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European Union

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NOTE

From: Presidency

To: Delegations

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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
- Variable geometry

The legal basis contained in the Commission proposal for a Regulation on the collection and transfer of advance passenger information (API) for enhancing and facilitating external border control is Articles 77(2)(b) and (d) and 79(2)(c) of the Treaty on the Functioning of the European Union.

The proposed Regulation constitutes an act building upon the Schengen acquis. In accordance with their respective Acts of Accession, the Regulation would apply to **Bulgaria, Cyprus and Romania** although the controls at their internal borders have not yet been lifted.

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According to its Article 2, the Regulation applies to air carriers conducting flights into the Union. According to Article 3 (c), “*flights into the Union*” means “*flights flying from the territory either of a third country or of a Member State not participating in this Regulation, and planned to land on the territory of a Member State participating in this Regulation*”.

In practical terms, therefore, no API data will be collected for flights originating in Bulgaria, Cyprus and Romania into the Schengen Area and vice versa, although border checks still exist at internal air borders between these three countries and the other Member States. It should be borne in mind however, that the controls at the internal borders with Bulgaria, Cyprus and Romania are expected to be lifted in due time.

Ireland is not part of the Schengen area without control at internal borders. However, as set out in Recital 39, Ireland takes part in the proposed Regulation. As a Member State participating in the Regulation, for flights from Ireland into the Schengen area (and vice versa), no API data would be collected although border checks exist.

Denmark is not taking part in the adoption of the Regulation but applies the Schengen acquis in full as a matter of international law. Hence, there are no border checks between Denmark and other Schengen states. Should Denmark decide to implement the proposed Regulation in its national law it will be bound by the Regulation. In that case, no API data will be collected on flights from Denmark to other Schengen countries.

Finally, as regards the four Associated States, **Norway, Iceland, Switzerland and Liechtenstein**, they are associated with the application and development of the Schengen acquis by means of the respective Schengen Association Agreements they have concluded with the Union. As a result, the Union shares with these countries the area without internal border controls on persons, where the entirety of the Schengen acquis, including all its consecutive developments, fully and coherently applies. Should these four associated states decide to apply the proposed Regulation it will apply to them as part of the Schengen acquis covered by their respective Schengen Association Agreements, and they would be regarded as participating Member States in the sense of Article 3 (c) and no API data would be collected on flights from them to other Schengen countries.

Some Member States consider that API data should be collected on all flights into the Schengen area, hence also on flights from those Member States that are not taking part in the Schengen area without control at internal borders (Ireland) and those where the controls at their internal borders have not yet been lifted (Bulgaria, Cyprus and Romania).

The Presidency would like to get a clear picture on Member States' view on this matter and intends to organise a discussion on this topic at the next IXIM meeting based on the following questions:

1. Do Member States see an operational need for the collection of API data on flights from Bulgaria, Cyprus, Ireland and Romania into the other Member States and vice versa?
2. Can those Member States that are not taking part in the Schengen area or those where the controls at their internal borders have not yet been lifted, accept that API data will be collected on flights from their territories into the other Member States (similar to the collection of API data on intra-EU flights for law enforcement purposes)? Likewise, can those latter Member States accept that, conversely, API data would be collected on flights from their territories into the territories of the Member States that are not taking part in the Schengen area or into those where the controls at their internal borders have not yet been lifted?
3. Finally, would those Member States that are not taking part in the Schengen area or those where the controls at their internal borders have not yet been lifted, collect API data on flights operating between them?
