



**COUNCIL OF  
THE EUROPEAN UNION**

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**Interinstitutional File:  
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**JAI 370  
SIRIS 57  
VISA 95  
EURODAC 11  
ENFOPOL 177  
EUROJUST 86  
COMIX 368  
CODEC 924**

**NOTE**

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from: Presidency

to: Mixed Committee at the level of Senior Officials

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No prev. doc.: 8327/1/11 REV 1 JAI 198 SIRIS 22 VISA 59 EURODAC 10 ENFOPOL 86  
EUROJUST 37 COMIX 188 CODEC 519  
7638/11 JAI 167 SIRIS 20 VISA 45 EURODAC 7 ENFOPOL 57 EUROJUST 31  
COMIX 157 CODEC 396  
16658/10 JAI 984 SIRIS 168 VISA 283 COMIX 770 + COR 1  
14469/10 JAI 873 SIRIS 143 VISA 231 EURODAC 42 SCHENGEN 57  
EUROPOL 34 EUROJUST 117 COMIX 630 CODEC 953

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Subject: 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  
- Possible agreement with the EP

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

2. After the entry into force of the Lisbon Treaty, the Commission submitted to the European Parliament and the Council a single amended proposal for a Regulation establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice <sup>1</sup>.
3. During the Swedish and the Spanish Presidencies, as well as under the Belgian Presidency on 6 September 2010 and 11 October 2010, the Working Party for Schengen Matters (Acquis) discussed the abovementioned proposal for a Regulation. Following these discussions, the Presidency inserted a number of extensive modifications into the text.
4. In parallel, the Presidency established regular informal contacts with the European Parliament, both informing the Rapporteur of the compromise drafts resulting from discussion in the Working Party for Schengen Matters (Acquis) and taking note of the main concerns expressed by the European Parliament. Representatives of the Commission were also involved in these preliminary informal contacts.
5. On 11 October 2010, the orientation vote on the draft report on the proposal for a Regulation took place in the LIBE Committee of the European Parliament and a mandate was given to the Rapporteur to negotiate in trilogue.
6. On 3 November 2010, the Mixed Committee at the level of Senior Officials gave the Presidency a mandate <sup>2</sup> to start negotiations in trilogue with a view to reaching an agreement with the European Parliament at first reading.
7. On that basis, informal trilogues took place at expert level on 16 November 2010, 30 November 2010, 3 February 2011, 11 February 2011 and 17 May 2011. Furthermore, on 28 March 2011, the Legal Services of the three institutions (the EP, the Council and the Commission) met to address the EURODAC issue.

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<sup>1</sup> See 8151/10.

<sup>2</sup> See 14469/10.

8. Member States were informed of the compromise proposals resulting from these informal trilogues during the JHA Counsellors meetings held on 10 December 2010 and 22 February 2011, where, at the same time, some outstanding issues were discussed. The Mixed Committee at the level of Senior Officials also dealt with some of the outstanding issues on 8 December 2010 and 17 March 2011, as did Ministers, informally, on 2 December 2010.
9. On the basis of 7638/11 JAI 167 SIRIS 20 VISA 45 EURODAC 7 ENFOPOL 57 EUROJUST 31 COMIX 157 CODEC 396, a high-level trilogue took place on 22 March 2011, at which the following main outstanding issues were addressed: EURODAC, the seat and sites of the Agency, the communication infrastructure, the budgetary provisions and the evaluation of the Agency (Article 27)<sup>3</sup>.
10. Taking into account the results of the high-level trilogue held on 22 March 2011, and the subsequent negotiations between the various stakeholders, the Presidency submitted to COREPER/Mixed Committee on 7 April 2011 a compromise version of the draft proposal for the Regulation as set out in the Annex to 8327/11 JAI 198 SIRIS 22 VISA 59 EURODAC 10 ENFOPOL 86 EUROJUST 37 COMIX 188 CODEC 519 + COR 1, containing (i) a brief explanation and state of play of the remaining outstanding issues raised by EP and COM, and (ii) a compromise solution for the seat and sites issue. This latter compromise encompassed both a proposal for a draft Article 7(4) of the Regulation<sup>4</sup> as well as a draft parallel Decision of the Governments of the Member States on the same subject<sup>5</sup>.  
A final agreement on Articles 14(5)(h), 19 and 34(2) was dependent on the solution to this issue.

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<sup>3</sup> For more details see paragraphs 11 and 13 to 15 of 8327/11 + COR 1.

<sup>4</sup> See Annex 1 to 8327/1/11 REV 1.

<sup>5</sup> See Annex 2 to 8327/1/11 REV 1.

11. On 11 April 2011 the Council (Justice and Home Affairs) supported the compromise text as set out in Annex 3 to 8327/1/11 REV 1 JAI 198 SIRIS 22 VISA 59 EURODAC 10 ENFOPOL 86 EUROJUST 37 COMIX 188 CODEC 519, on the understanding that the text as set out in Annex 1 to that document would be inserted in Article 7(4) of the Regulation and that a separate Decision of the Governments of the Member States would be adopted, containing the text as set out in Annex 2 to the said document, whilst the Commission drew attention to the risk of undermining the ordinary legislative procedure.
12. At that stage, only the Commission maintained reservations on Articles 7, 10, 11, 13, 15, 16, 27, 32 and 33, in particular regarding its participation in the Management Board and the settlement of voting rights.
13. On 25 May 2011 a second high-level trilogue took place, where the Presidency, the EP's Rapporteur and the representatives of the Commission achieved an overall compromise text, as set out in the Annex to the present document. This compromise does not include a parallel draft Decision of the Governments of the Member States on the seat and sites of the Agency. However, the text of the draft Decision as agreed previously by the Member States was fully integrated into Article 7(4) of the Regulation.
14. As regards EURODAC, despite the fact that the Legal Service of the EP took a different view on this issue, the Rapporteur said that for the sake of compromise, if this were the only issue still outstanding, the EP would accept the solution proposed by the Legal Services of Council and the Commission.
15. Taking into account the ongoing negotiations at the Inter-institutional Working Group on Agencies, The EP changed its position and requested two representatives of the Commission in the Management Board, as set out in the original Commission proposal<sup>6</sup>, in order to ensure consistency with the political position both of the EP and COM in the context of the ongoing Interinstitutional negotiations on an overall approach to the composition of the Management Boards of all the European Agencies.

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<sup>6</sup> 8151/10.

16. In this context, **the Mixed Committee at the level of Senior Officials is invited to agree to the compromise version of the draft 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, as set out in the Annex.**

If this compromise is accepted, COREPER will write to the EP to confirm that, should the EP adopt its position at first reading in the exact form as set out in the compromise, the Council will approve the EP's position.

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Changes to the previous version<sup>1</sup> are indicated in **bold** and commented in footnotes.

## DRAFT COMPROMISE TEXT

### **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**

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 proposal to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

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) and by Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second-generation Schengen Information System (SIS II). In accordance with Regulation (EC) No 1987/2006 and Decision 2007/533/JHA the Commission is to be responsible, during a transitional period, for the operational management of Central SIS II. After that transitional period, a Management Authority is to be responsible for the operational management of Central SIS II and certain aspects of the communication infrastructure.

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<sup>1</sup> As set out in 8327/1/11 REV 1.

- (2) The Visa Information System (VIS) was established by Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS). In accordance with Regulation (EC) No 767/2008 of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) the Commission is to be responsible, during a transitional period, for the operational management of VIS. After that transitional period a Management Authority is to be responsible for the operational management of the Central VIS, the national interfaces and certain aspects of the communication infrastructure.
- (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 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.

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

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

- (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 Council 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. 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) N.º 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, for large-scale IT systems in application of Title V of the Treaty on the Functioning of the European Union, at the specific and precise request of the Commission.
- 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 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 Decision 2008/633/JHA, is on the agenda. Europol should be able to appoint a representative to the VIS Advisory Group established under Article 16(1)(b).
- (11c) Member States 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 on the position of Denmark 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 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 Agency for Fundamental Rights. It should also consult and follow-up the recommendations of ENISA 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 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 that Regulation, 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 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 Treaty on the Functioning of the European Union.
- (17) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) should apply to the Agency, which should accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF).
- (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 Communities and the Conditions of Employment of Other Servants of the European Communities ("the Staff Regulations") should apply to the staff and to the Executive Director of the Agency, including the rules of professional secrecy or other equivalent duties of confidentiality.
- (19) The Agency is a body set up by the Union in the sense of Article 185(1) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities and should adopt its financial rules accordingly.

- (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 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 Treaty on European Union (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 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 request for asylum lodged in Denmark or any other Member State of the European Union and "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention, Denmark 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 Council 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 Treaty on European Union and to the Treaty on the Functioning of the European Union, and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000, 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*.

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 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*, the United Kingdom requested, by letter of 5 October 2010 to the President of the Council, to be authorised to take part in the adoption of this Regulation, in accordance with Article 4 of the Protocol on the Schengen acquis integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union. By virtue of Article 1 of Council Decision 2010/779/EU of 14 December 2010, 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 Treaty on European Union and the Treaty on the Functioning of the European Union.

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*. 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 Treaty on European Union and to the Treaty on the Functioning of the European Union. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application to the extent that its measures develop provisions of the Schengen *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 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 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*, which falls within the area referred to in Article 1, points A, B and G of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement. As regards EURODAC, this Regulation constitutes a new measure related to 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*, which fall within the area referred to in Article 1, points A, B and G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC on the conclusion, on behalf of the European Community, of the Agreement. As regards EURODAC, this Regulation constitutes a new measure related to EURODAC within the meaning of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland. Consequently, subject to its decision to implement it in their internal legal order, 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.

(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* which fall within the area referred to in Article 1, points A, B and G of Council Decision 1999/437/EC of 17 May 1999 read in conjunction with Article 3 of Council Decision 2008/261/EC. As regards EURODAC, this Regulation constitutes a new measure related to EURODAC within the meaning of the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland. Consequently, the delegation of the Principality of Liechtenstein should participate in the Management Board of the Agency. 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.



# CHAPTER I

## SUBJECT MATTER

### *Article 1*

#### **Establishment of the Agency**

- 0a. 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.
- 0b. 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 TFEU, taking into account, where appropriate, the developments in research referred to in Article 5 and the results of pilot schemes referred to in Article 6.
- 0c. 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 IT systems, including responsibility for the communication infrastructure used by the IT systems. These 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 IT systems referred to in Article 1, the Agency shall ensure:

- (a) the implementation of effective, secure and continuous operation of the IT systems referred to in Article 1;
- (b) the efficient and financially accountable management of those systems;
- (c) an adequately high quality of service for users of these systems;

- (d) continuity and uninterrupted service;
- (e) a high level of data protection, in accordance with the applicable rules, including specific provisions for each 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;
- perform tasks related to training on the technical use of SIS II, in particular for SIRENE-staff and training of experts on the technical aspects of SIS II in the framework of Schengen evaluation.

#### *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;
- perform 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;
- perform following tasks relating to the communication infrastructure: supervision, security and the coordination of relations between the Member States and the provider;
- perform 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(0a), the Agency shall perform tasks related to training on the technical use of those systems, as appropriate.

*Article 4B<sup>4</sup>*

***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 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.**

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<sup>4</sup> Article added following an amendment from EP. Text agreed in the trilogues.

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 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 the Financial Regulation. 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 can not 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 Council 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 Treaty on the Functioning of the European Union.  
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.<sup>5</sup> (a) **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.**
- (b) (...) **The tasks related to development and operational management referred to in Articles 1(0b) and 2 to 4 shall be carried out in Strasbourg, France.**
- (c) **A backup site capable of ensuring the operation of an 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**

0a. The Agency's administrative and management structure shall comprise:

- (a) a Management Board;
- (b) an Executive Director;
- (c) Advisory Groups.

0b. 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;

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<sup>5</sup> With the exception of the stylistic deletion of the word "However" at the beginning of paragraph (b), this text is identical to that of the "draft compromise of the Decision of the Governments of the Member States" as set out in Annex 2 to 8327/1/11 REV 1, p. 6, endorsed by the Council (JHA) on 11 April 2011.

- (d) establish the rules of procedure of the Agency after consultation of the Commission;
- (e) [deleted]
- (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 State 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 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;
- (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 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;
- (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 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 audit;
- (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**<sup>6</sup> 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.

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<sup>6</sup> This wording reflects the outcome of the high-level trilogue of 25 May 2011. The EP changed its position and requested two representatives of the Commission in the Management Board, in order to ensure consistency with the political position both of the EP and COM in the context of the ongoing Interinstitutional negotiations on an overall approach to the composition of the Management Boards of all the European Agencies.

## *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:
  - at the initiative of its Chairperson,
  - at the request of at least a third of its members,
  - at the request of the Commission or
  - 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 Council Decision 2007/533/JHA, is on the agenda. Europol shall also be granted observer status at the meetings of the Management Board when a question concerning VIS, in relation to the application of Council Decision 2008/633/JHA, is on the agenda.
5. The Management Board may invite any other person, whose opinion may be of interest, to attend its meetings as an observer.
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.**<sup>7</sup>

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<sup>7</sup> Wording agreed during the trilogues.

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**<sup>8</sup>, 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.

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<sup>8</sup> Wording agreed during the trilogues.

*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 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**<sup>9</sup> 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.

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<sup>9</sup> Suggested at the high-level trilogue on 25 May 2011. Accepted by the EP and COM.

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**<sup>10</sup> be invited to make a statement before the competent committee(s) of the Parliament and answer questions from its/their members.
6. The Executive Director shall be accountable to the Management Board for his/her activities.
7. The Executive Director may be dismissed by the Management Board. The Management Board shall take the decision by a two-thirds majority of all members with a right to vote.

### *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.

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<sup>10</sup> Wording agreed in the trilogues.

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 Communities ("Staff Regulations of Officials") and the Conditions of Employment of Other Servants of the European Communities ("the Conditions of Employment") pursuant to 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.
    - 2aa. The Agency shall not recruit interim staff to perform what are deemed to be sensitive financial duties.
    - 2b. The Commission and the Member States may second officials or national experts to the Agency on a temporary basis. The Management Board shall, taking into account the multi-annual staff policy plan, adopt the necessary implementing measures for that purpose.
  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<sup>11</sup>*

**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.

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<sup>11</sup> Only the text in *italics and underlined* differs from the original Commission proposal (8151/09).

## *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, 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.
4. [deleted]

### *Article 23*

#### **Access to document**

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 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.
2. [deleted]
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 procedure. 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 an EU strategy aimed at a coordinated, cost-effective and coherent IT environment at EU 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 EU 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.

## CHAPTER V

### FINANCIAL PROVISIONS

#### *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** workprogramme;
  - (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.



### 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 of 19 November 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 the provisions of Regulation (EC) No 1073/1999 shall apply.
2. The Agency shall accede to the Inter-institutional Agreement concerning internal investigations by the European Anti-fraud Office (OLAF) and shall issue, without delay, the appropriate provisions applicable to all the employees of the Agency.
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<sup>12</sup>*

##### **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.

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<sup>12</sup> The Commission agreed to make a statement declaring that *the Executive Director shall be appointed as soon as possible following the selection procedure foreseen under Article 15* (i.e. even before the entry into force of this Regulation).

## 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 July 2012]<sup>13</sup> (...).

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<sup>13</sup> \* *Note to the Lawyer-Linguists*: please insert a concrete date (e.g. "1 September 2012") that should correspond to the first day of the month following the period of one year after the entry into force of the Regulation.