Council of the European Union

MEETING DOCUMENT

From:	UK delegation
To:	JHA Counsellors/COSI Support Group
Subject:	Legal framework for intra-EEA API
	- Discussion document

Advanced Passenger Information (API)

API includes data which allows for the identification of the passenger, his/her travel documents, incoming flight, destination and time of departure and arrival.

API data is used to identify 'known' individuals for immigration or law enforcement purposes. The data enables the early identification of such individuals enabling both an appropriate response by the authorities and facilitating the travel of the vast majority of passengers.

Current EU Legal Framework for API

Directive 2004/82/EC on the obligation of carriers to communicate passenger data ("the API Directive"[1]) was adopted on 29 April 2004. The Directive has two main aims, namely (1) improving border controls and (2) combating illegal immigration.

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[1]   OJ L261, 6.8.2004, p. 24

The Directive permits Member States to use API data for law enforcement purposes, and to allow its use as evidence in proceedings on enforcement of the laws on entry and immigration, and the protection of public order and national security. It places requirements on carriers to communicate information – at the time of check-in – to the relevant national authority in charge of border checks at the external border about passengers travelling from a third country to a Member State. Data transmission, processing and retention obligations applying to carriers (and national authorities) are specified, and sanctions for carriers are foreseen in cases of infringements.

What has changed?

The threat posed by foreign fighters and the increasingly international nature of serious organised crime demonstrates the value of passenger data on intra-EEA routes. The majority of journeys into Member States are on an intra-EEA basis, and it is known that those seeking to evade law enforcement break up their journeys within the EU to avoid detection.

We have seen growing consensus about the need for swift agreement of a PNR Directive which provides for the collection of intra-EEA passenger data. Alongside this, we should make sure that **API data is used in conjunction with Passenger Name Record (PNR) data to address the growing and evolving threat**. Effective use of all passenger data (both API and PNR) enables law enforcement agencies to address the serious threats posed by foreign fighters, terrorists and organised crime groups. It also enables the protection of vulnerable individuals by identifying those involved in child exploitation and human trafficking.

A possible way forward

In order for law enforcement agencies to effectively tackle the growing and evolving threat posed to European citizens, in particular from foreign fighters, **it is necessary that they have a robust legal framework to access passenger data on intra-EEA routes.**

The existing API Directive does not explicitly provide for the collection on API data on intra-EEA routes. This has led to Member States who wish to obtain such data approaching carriers on an individual basis using domestic legislative powers. As a result, a patchwork of agreements has emerged since the API Directive was adopted, leading to uncertainty on which data is obtained providing difficulties for data owners, carriers, governments, law enforcement, data protection authorities and citizens. **An EU legal framework for the provision of API data on intra-EEA routes would provide clarity and certainty to all the stakeholders involved.** It would clearly set out their rights and responsibilities and would ensure that the data was collected and used consistently across the EU. A uniform system would replace the patchwork of agreements that has emerged since the API Directive was adopted.

Questions for discussion

1. Do delegations agree that a clear legal framework for the provision of passenger data on intra-EEA journeys would benefit law enforcement agencies, data providers and citizens?

2. How could an EU legal framework that provides for intra-EEA API best be achieved?