

Combating illegal immigration: obligation of carriers to communicate passenger data.

Initiative Spain

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The Mixed Committee at Ministerial Level reached a common approach on the third version of the draft Directive, with a view to its adoption by the Council before 1 May 2004. This text was presented to the delegations at the "Justice and Home Affairs" Council meeting held on 30 March 2004. The amendments aim in particular to delete references to "third country nationals". The new version prefers to make reference to "passengers". In addition, the new version of the text insists equally on the fact that the Directive should combat illegal immigration as well as improving border controls. In this context, and in respect of data transmission, the text stipulates that 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, by the end of check-in, information concerning the passengers they will carry to an authorised border crossing point through which these persons will enter the territory of a Member State. Another key element of the new version of the text concerns the respect of personal data. Personal data shall be communicated to the authorities responsible for carrying out checks on persons at external borders through which the passenger will enter the territory of a Member State, for the purpose of facilitating the performance of such checks with the objective of combating illegal immigration more effectively. The Council states that the 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 authorised border crossing point through which the passenger will enter the territory of a Member State. 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 delete the data, within 24 hours after transmission, unless the data are needed later for the purposes of exercising the statutory functions of the authorities responsible for carrying out checks on persons at external borders in accordance with national law and subject to data protection provisions under Directive 95/46/EC. The Council underlines that any other treatment would contravene the spirit of Directive 95/46/EC. Moreover, the new draft Directive states that : - 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, by the end of check-in, information concerning the passengers they will carry to an authorised border crossing point through which these persons will enter the territory of a Member State; - Member States shall take the necessary measures to impose sanctions on carriers which, as a result of fault, have not transmitted data or have transmitted incomplete or false data; - Member States shall take the necessary measures to comply with this Directive not later than twenty-four months after its adoption. Furthermore, the new version of the draft Directive includes two declarations one of which comes from the Commission which considers that this text must be interpreted in the light of its stated purposes, namely "to combat illegal immigration effectively and to improve border control". In its declaration, the Commission announces that it intends to propose by June 2004 a comprehensive legislative measure on data protection and exchanges of information between "law enforcement" authorities. The Commission would have preferred to await that measure before dealing piecemeal with law enforcement issues in this context. Lastly, the spirit of the proposal is in conformity with the previous proposal (please refer to the summary dated 25 February 2004).