

Collection and transfer of advance passenger information for enhancing and facilitating external border controls

2022/0424(COD) - 13/12/2022 - Legislative proposal

PURPOSE: to present new rules on the collection and transfer of advance passenger information (API) to facilitate external border controls, combat illegal immigration and increase internal security.

PROPOSED ACT: Regulation of the European Union and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: Advance Passenger Information (API) is information on a passenger collected at check-in or at boarding. It includes information about the passenger and information about their flight. In 2019, the International Civil Aviation Organisation (ICAO) reported 4.5 billion passengers globally carried by air transport on scheduled services, with over half a billion passengers that enter or leave the EU every year. This puts a strain on the external air borders of the EU as all travellers, meaning non-EU nationals, and EU citizens crossing the external borders, should be effectively and systematically checked against the relevant databases. To ensure that checks can be performed efficiently on every air passenger, there is a need to speed up border controls at airports and ensure the facilitation of passenger flows while at the same time maintaining a high level of security.

The existing legal framework on API data, which consists of Council Directive 2004/82/EC and national law transposing that Directive, has proven important in improving border controls, notably 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.

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**.

CONTENT: this proposed Regulation presents new rules on the collection and transfer of advance passenger information (API) to facilitate external border controls, combat illegal immigration and increase internal security. It lays down the rules on:

- the **collection** by air carriers of advance passenger information ('API data') on flights into the Union;
- the **transfer** by air carriers to the router of the API data;
- the **transmission** from the router to the competent border authorities of the API data.

It will apply to air carriers conducting scheduled or non-scheduled flights into the Union.

Overall, the proposal contains:

- provisions for the **collection and transfer** of API data, namely a clear set of rules for the collection of API data by air carriers, rules regarding the transfer of API data to the router, the processing of API data by competent border authorities, and the storage and deletion of API data by air carriers and those authorities;
- provisions for the **transmission** of API data through a **central router** which will act as the single point of reception and onward distribution of data, replacing the current system comprised of multiple connections between air carriers and national authorities. More specifically, it includes provisions describing the main features of the router, rules on the use of the router, the procedure for the transmission of API data from the router to the competent border authorities, deletion of API data from the router, the keeping of logs, and the procedures in case of a partial or full technical impossibility to use the router;
- specific provisions on the **protection of personal data**. More specifically, it specifies who the data controllers and data processor are for the processing of API data constituting personal data pursuant to this Regulation. It also sets out measures required from eu-LISA to ensure the security of data processing, in line with the provisions of Regulation (EU) 2018/1725. It sets out measures required from air carriers and competent border authorities to ensure their self-monitoring of compliance with the relevant provisions set out in this Regulation and rules on audits;
- specific issues relating to the **router**. It contains requirements on the connections to the router of competent border authorities and air carriers. It also sets out the tasks of eu-LISA relating to the design and development of, the hosting and technical management of, and other support tasks relating to, the router. It also contains provisions concerning the costs incurred by eu-LISA and Member States under this Regulation, in particular as regards Member States' connections to and integration with the router. It also sets out provisions regarding liability for damage caused to the router, the start of operations of the router and the possibility of voluntary use of the router by air carriers subject to certain conditions;
- provisions on supervision, possible **penalties** applicable to air carriers for non-compliance of their obligations set out in this Regulation, rules relating to statistical reporting by eu-LISA, and on the preparation of a practical handbook by the Commission;

Budgetary implications

This proposal will have an impact on the budget and staff needs of eu-LISA and Member States' competent border authorities.

For eu-LISA, it is estimated that an additional budget of around EUR 45 million (33 million under current MFF) to set-up the router and EUR 9 million per year from 2029 onwards for the technical management thereof, and that around 27 additional posts would be needed for to ensure that eu-LISA has the necessary resources to perform the tasks attributed to it in this proposed Regulation and in the proposed Regulation for the collection and transfer of API data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

For Member States, it is estimated that EUR 27 million (EUR 8 million under the current Multiannual Financial Framework) dedicated to upgrading the necessary national systems and infrastructures for border management authorities, and progressively up to EUR 5 million per year from 2028 onwards for the maintenance thereof, could be entitled for reimbursement by Border Management and Visa Instrument fund. Any such entitlement will ultimately have to be determined in accordance with the rules regulating those funds as well as the rules on costs contained in the proposed Regulation.

