



## **Ad-hoc query on the obligation of non-air carriers to transmit passenger data**

**Requested by EE EMN NCP on 3<sup>rd</sup> January 2014**

**Compilation produced on 28<sup>th</sup> January 2014**

**Responses from Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom plus Norway (24 in Total)**

*Disclaimer: The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

### **1. Background Information**

Estonian Ministry of Interior is in the process of amending the national legislation regarding the data transmission and sanctions foreseen to air carriers according to the Directive 2004/82/EC. Estonia is planning to broaden the regulation also to non-air carriers, i.e. who transport passenger via sea (ship companies) or land border (railway companies, bus companies). Thus, we would like know how this issue is managed in other Member States.










1. Does your MS apply the provisions laid down in Directive 2004/82/EC also to non-air carriers, i.e. who transport passenger via sea (ship companies) or land border (railway companies, bus companies)?

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We appreciate your answers by the **20<sup>th</sup> January 2014**.

### 2. Responses

		<b>Wider Dissemination?</b>	
	<b>Austria</b>	<b>No</b>	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	<b>Belgium</b>	<b>Yes</b>	Directive 2004/82/EC is implemented into Belgian law via the Royal Decree of 11 December 2006 concerning the obligation of air carriers to transmit passenger data. The application is not broadened to other carriers (sea, land).
	<b>Cyprus</b>	<b>Yes</b>	Cyprus applies the provisions laid down in Directive 2004/82/EC only to air carriers.
	<b>Czech Republic</b>	<b>Yes</b>	No.
	<b>Estonia</b>	<b>Yes</b>	Currently, Estonia is applying the provisions laid down in Directive 2004/82/EC only to air carriers.
	<b>Finland</b>	<b>Yes</b>	Finland applies Directive 2004/82/EC only to air carriers, passenger information is collected also from ship companies but this is based on other directives.
	<b>France</b>	<b>Yes</b>	According to articles L.232-1 to L.232-4 of the Code on internal Security ( <i>Code de la sécurité intérieure</i> ), air, maritime and rail carriers have to provide API (Advance Passenger Information) and PNR (Passenger Name Record) data to the French authorities. However, these provisions are only implemented by air carriers who only provide API data, for convenient and technical reasons. The above-mentioned articles have been completed by article L.237-7 which only refers to air carriers. This article has been recently voted by the French Parliament (in December 2013) in order to extend the purpose of data processing, in particular to fight against serious forms of crime. For reasons of efficiency, France focuses on the implementation of the PNR by air carriers and does not intend so far to require maritime and rail carriers to provide API and PNR data.
	<b>Germany</b>	<b>Yes</b>	Germany applies the provisions of the Directive 2004/82/EC not only with regard to air carriers.
	<b>Greece</b>	<b>Yes</b>	Yes. According to our legislation (L. 3386/2005) captains of ships or other vessels or airplanes and drivers of any means of










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			transportation, as well as the owners of the means of transport or their agents in Greece shall, immediately after the arrival of the means of transport in Greece, deliver to police control agencies arrival cards or list of passengers who are third-country nationals.
	<b>Hungary</b>	<b>Yes</b>	Directive 2004/82/EC laid down rules exclusively with regard to air-carriers. In terms of water carriers, the shipmaster shall provide preliminary information on passenger data for the police according to provision 3.1.2. and 4.3. of Annex VI of Regulation 562/2006/EC (Schengen Borders Code). As regards railway and road traffic, the transmission of such information is not compulsory for the carriers; however, the preliminary provision of passenger data would considerably facilitate border check. Sanctions related to air carriers are defined in the Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals in accordance with Directive 2004/82/EC. For water carriers, Hungary has not introduced any similar sanctions so far.
	<b>Ireland</b>	<b>Yes</b>	Currently Ireland applies the provisions of Directive 2004/82/EC only to air carriers. There are no plans at present to extend the provisions to non-air carriers. Further information may be found at <a href="http://www.inis.gov.ie/en/INIS/Pages/Minister%20Shatter%20signs%20new%20law%20requiring%20airlines%20to%20provide%20Advance%20Passenger%20Information">http://www.inis.gov.ie/en/INIS/Pages/Minister%20Shatter%20signs%20new%20law%20requiring%20airlines%20to%20provide%20Advance%20Passenger%20Information</a> <a href="http://www.irishstatutebook.ie/2011/en/si/0597.html">http://www.irishstatutebook.ie/2011/en/si/0597.html</a> .
	<b>Italy</b>	<b>Yes</b>	The provisions of Directive 2004/82/EC were adopted in Italy with Legislative Decree no. 144 of the 2nd of August 2007. Currently, Italy is applying said provisions only to air carriers.
	<b>Latvia</b>	<b>Yes</b>	In accordance with legislation of the Republic of Latvia air and sea carriers shall transmit passengers' data to the State Border Guard. Whereas land carriers are not obliged to transmit passengers' data. Regarding the maritime borders, the provision of information about the persons on board (crew and passengers) is determined by Cabinet Regulations "Regulations Regarding Port Formalities" No. 339 Adopted 15 May 2012. With regard to sanctions, Article 114 <sup>3</sup> of Administrative Violations Code foresees that in case of failure to provide the requested passenger information, provision of incomplete or incorrect information to the State Border Guard, if done by a <u>carrier, who performs carriage by air</u> transport from a country that is not a Member State of the European Union or European Economic Area to the Republic of Latvia, a fine shall be imposed on the carrier – a natural or legal person – in an amount from 3100 up to 5100 EUR. Article 21 of the Immigration Law defines that the carrier (air, land and sea) must ascertain that the foreigner, whom the carrier transports, has documents that allow him/her to enter the territory of the Republic of Latvia. With regard to sanctions, Article 114 <sup>2</sup> of Administrative Violations Code foresees that in the case of the carriage of citizens of such state that is not a Member State of the European Union or European Economic Area, from such states to the Republic of Latvia, if the referred to persons do not have the necessary travel documentation to cross the border of the Republic of Latvia and if the carrier has performed it by sea, air or land transport – a fine shall be imposed on a natural or legal person in an amount from 3000 up to 5000 EUR.



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	<b>Lithuania</b>	<b>Yes</b>	The provisions laid down in the Directive 2004/82/EC are transposed in Lithuania into the Law on fundamentals of transport activities. The law obliges to provide data for air carriers only. However, ship-companies are also obliged to provide lists of passengers as required by the order of the Minister of Transport and Communications, dated on the 29 <sup>th</sup> December, 2011.
	<b>Luxembourg</b>	<b>Yes</b>	Luxembourg has only one external border (Luxembourg International Airport). In consequence, Luxembourg is applying the provisions laid down in directive 2004/82/EC only to air carriers (see articles 106, 108 and 148 of the modified Law of 29 August 2008 on free movement of persons and immigration).
	<b>Malta</b>	<b>Yes</b>	Yes. In the case of Malta, being an Island, the Directive was transposed in a manner that applies the provisions to both carriers by sea and by air. Article 15 of Chapter 217 is the related legislation.
	<b>Netherlands</b>	<b>Yes</b>	No, although the Ministry is studying possibilities to apply these provisions also to ship companies.
	<b>Poland</b>	<b>Yes</b>	Poland is applying provisions of the Directive 2004/82/EC only to air carriers.
	<b>Portugal</b>	<b>Yes</b>	Yes. However, Portugal applies to the transmission of information systems for the enforcement of international rules for the monitoring of maritime traffic as well as the Schengen's Code.
	<b>Slovak Republic</b>	<b>Yes</b>	Slovak Republic applies provisions laid down in Directive 2004/82/EC only to air carriers.
	<b>Slovenia</b>	<b>Yes</b>	We have transposed provisions laid down in Directive 2004/82/EC for air carriers. Similar provisions laid down in Annex VI (Part 3) of Schengen Borders Code are transposed for sea carriers with sanctions provided for in national legislation. We do not have such provisions for carriers in other types of transport.
	<b>Sweden</b>	<b>Yes</b>	The Swedish Aliens Act (chapter 19 section 2) states the following: <b>The alien's liability for travel costs</b> Section 1 An alien who is refused entry or expelled is liable to pay the cost of his or her own journey to the place to which he or she is required to travel through the action of an authority. The carrier's liability for costs Section 2 If an alien who has come to Sweden on a ship or aircraft direct from a state that is not covered in the Schengen Convention is refused entry because the alien does not have a passport or the permits required to enter the country or the funds for his or her journey home, the carrier is liable to reimburse the State for

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			<p>the cost of the alien's journey from Sweden, the travel cost from Sweden and back again for the supervisory personnel who need to accompany the alien and the cost of the alien's subsistence here before the refusal of entry can be enforced, if the delay in enforcement is due to the carrier.</p> <p>The carrier (the owner or operator of the ship or aircraft) shall be exempted in full or in part from this liability if the carrier shows that he or she had fair reason to assume that the alien was entitled to enter Sweden or it appears clearly unreasonable to demand reimbursement of the cost on account of the size of the cost or other grounds.</p>
	<b>United Kingdom</b>	<b>Yes</b>	The UK has domestic legislation that allows the collection of API on air, sea and rail routes. There is no legislation in place to collect information from buses or coaches.
	<b>Norway</b>	<b>Yes</b>	<p>Norwegian Immigration Law applies the provisions laid down in Directive 2004/82/EC through the Immigration Act (ul § 20 og uf § 4-24) to airline and ship carriers. These provisions are not applied to travel by train or bus.</p> <p>The regulations (uf § 4-24 paragraph 1), apply to airlines and reflect a partial implementation of the API directive which is referred to in the following (the API directive is also referred to in the Proposition to the Norwegian Parliament nr. 75 delivered prior to finalizing the new Immigration Act in 2010).</p> <p>The Norwegian Ministry of Justice and Public Security (JD) is working on establishing full legislative implementation of the directive in connection with the establishment of new laws relating to border control, which when put into effect, will include for example, rules regarding sanctions, appeals and handling of personal information. The Norwegian Directorate of Police, (POD) will consider technical issues related to actually implementing the directive.</p> <p>Norwegian regulation (Uf § 4-24 paragraph 2) relates to the obligation for ships to report the names etc. of passengers/crew. Implementation of this regulation is technically addressed through Safe Sea Net (which electronically disperses information and automatically carries out a crosscheck against SIS listings). Although the API directive was not actually the inspiration behind this regulation, the principle in the API directive about electronically dispersing lists of names of passengers and crew is under any circumstances addressed in regards to Norwegian territorial traffic on the seas.</p> <p>Norway has not considered implementing these provisions for train or bus passengers. There is only one point of entry with a country outside of Schengen at Storskog and there are no train connections at this point of entry. The need for reporting is therefor not deemed to be significant. It could possibly be of interest for bus companies to practice such reporting, however, this is a matter that would have to be discussed in relation to discussions about the new border control regulations.</p>

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