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保安事務委員會

立法會秘書處為 2022 年 5 月 3 日會議 擬備的背景資料簡介

擬議設立和實施"預先通報旅客資料系統"

目的

本文件就擬議設立和實施"預先通報旅客資料系統"("預先通報系統")提供背景資料,並概述議員以往就此課題進行的討論。

背景

2. 國際民用航空組織("國際民航組織")是根據《國際民用航空公約》(一般稱為"《芝加哥公約》")("《公約》")在1944年成立的一個聯合國專門機構,負責制訂國際民航政策和標準,推動國際間以安全而有秩序的方式發展國際民航業務。「《公約》附件9所訂的《標準》及《建議措施》,載列如何在海關、出入境、公眾衞生和農業當局的要求方面,便利飛機和乘客,以及貨物和郵件在機場限制區外辦理清關手續。²

中國作為國際民航組織193個締約國的其中一員,承認《公約》及相關規例所引申的各項國際權利和義務,而這些國際權利和義務亦適用於香港特別行政區。

程據國際民航組織,《標準》為一套業界認同既切實可行亦有必要劃一遵行的規格,藉以促進及改善國際航空某些範疇。如有不遵行《標準》的情況,締約國必須通知國際民航組織理事會。《建議措施》的一套規格,是業界認同遵行這套規格對於促進及改善國際航空某些範疇一般而言切實可行,而且十分可取。締約國將按照《公約》,盡力予以配合。

- 3. 根據國際民航組織,今時今日,檢查旅客本人及旅遊文件只是對機場抵港乘客執行邊境管制程序的其中一個環節,其餘程序依賴安全的電子數據,部分數據是由乘客購買機票時提供;部分則是乘客登機時提供。無論如何,有必要在乘客抵達目的地國家前執行邊境管制,以便相關邊境管制當局對乘客和他們攜帶的貨物進行風險為本針對性的管制。運輸工具(航空公司)把與乘客有關的資料交予邊境管制當局的一個主要傳送渠道為預先通報系統。3《公約》附件 9 於 2017 年更新,要求每個締約國須設立預先通報系統。根據該附件所作定義,預先通報系統為"一個電子通訊系統,用以在航機離開或抵達前,收集和向邊境管制當局傳送所需數據元素,並首要向航機前往的機場提供該等數據"。除此之外,每個締約國際認可的標準一致。4附件 9 第九章 B 部"預先通報系統"(只備英文本)於 2018 年 2 月 23 日適用,現節錄於**附錄 1**。
- 4. 香港須履行在《公約》下的國際責任。據政府當局所述,實施預先通報系統不但可以加快邊境檢查程序,亦有助防止潛在免遣返聲請人抵港。作為全面檢討處理免遣返聲請策略的一部分,政府當局於 2020 年 12 月提交《2020 年入境(修訂)條例草案》("條例草案")。條例草案於 2021 年 4 月獲立法會通過後,《2021 年入境(修訂)條例》於 2021 年 8 月生效,當中包括賦權保安局局長制定規例,包括要求航空公司(或其他運輸工具)或其擁有人或代理人,在飛機(或其他交通工具)出發來港前向入境事務處("入境處")提供其乘客的資料,以及賦權入境處指示該飛機(或其他交通工具)不可運載某乘客來港。

³ 根據國際民航組織,運輸工具把與乘客有關的資料交予邊境管制當局的另一主要傳送渠道為"乘客姓名紀錄"。"乘客姓名紀錄"數據在預訂或購買機票的過程中產生。

⁴ 根據國際民航組織,第一套《預先通報指引》於1993年由世界海關組織與國際航空運輸協會合作制訂。其後,世界海關組織、國際航空運輸協會及國際民航組織組成了預先通報聯絡委員會。上述3間機構為協助屬下會員實施預先通報系統,於2003年聯合發表《世界海關組織/國際航空運輸協會/國際民航組織預先通報旅客資料指引》。該指引的最新版本已上載國際民航組織的網站,網址為:https://www.icao.int/Security/FAL/SiteAssets/SitePages/API%20Guidelines%20and%20PNR%20Reporting%20Standards/API-Guidelines-Main-Text_2014.pdf。

議員的商議工作

- 5. 關於實施擬議預先通報系統的事宜曾在保安事務委員會("事務委員會")及《2020年入境(修訂)條例草案》委員會的會議上討論。議員的主要商議工作及關注事項綜述於下文各段。
- 6. 議員詢問透過預先通報系統收集的資料和數據的詳情,以及如何使用這些資料和數據防止潛在免遣返聲請人抵港。他們要求提供資料,說明擬議預先通報系統會否採用相同或類似入境處目前的做法來處理所收集及使用的乘客及乘組人員的個人資料。
- 7. 政府當局表示,雖然尚未就預先通報系統制訂運作細節,但透過預先通報系統收集的紀錄和個人資料的處理方法,與相關人士抵港後辦理出入境檢查手續時入境處可查閱的個人資料相若。就擬議預先通報系統訂立的規例將按先訂立後審議的程序由立法會審議,並會諮詢航空業界及相關持份者。當局向議員保證,當局會小心處理收集所得的個人資料,並且完全符合《個人資料(私隱)條例》(第 486 章)的規定。
- 8. 有意見關注到實施擬議預先通報系統是否符合《基本法》第三十一條及《香港人權法案條例》(第 383 章)所訂《香港人權法案》第八(二)條。該等條文關乎香港居民旅行和出入境的自由。政府當局強調無須有此憂慮。擬議預先通報系統只適用於前往香港的航班,目的包括防止潛在免遣返聲請人或先前已獲發遞解離境令的人再次進入香港。目前已有超過 90 個國家採用預先通報系統,包括澳洲、加拿大、歐洲聯盟成員國和美國。
- 9. 委員在 2022 年 2 月的事務委員會會議上獲告知, 入境處已完成可行性研究,並正着手籌備招標工作。政府當局 會就有關附屬法例諮詢立法會,並尋求立法會批准所需撥款 建議,以期盡快推行預先通報系統。

相關文件

10. 立法會網站的相關文件一覽表載於附錄 2。

立法會秘書處 <u>議會事務部 2</u> 2022 年 4 月 29 日

節錄自《國際民用航空公約》附件9

CHAPTER 9. PASSENGER DATA EXCHANGE SYSTEMS

B. Advance Passenger Information (API)

9.5 Each Contracting State shall establish an Advance Passenger Information (API) system.

Note.— The UN Security Council, in Resolution 2178 (2014), at paragraph 9, "[c]alls upon Member States to require that airlines operating in their territories provide advance passenger information to the appropriate national authorities in order to detect the departure from their territories, or attempted entry into or transit through their territories, by means of civil aircraft, of individuals designated by the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) ("the Committee"), and further calls upon Member States to report any such departure from their territories, or such attempted entry into or transit through their territories, of such individuals to the Committee, as well as sharing this information with the State of residence or nationality, as appropriate and in accordance with domestic law and international obligations".

- 9.6 The API system of each Contracting State shall be supported by appropriate legal authority (such as, inter alia, legislation, regulation or decree) and be consistent with internationally recognized standards for API.
- Note 1.— API involves the capture of a passenger's or crew member's biographic data and flight details by the aircraft operator prior to departure. This information is electronically transmitted to the border control agencies in the destination or departure country. Thus, passenger and/or crew details are received in advance of the departure or arrival of the flight.
- Note 2.— The UN/EDIFACT PAXLST message is a standard electronic message developed specifically, as a subset of UN/EDIFACT, to handle passenger manifest (electronic) transmissions. UN/EDIFACT stands for "United Nations rules for Electronic Data Interchange For Administration, Commerce and Transport." The rules comprise a set of internationally agreed standards, directories and guidelines for the electronic interchange of structured data, and in particular that related to trade in goods and services between independent, computerized information systems. The WCO, IATA and ICAO have jointly agreed on the maximum set of API data that should be incorporated in the PAXLST message to be used for the transmission of such data by aircraft operators to the border control agencies in the destination or departure country. It is to be expected that the UN/EDIFACT standard may be supplemented by modern message techniques, such as international XML standards or web-based applications.
- Note 3.— Under its current format structure the UN/EDIFACT PAXLST message will not accommodate general aviation usage.
- Note 4.— The UN/EDIFACT PAXLST message is currently defined by the internationally recognized WCO/IATA/ICAO guidelines.
- 9.7 **Recommended Practice.** Each Contracting State developing legislation for the purpose of implementing an API system should consider developing aligned regulations that meet the needs of all involved agencies, define a common set of API data elements required for that jurisdiction in accordance with message construction standards and appoint one government agency to receive API data on behalf of all other agencies.
- 9.8 When specifying the identifying information on passengers to be transmitted, Contracting States shall require only data elements that are available in machine readable form in travel documents conforming to the specifications contained in Doc 9303. All information required shall conform to specifications for UN/EDIFACT PAXLST messages found in the WCO/IATA/ICAO API Guidelines.
- 9.9 When seeking to implement a national API programme, Contracting States that are unable to comply fully with the provisions contained in 9.8 with respect to data element requirements shall ensure that only those data elements that have been defined for incorporation into the UN/EDIFACT PAXLST message are included in the national programme's requirement or follow the WCO's Data Maintenance Request (DMR) process for any deviation from the standard.

Annex 9 — Facilitation Chapter 9

9.10 **Recommended Practice.**— Contracting States should seek to minimize the number of times API data is transmitted for a specific flight.

- 9.11 If a Contracting State requires API data interchange, then it shall seek, to the greatest extent possible, to limit the operational and administrative burdens on aircraft operators, while enhancing passenger facilitation.
- 9.12 **Recommended Practice.** Contracting States should refrain from imposing fines and penalties on aircraft operators for any errors caused by a systems failure which may have resulted in the transmission of no, or corrupted, data to the public authorities in accordance with API systems.
- 9.13 Contracting States requiring that passenger data be transmitted electronically through an API system shall not also require a passenger manifest in paper form.
- 9.14 **Recommended Practice.** Each Contracting State should consider the introduction of an interactive Advance Passenger Information (iAPI) system.
 - 9.15 **Recommended Practice.**—Contracting States seeking to implement an iAPI system should:
 - a) seek to minimize the impact on existing aircraft operator systems and technical infrastructure by consulting aircraft operators before development and implementation of an iAPI system;
 - b) work together with aircraft operators to develop iAPI systems that integrate into the aircraft operator's departure control interfaces; and
 - c) conform to the Guidelines on Advance Passenger Information (API) adopted by WCO/ICAO/IATA when requiring iAPI
- 9.16 **Recommended Practice.** Contracting States' and aircraft operators' API systems, including iAPI, should be capable of 24/7 operation, with procedures in place to minimize disruption in the event of a system outage or failure.

擬議設立和實施"預先通報旅客資料系統" 相關文件

委員會	會議日期	文件
保安事務委員會	2019年1月8日 (議程第III項)	議程 會議紀要
	2022年2月8日 (議程第III項)	議程
《2020年入境(修訂) 條例草案》委員會		法案委員會就2021年4月 16日內務委員會會議提交 的報告

立法會秘書處 議會事務部 2 2022 年 4 月 29 日