8

Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

Article 9

Addressees

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels.....

For the Council  
The President

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