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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
No. Cion doc.:	15720/22; 15719/22
No. prev. doc.:	10701/23; 10703/23
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the collection and transfer of advance passenger information (API) for enhancing and facilitating external border controls, amending Regulation (EU) 2019/817 and Regulation (EU) 2018/1726, and repealing Council Directive 2004/82/EC - <i>Confirmation of the final compromise text with a view to agreement</i> Proposal for a Regulation of the European Parliament and of the Council on the collection and transfer of advance passenger information for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, and amending Regulation (EU) 2019/818 - <i>Confirmation of the final compromise text with a view to agreement</i>

I. INTRODUCTION

1. On 13 December 2022, the Commission presented two legislative proposals for Regulations of the European Parliament and of the Council on the collection and transfer of advance passenger information ('API'): one for enhancing and facilitating external border controls, amending Regulation (EU) 2019/817 and Regulation (EU) 2018/1726, and repealing Council Directive 2004/82/EC¹ (the 'API border management proposal'), the second for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, and amending Regulation (EU) 2019/818² (the 'API law enforcement proposal').
2. The objective of the API border management proposal is to contribute to the effectiveness and efficiency of border checks by speeding up and facilitating the process of carrying out the required border checks during the border-crossing process. The objective of the API law enforcement proposal is to allow Member States' Passenger Information Units ('PIUs') benefit from the joint processing of API data and Passenger Name Record ('PNR') data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.
3. The Swedish Presidency worked intensively to find a compromise on the text of the proposed Regulations that would be acceptable to Member States with a view to starting negotiations with the European Parliament as soon as it was ready to do so. The Permanent Representatives Committee reached agreement on mandates for negotiations for both legislative proposals at its meeting on 21 June 2023.
4. In the European Parliament, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) was designated as the competent committee, with Mr Jan-Christoph OETJEN (RENEW, DE) appointed rapporteur for the API border management proposal and Ms Assita KANKO (ECR, BE) appointed rapporteur for the API law enforcement file. The LIBE Committee adopted its reports on both legislative proposals on 28 November 2023.

¹ 15720/22

² 15719/22

5. The European Data Protection Supervisor issued an opinion on the proposed Regulations on 8 February 2023³.
6. On 27 April 2023, the European Economic and Social Committee adopted an opinion on the proposed Regulations⁴.
7. Under the Spanish Presidency, a first trilogue took place on 13 December 2023 where the main political issues were identified (whether API data should be collected solely by automated means; the inclusion of provisions on a methodology for the selection of intra-EU flights under the law enforcement proposal; whether the use of the router should be made compulsory for the collection of PNR data under the law enforcement proposal; the types of flights falling under the scope of the proposals; whether crew members should fall under the scope of the proposals; data retention periods; provisions concerning statistics; governance mechanisms).
8. Under the Belgian Presidency, a number of technical and informal meetings took place with the European Parliament and the Commission, both before and after the second trilogue on 30 January 2024, in order to solve the outstanding issues and finalise the drafting of the text. Over the course of six JHA Counsellors meetings and one Working Party on JHA Information Exchange (IXIM), the Presidency ensured regular consultation of the Member States.
9. Following intense preparatory work at technical level, a third and final trilogue took place on 1 March 2024, which confirmed the outcome of negotiations conducted at technical level, in particular agreement on the remaining political issues (automated collection of API data will become the norm following a transition period during which sufficient guarantees will be in place to ensure data accuracy; provisions on the methodology for the selection of intra-EU flights under the law enforcement proposal include a 12-month review period; standardisation of PNR formats will facilitate the compulsory use of the router for the collection of PNR data).

³ https://edps.europa.eu/data-protection/our-work/publications/opinions/2023-02-08-edps-opinion-proposals-regulations-collection-and-transfer-advance-passenger-information-api_en

⁴ <https://webapi2016.EESC.europa.eu/v1/documents/eesc-2023-00256-00-00-ac-tra-en.docx/content>

10. On 6 March 2024, the Presidency debriefed the Permanent Representatives Committee on the outcome of the third trilogue and the provisional agreement reached. The Presidency considers that the overall compromise reached with the European Parliament is balanced and respects the mandate it received.
11. The Permanent Representatives Committee will find the full texts of the provisional compromise agreements reached in document 7278/24, for the API border management proposal, and in document 7279/24 for the API law enforcement proposal.

II. CONCLUSION

12. In light of the above, the Permanent Representatives Committee is invited to:
- confirm agreement on the final compromise text as set out in document 7278/24 and document 7279/24 with a view to reaching an agreement at first reading with the European Parliament;
 - authorise the Chair of the Permanent Representatives Committee to send a letter to inform the Chair of the European Parliament's LIBE Committee that, should the European Parliament adopt its position at first reading on the text of the proposal in the exact form as set out in document 7278/24 and document 7279/24, and subject to revision of that text by the lawyer-linguists of both institutions, the Council will approve the European Parliament's position and the act will be adopted in the wording which corresponds to the European Parliament's position.