

EVALUATION OF COUNCIL DIRECTIVE 2004/82/EC OF 29 APRIL 2004 ON THE OBLIGATION OF CARRIERS TO COMMUNICATE PASSENGER DATA

-TERMS OF REFERENCE-

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INTRODUCTION

Advance Passenger Information (API) is one measure that contributes to speeding up border checks by facilitating passenger clearance: it involves the capture of biographic data of passengers from the Machine Readable Zone (MRZ) of the travel document (usually at check-in) and other relevant flight and passengers details by the air carrier prior to departure and the transmission of these data to the border control authorities in the destination country. Based on API, border control authorities of the country of destination have more time to identify travellers who need further investigation upon arrival from *bona fide* travellers.

In the European Union (EU), the transmission of API data is regulated by Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (hereafter: ‘API Directive’ or ‘the Directive’)¹. The API Directive covers air carriers and applies to extra-EU inbound flights only. It does not however impose an obligation on Member States to request API data from air carriers. Therefore, API data is used unevenly in the Member States: some of them request API data systematically on (almost) all flights, others request API data only for selected flights, while others use API data very seldom.

As API are considered as a sub-set of a PNR², the collection and transmission of API data are also regulated in the PNR Directive³. Under the PNR Directive, besides PNR data, air carriers must also transmit API data (if such data is collected by them in the normal course of their business) to the Passenger Information Unit (PIU) of the EU Member State(s) of destination or/and departure. When used in combination with API, PNR data are much more reliable (PNR data are unverified as they are provided by the passenger or by a third party (e.g. a travel agency) at the time of flight reservation, whereas API data provides additional information concerning the passenger (e.g. date of birth) and is typically more reliable, especially when it is extracted by automated means from the machine-readable zone of a government-issued travel document at the time of check-in).

In a near future, the EU Entry-Exit System (EES) will register an individual file and entry/exit records of all third country nationals. The EES will replace the current system of manual stamping of passports. Also, nationals of visa exempted third countries will have to obtain a travel authorisation prior to their travel to the Schengen area (ETIAS). Once operational, ETIAS and EES will be queried by air carriers prior to the boarding of passengers to verify whether third country nationals have a valid travel authorisation (for visa exempted) or have already used the number of entries authorised by their visa (for persons holding a short stay entry visa). Such electronic systems for travel authorisation or visa

¹ The API Directive constitutes a development of the Schengen acquis which applies to all EU Member States (the UK and Ireland take part thereto; Denmark has decided to implement the API Directive in its national law) and to the Schengen associated countries (Norway, Island, Switzerland and Liechtenstein; the latter however does not have an airport).

² A record created by airlines for each passenger reservation, containing information like date of reservation, date of intended travel, the name(s), address, payment information, travel agency.

³ Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

verification are generally integrated with an interactive API (iAPI) system. Under an iAPI system, API data is transmitted within existing business processing times to the competent authorities of the country of arrival or departure as the passengers check-in. A response message is returned to the carrier for each passenger (as a target within max. 4 seconds), which may indicate 'OK /not OK' or where required, indicate further checks required for the identified traveller. The Commission has procured a feasibility study a Centralised Routing Mechanism (CRM) for API and PNR. The very idea is to offer air carriers a single point (carriers gateway) for sending API data, for the purposes of checking third country nationals against EES/VIS and ETIAS (these systems will send to air carriers an 'OK/not OK' for each passenger), but also for the purposes of processing API for border checks: once the EES/VIS and ETIAS queried, the carrier gateway would forward API data to the country of destination of the aircraft.

For a complete description of the advance information ecosystem in the EU, see Annex 8.

1. PURPOSE, OBJECTIVES AND SCOPE OF THE STUDY

The Commission will finance a study (from now on 'the study') in order to evaluate the effectiveness, efficiency, relevance, coherence and EU added value of the API Directive⁴. The first step has been the publication of an evaluation roadmap, which sets out the factors to be taken into account during the evaluation exercise that DG HOME is undertaking. The study will build on the findings of the 2012 Study. The study will cover all the EU Member States as well as the Schengen associated countries.

Specifically, the study will:

- i. **Analyse the effectiveness, efficiency, relevance, coherence and EU added value of the API Directive**, including:
 - Analyse the contextual background to the Directive, including its origins and initial objectives, the current trends in the collection and use of API data and the future challenges in this area.
 - Analyse the implementation state of play, including the policy and legal measures undertaken by Member States, economic operators and other stakeholders.
 - The extent to which the Directive remains relevant and its objectives are achieved by implementation of other systems and measures aiming to achieve similar ends, and in particular PNR and the Entry-Exit System.
- ii. On the basis of the findings of the above evaluation, **make recommendations where room for improvement appears necessary based on the analysis carried-out under point i.** which could:

⁴ The implementation of the API Directive has been already evaluated in 2012 ('Evaluation on the implementation and functioning of the obligation of carriers to communicate passenger data set up by Directive 2004/82', Final Report for Directorate-General for Home Affairs, ICF GHK milieu, 2012 – Annex 7).

- Address any shortcomings of the API Directive.
- Improve the capacity of all actors with a role in the implementation and application of the EU legal framework on API.
- Simplify the framework put in place by the API Directive and, as relevant, reduce its burden on stakeholders (mainly competent national authorities and private operators).

The study will also take into account the findings of the Feasibility Study on a Centralised Routing Mechanism for Advance Passenger Information and Passenger Name Records procured by DG HOME (Annex 9).

The results of this study will support the Commission with the necessary evidence to prepare a Staff Working Document presenting the findings of the evaluation study with a view to inform any possible decision concerning the future.

2. TASKS OF THE CONTRACTOR

The Contractor will develop all logical and consecutive steps of the tasks in conformity with the Better Regulation Guidelines⁵ and the Better Regulation Toolbox⁶ and in close cooperation with the Commission (the Inter-service Steering Group) in order to support the preparation by the Commission services of the Staff Working Document which will present the outcome of the evaluation.

In order to carry out the tasks below, the Contractor should propose the methodological tools, such as focus groups, surveys, statistical research, etc. considered necessary and feasible to achieve the purpose of the study and justify these choices. The evaluation must be based on recognised evaluation techniques and triangulation methods are required.

The choice and a detailed description of the methodology must form part of the offer submitted. Advantages, limitations and risks involved in using the proposed tools and techniques should be explained. There should be a clear link between the evaluation questions addressed and the corresponding methodology proposed. The evaluation questions should be further elaborated, by providing operational sub-questions under each question.

Considerable emphasis should be placed on the analysis phase of the evaluation. The Contractor must support findings and recommendations by explaining the degree to which these are based on opinion, case study, analysis and objectively verifiable evidence. Where opinion is the main source, the degree of consensus and the steps taken to test the opinion should be given.

The Contractor shall pay close attention to the quality checklist in Annex 5. This list provides essential insight into what the Commission expects from the study and will provide a basis for assessing the quality of the study. The quality checklist is based on the Better Regulation Guidelines and the Better Regulation Toolbox.

⁵ http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm

⁶ http://ec.europa.eu/smart-regulation/guidelines/toc_tool_en.htm

With respect to the preparatory phase, the Contractor shall perform the following:

- define the intervention logic (IL);
- refine the evaluation questions set out below and present the evaluation matrix;
- map the data available and outstanding data needs;
- finalise an analytical framework for carrying out the study;
- develop consultation documents, for the open public consultation and targeted stakeholder consultations (on-line survey, interviews, possible case studies).

With respect to the fieldwork, the Contractor shall perform the following:

- collect relevant data and information (incl. targeted stakeholder opinions);
- conduct case studies if the Contractor deems it appropriate for the purposes of the evaluation.

With respect to the analysis, the Contractor shall perform the following:

- analyse the data and information obtained, using appropriate methodological tools;
- measure and quantify results and impacts;
- answer and analyse all the evaluation questions;
- provide overall conclusions on each evaluation criterion, strictly based on the collected evidence pointing out clearly the lessons learnt and aspects that worked well and those that did not.

2.1 Data collection, research and analysis

The study shall be based on desk research (literature, reviews and reports) as well as data gathering, expert meetings and interviews with key stakeholders.

The study shall be based on quantitative and qualitative analysis of reports, studies and documents.

The Contractor shall make a structured analysis of the provisions of the Directive and its implementation through national laws and other measures.

Annex 1 sets out the minimum data sources to be taken into account in parallel with consulting stakeholders, but the Contractor shall identify additional relevant sources.

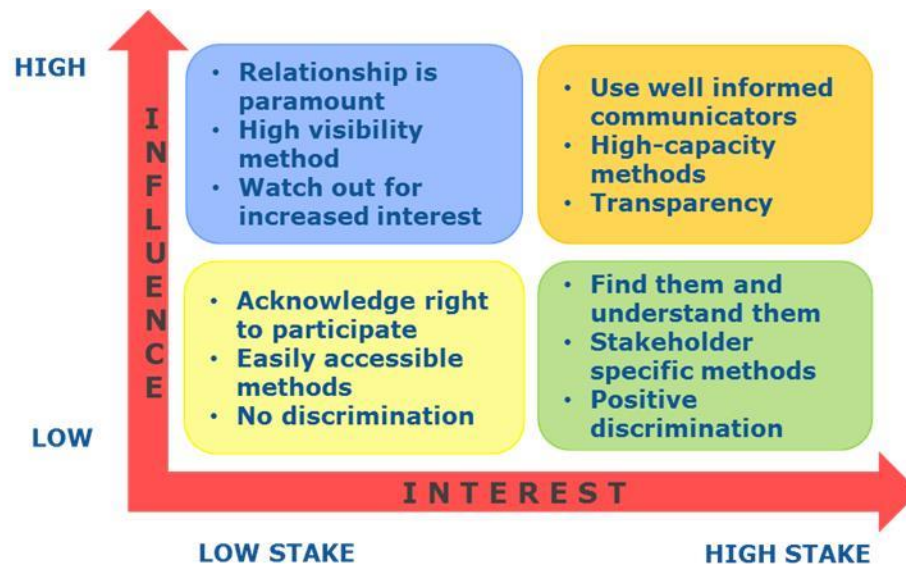
The Contractor shall keep a detailed record of all sources consulted and reflect them in the study through citations (in footnotes, keeping the citation style consistent) and in the study's relevant annex.

Raw data following consultations should be also made available to the Commission.

2.2 Mapping of stakeholders

The Contractor shall map the stakeholder groups concerned by the evaluation, in line with the Commission's Draft Consultation Strategy (see Annex 2).

The Contractor should structure the analysis on the basis of the following matrix:



The matrix has to be part of the inception report and agreed by the Commission.

2.3 Consultation of stakeholders

The Contractor will propose and conduct targeted consultations (targeted on-line surveys, interviews, workshops etc) of relevant stakeholders, on all elements of the evaluation study, in line with the Commission's Draft Consultation Strategy (see Annex 2).

The Contractor shall consult DG HOME on the drafts of any questionnaires or interview guides designed for the purpose of consulting stakeholders.

The Contractor will consolidate in a synopsis report⁷ all consultation activities undertaken, which will be annexed to the study. Such report shall consist of:

- i. Documentation of each consultation activity undertaken on the same initiative,
- ii. Information on which stakeholder groups participated, how they were selected (selection criteria), which interests they represented and whether all identified stakeholder groups have been reached,
- iii. Description of the results of each consultation activity, a comparison of their results including interdependencies, consistencies or divergent opinions.

2.4 Public consultation

The Commission will carry out a 12-week internet based public consultation to support the evaluation.

The Contractor will draft a questionnaire and any accompanying documents needed for clarifying the purpose and scope of this consultation. The questionnaire should be short (maximum 10 pages) and accessible, with an appropriate mix of open and closed questions. The Commission will review the drafted documents and translate them in all languages once these are approved.

⁷ See Tool #55 of the Toolbox.

The Contractor will also be responsible for analysing the contributions received by the Commission (which may come in all official languages – contributions shall be translated by the Commission) and including the following information in the synopsis report on consultation activities:

- i. A brief descriptive overview of contributions, including an overview of the profile of respondents (distribution of respondents across Member States and/or third countries; distribution of respondents by stakeholder category; distribution across sectors...) and methodology;
- ii. A qualitative analysis based on substance/content of responses (respondents' involvement and interest in the policy, the way they benefit or are affected by the policy, if they reply on their behalf or if they represent some specific interests, to which extent and how their contribution has been consolidated);
- iii. Results of the consultation per evaluation criterion.

2.5 Evaluation

The Contractor shall analyse the contextual background to the evaluation, baseline, the implementation state of play, and the effectiveness, efficiency, coherence, relevance, and EU added-value of the API Directive, as well as its scope and content (including the definitions).

For each evaluation criterion, the Contractor should develop evaluation questions and sub-questions and present and agree with the Inter-service Steering Group an evaluation matrix. This should indicate the judgement criteria, indicators, data source, methodology for data collection and methodology for analysis that it will apply.

The following questions should be addressed at the minimum. Additional questions can be suggested by the Contractor and completed, as necessary, in agreement with the Commission during the inception phase based on the intervention logic to be developed by the Contractor and the Commission.

2.5.1 Analyse the compliance and the quality of the transposition of the Directive

A) *Quality of the transposition*⁸

- How timely was the transposition of the Directive into national legislations? Has the deadline for transposition of the Directive into the national legal framework been met?
- Have all the provisions of the Directive been transposed and implemented by national measures? If not which ones and what are the likely reasons?
- Are there any national measures which go beyond the obligations as prescribed in the Directive? If so which ones and to what effect?
- What is the extent to which the national measures conform to the articles of the API Directive?

⁸ This Study will update where appropriate the findings of the 2012 Evaluation Study.

B) *Implementation*

- How soon after the transposition of the Directive the API systems in Member States were operational (time-frame for implementation)?
- What are the main processes through which API data is transmitted by carriers? Are national authorities granted automated access to API data?
- What is the organisation of the respective national authorities responsible for implementation and application of the Directive? What is the remit and powers of the national authorities and those of their parent authorities?
- Are API data processed by a Targeting Centre? If yes, what type of Targeting Centres has been developed (API Unit, Passenger Information Unit, Eurosur National Coordination Centre...)?
- What are the main technology solutions for data transfer (in-house, third party's system)? What are the pros and cons of implementing the API regarding the infrastructure needed to transmit information, taking into account the requirements of personal data protection?
- What is the overarching governance framework for ensuring compliance with related EU legislation (freedom of movement and data protection)?
- Are there any problems arising from the implementation of the Directive in terms of Fundamental Rights (i.e. right to freedom of movement, data protection, etc.)?
- What criteria have been used to determine: (i) whether and to what extent checks could be automated or whether human intervention is required; (ii) whether solely electronic online information can be submitted or alternative solutions exist?
- What type of transportation (air carriers, sea carriers, trains, coaches/busses) is currently covered? / What criteria have been used to determine the carriers for which API should be applicable?
- Where does the API system fit within the integrated border management system?
- What are the main databases against which API is being checked? And the procedures to check against these (e.g. automated vs manual)?
- What consequences such processing has on traveller? Are the results of automated processing verified?
- How are passengers informed of the use of their personal data? What type of information is provided to them (purpose for which data collected, type of data collected, retention period, right of access, right to correct and delete the data, processing of the data and in particular by automated means...)?
- What are the disadvantages/problems that API might pose in light of international relations, fundamental rights/civil liberties, and practically and politically in general?
- What is the amount of financial sanctions imposed on carriers? What other sanctions have been imposed?

- Have Member States applied the provisions of the API Directive also to extra-EU outbound flights? Do Member States not applying fully the Schengen acquis⁹ request from air carriers API data on intra-EU flights? If yes, do they apply the provisions of the API Directive to these intra-EU flights?
- As API data are usually not collected by air carriers on intra-Schengen flights, some Member States have introduced legal requirements on air carriers to check the passengers' name on their boarding pass and the name on their travel document at the boarding gate ('conformity checks'). The Contractor will analyse the following questions:
 - a) Which Member States have such requirements in place (or consider to have such requirements)?
 - b) What have been the implications for airlines?
 - c) Have there been tangible benefits in terms of increased security?
 - d) Are conformity checks proportionate and necessary compared to the benefits achieved?

The Contractor will also analyse the legal, operational and technical implications of broadening the collection of API data to cover also intra-EU/Schengen flights, by addressing the following questions:

- a) To which extent can API data be considered as "verified" (given that they are often provided by the passenger's themselves when checking-in on-line)?
- b) What would be the implications for air carriers' operations, in particular should they be required to verify at the boarding gate the accuracy of the information provided by the passenger?
- c) For which purposes would the authorities collect API data on intra-EU/Schengen flights?
- d) How to ensure that the intra-EU/Schengen collection of API does not go against the principle of free movement of persons within the Schengen area?
- e) Would the intra-EU/Schengen collection of API bring security benefits proportionate to the intrusiveness that a further collection of API data entails?

Context

The PNR Directive allows indeed EU Member States to decide to apply it also to intra-EU flights, or to selected intra-EU flights, what includes intra-Schengen flights. However, air carriers do not have the assurance that a passenger who booked a flight is the same as the passenger who checked-in and intends to board the aircraft.

The problem concerning the possibility of a passenger's real identity being different from the one inserted in the reservation system as PNR¹⁰ is not new. At international

⁹ Bulgaria, Croatia, Cyprus and Romania.

¹⁰ PNR data are indeed unverified because they are provided by the passenger himself/herself or by a third party (e.g. a travel agency) at the time of flight reservation.

level this problem is mitigated with API data¹¹, which are collected by the airlines solely for the purposes of providing such data to the competent authorities of a country (and not for commercial purposes), on account of a legal requirement of that country.

The collection of API data on intra-EU/Schengen flights could provide additional assurances as to the passenger's identity. The API process is already part of the operational and technical practices of both carriers and Member State authorities. Given that API data are not collected by airlines on intra-Schengen flights, some Member States have reflected on or even introduced (like Belgium¹², France, Spain and Luxemburg) conformity checks.

On a connected note, extending the scope for the collection of API data would allow Member States to obtain additional information that they consider valuable for law enforcement purposes and that is better suited to comparisons against databases of persons known to the authorities¹³. The evaluation of the implementation of the API Directive completed in September 2012 revealed that 18 Member States provided in their national law for the possibility to use API data for law enforcement purposes, although there was no common understanding of the term.

2.5.2 Evaluate the functioning of the Directive

A) Relevance of the Directive (to what extent the objectives of the Directive are pertinent to the needs, problems and issues to be addressed?)

- To what extent the objectives of the Directive are pertinent to the needs, problems and issues of different stakeholders? To what extent are the scope, objectives, definitions set out in the Directive still deemed to be suitable and fit for purpose? Are there provisions contained in the Directive that might be considered obsolete? How well adapted is the Directive to subsequent economic, technological, scientific, social, political or environmental advances?

¹¹ API data provides additional information concerning the passenger (e.g. date of birth) and is typically more reliable, especially when it is captured by automated means from the machine-readable zone of a travel document at the time of check-in.

¹² See for example <https://www.brusselsairlines.com/en-uk/practical-information/travel-info/before-the-flight/travel-documents/default.aspx>: "Belgian law requires Brussels Airlines to perform a conformity check between the name on your boarding pass and the name on your identity card or passport. Conformity checks will be performed on all Brussels Airlines operated flights to and from Brussels, also on intra-Schengen flights. All guests need to be in possession of a valid identity card or passport when boarding (driving license and other documents like health insurance cards, bank cards etc. are not accepted as valid travel documents). This also applied to children and infants. **You will only be accepted to board your flight if the names on your boarding pass and your identity card or passport match.** Therefore, it is important that your official name is mentioned in your reservation."

¹³ For example, information on the passenger's date of birth, which facilitates comparisons against the Schengen Information System, is one of the elements of API.

- To what extent the intended benefits of the national API systems respond to the needs, problems and issues as identified at national level in the field of irregular migration and internal security? Do they match those of the Directive?
- Are the objectives of the Directive addressed by the instruments and measures adopted in context of other related policies, and in particular in the context of implementation of PNR Directive and in context of the growth of the EU-large scale data bases and its increased use in the context of interoperability?

B) Coherence of the Directive (To what extent is the Directive coherent with other, closely related legal instruments?)

Internal coherence (how the various components of the same EU intervention operate together to achieve its objectives?)

- To what extent are its objectives coherent with those of API systems in the Member States?
- To what extent do the purposes of the API systems match the objectives of the Directive?
- To what extent are the obligations under the API Directive coherent with other obligations under EU legislation in the same policy field (i.e. Regulation 2016/679¹⁴ and Directive 2016/680¹⁵, Directive 2016/681)?

External coherence (compliance with international regulatory framework)

- To what extent is the API Directive compliant with the international regulatory framework on passenger information (i.e. Annex 9 (Chapter 9) to the Convention on International Civil Aviation (Chicago Convention), UNSCR 2178/2014 and 2309/2016, OSCE Ministerial Council Decision 6/16 of 9 December 2016 Enhancing the use of Advance Passenger Information)?

C) Effectiveness (to what extent has the Directive achieved its objectives? What factors contributed to or impeded to achieve the purposes of the Directive?)

- To what extent has the API Directive contributed to improving border controls in Member States/EU? To what extent the API Directive has contributed to expedite systematic checks against relevant databases (applicable since 7 April 2017)?
- To what extent has the API Directive contributed to combating irregular migration in Member States/EU?
- To what extent are the API data collected and transmitted by carriers compliant with the data requirements listed in the Directive?

¹⁴ Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

¹⁵ Directive (EU) 2016/680 on the protection of natural persons regarding processing of personal data connected with criminal offences or the execution of criminal penalties, and on the free movement of such data.

- To what extent the API data transmitted to national authorities is used, and for which purposes has it been used?
- To what extent has the API data transmitted to national authorities contributed to improve law enforcement purposes, if used for such purposes?
- To what extent is the management of API data (i.e. retention and protection) by national authorities and carriers compliant with the obligations and safeguards for data protection as listed in the API Directive?
- What have been the main impacts of the Directive on border control (i.e. border control procedures, technological innovation, number of irregular migrants apprehended and number of refused travellers)?
- What have been the main impacts of the Directive on law enforcement authorities (i.e. is API data used for law enforcement purposes, in how many cases, for which specific purpose and by which authorities)?
- What have been the main impacts on carriers and their industries, including for cruise line companies and air/rail traffic in Member States where API is implemented to this effect? (i.e. operations, costs)?
- Have best practices been identified (i.e. process automation, submission of information, transmission of information, information management, cooperation mechanism, technological advances)?
- What have been the main impacts on passengers (e.g. convenience, travel experience and well-being)?

C) Efficiency (to what extent are resources being efficiently used in achieving the intended impact of the Directive?)

- What are the costs and the benefits of the Directive?
- To what extent are resources being efficiently used in achieving the Directive's intended impact/benefits?
- What have been the costs related to the practical implementation of API systems for Member States carriers?
- What are the operating costs of running API systems for Member State authorities and carriers?
- What has been the number of passengers affected by the API Directive since the implementation of the Directive?
- Are there measures to reduce possible unnecessary burdens, which do not undermine policy objectives?

D) EU added-value

- What has been the added value of the Directive? Have there been some unintended benefits and drawbacks to the implementation of the Directive (i.e. spill over effects, etc.)?
- Could the objectives of the policy have been achieved sufficiently by the Member States acting alone?
 - o In the absence of EU level action, to what extent did Member States have the ability or possibility to enact appropriate measures?
 - o In case the initial problem and its causes (e.g. negative externalities, spill over effects) varied across the national, regional and local levels, did the EU level action helped establishing a level playing field?
 - o Was the initial problem widespread across the EU or limited to a few Member States? (In the latter case, EU added value should be assessed accordingly).
- Could the objectives of the proposed action be better achieved at Union level by reason of the scale or effects of that action?
 - o Were there clear benefits from EU level action (e.g. related to 10 political priorities of the Juncker Commission)
 - o Were there economies of scale? Were the objectives met efficiently at EU level (larger benefits per unit cost)?
 - o Were there benefits in replacing different national policies and rules with a more homogenous policy approach?
 - o Did the benefits of EU-level action outweigh the loss of competence of the Member States (beyond the costs and benefits of acting at national, local and regional levels)?
 - o Was there improved legal clarity from implementing EU legislation?
 - o To what extent do the issues addressed by the Directive continue to require action at EU level?
 - o Could the main findings (results/outputs) presented in the evaluation have been achieved without EU intervention?

2.5.3 Make recommendations on the need for new measures

On the basis of the evidence and findings of the evaluation, the Contractor shall make clear and operational recommendations so as to address any identifiable shortcomings of the current legislative framework and to improve the achievement of the general objectives of the Directive in areas such as (but not limited to), as appropriate:

- Data protection issues;
- Use of API data for law enforcement purposes;
- Moment and means of capture and transmission (push times, automation) of API data;
- Quality of API data (capture in the airport and possible issues in data matching with national databases);

- Clarity as to the type of carriers (air, sea, land) subject to the provisions of the API Directive;
- API data of crew members;
- Improved coherence with related legal instruments (e.g. PNR Directive);
- Scope of the API Directive (which applies to extra-EU inbound flights only) and possible extension to extra-EU outbound and intra-EU/Schengen flights (the Study will assess in particular the legal, operational and technical implications pertaining to a possible collection of API data for intra-Schengen flights – see above point 2.5.1, B) Implementation).

3. DELIVERABLES AND TIMING

The overall duration of the tasks should not exceed 32 weeks,¹⁶ commencing from the date of signature of the contract by the last of the two parties (the day of signature of the contract is herein referred to as "T").

During the process, the following shall be submitted by the Contractor: an inception report, two interim reports, a final report for review and a final report for acceptance (final study). Each deliverable will be examined by the Commission Services, which may ask for additional information or propose changes in order to redirect the work if necessary. Deliverables must be accepted by the Commission.

T + week 4: An **inception report** shall be submitted within 4 weeks from signature of the contract.

The inception report will contain at least the following information:

- a mapping of stakeholders for review;
- consultation documents proposed for review;
- a proposal for a final list of questions for the evaluation;
- the evaluation matrix, including evaluation sub-questions, success criteria, indicators, base line, data sources, methods, limitations; the intervention logic;
- a mapping of the data available and outstanding data needs.

The Contractor shall comply with any request by the Commission to attend an assessment meeting at the European Commission within 2 weeks of the submission of the inception report. The inception report will be reviewed by the Commission who will provide comments if any to the Contractor within 2 weeks of its receipt. The Contractor shall have 2 weeks to submit additional information or a new report.

T + week 12: A **first interim report** shall be submitted within 12 weeks of the date of signature of the contract. The exact delivery date and expected content will be agreed

¹⁶ Weeks are counted in calendar days, not working days (i.e., 2 weeks = 15 calendar days = 10 working days).

between Contractor and the Commission based on the inception report and work plan proposed by the Contractor.

The interim report will indicate the status of reflection to date with sufficient information to permit reorientation if appropriate and required, and will contain at least the following information:

- an assessment of the data collection process, including the consultation exercises, and of the quality of data collected, whether it meets expectations and will provide a sound basis for responding to the evaluation questions;
- information and clear references on sources of information used or to be used;
- problems and limitations encountered that may have an impact on the tasks to be carried out and proposed mitigation actions;
- clear indications and detailed planning of the work to be carried out for the completion of the tasks;
- revisited baseline and intervention logic if needed.

The Contractor shall comply with any request by the Commission to attend an assessment meeting at the European Commission within 2 weeks of the submission of the interim report.

The report will be reviewed by the Commission, who will provide the Contractor with comments within 2 weeks of its receipt. The Contractor shall have 2 weeks in which to submit additional information or a new report.

T + week 20: A **second interim report for review** shall be submitted within 20 weeks of the date of signature of the contract presenting the outcome of the evaluation. The exact delivery date and expected content will be agreed between Contractor and the Commission based on the inception report and work plan proposed by the Contractor.

The report shall include the sections and annexes detailed in Annex 3 of this document.

The Contractor shall comply with any request by the Commission to attend an assessment meeting at the European Commission within 2 weeks of the submission of the report.

The report will be reviewed by the Commission who will provide the Contractor with comments within 2 weeks to submit additional information or a new report.

The acceptance of the second interim report, confirmed by a formal acceptance note sent by the Commission to the Contractor, will allow the Contractor to submit an invoice for interim payment of 50% according to Art. I.4.3 and II.15.6 of the FWC.

T + week 28: **final report for review**, including annexes, shall be submitted within 28 weeks of the date of signature of the contract. The report shall include the sections and annexes detailed in Annex 4 of this document.

The Contractor shall comply with any request by the Commission to attend an assessment meeting at the European Commission within 2 weeks of the submission of the report. The report will be reviewed by the Commission who will provide the Contractor with comments

within 2 weeks of its receipt. The Contractor shall have 2 weeks to submit additional information or a new report.

T + week 32: The **study (final report) submitted for acceptance** shall be submitted within 32 weeks after the signature of the contract. The report shall include the sections and annexes detailed in Annex 4 of this document.

The study should contain an abstract of no more than 200 words in English. The purpose of the abstract is to act as a reference tool helping the reader to quickly ascertain the evaluation's subject.

The study must take into account the feedback from the Inter-Services Steering Group on the interim reports, insofar as these do not interfere with the autonomy of the Contractor in respect of the conclusions they have reached and the recommendations made.

The contracting authority will publish the Study, the Executive Summary, the Abstract, the annexes and the Quality Assessment Grid providing assessment of the study on the Commission's central website.

All reports must be written in English and in a style that is clear and non-technical, suitable for non-expert readers. Reports must be thorough and consistent in the style applied to citations and references throughout the document. In view of its publication, the study in particular must be of high editorial quality. The study shall be either drawn up or proofread by a native English speaker, and consequently be of a standard indistinguishable from that of a native speaker. In cases where the Contractor does not manage to produce a study of high editorial quality within the timeframe defined by the contract, the contracting authority can decide to have the study professionally edited at the expense of the Contractor (e.g. deduction of these costs from the final payment).

Rights concerning the deliverables and those relating to its reproduction and publication will remain the property of the European Commission. No document based, in whole or in part, upon the work undertaken in the context of this contract may be published except with the prior formal written approval of the European Commission.

The study will implement the Commission publication rules related to its "visual identity" policy by applying the graphic rules set out in the European Commission's Visual Identity Manual, including its logo.

The Contractor must deliver the study to the Commission in 3 hard copies and in electronic version (Word and PDF formats).

4. RELATIONS AND MEETINGS WITH THE COMMISSION AND THE INTER-SERVICE STEERING GROUP (ISSG)

The European Commission's Directorate-General for Migration and Home Affairs (DG HOME) is responsible for the study and its management. DG HOME has set up an Inter-Service Steering Group (ISSG) comprised of representatives from the Commission Directorate-Generals to oversee the work. The Contractor shall take into account the comments and recommendations of the ISSG and keep it regularly informed on the progress of the work.

The Contractor will attend a **half-day kick-off meeting** with DG HOME right after the signature of the contract.

The Contractor shall provide (biweekly), by means of **progress reports**, an update on the work performed against the plan, an update on risks and issues, announce actions or changes in the short term. **Ad-hoc meetings** may be organised to that respect. The ISSG may request the Contractor to present in a meeting some important deliverables.

5. BUDGET

The estimated maximum budget for the study, covering all the results to be achieved by the Contractor as listed above, is EUR 400.000.

6. EXPERTISE

The team carrying out the study should have expertise in legal and economic analysis. The team should also possess a good knowledge of passenger data (API, PNR) in the air sector and should also have a good knowledge of the developments related to the EES and ETIAS.

7. SOURCES OF DATA AND CLASSIFIED INFORMATION

A non-exhaustive list of documents, such as relevant studies, reports, previous impact assessments or evaluations already available, which the consultant should study as part of its desk research, is available in Annex 1. The European Commission may provide additional documents/reports which are not publicly available.

The Contractor is fully responsible for handling this information and must demonstrate its capacity to handle it appropriately.

Each member of the team will have to sign a non-disclosure and confidentiality declaration (see Annex 6).

Furthermore, individuals which are part of the evaluation team who may be privy to sensitive information at the Member State level or in the hands of operators should have a confidential security clearance (or equivalent) according to the EU classified information categorisation. The management of sensitive information should be thoroughly addressed as part of the data collection strategy described in the bid submitted to the Commission. In the offer, the bidder

should explain how he intends to receive, store, exploit and then at the conclusion of the evaluation destroy sensitive data using an appropriate and certified information management system.

8. RISKS

There are several risk factors which the Contractor may be faced with during the study process. The Contractor shall develop a risk and constraints matrix and present a risk mitigation plan addressing all risks and challenges identified, including:

- the short timescale of the study;
- the stakeholder consultations being carried out by the Commission and the Contractor, in parallel to the Contractor's evaluation study (in order to ensure synergy on the one hand and avoid overlaps on the other hand);
- the difficulties in accessing relevant data with regard to Member States.

9. QUALITY ASSESSEMENT

The quality of the study will be assessed by the ISSG on the basis of the criteria and questions laid out in Annex 5.

ANNEX 1 – Documents and sources of reference

The Contractor should be familiar with the following public documents and sources, among others:

- Better Regulation Guidelines¹⁷ and the Better Regulation Toolbox;¹⁸
- Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (API Directive);
- Evaluation on the implementation and functioning of the obligation of carriers to communicate passenger data set up by Directive 2004/82, Final Report, September 2012;
- Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011;
- Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 and Final Report of 16 November 2016;
- Feasibility Study on a Centralised Routing Mechanism for Advance Passenger Information and Passenger Name Records;
- Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime;
- Opinion 1/15 of the Court of Justice of the European Union of 26 July 2017 on the draft agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data;
- Commission implementing Decision (EU) 2017/759 of 28 April 2017 on the common protocols and data formats to be used by air carriers when transferring PNR data to Passenger Information Units;
- Regulation (EU) 2016/399 of the European Parliament and of the Council on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification), as modified by Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 and by Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017;

¹⁷ http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm

¹⁸ http://ec.europa.eu/smart-regulation/guidelines/toc_tool_en.htm

- Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 ('Carriers' liability');
- Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);
- Directive 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA;
- Convention on International Civil Aviation (Chicago Convention), in particular its Annex 9 (Facilitation), Fifteenth Edition, October 2017;
- WCO/IATA/ICAO Guidelines on Advance Passenger Information (API), version 2013, (<https://www.icao.int/Security/FAL/SitePages/API%20Guidelines%20and%20PNR%20Reporting%20Standards.aspx>);
- ICAO/WCO/IATA Management Summary on Passenger-related Information ['Umbrella Document'] (https://www.icao.int/Security/FAL/Documents/Umbrella_Document.2013Dec03.pdf);
- ICAO Doc. 9303 on Machine-Readable Travel Documents (<https://www.icao.int/publications/pages/publication.aspx?docnum=9303>);
- Report from the United Nations Counter-Terrorism Executive Directorate on Gaps in the use of advance passenger information and recommendations for expanding its use to stem the flow of foreign terrorist fighters, 26 May 2015;
- United Nations Security Council Resolution 2178/2014 [on threats to international peace and security caused by Foreign Terrorist Fighters] (in particular paragraph 9) ([http://undocs.org/en/S/RES/2178\(2014\)](http://undocs.org/en/S/RES/2178(2014)));
- United Nations Security Council Resolution 2309/2016 [on terrorist threats to civil aviation] ([http://undocs.org/en/S/RES/2309\(2016\)](http://undocs.org/en/S/RES/2309(2016)));
- OSCE Ministerial Council Decision 6/16 of 9 December 2016 Enhancing the use of Advance Passenger Information (<https://www.osce.org/cio/288256>);
- G7 Taormina Statement on the Fight Against Terrorism and Violent Extremism, 26-27 May 2017 (<http://www.g7italy.it/sites/default/files/documents/G7%20Taormina%20Statement%20on%20the%20Fight%20Against%20Terrorism%20and%20Violent%20Extremism.pdf>);
- Available statistical data.

In addition, the Contractor will be given access to documents of the Commission and of the European Border and Coast Guard Agency (Frontex), which are **not public** and are **to be used only for the purpose of producing the present study**, such as:

- Frontex Report on API Systems and Targeting Centres.

ANNEX 2 – Draft Consultation Strategy

1. Context

Advance Passenger Information (API) is one measure that contributes to speeding up border checks by facilitating passenger clearance: it involves the capture of biographic data of passengers from the Machine Readable Zone (MRZ) of the travel document (usually at check-in) and other relevant flight and passengers details by the air carrier prior to departure and the transmission of the data to the border control authorities in the destination country. Based on API, border control authorities of the country of destination have more time to identify travellers who need further investigation upon arrival from *bona fide* travellers.

In the European Union (EU), the transmission of API data is regulated by Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (hereafter: ‘API Directive’ or ‘the Directive’)¹⁹. The API Directive covers air carriers and applies to extra-EU inbound flights only. It does not however impose an obligation on Member States to request API data from air carriers. Therefore, API data is used unevenly in the Member States: some of them request API data systematically on (almost) all flights, others request API data only for selected flights, while others use API data very seldom.

The evaluation is supported by an independent external study. The external Contractor carrying the study will have responsibility for carrying out much of the consultation work related to the evaluation. An Inter-Service Steering Group (ISG) with representatives from the Directorates-General of the European Commission will be set up in order to provide guidance to the Contractor throughout the course of the evaluation.

2. Stakeholder Consultation – Objectives and Scope

In order to achieve the stated objectives of the evaluation, a wide number of stakeholder consultations will be conducted. The aim is to ensure that all interested parties have the opportunity to provide feedback. Besides ensuring transparency and accountability, these consultations will ensure that the outcomes of the evaluation are credible and of high quality, and reflect a wide range of views.

Therefore, the consultations aim to:

- 1) Collect objective data, information, and evidence which is necessary in assessing the five key evaluation criteria under the Commission's Better Regulation guidelines;²⁰
- 2) Collect views on the issues at stake and suggested EU involvement, as well as opinions, ideas and concerns about possible solutions and impacts; and
- 3) Collect evidence, data and views on the possible policy options and their potential impacts.

¹⁹ The API Directive constitutes a development of the Schengen acquis which applies to all EU Member States (the UK and Ireland take part thereto; Denmark has decided to implement the API Directive in its national law) and to the Schengen associated countries (Norway, Island, Switzerland and Liechtenstein).

²⁰ Effectiveness, efficiency, coherence, relevance and EU added value. More at http://ec.europa.eu/smart-regulation/guidelines/tool_47_en.htm.

The outcomes of the various consultations will feed into the evaluation process and be clearly identifiable in the report issued by the Contractor and, later, in the Staff Working Document prepared by the Commission on the outcome of the evaluation.

This consultation strategy lays down the approach to the consultation methods and tools that will be used during the consultation process. In order to allow for a dynamic process, however, the approach might be altered, if deemed necessary, in the course of the preparation of the evaluation.

3. The relevant stakeholders

The following stakeholder groups are concerned by the initiative:

Members of the general public: travelling by air is nowadays a common mode of transportation for all.

Public authorities: timely processing of API data facilitates the work of the following authorities in the Member States and the Schengen associated countries: border control authorities, law enforcement authorities, immigration services, visa services and customs among others.

Economic operators: airlines (traditional scheduled, low-costs and charter companies) are the main impacted group by API requirements. International and European-level airlines associations will primarily be consulted: International Air Transport Association (IATA), Airlines for Europe (A4E), Airports Council International (ACI) Europe, Airlines International Representation in Europe (AIRE) and European Regions Airline Association (ERA).

Other groups (bus/coaches companies, railway companies and liner/cruise companies) may also be impacted depending on existing API requirements for these modes of transport. The Contractor will identify and consult associations representing these groups.

The mapping will also cover:

- relevant EU agencies: the European Border and Coast Guard Agency (Frontex), Europol, the Fundamental Rights Agency (FRA).
- any other public or private stakeholders which may not fit in the above-mentioned groups such as air carriers' IT solution providers (like SITA, Amadeus, Sabre).

4. Consultation Methods & Tools

Public consultation

All stakeholders and the general public at large will have the possibility to provide their views and inputs as part of an open public consultation to be carried out by the Commission at the beginning of 2019. This open public consultation will take the form of an online questionnaire and will be published for a period of 12 weeks on a dedicated webpage of the Commission's Europa website (linked through both the "Contribute to law-making"²¹ and DG HOME²² webpages). The webpage of the open public consultation will be available in all official EU

²¹ https://ec.europa.eu/info/law/contribute-law-making_en

²² https://ec.europa.eu/home-affairs/what-is-new/public-consultation_en

languages.

The public questionnaire(s) and any accompanying documents will be made available in the Commission's procedural languages: English, French and German. However, respondents will be able to reply using any of the official EU languages.²³ Many stakeholders with an interest in this public consultation are professionals and economic operators who are members of national and/or European-level associations representing their sector. These associations, which disseminate information to them and are often tasked with transmitting their members' views to the Commission, are, regardless of their language of origin, usually able to communicate in one of the procedural languages.

Targeted consultations

Targeted consultations will be carried out beginning of 2019 with Member States authorities, airlines and airlines association, as well as IT solution providers. Consultations will be mostly based on questionnaires and interviews and will be supported by the Contractor selected by the Commission.

Interviews will be carried out with a sample group of particularly relevant stakeholders representing beneficiaries, operators/end users and competent authorities at Member State level.

The outcomes of the consultation process will be reflected in the Final Report prepared by the Contractor as well as in the Commission Staff Working Document (in a synopsis report).

5. Awareness raising

In order to raise stakeholders' awareness about the evaluation in general and the consultation process in particular, the national authorities involved in the implementation of the Directive will be requested to forward relevant information within their respective networks. Information about the evaluation will also be provided in other relevant groups.

Furthermore, DG HOME will set up a webpage dedicated to the preparation of this evaluation on its Europa website. This will serve to provide information on the evaluation, including the consultations and when they are expected to be held. The website will also provide a link to the open public consultation and contain contact information for the Commission's services in charge of this policy initiative.

²³ https://ec.europa.eu/info/official-eu-languages_en

ANNEX 3 – Length, structure and content of the second interim report

Length: Maximum 30 pages without annexes.

Structure and content:

ABSTRACT (200 words maximum)

EXECUTIVE SUMMARY (2 pages maximum)

1. INTRODUCTION
 - 1.1. Purpose of the evaluation
 - 1.2. Scope of the evaluation
2. BACKGROUND TO THE EVALUATION
 - 2.1. Description of the evaluation and its objectives
 - 2.2. Baseline
3. EVALUATION QUESTIONS
4. METHOD AND LIMITATIONS
5. IMPLEMENTATION STATE OF PLAY (RESULTS)
6. ANSWERS TO THE EVALUATION QUESTIONS
7. CONCLUSIONS

ANNEX 1: EVIDENCE: SOURCES AND EXTERNAL EXPERTISE

ANNEX 2: ANALYTICAL MODELS USED IN PREPARING THE EVALUATION

ANNEX 3: EVALUATION RECOMMENDATIONS

ANNEX 4 – Length, structure and content of the final report for review report and the final study

Length: Maximum 80 pages without annexes.

Structure and content:

ABSTRACT (200 words maximum)

EXECUTIVE SUMMARY (6 pages maximum)

1. INTRODUCTION
 - 1.1. Context
 - 1.2. Purpose of the evaluation
 - 1.3. Scope of the evaluation
 - 1.4. Evaluation questions
2. METHODOLOGY
 - 2.1 Data gathering
 - 2.2 Data analysis
3. ANALYSIS OF THE COMPLIANCE AND QUALITY OF THE TRANSPOSITION
4. EVALUATION OF THE FUNCTIONNING OF THE DIRECTIVE
 - 4.1 Relevance
 - 4.2 Coherence
 - 4.3 Effectiveness
 - 4.4 Efficiency
 - 4.5 EU added-value
5. CONCLUSIONS
6. RECOMMENDATIONS

ANNEX 1: EVIDENCE: SOURCES AND EXTERNAL EXPERTISE

ANNEX 2: SYNOPSIS REPORTS OF THE STAKEHOLDER CONSULTATION

ANNEX 5 – Quality checklist

The Commission will assess the quality of the study on the basis of the criteria and questions below.

Objective of the assessment	Aspects to be assessed	Fulfilled? Y, N, N/A	Comments
1. Scope of evaluation	Confirm with the Terms of Reference and the work plan that the contractor :		
	a. Has addressed the evaluation issues and specific questions		
	b. Has undertaken the tasks described in the work plan		
	c. Has covered the requested scope for time period, geographical areas, target groups, aspects of the intervention, etc.		
2. Overall contents of report	Check that the report includes:		
	a. Executive Summary according to an agreed format, in the three languages		
	b. Main report with required components		
	<ul style="list-style-type: none"> ▪ Title and Content Page ▪ A description of the policy being evaluated, its context, the purpose of the evaluation, contextual limitations, methodology, etc. ▪ Findings, conclusions, and judgments for all evaluation issues and specific questions ▪ The required outputs and deliverables ▪ Recommendations as appropriate 		
	c. All required annexes		
3. Data collection	Check that data is accurate and complete		
	a. Data is accurate		
	<ul style="list-style-type: none"> ▪ Data is free from factual and logical errors ▪ The report is consistent, i.e. no contradictions ▪ Calculations are correct 		
	b. Data is complete		
	<ul style="list-style-type: none"> ▪ Relevant literature and previous studies have been sufficiently reviewed ▪ Existing monitoring data has been appropriately used ▪ Limitations to the data retrieved are pointed out and explained. ▪ Correcting measures have been taken to address any problems encountered in the process of data gathering 		
4. Analysis and judgments	Check that analysis is sound and relevant		
	a. Analytical framework is sound		

Objective of the assessment	Aspects to be assessed	Fulfilled? Y, N, N/A	Comments
	<ul style="list-style-type: none"> ▪ The methodology used for each area of analysis is clearly explained, and has been applied consistently and as planned ▪ Judgements are based on transparent criteria ▪ The analysis relies on two or more independent lines of evidence ▪ Inputs from different stakeholders are used in a balanced way ▪ Findings are reliable enough to be replicable 		
	b. Conclusions are sound		
	<ul style="list-style-type: none"> ▪ Conclusions are properly addressing the evaluation questions and are coherently and logically substantiated ▪ There are no relevant conclusions missing according to the evidence presented ▪ Findings corroborate existing knowledge; differences or contradictions with existing knowledge are explained ▪ Critical issues are presented in a fair and balanced manner ▪ Limitations on validity of the conclusions are pointed out 		
5. Usefulness of recommendations	a. Recommendations are useful		
	<ul style="list-style-type: none"> ▪ Recommendations flow logically from the conclusions, are practical, realistic, and addressed to the relevant Commission Service(s) or other stakeholders 		
	b. Recommendations are complete		
6. Clarity of the report	a. Report is easy to read		
	<ul style="list-style-type: none"> ▪ Written style and presentation is adapted for the various relevant target readers ▪ The quality of language is sufficient for publishing ▪ Specific terminology is clearly defined ▪ Tables, graphs, and similar presentation tools are used to facilitate understanding; they are well commented with narrative text 		
	b. Report is logical and focused		
	<ul style="list-style-type: none"> ▪ The structure of the report is logical and consistent, information is not unjustifiably duplicated, and it is easy to get an overview of the report and its key results. ▪ The report provides a proper focus on main issues and key messages are summarised and highlighted ▪ The length of the report (excluded appendices) is proportionate (good balance of descriptive and analytical information) ▪ Detailed information and technical analysis are left for the appendix; thus information overload is avoided in the main report 		
Overall conclusion			
The report could be approved in its current state, as it overall complies with the contractual conditions and relevant professional evaluation standards			

ANNEX 6 – Non-Disclosure and confidentiality declaration

Compulsory Form to be filled in and signed by each member of the contractor’s team involved in the services

1. I, _____, agree not to disclose any classified, sensitive or proprietary information that is presented, discussed or made accessible during my contribution to the services performed under the framework contract HOME/2015/EVAL/02, to any person or legal entity who has not signed a nondisclosure agreement. This also includes the access to any documentation and plans during the call for tender process.

I understand that information I may become aware of, or possess, as a result of this Access is considered classified. I agree not to appropriate such information for my own use or to release or disclose it to third parties unless specifically authorised to do so. I also understand that I must protect proprietary information from unauthorised use or disclosure for as long as it remains proprietary and refrain from using the information for any purpose other than that for which it was furnished.

I continue to be bound by this undertaking after completion of the services.

I understand that a violation of this agreement is subject to administrative, civil and criminal sanctions.

2. I declare that towards the Commission and as regards the performance of the services, I am not placed in a situation that could give rise to conflict of interests, in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest.

Printed Name

Institution or Company

Address, E-Mail and Phone Number

Place and Date

Signature

ANNEX 7 – Evaluation on the implementation and functioning of the obligation of carriers to communicate passenger data set up by Directive 2004/82, Final Report for Directorate-General for Home Affairs, ICF GHK milieu, September 2012

See document attached.

ANNEX 8 –The Advance Information Ecosystem in the EU

Advance Passenger Information (API)

The last years have witnessed a sharp increase of air passengers and predictions are on an upward trend. At global level, the International Air Transport Association (IATA) expects 7.2 billion air passengers in 2035, almost double the 3.8 billion air passengers in 2016. At European level, IATA expects 1.5 billion air passengers in 2035, compared to 970 million air passengers in 2016 (intra-EU transport represented almost half (47.0%) of total air passenger transport in the EU and extra-EU transport over a third (35.6%), while national transport accounted for fewer than 1 in every 5 passengers (17.3%) – Eurostat).

This evolution puts a severe strain on the air borders of EU Member States. The continuous growth of air passengers requires the implementation of measures aiming at ensuring fluidity of passenger flows. Timely processing of Advance Passenger Information (API) speeds up border checks, while at the same time allow to better tackle illegal immigration and fight criminal offences.

API involves the capture of biographic data relating to each passenger from Machine Readable Zone²⁴ (MRZ) of the travel document (usually at check-in) and other relevant flight and passengers details by the air carrier prior to departure and the transmission of the data to the border control authorities in the destination country. Based on API, border control authorities have more time to identify travellers who need further investigation upon arrival from *bona fide* travellers.

At international level, for the air sector, API is regulated by Annex 9 (Chapter 9) to the Convention on International Civil Aviation (Chicago Convention). The establishment of an API system (APIS) is a standard²⁵ since 23 October 2017.

In the European Union, the transmission of API data is regulated by Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data (hereafter: ‘API Directive’ or ‘the Directive’)²⁶. The API Directive covers air carriers and applies to extra-EU inbound flights only. It does not however impose an obligation on Member States to request API data from air carriers. Therefore, API data is used unevenly in the Member States: some of them request API data systematically on (almost) all flights, others request API data only for selected flights, while others use API data very seldom.

²⁴ See:

https://www.icao.int/Security/FAL/Documents/2.API%20Guidelines%202013%20Appendix%20I%20MRZ%20Details_E.pdf

²⁵ Pursuant to Annex 9 to the Chicago Convention, a standard is any specification, the uniform observance of which has been recognized as practicable and as necessary to facilitate and improve some aspect of international air navigation, which has been adopted by the [ICAO] Council pursuant to Article 54 (l) of the Convention, and in respect of which non-compliance must be notified by Contracting States to the Council in accordance with Article 38.

²⁶ The API Directive constitutes a development of the Schengen acquis which applies to all EU Member States (the UK and Ireland take part thereto; Denmark has decided to implement the API Directive in its national law) and to the Schengen associated countries (Norway, Island, Switzerland and Liechtenstein).

The API Directive sets only minimum standards for the Member States that request API data from air carriers. Under the API Directive, API data is comprised of the issuing country, number and type of travel document used, nationality of the passenger, full names, date of birth, border crossing point of entry into the territory of the Member State, code of transport, departure and arrival time of the transportation, total number of passengers carried and initial point of embarkation. Member States operate non-interactive (batch-style) API systems:²⁷ API data are transmitted in a single (batch) manifest message at or immediately following flight reconciliation or departure. Typically, non-interactive batch-style API is received by the requesting authority in advance of the flight's arrival, allowing the receiving authority to perform adequate checks of all inbound passengers and crew. The primary benefit of this approach is an expedited inspection process at the primary immigration booth for the majority of travellers. Advance information also affords border control authorities the ability to identify legitimate travellers from travellers who may be of interest.

Systematic border checks against relevant databases

As of 7 April 2017, all persons crossing the external borders are subject to the systematic consultation against relevant databases (Schengen Information System (SIS), Interpol's Stolen and Lost Travel Documents (SLTD) database and relevant national and Union databases) to verify the identity and the nationality of these persons, the authenticity and validity of their travel document for crossing the border and that these persons are not a threat to the public policy, internal security, public health or international relations of any of the Member States.²⁸

These checks may be carried out with API data received ahead of the flight's arrival. To that respect, Recital (10) of Regulation (EU) 2017/458 underlines that the use of passenger data received in accordance with Council Directive 2004/82/EC, or in accordance with other Union or national law, could also contribute to speeding up the process of carrying out the required systematic checks during the border-crossing process. However, the API Directive does not impose on Member States an obligation to request API data; Member States remain free to choose for which EU inbound flights API data must be collected. Consequently, API data are collected unevenly across the EU.

²⁷ Except the UK which operates an interactive API system.

²⁸ Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders, O.J. 18.3.2017, L 74/1.

Carrier liability

Under Article 26 of the Schengen Convention²⁹, carriers are obliged to ensure that an 'alien' (this is the terminology used) is in possession of the travel documents required for entry into the territories of the Member States. They are not obliged to check the stamps in the passport of visa holders or non-visa holders to ensure that the aliens they transport still have the right to enter the Union as regards the authorised period of stay. However they do check in the case of a single-entry (and double-entry) visa holder that a stamp has not been entered in the passport in the page facing the one on which the visa is affixed to ensure that it is still valid. For multiple-entry visas, only the validity dates of the visa sticker can currently be checked.

Annex V Part A (paragraph 2) of the Schengen Borders Code further provides that “if a third-country national who has been refused entry is brought to the border by a carrier, the authority responsible locally shall: a) order the carrier to take charge of the third-country national and transport him or her without delay to the third country from which he or she was brought, to the third country which issued the document authorising him or her to cross the border, or to any third country where he or she is guaranteed admittance, or to find means of onward transportation in accordance with Article 26 of the Schengen Convention and Council Directive 2001/51/EC of 28 June supplementing the provisions of Article 26 of the Convention implementing the Schengen agreement of 14 June 1985.”

Passenger Name Record (PNR)

The provisions of EU Directive 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (PNR Directive) had to be implemented in all Member States except Denmark³⁰ by 25 May 2018. Since then, Member States must have the capability to obtain PNR data from air carriers operating inbound and outbound extra-EU flights and, subject to a specific notification from the relevant Member State, also intra-EU flights. Member States must also establish systems to enable the processing of PNR data in order to identify those passengers that might be

²⁹ Article 26 of the Schengen Convention provides as follows: “1. The contracting parties undertake, subject to the obligations resulting from their accession to the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, to incorporate the following rules into their national law: a) If aliens are refused access into the territory of one of the Contracting Parties, the carrier which brought them to the external border by air, sea or land shall be obliged immediately to assume responsibility for them again. At the request of the border surveillance authorities the carrier shall be obliged to return the aliens to the third State from which they were transported and or to the third State which issued the travel document on which they travelled or to any other third State to which they are certain to be admitted. b) The carrier shall be obliged to take all the necessary measures to ensure that an alien carried by air or sea is in possession of the travel documents required for entry into the territories of the Contracting Parties. 2. The Contracting Parties undertake, subject to the obligations resulting from their accession to the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, and in accordance with their constitutional law, to impose penalties on carriers which transport aliens who do not possess the necessary travel documents by air or sea from a third State to their territories. 3. Paragraphs 1(b) and 2 shall also apply to international carriers transporting groups overland by coach, with the exception of border traffic.

³⁰ In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark did not take part in the adoption of the PNR Directive and is not bound by it or subject to its application.

involved in terrorism or serious crime, as defined by the PNR Directive, as well as tools available for the exchange of such data amongst Member States and with Europol.

PNR data consists of the data obtained for the purposes of travel reservation and processing. As well as identity information, it typically contains data related to payments, booking codes, accompanying travellers, complete travel itineraries etc. It is typically sent in advance of travel (for example, 24 or 48 hours before travel), as well as immediately after flight closure, and is intended for the purposes of law enforcement analysis. As per the aforementioned Directive, the PNR data should be sent to passenger information units (PIUs), which must be established in each Member State, as the entity responsible for processing and exchange of PNR data with other PIUs as well as other relevant competent authorities. PNR data are unverified because they are provided by the passenger himself/herself or by a third party (e.g. a travel agency) at the time of flight reservation, whereas API data provides additional information concerning the passenger (e.g. date of birth) and is typically more reliable, especially when it is captured by automated means from the machine-readable zone of a travel document at the time of check-in.

The use of PNR together with API data can assist Member States in verifying the identity of an individual, thus reinforcing the law enforcement value of PNR and minimising the risk of carrying out checks and investigations on bona fide travellers. Item 18 of Annex I of the PNR Directive includes API among the data to be sent by carriers as far as collected for their own business purposes. Article 8 of the Directive requires Member States to adopt the necessary measures to ensure that carriers transfer API to the PIU also when such data are not retained by the same technical means as for other PNR data. It is also provided that, “in the event of such a transfer, all the provisions of this Directive shall apply in relation to those API data”. Therefore, the processing of API is subject to both the legal regimes of the API and the PNR Directives.

Entry/Exit System (EES) and European Travel Information and Authorisation System (ETIAS)

Compared with the situation where API data are sent by carriers to Member States authorities for extra-EU inbound flights (i.e. from outside the EU towards the EU), two Regulations (Regulation (EU) 2017/2226 establishing the Entry/Exit System (EES)³¹ and Regulation (EU) 2018/1240 establishing the European Travel Information and Authorisation System (ETIAS)³²) introduce a requirement for carriers to check in advance of boarding whether the traveller is likely to be authorised to enter the Schengen area. EES and ETIAS apply to the Schengen area and not to the European Union.

³¹ Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011.

³² Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 .

Entry/Exit System (EES)

The Entry/Exit System will enable the effective management of authorised short-stays, increased automation at border controls, and improved detection of document and identity fraud. The system will apply to all non-EU citizens who are admitted for a short stay in the Schengen area (maximum 90 days in any 180-day period). The system will register personal identification data (i.e. the contents of the passport machine-readable zone and/or chip) and biometrics and the date and place of entry and exit. This will facilitate the border crossing of bona fide travellers, detect overstayers and identify undocumented persons in the Schengen area. The System will also record refusals of entry. The Entry/Exit System will replace the current system of manual stamping of passports, which is time consuming, does not provide reliable data on border crossings and does not allow the detection of overstayers or address cases of loss or destruction of travel documents.

Carriers will be required to query the EES to verify whether or not third-country nationals holding a single or double-entry visa have already used the number of entries authorised by their visa.

European Travel Information and Authorisation System (ETIAS)

The European Travel Information and Authorisation System (ETIAS) will strengthen security checks on visa-free travellers by gathering information on all those travelling visa free to the European Union to enable advance irregular migration and security checks. The ETIAS will bridge an existing information gap on visa-free travellers by gathering information that could be vital to MS authorities in advance of their arrival at the Schengen border. The ETIAS is therefore an important step forward towards stronger and smarter information systems for borders and security.

ETIAS will also facilitate the crossing of the external border by visa-exempt third country nationals. Travellers will have a reliable early indication of entry into the Schengen area, which will thus substantially reduce the number of refusals of entry.

Travellers will have to make an online application via a dedicated website or an application for mobile devices to get an ETIAS travel authorisation. Prior to boarding, air and sea carriers, as well as carriers transporting groups overland by coach, will have to verify the status of the travel document required for entering the Schengen Area, including verifying that the visa-exempt third-country national has a valid ETIAS travel authorisation.

Electronic Travel System (ETS) and interactive API (iAPI)

The ETIAS is thus an electronic travel system (ETS) (implying an automated process for the lodging, acceptance and verification of a passenger's authorisation to travel to a country). The purpose of an ETS is to expedite the pre-vetting and acceptance of low-risk passengers into a country, while providing a secure method for applicants, governments and airlines to verify the acceptance for travel.

The International Civil Aviation Organisation (ICAO) recommends that an ETS should integrate the pre-travel verification system with an interactive API system (an electronic system that transmits, during check-in, API data elements collected by the aircraft operator to

public authorities who, within existing business processing times for passenger check-in, return to the operator a response message for each passenger and/or crew member).

As can be understood from the sections above, while the API Directive only calls for a batch-type data transfer, the future introduction of ETIAS and of EES means that reflection on the implementation of interactive API is to be considered. Such reflection must include not only efficiency but also legal requirements.

Carrier Gateway

The EES Regulation and the ETIAS Regulation introduce a requirement for carriers to check in advance of boarding the traveller's authorisation status to enter the Schengen area. The first instrument foresees a development of a 'web service' enabling TCNs to verify the remaining authorised stay and carriers to check whether TCNs have exhausted the number of entries authorised by their Schengen short stay visa (Article 13 of EES Regulation).

The ETIAS Regulation introduces, amongst others, the notion of 'carrier gateway' access to which allows carriers to verify authorisation status of TCN travellers (Article 45). The communication between ETIAS Central System and the carrier gateway is foreseen to be enabled by a web service.

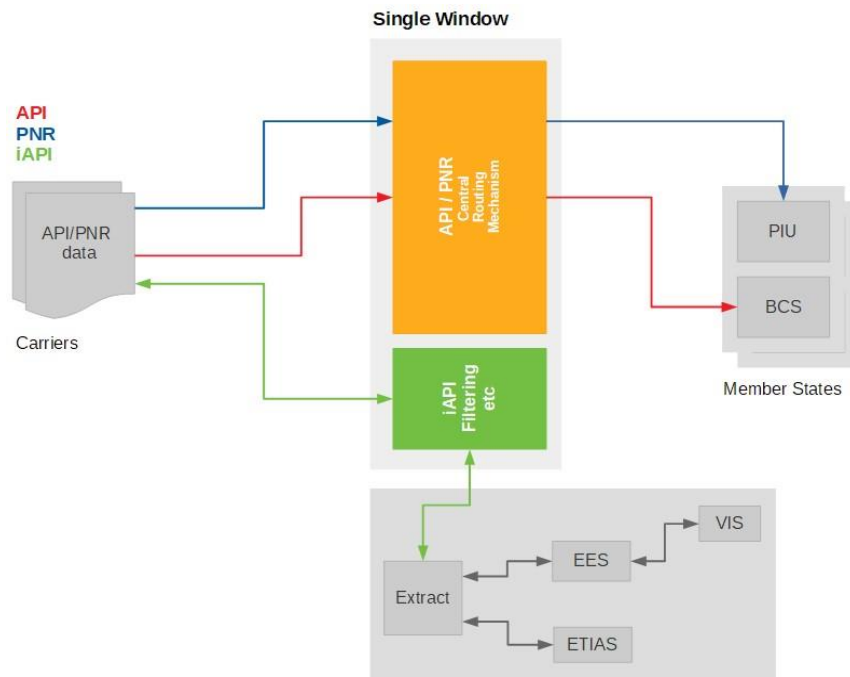
According to both EES and ETIAS Regulations, consultation of the Central System by carriers shall happen prior to the boarding of a passenger. Data fields embedded in the MRZ of the Travel Document shall be used for this purpose and an OK/NOT OK response shall be returned. These elements of carriers' obligation to conduct a check are inherent in the notion of interactive API, identified as a recommended practice by Annex 9 to the Convention on International Civil Aviation³³, which also considers it part of a Single Window approach.

DG HOME has procured a study on the feasibility of a Centralised Routing Mechanism (CRM). The rationale for the CRM is consolidating the transmission of passenger data from air³⁴ carriers to appropriate authorities in Member States and Central Systems such as the EES and the ETIAS in support of the following objectives: to establish an interactive pre-boarding check for each passenger during check-in procedures and to offer support for existing API checks and for PNR analysis, by routing API and PNR transmitted by air carriers to the Member States.

The combined set of options make up a European Single Window for carrier passenger data supporting the current API/PNR batch transfers and the interactive requirements for EES/ETIAS. The concept of a 'Single Window' offers air carriers and Member States a unique, single point of technical connectivity for the transfer of passenger data, as illustrated below:

³³ Recommended Practice 9.14, Annex 9 to the Convention on International Civil Aviation, Fifteenth edition, October 2017.

³⁴ The CRM could also be used for other transport modes (trains, buses and ferries).



ANNEX 9 - Feasibility Study on a Centralised Routing Mechanism for Advance Passenger Information and Passenger Name Records

See document attached.

This is the most recent version of the Feasibility Study on a Common Routing Mechanism for Advance Passenger Information (and Passenger Name Records). Changes may still occur on this version without affecting the essence of its contents and all the annexes will also be released in the final version. The annexes are however not required for understanding the feasibility study report. The approved version will be provided at the beginning of the study.