

# USE OF ADVANCED INFORMATION ON PERSONS CROSSING THE STATE BORDER AT AIR BORDER CROSSING POINTS

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**Abstract.** *Integrated border management is carried out in order to create and maintain a balance between ensuring an adequate level of border security and maintaining the openness of the state border for legitimate cross-border cooperation and for travelers. One of the ways to ensure such a balance is to use advanced information on persons crossing the state border.*

*In Ukraine, four options for border checks procedures execution at air border crossing points were tested. They were executed: at BCP on the territory of Ukraine (standard procedure); on the board of the aircraft during the flight; on the territory of a neighboring state; before the international flights arrival by means of checksng advanced information according to the lists of passengers. The last of the listed methods was determined to be the most effective one.*

*Information about passengers of the flight is collected in two formats: personal data of passengers and crew members and flight details of a specific international flight (API) and a record created by air carriers or their authorized representatives for each international flight booked by or on behalf of any passenger (PNR).*

*So, the implementation of border checks of advanced information according flight passenger lists ensures a high level of organization of interaction with subjects of integrated border management; simplification of border checks and customs procedure for passengers traveling by plane; contributes to reducing the time for conducting control operations, etc.*

**Keywords:** *Advance Passenger Information, border checks, border security, integrated border management, Passenger Name Record.*

## Introduction

Global cross-border (military) conflicts, new hybrid wars, numerous threats taking place at the present stage significantly affect the state of international security in general and national security in particular, provision of which is a priority task of every developed state.

In the context of ensuring national security, countering international terrorism, cross-border organized crime, illegal migration, smuggling, and attempts to illegally transfer weapons of mass destruction, each state strives to find and implement new effective mechanisms for countering emerging threats. One of them is a mechanism for processing information received from air carriers regarding persons who cross the border by air, with the aim of predicting their further activities in the country of destination, identifying



potential threats to national security as a whole, increasing the level of aviation security, preventing acts of terrorism, commission of crimes, offenses of a transnational nature, as well as for the purpose of accompanying (persecuting) persons who are suspected of committing such crimes or offenses or who have already committed them (European Union [EU], 2012).

The aim of the research is to study the issue of the advanced information on persons who cross the state border by air and its implementation into border checks formalities execution.

For this purpose, the author is going to fulfill the following tasks:

1. to find out the concepts “advance passenger information” and “passenger name record”;
2. to analyze the procedure of interdepartmental interaction on the use of advanced personal registration data;
3. to study main aspects of Ukrainian legislation concerning the problem under research.

Research methods: theoretical analysis and generalization of scientific and legislative acts.

### **Analysis of the organization of interdepartmental interaction in the system of the law enforcement sector on the use of advanced personal registration data**

It should be noted that prior to 2001, Advance Passenger Information (hereinafter in the text – API) and Passenger Name Record (hereinafter in the text – PNR) data were not widely used. The analysis of the organization of interdepartmental cooperation in the system of the law enforcement sector of the EU countries, the USA and other leading countries of the world showed that at the legislative level this process began in 2004. The issue of the possibility of obtaining information about aircraft passengers was first included in the agenda of the International Civil Aviation Organization (hereinafter in the text – ICAO) during the twelfth Specialized meeting on simplification of formalities, which took place in the capital of Egypt - Cairo. One of the results of the above-mentioned meeting was the adoption of recommendation B/5 with suggestions for the development of a certain toolkit for a number of states that may need it. It is about providing access to air passenger data registers to supplement identification data in databases, which is formed through the system of providing advance information on persons crossing the border at air border crossing points (API). This system combines the basic principles of data dissemination, storage and use, and contains a list of data elements that can be exchanged between an air carrier and a receiving State.

On April 29, 2004, the European Parliament adopted Directive No. 2004/82, which obliged air carriers to transfer passenger information to the relevant competent national authorities. A year later, in 2005, the ICAO Council approved the Recommended Practice with its inclusion in Annex 9 to the 1944 Chicago Convention "On International Civil Aviation", which was published the following year in April (ICAO, 1944).

The role of the United Nations (hereinafter in the text – the UN) is extremely important in the field of API/PNR implementation in world practice. Resolution No. 2178 of 2014 calls on all member states to require airlines carrying passengers through its territory to provide relevant data on persons crossing the border to the relevant national authorities. On April 27, 2016, the European Parliament and the Council approved Directive (EU) 2016/681 "On the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime", Article 14 of which states that EU member states are obliged to impose certain sanctions on air carriers who will not fulfill their obligations regarding the timely provision of necessary information about aircraft passengers to the relevant competent authorities. Annex II, in particular, contains a list of serious crimes for which the specified category of persons will be prosecuted. These are crimes such as human trafficking, sexual exploitation and violence, child pornography, rape, illegal trade in narcotic substances, weapons, ammunition, explosives, cybercrimes, acts of corruption, espionage, sabotage, fraud, environmental crimes, illegal trafficking of cultural values, organized armed robbery, trade in stolen vehicles, sabotage, etc.

According to Resolution No. 2396 of the UN Security Council (2017) all member states of the ICAO organization, starting from October 23, 2017, must create a system of preliminary data collection about passengers and require air carriers operating in its territory to provide pre-collected passenger information to the relevant competent national authorities in accordance with the domestic legislation of each state and its international obligations. In UN General Assembly Resolution No. 74/177 (2019) special attention is focused on the exchange of data between states in order to prevent the crossing of borders by foreign terrorist fighters.

The result of the above-mentioned legal documents was the creation of an API system – a database on preliminary information about passengers of aircraft making international trips. The guidelines of the API system were developed by the World Customs Organization (hereinafter in the text – WCO) in close cooperation with the International Air Transport Organization (hereinafter in the text – IATA). Subsequently, ICAO joined the formation process. This system is an electronic communication system that accumulates biographical data about passengers, basic information about

the flight provided by the air carrier. To obtain information of a biographical nature, as a rule, a foreign passport or other travel document issued by competent state authorities is used. The specified information is transmitted in electronic form to the representatives of the border checks and customs control bodies after the departure of the passengers to the point of destination. This information can later be compared with data from existing databases. Thus, it will make it possible to quickly and efficiently carry out the necessary formalities during the registration of passengers with a minimum level of risk.

Along with the API, the creation of a PNR (passenger registration) system for each flight when booking flights by an individual has become an important source of information about passengers. This system effectively complemented the API system, which enabled control bodies and services to carry out a more qualitative analysis of the degree of threat that may arise from the side of passengers, make a forecast of the development of a particular situation and analyze flight patterns.

If at the beginning of the use of the PNR data system, the basis was the achievement of improving the efficiency of operational and commercial services, then later in the process of use it became clear that this information will be useful to the authorities that carry out border checks and customs control, in the process of increasing the level of national security as a whole and aviation one, in particular, acceleration of border checks, customs and immigration formalities, effective fight against terrorism, etc.

PNR system data accumulation is based on several methods. Ticket reservations can be made by relevant international organizations with subsequent transfer of the necessary information to air carriers using automated reservation systems. Air carriers directly accept ticket booking applications, and PNR data may reside in global distribution systems. In order to ensure the performance of relevant functions at airports, some carriers may store PNR data in their own automated control systems.

In general, API and PNR data are exchanged according to the following scheme:

- 1) receiving API, PNR information from passengers;
- 2) primary data processing;
- 3) analytical processing of API, PNR data (databases checking; risk profiling; etc.);
- 4) verification of API, PNR information by other services.

States have the right to request PNR data only from air carriers that operate flights arriving at, departing from, and transiting an airport on their territory, or in the event of an unscheduled arrival at the destination airport. All states that receive PNR information are obliged to comply with a number of requirements for the protection of a person's personal data, namely:

- 1) use of data exclusively as intended;
- 2) the limited nature of access to this category of data;
- 3) ensuring the limitation of the storage period of PNR data (in accordance with the purpose of their transfer);
- 4) granting the right to persons to demand the disclosure of PNR information for the purpose of making appropriate corrections and notes;
- 5) compensation for damage in case of illegal processing of their personal data;
- 6) receipt/availability/transfer of personal data protocols and existing automated systems for the purpose of appropriate access to them (according to ICAO recommendations).

In practice, there are two ways of transferring PNR data:

- 1) the "pull" method, according to which the competent authorities of the relevant EU member state can gain access to the air carrier's reservation system and "pull" the necessary data from existing databases, i.e. receive "pull" copies;
- 2) the "push" method, according to which air carriers send the necessary information immediately to the database of the authorized competent body.

When choosing one or another method of data transfer, the state must consider their advantages and disadvantages (from the point of view of information protection) and assess the relevant risks, as well as take into account the economic component of the impact of each method on both the EU member state and the air carrier. In practice, in the process of transmitting PNR information, the "push" method is considered more reliable. Also, when determining the frequency of data provision, it is necessary to take into account the capabilities and limitations of existing air carrier systems. At the same time, the actual process of transferring PNR data should not stop, and it is the duty of each state to minimize the number of such transfers for each flight. The storage of this information should not exceed the appropriate (rational) time necessary to achieve a specific goal. In turn, the authorized competent bodies are obliged to ensure the appropriate level of storage and protection of PNR data. The relevant competent authorities are obliged to observe a reasonable balance between the need to ensure the protection of private passenger information and the right to disseminate it.

The air carrier must inform the passengers at the time of booking the plane tickets about the obligation to provide the competent authorities with PNR data about the air flight, and also that such information will be sent to the relevant authorities if necessary. The peculiarity of PNR data is that the air carrier cannot fully verify their completeness and authenticity, accordingly it is impossible to bring them to any legal, financial or other responsibility for the transmission of the received information, which may

turn out to be unreliable or falsified. In the case of rerouting flights to airports in other countries, it is advisable to take into account all the circumstances that may arise.

### **Analysis of changes in the legislation of Ukraine on the provision of advance information on persons crossing the state border by air**

Ukraine is confidently moving towards the European Community, therefore every year our state adjusts its policy, implementing the norms of European legislation to our realities. In the context of the Directive of the European Parliament (2004) appropriate mechanisms for improving border checks procedures, combating illegal migration, human trafficking, etc., were introduced at the legislative level (European Court of Human Rights [ECHR], d.n.). Thus, in 2011, changes designed to speed up and simplify the procedure for border checks and customs clearance of passengers were prescribed in the Regulation, which became the basis of the Air Code of Ukraine. In accordance with the specified Regulation, the aircraft operator, air carrier, ground service entity is obliged to provide the state border protection authority, the customs authority involved in the implementation of border checks and customs control at air border crossing points, preliminary information about aircraft crew members, passengers on board, as well as regarding the cargo category (import, export, transit) (Verkhovna Rada Ukrainy, 2017).

During the preparatory stage for the final part of the European Football Championship in 2012, our state gained some experience in introducing temporary procedures for the provision of passenger lists by air carriers ("SITA" system), preliminary registration of citizens at the airports of such cities as Warsaw, Poznan, Wroclaw (Republic of Poland), conducting border checks formalities with the use of mobile border checks automation complexes "Potok-A" on board charter flights, as well as in order to simplify the registration of participants of the European Championship and football fans - the creation of separate workplaces of border checks inspectors (Shysholin, 2013). Air carriers were required to provide a standard message without a digital signature to Separate Border Checks Unit "Kyiv" and the State Customs Service regarding passengers of international flights using the secure channel "SITA". The information provided in a certain form was entered into the database "Information about persons who crossed the state border".

Since 2012, the following four variants of the organization and implementation of border checks at air border crossing points have been tested in Ukraine:

- 1) carrying out border checks procedures on the territory of one's state is a common practice;
- 2) registration of passengers during the flight of the aircraft in the air;
- 3) joint border checks (territory of a neighboring state);
- 4) implementation of preliminary border checks according to the lists of passengers of international flights provided in advance (Binkovskyi & Kotov, 2013).

A comparative analysis of the advantages and disadvantages of the above-mentioned variants of border checks at air border crossing points is shown in Table 1.

**Table 1 Comparative analysis of the organization of border checks at air border crossing points (Nikiforenko, 2020)**

Factors	Variants of border checks			
	Border checks on the territory of Ukraine	Border checks during flight on board the plane	Border checks on the territory of another state	Preliminary border checks based on passenger lists
Organizational documents	International agreements, technological schemes, duties of border guards, job descriptions			
The level of coordination of international events	Low		High	
The possibility of advance training of personnel	Situations arise suddenly			Availability of time for preparation
Planning of border checks measures	It is difficult to predict the possible development of the situation; limited time to make a pass/no pass decision			Effective
Intensity of work of border checks inspectors	High	Low	High	
Technical support	Regular databases	Access to databases is difficult (in some cases – impossible)		Regular databases and access to passenger data
Additional financial costs	None	Additional travel expenses (per diem) and compensation for staff accommodation		None

Since 2017, the Ukrainian legislation has been significantly expanded as to the rights of authorized state bodies regarding the list of information they can receive from air carriers. However, the list of data did not fully correspond to the list of information in accordance with the international API format (regarding the validity period of the passport document, name of the airline, international flight number, date, time of departure/landing of the aircraft, as well as the name of the airport where the departure/landing took place).

At that time, there was a draft Law of Ukraine "On the use of previous personal registration data in the fight against cross-border crime", which, unfortunately, after the full-scale invasion of the Russian Federation on the territory of our country on February 24, 2022 and the temporary suspension of the operation of all international airports, has not yet come into force. In accordance with the draft of this Law, it is suggested to create a National Center of Preliminary Data (hereinafter in the text – NCPD) in Ukraine, the functions of which will be assigned to a separate structural unit in the State Border Guard Service of Ukraine, which will deal with the accumulation and storage of preliminary personal registration data, the exchange of this data, their processing, check them in relevant databases (in accordance with the specified risk profiles), carry out analysis for the purpose of updating, canceling or creating relevant profiles of personal registration data and process statistical information. This center is open 24/7.

The NCPD will collect information about passengers of aircraft that operate international flights in two formats:

1) API – personal data of passengers and crew members and flight details of a specific international flight, collected in advance of the aircraft departure;

2) PNR – a record created by air carriers or their authorized representatives for each international flight booked by or on behalf of any passenger, which is stored in the air carrier's reservation systems, flight departure control systems or other departure control systems that provide similar functions (Berezhniuk & Fradynskyi, 2017; Filipov, 2021).

In accordance with this Law, air carriers will be required to provide preliminary data: 1) 72 hours before the scheduled time of the international flight, as well as 48 and 24 hours before its departure for updated information in case of changes to this information; 2) not later than 30 minutes before the landing of the aircraft at the airport of Ukraine or after the completion of registration for an international flight departing from the airport of Ukraine.



In addition, in order to ensure the effective and timely transfer of information, the air carrier is obliged to provide data in paper form fourteen days before the start of the international flight regarding:

- 1) its name, address, phone number and e-mail;
- 2) selected data format used;
- 3) established schedule or program of international flights;
- 4) the accumulated category of advance data.

In the system of integrated border management, in order to maintain interdepartmental interaction, the competent authorities of the Ministries involved in the procedure send their representatives to the State Border Guard Service of Ukraine to perform the relevant tasks in the NCPD. These persons must be trained in the field of security and protection of personal data. Permission to perform tasks in the NCPS is granted by the Head of the State Border Guard Service of Ukraine upon a corresponding request to the interested competent authority. In accordance with this request, it is necessary to indicate the following data regarding the representative from each department:

- 1) the field of tasks to be performed, qualifications, experience and skills that the representative must have;
- 2) requirements for admission to work with the restricted access information and the period of its validity;
- 3) a defined period of performance of tasks, taking into account the possibilities of the organization of service in shifts;
- 4) duration of business trip;
- 5) the date of the start of the business trip;
- 6) the number of working hours at an automated workplace.

All data that is provided by air carriers will undergo mandatory verification regarding their compliance and completeness of the selected format, as well as compliance with the transfer deadlines. In the process of API and PNR verification, the information will be checked against the databases of assignments of authorized state bodies and against profiles of preliminary personal registration data. Preliminary data on citizens will be stored for five years from the moment of their submission, and at the end of this period they subject to immediate destruction.

### **Conclusions and suggestions**

Taking into account the international experience the most effective of the options listed above is the introduction of preliminary border checks using flight passenger lists. This will ensure a high level of organization of interaction with subjects of integrated border management, which are involved in this issue, and coordination of international activities; will ensure

effective and high-quality planning of border checks measures at air border crossing points; will increase the time for control operations; will provide an opportunity to improve the service of border guard details without the need to attract additional financial costs, etc.

The possibility of obtaining such information in advance and its effective analysis will allow the competent authorities of Ukraine to identify passengers who represent a potentially high level of risk from the point of view of the terrorist threat, and to take appropriate preventive measures. Since the issue of combating terrorism is a priority issue of the national security of our country, its solution should be at the state level in terms of technical, resource equipment and regulatory basis.

### References

1. Berezhniuk, I., & Fradynskyi, O. (2017). Systemy reiestratsii pasazhyriv (PNR) yak dzherelo informatsii na aviatsiinomu transporti. *Mytna Bezpeka: Naukovyi Zhurnal*, 1, 6–12.
2. Binkovskiy, O., & Kotov, S. (2013). Innovatsiini pidkhody do upravlinnia kordonom na shliakhakh mizhnarodnoho spoluchennia (aviatsiinykh, zaliznychnykh, avtomobilnykh). *Dosvid YeVRO–2012. Koordynatsiia ta Cpivrobitnytstvo Cubiektiv Intehrovanoho Upravlinnia Kordonamy, Intehrovane Upravlinnia Kordonom: Teoriia ta Praktyka*, 14–16.
3. Charter of Fundamental Rights of the European Union 2012/C 326/02. (2012). Official Journal of the European Union. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A12012P%2FTXT>
4. Convention on International Civil Aviation. (1944, December 7). Retrieved from [https://www.icao.int/publications/Documents/7300\\_orig.pdf](https://www.icao.int/publications/Documents/7300_orig.pdf)
5. Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data. (2004, April 29). Official Journal of the European Union. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0082&from=NL>
6. European Convention on Human Rights (ECHR) as amended by Protocols Nos. 11, 14 and 15, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16. Retrieved from [https://www.echr.coe.int/documents/d/echr/convention\\_eng](https://www.echr.coe.int/documents/d/echr/convention_eng)
7. Filipov, S. (2021). Okremi aspekty vykorystannia danykh pro pasazhyriv (API/PNR) v interesakh prykordonnoi bezpeky. *Pravova Derzhava. Zbirnyk*, 43, 169–175.
8. Nikiforenko, V. (2020). Administratyvna vidpovidalnist aviapereviznykiv za nevykonannia obov'iazku peredachi poperednykh danykh reiestratsii osoby. *Pravo i Suspilstvo. Seriia: Administratyvne Pravo i Administratyvnyi Protses, Informatsiine Pravo*, 5, 90–96.
9. Pro Derzhavnu prohramu aviatsiinoi bezpeky tsyvilnoi aviatsii: Zakon Ukrainy vid 21 bereznia 2017, № 1964-VIII. (2017). Retrieved from <https://zakon.rada.gov.ua/laws/show/1965-19#Text>
10. Resolution 74/177, A/RES/74/177, Strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity, on the report of the Third Committee. (2019). No. A/74/400. Retrieved from <https://documents.un.org/doc/undoc/gen/n19/431/54/pdf/n1943154.pdf>

11. Security Council resolution 2396 adopted by the Security Council at its 8148th meeting on 21 December 2017 on threats to international peace and security caused by returning foreign terrorist fighters. (2017, December 21). No. 2396. Retrieved from <https://documents.un.org/doc/undoc/gen/n17/460/25/pdf/n1746025.pdf>
12. Shysholin, P. (2013). *Yevro-2012: Dosvid ta Uroky*. Khmelnytskyi: NADPSU.