Initiative of the Kingdom of Spain with a view to adopting a Council Directive on the obligation of carriers to communicate passenger data

(2003/C 82/08)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2)(a) and Article 63(3)(b) thereof,

Having regard to the initiative of the Kingdom of Spain [1],

Having regard to the Opinion of the European Parliament [2],

Whereas:

(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. 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.

(2) This measure forms part of the general provisions aimed at curbing migratory flows and combating illegal immigration.

(3) 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.

(4) 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.

(5) These measures take up the control options set out in the Decision of the Executive Committee of Schengen (SCH/com-ex (94) 17-rev. 4), aimed at enabling border checks to be increased and providing for sufficient time to enable detailed and comprehensive checks to be carried out on all passengers through the electronic transmission of passenger data to the airport of arrival.

(6) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive, and is therefore not bound by it or subject to its application. Given that this instrument aims to build upon the Schengen acquis under the provisions of Title IV of the Treaty establishing the European Community, in accordance with Article 5 of the abovementioned Protocol, Denmark will decide within a period of 6 months after the Council has adopted this Directive whether it will implement it in its national law.

(7) As regards the Republic of Iceland and the Kingdom of Norway, this Directive constitutes a development of the Schengen acquis within the meaning of the Agreement concluded on 18 May 1999 by the Council of the European Union and those two States concerning the association of those States with the implementation, application and development of the Schengen acquis,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Aim

Member States shall take the necessary steps to establish an obligation for carriers to transmit to the authorities responsible for carrying out border checks:

(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 forty-eight hours of the date stipulated for the return journey or for continuing the journey to a third country.

The information referred to above shall comprise the number of the passport or travel document used, nationality, first name and family name(s) and the date and place of birth.

Article 2

Sanctions

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] OJ C . . .

[2] OJ C . . .

(a) the maximum amount of such sanctions is not less than EUR 5 000; 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.

2. 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.

Article 3

Proceedings

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.

Article 4

Data processing

1. The personal data referred to in Article 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.

2. After the border checks on passengers have been completed, Member States shall delete the data transmitted.

Article 5

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 6

Entry into force

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

Article 7

Addressees

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

Done at . . .

For the Council

The President

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