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

Delegations will find in annex the text of the provisional compromise agreement reached by the Presidency in trilogue negotiations with the European Parliament.

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

ANNEX

2022/0424 (COD)

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~~*checks*, amending Regulation (EU) 2019/817 and Regulation (EU) 2018/1726, and repealing Council Directive 2004/82/EC

PUBLIC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2), points (b) and (d), and Article 79(2), point (c), thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure,

[1] [OJ C , , p. .]

Whereas:

(1) The carrying-out of checks of persons at the external borders significantly contributes to guaranteeing the long-term security of the Union, Member States and its citizens and, as such, remains an important safeguard, especially in the area without internal border control ('the Schengen area'). ~~Efficient and effective external border controls,~~***Border checks should be*** carried out ~~in accordance with,~~***according to*** in particular, Regulation (EU) 2016/399 of the European Parliament and of the Council[2] where applicable, ***in order to help combat*** ~~help combating~~ illegal immigration and prevent threats to the Member States' internal security, public policy, public health and international relations. ***Such border checks should be carried out in such a way as to fully respect human dignity and be in full compliance with relevant Union law, including the Charter of Fundamental Rights of the European Union ('the Charter').***

(2) The use of ~~traveller~~***passenger*** data and flight information transferred ahead of the arrival of ~~travellers~~***passengers***, known as advance passenger information ('API') data, contributes to speeding up the process of carrying out the required checks during the border-crossing process. For the purposes of this Regulation that process concerns, more specifically, the crossing of borders between a third country or a Member State not participating in this Regulation, ~~on the one hand~~***and***~~, and~~ a Member State participating in this Regulation~~, on the other hand~~. Such use strengthens checks at those external borders by providing sufficient time to enable detailed and comprehensive checks to be carried out on all ~~travellers~~***passengers***, without having a disproportionate negative effect on persons travelling in good faith. Therefore, in the interest of the effectiveness and efficiency of checks at external borders, an appropriate legal framework should be provided for to ensure that Member States' competent border authorities at such external border crossing points have access to API data prior to the arrival of ~~travellers~~***passengers***.

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[2] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

(3) The existing legal framework on API data, which consists of Council Directive 2004/82/EC[3] and national law transposing that Directive, has proven important in improving border ~~controls, notably~~***checks, in particular*** by setting up a framework for Member States to introduce provisions for laying down obligations on air carriers to transfer API data on passengers transported into their territory. However, divergences remain at national level. In particular, API data is not systematically requested from air carriers and air carriers are faced with different requirements regarding the type of information to be collected and the conditions under which the API data needs to be transferred to competent border authorities. Those divergences lead not only to unnecessary costs and complications for the air carriers, but they are also prejudicial to ensuring effective and efficient pre-checks of persons arriving at external borders.

(4) The existing legal framework should therefore be updated and replaced to ensure that the rules regarding the collection and transfer of API data for the purpose of enhancing and facilitating the effectiveness and efficiency of border checks at external borders and for combating illegal immigration are clear, harmonised and effective***, in accordance with the rules set out in Regulation (EU) 2016/399 for Member States to which it applies, and with national law where it does not apply***.

(5) In order to ensure a consistent approach at ***both Union and*** international level as much as possible and in view of the rules on the collection of API data applicable at that level, the updated legal framework established by this Regulation should take into account the relevant practices internationally agreed with the air industry***, such as*** ~~and~~ in the context of the World Customs Organisation, International Aviation Transport Association and International Civil Aviation Organisation ***(ICAO)*** Guidelines on Advance Passenger Information.

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[3] Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJ L 261, 6.8.2004, p. 24).

(6) The collection and transfer of API data affects the privacy of individuals and entails the processing of ***their*** personal data. In order to fully respect ***their*** fundamental rights, in particular the right of respect for private life and the right to the protection of personal data, in accordance with the Charter ~~of Fundamental Rights of the European Union ('Charter')~~, adequate limits and safeguards should be provided for. In particular, any processing of API data and, in particular, API data constituting personal data, should remain ***strictly*** limited to what is necessary for and proportionate to achieving the objectives pursued by this Regulation. In addition, it should be ensured that the ***processing of any API data*** ~~API~~ collected and transferred under this Regulation do not lead to any form of discrimination precluded by the Charter.

(7) In order to achieve its objectives, this Regulation should apply to all ***air*** carriers conducting flights into the Union, as defined in this Regulation, ~~covering~~ ***irrespective of the place of establishment of the air carriers conducting those flights, and operating*** both scheduled and non-scheduled flights***. The collection of data from any other civil aircraft operations, such as flight schools, medical flights, emergency flights, as well as from military flights, should not be covered by the scope of this Regulation. This Regulation should be without prejudice to the collection of data from such flights as provided in acts of national law that are compatible with Union law. The Commission should assess the feasibility of an EU-scheme obliging operators of private*** ~~, irrespective of the place of establishment of the air carriers conducting those~~ flights ***to collect and transfer air passenger data***.

(7a) The obligations on air carriers to collect and transfer API data under this Regulation should include all passengers on flights into the Union, transit passengers whose final destination is outside of the Union and any non-operating crew member positioned on a flight by an air carrier in connection with their duties.

PUBLIC

(8) In the interest of effectiveness and legal certainty, the items of information that jointly constitute the API data to be collected and subsequently transferred under this Regulation should be listed clearly and exhaustively, covering both information relating to each ~~traveller~~***passenger*** and information on the flight ~~of that traveller.~~ ***taken by that passenger. Under this Regulation, and in accordance with international standards,*** such flight information should cover ***seating and baggage information, where such information is available, as well as*** information on the border crossing point of entry into the territory of the Member State concerned in all cases covered by this Regulation~~, but that~~. ***Where baggage or seat*** information ~~should be collected only where applicable under Regulation (EU) [API law enforcement], that is, not when~~***is available within other IT systems that the air carrier, its handler, system provider or the airport authority disposes of, air carriers should integrate this information in*** the API ~~data relate to intra-EU flights~~***push to be sent to the competent border authorities***.

(9) In order to allow for flexibility and innovation, it should in principle be left to each air carrier to determine how it meets its obligations regarding the collection of API data set out in this Regulation***, with respect to the different types of air carriers as defined by this Regulation, their respective business models, such as for example check-in times and cooperation with airports***. However, considering that suitable technological solutions exist that allow collecting certain API data automatically while guaranteeing that the API data concerned is accurate, complete and up-to-date, and having regard the advantages of the use of such technology in terms of effectiveness and efficiency, air carriers should be required to collect that API data using automated means, by reading information from the machine-readable data of the travel document. ***Where the use of such automated means is however technically not possible due to exceptional circumstances, air carriers should exceptionally collect the API data manually, either as part of the online check-in process, or as part of the check-in at the airport, in such a manner as to ensure compliance with their obligations under this Regulation.***

PUBLIC

(9a) The collection of API data by automated means should be strictly limited to the alphanumerical data contained in the travel document and should not lead to the collection of any biometric data from it. As the collection of API data is part of the check-in process, either online or at the airport, it should not include an obligation for air carriers to check a travel document of the passenger at the moment of boarding. Compliance with this regulation should not include any obligation for passenger to carry a travel document at the moment of boarding. This should be without prejudice to obligations stemming from other acts of Union law or national law that complies with Union law.

(9b) The collection of API data from travel documents should also be consistent with the International Civil Aviation Organisation (ICAO) standards on Machine Readable Travel Documents, that are transposed in Regulation EU 2019/1157 on strengthening the security of identity cards of Union citizens, Council Directive 2019/997 on EU emergency travel documents and Regulation EU 2252/2004 on standards for security features and biometrics in passports.

(9c) The requirements set out by this Regulation and by the corresponding delegated and implementing acts should lead to a uniform implementation by the airlines, thereby minimizing the cost of the interconnection of their respective systems. To facilitate a harmonized implementation of those requirements by the airlines, in particular as regards the data structure, format and transmission protocol, the Commission, based on its cooperation with the competent border authorities, other Member States authorities, air carriers, and relevant Union agencies, should ensure that the practical handbook to be prepared by the Commission provides all the necessary guidance and clarifications.

(9d) In order to enhance data quality, the router should verify whether the API data transferred to it by the air carriers comply with the supported data formats including standardised data fields or codes, both in terms of content or structure. Where the router has verified that the data are not compliant with the supported data formats, including standardised data fields or codes the router should, immediately and in an automated manner, notify the air carrier concerned.

PUBLIC

(9e) ***The automated data collection systems and other processes established under this Regulation should not negatively impact the employees in the aviation industry, who should benefit from upskilling and reskilling opportunities that would increase the efficiency and reliability of data collection and transfer as well as the working conditions in the sector.***

(10) ~~Automated means enable travellers~~***The passenger should be enabled*** to provide certain API data themselves during an online check-in process***, in accordance with Article 5***. Such means could, for example, include a secure app on a ~~travellers~~***passengers***' smartphone, computer or webcam with the capability to read the machine-readable data of the travel document. Where the ~~travellers~~***passengers*** did not check-in online, air carriers should ~~in practice~~ provide them with the possibility to provide the ***required*** machine-readable API data concerned during check-in at the airport with the assistance of a self-service kiosk or of airline staff at the counter. ***Without prejudice to air carriers' freedom to set air fares and define their commercial policy, obligations under this Regulation should not lead to disproportionate obstacles for passengers unable to use online means to provide API data, such as additional fees for providing API data at the airport. In addition, this Regulation should provide for a transition period during which passengers are in any case given the possibility to provide API data manually as part of the online check-in process. In such cases, air carriers should use data verification techniques.***

(10a) ***With a view to guaranteeing the fulfilment of the rights provided for under the Charter and to ensuring accessible and inclusive travel options, especially for vulnerable groups and persons with disabilities, and in accordance with the rights of disabled persons and persons with reduced mobility when travelling by air set out in Regulation (EC) 1107/2006, air carriers, supported by the Member States, should ensure that an option for the provision of the necessary data by passengers at the airport is available at all times.***

PUBLIC

(11) The Commission should be empowered to adopt technical requirements and procedural rules that air carriers ~~are to~~***should*** comply with ~~in connection to~~***regarding*** the use of automated means for the collection of machine-readable API data under this Regulation, so as to increase clarity and legal certainty and contribute to ensuring data quality and the responsible use of the automated means.

(12) In view of the advantages offered by using automated means for the collection of machine-readable API data and the clarity resulting from the technical requirements in that regard to be adopted under this Regulation, it should be clarified that air carriers that decide to use automated means to collect the information that they are required to transmit under Directive 2004//82/EC have the possibility, but not the obligation, to apply those requirements, once adopted, in connection to such use of automated means, insofar as that Directive permits ***and is applicable***. Any such voluntary application of those specifications in application of Directive 2004/82/EC should not be understood as affecting in any way the obligations of the air carriers and the Member States under that Directive.

PUBLIC

(13) In view of ensuring that the pre-checks carried out in advance by competent border authorities are effective and efficient, the API data transferred to those authorities should contain data of ~~travellers~~***passengers*** that are effectively set to cross the external borders, that is, of ~~travellers~~***passengers*** that are effectively on board of the aircraft***, irrespective of whether the final destination of the passenger is inside or outside the Union***. Therefore, the air carriers should transfer API data directly after flight closure. Moreover, API data helps the competent border authorities to distinguish legitimate ~~travellers from travellers~~***passengers from passengers*** who may be of interest and therefore may require additional verifications, which would necessitate further coordination and preparation of follow-up measures to be taken upon arrival. That could occur, for example, in cases of unexpected number of ~~travellers~~***passengers*** of interest whose physical checks at the borders could adversely affect the border checks and waiting times at the borders of other legitimate ~~travellers~~***passengers***. To provide the competent border authorities with an opportunity to prepare adequate and proportionate measures at the border, such as temporarily reinforcing or reaffecting staff, particularly for flights where the time between the flight closure and the arrival at the external borders is insufficient to allow the competent border authorities to prepare the most appropriate response, API data should also be transmitted prior to boarding, at the moment of check-in of each ~~traveller~~***passenger***.

(14) To provide clarity on the technical requirements that are applicable to air carriers and that are needed to ensure the API data that they collected under this Regulation are transferred to the router in a secure, effective and swift manner, the Commission should be empowered to lay down specifications on the common protocols and supported data formats to be used for those transfers***, including requirements for data security***.

PUBLIC

(15) In order to avoid any risk of misuse and in line with the principle of purpose limitation, the competent border authorities should be expressly precluded from processing the API data that they receive under this Regulation for any other purpose than ~~enhancing and facilitating the effectiveness and efficiency of border checks at external borders and combating illegal immigration~~***those explicitly provided for in this Regulation and in accordance with the rules set out in Regulation (EU) 2016/399 for Member States to which that it applies, and with national law where it does not apply***.

(16) To ensure that competent border authorities have sufficient time to carry out pre-checks effectively on all ~~travellers~~***passengers***, including ~~travellers~~***passengers*** on long-haul flights and those travelling on connecting flights, as well as sufficient time to ensure that the API data collected and transferred by the air carriers is complete, accurate and up-to-date, and where necessary to request additional clarifications, corrections or completions from the air carriers, ***in order to ensure that API data remains available until all travellers have effectively presented themselves at the border crossing point,*** the competent border authorities should store the API data that they received under this Regulation for a fixed time period that remains limited to what is strictly necessary for those purposes. ~~Similarly, to be able to respond to such~~ ***In exceptional circumstances where individual passengers, after landing, do not present themselves at a border crossing point within such fixed time period, the Member States should have the possibility to enable their competent border authorities to store the API data of such individual passengers until they present themselves at a border crossing point or at the latest for an additional fixed period of time. Where Member States want to make use of such possibility, Member States should be responsible to put in place the appropriate means to identify such individual passengers, in order to ensure that the longer retention of their specific API data remain limited to what is strictly necessary.***

PUBLIC

(16a) ***In order to be able to respond to*** requests ***for additional clarifications, corrections or completions by the competent border authorities***, air carriers should store the API data that they transferred under this Regulation for ~~the same~~ ***a*** fixed and strictly necessary time period. ***Beyond that, and with a view to enhance the travel experience of legitimate passengers, air carriers should be able to retain and use the API data where necessary for the normal course of their business in particular for travel facilitation, in compliance with the applicable law and in particular Regulation (EU) 2016/679.***

(17) In order to avoid that air carriers have to establish and maintain multiple connections with the competent border authorities of the Member States' for the transfer of API data collected under this Regulation and the related inefficiencies and security risks, provision should be made for a single router, created and operated at Union level ***in accordance with this Regulation and Regulation [API law enforcement]***, that serves as a connection and distribution point for those transfers. In the interest of efficiency and cost effectiveness, the router should, to the extent technically possible and in full respect of the rules of this Regulation and Regulation (EU) [API law enforcement], rely on technical components from other relevant systems created under Union law***, in particular the web service referred to in Regulation (EU) 2017/2226, the carrier gateway referred to in Regulation (EU) 2018/1240 and the carrier gateway referred to in Regulation (EC) 767/2008. In order to reduce the impact on air carriers and ensure a harmonised approach towards air carriers, eu-LISA should design the router, to the extent technically and operationally possible, in a way that is coherent and consistent with the obligations put on air carriers by Regulation (EU) 2017/2226, Regulation (EU) 2018/1240 and Regulation (EC) 767/2008***.

(17a) ***In order to improve the efficiency of the transmission of air traffic data and support the monitoring of the API data transmitted to competent border authorities, the router should receive real-time flight traffic information collected by other organisations, such as the European Organisation for the Safety of Air Navigation ('Eurocontrol').***

PUBLIC

(18) ***Under this Regulation, the*** ~~The~~ router should transmit the API data, in an automated manner, to the relevant competent border authorities, which should be determined on the basis of the border crossing point of entry into the territory of the Member State included in the API data in question. In order to facilitate the distribution process, each Member State should indicate which border authorities are competent to receive the API data transmitted from the router. ***Member States may establish a single data entry point that receives the API data from the router and that immediately and in an automated manner forwards it to the competent border authorities of the Member State concerned.*** To ensure the proper functioning of this Regulation and in the interest of transparency, ~~that~~ ***the*** information ***on the competent border authorities*** should be made public.

(19) The router should serve only to facilitate the transmission of API data from the air carriers to the competent border authorities in accordance with this Regulation ~~and to PIUs in accordance with Regulation (EU) [API law enforcement]~~, and should not be a repository of API data. Therefore, and in order to minimise any risk of unauthorised access or other misuse and in accordance with the principle of data minimisation, ~~any~~***no*** storage ~~of the API data on the router~~ should ~~remain limited to what is~~***take place unless*** strictly necessary for technical purposes related to the transmission and the API data should be deleted from the router, immediately, permanently and in an automated manner, from the moment that the transmission has been completed ~~or, where relevant under Regulation (EU) [API law enforcement], the API data is not to be transmitted at all~~.

(20) With a view to ensuring the proper functioning of the transmission of API data from router, the Commission should be empowered to lay down detailed technical and procedural rules on that transmission. Those rules should be such as to ensure that the transmission is secure, effective and swift and impacts passengers' travel and air carriers no more than necessary.

PUBLIC

(21) In order to allow air carriers to benefit as soon as possible from the advantages offered by the use of the router developed by eu-LISA in accordance with this Regulation and ***Regulation [API law enforcement], and*** to gain experience in using it, air carriers should be provided with the possibility, but not the obligation, to use the router to transmit the information that they are required to transmit under Directive 2004//82/EC during an interim period. That interim period should commence at the moment at which the router starts operations and end when the obligations under that Directive cease to apply. With a view to ensuring that any such voluntary use of the router takes place in a responsible manner, the prior written agreement of the responsible ~~authority~~ ***Member State*** that is to receive the information should be required, upon request of the air carrier and after that authority having conducted verifications and obtained assurances, as necessary. Similarly, in order to avoid a situation in which air carriers repeatedly start and stop using the router, once an air carrier starts such use on a voluntary basis, it should be required to continue it, unless there are objective reasons to discontinue the use for the transmission of the information to the responsible ~~authority~~ ***Member State*** concerned, such as it having become apparent that the information is not transmitted in a lawful, secure, effective and swift manner. In the interest of the proper application of this possibility of voluntarily using the router, with due regard to the rights and interests of all affected parties, the necessary rules on consultations and the provision of information should be provided for. Any such voluntary use of the router in application of Directive 2004/82/EC as provided for in this Regulation should not be understood as affecting in any way the obligations of the air carriers and the Member States under that Directive.

PUBLIC

(22) The router to be created and operated under this Regulation ***and Regulation (EU) [API Law Enforcement]*** should reduce and simplify the technical connections needed to transfer API data ***under this Regulation***, limiting them to a single connection per air carrier and per competent border authority. Therefore, this Regulation provides for the obligation for the competent border authorities and air carriers to each establish such a connection to, and achieve the required integration with, the router, so as to ensure that the system for transferring API data established by this Regulation can function properly. ~~To give effect to those obligations and~~ ***The design and development of the router by eu-LISA should enable the effective and efficient connection and integration of air carriers' systems and infrastructure by providing for all relevant standards and technical requirements.*** To ensure the proper functioning of the system set up by this Regulation, ~~they~~***detailed rules*** should be ~~supplemented by detailed rules~~***provided. When designing and developing the router, eu-LISA should ensure that API data transferred by air carriers and transmitted to competent border authorities is encrypted in transit***.

PUBLIC

(23) In view of the Union interests at stake, ***all*** the costs incurred by eu-LISA for the performance of its tasks under this Regulation ~~and Regulation (EU) [API law enforcement]~~ in respect of the router should be borne by the Union budget***, including the design and development of the router, the hosting and technical management of the router, and the governance structure at eu-LISA to support the design, development, hosting and technical management of the router***. The same ~~should go for appropriate~~ ***may apply for the*** costs incurred by the Member States in relation to their connections to, and integration with, the router ***and their maintenance***, as required under this Regulation ~~and~~***,*** in accordance with the applicable legislation***. It is important that the Union budget provides appropriate financial support to the Member States for that. To that end, the financial needs of the Member States should be supported by the general budget of the Union, in accordance with the eligibility rules and co-financing rates set by the respective acts of Union law. The annual EU contribution allocated to eu-LISA should cover the needs related to the hosting and the technical management of the router based on an assessment carried out by eu-LISA. The Union budget should also cover the support, such as training, by eu-LISA to air carriers and competent border authorities to enable effective transfer and transmission of API data through the router***~~, subject to certain exceptions~~. The costs ~~covered by those exceptions should~~***incurred by the independent national supervisory authorities in relation to the tasks entrusted to them under this Regulation shall also*** be borne by ~~each Member State concerned itself~~***the respective Member States***.

PUBLIC

(24) It cannot be excluded that, due to exceptional circumstances and despite all reasonable measures having been taken in accordance with this Regulation, the ~~router or the systems or infrastructure~~***central infrastructure or one of the technical components of the router, or the communication infrastructures*** connecting the competent border authorities and the air carriers thereto fail to function properly, thus leading to a technical impossibility ***for either the air carriers to transfer or for competent border authorities to receive*** ~~to use the router to transmit~~ API data. Given the unavailability of the router and that it will generally not be reasonably possible for air carriers to transfer the API data affected by the failure in a lawful, secure, effective and swift manner through alternative means, the obligation for air carriers to transfer that API data to the router should cease to apply for as long as the technical impossibility ~~persist. In order to minimise the duration and negative consequences thereof, the parties concerned should in such a case immediately inform each other and immediately take all necessary measures to address~~***persists. However, to ensure the availability of API data necessary for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, air carriers should continue to collect and store API data so that it can be transferred as soon as*** the technical ~~impossibility. Considering that API data relating to flights that already arrived is not useful for border checks, there is~~***impossiblity has been resolved. In order to minimise the duration and negative consequences any technical impossibility, the parties concerned should*** in such a case ~~no justification for requring the air carriers to collect and store the API data~~***immediately inform each other and immediately take all necessary measures to address the technical impossibility***. This arrangement should be without prejudice to the obligations under this Regulation of all parties concerned to ensure that the router and their respective systems and infrastructure function properly, as well as the fact that air carriers are subject to penalties when they fail to meet those obligations, including when they seek to rely on this arrangement where such reliance is not justified. In order to deter such abuse and to facilitate supervision and, where necessary, the imposition of penalties, air carriers that rely on this arrangement on account of the failure of their own system and infrastructure should report thereon to the competent supervisory authority.

PUBLIC

(24a) Where air carriers maintain direct connections to competent border authorities for the transfer of API data, these connections may provide appropriate means ensuring the necessary level of data security to transfer API data directly to the competent border authorities in case of technical impossibility to use the router. Competent border authorities should be able, in the exceptional case of technical impossibility to use the router, to request air carriers to use such appropriate means. This should not imply an obligation on air carriers to maintain or introduce such direct connections or any other appropriate means ensuring the necessary level of data security to transfer API data directly to the competent border authorities. The exceptional transfer of API data by any other appropriate means, such as encrypted email or a secure web portal, and excluding the use of non-standard electronic formats, should ensure the necessary level of data security, data quality and data protection. API data received by the competent border authorities by such other appropriate means should be further processed in accordance with the rules and data protection safeguards set out in Regulation (EU) 2016/399 and applicable national law. Following the notification from eu-LISA that the technical impossibility has been successfully addressed, and where it is confirmed that the transmission of the respective API data through the router to the competent border authority has been completed, the competent border authority should immediately delete the API data they previously received by any other appropriate means. This deletion should not affect specific cases where the API data that competent border authorities received by any other appropriate means has meanwhile been further processed in accordance with Regulation (EU) 2016/679 for the specific purposes of enhancing and facilitating the effectiveness and efficiency of border checks at external borders and of combating illegal immigration.

PUBLIC

(25) In the interest of ensuring compliance with the fundamental right to protection of personal data, this Regulation should identify the controller and processor and set out rules on audits. In the interest of effective monitoring, ensuring adequate protection of personal data and minimising security risks, rules should also be provided for on logging, security of processing and self-monitoring. Where they relate to the processing of personal data, those provisions should be ~~understood as complementing~~***in line with*** the generally applicable acts of Union law on the protection of personal data, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council[4] and Regulation (EU) 2018/1725 of the European Parliament and the Council.[5] ~~Those acts, which also apply to the processing of personal data under this Regulation in accordance with the provisions thereof, should not be affected by this Regulation.~~

(25a) Taking into account the right of passengers to be informed of the processing of their personal data, Member States should ensure that passengers are provided with accurate information about the collection of API data, the transfer of that data to the competent border authorities and their rights as data subjects that is easily accessible and easy to understand, at the moment of booking and at the moment of check-in.

(25b) Without prejudice to more specific rules laid down in this Regulation for the processing of personal data, Regulation (EU) 2016/679 should apply to the processing of personal data by the Member States and air carriers under this Regulation. Regulation (EU) 2018/1725 of the European Parliament and of the Council should apply to the processing of personal data by eu-LISA when carrying out its responsibilities under this Regulation.

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

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

(25c) In the interest of ensuring compliance with the fundamental right to protection of personal data, this Regulation should also set out rules on audits. The audits that Member States are responsible for should be carried out by the independent supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679 or by an auditing body entrusted with this task by the supervisory authority.

PUBLIC

(26) In particular, the purposes of the processing operations under this Regulation, namely the transmission of API data from air carriers via the router to the competent border authorities of the Member States, are to assist those authorities in the performance of their border management obligations and tasks related to combating illegal immigration. Therefore, ~~the competent border~~***Member States should designate*** authorities ~~receiving the API data should be controllers for~~***to be controllers for the processing of the data in the router,*** the transmission of ~~API data constituting personal data via router~~***the data from the router to the competent border authorities,*** and the ~~storage~~***subsequent processing*** of that data ~~on the router insofar as such storage is needed for technical purposes, and for any of their processing subsequently using that data to enhance and facilitate border checks at external borders~~***to enhance and facilitate border checks at external borders. Member States should communicate those authorities to the Commission, the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), established by Regulation (EU) 2018/1726***. ***For the processing of personal data in the router, Member States should be joint controllers in accordance with Article 26 of Regulation (EU) 2016/679. The*** ~~The~~ air carriers, in turn, should be separate controllers regarding the processing of API data constituting personal data that they are obliged to undertake under this Regulation. On this basis, both the air carriers and the competent border authorities should be separate data controllers with regard to ~~their own~~***the*** respective processing of API data under this Regulation. ***As responsible for the design, development, hosting and technical management of the router, eu-LISA should be the processor for the processing of API data constituting personal data via the router, including transmission of the data from the router to the competent border authorities and the storage of that data on the router insofar as such storage is needed for technical purposes. The responsibilities of the Member States as joint controllers, such as regards the identification and management of security incidents, including of personal data breaches, should be laid down in an implementing act. The relationship between the joint controllers and eu-LISA as the data processor, including the assistance of eu-LISA to the controllers with appropriate technical and organisational measures, insofar as it is possible, for the fulfilment of the controller's obligations to respond to requests for exercising the data subject's rights, should also be laid down in an implementing act.***

PUBLIC

(27) In order to ensure that the rules of this Regulation are applied effectively by air carriers, provision should be made for the designation and empowerment of national authorities ***as national API supervision authorities*** charged with the supervision of those rules. ***Member States may designate their competent border authorities as national API supervision authorities.*** The rules of this Regulation on such supervision, including as regards the imposition of penalties where necessary, should leave the tasks and powers of the supervisory authorities established in accordance with Regulation (EU) 2016/679 unaffected, including in relation to the processing of personal data under this Regulation.

(28) Effective, proportionate and dissuasive penalties, ~~including~~ ***which include*** financial ***as well as non-financial*** ones, should be provided for by Member States against those air carriers failing to meet their obligations ***under this Regulation, including on*** ~~regarding~~ the collection ***of API data by automated means and the*** ~~and~~ transfer of ***the data in accordance with the required time frames, formats and protocols. In particular, Member States should ensure that a recurrent failure on the part of air carriers as legal persons to comply with their obligation to transfer any*** API data ***to the router in accordance with this Regulation is subject to proportionate financial penalties of up to 2% of the air carrier's global turnover of the preceding financial year. In addition, Member States may apply penalties, including financial, to air carriers for other forms of non-compliance with obligations*** under this Regulation.

(28a) When providing for the penalties applicable to air carriers under this Regulation, Member States may take into account the technical and operational feasibility of ensuring complete data accuracy. Additionally, when penalties are imposed, their application and value should be established and may take into consideration the actions undertaken by the air carrier to mitigate the issue as well as its level of cooperation with national authorities.

PUBLIC

(28b) There should be a single governance structure for the purposes of this Regulation and Regulation [API law enforcement]. With the objective to enable and foster communication between the representatives of air carriers, of Member States authorities competent under this Regulation and under Regulation [API law enforcement] to have API data transmitted from the router, two dedicated bodies should be established at the latest two years after the start of operations of the router. Technical matters related to the usage and functioning of the router should be discussed in the API-PNR Contact Group where eu-LISA representatives should be also present. Policy matters such as in relation to penalties should be discussed in the API Expert Group.

(29) As this Regulation provides for the establishment of new rules on the collection and transfer of API data ~~by competent border authorities~~ for the purpose of enhancing and facilitating the effectiveness and efficiency of border checks at external borders, Directive 2004/82/EC should be repealed.

PUBLIC

(30) As the router should be designed, developed, hosted and technically managed by the eu-LISA, established by Regulation (EU) 2018/1726 of the European Parliament and of the Council[6], it is necessary to amend that Regulation by adding that task to the tasks of eu-LISA. In order to store reports and statistics of the router on the ~~Common~~***Central*** Repository for Reporting and Statistics it is necessary to amend Regulation (EU) 2019/817 of the European Parliament and of the Council[7]. ***In order to support the enforcement of this Regulation by the national API supervision authority, this should include statistics on whether the API data is accurate and complete, for example by indicating whether the data was collected by automated means. It is also important to collect reliable and useful statistics based on the implementation of this Regulation in order to support its objectives and inform the evaluations under this Regulation. Such statistics should not contain any personally identifiable data. Therefore, the Central Repository for Reporting and Statistics should only provide statistics based on API data for the implementation and effective supervision of this Regulation. The data that the router automatically transmits to the Common Repository for Reporting and Statistics to that end should not allow for the identification of the passengers concerned.***

PUBLIC

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6 Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

7 Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p. 27).

(31) In order to adopt measures relating to the technical requirements and operational rules for the automated means for the collection of machine-readable API data, ~~to the common protocols and formats to be used~~***for the manual collection of API data in exceptional circumstances,*** for the ~~transfer~~***collection*** of API data ~~by air carriers, to the technical and procedural rules for the transmission of API data from the router to the competent border authorities and to the PIUs and~~***during the transitional period, including on requirements for data security, to the common protocols and formats to be used for the transfer of API data by air carriers,*** to the ~~PIU's and air carriers' connections to and integration with the router~~***rules on correcting, complementing and updating API data***, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of Articles ***[***5, 6, ~~11, 20 and 21~~***and 8]*** respectively. It is of particular importance that the Commission carry out appropriate consultations ***with relevant stakeholders, including air carriers,*** during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016[8]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts. ***Taking into account the state of the art, these technical requirements and rules might change over time.***

[8] OJ L 123, 12.5.2016, p. 1.

(32) In order to ensure uniform conditions for the implementation of this Regulation, namely as regards the start of operations of the router, ***the technical and procedural rules for the data verifications and notifications, the technical and procedural rules for the transmission of API data from the router to the competent border authorities, and the competent border authorities' and air carriers' connections to and integration with the router, the responsibilities of the joint controllers and the relationship between the joint controllers and eu-LISA as the data processor,*** implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[9].

(33) All interested parties, and in particular the air carriers and the competent border authorities, should be afforded sufficient time to make the necessary preparations to be able to meet their respective obligations under this Regulation, taking into account that some of those preparations, such as those regarding the obligations on the connection to and integration with the router, can only be finalised when the design and development phases of the router have been completed and the router starts operations. Therefore, this Regulation should apply only from an appropriate date after the date at which the router starts operations, as specified by the Commission in accordance with this Regulation ***and Regulation [API law enforcement]***.

[9] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(34) However, the design and development phases of the router ***established under this Regulation and Regulation [API law enforcement]*** should be commenced and completed as soon as possible so that the router can start operations as soon as possible, which also requires the adoption of the relevant ~~implementing and delegated~~ ***delegated and implementing*** acts provided for by this Regulation. ***For the smooth and effective development of these phases, a dedicated Programme Management Board should be established with the function to supervise eu-LISA on fulfilling its tasks during these phases. It*** ~~The clarification provided by this Regulation regarding the application of specifications concerning the use of automated means in application of Directive 2004/82/EC~~ should ~~also be provided without delay. Therefore, the articles on those matters should apply from the date of the entry into force of this~~***cease to exist two years after the router has started its operations. In addition, a dedicated advisory body, the API-PNR Advisory Group, should be created in accordance with*** Regulation~~. In addition, in order to allow for the voluntary use of the router as soon as possible, the article on such use~~ ***(EU) 2018/1726, with the objectives to provide expertise to eu-LISA and to the Programme Management Board on the design and development phases of the router***, as well as ~~certain other articles needed to ensure that such use takes place in a responsible manner, should apply from the earliest possible moment, that is, from the moment at which the router starts operations~~***to eu-LISA on the hosting and management of the router. The Programme Management Board and the API-PNR Advisory Group should be established and operated following the models of existing programme management boards and advisory groups***.

(34a) This Regulation should be subject to regular evaluations to ensure the monitoring of its effective application. In particular, the collection of API data should not be to the detriment of the travel experience of legitimate passengers. Therefore, the Commission should include in its regular evaluation reports on the application of this Regulation an assessment of the impact of this Regulation on the travel experience of legitimate passengers. The evaluation should also include an assessment of the quality of the data sent by the router, as well as the performance of the router in respect of the competent border authorities.

(34b) The clarification provided by this Regulation regarding the application of specifications concerning the use of automated means in application of Directive 2004/82/EC should also be provided without delay. Therefore, the articles on those matters should apply from the date of the entry into force of this Regulation. In addition, in order to allow for the voluntary use of the router as soon as possible, the article on such use, as well as certain other articles needed to ensure that such use takes place in a responsible manner, should apply from the earliest possible moment, that is, from the moment at which the router starts operations.

(34c) Given that this Regulation requires additional adjustment and administrative costs by the air carriers, the overall regulatory burden for the aviation sector should be kept under close review. Against this backdrop, the report evaluating the functioning of this Regulation should assess the extent to which the objectives of the Regulation have been met and to which extent it has impacted the competitiveness of the sector.

(34d) This Regulation should be without prejudice to the competences of Member States with regard to national law concerning national security, provided that such law complies with Union law.

(35) This regulation should ~~not affect the possibility for~~***be without prejudice to the competence of*** Member States to ~~provide~~***collect***, under their national law, ~~for a system of collecting API~~***passenger*** data from transportation providers other than those specified in this regulation, provided that such national law complies with Union law.

(36) Since the objectives of this Regulation, namely enhancing and facilitating the effectiveness and efficiency of border checks at external borders and combating illegal immigration, relate to matters that are inherently of a cross-border nature, they cannot be sufficiently achieved by the Member States individually, but can rather be better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(37) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen acquis, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.

(38) Ireland is taking part in this Regulation, in accordance with Article 5(1) of Protocol No 19 on the Schengen acquis integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and Article 6(2) of Council Decision 2002/192/EC.[10]

~~(39) The participation of Ireland in this Regulation in accordance with Article 6(2) of Decision 2002/192/EC relates to the responsibilities of the Union for taking measures developing the provisions of the Schengen acquis against illegal immigration in which Ireland participates.~~

(40) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis[11], which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC[12].

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10 Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20).

11 OJ L 176, 10.7.1999, p. 36.

12 Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis (OJ L 176, 10.7.1999, p. 31).

(41) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis[13], which fall within the area referred to in Article 1, point A of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC[14].

(42) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis[15] which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[16].

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13 OJ L 53, 27.2.2008, p. 52.

14 Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008, p. 1).

15 OJ L 160, 18.6.2011, p. 21.

16 Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

(43) As regards Cyprus, Bulgaria and Romania and Croatia, this Regulation constitutes an act building upon, or otherwise relating to, the Schengen acquis within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, Article 4(1) of the 2005 Act of Accession and Article 4(1) of the 2011 Act of Accession.

(44) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on [XX],[17]

HAVE ADOPTED THIS REGULATION:

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[17] [OJ C …]

CHAPTER 1
GENERAL PROVISIONS

PUBLIC

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.

This Regulation is without prejudice to Regulations (EU) 2016/679 and (EU) 2018/1725.

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~~***the air carrier*** as defined in Article 3, point 1, of Directive (EU) 2016/681;

(b) 'border checks' means the ***border*** 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~~***to which*** this Regulation ***does not apply***, and planned to land on the territory of a Member State ~~participating in~~***or Member States to which*** this Regulation ***applies***;

(d) 'border crossing point' means the ***border*** 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 ***unless they are off duty***, 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;

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~~(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~~***passenger*** 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 ***and in Article 4d of Regulation (EU) [API law enforcement]***;

(n) 'personal data' means any ~~information~~***personal data*** as defined in Article 4, point 1, of Regulation (EU) 2016/679~~.~~***;***

(na) 'real-time flight traffic data' means information on inbound and outbound flight traffic of an airport covered by this Regulation.

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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~~***each passenger on the flights referred to in Article 2 to be transferred to the router in accordance with*** Article~~, respectively, on the flights referred to in Article 2~~ ***4a. Where the flight is code-shared between one or more air carriers***~~, for the purpose of transferring that~~ ***the obligation to transfer the*** API data ~~to the router in accordance with Article 6~~***shall be on the air carrier that operates the flight***.

2. The API data shall consist ***only*** of the following ~~traveller~~ data relating to each ~~traveller~~***passenger*** 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);

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

(h) baggage ~~information, such as~~***tag number(s) and the*** number ***and the weight*** of checked bags, where ***such information is available*** ~~the air carrier collects such information~~.

(i) a code indicating the method used to capture and validate the data referred to in points (a) to (d).

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

(a) the flight identification number or, ***where the flight is code-shared between one or more air carriers, the flight identification numbers, or,*** if no such number exists, other clear and suitable means to identify the flight;

(b) ~~when~~***where*** 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~~***arrival or, where the flight is planned to land in one or several airports within the territories of one or more Member States to which this Regulation applies, the codes of the airports of call on the territories*** of the Member ~~State~~***States concerned***;

(ca) the code of the airport of departure of the flight;

(d) ***the code of the airport of*** the initial point of embarkation***, where available***;

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

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

(g) contact information of the air carrier;

(h) the format used for the data transfer.

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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 ***in*** Article 4(2), points (a) to (d), using automated means to collect the machine-readable data of the travel document of the ~~traveller~~***passenger*** concerned. They shall do so in accordance with the detailed technical requirements and operational rules referred to in paragraph 4, ~~where~~***once*** such rules have been adopted and are applicable.

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

~~However,~~ Where ~~such~~***the*** use of automated means is ***technically*** not possible***, air carriers shall exceptionally collect that data manually, either as part of the online check-in or as part of the check-in at the airport*** ~~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. ***Air carriers shall ensure that API data is encrypted during the transfer of the data from the passenger to the air carriers.***

3a. ***During a transitional period, and in addition to the means to collect API data referred to in paragraph 3, air carriers shall provide the possibility to passengers to provide API data manually as part of the online check-in. For API data collected manually as part of the online check-in, air carriers shall use data verification techniques to ensure compliance with paragraph 2.***

3b. ***The transitional period referred to in paragraph 3a shall not affect the right of air carriers to verify, for API data collected as part of the online check-in, that data at the airport prior to the boarding of the aircraft to ensure compliance with paragraph 2, in accordance with the applicable Union law.***

3c. ***The Commission is empowered to adopt, four years after the start of operations of the router in relation to API data referred to in Article 21a, and based on an evaluation of the availability and accessibility of automated means to collect API data, a delegated act in accordance with Article 37 to terminate the transitional period referred to in paragraph 3a.***

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~~***paragraphs*** 2 and 3 of this Article***, and the manual collection of API data in exceptional circumstances in accordance with paragraph 2 of this Article and during the transitional period referred to in paragraph 3a of this Article, and including on requirements for data security and by using the most reliable automated means available to collect the machine-readable data of the respective travel document***.

5. Air carriers that use automated means to collect the information referred to in Article 3(1) ***and 3(2)*** 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.

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Article 6

Obligations on air carriers regarding transfers of API data

1. ~~Air carriers~~***The encrypted API data, to be transmitted to competent border authorities in accordance with Article 11,*** shall ~~transfer the API data~~***be transferred by air carriers*** to the router by electronic means. They shall ~~do so~~***transfer the API data*** in accordance with the detailed rules referred to in paragraph 3, ~~where~~***once*** 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.~~***:***

(a) for passengers:

(i) for all members of the crew immediately after flight closure, that is, once the crew is on board the aircraft in preparation for departure and it is no longer possible for them to leave the aircraft;

(ii) for all boarded passengers 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;

(b) for all members of the crew immediately after flight closure, that is, once the crew is on board the aircraft in preparation for departure and it is no longer possible for them to leave the aircraft.

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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 ***encrypted*** transfers of API data to the router referred to in paragraph 1***, including the transfer of API data at the moment of check-in and requirements for data security. Such detailed rules shall ensure that airlines transmit API data using the same structure and content***.

~~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~~*by competent border authorities*

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~~***of enhancing and facilitating the effectiveness and efficiency of border checks at external borders and of combating illegal immigration***.

The competent border authorities shall not process API data in such a way as to result in the profiling of individuals as referred to in Article 22 of Regulation (EU) 2016/679 nor to discriminate against persons on the grounds as mentioned in article 21 of the EU Charter on Fundamental Rights.

Article 8

Storage *period* and deletion of API data

1. Air carriers shall store, for a time period of 48 hours from the moment of ~~departure~~***receipt by the router*** of the ~~flight~~***API data transferred to it in accordance with Article 6(2)(a)(ii) and 6(2)(b)***, the API data relating to ~~that passenger~~***all passengers*** that they collected pursuant to Article 4. They shall immediately and permanently delete that API data after the expiry of that time period***, 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 applicable law, and to Article 14(1) and (3)***.

2. The competent border authorities shall store, for a time period of 48 hours from the moment of ~~departure~~***receipt*** of the ~~flight, the~~ API data ~~relating to that passenger that they received through the router~~***transmitted to them pursuant to Article 11 following the transfer*** pursuant to Article ~~11~~***6(2)(a)(ii) and 6(2)(b)***. They shall immediately and permanently delete that API data after the expiry of that time period. ***In exceptional cases, the competent border authorities may retain API data for an additional period of up to 48 hours only insofar as such API data refers to passengers who did not present themselves at a border crossing point during the time period referred to in the first sentence of this paragraph.***

~~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.~~

PUBLIC

Article 8a

Fundamental Rights

1. Collection and processing of personal data in accordance with this Regulation and Regulation (EU) [API law enforcement] by air carriers and competent authorities shall not result in the discrimination against persons on the grounds as mentioned in article 21 of the EU Charter on Fundamental Rights.

2. This Regulation shall fully respect human dignity and the fundamental rights and principles recognised by the Charter, including the right to respect for one's private life, to asylum, to the protection of personal data, to freedom of movement and to effective legal remedies.

3. Particular attention shall be paid to children, the elderly, persons with a disability and vulnerable persons. The best interests of the child shall be a primary consideration when implementing this Regulation.

Article 8b

Correcting, completing and updating API data

1. Where an air carrier becomes aware that the data that it stores under this Regulation was processed unlawfully, or that the data does not constitute API data, it shall immediately and permanently delete, that data. If that data has been transferred to the router, the air carrier shall immediately inform the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA). Upon receiving such information, eu-LISA shall immediately inform the competent border authority that received the API data transmitted through the router. That competent border authority shall immediately and permanently delete that data.

PUBLIC

2. Where an air carrier becomes aware that the data that it stores under this Regulation is inaccurate, incomplete or no longer up-to-date it shall immediately either correct, complete or update that data. This is without prejudice to the possibility for air carriers to retain and use the data where necessary for the normal course of their business in compliance with the applicable law.

3. Where an air carrier becomes aware after the transfer of API data under Article 6(2)(a)(i), but before the transfer under Article 6(2)(a)(ii), that the data it has transferred is inaccurate, the air carrier shall immediately transfer the corrected API data to the router.

4. Where an air carrier becomes aware, after the transfer of API data under Article 6(2)(a)(ii) or 6(2)(b), that the data it has transferred is inaccurate, incomplete or no longer up-to-date, the air carrier shall immediately transfer the corrected, completed or updated API data to the router.

5. Where a competent border authority becomes aware after the transmission of API data under Article 11, that the data is inaccurate, incomplete or no longer up-to-date, it shall immediately delete that data, unless that data is required to ensure compliance with the obligations laid down in this Regulation.

6. 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 correcting, completing and updating API data within the meaning of this Article.

PUBLIC

CHAPTER 3
PROVISIONS RELATING TO THE ROUTER

PUBLIC

Article 9

The router

1. eu-LISA shall design, develop, host and technically manage, in accordance with Articles 22 and 23, a router for the purpose of facilitating the transfer of ***encrypted*** API data by the air carriers to the competent border authorities ~~and to the PIUs~~ in accordance with this Regulation ~~and Regulation (EU) [API law enforcement], respectively~~.

2. The router shall be composed of:

   (a) a central infrastructure, including a set of technical components enabling the ***reception and*** transmission of ***encrypted*** API data;

   (b) a secure communication channel between the central infrastructure and the competent border authorities ~~and the PIUs~~, and a secure communication channel between the central infrastructure and the air carriers, for the transfer ***and transmission*** of API data and for any communications relating thereto ~~.~~***;***

   (c) a secure channel to receive real-time flight traffic data.

2b. The router shall automatically extract and make available the data, in accordance with Article 31, to the central repository for reporting and statistics.

3. Without prejudice to Article 10 of this Regulation, the router shall, ***if appropriate and*** to the extent technically possible, share and re-use the ~~technical components, including~~ hardware and software components, of the web service referred to in Article 13 of Regulation (EU) 2017/2226 of the European Parliament and of the Council[18], the carrier gateway referred to in Article 6(2), point (k), of Regulation (EU) 2018/1240, and the carrier gateway referred to in Article ~~2a, point (h)~~***45c***, of Regulation (EC) 767/2008 of the European Parliament and of the Council[19].

eu-LISA shall design the router, to the extent technically and operationally possible, in a way that is coherent and consistent with the obligations put on air carriers by Regulations (EU) 2017/2226, (EU) 2018/1240 and (EC) 767/2008.

3a. eu-LISA shall design and develop the router in a way that any API data transferred from the air carriers to the router in accordance with Article 6 and any API data transmitted from the router to the competent border authorities in accordance with Article 11 and to the central repository for reporting and statistics in accordance with Article 31(2) are encrypted.

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

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

Article 10

Exclusive use of the router

Notwithstanding the use of the router in Article 4b of Regulation (EU) [API law enforcement], the router shall only be used~~.~~***:***

(a) by air carriers to transfer ***encrypted*** API data ~~and by~~***in accordance with this Regulation;***

(b) ***by the*** competent border authorities ~~and PIUs~~ to receive ***encrypted*** API data~~,~~ in accordance with this Regulation ~~and Regulation (EU) [API law enforcement], respectively~~.

Article 10a

Data format and transfer verifications

1. ***The router shall, in an automated manner and based on real-time flight traffic data, verify whether the air carrier transferred the API data in accordance with Article 6(1).***

2. ***The router shall, immediately and in an automated manner, verify whether the API data transferred to it in accordance with Article 6(1) complies with the detailed rules on the supported data formats, referred to in Article 6(3).***

3. ***Where the router has verified in accordance with paragraph 1 that the data was not transferred by the air carrier or where the data in question is not compliant with the detailed rules referred to in paragraph 2, the router shall, immediately and in an automated manner, notify the air carrier concerned and the competent border authorities of the Member States to which the data were to be transmitted pursuant to Article 11(1). In this case, the air carrier shall immediately transfer the API data in accordance with Article 6.***

PUBLIC

4. The Commission shall adopt implementing acts specifying the necessary detailed technical and procedural rules for the verifications and notifications referred to in paragraph 1, 2 and 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 36(2).

Article 11

Transmission of API data from the router to the competent border authorities

1. ***Upon the verifications referred to in Article 10a,*** the router shall, immediately and in an automated manner, ***and without changing its content in any way,*** transmit the ***encrypted*** API data, transferred to it pursuant to Article 6 ***or Article 8b(3) and (4)***, to the competent border authorities of the Member State***, or where the flight is planned to land in one or several airports within the territories of one or more Member States participating in this Regulation, to the competent border authorities of the Member States,*** referred to in Article 4(3), point (c). It shall do so in accordance with the detailed rules referred to in paragraph 4 of this Article, ~~where~~***once*** such rules have been adopted and are applicable.

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

2. The Member State shall designate the competent border authorities authorised to receive the API data transferred to them from the router in accordance with this Regulation. They shall notify, by the date of application of this Regulation referred to in Article 39, second subparagraph, eu-LISA and the Commission of the name and contact details of the competent border authorities and shall, where necessary, update the notified information.

PUBLIC

2a. ***Each Member State shall notify, by the date of application of this Regulation referred to in Article 39, second subparagraph, eu-LISA and the Commission of the name and contact details of the competent border authorities and shall, where necessary, update the notified information.***

The Commission shall, on the basis of those notifications and updates, compile and make publicly available a list of the notified competent border authorities, including their contact details.

2b. ***Each Member State shall ensure that its competent border authorities in receipt of any API data in accordance with paragraph 1 immediately and in an automated manner confirm reception of such data to the router.***

3. ~~The~~***Each*** Member ~~States~~***State*** shall ensure that only the duly authorised ***and trained*** staff of ~~the~~***its*** competent border authorities***, designated in accordance with paragraph 2,*** have access to the API data transmitted to them through the router. ~~They~~***It*** shall lay down the necessary rules to that effect. Those rules shall include rules on the creation and regular update of a list of those staff and their profiles.

4. The Commission ~~is empowered to~~***shall*** adopt ~~delegated acts in accordance with Article 37 to supplement this Regulation by laying down~~***implementing acts specifying*** the necessary detailed technical and procedural rules for the transmissions of API data from the router referred to in paragraph 1***, including on requirements for data security. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 36(2)***.

Article 12

Deletion of API data from the router

API data, transferred to the router pursuant to this Regulation ~~and Regulation (EU) [API law enforcement],~~ shall be stored on the router only insofar as necessary to complete the transmission to the relevant competent borders authorities ~~or PIUs, as applicable,~~ in accordance with ~~those Regulations~~ ***this Regulation*** and shall be deleted from the router, immediately, permanently and in an automated manner~~, in both of the following situations:~~

~~(a)~~ where ***it is confirmed, in accordance with Article 11(2b), that*** the transmission of the API data to the relevant competent border authorities ~~or PIUs, as applicable,~~ has been completed~~;~~**.**

~~(b) in respect of Regulation (EU) [API law enforcement], where the API data relates to other intra-EU flights than those included the lists referred to in Article 5(2) of that Regulation.~~

Article 13

Keeping of logs

1. eu-LISA shall keep logs of all processing operations relating to the transfer of API data through the router under this Regulation ~~and Regulation (EU) [API law enforcement]~~. Those logs shall cover ~~the following~~:

   (a) the air carrier that transferred the API data to the router;

   (b) the competent border authorities ~~and PIUs~~ to which the API data ~~was~~***were*** transmitted through the router;

   (c) the date and time of the transfers referred to in points (a) and (b), and place of transfer;

(d) any access by staff of eu-LISA necessary for the maintenance of the router, as refererred to in Article 23(3);

(e) any other information relating to those processing operations necessary to monitor the security and integrity of the API data and the lawfulness of those processing operations.

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

2. Air carriers shall create logs of all processing operations ***related to API data*** under this Regulation undertaken by using the automated means referred to in Article 5(2). Those logs shall cover the date, time and place of transfer of the API data. ***Those logs shall not contain any personal data, other than the information necessary to identify the relevant member of the staff of the air carrier.***

3. The logs referred to in paragraphs 1 and 2 shall be used only for ensuring the security and integrity of the API data and the lawfulness of the processing, in particular as regards compliance with the requirements set out in this Regulation ~~and Regulation (EU) [API Law Enforcement]~~, including proceedings for penalties for infringements of those requirements in accordance with Articles 29 and 30 of this Regulation.

4. eu-LISA and ~~the~~ air carriers shall take appropriate measures to protect the logs that they created pursuant to paragraphs 1 and 2, respectively, against unauthorised access and other security risks.

4a. The National API Supervision Authority referred to in Article 29 and competent border authorities shall have access to the relevant logs referred to in paragraph 1 where necessary for the purposes referred to in paragraph 3.

PUBLIC

5. eu-LISAand the air carriers shall keep the logs that they created pursuant to paragraphs 1 and 2, respectively, for a time period of one year from the moment of the creation of those logs. They shall immediately and permanently delete those logs upon the expiry of that time period.

However, if those logs are needed for procedures for monitoring or ensuring the security and integrity of the API data or the lawfulness of the processing operations, as referred to in paragraph ~~2~~***3***, and these procedures have already begun at the moment of the expiry of the time period referred to in the first subparagraph, eu-LISA and the air carriers~~ may~~ ***shall*** keep those logs for as long as necessary for those procedures. In that case, they shall immediately delete those logs when they are no longer necessary for those procedures.

PUBLIC

Article 14

Actions in case of technical impossibility to use the router

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

   During the time period between those notifications, Article 6(1) ***and Article 8(1)*** shall not apply, insofar as the technical impossibility prevents the transfer of API data to the router. ~~Insofar as that is the case,~~***Air carriers shall store the API data until the technical impossibility has been successfully addressed and at that point transfer the data to the router in accordance with*** Article ~~4(1) and Article 8(1)~~***6(1). However, the router*** shall not ~~apply either~~***transmit the API data*** to the ~~API data in question~~***competent border authorities, but instead delete the data, if it is received later than 96 hours after the time of departure as referred to in Article 4(3)(e). Meanwhile, in exceptional cases related to the objectives of this Regulation that make it necessary for competent border authorities to immediately receive API data*** during ***the technical impossibility to use the router, competent border authorities may request air carriers to use any other appropriate means ensuring the necessary level of data security, data quality and data protection to transfer the API data directly to the competent border authorities. The competent border authorities shall process the API data received through any other appropriate means in accordance with the rules and safeguards set out in Regulation (EU) 2016/399 and applicable national law.***

   Following the notification from eu-LISA that the technical impossibility has been successfully addressed, and where it is confirmed in accordance with Article 11(2) that the the transmission of the respective API data through the router to the relevant competent border authority has been completed, the competent border authority shall immediately delete the API data they previously received by any other appropriate means~~that time period~~.

PUBLIC

2. Where it is technically impossible to use the router to transmit API data because of a failure of the systems or infrastructure referred to in Article 20 of a Member State, the competent border authorities of that Member State shall immediately notify the air carriers, the competent authorities of the other Member States, eu-LISA and the Commission of that technical impossibility in an automated manner. In that case, that Member State shall immediately take measures to address the technical impossibility to use the router and shall immediately notify those parties when it has been successfully addressed. ***The router shall store the API data until the technical impossibility has been successfully adressed and at that point transmit the data in accordance with Article 11(1). Meanwhile, in the exceptional case of technical impossibility to use the router, competent border authorities may request air carriers to use any other appropriate means ensuring the necessary level of data security to transfer the API data directly to the competent border authorities.***

During the time period between those notifications, Article 6(1) ***and Article 8(1)*** shall not apply, insofar as the technical impossibility prevents the transfer of API data to the router. ~~Insofar as that is the case,~~***Air carriers shall store the API data until the technical impossibility has been successfully addressed and at that point transfer the data to the router in accordance with*** Article ~~4(1) and Article 8(1)~~***6(1). However, the router*** shall not ~~apply either~~***transmit the API data*** to the ~~API data in question~~***competent border authorities, but instead delete the data, if it is received later than 96 hours after the time of departure as referred to in Article 4(3)(e). Meanwhile, in exceptional cases related to the objectives of this Regulation that make it necessary for competent border authorities to immediately receive API data*** during ***the technical impossibility to use the router, competent border authorities may request air carriers to use any other appropriate means ensuring the necessary level of data security, data quality and data protection to transfer the API data directly to the competent border authorities. The competent border authorities shall process the API data received through any other appropriate means in accordance with the rules and safeguards set out in Regulation (EU) 2016/399 and applicable national law.***

PUBLIC

Following the notification from eu-LISA that the technical impossibility has been successfully addressed, and where it is confirmed in accordance with Article 11(2) that the transmission of the respective API data through the router to the relevant competent border authority has been completed, the competent border authority shall immediately delete the API data they previously received by any other appropriate means~~that time period~~.

3. Where it is technically impossible to use the router to transmit API data because of a failure of the systems or infrastructure referred to in Article 21 of an air carrier, that air carrier shall immediately notify the competent border authorities, eu-LISA and the Commission of that technical impossibility in an automated manner. In that case, that air carrier shall immediately take measures to address the technical impossibility to use the router and shall immediately notify those parties when it has been successfully addressed.

During the time period between those notifications, Article 6(1) ***and Article 8(1)*** shall not apply, insofar as the technical impossibility prevents the transfer of API data to the router. ~~Insofar as that is the case,~~***Air carriers shall store the API data until the technical impossibility has been successfully addressed and at that point transfer the data to the router in accordance with*** Article ~~4(1) and Article 8(1)~~***6(1). However, the router*** shall not ~~apply either~~***transmit the API data*** to the ~~API data in question~~***competent border authorities, but instead delete the data, if it is received later than 96 hours after the time of departure as referred to in Article 4(3)(e). Meanwhile, in exceptional cases related to the objectives of this Regulation that make it necessary for competent border authorities to immediately receive API data*** during ***the technical impossibility to use the router, competent border authorities may request air carriers to use any other appropriate means ensuring the necessary level of data security, data quality and data protection to transfer the API data directly to the competent border authorities. The competent border authorities shall process the API data received through any other appropriate means in accordance with the rules and safeguards set out in Regulation (EU) 2016/399 and applicable national law.***

PUBLIC

Following the notification from eu-LISA that the technical impossibility has been successfully addressed, and where it is confirmed in accordance with Article 11(2) that the the transmission of the respective API data through the router to the relevant competent border authority has been completed, the competent border authority shall immediately delete the API data they previously received by any other appropriate means~~that time period~~.

When the technical impossibility has been successfully addressed, the air carrier concerned shall, without delay, submit to the~~ competent~~ national ~~supervisory~~***API supervision*** authority referred to in Article 29 a report containing all necessary details on the technical impossibility, including the reasons for the technical impossibility, its extent and consequences as well as the measures taken to address it.

PUBLIC

CHAPTER 4
SPECIFIC PROVISIONS ON THE PROTECTION OF PERSONAL DATA

PUBLIC

Article 15

~~**Personal data controllers**~~***Data protection responsibilities***

~~The competent border authorities shall be controllers, within the meaning of Article 4, point (7), of Regulation (EU) 2016/679, in relation to the processing of API data constituting personal data through the router, including the transmission and the storage for technical reasons of that data in the router, as well as in relation to their processing of API data constituting personal data referred to in Article 7 of this Regulation.~~

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

2. ***Each Member State shall designate a competent authority as data controller in accordance with this Article. Member States shall communicate those authorities to the Commission, eu-LISA and the other Member States.***

All the competent authorities designated by Member States shall be joint controllers in accordance with Article 26 of Directive (EU) 2016/679 for the purposes of processing of personal data in the router.

~~*Article 16*~~

~~**Personal data processor**~~

3. eu-LISA shall be ~~the~~***a*** processor within the meaning of Article 3, point (12), of Regulation (EU) 2018/1725 for the ***purposes of*** processing of ***personal*** API data constituting personal data ***under this Regulation*** through the router***, including transmission of the data from the router to the competent border authorities and storage for technical reasons of that data on the router. eu-LISA shall ensure that the router is operated in accordance with this Regulation*** ~~in accordance with this Regulation and Regulation (EU) [API law enforcement]~~.

4. ***The Commission shall adopt implementing acts establishing the respective responsibilities of the joint controllers and the respective obligations between joint controllers and the data processor. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 36(2).***

Article16a

Information to passengers

In accordance with the right of information in Article 13 of Regulation (EU) 2016/679, air carriers shall provide passengers, on flights covered by this Regulation, with information on the purpose of the collection of their personal data, the type of personal data collected, the recipients of the personal data and the means to exercise the data subject rights.

This information shall be communicated to passengers in writing and in an easily accessible format at the moment of booking and at the moment of check-in, irrespective of the means used to collect the personal data at the moment of check-in in accordance with Article 5.

PUBLIC

Article 17

Security

1. eu-LISA shall ensure the security ***and encryption*** of the API data, in particular API data constituting personal data, that it processes pursuant to this Regulation ~~and Regulation (EU) [API law enforcement]~~. The competent border authorities and the air carriers shall ensure the security of the API data, in particular API data constituting personal data, that they process pursuant to this Regulation. eu-LISA, the competent border authorities and the air carriers shall cooperate, in accordance with their respective responsibilities and in compliance with Union law, with each other to ensure such security.

2. In particular, eu-LISA shall take the necessary measures to ensure the security of the router and the API data, in particular API data constituting personal data, transmitted through the router, including by establishing, implementing and regularly updating a security plan, a business continuity plan and a disaster recovery plan, in order to:

   (a) physically protect the router, including by making contingency plans for the protection of critical components thereof;

   (b) prevent any unauthorised processing of the API data, including any unauthorised access thereto and copying, modification or deletion thereof, both during the transfer of the API data to and from the router and during any storage of the API data on the router where necessary to complete the transmission, in particular by means of appropriate encryption techniques;

   (ba) ensure that the persons authorised to access the router have access only to the data covered by their access authorisation;

   (c) ensure that it is possible to verify and establish to which competent border authorities ~~or PIUs~~ the API data is transmitted through the router;

PUBLIC

(d) properly report to its Management Board any faults in the functioning of the router;

(e) monitor the effectiveness of the security measures required under this Article and under Regulation (EU) 2018/1725, and assess and update those security measures where necessary in the light of technological or operational developments.

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

Article 18

Self-monitoring

The air carriers and competent ***border*** authorities shall monitor their compliance with their respective obligations under this Regulation, in particular as regards their processing of API data constituting personal data***. For air carriers, the monitoring shall include***~~, including through~~ frequent verification of the logs referred to in Article 13.

PUBLIC

Article 19

Personal data protection audits

1. The ~~competent national data protection~~***independent supervisory*** authorities referred to in Article 51 of Regulation (EU) 2016/679 shall ~~ensure that~~***carry out*** an audit of processing operations of API data constituting personal data performed by the competent border ~~autorities~~***authorities*** for the purposes of this Regulation ~~is carried out, in accordance with relevant international auditing standards, at least once every four years~~***at least once every four years. Member States shall ensure that their supervisory authorities have sufficient resources and expertise to fulfil the tasks entrusted to them under this Regulation***.

2. The European Data Protection Supervisor shall ~~ensure that~~***carry out*** an audit of processing operations of API data constituting personal data performed by eu-LISA for the purposes of this Regulation ~~and Regulation (EU) [API law enforcement] is carried out~~**,** in accordance with relevant international auditing standards at least once every year. A report of that audit shall be sent to the European Parliament, to the Council, to the Commission, to the Member States and to eu-LISA. eu-LISA shall be given an opportunity to make comments before the reports are adopted.

3. In relation to the processing operations referred to in paragraph 2, upon request, eu-LISA shall supply information requested by the European Data Protection Supervisor, shall grant the European Data Protection Supervisor access to all the documents it requests and to the logs referred to in Article 13(1), and shall allow the European Data Protection Supervisor access to all eu-LISA's premises at any time.

PUBLIC

CHAPTER 5
CONNECTIONS AND ADDITIONAL PROVISIONS REGARDING THE ROUTER

PUBLIC

Article 20

Competent border authorities' connections to the router

1. Member States shall ensure that their competent border authorities are connected to the router. They shall ensure that the competent border authorities' systems and infrastructure for the reception of API data transferred ~~purpsuant~~***pursuant*** to this Regulation are integrated with the router.

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

2. The Commission ~~is empowered to~~***shall*** adopt ~~delegated acts in accordance with Article 37 to supplement this Regulation by laying down~~***implementing acts specifying*** the necessary detailed rules on the connections to and integration with the router referred to in paragraph 1***, including on requirements for data security. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 36(2)***.

Article 21

Air carriers' connections to the router

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

   Air carriers shall ensure that the connection to that router and integration with it enables them to transfer the API data, as well as to exchange any communications relating thereto, in a lawful secure, effective and swift manner. ***To that end, air carriers shall conduct tests of the transfer of API data to the router in cooperation with eu-LISA in accordance with Article 24(3).***

2. The Commission ~~is empowered to~~***shall*** adopt ~~delegated acts in accordance with Article 37 to supplement this Regulation by laying down~~***implementing acts specifying*** the necessary detailed rules on the connections to and integration with the router referred to in paragraph 1***, including on requirements for data security. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 36(2)***.

Article 22

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

1. eu-LISA shall be responsible for the design of the physical architecture of the router, including defining the technical specifications.

2. eu-LISA shall be responsible for the development of the router, including for any technical adaptations necessary for the operation of the router.

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

PUBLIC

3. eu-LISA shall ensure that the router is designed and developed in such a manner that the router provides the functionalities specified in this Regulation ~~and Regulation (EU) [API law enforcement]~~, and that the router starts operations as soon as possible after the adoption by the Commission of the ***implementing and*** delegated acts provided for in Article 5(4), Article 6(3), Article 11(4), Article 20(2) and Article 21(2) ***and after the carrying out of a data protection impact assessment in accordance with Article 35 of Regulation (EU) 2016/679***.

3a. eu-LISA shall provide to the competent border authorities, other relevant Member States' authorities and air carriers, a compliance test set. The compliance test set shall include a test environment, a simulator, test data sets, and a test plan. The compliance test set shall allow for the comprehensive test of the router referred to in paragraph 4 and it shall remain available after the completion of the comprehensive test of the router.

4. Where eu-LISA considers that the development phase has been completed, it shall, without undue delay, conduct a comprehensive test of the router, in cooperation with the competent border authorities~~, PIUs~~ and other relevant Member States' authorities and air carriers and inform the Commission of the outcome of that test.

Article 23

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

1. eu-LISA shall host the router in its technical sites.

2. eu-LISA shall be responsible for the technical management of the router, including its maintenance and technical developments, in such a manner as to ensure that the API data are securely, effectively and swiftly transmitted through the router, in compliance with this Regulation ~~and Regulation (EU) [API law enforcement]~~.

PUBLIC

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

3. eu-LISA***'s staff*** shall not have access to any of the API data that is transmited through the router. However, that prohibition shall not preclude eu-LISA***'s staff*** from having such access insofar as strictly necessary for the maintenance ***and technical management*** of the router.

4. Without prejudice to paragraph 3 of this Article and to Article 17 of Council Regulation (EEC, Euratom, ECSC) No 259/68[20], eu-LISA shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to its staff required to work with API data transmitted through the router. This obligation shall also apply after such staff leave office or employment or after the termination of their activities.

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

Article 24

eu-LISA's support tasks relating to the router

1. eu-LISA shall, upon their request, provide training to competent border authorities~~, PIUs~~ and other relevant Member States' authorities and air carriers on the technical use of ***the router and on the connection and integration to*** the router.

2. eu-LISA shall provide support to the competent border authorities ~~and PIUs~~ regarding the reception of API data through the router pursuant to this Regulation ~~and Regulation (EU) [API law enforcement], respectively~~, in particular as regards the application of Articles 11 and 20 ~~of this Regulation and Articles 5 and 10 of Regulation (EU) [API law enforcement]~~.

3. In accordance with Article 21(1), eu-LISA shall conduct tests in cooperation with air carriers of the transfer of API data to the router, making use of the compliance test set referred to in Article 22(3a).

PUBLIC

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CHAPTER 5a
GOVERNANCE

Article 24a

Programme Management Board

1. By [Date of entry into force of this Regulation], eu-LISA's Management Board shall establish a Programme Management Board. It shall be composed of 10 members and shall consist of:

(a) seven members appointed by eu-LISA's Management Board from among its members or its alternates;

(b) the chair of the API-PNR Advisory Group referred to in Article 24b;

(c) one member of the eu-LISA staff appointed by its Executive Director;

(d) and one member appointed by the Commission.

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

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

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

3. The Programme Management Board shall supervise the effective fulfilment of eu-LISA's tasks relating to the design and development of the router in accordance with Article 22.

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

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

5. The Programme Management Board shall have no decision-making power, nor any mandate to represent eu-LISA's Management Board or its members.

6. The Programme Management Board shall cease to exist by the date of the application of this Regulation referred to in Article 39, second subparagraph.

Article 24b

API-PNR Advisory Group

1. By [Date of entry into force of this Regulation], eu-LISA's Management Board shall establish an API-PNR Advisory Group in accordance with Article 27 of Regulation (EU) 2018/1726.

2. Whenever available, eu-LISA shall provide the API-PNR Advisory Group with versions, even intermediary ones, of the technical specifications and the compliance test sets referred to in Article 22(1), (2) and (3a).

PUBLIC

3. The API-PNR Advisory Group shall exercise the following functions:

(a) provide expertise to eu-LISA and to the Programme Management Board on the design and development of the router in accordance with Article 22;

(b) provide expertise to eu-LISA on the hosting and technical management of the router in accordance with Article 23;

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

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

Article 24c

API-PNR Contact Group

1. By the date of the application of this Regulation referred to in Article 39, second subparagraph, eu-LISA's Management Board shall establish an API-PNR Contact Group.

2. The API-PNR Contact Group shall enable communication between Member States' relevant authorities and air carriers on technical matters related to their respective tasks and obligations under this Regulation.

3. The API-PNR Contact Group shall be composed of representatives of Member States' relevant authorities and air carriers, the chairperson of the API-PNR Advisory Group and eu-LISA's experts.

4. eu-LISA's Management Board shall establish the rules of procedure of the API-PNR Contact Group, following an opinion of the API-PNR Advisory Group.

PUBLIC

5. When deemed necessary, eu-LISA's Management Board may also establish sub-groups of the API-PNR Contact Group to discuss specific technical matters related to the respective tasks and obligations of Member States' relevant authorities and air carriers under this Regulation.

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

Article 24d

API Expert Group

1. By the date of application of this Regulation referred to in Article 39, second subparagraph, the Commission shall establish an API Expert Group in accordance with the horizontal rules on the creation and operation of Commission expert groups.

2. The API Expert Group shall enable communication among Member States' relevant authorities, and between Member States' relevant authorities and air carriers, on policy matters related to their respective tasks and obligations under this Regulation, including in relation to the penalties referred to in Article 30.

3. The API Expert Group shall be chaired by the Commission and constituted in accordance with the horizontal rules on the creation and operation of Commission expert groups. It shall be composed of representatives of Member States' relevant authorities, representatives of air carriers and eu-LISA's experts. Where relevant for the performance of its tasks, the API Expert Group may invite relevant stakeholders, in particular representatives of the European Parliament, the EDPS and the independent national supervisory authorities, to participate in its work.

4. The API Expert Group shall carry out its tasks in accordance with the principle of transparency. The Commission shall publish the minutes of the meetings of the API Expert Group and other relevant documents on the Commission website.

PUBLIC

Article 25

Costs of eu-LISA, *the European Data Protection Supervisor, the national supervisory authorities* and of Member States

1. Costs incurred by eu-LISA ~~in relation to the design, development, hosting and technical management~~***arising out of the establishment and operation*** of the router under this Regulation ~~and Regulation (EU) [API law enforcement]~~ shall be borne by the general budget of the Union.

2. Costs incurred by ***the*** Member States in relation to ***the implementation of this Regulation, in particular to*** their ~~connections~~***connection*** to and ***the*** integration with the router referred to in Article 20***,*** shall be ~~borne~~***supported*** by the general budget of the Union***, in accordance with the eligibility and co-financing rates set in the respective acts of Union law***.

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

~~(a) costs for the project management office, including meetings, missions, offices;~~

~~(b) costs for the hosting of national information technology (IT) systems, incldluing space, implementation, electricity and cooling;~~

~~(c) costs for the operation of national IT systems, including operators and support contracts;~~

~~(d) costs for the design, development, implementation, operation and maintenance of national communication networks.~~

2a. Costs incurred by the European Data Protection Supervisor in relation to the tasks entrusted to it under this Regulation shall be borne by the general budget of the Union.

2b. Costs incurred by independent national supervisory authorities in relation to the tasks entrusted to them under this Regulation shall be borne by the Member States.

~~3. The Member States shall also bear the costs arising from the administration, use and maintenance of their connections to and integration with the router.~~

Article 26

Liability regarding the router

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

Article 27

Start of operations of the router

The Commission shall determine, without undue delay, the date from which the router starts operations by means of an implementing act once eu-LISA has informed the Commission of the successful completion of the comprehensive test of the router referred to in Article 22(4). That implementing act shall be adopted in accordance with the examination procedure referred to in Article 36(2).

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

PUBLIC

Article 28

Voluntary use of the router in application of Directive ~~2004/81/EC~~*2004/82/EC*

1. Air carriers shall be entitled to use the router to transmit the information referred to in Article 3(1) ***and 3(2)*** of Directive 2004/82/EC to one or more of the responsible authorities referred to therein, in accordance with that Directive, provided that the ~~responsible authority~~***Member State*** concerned has agreed with such use, from an appropriate date set by that ~~authority. That authority~~***Member State. That Member State*** shall only agree after having established that, in particular as regards both its own ~~connection~~***responsible authorities' connections*** to the router and that of the air carrier concerned, the information can be transmitted in a lawful, secure, effective and swift manner.

2. Where an air carrier starts using the router in accordance with paragraph 1, it shall continue using the router to transmit such information to the responsible ***authorities of the Member State*** ~~authority~~ concerned until the date of application of this Regulation referred to in Article 39, second subparagraph. However, that use shall be discontinued, from an appropriate date set by that ***Member State*** ~~authority~~, where that ***Member State*** ~~authority~~ considers that there are objective reasons that require such discontinuation and has informed the air carrier accordingly.

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

   (a) consult eu-LISA before agreeing with the voluntary use of the router in accordance with paragraph 1;

   (b) except in situations of duly justified urgency, afford the air carrier concerned an opportunity to comment on its intention to discontinue such use in accordance with paragraph 2 and, where relevant, also consult eu-LISA thereon;

   (c) immediately inform eu-LISA and the Commission of any such use to which it agreed and any discontinuation of such use, providing all necessary information, including the date of the start of the use, the date of the discontinuation and the reasons for the discontinuation, as applicable.

PUBLIC

CHAPTER 6

SUPERVISION, PENALTIES, STATISTICS AND HANDBOOK

PUBLIC

Article 29

National ~~supervisory~~*API supervision* authority

1. Member States shall designate one or more national ~~supervisory~~***API supervision*** authorities responsible for monitoring the application within their territory by air carriers of the provisions of this Regulation and ensuring compliance with those provisions.

2. Member States shall ensure that the national ~~supervisory~~***API supervision*** authorities have all necessary means and all necessary investigative and enforcement powers to carry out their tasks under this Regulation, including by imposing the penalties referred to in Article 30 where appropriate. They shall lay down detailed rules on the performance of those tasks and the exercise of those powers, ensuring that the performance and exercise is effective, proportionate and dissuasive and is subject to safeguards in compliance with the fundamental rights guaranteed under Union law.

3. Member States shall, by the date of application of this Regulation referred to in Article ~~21~~***39***, second subparagraph, notify the Commission of the name and the contact details of the authorities that they designated under paragraph 1 and of the detailed– rules that they laid down pursuant to paragraph 2. They shall notify the Commission without delay of any subsequent changes or amendments thereto.

4. This Article is without prejudice to the powers of the supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679.

Article 30

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

2. Member States shall, by the date of application of this Regulation referred to in Article 39, second subparagraph, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.

3. ***Member States shall ensure that the national API supervision authorities, when deciding whether to impose a penalty and when determining the type and level of penalty, take into account relevant circumstances, which may include:***

(a) the nature, gravity and duration of the infringement;

(b) previous infringements by the air carrier;

(c) the overall level of cooperation of the air carrier with the competent authorities;

(d) the size of the air carrier, such as the annual number of passengers carried;

(e) the degree of the air carrier's fault;

(f) whether previous penalties have already been applied by other national API supervision authorities to the same carrier for the same infringement.

4. ***Member States shall ensure that a recurrent failure to transfer API data in accordance with Article 6(1) is subject to proportionate financial penalties of up to 2% of the air carrier's global turnover of the preceding financial year. Member States shall ensure that failure to comply with other obligations set out in this Regulation are subject to proportionate penalties, including financial.***

PUBLIC

Article 31

Statistics

1. ~~Every quarter, eu-LISA shall publish statistics on the functioning of the router, showing in particular the number, the nationality and the country of departure of the travellers, and specifically of the travellers who boarded the aircraft with inaccurate, incomplete or no longer up-to-date API data, with a non-recognised travel document, without a valid visa, without a valid travel authorization, or reported as overstay, the number and nationality of travellers~~***To support the implementation and supervision of this Regulation and based on the statistical information referred to in paragraph 5 of this Article, eu-LISA shall publish every quarter statistics on the functioning of the router, and on compliance by air carriers with the obligations set out in this Regulation. These statistics shall not allow for the identification of individuals***.

2. ~~eu-LISA~~***For the purposes set out in paragraph 1, the router*** shall ~~store the daily statistics in~~***automatically transmit the data listed in paragraph 5 to*** the central repository for reporting and statistics established in Article 39 of Regulation (EU) 2019/817.

3. ***In order to support the implementation and supervision of this Regulation,*** at the end of each year, eu-LISA shall compile statistical data in an annual report ~~for that~~***the previous*** year. It shall publish that annual report and transmit it to the European Parliament, the Council, the Commission, the European Data Protection Supervisor, the European Border and Coast Guard Agency and the national supervisory authorities referred to in Article 29. ***The annual report shall not disclose confidential working methods or jeopardise ongoing investigations of the Member States' competent authorities.***

4. At the request of the Commission, eu-LISA shall provide it with statistics on specific aspects related to the implementation of this Regulation ~~and Regulation (EU) [API Law enforcement]~~ as well as the statistics pursuant to paragraph 3.

PUBLIC

5. ~~eu-LISA shall have the right to access the following API data transmitted through to the router, solely~~***The central repository for reporting and statistics shall provide eu-LISA with the statistical information necessary*** for the ~~purposes of the~~ reporting referred to in Article 38 and for generating statistics in accordance with the present Article, without however such ~~access~~***statistics on API*** allowing for the identification of the ~~travellers~~***passengers*** concerned:

(a) whether the ~~traveller is~~***data concerns a*** passenger or a crew member;

(b) the nationality, sex and year of birth of the ~~traveller~~***passenger or crew member***;

(c) the date***, the*** ~~and~~ initial point of embarkation, ~~and the date and~~ ***the*** airport of ~~entry into the territory of a Member State~~***departure, and the date and airport of*** arrival;

(d) the type of the travel document and the three letter code of the issuing country and the date of expiry of the travel document;

(e) the number of travellers checked-in on the same flight;

(ea) the code of the airline operating the flight;

(f) whether the flight is a scheduled or a non-scheduled flight;

(fa) whether API data was transferred at the moment of flight closure;

(g) whether the personal data of the ~~traveller~~***passenger*** is accurate, complete and up-to-date.

(ga) the technical means used to capture the API data.

PUBLIC

6. For the ~~the~~ purposes of the reporting referred to in Article 38 and for generating statistics in accordance with the present Article, eu-LISA shall store the data referred to in paragraph 5 of this Article in the central repository for reporting and statistics established by Article 39 of Regulation (EU) 2019/817. ~~The cross-system statistical data and analytical reporting referred to in Article 39(1) of that Regulation~~***It shall store that data for a period of five years in accordance with paragraph 2, without the data allowing for the identification of the passengers concerned. The central repository for reporting and statistics*** shall ~~allow the competent border authorities~~***provide duly authorised staff of the PIUs*** and other relevant authorities of the Member States ~~to obtain~~***with*** customisable reports and statistics~~, for the purposes~~ ***on API as*** referred to in ~~Article 1~~***paragraph 5 for the implementation and supervision*** of this Regulation.

6a. The use of the data referred to in paragraph 5 of this Article shall not result in not result in the profiling of individuals as referred to in Article 22 of Regulation (EU) 2016/679 nor discrimination against persons on the grounds as mentioned in article 21 of the EU Charter on Fundamental Rights. The data referred to in paragraph 5 of this Article shall not be used to compare or match it with personal data or to combine it with personal data.

7. The procedures put in place by eu-LISA to monitor the development and the functioning of the router referred to in Article 39(1) of Regulation (EU) 2019/817 shall include the possibility to produce regular statistics to ensure that monitoring.

PUBLIC

Article 32

Practical handbook

The Commission shall, in close cooperation with the competent ~~border~~ authorities, other relevant Member States' authorities, the air carriers and relevant Union ***bodies and*** agencies, prepare and make publicly available a practical handbook, containing guidelines, recommendations and best practices for the implementation of this Regulation***, including on fundamental rights compliance as well as on penalties in accordance with Article 30***.

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

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

PUBLIC

CHAPTER 7
RELATIONSHIP TO OTHER EXISTING INSTRUMENTS

PUBLIC

Article 33

Repeal of Directive 2004/82/EC

Directive 2004/82/EC is repealed from the date of application of this Regulation, referred to in Article 39, second subparagraph.

Article 34

Amendments to Regulation (EU) 2018/1726

Regulation (EU) 2018/1726 is amended as follows:

(1) the following Article 13b is inserted:

"Article 13b

Tasks related to the router

In relation to Regulation (EU) …/… of the European Parliament and of the Council* [this Regulation] and Regulation (EU) [API LE], the Agency shall perform the tasks related to the router conferred on it by those Regulations.

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

(2) in Article 17, paragraph 3 is replaced by the following:

"3. The seat of the Agency shall be Tallinn, Estonia.

The tasks relating to development and operational management referred to in Article 1(4) and (5) and Articles 3 to 9 and Articles 11, [13a] and 13b shall be carried out at the technical site in Strasbourg, France.

A backup site capable of ensuring the operation of a large-scale IT system in the event of failure of such a system shall be installed in Sankt Johann im Pongau, Austria."

(3) in Article 19, paragraph 1, is amended as follows:

(a) the following point (eeb) is inserted:

"(eeb) adopt reports on the state of play of the development of the router pursuant to Article 38(2) of the Regulation (EU) …/… of the European Parliament and of the Council* [this Regulation];"

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

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(b) point (ff) is replaced by the following:

"(ff) adopt reports on the technical functioning of the following:

~~(1)~~***(i)*** SIS pursuant to Article 60(7) of Regulation (EU) 2018/1861 of the European Parliament and of the Council* and Article 74(8) of Regulation (EU) 2018/1862 of the European Parliament and of the Council**;

~~(2)~~***(ii)*** VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and Article 17(3) of Decision 2008/633/JHA;

~~(3)~~***(iii)*** EES pursuant to Article 72(4) of Regulation (EU) 2017/2226;

~~(4)~~***(iv)*** ETIAS pursuant to Article 92(4) of Regulation (EU) 2018/1240;

~~(5)~~***(v)*** ECRIS-TCN and of the ECRIS reference implementation pursuant to Article 36(8) of Regulation (EU) 2019/816;

~~(6)~~***(vi)*** the interoperability components pursuant to Article 78(3) of Regulation (EU) 2019/817, Article 74(3) of Regulation (EU) 2019/818 and of the router pursuant to Article 79(5) of Regulation (EU) …/… of the European Parliament and of the Council* [Prüm II Regulation] and Article 38(5) of Regulation (EU) …/… of the European Parliament and of the Council* [this Regulation];

~~(7)~~***(vii)*** the e-CODEX system pursuant to Article 16(1) of Regulation (EU) 2022/850"

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PUBLIC

*Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006 (OJ L 312, 7.12.2018, p. 14).

**Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).'

(c) point (hh) is replaced by the following:

"(hh) adopt formal comments on the European Data Protection Supervisor's reports on its audits pursuant to Article 56(2) of Regulation (EU) 2018/1861, Article 42(2) of Regulation (EC) No 767/2008, Article 31(2) of Regulation (EU) No 603/2013, Article 56(2) of Regulation (EU) 2017/2226, Article 67 of Regulation (EU) 2018/1240, Article 29(2) of Regulation (EU) 2019/816, Article 52 of Regulations (EU) 2019/817 and (EU) 2019/818, Article 60(1) of the Regulation (EU) …/… of the European Parliament and of the Council* [Prüm II] and Article 19(3) of the Regulation (EU) …/… of the European Parliament and of the Council* [this Regulation] and ensure appropriate follow-up of those audits;**"**

~~(4)~~ * Regulation (EU) [number] of the European Parliament and of the Council of xy on [officially adopted title] (OJ L …)

(4) in Article 27, paragraph 1, is amended as follows:

(a) the following point (dd) is inserted:

"(dd) API-PNR Advisory Group"

PUBLIC

Article 35

Amendments to Regulation (EU) 2019/817

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

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

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

2. eu-LISA shall establish, implement and host in its technical sites the CRRS containing the data and statistics referred to in Article 63 of Regulation (EU) 2017/2226, Article 17 of Regulation (EC) No 767/2008, Article 84 of Regulation (EU) 2018/1240, Article 60 of Regulation (EU) 2018/1861 and Article 16 of Regulation (EU) 2018/1860, logically separated by EU information system. eu-LISA shall also collect the data and statistics from the router referred to in Article 31(1) of Regulation (EU) …/… * [this Regulation]. Access to the CRRS shall be granted by means of controlled, secured access and specific user profiles, solely for the purpose of reporting and statistics, to the authorities referred to in Article 63 of Regulation (EU) 2017/2226, Article 17 of Regulation (EC) No 767/2008, Article 84 of Regulation (EU) 2018/1240, Article 60 of Regulation (EU) 2018/1861 and Article 38(2) of Regulation (EU) …/… [this Regulation]."

PUBLIC

CHAPTER 8
FINAL PROVISIONS

PUBLIC

Article 36

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and Article 5(4), the third subparagraph, of Regulation (EU) No 182/2011 shall apply.

Article 37

Exercise of delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in ***/***Article 5(4), Article 6(3), Article 11(4), Article 20(2) and Article 21(2)***/*** shall be conferred on the Commission for a period of five years from [date of adoption of the Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in ***[***Article 5(4), Article 6(3), Article 11(4), Article 20(2) and Article 21(2)***]*** may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

3a. A delegated act adopted pursuant to Article 5(3c) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council. If an objection has been expressed either by the European Parliament or by the Council, the European Parliament or the Council cannot oppose the tacit extension referred to in paragraph 2 of this Article.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

PUBLIC

Article 38

Monitoring and evaluation

1. eu-LISA shall ensure that procedures are in place to monitor the development of the router in light of objectives relating to planning and costs and to monitor the functioning of the router in light of objectives relating to the technical output, cost-effectiveness, security and quality of service.

2. By [one year after the date of entry into force of this Regulation] and every year thereafter during the development phase of the router, eu-LISA shall produce a report, and submit it to the European Parliament and to the Council on the state of play of the development of the router. That report shall contain detailed information about the costs incurred and about any risks which may impact the overall costs to be borne by the general budget of the Union in accordance with Article 25.

3. Once the router starts operations, eu-LISA shall produce a report and submit it to the European Parliament and to the Council explaining in detail how the objectives, in particular relating to planning and costs, were achieved as well as justifying any divergences.

4. By [four years after the date of– entry into force of this Regulation] and every four years thereafter, the Commission shall produce a report containing an overall evaluation of this Regulation***, including on the necessity and the added value of the collection of API data***, including an assessment of:

   (a) the application of this Regulation;

   (b) the extent to which this Regulation achieved its objectives;

   (c) the impact of this Regulation on relevant fundamental rights protected under Union law;

   (ca) the impact of this Regulation on the travel experience of legitimate passengers.

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(cb) the impact of this Regulation on the competitiveness of the aviation sector and the burden incurred by businesses. The Commission's report shall also address this Regulation's interaction with other relevant Union legislative acts, in particular Regulations (EU) 2017/2226, (EU) 2018/1240 and (EC) 767/2008, in order to assess the overall impact of related reporting obligations on air carriers, identify provisions that could be updated and simplified, where appropriate, to mitigate the burden on air carriers, and consider actions and measures that could be taken to reduce the total cost pressure on air carriers.

(cc) the quality of the data transmitted by the router to the competent border authorities;

(cd) the performance of the router in respect of the competent border authorities.

5. The Commission shall submit the evaluation report to the European Parliament, the Council, the European Data Protection Supervisor and the European Agency for Fundamental Rights. If appropriate, in light of the evaluation conducted, the Commission shall make a legislative proposal to the European Parliament and to the Council with a view to amending this Regulation.

6. The Member States and air carriers shall, upon request, provide eu-LISA and the Commission with the information necessary to draft the reports referred to in paragraphs 2, 3 and 4, ~~including information not constituting personal~~***such as*** data related to the results of the pre-checks of Union information systems and national databases at the external borders with API data. ~~However~~***In particular***, ***Member States shall provide quantitative and qualitative information on the collection of API data from an operational perspective. The information provided may not constitute personal data.*** Member States may refrain from providing such information if, and to the extent necessary not to disclose confidential working methods or jeopardise ongoing investigations of the competent border authorities. The Commission shall ensure that any confidential information provided is appropriately protected.

Article 39

Entry into force and application

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

It shall apply from two years from the date at which the router starts operations, specified by the Commission in accordance with Article 27.

However:

(a) Article 5(4) and (5), Article 6(3), Article ***8b(6), Article 10a(4), Article*** 11(4), Article ***15(4), Article*** 20(2), Article 21(2), Article 22***, Article 24(a), Article 24(b)***, Article 25(1), Article 27, Article 36 and Article 37 shall apply from [Date of entry into force of this Regulation];

(b) ***Article 5(3c),*** Article 10, Article ***12, Article*** 13(1), (3) and (4), Article 15~~, Article 16~~, Article 17, Article 23, Article 24, Article 26 and Article 28 shall apply from the date at which the router starts operations, specified by the Commission in accordance with Article 27.

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

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President

PUBLIC