



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 25 October 2010**

**14469/10**

---

---

**Interinstitutional File:  
2009/0089 (COD)**

---

---

**JAI 873  
SIRIS 143  
VISA 231  
EURODAC 42  
SCHENGEN 57  
EUROPOL 34  
EUROJUST 117  
COMIX 630  
CODEC 953**

**NOTE**

---

from: Presidency  
to: Mixed Committee at the level of Senior Officials

---

No prev. docs. 9719/3/10 REV 3 JAI 422 SIRIS 75 VISA 132 EURODAC 21 EUROPOL 16  
EUROJUST 50 COMIX 358 CODEC 489 + ADD 2  
DS 1652/10

---

Subject: Proposal for a Regulation of the European Parliament and of the Council  
establishing an Agency for the operational management of large-scale IT systems  
in the area of freedom, security and justice  
– Open issues  
– Preparation of the informal trilogue

---

**I. INTRODUCTION**

1. On 26 June 2009, the Commission submitted to the Council proposals for a legislative package establishing an agency for the operational management of large-scale IT systems in the area of freedom, security and justice. The package consisted of a proposal for a Regulation of the European Parliament and of the Council establishing the Agency (ex-1st pillar) and a proposal for a Council Decision conferring upon the Agency tasks regarding the operational management of SIS II and VIS in application of Title VI of the EU Treaty (ex-3rd pillar).

2. After the entry into force of the Lisbon Treaty, the Commission submitted to the European Parliament and the Council a single amended proposal for a Regulation establishing an agency for the operational management of large-scale IT systems in the area of freedom, security and justice.
3. During the Swedish and the Spanish Presidency, as well as under the Belgian Presidency on 6 of September 2010 and 11 October 2010, the Working Party for Schengen Matters (Acquis) has discussed the abovementioned proposal for a Regulation. Following these discussions, a number of extensive modifications were inserted in the text by the Presidency.
4. In parallel, the Presidency has established regular informal contacts with the European Parliament, on one hand informing the Rapporteur of the compromise drafts resulting from the discussion at the Working Party, and taking note of the main concerns expressed by the European Parliament, on the other. Representatives of the Commission have also been involved in these preliminary informal contacts.
5. On 11 October 2010, the orientation vote on the draft report on the said proposal for a Regulation took place at the LIBE Committee of the European Parliament and mandate was given to Rapporteur to negotiate in trilogue.
6. At the level of the Working Party for Schengen Matters (Acquis) an agreement could be reached on the most part of the text. Only a limited number of issues remain open. Such issues relate essentially to the geometrie variable of the Schengen, on one side, and the structure and location of the Agency, on the other.
7. However, general reservations from DE and FR as well as general scrutiny reservations from AT, CY, EL, IT, LT, NL, SI and UK are still pending on the proposal.

8. On 18 October 2010, JHA Counsellors discussed the open issues presented in DS 1652/10. A compromise could be accepted by the delegations on:
- the pilot schemes (Article 6<sup>1</sup>) and
  - the participation of the associated countries (Articles 10(5), 13(3a) and 33)<sup>2</sup>.

## II. OPEN ISSUES

### STRUCTURE AND LOCATION OF THE AGENCY (Article 7(4))

9. During the Swedish Presidency, the Member States were invited to announce by 31 December 2009 their candidatures to host the Agency. Only Estonia and France have shown interest in hosting the Agency. Both Member States are still negotiating bilaterally on a compromise solution.
10. The EP accepts that a decision on the location of the seat of the Agency be taken by the Council. However, the EP considers that this location should be centralised and fulfil a set of criteria. Taken into account the progress of the negotiations of the proposal for the Regulation, and the willingness of the Belgian Presidency and of the Rapporteur to reach a global approach by the end of 2010, it is opportune that an agreement on this subject be reached within a reasonable time limit. Political guidance is asked to COREPER on this issue.

### VOTING RIGHTS OF MEMBER STATES HAVING SPECIAL POSITION IN RESPECT OF THE AREA OF FREEDOM, SECURITY AND JUSTICE (UK/(IE)/DK) (Article 13(3))

11. The current compromise text of Article 13(3) allows for voting rights in the Management Board if these Member States are bound, under Union law, by at least one legislative instrument governing the development, establishment, operation and use of a large-scale IT system managed by the Agency. It reflects thus the special position of these Member States under their respective Protocols. Following the discussions at the JHA Counsellors on 18 October 2010, while the UK (and IE) could agree to the current wording, DK requested to modify this Article in order to achieve full voting rights in the Management Board.

---

<sup>1</sup> DE was not in a position to support.

<sup>2</sup> CH was not in a position to support and COM retains a reservation on these Articles.

12. The Presidency submits therefore to the Mixed Committee at the level of Senior Officials three possible options for the wording of Article 13(3):

**Option A (current compromise text):**

*Each member appointed by a Member State which is bound, under Union law, by any legislative instrument governing the development, establishment, operation and use of a large-scale IT system managed by the Agency, may vote on a question which concerns that large-scale IT system.*

This option was suggested by the Council Legal Service. It would entail voting rights for DK in the Management Board as regards SIS II matters.

**Option B:**

*Each member appointed by a Member State which is bound by any legislative instrument governing the development, establishment, operation and use of a large-scale IT system managed by the Agency, or which is bound by it as an obligation under international law, may vote on a question which concerns that large-scale IT system.*

This option was suggested by DK. It would entail full voting rights for DK in the Management Board as regards SIS II, VIS, Eurodac and possible future systems.

**Option C:**

*Each member appointed by a Member State which is bound, under Union law, by any legislative instrument governing the development, establishment, operation **or** use of a large-scale IT system managed by the Agency, may vote on a question which concerns that large-scale IT system.*

This option was suggested by COM. It would entail voting rights for DK in the Management Board as regards SIS II and VIS, given that Council Decision 2008/633/JHA concerning access for consultation of the VIS by law enforcement authorities, in the adoption of which DK participated, can be regarded as a legislative instrument governing the use of the VIS.

13. Recital (11c) would need to be adapted according to the option chosen.

#### APPOINTMENT OF THE EXECUTIVE DIRECTOR (Article 15)

14. Some Member States and COM felt that this matter should be dealt with at a political level.
15. The majority of the Member States considered that the Executive Director should be appointed by the Management Board, whilst AT, DE and PL considered that he/she should be appointed by the Council.
16. The Presidency suggests therefore the following text be retained as a compromise:

##### *Article 15*

1. *The Executive Director of the Agency shall be appointed for a period of five years by the Management Board among the suitable candidates identified in an open competition organised by the Commission. This selection procedure will provide for publication in the Official Journal of the European Union and elsewhere of a call for expressions of interest. The Management Board could require a repeated procedure if it is not satisfied with the suitability of any of the candidates retained in the first list. The Executive Director shall be appointed on the basis of his or her personal merits, experience in the field of large-scale IT-systems and administrative and management skills. The Management Board shall take the decision by a two-thirds majority of all members with a right to vote.*

2. *Before appointment, the candidate selected by the Management Board may be invited to make a statement before the competent committee(s) of the European Parliament and answer questions from its/their members. After this statement, the European Parliament may adopt an opinion setting out its view of the selected candidate. The Management Board shall inform the European Parliament of the manner in which this opinion has been taken into account. The opinion shall be treated as personal and confidential until the appointment of the candidate.*
3. *In the course of the nine months preceding the end of the five-year period, the Management Board, after having consulted the Commission, shall undertake an evaluation. In the evaluation, the Management Board shall assess in particular the results achieved in the first term of office and the way they were achieved.*
4. *The Management Board, taking into account the evaluation report, and only in those cases where it can be justified by the duties and requirement of the Agency, may extend the term of office of the Executive Director once for up to five years.*
5. *The Management Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within a month before the extension of his/her term of office, the Executive Director may be invited to make a statement before the competent committee(s) of the Parliament and answer questions from its/their members.*
6. *The Executive Director shall be accountable to the Management Board for his/her activities.*
7. *The Executive Director may be dismissed by the Management Board. The Management Board shall take the decision by a two-thirds majority of all members with a right to vote.*

## APPOINTMENT OF AN INTERIM EXECUTIVE DIRECTOR (Article 32)

17. Some delegations (AT, DE, FR) would prefer that an interim Executive Director would not be assigned, as no urgent reason justifies that. Instead, they would prefer that the definitive Executive Director be appointed as soon as possible. The Rapporteur could share this view. For the sake of a compromise, the Presidency suggests the following text be accepted by the Member States, as a basis for the informal trilogue:

### *Article 32*

- 1. The Commission shall be responsible for the establishment and initial operation of the Agency until the latter has the operational capacity to implement its own budget.*
- 2. For that purpose, until such time as the Executive Director takes up his/her duties following his/her appointment by the Management Board in accordance with article 15 of this Regulation, the Commission may assign a limited number of officials including one to fulfil the functions of the Executive Director, on an interim basis. The interim Executive Director may be assigned once the Management Board is convened, in accordance with Article 10(2).  
  
If the Executive Director does not comply with the obligations laid down in this Regulation, the Management Board may ask the Commission to assign a new interim Executive Director.*
- 3. The interim Executive Director may authorise all payments covered by credits provided in the Budget of the Agency, once approved by the Management Board and may conclude contracts, including staff contracts following the adoption of the Agency's establishment plan. If justified, the Management Board may impose restrictions on the interim Executive Director's powers.*

### III. CONCLUSION / NEXT STEPS

18. **The Mixed Committee at the level of Senior Officials is invited to seek a compromise on the abovementioned open issues and provide the necessary political guidance on the remaining open issues.**
  
19. Furthermore, **the Mixed Committee at the level of Senior Officials is requested to give the Presidency a mandate to start negotiations in trilogue with a view to reaching an agreement with the European Parliament in first reading.** Delegations will find in the annex a three-column document containing the Presidency compromise which would be the basis to start the first informal trilogue with the European Parliament.



COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
<p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, Having regard to the Treaty on the Functioning of the European Union and in particular Articles 77(2)(a) and (b), 78(2)(e), 79(2)(c), 74, 82(1)(d) and 87(2)(a) thereof,</p> <p>Having regard to the proposal from the <u>European Commission</u>,</p> <p>After transmission of the proposal to the national parliaments,</p> <p>Having consulted the European Data Protection Supervisor,</p> <p>Acting in accordance with the ordinary legislative procedure,</p> <p>Whereas:</p>	<p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, Having regard to the Treaty on the Functioning of the European Union and in particular Articles 77(2)(a) and (b), 78(2)(e), 79(2)(c), 74, 82(1)(d) and 87(2)(a) thereof,</p> <p>Having regard to the proposal from the <u>European Commission</u>,</p> <p>After transmission of the proposal to the national parliaments,</p> <p>(...)</p> <p>Acting in accordance with the ordinary legislative procedure,</p> <p>Whereas:</p>	<p><i>Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>1</sup> (Financial Regulation), and in particular Article 185 thereof,</i></p> <p><i>Having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management <sup>2</sup> (IIA of 17 May 2006), and in particular Point 47 thereof,</i></p> <p><sup>1</sup> OJ L 248, 16.9.2002, p. 1. <sup>2</sup> OJ C 139, 14.6.2006, p. 1.</p>
<p>(1) The second-generation Schengen Information System (SIS II) was established by Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second-generation Schengen</p>	<p>(1) The second-generation Schengen Information System (SIS II) was established by Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second-generation Schengen</p>	

<b>COMMISSION 8151/10</b>	<b>COUNCIL 9719/3/10 REV 3</b>	<b>PARLIAMENT</b>
<p>Information System (SIS II) and by Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second-generation Schengen Information System (SIS II). In accordance with Regulation (EC) No 1987/2006 and Decision 2007/533/JHA the Commission is to be responsible, during a transitional period, for the operational management of Central SIS II. After that transitional period, a Management Authority is to be responsible for the operational management of Central SIS II and certain aspects of the communication infrastructure.</p>	<p>Information System (SIS II) and by Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second-generation Schengen Information System (SIS II). In accordance with Regulation (EC) No 1987/2006 and Decision 2007/533/JHA the Commission is to be responsible, during a transitional period, for the operational management of Central SIS II. After that transitional period, a Management Authority is to be responsible for the operational management of Central SIS II and certain aspects of the communication infrastructure.</p>	
<p>(2) The Visa Information System (VIS) was established by Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS). In accordance with Regulation (EC) No 767/2008 of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) the Commission is to be responsible, during a transitional period, for the operational management of VIS. After that transitional period a Management Authority is to be responsible for the operational management of the Central VIS, the national interfaces and certain aspects of the communication infrastructure.</p>	<p>(2) The Visa Information System (VIS) was established by Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS). In accordance with Regulation (EC) No 767/2008 of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) the Commission is to be responsible, during a transitional period, for the operational management of VIS. After that transitional period a Management Authority is to be responsible for the operational management of the Central VIS, the national interfaces and certain aspects of the communication infrastructure.</p>	
<p>(3) EURODAC was established by Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention. In accordance with Regulation (EC) XX/2009 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EC) No [...] the Commission is to be responsible, during a transitional period, for the operational management of EURODAC. After that transitional period a Management Authority is to be responsible for the</p>	<p>(3) EURODAC was established by Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention. In accordance with Regulation (EC) XX/2009 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EC) No [...] the Commission is to be responsible, during a transitional period, for the operational management of EURODAC. After that transitional period a Management Authority is to be responsible for the</p>	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
operational management of the Central System and certain aspects of the communication infrastructure.	operational management of the Central System and certain aspects of the communication infrastructure.	
(4) In order to ensure the operational management of SIS II, VIS and EURODAC after the transitional period and potentially of other information technology ("IT") systems in the area of freedom, security and justice, it is necessary to establish a Management Authority.	(4) In order to ensure the operational management of SIS II, VIS and EURODAC after the transitional periods and potentially of other <b>large-scale</b> information technology (...) systems in the area of freedom, security and justice, it is necessary to establish a Management Authority.	(4) In order to ensure the operational management of SIS II, VIS and EURODAC <i>and parts of the communication infrastructure</i> after the transitional period and potentially of other information technology ("IT") systems in the area of freedom, security and justice, <i>subject to the adoption of separate legal instruments</i> , it is necessary to establish a Management Authority.
(5) With a view to achieving synergies, it is necessary to provide for the operational management of these systems in one entity, benefiting from economies of scale, creating critical mass and ensuring the highest possible utilisation rate of capital and human resources.	(5) With a view to achieving synergies, it is necessary to provide for the operational management of these <b>large-scale</b> systems in one entity, benefiting from economies of scale, creating critical mass and ensuring the highest possible utilisation rate of capital and human resources.	
	<b>(5a) In joint statements of the European Parliament, the Council and the Commission accompanying the SIS II and VIS legal instruments, the Commission was invited to present, following an impact assessment, the necessary legislative proposals entrusting an Agency with the long term operational management of the Central SIS II and parts of its Communication Infrastructure as well as the VIS.</b>	<i>(5a) In the joint statements accompanying the SIS II and VIS legal instruments, the European Parliament and the Council invited the Commission to present, following an impact assessment, the necessary legislative proposals entrusting an Agency with the long term operational management of the Central SIS II and parts of the communication infrastructure as well as the VIS.</i>
(6) Since the Management Authority should have legal, administrative and financial autonomy it should be established in the form of a regulatory agency having legal personality.	(6) Since the Management Authority should have legal, administrative and financial autonomy it should be established in the form of a regulatory agency having legal personality.	
(7) Consequently, the tasks of the Management Authority set out in Regulation (EC) No 1987/2006, in Regulation (EC) No 767/2008 and in Regulation (EC) XX/2009 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EC) No [...] should be exercised by the Agency. These tasks comprise further technical development.	(7) Consequently, the tasks of the Management Authority set out in Regulation (EC) No 1987/2006, in Regulation (EC) No 767/2008 and in Regulation (EC) XX/2010 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EC) No [...] should be exercised by the Agency. These tasks comprise further technical development.	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
	(7a) The core mission of the Agency is to fulfil the operational management tasks for SIS II, VIS and EURODAC and, if so decided, other large-scale IT-systems in the area of freedom, security and justice. The Agency should also be responsible for technical measures required by the tasks entrusted to it, which are not of a normative nature. These responsibilities should be without prejudice to the tasks reserved to the Commission alone or assisted by a Committee in the respective legal instruments governing the systems operationally managed by the Agency.	
(8) In addition, the Agency should organize specific VIS and SIS II related training.	(8) In addition, the Agency should perform tasks related to training on the technical use of SIS II, VIS and EURODAC and other large-scale IT systems which might be entrusted to it in the future.	8. In addition, the Agency should <i>perform tasks related to training on the technical use of VIS, SIS II and EURODAC.</i>
		<i>(8a) Furthermore, the Agency should be responsible for the operation, management and supervision of a communication infrastructure providing networking and security services for the exchange of data within the framework of each IT system concerned, according to their respective legal instruments.</i>
(9) Furthermore, the Agency may also be made responsible for the preparation, development and operational management of additional large-scale IT systems on the basis of a relevant legislative instrument in application of Title V of the Treaty on the Functioning of the European Union. In addition, the Agency should be responsible for monitoring of research and for pilot schemes for large-scale IT systems in application of Title V of the Treaty on the Functioning of the European Union, upon specific and precise request of the Commission.	(9) Furthermore, the Agency <b>might</b> also be made responsible for the preparation, development and operational management of additional large-scale IT systems (...) in application of Title V of the TFEU <b>on the basis of a relevant legislative instrument</b> . In addition, the Agency should be responsible for monitoring of research and for pilot schemes for large-scale IT systems (...), upon specific and precise request of the Commission. <b>When tasked with a pilot scheme, special attention should be given to the European Union Information Management Strategy.</b>	(9) Furthermore, the Agency may also be made responsible for the preparation, development and operational management of additional large-scale IT systems in application of Title V of the Treaty on the Functioning of the European Union. <i>The Agency should be entrusted with such tasks only by means of subsequent and separate legal instruments, preceded by an impact assessment and a <u>proper evaluation</u> of the Agency's work.</i>
		<i>(9a) The Agency should be responsible for monitoring of research and for pilot schemes, in accordance with the provisions of Article 49 (6) (a) of Council</i>

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
		<i>Regulation (EC, Euratom) N° 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, for large-scale IT systems in application of Title V of the Treaty on the Functioning of the European Union, at the specific and precise request of the Commission, <u>or the budgetary authority</u>, and in accordance with Article 6 of this Regulation.</i>
(10) Entrusting an Agency with the operational management of large-scale IT systems in the area of freedom, security and justice does not affect the specific rules applicable to those systems. In particular, the specific rules governing the purpose, access rights, security measures and further data protection requirements for each of the systems the operational management of which the Agency is entrusted with, are fully applicable.	(10) Entrusting an Agency with the operational management of large-scale IT systems in the area of freedom, security and justice does not affect the specific rules applicable to those systems. In particular, the specific rules governing the purpose, access rights, security measures and further data protection requirements for each of the <b>large-scale IT</b> systems the operational management of which the Agency is entrusted with, are fully applicable.	
(11) The Member States and the Commission should be represented within a Management Board, in order to effectively control the functions of the Agency. The Management Board should be entrusted with the necessary powers, in particular to adopt the annual work programme, carry out its functions related to the Agency's budget, adopt the financial rules applicable to the Agency, appoint the Executive Director and establish procedures for taking decisions related to the operational tasks of the Agency by the Executive Director.	(11) The Member States and the Commission should be represented within a Management Board, in order to effectively control the functions of the Agency. The Management Board should be entrusted with the necessary powers, in particular to adopt the annual work programme, carry out its functions related to the Agency's budget, adopt the financial rules applicable to the Agency, appoint the Executive Director and establish procedures for taking decisions related to the operational tasks of the Agency by the Executive Director.	
	(11a) <b>As regards SIS II, the European Police Office (Europol) and Eurojust, both having the right to access and search directly data entered into SIS II in application of Decision 2007/533/JHA, should have observer status at the meetings of the Management Board when a question in relation to the application of Decision 2007/533/JHA is on the agenda. Europol and</b>	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
	Eurojust should each be able to appoint a representative to the SIS II Advisory Group established under Article 16(1)(a).	
	(11b) As regards VIS, Europol should be granted observer status at the meetings of the Management Board, when a question in relation to the application of Decision 2008/633/JHA, is on the agenda. Europol should be able to appoint a representative to the VIS Advisory Group established under Article 16(1)(b).	
	(11c) Member States not participating fully in the provisions of Schengen acquis concerning the IT systems should have voting rights in the Management Board of the Agency if they are bound by at least one legislative instrument setting up the IT system, notably Council Decision 2007/533/JHA for SIS II, and Council Decision 2004/512/EC and Regulation 767/2008 for VIS. As regards Eurodac and other future IT systems to be set up in application of the provisions of Title V TFEU, Member States should have voting rights concerning those systems if they are bound by the legislative instrument setting up that system.	
(12) In order to guarantee its full autonomy and independence, the Agency should be granted an autonomous budget with revenue from the general budget of the European Union. The Union budgetary procedure should be applicable as far as the Union contribution and any other subsidies chargeable to the general budget of the European Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors.	(19) In order to guarantee its full autonomy and independence, the Agency should be granted an autonomous budget with revenue from the general budget of the European Union. The Union budgetary procedure should be applicable as far as the Union contribution and any other subsidies chargeable to the general budget of the European Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors of the European Union.	(12) In order to guarantee its full autonomy and independence, the Agency should be granted an autonomous budget with revenue from the general budget of the European Union. <i>The financing of the Agency is subject to an agreement by the budgetary authority as set out in Point 47 of the IIA of 17 May 2006.</i> The Union budgetary <i>and discharge procedures</i> should be applicable (...). The auditing of accounts <i>and of the legality and regularity of the underlying transactions</i> should be undertaken by the Court of Auditors.
	(12a) The Agency's host Member States should strive to provide the best possible conditions to ensure	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
	<b>proper functioning of the Agency, e. g. including multilingual, European-oriented schooling and appropriate transport connections.</b>	
(13) Within the framework of their respective competences, the Agency should cooperate with other agencies of the European Union, especially agencies established in the area of freedom, security and justice.	(12) Within the framework of their respective competences, the Agency should cooperate with other agencies of the (...) Union, especially agencies established in the area of freedom, security and justice.	(13) Within the framework of their respective competences, the Agency should cooperate with other agencies of the European Union, especially agencies established in the area of freedom, security and justice <i>and, in particular, those concerned with the defence of fundamental rights.</i>
		<i>(13a) With regard to cooperation among the agencies operational in the area of freedom, security and justice, synergies should be created for better policy implementation in the area, ensuring sound management and avoiding duplication of procedures and structures and thereby of costs.</i>
(14) When ensuring the operational management of IT systems, the Agency should follow European and international standards taking into account the highest professional requirements.	(13) When ensuring <b>development and</b> the operational management of large-scale IT systems, the Agency should follow European and international standards taking into account the highest professional requirements, <b>in particular the European Union Information Management Strategy.</b>	
(15) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data applies to the processing of personal data by the Agency. This Regulation provides, <i>inter alia</i> , that the European Data Protection Supervisor shall have the power to obtain from the Agency access to all information necessary for his or her enquiries.	(15) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data applies to the processing of personal data by the Agency. This Regulation provides, <i>inter alia</i> , that the European Data Protection Supervisor shall have the power to obtain from the Agency access to all information necessary for his or her enquiries. <b>In accordance with Article 28 of that Regulation, the Commission consulted the European Data Protection Supervisor, who delivered its opinion on 7 December 2009.</b>	(15) <i>Without prejudice to future Union legislation relating to the protection of personal data and implementing Article 16 of the Treaty on the Functioning of the European Union and Article 8 of the Charter of Fundamental Rights of the European Union</i> , Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data applies to the processing of personal data by the Agency. This Regulation provides, <i>inter alia</i> , that the European Data Protection Supervisor shall have the power to obtain from the Agency access to all information necessary for his or her enquiries.

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
(16) In order to ensure the transparent operation of the Agency, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents should apply to the Agency.	(16) In order to ensure the transparent operation of the Agency, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents should apply to the Agency.	
(17) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) should apply to the Agency, which should accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF).	(17) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) should apply to the Agency, which should accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF).	
	<b>(17a) The Agency's host Member States should provide the best possible conditions to ensure proper functioning of the Agency, e. g. including multilingual, European-oriented schooling and appropriate transport connections.</b>	
(18) In order to ensure open and transparent employment conditions and equal treatment of staff, the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities ("the Staff Regulations") should apply to the staff and to the Executive Director of the Agency, including the rules of professional secrecy or other equivalent duties of confidentiality.	(18) In order to ensure open and transparent employment conditions and equal treatment of staff, the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities ("the Staff Regulations") should apply to the staff and to the Executive Director of the Agency, including the rules of professional secrecy or other equivalent duties of confidentiality.	
(19) The Agency is a body set up by the Union in the sense of Article 185(1) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities and should adopt its financial rules accordingly.	(19) The Agency is a body set up by the Union in the sense of Article 185(1) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities and should adopt its financial rules accordingly.	
(20) Commission Regulation (EC, Euratom) No	(20) Commission Regulation (EC, Euratom) No	



COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities should apply to the Agency.	2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities should apply to the Agency.	
(21) Since the objectives of the proposed action, namely the creation of an Agency at the level of the European Union, responsible for the operational management of large-scale IT systems in the area of freedom, security and justice cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.	(21) Since the objectives of <b>this Regulation</b> , namely the <b>establishment</b> of an Agency at <b>Union</b> level, responsible for the operational management <b>and where appropriate the development</b> of large-scale IT systems in the area of freedom, security and justice cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union ( <b>TEU</b> ). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.	
(22) This Regulation respects fundamental rights and observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union.	(22) This Regulation respects fundamental rights and observes the principles recognised by Article 6(2) of the <b>TEU</b> and reflected in the Charter of Fundamental Rights of the European Union.	
(23) Insofar as it relates to SIS II and VIS, in accordance with Articles 1 and 2 of the Protocol on the Position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen <i>acquis</i> under the provisions of Title V of Part Three of the Treaty on the Functioning of the European Union Denmark should, in accordance with Article 4 of the said Protocol, decide within a period of six months after the date of	(23) (...) <b>In</b> accordance with Articles 1 and 2 of (...) Protocol <b>No 22</b> on the Position of Denmark, annexed to the <b>TEU</b> and (...) the <b>TFEU</b> , Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation, <b>insofar as it relates to SIS II and VIS</b> , builds upon the Schengen <i>acquis</i> (...) Denmark <b>shall</b> , in accordance with Article 4 of the said Protocol, decide within a period of six months after the date of adoption of this Regulation whether it will implement it in its national law (...). In accordance with Article <b>3</b> of the (...) Agreement	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
<p>adoption of this Regulation whether it will implement it in its national law or not. In accordance with Article 5 of the former Protocol on the Position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark decided to implement Regulation (EC) No 1987/2006 and Regulation (EC) No 767/2008 in national law. On the basis of the Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention, Denmark has implemented Council Regulation (EC) No 2725/2000 in national law.</p>	<p>between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention, Denmark <b>shall notify the Commission whether it will implement the contents of this (...) Regulation (...), insofar as it relates to Eurodac.</b></p>	
<p>(24) Insofar as it relates to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS, this Regulation constitutes a development of provisions of the Schengen <i>acquis</i> in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen <i>acquis</i>. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application to the extent that its measures develop provisions of the Schengen <i>acquis</i> insofar as they relate to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS. In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of the said</p>	<p>(24) Insofar as its provisions relate to SIS II as governed by Council Decision 2007/533/JHA, the United Kingdom is taking part in this Regulation in accordance with <b>Article 5(1) of the Protocol No 19 on the Schengen acquis integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000</b>, concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen <i>acquis</i>. Insofar as its <b>provisions</b> relate to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS, <b>which</b> constitute developments of provisions of the Schengen <i>acquis</i> in which the United Kingdom does not take part in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern</p>	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
<p>Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application to the extent that its measures do not develop provisions of the Schengen <i>acquis</i> insofar as they relate to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS. However, the United Kingdom is taking part in this Regulation insofar as its provisions relate to SIS II as governed by Council Decision 2007/533/JHA, in accordance with Article 8(2) of Council Decision 2000/365/EC of 29 May 2000, concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen <i>acquis</i>. Furthermore, by letter of 23 September 2009 to the President of the Council, the United Kingdom notified its intention to take part in the adoption of this Regulation, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty Establishing the European Community. Insofar as this Regulation does not relate to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS, the United Kingdom therefore takes part in its adoption, is bound by it and subject to its application.</p>	<p>Ireland to take part in some of the provisions of the Schengen <i>acquis</i>, <b>the United Kingdom requested, by letter of 5 October 2010 to the President of the Council, to be authorised to take part in the adoption of this Regulation, in accordance with Article 4 of the Protocol on the Schengen acquis integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union. By virtue of Article 1 of Council Decision XXX, concerning that request of the United Kingdom of Great Britain and Northern Ireland, the United Kingdom has been authorised to take part in this Regulation.</b></p> <p>Furthermore, <b>insofar as its provisions relate to the provisions of Eurodac</b>, by letter of 23 September 2009 to the President of the Council, the United Kingdom <b>has</b> notified its <b>wish</b> to take part in the adoption <b>and application</b> of this Regulation, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland <b>in respect of the area of freedom, security and justice</b> annexed to the Treaty on European Union and the Treaty <b>on the Functioning of the European Union.</b></p> <p>(...) The United Kingdom therefore takes part in <b>the adoption of this Regulation</b>, is bound by it and subject to its application.</p>	
<p>(25) Insofar as it relates to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS, this Regulation constitutes a development of provisions of the Schengen <i>acquis</i> in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen <i>acquis</i>. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application to the extent</p>	<p>(25) Insofar as it relates to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS, this Regulation constitutes a development of provisions of the Schengen <i>acquis</i> in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen <i>acquis</i>.</p> <p><b>Ireland has not requested to take part in the adoption of this Regulation, in accordance with</b></p>	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
<p>that its measures develop provisions of the Schengen <i>acquis</i> insofar as they relate to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS. In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of the said Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application to the extent that its measures do not develop provisions of the Schengen <i>acquis</i> insofar as they relate to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS. However, Ireland is taking part in this Regulation insofar as its provisions relate to SIS II as governed by Council Decision 2007/533/JHA, in accordance with Article 6(2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen <i>acquis</i>.</p>	<p><b>Article 4 of the Protocol on the Schengen acquis integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.</b> Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application to the extent that its measures develop provisions of the Schengen <i>acquis</i> as they relate to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS.</p> <p><b>As far as it relates to the provisions of Eurodac, in accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the TEU and to the TFEU (...) Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application (...). Since it is not possible, under these circumstances, to ensure the applicability of the Regulation to Ireland in its entirety as required by Article 288 TFEU, Ireland is not taking part in the adoption of this Regulation, and is not bound by it or subject to its application, without prejudice to its rights under the aforementioned Protocols.</b></p>	
<p>(26) As regards Iceland and Norway, this Regulation constitutes, insofar as it relates to SIS II and VIS, a development of the Schengen <i>acquis</i> within the meaning of the Agreement concluded by the Council of the EU and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen <i>acquis</i>, which falls within the area referred to in Article 1, points A, B and G of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement. As regards EURODAC, this Regulation constitutes a new measure related to</p>	<p>(26) As regards Iceland and Norway, this Regulation constitutes, insofar as it relates to SIS II and VIS, a development of the Schengen <i>acquis</i> within the meaning of the Agreement concluded by the Council of the EU and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen <i>acquis</i>, which falls within the area referred to in Article 1, points A, B and G of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement. As regards EURODAC, this Regulation constitutes a new measure related to</p>	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
<p>EURODAC within the meaning of the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway. Consequently, subject to their decision to implement it in their internal legal order, delegations of the Republic of Iceland and the Kingdom of Norway should participate in the Management Board of the Agency, albeit without voting rights. In order to determine the further modalities allowing for the participation of the Republic of Iceland and the Kingdom of Norway in the Agency's activities, a further arrangement should be concluded between the Union and these States.</p>	<p>EURODAC within the meaning of the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway. Consequently, subject to their decision to implement it in their internal legal order, delegations of the Republic of Iceland and the Kingdom of Norway should participate in the Management Board of the Agency (...). In order to determine the further modalities, <b>e.g. voting rights</b>, allowing for the participation of the Republic of Iceland and the Kingdom of Norway in the Agency's activities, a further arrangement should be concluded between the Union and these States.</p>	
<p>(27) As regards Switzerland, this Regulation constitutes, insofar as it relates to SIS II and VIS, a development of the provisions of the Schengen <i>acquis</i> within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen <i>acquis</i>, which fall within the area referred to in Article 1, points A, B and G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC on the conclusion, on behalf of the European Community, of the Agreement. As regards EURODAC, this Regulation constitutes a new measure related to EURODAC within the meaning of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland. Consequently, subject to its decision to implement it in their internal legal order,</p>	<p>(27) As regards Switzerland, this Regulation constitutes, insofar as it relates to SIS II and VIS, a development of the provisions of the Schengen <i>acquis</i> within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen <i>acquis</i>, which fall within the area referred to in Article 1, points A, B and G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC on the conclusion, on behalf of the European Community, of the Agreement. As regards EURODAC, this Regulation constitutes a new measure related to EURODAC within the meaning of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland. Consequently, subject to its decision to implement it in their internal legal order,</p>	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
<p>the delegation of the Swiss Confederation should participate in the Management Board of the Agency, albeit without voting rights. In order to determine the further modalities allowing for the participation of the Swiss Confederation in the Agency's activities, a further arrangement should be concluded between the Union and the Swiss Confederation.</p>	<p>the delegation of the Swiss Confederation should participate in the Management Board of the Agency, albeit without voting rights. In order to determine the further modalities, <b>e.g. voting rights</b>, allowing for the participation of the Swiss Confederation in the Agency's activities, a further arrangement should be concluded between the Union and the Swiss Confederation.</p>	
<p>(28) As regards Liechtenstein, this Regulation constitutes, insofar as it relates to SIS II and VIS, a development of the provisions of the Schengen <i>acquis</i> within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen <i>acquis</i> which fall within the area referred to in Article 1, points A, B and G of Council Decision 1999/437/EC of 17 May 1999 read in conjunction with Article 3 of Council Decision 2008/261/EC. As regards EURODAC, this Regulation constitutes a new measure related to EURODAC within the meaning of the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland. Consequently, the delegation of the Principality of Liechtenstein should participate in the Management Board of the Agency, albeit without voting rights. In order to determine the further modalities allowing for</p>	<p>(28) As regards Liechtenstein, this Regulation constitutes, insofar as it relates to SIS II and VIS, a development of the provisions of the Schengen <i>acquis</i> within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen <i>acquis</i> which fall within the area referred to in Article 1, points A, B and G of Council Decision 1999/437/EC of 17 May 1999 read in conjunction with Article 3 of Council Decision 2008/261/EC. As regards EURODAC, this Regulation constitutes a new measure related to EURODAC within the meaning of the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland. Consequently, the delegation of the Principality of Liechtenstein should participate in the Management Board of the Agency, albeit without voting rights. In order to determine the further modalities, <b>e.g. voting</b></p>	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
the participation of the Principality of Liechtenstein in the Agency's activities, a further arrangement should be concluded between the Union and the Principality of Liechtenstein.	<b>rights</b> , allowing for the participation of the Principality of Liechtenstein in the Agency's activities, a further arrangement should be concluded between the Union and the Principality of Liechtenstein.	
CHAPTER I SUBJECT MATTER	CHAPTER I SUBJECT MATTER	
<i>Article 1</i> <b>Establishment of the Agency</b>	<i>Article 1</i> <b>Establishment of the Agency</b>	
A European Agency ("the Agency") for the operational management of the second-generation Schengen Information System (SIS II), the Visa Information System (VIS), EURODAC and for developing and managing other large-scale information technology ("IT") systems, in application of Title V of the Treaty on the Functioning of the European Union is hereby established.	1. A European Agency ("the Agency") for the operational management of the second-generation Schengen Information System (SIS II), the Visa Information System (VIS), EURODAC and for developing and <b>operationally</b> managing other large-scale information technology (...) systems ( <b>hereinafter referred to as "large-scale IT systems"</b> ), in application of Title V of the TFEU ( <b>hereinafter referred to as "large-scale IT systems"</b> ) is hereby established.	<b>I.</b> A European Agency ("the Agency") for the operational management of the second-generation Schengen Information System (SIS II), the Visa Information System (VIS) <b>and</b> EURODAC (...) is hereby established.  A European Agency ("the Agency") for the operational management of the second-generation Schengen Information System (SIS II), the Visa Information System (VIS), EURODAC and for developing and managing other large-scale information technology ("IT") systems, in application of Title V of the Treaty on the Functioning of the European Union is hereby established, <b>in accordance with Article 185 of the Financial Regulation.</b>
	<b>1a. Operational management shall consist of all the tasks necessary to keep large-scale IT systems as provided for in paragraph 1 functioning in accordance with the legal instruments governing each of these systems respectively.</b>	<b>1b. Operational management shall consist of all the tasks necessary to keep the large-scale IT systems referred to in paragraph 1 functioning in accordance with the specific provisions applicable to each of those systems, including responsibility for the communication infrastructure used by the IT systems. There shall be no possibility of interoperability between those large-scale IT Systems.</b> See also Article 4A
	<i>Article 1A</i> <b>Objectives</b>	<i>Article 1a</i> <b>Objectives of the Agency</b>
	<b>Without prejudice to the respective responsibilities of the Commission and of the Member States under the</b>	<b>Without prejudice to the respective responsibilities of the Commission and of the Member States under the</b>

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
	<p>instruments governing the development, establishment, use and operation of the IT-systems referred to in Article 1, the Agency shall ensure:</p> <p>(a) the implementation of a continuous, efficient and financially accountable management of the large-scale IT systems referred to in Article 1;</p> <p>(b) an adequately high quality of service for users of these systems;</p> <p>(c) continuity and uninterrupted service;</p> <p>(d) appropriate level of data protection, in accordance with applicable rules, including specific provisions for each of the IT-systems, referred to in Article 1;</p> <p>(e) an appropriate level of data- and physical security, in accordance with applicable rules, including specific provisions for each of the large-scale IT systems, referred to in Article 1; and;</p> <p>(f) the use of an adequate project management structure for efficiently developing large-scale IT systems.</p>	<p><i>instruments governing the IT systems referred to in Article 1, the Agency shall ensure:</i></p> <ul style="list-style-type: none"> <li>- <i>the implementation of effective and secure operation, and the continuous, efficient and financially accountable management, of the IT systems referred to in Article 1;</i></li> <li>- <i>a high-level quality of service quality for users of those IT systems;</i></li> <li>- <i>continuity and uninterrupted service;</i></li> <li>- <i>a high level of data protection, in accordance with the applicable rules, including specific provisions for each IT system referred to in Article 1;</i></li> <li>- <i>a high level of physical security and data integrity and security, in accordance with the applicable rules, including specific provisions for each IT system, as referred to in Article 1;</i></li> <li>- <i>the use of a professional project management structure for the efficient development of large-scale IT systems.</i></li> </ul>
CHAPTER II TASKS	CHAPTER II TASKS	
<i>Article 2</i> Tasks related to SIS II	<i>Article 2</i> Tasks related to SIS II	
<p>The Agency shall perform the tasks conferred on the Management Authority by Regulation (EC) No. 1987/2006 and Council Decision 2007/533/JHA, organize common training for staff involved in the exchange of supplementary information, in accordance with the SIRENE Manual and perform tasks related to the training of experts on SIS II as provided for in Council Regulation No. XXX on the establishment of an evaluation mechanism to verify the application of the Schengen acquis.</p>	<p>The Agency shall:</p> <ul style="list-style-type: none"> <li>- perform the tasks conferred on the Management Authority by Regulation (EC) No 1987/2006 and Decision 2007/533/JHA (...);</li> <li>- <b>perform tasks related to training on the technical use of SIS II, in particular for SIRENE-staff and training of experts on the technical aspects of SIS II in the framework of Schengen evaluation.</b></li> </ul>	<p>The Agency shall:</p> <ul style="list-style-type: none"> <li>- perform the tasks conferred on the Management Authority by Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA;</li> <li>- <b>perform tasks relating to training in the use of SIS II, in particular to</b> organize common training for staff involved in the exchange of supplementary information, in accordance with the SIRENE Manual and perform tasks related to the training of experts on <b>the technical aspects of SIS II</b> as provided for in Council Regulation No XXX on the establishment of an evaluation mechanism to verify</li> </ul>



COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
		the application of the Schengen acquis.
<i>Article 3</i> <b>Tasks related to VIS</b>	<i>Article 3</i> <b>Tasks related to VIS</b>	
The Agency shall perform the tasks conferred on the Management Authority by Regulation (EC) No 767/2008 and Council Decision 2008/633/JHA, and perform tasks related to training on the use of VIS.	The Agency shall: – perform the tasks conferred on the Management Authority by Regulation (EC) No 767/2008 and Decision 2008/633/JHA; – perform tasks related to training on the <b>technical</b> use of VIS.	The Agency shall: - perform the tasks conferred on the Management Authority by Regulation (EC) No 767/2008 and Decision 2008/633/JHA; - perform tasks related to training on the use of VIS, <b>in particular to the training of experts in the technical aspects of VIS.</b>
<i>Article 4</i> <b>Tasks related to EURODAC</b>	<i>Article 4</i> <b>Tasks related to EURODAC</b>	
The Agency shall perform the tasks conferred on the Management Authority by Regulation (EC) XX/2009 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...].	The Agency shall: – perform the tasks conferred on the Management Authority by Regulation (EC) XX/2009 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...]; – <b>perform tasks related to training on the technical use of EURODAC.</b>	The Agency shall: - perform the tasks conferred on the Management Authority by Regulation (EC) XX/2009 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...] - <b>perform tasks related to training in the use of EURODAC, in particular to the training of experts in the technical aspects of EURODAC.</b>
	<i>Article 4A</i> <b>Tasks related to the development and operational management of other large-scale IT systems</b>	<i>Article 4a</i> <b>Tasks related to the communication infrastructure</b>
	The Agency may be made responsible for the preparation, development and operational management of other large-scale IT systems in the area of freedom, security and justice, on the basis of a relevant legislative instrument, based on Title V of the TFEU.  In such a case, the Agency shall perform tasks related to training on the technical use of those systems, as appropriate	<i>[1a. The Agency may also be entrusted with the preparation, development and operational management of other large-scale information technology ("IT") systems, in application of Title V of the Treaty on the Functioning of the European Union. The Agency shall be entrusted with such tasks only by means of separate legal instruments based on Title V of the Treaty on the Functioning of the European Union, following an impact assessment and taking into account the developments in research referred to in Article 5 and the results of pilot schemes referred to in Article 6.</i>  <i>Amendment 8 of the EP for Article 1(1a)]</i>

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
		<p><i>1. The Agency shall be responsible for the operational management and control of a communication infrastructure providing networking and security services for the exchange of data within the framework of each IT system concerned, in accordance with their respective legal instruments..</i></p> <p><i>2. The communication infrastructure shall be adequately managed and controlled in order to protect it from threats and to ensure the security of the communication infrastructure and of the IT systems, including data exchanged through it.</i></p> <p><i>3. The tasks concerning the operational management and control of the communication infrastructure may be entrusted to external private-sector entities or bodies in accordance with Article 36(2) of Commission Regulation (EC, Euratom) No 2343/2002.</i></p> <p><i>4. The entity or body referred to in paragraph 3 shall comply with the following criteria in particular:</i></p> <ul style="list-style-type: none"> <li><i>(a) it shall demonstrate extensive experience of operating the communication infrastructure of a large-scale IT system;</i></li> <li><i>(b) it shall have considerable expertise in the service and security requirements of an IT system with such functionalities;</i></li> <li><i>(c) it shall have sufficient and experienced staff with the appropriate professional expertise and language skills to work in an international cooperation environment such as that required by SIS II, VIS or EURODAC;</i></li> <li><i>(d) it shall have a secure and custom-built facility infrastructure, in particular a single building</i></li> </ul>

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
		<p><i>dedicated exclusively to the tasks conferred on it under paragraph 3, situated on Union territory and be able to back up and guarantee the continuous functioning of large-scale IT systems;</i></p> <p><i>(e) it shall undertake to refrain from any act which may give rise to a conflict of interests;</i></p> <p><i>(f) it shall ensure that the infrastructure provided serves exclusively the needs of information exchange regarding European and national public administrations.</i></p>
<p><i>Article 5</i> <b>Monitoring of research</b></p>	<p><i>Article 5</i> <b>Monitoring of research</b></p>	
<p>1. The Agency shall monitor the developments in research relevant for the operational management of SIS II, VIS, EURODAC and other large-scale IT systems in application of Title V of the Treaty on the Functioning of the European Union.</p>	<p>1. The Agency shall monitor the developments in research relevant for the operational management of SIS II, VIS, EURODAC and other large-scale IT systems (...).</p>	<p>1. The Agency shall monitor the developments in research relevant for the operational management of SIS II, VIS, EURODAC in application of Title V of the Treaty on the Functioning of the European Union.</p>
<p>2. The Agency shall on a regular basis keep the Commission informed on the developments referred to in paragraph 1.</p>	<p>2. The Agency shall on a regular basis keep the <b>European Parliament, the Council and the Commission (...)</b> informed on the developments referred to in paragraph 1.</p>	<p>2. The Agency shall on a regular basis keep <b><i>the European Parliament, the Council, the Commission, and the European Data Protection Supervisor</i></b> informed of the developments referred to in paragraph 1.</p>
<p><i>Article 6</i> <b>Pilot Schemes</b></p>	<p><i>Article 6</i> <b>Pilot Schemes</b></p>	
<p>1. Upon specific and precise request of the Commission, the Agency shall implement pilot schemes for the development and/or the operational management of large-scale IT systems, in application of Title V of the Treaty on the Functioning of the European Union.</p>	<p>1. <b>Only</b> upon specific and precise request of the Commission, <b>which will have informed the European Parliament and Council in advance</b>, the Agency <b>may, in accordance with Article 9(1)(k), carry out pilot schemes as referred to in Article 49(6)(a) of the Council Regulation (EC, Euratom) No 1605/2002</b>, for the development and/or the operational management of large-scale IT systems, in application of Title V of the Treaty on the Functioning of the European Union.</p>	<p>1. <b><i>Only at</i></b> specific and precise request of the Commission <b><i>or of the budgetary authority, and only after having informed the European Parliament and the Council, at least three months in advance</i></b>, the Agency <b><i>may</i></b> implement pilot schemes <b><i>as referred to in Article 49 (6) (a) of Council Regulation (EC, Euratom) N° 1605/2002</i></b>, for the development and/or the operational management of large-scale IT systems, in application of Title V of the Treaty on the Functioning of the European Union.</p> <p><b><i>The European Parliament, the Council and the European Data Protection Supervisor shall be regularly kept informed of the evolution of these pilot</i></b></p>

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
2. Financial appropriations for pilot schemes as requested by the Commission shall be entered in the budget for no more than two successive financial years.	2. Financial appropriations for pilot schemes as requested by the Commission shall be entered in the budget for no more than two successive financial years.	<i>schemes.</i>
<b>CHAPTER III STRUCTURE AND ORGANISATION</b>	<b>CHAPTER III STRUCTURE AND ORGANISATION</b>	
<i>Article 7</i> <b>Legal status</b>	<i>Article 7</i> <b>Legal status</b>	
1. The Agency shall be a Union body and shall have legal personality.	1. The Agency shall be a Union body and shall have legal personality.	
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under national legislation. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. It shall also be empowered to conclude a Headquarters Agreement with its host Member State.	2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under <b>their laws</b> . It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. It shall also be empowered to conclude (...) Headquarters Agreements with <b>the</b> host Member States.	
3. The Agency shall be represented by its Executive Director.	3. The Agency shall be represented by its Executive Director.	
4. The seat of the Agency shall be [...]	4. The seat of the Agency shall be [...].	4. The seat of the Agency shall be [...].
	<b>4a. option 0:</b> [paragraph 4a was not included in the original COM's proposal and would not be inserted in the text.] <b>option 1:</b> [The Agency may establish data centers for hosting IT systems managed by the Agency.] <b>option 2:</b> [The Agency shall maintain one backup IT centre for hosting backup continuity units of the systems managed by the Agency.]	<b>4a. The seat of the Agency shall respect the following requirements:</b> <b>(a)</b> it shall be a <u>centralised</u> location. A Second location shall be maintained only for running a backup IT centre hosting backup continuity units of the IT systems managed by the Agency; <b>(b)</b> it shall be situated in a single building dedicated exclusively to the Agency, which should be owned or rented by the Agency itself; <b>(c)</b> it shall ensure the highest standards of physical and data security; <b>(d)</b> it shall provide for the most cost-effective solution.

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
		<p><b><u>4b. The host Member State shall ensure that the Agency benefits from attractive conditions in respect of the accommodation to be provided to the Agency and the rules applicable to staff and members of the Agency's governing bodies, to be set out in a Headquarters Agreement. In order to ensure the best possible long-term functioning of the Agency, a cost-benefit assessment shall precede the conclusion of the Headquarters Agreement. Particular account shall be taken of a Member State's willingness and ability to provide its own resources to host the Agency in such a way as to ensure its smooth establishment and operation.</u></b></p>
<p><i>Article 8</i> <b>Structure</b></p>	<p><i>Article 8</i> <b>Structure</b></p>	
<p>The Agency's administrative and management structure shall comprise:</p> <p>(a) a Management Board;</p> <p>(b) an Executive Director;</p> <p>(c) Advisory Groups.</p>	<p>0a. The Agency's administrative and management structure shall comprise:</p> <p>(a) a Management Board;</p> <p>(b) an Executive Director;</p> <p>(c) Advisory Groups.</p>	
	<p><b>0b. The Agency's structure shall also include:</b></p> <p><b>(a) a Data Protection Officer;</b></p> <p><b>(b) a Security Officer;</b></p> <p><b>(c) an Accounting Officer.</b></p>	<p><i>(1a) The structure of the Agency shall also comprise:</i></p> <p><i>(a) a Data Protection Officer;</i></p> <p><i>(b) a Security Officer;</i></p> <p><i>(c) an Accounting Officer.</i></p>
<p><i>Article 9</i> <b>Powers of the Management Board</b></p>	<p><i>Article 9</i> <b>Powers of the Management Board</b></p>	
<p>1. In order to ensure that the Agency carries out its tasks, the Management Board shall in particular:</p> <p>(a) appoint, and if relevant, dismiss the Executive Director, in accordance with Article 15;</p> <p>(b) exercise disciplinary authority over the Executive Director;</p> <p>(c) establish the Agency's organisational structure after consultation of the Commission;</p> <p>(d) establish the rules of procedure of the Agency</p>	<p>1. In order to ensure that the Agency carries out its tasks, the Management Board shall (...):</p> <p>(a) appoint, and if relevant, dismiss the Executive Director, in accordance with Article 15;</p> <p>(b) exercise disciplinary authority over the Executive Director <b>and oversee his/her performance including the implementation of Management Board decisions;</b></p> <p>(c) establish the Agency's organisational structure (...);</p> <p>(d) establish the rules of procedure of the Agency</p>	<p>(b) exercise disciplinary authority over the Executive Director <b>and oversee his/her performance including the implementation of Management Board decisions;</b></p>

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
<p>after consultation of the Commission;</p> <p>(e) establish the rules governing the use of languages by the Agency in accordance with Article 22 of this Regulation;</p> <p>(f) approve the Headquarters Agreement to be signed by the Executive Director with the host Member State following a proposal by the Executive Director;</p> <p>(g) in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations;</p> <p>(h) adopt the multi-annual staff policy plan and submit it by 31 March each year at the latest to the Commission and the budgetary authority;</p> <p>(i) before 30 September each year, and after receiving the opinion of the Commission, adopt by a two-thirds majority of its members with the right to vote, and in accordance with the annual Union budgetary procedure and the Union legislative programme in areas of Title V of the Treaty on the Functioning of the European Union, the Agency's annual work programme for the coming year; and ensure that the adopted work programme is forwarded to the European Parliament, the Council and the</p>	<p>(...);</p> <p>(e) (...)</p> <p>(f) approve the Headquarters Agreements to be signed by the Executive Director with the host Member States following a proposal by the Executive Director;</p> <p>(g) in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations;</p> <p><b>(ga) adopt the necessary implementing measures on secondment of national experts to the Agency;</b></p> <p>(h) adopt the multi-annual staff policy plan and submit it by 31 March each year at the latest to the <b>European Parliament and the Council</b> (the budgetary authority) <b>and the Commission</b>;</p> <p>(i) before 30 September each year, and after receiving the opinion of the Commission, adopt by a <b>three-quarters</b> majority of its members with the right to vote, and in accordance with the annual Union budgetary procedure and the Union legislative programme in areas of Title V of the <b>TFEU</b>, the Agency's annual work programme for the coming year; and ensure that the adopted work programme is forwarded to the European Parliament, the Council and the Commission and published;</p>	<p>From CONT PE440.188v01-00</p> <p><b>(ga) adopt a multi-annual work-programme based on the tasks referred to Chapter II- Tasks, using as its basis a draft submitted by the Executive Director referred to in Article 14, after consulting the Advisory Groups referred to in Article 16, and receiving the Commission's opinion. The multi-annual work-programme shall, without prejudice to the annual Union budgetary procedure, include a multi-annual budget estimate and ex ante evaluations in order to structure the objectives and the different stages of the multi-annual planning;</b></p> <p>(h) adopt the multi-annual staff policy plan, <b>and a draft annual work programme</b> and submit <b>them</b> by 31 March each year at the latest to the Commission and the budgetary authority;</p> <p>(i) <b>under the multi-annual programme</b>, before 30 September each year, and after receiving the opinion of the Commission, adopt by a two-thirds majority of its members with the right to vote, and in accordance with the annual Union budgetary procedure and the Union legislative programme in areas of Title V of the Treaty on the Functioning of the European Union, the Agency's annual work programme for the coming year; ensure that the adopted work programme is forwarded to the European Parliament, the Council, the Commission <b>and the European Data Protection</b></p>

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
<p>Commission and published;</p> <p>(j) before 31 March each year, adopt the Agency's annual activity report for the previous year and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors; the annual activity report shall be published;</p> <p>(k) carry out its functions relating to the Agency's budget, pursuant to the provisions of Articles 28, 29(6) and 30 of this Regulation;</p> <p>(l) adopt the financial rules applicable to the Agency in accordance with Article 30 of this Regulation;</p> <p>(m) appoint an Agency staff member as accounting officer who shall be functionally independent in the performance of his/her duties;</p> <p>(n) adopt the necessary security measures, including a security plan;</p> <p>(o) appoint an Agency staff member as a Data Protection Officer in accordance with Regulation (EC) No 45/2001;</p>	<p>(j) before 31 March each year, adopt the Agency's annual activity report for the previous year and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission (...) and the Court of Auditors; the annual activity report shall be published;</p> <p>(k) carry out its functions relating to the Agency's budget, <b>including the implementation of pilot schemes as referred to in Article 6</b>, pursuant to the provisions of Articles 28, 29(6) and 30 of this Regulation;</p> <p>(l) adopt the financial rules applicable to the Agency in accordance with Article 30 of this Regulation;</p> <p>(m) appoint an (...) accounting officer who shall be functionally independent in the performance of his/her duties;</p> <p>(n) adopt the necessary security measures, including a security plan <b>taking into account the advice from security experts in the Advisory Groups and the appointment of a security officer;</b></p> <p>(o) appoint (...) a Data Protection Officer in accordance with Regulation (EC) No 45/2001;</p>	<p><i>Supervisor</i> and <i>that it is</i> published;</p> <p>(j) before 31 March each year, adopt the Agency's annual activity report for the previous year <b><i>comparing, in particular, the results achieved with the objectives of the annual work programme</i></b> and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the European Economic and Social Committee, the Court of Auditors <b><i>and the European Data Protection Supervisor</i></b>; the annual activity report shall be published;</p> <p><b><i>(ma) monitor and give adequate follow-up to the findings and recommendations stemming from various audit reports and evaluations, whether internal or external;</i></b></p> <p>(n) adopt the necessary security measures, including a security plan <b><u>and a business continuity and disaster recovery plan, taking into account the possible recommendations of the security experts present in the Advisory Groups and other relevant authorities (e.g. the European Network and Information Security Agency ("ENISA")) regarding, in particular, network security; and the appointment of a security officer;</u></b></p>

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
<p>(p) adopt, within 6 months after the date of application of this Regulation, the practical arrangements for implementing Regulation (EC) No 1049/2001;</p> <p>(q) adopt the reports on the technical functioning of SIS II pursuant to Article 50(4) of Regulation (EC) No 1987/2006 and Article 66(4) of Decision 2007/533/JHA respectively, of VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and 17(3) of Decision 2008/633/JHA and of EURODAC pursuant to Article [28] of Regulation (EC) XX/2009 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...];</p> <p>(r) make comments on the European Data Protection Supervisor's report about the audit pursuant to Article 45 of Regulation (EC) 1987/2006 and Article 42(2) of Regulation (EC) No 767/2008 and decide on the follow-up of the audit;</p> <p>(s) publish statistics related to SIS II pursuant to Article 50(3) of Regulation (EC) No 1987/2006 and Article 66(3) of Decision 2007/533/JHA respectively;</p>	<p>(p) adopt, within 6 months after the date of application of this Regulation, the practical arrangements for implementing Regulation (EC) No 1049/2001;</p> <p>(q) adopt the reports on the technical functioning of SIS II pursuant to Article 50(4) of Regulation (EC) No 1987/2006 and Article 66(4) of Decision 2007/533/JHA respectively, of VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and 17(3) of Decision 2008/633/JHA and of EURODAC pursuant to Article <b>30(4)</b> of Regulation (EC) <b>No [.../...]</b> concerning the establishment of EURODAC for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...] <b>[EURODAC recast Regulation]</b>;</p> <p><b>(qa) adopt the annual report on the activities of the Central System of EURODAC pursuant to Article [30(1)] of Regulation (EC) No [.../...] [EURODAC recast Regulation];</b></p> <p>(r) make comments on the European Data Protection Supervisor's report about the audit pursuant to Article 45 of Regulation (EC) 1987/2006, Article 42(2) of Regulation (EC) No 767/2008 and (...) <b>Article 27(2) of Regulation XX/2010 [EURODAC recast Regulation] and ensure the appropriate</b> follow-up of the audit;</p> <p>(s) publish statistics related to SIS II pursuant to Article 50(3) of Regulation (EC) No 1987/2006 and Article 66(3) of Decision 2007/533/JHA respectively;</p> <p><b>(sa) compile statistics on the work of the Central System pursuant to Article [6] of Regulation (EC) No [.../...] concerning the establishment of EURODAC for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...] [EURODAC</b></p>	<p>(r) make comments on the European Data Protection Supervisor's report about the audit pursuant to Article 45 of Regulation (EC) No 1987/2006 and Article 42(2) of Regulation (EC) No 767/2008 and decide on <i>how to implement the recommendations in the most appropriate way;</i></p>



COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
<p>(t) ensure the annual publication of the list of competent authorities authorised to directly search the data contained in SIS II pursuant to Article 31(8) of Regulation (EC) No 1987/2006 and Article 46(8) of Decision 2007/533/JHA, together with the list of N.SIS II Offices and SIRENE Bureaux as referred to in Article 7(3) of Regulation (EC) No 1987/2006 and Article 7(3) of Decision 2007/533/JHA respectively;</p> <p>(u) perform any other tasks conferred on it in accordance with this Regulation.</p>	<p><b>recast Regulation];</b></p> <p>(t) ensure the annual publication of the list of competent authorities authorised to directly search the data contained in SIS II pursuant to Article 31(8) of Regulation (EC) No 1987/2006 and Article 46(8) of Decision 2007/533/JHA, together with the list of N.SIS II Offices and SIRENE Bureaux as referred to in Article 7(3) of Regulation (EC) No 1987/2006 and Article 7(3) of Decision 2007/533/JHA respectively;</p> <p><b>(ta) ensure the annual publication of the list of authorities designated pursuant to Article [22(3)] of Regulation (EC) No [.../...] concerning the establishment of EURODAC for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...] [EURODAC recast Regulation];</b></p> <p>(u) perform any other tasks conferred on it in accordance with this Regulation.</p>	
<p>2. The Management Board may advise the Executive Director on any matter strictly related to the development or operational management of the IT systems.</p>	<p>2. The Management Board may advise the Executive Director on any matter strictly related to the development or operational management of the <b>large-scale</b> IT systems.</p>	
<p style="text-align: center;"><i>Article 10</i> <b>Composition of the Management Board</b></p>	<p style="text-align: center;"><i>Article 10</i> <b>Composition of the Management Board</b></p>	
<p>1. The Management Board shall be composed of one representative of each Member State and two representatives of the Commission.</p>	<p>1. <b>Without prejudice to Article 11(2),</b> the Management Board shall be composed of one representative of each Member State and (...) the Commission.</p>	<p>1. The Management Board shall be composed of one representative of each Member State and (...) the Commission.</p>
<p>2. Each Member State shall appoint a member of the Management Board as well as an alternate. The Commission shall appoint two members and their alternates. The alternates shall represent the members in their absence. They shall be members with voting rights.</p>	<p>2. Each Member State <b>and the Commission</b> shall appoint a member of the Management Board as well as <b>a deputy, within two months after the entry into force of this Regulation. After the expiry of this period, the Commission shall convene the Management Board.</b> (...) The <b>deputies</b> shall represent the members in their absence. (...)</p>	<p>2. Each Member State <b>and the</b> Commission shall appoint a member of the Management Board as well as an alternate. (...) The alternates shall represent the members in their absence. They shall be members with voting rights.</p>
<p>3. The members of the Management Board shall be</p>	<p>3. (...)</p>	<p>3. The members of the Management Board shall be</p>

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
appointed on the basis of their high level relevant experience and expertise in the field of large-scale IT systems in the area of freedom, security and justice.		appointed on the basis of their high level relevant experience and expertise in the field of large-scale IT systems in the area of freedom, security and justice, <b>and in the field of data protection. They shall also have the necessary administrative and management skills to fulfil the tasks listed in Article 9.</b>
4. The term of office of the members shall be four years. It may be renewed once. Upon expiry of their term of office or in the event of their resignation, members shall remain in office until their appointments are renewed or until they are replaced.	4. The term of office of the members shall be four years. It may be renewed (...).	
5. Countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures shall participate in the Agency. They shall each appoint one representative and an alternate to the Management Board who shall be members without voting rights.	5. Countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures shall participate in the Agency. They shall each appoint one representative and <b>a deputy</b> to the Management Board (...).	5. Countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures shall participate in the Agency. They shall each appoint one representative and an alternate to the Management Board. (...).
<i>Article 11</i> <b>Chairmanship of the Management Board</b>	<i>Article 11</i> <b>Chairmanship of the Management Board</b>	
1. The Management Board shall elect a Chairperson from among its members.	1. The Management Board shall elect a Chairperson <b>and a deputy Chairperson</b> from among its members.	
2. The term of office of the Chairperson shall be four years and may be renewed once. His/her term of office shall expire earlier if his/her membership of the Management Board ceases.	2. The term of office of the Chairperson shall be <b>two</b> years and may be renewed once. His/her term of office shall expire earlier if his/her membership of the Management Board ceases. <b>During that period the Chairperson shall no longer act as a representative of his or her respective Member State in the Management Board. The Chairperson shall have no voting right. This Member State shall appoint an other representative.</b>	
3. The Chairperson may only be appointed from among those members who are appointed by Member States that participate fully in the adoption of the legal instruments governing all the systems managed by the Agency.	3. The Chairperson may only be appointed from among those members who are appointed by Member States <b>which are fully bound by the legislative instruments governing the development, establishment, operation and use of all the large-scale systems managed by the Agency.</b>	3. The Chairperson may only be appointed from among those members who are appointed by Member States <b>which are fully bound by the</b> legal instruments governing <b>the establishment, development, operation and use of</b> all the <b>IT</b> systems managed by the Agency.

<b>COMMISSION 8151/10</b>	<b>COUNCIL 9719/3/10 REV 3</b>	<b>PARLIAMENT</b>
<i>Article 12</i> <b>Meetings of the Management Board</b>	<i>Article 12</i> <b>Meetings of the Management Board</b>	
1. The meetings of the Management Board shall be convened at the initiative of its Chairperson or at the request of at least a third of its members or at the request of the Commission. The Management Board shall hold at least two ordinary meetings a year.	1. The meetings of the Management Board shall be convened: - at the initiative of its Chairperson, - at the request of at least a third of its members, - at the request of the Commission <b>or</b> - <b>at the request of the Executive Director.</b> The Management Board shall hold at least <b>one</b> ordinary <b>meeting every half</b> year.	
2. The Executive Director of the Agency shall take part in the meetings.	2. The Executive Director of the Agency shall take part in the meetings.	
3. The members of the Management Board may be assisted by experts who are members of the Advisory Groups.	3. The members of the Management Board may be assisted by experts who are members of the Advisory Groups.	
4. Europol and Eurojust shall be granted observer status at the meetings of the Management Board when a question concerning SIS II, in relation to the application of Council Decision 2007/533/JHA, is on the agenda. Europol shall also be granted observer status at the meetings of the Management Board when a question concerning VIS, in relation to the application of Council Decision 2008/633/JHA, is on the agenda.	4. Europol and Eurojust shall be granted observer status at the meetings of the Management Board when a question concerning SIS II, in relation to the application of Council Decision 2007/533/JHA, is on the agenda. Europol shall also be granted observer status at the meetings of the Management Board when a question concerning VIS, in relation to the application of Council Decision 2008/633/JHA, is on the agenda.	
5. The Management Board may invite any other person, whose opinion may be of interest, to attend its meetings as an observer.	5. The Management Board may invite any other person, whose opinion may be of interest, to attend its meetings as an observer.	
6. The secretariat for the Management Board shall be provided by the Agency.	6. The secretariat for the Management Board shall be provided by the Agency.	
	<b>6a. The Management Board may decide to have meetings, or parts of meetings, only open to the members appointed in accordance with Article 10(2) and (5) and the Executive Director.</b>	
<i>Article 13</i> <b>Voting</b>	<i>Article 13</i> <b>Voting</b>	
1. Without prejudice to paragraph 4 of this Article as well as Article 9(1) (i), decisions of the Management	1. Without prejudice to paragraph 4 of this Article as well as Article 9(1)(i) <b>and Article 15(1)</b> , decisions of	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
Board shall be taken by a simple majority of its members with a right to vote.	the Management Board shall be taken by <b>an absolute majority</b> of its members with a right to vote.	
2. Without prejudice to paragraph 3 of this Article, each member in the Management Board shall have one vote.	2. Without prejudice to paragraph 3 of this Article, each member in the Management Board shall have one vote.	
3. Each member appointed by a Member State which participates in the adoption of any legal instrument governing an IT system managed by the Agency may vote on a question which concerns that IT system.	3. <b>Option A:</b> <i>Each member appointed by a Member State which is bound, under Union law, by any legislative instrument governing the development, establishment, operation and use of a large-scale IT system managed by the Agency, may vote on a question which concerns that large-scale IT system.</i> <b>Option B:</b> <i>Each member appointed by a Member State which is bound by any legislative instrument governing the development, establishment, operation and use of a large-scale IT system managed by the Agency, or which is bound by it as an obligation under international law, may vote on a question which concerns that large-scale IT system.</i> <b>Option C:</b> <i>Each member appointed by a Member State which is bound, under Union law, by any legislative instrument governing the development, establishment, operation or use of a large-scale IT system managed by the Agency, may vote on a question which concerns that large-scale IT system.</i>	3. Each member appointed by a Member State which <b>is bound by</b> any legal instrument governing <b>the establishment, development, operation and use of a large-scale</b> IT system managed by the Agency may vote on a question which concerns that IT system. <b><i>If a Member State takes part only in parts of a large-scale IT system, the member appointed by that Member State may vote only on matters concerning that part of the IT system.</i></b>
	<b>3a. Regarding countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures, Article 33 shall apply.</b>	<b><i>3a. Regarding countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC-related measures Article 33 shall apply.</i></b>
4. In case of disagreement among members over whether or not a specific IT system is affected by a vote, members shall decide by a two-thirds majority,	4. In case of disagreement among members over whether or not a specific <b>large-scale</b> IT system is affected by a vote, members shall decide by a two-	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
that it is not affected.	thirds majority, that it is not affected.	
5. The Executive Director of the Agency shall not vote.	5. The Executive Director of the Agency shall not vote.	
6. More detailed voting arrangements shall be established in the rules of procedure of the Agency, in particular, the conditions under which a member may act on behalf of another member as well as any quorum requirements, where appropriate.	6. More detailed voting arrangements shall be established in the rules of procedure of the Agency, in particular, the conditions under which a member may act on behalf of another member as well as any quorum requirements, where appropriate.	
		<p style="text-align: center;">Article 13a (New)</p> <p style="text-align: center;"><b><i>Participation in meetings and access to documents of the Management Board</i></b></p> <p><i>Without prejudice to the more detailed provisions to be laid down in the rules of procedure of the Agency in this respect, the member of the Management Board appointed by a Member State which is not bound by a legal instrument governing that particular large-scale IT system may neither participate in the respective meetings nor have access to documents which relate only to that IT system and which have no impact on other large-scale IT systems in which that Member State takes part.</i></p>
<i>Article 14</i> <b>Functions and powers of the Executive Director</b>	<i>Article 14</i> <b>Functions and powers of the Executive Director</b>	
1. The Agency shall be managed and represented by its Executive Director.	1. The Agency shall be managed and represented by its Executive Director.	
2. The Executive Director shall be independent in the performance of his/her duties. Without prejudice to the respective competences of the Commission and the Management Board, the Executive Director shall neither seek nor take instructions from any government or from any other body.	2. The Executive Director shall be independent in the performance of his/her duties. Without prejudice to the respective competences of the Commission and the Management Board, the Executive Director shall neither seek nor take instructions from any government or from any other body.	
3. Without prejudice to Article 9, the Executive Director shall assume full responsibility for the tasks entrusted to the Agency and shall be subject to the procedure for annual discharge by the European Parliament for the implementation of the budget.	3. Without prejudice to Article 9, the Executive Director shall assume full responsibility for the tasks entrusted to the Agency and shall be subject to the procedure for annual discharge by the European Parliament for the implementation of the budget.	
4. The European Parliament or the Council may invite	4. The European Parliament or the Council may invite	4. <b><i>The Executive Director shall report regularly to the</i></b>

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
the Executive Director of the Agency to report on the implementation of his/her tasks.	the Executive Director of the Agency to report on the implementation of his/her tasks.	<u><i>European Parliament on the implementation of his tasks. The Council and the European Parliament may invite the Executive Director to report on the performance of his/ her tasks.</i></u>
<p>5. The Executive Director shall in particular:</p> <ul style="list-style-type: none"> <li>(a) ensure the Agency's day-to-day administration;</li> <li>(b) take any action necessary to ensure the Agency's operation in accordance with this Regulation;</li> <li>(c) prepare and implement the procedures, decisions, strategies, programmes and activities adopted by the Management Board, within the limits specified by this Regulation, its implementing rules and any applicable law;</li> <li>(d) establish and implement an effective system enabling regular monitoring and evaluations of the IT systems, including statistics, and of the Agency;</li> <li>(e) participate, without the right to vote, in the meetings of the Management Board;</li> <li>(f) exercise in respect to the Agency's staff the powers laid down in Article 17 (2) and manage staff matters;</li> <li>(g) without prejudice to Article 17 of the Staff Regulations, establish confidentiality requirements to comply with Article 17 of Regulation (EC) No 1987/2006, Article 17 of Decision 2007/533/JHA and Article 26(9) of Regulation (EC) No 767/2008 respectively and Article [4(6)] of Regulation (EC) XX/2009 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...];</li> <li>(h) negotiate and, after approval by the Management Board, sign a Headquarters Agreement with the Government of the host Member State.</li> </ul>	<p>5. The Executive Director shall (...):</p> <ul style="list-style-type: none"> <li>(a) ensure the Agency's day-to-day administration;</li> <li>(b) take any action necessary to ensure the Agency's operation in accordance with this Regulation;</li> <li>(c) prepare and implement the procedures, decisions, strategies, programmes and activities adopted by the Management Board, within the limits specified by this Regulation, its implementing rules and any applicable law;</li> <li>(d) establish and implement an effective system enabling regular monitoring and evaluations of the <b>large-scale</b> IT systems, including statistics, and of the Agency;</li> <li>(e) participate, without the right to vote, in the meetings of the Management Board;</li> <li>(f) exercise in respect to the Agency's staff the powers laid down in Article 17(2) and manage staff matters;</li> <li>(g) without prejudice to Article 17 of the Staff Regulations, establish confidentiality requirements to comply with Article 17 of Regulation (EC) No 1987/2006, Article 17 of Decision 2007/533/JHA and Article 26(9) of Regulation (EC) No 767/2008 respectively and Article [4(6)] of Regulation (EC) XX/2009 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...];</li> <li>(h) negotiate and, after approval by the Management Board, sign (...) Headquarters Agreements with the Government of the host Member States.</li> </ul>	<ul style="list-style-type: none"> <li>(d) establish and implement an effective system enabling regular monitoring, <b>auditing</b> and evaluations of the IT systems, including statistics, and of the Agency, <b>also in terms of effective and efficient achievement of Agency's objectives;</b></li> <li>(h) negotiate and, after approval by the Management Board, sign a Headquarters Agreement with the Government of the host Member State, <b>having taken into account the cost/benefit assessment as specified</b></li> </ul>

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
<p>6. The Executive Director shall submit to the Management Board for adoption the drafts for:</p> <p>(a) the Agency's annual work programme and its annual activity report, after prior consultation of the Advisory Groups ;</p> <p>(b) the financial rules applicable to the Agency;</p> <p>(c) the budget for the coming year;</p> <p>(d) the multi-annual Staff Policy Plan;</p> <p>(e) the terms of reference for the evaluation referred to in Article 27;</p> <p>(f) the practical arrangements for implementing Regulation (EC) No 1049/2001;</p> <p>(g) the necessary security measures including a security plan;</p> <p>(h) reports on the technical functioning of each IT system referred to in Article 9(1)(q) of this Regulation, on the basis of the results from the monitoring and evaluation;</p> <p>(i) annual publication of the list of competent authorities authorised to directly search the data contained in SIS II, including the list of N.SIS II Offices and SIRENE Bureaux, referred to in Article 9(1)(t) of this Regulation.</p>	<p>6. The Executive Director shall submit to the Management Board for adoption <b>in particular</b> the drafts for:</p> <p>(a) the Agency's annual work programme and its annual activity report, after prior consultation of the Advisory Groups ;</p> <p>(b) the financial rules applicable to the Agency;</p> <p>(c) the budget for the coming year;</p> <p>(d) the multi-annual Staff Policy Plan;</p> <p>(e) the terms of reference for the evaluation referred to in Article 27;</p> <p>(f) the practical arrangements for implementing Regulation (EC) No 1049/2001;</p> <p>(g) the necessary security measures including a security plan;</p> <p>(h) reports on the technical functioning of each <b>large-scale</b> IT system referred to in Article 9(1)(q) of this Regulation, on the basis of the results from the monitoring and evaluation;</p> <p>(i) annual publication of the list of competent authorities authorised to directly search the data contained in SIS II, including the list of N.SIS II Offices and SIRENE Bureaux, referred to in Article 9(1)(t) of this Regulation.</p>	<p><i>in the second subparagraph of Article 7(4).</i></p> <p>(a) the Agency's annual work programme and its annual activity report, <b>with an indication of the resources allocated to each activity</b>, after prior consultation of the Advisory Groups;</p> <p><b>(ba) the multi-annual work programme</b></p> <p>(c) the budget for the coming year, <b>established on the basis of activity-based budgeting</b>;</p> <p>(g) the necessary security measures including a security plan, (...) <b>and a business continuity and disaster recovery plan</b>;</p>
<p>7. The Executive Director shall perform any other tasks conferred on him/her in accordance with this Regulation.</p>	<p>7. The Executive Director shall perform any other tasks conferred on him/her in accordance with this Regulation.</p>	
<p style="text-align: center;"><i>Article 15</i></p> <p style="text-align: center;"><b>Appointment of the Executive Director</b></p>	<p style="text-align: center;"><i>Article 15</i></p> <p style="text-align: center;"><b>Appointment of the Executive Director</b></p>	
<p>1. The Executive Director of the Agency shall be appointed by the Management Board, from a list of candidates proposed by the Commission, for a period of five years.</p>	<p>1. The Executive Director of the Agency shall be appointed <b>for a period of five years</b> by the Management Board <b>among the suitable candidates identified in an open competition organised by the Commission. This selection procedure will provide</b></p>	<p>1. The Executive Director of the Agency shall be appointed (...) by the Management Board for a period of five years <b>from among the suitable candidates identified in an open competition organised by the Commission. That selection procedure shall provide</b></p>

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
	<p>for publication in the Official Journal of the European Union and elsewhere of a call for expressions of interest. The Management Board could require a repeated procedure if it is not satisfied with the suitability of any of the candidates retained in the first list. The Executive Director shall be appointed on the basis of his or her personal merits, experience in the field of large-scale IT-systems and administrative and management skills. The Management Board shall take the decision by a two-thirds majority of all members with a right to vote.</p>	<p><i>for publication in the Official Journal of the European Union and elsewhere of a call for expressions of interest. The Management Board may require a new procedure to be initiated if it is not satisfied with the suitability of any of the candidates retained in the first list. The Executive Director shall be appointed on the basis of his or her personal merits, experience in the field of large-scale IT systems, experience in the field of data protection, and administrative and management skills.</i></p> <p><i>The candidates shall have the qualities and skills required to effectively perform the duties of Executive Director of the Agency, particularly with regard to the financial rules applicable to the Agency.</i></p>
<p>2. Before appointment, the candidate selected by the Management Board may be invited to make a statement before the competent committee(s) of the European Parliament and answer questions from its/their members.</p>	<p>2. Before appointment, the candidate selected by the Management Board may be invited to make a statement before the competent committee(s) of the European Parliament and answer questions from its/their members. <b>After this statement, the European Parliament may adopt an opinion setting out its view of the selected candidate. The Management Board shall inform the European Parliament of the manner in which this opinion has been taken into account. The opinion shall be treated as personal and confidential until the appointment of the candidate.</b></p>	<p>(...)Before appointment, the candidate selected by the Management Board <b>shall</b> be invited to make a statement before the competent committee(s) of the European Parliament and answer questions from its/their members. <b>If the European Parliament has adopted an opinion setting out its view of the selected candidate, the Management Board shall inform the European Parliament of the manner in which its opinion has been taken into account. The opinion shall be treated as personal and confidential until the appointment of the candidate concerned.</b></p>
<p>3. In the course of the nine months preceding the end of the five-year period, the Commission shall undertake an evaluation. In the evaluation, the Commission shall assess in particular:</p> <p>(a) the results achieved in the first term of office and the way they were achieved;</p> <p>(b) the Agency's duties and requirements in the coming years.</p>	<p>3. In the course of the nine months preceding the end of the five-year period, the <b>Management Board, after having consulted the Commission</b>, shall undertake an evaluation. In the evaluation, the <b>Management Board</b> shall assess in particular the results achieved in the first term of office and the way they were achieved (...)</p>	
<p>4. The Management Board, acting on a proposal from the Commission, taking into account the evaluation</p>	<p>4. The Management Board, (...) taking into account the evaluation report, and only in those cases where it</p>	<p>4. The Management Board, acting on a proposal from the Commission, taking into account the evaluation report,</p>



COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
report, and only in those cases where it can be justified by the duties and requirement of the Agency, may extend the term of office of the Executive Director once for not more than three years.	can be justified by the duties and requirement of the Agency, may extend the term of office of the Executive Director once for <b>up to five</b> years.	and only in those cases where it can be justified by the duties and requirement of the Agency, may extend the term of office of the Executive Director once for not more than three years. <b><i>The Executive Director shall hold office for a period of not exceeding eight years.</i></b>
5. The Management Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within a month before the extension of his/her term of office, the Executive Director may be invited to make a statement before the competent committee(s) of the Parliament and answer questions from its/their members.	5. The Management Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within a month before the extension of his/her term of office, the Executive Director may be invited to make a statement before the competent committee(s) of the Parliament and answer questions from its/their members.	5. The Management Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within a month before the extension of his/her term of office, the Executive Director <b>shall</b> be invited to make a statement before the competent committee(s) of (...) Parliament and answer questions from its/their members.
6. The Executive Director shall be accountable to the Management Board for his/her activities.	6. The Executive Director shall be accountable to the Management Board for his/her activities.	
7. The Executive Director may be dismissed by the Management Board.	7. The Executive Director may be dismissed by the Management Board. <b>The Management Board shall take the decision by a two-thirds majority of all members with a right to vote.</b>	
<i>Article 16</i> <b>Advisory Groups</b>	<i>Article 16</i> <b>Advisory Groups</b>	
1. The following Advisory Groups shall provide the Management Board with the expertise related to the respective IT systems and, in particular, in the context of the preparation of the annual work program and the annual activity report: (a) SIS II Advisory Group; (b) VIS Advisory Group; (c) EURODAC Advisory Group; (d) any other Advisory Group related to a large-scale IT system developed or managed by the Agency.	1. The following Advisory Groups shall provide the Management Board with the expertise related to the respective <b>large-scale</b> IT systems and, in particular, in the context of the preparation of the annual work program and the annual activity report: (a) SIS II Advisory Group; (b) VIS Advisory Group; (c) EURODAC Advisory Group; (d) any other Advisory Group related to a large-scale IT system developed or managed by the Agency.	1. The following Advisory Groups shall provide the Management Board with the expertise related to the respective IT systems and, in particular, in the context of the preparation of the annual work <b>programme</b> and the annual activity report: (a) SIS II Advisory Group; (b) VIS Advisory Group; (c) EURODAC Advisory Group; (d) <b>deleted</b>
2. Each Member State, each country associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures as well as the Commission shall appoint one member to each of the Advisory Groups for a three-year term, which may be renewed.	2. Each Member State, each country associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures as well as the Commission shall appoint one member, <b>as well as a deputy</b> , to each of the Advisory Groups for a three-year term, which may be	2. Each Member State, each country associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures <b>as long as that country is bound by a legal instrument governing the respective large-scale IT system</b> , as well as the Commission shall appoint one

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
	renewed. <b>The deputies shall represent the members in their absence.</b>	member to each of the Advisory Groups, for a three-year term, which may be renewed.
3. Europol and Eurojust may each appoint a representative to the SIS II Advisory Group. Europol may appoint a representative to the VIS Advisory Group.	3. Europol and Eurojust may each appoint a representative to the SIS II Advisory Group. Europol may appoint a representative to the VIS Advisory Group.	
4. Members of the Management Board shall not be members of the Advisory Groups. The Agency's Executive Director or his/her representative shall be entitled to attend all the meetings of the Advisory Groups as observers.	4. Members of the Management Board shall not be members of the Advisory Groups. The Agency's Executive Director or his/her representative shall be entitled to attend all the meetings of the Advisory Groups as observers.	
5. The procedures for the operation and cooperation of the Advisory Groups shall be laid down in the Agency's rules of procedure.	5. The procedures for the operation and cooperation of the Advisory Groups shall be laid down in the Agency's rules of procedure.	
6. When preparing an opinion, each Advisory Group shall do its best to reach a consensus. If such a consensus cannot be reached, the opinion shall consist of the position of the majority of members, including its grounds. The minority position(s), including their grounds, shall also be recorded. Article 13(3) shall apply accordingly. The members representing the countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures shall be allowed to express opinions which are not taken into account in the calculation of the majority required.	6. When preparing an opinion, each Advisory Group shall do its best to reach a consensus. If such a consensus cannot be reached, the opinion shall consist of the position of the majority of members, including its grounds. The minority position(s), including their grounds, shall also be recorded. Article 13(3) <b>and Article 13(3a)</b> shall apply accordingly. (...).	
7. Each Member State, each country associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures shall facilitate the activities of the Advisory Groups.	7. Each Member State, each country associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures shall facilitate the activities of the Advisory Groups.	
8. For the chairmanship, Article 11 shall apply <i>mutatis mutandis</i> .	8. For the chairmanship, Article 11 shall apply <i>mutatis mutandis</i> .	
		<b>8a. Article 13a shall apply <i>mutatis mutandis</i> to the participation in meetings and access to documents of the Advisory Groups.</b>

<b>COMMISSION 8151/10</b>	<b>COUNCIL 9719/3/10 REV 3</b>	<b>PARLIAMENT</b>
<b>CHAPTER IV OPERATION</b>	<b>CHAPTER IV GENERAL PROVISIONS</b>	
<i>Article 17</i> <b>Staff</b>	<i>Article 17</i> <b>Staff</b>	
1. The Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the European Union institutions for the purpose of applying these Staff Regulations and Conditions of Employment shall apply to the Staff of the Agency, including the Executive Director.	1. The Staff Regulations of Officials <b>of the European Communities ("Staff Regulations of Officials")</b> and the Conditions of Employment of Other Servants of the European Communities (" <b>the Conditions of Employment</b> ") pursuant to Council Regulation (EEC, Euratom, ECSC) 259/68 (" <b>the Staff Regulations</b> "), and the rules adopted jointly by the (...) Union institutions for the purpose of applying these Staff Regulations (...) shall apply to the staff of the Agency <b>and to the Executive Director.</b>	
	<b>1a. For the purpose of implementing the Staff Regulations, the Agency shall be considered an agency within the meaning of Article 1a(2) of the Staff Regulations of Officials.</b>	<b>1a. The Agency shall not recruit interim staff to perform what are deemed to be sensitive financial duties.</b>
2. The powers conferred on the Appointing Authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment of Other Servants shall be exercised by the Agency in respect of its own staff.	2. The powers conferred on the Appointing Authority by the Staff Regulations <b>of Officials</b> and on the authority entitled to conclude contracts by the Conditions of Employment (...) shall be exercised by the Agency in respect of its own staff.	
	<b>2a. The staff of the Agency shall consist of officials, temporary staff and/or contract staff. The Management Board shall give its consent on a yearly basis in so far as the contracts that the Executive Director plans to renew would become indefinite pursuant to the Conditions of Employment.</b>	
	<b>2b. The Commission and the Member States may second officials or national experts to the Agency on a temporary basis. The Management Board shall, taking into account the multi-annual staff policy plan, adopt the necessary implementing measures for that purpose.</b>	
3. Without prejudice to Article 17 of the Staff	3. Without prejudice to Article 17 of the Staff	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
Regulations, the Agency shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality.	Regulations <b>of Officials</b> , the Agency shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality.	
4. The Management Board shall, in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations.	4. The Management Board shall, in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations of <b>Officials</b> .	
		<b>Article 17a</b> <b>Privileges and immunities</b>
		<b>The Protocol on the Privileges and Immunities of the European Union shall apply to the Agency. (from Art. 20)</b>
		<b>CHAPTER IVa</b> <b>GENERAL PROVISIONS</b>
<i>Article 18</i> <b>Public interest</b>	<i>Article 18</i> <b>Public interest</b>	
The members of the Management Board, the Executive Director and the members of the Advisory Groups shall undertake to act in the public interest. For this purpose, they shall make, annually and in writing, a statement of commitment.	The members of the Management Board, the Executive Director and the members of the Advisory Groups shall undertake to act in the public interest. For this purpose, they shall make, annually and in writing, a statement of commitment <b>which shall be made public</b> .	The members of the Management Board, the Executive Director and the members of the Advisory Groups shall undertake to act in the public interest. For this purpose, they shall make, annually and in writing, a statement of commitment. <b><i>The list of members of the Management Board shall be published on the Agency's internet site.</i></b>
<i>Article 19</i> <b>Headquarters Agreement</b>	<i>Article 19</i> <b>Headquarters Agreements</b>	<i>Article 19</i> <b>Headquarters Agreement and Operating Conditions</b>
The necessary arrangements concerning the accommodation to be provided for the Agency in the host Member State and the facilities to be made available by that State, as well as the specific rules applicable in the Agency's host Member State to the Executive Director, the members of the Management Board, staff of the Agency and members of their families shall be laid down in a Headquarters Agreement between the Agency and the host Member State concluded after obtaining the approval of the Management Board. The Agency's host Member State should provide the best possible conditions to ensure proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport	The necessary arrangements concerning the accommodation to be provided for the Agency in the host Member States and the facilities to be made available by <b>those States</b> , as well as the specific rules applicable in the Agency's host Member States to the Executive Director, the members of the Management Board, staff of the Agency and members of their families shall be laid down in Headquarters Agreements between the Agency and the host Member States concluded after obtaining the approval of the Management Board. (...)	The necessary arrangements concerning the accommodation to be provided for the Agency in the host Member State and the facilities to be made available by that State, as well as specific rules <b><i>aimed at ensuring good conditions for staff</i></b> , applicable in the Agency's host Member State to the Executive Director, the members of the Management Board, staff of the Agency and members of their families shall be laid down in a Headquarters Agreement between the Agency and the host Member State concluded after obtaining the approval of the Management Board. The Agency's host Member State should provide the best possible conditions to ensure proper functioning of the Agency, including multilingual,

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
connections.		European-oriented schooling and appropriate transport connections. <i>Those conditions shall be examined in the cost/benefit assessment prior to the signing of the Headquarters Agreement and in accordance with the second subparagraph of Article 7(4) and taking into account the Member State's willingness to and capability of providing its own resources to host the Agency.</i>
<i>Article 20</i> <b>Privileges and immunities</b>	<i>Article 20</i> <b>Privileges and immunities</b>	<b>moved to Article 17A</b>
The Protocol on the Privileges and Immunities of the European Union shall apply to the Agency.	The Protocol on the Privileges and Immunities of the European Union shall apply to the Agency.	
<i>Article 21</i> <b>Liability</b>	<i>Article 21</i> <b>Liability</b>	
1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.	1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.	
2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.	2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.	
3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.	3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its departments or by its servants in the performance of their duties.	
4. The Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.	4. The Court of Justice shall have jurisdiction in disputes relating to compensation for the damage referred to in paragraph 3.	
5. The personal liability of the Agency's servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations.	5. The personal liability of the Agency's servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations.	
<i>Article 22</i> <b>Linguistic regime</b>	<i>Article 22</i> <b>Linguistic regime</b>	
1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the language to be used in the European Economic Community, shall apply to the Agency.	1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the language to be used in the European Economic Community, shall apply to the Agency.	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
2. Without prejudice to decisions taken pursuant to Article 342 of the Treaty on the Functioning of the European Union, the annual work programme and the annual activity report referred to in Article 9 (1)(i) and (j), shall be produced in all official languages of the Union.	2. Without prejudice to decisions taken pursuant to Article 342 of the TFEU, the annual work programme and the annual activity report referred to in Article 9(1)(i) and (j), shall be produced in all official languages of the <b>institutions of the</b> Union.	
3. The translation services necessary for the activities of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.	3. The translation services necessary for the activities of the Agency shall be provided by the Translation Centre for the Bodies of the (...) Union	
4. The Management Board shall establish the practical arrangements for the implementation of the language regime.	4. (...)	
<i>Article 23</i> <b>Access to documents</b>	<i>Article 23</i> <b>Access to document</b>	
1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents shall apply to documents held by the Agency.	1. <b>On the basis of a proposal by the Executive Director, and not later than six months after the date of application of this Regulation, the Management Board shall adopt rules concerning access to the Agency's documents, in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.</b>	
2. The Management Board shall, within 6 months after the date of applicability of this Regulation, adopt the practical arrangements for implementing Regulation (EC) No 1049/2001.	2. (...)	
3. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the European Ombudsman or form the subject of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 of the Treaty on the Functioning of the European Union respectively.	3. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the European Ombudsman or form the subject of an action before the Court of Justice (...), under the conditions laid down in Articles 228 and 263 of the TFEU respectively.	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
		<b>Article 23a</b> <b>Administrative controls</b>
		<b>The activities of the Agency shall be subject to the scrutiny of the European Ombudsman in accordance with Article 228 of the Treaty on the Functioning of the European Union.</b>
<i>Article 24</i> <b>Information and communication</b>	<i>Article 24</i> <b>Information and communication</b>	
1. The Agency may communicate on its own initiative in the fields within its mission. It shall ensure in particular that, in addition to the publication specified in Article 9(1) (i),(j),(s),(t), Article 27(3) and Article 29(8), the public and any interested party are rapidly given objective, reliable and easily understandable information with regard to its work.	1. The Agency <b>shall</b> communicate <b>in accordance with the instruments governing the development, establishment, use and operation of the large-scale IT-systems referred to in Article 1</b> and on its own initiative in the fields within its <b>tasks</b> . It shall ensure in particular that, in addition to the publication specified in Article 9(1)(i),(j),(s),(t), Article 27(3) and Article 29(8), the public and any interested party are rapidly given objective, reliable and easily understandable information with regard to its work.	
2. The Management Board shall lay down the practical arrangements for the application of paragraph 1.	2. The Management Board shall lay down the practical arrangements for the application of paragraph 1.	
<i>Article 25</i> <b>Data protection</b>	<i>Article 25</i> <b>Data protection</b>	
1. The information processed by the Agency in accordance with this Regulation shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.	1. <b>Without prejudice to the provisions on data protection which apply as laid down in the instruments governing the development, establishment, use and operation of the large-scale IT-systems</b> , the information processed by the Agency in accordance with this Regulation shall be subject to Regulation (EC) No 45/2001 (...).	
2. The Management Board shall establish measures for the application of Regulation (EC) No 45/2001 by the Agency, including those concerning the Data Protection Officer of the Agency.	2. The Management Board shall establish measures for the application of Regulation (EC) No 45/2001 by the Agency, <b>and in particular Section 8</b> concerning the Data Protection Officer (...).	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
<i>Article 26</i> <b>Security rules on the protection of classified information and non-classified sensitive information</b>	<i>Article 26</i> <b>Security rules on the protection of classified information and non-classified sensitive information</b>	
1. The Agency shall apply the security principles contained in Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure. This shall cover, inter alia, provisions for the exchange, processing and storage of classified information.	1. The Agency shall apply the security principles contained in Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure. This shall cover, inter alia, provisions for the exchange, processing and storage of classified information <b>including measures on physical security</b> .	
2. The Agency shall also apply the security principles relating to the processing of non-classified sensitive information as adopted and implemented by the European Commission.	2. The Agency shall also apply the security principles relating to the processing of non-classified sensitive information as adopted and implemented by the (...) Commission.	2. The Agency shall also apply the security principles relating to the processing of non-classified sensitive information as adopted and implemented by the European Commission. <b><i>In addition, the Agency shall apply the security principles and relevant provisions of the legal instruments concerning the three large-scale IT systems SIS II, VIS and EURODAC.</i></b>
	2a. <b>The Management Board shall, pursuant to Articles 1A and 9(1)(n), decide on the Agency's internal structure necessary to fulfil the appropriate security principles.</b>	
	<i>Article 26A</i> <b>Security of the Agency</b>	
	1. <b>The Agency shall be responsible for the security and the preservation of order within the buildings, premises and land used by it.</b> 2. <b>The host Member States shall take all effective and adequate measures to preserve order and security in the immediate vicinity of the buildings, premises and land used by the Agency and shall provide to the Agency the appropriate protection, in accordance with the relevant Headquarters Agreements, whilst guaranteeing free access to these buildings, premises and land to persons authorised by the Agency.</b>	



COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
<i>Article 27</i> <b>Evaluation</b>	<i>Article 27</i> <b>Evaluation</b>	<i>Article 27</i> <b>Evaluation and review</b>
1. Within three years from the date of the Agency having taken up its responsibilities, and every five years thereafter, the Management Board shall commission an independent external evaluation of the implementation of this Regulation on the basis of terms of reference issued by the Management Board after consultation with the Commission.	1. Within three years from the date of the Agency having taken up its responsibilities, and every five years thereafter, the Management Board shall commission an independent external evaluation of the implementation of this Regulation on the basis of terms of reference issued by the Management Board (...).	1. Within three years from the date of the Agency having taken up its responsibilities, and every <b>three</b> years thereafter, the Management Board shall commission an independent external evaluation of the implementation of this Regulation on the basis of terms of reference issued by the Management Board after consultation with the Commission.
2. The evaluation shall assess the utility, relevance and effectiveness of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level.	2. The evaluation shall <b>examine how effectively</b> the Agency <b>fulfils its tasks. It shall also assess the impact of the Agency</b> and its working practices. (...)	2. The evaluation shall assess the utility, relevance and effectiveness of the Agency and its working practices, <b>including compliance with data protection standards and the respect of fundamental rights.</b> The evaluation shall take into account the views of stakeholders, <b>including Parliaments and data protection authorities</b> , at both European and national level.
3. The Management Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which shall forward them, together with its own opinion as well as appropriate proposals, to the Council and the European Parliament. An action plan with a timetable shall be included, if appropriate. Both the evaluation and the recommendations shall be made public.	3. The Management Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission. <b>The Commission</b> shall forward them, together with its own opinion as well as appropriate proposals, to the Council, the European Parliament <b>and the European Data Protection Supervisor.</b> An action plan with a timetable shall be included, if appropriate. Both the evaluation and the recommendations shall be made public.	3. The Management Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which shall forward them, together with its own opinion as well as appropriate proposals, <b>to the European Parliament, the Council and the European Data Protection Supervisor.</b> An action plan with a timetable shall be included, if appropriate. Both the evaluation and the recommendations shall be made public.
<b>CHAPTER V</b> <b>FINANCIAL PROVISIONS</b>	<b>CHAPTER V</b> <b>FINANCIAL PROVISIONS</b>	
<i>Article 28</i> <b>Budget</b>	<i>Article 28</i> <b>Budget</b>	
1. The revenue of the Agency shall consist, without prejudice to other types of income, of: (a) a subsidy from the Union entered in the general budget of the European Union (Commission section); (b) a contribution from the countries associated with	1. The revenue of the Agency shall consist, without prejudice to other types of income, of: (a) a subsidy from the Union entered in the general budget of the European Union (Commission section); (b) a contribution from the countries associated with	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures; (c) any financial contribution from the Member States.	the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures; (c) any <b>voluntary</b> financial contribution from the Member States.	
2. The expenditure of the Agency shall include, inter alia, staff remuneration, administrative and infrastructure expenses, operating costs and expenditure relating to contracts or agreements concluded by the Agency. Each year the Executive Director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following financial year, together with the establishment plan, and shall transmit it to the Management Board.	2. The expenditure of the Agency shall include, inter alia, staff remuneration, administrative and infrastructure expenses, operating costs and expenditure relating to contracts or agreements concluded by the Agency. Each year the Executive Director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following financial year, together with the establishment plan, and shall transmit it to the Management Board.	2. The expenditure of the Agency shall include, inter alia, staff remuneration, administrative and infrastructure expenses, operating costs and expenditure relating to contracts or agreements concluded by the Agency. Each year the Executive Director shall draw up, <b><i>on the basis of the activities carried out by the Agency</i></b> , a draft statement of estimates of the Agency's revenue and expenditure for the following financial year, together with the establishment plan, and shall transmit it to the Management Board.
3. Revenue and expenditure of the Agency shall be in balance.	3. Revenue and expenditure of the Agency shall be in balance.	
4. The Management Board, on the basis of a draft drawn up by the Executive Director, shall adopt a draft statement of estimates of the revenue and expenditure of the Agency for the following financial year.	4. The Management Board, on the basis of a draft drawn up by the Executive Director, shall adopt a draft statement of estimates of the revenue and expenditure of the Agency for the following financial year.	
5. The draft statement of estimates of the Agency's revenue and expenditure and the general guidelines underlying that estimate, shall be transmitted by the Management Board to the Commission and to the countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures by 10 February each year and the final statement of estimates by 31 March.	5. The draft statement of estimates of the Agency's revenue and expenditure and the general guidelines underlying that estimate, shall be transmitted by the Management Board to the Commission and to the countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures by 10 February each year and the final statement of estimates by 31 March.	
6. By 31 March each year at the latest, the Management Board shall submit to the Commission and to the budgetary authority : (a) its draft work programme;	6. By 31 March each year at the latest, the Management Board shall submit to the Commission and to the budgetary authority: (a) its draft work programme;	(a) its draft <b><i>annual</i></b> work programme, <b><i>together with the anticipated human and financial resources associated with each programmed activity</i></b> ;

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
<p>(b) its updated multi-annual Staff Policy Plan, established in line with the guidelines set by the Commission;</p> <p>(c) information on the number of officials, temporary and contract staff as defined in the Staff Regulation for the years n-1 and n as well as an estimate for the year n+1;</p> <p>(d) information on contributions in kind granted by the host Member State to the Agency;</p> <p>(e) an estimate of the balance of the outturn account for the year n-1.</p>	<p>(b) its updated multi-annual Staff Policy Plan, established in line with the guidelines set by the Commission;</p> <p>(c) information on the number of officials, temporary and contract staff as defined in the Staff Regulation for the years n-1 and n as well as an estimate for the year n+1;</p> <p>(d) information on contributions in kind granted by the host Member State to the Agency;</p> <p>(e) an estimate of the balance of the outturn account for the year n-1.</p>	<p><b>(ba) its updated multi-annual work programme</b></p>
<p>7. The statement of estimates shall be forwarded by the Commission to the European Parliament and the Council (referred to as the budgetary authority) together with the preliminary draft general budget of the European Union.</p>	<p>7. The statement of estimates shall be forwarded by the Commission to the (...) budgetary authority together with the preliminary draft general budget of the (...) Union.</p>	<p>7. The statement of estimates shall be forwarded by the Commission to the European Parliament and the Council (referred to as the budgetary authority) together with the (...) draft general budget of the European Union.</p>
<p>8. On the basis of the statement of estimates, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 314 of the Treaty on the Functioning of the European Union.</p>	<p>8. On the basis of the statement of estimates, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 314 of the TFEU.</p>	<p>8. On the basis of the statement of estimates, the Commission shall enter in the (...) draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 314 of the Treaty on the Functioning of the European Union, <i>together with a description of and justification for any difference between the Agency's statement of estimates and the subsidy to be charged to the general budget.</i></p>
<p>9. The budgetary authority shall authorise the appropriations for the subsidy to the Agency. The budgetary authority shall adopt the establishment plan for the Agency.</p>	<p>9. The budgetary authority shall authorise the appropriations for the subsidy to the Agency. The budgetary authority shall adopt the establishment plan for the Agency</p>	
<p>10. The Agency's budget shall be adopted by the Management Board. It shall become final following the final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.</p>	<p>10. The Agency's budget shall be adopted by the Management Board. It shall become final following the final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.</p>	<p>10. The Agency's budget shall be adopted by the Management Board. It shall become final following the final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly, <i>together with the annual work</i></p>

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
		<i>programme.</i>
11. Any modification to the budget, including the establishment plan, shall follow the same procedure.	11. Any modification to the budget, including the establishment plan, shall follow the same procedure.	
12. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project, which may have significant financial implications for the funding of its budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof as well as the countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures. If either branch of the budgetary authority intends to issue an opinion, it shall within two weeks after receipt of the information on the project, notify the Management Board of its intention to issue such an opinion. Failing a reply, the Agency may proceed with the planned operation.	12. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project, which may have significant financial implications for the funding of its budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof as well as the countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures. If either branch of the budgetary authority intends to issue an opinion, it shall within two weeks after receipt of the information on the project, notify the Management Board of its intention to issue such an opinion. Failing a reply, the Agency may proceed with the planned operation.	
<i>Article 29</i> <b>Implementation of the budget</b>	<i>Article 29</i> <b>Implementation of the budget</b>	
1. The Agency's budget shall be implemented by its Executive Director.	1. The Agency's budget shall be implemented by its Executive Director	
2. The Executive Director shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures.	2. The Executive Director shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures.	2. The Executive Director shall forward annually to the budgetary authority <b><i>a report summarising the number and type of internal audits conducted by the internal auditor, the recommendations made and the action taken on those recommendations, in accordance with Article 72(5) of Regulation (EC, Euratom) No 2343/2002.</i></b> <sup>1</sup> <sup>1</sup> <i>OJ L 357, 31.12.2002, p. 72.</i>
3. The Agency's Accounting Officer shall send to the Commission's Accounting Officer and the Court of Auditors by no later than 1 March of the following year its provisional accounts, together with the report on budgetary and financial management during the year. The Commission's accounting officer shall	3. The Agency's Accounting Officer shall send to the Commission's Accounting Officer and the Court of Auditors by no later than 1 March of the following year its provisional accounts, together with the report on budgetary and financial management during the year. The Commission's accounting officer shall	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Regulation (EC, Euratom) No 1605/2002.	consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Regulation (EC, Euratom) No 1605/2002.	
4. The Agency's accounting officer shall also send to the European Parliament and the Council, by 31 March of the following year at the latest, the report on budgetary and financial management.	4. The Agency's accounting officer shall also send to the <b>budgetary authority (...)</b> , by 31 March of the following year at the latest, the report on budgetary and financial management.	
		<i>4a. The European Court of Auditors shall audit the accounts of the Agency and the legality and regularity of the underlying transactions. It shall also provide, when available, any finding regarding the Agency's performance in achieving its objectives in an efficient and effective manner.</i>
5. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of Regulation (EC, Euratom) No 1605/2002, the Executive Director shall draw up the Agency's final accounts under his/her own responsibility and forward them to the Management Board for an opinion.	5. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of Regulation (EC, Euratom) No 1605/2002, the Executive Director shall draw up the Agency's final accounts under his/her own responsibility and forward them to the Management Board for an opinion.	
6. The Management Board shall deliver an opinion on the Agency's final accounts.	6. The Management Board shall examine and deliver an opinion on the Agency's final accounts.	
7. By 1 July of the following year at the latest, the Executive Director shall send the final accounts, together with the opinion of the Management Board, to the Commission's Accounting Officer, the Court of Auditors, the European Parliament and the Council as well as the countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures.	7. By 1 July of the following year at the latest, the Executive Director shall send the final accounts, together with the opinion of the Management Board, to the <b>budgetary authority, the</b> Commission's Accounting Officer, the Court of Auditors (...) as well as the countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures.	
8. The final accounts shall be published.	8. The final accounts shall be published.	
9. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He/she shall also send this reply to the Management Board.	9. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He/she shall also send this reply to the Management Board.	

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
10. The Executive Director shall submit to the European Parliament, at the latter's request, all information necessary for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of Regulation (EC, Euratom) No 1605/2002.	10. The Executive Director shall submit to the European Parliament, at the latter's request, all information necessary for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of Regulation (EC, Euratom) No 1605/2002.	
11. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 15 May of year n + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year n.	11. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 15 May of year n + 2, give a discharge to the Executive Director in respect of the implementation of the budget for year n.	
<i>Article 30</i> <b>Financial rules</b>	<i>Article 30</i> <b>Financial rules</b>	
The financial rules applicable to the Agency shall be adopted by the Management Board after consultation of the Commission. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 unless such departure is specifically required for the Agency's operation and the Commission has given its prior consent.	The financial rules applicable to the Agency shall be adopted by the Management Board after consultation of the Commission. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 unless such departure is specifically required for the Agency's operation and the Commission has given its prior consent.	
<i>Article 31</i> <b>Combating fraud</b>	<i>Article 31</i> <b>Combating fraud</b>	
1. In order to combat fraud, corruption and other unlawful activities the provisions of Regulation (EC) No 1073/1999 shall apply.	1. In order to combat fraud, corruption and other unlawful activities the provisions of Regulation (EC) No 1073/1999 shall apply.	
2. The Agency shall accede to the Inter-institutional Agreement concerning internal investigations by the European Anti-fraud Office (OLAF) and shall issue, without delay, the appropriate provisions applicable to all the employees of the Agency.	2. The Agency shall accede to the Inter-institutional Agreement concerning internal investigations by the European Anti-fraud Office (OLAF) and shall issue, without delay, the appropriate provisions applicable to all the employees of the Agency.	
3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks among the recipients of the Agency's funding and the agents responsible for allocating it.	3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks among the recipients of the Agency's funding and the agents responsible for allocating it.	

<b>COMMISSION 8151/10</b>	<b>COUNCIL 9719/3/10 REV 3</b>	<b>PARLIAMENT</b>
<b>CHAPTER VI FINAL PROVISIONS</b>	<b>CHAPTER VI FINAL PROVISIONS</b>	
<i>Article 32</i> <b>Preparatory actions</b>	<i>Article 32</i> <b>Preparatory actions</b>	
1. The Commission shall be responsible for the establishment and initial operation of the Agency until the latter has the operational capacity to implement its own budget.	1. The Commission shall be responsible for the establishment and initial operation of the Agency until the latter has the operational capacity to implement its own budget.	1. The Commission shall be responsible for the establishment and initial operation of the Agency (...)
2. For that purpose, until such time as the Executive Director takes up his/her duties following his/her appointment by the Management Board in accordance with article 15 of this Regulation, the Commission may assign a limited number of officials including one to fulfil the functions of the Executive Director, on an interim basis.	2. For that purpose, until such time as the Executive Director takes up his/her duties following his/her appointment by the Management Board in accordance with article 15 of this Regulation, the Commission may assign a limited number of officials including one to fulfil the functions of the Executive Director, on an interim basis. <b>The interim Executive Director may be assigned once the Management Board is convened, in accordance with Article 10(2). If the Executive Director does not comply with the obligations laid down in this Regulation, the Management Board may ask the Commission to assign a new interim Executive Director.</b>	2. For that purpose, until such time as the Executive Director takes up his/ her duties following his/ her appointment by the Management Board in accordance with Article 15 of this Regulation, the Commission may assign a limited number of officials (...) on an interim basis.
3. The interim Executive Director may authorise all payments covered by credits provided in the Budget of the Agency, once approved by the Management Board and may conclude contracts, including staff contracts following the adoption of the Agency's establishment plan.	3. The interim Executive Director may authorise all payments covered by credits provided in the Budget of the Agency, once approved by the Management Board and may conclude contracts, including staff contracts following the adoption of the Agency's establishment plan. <b>If justified, the Management Board may impose restrictions on the interim Executive Director's powers.</b>	3. <b>Once the Management Board has been appointed, the Commission shall immediately launch the selection procedure for the Executive Director of the Agency.</b>
<i>Article 33</i> <b>Participation by Countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures</b>	<i>Article 33</i> <b>Participation by Countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures</b>	
Under the relevant provisions of their association agreements, arrangements shall be made in order to specify, inter alia, the nature and extent of, and the	Under the relevant provisions of their association agreements, arrangements shall be made in order to specify, inter alia, the nature and extent of, and the	Under the relevant provisions of their association agreements, arrangements shall be made in order to specify, inter alia, the nature and extent of, and the

COMMISSION 8151/10	COUNCIL 9719/3/10 REV 3	PARLIAMENT
detailed rules for, the participation by countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures in the work of the Agency, including provisions on financial contributions and staff.	detailed rules for, the participation by countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures in the work of the Agency, including provisions on financial contributions, staff <b>and voting rights</b> .	detailed rules for, the participation by countries associated with the implementation, application and development of the Schengen <i>acquis</i> and the EURODAC related measures in the work of the Agency, including provisions on financial contributions, staff <b>and voting rights</b> .
<i>Article 34</i> <b>Entry into force and applicability</b>	<i>Article 34</i> <b>Entry into force and applicability</b>	
1. This Regulation shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.	1. This Regulation shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.	
2. The Agency shall take up its responsibilities set out in Articles 2 to 6 from 1 January 2012.	2. The Agency shall take up its responsibilities set out in Articles 2 to 6 from [1 January 2012].	2. The Agency shall take up its responsibilities set out in Articles 2 to 6 from 1 January 2012, <b><i>provided that the Member States have agreed on the location of its seat sufficiently in advance to allow its basic infrastructure and procedures to become operational at that seat.</i></b>