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Response to the Revision of the API Directive

**Consultation Response to
the Inception Impact
Assessment of the upcoming
Revision of the API Directive
2004/82/EC**

For epicenter.works

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Introduction

epicenter.works welcomes the opportunity to provide feedback for the consultation process regarding the upcoming revision of Directive 2004/82/EC (API Directive) and hereby wants to contribute to the Inception Impact Assessment (Ref. Ares(2020)2916519 - 05/06/2020).¹

Analysis

We acknowledge parts of the identified problems in the assessment, especially these concerned with missing conditions and safeguards for processing API data. As the API directive predates the GDPR we agree with the Commission's view to implement new provisions which are in line with all EU data protection requirements. Processing sensible personal data by private companies (in this case airlines) needs clear and transparent rules, which reflect the robust data protection framework set forth by the GDPR. We also think that it is vital to implement an **exhaustive list of API data fields**, which leaves no space for extending it at the member states' level. An unspecified set of data fields and vague processing rules are not compatible with fundamental data protection rights – therefore the new directive should reflect this issue appropriately.

The scope of the API Directive should stay **limited to only inbound flights** from extra Schengen countries. An extension to all flights (also intra EU flights), together with a systematic collection of API data by airlines should not be implemented. There is no evidence put forward that such a measure would be necessary to (better) achieve the objective of the API Directive (*"improving border controls and combating illegal immigration"*). Furthermore, such an expansion could be seen as limiting the free movement of people within the European Union. In addition, also the PNR Directive is limited to only extra Schengen flights.

Regards the usage of API data for **law enforcement purposes**, we cannot see the necessity to implement this as an additional objective for a revised directive. In the inception impact assessment it is mentioned that the *"combined use of API and PNR data is believed to improve the data quality of the latter, limiting the number of false positives currently experienced by Passenger Information Units in the automated processing of PNR data"*. We think that major issues of the PNR Directive should not be mitigated by changing another directive but be tackled at its core: the PNR Directive itself needs to be modified as can be seen by the pending cases before the CJEU. Furthermore, legislative changes should not be based on a mere "believe" – especially when it involves the expansion of personal data gathering and systematic surveillance for law enforcement purposes. As there is no robust evidence shown in the assessment, we do not see the advantages of harmonizing the usage of API data for law enforcement purposes, nor codify "law enforcement" as a new objective for the revised API Directive.

¹ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12434-Advance-Information-on-Air-Passengers>