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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. prev. doc.:	12649/1/19 REV 1
Subject:	Draft Council conclusions on widening the scope of the use of passenger name record (PNR) data to forms of transport other than air traffic – Adoption

1. On the basis of Presidency papers 10597/19 and 11433/19, DAPIX discussed to what extent Member States would support the widening of the scope of the EU PNR Directive to land and maritime transport.
2. In the light of these discussions, the Presidency drafted Council conclusions recommending that the Commission carry out a study that would explore by means of an impact assessment the need for and feasibility of the collection, storage and processing of PNR data from cross-border forms of transport other than air traffic.
3. In its meeting on 8 November 2019, DAPIX welcomed the revised draft Council conclusions (12649/1/19 REV 1) and the Presidency took note of the hesitation of one Member State.
4. Delegations find in annex the revised draft Council conclusions and are invited to agree on the draft with a view to submitting the draft to COREPER / Council for adoption in accordance with Article 241 of TFEU as a I/A item at a forthcoming meeting.

Draft

Council conclusions

of

on

**Widening the scope of the use of passenger name record (PNR) data
to forms of transport other than air traffic**

THE COUNCIL OF THE EUROPEAN UNION,

RECALLS that the PNR Directive¹ applies to PNR data on air traffic and does not cover any other form of transport. PNR may contain different types of data, such as travel dates, travel itinerary, ticket information, contact details, details of the travel agent through which the flight was booked, means of payment used, seat number and baggage information. Air carriers are required to transfer the registered data for all passengers on extra-EU flights and Member States can decide to apply the same obligation to intra-EU flights.

ACKNOWLEDGES that traffic volumes from both within and outside the Schengen area are increasing. Besides air traffic, ferries, ships, boats, trains and buses carry large numbers of passengers across the borders on a daily basis.

¹ Directive (EU) 2016/681 of the European Parliament and of the Council on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, OJ L 119/132, 4.5.2016.

NOTES that gathering and analysing PNR data and closely related advance passenger information (API) data is deemed important for combating terrorism and serious crime. Through handling and analysing PNR and API data, law enforcement authorities' actions and resources are directed in a more efficient and targeted way.

TAKES NOTE that in some Member States, PNR data is already collected in respect of forms of transport other than air traffic. However, the collection and processing of PNR data for these forms of transport is not regulated at EU level.

TAKES NOTE of the Presidency initiative to launch discussions in DAPIX about widening, if appropriate, the scope of the EU PNR legislation to forms of transport other than air traffic.

NOTES the outcome of these discussions², where some Member States welcomed the Presidency initiative and acknowledged the potential added value for preventing, detecting, investigating and prosecuting terrorist offences and serious crime.

NOTES the concerns voiced by delegations about the timing and likely legal, technical and financial challenges, notably with regard to fundamental rights and the principles of proportionality and necessity.

RECALLS the delegations' suggestion to carry out a thorough impact assessment, which should take into account the outcome of both the review of the PNR Directive, envisaged in 2020 as provided for by Article 19 of the Directive, and of the current evaluation of the closely correlated API Directive.

RECOMMENDS therefore that subsequent to the PNR review the European Commission conduct a thorough impact assessment on widening the scope of the PNR Directive to cross-border forms of transport other than air traffic.

² 11433/19

EMPHASISES that in making the impact assessment, it is important to closely study the legal, operational, technical and other issues, especially including:

- the forms of transport to be included,
- the impact on fundamental rights, such as data protection and freedom of movement within the territory of the Member States,
- the extent to which operators dealing with other modes of transportation already collect PNR data in the normal course of their business, and the impact of additional mandatory processing of their business data,
- the obligatory collection of a minimum set of passenger data, and the impact of such collection on carriers, travellers and automated PNR data processing within the passenger information unit (PIU),
- the impact on widely used travel options with flexible tickets not bound to a specific person or a specific connection, i.e. whether a widening of the scope of the PNR Directive could restrict or impede the use of such tickets,
- the lack of common protocols and data formats,
- compliance with the principles of proportionality and necessity,
- the different needs in Member States due to their geographical situation,
- the costs for both public and private sector, in particular the potential repercussions on the economic situation of carriers.

CONCLUDES that the aim of such an impact assessment is to explore the necessity and feasibility of the collection, storage and processing of PNR data from cross-border forms of transport other than air traffic.