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THE EUROPEAN UNION**

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**ADDENDUM TO "I" ITEM NOTE**

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from: General Secretariat of the Council

to : Coreper

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No. Cion prop.: 14358/10 TELECOM 99 MI 346 DTATPROTECT 70 JAI 794 CAB 16 INST 361  
CODEC 943

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Subject: Proposal for a Regulation of the European Parliament and of the Council  
concerning the European Network and Information Security Agency (ENISA)  
*- Approval of the final compromise text*

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Delegations will find in Annex the consolidated text of the draft Regulation.

**REGULATION (EU) NO .../2013**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of...**

**Concerning the European *Union Agency for Network and Information Security* (ENISA)**

*(Text with EEA relevance)*

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 Article 114 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

After transmission of the proposal to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

- (1) Electronic communications, infrastructure and services are an essential factor, ***both directly and indirectly***, in economic and societal development. They play a vital role for society and have ***in themselves*** become ubiquitous utilities in the same way that electricity or water supplies are, ***and also constitute vital factors in the delivery of electricity, water and other critical services. Communications networks function as social and innovation catalysts, multiplying the impact of technology and shaping consumer behaviours, business models, industries, as well as citizenship and political participation.*** Their disruption has the potential to cause considerable ***physical, social and*** economic damage, underlining the importance of measures to increase protection and resilience aimed at ensuring continuity of critical services. The security of electronic communications, infrastructure and services, in particular their integrity, availability ***and confidentiality***, faces continuously expanding challenges ***which relate inter alia to the individual components of the communications infrastructure and the software controlling those components, the infrastructure overall and the services provided through that infrastructure.*** This is of increasing concern to society not least because of the possibility of problems due to system complexity, ***malfunctions, systemic failures***, accidents, mistakes and attacks that may have consequences for the ***electronic and*** physical infrastructure which delivers services critical to the well-being of European citizens.
- (2) The threat landscape is continuously changing and security incidents can ***undermine the trust that users have in technology, networks and services, thereby affecting their ability to exploit the full potential of the internal market and widespread use of ICT.***
- (3) Regular assessment of the state of network and information security in Europe, based on reliable European data, ***as well as systematic forecast of future developments, challenges and threats, both at European and global level,*** is therefore important for policy makers, industry and users.

- (4) The representatives of the Member States, meeting in the European Council on 13 December 2003, decided that the European Network and Information Security Agency (ENISA), that was to be established on the basis of the proposal submitted by the Commission, would have its seat in a town in Greece to be determined by the Greek Government. ***Following that decision (2004/97/EC<sup>3</sup>), the Greek Government determined that ENISA should have its seat in Heraklion, Crete.***
- (4a) On 1 April 2005, a Headquarters Agreement (“Seat Agreement”) was concluded between the Agency and the Host Member State.***
- (4b) The Agency’s host Member State should ensure the best possible conditions for the smooth and efficient operation of the Agency. It is imperative for the proper and efficient performance of its tasks, for staff recruitment and retention and to enhance the efficiency of networking activities that the Agency should be based in an appropriate location, among other things providing appropriate transport connections and facilities for accompanying spouses and children. The necessary arrangements should be laid down in an agreement between the Agency and that Member State concluded after obtaining the approval of the Management Board.***
- (4c) Therefore, in order to improve the operational efficiency of the agency, the Agency has established an office in the metropolitan area of Athens, which should be maintained with the agreement and support of the host Member State, and where operational staff of the Agency should be located. Staff primarily engaged in administration of the Agency (including the Executive Director), finance, desk research and analysis, IT and facilities management, human resources, training, and communications and public affairs, should be based in Heraklion.***

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<sup>3</sup> ***2004/97/EC, Euratom: Decision taken by common agreement between the Representatives of the Member States, meeting at Head of State or Government level, of 13 December 2003 on the location of the seats of certain offices and agencies of the European Union (OJ L 29, 3.2.2004, p. 15).***

- (4d) *The Agency has the right to determine its own organisation in order to ensure the proper and efficient performance of its tasks, while respecting the provisions on the seat and Athens office laid down in this Regulation. In particular, to carry out those tasks involving interaction with key stakeholders such as Union institutions, the Agency should make the necessary practical arrangements to enhance such operational efficiency.*
- (5) In 2004 the European Parliament and the Council adopted a Regulation (EC) No 460/2004<sup>4</sup> establishing *ENISA* with the purpose of contributing to the goals of ensuring a high level of network and information security within the Union and developing a culture of network and information security for the benefit of citizens, consumers, enterprises and public administrations. In 2008, the European Parliament and the Council adopted a Regulation (EC) No 1007/2008<sup>5</sup> extending the mandate of the Agency until March 2012. *Regulation (EC) No 580/2011 of the European Parliament and of the Council of 8 June 2011 establishing the European Network and Information Security Agency as regards its duration*<sup>6</sup>*extends the mandate of the Agency until 13 September 2013.*

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4 Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information Security Agency (OJ L 77, 13.3.2004, p. 1).

5 Regulation (EC) No 1007/2008 of the European Parliament and of the Council of 24 September 2008 amending Regulation (EC) No 460/2004 establishing the European Network and Information Security Agency as regards its duration (OJ L 293, 31.10.2008, p. 1).

<sup>6</sup> *OJ L 165, 24.6.2011, p. 3.*

- (6) Since *ENISA* was set up, the challenges of network and information security have changed with technology, market and socio-economic developments and have been the subject of further reflection and debate. In response to the changing challenges, the Union has updated its priorities for network and information security policy in a number of documents, including the 2006 Commission Communication A strategy for a Secure Information Society — Dialogue, partnership and empowerment, the Council Resolution of 2007 on a Strategy for a Secure Information Society in Europe, the 2009 Communication Critical Information Infrastructure Protection – ‘Protecting Europe from large scale cyber-attacks and disruptions: enhancing preparedness, security and resilience’, the **2009** Presidency Conclusions of the Ministerial Conference on Critical Information Infrastructure Protection (CIIP) *in Tallinn*, the Council Resolution of 2009 on a collaborative European approach to Network and Information Security, *the 2011 Presidency Statement following the Ministerial Conference on CIIP in Balatonfüred and the 2011 Council conclusions on Critical Information Infrastructure Protection "Achievements and next steps: towards global cyber-security"*<sup>7</sup>.

The *Digital Agenda for Europe*<sup>8</sup> recognized the need ■ to modernise *the Agency*. The *European Parliament resolution of 6 July 2011 on European Broadband: investing in digitally driven growth*<sup>9</sup> further underlines the importance of network and information security. *The present proposal aims to* strengthen the Agency to successfully contribute to the efforts of the *Union's* institutions and the Member States to develop a European capacity to cope with network and information security challenges. ■

- (6a) *The European Data Protection Supervisor was consulted and adopted its opinion on 20 December 2010*<sup>10</sup>,

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<sup>7</sup> Council Conclusions of 27 May 2011, doc. 10299/11.

<sup>8</sup> COM(2010)245, 19.5.2010.

<sup>9</sup> *Text adopted, P7\_TA(2011)0322.*

<sup>10</sup> *OJ C 101, 1.4.2011, p. 20.*

- (7) Internal market measures in the field of security of electronic communications, and, more generally, network and information security require different forms of technical and organisational applications by the Member States and the *Union institutions*. The heterogeneous application of these requirements can lead to inefficiencies and can create obstacles to the internal market. This calls for a centre of expertise at European level providing guidance, advice and assistance on issues related to network and information security, which may be relied upon by the Member States and the *Union institutions*. The Agency can respond to these needs by developing and maintaining a high level of expertise and assisting the Member States, the *Union institutions and* the business community in order to help them to meet the legal and regulatory requirements of network and information security *and to determine and address network and information security issues*, thereby contributing to the smooth functioning of the internal market.
- (8) The Agency should carry out the tasks conferred on it by Union legislation in the field of electronic communications and, in general, contribute to an enhanced level of security of electronic communications *as well as of privacy and personal data protection* by, among other things, providing expertise and advice, and promoting the exchange of good practices, *and offering policy suggestions*.
- (9) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)<sup>11</sup> requires that providers of public electronic communications networks or publicly available electronic communications services take appropriate measures to safeguard their integrity and security and introduces *the obligation for the national regulatory authorities, where appropriate, to inform inter alia, the Agency about a security breach and integrity loss that has had a significant impact on the operation of networks or services and to submit to the Commission and the Agency an annual summary report on the notifications received and the action taken*. Directive 2002/21/EC further calls on the Agency to contribute to the harmonisation of appropriate technical and organisational security measures by providing opinions.

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<sup>11</sup> OJ L 108, 24.4.2002, p. 33.

- (10) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)<sup>12</sup> requires a provider of a publicly available electronic communications service to take appropriate technical and organisational measures to safeguard the security of its services and also requires confidentiality of the communications and related traffic data. Directive 2002/58/EC introduces personal data breach information and notification requirements for electronic communication services providers. It also requires the Commission to consult the Agency on any technical implementing measures to be adopted concerning the circumstances or format of and procedures applicable to information and notification requirements. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>13</sup> requires Member States to provide that the controller must implement appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network and against all other unlawful forms of processing.
- (11) The Agency should contribute to a high level of network and information security within the Union, ***to better protection of privacy and personal data***, and to the development ***and promotion*** of a culture of network and information security for the benefit of citizens, consumers, businesses and public sector organisations in the European Union, thus contributing to the smooth functioning of the internal market. ***In this regard, necessary budgetary funds should be allocated to the Agency.***

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<sup>12</sup> OJ L 201, 31.7.2002, p. 37.

<sup>13</sup> OJ L 281, 23.11.1995, p. 31.



***(11a) Given the increasing significance of electronic networks and communications, which by now constitute the backbone of the European economy, and the actual size of the digital economy, an increase in the financial and human resources allocated to the Agency should be made, corresponding to its enhanced role and tasks, and its critical position in defending the European digital ecosystem.***

***(11b)*** The Agency should operate as a point of reference ■ establishing ***trust and*** confidence by virtue of its independence, the quality of the advice it delivers and the information it disseminates, the transparency of its procedures and methods of operation, and its diligence in carrying out the tasks assigned to it. The Agency should build on national and Union efforts and therefore carry out its tasks in full cooperation with the Member States and ***Union Institutions, bodies, offices and agencies and*** be open to contacts with industry and other relevant stakeholders. In addition, the Agency should build on the input from and cooperation with the private sector, which ***plays*** an important role in securing electronic communications, infrastructures and services.

(12) A set of tasks should indicate how the Agency is to accomplish its objectives while allowing flexibility in its operations. The tasks carried out by the Agency should include the collection of appropriate information and data needed to carry out analyses of the risks to the security and resilience of electronic communications, infrastructure and services and to assess, in cooperation with Member States, the Commission and, where appropriate, with relevant stakeholders, the state of network and information security in Europe. The Agency should ensure coordination and collaboration with Member States and the Union institutions and enhance cooperation between stakeholders in Europe, in particular by involving in its activities competent national and Union bodies and high-level private sector experts ***in relevant areas, in particular providers of electronic communications networks and services, network equipment manufacturers and software vendors, taking into account that network and information systems comprise combinations of hardware, software and services.*** The Agency should provide assistance to the Union institutions and the Member States in their dialogue with industry to address security-related problems in hardware and software products, thereby contributing to a collaborative approach to network and information security.

- (12a) Network and information security strategies made public by a Member State or Union institution or body, office or agency should be provided to the Agency in order to inform the Agency and to avoid duplication of effort. The Agency should analyse the strategies and promote their presentation in a format facilitating comparability. It should make the strategies and its analyses accessible to the public through electronic means.*
- (12b) The Agency should assist the Commission by means of **advice**, opinions and **analyses** on all the Union matters related to policy development in the area of network and information security, including **CIIP and resilience**. The Agency should also assist, *the Member States, where relevant*, at their request, **and the Union** institutions and bodies *set up by Union law* in their efforts to develop network and information security policy and capability.*
- (12c) The Agency should utilise the ongoing research, development, and technological assessment activities, in particular those carried out by the different Union research initiatives to advise the Union and, where relevant, at their request, the Member States on research needs in the area of network and information security.*
- (13) The Agency should assist the Member States *as well as Union* institutions, *bodies, offices and agencies* in their efforts to build and enhance cross-border capability and preparedness to prevent, detect **and** respond to network and information security problems and incidents; in this regard, the Agency should facilitate cooperation among the Member States and between the Member States, the Commission *and Union institutions, bodies, offices and agencies*. To this end, the Agency should **support the** Member States in their continuous efforts to improve their response capability and to organise and run national, *at the request of a Member State*, and European exercises on security incidents.

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- (18) To understand better the challenges in the network and information security field, the Agency needs to analyse current and emerging risks. For that purpose the Agency should, in cooperation with Member States and, as appropriate, statistical bodies *and others*, collect relevant information. Furthermore, the Agency should assist the Member States and the *Union* institutions and bodies in their efforts to collect, analyse and disseminate network and information security data. *The collection of appropriate statistical information and data needed to carry out analyses of the risks to the security and resilience of electronic communications, infrastructure and services should take place on the basis of the information provided by the Member States and the Agency's insight to the Union's Institutions's ICT infrastructures in accordance with the Union provisions and national provisions in compliance with the Union law. On the basis of this information, the Agency should maintain awareness of the latest state of network and information security and related trends in Europe for the benefit of the Member States and the Union's institutions.*
- (19) *In performing its tasks*, the Agency should facilitate cooperation between the Union and the Member States *to improve awareness* on █ the state of network and information security in █ the *Union*.

(20) The Agency should facilitate cooperation among the Member States' competent ***independent regulatory authorities***, in particular supporting the development, ***promotion*** and exchange of good practices and standards for education programmes and awareness-raising schemes. Increased information exchange between Member States will facilitate such action. ***The Agency should contribute towards raising awareness by individual users of electronic communications, infrastructure and services, including by assisting Member States, where they chose to use the public interest information platform provided for in Article 21(4) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)<sup>14</sup>, to produce relevant public interest information regarding network and information security, and also by assisting in the development of such information to be included with the supply of new devices intended for use on public communications networks.*** The Agency should also support cooperation between public and private stakeholders at the Union level, partly by promoting information sharing, awareness-raising campaigns and education and training programmes.

***(20a) The Agency should, inter alia, assist the relevant Union institutions and the Member States in public education campaigns to end users, aiming at promoting safer individual online behaviour and raising awareness on potential threats in cyberspace (cybercrimes such as phishing attacks, botnets, financial and banking fraud, but also basic authentication and data protection advice).***

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<sup>14</sup> ***OJ L 108, 24.4.2002, p. 51.***

- (20b) To ensure full achievement of its objectives, the Agency should liaise with relevant bodies, including those dealing with cybercrime such as Europol, and privacy protection authorities to exchange know how and best practices and provide advice on network and information security aspects that might have an impact on their work aiming to deliver synergies between their efforts and the Agency's efforts to promote advanced network and information security. Representatives of national and Union law enforcement and privacy protection authorities should be eligible to be represented in the Agency's Permanent Stakeholders Group. In liaising with law enforcement bodies on network and information security aspects that might have an impact on their work, the Agency should respect existing channels of information and established networks.*
- (20c) The Commission has launched a European Public-Private Partnership for Resilience as a flexible Europe-wide cooperation platform for resilience of ICT infrastructure, in which the Agency should play a facilitating role, bringing together public and private sector stakeholders to discuss public policy priorities, economic and market dimensions of challenges and measures for resilience of ICT.*
- (20d) To promote network and information security and its visibility the Agency should facilitate cooperation among the Member States' competent public bodies, in particular by supporting the development and exchange of good practices and awareness-raising schemes and by enhancing their outreach activities. The Agency should also support cooperation between public and private stakeholders and the Union's institutions, partly by promoting information sharing and awareness-raising activities.*
- (20e) To enhance an advanced level of network and information security in the Union the Agency should promote cooperation and exchange of information and good practices between relevant organisations e.g. Computer Security Incident Response Teams (CSIRTs)/Computer Emergency Response Teams (CERTs).*

- (20f) A Union system of well-functioning computer emergency and response teams (CERTs) should constitute a cornerstone of the Union's network and information security infrastructure. The Agency should support Member State CERTs and the EU CERT in the operation of a network of CERTs, including the members of the European Governmental CERTs Group. To assist in ensuring that each of the CERTs has sufficiently advanced capabilities and that those capabilities correspond as far as possible to the capabilities of the most developed CERTs, the Agency should promote the establishment and operation of a peer-review system. The Agency should furthermore promote and support cooperation between the relevant CERTs in the event of incidents, attacks or disruptions on networks or infrastructure managed or protected by them and involving or potentially involving at least two of them.*
- (21) Efficient security policies should be based on well-developed risk assessment methods, both in the public and private sector. Risk assessment methods and procedures are used at different levels with no common practice on their efficient application. The promotion and development of best practice for risk assessment and for interoperable risk management solutions in public and private sector organisations will increase the security level of networks and information systems in Europe. To this end, the Agency should support cooperation between public and private stakeholders at Union level, facilitating their efforts relating to the *establishment* and take-up of *European and international* standards for risk management and for measurable security of electronic products, systems, networks and services *which, together with software, comprise the network and information systems.*

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- (23) Where appropriate and useful for fulfilling its █ objectives and tasks, the Agency should share experience and general information with bodies and agencies created under European Union law and dealing with network and information security. *The Agency should contribute to identifying research priorities, on a European level, in the areas of network resilience and network and information security, and should convey knowledge of industry needs to potential research institutions.*

***(23a) The Agency should encourage Member States and service providers to raise their general security standards so that all internet users take the necessary steps to ensure their own personal cyber security.***

**█**

(26) Network and information security problems are global issues. There is a need for closer international cooperation to improve security standards, ***including the definition of common norms of behaviour and codes of conduct, and information sharing, promoting a swifter international collaboration in response to, as well as*** a common global approach to, network and information security issues. To this end, the Agency should support ***further Union involvement and*** cooperation with third countries and international organisations ***by providing***, where appropriate, **█** the ***necessary expertise and analysis to the relevant Union bodies and institutions.***

(27) The *Agency should operate according to, respectively, (i) the principle of subsidiarity, ensuring an appropriate degree of coordination between the Member States on NIS-related matters and improving the effectiveness of national policies, thus adding value to them and (ii) the principle of proportionality, not going beyond what is necessary in order to achieve the objectives set out by this Regulation. The exercise of the Agency's tasks should reinforce and should not interfere with the competencies, nor pre-empt, impede or overlap with the relevant powers and tasks, of: the national regulatory authorities as set out in the Directives relating to the electronic communications networks and services, as well as ~~on~~ of the Body of European Regulators for Electronic Communications (BEREC) established by Regulation 1211/2009<sup>15</sup> of the European Parliament and the Council and the Communications Committee referred to in Directive 2002/21/EC, the European standardisation bodies, the national standardisation bodies and the Standing Committee as set out in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations<sup>16</sup> and of rules on Information Society Services and the *independent* supervisory authorities of the Member States relating to the protection of individuals with the regard to the processing of personal data and on the free movement of such data.*

*(27a) It is necessary to implement certain principles regarding the governance of the Agency in order to comply with the Joint Statement and Common Approach agreed by the Inter-Institutional Working Group on EU decentralised agencies in July 2012, the purpose of which is to streamline the activities of agencies and improve their performance.*

*(27b) The Joint Statement and Common Approach should also be reflected, as appropriate, in the Agency's Work Programmes, evaluations of the Agency, and the Agency's reporting and administrative practice.*

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<sup>15</sup> Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office OJ L 337, 18.12.2009, p. 1.

<sup>16</sup> OJ L 204, 21.7.1998, p. 37.



- (27c) In order for the Agency to function properly, Member States and the Commission should ensure appropriate professional expertise when nominating members to the Management Board. They should make efforts to limit turnover of their Representative on the Management Board, in order to ensure continuity of the Management Board's work.*
- (27d) It is essential that the Agency establishes and maintains a reputation for impartiality, integrity and high professional standards. Accordingly, the Management Board should adopt comprehensive rules for the prevention and management of conflicts of interest covering the entire Agency.*
- (27e) Given the unique circumstances of the Agency and the difficult challenges facing it, the organisational structure of the Agency should be simplified and strengthened to ensure greater efficiency and effectiveness. Therefore, among other things, an Executive Board should be established in order to enable the Management Board to focus on issues of strategic importance.*
- (27f) The Management Board should appoint an Accounting Officer in accordance with rules adopted under the Financial Regulation 966/2012<sup>17</sup>.*

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<sup>17</sup> *Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).*

- (28) In order to ensure that the Agency is effective, the Member States and the Commission should be represented on a Management Board, which should define the general direction of the Agency's operations and ensure that it carries out its tasks in accordance with this Regulation. The Management Board should be entrusted with the necessary powers to establish the budget, verify its execution, adopt the appropriate financial rules, establish transparent working procedures for decision making by the Agency, adopt the Agency's work programme, adopt its own rules of procedure and the Agency's internal rules of operation, appoint *the Executive Director*, decide on the extension *of his/her mandate after obtaining the views of the European Parliament, and decide on* termination of *his/her* mandate **█**. The Management Board should **█** set up **█** an Executive Board to assist it with its tasks *on administrative and budgetary matters.* **█**
- (29) The smooth functioning of the Agency requires its Executive Director to be appointed on the grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant for network and information security, and that he/she performs his/her duties with complete independence as to the organisation of the internal functioning of the Agency. To this end, the Executive Director should prepare a proposal for the Agency's work programme, after prior consultation with the Commission **█**, and take all necessary steps to ensure the proper execution of the work programme of the Agency. He/*she* should prepare *an annual* report to be submitted to the Management Board, **█** draw up a draft statement of estimates of revenue and expenditure for the Agency, and implement the budget.
- (30) The Executive Director should have the option of setting up ad hoc Working Groups to address specific matters, in particular of a scientific, technical or **█** legal or socio-economic nature. In setting up **█** ad hoc Working Groups the Executive Director should seek input from and draw on the relevant external expertise needed to enable the Agency to have access to the most up-to-date information available on security challenges posed by the developing information society.

The **Executive Director** should ensure that the ad hoc Working Groups' membership is selected according to the highest standards of expertise, taking due account of a representative balance, as appropriate according to the specific issues, between the public administrations of the Member States, the **Union institutions**, the private sector, including industry, the users, and academic experts in network and information security. The **Executive Director** may, as **appropriate**, invite individual experts recognised as competent in the relevant field to participate in the Working Groups' proceedings, on a case-by-case basis. Their expenses should be met by the Agency in accordance with its internal rules and in accordance with **rules adopted under the** ■ **Financial Regulation 966/2012**.

- (31) The Agency should have a Permanent Stakeholders' Group as an advisory body, to ensure regular dialogue with the private sector, consumers' organisations and other relevant stakeholders. The Permanent Stakeholders' Group, set up by the Management Board on a proposal by the Executive Director, should focus on issues relevant to ■ stakeholders and bring them to the attention of the Agency. The Executive Director may, where appropriate and according to the agenda of the meetings, invite representatives of the European Parliament and other relevant bodies to take part in meetings of the Group.

***(31a) Since there is ample representation of stakeholders in the Permanent Stakeholders Group, and the PSG is consulted in particular regarding the draft Work Programme, there is no need of representation of stakeholders in the Management Board.***

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- (33) The Agency should apply the relevant Union legislation concerning public access to documents as set out in Regulation (EC) No 1049/2001<sup>18</sup> of the European Parliament and of the Council █ . ***The information processed by the Agency for purposes relating to its internal functioning as well as the information processed during the performance of its tasks should be subject to the*** 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>19</sup>.
- (34) Within its scope, in its objectives and in the fulfilment of its tasks, the Agency should comply in particular with the provisions applicable to the ***Union'*** institutions, and with national legislation regarding the treatment of sensitive documents. █
- (34a) The Agency should succeed ENISA as established by Regulation No 460/2004. Within the framework of the decision of the Representatives of the Member States, meeting in the European Council of 13 December 2003, the host Member State should maintain and further develop the current practical arrangements in order to ensure the smooth and efficient operation of the Agency, including its Athens office, and facilitate recruitment and retention of highly qualified staff.***

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<sup>18</sup> ***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 (OJ L 145, 31.5.2001, p. 43).***

<sup>19</sup> ***OJ L 8, 12.1.2001, p. 1.***

(35) In order to guarantee the full autonomy and independence of the Agency and to enable it to perform additional and new tasks, including unforeseen emergency tasks, it is considered necessary to grant it a sufficient and autonomous budget whose revenue comes primarily from a contribution from the Union and contributions from third countries participating in the Agency's work. The majority of the Agency staff should be directly engaged in the operational implementation of the Agency's mandate. The host Member State, or any other Member State, should be allowed to make voluntary contributions to the revenue of the Agency. The Union's budgetary procedure remains applicable as far as any subsidies chargeable to the general budget of the European Union are concerned. Moreover, the Court of Auditors should undertake the auditing of accounts to ensure transparency and accountability.

***(35a) In view of the continually changing threat landscape and the evolution of Union policy on network and information security, and in order to align to the multiannual financial framework, the duration of the mandate of the Agency should be set to a limited period of seven years with a possibility for an extension of the duration.***

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(37) ***The Agency's*** operations should be evaluated ***independently***. ***The evaluation should have*** regard to the ***Agency's*** effectiveness ***in*** achieving ***its*** objectives █, its working practices ***and the relevance of its tasks***, in order to determine the continuing validity, or otherwise, of the objectives of the Agency and, based on this, whether ***and for what period*** the duration of its ***mandate*** should be further extended.

***(37a) If towards the end of the duration of the mandate of the Agency, the Commission has not introduced a proposal for an extension of the mandate, the Agency and the Commission should take the relevant measures, addressing in particular issues related to staff contracts and budget arrangements.***

*(37b) Since the objectives of this Regulation, namely to establish a European Union Agency for Network and Information Security, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,*

HAVE ADOPTED THIS REGULATION:

## SECTION 1, SCOPE OBJECTIVES AND TASKS

### Article 1

#### Subject matter and Scope

1. This Regulation establishes a European ***Union Agency for*** Network and Information Security **█** (***ENISA***, hereinafter "the Agency") ***to undertake the tasks assigned to it*** for the purpose of contributing to a high level of network and information security within the Union and in order to raise awareness and develop ***and promote*** a culture of network and information security in society for the benefit of **█** citizens, consumers, enterprises and public sector organisations in the Union, thus contributing to the ***establishment and*** smooth functioning of the internal market.
2. The objectives and the tasks of the Agency shall be without prejudice to the competencies of the Member States regarding network and information security and in any case to activities concerning public security, defence, State security (including the economic well-being of the State when the issues relate to State security matters) and the activities of the State in areas of criminal law.

3. For the purposes of this Regulation "network and information security" shall mean the ability of a network or an information system to resist, at a given level of confidence, accidental events or unlawful or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted data and the related services offered by or accessible via these networks and systems.

## Article 2

### Objectives

**- 1. *The Agency shall develop and maintain a high level of expertise.***

1. The Agency shall assist the *Union's institutions, bodies, offices and agencies in developing policies in network and information security.*

**1a. *The Agency shall assist the Member States and the Union's institutions, bodies, offices and agencies in implementing the policies necessary to meet the legal and regulatory requirements of network and information security in present and future Union legislation, thus contributing to the smooth functioning of the internal market.***

2. The Agency shall ***assist in enhancing and strengthening*** the capability and preparedness of the Union and of ***the*** Member States to prevent, detect and respond to network and information security problems and incidents.
3. The Agency shall **■** use ***its*** expertise to stimulate broad cooperation between ***actors from the*** public and private-***sectors***.

## Article 3

### Tasks

1. Within the purpose set out in Article 1, ***and in order to attain the objectives set out in Article 2, whilst respecting Article 1(2)***, the Agency shall perform the following tasks:
  - (a) ***Support*** the **■** development ***of*** Union ***policy and*** legislation, ***by:***

- (i) Assisting and advising on all matters related to Union network and information security policy and legislation;*
- (ii) Providing preparatory work, advice and analyses related to the development and update of Union network and information security policy and legislation;*
- (iii) Analysing publicly available network and information security strategies and promoting their publication.*

*(aa) Support capability building by:*

- (i) Supporting Member States at their request in their efforts to develop and improve network and information security prevention, detection, analysis and response capability, and providing them with the necessary knowledge;*
- (ii) Promoting and facilitating voluntary cooperation among the Member States and between the Member States and the Union's institutions, bodies, offices and agencies in their efforts to prevent, detect and respond to network and information security problems and incidents where these have an impact across borders;*
- (iii) Assisting the Union's institutions, bodies, offices and agencies in their efforts to develop network and information security prevention, detection, analysis and response capability, in particular by supporting the operation of a Computer Emergency Response Team (CERT) for them;*
- (iv) Supporting the raising of the level of capabilities of national, governmental and Union CERTs, including by promoting dialogue and exchange of information, towards ensuring that, having regard to the state of the art, each CERT meets a common set of minimum capabilities and that they operate according to best practices;*
- (v) Supporting the organisation and running of Union network and information security exercises, and, at their request, advising Member States on national exercises;*



- (vi) Assisting the Member States and the Union's institutions, bodies, offices and agencies in their efforts to collect, analyse and, in line with Member States' security requirements, disseminate relevant network and information security data; and on the basis of information provided by the Member States and the Union's institutions, bodies, offices and agencies in accordance with Union provisions and national provisions in compliance with Union law, maintaining awareness of the latest state of network and information security in the Union for the benefit of the Member States and the Union's institutions, bodies, offices and agencies;*
- (vii) Supporting the development of a European early warning mechanism that is complementary to Member States' mechanisms;*
- (viii) Offering network and information security training for relevant public bodies, where appropriate in cooperation with stakeholders.*
- (ab) Support voluntary co-operation among competent public bodies, and between public and private stakeholders, including universities and research centres in the Union, and awareness raising, inter alia, by:*
  - (i) Promoting cooperation between national and governmental CERTs or Computer Security Incident Response Teams (CSIRTs), including the CERT for the Union institutions, bodies, offices and agencies;*
  - (ii) Promoting the development and sharing of best practice with the aim to arrive at an advanced level of network and information security;*
  - (iii) Facilitating dialogue and efforts to develop and exchange good practices;*
  - (iv) Promoting best practice in information sharing and awareness raising;*
  - (v) Supporting the Member States, at their request, and the Union and their respective institutions, bodies, offices and agencies in organising awareness raising, including at the level of individual users, and other outreach activities to increase network and information security and its visibility by providing best practices and guidelines.*

- (ac) Support research and development and standardisation, by:**
- (i) Facilitating the establishment and take up of European and international standards for risk management and for the security of electronic products, networks and services;**
  - (ii) Advising the Union and the Member States on research needs in the area of network and information security with a view to enabling effective responses to current and emerging network and information security risks and threats, including with respect to new and emerging ICT technologies, and to using risk prevention technologies effectively.**
- (ad) Cooperate with Union institutions, bodies, offices and agencies, including those dealing with cybercrime and the protection of privacy and personal data, to address issues of common concern, including by:**
- (i) Exchanging know-how and best practice;**
  - (ii) Providing advice on relevant network and information security aspects in order to develop synergies.**
- █**
- (j) Contribute to the Union efforts to cooperate with third countries and international organisations █ to promote international cooperation on network and information security issues, including by:**
- (i) Being engaged, where appropriate, as an observer and in the organisation of international exercises, and analysing and reporting on the outcome of such exercises;**
  - (ii) Facilitating exchange of best practices of relevant organisations;**
  - (iii) Providing the Union's institutions with expertise.**

2. *Member State bodies and Union institutions, bodies, offices and agencies may request advice from the Agency in case of breach of security or loss of integrity with a significant impact on the operation of networks and services.*
3. *The Agency shall carry out tasks conferred on it by Union legislative acts.*
4. *The Agency shall express independently its own conclusions, orientations and advice on matters within the scope and objectives of this Regulation.*

## SECTION 2 ORGANISATION

### Article 4

#### Bodies of the Agency

1. The Agency shall comprise:
  - (a) a Management Board;
  - (b) an Executive Director and the staff; and
  - (c) a Permanent Stakeholders' Group.
2. *In order to contribute to enhancing effectiveness and efficiency of the operation of the Agency, the Management Board shall establish an Executive Board.*

### Article 5

#### Management Board

1. The Management Board shall define the general direction of the operation of the Agency and ensure that the Agency works in accordance with the rules and principles laid down in this Regulation. It shall also ensure consistency of the Agency's work with activities conducted by the Member States as well as at Union level.
2. The Management Board shall adopt **■** the *Agency's annual and strategic multi-annual work programme*.

3. The Management Board shall adopt *an annual report on the Agency's activities and send it, by 1 July of [ ] the following year, to the European Parliament, the Council, the Commission and the Court of Auditors. The annual report shall include the accounts and describe how the Agency has met its performance indicators. The annual report shall be made public.*
- 3a. *The Management Board shall adopt an anti-fraud strategy, which is proportionate to the fraud risks having regard to cost-benefit of the measures to be implemented.*
- 3b. *The Management Board shall ensure adequate follow-up to the findings and recommendations stemming from investigations of the European Anti-fraud Office (OLAF) and the various internal or external audit reports and evaluations.*
- 3c. *The Management Board shall adopt rules for the prevention and management of conflicts of interest.*
- 3d. *The Management Board shall exercise, with respect to the staff of the Agency, the appointing authority powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude Contract of Employment.*

*The Management Board shall adopt, in accordance with the procedure under Article 110 of the Staff Regulations, a decision based on Article 2 paragraph 1 of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants delegating the relevant appointing authority powers to the Executive Director. The Executive Director is authorised to sub-delegate these powers.*

*Where exceptional circumstances so require, the Management Board may reclaim the appointing authority powers delegated to the Executive Director and those sub-delegated by the Executive Director. In such a case, the Management Board may delegate them, for a limited period to one of its members or to a staff member other than the Executive Director.*

- 3e. *The Management board shall adopt appropriate implementing rules to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with the procedure provided for in Article 110 of the Staff Regulations.*
- 3f. *The Management Board shall appoint the Executive Director and may extend his term of office or remove him from the office in accordance with Article 21c.*
- 3g. *The Management Board shall adopt the rules of procedure for itself and for the Executive Board after consulting with the Commission. The rules of procedure shall provide for expedited decisions through either written procedure or by remote conferencing.*
- 3h. *The Management Board shall adopt the Agency's internal rules of operation after consulting the Commission services. These rules shall be made public.*

6. The Management Board shall adopt the financial rules applicable to the Agency. They may not depart from 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>20</sup>, unless such departure is specifically required for the Agency's operation and the Commission has given its prior consent.

9. The Management Board *shall* adopt the Multi-Annual Staff Policy Plan, after consulting the Commission services and having duly informed the Budgetary Authority.

## Article 6

### Composition of the Management Board

- 1. The Management Board shall be composed of one representative of each Member State, *and two* representatives appointed by the Commission, *all with a* right to vote.
- 1a. *Each member of the Management Board shall have an alternate who will represent the member in his/her absence.*

<sup>20</sup> OJ L 357, 31.12.2002, p. 72.

**1b. Members of the Management Board and their alternates shall be appointed in light of their knowledge of the Agency's tasks and objectives, taking into account the managerial, administrative and budgetary skills relevant to fulfil the tasks listed in Article 5. All parties should make efforts to limit turnover of their representatives in the board, in order to ensure continuity of the board's work. All parties shall aim to achieve a balanced representation between men and women on the Management Board.**

3. The term of office of **board members and of their alternates** shall be four years. **That** term shall **be renewable**.

#### Article 7

##### Chairperson of the Management Board

1. The Management Board shall elect its Chairperson and a Deputy Chairperson from among its members for a period of three years, which shall be renewable. The Deputy Chairperson shall ex officio replace the Chairperson if the latter is unable to attend to his or her duties.
- 1a. The Chairperson may be invited to make a statement before the competent committee(s) of the European Parliament and answer questions from committee members.**

#### Article 8

##### Meetings

1. Meetings of the Management Board shall be convened by its Chairperson.
2. The Management Board shall hold an ordinary meeting **at least once** a year. It shall also hold extraordinary meetings at the instance of the Chairperson or at the request of at least a third of its members .
3. The Executive Director shall take part in the meetings of the Management Board, without voting rights.

## Article 9

### Voting

1. The Management Board shall take its decisions by ***an absolute*** majority of its members.
2. A two-thirds majority of all Management Board members **■** is required for the adoption of its rules of procedure, the Agency's internal rules of operation, the budget, the annual ***and multi-annual*** work programme, **■** the appointment, extension of the term of office or removal of the Executive Director, ***and the designation of the Chairperson of the Board.***

## Article 9 a

### Executive Board

1. ***The Management Board shall be assisted by an Executive Board.***
2. ***The Executive Board shall prepare decisions to be adopted by the Management Board on administrative and budgetary matters only.***

***Together with the Management Board, it shall ensure adequate follow-up to the findings and recommendations stemming from investigations of OLAF and the various internal or external audit reports and evaluations.***

***Without prejudice to the responsibilities of the Executive Director, as set out in Article 10, it shall assist and advise him/her in the implementation of the decisions of the Management Board on administrative and budgetary matters.***

3. ***The Executive Board shall be made up of five members appointed from among the members of the Management Board amongst whom the Chairperson of the Management Board, who may also chair the Executive Board, and one of the representatives of the Commission.***
4. ***The term of office of members of the Executive Board shall be the same as that of members of the Management Board.***

5. *The Executive Board shall meet at least once every three months. The chairperson of the Executive Board shall convene additional meetings at the request of its members.*

## Article 10

### Duties of the Executive Director

1. The Agency shall be managed by its Executive Director, who shall be independent in the performance of his/her duties.

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7. The Executive Director shall be responsible for:
- (a) the day-to-day administration of the Agency;
  - (b) implementing █ the decisions adopted by the Management Board;
  - (ba) following consultation with the Management Board, preparing the annual work programme and the strategic multi-annual work programme and submit them to the Management Board after consultation of the Commission;*
  - (bb) implementing the annual work programme and the strategic multi-annual work programme and reporting to the Management Board on their implementation;*
  - (bc) preparing the annual report on the Agency's activities and presenting it to the Management Board for approval;*
  - (bd) preparing an action plan following-up on the conclusions of the retrospective evaluations and report on progress bi-annually to the Commission;*



*(be) protecting the financial interests of the Union by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties;*

*(bf) preparing an anti-fraud strategy of the Agency and presenting it to the Management Board for approval;*

(c) ensuring that the Agency performs its activities in accordance with the requirements of those using its services, in particular with regard to the adequacy of the services provided;

■

(e) developing and maintaining contact with the European institutions and bodies;

(f) developing and maintaining contact with the business community and consumers' organisations to ensure regular dialogue with relevant stakeholders;

(g) other tasks assigned to him/her by this Regulation.

8. Where necessary and within the Agency's objectives and tasks, the Executive Director may set up ad hoc Working Groups composed of experts, ***including from the Member States' competent authorities***. The Management Board shall be informed in advance. The procedures regarding in particular the composition, the appointment of the experts by the Executive Director and the operation of the ad hoc Working Groups shall be specified in the Agency's internal rules of operation.

9. The Executive Director shall make administrative support staff and other resources available to the Management ***and Executive Boards*** whenever necessary.

## Article 11

### Permanent Stakeholders' Group

1. The Management Board shall set up a Permanent Stakeholders' Group on a proposal by the Executive Director, composed of *recognised* experts representing the relevant stakeholders, such as the information and communication technologies industry, *providers of electronic communications networks or services available to the public*, consumer groups, academic experts in network and information security, and *representation of national regulatory authorities notified under Directive 2002/21 as well as of* law enforcement and privacy protection authorities.
2. Procedures for, in particular, the number, composition, and appointment of the members by the Management Board, proposal by the Executive Director and the operation of the Group shall be specified in the Agency's internal rules of operation and shall be made public.
3. The Group shall be chaired by the Executive Director *or by any person he or she appoints on a case-by-case basis*.
4. The term of office of the Group's members shall be two-and-a-half years. Members of the Management Board may not be members of the Group. Commission staff *and experts from the Member States* shall be entitled to be present at the meetings and participate in the work of the Group. *If they are not members, representatives of other bodies deemed relevant by the Executive Director may be invited to be present at the meetings and participate in the work of the Group*.
5. The Group shall advise the Agency in the performance of its activities. The Group shall in particular advise the Executive Director on drawing up a proposal for the Agency's work programme, and on ensuring communication with the relevant stakeholders on all issues related to the work programme.

## SECTION 3 OPERATION

### Article 12

#### Work Programme

1. The Agency shall carry out its operations in accordance with its **annual and multi-annual** work programme, which shall contain all of its planned activities. **■**
  - 1a. ***The work programme shall include tailored performance indicators allowing for effective assessment of the results achieved in terms of objectives.***
2. The Executive Director shall be responsible for drawing up the Agency's draft work programme after prior consultation with the Commission services. Before 15 March each year the Executive Director shall submit the draft work programme for the following year to the Management Board.
3. Before 30 November each year, the Management Board shall adopt the Agency's work programme for the following year, ***after having received the opinion of the Commission.*** The work programme shall include a multi-annual outlook. The Management Board shall ensure that the work programme is consistent with the Agency's objectives and with the Union's legislative and policy priorities in the area of network and information security.
4. The work programme shall be organised in accordance with the Activity-Based Management **■** principle. The work programme shall be in line with the statement of estimates of the Agency's revenue and expenditure and the Agency's budget for the same financial year.
5. The Executive Director shall, following adoption by the Management Board, forward the work programme to the European Parliament, the Council, the Commission and the Member States and shall have it published. ***At the invitation of the European Parliament's competent committee, the Executive Director shall present and hold an exchange of views on the adopted annual work programme.***

## Article 14

### Requests to the Agency

1. Requests for advice and assistance falling within the Agency's objectives and tasks shall be addressed to the Executive Director and accompanied by background information explaining the issue to be addressed. The Executive Director shall inform the Management *and Executive Boards* of the requests received, *the potential resource implications*, and, in due course, of the follow-up given to the requests. If the Agency refuses a request, justification shall be given.
2. Requests referred to in paragraph 1 may be made by:
  - (a) the European Parliament;
  - (b) the Council;
  - (c) the Commission;
  - (d) any competent body appointed by a Member State, such as a national regulatory authority as defined in Article 2 of Directive 2002/21/EC.
3. The practical arrangements for applying paragraphs 1 and 2, regarding in particular submission, prioritisation, follow up and information of the Management *and Executive Boards* on the requests to the Agency, shall be laid down by the Management Board in the Agency's internal rules of operation.

## Article 15

### Declaration of interest

1. *Members of the Management Board, the* Executive Director and officials seconded by Member States on a temporary basis shall make a **■** declaration of commitments and a declaration indicating the absence *or presence* of any direct or indirect interest which might be considered prejudicial to their independence. *The declarations shall be accurate and complete, made annually in writing and updated whenever necessary*

2. **Members of the Management Board, the Executive Director, and external** experts participating in ad hoc Working Groups shall **accurately and completely** declare at **the latest at the start of** each meeting any interest which might be considered prejudicial to their independence in relation to the items on the agenda, and abstain from participating in the discussions **and the voting** on such points.
3. **In its internal rules of operation, the Agency shall lay down the practical arrangements for the rules on declarations of interest referred to in paragraphs 1 and 2.**

#### Article 16

##### Transparency

1. The Agency shall ensure that it carries out its activities with a high level of transparency and in accordance with Article **17** and **18**.
2. The Agency shall ensure that the public and any interested parties are given **appropriate**, objective, reliable and easily accessible information, in particular with regard to the results of its work **■** . It shall also make public the declarations of interest made **in accordance** with **Article 15**.
3. The Management Board, acting on a proposal from the Executive Director, may authorise interested parties to observe the proceedings of some of the Agency's activities.
4. In its internal rules of operation, the Agency shall lay down the practical arrangements for implementing the transparency rules referred to in paragraphs 1 and 2.

#### Article 17

##### Confidentiality

1. Without prejudice to Article **18**, the Agency shall not divulge to third parties information that it processes or receives for which **a reasoned request for** confidential treatment, **in whole or in part**, has been **made**.
2. Members of the Management Board, the Executive Director, the members of the Permanent Stakeholders Group, external experts participating in ad hoc Working Groups, and members of the staff of the Agency including officials seconded by Member States on a temporary basis are subject to confidentiality requirements under Article 339 of the Treaty even after their duties have ceased.

3. The Agency shall lay down in its internal rules of operation the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.
4. ***If required for the performance of the Agency's tasks, the*** Management Board ***shall*** decide to allow the Agency to handle classified information. In that case the Management Board shall, in agreement with the Commission services, adopt internal rules of operation applying the security principles contained in Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure<sup>21</sup>. This shall cover, inter alia, provisions for the exchange, processing and storage of classified information.

#### Article 18

##### Access to documents

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Agency.
2. The Management Board shall adopt arrangements for implementing Regulation (EC) No 1049/2001 within six months of the establishment of the Agency.
3. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Union, under Articles 228 and 263 of the Treaty respectively.

### SECTION 4 FINANCIAL PROVISIONS

#### Article 19

##### Adoption of the budget

1. The revenues of the Agency shall consist of a contribution from the European Union budget, contributions from third countries participating in the work of the Agency as provided for in Article 29, and ***voluntary*** contributions from Member States ***in money or in kind***. ***Member States that provide voluntary contributions may not claim any specific right or service as a result thereof.***

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<sup>21</sup> OJ L 317, 3.12.2001, p. 1.

2. The expenditure of the Agency shall include staff, administrative and technical support, infrastructure and operational expenses, and expenses resulting from contracts entered into with third parties.
3. By 1 March each year at the latest, the Executive Director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following financial year, and shall forward it to the Management Board, together with a draft establishment plan.
4. Revenue and expenditure shall be in balance.
5. Each year, the Management Board, on the basis of a draft statement of estimates of revenue and expenditure drawn up by the Executive Director, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year.
6. This statement of estimates, which shall include a draft establishment plan together with the draft work programme, shall, by 31 March at the latest, be sent by the Management Board to the Commission and the States with which the European Union has concluded agreements in accordance with Article 28.
7. This statement of estimates shall be forwarded by the Commission to the European Parliament and the Council (both hereinafter 'the budgetary authority') together with the draft general budget of the European Union.
8. On the basis of this 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 submit to the budgetary authority in accordance with Article 314 of the Treaty.
9. The budgetary authority shall authorise the appropriations for the subsidy to the Agency.
10. The budgetary authority shall adopt the establishment plan for the Agency.
11. Together with the work programme, the Management Board shall adopt the Agency's budget. It shall become final following final adoption of the general budget of the European Union. Where appropriate, the Management Board shall adjust the Agency's budget and work programme in accordance with the general budget of the European Union. The Management Board shall forward it without delay to the Commission and the budgetary authority.

## Article 20

### Combating fraud

1. In order to **facilitate combating** fraud, corruption and other unlawful activities **under** Regulation (EC) No 1073/1999<sup>22</sup>, **within six months from the day the Agency becomes operational, it** shall accede to the Interinstitutional Agreement of 25 May 1999 **concerning** internal investigations by the European Anti-fraud Office (OLAF) and **adopt** the **appropriate** provisions applicable to all the employees of the Agency **using the template set out in the Annex to that Agreement.**
2. **The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.**
3. **OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 and Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities<sup>23</sup> with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the Agency.**
4. **Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.**

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<sup>22</sup> **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) (OJ L 136, 31.5.1999, p. 1).**

<sup>23</sup> **OJ L 292, 15.11.1996, p. 2.**



## Article 21

### Implementation of the budget

1. The Executive Director shall ***be responsible for the implementation of*** the Agency's budget.
2. The Commission's internal auditor shall exercise the same powers over the Agency as over Commission departments.
3. By 1 March at the latest following each financial year, the Agency's accounting officer shall send the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 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>24</sup> (hereinafter 'the general Financial Regulation').
4. No later than 31 March following each financial year, the Commission's accounting officer shall send the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be sent to the budgetary authority.
5. On receipt of the Court of Auditor's observations on the Agency's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Executive Director shall draw up the Agency's final accounts under his/her own responsibility and send them to the Management Board for an opinion.
6. The Management Board shall deliver an opinion on the Agency's final accounts.
7. The Executive Director shall, no later than 1 July following each financial year, transmit the final accounts, ***including the report on the budgetary and financial management for that financial year and the Court of Auditor's observations***, to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.
8. The Executive Director shall publish the final accounts.

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<sup>24</sup> OJ L 248, 16.9.2002, p. 1.

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 the information necessary for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the general Financial Regulation.
11. The European Parliament, acting on a recommendation from the Council, shall, before 30 April of year N+2, give a discharge to the Executive Director in respect of the implementation of the budget for the year N.

## **SECTION 4a STAFF**

### *Article 21a*

#### *General provisions*

*The Staff Regulations of the European Union and the Conditions of Employment of Other Servants of the European Union<sup>[1]</sup> and the rules adopted by agreement between the institutions of the European Union for giving effect to those Staff Regulations shall apply to the staff of the Agency.*

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### *Article 21b*

#### *Privileges and immunity*

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

*Article 21c*

*Executive Director*

1. *The Executive Director shall be engaged as a temporary agent of the Agency under Article 2(a) of the Conditions of Employment of Other servants.*
2. *The Executive Director shall be appointed by the Management Board from a list of candidates proposed by the Commission, following an open and transparent selection procedure.*

*For the purpose of concluding the contract of the Executive Director, the Agency shall be represented by the Chair of the Management Board.*

*Before appointment, the candidate selected by the Management Board shall be invited to make a statement before the competent committee of the European Parliament and to answer questions by its members.*

3. *The term of office of the Executive Director shall be five years. By the end of this period, the Commission shall undertake an assessment which takes into account the evaluation of the performance of the Executive Director and the Agency's future tasks and challenges.*
4. *The Management Board, acting on a proposal from the Commission which takes into account the assessment referred to in paragraph 3, may extend once the term of office of the Executive Director for no more than five years after obtaining the views of the European Parliament.*
5. *The Management Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within three months before any such extension, the Executive Director shall, if invited, make a statement before the competent committee of the Parliament and answer questions put by its members.*

6. *An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.*
7. *The Executive Director may be removed from the office only upon a decision of the Management Board.*

#### *Article 21d*

##### *Seconded national experts and other staff*

1. *The Agency may also make use of Seconded national experts or other staff not employed by the Agency. The Staff Regulations and the Conditions of Employment of Other Servants shall not apply to such staff.*
2. *The Management Board shall adopt a decision laying down rules on the secondment to the agency of national experts.*

### SECTION 5 GENERAL PROVISIONS

#### Article 22

##### Legal status

1. The Agency shall be a body of the Union. It 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 and dispose of movable and immovable property and be a party to legal proceedings.
3. The Agency shall be represented by its Executive Director.
4. *A branch office has been established and shall be maintained in the metropolitan area of Athens in order to improve the operational efficiency of the Agency.*

## Article 25

### Liability

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.

2. 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 it or its servants in the performance of their duties.

The Court of Justice shall have jurisdiction in any dispute relating to compensation for such damage.

3. The personal liability of its servants towards the Agency shall be governed by the relevant conditions applying to the staff of the Agency.

## Article 26

### Languages

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community<sup>25</sup> shall apply to the Agency. The Member States and the other bodies appointed by them may address the Agency and receive a reply in the European Union language of their choice.
2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.

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<sup>25</sup> OJ 17, 6.10.1958, p. 385. Regulation as last amended by the 1994 Act of Accession.

## Article 27

### Protection of personal data

1. When processing data relating to individuals, *in particular while performing its tasks*, the Agency shall *observe the principles of personal data protection in, and* be subject to, the provisions of Regulation (EC) No 45/2001.
  - 1a. *The Management Board shall adopt implementing measures referred to in Article 24(8) of Regulation 45/2001. The Management Board may adopt additional measures necessary for the application of Regulation 45/2001 by the Agency.*

## Article 28

### Participation of third countries

1. The Agency shall be open to the participation of third countries which have concluded agreements with the European Union by virtue of which they have adopted and applied Union legislation in the field covered by this Regulation.
2. Arrangements shall be made under the relevant provisions of those agreements, specifying in particular the nature, extent and manner in which these countries will participate in the Agency's work, including provisions relating to participation in the initiatives undertaken by the Agency, financial contributions and staff.

## *Article 28a*

### *Security Rules on the protection of classified information*

*The Agency shall apply the security principles contained in the Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information, as set out in the annex to Decision 2001/844/EC. This shall cover, inter alia, provisions for the exchange, processing and storage of such information.*

## SECTION 6 FINAL PROVISIONS

### Article 29

#### Evaluation and *review*

1. *No later than 5 years from the day of entry into force of this Regulation, the Commission shall commission an evaluation to assess particularly the impact, effectiveness and efficiency of the Agency and its working practices. The evaluation shall also address the possible need to modify the mandate of the Agency and the financial implications of any such modification.*
  - 1a. *The evaluation shall take into account any feedback made to the Agency in response to its activities.*
2. *The Commission shall forward the evaluation report together with its conclusions to the European Parliament, the Council and the Management Board. The findings of the evaluation shall be made public.*
3. *On the occasion of the evaluation, there shall also be an assessment of the results achieved by the Agency having regard to its objectives, mandate and tasks. If the Commission considers that the continuation of the Agency is justified with regard to its assigned objectives, mandate and tasks, it may propose that the duration of the Agency set out in Article 33 be extended.*

### Article 30

#### Cooperation of the host Member State

The Agency's host Member State shall *provide* the best possible conditions *to ensure the proper functioning of the Agency, including the accessibility of the location, the existence of adequate education facilities for the children of staff members, appropriate access to the labour market, social security and medical care for both children and spouses.*

## Article 31

### Administrative control

The operations of the Agency are subject to the supervision of the Ombudsman in accordance with Article 228 of the Treaty.

## Article 32

### Repeal and succession

1. Regulation (EC) No 460/2004 is repealed.  
References to Regulation (EC) No 460/2004 and to ENISA shall be construed as references to this Regulation and to the Agency.
2. The Agency succeeds the Agency that was established by Regulation (EC) No 460/2004 as regards all ownership, agreements, legal obligations, employment contracts, financial commitments and liabilities.

## Article 33

### Duration

The Agency shall be established from *the day of entry into force of this Regulation* for a period of *seven* years.

## Article 34

### Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*. █

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at [...],

*For the European Parliament*  
*The President*

*For the Council*  
*The President*