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DECLASSIFICATION

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Subject:	Recommendation from the Commission to the Council authorising the Commission to open negotiations with Canada on an Agreement on the processing and transfer of Advanced Passenger Information (API) and Passenger Name Record (PNR) data by air carriers to the Canada Border Services Agency (CBSA)

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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"I/A" ITEM NOTE

from:	General Secretariat
to:	COREPER / COUNCIL
No. Cion prop.:	5202/05 CDN 1 TRANS 2 RESTREINT UE SEC(1717) final
Subject:	Recommendation from the Commission to the Council authorising the Commission to open negotiations with Canada on an Agreement on the processing and transfer of Advanced Passenger Information (API) and Passenger Name Record (PNR) data by air carriers to the Canada Border Services Agency (CBSA)

1. After 9/11, Canada adopted legislation giving the Canada Border Services Agency (CBSA) legal authority to obtain and collect Advanced Passenger Information (API) and Passenger Name Record (PNR) information relating to all persons on board of flights bound for Canada. CBSA started collecting API and requesting PNR data. A system of monetary penalties for non-compliance was put in place but the EU was granted a temporary exemption in order to allow for negotiations.

2. These measures potentially conflict with Community and Member States' legislation on privacy and data protection, in particular with Directive 95/46/EC. From February 2005, airlines potentially face sanctions from both sides of the Atlantic. A solution is urgently required. The Commission has been working with Canada over the last year to try to put in place a sound legal framework for the transfers of API/PNR data to CBSA.

3. The legal framework for the transfers of API/PNR data to the CBSA would consist of three elements: (1) Commitments made by the CBSA. (2) Adequacy finding by the Commission under Art 25 para 6 of the Data Protection Directive (95/46/EC). (3) Bilateral agreement between the EC and Canada. The agreement would have the goal to provide a legal basis for air carriers to process data in accordance with Directive 95/46/EC.

4. The Commission first introduced its proposal to COTRA on 25 January 2005. The negotiating directives were discussed in COTRA on several occasions and amended by the Commission in the course of the discussions. Delegations Member states agreed to the negotiating guidelines set out at Annex by silence procedure which expired on 24 February 2005.

5. It is suggested that COREPER confirm the agreement on the Negotiating Directives set out in Annex and recommend that the Council:

   – authorise the Commission to negotiate an Agreement on the processing and transfer of Advance Passenger Information (API) and Passenger Name Record (PNR) data by air carriers to CBSA to ensure respect for fundamental rights and freedoms, notably the right to privacy, imposing an obligation on air carriers to process API/PNR data as required by CBSA;
   – adopt the annexed Negotiating Guidelines.

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ANNEX

NEGOTIATING GUIDELINES

– The obligation placed on air carriers to transfer data to CBSA, as set out in the applicable Canadian legislation and requested by CBSA itself, must apply only to those transfers covered by a Commission Decision establishing that the protection granted by CBSA to API/PNR data is 'adequate', in accordance with Directive 95/46/EC ('Adequacy Finding').

– The Agreement shall render legally binding on the Government of Canada and CBSA those Commitments made by CBSA which are not enshrined in existing Canadian law or in new legally binding domestic Regulations issued by CBSA which are necessary to ensure an adequate level of protection.

– The way in which API/PNR data is processed by CBSA should not discriminate against EU passengers.

– A mechanism should be provided for joint review of the implementation of all matters related to the Agreement. The Agreement should be re-examined should the need arise, for instance to take into account policy developments such as the definition by the International Civil Aviation Organisation (ICAO) of relevant PNR guidelines.

– The Agreement shall ensure reciprocal support from Canada for any European passenger identification system that may be adopted in the future.

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