

# Advance passenger information (API) to enhance border checks

## OVERVIEW

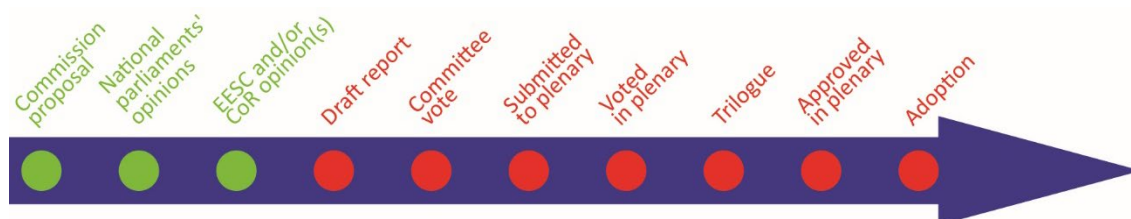
In December 2022, the Commission presented two proposals to revise the rules on the collection and transfer of advance passenger information (API) data – data collected by air carriers at check-in and sent to border control authorities in the country of destination prior to a flight's take-off. The current directive on the collection and transfer of API data will be replaced by two regulations: one on the collection and transfer of API data for border management purposes, and another on the collection and transfer of API data for law enforcement purposes.

The proposal on the collection and transfer of API data for border management seeks to enhance and facilitate the effectiveness and efficiency of border checks at external borders and to combat irregular immigration. It provides a revised and extended list of API data and makes mandatory the collection of API data on all scheduled and non-scheduled flights into the EU. It also establishes a new technical solution (a router) to enable air carriers to transfer API data to the competent national authorities through a single, centralised system, under strict data protection and security rules.

The proposal falls under the ordinary legislative proposal where the European Parliament and the Council act as co-legislators. In the European Parliament, the rapporteur appointed in the Committee on Civil Liberties, Justice and Home Affairs (LIBE) has started preparing a draft report.

**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.**

Committee responsible:	Civil Liberties, Justice and Home Affairs (LIBE)	COM(2022) 729 13.12.2022
Rapporteur:	Jan-Christoph Oetjen (Renew, Germany)	2022/0424(COD)
Shadow rapporteurs:	Jeroen Lenaers (EPP, Netherlands) Marina Kaljurand (S&D, Estonia) Tineke Strik (Greens/EFA, the Netherlands) Assita Kanko (ECR, Belgium) Nikolaus Fest (ID, Germany) José Gusmão (The Left, Portugal)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Publication of draft report	



## Introduction

Advance passenger information (API) is data collected by air carriers at check-in and sent to border control authorities in the country of destination prior to a flight's take-off. API data includes biographic data of the passenger as well as some information relating to their flight. The establishment of systems for the collection and transfer of API data is an international standard under the Convention on International Civil Aviation ([Chicago Convention](#)) since 2017. In the EU, the collection and transfer of API data is regulated by [Council Directive 2004/82/EC](#) (API Directive), which the participating EU/Schengen States<sup>1</sup> had to transpose by September 2006.

In its 2022 [work programme](#) the Commission announced its intention to update the rules on the obligation of carriers to communicate API data. In December 2022, the Commission presented two proposals to revise the rules on the collection and transfer of API data. The first proposal ([COM\(2022\) 729](#)) aims to revise the API rules in order to enhance and facilitate external border checks. The second ([COM\(2022\) 731](#)) amends the API rules to improve the prevention, detection, investigation and prosecution of terrorist offences and serious crime. The proposals are included in the EU legislative priorities for 2023 and 2024, as listed in the [joint declaration](#) of the European Parliament, the Council and the European Commission.

## Existing situation

The existing legal framework on API data consists of the API Directive and the national law [transposing](#) that directive. The API Directive imposes an obligation on air carriers to transmit, **upon request**, passenger data to the Member State of destination for flights in-bound from a third country. API data are used to improve border checks at the EU's external borders and to combat illegal immigration. They can also be used for law enforcement purposes, in accordance with national law.

Whereas the API Directive obliges air carriers to collect and transfer API data (upon request), the directive **does not impose an obligation** on Member States to request API data from carriers. In fact, many Member States did not have an API system in place for many years after the adoption of the API Directive. According to the Commission's [evaluation report of the directive](#), only 22 implementing countries out of the 31 (74 %) collect API data for all airports with extra-EU/Schengen flights. Even where Member States request API data, their national authorities do not always use API data in a consistent manner. 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 the competent authorities. Moreover, the collection of API data is not in line with **international API data standards** (such as the WCO/IATA/ICAO API [guidelines](#)).

The collection and transfer of API data allows border guards to perform pre-entry checks on the identity of passengers and the validity of their travel document. [Regulation \(EU\) 2016/399](#) (the Schengen Borders Code) lays down rules on checks on persons at the external borders, including the obligation for Member States to carry out checks against relevant databases. Article 8(2)(e) of the code provides that border checks may be carried out in advance on the basis of API data. However, this possibility is not fully exploited in practice and pre-arrival information is not efficiently integrated in external border control procedures.

The revision of the API Directive takes place in the context of broader efforts to strengthen and expand the EU's **architecture of information systems** that support the EU's policies on border management and internal security. The upgrade of existing EU-wide (centralised) information systems (the Schengen information system – [SIS](#), and the visa information system – [VIS](#)), the establishment of new information systems (the entry-exit system – [EES](#), and the European travel authorisation system – [ETIAS](#)), and the creation of an interoperability framework for these systems seek to enable systematic checks of persons crossing the external borders against all relevant information available in these systems. Under the API Directive, the collection and transfer of API

data is made through decentralised systems linking air carriers to national authorities in each participating state. As the Commission points out in the proposal's [explanatory memorandum](#), establishing a **centralised transmission mechanism for API data** at EU level is 'a logical continuation' of the interoperability concept, that could bring efficiency and data security gains, and would allow for the future integration of the API system into the [interoperability framework](#) (which provides a single interface for searches in all relevant databases to facilitate the identification of third-country nationals crossing the EU's borders).

[Directive \(EU\) 2016/681](#) on the use of passenger name records (PNR Directive) obliges air carriers to transfer passenger data (travel dates, itinerary, ticket information, contact details, means of payment and baggage information) to the Member States' passenger information units (PIUs). The Member States process PNR data for the purposes of **preventing, detecting, investigating and prosecuting** terrorist offences and serious crime. Article 3(1) of the API Directive limits its scope to inbound flights from third countries. However, according to the 2020 evaluation study of the API Directive, 12 implementing countries request API data for intra-EU/Schengen flights, on the basis of Article 2(1) of the PNR Directive.

The combined use of API and PNR data is [believed](#) to improve the data quality of the latter, limiting the number of 'false-positive' automatic matches in the automated processing of PNR data. However, the **partial overlap** between the API and PNR data creates inconsistencies and uncertainty for both data subjects and national authorities. In its 2022 judgment in the [Ligue des droits humains](#) (Case C-817/19), the Court of Justice of the European Union (CJEU) confirmed the validity of the PNR Directive, while setting out strict limitations to be respected when transposing and applying it (e.g. with regard to the retention period of the data, access to data, and the processing of data when cross-checked with other databases). The Court also found that the EU law precludes national legislation from establishing a system for the transfer, by air carriers, and for the processing, by the competent authorities, of the PNR data of **all intra-EU flights**. Such processing can be allowed when a Member State is 'confronted with a terrorist threat which is shown to be genuine and present or foreseeable'.

## Parliament's starting position

The API Directive was adopted under 'exceptional circumstances', without the opinion of the European Parliament, following the Madrid terrorist attacks in March 2004 and the Council's [declaration](#) deciding to expedite the adoption of several policy measures aimed at combatting terrorism.

In its 2020 [resolution](#) on the [EU security union strategy](#), the European Parliament stressed that the API Directive has contributed to more efficient border controls and the identification of people posing security threats, and that it expected that the Commission's proposal be accompanied by a thorough impact assessment, including of its fundamental rights implications. In its 2020 [decision](#) on discharge in respect of the implementation of the budget of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice ([eu-LISA](#)) for the financial year 2018, the European Parliament observed the possible development of a centralised router for the exchange of API and PNR information among Member States. It noted that 'the use of such information for checks against large-scale IT systems has been proposed as an element of interoperability of future interest'.

## Preparation of the proposal

In its EU security union strategy from July 2020, the Commission announced the revision of the API legal framework to ensure a more effective use of the information, while guaranteeing compliance with data protection legislation and facilitating the flow of passengers. The reform was also announced in the Commission's Schengen [strategy](#) of June 2021. In its 2022 state of Schengen

[report](#), the Commission reiterated the need for air carriers to transmit API data at the request of the competent authorities, to help combat irregular immigration and ensure effective border controls.

The first [evaluation](#) of the implementation of the API Directive took place in 2012. In December 2018, the Commission put forward an evaluation [roadmap](#) for the API directive, followed by a [public consultation](#) (between 10 September and 3 December 2019). It also presented an [inception impact assessment](#) (opened for feedback between 5 June and 14 August 2020) and commissioned an evaluation [study](#), which was published in February 2020. The evaluation study revealed discrepancies between the API Directive and other EU instruments and existing international standards on passenger information. Moreover, the lack of harmonisation in the implementation of the directive was an obstacle to its effectiveness and coherence.

In line with the Better Regulation Guidelines, the Commission prepared an [Impact Assessment](#) (IA) for both proposals aiming to revise the API rules. The IA report assessed policy options on the scope API data and how to collect it. According to the [EPRS initial appraisal](#), however, it is questionable whether they qualify as alternative options under the Better Regulation Guidelines'. The IA retained as the preferred option the collection of API data on all relevant inbound flights, with the collection by air carriers of certain API data by automated means only. The report also assessed but discarded the option of collecting, at EU level, API data from other means of transport, such as maritime, rail and bus transport operators.

## The changes the proposal would bring

The API Directive will be **replaced by two regulations**, which means that the new API rules will be directly and uniformly applicable in the Member States.<sup>2</sup> The proposal<sup>3</sup> on the collection and transfer of API data for border management purposes seeks to enhance the effectiveness and efficiency of border checks at external borders and combat illegal immigration. The proposed regulation would be based on [Articles 77\(2\)\(b\) and \(d\)](#) and [79\(2\)\(c\) TFEU](#) (as the current API Directive).

The proposal provides a **revised list of API data** (extending the number of data points from 9 to 14) and detailed rules on the collection, transmission, storage, and deletion of API data. The **collection of API data will become mandatory** on all scheduled and non-scheduled flights into the EU. It will also become mandatory for air carriers to collect certain API data through **automated means**, based on automatic reading of information from the machine-readable data on travel documents (where possible). The proposal lays down strict rules **limiting the collection of identity data** and the extent of the data processing to the minimum necessary, including a limited storage period (48 hours).

**A new technical solution** (a router) will be established to enable air carriers to transfer API data to the competent national authorities through a single, centralised system. The technical solution will be developed and managed by eu-LISA. To avoid duplication of technical components, the new system will rely on the ETIAS carrier gateway (which enables air carriers to check the status of visa-exempt third-country nationals travelling to the Member States) without mixing the two data processes or altering the specific data access rules. The router will serve only to facilitate the transmission of API data and will not store API data. In this sense, the proposed system does not constitute a new EU-wide information system that stores data at EU level (such as the SIS). Nevertheless, the proposal's explanatory memorandum states that establishing a centralised transmission mechanism for API data at EU level is 'a logical continuation' of the **interoperability concept**, which 'could in the future lead to using this data to query various databases (SIS, Europol data) via the [forthcoming] European Search Portal'.

Under the proposal, Member States must establish **rules on the penalties to be applicable to infringements** of this regulation and take all measures necessary to ensure they are implemented. The penalties would have to be effective, proportionate and dissuasive.

According to the financial statement included in the proposal, the Commission estimates that the revision of the API system will require an additional budget of around **€45 million** (€33 million under the current multiannual financial framework – MFF) to set up the router and **€9 million per year** from 2029 onwards for technical management. The costs for Member States are estimated at about **€27 million** (€8 million under the current MFF) for upgrading their national systems and infrastructure, and progressively up to **€5 million** per year from 2028 onwards for maintenance. These costs could be covered by the Border Management and Visa Instrument part of the Integrated Border Management Fund.

The Commission's IA also estimates costs of **€75 million** to be incurred by air carriers. However, the IA argues that these costs will be off set by lower operating costs due to simplified technical infrastructure (the router) and reduced penalties for poor or missing travel data.

## Advisory committees

In its [opinion](#) on the API proposal(s), issued on 26 April 2023, the **European Economic and Social Committee** (EESC) recognised the need for harmonised implementation and monitoring of the API rules. It recommended further clarifying the norms on penalties imposed on air carriers, and suggested establishing a 'threshold of tolerance' at EU level for API data collection and transfer errors.

## National parliaments

The [deadline](#) for the submission of reasoned opinions on the grounds of subsidiarity was 4 April 2023. Opinions on the application of the principles of subsidiarity and proportionality concerning the two API proposals were issued by the [Spanish Parliament](#), the [Portuguese Parliament](#), and the [Senate of the Kingdom of the Netherlands](#). The Dutch Senate raised a number of questions about the necessity, effectiveness, and the fundamental rights (right to privacy) implications of the two proposals.

## Stakeholder views<sup>4</sup>

In response to the Commission's inception impact assessment, published before the presentation of the API proposal(s), the [World Travel & Tourism Council](#) (WTTC), a business association, supported measures to improve the efficiency of the API system and recommended that 'sufficient consideration should be given to consistency, practicality and proportionality of the data to be collected'. The [International Air Transport Association](#) (IATA), a trade association for the airline companies, considered that obliging air carriers to collect API data only by automated means is 'unbalanced and disproportionate' as this 'neglects the operational reality of the carriers operations while preventing their prerogative on how to run their own business'.

In its [opinion](#) on the API proposal(s), issued on 8 February 2023, the **European Data Protection Supervisor** (EDPS) focused primarily on the necessity and proportionality of the envisaged processing of API data from intra-EU flights (for law enforcement purposes) and its compatibility with the PNR Directive as interpreted by the CJEU judgment in case C-817/19. The EDPS recommended that eu-LISA consider the use of pseudonymisation and/or encryption of the API data when designing and developing the router. It also recommended clarifying that in the event of a technical problem preventing the router from transmitting the API data to the competent national authorities, the data would be automatically deleted.

## Legislative process

The Commission presented the [proposal](#) to revise the API rules in order to enhance and facilitate external border checks on 13 December 2022. The proposal falls under the ordinary legislative proposal where the European Parliament and the Council act as co-legislators.



[Discussions](#) within the Council and its preparatory bodies started in December 2022. In the European Parliament, the proposal has been [assigned](#) to the Committee on Civil Liberties, Justice and Home Affairs (LIBE). The appointed rapporteur, Jan-Christoph Oetjen (Renew, Germany), is preparing a draft report.

## EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Dumbrava C., [Advance Passenger Information \(API\) to tackle terrorism and serious crime](#)

, EPRS, European Parliament, June 2023.

Dumbrava C., [The EU's external borders: Key trends and developments](#), EPRS, European Parliament, March 2023.

Frizberg D., [Advance passenger information \(API\): Revising the rules](#), initial appraisal of a European Commission impact assessment, EPRS, European Parliament, June 2023.

Huemer M.-A., [Revision of Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data](#), initial appraisal of a European Commission impact assessment, EPRS, European Parliament, December 2022.

Vavoula N. and Mitsilegas V., [Advance Passenger Information \(API\) – An analysis of the European Commission's proposals to reform the API legal framework](#), study for the European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs, June 2023.

## OTHER SOURCES

[Collection and transfer of advance passenger information for enhancing and facilitating external border controls](#), Legislative Observatory (OEL), European Parliament.

## ENDNOTES

- <sup>1</sup> There are 31 participating states to the API directive: 27 EU Member States and 4 Schengen associated countries (Iceland, Liechtenstein, Norway, and Switzerland).
- <sup>2</sup> This is limited to flights from a third country or a non-participating EU/Schengen State into the territory of a participating EU/Schengen State.
- <sup>3</sup> The proposal is closely linked to the proposal for a regulation on the collection and transfer of API data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, insofar as both proposals contain similar provisions on the list of API data elements, the collection of API data by automated means and the transfer of the data to the router. The legislative financial statement is also identical for both proposals.
- <sup>4</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

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