



**2022/0425(COD)**

4.7.2023

**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council on the collection and transfer of advance passenger information for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, and amending Regulation (EU) 2019/818 (COM(2022)0731 – C9-0427/2022 – 2022/0425(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Assita Kanko

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT .....	18



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on the collection and transfer of advance passenger information for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, and amending Regulation (EU) 2019/818 (COM(2022)0731 – C9-0427/2022 – 2022/0425(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0731),
  - having regard to Article 294(2) and Articles 82(1) point (d) and 87(2) point (a) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0427/2022),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rules 59 of its Rules of Procedure,
  - having regard to the opinion of the Committee on Transport and Tourism,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0000/2023),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a regulation**

##### **Recital 11**

*Text proposed by the Commission*

(11) In order to ensure a consistent approach on the collection and transfer of API data by air carriers as much as possible, the rules set out in this Regulation

*Amendment*

(11) In order to ensure a consistent approach on the collection and transfer of API data by air carriers as much as possible, the rules set out in this Regulation

should be aligned with those set out in the Regulation (EU) [API border management] where appropriate. That concerns, in particular, the rules on data quality, the air carriers' use of automated means for such collection, the precise manner in which they are to transfer the collected API data to the router and the deletion of the API data.

should be aligned with those set out in the Regulation (EU) [API border management] where appropriate. That concerns, in particular, the rules on data quality, the air carriers' **mandatory** use of automated means for such collection, ***except where travel documents do not contain machine-readable data, or where it is technically impossible to collect the API data using automated means***, the precise manner in which they are to transfer the collected API data to the router and the deletion of the API data.

Or. en

## Amendment 2

### Proposal for a regulation Recital 11 a (new)

*Text proposed by the Commission*

*Amendment*

***(11a) The Commission should ensure that the obligation to use automated means for the collection of API data does not lead to disproportionate obstacles, such as additional airport check-in fees, for passengers unable to use other means for automated check-in.***

Or. en

## Amendment 3

### Proposal for a regulation Recital 14

*Text proposed by the Commission*

*Amendment*

(14) As regards intra-EU flights, in line with the case law of the Court of Justice of the European Union (CJEU), in order to avoid unduly interfering with the relevant fundamental rights protected under the Charter and to ensure compliance with the requirements of Union law on the free movement of persons and the abolition of internal border controls, a selective

(14) As regards intra-EU flights, in line with the case law of the Court of Justice of the European Union (CJEU), in order to avoid unduly interfering with the relevant fundamental rights protected under the Charter and to ensure compliance with the requirements of Union law on the free movement of persons and the abolition of internal border controls, a selective

approach should be provided for. In view of the importance of ensuring that API data can be processed together with PNR data, that approach should be aligned with that of Directive (EU) 2016/681. For those reasons, API data on those flights should only be transmitted from the router to the relevant PIUs, where the Member States have selected the flights concerned in application of Article 2 of Directive (EU) 2016/681. As recalled by the CJEU, the selection entails Member States targeting the obligations in question only at, inter alia, certain routes, travel patterns or airports, subject to the regular review of that selection.

approach should be provided for, ***except in situations of a genuine and present or foreseeable terrorist threat***. In view of the importance of ensuring that API data can be processed together with PNR data, that approach should be aligned with that of Directive (EU) 2016/681. For those reasons, API data on those flights should only be transmitted from the router to the relevant PIUs, where the Member States have selected the flights concerned in application of Article 2 of Directive (EU) 2016/681. As recalled by the CJEU, the selection entails Member States targeting the obligations in question only at, inter alia, certain routes, travel patterns or airports, subject to the regular review of that selection. ***Furthermore, the selection criteria should be relevant for the prevention, detection, investigation and prosecution of terrorist offences and serious crime and should demonstrate an objective link or suspicion of a link, with the carriage of passengers by air.***

Or. en

#### **Amendment 4**

##### **Proposal for a regulation Recital 15 a (new)**

*Text proposed by the Commission*

*Amendment*

***(15a) In order to increase cohesion among the selective approaches taken by the different Member States, the Commission should facilitate the exchange of views on the choice of selection criteria, as well as, on a voluntary basis, of selected flights.***

Or. en

#### **Amendment 5**

##### **Proposal for a regulation Recital 19**

*Text proposed by the Commission*

(19) In view of the Union interests at stake, appropriate costs incurred by the Member States in relation to their connections to, and integration with, the router, as required under this Regulation, should be borne by the Union budget, in accordance with the ***applicable legislation and subject to certain exceptions. The costs covered by those exceptions should be borne by each Member State concerned itself.***

*Amendment*

(19) In view of the Union interests at stake, appropriate costs incurred by the Member States in relation to their connections to, and integration with, the router, ***costs related to the maintenance of those connections and costs related to training needs,*** as required under this Regulation, should be borne by the Union budget, in accordance with the ***eligibility rules and co-financing rates set in the legal basis of the Internal Security Fund.***

Or. en

**Amendment 6**

**Proposal for a regulation  
Recital 20**

*Text proposed by the Commission*

(20) In accordance with Regulation (EU) 2018/1726, Member States may entrust eu-LISA with the task of facilitating connectivity with air carriers in order to assist Member States in the implementation of Directive (EU) 2016/681, particularly by collecting and transferring PNR data via the router.

*Amendment*

(20) In accordance with Regulation (EU) 2018/1726, Member States may entrust eu-LISA with the task of facilitating connectivity with air carriers in order to assist Member States in the implementation of Directive (EU) 2016/681, particularly by collecting and transferring PNR data via the router ***as a secure, reliable and cost-effective solution. Such streamlining would further underline the complementary nature of PNR and API data. Furthermore, it would extend the use of the automatic filter for selected EU flights to PNR data transfers.***

Or. en

**Amendment 7**

**Proposal for a regulation  
Recital 24**

*Text proposed by the Commission*

(24) In order to adopt measures relating

*Amendment*

(24) In order to adopt measures relating

to the technical requirements and operational rules for the automated means for the collection of machine-readable API data, to the common protocols and formats to be used for the transfer of API data by air carriers, to the technical and procedural rules for the transmission of API data from the router and to the PIUs and to the PIU's and air carriers' connections to and integration with the router, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of Articles 4, 5, 10 and 11, respectively. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>33</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

---

<sup>33</sup> OJ L 123, 12.5.2016, p. 1.

to the technical requirements and operational rules for the automated means for the collection of machine-readable API data, to the common protocols and formats to be used for the transfer of API data by air carriers, to the technical and procedural rules for the transmission of API data from the router and to the PIUs and to the PIU's and air carriers' connections to and integration with the router, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of Articles 4, 5, 10 and 11, respectively. It is of particular importance that the Commission carry out appropriate consultations *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<sup>33</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated act.

---

<sup>33</sup> OJ L 123, 12.5.2016, p. 1.

Or. en

## Amendment 8

### Proposal for a regulation Recital 24 a (new)

*Text proposed by the Commission*

*Amendment*

***(24a) The collection of API data should not be detrimental to the fundamental rights and travel experience of legitimate travellers. The application of this***

*Regulation, in combination with the application of several other Union legal acts, such as Regulation (EU) 2017/2226 of the European Parliament and of the Council<sup>1a</sup> and Regulation (EU) 2018/1240 of the European Parliament and of the Council<sup>1b</sup>, should not place a disproportionate burden on air carriers. For these reasons, and in order to ensure the monitoring of the effective application of this Regulation by all stakeholders, this Regulation should be subject to regular evaluations.*

---

*<sup>1a</sup> Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ 327, 9.12.2017. p, 20).*

*<sup>1b</sup> Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018., p. 1).*

Or. en

## **Amendment 9**

### **Proposal for a regulation Recital 24 b (new)**

*Text proposed by the Commission*

*Amendment*

***(24b) It is important to collect reliable and useful statistics based on the implementation of this Regulation in order to support its objectives and inform the evaluations described in Recital 24a and Article 20. Such statistics should not contain any personally identifiable data. All relevant stakeholders, including relevant Member State authorities, Europol and, where appropriate, air carriers, should have access to those statistics.***

Or. en

## **Amendment 10**

### **Proposal for a regulation**

#### **Article 1 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) the collection by air carriers of advance passenger information data ('API data') on extra EU flights and ***selected intra EU*** flights;

(a) the collection by air carriers of advance passenger information data ('API data') on extra EU flights and ***intra-EU*** flights;

Or. en

## **Amendment 11**

### **Proposal for a regulation**

#### **Article 3 – paragraph 1 – point g**

*Text proposed by the Commission*

*Amendment*

(g) 'crew' means any person as defined in Article 3, point ***(h)***, of Regulation (EU) [API border management];

(g) 'crew' means any person as defined in Article 3, point ***(i)***, of Regulation (EU) [API border management];

Or. en

## **Amendment 12**

### **Proposal for a regulation**

#### **Article 3 – paragraph 1 – point h**

*Text proposed by the Commission*

(h) ‘traveller’ means any person as defined in Article 3, point **(i)**, of Regulation (EU) [API border management];

*Amendment*

(h) ‘traveller’ means any person as defined in Article 3, point **(j)**, of Regulation (EU) [API border management];

Or. en

**Amendment 13**

**Proposal for a regulation**

**Article 3 – paragraph 1 – point i**

*Text proposed by the Commission*

(i) ‘advance passenger information data’ or ‘API data’ means the data as defined in Article 3, point **(j)**, of Regulation (EU) [API border management];

*Amendment*

(i) ‘advance passenger information data’ or ‘API data’ means the data as defined in Article 3, point **(k)**, of Regulation (EU) [API border management];

Or. en

**Amendment 14**

**Proposal for a regulation**

**Article 3 – paragraph 1 – point m**

*Text proposed by the Commission*

(m) ‘serious crime’ means the offences as defined in Article 3, point (9), of Directive 2016/681;

*Amendment*

(m) ‘serious crime’ means the offences as defined in Article 3, point (9), of Directive **(EU)** 2016/681;

Or. en

**Amendment 15**

**Proposal for a regulation**

**Article 3 – paragraph 1 – point n**

*Text proposed by the Commission*

(n) ‘the router’ means the router as defined in Article 3, point **(k)** of Regulation (EU) [API border

*Amendment*

(n) ‘the router’ means the router as defined in Article 3, point **(m)** of Regulation (EU) [API border

management];

management];

Or. en

## Amendment 16

### Proposal for a regulation

#### Article 4 – paragraph 3 – subparagraph 1

##### *Text proposed by the Commission*

Air carriers shall collect the API data referred to Article 4(2), points (a) to (d), of Regulation (EU) [API border management] using automated means to collect the machine-readable data of the travel document of the traveller concerned. They shall do so in accordance with the detailed technical requirements and operational rules referred paragraph 5, where such rules have been adopted and are applicable.

##### *Amendment*

Air carriers shall collect the API data referred to ***in*** Article 4(2), points (a) to (d), of Regulation (EU) [API border management] using automated means to collect the machine-readable data of the travel document of the traveller concerned. They shall do so in accordance with the detailed technical requirements and operational rules referred ***to in*** paragraph 5, where such rules have been adopted and are applicable.

Or. en

## Amendment 17

### Proposal for a regulation

#### Article 4 – paragraph 3 – subparagraph 2

##### *Text proposed by the Commission*

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

##### *Amendment*

However, where such use of automated means is not possible due to the travel document not containing machine-readable data, ***or where it is technically impossible to collect the API data referred to in Article 4(2), points (a) to (d), of Regulation (EU) [API border management] using automated means,*** air carriers shall collect that data manually, in such a manner as to ensure compliance with paragraph 2.

Or. en

## Amendment 18

### Proposal for a regulation Article 5 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 5a*

##### *Selection of intra-EU flights*

**1. Member States that decide to apply Directive (EU) 2016/681 to intra-EU flights shall for the selection of those flights:**

**(a) take into account only criteria which are relevant for the prevention, detection, investigation and prosecution of terrorist offences and serious crime having an objective link, including an indirect link, with the carriage of passengers by air; and**

**(b) in the absence of a genuine and present or foreseeable terrorist threat, only target specific routes, travel patterns or airports for which there are indications of suspicious activities that justify the transmission and processing of API data.**

**2. The Commission shall facilitate the exchange of views on the choice of selection criteria, as well as, on a voluntary basis, of selected flights.**

Or. en

## Amendment 19

### Proposal for a regulation Article 6 – paragraph 4 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

However, if those logs are needed for procedures for monitoring or ensuring the security and integrity of the API data or the lawfulness of the processing operations, as referred to in paragraph 2, and those procedures have already begun at the moment of the expiry of the time period

However, if those logs are needed for procedures for monitoring or ensuring the security and integrity of the API data or the lawfulness of the processing operations, as referred to in paragraph 2, and those procedures have already begun at the moment of the expiry of the time period

referred to in the first subparagraph, air carriers may 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.

referred to in the first subparagraph, air carriers may keep those logs for as long as necessary for those procedures. In that case, they shall ***inform the Commission and*** immediately delete those logs when they are no longer necessary for those procedures.

Or. en

## Amendment 20

### Proposal for a regulation Article 8 – paragraph 1

*Text proposed by the Commission*

PIUs and air carriers shall ensure the security of the API data, in particular API data constituting personal data, that they process pursuant to this Regulation.

*Amendment*

***Pursuant to Article 17 of Regulation (EU) [API borders] eu-LISA***, PIUs and air carriers shall ensure the security of the API data, in particular API data constituting personal data, that they process pursuant to this Regulation.

Or. en

## Amendment 21

### Proposal for a regulation Article 12 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

Costs incurred by the Member States in relation to their connections to and integration with the router referred to in Article 10 ***shall be borne by the general budget of the Union.***

*Amendment*

***The funding referred to in Article 7(2)(a) and (b) of Regulation (EU) 2021/1149 of the European Parliament and of the Council <sup>1a</sup> may provide support for costs incurred by the Member States in relation to their connections to and integration with the router referred to in Article 10 of this Regulation and the maintenance thereof, in accordance with the eligibility rules and co-financing rates set out in Regulation (EU) 2021/1149.***

---

***<sup>1a</sup> Regulation (EU) 2021/1149 of the European Parliament and of the Council of 7 July 2021 establishing the Internal***

## **Amendment 22**

### **Proposal for a regulation Article 12 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

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

***(a) costs for project management, including costs for meetings, missions and offices;***

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

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

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

## **Amendment 23**

### **Proposal for a regulation Article 12 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. Member States shall also bear the costs arising from the administration, use and maintenance of their connections to and integration with the router.*** ***deleted***

## **Amendment 24**

### **Proposal for a regulation Article 20 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. In conducting its evaluation, the Commission shall also pay special attention to the impact of this Regulation on:***

- (a) passengers, including their travel experience;***
- (b) air carriers.***

Or. en

## **Amendment 25**

### **Proposal for a regulation Article 20 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. The evaluation referred to in paragraph 1 shall also include a review of the necessity, proportionality and effectiveness of including the mandatory collection and transfer of API data relating to intra-EU flights within the scope of this Regulation.***

Or. en

## **EXPLANATORY STATEMENT**

### **1. Context of the proposal**

The Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data ('API Directive') aims at improving border controls and combating illegal immigration. It requires Member States to establish an obligation for air carriers to transmit, at the request of the authorities responsible for carrying out checks on persons at external borders, information concerning the passengers they will carry. The API Directive establishes no obligation for Member States to request the transmission of data. The API Directive contains an open list of data categories that Member States may request. The API Directive is in principle intended as an instrument to enhance border security, but it allows the Member States to use the personal data collected for law enforcement purposes as well.

The Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime ('PNR Directive') aims to facilitate the prevention, detection, investigation and prosecution of terrorist offences and serious crime and thus enhance the internal security of the Union. The PNR Directive establishes an obligation for Member States to introduce provisions laying down obligations on air carriers operating extra-EU flights to transfer PNR data they collect. The PNR Directive allows Member States to apply the Directive to intra-EU flights. The PNR Directive includes API data in the list of PNR data.

On 21 June 2022, the Court of Justice of the European Union (CJEU) in case C-817/19 confirmed the validity of the PNR Directive. The CJEU also provided clarifications on certain provisions, in particular a number of conditions regarding the selection criteria for flights that Member States must comply with if they apply the PNR Directive to intra-EU flights.

The context of the API and PNR Directives is that in 2019, the EU recorded about 1 billion air passengers, half of which crossed the EU's external borders. The Schengen Borders Code requires effective and systematic checks of people crossing the EU's external borders. Advance passenger information is one of the tools for border authorities to anticipate their workload and perform adequate border controls.

The collection and transfer of API is in itself nothing new, nor is it limited to the EU. It is a commitment of all EU Member States since they are all parties to the Chicago Convention of the International Civil Aviation Organisation (ICAO). Furthermore, it is a requirement from many countries of destination, such as the United States, Japan, France, United Kingdom, China, India, Australia, Canada, Mexico and Thailand. API collection is an established practice under the abovementioned API Directive.

### **2. Content of the proposal**

The API and PNR Directives leaves a lot of room for variable implementation. As a result, the API collection practice varies widely among EU Member States. Airlines have to deal with each Member State individually and are confronted with varying requests for data categories,

modes of data transfer and safeguards including data security and privacy.

In order to remedy this situation, the Commission has proposed twin Regulations:

- A Regulation on the collection and transfer of advance passenger information (API) for enhancing and facilitating external border controls, amending Regulation (EU) 2019/817 and Regulation (EU) 2018/1726 and repealing Council Directive 2004/82/EC ('API borders');
- A Regulation on the collection and transfer of advance passenger information for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, and amending Regulation (EU) 2019/818 ('API law enforcement').

In the Commission's design, the API borders proposal contains the main elements, including with regards to the technical solution (the router). The API law enforcement proposal has its own legal base and contains the elements relevant to the collection, transfer and processing of API data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime by Member States' competent authorities.

Taken together, the proposals include the following main changes compared to the API Directive currently in force:

- **A closed and exhaustive list of API data elements.** Under the current API Directive, the list of data elements is open.
- **Automated collection of API data**, which should give more reliable data. Under the current API Directive, the collection can be done manually.
- **Mandatory API data collection for the purposes of enhancing and facilitating the efficiency of border checks** at external borders and of combating illegal immigration on all flights entering the Union. Under the current API Directive, Member States may request this data but are not obliged to do so.
- **Mandatory API data collection for law enforcement purposes** for all flights to and from the EU, as well as on flights within the EU. Under the current API Directive, Member States may use the personal data for law enforcement purposes, but the mandatory nature of the collection is new.
- **Streamlined transmission of API data** by air carriers to a new **router**, which will be developed and managed by the EU Agency for the Operational Management of Large-scale IT Systems (eu-LISA).
- An **automatic filter in the router** executing the automatic transmission from the router of API data of extra-EU flights and selected intra-EU flights to Member State Passenger Information Units ('PIUs') and the automatic deletion of all other API data.

In its Opinion 6/2023 on the Proposals for Regulations on the collection and transfer of advance passenger information (API), the European Data Protection Supervisor (EDPS) assessed the proposal to collect API data from all flights and to have this data automatically filtered by the proposed router on the basis of pre-selected flights positively from a data protection perspective.

### **3. Rapporteur's assessment of the proposal**

The rapporteur responsible for API law enforcement welcomes the Commission proposal to replace the obsolete API Directive with two new Regulations. The rapporteur agrees with the Commission that it is necessary to remedy the current situation of variable interpretation and application of the API Directive as well as of API elements of the PNR Directive. The rapporteur is of the opinion that API data and PNR data complement each other and that together they can provide more reliable information. This will mean more limited and targeted interventions by law enforcement authorities and less intrusion of travellers' privacy. By way of example, the rapporteur would like to point out that criminals often book flights (generating PNR data) but without cancellation do not board these flights. The unavailability of API data based on passengers that boarded the flight in such situations leads to unnecessary interventions by law enforcement authorities using limited capacities and sometimes disturbing innocent travellers. Another example is the issue of date of birth, which is often not available to air carriers at the time of booking, but which only becomes available at the time of check in. Date of birth is an extremely important data element, which is crucial in avoiding false hits based on name only.

The rapporteur also supports the collection of API data by air carriers using automated means. Not only does this avoid unnecessary problems due to innocent typos and spelling mistakes. It also stops criminals from playing with such typos, which they currently do enthusiastically to avoid detection. Nevertheless, the rapporteur wants to ensure fair treatment for all passengers in all situations. The rapporteur insists that manual collection of API data remain possible for documents not containing a 'Machine-Readable Zone' (MRZ) and for situation of technical impossibility to automatically collect the data. Furthermore, the rapporteur is of the opinion that the Commission should make sure that the obligation to use automated means for the collection of API data does not lead to disproportionate obstacles, such as additional airport check-in fees, for passengers unable to use other means for automated check-in.

The rapporteur strongly supports the inclusion of intra-EU flights in the scope of API law enforcement. With the CJEU, the rapporteur believes that this is proportionate, taking into account the security situation and travel patterns of criminals and terrorists. However, the rapporteur also believes that the selection of intra-EU flights must be strictly limited as indeed demanded by the CJEU. Therefore, the rapporteur introduces some parameters for Member States based on the Court ruling. Furthermore, the rapporteur instructs the Commission to facilitate further steps to increase cohesion among the Member States regarding their selection of intra-EU flights.

The rapporteur believes that the router solution, once operational, could be useful for the transfer of PNR data as well as a secure and reliable and, for the airlines cost-effective, solution. Such a step would be in line with the requirement that Member States take one decision regarding the selection of intra-EU flights for the application of both the PNR Directive and the proposed API Regulations.

The rapporteur insists on stringent data security requirements, which should be embedded in the API borders Regulation.

The rapporteur believes that Member States can use the Internal Security Fund to claim compensation for costs made related to the proposed new technical solution (the router).

The rapporteur believes that delegation of powers to the Commission is appropriate in a number of cases described in the Regulation. The rapporteur insists that this is done via delegated acts, because it gives airline industry representatives more of a voice in technical decisions such regarding the choice of data formats and it places Parliament on an equal footing with the Council.

The rapporteur insists on including in the regular Commission evaluation the impact of this Regulation, also in combination with other legislation applying to passenger air travel, on passengers and on air carriers.