Basic information

2003/0809(CNS) CNS - Consultation procedure Directive	Procedure completed
Combating illegal immigration: obligation of carriers to communicate passenger data. Initiative Spain Repealed by 2022/0424(COD) **Subject** 7.10.08 Migration policy	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	HERNÁNDEZ MOLLAR Jorge Salvador (PPE-DE)	06/04/2004

Former committee responsible	Former rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	SCHMITT Ingo (PPE-DE)	23/04/2003

Former committee for opinion	Former rapporteur for opinion	Appointed
RETT Regional Policy, Transport and Tourism	VAN DAM Rijk (EDD)	24/04/2003

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2579	2004-04-29

Key events

Date	Event	Reference	Summary
25/03/2003	Initial legislative proposal published	07161/2003	Summary
10/04/2003	Committee referral announced in Parliament		
23/02/2004	Decision by Parliament	06620/2004	
23/02/2004	Initial legislative proposal published	06620/2004	
18/03/2004	Vote in committee		Summary
18/03/2004	Committee report tabled for plenary, 1st reading/single reading	A5-0211/2004	

31/03/2004	Debate in Parliament		Summary
01/04/2004	Decision by Parliament	08058/2004	Summary
01/04/2004	Legislative proposal published	08058/2004	Summary
06/04/2004	Vote in committee		Summary
06/04/2004	Committee report tabled for plenary, 1st reading/single reading	A5-0266/2004	
13/04/2004	Report referred back to committee		
29/04/2004	Act adopted by Council after consultation of Parliament		
29/04/2004	End of procedure in Parliament		
06/08/2004	Final act published in Official Journal		

Technical information

Procedure reference	2003/0809(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Repealed by 2022/0424(COD)
Legal basis	EC Treaty (after Amsterdam) EC 063-p3 EC Treaty (after Amsterdam) EC 062-p2
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/20874 LIBE/5/19433

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0211/2004	18/03/2004	
Committee report tabled for plenary, 1st reading/single reading		A5-0266/2004	06/04/2004	

Council of the EU

Document type	Reference	Date	Summary
Initial legislative proposal	07161/2003 OJ C 082 05.04.2003, p. 0023-0024	25/03/2003	Summary
Initial legislative proposal	06620/2004	23/02/2004	
Legislative proposal	08058/2004	01/04/2004	Summary

European Commission

Document type	Reference	Date	Summary
Follow-up document	SWD(2020)0174	08/09/2020	
Follow-up document	SWD(2020)0175	08/09/2020	

Additional information		
Source	Document	Date
European Commission	EUR-Lex	

Final act	
Directive 2004/0082 OJ L 261 06.08.2004, p. 0024-0027	Summary

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

2003/0809(CNS) - 01/04/2004 - Legislative proposal

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).

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

2003/0809(CNS) - 29/04/2004 - Final act

PURPOSE: To combat illegal immigration by obliging air carriers to transmit data on passengers to competent authorities.

LEGISLATIVE ACT: Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data.

CONTENT: The purpose of this Directive is to improve border controls and to combat illegal immigration through the transmission of advance passenger data by carriers to the competent national authorities. In order to realise this objective the following provisions have been agreed:

- For the sake of clarity and consistency terms related to the objective of the Directive have been defined. They are: carrier (in this case passenger air transport), external borders, border control, border crossing point, personal data, processing of personal data and personal data filing system. As regards the later (i.e. personal data) the definitions relate to those set out in Directive 95/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

- Carriers are obliged to transmit, upon a request from the competent authorities, information concerning the passengers they will carry entering the territory of a Member State. The information must be passed on by the end of check-in. The information should comprises of: the number and type of travel document, nationality, full names, 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.

- Carriers who fail to transmit the requested data or who pass on faulty or fake data will face sanctions. The Directive does not prevent Member States from adopting or retaining other sanctions such as immobilisation, seizure and confiscation of the means of transport or temporary suspension or the withdrawal of the operating licence.

- The data should be transferred electronically even though in cases where this is not possible any other appropriate means should be used to forward information to the appropriate authorities. The authorities responsible for carrying out checks on persons at external borders are to save the data in a temporary file. Unless needed for exercising statutory functions, the information received should be deleted by the authorities within 24 hours after transmission. Similarly, carriers are obliged to delete, within 24 hours of the arrival of transportation, the personal data they have collected and transmitted to the border authorities. Member States may use the personal data collected for law enforcement purposes so long as it conforms to Directive 95/46.

TRANPOSITION: 5 September 2006

ENTRY INTO FORCE: 5 September 2004

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

2003/0809(CNS) - 25/03/2003 - Initial legislative proposal

PURPOSE : to present the Spanish initiative with a view to adopting a Council Directive on the obligation of carriers to communicate passenger data.
CONTENT : 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. 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 the differences in legal systems and practices between the Member States. This measure forms part of the general provisions aimed at curbing migratory flows and combating illegal immigration. The freedom of the Member States to retain or introduce additional measures or penalties for carriers, whether referred to in this Directive or not, should not be affected. Member States should ensure that in any proceedings brought against carriers which may result in the application of penalties, the rights of defence and the right of appeal against such decisions can be exercised effectively. The idea is to force carriers to transmit a series of information to the authorities responsible for carrying out border checks. This information shall concern in particular : a) at the time of boarding, information concerning the people they are preparing to carry; b) information on foreign 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. This information must be transmitted at the latest within 48 hours of the date stipulated for the return journey or for continuing the journey to a third country. The information shall comprise the number of the passport or travel document used, nationality, first name and family name and the date and place of birth. As regards the sanctions, it is stated that Member States shall take the necessary measures to ensure that the sanctions applicable to carriers are dissuasive, effective and proportionate and that either: - the maximum amount of such sanctions is not less than EUR 5.000, or - the minimum amount of such sanctions is not less than EUR 3.000. Member States may adopt or retain, for carriers which do not comply with 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. 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. The personal data shall be communicated to the authorities responsible for carrying out checks on persons at externalborders for the sole purpose of facilitating the performance of such checks. After the border checks on passengers have been completed, Member States shall delete the data transmitted.