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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	CM 1174/23; 15720/22
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the collection and transfer of advance passenger information (API) for enhancing and facilitating external border controls, amending Regulation (EU) 2019/817 and Regulation (EU) 2018/1726, and repealing Council Directive 2004/82/EC - Compilation of replies by delegations

Following the request for written contribution on the above-mentioned proposal (CM 1174/23), delegations will find in Annex a compilation of the replies as received by the General Secretariat.

ANNEX

WRITTEN REPLIES SUBMITTED BY DELEGATIONS

BELGIUM

BE - Comments articles 1 – 8 of the draft Regulation API Border Management

General remarks:

1) Regarding the timeline, isn't it possible to shorten the foreseen timeline? Gains could be made based on the developments that are foreseen in the framework of EES/ETIAS (at least partly) and transfer of data to Member States can possibly be done through the National Uniform Interface (also used for EES/ETIAS).

2) In Recital 35 - provides for the possibility of implementing other modes of transport (train, bus, boat). Belgium would like to propose to include this extension in the regulation itself and not in a recital. Operational needs for the extension to the other modes of transport have been transferred during the workshops and in a written contribution. The growing number of travelers by train within Europe is also a valid argument to include other modes of transport in the scope of the regulations. (Following the French, Dutch, Estonian and Bulgarian comments). If the extension to other modes of transport would be considered, the terminology in the draft Regulation should be adjusted in that respect (e.g. replace air carrier by carrier).

3) We would like to know a little bit more about the costs: does ISF also reimburse maintenance costs cfr. BMVI for BMS?

4) Belgium would support the proposition to include a range of sanctions in article 30 (minimum and maximum sanctions). The draft leaves this entirely to appreciation by the Member States. In order to create uniformity within the EU, the different types of infringement and the range of sanctions should be specified. This would give a legal certainty for the carriers and avoid an unequal treatment. (following Italian comments)

Article 1:

1) On the deviated flights:

We reiterate our question and would like to know if the deviated flights are included in the scope? (Following Bulgarian comments).

2) On the issue of API data for flights outgoing of the Union:

The Belgian delegation would like to add at Article 1 Subject matter:

[…] this regulation lays down the rules on: (a) The collection by air carriers of advance passenger information data ("API data¨) on flights into **and outgoing** of the Union.

- On the legal aspect of the case:

- This data needs to be collected in order to comply with the proposed 'Law enforcement ' regulation.

- Since there is a first push of API data **during check-in procedures**, the data is present in the router and can be used in a timely manner through the border guard's management application.

- The ICAO Annex 9:

  - **Advance Passenger Information (API) System**. An electronic communications system whereby required data elements are collected and transmitted to border control agencies **prior to flight departure or arrival** and made available on the primary line at the airport of entry

  - Note 1.— API involves the capture of a passenger's or crew member's biographic data and flight details by the aircraft operator prior to departure. This information is electronically transmitted **to the border control agencies** in the destination **or departure country**. Thus, passenger and/or crew details are received in advance **of the departure** or arrival of the flight.

- Belgian national law already has the obligation for air carriers to transmit API-data for border management purposes when passengers intend to leave the Union through Belgians external borders or when they already have left the Union through Belgians external borders (Law 25.12.2016 – Art. 29§2.2)

  - Practical case

- Check in closes in general 50 minutes before the scheduled departure of the flight. After this time only the gate agent can board a passenger on the required flight.

- After check-in the passenger needs to proceed from the check-in counter to the aviation security check. This is also time spent before presenting him-/herself at the immigration desk departure.

- This gives us ample of time to collect the data from the MRZ code, process it and decide whether or not to allow him to use the manual or the e-gates to proceed towards the boarding gate.

- On the cross border crime aspect of border guarding, criminals buy different tickets on different airliners to the same or almost the same destination or to an opposite destination in order to delude border guards and law enforcement. Using API on departure from the check in data these persons can be identified via as example a countdown system.

- Irregular migrants who depart from an EU-airport in possession of a genuine travel document and a ticket to destination X can swap and use another set of documents to another destination. These persons can be identified using the API departure data.

- Furthermore, the Belgian national regulation already has the obligation for air carriers to send API data for passengers who intend to leave the territory via the external borders of Belgium or the territory through the external borders of Belgium.

3) On the definition of transit passengers:

The Belgian delegation is not satisfied of the assurance that all transit passengers will be presented in the API directive "border control" as it is presented. Passengers who arrive at the Union and directly continue onwards a flight outside of the Union can present a danger for irregular migration or cross border crime. At present this API data does need to be presented to border guards under Belgian law. The current proposal isn't that clear on that regard.

- Practical case:

An Indian national arrives from Doha at Brussels airport with Qatar Airways and continues with TUI Fly onwards to Mexico City. When this person is refused at Mexico City he will be returned to Brussels airport as Inadmissible. Without the API data from this passenger it will be difficult to identify his original place of departure.

Persons who are flagged in international/national databases who are travelling from an extra-Union flight to an extra-Union flight will not appear for border guards. This gap can be used for facilitators in order not to be identified by border guards.

Article 2:

What is the scope of non-scheduled flights? Are e.g. medical, military flights etc. excluded from the scope?

Article 3:

(j) - We support the addition of the reference to crew members in "travellers" and would like this to be retained.

Article 4.1:

The obligation to transfer data in case of codeshare has been foreseen in the draft Regulation API Law Enforcement, more specifically in article 4.1. But this hasn't been included in the draft Regulation API Border Management. Could the obligation to send data in case code share be included in the draft Regulation API Border Management as well?

Article 4.2:

Points (g) and (h):

- Belgium deduces from the phrase 'when the air carrier collects such information' that these data fields are optional. However, these data fields should be made mandatory.

- Information on the weight and the type of luggage can also be useful (following the Romanian comments).

We would also like to introduce here a means to determine the number of PAX per flight. This information is not provided for in this framework and it is not possible to determine this. Could we consider introducing this in some way?

Article 5:

§2 - We think it is very important to clarify the term "manually". It might be necessary to go into more detail for this. There should not be any discrepancies in the encoding procedure, in the way the information is transferred, but also in the safeguards that would be put in place to compensate for possible human errors. We therefore propose to detail this in the recitals. COM accepted this orally, but we would like to see this already modified in the next proposal.

§3 - When it says "reliable, secure and up-to-date". Would it be possible to have more information on what could be considered as "secure"? Are there specific criteria that draw the line? We talked during the WP IXIM about putting more details in the recitals and we would like to see this in the next proposal.

Article 6, point 4:

How will EU-Lisa contact the competent border authority and is the term ‘immediate’ not to vague? How will be ensured that the competent border authority has received the communication by EU-Lisa? (Following the Bulgarian, Slovenian and French comments).

Article 7:

All processing of personal data must be clearly described in the legal basis that allows the processing. However, the description in Article 7 is very general and vague. The explanatory memorandum does refer to the Schengen Borders Code: *"the border checks that the rules of the proposed Regulation are intended to facilitate and enhance are to be conducted under the Schengen Borders Code where applicable or under national law"*. Footnote 7 refers to Article 8(2)(a) SBC.

- Wouldn't it be better to explicitly include the reference to article 8 (2)(a) of the Schengen Border Code in Article 7 cfr. the draft Regulation for API Law Enforcement where explicit has been referred to the PNR Directive and the processing van the data according to this Directive (experience with PNR ruling teaches us to be as explicit as possible about the processing of the data) or to clearly describe which processing operations border authorities may perform with the data? In case the first option is retained, does it not pose a problem that Article 8(2)(a) does not include API)?

- Isn't there an error in footnote 7: shouldn't this be Article 8(3)(a) instead of Article 8(2)(a)?

Article 8:

§1 – We welcome the increase in the retention period.

The term 'passenger' is used in this article where throughout the text, the term "traveler" is used. We believe that it should be aligned

Point 3: If the air carrier must correct, complete or update the data in case they are not accurate, incomplete or not up-to-date, Belgian proposes to add that they must send a new push with correct information, this is not explicitly included as an obligation in the current draft.

CZECHIA

CZ Comments on Chapter 1 and 2 of API regulation (15720)

General comments

The Czech Republic welcomes the proposals that set out clear rules for the collection and transfer of API data. We believe that proposals will reduce administrative burden and related costs, facilitate border controls and unify conditions and rules. At the same time, we appreciate that the obligation to collect API data applies only to air transport, especially when it comes to the law-enforcement regulation.

The Czech Republic accepts the creation of a central router and the proposed technical solution, which should make maximum use of available components and already established infrastructure developed within the Interoperability framework.

It is essential to ensure that EU funding is available to Member States as much as possible for the development and adaptation of national systems and the establishment of technical infrastructure. At the same time, we believe that the current wording of rules for funding is unclear and not in line with established standards of the EU.

Funds for air carriers

CZ appreciates that the Commission will make EU funds available for the Member States' authorities in order to support the implementation of both proposals. However, our national discussions have shown that we should not forget the air carriers themselves. Indeed, since the scope of API data collection for combating crime is broadened, it may happen that some European air carriers will need to invest into automated check-in and make similar extra efforts. Since we are in effect harnessing air carriers to provide more security for the EU, we would find it appropriate if these carriers would be eligible for EU funding as well.

Airlines only

CZ appreciates that the Commission focuses on air transport. We are aware that there are different national solutions that respond to needs of various Member States. The Commission proposals do not affect wider national solutions and that is good. However, we would have significant problems with proportionality and with impact on the industry if the scope of the European rules would be extended on rail or even bus transport. CZ supports the current scope and is of the opinion that the obligation to collect and transfer API data should apply only to air carriers and not to rail, bus or boat carriers (similar obligations are already in place in maritime transport, while in rail and bus transport the issue of personalised tickets and identity checks on boarding are not standard practices and would require significant investments).

eu-LISA as a controller

We believe that eu-LISA should be a controller as regards the operations of the router. The processing will be clearly regulated by the applicable rules, so eu-LISA will know what to do. The proposals presume that border authorities and PIUs will be the controllers instead. That means about 30 controllers for "Borders Proposal" and about 25 controllers for "Law Enforcement Proposal" who will need to act as joint controllers for eu-LISA, which is a single processor operating a single router. This mechanism is going to be quite unwieldy in practice.

Delegated acts

We do not understand why the Commission is proposing to implement both Regulations by adopting delegated acts. These acts should apply in quite precise and technical extent, ensuring uniform application of the Regulations, such as data formats or connections to the router. There is no intention to use delegated acts to change existing elements of the Regulations or adopt new ones. Therefore, we believe that the proper choice would be the implementing acts.

Router without alternative

As regards the „Law Enforcement Proposal“, we should keep in mind that the collection of API data will have the same scope as collection of PNR data. There is already a connection between PIU and air carrier for that. We understand that there is an advantage for air carriers to have a single point of connection, but we should consider having an alternative way for the transfer of data in cases when the connection to the router is not available, as described in Article 13 of Law Enforcement Proposal.

In this regard, the possibility to enable PIUs to transfer relevant set of data to competent border authorities could be further explored. At the moment, it is unclear whether this solution would find support in the applicable legislation and whether the PIU could play the role of a "postman" in justified and exceptional situations. This could be a practical solution, however, we have doubts regarding data processing purposes (law enforcement X border management).

Comments to Chapters 1 and 2

Article 3

- Definitions of the terms *scheduled*, *non-scheduled* and *flights into the Union* should be clarified in order to facilitate the understanding of the scope. A more precise definition of the scope may be provided in the recitals in order to avoid any misunderstandings of the text. In this regard, it should keep in mind that terms *scheduled* and *non-scheduled flights* are used in the PNR Directive.

- For the Czech Republic, it is essential that the transmission of data from EU countries with which border controls have not been lifted is maintained. According to the Commission this principle is retained in the Regulation when it comes to Bulgaria, Cyprus and Romania and it would be appropriate to indicate this clearly in the text, especially the case of Ireland, where in our understanding, the current text does not allow for the collection of API data on flights from Ireland to the Schengen Area.

Article 4

- Regarding subparagraphs (g) and (h), we suggest deleting the phrase *where the air carrier collects such information.* Data on baggage and seating are important and Member States should require such data, therefore, this obligation should be clearly stated. Due to deletion of the conditionality to collect the data, the required information in both subparagraphs should be specified, i.e. what baggage information and seating information should be collected. Based on the statements above, the phrase *such as* does not seem any longer appropriate and it should be precisely defined what kind of information is needed. In this regard, Member states should be able to justify the selection of required categories of API data and describe the additional value of their collection and processing.

- If the phrase *where the air carrier collects such information* in these subparagraphs is to be left in the text, it should be clearly defined how will the Member states know what kind of baggage and seating information do air carriers collect. This is important for sanctioning of air carriers.

- The current wording creates room for a different approach by carriers, whereas the Regulation should primarily aim to harmonise the rules.

- Furthermore, we propose that the API data from transit flights should include information on the final destination of the passenger.

Article 5

- The Czech Republic would welcome the possibility to consider whether the delegated act could be replaced by an implementing act with the reasoning provided in the general comments.

Article 6

- The Czech Republic would welcome different wording of the second paragraph, which specifies at what point the carrier will be obliged to transmit API data. Specifically, the phrase *at the moment of check-in* needs to be more precisely defined and specified. The paragraph should clearly define whether the carrier will send data after each update, for each passenger separately, or for the whole aircraft.

- Furthermore, it would be useful to clarify how the phrase *flight closure* is to be understood. In this regard the API regulation should include the same definition as in Article 8(3)(b) of PNR Directive: "*immediately after flight closure, that is once the passengers have boarded the aircraft in preparation for departure and it is no longer possible for passengers to board or leave*."

- While the second paragraph sets out clear rules, it is not clear who will monitor compliance with these rules. Since it would be useful to ensure that compliance with the obligation to immediately send out the data can be monitored, we would like to know how it will be possible to monitor fulfilment of this obligation.

Article 8

- The Czech Republic proposes to set the deadline at 48 hours from the moment of data receipt by competent boarder authority instead of 48 hours from the moment of departure, since it is easily traceable information and precise indication that will allow a clear determination of the deadline.

- In addition, we believe that the Article should in paragraph 2 provide rules for exceptional cases where API data need to be retained for a period exceeding the 48 hours deadline. An example of such an exceptional situation could be the need to retain data for possible administrative proceedings with the carrier (e.g. due to late transfer of data).

DENMARK

To the Council Secretariat and the Presidency

With reference to our previous e-mail we wish to send a written contribution regarding Article 7 in the proposal for Regulation of the European Parliament and the Council on collection and transfer of advance passenger information (API) for enhancing and facilitating external border controls.

From a Danish perspective it is important to ensure that Danish police can process API data to the same extent as the other Member States, while not imposing extra burdens on the air carriers. In this context Denmark notes that the API regulation on law enforcement includes selected intra EU flights and that Denmark will not have access to the information collected on these flights and transferred to the central router.

We therefore propose the following wording of Article 7:

"*The competent ~~border~~ authorities shall process API data, transferred to them in accordance with the Regulation, solely for the purposes referred to in Article 1. Competent authorities of Member states not bound by Regulation (EU) [API law enforcement] may process API data transferred to them in accordance with this Regulation for the purposes referred to in Article 1 of Regulation (EU) [API law enforcement]*."

We are thankful for the opportunity to send written contributions and we welcome a dialogue on the wording of Article 7.

GERMANY

IXIM, 11th/12th january 2023

DE: written comments

General comments and questions

DE would like to thank COM for presenting the two proposals on the new regulation of the collection and transfer of API data.

Our legal and technical reviews are still ongoing. Against this backdrop, we declare a scrutiny reservation on the entire regulatory proposals.

After an initial review, we have several fundamental questions. We also see a need for improvement in some areas.

- Both draft regulations are limited to partial provisions though this is not expressed in the operative part of the regulations. The commission assumes that the continued processing is already sufficiently regulated by other legislative acts, such as the Schengen Borders Code (SBC) or the PNR directive. It has to be carefully examined for both proposals whether all aspects requiring regulation are covered.

  DE also asks the Commission to explain why the operative provisions do not at least contain rules on the relation to other applicable EU legislation, such as the SBC, the GDPR, Regulation (EU) 2018/1725, the Data Protection Directive and in particular the PNR Directive as well as to national provisions. Should such rules be included in the interest of legal certainty and clarity? This could make it easier for authorities to apply the law and for affected persons (passengers and crew) to access legal protection.

- In its PNR judgement of 21 June 2022, the CJEU formulated fundamental rights requirements for the processing of data for law enforcement purposes, which are reflected in the proposed regulation only in certain points. For example, the draft Regulation on Law Enforcement does neither contain the CJEU's requirements on the offences covered, nor on the conditions under which PNR data from intra-EU flights may be processed. We ask COM to explain why it refrained from explicitly including the conditions formulated by the CJEU in the regulations. We also ask COM to explain how the requirements of the CJEU ruling on the PNR Directive were taken into account in the proposed regulations. In this context, we ask COM to explain why the transfer to the router of API data on all intra-EU flights is in line with the requirements of the CJEU, although the CJEU in its judgment of 21 June 2022 also requires a restriction to certain intra-EU flights for the transfer and not only for the processing of PNR data, as can be seen in para. 174 of the judgment and in para. 7 of the operative provisions of the judgment (cf. the comments in para. 96 et seqq, according to which the transfer of the data already constitutes a seperate encroachment on fundamental rights compared to the storage of the data).

- From DE's point of view, basic questions remain unanswered regarding the relation between the Regulation API law enforcement and the PNR Directive. According to the current PNR Directive, API data, insofar as they have already been collected by the airlines in the course of their normal business activities, must be transfered as part of the PNR data at two points in time (24 to 48 hours before the scheduled time of departure and again "immediately after closing time"). The new Law Enforcement Regulation not only requires data to be transfered "immediately after check-in" (now via the router) for the same purposes (preventing and combating terrorism and other serious crimes), but also at the individual check-in of each passenger.

From DE's perspective, this raises the following questions:

1. Which provisions of the PNR Directive should still be applicable in addition to the provisions of the Regulation API border management? Should airlines be obliged in future to transfer API data at three points of time (24 to 48 hours before the scheduled departure time if they have already collected API data in the course of their normal business activities; at the individual check-in of each passenger and "immediately after the end of check-in")? Does the air carrier indeed have to transfer the API data "twice" after check-in, i.e. not only to the router but also directly to the PIU, unless they make use of the option mentioned by the EC to transfer PNR data via the router? Or should the API data categories mentioned in Article 4 of the Regulation border management (cf. Article 3 lit. (i) Regulation law enforcement) in future be transmitted exclusively via the router, i.e. no longer at any time directly from the air carrier to the PIU as required by the PNR Directive? If the tranfer of API data is to be governed exclusively by the API regulations, shall an air carrier in future be allowed at all to transfer the API data as part of the PNR data set (in the PNRGOV standard)?

2. If API data or at least certain categories of data have to be transfered multiple times, the question arises why the multiple transfer of the same categories of data are considered necessary and proportionate as measured by the fundamental rights requirements set out by the CJEU judgment of 21 June 2022. Has there been any consideration on how to avoid the multiple transfer of certain categories of data, such as first name and surname?

3. Against this background, isn’t there a need for an explicit regulation on the relation between the provisions in the PNR Directive and the provisions in the Regulation API law enforcement?

4. COM has stated that the central router is a legitimate solution to comply with the CJEU judgement on PNR and therefore wants to make the router available as an option to member states for the transfer of PNR data under the PNR Directive pursuant to Article 16(4) of Regulation (EU) 2018/1726. We ask COM to please explain: How is the use of the router to transfer PNR data compatible with the PNR Directive, which states that the national PIU (and not eu-LISA) is responsible for collecting PNR data from air carriers (Article 4(1) PNR Directive) and that MS must ensure that air carriers transfer PNR data to the database of the PIU (Article 8(1), first sentence PNR Directive)? The detailed requirements on the router contained in Chapters 3 and 5 and on data protection in Chapter 4 of the Regulation border management do not apply to the transfer of PNR data. How shall the legal relation between air carriers, eu-LISA and the PIU be structured? Should this only be structured by the agreement referred to in Article 16(4) of Regulation (EU) 2018/1726 or, in the view of the COM, do other EU or national provisions also apply? In the view of the COM, would it be sufficient to do this solely by means of an agreement?

- The proposed regulations provide further extensions of API data processing compared to the status quo. From DE's point of view, the fundamental rights requirements must also be taken into account with regard to mandatory data processing and the necessity of all data categories with regard to the regulatory purpose.

- Regarding the proposal to introduce a central router, DE still has numerous unanswered questions and sees various problems that require more in-depth consideration:

  From a legal perspective, the question arises as to why central processing of the data by the router is considered necessary for API data, although decentralised transfering directly from the air carriers to the PIU should remain the case for other PNR data?

  From a technical-operational perspective, the following questions arise:

  Is it from a technical point of view reasonable that in future there will be a coexistence of the processing of API data with the help of an IT infrastructure at EU level on the one hand and decentralised processing of PNR data on the other?

As DE has concerns whether all the issues arising in connection with the proposed routing mechanism can be resolved, we are currently critical of the proposal from a technical-operational point of view.

In principle, the question arises as to whether eu-LISA is capable of ensuring the necessary high availability of the system. Any delays in the sphere of eu-LISA lead to restrictions in the performance of (border) police tasks. Therefore, high demands have to be placed on eu-LISA not only during the set-up of the system, but also during its operation. In regard to the multiple tasks eu-LISA is taking on now and in the coming years (including SIS, EES, ETIAS, ECRIS-TCN, interoperability, Prüm II, E-CODEX, JIT platforms), DE has serious doubts that eu-LISA can meet these high demands.

In addition, DE fears efficiency losses in the national system for processing API data and also PNR data in connection with the introduction of the proposed central routing mechanism. When transfering API data, formats and transmission paths differ (e.g. sending in PNRGOV or PAXLST format; sending from different systems). The task of the national PNR system is to level out these differences through technical systems so that a uniform PNR data set can be generated. This also requires that the competent national authorities are aware of the specifics of the individual air carriers and can understand in which way API messages are transfered. Provided that the router forwards the air carriers data unchanged, the competent national authorities must continue to undertake the necessary clarification work in cooperation with the air carriers. If the router modifies the data transmitted by the air carriers, national authorities can no longer clarify ambiguities bilaterally with the air carriers.

The german practice of PNR processing compensates for identified weaknesses in the messaging standards. For example, the PAXLST standard requires to include a date of birth for each passenger. If a date of birth is not included for a passenger, the entire passenger list cannot be transmitted technically. DE has developed technical solutions that enable further processing even of messages that do not meet the standard. With a central router, individual bypassing of weaknesses in the standards would be impossible. In some cases, bilateral agreements with individual air carriers are necessary to bypass weaknesses in the standards. In the case of a centralisation of the data transfer, these weaknesses would have to be taken into account and compensated for; or else, national solutions would still have to be made possible. Otherwise, centralisation would run counter to national efforts. Would this not require an additional, permanent and transnational committee with the aim of harmonising national IT systems? (How is the data to be understood?) Shouldn't this body be mandated to reach agreements with the airlines (i.e. What codes are permissible and used? Are non-standard-compliant codes still permissible?)?

In addition, the transfer of API data to the Member States via the router could lead to problems in sanctioning airlines that violate the regulation. When sanctioning air carriers, the national regulations and requirements of national courts regarding evidence (e.g. specifications of log data) must be taken into account. Delays in the transfer of data by eu-LISA or any changes to the data up to deletion after the intended storage periods by eu-LISA in the process of data transfering can jeopardise sanctions. If the member states are to ensure the sanctioning, the border authorities or the law enforcement authorities would need, if necessary and to the extent legally permissible, information about which data were transfered by the air carriers to eu-LISA and, where required, the log data from eu-LISA.

Finally, DE has a question of understanding: In Annex 7 of the Impact Assessment, the COM proposal is justified, among other things, by the fact that the single windows concept according to Annex 9 of the Chicago Convention is implemented. Do we understand this correctly, that this concerns only the relationship between air carriers and the router and that it is not intended to pursue the approach of establishing only one national single window for data acceptance?

The Regulation law enforcement provides for a parallelism between national PNR processing and the obligation to transfer API data. As already explained, API data processing involves fundamental rights encroachments that need to be justified. Therefore, the automated collection and transfer of API data, which is now mandatory, also requires careful legal examination from the perspectives of necessity and appropriateness. From a purely technical-operational point of view, access to API data together with the collected PNR data could bring about an improvement in data quality, as PNR data (booking) can now be linked to API data (travel document). The expected increase in data quality could also increase the quality of hits in the PIU. Higher quality hits reduce the workload in verification and research. In addition, no-shows can be easily detected, which simplifies operational planning.

Article-by-article examination:

Article 2

There are differing views within the Federal Government on the question of whether, the processing of API data by border authorities could also be considered for certain intra-EU flights in specific constellations or in the event of the temporary reintroduction of internal border controls. DE would be grateful if the Commission could explain its proposal and considerations on this point. This would be helpful for the further formation of opinion within the Federal Government.

Article 3

DE has the following comprehension questions on the definition of "flights into the Union": Does the phrase "Member State participating in this Regulation" mean EU member states that are part of the Schengen area (cf. explanation of the COM in the explanatory memorandum of the Regulation API border management, p. 2)? Does this mean that the definition covers all flights leading to an EU member state that is part of the Schengen area from outside the EU or flights from an EU member state that is not a member of the Schengen area?

The definition of "Passenger Information Unit" refers to Regulation API law enforcement, which in Article 3(i) refers to the definition in Article 4(1) and (5) PNR Directive. Wouldn't a direct reference to the PNR Directive be preferable? Otherwise, the reference to Regulation API law enforcement would have to be editorially corrected (Article 3, point k).

Please explain, why it is necessary to collect API data of crew members other than before. Where are "information gaps" seen in this respect? In DE, for example, the "crew" is regularly subject to background checks.

Article 4 (1)

We ask to examine whether it should be explicitly clarified in Article 4(1) that the list of data is exhaustive. It should therefore read "consisting only of". Moreover, there may be cases where the categories of data referred to in paragraph 2(a) to (f) are not available, therefore "if available" should be added. Or can this be excluded?

Article 4 (2)

Regarding the data category "sex" mentioned under (b), the question arises whether the required travel documents always contain information on sex? If not, what is the basis for this information? Why is it required?

The term "three-letter code of the issuing country" under (c) is open to interpretation. There are different three-letter country codes (e.g. IOC or ISO 3166-1 alpha-3). Since this date is read from the MRZ according to Art. 5(2), it must also be taken into account that the design of the respective MRZ and the codes contained therein are the responsibility of the issuing country. For example, DE uses the code "D" according to ICAO Doc.9303. This corresponds to the actual design of German passports and identity cards. Therefore, the code from the MRZ should be adopted, if the document does not have an MRZ, reference should be made to the ISO 3166-1 alpha-3.

(f) Does the Commission estimate that it is ensured that the PNR record locator can be exchanged between the departure control system and the booking system in good time? This could be problematic in the case of ad hoc charter flights, last-minute ticket sales at the airport and so-called disparate or non-synchronised DCS-RES systems, i.e. if the departure control systems at the airport and the booking systems are not based on the same IT platform. In addition, the PNR record locator is not uniquely assigned, reuse of the identifier for another passenger is common.

For the categories of data referred to in Article 4(2)(g) and (h) "seating information" and "baggage information", please indicate the purposes for which the data is needed.

In order to improve border controls, DE also collects information on whether the traveller is carrying the required residence permit or airport transit visa. We would like the COM to explain why the information on the number and issuing state of the required residence permit or airport transit visa has not been included and whether this information can indeed be fully compensated for by retrievals from other European IT systems.

Article 4 (3)(a)

It remains unclear what is meant by the "flight identification number"; here it would be advisable to clarify that it can consist of "company code" and "flight number in the narrower sense + suffix (if applicable)".

"other clear and suitable means to identify the flight": So-called "non-scheduled" business carriers will pose a particular challenge, as they regularly do not have a company code, be it an IATA or ICAO code. Since they do not offer public flights according to a fixed schedule, the flights they operate also do not have a "flight number in the strict sense". Has the allocation of a European "substitute company code" + unique "aircraft registration number" as a flight number substitute in addition to information on the route and time of the flight been considered for the "non-scheduled business carriers" or also in order to be able to allocate the flights in the PNR system in future?

Article 4 (3) (e) and (f)

ETD and ETA are volatile time data, as flights are often delayed and can also be spontaneously postponed; here, especially in the case of individual check-in transmissions, there could be a discrepancy between the transfered travel times of passengers on the same flight, which could result in allocation problems. The API Directive and the PNR Directive in general take the planned flight times (STD/STA) as connecting times. What is the reason for the proposal being based on ETD/ETA?

Article 5(1)

Please explain when and how API data should be collected from passengers? The collection from the travel document is likely to have in mind the check-in process in physical presence at the airport in direct temporal connection with the travel process. However, the question is not specified in the proposed regulation. Is it intended to regulate this in delegated acts according to Article 5(4) of the Regulation? Could this be specified in the Regulation?

We ask COM to explain why the collection and transfer of data should not take place only on request as currently regulated, but should be obligatory for all flights into the Union.

As far as Article 5(1) requires the data to be "accurate, complete and up-to-date", it should not appear that the air carriers can ensure this completely. The air carriers can only take over the data of the travellers and do not have sovereign powers over travellers. We suggest examining whether this should be made clearer in the text of the regulation.

Article 5 (2)

As we understand, this regulation only concerns the collecting modalities by the air carriers. This does not impose any obligations on passengers. Is this understanding correct? The text of the regulation should contain a clarifying note that travellers are not obliged to use the online procedure for automated registration. Travellers must be free to physically present their travel documents during check-in at the airport. The MRZ can then be read out by the air carrier at this point.

Article 5 (3)

What ist meant by the terms "reliable, secure and up-to-date"? We welcome that the COM has offered to clarify the definitions of "reliable, secure and up-to-date" in response to DE's question, which was taken up by several MS. In particular, the term "secure" is used in several places in the Regulation and should therefore be clear in terms of meaning. In the IXIM meeting on 23. January 2023, COM explained that "secure" is to be understood in the sense of Article 17. We ask to check whether this could be clarified in the wording, e.g. by a reference to Article 17.

Article 5 (5)

We ask for an explanation of Article 5(5). The Directive 2004/82/EC cited will be repealed with the entry into force of the proposed Regulation API border management. Moreover, the cited Article 3(1) of Directive 2004/82/EC deals with the obligation to transmit API data on request in general and is replaced by the content of the proposed Regulation. Against this background, we do not understand the regulation.

Article 6 (1)

We refer to our comments above on the coexistence of the PNR Directive and the API Regulations and ask for answers to the questions listed there.

Article 6(1) is limited to the statement that data shall be transfered by electronic means from the air carrier to the router. This does not define to whom the air carrier is legally obliged to transfer the date to. Do we understand the statements of the COM during the IXIM meeting on 11/12th january 2023 correctly, that the obligation imposed on the air carrier to transfer data should be towards the member states or the authorities of the member states and not towards the EU (eu-LISA)? From DE's point of view, a clarification in the wording of the Regulation is important with regard to Article 30, which obliges the Member States to impose sanctions on air carriers that violate the Regulation.

We ask that it be examined whether the adoption of delegated acts should be made mandatory in Article 6(1) by means of a corresponding wording. Article 6(3) also refers to the "necessary detailed rules".

Article 6 (2)

Please explain why the transfer of API data for each passenger is to take place at two points in time. What are the advantages? Have the advantages been weighed against the additional encroachment on fundamental rights through the double data collection?

According to DE experience in the context of PNR data processing, the points in time at which data is transferred (check-in; flight closure) are interpreted very differently by both, countries and airlines. Further specification could be helpful.

Article 6 (4)

Art. 6(4) regulates information obligations, the corresponding obligations to amend or delete are regulated in Art. 8. Shouldn't the information obligations be better regulated in connection with Article 8(3)?

Article 7

As stated at the beginning, it still seems to us to be in need of clarification why the Regulation API border management is limited to a general purpose in Article 1 ("enhancing and facilitating the effectiveness and efficiency of border checks"), but refrains from making more detailed provisions on the further processing of data after the transfer of the data to the border authorities. In this respect, we refer to the questions raised at the beginning and ask COM to specifically name the EU provisions in the SBC and, if applicable, in further EU legal acts that are to be required for the further data processing of API data for border management purposes.

Article 8 (1)

Please explain the necessity of storing API data at the air carrier after transfer to the router. In which cases has the previous time limit of 24 hours not been sufficient? How does the regulation relate to the deviating provision in Article 4(8)(b) of the Regulation API law enforcement, according to which the data must be deleted after it has been transmitted to the router completely? Are not the same data sets (apart from exceptional constellations of divergent areas of application of the two draft regulations) involved?

Article 8 (2)

We ask to explain why the storage period starts with the departure of the flight and not with the landing of the flight. If the storage period already starts with the departure of the flight, the API data would be usable to the border authorities for different lengths of time depending on the flight. The flight duration may vary depending on the place of departure and may be further extended, for example, by weather-related delays or unforeseen emergency stopovers. However, for the follow-up measures to be taken by the border authorities, access to the API data should always be available for the same duration after the flight has landed.

We ask for an explanation of the background for the determination of the storage period.

Has the COM considered whether cases are conceivable in which longer storage is necessary, e.g. for evidence purposes in the event of sanctions against airlines for a breach of the regulation? Cases are conceivable for which an exemption from the obligation to delete is necessary because follow-up measures have to be taken. For example, longer storage is necessary for evidentiary purposes, in the case of sanctions against the air carrier for a breach of the Regulation. In practice, it occurs that travel documents are destroyed by travellers during the flight in order to deceive about their identity in the following. In these cases, a new collection of the traveller's data at the border control is not possible.

Article 8 (3)

In the event that a sanction against an air carrier comes into consideration, further processing of the data for the purpose of sanctioning might be necessary. Has consideration been given to providing for an exception to the obligation for border authorities to amend and delete data for this purpose?

The first sentence should read "received under this Regulation" instead of "received under **to** this Regulation".

ESTONIA

EE proposals regarding to COM (2022) 729 final

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

On the collection and transfer of advance passenger information (API) for enhancing and facilitating external border controls, amending Regulation (EU) 2019/817 and Regulation (EU) 2018/1726, and repealing Council Directive 2004/82/EC

Please find below in **bold underlined** the text proposed by EE and in ~~strikethrough~~ the deletions of current wording of Articles 1-8.

Our proposals on the respective Articles are following:

Article 1

Subject matter

For the purposes of enhancing and facilitating the effectiveness and efficiency of border checks at external borders**,** ~~and of~~ combating illegal immigration~~,~~ **and preventing any threat to Member States´public policy or internal security or public health,** this Regulation lays down the rules on:

(a) the collection by air carriers of advance passenger information ('API data') on flights into the Union;

(b) the transfer by air carriers to the router of the API data;

(c) the transmission from the router to the competent border authorities of the API data.

Justification: EE finds the proposed wording too narrow. Especially when the data of EU citizens and their family members are processed, the purpose should also include the protection of public order and internal security. As clearly stipulated in recital 6 of the Schengen Borders Code, besides combating illegular immigration, border control should also help to prevent any threat to the Member States´ internal security, public policy, public health and international relations. This is also supported by the Article 8 (2)(2)(a) and (b) of Schengen Borders Code (amendment with the Regulation (EU)2017/458), which stipulates that throrough checks shall comprise of checking that a person with the right to free movement under the Union law does not pose a risk to the public order, internal security, public health or international relations of any Member State.

General comment on including other modes of transport to the scope: We acknowledge the difficulties in including other means on transport. However, as maritime carriers already have a harmonised system in place for data transfers, involving at least maritime carriers should be possible. Therefore, we find it necessary to analyse the possibility to connect the European Maritime Single Window and the API router.

Article 2

Scope

This Regulation applies to air carriers conducting scheduled or non-scheduled flights into the Union.

On the basis of national law, a Member State shall have the right to to require the transfer of passenger data also from other modes of transport and, in case of failure to meet the obligation, apply corresponding sanctions towards the carrier concerned.

Justification: Even if other carriers will not be covered by the Regulation, Member States must remain able to continue the current practice regarding other carriers and their obligations to transmit API data. These obligations are set out in national law established under the API Directive.To the extent that the directive will be repealed and the wording of API Regulation does not cover other carriers, this may increase the risk that carriers will not agree to transfer data under national law in the future and it will be difficult for a member state to apply sanctions on its own. With this, we are once again creating a unharmonized practice between the member states.

IRELAND

Dear colleagues,

Please find below IE comments on Articles 1-8 as requested:

Article 3

References to Schengen Borders Code

- Within Article 3 (Definitions), (b) and (d), it is noted that references are taken from the Schengen Borders Code. As the proposed definitions for Article 3(b) and (d) sit within the Schengen Borders Code, in which Ireland does not participate, the current proposal gives rise to a situation where Ireland would have no say over possible future amendments to those definitions. We suggest that rather than a reference to the Schengen Borders Code, the actual text of the definition is copied into the API proposals.

Article 4

Article 4(2) – text anomaly

(h) baggage information, such as number of checked bags, where the air carrier collects such information.

Suggested text

(h) baggage information, such as the number of checked bags, where the air carrier collects such information.

GREECE

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter

For the purposes of enhancing and facilitating the effectiveness and efficiency of border checks at external borders and of combating illegal immigration, this Regulation lays down the rules on:

(a) the collection by air carriers of advance passenger information ('API data') on flights into the Union;

(b) the transfer by air carriers to the router of the API data;

(c) the transmission from the router to the competent border authorities of the API data.

Article 2

Scope

This Regulation applies to air carriers conducting scheduled or non-scheduled flights into the Union.

Article 3

Definitions

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

(a) ‘air carrier’ means an air transport undertaking as defined in Article 3, point 1, of Directive (EU) 2016/681;

(b) ‘border checks’ means the checks as defined in Article 2, point 11, of Regulation (EU) 2016/399;

(c) ‘flights into the Union’ means flights flyingfrom the territory either of a third country or of a Member State not participating in this Regulation,and planned to land on the territory of a Member State participating in this Regulation;

(d) ‘border crossing point’ means the crossingpoint as defined in Article 2, point 8, of Regulation (EU) 2016/399;

(e) ‘scheduled flight’ means a flight that operates according to a fixed timetable, for which tickets can be purchased by the general public;

(f) ‘non-scheduled flight’ means a flight that does not operate according to a fixed timetable and that is not necessarily part of a regular or scheduled route;

(g) ‘competent border authority’ means the authority charged by a Member State to carry out border checks and designated and notified by that Member State in accordance with Article 11(2);

(h) ‘passenger’ means any person, excluding members of the crew, carried or to be carried in an aircraft with the consent of the air carrier, such consent being manifested by that person's registration in the passengers list;

(i) ‘crew’ means any person on board of an aircraft during the flight, other than a passenger, who works on and operates the aircraft, including flight crew and cabin crew;

(j) ‘traveller’ means a passenger or crew member;

(k) ‘Advance Passenger Information data’ or ‘API data’ means the traveller data and the flight information referred to in Article 4(2) and (3) respectively;

(l) ‘Passenger Information Unit’ or ‘PIU’ means the competent authority referred to in Article 3, point i, of Regulation (EU) [API law enforcement];

(m) ‘the router’ means the router referred to in Article 9;

(n) ‘personal data’ means any information as defined in Article 4, point 1, of Regulation (EU) 2016/679.

CHAPTER 2

COLLECTION AND TRANSFER OF API DATA

Article 4

API data to be collected by air carriers

1. Air carriers shall collect API data of travellers, consisting of the traveller data and the flight information specified in paragraphs 2 and 3of this Article, respectively, on the flights referred to in Article 2, for the purpose of transferring that API data to the router in accordance with Article 6.

2. The API data shall consistof the following traveller data relating to each traveller on the flight:

   (a) the surname (family name), first name or names (given names);

   (b) the date of birth, sex and nationality;

   (c) the type and number of the travel document and the three-letter code of the issuing country of the travel document;

   (d) the date of expiry of the validity of the travel document;

   (e) whether the traveller is a passenger or a crew member (traveller's status);

   (f) the number identifying a passenger name record used by an air carrier to locate a passenger within its information system (PNR record locator);

   (g) the seating information, such as the number of the seat in the aircraft assigned to a passenger, where the air carrier collects such information;

   (h) baggage information, such as number of checked bags, where the air carrier collects such information.

3. The API data shall also consist of the following flight information relating to the flight of each traveller:

   (a) the flight identification number or, if no such number exists, other clear and suitable means to identify the flight;

   (b) when applicable, the border crossing point of entry into the territory of the Member State;

   (c) the code of the airport of entry into the territory of the Member State;

(d) the initial point of embarkation;

(e) the local date and estimated time of departure;

(f) the local date and estimated time of arrival.

Article 5

Means of collecting API data

1. Air carriers shall collect the API data pursuant to Article 4 in such a manner that the API data that they transfer in accordance with Article 6 is accurate, complete and up-to-date.

2. Air carriers shall collect the APIdata referred to Article 4(2), points (a) to (d), 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 4, where such rules have been adopted and are applicable.

However, where such 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 1.

3. Any automated means used by air carriers to collect API data under this Regulation shall be reliable, secure and up-to-date.

4. The Commission is empowered to adopt delegated acts in accordance with Article 37 to supplement this Regulation by laying down detailed technical requirements and operationalrules for the collection of the APIdata referred to in Article 4(2), points (a) to (d), using automated means in accordance with paragraph 2 and 3 of this Article.

5. Air carriers that use automated means to collect the information referred to in Article 3(1) of Directive 2004/82/EC shall be entitled to do so applying the technical requirements relating to such use referred to in paragraph 4, in accordance with that Directive.

Article 6

Obligations on air carriers regarding transfers of API data

1. Air carriers shall transfer the API data to the router by electronic means.They shall do so in accordance with the detailed rules referred to in paragraph 3, where such rules have been adopted and are applicable.

2. Air carriers shall transfer the API data both at the moment of check-in and immediately after flight closure, that is, once the passengers have boarded the aircraft in preparation for departure and it is no longer possible for passengers to board or to leave the aircraft.

3. The Commission is empowered to adopt delegated acts in accordance with Article 37 to supplement this Regulation by laying down 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.

4. Where an air carrier becomes aware, after having transferred data to the router, that the API data is inaccurate, incomplete, no longer up-to-date or was processed unlawfully, or that the data does not constitute API data, it 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 competent border authority that received the API data transmitted through the router.

Article 7

Processing of API data received

The competent border authorities shall process API data, transferred to them in accordance with this Regulation, solely for the purposes referred to in Article 1.

Article 8

Storage and deletion of API data

1. Air carriers shall store, for a time period of 48 hours from the moment of departure of the flight, the API data relating to that passenger that they collected pursuant to Article 4. They shall immediately and permanently delete that API data after the expiry of that time period.

2. The competent border authorities shall store, for a time period of 48 hours from the moment of departure of the flight, the API data relating to that passenger that they received through the router pursuant to Article 11. They shall immediately and permanently delete that API data after the expiry of that time period.

3. Where an air carrier or competent border authority becomes aware that the data that it has collected, transferred or received under to this Regulation is inaccurate, incomplete, no longer up-to-date or was processed unlawfully, or that the data does not constitute API data, it shall immediately either correct, complete or update, or permanently delete, that API 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.

SPAIN

Written contributions (Articles 1-8) by Spanish IXIM Delegation

Article 1. Subject matter

Related to art. 1 (a), this Delegation presents a particular situation which is not included in "flights into the Union" but in fact exceptionally have occurred some cases of rerouted flights (not previously foreseen to come into the Union) providing a couple of real situations as an example: flights that leave a non-Schengen state with destination to another non-Schengen state (this implies that there is no API data in the router) but at a certain moment overflying Spain, passengers simulate a medical emergency and consequently the plane comes into the necessity to land in a Spanish airport. Suddenly some of the passengers run away (a clearly illegal entry, which is not subject to this Regulation) and for the rest of the passengers remaining in the plane, not involved in illegal migration, there is no API data at all about them.

These kinds of situations are cases not thought for a normal run out in the Regulation with probably a difficult solution beyond the case-by-case treatment in which national authorities have to take particular measures. However, the Commission announced to look into it.

On the other hand, in relation to "passenger information" (art. 1(a)) this Delegation addressed the particular case of "Air Marshalls" considered as "travellers". Some considerations into it will be given in articles 3 and 4.

Art. 1 (a) (b). This Delegation would support very much also include in the Regulation "maritime carriers". The operations of maritime passenger transportation are quite similar to air transport and in our particular case, it is very important due to the maritime routes coming from North Africa. Within the framework of the current procedures, highly valuable information is obtained. Furthermore, given the volume of travellers, the fact that it could be done in advance is essential. In short, maritime is desirable. Otherwise, it would be a considerable loss.

During the past discussions on this article, the different use of the word "transfer" (b) and "transmission" (c) was not sufficiently clarified by COM. Is it to be understood that the difference is that "transfer" means that the airlines send the data and do not delete it from their databases, and "transmission" means that the data is moved to the MS and completely deleted in the Router?. We would appreciate clarification on the reason for the different usage of these terms, if any.

Article 2. Scope

No comments.

Article 3. Definitions

Art. 3 (c). From the point of view of this Delegation when we refer to flights entering "into the Union", means those coming from a "Third Country". However, we may suggest making a reference to “third country [...] not participating in this Regulation", since the Schengen-associated States which are "third States" to the EU, do participate in the Regulation, which is part of the Schengen acquis. Therefore, flights from NO/IS/CH/LI to an EU MS do not have to send API data, as they are, for all intents and purposes, Schengen flights. On the other way around, flights from Third States to these countries do have to send API data.

As already mentioned in comments to article 1, we consider addressing the case of “Air Marshalls” by adding to the current definitions of "passenger" (h) and "crew" (i), a third one, related to the “Air Marshalls” themselves, so that the definition of "traveller" (j) would be the set formed by the three previous categories.

Article 4. API data to be collected by air carriers

In our view, it is clear that it is about data of all those on the aircraft (passengers, crew and Air Marshalls) by specifying, in Article 4, that the API data is about "travellers", which should include the three categories as mentioned.

Then, in article 4.2, it would be appropriated to clarify that, as an exception, Air Marshalls would not be identified by their first name and surname, but by the name of their Police Force or Agency and professional identification number.

Also concerning art. 2 (a) this Delegation asked to incorporate the two surnames for Spaniards and citizens from most of the South American countries, as follows: adding "surname or surnames".

This Delegation considers that in art. 4.2(g)(h), the provision of seat and baggage information written as "where the air carrier collects such information" is not enough. We see essential information on seating and baggage to be compulsory for the carriers.

In art. 4.3 (d), it would be desirable that the point of embarkation is also reported with the airport code so that the airport of entry is codified in 3 (c).

Concerning the overall flight passengers' information, it is considered relevant to know the final destination of the passengers on all the intermediate connections. Such information is currently included and used in the API received in Spain.

Finally, it would be very useful to add to Article 4 the number of passengers carried on each flight. This already exists in the current API Regulation.

Article 5. Means of collecting API data

The Spanish delegation points out that since art. 5.2 introduces the possibility of manual data entry, there is a possibility of errors in the data. It is proposed then that some kind of flag be introduced for cases where data manually collected may be subject to human error and having knowledge of this would help border officials in handling the case.

Comment for art. 5.4, but applicable transversally to the whole text: as a general rule, this Delegation tends to advocate for replacing all references to "Delegated Acts" with "Implementing Acts", since the level of control that Member States exercise over the latter is much higher (in particular, Implementing Acts are formally voted by MS in COM committees, whereas Delegated Acts are not.

Article 6. Obligations on air carriers regarding transfers of API data

Related to art. 6.3 same comments as those provided for art. 5.4.

Article 7. Processing of API data received

No comments.

Article 8. Storage and deletion of API data

Art. 8.2. This Delegation considers that the storage of data for a time period of 48 hours from the moment of departure of the flight, is very short. Ideally, we would see an appropriate time period of a week.

FRANCE

NOTE

Objet : Note de commentaires suite à l'IXIM des 11-12 janvier 2023 sur les articles 1 à 8 (chapitre 1 et 2) du règlement 729 (« Frontières »)

Réf. :COM (2022) 729 – Règlement API « Frontières »

CM 1174/22

A la suite du groupe IXIM des 11-12 janvier 2023, durant lequel les articles 1 à 8 du règlement 729 ont été abordés (chapitres 1 et 2), la Présidence a invité les Etats membres à lui fournir les commentaires sur ces articles.

Commentaires généraux sur la multi-modalité

Les autorités françaises regrettent que les deux propositions de règlements 729 et 731 de la Commission ne se limitent qu'à un seul mode de transport, à savoir l'aérien. S'il peut paraître ambitieux d'élargir l'objet et la portée des deux textes à tous les autres modes de transports, il semble utile de ne pas les écarter d'emblée.

Des commentaires seront transmis à la Présidence dans le cadre des discussions en IXIM lorsque la proposition de règlement « préventif / répressif » (731) sera à l'ordre du jour.

Concernant la proposition de règlement API « frontières » (729), les autorités françaises plaident pour une intégration du transport maritime pour les trajets entrants. La France est essentiellement concernée par les liaisons maritimes avec les pays du Maghreb et le Royaume-Uni. Un dispositif spécifique API-PNR est déjà en cours de développement pour ce vecteur de transport au niveau français. Il paraît essentiel que nos partenaires européens puissent aussi disposer d'un tel système afin d'empêcher les stratégies d'évitement par les individus les plus dangereux, pour la sécurité de l'espace Schengen, soucieux de ne pas laisser de traces de leurs déplacements.

Commentaires spécifiques sur les articles 1 à 8 (chapitre I et II) du règlement 729

Chapitre 1er : Dispositions générales

Article 1er Objet :

Comme indiqué dans les commentaires généraux, après les mots *"air carriers*", il conviendrait d'ajouter les mots *"maritime carriers* " aux alinéas aux a) et b). La modification se retrouvera également à l'article 2 et dans plusieurs autres itérations du texte.

La délégation française souhaiterait connaître les raisons pour lesquelles la Commission a exclu la transmission des données API aux Unités d'Informations Passagers. En effet, les données API sont déjà transmises aux UIP (guichet unique). Cet oubli est incohérent avec le chapitre 10 qui indique *« The router shall only be used by air carriers to transfer API data and by competent border authorities **and PIUs** to receive API data, in accordance with this Regulation and Regulation (EU) [API law enforcement], respectively* ».

Article 2 : Portée

Cet article doit être mis en conformité avec l'idée de multi-modalité, en ajoutant le transport maritime.

Article 3 : Définitions

Il conviendrait d'ajouter après le a) « *air carrier* », pour tenir compte de notre souhait de multi-modalité, des définitions relatives à b) « *maritime carriers* ».

Au point c) : il conviendrait de changer « *flights* » par « *travel* » dans l'esprit de la multi-modalité, puisqu'il ne sera plus question uniquement de vols si la multi-modalité est acceptée.

Au point h) : le concept de multi-modalité est également à intégrer ici.

Au point k) : il conviendrait également de faire référence à la multi-modalité, ne plus parler de *« flight information* » mais trouver un terme qui puisse englober les autres transports.

Au point l), il conviendrait de corriger une erreur dans la référence à l'article 3 de l'autre règlement (finalités prévention/répression) : il s'agit du point k et non du point i.

Chapitre 2 : Recueil et transfert des données API

Article 4 : Données API à collecter par les transporteurs aériens

Il conviendrait également de mettre en conformité cet article avec l'idée de multi-modalité.

Article 5 : Moyens de collecte des données API

Au point 2, il serait souhaitable d'introduire une procédure de secours - qu'il conviendrait de définir - lorsque la lecture des données API sur la bande MRZ est défaillante. Les données de la bande MRZ sont les principales données contenues dans les données API.

Au point 4 – et d'une manière générale dans l'ensemble du texte, les autorités françaises, réticentes à laisser la Commission fixer un certain nombre de modalités par actes délégués, préfèrent privilégier la procédure d'actes d'exécution.

Article 6 : Obligations des transporteurs aériens concernant les transferts de données API

Il conviendrait de prévoir, au point 2, une modulation des enregistrements en fonction du type d'aviation (aviation régulière / aviation charter / aviation d'affaire). En outre, il conviendrait de préciser les modalités d'enregistrement qui ne sont pas réalisées de la même manière "sur le terrain" en fonction du type d'aviation (notamment aviation d'affaire).

Article 7 : Traitement des données API reçues

Les autorités françaises proposent la suppression de cet article (redondance avec l'article 1er). Elles seraient également ouvertes à ce que les modalités d'exploitation soient régies par la directive PNR.

Article 8 : Stockage et suppression des données API

Les autorités françaises s'interrogent sur cette proposition et en particulier sur le nouveau rôle qui sera conféré aux garde-frontières (point 2). La question de l'utilisation mais également la durée de conservation des données se pose. Les autorités françaises aimeraient des précisions sur la manière dont les autorités compétentes en charge du contrôle utiliseront ces données et sur les règles de leur conservation. Elles préconisent une durée de conservation de 48 heures après la réception de la donnée plutôt qu'après le départ du vol.

Les autorités françaises souhaiteraient savoir comment une autorité compétente en charge du contrôle aux frontières peut-elle corriger d'elle-même des données API (point 3). En effet, il n'y a qu'au moment du recueil de la donnée que cette opération peut être réalisée. Les autorités compétentes n'ayant aucun lien avec les compagnies aériennes ne pourront de toute façon pas effectuer les corrections.

Courtesy translation

Following the IXIM meeting of 11-12 January 2023, during which articles 1 to 8 of the draft regulation 729 were discussed (chapters 1 and 2), the Presidency invited the Member States to provide comments on these articles.

General comments on multi-modality

The French authorities regret that the Commission's two proposals for regulations 729 and 731 are limited to a single mode of transport, namely air. While it may seem ambitious to extend the subject matter and scope of the two texts to all other modes of transport, it seems useful not to dismiss them out of hand.

Comments will be transmitted to the Presidency in the framework of the discussions in IXIM when the "law enforcement" draft regulation (731) is on the agenda.

Concerning the API "border" draft regulation (729), the French authorities are in favour of integrating maritime transport for incoming journeys. France is mainly concerned by maritime links with the Maghreb countries and the United Kingdom. A specific API-PNR system is already being developed for this transport mode in France. It seems essential that our European partners also have such a system in order to prevent "avoidance strategies" by the most dangerous individuals, for the security of the Schengen area, anxious not to leave any trace of their movements.

Specific comments on Articles 1 to 8 (Chapter I and II) of Regulation 729

Chapter 1: General Provisions

Article 1 Purpose:

As noted in the general comments, after the words "air carriers", the words "maritime carriers" should be added to paragraphs at (a) and (b). This modification should be done in Article 2 and in several other iterations of the text.

The French authorities would like to know the reasons why the Commission has excluded the transmission of API data to the Passenger Information Units. Indeed, API data are already transmitted to PIUs (one-stop shop). This omission is inconsistent with Chapter 10, which states "*The router shall only be used by air carriers to transfer API data and by competent border authorities* ***and PIUs*** *to receive API data, in accordance with this Regulation and Regulation (EU) [API law enforcement], respectively".*

Article 2: Scope

This article needs to be brought in line with the idea of multi-modality, by adding maritime transport.

Article 3: Definitions

Definitions for b) "maritime carriers" should be added after a) "air carrier", to take into account our wish for multi-modality.

In point c): "flights" should be changed to "travel" in the spirit of multi-modality, since it will no longer be just flights if multi-modality is accepted.

In point h): the concept of multi-modality should also be included here.

In point k): reference should also be made to multi-modality, no longer to "flight information" but to find a term that can encompass other transport.

In point l), an error should be corrected in the reference to Article 3 of the other regulation (prevention/punishment purposes): it is point k and not point i.

Chapter 2: Collection and Transfer of API Data

Article 4: API Data to be collected by Air Carriers

This article should also be brought into line with the idea of multi-modality.

Article 5: Means of collection of API data

In point 2, it would be desirable to introduce a back-up procedure - which should be defined - when the reading of API data on the MRZ band fails. The MRZ band data is the main data contained in the API data.

In point 4 - and in general throughout the text - the French authorities are reluctant to let the Commission lay down a certain number of procedures by delegated acts, and prefer to use the implementing act procedure.

Article 6: Obligations of air carriers regarding API data transfers

It would be appropriate to provide, in point 2, for the different type of check-ins according to the type of aviation (regular aviation / charter aviation / business aviation). In addition, it would be advisable to specify the check-in modalities that are not carried out in the same way "on the ground" depending on the type of aviation (in particular business aviation).

Article 7: Processing of API data received

The French authorities propose the deletion of this article (redundancy with article 1). They would also be open to the operating procedures being governed by the PNR Directive.

Article 8: Storage and deletion of API data

The French authorities have questions about this proposal and in particular about the new role that will be given to border guards (point 2). The question of the use of the data, but also the length of time they will be stored, arises. The French authorities would like clarifications on the way in which the competent authorities responsible for border control will use these data and the rules for their storage. They recommend a retention period of 48 hours after receiving the data rather than after the flight's departure.

The French authorities would like to know how a competent authority responsible for border control can correct API data on its own (point 3). Indeed, this operation can only be carried out at the time of collection of the data. Competent authorities that have no connection with the airlines will not be able to make corrections in any case.

LITHUANIA

Dear Presidency,

Following the meeting of the Working Party on JHA Information Exchange (IXIM) of 11 and 12 January 2023, Lithuanian delegation provides written contributions on document 15720/22.

We consider the European Commission's proposals for better use of API data to facilitate the management of external borders and increase internal security to be a fair and timely step towards harmonization and unification of Member States' practices in this area.

From this point of view, we support the chosen legal instrument, i.e. for a Regulation that ensures uniform implementation and does not require a transposition process.

API is an effective means of informing the relevant authorities in advance of the number and identity of persons traveling by air, enabling pre-arrival checks and, effective means of combating with terrorism and serious crime.

I.

Proposal for a Regulation of the European Parliament and of the Council on the collection and transfer of advance passenger information (API) for enhancing and facilitating external border controls, amending Regulation (EU) 2019/817 and Regulation (EU) 2018/1726, and repealing Council Directive 2004/82/EC

Lithuania collects both PNR and API data in a "single window" and processes such data in one system. According to national law, the controller of passenger data is the police, which distributes API data to border authorities and PIU through technical means. We believe that this format of data processing must have been considered in the Regulation, therefore Art. 3 the definition of "single window" have to be introduced and have to be supplemented. Art. 1 point (c), as well as other articles of the regulation, respectively.

In article 3, point (o) add definition "**single window**" - a unit authorized by national law to collect all passenger data (API and PNR) from (air) carriers into a single system and then transfer the data to the national competent border authorities and PIU's by technical means, in accordance with their competence.

Regarding this definition, to make changes where it is necessary, namely in **article 1, point (c), article 6 (4), article 9 (1), (2) point (b), article 10 (1), article 11 (1, 2, 3), article 12 (1) point (a), article 13 (1), point (b), article 14 (1, 2, 3), article 15 (1), article 17 (1), (2) point (c), article 20 (1), article 22 (4), article 23 (2), article 24 (1, 2), article 31 (6), article 32 (1).**

HUNGARY

We thank the Commission for the proposal. We do not yet have an overall national position; the national coordination process is still ongoing with the involvement of all the national stakeholders.

With this in mind, we support the objectives of the draft Regulation in principle. Our preliminary position is that we welcome a legal instrument with the purpose of laying down unified rules and procedures of collecting, transferring, transmitting and using of API data within the EU. We also agree that a Regulation is the appropriate form of this legal instrument, taking into consideration that the proposed measures needs to be directly applicable and uniformly applied in all Member States.

Chapter 1

We agree with the subject matter (Article 1) and scope (Article 2) of the draft Regulation. The terminology and the list of definitions used in Article 3 are in line with the relevant EU legal standards already transposed and implemented (i.a. Schengen Borders Code, GDPR, PNR Directive), in our view these shall not be subject to dispute.

Chapter 2

We agree with the set of API data to be collected by air carriers according to Article 4 of the draft Regulation.

Regarding Article 5 Paragraph 2 of the draft Regulation, further clarification and explanation is needed from COM on how the manual data collection is managable by air carriers in cases when automated means is not possible (due to the travel documents not containing machine-readable data).

As regard Article 6 Paragraph 2 of the draft Regulation, the obligation for the transfer the API data at the moment of check-in shall be further clarified, with special regard to cases of online check-in, when passengers are usually not present at the airport of departure, so air carriers have no direct possibility for collecting data by automated means.

Regarding Article 6 Paragraph 4 of the draft Regulation, more precise procedures shall be defined for cases when the transferred API data prove to be inaccurate, incomplete, no longer up-to-date or unlawfully processed, or data not constituting API data. The means of „informing" the eu-LISA as well as the competent border authority that received the data shall be further elaborated.

We can preliminarily agree with the rest of the rules laid down in Chapter 2 of the draft Regulation.

THE NETHERLANDS

Article 1-8

on Proposal for a Regulation of the European Parliament and of the Council on the collection and transfer of advance passenger information (API) for enhancing and facilitating external border controls, amending Regulation (EU) 2019/817 and Regulation (EU) 2018/1726, and repealing Council Directive 2004/82/EC

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter

For the purposes of enhancing and facilitating the effectiveness and efficiency of border checks at external borders and of combating illegal immigration, this Regulation lays down the rules on:

(a) the collection by air carriers of advance passenger information ('API data') on flights into the Union;

(b) the transfer by air carriers to the router of the API data;

(c) the transmission from the router to the competent border authorities of the API data.

Comments/questions

We propose the following amendments per paragraph:

a) – With a view to consistency, NL would prefer the use of the term "border control" in Article 1 instead of "border checks" (since "border control" is used in title of the current proposal, and border control was also used in the API directive).

- please clarify "flights into the Union' vs Schengen/non Schengen.

b) flights should be replaced by travels in case of extending the scope to other modes of transport;

c) please clarify the difference between transfer (b) and transmission (c). In the API directive it was only transmission;

Please also see our general comments regarding other modes of transport and use for intra-Schengen flights. On the latter issue, we will send additional information at a later date as requested separately.

Article 2

Scope

This Regulation applies to air carriers conducting scheduled or non-scheduled flights into the Union.

Comments/questions

- Please define non-scheduled flights, since we prefer to have a clear and uniform definition. Is it applicable to all General Aviation flights, military/medical flights and private jets or only commercial flights?

Article 3

Definitions

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

(a) 'air carrier' means an air transport undertaking as defined in Article 3, point 1, of Directive (EU) 2016/681;

Comments/questions

Could the Commission please explain why you refer to the Directive 2016/681 and not to Regulation 2016/399?

(b) 'border checks' means the checks as defined in Article 2, point 11, of Regulation (EU) 2016/399;

Comments/questions

We would prefer the definition of 'border checks' to be replaced by a definition of 'border control' (see also above).

(c) 'flights into the Union' means flights flying from the territory either of a third country or of a Member State not participating in this Regulation, and planned to land on the territory of a Member State participating in this Regulation;

(d) 'border crossing point' means the crossing point as defined in Article 2, point 8, of Regulation (EU) 2016/399;

(e) 'scheduled flight' means a flight that operates according to a fixed timetable, for which tickets can be purchased by the general public;

(f) 'non-scheduled flight' means a flight that does not operate according to a fixed timetable and that is not necessarily part of a regular or scheduled route;

Comments/questions

See comment above regarding a request for further clarification of the definition of non-scheduled flights.

(g) 'competent border authority' means the authority charged by a Member State to carry out border checks and designated and notified by that Member State in accordance with Article 11(2);

Comments/questions

See comment above: please replace checks by control.

(h) 'passenger' means any person, excluding members of the crew, carried or to be carried in an aircraft with the consent of the air carrier, such consent being manifested by that person's registration in the passengers list;

(i) 'crew' means any person on board of an aircraft during the flight, other than a passenger, who works on and operates the aircraft, including flight crew and cabin crew;

(j) ‘traveller’ means a passenger or crew member;

(k) ‘Advance Passenger Information data’ or ‘API data’ means the traveller data and the flight information referred to in Article 4(2) and (3) respectively;

(l) ‘Passenger Information Unit’ or ‘PIU’ means the competent authority referred to in Article 3, point i, of Regulation (EU) [API law enforcement];

(m) ‘the router’ means the router referred to in Article 9;

(n) ‘personal data’ means any information as defined in Article 4, point 1, of Regulation (EU) 2016/679.

CHAPTER 2

COLLECTION AND TRANSFER OF API DATA

Article 4

API data to be collected by air carriers

1. Air carriers shall collect API data of travellers, consisting of the traveller data and the flight information specified in paragraphs 2 and 3 of this Article, respectively, on the flights referred to in Article 2, for the purpose of transferring that API data to the router in accordance with Article 6.

2. The API data shall consist of the following traveller data relating to each traveller on the flight:

(a) the surname (family name), first name or names (given names);

(b) the date of birth, sex and nationality;

(c) the type and number of the travel document and the three-letter code of the issuing country of the travel document;

(d) the date of expiry of the validity of the travel document;

(e) whether the traveller is a passenger or a crew member (traveller's status);

(f) the number identifying a passenger name record used by an air carrier to locate a passenger within its information system (PNR record locator);

(g) the seating information, such as the number of the seat in the aircraft assigned to a passenger, ~~where the air carrier collects such information~~;

Comments/questions

Please strike the voluntary nature of this provision since this information is needed for operational benefits, for example in the detection of human trafficking.

(h) baggage information, such as number of checked bags, ~~where the air carrier collects such information.~~

Comments/questions

Please strike the voluntary nature of this provision since this information is needed for operational benefits, for example in the detection of human trafficking.

3. The API data shall also consist of the following flight information relating to the flight of each traveller:

(a) the flight identification number or, if no such number exists, other clear and suitable means to identify the flight;

(b) when applicable, the border crossing point of entry into the territory of the Member State;

(c) the code of the airport of entry into the territory of the Member State;

(d) the initial point of embarkation;

(e) the local date and estimated time of departure;

(f) the local date and estimated time of arrival.

Article 5

Means of collecting API data

1. Air carriers shall collect the API data pursuant to Article 4 in such a manner that the API data that they transfer in accordance with Article 6 is accurate, complete and up-to-date.

2. Air carriers shall collect the API data referred to Article 4(2), points (a) to (d), 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 4, where such rules have been adopted and are applicable.

However, where such 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 1.

3. Any automated means used by air carriers to collect API data under this Regulation shall be reliable, secure and up-to-date.

4. The Commission is empowered to adopt delegated acts in accordance with Article 37 to supplement this Regulation by laying down detailed technical requirements and operational rules for the collection of the API data referred to in Article 4(2), points (a) to (d), using automated means in accordance with paragraph 2 and 3 of this Article.

5. Air carriers that use automated means to collect the information referred to in Article 3(1) of Directive 2004/82/EC shall be entitled to do so applying the technical requirements relating to such use referred to in paragraph 4, in accordance with that Directive.

Comments/questions

As discussed in the first reading, we would prefer a futureproof wording of the automated means for collecting data of the travel document with a view to technological developments. This should not only include the use of MRZ but also reading the chip and possible other ways.

Article 6

Obligations on air carriers regarding transfers of API data

1. Air carriers shall transfer the API data to the router by electronic means. They shall do so in accordance with the detailed rules referred to in paragraph 3, where such rules have been adopted and are applicable

2. Air carriers shall transfer the API data both at the moment of check-in and immediately after flight closure, that is, once the passengers have boarded the aircraft in preparation for departure and it is no longer possible for passengers to board or to leave the aircraft.

Comments/questions

It is unclear in the text whether the API data is sent to the router at the time of online check-in or at the physical check-in at the airport. We would like to see further clarification in the text.

3. The Commission is empowered to adopt delegated acts in accordance with Article 37 to supplement this Regulation by laying down 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.

4. Where an air carrier becomes aware, after having transferred data to the router, that the API data is inaccurate, incomplete, no longer up-to-date or was processed unlawfully, or that the data does not constitute API data, it 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 competent border authority that received the API data transmitted through the router.

Article 7

Processing of API data received

The competent border authorities shall process API data, transferred to them in accordance with this Regulation, solely for the purposes referred to in Article 1.

Article 8

Storage and deletion of API data

1. Air carriers shall store, for a time period of 48 hours from the moment of departure of the flight, the API data relating to that passenger that they collected pursuant to Article 4. They shall immediately and permanently delete that API data after the expiry of that time period.

2. The competent border authorities shall store, for a time period of 48 hours from the moment of departure of the flight, the API data relating to that passenger that they received through the router pursuant to Article 11. They shall immediately and permanently delete that API data after the expiry of that time period.

3. Where an air carrier or competent border authority becomes aware that the data that it has collected, transferred or received under to this Regulation is inaccurate, incomplete, no longer up-to-date or was processed unlawfully, or that the data does not constitute API data, it shall immediately either correct, complete or update, or permanently delete, that API 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.

Comments/questions

- We propose to replace “delete” in paragraph 2 with “anonymise” for statistical and research purposes.

- For border and migration purposes, as well as operational experience in the Netherlands, we propose to include under paragraph 2 extra exceptional categories to store data longer than 48 hours for:

- 1; high risk nationalities (3x24 hours extra);

- 2; in case of a match on an alert based on risk criteria and/or of databases (period of 1 year);

- 3; longer storage up to 4 days in case of increased risk of illegal migration. Note if there is an alert to the person, we keep the data for 1 year, because we need it for the performance of the legal duties regarding border control. For example, you need an alert that leads to an arrest or a refusal outside that period of 4 days.

It has happened multiple times in NL that an individual has hidden themselves in the international area of Schiphol Airport and has thrown away his/her passport. After some days these individuals requested asylum without verifiable identity data. We then needed to check the API data of the flight which they took into the Schengen area.

POLAND

Dear Presidency, Dear Colleagues,

following the meeting of the Working Party on JHA Information Exchange (IXIM) of 11 and 12 January 2023, please find below PL written contribution on document 15720/22 (Articles 1-8):

PL would like to thank the European Commission for the legislative initiative related to the preparation of the new drafts of the regulations regarding the collection and processing of Advanced Passenger Information (API). The direction of changes proposed in the drafts of both regulations is, in principle, consistent with the interests of PL, including in particular the limitation of the application of the API provisions to air carriers only.

PL maintains analytical reservation due to the ongoing consultations at the national level.

PL can only provide preliminary comments at this time. PL position may change after full formal arrangements have been made.

Detailed comments to art. 8:

The proposed period of 48 hours for processing API data is still too short. The change from 24 hours to 48 hours is symbolic and changes practically nothing. Data should be deleted in accordance with national regulations. The lack of API information - due to their mandatory deletion - often makes it impossible to analyse migration routes and makes it impossible to track and prevent irregular migration phenomena. Such a short period of data storage prevents quantitative analysis of people moving to the EU using transfer ports, i.e. arrival in an EU country that is not the country of destination, passport control for entry, failure to leave the transfer port and departure on an internal flight to the EU destination country. Having data in the longer term, it would allow for better planning of checks on the legality of entry. Therefore, it would be reasonable to extend this data retention period:

Proposal of change in Art.8.3

„The competent border authorities shall store, for a time period of 96 hours from the moment of departure of the flight, the API data relating to that passenger that they received through the router pursuant to Article 11. They shall immediately and permanently delete that API data after the expiry of that time period. Competent border authority may store statistical information of received API data excluding personal data".

ROMANIA

General remarks

Romania welcomes the Commission's proposals to reform the API legal framework and believes that the **chosen form - of regulations - facilitates uniform implementation**, creating, together with the PNR Directive, **a solid legal framework**.

The technological progress registered during the almost two decades since the adoption of Directive 82 supports the creation of a system that will harmonize the relevant national systems of the Member States, contributing to the elimination of differences in implementation from a technical point of view, in particular as regards the systematic collection of data, to better legal certainty regarding the flights taken into consideration and to a use of these data in accordance with the purposes for which they are collected.

We consider that **centralised collection of API data and transmission to PIUs will optimize data analysis / targeting activity**, so that the activity of preventing and combating serious crimes and terrorism is improved.

As the experience of using API data has shown that most data quality problems arise from incorrectly collected data, we believe that the proposed automated solution will reduce the risk regarding the errors. The proposal to transmit **API data at the check-in of each traveller and immediately after the closure of the flight is of great importance**. This will facilitate the processing of API data to prevent illegal migration (for example, by identifying double-check-in cases).

Romania has a positive opinion regarding the inclusion of new information, not previously provided for by Directive 82, such as data on baggage, the seat and the crew members. We consider that extend the data to also include the weight and destination airport information of checked baggage, already collected by air carriers, can provide additional tools to law enforcement.

The **inclusion of chapters related to the protection of personal data** also represents an element of progress compared to the previous regulatory framework; however, it is necessary to include express provisions regarding the application of the *privacy by design* and *privacy by default* principles, but also the role of the national supervisory authority in monitoring the lawfulness of personal data processing, a role properly reflected in the allocated resources. Also, the provisions regarding the rights of the persons concerned (the right to information, the right of access etc.) are missing.

Regarding the collection of API data for **selected intra-EU flights**, Romania would prefer that the final solution converge towards the transmission of all data from the router to the PIUs, and that their processing be selectively carried out at the MS level, based on risk analyses.

We believe that intra-EU flight data represents an important law enforcement tool for tracking the movements of known suspects and identifying the travel patterns of unknown persons who may be involved in criminal / terrorist activities. Moreover, it is important to be able to profile individuals, not travel routes, bearing in mind that OCGs or terrorist suspects operate in several EU countries and regularly change their travel itineraries or the countries where they carry out criminal/terrorist activities. Selective collection, limited to certain flights or timeframes, would affect the process of verifying information relating to possible terrorist/homeland security threats, the end result could lead in many cases to the measure being unenforceable and ineffective. One of the most used criteria for detecting both known and unknown persons is departure and/or arrival airport and transit. Having API for a selection of flights/itineraries will make, most of the time this type of criteria inefficient.

Regarding the **collection of API data from the maritime, rail and road transport operators, Romania considers that t**his measure would have important operational benefits as it would eliminate gaps in the movement of suspects (”broken travels”[1], ”hidden cities”[2]) and allow the modus operandi to be established in detail, aspect supported also by FR, BE, EE, NL, BG during IXIM meeting (11-12.01.2023).

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1 For example, they use air transport to enter a European country, from where they continue their journey by coach/train to another European country and can no longer be detected by law enforcement authorities.

2 The suspects purchase flights on complex routes (1 - 2 two transit airports), and they actually fly only part of the booked flight segments.

In order to complete the information picture, we consider that the **centralised collection of API data on domestic flights** should also be covered for the purposes of prevention, detection, investigation and prosecution of terrorist offences and serious crime.

ARTICLES 1 – 8 – doc. 15720/22

As a general remark, the use of the terms *passenger* and *traveller* should be harmonized on the whole text according to the definitions provided at article 3.

Art. 3 – Definitions

- We propose to include at **letter a)** other types of flights, such as *chartered flights, private flights, privately freighted flights*.

'air carrier' means an air transport undertaking as defined in Article 3, point 1, of Directive (EU) 2016/681, **including chartered flights, private flights, privately freighted flights as well as any transit flights where passengers disembark, together with cargo carriers transporting passengers**.

Art. 4 – API data to be collected by air carriers

- Regarding baggage information, we propose to add at **para 2, letter h)** *weight, including mentions concerning overweight or oversized luggage, and the destination airport of the checked baggage*. We consider that these are relevant indicators for the analysis of criminal activity, respectively in the targeting activity carried out at the level of PIU.

h) "baggage information, such as number of checked bags, ***weight, including mentions concerning overweight or oversized luggage, the destination airport of the checked baggage****, where the air carrier collects such information";*

- We propose to include at article 4 *information regarding the total number of passengers carried on that transport, checked-in/boarded*. This information is collected, at this moment, in accordance with API Directive.

Art. 6 – Obligation on air carriers regarding transfers of API data

- **At art. 6 para. 2** – In order to bring more clarity to the text, we propose to add the term *each traveller* when API data is transferred both at the moment of check-in and immediately after flight closure: *"air carriers shall transfer the API data both at the moment of check-in* ***of each traveller*** *[...]".*

- **At art. 6 para. 4 –** Having in mind the procedure regulated at art. 14 para 3**,** we are wondering whether it would not be more effective for the air carrier to inform eu-LISA and the border authority simultaneously about the inaccurate, incomplete and no longer up – to- date data. In our view, this measure ensures the efficiency of actions at the level of border authorities by eliminating the additional time generated by the initial notification of eu-LISA.

Art. 8 – Storage and deletion of API data

At **para. 2**, RO suggests the following modification of the text: *The competent border authorities shall store, for a time period of 48 hours from the moment of ~~departure of the flight~~* ***receiving*** *the API data […].*

In our view, it is more efficient to store the API data for a time period of 48h from the moment the data was received by the competent border authority. In this context, potential gaps related to failure transmission of data from air carrier to router and border competent authority shall be covered.

SLOVAKIA

Written contributions SK PIU

11/1/2023 + 12/1/2023 IXIM

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter

For the purposes of enhancing and facilitating the effectiveness and efficiency of border checks at external borders and of combating illegal immigration, this Regulation lays down the rules on:

(a) the collection by air carriers of advance passenger information ('API data') on flights into the Union;

(b) the transfer by air carriers to the router of the API data;

(c) the transmission from the router to the competent border authorities of the API data.

➔ Regarding Article 1, letter c, we are interested in whether the *competent border authorities* are determined by the MS themselves or by something else? For example, if it would be according to the Schengen acquis? It is currently being done by the PIU. If it should be according to the Schengen acquis, we would like to propose an amendment to the wording of the PIU (regarding the regulation on API for law enforcement).

Article 2

Scope

This Regulation applies to air carriers conducting scheduled or non-scheduled flights into the Union.

➔ Regarding article 2, we have a question whether it also includes general aviation? Because it is also described in very general terms in the PNR directive itself. If that is so, despite the fact that the crew is already mentioned in the next article 3, we would suggest that the wording in Article 2 would be written more specifically.

Article 3

Definitions

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

(a) 'air carrier' means an air transport undertaking as defined in Article 3, point 1, of Directive (EU) 2016/681;

➔ Regarding Article 4, letter a, in our opinion, it would be appropriate to define the term *air carrier* in more detail; to make it clear who exactly this pertains to?

(b) 'border checks' means the checks as defined in Article 2, point 11, of Regulation (EU) 2016/399;

(c) 'flights into the Union' means flights flying from the territory either of a third country or of a Member State not participating in this Regulation, and planned to land on the territory of a Member State participating in this Regulation;

(d) 'border crossing point' means the crossing point as defined in Article 2, point 8, of Regulation (EU) 2016/399;

(e) 'scheduled flight' means a flight that operates according to a fixed timetable, for which tickets can be purchased by the general public;

(f) 'non-scheduled flight' means a flight that does not operate according to a fixed timetable and that is not necessarily part of a regular or scheduled route;

(g) 'competent border authority' means the authority charged by a Member State to carry out border checks and designated and notified by that Member State in accordance with Article 11(2);

(h) 'passenger' means any person, excluding members of the crew, carried or to be carried in an aircraft with the consent of the air carrier, such consent being manifested by that person's registration in the passengers list;

(i) 'crew' means any person on board of an aircraft during the flight, other than a passenger, who works on and operates the aircraft, including flight crew and cabin crew;

(j) 'traveller' means a passenger or crew member;

(k) 'Advance Passenger Information data' or 'API data' means the traveller data and the flight information referred to in Article 4(2) and (3) respectively;

(l) 'Passenger Information Unit' or 'PIU' means the competent authority referred to in Article 3, point i, of Regulation (EU) [API law enforcement];

(m) ‘the router’ means the router referred to in Article 9;

(n) ‘personal data’ means any information as defined in Article 4, point 1, of Regulation (EU) 2016/679.

CHAPTER 2

COLLECTION AND TRANSFER OF API DATA

Article 4

API data to be collected by air carriers

1. Air carriers shall collect API data of travellers, consisting of the traveller data and the flight information specified in paragraphs 2 and 3 of this Article, respectively, on the flights referred to in Article 2, for the purpose of transferring that API data to the router in accordance with Article 6.

2. The API data shall consist of the following traveller data relating to each traveller on the flight:

(a) the surname (family name), first name or names (given names);

(b) the date of birth, sex and nationality;

(c) the type and number of the travel document and the three-letter code of the issuing country of the travel document;

(d) the date of expiry of the validity of the travel document;

(e) whether the traveller is a passenger or a crew member (traveller’s status);

(f) the number identifying a passenger name record used by an air carrier to locate a passenger within its information system (PNR record locator);

(g) the seating information, such as the number of the seat in the aircraft assigned to a passenger, where the air carrier collects such information;

(h) baggage information, such as number of checked bags, where the air carrier collects such information.

3. The API data shall also consist of the following flight information relating to the flight of each traveller:

(a) the flight identification number or, if no such number exists, other clear and suitable means to identify the flight;

(b) when applicable, the border crossing point of entry into the territory of the Member State;

(c) the code of the airport of entry into the territory of the Member State;

(d) the initial point of embarkation;

(e) the local date and estimated time of departure;

(f) the local date and estimated time of arrival.

Article 5

Means of collecting API data

1. Air carriers shall collect the API data pursuant to Article 4 in such a manner that the API data that they transfer in accordance with Article 6 is accurate, complete and up-to-date.

2. Air carriers shall collect the API data referred to Article 4(2), points (a) to (d), 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 4, where such rules have been adopted and are applicable.

However, where such 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 1.

3. Any automated means used by air carriers to collect API data under this Regulation shall be reliable, secure and up-to-date.

4. The Commission is empowered to adopt delegated acts in accordance with Article 37 to supplement this Regulation by laying down detailed technical requirements and operational rules for the collection of the API data referred to in Article 4(2), points (a) to (d), using automated means in accordance with paragraph 2 and 3 of this Article.

5. Air carriers that use automated means to collect the information referred to in Article 3(1) of Directive 2004/82/EC shall be entitled to do so applying the technical requirements relating to such use referred to in paragraph 4, in accordance with that Directive.

Article 6

Obligations on air carriers regarding transfers of API data

1. Air carriers shall transfer the API data to the router by electronic means. They shall do so in accordance with the detailed rules referred to in paragraph 3, where such rules have been adopted and are applicable.

2. Air carriers shall transfer the API data both at the moment of check-in and immediately after flight closure, that is, once the passengers have boarded the aircraft in preparation for departure and it is no longer possible for passengers to board or to leave the aircraft.

3. The Commission is empowered to adopt delegated acts in accordance with Article 37 to supplement this Regulation by laying down 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.

4. Where an air carrier becomes aware, after having transferred data to the router, that the API data is inaccurate, incomplete, no longer up-to-date or was processed unlawfully, or that the data does not constitute API data, it 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 competent border authority that received the API data transmitted through the router.

➔ Regarding Article 6, paragraph 4, we would be interested in how exactly is eu-LISA going to inform the competent authorities regarding the inaccurate API data and what will the report contain?

Article 7

Processing of API data received

The competent border authorities shall process API data, transferred to them in accordance with this Regulation, solely for the purposes referred to in Article 1.

Article 8

Storage and deletion of API data

1. Air carriers shall store, for a time period of 48 hours from the moment of departure of the flight, the API data relating to that passenger that they collected pursuant to Article 4. They shall immediately and permanently delete that API data after the expiry of that time period.

2. The competent border authorities shall store, for a time period of 48 hours from the moment of departure of the flight, the API data relating to that passenger that they received through the router pursuant to Article 11. They shall immediately and permanently delete that API data after the expiry of that time period.

3. Where an air carrier or competent border authority becomes aware that the data that it has collected, transferred or received under to this Regulation is inaccurate, incomplete, no longer up-to-date or was processed unlawfully, or that the data does not constitute API data, it shall immediately either correct, complete or update, or permanently delete, that API 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.

FINLAND

Dear colleagues,

Thank you for the possibility to submit written contributions. One remark from FI:

We see that the Scope (Article 2) of the proposed Regulation (COM(2022) 729 final) is quite narrow. Should it be expanded to cover also the competent border authorities responsible for the checks of persons at the external borders of the Union? And perhaps eu-LISA as well, since it has proposed responsibilities e.g. for the development and technical management of the router?

SWITZERLAND

API border management proposal

Written contribution of Switzerland on document 15720/22 (Articles 1-8)

Switzerland thanks you for the opportunity to submit its written comments. Please find below our comments on Articles 1 and 8 of the Regulation on the collection and transfer of advance passenger information (API) for enhancing and facilitating external border controls, amending Regulation (EU) 2019/817 and Regulation (EU) 2018/1726, and repealing Council Directive 2004/82/EC.

Article 1, Subject matter

Letter a: During the discussions of 12 January on Article 1, the Commission stated that API data should only be collected and processed from passengers who are subject to border control. In the Commission's view, since transit passengers do not legally cross an external border and are therefore not subject to border controls, no API data can be collected from them according to the draft regulation. However, Switzerland has certain concerns with regard to this understanding.

Switzerland currently also collects API data from transit passengers. It happens that passengers deliberately book an onward flight that they never intend to take, simply in order to get to a Swiss airport (supposedly just to change planes), where they do not fulfil the entry requirements, but at least the transit requirements. Already during the flight or then in the transit zones of Switzerland's international airports, they get rid of their documents in order to subsequently apply for asylum in Switzerland. Thanks to the above-mentioned API data, the border control authorities are usually able to identify such passengers who are only making a fictitious transit and to take the necessary measures before they mingle undetected with other passengers and can hardly be assigned to a specific flight and thus can no longer be identified.

Without API data of transit passengers, it will hardly be possible in these cases to take the necessary measures in time in order to determine the true identity and origin of these persons when they later present themselves at the entry counter without any documents. For this reason, Switzerland considers it imperative that the data of transit passengers must also be collected for border control purposes under the new regulation. The airlines must be obliged to collect the API data of transit passengers and retain it for 48 hours. The same must apply to the API data of passengers on flights from third countries that pass through the airspace of a Member State without landing there. This would ensure that air carriers can make API data available to border control authorities upon request, for example in the event of forced illegal entry by feigning a medical emergency and subsequent landing in a Member State.

Article 3, Definitions

Letter a: Directive (EU) 2016/681 is not part of the Schengen acquis and therefore not legally binding on Switzerland. To avoid legal inconsistencies, we suggest defining "air carrier" directly in this regulation resp. this letter.

Letter n: We would like to remind that since the General Data Protection Regulation (GDPR) is not part of the Schengen acquis, neither the GDPR as such nor references to it in legal acts pertaining to the Schengen acquis are legally binding on Switzerland. However, the Commission confirmed with an adequacy decision that Switzerland offers an adequate level of data protection. Furthermore, Switzerland has recently revised its data protection legislation and thereby continues to ensure high data protection standards.

Article 8, Storage and deletion of API data

Even under this new Regulation, it may happen that an air carrier transmits incorrect or incomplete API data. In order for such a transmission to be the subject of penalties against air carriers, it must be possible to store the erroneous API data for longer than 48 hours, as the decision to initiate such proceedings and its implementation are known to take some time. Switzerland therefore suggests that the wording of this provision is further looked into.

We thank you in advance for your kind consideration.