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#### OUTCOME OF PROCEEDINGS

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From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	10511/23; 10512/23
No. Cion doc.:	15719/22
Subject:	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 - Mandate for negotiations with the European Parliament

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Delegations will find in the Annex the mandate on the abovementioned proposal approved by the Permanent Representatives Committee on 21 June 2023.

The Committee also agreed that, on the basis of this text, negotiations could start with the European Parliament in the context of the ordinary legislative procedure.

Changes, as compared to the Commission's proposal, appear as **bold** for new text and ~~striketrough~~ for deleted text.

2022/0425 (COD)

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1), point (d), and Article 87(2), point (a), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The transnational dimension of serious and organised crime and the continuous threat of terrorist attacks on European soil call for action at Union level to adopt appropriate measures to ensure security within an area of freedom, security and justice without internal borders. Information on air travellers, such as Passenger Name Records (PNR) and in particular Advance Passenger Information (API), is essential in order to identify high-risk travellers, including those who are not otherwise known to law enforcement authorities, and to establish links between members of criminal groups, and countering terrorist activities.

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<sup>1</sup> OJ C , , p. .

- (2) While Council Directive 2004/82/EC<sup>2</sup> establishes a legal framework for the collection and transfer of API data by air carriers with the aims of improving border controls and combating illegal immigration, it also states that Member States may use API data for law enforcement purposes. However, only creating such a possibility leads to several gaps and shortcomings. In particular, it means that, despite its relevance for law enforcement purposes, API data is not in all cases collected and transferred by air carriers for those purposes. It also means that, where Member States acted upon the possibility, air carriers are faced with diverging requirements under national law as regards when and how to collect and transfer API data for this purpose. Those divergences lead not only to unnecessary costs and complications for the air carriers, but they are also prejudicial to the Union's internal security and effective cooperation between the competent law enforcement authorities of the Member States. Moreover, in view of the different nature of the purposes of facilitating border controls and law enforcement, it is appropriate to establish a distinct legal framework for the collection and transfer of API data for each of those purposes.

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<sup>2</sup> Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJ L 261, 6.8.2004, p. 24).

- (3) Directive (EU) 2016/681 of the European Parliament and of the Council<sup>3</sup> lays down rules on the use of PNR data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. Under that Directive, Member States must adopt the necessary measures to ensure that air carriers transfer PNR data, including any API data collected, to the national Passenger Information Unit ('PIU') established under that Directive to the extent that they have already collected such data in the normal course of their business. Consequently, that Directive does not guarantee the collection and transfer of API data in all cases, as air carriers do not have any business purpose to collect a full set of such data. Ensuring that PIUs receive API data together with PNR data is important, since the joint processing of such data is needed for the competent law enforcement authorities of the Member States to be able to effectively prevent, detect, investigate and prosecute terrorist offences and serious crime. In particular, such joint processing allows for the accurate identification of those passengers that may need to be further examined, in accordance with the applicable law, by those authorities. In addition, that Directive does not specify in detail which information constitutes API data. For those reasons, complementary rules should be established requiring air carriers to collect and subsequently transfer a specifically defined set of API data, which requirements should apply to the extent that the air carriers are bound under that Directive to collect and transfer PNR data on the same flight.
- (4) It is therefore necessary to establish at Union level clear, harmonised and effective rules on the collection and transfer of API data for the purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious crime.

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<sup>3</sup> Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 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, 4.5.2016, p. 132).

- (5) Considering the close relationship between both acts, this Regulation should be understood as complementing the rules provided for in Directive (EU) 2016/681, **as interpreted by the Court of Justice of the European Union (CJEU)**. Therefore, API data is **only** to be collected and transferred **under this Regulation** in accordance with the specific requirements ~~set out herein of this Regulation~~, including as regards the situations and the manner in which that is to be done. However, the rules of that Directive apply in respect of matters not specifically covered by this Regulation, especially the rules on the subsequent processing of the API data received by the PIUs, exchange of information between Member States, conditions of access by the European Union Agency for Law Enforcement Cooperation (Europol), transfers to third countries, retention and depersonalisation, as well as the protection of personal data. Insofar as those rules apply, the rules of that Directive on penalties and the national supervisory authorities apply as well. This Regulation should leave those rules unaffected **and should therefore, in particular, be without prejudice to the requirements and safeguards applicable to the processing of API data by the PIUs.**
- (6) The collection and transfer of API data affects the privacy of individuals and entails the processing of personal data. In order to fully respect fundamental rights, in particular the right of respect for private life and the right to the protection of personal data, in accordance with the Charter of Fundamental Rights of the European Union ('Charter'), adequate limits and safeguards should be provided for. In particular, any processing of API data and, in particular, API data constituting personal data, should remain limited to what is necessary for and proportionate to achieving the objectives pursued by this Regulation. In addition, it should be ensured that the API collected and transferred under this Regulation do not lead to any form of discrimination precluded by the Charter.

- (7) In view of the complementary nature of this Regulation in relation to Directive (EU) 2016/681, the obligations of air carriers under this Regulation should apply in respect of all flights for which Member States are to require air carriers to transmit PNR data under Directive (EU) 2016/681, **irrespective of the place of establishment of the air carriers conducting those flights. Those namely flights should concern, including both scheduled and non-scheduled flights, both between Member States and third countries (extra-EU flights), and between several Member States (intra-EU flights), yet only insofar as those flights have been selected in accordance with will depart from, land on, or make a stop-over on the territory of at least one Member State that has notified its decision to apply Directive (EU) 2016/681, irrespective of the place of establishment of the air carriers conducting those flights to intra-EU flights in accordance with Article 2(1) of that Directive and in line with the case law of the Court of Justice of the European Union (CJEU). As regards the intra-EU flights covered by this Regulation, such a targeted approach, enacted in application of Article 2 of Directive (EU) 2016/681 and centered on the demands of effective law enforcement, should also be required in view of the need to ensure compliance with requirements of Union law on the necessity and proportionality of the data processing, the free movement of persons and the abolition of internal border controls. Scheduled and non-scheduled flights should be understood as meaning flights operated according to a fixed timetable, for which tickets can be purchased by the general public, and those that are not necessarily part of a regular or scheduled route. Other flights, operated by air carriers that do not fall within the scope of the definition of air carrier under this Regulation, such as military flights, medical flights and emergency flights should not be subject to the obligations set out in this Regulation.**
- (7a) **The obligations on air carriers to collect and transfer API data should include all travellers, including all passengers and crew on flights into the Union, transit travellers whose final destination is outside of the Union and any non-operating crew member positioned on a flight by an air carrier in connection with their duties.**

- (8) Accordingly, given that Directive (EU) 2016/681 does not cover domestic flights, that is, flights that depart and land on the territory of the same Member State without any stop-over in the territory of another Member State or a third country, and in view of the transnational dimension of the terrorist offences and the serious crime covered by this Regulation, such flights should not be covered by this Regulation either. This Regulation should not be understood as affecting the possibility for Member States to provide, under their national law and in compliance with Union law, for obligations on air carriers to collect and transfer API data on such domestic flights.
- (9) In view of the close relationship between the acts of Union law concerned and in the interest of consistency and coherence, the definitions set out in this Regulation should as much as possible be aligned with, and be interpreted and applied in the light of, the definitions set out in Directive (EU) 2016/681 and Regulation (EU) [API border management]<sup>4</sup>.
- (10) In particular, the items of information that jointly constitute the API data to be collected and subsequently transferred under this Regulation should be those listed clearly and exhaustively in Regulation (EU) API [border management], covering both information relating to each passenger and information on the flight of that traveller. Under this Regulation, such flight information should cover information on the border crossing point of entry into the territory of the Member State concerned only where applicable, that is, not when the API data relate to intra-EU flights.
- (10a) In order to enable travelling without carrying a travel document where Member States allow such practice under national law in accordance with Union law, including on the basis of an international agreement, it should be possible for a Member State to impose an obligation on air carriers to provide the possibility for passengers to voluntarily upload API data by automated means and to store that data at the carrier with a view to transferring the data for future flights.**

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<sup>4</sup> OJ C , , p. .

- (10b) In order to allow for flexibility and innovation, it should in principle be left to each air carrier to determine how it meets its obligations regarding the collection of API data set out in this Regulation, with respect to the different types of air carriers as defined by this Regulation, their respective business models, such as for example check-in times and cooperation with airports. However, considering that suitable technological solutions exist that allow collecting certain API data automatically while guaranteeing that the API data concerned is accurate, complete and up-to-date, and having regard the advantages of the use of such technology in terms of effectiveness and efficiency, air carriers should be required to collect that API data using automated means, by reading information from the machine-readable data of the travel document.**
- (10c) The collection of API data from travel documents should also be consistent with the International Civil Aviation Organisation (ICAO) guidelines on Machine Readable Travel Documents, that are transposed in Regulation 2019/1157 on strengthening the security of identity cards of Union citizens, Council Directive 2019/997 on EU emergency travel documents and Regulation 2252/2004 on standards for security features and biometrics in passports.**
- (10d) Automated means enable travellers to provide certain API data themselves during an online check-in process. Such means could, for example, include a secure app on a travellers' smartphone, computer or webcam with the capability to read the machine-readable data of the travel document. Where the travellers did not check-in online, air carriers should in practice provide them with the possibility to provide the machine-readable API data concerned during check-in at the airport with the assistance of a self-service kiosk or of airline staff at the counter.**
- (10e) The Commission should adopt technical requirements and procedural rules that air carriers are to comply with in connection to the use of automated means for the collection of machine-readable API data under this Regulation, so as to increase clarity and legal certainty and contribute to ensuring data quality and the responsible use of the automated means.**



- (10f) To provide clarity on the technical requirements that are applicable to air carriers and that are needed to ensure the API data that they collected under this Regulation are transferred to the router in a secure, effective and swift manner, the Commission should lay down specifications on the common protocols and supported data formats to be used for those transfers, including requirements for data security. Such requirements may also concern the use of anonymisation and pseudonymisation.**
- (10g) In order to avoid that air carriers have to establish and maintain multiple connections with the PIUs of the Member States' for the transfer of API data collected under this Regulation and the related inefficiencies and security risks, provision should be made for a single router, created and operated at Union level in accordance with this Regulation and Regulation [API border management], that serves as a connection and distribution point for those transfers. In the interest of efficiency and cost effectiveness, the router should, to the extent technically possible and in full respect of the rules of this Regulation and Regulation (EU) [API border management], rely on technical components from other relevant systems created under Union law.**
- (10h) In order to improve the efficiency of the transmission of air traffic data and support the monitoring of the API data transmitted to PIUs, the router should receive real-time flight traffic information collected by other organisations, such as the European Organisation for the Safety of Air Navigation ('Eurocontrol').**
- (10i) The router should serve only to facilitate the transmission of API data from the air carriers to the PIUs in accordance with this Regulation, and should not be a repository of API data. Therefore, and in order to minimise any risk of unauthorised access or other misuse and in accordance with the principle of data minimisation, any storage of the API data on the router should remain limited to what is strictly necessary for technical purposes related to the transmission and the API data should be deleted from the router, immediately, permanently and in an automated manner, from the moment that the transmission has been completed or, where relevant under this Regulation, the API data is not to be transmitted at all.**

- (10j) With a view to ensuring the proper functioning of the transmission of API data from router, the Commission should lay down detailed technical and procedural rules on that transmission. Those rules should be such as to ensure that the transmission is secure, effective and swift and impacts passengers' travel and air carriers no more than necessary.**
- (10k) In order to allow air carriers to benefit as soon as possible from the advantages offered by the use of the router developed by eu-LISA in accordance with this Regulation and Regulation [API border management], and to gain experience in using it, air carriers should be provided with the possibility, but not the obligation, to use the router to transmit the information that they are required to transmit under Directive 2004/82/EC during an interim period. That interim period should commence at the moment at which the router starts operations and end when the obligations under that Directive cease to apply. With a view to ensuring that any such voluntary use of the router takes place in a responsible manner, the prior written agreement of the responsible Member State that is to receive the information should be required, upon request of the air carrier and after that authority having conducted verifications and obtained assurances, as necessary. Similarly, in order to avoid a situation in which air carriers repeatedly start and stop using the router, once an air carrier starts such use on a voluntary basis, it should be required to continue it, unless there are objective reasons to discontinue the use for the transmission of the information to the responsible Member State concerned, such as it having become apparent that the information is not transmitted in a lawful, secure, effective and swift manner. In the interest of the proper application of this possibility of voluntarily using the router, with due regard to the rights and interests of all affected parties, the necessary rules on consultations and the provision of information should be provided for. Any such voluntary use of the router in application of Directive 2004/82/EC as provided for in this Regulation should not be understood as affecting in any way the obligations of the air carriers and the Member States under that Directive.**

- ~~(11) In order to ensure a consistent approach on the collection and transfer of API data by air carriers as much as possible, the rules set out in this Regulation should be aligned with those set out in the Regulation (EU) [API border management] where appropriate. That concerns, in particular, the rules on data quality, the air carriers' use of automated means for such collection, the precise manner in which they are to transfer the collected API data to the router and the deletion of the API data.~~
- (12) In order to ensure the joint processing of API data and PNR data to effectively fight terrorism and serious crime in the Union and at the same time minimise the interference with passengers' fundamental rights protected under the Charter, the PIUs should be the competent authorities in the Member States that are entrusted to receive, and subsequently further process and protect, API data collected and transferred under this Regulation. In the interest of efficiency and to minimise any security risks, the router, as designed, developed, hosted and technically maintained by the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) in accordance with **this Regulation and** Regulation (EU) [API border management], should transmit the API data, collected and transferred to it by the air carriers under this Regulation, to the relevant PIUs. Given the necessary level of protection of API data constituting personal data, including to ensure the confidentiality of the information concerned, the API data should be transmitted by the router to the relevant PIUs in an automated manner. **Member States may establish a single data entry point that receives the API data from the router and that immediately and in an automated manner forwards it to the PIU of the Member State concerned.**
- (13) For extra-EU flights, the PIU of the Member State on the territory of which the flight will land and or from the territory of which the flight will depart should receive the API data from the router for all those flights, given that that PNR data is collected for all those flights in accordance with Directive (EU) 2016/681. The router should identify the flight and the corresponding PIUs using the information contained in the PNR record locator, a data element common to both the API and PNR data sets allowing for the joint processing of API data and PNR data by the PIUs.

- (14) As regards intra-EU flights, in line with the case law of the Court of Justice of the European Union (CJEU), in order to avoid unduly interfering with the relevant fundamental rights protected under the Charter and to ensure compliance with the requirements of Union law on the free movement of persons and the abolition of internal border controls, a selective approach should be provided for. In view of the importance of ensuring that API data can be processed together with PNR data, that approach should be aligned with that of Directive (EU) 2016/681. For those reasons, API data on those flights should only be transmitted from the router to the relevant PIUs, where the Member States have selected the flights concerned in application of Article 2 of Directive (EU) 2016/681. As recalled by the CJEU, the selection entails Member States targeting the obligations in question only at, inter alia, certain routes, travel patterns or airports, subject to the regular review of that selection. **As recalled by the CJEU, a Member State may select all intra-EU flights under this approach when duly justified.**
- (15) In order to enable the application of that selective approach under this Regulation in respect of intra-EU flights, the Member States should be required to draw up ~~and submit to eu-LISA~~ **the lists of the flights or routes they selected and insert these into the router**, so that eu-LISA can ensure that only for those flights **or routes** API data is transmitted from the router to the relevant PIUs and that the API data on other intra-EU flights is immediately and permanently deleted.

- (16) In order not to endanger the effectiveness of the system that relies on the collection and transfer of API data set up by this Regulation, and of PNR data under the system set up by Directive (EU) 2016/681, for the purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious crime, in particular by creating the risk of circumvention, information on which intra-EU flights the Member States selected should be treated in a confidential manner. For that reason, such information should not be shared with the air carriers and they should therefore be required to collect API data on all flights covered by this Regulation, including all intra-EU flights, and then transfer it to the router, where the necessary selection should be enacted. Moreover, by collecting API data on all intra-EU flights, passengers are not made aware on which selected intra-EU flights API data, and hence also PNR data, is transmitted to PIUs in accordance with Member States' assessment. That approach also ensures that any changes relating to that selection can be implemented swiftly and effectively, without imposing any undue economic and operational burdens on the air carriers.

(17) In the interest of ensuring compliance with the fundamental right to protection of personal data and in line with Regulation (EU) [API border management], this Regulation should **lay down rules on personal data** ~~identify the~~ controllers. In the interest of effective monitoring, ensuring adequate protection of personal data and minimising security risks, rules should also be provided for on logging, security of processing and self-monitoring. Where they relate to the processing of personal data, those provisions should be **in line with** ~~understood as complementing~~ the generally applicable acts of Union law on the protection of personal data, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>5</sup>, Directive (EU) 2016/680 of the European Parliament and the Council<sup>6</sup> and Regulation (EU) 2018/1725 of the European Parliament and the Council<sup>7</sup>. ~~Those acts, which also apply to the processing of personal data under this Regulation in accordance with the provisions thereof, should not be affected by this Regulation.~~

**(17a) Without prejudice to more specific rules laid down in this Regulation for the processing of personal data, Regulation (EU) 2016/679 should apply to the processing of personal data by air carriers under this Regulation. Directive (EU) 2016/680 should apply to the processing of personal data under this Regulation by national competent authorities, as defined in that directive, for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. Regulation (EU) 2018/1725 of the European Parliament and of the Council should apply to the processing of personal data by eu-LISA when carrying out its responsibilities under this Regulation.**

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<sup>5</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.

<sup>6</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119, 4.5.2016, p. 89.

<sup>7</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39

- (17b) In the interest of ensuring compliance with the fundamental right to protection of personal data, this Regulation should also set out rules on audits. The audits that Member States are responsible for should be carried out by the supervisory authorities referred to in Article 41 of Directive (EU) 2016/680 or by an auditing body entrusted with this task by the supervisory authority.
- (17c) As responsible for the design, development, hosting and technical management of the router, eu-LISA should be the controller for its processing of API data constituting personal data via the router, including the storage of that data on the router insofar as such storage is needed for technical purposes. Member States should designate authorities to be controllers for the receipt of API data from the router. The air carriers, in turn, should be separate controllers regarding the processing of API data constituting personal data that they are obliged to undertake under this Regulation. On this basis, the air carriers, eu-LISA and the authorities designated by the Member State, should be separate data controllers with regard to their own respective processing of API data under this Regulation.
- (18) The router to be created and operated under **this Regulation and** Regulation (EU) [API border management] should reduce and simplify the technical connections needed to transfer API data, limiting them to a single connection per air carrier and per PIU. Therefore, this Regulation provides for the obligation for the PIUs and air carriers to each establish such a connection to, and achieve the required integration with, the router, so as to ensure that the system for transferring API data established by this Regulation can function properly.

- (19) In view of the Union interests at stake, **all the costs incurred by eu-LISA for the performance of its tasks under this Regulation in respect of the router should be borne by the Union budget, including the design and development of the router, the hosting and technical management of the router, and the governance structure at eu-LISA to support the design, development, hosting and technical management of the router. The same may apply for the appropriate costs incurred by the Member States in relation to their connections to, and integration with, the router and their maintenance, as required under this Regulation, should be borne by the Union budget, in accordance with the applicable legislation and subject to certain exceptions. The costs covered by those exceptions should be borne by each Member State concerned itself. It is important that the Union budget provides appropriate financial support to the Member States for that. To that end, the financial needs of the Member States should be addressed by the Instrument for Financial Support for Border Management and Visa Policy and by the Internal Security Fund, including through their thematic facilities and in the mid-term review allocations, and in the programming of their successor instruments.**
- (20) In accordance with Regulation (EU) 2018/1726, Member States may entrust eu-LISA with the task of facilitating connectivity with air carriers in order to assist Member States in the implementation of Directive (EU) 2016/681, particularly by collecting and transferring PNR data via ~~the~~ a router. **To that end, and for reasons of cost effectiveness and efficiency for both Member States and air carriers, Member States should have the possibility to decide, without however being obliged to do so, to require air carriers to use the router for the transfer to the databases of their respective PIUs of other PNR data covered by Directive (EU) 2016/681, as part of their national measures implementing Article 8(1) of that Directive, in the same way as for the transfer of API data in respect of which this Regulation lays down a mandatory regime.**



- (20a) In order to ensure that the data at issue is processed in a lawful, secure, effective and swift manner also where Member States make use of that possibility, the rules established by this Regulation in relation to the router, the transfer of API data from air carriers to the router and the transmission of API data from the router to the PIUs should in such a case also apply accordingly to the other PNR data in question. In that case, those rules should thus apply in the same manner, despite the data in question being other PNR data rather than API data. Those rules also include the obligations of this Regulation regarding the transfer and transmission of data in connection to intra-EU flights, in line with the case law of the Court of Justice of the European Union (CJEU), as well as regarding the air carriers' and the PIU's connections to the router.**
- (20b) It is appropriate to clarify that any exercise of the possibility provided for in this Regulation regarding the use of the router in connection to such other PNR data affects only the manner in which those data are transferred and transmitted to the databases of the PIUs of the Member States concerned. Therefore, the exercise of that possibility should not be understood to mean that in such a case the obligations of this Regulation regarding the collection of API data become applicable in respect of all those other PNR data. Such collection should instead continue to be regulated solely by Directive (EU) 2016/681, that is to say only to the extent that air carriers have already collected such data in the normal course of their business within the meaning of Article 8(1) of that Directive. Moreover, as is the case for API data collected by air carriers and transmitted to the PIUs in accordance with this Regulation, the rules of that Directive in respect of matters not specifically covered by this Regulation, especially the rules on the subsequent processing of other PNR data received by the PIUs, should be left unaffected. Therefore, those rules continue to apply in respect of that data, regardless of whether a Member State has exercised that possibility.**

- (21) It cannot be excluded that, due to exceptional circumstances and despite all reasonable measures having been taken in accordance with this Regulation ~~and, as regards the router, Regulation (EU) [API border management]~~, the router or the systems or infrastructure connecting the PIUs and the air carriers thereto fail to function properly, thus leading to a technical impossibility to use the router to transmit API data. Given the unavailability of the router and that it will generally not be reasonably possible for air carriers to transfer the API data affected by the failure in a lawful, secure, effective and swift manner through alternative means, the obligation for air carriers to transfer that API data to the router should cease to apply for as long as the technical impossibility persists. **However, air carriers should continue to collect and store API data so that it can be transferred as soon as the technical impossibility has been resolved.** In order to minimise the duration and negative consequences **any technical impossibility thereof**, the parties concerned should in such a case immediately inform each other and immediately take all necessary measures to address the technical impossibility. This arrangement should be without prejudice to the obligations under this Regulation of all parties concerned to ensure that the router and their respective systems and infrastructure function properly, as well as the fact that air carriers are subject to penalties when they fail to meet those obligations, including when they seek to rely on this arrangement where such reliance is not justified. In order to deter such abuse and to facilitate supervision and, where necessary, the imposition of penalties, air carriers that rely on this arrangement on account of the failure of their own system and infrastructure should report thereon to the competent supervisory authority.
- (21a) **Where air carriers maintain direct connections to PIUs for the transfer of API data, these connections may provide appropriate means ensuring the necessary level of data security to transfer API data directly to the PIUs in case of technical impossibility to use the router. PIUs should be able, in the exceptional case of technical impossibility to use the router, to request air carriers to use such appropriate means. This should not imply an obligation on air carriers to maintain or introduce such direct connections or any other appropriate means ensuring the necessary level of data security to transfer API data directly to the PIUs.**

- (22) In order to ensure that the rules of this Regulation are applied effectively by air carriers, provision should be made for the designation and empowerment of national authorities **as national API supervision authorities** charged with the supervision of those rules. **Member States may designate their PIUs as national API supervision authorities.** The rules of this Regulation on such supervision, including as regards the imposition of penalties where necessary, should leave the tasks and powers of the supervisory authorities established in accordance with Regulation (EU) 2016/679 and Directive (EU) 2016/680 unaffected, including in relation to the processing of personal data under this Regulation.
- (23) Effective, proportionate and dissuasive penalties, **which include** ~~including~~ financial **as well as non-financial** ones, should be provided for by Member States against those air carriers failing to meet their obligations ~~regarding the collection and transfer of API data~~ under this Regulation, **including on the collection of API data by automated means and the transfer of the data in accordance with the required time frames, formats and protocols. In particular, Member States should ensure that a recurrent failure on the part of air carriers as legal persons to comply with their obligation to transfer any API data to the router in accordance with this Regulation is subject to proportionate financial penalties of up to 4% of the air carrier's global turnover of the preceding financial year. In addition, Member States may apply financial penalties to air carriers for other forms of non-compliance with obligations under this Regulation.**

- (24) **In order to ensure uniform conditions for the implementation of this Regulation, namely as regards the technical requirements and operational rules for the automated means for the collection of machine-readable API data, to the common protocols and formats to be used for the transfer of API data by air carriers, to the rules on correcting, completing and updating API data, to the technical and procedural rules for the data verifications and notifications, to the technical and procedural rules for the transmission of API data from the router and to the PIUs, to the PIU's and air carriers' connections to and integration with the router and to the start of operations of the router, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.** ~~In order to adopt measures relating to the technical requirements and operational rules for the automated means for the collection of machine-readable API data, to the common protocols and formats to be used for the transfer of API data by air carriers, to the technical and procedural rules for the transmission of API data from the router and to the PIUs and to the PIU's and air carriers' connections to and integration with the router, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of Articles 4, 5, 10 and 11, respectively. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>8</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.~~

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<sup>8</sup> OJ L 123, 12.5.2016, p. 1.

- (25) All interested parties, and in particular the air carriers and the PIUs, should be afforded sufficient time to make the necessary preparations to be able to meet their respective obligations under this Regulation, taking into account that some of those preparations, such as those regarding the obligations on the connection to and integration with the router, can only be finalised when the design and development phases of the router have been completed and the router starts operations. Therefore, this Regulation should apply only from an appropriate date after the date at which the router starts operations, as specified by the Commission in accordance with **this Regulation and Regulation (EU) [API border management]**. However, it should be possible for the Commission to adopt **implementing** ~~delegated~~ acts under this Regulation already from an earlier date, so as to ensure that the system set up by this Regulation is operational as soon as possible.
- (25a) However, the design and development phases of the router established under this Regulation and Regulation (EU) [API border management] should be commenced and completed as soon as possible so that the router can start operations as soon as possible, which also requires the adoption of the relevant implementing acts provided for by this Regulation. For the smooth and effective development of these phases, a dedicated Programme Management Board should be established with the function to supervise eu-LISA on fulfilling its tasks during these phases. It should cease to exist two years after the router have started its operations. In addition, a dedicated advisory body, the API-PNR Advisory Group, should be created in accordance with Regulation (EU) 2018/1726, with the objectives to provide expertise to eu-LISA and to the Programme Management Board on the design and development phases of the router, as well as to eu-LISA on the hosting and management of the router. The Programme Management Board and the API-PNR Advisory Group should be established and operated following the models of existing programme management boards and advisory groups.**

- (25b) The clarification provided by this Regulation regarding the application of specifications concerning the use of automated means in application of Directive 2004/82/EC should also be provided without delay. Therefore, the articles on those matters should apply from the date of the entry into force of this Regulation. In addition, in order to allow for the voluntary use of the router as soon as possible, the article on such use, as well as certain other articles needed to ensure that such use takes place in a responsible manner, should apply from the earliest possible moment, that is, from the moment at which the router starts operations.**
- (25c) There should be a single governance structure for the purposes of this Regulation and Regulation [API border management]. With the objective to enable and foster communication between the representatives of air carriers, of Member States authorities competent under this Regulation and under Regulation [API border management] to have API data transmitted from the router, two dedicated bodies should be established at the latest two years after the start of operations of the router. Technical matters related to the usage and functioning of the router should be discussed in the API-PNR Contact Group where eu-LISA representatives should be also present. Policy matters such as in relation to penalties should be discussed in the API Expert Group.**
- (25d) As the router should be designed, developed, hosted and technically managed by the eu-LISA, established by Regulation (EU) 2018/1726 of the European Parliament and of the Council, it is necessary to amend that Regulation by adding that task to the tasks of eu-LISA. In order to store reports and statistics of the router on the Common Repository for Reporting and Statistics it is necessary to amend Regulation (EU) 2019/818 of the European Parliament and of the Council. In order to support the enforcement of this Regulation by the national API supervision authority, this should include statistics on whether the API data is accurate and complete, for example by indicating whether the data was collected by automated means.**

- (26) The objectives of this Regulation, namely contributing to the prevention, detection, investigation and prosecution of terrorist offences and serious crime, in view of the transnational dimension of the offences concerned and the need to cooperate on a cross-border basis to effectively address them, cannot be sufficiently achieved by the Member States individually, but can rather be better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (26a) As national security remains the sole responsibility of each Member State, this Regulation should not prevent Member States from adopting or maintaining their own respective national schemes for the collection of API data for national security purposes outside the scope of and without prejudice to applicable Union law.**
- (26b) This Regulation should not affect the possibility for Member States to provide, under their national law, for a system of collecting API data from transportation providers other than those specified in this Regulation, provided that such national law complies with Union law.**
- (27) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

- (28) ~~{In accordance with Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Regulation.} OR {In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.}~~
- (29) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on [XX].<sup>9</sup>

HAVE ADOPTED THIS REGULATION:

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<sup>9</sup> [OJ C ...]



## CHAPTER 1

### GENERAL PROVISIONS

#### Article 1

##### Subject matter

For the purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious crime, this Regulation lays down the rules on:

- (a) the collection by air carriers of advance passenger information data (~~‘API data’~~) on extra EU flights and ~~selected~~ intra EU flights;
- (b) the transfer by air carriers to the router of the API data;
- (c) the transmission from the router to the Passenger Information Units (‘PIUs’) of the API data on extra-EU flights and selected intra-EU flights.

#### Article 2

##### Scope

This Regulation applies to air carriers conducting:

- (a) ~~scheduled or non-scheduled~~ extra-EU flights;
- (b) ~~or~~ intra-EU flights **that will depart from, arrive in or make a stop-over on the territory of at least one Member State that notified its decision to apply Directive (EU) 2016/681 to intra-EU flights in accordance with Article 2(1) of that Directive.**

## Article 3

### Definitions

For the purposes of this Regulation, the following definitions apply:

- (a) ‘air carrier’ means ~~an~~**the** air ~~transport undertaking~~**carrier** as defined in Article 3, point (1), of Directive (EU) 2016/681;
- (b) ‘extra-EU flights’ means any **extra-EU** flight as defined in Article 3, point (2), of Directive (EU) 2016/681;
- (c) ‘intra-EU flight’ means any **intra-EU** flight as defined in Article 3, point (3), of Directive (EU) 2016/681;
- ~~(d) ‘scheduled flight’ means a flight as defined in Article 3, point (e), of Regulation (EU) [API border management];~~
- ~~(e) ‘non-scheduled flight’ means a flight as defined in Article 3, point (f), of Regulation (EU) [API border management];~~
- (f) ‘passenger’ means any ~~person~~**passenger** as defined in Article 3, point (4), of Directive (EU) 2016/681;
- (g) ‘crew’ means ~~any person~~**the crew** as defined in Article 3, point ~~(hi)~~, of Regulation (EU) [API border management];
- (h) ‘traveller’ means ~~any person~~**traveller** as defined in Article 3, point ~~(ij)~~, of Regulation (EU) [API border management];
- (i) ‘advance passenger information-~~data~~’ or ‘API data’ means the data as defined in Article 3, point ~~(jk)~~, of Regulation (EU) [API border management];

- (j) ‘**other passenger name record data**’ or ‘**other PNR data**’ means a record of each passenger’s travel requirements as defined in Article 3, point (5), of Directive (EU) 2016/681, **and as listed in Annex I to that Directive, with the exception of point 18 of that Annex;**
- (k) ‘Passenger Information Unit’ or ‘PIU’ means the ~~competent authority established by a Member State~~**Passenger Information Unit**, as contained in the notifications and modifications published by the Commission pursuant to Article 4(1) and (5), respectively, of Directive (EU) 2016/681;
- (l) ‘terrorist offences’ means the **terrorist** offences as defined in Articles 3 to 12 of Directive (EU) 2017/541 of the European Parliament and the Council<sup>10</sup>;
- (m) ‘serious crime’ means ~~the offences~~ **serious crimes** as defined in Article 3, point (9), of Directive 2016/681;
- (n) ‘the router’ means the router as defined in Article ~~34d~~ **and in Article 9 of Regulation (EU), point (k) of Regulation (EU) [API border management];**
- (o) ‘personal data’ means any ~~information~~**personal data** as defined in Article ~~43~~, point (1), of ~~Regulation Directive (EU) 2016/679~~**80, and Article 4, point 1, of Regulation (EU) 2016/679;**
- (p) ‘**real-time flight traffic data**’ means **information on inbound and outbound flight traffic of an airport covered by this Regulation, provided by the European Organisation for the Safety of Air Navigation (‘Eurocontrol’).**

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<sup>10</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

## CHAPTER 2

### PROCESSING COLLECTION, TRANSFER, STORAGE AND DELETION OF API DATA

#### Article 4

##### Collection, ~~transfer and deletion~~ of API data by air carriers

1. Air carriers shall collect API data of **each** travellers on the flights referred to in Article 2, ~~for the purpose of transferring that API data~~ **to be transferred** to the router in accordance with ~~paragraph 6~~ **Article 4a**. Where the flight is code-shared between one or more air carriers, the obligation to transfer the API data shall be on the air carrier that operates the flight.
2. Air carriers shall collect the API data in such a manner that the API data that they transfer in accordance with ~~paragraph 6~~ **Article 4a** is accurate, complete and up-to-date.  
**Compliance with this obligation does not require air carriers to check the travel document at the moment of boarding the aircraft, without prejudice to acts of national law that are compatible with Union law.**
3. Air carriers shall collect the API data referred to **in** Article 4(2), points (a) to (d), of Regulation (EU) [API border management] using automated means to collect the machine-readable data of the travel document of the traveller concerned. They shall do so in accordance with the detailed technical requirements and operational rules referred **to in** paragraph 5, where such rules have been adopted and are applicable.

**Where air carriers provide an online check-in process, they shall enable passengers to provide API data referred to in Article 4(2), points (a) to (d) of Regulation (EU) [API border management] by automated means during this online check-in process. For passengers that do not check-in online, air carriers shall enable those passengers to provide those API data by automated means during check-in at the airport with the assistance of a self-service kiosk or of airline staff at the counter.**

~~However, where such~~ **Where the** use of automated means is not possible due to the travel document not containing machine-readable data, air carriers shall collect that data manually, in such a manner as to ensure compliance with paragraph 2.

- 3a. This Regulation does not impose any obligations on passengers to carry a travel document when travelling, without prejudice to other acts of Union law or national law that is compatible with Union law.**
- 3b. A Member State may impose an obligation on air carriers to provide the possibility for passengers to voluntarily upload the data referred to in Article 4(2), points (a) to (d), of Regulation (EU) [API border management] by automated means and to store that data at the carrier with a view to transferring the data for future flights in accordance with Article 4a and in a manner compliant with the requirements set out in paragraphs 2, 3 and 4 of this Article. A Member State that imposes such an obligation shall lay down the rules and safeguards on data protection, in accordance with Regulation (EU) 2016/679, including rules on storage time. However, the data shall be deleted where the passenger no longer consents to the storage of the data, or at the latest on the date of expiry of the travel document.**
4. Any automated means used by air carriers to collect API data under this Regulation shall be reliable, secure and up-to-date.
5. ~~The Commission is empowered to~~**shall** adopt ~~delegated~~implementing acts ~~in accordance with Article 19 to supplement this Regulation by laying down~~**specifying the** detailed technical requirements and operational rules for the collection of the API data referred to in Article 4(2), points (a) to (d), of Regulation (EU) [API border management] ~~using automated means~~ in accordance with paragraphs 3, **3b** and 4 of this Article, **including on requirements for data security. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).**

## Article 4a

### Obligations on carriers regarding transfers of API data

61. Air carriers shall transfer the API data ~~collected pursuant to paragraph 1~~ to the router, by electronic means, **to be transmitted to PIUs in accordance with Article 5**. They shall **transfer the API data** ~~do so~~ in accordance with the detailed rules referred to in paragraph ~~93~~, where such rules have been adopted and are applicable.
72. Air carriers shall transfer the API data:
- a) **for passengers:**
    - (i) **per passenger** ~~both~~ at the moment of check-in, **but not earlier than 48 hours prior to the scheduled departure time**, and
    - (ii) **for all boarded passengers** immediately after flight closure, that is, once the travellers have boarded the aircraft in preparation for departure and it is no longer possible for travellers to board or to leave the aircraft;
  - b) **for all members of the crew immediately after flight closure, that is, once the crew is on board the aircraft in preparation for departure and it is no longer possible for them to leave the aircraft.**
3. The Commission shall adopt implementing acts, ensuring that the API data are transferred with a uniform content and structure, specifying the necessary detailed rules on the common protocols and supported data formats to be used for the transfers of API data to the router referred to in paragraph 1, including on requirements for data security. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).

## Article 4b

### Storage period and deletion of API data

81. **Air carriers shall store API data for a time period of 48 hours from the moment of receipt by the router of the API data transferred to it in accordance with Article 4a(2)(a)(ii) and 4a(2)(b), the API data relating to all travellers that they collected pursuant to Article 4. They shall immediately and permanently delete that data after the expiry of that time period, ~~Without~~without prejudice to the possibility for air carriers to retain and use the data where necessary for the normal course of their business in compliance with the applicable law, and to Article 13(1) and (3)air carriers shall immediately either correct, complete or update, or permanently delete, the API data concerned in both of the following situations:**

- ~~(a) — where they become aware that the API data collected is inaccurate, incomplete or no longer up-to-date or was processed unlawfully, or that the data transferred does not constitute API data;~~
- ~~(b) — where the transfer of the API data in accordance with paragraph 3 has been completed.~~

~~Where the air carriers obtain the awareness referred to in point (a) of the first subparagraph of this paragraph after having completed the transfer of the data in accordance with paragraph 6, they shall immediately inform the European Union Agency for the Operational Management of Large Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA). Upon receiving such information, eu-LISA shall immediately inform the PIUs that received the API data transmitted through the router.~~

## Article 4c

### Correcting, completing and updating API data

1. Where an air carrier becomes aware that the data that it stores under this Regulation was processed unlawfully, or that the data does not constitute API data, it shall immediately and permanently delete, that data. If that data has been transferred to the router, the air carrier shall immediately inform the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA). Upon receiving such information, eu-LISA shall immediately inform the PIU that received the API data transmitted through the router.
2. Where an air carrier becomes aware that the data that it stores under this Regulation is inaccurate, incomplete or no longer up-to-date it shall immediately either correct, complete or update that data. This is without prejudice to the possibility for air carriers to retain and use the data where necessary for the normal course of their business in compliance with the applicable law.
3. Where an air carrier becomes aware after the transfer of API data under Article 4a(2)(a)(i), but before the transfer under Article 4a(2)(a)(ii), that the data it has transferred is inaccurate, the air carrier shall immediately transfer the corrected API data to the router.
4. Where an air carrier becomes aware, after the transfer of API data under Article 4a(2)(a)(ii) or 4a(2)(b), that the data it has transferred is inaccurate, incomplete or no longer up-to-date, the air carrier shall immediately transfer the corrected, completed or updated API data to the router.
95. The Commission is empowered to ~~shall~~ adopt ~~delegated~~ **implementing** acts in accordance with ~~Article 19 to supplement this Regulation by laying down~~ **specifying** the necessary detailed rules on the common protocols and supported data formats to be used for the transfers of API data to the router referred to in paragraph 6 **correcting, completing and updating API data within the meaning of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).**



## **CHAPTER 2a**

### **PROVISIONS RELATING TO THE ROUTER**

#### **Article 4d**

##### **The router**

- 1. eu-LISA shall design, develop, host and technically manage, in accordance with Articles 11a and 11b, a router for the purpose of facilitating the transfer of API data by the air carriers to the PIUs in accordance with this Regulation.**
- 2. The router shall be composed of:**
  - (a) a central infrastructure, including a set of technical components enabling the reception and transmission of API data;**
  - (b) a secure communication channel between the central infrastructure and the PIUs, and a secure communication channel between the central infrastructure and the air carriers, for the transfer and transmission of API data and for any communications relating thereto, including the insertion of selected flights referred to in Article 5(2) from the Member States to the router and any updates;**
  - (c) a secure channel to receive real-time flight traffic data.**

3. Without prejudice to Article 4e of this Regulation, the router shall, to the extent technically possible, share and re-use the technical components, including hardware and software components, of the web service referred to in Article 13 of Regulation (EU) 2017/2226 of the European Parliament and of the Council<sup>11</sup>, the carrier gateway referred to in Article 6(2), point (k), of Regulation (EU) 2018/1240, and the carrier gateway referred to in Article 45c of Regulation (EC) 767/2008 of the European Parliament and of the Council<sup>12</sup>.

#### **Article 4e**

##### **Exclusive use of the router**

Notwithstanding Article 10 of Regulation (EU) [border management], the router shall only be used:

- (a) by air carriers to transfer API data or other PNR data in accordance with this Regulation;
- (b) by PIUs to receive API data or other PNR data in accordance with this Regulation;
- (c) on the basis of international agreements enabling the transfer of PNR data via the router, concluded by the Union with third countries that have concluded an agreement providing for their association with the implementation, application and development of the Schengen acquis.

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<sup>11</sup> Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).

<sup>12</sup> Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

## **Article 4f**

### **Data format and transfer verifications**

- 1. The router shall, in an automated manner and based on real-time flight traffic data, verify whether the air carrier transferred the API data in accordance with Article 4a(1).**
- 2. The router shall, immediately and in an automated manner, verify whether the API data transferred to it in accordance with Article 4a(1) complies with the detailed rules on the supported data formats, referred to in Article 4a(3).**
- 3. Where the router has verified in accordance with paragraph 1 that the data was not transferred by the air carrier or where the data in question is not compliant with the detailed rules referred to in paragraph 2, the router shall, immediately and in an automated manner, notify the air carrier concerned and the PIUs of the Member States to which the data were to be transmitted pursuant to Article 5(1). In this case, the air carrier shall immediately transfer the API data in accordance with Article 4a.**
- 4. The Commission shall adopt implementing acts specifying the necessary detailed technical and procedural rules for the verifications and notifications referred to in paragraphs 1, 2 and 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).**

## Article 5

### Transmission of API data from the router to the PIUs

1. **Upon the verifications referred to in Article 4f** ~~The~~ the router shall, immediately and in an automated manner, **and without changing its content in any way**, transmit the API data, transferred to it by air carriers pursuant to Article 4a(1) and Article 4c(3) and (4), to the PIUs of the Member State on the territory of which the flight will land or from the territory of which the flight will depart, or to both in the case of intra-EU-flights. Where a flight has one or more stop-overs at the territory of other Member States than the one from which it departed, the router shall transmit the API data to the PIUs of all the Member States concerned.

For the purpose of such transmission, eu-LISA shall establish and keep up-to-date a table of correspondence between the different airports of origin and destination and the countries to which they belong.

However, for intra-EU flights, the router shall only transmit the API data to that PIU in respect of the flights included in the list referred to in paragraph 2.

The router shall transmit the API data in accordance with the detailed rules referred to in paragraph 3, where such rules have been adopted and are applicable.

- 1a. **Each Member State may establish a single data entry point that receives the API data transmitted to it from the router and that immediately and in an automated manner forwards the API data to the PIU of the Member State concerned. No access to the API data by the staff managing the single data entry point shall be allowed, unless strictly necessary for the maintenance and technical management of the single data entry point. If so the Member State shall provide information on that single data entry point to eu-LISA and the Commission by the date of application of this Regulation referred to in Article 21, second subparagraph.**

- 1b. Each Member State shall ensure that its PIUs in receipt of any API data in accordance with paragraph 1 immediately and in an automated manner confirm, through, where applicable, their single data entry point, reception of such data to the router.**
- 2. Member States that decide to apply Directive (EU) 2016/681 to intra-EU flights in accordance with Article 2 of that Directive shall each establish a list of the intra-EU flights concerned and shall, by the date of application of this Regulation referred to in Article 21, second subparagraph, provide eu-LISA with that list or routes selected. Member States may use the code of the airport of departure and the airport of arrival for indicating the selected flights or routes. Those Member States shall, in accordance with Article 2 of that Directive, regularly review and where necessary update those lists and shall immediately provide eu-LISA with any such updated lists. A Member State may select all intra-EU flights or routes when duly justified, in accordance with Directive (EU) 2016/681.**

**Member States shall, by the date of application of this Regulation referred to in Article 21, second subparagraph, insert the selected flights or routes to the router, by automated means through the secure communication channel referred to in Article 4d(2)(b), and thereafter provide the router with any updates thereof.**

**The information inserted by the Member States to the router contained on those lists shall be treated confidentially and access to that information by eu-LISA staff shall be limited to what is strictly necessary for the resolution of technical problems. eu-LISA shall ensure, upon receipt by the router of that information or any updates thereto from a Member State, that the router immediately transmits the API data to the PIU of that Member State in respect of the selected flights or routes, in accordance with paragraph 1.**

3. ~~The Commission is empowered to~~**shall adopt delegated implementing acts in accordance with Article 19 to supplement this Regulation by laying down**~~specifying~~ the necessary detailed technical and procedural rules for the transmissions of API data from the router referred to in paragraph 1 **and for the insertion of information to the router referred to in paragraph 2, including on requirements for data security. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).**

## **Article 5a**

### **Deletion of API data from the router**

**API data, transferred to the router pursuant to this Regulation shall be stored on the router only insofar as necessary to complete the transmission to the relevant PIUs in accordance with this Regulation and shall be deleted from the router, immediately, permanently and in an automated manner, in both of the following situations:**

- (a) where it is confirmed, in accordance with Article 5(1b), that the transmission of the API data to the relevant PIUs has been completed;**
- (b) where the API data relates to other intra-EU flights than those inserted by the Member States to the router in accordance with Article 5(2).**

## **Article 5b**

### **Processing of API data by PIUs**

**API data transmitted to PIUs in accordance with this Regulation, shall subsequently be processed by the PIUs in accordance with Directive (EU) 2016/681 solely for the purposes of prevention, detection, investigation and prosecution of terrorist offences and serious crime.**

**This Regulation is without prejudice to Directive (EU) 2016/681, in particular as regards the rules on the processing of API data by PIUs, including those set out in its Article 6 on the processing of data, Article 10 on conditions for access to data by Europol, Article 12 on the period of data retention and depersonalisation and Article 13 on the protection of personal data.**

## **Article 5c**

### **Optional use of the router for other PNR data**

**When adopting measures in accordance with Article 8 of Directive (EU) 2016/681, Member States may require air carriers to transfer other PNR data collected, pursuant to Article 8(1) of that Directive, to the database of the PIU of the Member States concerned, through the router. In that event, the provisions relating to the router, the transfer and transmission of data set out in Articles 4a, 4b, 4c, 4e, 4f, 5, 5a, 6, 7, 8, 9a, 10, 11, 11a, 11b, 11c, 11d, 11e, 11f, 11g, 12, 13, 14, 14a, 14b and 16a shall apply accordingly to that other PNR data.**

## CHAPTER 3

### LOGGING, PERSONAL DATA PROTECTION AND SECURITY

#### Article 6

##### Keeping of logs

0. **eu-LISA shall keep logs of all processing operations relating to the transfer of API data through the router under this Regulation. Those logs shall cover:**
- (a) **the air carrier that transferred the API data to the router;**
  - (b) **the PIUs to which the API data were transmitted through the router;**
  - (c) **the date and time of the transfers referred to in points (a) and (b), and place of transfer;**
  - (d) **any access by staff of eu-LISA necessary for the maintenance of the router, as referred to in Article 11b(3);**
  - (e) **any other information relating to those processing operations necessary to monitor the security and integrity of the API data and the lawfulness of those processing operations.**

**Those logs shall not include any personal data, other than the information necessary to identify the relevant member of eu-LISA's staff referred to in point (d) of this subparagraph.**

1. Air carriers shall create logs of all processing operations **related to API data** under this Regulation undertaken using the automated means referred to in Article 4(3). Those logs shall cover the date, time, and place of transfer of the API data. **Those logs shall not include any personal data.**



2. The logs referred to in paragraphs **0 and 1** shall be used only for ensuring the security and integrity of the API data and the lawfulness of the processing, in particular as regards compliance with the requirements set out in this Regulation, including proceedings for penalties for infringements of those requirements in accordance with Articles 15 and 16.
3. **eu-LISA and air** ~~Air~~ carriers shall take appropriate measures to protect the logs that they created pursuant to paragraphs **0 and 1** against unauthorised access and other security risks.
4. **eu-LISA and air** ~~Air~~ carriers shall keep the logs that they created pursuant to paragraphs **0 and 1**, for a time period of one year from the moment of the creation of those logs. They shall immediately and permanently delete those logs upon the expiry of that time period.

However, if those logs are needed for procedures for monitoring or ensuring the security and integrity of the API data or the lawfulness of the processing operations, as referred to in paragraph 2, and those procedures have already begun at the moment of the expiry of the time period referred to in the first subparagraph, air carriers ~~may~~**shall** keep those logs for as long as necessary for those procedures. In that case, they shall immediately delete those logs when they are no longer necessary for those procedures.

5. **The national API supervision authority referred to in Article 15 and PIUs shall have access to the relevant logs referred to in paragraph 0 where necessary for the purposes referred to in paragraph 2.**

## Article 7

### Personal data controllers

**The authorities so designated by the Member State for that purpose, shall be controllers, within the meaning of Article 3, point (8), of Directive (EU) 2016/680 in relation to the receipt of API data from the router referred to in Article 5 of this Regulation.**

~~The PIU~~**eu-LISA** shall be controllers, within the meaning of Article 3, point (8), of ~~Directive~~**Regulation** (EU) 2016/680**1725** in relation to the processing of API data constituting personal data under this Regulation through the router, including transmission and storage for technical reasons of that data on the router.

The air carriers shall be controllers, within the meaning of Article 4, point (7), of Regulation (EU) 2016/679, for the processing of API data constituting personal data in relation to their collection of that data and their transfer thereof to the router under this Regulation

## Article 8

### Security

- 1. eu-LISA shall ensure the security of the API data, in particular API data constituting personal data, that it processes pursuant to this Regulation.** PIUs and air carriers shall ensure the security of the API data, in particular API data constituting personal data, that they process pursuant to this Regulation.

**eu-LISA**, PIUs and air carriers shall cooperate, in accordance with their respective responsibilities and in compliance with Union law, with each other and with eu-LISA to ensure such security.

- 1a. eu-LISA shall ensure the security and the confidentiality of the data related to flights and routes selected by the Member States in accordance with Article 5(2) of this Regulation.**

- 2. In particular, eu-LISA shall take the necessary measures to ensure the security of the router and the API data, in particular API data constituting personal data, transmitted through the router, including by establishing, implementing and regularly updating a security plan, a business continuity plan and a disaster recovery plan, in order to:**
- (a) physically protect the router, including by making contingency plans for the protection of critical components thereof;**
  - (b) prevent any unauthorised processing of the API data, including any unauthorised access thereto and copying, modification or deletion thereof, both during the transfer of the API data to and from the router and during any storage of the API data on the router where necessary to complete the transmission, in particular by means of appropriate encryption techniques;**
  - (c) ensure that the persons authorised to access the router have access only to the data covered by their access authorisation;**
  - (d) ensure that it is possible to verify and establish to which PIUs the API data is transmitted through the router;**
  - (e) properly report to its Management Board any faults in the functioning of the router;**
  - (e) monitor the effectiveness of the security measures required under this Article and under Regulation (EU) 2018/1725, and assess and update those security measures where necessary in the light of technological or operational developments.**

**The measures referred to in the first subparagraph of this paragraph shall not affect Article 33 of Regulation (EU) 2018/1725 and Article 32 of Regulation (EU) 2016/679, and Article 29 of Directive (EU) 2016/680.**

## Article 9

### Self-monitoring

Air carriers and the PIUs shall monitor their compliance with their respective obligations under this Regulation, in particular as regards their processing of API data constituting personal data. **For air carriers the monitoring shall include frequent verification of the logs in accordance with Article 76.**

## Article 9a

### Personal data protection audits

1. **The supervisory authorities referred to in Article 41 of Directive (EU) 2016/680 shall carry out an audit of processing operations of API data constituting personal data performed by the PIUs for the purposes of this Regulation at least once every four years. Member States shall ensure that their supervisory authorities have sufficient resources and expertise to fulfil the tasks entrusted to them under this Regulation.**
2. **The European Data Protection Supervisor shall carry out an audit of processing operations of API data constituting personal data performed by eu-LISA for the purposes of this Regulation at least once every year. A report of that audit shall be sent to the European Parliament, to the Council, to the Commission, to the Member States and to eu-LISA. eu-LISA shall be given an opportunity to make comments before the reports are adopted.**
3. **In relation to the processing operations referred to in paragraph 2, upon request, eu-LISA shall supply information requested by the European Data Protection Supervisor, shall grant the European Data Protection Supervisor access to all the documents it requests and to the logs referred to in Article 6(0), and shall allow the European Data Protection Supervisor access to all eu-LISA's premises at any time.**

## CHAPTER 4

### MATTERS RELATING TO THE ROUTER

#### Article 10

##### PIUs' connections to the router

1. Member States shall ensure that their PIUs are connected to the router. They shall ensure that their national systems and infrastructure for the reception and further processing of API data transferred pursuant to this Regulation, **including any single data entry point as referred to in Article 5(1a)**, are integrated with the router.

Member States shall ensure that the connection to that router and integration with it enables their PIUs to receive and further process ~~the~~**that** API data, as well as to exchange any communications relating thereto, in a lawful, secure, effective and swift manner.

2. ~~The Commission is empowered to~~**shall adopt delegated**~~implementing~~ acts in accordance with Article 19 to supplement this Regulation by laying down**specifying** the necessary detailed rules on the connections to and integration with the router referred to in paragraph 1, **including on requirements for data security. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).**

#### Article 11

##### Air carriers' connections to the router

1. Air carriers shall ensure that they are connected to the router. They shall ensure that their systems and infrastructure for the transfer of API data to the router pursuant to this Regulation are integrated with the router.

Air carriers shall ensure that the connection to the router and the integration with it enables them to transfer ~~the~~**that** API data as well as to exchange any communications relating thereto, in a lawful, secure, effective and swift manner. **To that end, air carriers shall conduct tests of the transfer of API data to the router in cooperation with eu-LISA in accordance with Article 11c(3).**

2. The Commission ~~is empowered to~~**shall** adopt ~~delegated~~**implementing** acts ~~in accordance with Article 19 to supplement this Regulation by laying down~~**specifying** the necessary detailed rules on the connections to and integration with the router referred to in paragraph 1, **including on requirements for data security. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2).**

#### **Article 11a**

##### **eu-LISA's tasks relating to the design and development of the router**

1. **eu-LISA shall be responsible for the design of the physical architecture of the router, including defining the technical specifications.**
2. **eu-LISA shall be responsible for the development of the router, including for any technical adaptations necessary for the operation of the router.**

**The development of the router shall consist of the elaboration and implementation of the technical specifications, testing and overall project management and coordination of the development phase.**

3. **eu-LISA shall ensure that the router is designed and developed in such a manner that the router provides the functionalities specified in this Regulation and that it starts operations as soon as possible after the adoption by the Commission of the implementing acts provided for in Article 4(5), Article 4a(3), Article 5(3)), Article 10(2) and Article 11(2).**

4. **eu-LISA shall provide to the PIUs, other relevant Member States' authorities and air carriers, a compliance test set. The compliance test set shall include a test environment, a simulator, test data sets, and a test plan. The compliance test set shall allow for the comprehensive test of the router referred to in paragraph 5 and it shall remain available after the completion of the comprehensive test of the router.**
5. **Where eu-LISA considers that the development phase has been completed, it shall, without undue delay, conduct a comprehensive test of the router, in cooperation with the PIUs and other relevant Member States' authorities and air carriers and inform the Commission of the outcome of that test.**

#### **Article 11b**

**eu-LISA's tasks relating to the hosting and technical management of the router**

1. **eu-LISA shall host the router in its technical sites.**
2. **eu-LISA shall be responsible for the technical management of the router, including its maintenance and technical developments, in such a manner as to ensure that the API data are securely, effectively and swiftly transmitted through the router, in compliance with this Regulation.**

**The technical management of the router shall consist of carrying out all the tasks and enacting all technical solutions necessary for the proper functioning of the router in accordance with this Regulation, in an uninterrupted manner, 24 hours a day, 7 days a week. It shall include the maintenance work and technical developments necessary to ensure that the router functions at a satisfactory level of technical quality, in particular as regards availability, accuracy and reliability of the transmission of API data, in accordance with the technical specifications and, as much as possible, in line with the operational needs of the PIUs and air carriers.**

3. **eu-LISA's staff shall not have access to any of the API data that is transmitted through the router. However, that prohibition shall not preclude eu-LISA's staff from having such access insofar as strictly necessary for the maintenance and technical management of the router.**
4. **Without prejudice to paragraph 3 of this Article and to Article 17 of Council Regulation (EEC, Euratom, ECSC) No 259/68<sup>13</sup>, eu-LISA shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to its staff required to work with API data transmitted through the router. This obligation shall also apply after such staff leave office or employment or after the termination of their activities.**

#### **Article 11c**

##### **eu-LISA's support tasks relating to the router**

1. **eu-LISA shall, upon their request, provide training and support to PIUs and other relevant Member States' authorities and air carriers on the technical use of the router.**
2. **eu-LISA shall provide support to the PIUs regarding the reception of API data through the router pursuant to this Regulation in particular as regards the application of Articles 5 and 10.**
3. **In accordance with Article 11(1), eu-LISA shall conduct tests in cooperation with air carriers of the transfer of API data to the router, making use of the compliance test set referred to in Article 11a(4).**

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<sup>13</sup> **Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).**



## **CHAPTER 4a**

### **GOVERNANCE**

#### **Article 11d**

##### **Programme Management Board**

- 1. By [Date of entry into force of this Regulation], eu-LISA's Management Board shall establish a Programme Management Board. It shall be composed of 10 members and shall consist of:**
  - (a) seven members appointed by eu-LISA's Management Board from among its members or its alternates;**
  - (b) the chair of the API-PNR Advisory Group referred to in Article 11e;**
  - (c) one member of the eu-LISA staff appointed by its Executive Director;**
  - (d) and one member appointed by the Commission.**

**As regards point (a), the members appointed by eu-LISA's Management Board shall be elected only from its members or its alternates from those Member States that are bound by this Regulation.**

- 2. The Programme Management Board shall draft its rules of procedure to be adopted by eu-LISA's Management Board.**

**The chairpersonship shall be held by a Member State that is a member of the Programme Management Board.**

- 3. The Programme Management Board shall supervise the effective fulfilment of eu-LISA's tasks relating to the design and development of the router in accordance with Article 11a.**

To that end, upon request of the Programme Management Board, eu-LISA shall provide detailed and updated information on the design and development of the router, including on the resources allocated by eu-LISA.

The Programme Management Board shall regularly, and at least three times per quarter, submit written reports on progress in the design and development of the router to eu-LISA's Management Board.

4. The Programme Management Board shall have no decision-making power, nor any mandate to represent eu-LISA's Management Board or its members.
5. The Programme Management Board shall cease to exist by the date of the application of this Regulation referred to in Article 21, second subparagraph.

#### **Article 11e**

##### **API-PNR Advisory Group**

1. By [Date of entry into force of this Regulation], eu-LISA's Management Board shall establish an API-PNR Advisory Group in accordance with Article 27 of Regulation (EU) 2018/1726.
2. Whenever available, eu-LISA shall provide the API-PNR Advisory Group with versions, even intermediary ones, of the technical specifications and the compliance test sets referred to in Article 11a(1), (2) and (4).
3. The API-PNR Advisory Group shall exercise the following functions:
  - (a) provide expertise to eu-LISA and to the Programme Management Board on the design and development of the router in accordance with Article 11a;
  - (b) provide expertise to eu-LISA on the hosting and technical management of the router in accordance with Article 11b;

(c) provide its opinion to the Programme Management Board, upon its request, on the progress of the design and development of the router, including on the progress of those technical specifications and compliance test sets referred to in paragraph 2.

4. The API-PNR Advisory Group shall have no decision-making power, nor any mandate to represent the eu-LISA's Management Board or its members.

#### **Article 11f**

##### **API-PNR Contact Group**

1. By the date of the application of this Regulation referred to in Article 21, second subparagraph, eu-LISA's Management Board shall establish an API-PNR Contact Group.
2. The API-PNR Contact Group shall enable communication between Member States' relevant authorities and air carriers on technical matters related to their respective tasks and obligations under this Regulation.
3. The API-PNR Contact Group shall be composed of representatives of Member States' relevant authorities and air carriers, the chairperson of the API-PNR Advisory Group and eu-LISA's experts.
4. eu-LISA's Management Board shall establish the rules of procedure of the API-PNR Contact Group, following an opinion of the API-PNR Advisory Group.
5. When deemed necessary, eu-LISA's Management Board may also establish sub-groups of the API-PNR Contact Group to discuss specific technical matters related to the respective tasks and obligations of Member States' relevant authorities and air carriers under this Regulation.
6. The API-PNR Contact Group, including its sub-groups, shall have no decision-making power, nor any mandate to represent the eu-LISA's Management Board or its members.

## **Article 11g**

### **API Expert Group**

- 1. By the date of application of this Regulation referred to in Article 21, second subparagraph, the Commission shall establish an API Expert Group in accordance with the horizontal rules on the creation and operation of Commission expert groups.**
- 2. The API Expert Group shall enable communication among Member States' relevant authorities, and between Member States' relevant authorities and air carriers, on policy matters related to their respective tasks and obligations under this Regulation, including in relation to the penalties referred to in Article 16.**
- 3. The API Expert Group shall be chaired by the Commission and constituted in accordance with the horizontal rules on the creation and operation of Commission expert groups. It shall be composed of representatives of Member States' relevant authorities, representatives of air carriers and eu-LISA's experts.**
- 4. The API Expert Group shall carry out its tasks in accordance with the principle of transparency. The Commission shall publish the minutes of the meetings of the API Expert Group and other relevant documents on the Commission website.**

## Article 12

### Costs of eu-LISA and Member States<sup>2</sup>—costs

0. **Costs incurred by eu-LISA arising out of the establishment and operation of the router under this Regulation shall be borne by the general budget of the Union.**
1. **The funding referred to in Article 7(2)(a) and (b) of Regulation (EU) 2021/1149 may provide support for ~~Costs~~costs incurred by the Member States in relation to their connections to and integration with the router referred to in Article 10 of this Regulation and the maintenance thereof, shall be borne by the general budget of the Union in accordance with the eligibility rules and co-financing rates set in the legal basis of the Internal Security Fund.**

~~However, the following costs shall be excluded and be borne by the Member States:~~

- ~~(a) costs for project management, including costs for meetings, missions and offices;~~
  - ~~(b) costs for the hosting of national information technology (IT) systems, including costs for space, implementation, electricity and cooling;~~
  - ~~(c) costs for the operation of national IT systems, including operators and support contracts;~~
  - ~~(d) costs for the design, development, implementation, operation and maintenance of national communication networks.~~
2. ~~Member States shall also bear the costs arising from the administration, use and maintenance of their connections to and integration with the router.~~

## Article 13

### Actions in case of technical impossibility to use the router

1. Where it is technically impossible to use the router to transmit API data because of a failure of the router, eu-LISA shall immediately notify the air carriers and PIUs of that technical impossibility in an automated manner. In that case, eu-LISA shall immediately take measures to address the technical impossibility to use the router and shall immediately notify those parties when it has been successfully addressed.

During the time period between those notifications, Article 4a(61) shall not apply, insofar as the technical impossibility prevents the transfer of API data to the router. ~~Insofar as that is the case, Article 4(1) shall not apply either to the API data in question during that time period.~~ **Air carriers shall store the API data until the technical impossibility has been successfully addressed and at that point transfer the data to the router in accordance with Article 4a(1). Meanwhile, in the exceptional case of technical impossibility to use the router, PIUs may request air carriers to use any other appropriate means ensuring the necessary level of data security to transfer the API data directly to the PIUs.**

2. Where it is technically impossible to use the router to transmit API data because of a failure of the systems or infrastructure referred to in Article 10 of a Member State, the PIU of that Member State shall immediately notify ~~the air carriers~~, the other PIUs, eu-LISA and the Commission of that technical impossibility in an automated manner. In that case, that Member State shall immediately take measures to address the technical impossibility to use the router and shall immediately notify those parties when it has been successfully addressed. **The router shall store the API data until the technical impossibility has been successfully addressed and at that point transmit the data in accordance with Article 5(1). Meanwhile, in the exceptional case of technical impossibility to use the router, PIUs may request air carriers to use any other appropriate means ensuring the necessary level of data security to transfer the API data directly to the PIUs.**

~~During the time period between those notifications, Article 4(6) shall not apply, insofar as the technical impossibility prevents the transfer of API data to the router. Insofar as that is the case, Article 4(1) shall not apply either to the API data in question during that time period.~~

3. Where it is technically impossible to use the router to transmit API data because of a failure of the systems or infrastructure referred to in Article 11 of an air carrier, that air carrier shall immediately notify the PIUs, eu-LISA and the Commission of that technical impossibility in an automated manner. In that case, that air carrier shall immediately take measures to address the technical impossibility to use the router and shall immediately notify those parties when it has been successfully addressed.

During the time period between those notifications, Article 4a(61) shall not apply, insofar as the technical impossibility prevents the transfer of API data to the router. ~~Insofar as that is the case, Article 4(1) shall not apply either to the API data in question during that time period.~~ **Air carriers shall store the API data until the technical impossibility has been successfully addressed and at that point transfer the data to the router in accordance with Article 4a(1). Meanwhile, in the exceptional case of technical impossibility to use the router, PIUs may request air carriers to use any other appropriate means ensuring the necessary level of data security to transfer the API data directly to the PIUs.**

When the technical impossibility has been successfully addressed, the air carrier concerned shall, without delay, submit to the competent national supervisory authority referred to in Article 15 a report containing all necessary details on the technical impossibility, including the reasons for the technical impossibility, its extent and consequences as well as the measures taken to address it.

## Article 14

### Liability regarding the router

If ~~a any~~ failure of a Member State or an air carrier to comply with its obligations under this Regulation causes damage to the router, that Member State or air carrier shall be liable for such damage, **as provided for by the applicable Union or national law**, unless and insofar as **it is demonstrated that eu-LISA, another Member State or another air carrier** failed to take reasonable measures to prevent the damage from occurring or to minimise its impact.



## **Article 14a**

### **Start of operations of the router**

**The Commission shall determine, without undue delay, the date from which the router starts operations by means of an implementing act once eu-LISA has informed the Commission of the successful completion of the comprehensive test of the router referred to in Article 11a(5). That implementing act shall be adopted in accordance with the examination procedure referred to in Article 19(2).**

**The Commission shall set the date referred to in the first subparagraph to be no later than 30 days from the date of the adoption of that implementing act.**

## **Article 14b**

### **Voluntary use of the router in application of Directive 2004/82/EC**

- 1. Air carriers shall be entitled to use the router to transmit the information referred to in Article 3(1) and 3(2) of Directive 2004/82/EC to one or more of the responsible PIUs, in accordance with that Directive, provided that the Member State concerned has agreed with such use, from an appropriate date set by that Member State. That Member State shall only agree after having established that, in particular as regards both its own PIU's connection to the router and that of the air carrier concerned, the information can be transmitted in a lawful, secure, effective and swift manner.**
- 2. Where an air carrier starts using the router in accordance with paragraph 1, it shall continue using the router to transmit such information to the PIUs of the Member State concerned until the date of application of this Regulation referred to in Article 21, second subparagraph. However, that use shall be discontinued, from an appropriate date set by that Member State, where that Member State considers that there are objective reasons that require such discontinuation and has informed the air carrier accordingly.**

**3. The responsible Member State concerned shall:**

- (a) consult eu-LISA before agreeing with the voluntary use of the router in accordance with paragraph 1;**
- (b) except in situations of duly justified urgency, afford the air carrier concerned an opportunity to comment on its intention to discontinue such use in accordance with paragraph 2 and, where relevant, also consult eu-LISA thereon;**
- (c) immediately inform eu-LISA and the Commission of any such use to which it agreed and any discontinuation of such use, providing all necessary information, including the date of the start of the use, the date of the discontinuation and the reasons for the discontinuation, as applicable.**

CHAPTER 5

SUPERVISION, PENALTIES AND HANDBOOK

Article 15

National ~~API supervisory~~**supervision** authority

1. Member States shall designate one or more national ~~API supervisory~~**supervision** authorities responsible for monitoring the application within their territory by air carriers of the provisions of this Regulation and ensuring compliance with those provisions.
2. Member States shall ensure that the national ~~API supervisory~~**supervision** authorities have all necessary means and all necessary investigative and enforcement powers to carry out their tasks under this Regulation, including by imposing the penalties referred to in Article 16 where appropriate. ~~They~~**Member States** shall ~~lay down detailed rules on the performance of those tasks and ensure that the exercise of those powers, ensuring that the performance and exercise is effective, proportionate and dissuasive and conferred on the national API supervision authority~~ is subject to **appropriate** safeguards in compliance with the fundamental rights guaranteed under Union law.
3. Member States shall, by the date of application of this Regulation referred to in Article 21, second subparagraph, notify the Commission of the name and the contact details of the authorities that they designated under paragraph 1 and of the detailed rules that they laid down pursuant to paragraph 2. They shall notify the Commission without delay of any subsequent changes or amendments thereto.
4. This Article is without prejudice to the powers of the supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679, ~~and~~ Article 41 of Directive (EU) 2016/680 **and Article 15 of Directive 2016/681.**

## Article 16

### Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure they are implemented. The penalties provided for shall be effective, proportionate and dissuasive ~~penalties~~.
2. Member States shall, by the date of application of this Regulation referred to in Article 21, second subparagraph, notify the Commission of those rules and of those measures and shall notify it without delay of any subsequent amendment affecting them.
3. **Member States shall ensure that the national API supervision authorities, when deciding whether to impose a penalty and when determining the type and level of penalty, take into account relevant circumstances, which may include:**
  - (a) **the nature, gravity and duration of the infringement;**
  - (b) **the degree of the air carrier's fault;**
  - (c) **previous infringements by the air carrier;**
  - (d) **the overall level of cooperation of the air carrier with the competent authorities;**
  - (e) **the size of the air carrier, such as the annual number of passengers carried;**
  - (f) **whether previous penalties have already been applied by other national API supervision authorities to the same carrier for the same infringement.**
4. **Member States shall ensure that a recurrent failure to transfer any API data in accordance with Article 4a(1) is subject to proportionate financial penalties of up to 4% of the air carrier's global turnover of the preceding financial year.**

## **Article 16a**

### **Statistics**

- 1. Every quarter, eu-LISA shall publish statistics on the functioning of the router, showing in particular the number, the nationality and the country of departure of the travellers. Those statistics shall specifically include the number, the nationality, and the country of departure, of the travellers who boarded the aircraft with incomplete API data. Those statistics shall also indicate the technical means used to capture the data in paragraph 5(b), (d) and (da). eu-LISA shall also publish statistics showing the overall performance of air carriers as regards their compliance with the rules of this Regulation.**
- 2. eu-LISA shall store the daily statistics in the central repository for reporting and statistics established in Article 39 of Regulation (EU) 2019/818.**
- 3. Each year, eu-LISA shall compile statistical data in an annual report for the previous year. It shall publish that annual report and transmit it to the European Parliament, the Council, the Commission, the European Data Protection Supervisor, the European Border and Coast Guard Agency and the national API supervision authorities referred to in Article 15. The annual report shall not disclose confidential working methods or jeopardise ongoing investigations of the Member States' competent authorities.**
- 4. At the request of the Commission, eu-LISA shall provide it with statistics on specific aspects related to the implementation of this Regulation as well as the statistics pursuant to paragraph 3.**

- 5. eu-LISA shall have the right to access the following data solely for the purposes of the reporting referred to in Article 20 and for generating statistics in accordance with the present Article, without however such access allowing for the identification of the travellers concerned:**
- (a) whether the traveller is passenger or a crew member;**
  - (b) the nationality, sex and year of birth of the traveller;**
  - (c) the date and airport of departure, and the date and airport of arrival;**
  - (d) the type of the travel document and the three letter code of the issuing country and the date of expiry of the travel document;**
  - (da) the travel document number together with the data in (d), in pseudonymised form;**
  - (e) the number of travellers checked-in on the same flight;**
  - (f) the code of the airline operating the flight;**
  - (g) whether the flight is a scheduled or a non-scheduled flight;**
  - (h) whether API data was transferred at the moment of flight closure;**
  - (i) whether the corresponding API data is complete and constitutes an update;**
  - (ia) the degree of reliability of the personal API data of the traveller.**

6. For the the purposes of the reporting referred to in Article 20 and for generating statistics in accordance with the present Article, eu-LISA shall store the data referred to in paragraph 5 of this Article in the central repository for reporting and statistics established by Article 39 of Regulation (EU) 2019/818. To that end, the router shall push the data referred to in paragraph 5 of this Article automatically to the central repository for reporting and statistics. The cross-system statistical data and analytical reporting referred to in Article 39(1) of that Regulation shall allow the PIU and other relevant authorities of the Member States to obtain customisable reports and statistics, for the purposes referred to in Article 1 of this Regulation.
7. The procedures put in place by eu-LISA to monitor the development and the functioning of the router referred to in Article 39(1) of Regulation (EU) 2019/818 shall include the possibility to produce regular statistics to ensure that monitoring.

## Article 17

### Practical handbook

The Commission shall, in close cooperation with the PIUs, **national API supervision authorities**, other relevant Member States' authorities, the air carriers and relevant Union agencies, prepare and make publicly available a practical handbook, containing guidelines, recommendations and best practices for the implementation of this Regulation, **including on penalties in accordance with Article 16**.

The practical handbook shall take into account the relevant existing handbooks.

The Commission shall adopt the practical handbook in the form of a recommendation.

## CHAPTER 6

### RELATIONSHIP TO OTHER EXISTING INSTRUMENTS

#### Article 18

##### Amendments to Regulation (EU) 2019/818

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In Article 39, paragraphs 1 and 2 are replaced by the following:

“1. A central repository for reporting and statistics (CRRS) is established for the purposes of supporting the objectives of the SIS, Eurodac and ECRIS-TCN, in accordance with the respective legal instruments governing those systems, and to provide cross-system statistical data and analytical reporting for policy, operational and data quality purposes. The CRRS shall also support the objectives of Regulation (EU) .../... of the European Parliament and of the Council\* [*this Regulation*].”

\* Regulation (EU) [number] of the European Parliament and of the Council of xy on [officially adopted title] (OJ L ...)”

“2. eu-LISA shall establish, implement and host in its technical sites the CRRS containing the data and statistics referred to in Article 74 of Regulation (EU) 2018/1862 and Article 32 of Regulation (EU) 2019/816 logically separated by EU information system. eu-LISA shall also collect the data and statistics from the router referred to in Article ~~43~~**16a**(1) of Regulation (EU) .../... \* [*this Regulation* ]. Access to the CRRS shall be granted by means of controlled, secured access and specific user profiles, solely for the purpose of reporting and statistics, to the authorities referred to in Article 74 of Regulation (EU) 2018/1862, Article 32 of Regulation (EU) 2019/816 and Article 13(1) of Regulation (EU) .../... \* [*this Regulation* ].”



## CHAPTER 7

### FINAL PROVISIONS

#### Article 19

##### ~~Exercise of delegation~~ **Committee procedure**

1. ~~The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.~~ **The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.**
2. ~~The power to adopt delegated acts referred to in Article 4(5) and (9), Article 5(3), Article 10(2) and Article 11(2) shall be conferred on the Commission for a period of five years from [date of adoption of the Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.~~ **Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and Article 5(4), the third subparagraph, of Regulation (EU) No 182/2011 shall apply.**
3. ~~The delegation of power referred to in Article 4(5) and (9), Article 5(3), Article 10(2) and Article 11(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.~~

- ~~4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.~~
- ~~5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.~~

## Article 20

### Monitoring and evaluation

1. By [*four years after the date of entry into force of this Regulation*], and every four years thereafter, the Commission shall produce a report containing an overall evaluation of this Regulation, including an assessment of:
  - (a) the application of this Regulation;
  - (b) the extent to which this Regulation achieved its objectives;
  - (c) the impact of this Regulation on the fundamental rights protected under Union law;
  - (d) The Commission shall submit the evaluation report to the European Parliament, the Council, the European Data Protection Supervisor and the European Agency for Fundamental Rights. If appropriate, in light of the evaluation conducted, the Commission shall make a legislative proposal to the European Parliament and to the Council with a view to amending this Regulation.
2. The Member States and air carriers shall, upon request, provide the Commission with the information necessary to draft the report referred to in paragraph 1. **That information provided may not constitute personal data.** ~~However,~~ Member States may refrain from providing such information if, and to the extent, necessary not to disclose confidential working methods or jeopardise ongoing investigations of their PIUs or other **competent law enforcement** authorities. The Commission shall ensure that any confidential information provided is appropriately protected.

## Article 21

### Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from two years from the date at which the router starts operations, specified by the Commission in accordance with Article ~~14a~~ 27 of Regulation (EU) [API border management].

However, Article 4(5) and (9), Article 5(3), Article 10(2), Article 11(2) and Article 19 shall apply from [Date of entry into force of this Regulation].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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