

Brussels, 2 March 2023
(OR. en)

Interinstitutional File:
2022/0424(COD)

6853/1/23
REV 1

LIMITE

IXIM 37
ENFOPOL 85
FRONT 64
AVIATION 52
DATAPROTECT 52
JAI 226
COMIX 100
CODEC 263

NOTE

From: General Secretariat of the Council
To: Delegations
No. prev. doc.: CM 1619/23; 15720/22
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
- Compilation of replies by delegations

Following the request for written contributions on the above-mentioned proposal (CM 1619/23), delegations will find in Annex a compilation of the replies as received by the General Secretariat. This revision (REV 1) includes contributions received from Spain and Malta.

ANNEX

WRITTEN REPLIES SUBMITTED BY DELEGATIONS

CZECHIA.....	3
GERMANY.....	5
ESTONIA.....	10
SPAIN.....	12
FRANCE.....	14
CROATIA.....	24
LATVIA.....	25
LITHUANIA.....	26
HUNGARY.....	27
MALTA.....	28
THE NETHERLANDS.....	29
POLAND.....	34
ROMANIA.....	35
SLOVAKIA.....	36
SWITZERLAND.....	37

CZECHIA

CZ Comments on Chapter 5 of API regulation (15720)

Article 20

In light of Art. 17, CZ proposes to either delete the word “secure” in second subparagraph of paragraph 1, or to refer back to Art. 17 in this regard.

In para 2, CZ prefers implementing acts to delegated acts. CZ does not share the position of Commission that these acts should be prepared in inclusive manner, because the issues at stake concern only Member States’ competent authorities, and do not involve carriers. Presuming the impact on data formats used by carriers (Article 21), it is even more important to have a workable system.

Article 21

CZ would welcome the possibility to consider whether a delegated act could be replaced by an implementing act.

Article 23

CZ would welcome the possibility to consider whether a delegated act could be replaced by an implementing act, as is the case, for example, in the draft Prüm II Regulation.

In reaction to the demand from Swiss delegation about the ability of the router to automatically check data quality and completeness, would it in that case notify the carrier automatically about the fulfilment of these conditions?

In addition, would it be possible to clarify what would happen if the destination of transferred data would not be recognized by the router? For example, due to some technical problems or data file corruption. In such a case, would authorized eu-LISA personnel have access to transferred data?

Article 25

CZ does not agree with the wording of the Article 25. Paragraphs 2 and 3 of this Article unsystematically undermine the principles of funding established by Common Provision Regulation (CPR) (2021/1060), which includes the Border Management and Visa Instrument (BMVI).

While the aim should be to reduce heavy administrative burden associated with the use of EU funds, the proposed wording provides for its increase by creating special methods and non-systematic mechanisms. In this regard it is essential to make maximum use of the existing rules and mechanisms related to the use of EU funds.

In addition, the chosen formulation of the article does not allow the use of procedures introduced in CPR, such as the use of simplified reporting methods.

Even though the Commission argues that the proposed wording has its advantages, maintaining the clear and transparent principles set out in the CRP 2021/1060 and maintaining the procedures under the existing rules of the BMVI is more important to us than securing 100% of the Union contribution.

Similar wording was used for EES and ETIAS regulation and in practice it proved confusing. It causes interpretation difficulties with controlling and auditing bodies, uncertainty for beneficiaries and above all it creates special types of projects with special set of rules which undermines the generally applied principles.

In regard to aforementioned issues CZ suggests deleting paragraphs 2 and 3 of Article 25 and replacing them with e.g. the following text:

- 2. Costs incurred by Member States in relation to their connections to and integration with the router referred to in Article 20 shall be borne by the general budget of the Union. The funding shall be released from the relevant Funds or Instruments under applicable rules.",
OR
- 2. Costs incurred by Member States in relation to their connections to and integration with the router referred to in Article 20 shall be borne by the general budget of the Union. The funding shall be released from the thematic facility of Instrument for Financial Support for Border Management and Visa Policy, in particular in a form of specific action. Rules and procedures used for BMVI funding shall be used.

In addition to above mentioned comments to the Article 25, it is necessary to clarify the statement in section 1.5.5, which refers to the reduction of the volume of the BMVI thematic instrument. We have a question how to make this change? The financing volume of the thematic instrument is explicitly set in Regulation 2021/1148 and this Regulation would have to be amended in order to change the amount.

GERMANY

IXIM, 8th february 2023

DE: written comments on chapter 5

General comments

DE legal and technical reviews are still ongoing. Against this backdrop, DE maintains the scrutiny reservation on the entire regulatory proposals.

Comments on the presentation by the Commission on the European Maritime Single Window environment:

DE shares the Commissions view that the scope of the two API regulations should not be extended to other modes of transport (bus, rail, sea).

It is true that extending the transmission of API data to additional modes of transport could have a practical added value for the purposes of the two regulations.

However, there are both legal and practical concerns about extending the scope.

From a legal perspective, we have concerns as to whether a regulation by the EU would be justified in view of the existing possibilities of national regulation. According to the API Border Management, member states should be free, as before, to collect API data by modes of transport other than airlines under national law, provided that this is done in accordance with EU law (cf. recital 35 API Border Management).

We have concerns about whether the systematic processing of API data by other carriers would be necessary and proportionate. This is also against the background of the strict requirements of the ECJ in its ruling of June 21, 2022 on PNR data, according to which data processing must be limited to what is absolutely necessary.

For passengers and crew, the extension to other modes of transport would lead to further encroachments on fundamental rights, in particular the right to protection of personal data. The necessity and proportionality of this encroachment was not subject of the impact assessment and they have not been comprehensibly argued so far. In DE, an extension to the bus and rail carriers would have drastic impact on their business models and passengers, which was demonstrated by COM in the impact assessment (cf. ST 15720/22 ADD2, p. 26, 58). Significant changes in the way bus and rail carriers operate may be expected, making these modes of transport much less attractive: In DE it is popular to purchase tickets that are not tied to a specific person and a specific connection. Either such forms of distribution have to be banned in the future or companies would be obliged to collect API data before departure. In addition, technical equipment would have to be procured and installed to check all passengers at boarding and disembarking. These changes would require significant financial investment.

Regarding sea carriers, data processing options based on EU regulations as well as international law already exist. The inclusion of sea carriers in the scope of the regulations would lead to repeated and therefore unnecessary data collection, as COM convincingly explained.

Furthermore, the existing, complex structures of the European Maritime Single Window and already existing EU regulations, such as the Schengen Borders Code, as well as international obligations would have to be taken into account and, if necessary, amended. For further processing for law enforcement purposes, a corresponding legal basis would have to be created, taking into account the ECJ ruling on PNR.

Regarding that the introduction of the router, limited to air carriers, is already a challenging task speaks against the extension to other modes of transport. If further processes have to be set up and thus further carriers have to be connected to the router, the technical introduction of the router would become even more difficult.

In addition, we share the Commissions concerns that the inclusion of other modes of transport in the scope of the regulation would considerably delay the negotiation of the regulations and, in particular, would also counteract the COM's approach of refraining from amending the PNR Directive.

Article-by-article commentation

Article 20

The term "secure" is used in Article 20 para. 1 subpara. 2 and in various other articles (Article 21 para. 1 subpara. 2, Article 23 para. 2 and Article 28 para. 1) without explaining or defining it. COM has already stated that the term "secure" is to be understood in the sense of Article 17. This should be clarified in the wording, e.g. by a reference to Article 17. Proposed wording: "in a manner that is lawful, effective and swift while ensuring security within the meaning of Article 17".

Article 21

We propose to specify the term "secure" in Article 21 para. 1 and refer to our proposal on Article 20.

Article 22

The EDPS, Opinion 6/2023 of 8th february 2023, recommends eu-LISA to consider pseudonymisation and encryption of API data if practically and technically possible. We ask to seize this recommendation by an open-ended provision (if practically and technically feasible) in Article 22.

Article 23

We propose to clarify the term "secure" in the first subparagraph of Article 23(2) and refer to our proposal on Article 20.

According to the second sentence of Article 23(3), eu-LISA shall have access to the API data transmitted to the router when this is strictly necessary for the "maintenance of the router". Even after the explanations of the COM in the IXIM meeting on 8 February 2023, it is still not sufficiently clear to us what is meant by the purpose of "maintenance of the router". Can COM give examples on this? Is it only about fixing technical faults on the router? Or is compliance with external standards by the carriers, such as the standard format, also checked?

We also ask to add the following sentence 3 to Art. 23 para. 3: "As far as eu-LISA accesses personal data for maintenance purposes, it may not use this data for any other purposes".

As already stated in our written comments on Chapter 3, it would be essential that the router has a technical component that detects any deviations from the mandatory standard (measurement of standard compliance) and automatically provides the airlines with corresponding feedback without providing eu-LISA with access to the data itself (so that the statement in paragraph 3 remains unchanged in this respect). We had already pointed out several times that the messaging standards for the transmission of API data have weaknesses which are compensated for within the framework of our national systems. These weaknesses result from an insufficient specification of standards and a lack of binding requirements for a uniform use of the messaging standards. For this reason, API data deliveries from different air carriers differ considerably. The range of different data deliveries requires carrier-specific approaches and individual agreements between national authorities and air carriers for national processability of API data. From DE's point of view, these weaknesses can only be adequately compensated if the detailed regulations for API data transmission already provided for in Art. 6 para. 3 provide for a concretisation of the message standards by which a uniform API data delivery - independent of the supplying air carrier - is made mandatory. The router - and thus also eu-LISA - would then have the task of measuring standard compliance and providing the airlines with automated feedback in the event of inadmissible standard deviations. Otherwise, a significant loss of efficiency of our national systems is to be expected, which will also lead to a loss of safety. In this respect, the two aspects mentioned above are essential DE concerns.

In addition to agreeing and setting binding standards at EU level for the purposes of this Regulation, consideration should also be given to whether an improvement in international standards can be achieved. Creating improved and uniform international standards could have a positive impact on air carriers' compliance with the standards.

DE supports the COM's announcement to examine the question of what practical and legal consequences the provision of real-time flight information via the central routing mechanism would have and asks the COM to come back to this in a forthcoming meeting. In this context, we ask the COM to assess whether, in the COM's view, the provision of such information would be in line with the subsidiarity principle, necessary and proportionate, and also otherwise considered legally and practically feasible, e.g. to be able to determine that API data have not been provided or have not been provided in time, or that a flight for which API data have already been provided has been cancelled or diverted, and thus to promote sanctioning of omitted data provision or the planning of border control measures.

Article 24

Article 24 para. 2 only obliges eu-LISA to provide support to competent border authorities and PIUs. We ask to include a provision that obliges eu-LISA to also provide support to air carriers regarding their connection to the router. We are, for example, thinking of a support hotline for the air carriers.

Article 25

DE supports the COM proposal on the regulation of cost distribution. It ties in with corresponding provisions in other regulations and leads to a fair distribution of the cost burden between the Union and the Member States.

Article 26

We have the following questions on Article 26:

1. Why is there a need for a non-contractual claim for damages at the expense of air carriers? Why is the existing non-contractual liability law of the member states not sufficient to cover potential damages?
2. Why does the regulation provide a non-contractual liability? German tort law is based on the principle of fault-based liability.
3. Which law governs the claim for compensation? Union law (which one?) or subsidiary applicable law of the member state? Usually, comparable liability rules in other regulations contain a provision on the applicable law (for example, Article 20 of Regulation (EU) 2019/816, Article 46 of Regulation (EU) 2019/817, Article 46 of Regulation (EU) 2019/818, Article 58 of Regulation (EU) 2018/1861). Why was this not done here?
4. Who is the claimant? Every potentially injured party or only eu-LISA (as far as eu-LISA has legal capacity)?

Article 28

In the title, the reference should read "Directive 2004/~~82~~/EC".

We ask to clarify that the scope of Article 28 is limited to the processing of API data for the purposes set out in Article 1 of Directive 2004/82/EC. We therefore suggest adding the words "*in particular only for the purposes set out in Article 1 of that Directive*" to the first sentence of Article 28(1). Irrespective of the fact that the use of the router can also be made possible for individual competent authorities of a Member State, the decision to use the router should rest with the Member State and not with the responsible authority. We also suggest to specify the term "secure" used in paragraph 1 as already proposed for Article 20.

In summary, we propose the following wording:

Paragraph 1:

*“Air carriers shall be entitled to use the router to transmit the information referred to in Article 3(1) of Directive 2004/82/EC to one or more of the responsible authorities referred to therein, in accordance with that Directive, **in particular only for the purposes set out in Article 1 of that Directive**, provided that the ~~responsible authority~~ **Member State** concerned has agreed with such use, from an appropriate date set by that ~~authority~~ **Member State**. **The Member State** ~~That authority~~ shall only agree after having established that, in particular as regards both ~~its own~~ the connection **of the responsible authority concerned** to the router and that of the air carrier concerned, the information can be transmitted in a **manner that is lawful, secure, effective and swift manner while ensuring security within the meaning of Article 17.**”*

Paragraph 2 Sentence 2:

*“However, that use shall be discontinued, from an appropriate date set by that ~~authority~~ **Member State**, where that ~~authority~~ **Member State** considers that there are objective reasons that require such discontinuation and has informed the air carrier accordingly.”*

Paragraph 3:

*“The ~~responsible authority~~ **Member State** concerned shall: [...]”*

COM stated that data processing during the two-year transitional period, during which the router can be used voluntarily, is governed by the API Directive, the general European data protection regulations and the national regulations. This should be clarified in the text of the regulation. We suggest adding the following paragraph 4 to Article 28:

„During the period of voluntary use of the router the processing of information will have to comply with the conditions set out in Directive 2004/82/EC, Regulation (EU) 2016/679 and Regulation (EU) 2018/1725 as well as national laws without prejudice to the provisions referred to in Article 39(3)(b).”

We ask for an examination of whether the data protection provisions in the regulation are sufficient. We have noticed, for example, that Article 12, which contains the provisions on the deletion of API data on the router, does not apply in the phase up to the mandatory use of the router (cf. Article 39(2)), although deadlines for deletion on the router are also to be provided for in the phase of voluntary use of the router and Directive 2004/82/EC does not contain any provisions on this.

ESTONIA

EE proposals regarding to COM (2022) 729 final

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

Please find below EE's proposal to amend Article 25. We propose to delete para 2 and 3 and reword para 2.

Article 25

Costs of eu-LISA and of Member States

1. Costs incurred by eu-LISA in relation to the design, development, hosting and technical management 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 Member States in relation to their connections to and integration with the router referred to in Article 20 shall be borne by the general budget of the Union.~~

~~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, including 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.~~

~~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.~~

„2. Costs incurred by Member States in relation to their connections to and integration with the router referred to in Article 20 shall be borne by the general budget of the Union. The funding shall be released from the thematic facility of Instrument for Financial Support for Border Management and Visa Policy, in particular in a form of specific action. Rules and procedures used for BMVI funding shall be used.“

OR

„2. Costs incurred by Member States in relation to their connections to and integration with the router referred to in Article 20 shall be borne by the general budget of the Union. The funding shall be released from the relevant Funds or Instruments under applicable rules.“

Justification: The EC has previously promised to avoid the restrictions that were stipulated in the regulations of the EES and the ETIAS. Yet similar provisions which have proven to be problematic in financing of the systems have been foreseen for API regulations. We consider it necessary to avoid wording in the regulation, which may create disputes on the eligibility of the use of EU funds during the implementation of projects, limit the options developed to simplify the use of the funds and cause additional administrative burden for Member States. As the conditions for the implementation of EU funds have already been agreed (ISF Regulation 2021/1149 (EU) and BMVI Regulation 2021/1148 (EU) and Common Provision Regulation 2021/1060 (EU)), we find that setting additional restrictions in other legislation does not provide any added value in terms of protecting the EU's financial interests or ensuring internal security.

The costs incurred by the Member State in connection with establishing and integrating the connection with the router are planned to be covered by the BMVI and the ISF as well as by the 2028+ period successor HOME funds. We consider it necessary that, in order to fulfill the obligations of the Member States stated in Article 20, the possibility to apply for funds from the BMVI and ISF Thematic Facility shall be foreseen in current funding period, since the obligation in question was not known at the time of the programming of the funds. The EC applies for the same justification in the financial statement of the proposal where it is stated that BMVI Thematic Facility will be decreased in order to reinforce eu-LISA's and DG HOME's budget. It is only fair that the same approach will be taken for Member States. It is also important to emphasize that both the BMVI and the ISF allocation to Estonia have already been fully planned according to the programming rules, therefore we find it necessary to allocate additional funds to the member states for the implementation of all new initiatives.

EE would like to draw attention to the issue that the EC has not proposed to amend fund regulations as was done by the ETIAS regulation. Therefore, it is unclear how and on what legal basis the Thematic Facilities will be decreased.

Last but not least, EE considers its proposal already a compromise. In the period of 2014-2020, the ETIAS top-up was 100% of EU support. According to the BMVI and ISF regulations the maximum EU support for the Specific Action can be 90%. 100% support is only possible for emergency assistance, for actions in accordance with Article 85(2) or (3) of Regulation (EU) 2018/1240 and for operating support. In case other Member States would like to seek for 100% of EU support, the BMVI and ISF regulations must be amended, in which case EE is open for discussions.

SPAIN

Written contributions (Articles 20-28) by Spanish IXIM Delegation on

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

Article 20. Competent border authorities' connections to the router

Comment for art. 20.2, but applicable transversally to the whole text: as a general rule, this Delegation tends to advocate for replacing all references to "Delegated Acts" with "Implementing Acts", since the level of control that Member States exercise over the latter is much higher (in particular, Implementing Acts are formally voted by MS in COM committees, whereas Delegated Acts are not).

Article 21. Air carriers' connections to the router

No comments from this Delegation.

Article 22. eu-LISA's tasks relating to the design and development of the router

- Related to art. 22.2., as above mentioned Spanish delegation prefers replacing the reference to "Delegated Acts" with "Implementing Acts".
- This delegation would very much welcome adding a new epigraph related to including both a management board and a committee of experts as appropriate, in order to enable a follow-up of the eu-LISA activities by Member States.

Article 23. eu-LISA's tasks relating to the hosting and technical management of the router

Art. 23.2. This second paragraph related to the technical management of the router, in view of this Delegation, could include some kind of system to ensure that in the cases of flights that for whichever reasons are not carried out (weather conditions or other incidents), or flights that while flying are sent to other destination different to the one planned, the involved Member States receive proper data maybe using existing tools such as connexion through *Eurocontrol or other means*, avoiding this way that each MS has to obtain the information in a decentralized manner as it happens nowadays.

Article 24. eu-LISA's support tasks relating to the router

No comments from this Delegation.

Article 25. Costs of eu-LISA and of Member States

This Delegation can certainly understand the situation identified by, namely that it is not a nice solution to reduce the amounts available for the ISF and BMVI, which finance MS projects, in order to "transfer" a part to euLISA's budget so that it can cover the costs that the new API router and other central components of the system, initially not foreseen in the current MFF, will generate.

That said, what does not seem very realistic is EE's proposed solution to this problem: to simply delete the two paragraphs that make the distinction between which MS costs can be covered by the EU budget and which cannot, and simply say (in either of the two alternative wordings they propose) that ALL costs will be borne by the EU.

We all know, as the interoperability we are now immersed in teaches us, that there is always a part of the costs to be borne by the MS themselves, while others they can ask for EU funding. So maybe this aspect needs to be drawn a little more finely and better, rather than completely eliminated.

In practical terms, we probably should aim to use terms already used in similar previous texts. This way this Delegation would use ETIAS budgetary formula to be applied in this case, namely to provide for additional resources both for eu-LISA (paragraph 1), and at the same time for the Member States (paragraphs 2 and 3).

Furthermore, Spanish authorities would welcome some kind of written guarantee (in the text) through which it could be compatible to receive some co-financing by the EU, in the cases Member States request for, to afford costs referred in paragraphs 2 and 3, through reformulation of the corresponding national Program, as it has been done for other big ongoing projects.

Articles 26, 27 and 28.

No comments from this Delegation.

FRANCE

Note des autorités françaises

Objet : Note de commentaires suite à l'IXIM du 8 février 2023 sur le règlement API 729 « Frontières » (chapitre V, articles 20 à 28)

Réf. : COM (2022) 729 – Règlement API « Frontières »

Chapitre V : Connexions et dispositions complémentaires relatives au routeur

Article 20 Connexions des autorités frontalières compétentes au routeur

Pour le titre de cet article, les autorités françaises sont en attente de modification de l'article 1^e portant sur l'articulation entre les deux règlements (mention des unités d'informations passagers au même titre que les autorités frontalières compétentes).

Article 21 Connexions des transporteurs aériens au routeur

Les autorités françaises rappellent que par la décision d'exécution (UE) 2017/759 de la Commission européenne, les compagnies aériennes utilisent actuellement des protocoles communs et formats de données lors d'un transfert de données PNR aux UIP, et donc des données API pour les Etats membres qui ont choisi de recevoir les données API au titre de la directive PNR 2016/681, conformément au point 3 de l'annexe de cette décision d'exécution 2017/759.

Un alignement avec les dispositions des règlements d'exécution 2022/1380 et 2022/1409 concernant l'authentification des transporteurs, et le format des données envoyées au portail transporteur EES/ETIAS/VIS est-il envisagé ? Selon ces règlements, les transporteurs sont :

- Tenus de garantir des exigences minimales de sécurité dont gérer les risques en matière de sécurité liés à la connexion au portail et analyser, réagir et surmonter les incidents de cybersécurité ;
- Doivent appliquer les lignes directrices techniques concernant les modalités d'authentification ;
- Disposent d'un temps pour tester la connexion au portail et l'envoi des messages ;
- Peuvent-ils être retirés du dispositif d'authentification en cas de non-respect des exigences en matière de sécurité (si un transporteur y est retiré, quelles sont les modalités envisagées pour qu'il puisse communiquer les données API requises ?) ?

L'agence eu-LISA est également tenue de prévoir au moins l'utilisation des formats EDIFACT/ONU, PAXLST/CUSRES, XML et JSON. Dans le cas contraire, quelles seront les capacités du portail transporteur à traiter des données dans des formats différents ?

La décision d'exécution (UE) 2017/759 sera-t-elle mise à jour, voire abrogée ? Les compagnies et leurs fournisseurs de données devront-ils développer et mettre en œuvre d'autres protocoles et des formats de données différents des normes internationales existantes (WCO/IATA/ICAO *Passenger list message*) ?

À l'inverse, si on laisse le choix aux compagnies de transmettre les données selon leurs propres formats, et que ces derniers ne sont pas pris en compte par les systèmes d'information des Etats-membres, alors ces messages seront-ils bien considérés comme non conformes ? Les données ne seront donc pas disponibles et non traitées. Le coût financier pour s'adapter à chaque compagnie sera exponentiel. Est-ce que le routeur central effectuera un contrôle de cohérence de format en fonction des formats exploités par les Etats-membres, avant transmission des données ? Le sujet se posera d'autant plus lors d'un vol à destination d'un Etat-membre avec au moins une escale dans un autre Etats-membres (par exemple : Istanbul –Francfort-CGD) : chaque Etat membre (ici France et Allemagne), ne recevra pas obligatoirement les données API au même format (Paxlst 2003, Paxlst 2007 ou 2010...).

Article 22 Tâches de l'eu-LISA relatives à la conception et au développement du routeur

Au paragraphe 2, les autorités françaises souhaitent que la Commission indique la durée envisagée pour la phase de test et les modalités de celle-ci. Combien d'Etat membres seront-ils sollicités, pendant combien de temps, etc. ?

Au paragraphe 4, les autorités françaises demandent des précisions sur la mention : "*and other relevant Member States' authorities*".

Par ailleurs, pour permettre aux Etats-membres de suivre les travaux de l'agence eu-LISA et de lui faire bénéficier de leur expertise, la création d'un conseil de gestion du programme et d'un comité d'experts comparables à ceux mis en place pour les systèmes d'information européens serait pertinente. A cette fin, les autorités françaises proposent la création d'un cinquième alinéa reprenant les dispositions habituelles régissant ces deux types d'instance. Le conseil de gestion, incluant des représentants des autorités compétentes des Etats membres, pourrait se réunir tous les trimestres (au lieu de tous les mois pour les projets les plus complexes), tandis que le groupe d'experts pourrait être utilement constitué de représentants des unités d'informations passagers (UIP).

De plus, le développement du routeur constituant un chantier de longue haleine, les autorités françaises proposent la création d'un sixième alinéa rédigé comme suit « **La collecte des données via les canaux habituels ne prendra fin qu'après la validation sans réserve du fonctionnement du routeur par la Commission, après avis de la Commission de contrôle** ». Enfin, la proposition de la Commission ne visant qu'une seule catégorie de transporteurs (« *air carriers* »), la rédaction du paragraphe 4 devra être adaptée à la multi-modalité telle que demandée par les autorités françaises.

Article 23 Tâches de l'eu-LISA relatives à l'hébergement et à la gestion technique du routeur

Au paragraphe 2, les autorités françaises s'interrogent sur la mention : "*in particular as regards availability, accuracy and reliability of the transmission of API data*". En effet, il est possible qu'un vol ne soit pas effectué pour diverses raisons (notamment en raison de conditions météorologiques défavorables ou d'incidents techniques). Dans ce cas de figure, l'Etat-membre ne saura pas si le vol attendu a bien eu lieu. En France et dans d'autres Etats membres, cette information est obtenue par recoupement avec un fichier 3 jours après le vol effectué.

Ce fichier concerne les données relatives aux plans de vols des aéronefs qui ont effectué des routes sur les trois derniers jours. Il est obtenu auprès d'organismes privés tel qu'OAG soit auprès d'organismes publics tel qu'Eurocontrol. C'est une aide précieuse pour confirmer qu'un vol a bien eu lieu et recouper ainsi les informations. Il nous semble nécessaire de prolonger ce système de vérification à l'échelle européenne pour Eu-LISA. Les autorités françaises s'interrogent sur la possibilité d'assurer ce système compte tenu de la masse de vols à vérifier dans le cadre d'un routeur central.

Article 25 Coûts de l'eu-LISA et des États membres

Les coûts liés aux missions dévolues à eu-Lisa sont pris en compte par le budget de l'UE, mais également pour la connexion et l'intégration des systèmes des autorités des Etats membres au routeur. Certaines exceptions sont listées, comme notamment les coûts liés à la gestion de projets, ceux en lien avec la maintenance des systèmes nationaux et leur connexion au routeur.

Cependant, les autorités françaises notent que les coûts liés aux phases de tests ne sont pas cités dans cet article (ni dans les coûts pris en compte par le budget de l'UE ni dans les exceptions figurant dans l'article) et souhaitent que cela soit précisé dans le règlement API.

Les propositions estoniennes permettent de préciser la source précise du financement qui sera accordé aux Etats membres et donc d'éviter que celle-ci soit prélevée sur les budgets déjà alloués à leurs programmes nationaux au titre du Fonds pour la sécurité intérieure (FSI) et de l'Instrument de gestion des frontières et des visas (IGFV).

Toutefois, seule la première proposition mentionne la notion de « *thematic facilities* » qui est l'enveloppe de la Commission au sein de l'IGFV. La seconde proposition ne garantit, à l'inverse, en rien un financement supplémentaire.

Aucune des deux propositions ne garantit à eu-LISA un budget et des ressources humaines appropriées.

Aucune des deux propositions ne reprend des termes déjà utilisés dans des textes comparables, ce qui fragilise leur interprétation.

Les autorités françaises proposent donc de reprendre des termes déjà employés dans le règlement ETIAS pour prévoir des ressources supplémentaires à la fois pour eu-LISA, aliéna 1, et pour les Etats membres, dans un nouvel aliéna 4 tandis qu'une précision sur les tests pourrait par ailleurs être utilement introduite à l'alinéa 3 :

« *Article 25 Costs of eu-LISA and of Member States*

*1. Costs incurred by eu-LISA in relation to the design, development, hosting and technical management of the router under this Regulation and Regulation (EU) [API law enforcement] shall be borne by the general budget of the Union. **Eu-LISA shall receive appropriate additional funding and the staff necessary for the fulfilment of the tasks entrusted to them under this Regulation.***

2. Costs incurred by Member States in relation to their connections to and integration with the router referred to in Article 20 shall be borne by the general budget of the Union.

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, including 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.

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

4. Funding to be mobilised from the envelope referred to in point (b) of Article 7(3) of Regulation (EU) No 2021/1148 to cover the costs of implementation of this Regulation referred to in paragraphs 2 to 3 of this Article shall be implemented under shared management. »

Alternativement, les autorités françaises peuvent soutenir la proposition estonienne n°1 en y ajoutant les propositions françaises relatives aux alinéas 1 et 3 présentées ci-dessus.

Article 26 Responsabilité vis-à-vis du routeur

Les autorités françaises sollicitent des précisions quant à cet article :

Quelle distinction est faite avec les articles relatifs à l'impossibilité technique de l'utilisation du routeur et les cas où les compagnies ou les autorités compétentes ne pourraient plus l'utiliser ? Quel dispositif de sanction est-il envisagé ?

Article 27 Début des opérations du routeur

D'après la proposition de rédaction de la Commission, elle doit déterminer sans délai par un acte d'exécution la date de mise en route du routeur une fois que l'agence a informé la Commission de l'entière réussite des tests. Cette date ne doit pas être postérieure à une période de 30 jours après l'adoption de l'acte d'exécution. Quelles sont les conséquences possibles si un tel calendrier n'était pas respecté ? Quelles sont les formalités qui devront être complétées par l'agence pour prévenir les États-membres de la réussite des tests ?

Article 28 Utilisation volontaire du routeur en application de la directive 2004/81/CE

Au paragraphe 1, les autorités françaises souhaitent que l'article 28 se réfère aux articles 3(1) et 3(2) de la directive 2004/82 (le premier paragraphe de la directive 2004/82 introduit les données d'embarquement tandis que le second paragraphe les énumère).

En outre, l'article prévoit que les compagnies aériennes transmettent les données via le routeur à l'Etat membre lorsque ce dernier l'aura décidé. Les points de départ et d'arrivée des vols pouvant se situer des pays différents, la compagnie ou son/ses fournisseur(s) de données transmettront-ils les données via le routeur pour le pays de départ et par un autre biais pour le pays d'arrivée (ou vice-versa) ? Selon quelles modalités l'Etat responsable sera-t-il déterminé ?

Enfin, l'article 28 permet l'utilisation volontaire du routeur dès 2028 selon la Commission (date à partir de laquelle le routeur serait opérationnel) par les transporteurs pour communiquer les données en application de la directive API de 2004 (finalités frontières). Cette possibilité n'est pas reprise dans le projet de règlement « répressif ». Il serait intéressant d'intégrer la possibilité de communiquer les données API relevant de l'application de la directive PNR avant 2030 (date à partir de laquelle l'utilisation du routeur deviendrait selon la Commission obligatoire) dans le projet de règlement « répressif ».

Courtesy translation

Chapter V: Connections and additional provisions relating to the router

Article 20 - Connections of the competent border authorities to the router

For the title of this article, the French authorities are waiting for an amendment to Article 1 concerning the link between the two regulations (reference to the passenger information units in the same way as the competent border authorities).

Article 21 - Air carrier connections to the router

The French authorities recall that by the Commission Implementing Decision (EU) 2017/759, airlines currently use common protocols and data formats when transferring PNR data to PIUs, and thus API data for those Member States that have opted to receive API data under PNR Directive 2016/681, in accordance with point 3 of the Annex to that Implementing Decision 2017/759.

Is an alignment with the provisions of Implementing Regulations 2022/1380 and 2022/1409 regarding the authentication of carriers, and the format of data sent to the EES/ETIAS/VIS carrier gateway envisaged? According to these regulations, carriers are:

- Required to ensure minimum security requirements including managing the security risks associated with logging into the portal and analysing, responding to and overcoming cybersecurity incidents;
- Must apply technical guidelines for authentication procedures;
- Have time to test portal login and message delivery;
- Can they be removed from the authentication scheme in case of non-compliance with the security requirements (if a carrier is removed, what are the modalities envisaged for them to provide the required API data)?

The eu-LISA Agency is also required to provide at least for the use of UN/EDIFACT, PAXLST/CUSRES, XML and JSON formats. If not, what will be the capabilities of the carrier portal to handle data in different formats?

Will Implementing Decision (EU) 2017/759 be updated or even repealed? Will companies and their data providers have to develop and implement other protocols and data formats different from the existing international standards (WCO/IATA/ICAO Passenger list message)?

On the other hand, if companies are allowed to transmit data according to their own formats, and these formats are not taken into account by the information systems of the Member States, will these messages be considered as non-compliant? The data will therefore not be available and not processed. The financial cost to adapt to each company will be exponential. Will the central router perform a format consistency check according to the formats used by the Member States, before transmitting the data? The issue will be even more important for a flight to a Member State with at least one stop-over in another Member State (for example: Istanbul-Frankfurt-Charles de Gaulle): each Member State (here France and Germany), will not necessarily receive the API data in the same format (Paxlst 2003, Paxlst 2007 or 2010...)

Article 22 - eu-LISA tasks relating to the design and development of the router

In paragraph 2, the French authorities would like the Commission to indicate how long the test phase is planned to last and how it will be carried out. How many Member States will be involved, for how long, etc.?

In paragraph 4, the French authorities request clarification of the phrase "*and other relevant Member States' authorities*".

Furthermore, to enable the Member States to follow the work of the eu-LISA agency and to give it the benefit of their expertise, the creation of a program management board and a committee of experts comparable to those set up for European information systems would be appropriate. To this end, the French authorities propose the creation of a fifth paragraph incorporating the usual provisions governing these two types of body. The programme board, including representatives of the competent authorities of the Member States, could meet quarterly (instead of monthly for the most complex projects), while the group of experts could usefully be made up of representatives of the passenger information units (PIUs).

Furthermore, as the development of the router is a long-term project, the French authorities propose the creation of a sixth paragraph worded as follows: "*The collection of data via the usual channels will only end after the Commission has fully validated the operation of the router, after receiving the opinion of the Supervisory Committee*". Finally, since the Commission's proposal refers to only one category of carriers ("*air carriers*"), the wording of paragraph 4 will have to be adapted to multi-modality as requested by the French authorities.

Article 23 - eu-LISA's tasks relating to the hosting and technical management of the router

In paragraph 2, the French authorities question the words "*in particular as regards availability, accuracy and reliability of the transmission of API data*". Indeed, it is possible that a flight will not be carried out for various reasons (in particular because of unfavourable weather conditions or technical incidents). In this case, the Member State will not know if the expected flight has taken place. In France and in other Member States, this information is obtained by cross-checking the information with a file three days after the flight.

This file concerns the flight plan data of aircraft that have flown routes over the last three days. It is obtained from private organizations such as OAG or from public organizations such as Eurocontrol. It is a precious help to confirm that a flight has taken place and to cross-check the information. We believe that this verification system should be extended to the European level with Eu-LISA. The French authorities are wondering whether it is possible to provide this system, given the number of flights to be verified by a central router.

Article 25 - Costs of eu-LISA and the Member States

The costs related to the tasks assigned to eu-LISA are covered by the EU budget, but also for the connection and integration of the systems of the Member States' authorities to the router. Some exceptions are listed, such as costs related to project management, those related to the maintenance of national systems and their connection to the router.

However, the French authorities note that the costs related to the test phases are not mentioned in this article (neither in the costs taken into account by the EU budget nor in the exceptions listed in the article) and would like this to be specified in the API regulation.

The Estonian proposals make it possible to specify the precise source of the financing that will be granted to the Member States and thus avoid that it be taken from the budgets already allocated to their national programs under the Internal Security Fund (ISF) and the Border and Visa Management Instrument (VBMI).

However, only the first proposal mentions the notion of "*thematic facilities*" which is the Commission's envelope within the IGFV. The second proposal, on the other hand, does not guarantee any additional funding.

Neither proposal guarantees eu-LISA an appropriate budget and human resources.

Neither of the two proposals uses terms already used in comparable texts, which makes their interpretation more difficult.

The French authorities therefore propose to use terms already used in the ETIAS regulation to provide for additional resources both for eu-LISA, in paragraph 1, and for the Member States, in a new paragraph 4, while a clarification on the tests could also be usefully introduced in paragraph 3:

"Article 25 Costs of eu-LISA and of Member States

*1 Costs incurred by eu-LISA in relation to the design, development, hosting and technical management of the router under this Regulation and Regulation (EU) [API law enforcement] shall be borne by the general budget of the Union. **Eu-LISA shall receive appropriate additional funding and the staff necessary for the fulfilment of the tasks entrusted to them under this Regulation.***

2. Costs incurred by Member States in relation to their connections to and integration with the router referred to in Article 20 shall be borne by the general budget of the Union.

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, including 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.

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

4. Funding to be mobilised from the envelope referred to in point (b) of Article 7(3) of Regulation (EU) No 2021/1148 to cover the costs of implementation of this Regulation referred to in paragraphs 2 to 3 of this Article shall be implemented under shared management."

Alternatively, the French authorities can support the Estonian proposal n°1 by adding the French proposals related to paragraphs 1 and 3 presented above.

Article 26 - Responsibility towards the router

The French authorities request clarification of this article: what distinction is made with the articles relating to the technical impossibility of using the router and the cases where the companies or the competent authorities could no longer use it? What penalty mechanism is envisaged?

Article 27 – Beginning of router operations

According to the Commission's drafting proposal, the Commission must determine without delay by means of an implementing act the date on which the router is to be put into operation once the agency has informed the Commission that the tests have been completed successfully. This date must not be later than 30 days after the adoption of the implementing act. What are the possible consequences if such a timetable is not respected? What are the formalities that will have to be completed by the Agency to notify the Member States of the success of the tests?

Article 28 - Voluntary use of the router under Directive 2004/81/EC

In paragraph 1, the French authorities would like to refer to Articles 3(1) and 3(2) of Directive 2004/82 (the first paragraph of Directive 2004/82 introduces the data, while the second paragraph lists them).

In addition, the article provides that the airlines shall transmit the data via the router to the Member State when the latter so decides. Since the departure and arrival points of the flights may be in different countries, will the company or its data provider(s) transmit the data via the router for the country of departure and via another means for the country of arrival (or vice versa)? How will the responsible state be determined?

Finally, Article 28 allows for the voluntary use of the router from 2028 onwards according to the Commission (date from which the router would be operational) by carriers to communicate data in application of the 2004 API Directive (border purposes). This possibility is not included in the draft "law enforcement" regulation. It would be interesting to include the possibility of communicating API data under the PNR directive before 2030 (the date from which the use of the router would become mandatory according to the Commission) in the draft "law enforcement" regulation.

CROATIA

Following yesterday's discussion about the Chapter 5 of the API regulation, I would hereby like to inform you that Croatia also supports the Estonian proposal.

We support the Estonian proposal regarding the amendment of Article 25(2) and (3) for ensuring the funds to implement activities concerning the API Regulation under the thematic facility of the Integrated Border Management Fund, Instrument for Financial Support for Border Management and Visa Policy.

We also agree with the Czech position that it is necessary to avoid the same limitations when it comes to the costs of Member States as in the period 2014-2020 for ETIAS and EES, which complicates the implementation of projects by placing an additional financial and administrative burden on Member States.

LATVIA

Please find below LV comment on Article 25:

Article 25 "Costs of eu-LISA and of Member States"

LV shares EE concerns regarding the financial aspects of the proposed API Regulations expressed at the last IXIM WP meeting on February 8.

LV reiterates its support to **option 2** proposed by EE* that should replace paragraphs 2 and 3 of this article, since, in comparison to option 1 proposed by EE**, it provides for more flexibility (both BMVI and ISF could be used for the purposes of both proposed API Regulations) and is future-proof (within the next MFF new financial instruments could be created).

** "2. Costs incurred by Member States in relation to their connections to and integration with the router referred to in Article 20 shall be borne by the general budget of the Union. The funding shall be released from the relevant Funds or Instruments under applicable rules."*

*** „2. Costs incurred by Member States in relation to their connections to and integration with the router referred to in Article 20 shall be borne by the general budget of the Union. The funding shall be released from the thematic facility of Instrument for Financial Support for Border Management and Visa Policy, in particular in a form of specific action. Rules and procedures used for BMVI funding shall be used."*

LITHUANIA

Following the meeting of the Working Party on JHA Information Exchange (IXIM) of 8 February 2023 please find below Lithuanian delegation written contributions on document 15720/22 (Chapter 5, Articles 20-28):

Article 25

Lithuania, like many Member States, are concerned about this article. We lack clarity as to what exactly the costs of the Member States, related to their connection to the router and integration into it, could be covered by the funds of the European Union. We are also in favour of the most flexible conditions for using the Union funds to cover the costs incurred by the Member States related to their connections with the router and integration with it. We fully support the proposals of Estonian delegation and would give priority to the first alternative, which is to delete paragraphs 2 and 3 of Article 25 and to insert a new text as it was proposed by Estonian delegation ("*2. Costs incurred by Member States in relation to their connections to and integration with the router referred to in Article 20 shall be borne by the general budget of the Union. The funding shall be released from the thematic facility of Instrument for Financial Support for Border Management and Visa Policy, in particular in a form of specific action. Rules and procedures used for BMVI funding shall be used.*").

HUNGARY

Comments from the Hungarian delegation

Subject: Chapter 5 (Articles 20-28) of the 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

We still do not yet have an overall national position; the national coordination process is still ongoing with the involvement of all the national stakeholders.

With this in mind, however, we would like to reiterate our support for the objectives of the draft Regulation and its Chapter 5.

The technical design of the API router should be implemented with appropriate safeguards, and the responsibilities should be established to guarantee data quality at the highest possible level.

Regarding Article 25:

Hungary agrees that the current Commission proposal may cause challenges in the future.

We support the Estonian proposal for clarification of Article 25, as in its current form, it would create tasks and costs that Member States have yet to foresee in their 7-year national programmes.

We propose that the improvements covered by Article 25 be allocated to the Member States from the resources of the thematic instrument, e.g. in the framework of a specific action.

MALTA

Following the Working Party on JHA Information Exchange (IXIM) meeting held on 8 February 2023, below please find Malta's comments as follows:

Article 20 on connection of the router by border authorities

Similarly to other meeting interventions on this article, clarification is needed as to why is it considered necessary for API data to be processed at a centralised level via a router while PNR data will continue to be transferred and processed at a decentralised level by air carriers to the PIU. The text also needs to be clearer in terms of how and in which instances the border authorities will be able to receive API data from the router.

Article 24 on eu-LISA's support

While Malta welcomes the training which eu-LISA intends to offer, there needs to be a holistic training strategy for end-users and also on the functions of the router.

Article 25 on Costs

Malta notes that the proposals repeat the same limitations as were set in the 2014–2020 financial period for ETIAS and EES and which had made the implementation of projects difficult. Lessons learnt from funding issues for EES and ETIAS should be taken into consideration for API, i.e. if there will be costs incurred for Member States in MFF 2021–2027, a specific action must be included to the thematic facility work plan.

Furthermore, some European air carriers will need to incur costs to ensure compliance with this Regulation, especially in terms of router connection. Since we are in effect requiring air carriers to provide more security for the EU, it would be appropriate if these carriers would be eligible for EU funding as well.

THE NETHERLANDS

Written comments The Netherlands on API borders chapter 5

Concrete text suggestions are in track changes and marked yellow.

CHAPTER 5

CONNECTIONS AND ADDITIONAL PROVISIONS REGARDING THE ROUTER

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 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 adopt delegated acts in accordance with Article 37 to supplement this Regulation by laying down the necessary detailed rules on the connections to and integration with the router referred to in paragraph 1.

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 complete a compliance test prior to connecting to 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.

2. 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 connections to and integration with the router referred to in paragraph 1.

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.

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 delegated acts provided for in Article 5(4), Article 6(3), Article 11(4), Article 20(2) and Article 21(2).
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. A testing environment shall remain available to the competent border authorities, PIUs and other relevant Member States' authorities and air carriers after the implementation of this Regulation has been completed.

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, where the router will be on the mainsite and an active backup on the backupsite.
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].

The Commission is empowered to adopt delegated acts in accordance with Article 37 to supplement this Regulation by laying down the necessary detailed ~~The~~ technical management of the router which 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.

Commented [SA-B1]: As mentioned during the IXIM WP of 8 february, NL would be in favour of specifying either in the articles or in a recital that:

- air carriers must complete a compliance test before they may connect to the router. And for this requirement to be structural, i.e. for it to not only be applicable during the development phase, but also after. [Please see text suggestion in article 21(1)]

- a testing environment should also be available to MS and air carriers after the implementation of the API proposals. This is necessary for example for the continued development of national systems so that bugs may be detected and addressed. [Please see text suggestion in article 22(4)]

Commented [SiP-B2]: We would like to suggest to record all the requirements in regards to availability, accuracy and reliability of the transmission of api data in a delegated act

For example in the other smart borders regulations it is specified that the central systems must reside in the main site and the backup site of EU-LISA. This to ensure and guarantee availability and reliability. Please see text suggestions in article 23(1) and 23(2)

3. eu-LISA shall not have access to any of the API data that is transmitted through the router. However, that prohibition shall not preclude eu-LISA from having such access insofar as strictly necessary for the maintenance of the router.
4. Without prejudice to paragraph 3 of this Article and to Article 17 of Council Regulation (EEC, Euratom, ECSC) No 259/68¹, 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.

Article 24

eu-LISA's support tasks relating to the router

1. eu-LISA shall, upon their request, provide **training and support** to competent border authorities, PIUs and other relevant Member States' authorities and air carriers on the technical use of the router **during the development and implementation phase, and thereafter during the entire lifecycle of the system.**
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].

Commented [SiP-B3]: EU-LISA should also provide (knowledge) support to MS and CARRIERS during the development phase Please see text suggestion in article 24 1

Article 25

Costs of eu-LISA and of Member States

1. Costs incurred by eu-LISA in relation to the design, development, hosting and technical management 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 Member States in relation to their connections to and integration with the router referred to in Article 20 shall be borne by the general budget of the Union.
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, including space, implementation, electricity and cooling;

Commented [SA-B4]: As mentioned in the IXIM WP, NL is of the opinion that additional funding for the implementation of API border and API Law Enforcement will be necessary, as the current programmes would not sufficiently cover the costs of implementation

¹ 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).

- (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.
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 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, unless and insofar as 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.

Article 28

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

1. Air carriers shall be entitled to use the router to transmit the information referred to in Article 3(1) 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 concerned has agreed with such use, from an appropriate date set by that authority. That authority shall only agree after having established that, in particular as regards both its own connection 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 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 authority, where that authority considers that there are objective reasons that require such discontinuation and has informed the air carrier accordingly.
3. The responsible authority 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.

POLAND

Following the meeting of the Working Party on JHA Information Exchange (IXIM) of 8 February 2023, please find below PL written contributions on document 15720/22 (Chapter 5, Articles 20-28):

PL maintains an analytical reservation and can only provide preliminary comments at this time. PL's position may change after full, formal arrangements have been made.

Detailed Comments on the draft on the Chapter V of the Proposal for a Regulation:

The implementation of API projects due to the restrictions introduced in art. 25 can be problematic. Due to the complexity of the current system of implementing and reporting on European funds for migration, borders and security, there is no need to introduce further solutions that are incompatible with the current system, which is based on the following regulations:

- REGULATION (EU) 2021/1148 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy;
- REGULATION (EU) 2021/1060 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy.

Therefore PL suggests redrafting of Art. 25 para 2 and 3 in such a way as to indicate the Border Management and Visa Instrument (BMVI) thematic facility or the EU general budget as the source of funding.

The implementation of the provisions of the draft API Border Management Regulation will entail new tasks, the implementation of which requires appropriate financial outlays. The task programming process and allocation of funds under the BMVI 2021-2027 has already been completed, and the Polish BMVI Program itself was approved by the European Commission on December 12, 2022. Therefore, in the event of the obligation to perform new tasks in the field of API Border Management, there will be a necessity to allocate financial resources in the form of additional instruments, for example in the form of specific actions or top-ups (additional funds).

ROMANIA

Article 22

We support FR proposal to include at this Article specific provisions regarding the API governance, similar to EES and ETIAS Regulations.

Article 24

– para. 1 - in the context of this Article, we propose to add a recital regarding the importance for eu-LISA's to carry out periodical residential training sessions (minimum of 2 times/year), respectively the development of permanent e-Learning modules.

Furthermore, we appreciate that training is a fundamental component for the good functioning of the API system. From this perspective, we consider useful the development of a test or simulator module that includes both the maintenance and operational components (not in connection with Article 22 – simulation tests of the router). The aim of our proposal is to maintain a continuous level of training of the existing staff, as well as the training of the new personnel.

Article 25

We support Estonian proposal to modify para. 2 and 3.

SLOVAKIA

Article 20, point 1

- 1) For Article 20 we would respectfully ask to add “PIU” after “competent border authorities”. It is necessary to take into consideration cases, where PIU serves as a single window and forward data to competent border authorities for border control purposes. In those cases, it is necessary; not only for law enforcement, but also for border control purposes that PIUs are connected to the router and as such, they should be added to Article 20 point 1.

Article 21, points 1, 2 and 3

- 2) We suggest that in Article 21, the interoperability with ETIAS should be kept in mind, as both systems will use the same connection. As a result, it should be clarified who will be responsible for connecting air carriers to both systems, to prevent cases where air carriers will be connected to ETIAS, but not yet connected to API router or vice versa. Additionally, it should be harmonized who will be responsible for pursuing sanction in cases of failure to comply with this Directive, as currently PIUs are responsible for sanctions for API and PNR data and competent border authorities would be responsible for sanctions for ETIAS, which creates a redundancy.

Article 25

- 3) For Article 25, we are supporting Estonia’s contribution and would like to suggest deleting points 2 and 3 of the article and exchanging them by following text: „2. Costs incurred by Member States in relation to their connections to and integration with the router referred to in Article 20 shall be borne by the general budget of the Union. The funding shall be released from the thematic facility of Instrument for Financial Support for Border Management and Visa Policy, in particular in a form of specific action. Rules and procedures used for BMVI funding shall be used.“ The reason is that currently BMVI program for SR is fully allocated and it would be impossible to finance measures resulting from API Directive from the BMVI program without the Commission increasing allocation from Thematic Facility BMVI package.

SWITZERLAND

Please find below the comments of Switzerland on articles 23 and 28 of the proposal for a Regulation on the collection and transfer of 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.

Article 23, eu-LISA's tasks relating to the hosting and technical management of the router:

Switzerland points out that a comparison of the actually submitted API data with the real-time flight plan is a necessary prerequisite for an accurate check of the compliance with the API data reporting obligation. Against this background, Switzerland considers it useful to check whether and to what extent this comparison could and would be useful already at the router level.

Article 28, Voluntary use of the router in application of Directive 2004/81/EC (recte: Directive 2004/82/EC):

Switzerland points out that Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data is incorrectly referenced in the article title. We further note that Art. 28(1) refers to Art. 3(1) of Council Directive 2004/82/EC, which is repealed by this legal act. The same applies to Art. 5(5), which also refers to Art. 3(1) of the repealed Council Directive 2004/82/EC.