

**8842/04**

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COMIX 288  
OC 450**

**"I/A" ITEM NOTE**

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from : General Secretariat  
to : Permanent Representatives Committee/Council  
Subject : Draft Council Directive on the obligation of carriers to communicate passenger data

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**COMMON GUIDELINES**

**Consultation deadline: 27 April 2004**

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1. By a letter addressed to the General Secretariat of the Council (dated 24 February 2003), the Kingdom of Spain forwarded an initiative, based on Article 62 (2)(a) and Article 63 (3)(b) of the Treaty establishing the European Community, with a view to the adoption of a Council Directive on the obligation of carriers to communicate passenger data. The text of this Initiative was submitted to the Permanent Representatives Committee at its meeting on 26 March 2003, which decided to publish it in the Official Journal, "C" series<sup>1</sup>.
2. By letter dated 3 April 2003, the Council consulted the European Parliament on the above-mentioned initiative, as contained in document 7161/03 FRONT 22 COMIX 139 and requested to deliver its opinion at the earliest opportunity.

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<sup>1</sup> OJ C 82, 2.4.2003, p. 23

3. The purpose of this initiative is to improve border controls and combat illegal immigration by the transmission of advance passengers data by carriers to the competent national authorities. At the request of the authorities responsible for carrying out checks on persons at external borders, carriers will be obliged to transmit, by the end of check-in, information concerning the passengers they will carry to an authorised border crossing point through which these persons will enter the territory of a Member State.

This Directive has a particularly important role to play in combating illegal immigration. If the Council would not take a decision, the vacuum in the Community's action in this area will remain.

4. At its meeting on 26 February 2004, the Permanent Representatives' Committee decided that the European Parliament should be informed on the updated text of the initiative of the Kingdom of Spain with a view to its adoption by the Council. (doc. 6620/04 FRONT 27 COMIX 119).
5. By letter dated 18 March 2004, the Council requested the Parliament to give its opinion on the initiative in question as soon as possible and in any event no later than at its plenary session of 29 March - 1 April 2004, under the urgent procedure laid down in Article 112 of the European Parliament's Rules of Procedure.

In this context, it has to be pointed out that, pursuant to Article 67(2), first indent of the Treaty establishing the European Communities, in case of failure to adopt this Directive before the deadline of 1 May 2004, the Council could not act on an Initiative of a Member State.

6. Furthermore, the European Council of 25 and 26 March 2004 adopted a Declaration on combating terrorism, paragraph 6 of which stresses the need to expedite examination of measures in this area and take work forward on the proposed Council Directive on the obligation of carriers to communicate passenger data with view to an early conclusion on this measure.

7. At its meeting on 30 March 2004, the Mixed Committee at Ministerial Level reached a common approach on the draft Council Directive, as set out in doc. 8058/04 FRONT 61 AVIATION 87 COMIX 237 , pending the opinion of the European Parliament and the lifting of the Netherlands and United Kingdom Parliamentary reservations.
8. Since the European Parliament, at its session of 29 March - 1 April 2004, did not give its opinion on the initiative, the Permanent Representatives' Committee decided to request again the European Parliament to give its opinion as soon as possible, and in any case no later than 22 April 2004, under the urgent procedure laid down in Rule 112 of the European Parliament's Rules of Procedure. The Council also informed the European Parliament that if it did not give its opinion by that date, the Council reserved the right to act without the Parliament's opinion.
9. In spite of the efforts of the Council, which had regular contacts with the European Parliament in the course of the consultation procedure, the European Parliament, decided, at its plenary session held on 22 April 2004, to send the initiative back to the LIBE Committee pursuant to Rule 68(3) of the European Parliament's Rules of Procedure.

The Permanent Representatives Committee is invited to suggest that the Council

- adopts, under part "A" of the agenda of its meeting on 29-30 April 2004, the draft Council Directive as set out in 8078/04 FRONT 63 AVIATION 88 COMIX 239 (text finalised by the legal/linguistic experts);
- decides that the above Directive will be published in the Official Journal, "L" series, in accordance with Article 17 (1)(a) of the Council's Rules of Procedure.