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*Plenary sitting*

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**A7-0241/2011**

21.6.2011

**\*\*\*I**  
**REPORT**

on the amended 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  
(COM(2010)0093 – C7-0046/2009 – 2009/0089(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Carlos Coelho

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* alerts the relevant departments to parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act which the draft act seeks to amend includes a third and fourth line identifying respectively the existing act and the provision in that act affected by the amendment. Passages in a provision of an existing act that Parliament wishes to amend, but the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the amended 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  
(COM(2010)0093 – C7-0046/2009 – 2009/0089(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the amended Commission proposal to Parliament and the Council (COM(2010)0093),
  - having regard to Article 294(2) and Articles 77(2)(a) and (b), 78(2)(e), 79(2)(c), 74, 82(1)(d) and 87(2)(a) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0046/2009),
  - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the Opinion of the European Data Protection Supervisor of 7 December 2009<sup>1</sup>,
  - having regard to the undertaking given by the Council representative by letter of 9 June 2011 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
  - having regard to Rules 55 and 37 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Budgets and the Committee on Budgetary Control (A7-0241/2011),
1. Adopts its position at first reading hereinafter set out;
  2. Approves the joint statement by Parliament and the Council annexed to this resolution;
  3. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 70, 19.3.2010, p. 13.

AMENDMENTS BY PARLIAMENT\*

to the Commission proposal/to the Council common position

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REGULATION (EU) No .../... 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

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), **85(1)**, 87(2)(a) **and 88(2)** thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

■  
Acting in accordance with the ordinary legislative procedure<sup>1</sup>,

Whereas:

- (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 Information System (SIS II)<sup>2</sup> 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)<sup>3</sup>. 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.
- (2) The Visa Information System (VIS) was established by Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS)<sup>4</sup>. In

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<sup>1</sup> Position of the European Parliament of xxx

<sup>2</sup> OJ L 381, 28. 12. 2006, p. 4.

<sup>3</sup> OJ L 205, 7. 8. 2007, p. 63.

<sup>4</sup> OJ L 213, 15. 6. 2004, p. 5.

accordance with Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)<sup>1</sup> 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.

- (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<sup>2</sup>. ***Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention<sup>3</sup> provided for necessary implementing provisions.*** ■
- (4) In order to ensure the operational management of SIS II, VIS and EURODAC ***and parts of the communication infrastructure*** after the transitional period and potentially of other ***large-scale*** information technology ("IT") systems in the area of freedom, security and justice, ***subject to the adoption of separate legal instruments***, 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 ***large-scale IT*** systems in one entity, benefiting from economies of scale, creating critical mass and ensuring the highest possible utilisation rate of capital and human resources.
- (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.***
- (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. ***As was agreed, the seat of the Agency should be in Tallinn (Estonia). However, since the tasks related to technical development and the preparation for the operational management of SIS II and VIS were already carried out in Strasbourg (France) and a backup site for these IT systems was already installed in Sankt Johann im Pongau (Austria), this should continue to be the case. These two sites should also be the locations, respectively, where the tasks related to technical development and operational management of EURODAC should be carried out and where a backup site for EURODAC should be established. This should also be the case regarding, respectively, the technical development and operational management of other large-scale IT systems in the area of freedom,***

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<sup>1</sup> OJ L 218, 13.8.2008, p. 60.

<sup>2</sup> OJ L 316, 15.12.2000, p. 1.

<sup>3</sup> OJ L 62, 5.3.2002, p. 1.

*security and justice and a backup site capable of ensuring the operation of an IT system in the event of failure of that system, if so provided in the relevant legislative instrument.*

- (7) Consequently, the tasks of the Management Authority set out in Regulation (EC) No 1987/2006, *and* in Regulation (EC) No 767/2008 **■** should be exercised by the Agency. These tasks comprise further technical development.
- (7a) *According to Regulations (EC) No 2725/2000 and (EC) No 407/2002, a central Unit is established within the Commission which is responsible for the operation of the central database of Eurodac and other tasks related to it. In order to exploit synergies, the Agency should replace the Commission for the latter's tasks relating to the operational management of Eurodac including certain tasks relating to the communication infrastructure as from the date on which the Agency takes up its responsibilities.*
- (7b) *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 normative 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 *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.*
- (9) Furthermore, the Agency *might* 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 ("*TFEU*"). **■** The Agency should be *entrusted with such tasks only by means of subsequent and separate legal instruments, preceded by an impact assessment.*
- (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 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>, for large-scale IT systems in application of Title V of the TFEU, at the specific and precise request of the Commission. When tasked with a pilot scheme, special attention should be given to the European Union Information Management Strategy.*
- (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

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<sup>1</sup> OJ L 248, 16.9.2002, p. 1.



to those systems. In particular, the specific rules governing the purpose, access rights, security measures and further data protection requirements for each of the **large-scale IT** 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.
- (11a) *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 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 Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences<sup>1</sup>, 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 should have voting rights in the Management Board of the Agency concerning a large-scale IT system provided they are bound under Union law by any legislative instrument governing the development, establishment, operation and use of that particular system. Denmark should also have voting rights concerning a large-scale IT system, if it decides under Article 4 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union ("TEU") and to the TFEU to implement the legislative instrument governing the development, establishment, operation and use of that particular large-scale IT system in its national law.***
- (11d) *Member States should appoint a Member to the Advisory Group concerning a large-scale IT system, if they are bound under Union law by any legislative instrument governing the development, establishment, operation and use of that particular system. Denmark should in addition, appoint a Member to the Advisory Group concerning a large-scale IT system, if it decides under Article 4 of the Protocol on the position of Denmark to implement the legislative instrument governing the development, establishment, operation and use of that particular***

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<sup>1</sup> OJ L 218, 13.8.2008, p. 129.

*system in its national law.*

- (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 financing of the Agency is subject to an agreement by the budgetary authority as set out in Point 47 of the Inter Institutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management.*** The Union budgetary ***and discharge procedures*** should be applicable **■**. The auditing of accounts ***and of the legality and regularity of the underlying transactions*** should be undertaken by the Court of Auditors.
- (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, ***and in particular the European Union Agency for Fundamental Rights. It should also consult and follow-up the recommendations of European Network and Information Security Agency regarding network security, where appropriate.***
- (14) When ensuring ***development and*** the operational management of ***large-scale*** IT systems, the Agency should follow European and international standards taking into account the highest professional requirements, ***in particular the European Union Information Management Strategy.***
- (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<sup>1</sup> applies to the processing of personal data by the Agency. This Regulation provides, inter alia, 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. ***In accordance with Article 28 of Regulation (EC) No 45/2001, the Commission consulted the European Data Protection Supervisor, who delivered its opinion on 7 December 2009.***
- (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<sup>2</sup> should apply to the Agency. ***The activities of the Agency shall be subject to the scrutiny of the European Ombudsman in accordance with Article 228 of the TFEU.***
- (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)<sup>3</sup> 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

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<sup>1</sup> OJ L 8, 12.1.2001, p. 1.

<sup>2</sup> OJ L 145, 31.5.2001, p. 43.

<sup>3</sup> OJ L 136, 31.5.1999, p. 1.

internal investigations by the European Anti-Fraud Office (OLAF)<sup>1</sup>.

- (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.***
- (18) In order to ensure open and transparent employment conditions and equal treatment of staff, the Staff Regulations of Officials of the European **Union** and the Conditions of Employment of Other Servants of the European **Union laid down in Regulation (EEC, Euratom, ECSC) No 259/68**<sup>2</sup> ("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 Regulation (EC, Euratom) No 1605/2002<sup>3</sup> and should adopt its financial rules accordingly.
- (20) Commission Regulation (EC, Euratom) No 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<sup>3</sup> should apply to the Agency.
- (21) Since the objectives of **this Regulation**, namely the **establishment** of an Agency at **Union level**, responsible for the operational management **and where appropriate the development** 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 **TEU**. 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 **TEU** and reflected in the Charter of Fundamental Rights of the European Union.
- (23) **In accordance with Articles 1 and 2 of the Protocol No 22 on the Position of Denmark annexed to the TEU and the TFEU, 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, insofar as it relates to SIS II and VIS, builds upon the Schengen acquis Denmark shall, 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 3 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**

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<sup>1</sup> OJ L 136, 31.5.1999, p. 15.

<sup>2</sup> OJ L 56, 4.3.1968, p. 1.

<sup>3</sup> OJ L 357, 31.12.2002, p. 72.

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<sup>1</sup>, Denmark **shall notify the Commission whether it will implement the contents of this Regulation, insofar as it relates to Eurodac.**

- (24) Insofar as **its provisions** relate to SIS II as governed by **Decision 2007/533/JHA**, the United Kingdom **is taking part in this Regulation**, in accordance with **Article 5(1) of the Protocol No 19 on the Schengen acquis integrated into the framework of the European Union, annexed to the TEU and to the TFEU, and 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 acquis<sup>2</sup>.** Insofar as **its provisions** relate to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS, **which constitute developments of provisions of the Schengen acquis in which the United Kingdom does not take part in** accordance with **Decision 2000/365/EC**, **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 TEU and to the TFEU. By virtue of Article 1 of Council Decision 2010/779/EU of 14 December 2010<sup>3</sup>, 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.** Furthermore, **insofar as its provisions relate to the provisions of Eurodac**, by letter of 23 September 2009 to the President of the Council, the United Kingdom **has notified its wish to take part in the adoption and application** of this Regulation, in accordance with Article 3 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 the **TFEU**. The United Kingdom therefore takes part in **the adoption of this Regulation**, is bound by it and subject to its application.
- (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 acquis 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 acquis<sup>4</sup>. **Ireland has not requested 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 TEU and to the TFEU.** Ireland is therefore 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 develop provisions of the Schengen acquis as they relate to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS. **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

<sup>1</sup> OJ L 66, 8.3.2006, p. 38.

<sup>2</sup> OJ L 131, 1.6.2000, p. 43.

<sup>3</sup> OJ L 333, 17.12.2010, p. 58.

<sup>4</sup> OJ L 64, 7.3.2002, p. 20.

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.*

- (26) As regards Iceland and Norway, this Regulation constitutes, insofar as it relates to SIS II and VIS, a development of the *provisions of the* Schengen acquis 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 acquis<sup>1</sup>, 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<sup>2</sup>. As regards EURODAC, this Regulation constitutes a new measure related to 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, *e.g. voting rights*, 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.
- (27) As regards Switzerland, this Regulation constitutes, insofar as it relates to SIS II and VIS, a development of the provisions of the Schengen acquis 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 acquis<sup>3</sup>, 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<sup>4</sup> **■**. 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, the delegation of the Swiss Confederation should participate in the Management Board of the Agency **■**. In order to determine the further modalities, *e.g. voting rights*, 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.

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<sup>1</sup> OJ L 176, 10.7.1999, p. 36.

<sup>2</sup> OJ L 176, 10.7.1999, p. 31.

<sup>3</sup> OJ L 53, 27.2.2008, p. 52.

<sup>4</sup> OJ L 53, 27.2.2008, p. 1.

- (28) As regards Liechtenstein, this Regulation constitutes, insofar as it relates to SIS II and VIS, a development of the provisions of the Schengen acquis 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 acquis<sup>1</sup> 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<sup>2</sup>. 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<sup>3</sup>. Consequently, the delegation of the Principality of Liechtenstein should participate in the Management Board of the Agency █. In order to determine the further modalities, *e.g. voting rights*, 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,

HAVE ADOPTED THIS REGULATION:

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<sup>1</sup> OJ: Please insert the publication reference of the Protocol contained in doc. st 16462/06.

<sup>2</sup> OJ L 83, 26.3.2008, p. 3.

<sup>3</sup> OJ...

CHAPTER I  
SUBJECT MATTER

Article 1  
Establishment of the Agency

1. A European Agency ("the Agency") for the operational management of the second-generation Schengen Information System (SIS II), the Visa Information System (VIS) *and* EURODAC (*hereinafter referred to as ("large-scale IT systems")*) is hereby established.
2. *The Agency may also be made responsible for the preparation, development and operational management of other large-scale IT systems in the area of freedom, security and justice, only if so provided by the relevant legislative instrument, based on Title V of the Treaty on the Functioning of the European Union (TFEU), taking into account, where appropriate, the developments in research referred to in Article 5 of this Regulation and the results of pilot schemes referred to in Article 6 of this Regulation.*
3. *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 large-scale IT systems, including responsibility for the communication infrastructure used by the large-scale IT systems. Those large-scale IT systems shall not exchange data and/or enable sharing of information and knowledge, unless provided in a specific legal basis.*

*Article 1a  
Objectives*

*Without prejudice to the respective responsibilities of the Commission and of the Member States under the instruments governing the large-scale IT systems referred to in Article 1, the Agency shall ensure:*

- (a) *the implementation of effective, secure and continuous operation of the large-scale IT systems referred to in Article 1;*
- (b) *the efficient and financially accountable management of those large-scale IT systems;*
- (c) *an adequately high quality of service for users of those large-scale IT systems;*
- (d) *continuity and uninterrupted service;*
- (e) *a high level of data protection, in accordance with the applicable rules, including specific provisions for each large-scale IT system referred to in Article 1;*
- (f) *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;*
- (g) *the use of an adequate project management structure for efficiently developing large-scale IT systems.*

## CHAPTER II TASKS

### Article 2 Tasks related to SIS II

The Agency shall *perform*:

- the tasks conferred on the Management Authority by Regulation (EC) No 1987/2006 and Decision 2007/533/JHA ;
- *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.*

### Article 3 Tasks related to VIS

The Agency shall *perform*:

- the tasks conferred on the Management Authority by Regulation (EC) No 767/2008 and Decision 2008/633/JHA;
- tasks related to training on the *technical* use of VIS.

### Article 4 Tasks related to EURODAC

The Agency shall *perform*:

- the tasks conferred on the *Commission as the authority responsible for the operational management of Eurodac in accordance with Regulation (EC) No 2725/2000 and (EC) No 407/2002;*
- *the following tasks relating to the communication infrastructure: supervision, security and the coordination of relations between the Member States and the provider;*
- *tasks related to training on the technical use of EURODAC.*

#### *Article 4a Tasks related to the development and operational management of other large-scale IT systems*

*When entrusted with the preparation, development and operational management of other large scale IT systems than those referred to in Article 1(1), the Agency shall perform tasks related to training on the technical use of those systems, as appropriate.*



*Article 4b*  
*Tasks related to the communication infrastructure*

1. *The Agency shall carry out the tasks relating to the communication infrastructure conferred on the Management Authority by the legal instruments governing the development, establishment, operation and use of the large scale IT systems.*
2. *According to those legal instruments, the tasks regarding the communication infrastructure (including the operational management and security) are divided between the Agency and the Commission. In order to ensure coherence between the exercise of the respective responsibilities of the Commission and the Agency, operational working arrangements shall be made between them and reflected in a Memorandum of Understanding.*
3. *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 large-scale IT systems, including data exchanged through it.*
4. *Appropriate measures including security plans shall be adopted, inter alia, to prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media in particular by means of appropriate encryption techniques. It shall be ensured that no system-related operational information shall circulate in the communication infrastructure without encryption.*
5. *The tasks concerning the operational management of the communication infrastructure may be entrusted to external private-sector entities or bodies in accordance with the relevant provisions of Regulation (EC, Euratom) No 1605/2002. In such case, the network provider shall be bound by the security measures referred to in paragraph 3 and shall not have access to VIS, EURODAC and SIS II operational data and the related SIRENE exchange by any means.*
6. *Without prejudice to the existing contracts on the network of SIS II, VIS and Eurodac, the management of the encryption keys will remain within the competence of the Agency and cannot be outsourced to any external private-sector entity.*

*Article 5*  
*Monitoring of research*

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 .
2. The Agency shall on a regular basis keep the *European Parliament, the Council, the Commission, and, where data protection issues are concerned, the European Data Protection Supervisor* informed of the developments referred to in paragraph 1.

*Article 6*  
*Pilot Schemes*

1. **Only** upon specific and precise request of the Commission, *which will have informed the European Parliament and Council at least three months in advance, and after a decision by Management Board*, the Agency may, in accordance with Article 9(1)(k), carry out pilot schemes as referred to in Article 49(6)(a) of the Regulation (EC, Euratom) No 1605/2002, for the development and/or the operational management of large-scale IT systems, in application of Title V of the TFEU. **The European Parliament, the Council and, where data protection issues are concerned, the European Data Protection Supervisor shall be regularly kept informed of the evolution of these pilot schemes.**

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.

### CHAPTER III STRUCTURE AND ORGANISATION

#### Article 7 Legal status

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 *their laws*. 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 **agreements concerning the seat of the Agency and the sites set up in accordance with paragraph 4 with the Member States on whose territories the seat and the technical and backup sites are situated (the host Member States).**
3. The Agency shall be represented by its Executive Director.
4. The seat of the Agency **for the operational management of large-scale IT systems in the area of freedom, security and justice** shall be **Tallinn, Estonia.**

**The tasks related to development and operational management referred to in Article 1(2), Articles 2, 3, 4 and 4b shall be carried out in Strasbourg, France.**

**A backup site capable of ensuring the operation of a large scale IT system in the event of failure of that system shall be installed in Sankt Johann im Pongau, Austria, if so provided in the legislative instrument governing the development, establishment and use of that system.**

#### Article 8 Structure

- I. The Agency's administrative and management structure shall comprise:
  - (a) a Management Board;
  - (b) an Executive Director;
  - (c) Advisory Groups.

2. *The Agency's structure shall also include:*

(a) *a Data Protection Officer;*

(b) *a Security Officer;*

(c) *an Accounting Officer.*

#### Article 9

#### Powers of the Management Board

1. In order to ensure that the Agency carries out its tasks, the Management Board shall

(a) appoint, and if relevant, dismiss the Executive Director, in accordance with Article 15;

(b) exercise disciplinary authority over the Executive Director *and oversee his/her performance including the implementation of Management Board decisions;*

(c) establish the Agency's organisational structure after consultation of the Commission;

(d) establish the rules of procedure of the Agency after consultation of the Commission;

■

- (f) approve the Headquarters Agreement ***and Agreements on the technical and backup sites set up in accordance with Article 7(4)*** to be signed by the Executive Director with the host Member *States* following a proposal by the Executive Director;
- (g) in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations;
- (ga) *adopt the necessary implementing measures on secondment of national experts to the Agency;***
- (gb) *adopt a multi-annual work-programme based on the tasks referred to in Chapter II, 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;***
- (h) adopt the multi-annual staff policy plan, ***and a draft annual work programme*** and submit it by 31 March each year at the latest to the Commission and the budgetary authority;
- (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 *TFEU*, 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;
- (j) before 31 March each year, adopt the Agency's annual activity report for the previous year ***comparing, in particular, the results achieved with the objectives of the annual work programme*** and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission **■**; the annual activity report shall be published;
- (k) carry out its functions relating to the Agency's budget, ***including the implementation of pilot schemes as referred to in Article 6***, pursuant to the provisions of Articles 28, 29(6) and 30 of this Regulation;
- (l) adopt the financial rules applicable to the Agency in accordance with Article 30 of this Regulation;
- (m) appoint an **■** accounting officer who shall be functionally independent in the performance of his/her duties;
- (ma) *give adequate follow-up to the findings and recommendations stemming from various audit reports and evaluations, whether internal or external;***
- (n) adopt the necessary security measures, including a security plan ***and a business continuity and disaster recovery plan, taking into account the possible***

- recommendations of the security experts present in the Advisory Groups;*
- (na) appoint a security officer;**
  - (o) appoint █ a Data Protection Officer in accordance with Regulation (EC) No 45/2001;
  - (p) adopt, within 6 months after the date of application of this Regulation, the practical arrangements for implementing Regulation (EC) No 1049/2001;
  - (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 *and* of VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and *Article* 17(3) of Decision 2008/633/JHA █ ;
  - (qa) adopt the annual report on the activities of the Central Unit of EURODAC pursuant to Article 24(1) of Regulation (EC) No 2725/2000;**
  - (r) make comments on the European Data Protection Supervisor's *reports* about the *audits* pursuant to Article 45 of Regulation (EC) 1987/2006, and Article 42(2) of Regulation (EC) No 767/2008 and *ensure* the *appropriate* follow-up of the *audits*;
  - (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;
  - (sa) compile statistics on the work of the Central Unit of EURODAC pursuant to Article 3(3) of Regulation (EC) No 2725/2000;**
  - (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;
  - (ta) ensure the annual publication of the list of authorities designated pursuant to Article 15(2) of Regulation (EC) No 2725/2000;**
  - (u) perform any other tasks conferred on it in accordance with this Regulation.
2. The Management Board may advise the Executive Director on any matter strictly related to the development or operational management of the *large-scale* IT systems.

Article 10  
Composition of the Management Board

1. The Management Board shall be composed of one representative of each Member State and two representatives of the Commission.
2. Each Member State *and the Commission* shall appoint *the members* of the Management Board as well as *the deputies, at the latest within two months after the entry into force of this Regulation. After the expiry of this period, the Commission shall convene the Management Board.* The *deputies* shall represent the members in their absence. ■
3. The members of the Management Board shall be 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, *and knowledge in data protection.*
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.
5. Countries associated with the implementation, application and development of the Schengen acquis and the EURODAC related measures shall participate in the Agency. They shall each appoint one representative and *a deputy* to the Management Board ■ .

Article 11  
Chairmanship of the Management Board

1. The Management Board shall elect a Chairperson *and a deputy Chairperson* from among its members.
2. The term of office of the Chairperson shall be *two* years and may be renewed once. His/her term of office shall expire earlier if his/her membership of the Management Board ceases.
3. The Chairperson may only be appointed from among those members who are appointed by Member States *which are fully bound under Union law by the legislative instruments governing the development, establishment, operation and use of all the large-scale* systems managed by the Agency.

Article 12  
Meetings of the Management Board

1. The meetings of the Management Board shall be convened:
  - (a) at the initiative of its Chairperson,
  - (b) at the request of at least a third of its members,
  - (c) at the request of the Commission *or*
  - (d) *at the request of the Executive Director*

The Management Board shall hold at least *one* ordinary *meeting every half* year.

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.
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 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 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.
6. The secretariat for the Management Board shall be provided by the Agency.

### Article 13

#### Voting

1. Without prejudice to paragraph 4 of this Article as well as Article 9(1) (i) *and Article 15(1)*, decisions of the Management Board shall be taken by a majority of *all* 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.
3. 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. In addition, as regards Denmark, it may vote on a question which concerns a large-scale IT system, if it decides under Article 4 of the Protocol on the position of Denmark to implement the legislative instrument governing the development, establishment, operation and use of such a large-scale IT system in its national law.*
- 3a. Regarding countries associated with the implementation, application and development of the Schengen acquis and the EURODAC-related measures, Article 33 shall apply.*
4. In case of disagreement among members over whether or not a specific *large-scale* IT system is affected by a vote, members shall decide by a two-thirds majority, that it is not affected.
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.

Article 14  
Functions and powers of the 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.
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 the Executive Director of the Agency to report on the implementation of his/her tasks.
5. The Executive Director shall **■** :
  - (a) ensure the Agency's day-to-day administration;
  - (b) take any action necessary to ensure the Agency's operation in accordance with this Regulation;
  - (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;
  - (d) establish and implement an effective system enabling regular monitoring and evaluations of the *large-scale* IT systems, including statistics, and of the Agency, *also in terms of effective and efficient achievement of Agency's objectives*;
  - (e) participate, without the right to vote, in the meetings of the Management Board;
  - (f) exercise in respect to the Agency's staff the powers laid down in Article 17(2) and manage staff matters;
  - (g) without prejudice to Article 17 of the Staff Regulations, establish confidentiality requirements *in order* 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 *in order to apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to all its staff required to work with Eurodac data*;
  - (h) negotiate and, after approval by the Management Board, sign a Headquarters Agreement *and Agreements on the technical and backup sites* with the *Governments* of the host Member *States*.
6. The Executive Director shall submit to the Management Board for adoption *in particular* the drafts for:



- (a) the Agency's annual work programme and its annual activity report, after prior consultation of the Advisory Groups;
- (b) the financial rules applicable to the Agency;
- (ba) the multi-annual work programme;**
- (c) the budget for the coming year, **established on the basis of activity-based budgeting**;
- (d) the multi-annual Staff Policy Plan;
- (e) the terms of reference for the evaluation referred to in Article 27;
- (f) the practical arrangements for implementing Regulation (EC) No 1049/2001;
- (g) the necessary security measures including a security plan, **and a business continuity and disaster recovery plan**;
- (h) reports on the technical functioning of each **large-scale** IT system referred to in Article 9(1)(q) of this Regulation **and the annual report on the activities of the Central Unit of Eurodac referred to in Article 9(1)(qa) of this Regulation**, on the basis of the results from the monitoring and evaluation;
- (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 **and of the list of authorities referred to in Article 9(1)(ta) of this Regulation**.

7. The Executive Director shall perform any other tasks conferred on him/her in accordance with this Regulation.

#### Article 15

##### Appointment of the Executive Director

1. The Executive Director of the Agency shall be appointed **■** for a period of five years **by the Management Board from among the eligible 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, financial and management skills as well as knowledge in data protection. 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 **shall** 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 shall 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, in close consultation with 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** three 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 **shall** be invited to make a statement before the competent committee(s) of the **European** 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.**

#### Article 16 Advisory Groups

1. The following Advisory Groups shall provide the Management Board with the expertise related to the respective **large-scale** 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 **when so provided in the relevant legal instrument governing the development, establishment, use and operation of that system.**
2. Each Member State, **which is bound under Union law by any legislative instrument governing the development, establishment, operation and use of a particular large-scale IT system**, as well as the Commission, shall appoint one member to the Advisory **Group which concerns that system**, for a three-year term, which may be renewed.

**As regards Denmark, it shall also appoint a member to an Advisory Group concerning a system, if it decides under Article 4 of the Protocol on the position of Denmark to implement the legislative instrument governing the development, establishment, operation**

*and use of that particular system in its national law.*

*Each country associated with the implementation, application and development of the Schengen acquis, the EURODAC-related measures and the measures related to other large scale IT systems which participates in a particular system shall appoint a member to the Advisory Group which concerns that system.*

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.
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) *and Article 13(3a)* shall apply accordingly. The members representing the countries associated with the implementation, application and development of the Schengen acquis and the EURODAC related measures shall be allowed to express opinions *on issues on which they are not entitled to vote*.
7. Each Member State, each country associated with the implementation, application and development of the Schengen acquis and the EURODAC related measures shall facilitate the activities of the Advisory Groups.
8. For the chairmanship, Article 11 shall apply mutatis mutandis.

#### CHAPTER IV **GENERAL PROVISIONS**

##### Article 17 Staff

1. The Staff Regulations of Officials *of the European Union ("Staff Regulations of Officials")* and the Conditions of Employment of Other Servants of the European Union *("the Conditions of Employment") laid down in Council Regulation (EEC, Euratom, ECSC) 259/68 ("the Staff Regulations")*, 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, *and to* the Executive Director.

*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.*

2. The powers conferred on the Appointing Authority by the Staff Regulations *of*

**Officials** 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.

**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.**

**2b. The Agency shall not recruit interim staff to perform what are deemed to be sensitive financial duties.**

**2c. 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.**

3. Without prejudice to Article 17 of the Staff Regulations *of Officials*, 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 *of Officials*.

#### Article 18 Public interest

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, **which shall be made public**.

**The list of members of the Management Board shall be published on the Agency's internet site.**

Article 19  
Headquarters Agreement *and agreements on the technical and backup sites*

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 *those States*, as well as the specific rules applicable in the 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 a Headquarters Agreement *concerning the seat of the Agency and in Agreements concerning the technical and backup sites, concluded* between the Agency and the host Member *States* after obtaining the approval of the Management Board. █

Article 20  
Privileges and immunities

The Protocol on the Privileges and Immunities of the European Union shall apply to the Agency.

Article 21  
Liability

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.
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.
5. The personal liability of the Agency's servants towards the Agency shall be governed by the provisions laid down in the Staff Regulations.

Article 22  
Linguistic regime

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the language to be used in the European Economic Community<sup>1</sup>, shall apply to the Agency.
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 *institutions of the* 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.

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<sup>1</sup> OJ 17, 6.10.1958, p. 385.

Article 23  
Access to documents

1. ***On the basis of a proposal by the Executive Director, and not later than six months after the date referred to in Article 34(2), the Management Board shall adopt rules concerning access to the Agency's documents, in accordance with Regulation (EC) No 1049/2001<sup>1</sup>.***

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.

Article 24  
Information and communication

1. The Agency ***shall*** communicate ***in accordance with the instruments governing the development, establishment, use and operation of the large-scale IT-systems referred to in Article 1 and*** on its own initiative in the fields within its *tasks*. 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.

Article 25  
Data protection

1. ***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, 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, ***and in particular Section 8*** concerning the Data Protection Officer .

Article 26  
Security rules on the protection of classified information and non-classified sensitive 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

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<sup>1</sup> OJ L 145, 31.5.2001, p. 43.

procedure<sup>1</sup>. This shall cover, inter alia, provisions for the exchange, processing and storage of classified information ***including measures on physical security***.

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.

***2a. 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.***

#### **Article 26a** **Security of the Agency**

***1. The Agency shall be responsible for the security and the preservation of order within the buildings, premises and land used by it. The Agency shall apply the security principles and relevant provisions of the instruments governing the development, establishment, use and operation of the large-scale IT-systems referred to in Article 1.***

***2. 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 Agreement and the Agreements on the technical and backup sites, whilst guaranteeing free access to these buildings, premises and land to persons authorised by the Agency.***

#### **Article 27** **Evaluation**

1. Within three years from the date of the Agency having taken up its responsibilities, and every ***four*** years thereafter, ***the Commission, in close consultation with the Management Board, shall perform an evaluation of the action of the Agency. This evaluation shall examine the way and extent to which the Agency effectively contributes to the operational management of large-scale IT systems in the area of freedom, security and justice and fulfils its tasks described in this regulation. The evaluation should also evaluate the role of the Agency in the context of a Union strategy aimed at a coordinated, cost-effective and coherent IT environment at Union level that is to be established in the coming years.***

2. ***On the basis of this evaluation, the Commission, after consultation of the Management Board, shall █ issue recommendations regarding changes to this Regulation, also in order to bring it further in line with the above mentioned Union strategy. The Commission █ shall forward them, together with the opinion of the Management Board, as well as appropriate proposals, to the Council, the European Parliament and the European Data Protection Supervisor.***

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## **CHAPTER V** **FINANCIAL PROVISIONS**

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<sup>1</sup> OJ L 317, 03.12.2001, p. 1.

Article 28  
Budget

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 the implementation, application and development of the Schengen acquis and the EURODAC related measures;
  - (c) any 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, ***taking into account the activities carried out by the Agency***, 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.
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 acquis 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 ***annual*** work programme;
  - (b) its updated multi-annual Staff Policy Plan, established in line with the guidelines set by the Commission;
  - (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;
  - (d) information on contributions in kind granted by the host Member ***States*** to the Agency;
  - (e) an estimate of the balance of the outturn account for the year n-1.
7. The statement of estimates shall be forwarded by the Commission to the   budgetary



authority together with the draft general budget of the Union.

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 *TFEU*.

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.

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.

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 acquis 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.

#### Article 29

#### Implementation of the budget

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.

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 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 *budgetary authority*, by 31 March of the following year at the latest, the report on budgetary and financial management.

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.
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 *budgetary authority, the Commission's Accounting Officer, the Court of Auditors* ■ as well as the countries associated with the implementation, application and development of the Schengen acquis and the EURODAC related measures.
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.
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.

#### Article 30 Financial rules

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 unless such departure is specifically required for the Agency's operation and the Commission has given its prior consent.

#### Article 31 Combating fraud

1. In order to combat fraud, corruption and other unlawful activities 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.
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.

CHAPTER VI  
FINAL PROVISIONS

Article 32  
Preparatory actions

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 only once the Management Board is convened, in accordance with Article 10(2).***

***If the interim 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.***

Article 33

Participation by Countries associated with the implementation, application and development of the Schengen acquis and the EURODAC related measures

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 detailed rules for, the participation by countries associated with the implementation, application and development of the Schengen acquis and the EURODAC related measures in the work of the Agency, including provisions on financial contributions, ■ staff ***and voting rights.***

Article 34  
Entry into force and applicability

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.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at,

For the European Parliament  
The President

For the Council  
The President

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<sup>1</sup> *OJ: Please insert the date corresponding to the first day of the month following the period of one year after the entry into force of the Regulation.*

## ANNEX TO THE DRAFT LEGISLATIVE RESOLUTION

### **Draft Joint Statement of the European Parliament and the Council**

The European Parliament and the Council recognise the particular circumstances underlying the specific arrangement on the seat and sites of the Agency and the fact that it does not prejudice the Conclusions of the Representatives of the Member States meeting at Head of State or Government level in Brussels on 13 December 2003<sup>1</sup> notably as regards the priority to be given to the Member States, which have acceded to the EU in 2004 and 2007, in the distribution of the seats of offices or agencies to be set up in the future.

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<sup>1</sup> See 5381/04, p. 27.

## EXPLANATORY STATEMENT

### BACKGROUND

In June 2009 the Commission submitted a pair of legislative initiatives with a view to establishing an agency to manage large-scale IT systems within the area of freedom, security, and justice. One was a proposal for a regulation on the first-pillar matters related to the SIS, VIS, and Eurodac systems, and the other, a proposal for a decision on the third-pillar matters related to those systems.

However, with the entry into force of the Treaty of Lisbon, the initiatives were rendered obsolete. On 19 March 2010 the Commission submitted a new proposal amounting essentially to a revised version of the earlier proposal for a regulation incorporating the third-pillar matters.

Although the entry into force of the Treaty of Lisbon has done away with the distinction between the pillars, the proposal under consideration here is symptomatic of the ‘variable geometry’ reflected in different aspects of the area of freedom, security, and justice in general and of Schengen in particular. The legal framework for the systems to be managed by the Agency applies to a disparate group of Member States participating to different degrees (as far as the United Kingdom, Denmark, and Ireland are concerned) and associated third countries (Norway, Iceland, Switzerland, and, in the future, Liechtenstein).

As regards **SIS II**, the United Kingdom and Ireland take no part under the old first pillar (Regulation (EC) No 1987/2006), their involvement being confined to the third pillar (Council Decision 2007/533/JHA). Denmark does participate. Norway and Iceland are associated countries, and Liechtenstein will be in the future.

As regards **VIS**, the United Kingdom and Ireland do not participate, but Denmark does. Norway, Iceland, and Switzerland are associated countries, and Liechtenstein will be in the future.

As regards **Eurodac**, the United Kingdom, Ireland, and Denmark do take part. The United Kingdom has notified the Council that it wishes to participate in the Agency where Eurodac-related matters are concerned, but Ireland has not. Norway, Iceland, and Switzerland are associated countries and Liechtenstein will be in the future.

Regarding these three systems to be managed by the Agency, the United Kingdom and Ireland will take part only to some extent in SIS II and will not participate in the VIS; regarding the Agency, only the United Kingdom will participate where Eurodac-related measures are concerned.

The questions to answer, therefore, are:

- When Member States do not participate in all of the systems, how much of a say should they be allowed in the adoption of the legislative initiative establishing the Agency?

- To what extent is the regulation binding on those Member States?

The Commission proposal is not entirely clear. On the one hand, the Commission believes the proposal as a whole to be a measure building upon the Schengen *acquis*. On the other hand, recitals 24 and 25 of the Commission proposal make reference to the respective participation of United Kingdom and Ireland in the legal framework of each one of the three databases. On this basis, the proposal seeks to determine to what extent those States may participate in the adoption of the legislative proposal and will be bound by the text adopted. However, as regards the United Kingdom, recital 24 only states in a general way that the United Kingdom participates in the adoption and is bound by the application of the regulation in so far as it does not relate to the former first-pillar part of SIS II or to VIS. A similar general formula can be found in recital 25 as regards Ireland.

In its opinion of 7 June 2010 the EP's Legal Service drew attention to the ruling handed down by the Court of Justice on 18 September 2009 in a dispute between the United Kingdom and the Council (Case C-77/05 on the adoption of Regulation (EC) No 2007/2004 – the Frontex Regulation). The Court took the view that although the United Kingdom had formally asked to take part in the adoption of the regulation, it should not be authorised to do so, since it had not agreed to be bound by the relevant part of the Schengen *acquis*. Another action on a similar subject is currently before the Court (concerning the adoption of Council Decision 2008/633/JHA on VIS).

In the view of the Legal Service, recitals 24 and 25 of the Commission's proposal '*are not sufficient to ensure that the adoption of this Regulation would take place in a manner that is transparent and consistent with the above-mentioned case-law of the Court of Justice*'. Moreover, '*it would be impossible (...) to determine the legal effects of the act in relation to the United Kingdom and Ireland, which would therefore create a situation of legal uncertainty, contrary to the principles of Union law*'.

The EP and the Council, which share legislative power, are carefully considering the alternatives to overcome the legal problem highlighted in the legal opinion. Three options are currently being studied by the respective Legal Services:

OPTION 1 – Reject the Commission proposal and call for it to be replaced by other initiatives. (For example a regulation establishing the Agency and separate legal instruments conferring powers on the Agency and governing the management of each system. The say to be accorded to the individual Member States would depend on the extent of their participation in the system in question).

OPTION 2 – Amend the proposal so as to spell out what voting rights each Member State would have where the Agency was concerned. A decision could, in addition, be adopted if the United Kingdom and Ireland were to ask to exercise their right to opt into the regulation establishing the Agency.

OPTION 3 – Split the proposal in two and leave VIS-related matters to be dealt with in another instrument (VIS being the only one of the three systems in which neither Ireland nor the United Kingdom participates in any way at all).

## **The Commission proposal**

When they adopted the legislative instruments on SIS II and VIS, the EP and the Council called on the Commission to submit the legislative initiatives necessary to set up a body to manage the systems.

The Commission has produced an impact assessment in order to determine what would be the best solution from the financial, operational, and institutional point of view.

## **The rapporteur's view**

The rapporteur believes that, among the various options set out in the Commission's study, setting up a European agency is the best.

### **1. Why we need to establish a new agency**

There is plainly no other solution. It would be quite wrong to assign the responsibility to the Commission, especially in view of the protracted problems that have occurred in recent years regarding the development of the systems. Furthermore, the Commission itself has repeatedly pointed out that its running of Eurodac is merely a stopgap solution and that it does not consider itself equal to assuming direct management responsibility for large-scale IT systems.

Why would the solution not lie in an executive agency? Because in that case the legislature would be denied the possibility to shape the agency and exercise its democratic scrutiny. Executive agencies are set up by the Commission entirely under its supervision and responsibility. The Commission lays down their tasks and appoints their managing bodies, including the director. An executive agency has a limited life and would thus be a temporary solution.

### **2. Extending the Agency's responsibilities to cover other systems**

One point which the rapporteur believes has to be made clear is that wider powers for the Agency, allowing it to manage such new systems as might be set up, could be created only under specific legal instruments.

### **3. Clarifying the Agency's aims and tasks**

It is important to stress that the Agency's aims and tasks apply purely at the technical level of operational management. The Agency must not have the power to take policy decisions, for instance to set up new systems or concerning system interoperability.

### **4. Pilot projects**

It would be wise to lay down rules to prevent the Agency's responsibilities being widened de facto through a proliferation of pilot projects beyond the range of supervision and transparency.



## **5. Siting of the Agency**

There are two candidates for the seat of the Agency: Estonia and France. The rapporteur does not think it right to propose a place for the time being, even though Parliament, together with the Council, has the power to take the necessary decision.

Parliament should, however, spell out certain criteria that will need to be observed in order to produce a sound decision:

- For security and budgetary reasons, it would be preferable for the Agency to be based in one place (as opposed to a decentralised arrangement); a plethora of infrastructures and human resources does not seem a good idea.
- The facilities should be owned or rented by the Agency, so as to enhance possibilities to ensure the security of the building, and not shared with any other national system.
- Security standards must be as high as possible, both as regards the physical facilities and as regards data.
- The seat must constitute the most cost-effective solution.

## **6. Communication infrastructure**

As laid down in the SIS II legal framework, the Agency will be partly responsible for the communication infrastructure, specifically as regards its supervision and security, the object being to make the network secure for data exchange within the legal framework for each of the systems involved.

It is vital to protect the network from threats of every kind and guarantee security, not only of the network as such, but also of the data transmitted.

The rapporteur does not believe that an exclusive communication infrastructure should be set up for the three systems, not least because, in budget terms, the impact of this solution would be considerable. The possibility of outsourcing is available, but subject to stringent criteria. Significant changes would need to be made to, for example, the s-TESTA network in order to fulfil the requirements.

## **7. The structure of the Agency should also comprise**

- a Data Protection Officer
- a Security Officer
- an Accounting Officer

## **8. ‘Variable geometry’**

Like Parliament’s Legal Service (see the opinion reproduced above), the rapporteur believes that the ruling of the Court of Justice must be taken into account. He calls on the Commission and Council to seek actively to resolve the legal problems so as to make for the utmost clarity

when the Agency is to be established.

### **9. Members of the Management Board and voting rights**

The Agency's management structure and the Member States' participation are determined by variable geometry. It seems obvious that a Member State which does not take part in a system should not be able to access information or have a say in, or vote on, matters related to that system. A trickier problem is posed by Member States which participate only to some extent in certain aspects of a system.

Through his amendments the rapporteur has attempted to establish clear-cut arrangements for the participation of individual Member States and the associated third countries in each of the systems.

The Chairperson should be chosen from among the members designated by Member States which fully apply all of the instruments relating to the systems managed by the Agency.

### **10. Greater data protection and democratic scrutiny**

The rapporteur has amended a number of articles in an attempt to strengthen Parliament's role and enhance transparency.

He has likewise sought to tighten up the rules on data protection and the integrity and security of personal data by strengthening the role of the European Data Protection Supervisor.

Parliament's role in selecting candidates for the post of executive director should be clearly defined and strengthened.

## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

12.4.2011

Mr Juan Fernando López Aguilar  
Chair  
Committee on Civil Liberties, Justice and Home Affairs  
BRUSSELS

Subject: Opinion on the legal basis of the amended 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 (COM(2010)0093 – C7-0046/2009 – 2009/0089(COD))

Dear Mr Chair,

By letter of 14 March 2011 you asked the Committee on Legal Affairs pursuant to Rule 37(2) of the Rules of Procedure, to consider the addition of two legal bases to the above proposal for a regulation.

The committee considered the above question at its meeting of 12 April 2011.

The legal bases proposed by the Commission are Articles 74, 77(2)(a) and (b), 78(2)(e), 79(2)(c), 82(1)(d) and 87(2)(a) TFEU, all of which fall under Title V, entitled "Area of freedom, security and justice".

The legal bases proposed to be added are Articles 85(1) and 88(2) TFEU, both of which also come under Title V, which set out the procedure to be used when determining the structure, operation, field of action and tasks of Eurojust and Europol, respectively.

### **I - Background**

In June 2009 the Commission presented a package proposal to establish an Agency responsible for the operational management of large-scale information technology systems in the area of freedom, security and justice, consisting of a proposal for a regulation establishing the Agency and a proposal for a Council Decision conferring upon the Agency established by this regulation tasks regarding the operational management of the Second Schengen Information System (SIS II), the Visa Information System (VIS) and the European Dactylscopy (EURODAC) in application of Title VI of the EU Treaty, under the former third pillar.

As we know, the Lisbon Treaty did away with the pillar structure and now virtually all legislation coming within the area of freedom, security and justice has to be adopted under the ordinary legislative procedure. The Commission therefore presented the above amended proposal for a regulation which takes into account the changes resulting from the entry into force of the Lisbon Treaty and contains the provisions initially proposed as a Council decision.

An orientation vote took place in the Committee on Civil Liberties, Justice and Home Affairs on 11 October 2010 on amendments to a draft report in order to provide its rapporteur, Mr Carlos Coelho, with a mandate in negotiations with the Council. Informal dialogues at experts' level were held between November 2011 and March 2011.

At the suggestion of the Council Legal Service, the compromise text which constituted the basis for a high-level triologue scheduled for the end of March 2011 included the addition of the suggested two new legal bases, namely Articles 85(1) and 88(2) TFEU, in order to supplement the legal basis of the ex-third pillar instrument<sup>1</sup>.

## **II - Relevant Articles of the TFEU**

The following Articles are presented as the legal bases in the Commission proposal:

### ***Article 74***

*The Council shall adopt measures to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this Title, as well as between those departments and the Commission. It shall act on a Commission proposal, subject to Article 76, and after consulting the European Parliament.*

### ***Article 76***

*The acts referred to in Chapters 4 and 5, together with the measures referred to in Article 74 which ensure administrative cooperation in the areas covered by these Chapters, shall be adopted:*

- (a) on a proposal from the Commission, or*
- (b) on the initiative of a quarter of the Member States.*

### ***Article 77***

*1. The Union shall develop a policy with a view to:*

- (a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;*

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<sup>1</sup> Council document 7638/11 of 11 March 2011.

*(b) carrying out checks on persons and efficient monitoring of the crossing of external borders;*

*(c) the gradual introduction of an integrated management system for external borders.*

*2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:*

*(a) the common policy on visas and other short-stay residence permits;*

*(b) the checks to which persons crossing external borders are subject;*

*(c) ...*

*(d) ...*

*(e) ...*

*3. ...*

*4. ...*

#### **Article 78**

*1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.*

*2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:*

*(a) ...*

*(b) ...*

*(c) ...*

*(d) ...*

*(e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;*

*(f) ...*

*(g) ...*

*3. ...*

#### **Article 79**

*1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention*

*of, and enhanced measures to combat, illegal immigration and trafficking in human beings.*

*2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:*

*(a) ...*

*(b) ...*

*(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;*

*(d) ...*

*3. ...*

*4. ...*

*5. ...*

## **Article 82**

*1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83.*

*The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to:*

*(a) ...*

*(b) ...*

*(c) ...*

*(d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.*

*2. ...*

*3. ...*

## **Article 87**

*1. The Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.*

*2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures concerning:*

*(a) the collection, storage, processing, analysis and exchange of relevant information;*

(b) ...

(c) ...

3. ...

The following Articles are proposed to be added:

**Article 85**

*1. Eurojust's mission shall be to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.*

*In this context, the European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Eurojust's structure, operation, field of action and tasks. These tasks may include:*

*(a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;*

*(b) the coordination of investigations and prosecutions referred to in point (a);*

*(c) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.*

*These regulations shall also determine arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust's activities.*

2. ...

**Article 88**

1. ...

*2. The European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol's structure, operation, field of action and tasks. These tasks may include:*

*(a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;*

*(b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in*

*liaison with Eurojust.*

*These regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.*

3. ...

### **III - The proposed legal bases**

Article 74 TFEU, which refers to the procedure in Article 76 TFEU for the areas of judicial cooperation in criminal matters and of police cooperation, sets out the general rule on administrative cooperation between the relevant departments of the Member States. According to these two articles, the Council alone adopts measures, and the Parliament is merely consulted. It is however important to note that by virtue of Article 16(3) TEU the Council acts by a qualified majority given that Article 76 TFEU does not provide otherwise.

Articles 77-79, 82 and 87 all deal with relevant areas where the Parliament is co-legislator.

Articles 85 and 88, finally, concern the structure, operation, field of action and tasks of Eurojust and Europol, to be determined with Parliament as co-legislator. It could be noted that both these articles require that regulations adopted on their basis lay down the procedures for scrutiny of the two agencies by Parliament, together with national parliaments.

### **IV - Case-law on legal basis**

It is settled case law of the Court of Justice that "the choice of legal basis for a Community measure must rest on objective factors amenable to judicial review, which include in particular the aim and content of the measure"<sup>1</sup>. The choice of an incorrect legal basis may therefore justify the annulment of the act at stake.

### **V. Aim and content of the proposed regulation**

The recitals to the proposed regulation set out the aim as follows:

- (a) With a view to achieving synergies, it is necessary to provide for the operational management of SIS II, VIS and EURODAC in one entity, in the form of a regulatory agency having legal personality;
- (b) This 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 TFEU and would be responsible for monitoring of research and for pilot schemes for large-scale IT systems in application of Title V of TFEU;

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<sup>1</sup> Case C-45/86, *Commission v. Council* (Generalised Tariff Preferences) [1987] ECR 1439, para. 5; Case C-440/05 *Commission v. Council* [2007] E.C.R. I-9097; Case C-411/06 *Commission v. Parliament and Council* (8 September 2009) ([OJ C 267 of 07.11.2009, p.8](#)).



(c) 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;

(d) Several recitals set out the administrative framework under which the Agency would operate;

(e) There are special arrangements insofar as Denmark, the United Kingdom, Ireland, Norway, Iceland, Switzerland and Liechtenstein are concerned.

The above-mentioned compromise text of 11 March 2011 includes the following two new Recitals:

*"(11a) 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 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)."*

The enacting terms are as follows:

Article 1 provides for the establishment of the Agency.

Articles 2-6 set out the tasks to be performed by the Agency relating to SIS II, VIS and EURODAC as well as monitoring of research and pilot schemes.

Articles 7-16 deal with the structure and organisation of the Agency, Articles 17-27 set out provisions on its operation and Articles 28-31 outline the financial provisions.

Article 12(4) of the proposal has the following wording:

*"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."*

Article 16(3) of the proposal has the following wording:

*"Europol and Eurojust may each appoint a representative to the SIS II*

*Advisory Group. Europol may appoint a representative to the VIS Advisory Group."*

Articles 12(4) and 16(3) remain untouched in the above-mentioned compromise text of 11 March 2011.

The remaining Articles 32-34 set out final provisions and entry into force of the proposed regulation.

## **VI - Determination of the appropriate legal basis**

Since the proposed Recitals 11a and 11b and Articles 12(4) and 16(3) provide for the participation of Europol and Eurojust in questions relating to the operation and functioning of SIS II and VIS, the proposed regulation would effectively set out provisions pertaining to the structure, operation, field of action and tasks of these two bodies, and it is therefore necessary to add the proposed legal bases.

Although Articles 74 and 76 TFEU, unlike all the other articles constituting the legal basis, do not provide for the application of the ordinary legislative procedure, they provide that the Council is to act by a qualified majority. Consequently, these articles are not procedurally incompatible.

## **VII - Conclusion and recommendation**

In light of the foregoing analysis Articles 85(1) and 88(2) TFEU must be added to Articles 74, 77(2)(a) and (b), 78(2)(e), 79(2)(c), 82(1)(d) and 87(2)(a) TFEU to form the legal basis for the proposed regulation.

At its meeting of 12 April 2011 the Committee on Legal Affairs accordingly decided, unanimously<sup>1</sup>, to recommend to you as follows: the amended 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 (COM(2010)0093) should be based on Articles 74, 77(2)(a) and (b), 78(2)(e), 79(2)(c), 82(1)(d), 85(1), 87(2)(a) and 88(2) TFEU.

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<sup>1</sup> The following were present for the final vote: Klaus-Heiner Lehne (Chair), Evelyn Regner (Vice-Chair), Piotr Borys, Sergio Gaetano Cofferati, Christian Engström, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Kurt Lechner, Eva Lichtenberger, Antonio López-Istúriz White, Arlene McCarthy, Antonio Masip Hidalgo, Alajos Mészáros, Angelika Niebler, Bernhard Rapkay, Alexandra Thein, Diana Wallis, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka.

Yours sincerely,

Klaus-Heiner Lehne

15.7.2010

## OPINION OF THE COMMITTEE ON BUDGETS

for the Committee on Civil Liberties, Justice and Home Affairs

on the amended 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

(COM((2010)0093 – C7-0046/2009 – 2009/0089(COD))

Rapporteur: Jutta Haug

### SHORT JUSTIFICATION

On 24 June 2009, the Commission adopted a legislative proposal package to establish an Agency responsible for the operational management of large-scale information technology ("IT") systems in the area of freedom, security and justice.

Following the entry into force of the Lisbon Treaty, the initial legislative package (proposals for a Regulation and a Council's Decision) needed to be merged into the proposed single amended proposal for a Regulation of the European Parliament and of the Council.

The Agency's core task will be to fulfil the operational management tasks for SIS II, VIS and EURODAC, keeping the systems functioning 24 hours a day, seven days a week, thus ensuring a continuous, uninterrupted flow of data exchange, without having responsibility for the data entered in the systems.

Although supporting the political goals aimed at by the creation of the Agency, your Rapporteur must however raise some questions from the budgetary point of view, bearing in mind that the points relating to the mission and tasks of the agency or even the opportunity of the latter's creation fall under the lead Committee's remit.

### Budget

Two new budget lines will be created for the funding of the agency from the EU budget under Chapter 18 02. Total cost until the end of the financial framework is expected to be EUR 113 million, distributed as follows:

	Million EUR				
	2010	2011	2012	2013	Total

Total financial cost	1.500	15.500	55.700	40.300	113.000
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As mentioned in the legislative financial statement, those appropriations will come from those budget lines currently devoted to the IT systems considered: 18 02 04 "Schengen Information System (SIS II)", 18 02 05 "Visa Information System (VIS)" and 18 03 11 "EURODAC". The proposal is therefore compatible with existing financial programming.

These budget lines are founded as follows for the period 2010-2013, according to the latest financial programming figures:

	Million EUR				
	2010	2011	2012	2013	Total
VIS, SIS II, Eurodac FP	58.000	112.000	109.000	122.000	401.000

Since the remaining appropriations (some EUR 288 million) presented in the budget lines for VIS, SIS II and Eurodac remained necessary despite the creation of the agency, your Rapporteur would like to share her surprise that the overall amount deemed necessary, including for the creation of an agency, perfectly matches the amounts initially foreseen in the financial programming (no savings, no extra costs).

Your Rapporteur would further recall that the creation of decentralised agencies amounts to a way of using operational funds to cover administrative expenses. The issue of financing a part of the expenditure of the agencies via Heading 5 should be tackled. The limited margin available in heading 3a reinforces the argument for doing so as other priorities by the European Parliament might not be able to be financed. Your Rapporteur underlines that the inter-institutional working group on regulatory agencies will allow for some further discussion in this area.

### **Staff**

At cruising speed, the agency is expected to employ 120 staff, to be recruited gradually from early 2011 onwards.

Even though the agency's tasks will be transferred from the Commission, no transfer of posts is expected from the Commission to the agency:

- for Eurodac, 4 officials and temporary agents and 1 external agent currently in Brussels will become "freed" and will be redeployed to other Commission priorities;
- and around 20 officials and 25 external staff (contractual agents and seconded national experts) assigned to the development and preparation of operations of SIS II and VIS will be redeployed in accordance with the Commission's annual policy strategy and management procedures.

Your Rapporteur therefore deplores that the outsourcing of tasks to an agency is used to free some posts that will be affected to other priorities. As acknowledged by the Commission, it is only through outsourcing of tasks that the Commission manages to stick to its commitment not to request extra staff.

### **Impact assessment**

Your Rapporteur considers that the Impact Assessment (IA) provided by the Commission presents some significant weaknesses in terms of legislative authority's sound and complete information.

In particular, it is not explicitly addressed why an agency is needed to accomplish a technical task that was until now falling under the Commission's remit.

In addition, the impact assessment was carried out in 2007 and appears outdated / inadequate for several reasons, despite qualitative improvements as compared to those carried out for previous agencies:

- not all current possible options were considered;
- no mention is made as to how it would possibly better address the difficulties encountered by the Commission or how its tasks would be articulated with the Commission's, in particular given the difficult transition to SIS II;
- some additional concerns were raised by national parliaments that are not addressed, notably as to data protection and the disconnection between the proposed responsibility and the lack of access to data;
- the overall budgetary impact of the creation of such an agency is not clearly presented in the impact assessment, both for the Commission's and, possibly, national budgets.

This is not the first time the Commission presents an inconsistent impact assessment or cost-benefit- analysis (CBA). Your Rapporteur considers that the EP should analyse the possibility that, in future, the Commission should send its IA/CBA concerning the creation of a new agency to the Court of Auditors, so that they may give an opinion on the consistency of the impact assessments in order to avoid this kind of situation.

## **Amendments**

The amendments proposed cover the following aspects of the proposal:

- Reference to the complete set of legal bases ;
- Protection of EP prerogatives in the budgetary and discharge procedures, as well as parliamentary scrutiny ;
- Tasks of the Court of Auditors ;
- Duties of the host Member States ;
- Implementation of ABB-ABM for a better monitoring of agency's activities and budget ;
- Real management and supervision activities by the Management board and adequate competences of its members ;
- Follow up of audit reports ;
- Length of the director's mandate ;
- Reasonable size of the advisory boards ;
- Outcome of the evaluations of the agency and information of the EP ;
- Adaptation to the Lisbon treaty budgetary terminology ;
- Agency's start-up phase and Commission's support .

## **AMENDMENTS**

The Committee on Budgets calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

## **Amendment 1**

### **Proposal for a regulation Citations 1 a and 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***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,***

***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,***

<sup>1</sup> OJ L 248, 16.9.2002, p. 1.

<sup>2</sup> OJ C 139, 14.6.2006, p. 1.

### *Justification*

*The Financial Regulation (art 185) and the Interinstitutional agreement on budgetary management and budgetary discipline (art. 47) should be referred to as legal basis for the establishment of a new EU agency.*

## **Amendment 2**

### **Proposal for a regulation Recital 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***(5a) The Commission should submit a ‘roadmap’ for the further development of the systems, particularly SIS II and VIS, to the budgetary authority. The ‘roadmap’ should indicate what technical steps are***

*planned when and at what cost. Should the plans and schedules not be adhered to, the budgetary authority could place the corresponding funding in the reserve.*

### **Amendment 3**

#### **Proposal for a regulation**

##### **Recital 12**

*Text proposed by the Commission*

(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.

*Amendment*

(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 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.*** The Union budgetary ***and discharge procedures*** should be applicable. The auditing of accounts ***and of the legality and regularity of the underlying transactions*** should be undertaken by the Court of Auditors.

#### *Justification*

*A reference to the need for an agreement between the two branches of the budgetary authority on the financing of the Office, as required by the IIA, should be inserted in the recital. The recitals should also make reference to the discharge procedure and reflect that the latter discharge applies not only to EU financed activity. In addition, as is current practice for other EU agencies, the Agency should be subject of an audit of the legality and regularity and the transactions underlying the accounts.*

### **Amendment 4**

#### **Proposal for a regulation**

##### **Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(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.*

## Amendment 5

### Proposal for a regulation

#### Article 1

##### *Text proposed by the Commission*

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.

##### *Amendment*

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, ***in accordance with Article 185 of the Financial Regulation.***

##### *Justification*

*A reference to the basic rule of the financial regulation concerning the establishment of decentralised agencies under which the Agency is to be established should be added in the article concerning its legal definition and status.*

## Amendment 6

### Proposal for a regulation

#### Article 7 – paragraph 4

##### *Text proposed by the Commission*

4. The seat of the Agency shall be [...]

##### *Amendment*

4. The seat of the Agency shall be [...]. ***The host Member State shall ensure that the Agency benefits from attractive conditions in respect of the accommodation to be provided for it and the rules applicable to its staff and members of its 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 should precede the conclusion of the Headquarters Agreement. Particular account shall be taken of a Member State's willingness to provide resources of its own for hosting the Agency, and its ability to do so, in order to ensure the Agency's smooth establishment and operation.***

*Justification*

*The provision of such attractive conditions should not depend solely on the goodwill of the designated host Member State. While the Member States will decide on the Agency's location, a prior financial assessment, with particular reference to the physical establishment in the host country, should determine where the least extra costs are likely to be incurred in setting up the Agency, bearing in mind the conditions set out in Article 19 of the regulation. The assessment should also reflect a Member State's willingness to provide its own resources to accommodate the Agency's needs, and its ability to do so.*

**Amendment 7**

**Proposal for a regulation**

**Article 9 - paragraph 1 - point j**

*Text proposed by the Commission*

(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;

*Amendment*

(j) before 31 March each year, adopt the Agency's annual activity report for the previous year ***comparing, in particular, the results achieved with the objectives of the annual work programme*** 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;

*Justification*

*In line with the principles of Activity based management and Activity based budgeting (ABM-ABB), the Agency's annual activity report should be relative to the objectives set out in the work programme, to allow a sound monitoring of Agency's achievements.*

## Amendment 8

### Proposal for a regulation

#### Article 9 - paragraph 1 - point m a (new)

*Text proposed by the Commission*

*Amendment*

***(ma) monitor and give adequate follow-up to the findings and recommendations stemming from various audit reports and evaluations, whether internal or external;***

*Justification*

*For a better ownership and follow-up of audit and evaluations findings, the Management Board, to whom the Director is accountable, should explicitly be entrusted with their monitoring.*

## Amendment 9

### Proposal for a regulation

#### Article 10 - paragraph 3

*Text proposed by the Commission*

*Amendment*

3. The members of the Management Board shall be 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.

3. The members of the Management Board shall be 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. ***They shall also have the necessary administrative and management skills to fulfil the tasks listed in Article 9 .***

*Justification*

*The skills of the members of the Management Board should be in line with the functions assigned to them.*

## Amendment 10

### Proposal for a regulation

#### Article 14 - paragraph 5 - point d

*Text proposed by the Commission*

*Amendment*

(d) establish and implement an effective

(d) establish and implement an effective

system enabling regular monitoring and evaluations of the IT systems, including statistics, and of the Agency;

system enabling regular monitoring, **auditing** and evaluations of the IT systems, including statistics, and of the Agency, **also in terms of effective and efficient achievement of Agency's objectives**;

*Justification*

*In line with amendment 6 above / Article 9, par. 1, indent ma, a system for following up and addressing audit findings shall also be put in place, not only regarding financial and compliance but also performance auditing.*

**Amendment 11**

**Proposal for a regulation**

**Article 14 – paragraph 5 – point h**

*Text proposed by the Commission*

(h) negotiate and, after approval by the Management Board, sign a Headquarters Agreement with the Government of the host Member State.

*Amendment*

(h) negotiate and, after approval by the Management Board, sign a Headquarters Agreement with the Government of the host Member State, **having taken into account the cost/benefit assessment as specified in the second subparagraph of Article 7(4).**

**Amendment 12**

**Proposal for a regulation**

**Article 14 - paragraph 6 - point a**

*Text proposed by the Commission*

(a) the Agency's annual work programme and its annual activity report, after prior consultation of the Advisory Groups;

*Amendment*

(a) the Agency's annual work programme and its annual activity report, **with an indication of the resources allocated to each activity**, after prior consultation of the Advisory Groups;

*Justification*

*In line with the principles of Activity based management and Activity based budgeting (ABM-ABB), the Agency's work programme and annual activity report should provide information on the resources allocated to the activities which are necessary to reach the Agency's objectives.*

## Amendment 13

### Proposal for a regulation

#### Article 14 - paragraph 6 - point c

*Text proposed by the Commission*

*Amendment*

(c) the budget for the coming year;

(c) the budget for the coming year,  
***established on the basis of activity-based budgeting;***

*Justification*

*In line with the principles of Activity based management and Activity based budgeting (ABM-ABB), the Agency's budget should explicitly be based on the Agency's objectives and activities, making the link between the Agency's mission and objectives and its activities and resources.*

## Amendment 14

### Proposal for a regulation

#### Article 15 - paragraph 2

*Text proposed by the Commission*

*Amendment*

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.

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. ***Its/their opinion, if any, shall be considered before appointment.***

*Justification*

*Any Parliament's opinion on the selected candidate shall be taken into consideration before its appointment.*

## Amendment 15

### Proposal for a regulation Article 15 - paragraph 4

*Text proposed by the Commission*

4. The Management Board, acting on a proposal from the Commission, 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 not more than three years.

*Amendment*

4. The Management Board, acting on a proposal from the Commission, 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 not more than three years. ***The Executive Director shall hold office for a period of not exceeding eight years.***

*Justification*

*Given the sensitivity of the post, it should not be possible for the Executive Director to stay in office for more than eight years, including through an external application for the same post after the extension of his/her term of office.*

## Amendment 16

### Proposal for a regulation Article 16 - paragraph 2

*Text proposed by the Commission*

2. Each Member State, each country associated with the implementation, application and development of the Schengen *acquis* 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;

*Amendment*

2. Each Member State, each country associated with the implementation, application and development of the Schengen *acquis* and the EURODAC related measures as well as the Commission shall appoint one member to ***one of the three*** Advisory Groups for a three-year term, which may be renewed, ***on a rotating basis***;

*Justification*

*To avoid a governance structure, in which member of various Boards would be as many as staff members of the Agency, the Advisory Committees should be composed of no more than 1/3 of the number of Member States. This is compatible with their advisory nature and counterbalanced by the full representation of Member States in the Management Board.*

## Amendment 17

### Proposal for a regulation Article 19

#### *Text proposed by the Commission*

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 connections.

#### *Amendment*

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 ***aimed at ensuring good conditions for staff***, 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 connections. ***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.***

#### *Justification*

*The purpose of such provisions should be explicitly mentioned.*

## Amendment 18

### Proposal for a regulation Article 27 - paragraph 2

*Text proposed by 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.

*Amendment*

2. The evaluation shall assess the utility, relevance, **achieved added value** 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. **It shall, in particular, address the possible need to modify or extend the Agency's tasks or to put an end to its activities in the event of its role having become superfluous.**

*Justification*

*It should be mentioned that regular evaluations may also result in the reconsideration of the Agency's tasks or existence, should this need be.*

## Amendment 19

### Proposal for a regulation Article 28 - paragraph 2

*Text proposed by the Commission*

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.

*Amendment*

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, **on the basis of the activities carried out by the Agency**, 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.



### *Justification*

*In line with the principles of Activity based management and Activity based budgeting (ABM-ABB), the Agency's budget should explicitly be based on the Agency's objectives and activities, making the link between the Agency's mission and objectives and its activities and resources.*

### **Amendment 20**

#### **Proposal for a regulation**

#### **Article 28 - paragraph 6 - point a**

*Text proposed by the Commission*

*Amendment*

(a) its draft work programme;

(a) its draft work programme, **together with the anticipated human and financial resources associated with each programmed activity**;

### *Justification*

*In line with the principles of Activity based management and Activity based budgeting (ABM-ABB), the Agency's work programme should provide information on the resources allocated to the activities which are necessary to reach the Agency's objectives.*

### **Amendment 21**

#### **Proposal for a regulation**

#### **Article 28 - paragraph 7**

*Text proposed by the Commission*

*Amendment*

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.

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.

### *Justification*

*Application of Lisbon Treaty nomenclature*

## Amendment 22

### Proposal for a regulation Article 28 - paragraph 8

*Text proposed by the Commission*

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.

*Amendment*

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, **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.**

*Justification*

*The first part of the amendment refers to the application of Lisbon Treaty nomenclature. The second aims at providing the budgetary authority with adequate information in case the Agency's estimates have been modified by the Commission.*

## Amendment 23

### Proposal for a regulation Article 28 - paragraph 10

*Text proposed by the Commission*

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.

*Amendment*

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, **together with the annual work programme.**

*Justification*

*In case of significant budgetary cuts by Commission, the Agency should not be requested to*

*carry out the same tasks and activities with reduced resources.*

#### **Amendment 24**

##### **Proposal for a regulation**

##### **Article 28 – paragraph 11 a (new)**

*Text proposed by the Commission*

*Amendment*

***11a. The Commission shall submit a ‘roadmap’ for the further development of the systems, particularly SIS II and VIS, to the budgetary authority. The ‘roadmap’ shall indicate what technical steps are planned when and at what cost.***

#### **Amendment 25**

##### **Proposal for a regulation**

##### **Article 29 - paragraph 2**

*Text proposed by the Commission*

*Amendment*

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 ***regarding*** the outcome of the evaluation procedures.

*Justification*

*It should not be up to the Agency's Director to decide on what is relevant to the Parliament.*

#### **Amendment 26**

##### **Proposal for a regulation**

##### **Article 29 - paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***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.***

*Justification*

*Information on the performance of agencies is often missing when the Parliament has to assess the achievement of their objectives. While performance auditing of each agency cannot be requested to the ECA with its current resources, available performance information should be forwarded to the discharge authority.*

**Amendment 27**

**Proposal for a regulation  
Article 32 - paragraph 2**

*Text proposed by the Commission*

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.

*Amendment*

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 **shall** assign a limited number of officials including one to fulfil the functions of the Executive Director, on an interim basis.

*Justification*

*Before the Agency acquires its autonomy, the Commission's assistance at the starting-up of the Agency should not be hypothetical.*

**Amendment 28**

**Proposal for a regulation  
Article 34 - paragraph 2**

*Text proposed by the Commission*

2. The Agency shall take up its responsibilities set out in Articles 2 to 6 from 1 January 2012.

*Amendment*

2. The Agency shall take up its responsibilities set out in Articles 2 to 6 from 1 January 2012, ***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.*

*Justification*

*This addition is intended to prevent situations - like it happened with EMSA - in which an agency is provisionally established in one place different from the one of its definitive seat and has to face additional substantial costs for its later transfer.*

## PROCEDURE

<b>Title</b>	Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
<b>References</b>	COM(2010)0093 – C7-0046/2009 – COM(2009)0293 – 2009/0089(COD)
<b>Committee responsible</b>	LIBE
<b>Opinion by</b> Date announced in plenary	BUDG 14.7.2009
<b>Rapporteur</b> Date appointed	Jutta Haug 21.10.2009
<b>Date adopted</b>	14.7.2010
<b>Result of final vote</b>	+: 35 –: 0 0: 3
<b>Members present for the final vote</b>	Marta Andreasen, Reimer Böge, Lajos Bokros, Giovanni Collino, Andrea Cozzolino, Isabelle Durant, James Elles, Göran Färm, José Manuel Fernandes, Eider Gardiazábal Rubial, Salvador Garriga Polledo, Jens Geier, Ivars Godmanis, Ingeborg Gräßle, Carl Haglund, Jiří Havel, Monika Hohlmeier, Sidonia Elżbieta Jędrzejewska, Anne E. Jensen, Sergej Kozlík, Jan Kozłowski, Alain Lamassoure, Giovanni La Via, Vladimír Maňka, Barbara Matera, Claudio Morganti, Miguel Portas, Dominique Riquet, László Surján, Helga Trüpel, Derek Vaughan
<b>Substitute(s) present for the final vote</b>	François Alfonsi, Maria Da Graça Carvalho, Peter Jahr, Riikka Manner, Peter Šťastný, Georgios Stavrakakis, Theodor Dumitru Stolojan
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Lucas Hartong

14.7.2010

## **OPINION OF THE COMMITTEE ON BUDGETARY CONTROL**

for the Committee on Civil Liberties, Justice and Home Affairs

on the amended proposal for a regulation of the European Parliament and of the Council on establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice  
(COM(2010)0093 – C7-0046/2009 – 2009/0089(COD))

Rapporteur: Marian-Jean Marinescu

### **SHORT JUSTIFICATION**

A new regulatory Agency implies additional expenses. Therefore it is of paramount importance to ensure the most appropriate balance between efficiency, results and costs.

Based on different assessment reports, the conclusion is that there are a few aspects to seriously take into consideration.

First of all, the need to produce a document to convert the Agency's Strategy into a multiannual framework with clear objectives and performance indicators. This will improve the performance, financial management and control of the Agency.

Secondly, the need to reduce the number of the Management Board's members. This will ensure a more efficient working scheme and would prevent a rise in the governance costs and also a structural deficit for the Agency. The reduction of the members of the Management Board will naturally lead to a reduction of the members of the Audit Committee that will assist the Management Board in its duties.

Thirdly, for good governance, the composition of the Management Board should offer the possibility of fair representation of the Member States and this could be guaranteed, among other things, through alternation.

### **AMENDMENTS**

The Committee on Budgetary Control calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

## **Amendment 1**

### **Proposal for a regulation**

#### **Article 7 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. The Agency shall be under the supervision of the Commission.**

*Justification*

*Even if the Agency is to be established as a legally independent administrative body, compliance by the administration with the law must be ensured within the context of a supervisory role for the Commission.*

## **Amendment 2**

### **Proposal for a regulation**

#### **Article 9 – paragraph 1 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

**(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;**

*Justification*

*The Framework Financial Regulation applicable to agencies foresees an obligation concerning multiannual programming only for staff. In its Special Report No 5/2008 "European Union's Agencies: getting results", the Court of Auditors recommends that*



agencies produce a document converting their strategy into a multiannual work programme that has clear objectives and performance indicators. This has also been requested in the EP resolution on "the 2008 discharge: performance, financial management and control of EU agencies"(Texts adopted of 5 May 2010, P7\_TA(2010)0139).

### Amendment 3

#### Proposal for a regulation

#### Article 9 – paragraph 1 – point h

*Text proposed by the Commission*

(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;

*Amendment*

(h) adopt the multi-annual staff policy plan, **and a draft annual work programme** and submit **them** by 31 March each year at the latest to the Commission and the budgetary authority;

*Justification*

*For consistency with Article 28(6)(a).*

### Amendment 4

#### Proposal for a regulation

#### Article 9 – paragraph 1 – point i

*Text proposed by the Commission*

(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 Commission and published;

*Amendment*

(i) **under the multi-annual programme**, 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 Commission and published;

## Amendment 5

### Proposal for a regulation

#### Article 14 – paragraph 6 – point b a (new)

*Text proposed by the Commission*

*Amendment*

***(ba) the multi-annual work programme;***

## Amendment 6

### Proposal for a regulation

#### Article 15 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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.

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. ***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.***

*Justification*

*Consistency with Article 14(3).*

## Amendment 7

### Proposal for a regulation

#### Article 16 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Each ***Member State, each country associated with the implementation, application and development of the Schengen acquis 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 ***Advisory Group shall have 10 members. The Commission shall appoint one member of each Advisory Group. Nine members of each Advisory Group shall be appointed by the Council. All members shall be appointed*** for a three-year term, which may be renewed.

*Justification*

*Given that advisory bodies should make every effort to achieve consensus in their opinions, overly large bodies are not conducive to reaching an opinion. Overly large advisory bodies may therefore make the Agency's work unnecessarily more difficult.*

**Amendment 8**

**Proposal for a regulation  
Chapter IV – Title**

*Text proposed by the Commission*

*Amendment*

**OPERATION**

**STAFF**

*Justification*

*A new title on staff provision.*

**Amendment 9**

**Proposal for a regulation  
Article 17 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The Agency shall not recruit interim staff to perform what are deemed to be sensitive financial duties.***

*Justification*

*Recruiting interim staffs to perform sensitive financial duties could affect the agency's performance due to unqualified/ not trained staff/not motivated staff. This could also expose the agency to financial fraud as the interim staff is more exposed to be influenced in order to get a renewal of his/her contract. See also the EP Resolution on "The 2008 discharge: performance, financial management and control of EU agencies" paragraph 7(Texts adopted of 5 May 2010, P7\_TA(2010)0139).*

**Amendment 10**

**Proposal for a regulation**  
**Article 17 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. If the Commission establishes that there have been repeated infringements of the Staff Regulations or the Conditions of Employment of Other Servants and that the Agency's Management Board is not fulfilling the monitoring role assigned to it in this area, the Commission may demand, in the context of its supervisory role, to take action itself in the area of staff management in place of the Agency.***

*Justification*

*In the past, in the case of other agencies, the powers of the Executive Director have proved not to be subject to adequate monitoring by the Management Board in the area of personnel management. Even when there have clearly been repeated infringements of the Staff Regulations, management boards in other agencies have been reluctant to fulfil their monitoring role. This amendment is intended to give the Commission a last resort option within the context of its supervisory role.*

**Amendment 11**

**Proposal for a regulation**  
**Article 17 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 17a***  
***Privileges and immunities***

***The Protocol on the Privileges and Immunities of the European Union shall apply to the Agency.***

*Justification*

*Article 20 of the Commission proposal is now moved to Article 17 a (new).*

## Amendment 12

### Proposal for a regulation Chapter IV a (new)– before Article 18

*Text proposed by the Commission*

*Amendment*

#### **CHAPTER IVa**

#### **GENERAL PROVISIONS**

*Justification*

*New Chapter.*

## Amendment 13

### Proposal for a regulation Article 18

*Text proposed by the Commission*

*Amendment*

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. ***The list of members of the Management Board shall be published on the Agency's internet site.***

*Justification*

*The aim is to increase transparency, as agencies do not follow uniform practices in this connection.*

## Amendment 14

### Proposal for a regulation Article 19 – Title

*Text proposed by the Commission*

*Amendment*

Headquarters Agreement

Headquarters Agreement ***and Operating Conditions***

*Justification*

*Change in the Title.*

**Amendment 15**

**Proposal for a regulation**  
**Article 20**

*Text proposed by the Commission*

*Amendment*

*Article 20*

*deleted*

*Privileges and immunities*

*The Protocol on the Privileges and Immunities of the European Union shall apply to the Agency.*

*Justification*

*Redundancy due to amendment 11.*

**Amendment 16**

**Proposal for a regulation**  
**Article 23 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 23a*

*Administrative controls*

*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.*

## Amendment 17

### Proposal for a regulation Article 27 – Title

*Text proposed by the Commission*

*Amendment*

Evaluation

Evaluation **and review**

*Justification*

*Possibilities of review should also need to be taken into account.*

## Amendment 18

### Proposal for a regulation Article 27 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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 **three** 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.

## Amendment 19

### Proposal for a regulation Article 27 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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 assess the utility, relevance and effectiveness of the Agency and its working practices. ***That evaluation shall also look at whether the management structure is appropriate for carrying out the Agency's tasks.*** The evaluation shall take into account the views of stakeholders, at both European and national level.

*Justification*

*This evaluation shall also look at whether the management structure is appropriate for carrying out the Agency's tasks.*

**Amendment 20**

**Proposal for a regulation**

**Article 27 – paragraph 3**

*Text proposed by the Commission*

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.

*Amendment*

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. Both the evaluation and the recommendations shall be made public.

*Justification*

*The timing of future evaluations, taking into account the findings of the evaluation report referred to in paragraph 2 should be treated in a separate and more detailed paragraph. See amendment 21 below.*

**Amendment 21**

**Proposal for a regulation**

**Article 27 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. The Management Board, in agreement with the Commission, shall decide the timing of future evaluations, taking into account the findings of the evaluation report referred to in paragraph 2.***

*Justification*



See the justification of the amendment 20.

## Amendment 22

### Proposal for a regulation

#### Article 28 – paragraph 6 – point a

*Text proposed by the Commission*

(a) its draft work programme;

*Amendment*

(a) its draft **annual** work programme;

*Justification*

See amendment 2.

## Amendment 23

### Proposal for a regulation

#### Article 28 – paragraph 6 – point b a (new)

*Text proposed by the Commission*

*Amendment*

**(ba) its updated multi-annual work programme;**

## Amendment 24

### Proposal for a regulation

#### Article 29 – paragraph 2

*Text proposed by the Commission*

2. The Executive Director shall forward annually to the budgetary authority **any information relevant to the outcome of the evaluation procedures.**

*Amendment*

2. The Executive Director shall forward annually to the budgetary authority **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<sup>1</sup>.**

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<sup>1</sup> OJ L 357, 31.12.2002, p. 72.

*Justification*

*The requirements made of the Executive Director pursuant to the financial regulation should be specified.*

**Amendment 25**

**Proposal for a regulation**  
**Article 32 – Title**

*Text proposed by the Commission*

*Amendment*

***Preparatory actions***

***Start of the Agency's Activities***

*Justification*

*Change the title.*

**Amendment 26**

**Proposal for a regulation**  
**Article 34 – Title**

*Text proposed by the Commission*

*Amendment*

Entry into force ***and applicability***

Entry into force

## PROCEDURE

<b>Title</b>	Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
<b>References</b>	COM(2010)0093 – C7-0046/2009 – COM(2009)0293 – 2009/0089(COD)
<b>Committee responsible</b>	LIBE
<b>Opinion by</b> Date announced in plenary	CONT 14.7.2009
<b>Rapporteur</b> Date appointed	Marian-Jean Marinescu 1.10.2009
<b>Discussed in committee</b>	31.5.2010
<b>Date adopted</b>	12.7.2010
<b>Result of final vote</b>	+: 18 –: 2 0: 1
<b>Members present for the final vote</b>	Marta Andreasen, Jean-Pierre Audy, Inés Ayala Sender, Zigmantas Balčytis, Luigi de Magistris, Tamás Deutsch, Martin Ehrenhauser, Jens Geier, Gerben-Jan Gerbrandy, Ingeborg Gräßle, Ville Itälä, Bogusław Liberadzki, Monica Luisa Macovei, Jan Olbrycht, Aldo Patriciello, Theodoros Skylakakis, Georgios Stavrakakis, Søren Bo Søndergaard
<b>Substitute(s) present for the final vote</b>	Zuzana Brzobohatá, Edit Herczog, Ivailo Kalfin, Olle Schmidt, Derek Vaughan

## PROCEDURE

<b>Title</b>	Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
<b>References</b>	COM(2010)0093 – C7-0046/2009 – COM(2009)0293 – 2009/0089(COD)
<b>Date submitted to Parliament</b>	19.3.2010
<b>Committee responsible</b> Date announced in plenary	LIBE 14.7.2009
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	BUDG                      CONT 14.7.2009                      14.7.2009
<b>Rapporteur(s)</b> Date appointed	Carlos Coelho 2.9.2009
<b>Legal basis disputed</b> Date of JURI opinion	JURI 12.4.2011
<b>Discussed in committee</b>	15.6.2011
<b>Date adopted</b>	15.6.2011
<b>Result of final vote</b>	+:                      43 -:                      3 0:                      1
<b>Members present for the final vote</b>	Jan Philipp Albrecht, Rita Borsellino, Simon Busuttil, Carlos Coelho, Rosario Crocetta, Cornelis de Jong, Agustín Díaz de Mera García Consuegra, Cornelia Ernst, Tanja Fajon, Kinga Gál, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Livia Járóka, Timothy Kirkhope, Juan Fernando López Aguilar, Baroness Sarah Ludford, Clemente Mastella, Véronique Mathieu, Claude Moraes, Jan Mulder, Georgios Papanikolaou, Judith Sargentini, Birgit Sippel, Csaba Sógor, Rui Tavares, Wim van de Camp, Daniël van der Stoep, Axel Voss, Renate Weber, Tatjana Ždanoka
<b>Substitute(s) present for the final vote</b>	Edit Bauer, Michael Cashman, Anna Maria Corazza Bildt, Luis de Grandes Pascual, Ioan Enciu, Heidi Hautala, Mariya Nedelcheva, Norica Nicolai, Zuzana Roithová, Michèle Striffler, Cecilia Wikström
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Marita Ulvskog
<b>Date tabled</b>	21.6.2011