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INFORMATION NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, and amending Regulation (EC) 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) 1077/2011
– Outcome of the European Parliament's first reading (Strasbourg 2 to 5 July 2018)

I. INTRODUCTION

The rapporteur, Monica MACOVEI (ECR, RO), presented a report consisting of 107 amendments (amendments 1-107) to the proposal for a Regulation on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, a compromise amendment was tabled (amendment 108). This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

II. VOTE

When it voted on 5 July 2018, the plenary adopted the compromise amendment (amendment 108) to the proposal for a Regulation.

The Commission proposal as thus amended and the legislative resolution constitute the European Parliament's position at first reading². It reflects what had been previously agreed between the institutions. Consequently, once the legal-linguistic experts have scrutinised the text, the Council should be in a position to approve the position of the European Parliament.

The act would then be adopted in the wording which corresponds to the Parliament's position.

¹ OJ C 145, 30.6.2007, p.5

² The text of the amendments adopted and the European Parliament's legislative resolution are set out in the Annex. The amendments are presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in bold and italics. The symbol "■" indicates deleted text.

European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice *I**

European Parliament legislative resolution of 5 July 2018 on the proposal for a regulation of the European Parliament and of the Council on the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, and amending Regulation (EC) 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) 1077/2011 (COM(2017)0352 – C8-0216/2017 – 2017/0145(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0352),
 - having regard to Article 294(2) and Article 74, Articles 77(2)(a) and (b), Article 78(2)(e), Article 79(2)(c), Article 82(1)(d), Article 85(1), Article 87(2)(a) and Article 88(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0216/2017),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 7 June 2018 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Budgets (A8-0404/2017),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 5 July 2018 with a view to the adoption of Regulation (EU) 2018/... of the European Parliament and of the Council on the European *Union* Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (*eu-LISA*), and amending Regulation (EC) 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) 1077/2011*

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 74, Article 77(2)(a) and (b), Article 78(2)(e), Article 79(2)(c), Article 82(1)(d), Article 85(1), Article 87(2)(a) and Article 88(2) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure³,

* TEXT HAS NOT YET UNDERGONE LEGAL-LINGUISTIC FINALISATION.

³ Position of the European Parliament of 5 July 2018.

Whereas:

- (1) The Schengen Information System (SIS) was established by Regulation (EC) No 1987/2006 of the European Parliament and of the Council⁴ and by Council Decision 2007/533/JHA⁵. Regulation (EC) No 1987/2006 and Decision 2007/533/JHA provide that the Commission is to be responsible, during a transitional period, for the operational management of Central SIS II. After that transitional period, a Management Authority is to be responsible for the operational management of Central SIS II and certain aspects of the communication infrastructure.
- (2) The Visa Information System (VIS) was established by Council Decision 2004/512/EC⁶. Regulation (EC) No 767/2008 of the European Parliament and of the Council⁷ provides that the Commission is to be responsible, during a transitional period, for the operational management of the VIS. After that transitional period, a Management Authority is to be responsible for the operational management of the Central VIS and of the national interfaces and for certain aspects of the communication infrastructure.

⁴ 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) (OJ L 381, 28.12.2006, p. 4).

⁵ Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63).

⁶ Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) (OJ L 213, 15.6.2004, p. 5).

⁷ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

- (3) Eurodac was established by Council Regulation (EC) No 2725/2000⁸. Council Regulation (EC) No 407/2002⁹ laid down necessary implementing rules. These instruments were repealed and replaced by Regulation (EU) No 603/2013 of the European Parliament and of the Council¹⁰ with effect from 20 July 2015.
- (4) The European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, *commonly referred to as eu-LISA*, was established by Regulation (EU) No 1077/2011 of the European Parliament and of the Council¹¹ in order to ensure the operational management of SIS, VIS and Eurodac and of certain aspects of their communication infrastructures, and potentially that of other large-scale information technology (IT) systems in the area of freedom, security and justice, subject to the adoption of separate legislative instruments. Regulation (EU) No 1077/2011 was amended by Regulation (EU) No 603/2013 in order to reflect the changes introduced to Eurodac.

⁸ 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 (OJ L 316, 15.12.2000, p. 1).

⁹ 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 (OJ L 62, 5.3.2002, p. 1).

¹⁰ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 180, 29.6.2013, p. 1).

¹¹ Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 286, 1.11.2011, p. 1).

(5) Since the Management Authority required legal, administrative and financial autonomy, it was established in the form of a regulatory agency (Agency) having legal personality. As was agreed, the seat of the Agency was established in Tallinn (Estonia). However, since the tasks relating to technical development and the preparation for the operational management of SIS and VIS were already being carried out in Strasbourg (France) and a backup site for those IT systems had been installed in Sankt Johann im Pongau (Austria) in line also with the locations of the SIS and VIS systems decided under the relevant legislative instruments, this should continue to be the case. Those two sites should also continue to be the locations, respectively, where the tasks relating to operational management of Eurodac should be carried out and where a backup site for Eurodac should be established. Those two sites should also be the locations, respectively, for the technical development and operational management of other large-scale IT systems in the area of freedom, security and justice ■ and for a backup site capable of ensuring the operation of a large-scale IT system in the event of failure of that system. In order to maximise the possible use of the backup site, this site *could also be used to operate systems* simultaneously ■ provided that it remains capable of ensuring their operation in case of failure of *one or more of* the systems. ***Due to the high-security, high-availability and mission-critical nature of the systems eu-LISA operates, where the hosting capacity would become insufficient in the existing technical sites, it should be possible for the Management Board to propose to establish a second separate technical site either in Strasbourg or in Sankt Johann im Pongau or in both locations, as required, in order to host the systems, only if so justified on the basis of an independent impact assessment and cost-benefit analysis. The Management Board should consult the Commission and take into account the Commission's views before notifying the budgetary authority of its intention to implement any project related to property in accordance with Article 40(9).*** Since taking up its responsibilities on 1 December 2012, the Agency took over the tasks conferred on the Management Authority in relation to VIS by Regulation (EC) No 767/2008 and Council Decision 2008/633/JHA¹². It took over the tasks conferred to the Management Authority in relation to SIS II by Regulation (EC) No 1987/2006 and

¹² Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ L 218, 13.8.2008, p. 129).

Decision 2007/533/JHA in April 2013 following the system's go-live and it took up the tasks conferred on the Commission in relation to Eurodac in accordance with Regulations (EC) No 2725/2000 and (EC) 407/2002 in June 2013. The first evaluation of the Agency's work based on an independent external evaluation and carried out in 2015-2016, concluded that the Agency effectively ensures the operational management of the large-scale IT systems and other tasks entrusted to it but also that a number of changes to the establishing Regulation are necessary such as the transfer to the Agency of the communication infrastructure tasks retained by the Commission. Building on the external evaluation, the Commission took into account policy, legal and factual developments and proposed in particular in its Report on the functioning of the European Agency *for* the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA)¹³ that the mandate of the Agency should be extended to carry out the tasks derived from the adoption by the co-legislators of proposals entrusting new systems to the Agency, the tasks referred to in the Commission's Communication on Stronger and Smarter Information Systems for Borders and Security of 6 April 2016, in the final report of 11 May 2017 of the High Level Expert Group *on Information Systems and Interoperability* and in the Commission's Seventh progress report towards an effective and genuine Security Union of 16 May 2017¹⁴, subject where required to the adoption of the relevant legislative instruments. In particular, the Agency should be tasked with the development of *solutions for interoperability, defined in the Communication of 6 April 2016 as the ability of information systems to exchange data and to enable the sharing of information.*-Where relevant, any actions carried out on interoperability should have to be guided by the Commission Communication on the European Interoperability Framework – Implementation Strategy¹⁵.

¹³ COM(2017)0346, 29.6.2017.

¹⁴ COM(2017)0261, 16.5.2017.

¹⁵ COM(2017)0134, 23.3.2017. Annex 2 of this Communication provides the general guidelines, recommendations and best practices for achieving interoperability or at least for creating the environment to achieve better interoperability when designing, implementing and managing European public services.

- (6) The above mentioned Commission report also concluded that the Agency's mandate should be extended to provide advice to Member States with regard to the national systems' connection to the central systems and for ad-hoc assistance/support where required as well as to provide assistance/support to the Commission services on technical issues related to new systems.
- (7) ■ The Agency should therefore be entrusted with the preparation, development and operational management of the Entry/Exit system, established by Regulation (EU) 2017/2226 of the European Parliament and of the Council¹⁶. ■

¹⁶ Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20)

- (8) *The Agency should be entrusted with the operational management of a separate secure electronic transmission channel known as DubliNet, set up under Article 18 of Commission Regulation (EC) No 1560/2003¹⁷, which Member States' competent authorities for asylum should use for the exchange of information on applicants for international protection.*
- (9) ■ *It should be entrusted with the preparation, development and operational management of the European Travel Authorisation System (ETIAS) established by Regulation XX/XX [number of COD 2016/0357A to be inserted here and in footnote] of the European Parliament and of the Council¹⁸.*

¹⁷ Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 222, 5.9.2003, p. 3).

¹⁸ Regulation XX/XX of the European Parliament and of the Council of ... establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624, and (EU) 2017/2226 (OJ L ..., ..., p. ...) [please insert correct number of COD 2016/357A].

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- (13) The core function of the Agency should continue to be to fulfil the operational management tasks for SIS, VIS, █ Eurodac, █ EES █, █ DubliNet █, █ ETIAS █ 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. Those responsibilities should be without prejudice to the normative tasks reserved for the Commission alone or for the Commission assisted by a Committee in the respective legislative instruments governing the systems operationally managed by the Agency.

(13a) *The Agency should be able to implement technical solutions in order to comply with the availability requirements laid down in the legislative instruments governing the systems under the responsibility of the Agency while fully respecting the specific provisions of those instruments with regard to the technical architecture of the respective system. Where those technical solutions require a duplication of a system or a duplication of components of a system an independent impact assessment and cost-benefit analysis should be carried out and a decision should be taken by the Management Board following the consultation of the Commission. The assessment should also include an examination of the needs in terms of hosting capacity of the existing technical sites related to the development of such solutions and the possible risks of the current operational set up.*

(13b) It is no longer justified for the Commission to retain certain tasks related to the communication infrastructure of the systems and therefore these tasks should be transferred to the Agency in order to improve the coherence of its management. However, for those systems which use EuroDomain, a secured communication infrastructure provided by TESTA-ng (Trans-European Services for Telematics between Administrations-new generation) which is a project in the form of a network service on the basis of Article 3 of Decision No 922/2009/EC of the European Parliament and of the Council¹⁹, the tasks of the implementation of the budget, acquisition and renewal and contractual matters should be retained by the Commission. The Agency may entrust tasks relating to the delivery, setting up, maintenance and monitoring of the communication infrastructure to external private-sector entities or bodies in accordance with Regulation (EU, Euratom) No 966/2012. The Agency should have sufficient budgetary and staff resources at its disposal in order to limit as much as possible the need to outsource its tasks and duties to private companies.

¹⁹ Decision No 922/2009/EC of the European Parliament and of the Council of 16 September 2009 on interoperability solutions for European Public Administrations (ISA) (OJ L 280, 3.10.2009, p. 20).

- (14) In addition, the Agency should continue to perform tasks relating to training on the technical use of SIS, VIS and Eurodac and other large-scale IT systems entrusted to it in the future.
- (14a) *In order to contribute to the evidence-based Union migration and security policy-making and to the monitoring of the proper functioning of the large-scale IT systems under the responsibility of the Agency, the Agency should compile and publish statistics, and produce statistical reports and make them available to the relevant actors in accordance with legal instruments governing those large-scale IT systems, for example in order to monitor the implementation of Council Regulation (EU) No 1053/2013²⁰ and for the purposes of carrying out risk analysis and vulnerability assessment in accordance with Regulation of the European Parliament and of the Council (EU) 2016/1624²¹.*

²⁰ *Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (OJ L 295, 6.11.2013, p. 27).*

²¹ *Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).*

- (15) Furthermore, the Agency could also be made responsible for the preparation, development and operational management of additional large-scale IT systems in application of Articles 67 to 89 of the Treaty on the Functioning of the European Union (TFEU). **Possible examples of such systems could be the ECRIS-TCN system or the secure ICT-solution for cross-border exchange of sensitive data by the judicial authorities (e-CODEX).** However, the Agency should be entrusted with such *systems* only by means of subsequent and separate legislative instruments, preceded by an impact assessment.
- (16) The mandate of the Agency with regard to research should be extended in order to increase its ability to be more proactive suggesting relevant and necessary technical changes in the IT systems under its responsibility. The Agency might not only monitor ■ research activities relevant to the operational management of the systems it manages **but also contribute to the implementation of relevant parts of the Framework Programme for Research and Innovation, where the Commission has delegated the relevant powers to the Agency.** It should send information on such monitoring to the Parliament, *to the Council and where the processing of personal data is concerned,* to the European Data Protection Supervisor **at least once a year.**

- (17) The Agency *could* be *made* responsible for carrying out pilot projects *of an experimental nature designed to test the feasibility of an action and its usefulness, which may be implemented without a basic act* in accordance with Article 54(2)(a) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council²². The Agency may in addition be entrusted by the Commission with budget implementation tasks for proofs of concept funded under the instrument for financial support for external borders and visa provided for in Regulation (EU) No 515/2014 of the European Parliament and of the Council²³ in accordance with Article 58(1)(c) of Regulation (EU, Euratom) No 966/2012, *after informing the Parliament*. The Agency may also plan and implement testing activities on matters strictly covered by this Regulation and the legislative instruments governing the development, establishment, operation and use of the large-scale IT systems managed by the Agency, *such as testing virtualisation concepts*. When tasked with carrying out a pilot project, the Agency should pay particular attention to the European Union Information Management Strategy.

²² 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).

²³ Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (OJ L 150, 20.5.2014, p. 143).

- (18) The Agency should, *as regards the national systems' connection to the central systems provided for in the legislative instruments governing those systems, provide advice to Member States at their request.*

- (19) The Agency should also provide ad-hoc support to Member States *at their request, subject to the procedure set out in this Regulation*, where required by security or migratory extraordinary *challenges or* needs. In particular, *a Member State should be able to request and rely on technical and operational reinforcements* where a *that* Member State faces specific and disproportionate migratory challenges at particular areas of its external borders characterised by large inward migratory flows. *Such reinforcements* should be provided in hotspot areas by migration management support teams composed of experts from relevant Union agencies. Where the support of the Agency would be required in this context with regard to issues related to the large-scale IT systems it manages, the request for support should be *transmitted by the Member State concerned* to the Commission, *which, following its assessment that such support is effectively justified, should transmit the request for support, without delay* to the Agency, *which should inform the Management Board. The Commission should also monitor whether the Agency provides a timely response to the request for ad-hoc support. The Annual Activity Report should report in detail on the actions the Agency has carried out to provide ad-hoc support to Member States and on the costs incurred in that respect.*

- (20) The Agency should also support the Commission services on technical issues related to existing or new systems, when required, in particular for the preparation of new proposals on large-scale IT systems to be entrusted to the Agency.
- (21) It should **■** be possible *for the Agency to be entrusted with developing, managing and/or hosting a common IT component* for a group of Member States *to assist them* to implement technical aspects of obligations deriving from Union legislation on decentralised **■** IT systems in the area of freedom, security and justice *and without prejudice to their obligations under the applicable Union legislation, in particular with regard to the architecture of those systems*. This should require prior approval by the Commission, *be subject to a positive decision of the Management Board, be reflected in a delegation agreement* between the Member States concerned and the Agency and be financed *fully by the Member States concerned. The Agency should inform the European Parliament and the Council of the approved delegation agreement and of any modifications thereto. Other Member States should be able to participate in such common IT solution on condition that this possibility is provided for in the delegation agreement and the necessary amendments are made thereto. This task should not adversely affect the operational management of IT systems under the responsibility of the Agency.*

- (22) Entrusting the Agency with the operational management of large-scale IT systems in the area of freedom, security and justice should 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 large-scale IT system the operational management of which the Agency is entrusted with, are fully applicable.
- (23) ***In order to monitor effectively the functioning of the Agency***, the Member States and the Commission should be represented on a Management Board. The Management Board should be entrusted with the necessary functions, in particular to adopt the annual work programme, carry out its functions relating to the Agency's budget, adopt the financial rules applicable to the Agency and establish procedures for taking decisions relating to the operational tasks of the Agency by the Executive Director. ***The Management Board should carry out those tasks in an efficient and transparent way. Following the organisation of an appropriate selection procedure by the Commission, and following a hearing of the proposed candidates in the competent committee of the Parliament, the Management Board should also appoint an Executive Director.***

- (23a)** *Considering that the number of large-scale IT systems entrusted to the Agency will have increased significantly by 2020 and that the tasks of the Agency are being considerably enhanced, there will be a corresponding large increase in staff of the Agency until 2020. A position of Deputy Executive Director of the Agency should therefore be created taking also into account that the tasks relating to development and operational management of the large-scale IT systems will require increased and dedicated oversight and that the headquarters and technical sites of the Agency are spread over three Member States. The Management Board should appoint the Deputy Executive Director.*
- (23b)** The Agency should be governed and operated taking into account the principles of the Common approach on Union decentralised agencies adopted on 19 July 2012 by the European Parliament, the Council and the Commission.

- (24) As regards SIS II, the European *Union Agency for Law Enforcement Cooperation* (Europol) and the European Judicial Cooperation Unit (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. The European Border and Coast Guard *Agency* which has the right to access and search SIS in application of Regulation (EU) 2016/1624 ■ should have observer status *at the meetings of* the Management Board when a question in relation to the application of Regulation (EU) 2016/1624 ■ is on the agenda. Europol, Eurojust and the European Border and Coast Guard *Agency* should each be able to appoint a representative to the SIS Advisory Group established under this Regulation.

- (25) As regards VIS, Europol should have 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 this Regulation.
- (26) As regards Eurodac, Europol should have observer status at the meetings of the Management Board, when a question in relation with the application of Regulation (EU) No 603/2013 ■ is on the agenda. Europol should be able to appoint a representative to the Eurodac Advisory Group.

- (27) █ As regards EES, Europol should have observer status at the meetings of the Management Board when a question concerning Regulation *(EU) 2017/2226* is on the agenda █ .
- (28) █ As regards ETIAS, Europol should have observer status at the meetings of the Management Board when a question concerning Regulation XX/XXXX █ establishing ETIAS█ is on the agenda. The European Border and Coast Guard *Agency* should also have observer status at the meetings of the Management Board when a question concerning ETIAS in relation with the application of Regulation XX/XX establishing ETIAS is on the agenda. Europol and the European Border and Coast Guard *Agency* should be able to appoint a representative to the █ EES-ETIAS █ Advisory Group.
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- (31) Member States should have voting rights on the Management Board, if they are bound under Union law by any legislative instrument governing the development, establishment, operation and use of that particular system. Denmark should also have voting rights concerning a large-scale IT system, if it decides under Article 4 of the Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union (TEU) and the TFEU, to implement the legislative instrument governing the development, establishment, operation and use of that particular system in its national law.

- (32) 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 No 22 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. ***Advisory Groups should cooperate with each other when necessary.***

- (33) In order to guarantee its full autonomy and independence *and to enable it to properly perform the objectives and tasks assigned to it by this Regulation*, the Agency should be granted an *adequate and* autonomous budget with revenue from the general budget of the European Union. The financing of the Agency should be subject to an agreement by the budgetary authority as set out in point 31 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and sound financial management²⁴. 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.

²⁴ OJ C 373, 20.12.2013, p. 1.

- (34) For the purpose of fulfilling its mission and to the extent required for the accomplishment of its tasks, the Agency should be allowed to cooperate with Union institutions, bodies, offices and agencies, in particular those established in the area of freedom, security and justice, in matters covered by this Regulation and the legislative instruments governing the development, establishment, operation and use of large-scale IT systems managed by the Agency in the framework of working arrangements concluded in accordance with Union law and policy and within the framework of their respective competences. ***Where so provided by a Union act, the Agency should also be allowed to cooperate with international organisations and other relevant entities and should be able to conclude working arrangements for that purpose.*** Those working arrangements should receive the Commission's prior approval ***and be authorised by the Management Board.*** The Agency should also consult and follow up the recommendations of the European Network and Information Security Agency regarding network security, where appropriate.
- (35) When ensuring the 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.

- (36) Regulation (EC) No 45/2001²⁵ [or Regulation XX/2018 of the European Parliament and of the Council on the protection of *individuals with regard to the processing of personal data by the* Union institutions, bodies, *offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC*] should apply to the processing of personal data by the Agency, *without prejudice to the provisions on data protection laid down in the legislative instruments governing the development, establishment, operation and use of large-scale IT systems which should be consistent with Regulation (EC) No 45/2001²⁰ [or Regulation XX/2018]. In order to maintain security and to prevent processing in infringement of Regulation 45/2001 [or Regulation XX/2018] and of the legislative instruments governing the systems, the Agency should evaluate the risks inherent in the processing and implement measures to mitigate those risks, such as encryption. Those measures should ensure an appropriate level of security, including confidentiality, taking into account the state of the art and the costs of implementation in relation to the risks and the nature of the personal data to be protected. In assessing data security risk, consideration should be given to the risks that are presented by personal data processing, such as accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed which may in particular lead to physical, material and non-material damage.* The European Data Protection Supervisor should be able to obtain from the Agency access to all information necessary for his or her enquiries. In accordance with Article 28 of Regulation (EC) No 45/2001, the Commission consulted the European Data Protection Supervisor, who delivered his opinion on **10 October 2017**.

²⁵ 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 (OJ L 8, 12.1.2001, p. 1).

- (37) In order to ensure the transparent operation of the Agency, Regulation (EC) No 1049/2001 of the European Parliament and of the Council²⁶ should apply to the Agency. The Agency should be as transparent as possible about its activities, without jeopardising the attainment of the objective of its operations. It should make public information on all of its activities. It should likewise ensure that the public and any interested party are rapidly given information with regard to its work.
- (38) The activities of the Agency should be subject to the scrutiny of the European Ombudsman in accordance with Article 228 TFEU.
- (39) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council²⁷ 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)²⁸.

²⁶ 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).

²⁷ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

²⁸ OJ L 136, 31.5.1999, p. 15.

(39a) **Council Regulation (EU) 2017/1939²⁹ concerning the establishment of the European Public Prosecutor's Office should apply to the Agency.**

(40) In order to ensure open and transparent employment conditions and equal treatment of staff, the Staff Regulations of Officials of the European Union ('Staff Regulations') and the Conditions of Employment of Other Servants of the European Union ('Conditions of Employment of other Servants'), laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68³⁰ (together referred to as the 'Staff Regulations'), should apply to the staff (including the Executive Director *and the Deputy Executive Director* of the Agency), including the rules of professional secrecy or other equivalent duties of confidentiality.

²⁹ **Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the 'EPPO') (OJ L 283, 31.10.2017 p. 1).**

³⁰ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

- (41) The Agency is a body set up by the Union in the sense of Article 208 of Regulation (EU, Euratom) No 966/2012 and should adopt its financial rules accordingly.
- (42) Commission Delegated Regulation (EU) No 1271/2013³¹ should apply to the Agency.
- (42a) The Agency as established by this Regulation replaces and succeeds the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice as established by Regulation (EU) No 1077/2011. It should therefore be the legal successor in respect of all contracts concluded by, liabilities incumbent upon and properties acquired by the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice as established by Regulation (EU) No 1077/2011. This Regulation should not affect the legal force of agreements, working arrangements and memoranda of understanding concluded by the Agency as established by Regulation (EU) No 1077/2011 without prejudice to any amendments thereto required by this Regulation.***

³¹ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

- (42b)** *To enable the Agency to continue to fulfil the tasks of the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice as established by Regulation (EU) No 1077/2011 to the best of its abilities, transitional measures should be laid down, in particular with regard to the Management Board, the Advisory Groups, the Executive Director and the internal rules adopted by the Management Board.*
- (42c)** *This Regulation aims to amend and expand the provisions of Regulation (EU) No 1077/2011. Since the amendments to be made are of a substantial number and nature, that Regulation should, in the interests of clarity, be replaced in its entirety in relation to the Member States bound by this Regulation. The Agency as established by this Regulation should replace and assume the functions of the Agency as established by Regulation (EU) No 1077/2011, which, as a consequence, should be repealed.*

- (43) 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 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.

(44) In accordance with Articles 1 and 2 of Protocol No 22 on the Position of Denmark, annexed to TEU and 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, ■ EES ■ and ETIAS ■ builds upon the Schengen acquis, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the 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 Convention³², Denmark is to notify the Commission whether it will implement the contents of this Regulation, insofar as it relates to Eurodac *and DubliNet*.

³² OJ L 66, 8.3.2006, p. 38.

- (45) Insofar as its provisions relate to SIS **II** as governed by Decision 2007/533/JHA, the United Kingdom is taking part in this Regulation, in accordance with Article 5(1) of Protocol No 19 on the Schengen acquis integrated into the framework of the European Union, annexed to TEU and to TFEU (Protocol on the Schengen acquis) and Article 8(2) of Council Decision 2000/365/EC³³.

Insofar as its provisions relate to SIS **II** as governed by Regulation (EC) No 1987/2006 and to VIS, ■ to EES ■ and to ETIAS, **this Regulation constitutes a development** of provisions of the Schengen acquis in which the United Kingdom does not take part in accordance with Decision 2000/365/EC. **The** United Kingdom may request 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.

Furthermore, insofar as its provisions relate to Eurodac and **DubliNet, the United Kingdom has notified, by letter of 23 October 2017, its wish to take part in the adoption and application of this Regulation.**

³³ 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 (OJ L 131, 1.6.2000, p. 43).

- (46) Insofar as its provisions relate to SIS II as governed by Decision 2007/533/JHA, Ireland is taking part in this Regulation, in accordance with Article 5(1) of Protocol No 19 on the Schengen acquis integrated into the framework of the European Union, annexed to TEU and to TFEU (Protocol on the Schengen acquis), and Article 6(2) of Council Decision 2002/192/EC³⁴.

Insofar as its provisions relate to SIS *II* as governed by Regulation (EC) No 1987/2006 and to VIS, ■ to EES ■ and to ETIAS ■ this Regulation constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance with Decision 2002/192/EC, Ireland may request 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.

Furthermore, insofar as its provisions relate to Eurodac and *DubliNet*, in accordance with *Articles 1 and 2 and Article 4a(1)* of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to TEU and to TFEU, *and without prejudice to Article 4 of that Protocol*, Ireland is not taking part in the adoption of this Regulation and *is* not bound *by it* or subject to its application. ■

³⁴ 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 (OJ L 64, 7.3.2002, p. 20).

(47) As regards Iceland and Norway, this Regulation constitutes, insofar as it relates to SIS II and VIS, ■ to EES ■ and to ETIAS ■ a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union 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 acquis³⁵ which fall within the area referred to in Article 1, points A, B and G of Council Decision 1999/437/EC³⁶. As regards Eurodac *and DubliNet*, this Regulation constitutes a new measure 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 Norway³⁷. 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 further detailed rules allowing for the participation of the Republic of Iceland and the Kingdom of Norway in the activities of the Agency, a further arrangement should be concluded between the Union and these States.

³⁵ OJ L 176, 10.7.1999, p. 36.

³⁶ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union 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 (OJ L 176, 10.7.1999, p. 31).

³⁷ OJ L 93, 3.4.2001, p. 40.

(48) As regards Switzerland, this Regulation constitutes, insofar as it relates to SIS II and VIS, ■ to EES ■ and to ETIAS ■ 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 concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen acquis³⁸ 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/EC³⁹. As regards Eurodac *and DubliNet*, 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 Switzerland⁴⁰. 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 further detailed rules allowing for the participation of the Swiss Confederation in the activities of the Agency, a further arrangement should be concluded between the Union and the Swiss Confederation.

³⁸ OJ L 53, 27.2.2008, p. 52.

³⁹ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, 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 (OJ L 53, 27.2.2008, p. 1).

⁴⁰ OJ L 53, 27.2.2008, p. 5.

(49) As regards Liechtenstein, this Regulation constitutes, insofar as it relates to SIS II and VIS, to EES and to ETIAS 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 acquis⁴¹ 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 2011/350/EU⁴². As regards Eurodac *and DubliNet* this Regulation constitutes a new measure 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 Switzerland⁴³. Consequently, *subject to its decision to implement it in its internal legal order*, the delegation of the Principality of Liechtenstein should participate in the Management Board of the Agency. In order to determine further detailed rules allowing for the participation of the Principality of Liechtenstein in the activities of the Agency, a further arrangement should be concluded between the Union and the Principality of Liechtenstein,

HAVE ADOPTED THIS REGULATION:

⁴¹ OJ L 160, 18.6.2011, p. 21.

⁴² Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, 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, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

⁴³ OJ L 160, 18.6.2011, p. 39.

CHAPTER I
SUBJECT MATTER

Article 1
Subject matter

1. ■ The European Union agency for the operational management of large-scale IT systems in the area of freedom, security and justice (the Agency) *is hereby established*.
- 1a. The Agency as established by this Regulation shall replace and succeed the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice* which was established by Regulation (EU) No 1077/2011.
2. The Agency shall be responsible for the operational management of the Schengen Information System (SIS) the Visa Information System (VIS) and Eurodac.
3. ■ The Agency shall be responsible for the preparation, development and/or the operational management of the ■ Entry/Exit System (EES)⁴⁴, ■ DubliNet ■⁴⁵, *and* the European Travel *Information and* Authorisation System (ETIAS)⁴⁶ ■ .

⁴⁴ The amendments concerning EES have been foreseen in the EES proposal. They might be subject to amendments in the process of finalisation of negotiations with the EP and Council.

⁴⁵ The amendments to the eu-LISA Regulation concerning DubliNet have been foreseen in the Eurodac recast proposal and are subject to the adoption of that proposal.

⁴⁶ The amendments to the eu-LISA Regulation on ETIAS have not been foreseen in the ETIAS proposal but could be inserted during the negotiations of the text. In any event they are subject to adoption of that proposal.

4. The Agency may be made responsible for the preparation, development and/or the operational management of large-scale IT systems in the area of freedom, security and justice other than those referred to in paragraphs 2 and 3 including existing systems, only if so provided by relevant legislative instruments ***governing those systems***, based on Articles 67 to 89 TFEU, taking into account, where appropriate, the developments in research referred to in Article 10 of this Regulation and the results of pilot projects and proofs of concept referred to in Article 11 of this Regulation.
5. Operational management shall consist of all the tasks necessary to keep large-scale IT systems functioning in accordance with the specific provisions applicable to each of them, including responsibility for the communication infrastructure used by them. Those large-scale systems shall not exchange data or enable sharing of information or knowledge, unless so provided in a specific legal basis.

6. The Agency shall also be responsible for the following tasks:

ensuring data quality in accordance with Article 8;

- developing the necessary actions to enable interoperability in accordance with Article 9;
- carrying out research activities in accordance with Article 10;
- carrying out pilot projects, proofs of concept and testing activities in accordance with Article 11; and
- providing support to Member States and the Commission in accordance with Article 12.

Article 2 Objectives

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

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

CHAPTER II
TASKS OF THE AGENCY

Article 3

Tasks relating to SIS *II*

In relation to SIS II, the Agency shall perform:

- (a) the tasks conferred on the Management Authority by Regulation (EC) No 1987/2006 and Decision 2007/533/JHA **II** ;
- (b) tasks relating to training on the technical use of SIS II, in particular for SIRENE-staff (SIRENE — Supplementary Information Request at the National Entries), and training of experts on the technical aspects of SIS II in the framework of Schengen evaluation.

Article 4
Tasks relating to VIS

In relation to VIS, the Agency shall perform:

- (a) the tasks conferred on the Management Authority by Regulation (EC) No 767/2008 and Decision 2008/633/JHA;
- (b) tasks relating to training on the technical use of VIS *and training of experts on the technical aspects of VIS in the framework of Schengen evaluation.*

Article 5
Tasks relating to Eurodac

In relation to Eurodac, the Agency shall perform:

- (a) the tasks conferred on it by Regulation (EU) No 603/2013 ■ ;
- (b) tasks relating to training on the technical use of Eurodac.

■ Article 5a
Tasks relating to EES

In relation to EES, the Agency shall perform:

- (a) the tasks conferred on it by Regulation **(EU) 2017/2226**;
- (b) tasks relating to training on the technical use of EES *and training of experts on the technical aspects of EES in the framework of Schengen evaluation.*

■ Article 5b
Tasks relating to ETIAS

In relation to ETIAS, the Agency shall perform:

- (a) the tasks conferred on it by Regulation XX/XX [correct number of Regulation COD 2016/0357A of *the European Parliament and of the Council* establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations *(EU) No 1077/2011*, (EU) No 515/2014, *(EU)2016/1624, and (EU)2017/2226 to be inserted*];
- (b) tasks relating to training on the technical use of the ETIAS *and training of experts on the technical aspects of ETIAS in the framework of Schengen evaluation.*

■ Article 5c

Tasks relating to DubliNet⁴⁷

In relation to DubliNet, the Agency shall perform:

- (a) *the operational management of DubliNet, a separate secure electronic transmission channel between the authorities of Member States, set up under Article 18 of Regulation (EC) No 1560/2003 for the purposes set out in Articles 31, 32 and 34 of Regulation (EU) No 604/2013 of the European Parliament and of the Council*⁴⁸;
- (b) tasks relating to training on the technical use of DubliNet. ■

■

⁴⁷ The technical support for the operational management of DubliNet was transferred from the Commission to eu-LISA by a service level agreement of 31 July 2014. The Commission retained the budgetary and financial management of existing contracts relating to DubliNet as well as the conclusion of new contracts necessary for its operation. In order to transfer all the tasks related to the operational management of DubliNet, a provision was inserted in the proposal for the recast of Eurodac. However, since negotiations on Eurodac are still ongoing and references to that proposal in the present Regulation need be deleted, and since it is important to transfer formally the operational management of DubliNet to the Agency, the relevant provision has been included in the present proposal and will be deleted from the proposal for the recast of Eurodac.

⁴⁸ Regulation (EU) 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person (OJ L 180, 29.6.2013, p. 31).

Article 6

Tasks relating to the preparation, development and operational management of other large-scale IT systems

When entrusted with the preparation, development or operational management of other large-scale IT systems referred to in Article 1(4), the Agency shall perform the tasks conferred on it pursuant to the legislative instrument governing the relevant system, as well as tasks relating to training on the technical use of those systems, as appropriate.

Article 6a

Technical solutions requiring specific conditions before implementation

Where the legislative instruments governing the systems under the responsibility of the Agency require the Agency to keep those systems functioning 24 hours a day, 7 days a week and without prejudice to those legislative instruments, the Agency shall implement technical solutions to meet those requirements. Where those technical solutions require a duplication of a system or a duplication of components of a system, they shall be implemented only after an independent impact assessment and cost-benefit analysis to be commissioned by the Agency and following the consultation of the Commission and the positive decision of the Management Board. Such an assessment shall also examine the existing and future needs in terms of hosting capacity of the existing technical sites related to the development of such solutions and the possible risks of the current operational set up.

Article 7

Tasks relating to the communication infrastructure

1. The Agency shall carry out all the tasks relating to the communication infrastructures of the systems operated by the Agency conferred on it by the legislative instruments governing the large-scale IT systems operated by the Agency, with the exception of those systems making use of the EuroDomain for their communication infrastructure for which the Commission shall be responsible for the tasks of implementation of the budget, acquisition and renewal and contractual matters. According to the legislative instruments governing the systems using the EuroDomain⁴⁹, 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 their respective responsibilities, operational working arrangements *shall be* made between the Agency and the Commission and reflected in a Memorandum of Understanding.

⁴⁹ This is currently only the case for Eurodac.

2. The communication infrastructure shall be adequately managed and controlled in such a way as to protect it from threats, and to ensure its security and that of large-scale IT systems for which the Agency is responsible, including that of data exchanged through the communication infrastructure.
3. Appropriate measures including security plans shall be adopted by the Agency, inter alia, to prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or transport of data media, in particular by means of appropriate encryption techniques. All system-related operational information circulating in the communication infrastructure shall be encrypted.

4. Tasks relating to the *delivery, setting up, maintenance and monitoring* of the communication infrastructure may be entrusted to external private-sector entities or bodies in accordance with Regulation (EU, Euratom) No 966/2012. ***Such tasks shall be carried out under the responsibility of the Agency and under its close supervision.***

When carrying out those tasks all external private-sector entities or bodies, including the network provider, shall be bound by the security measures referred to in paragraph 3 and shall have no access to any operational data stored in the large scale IT systems operated by the Agency or transferred through the communication infrastructure or to the SIS II SIRENE-related exchange by any means.

5. **■** The management of the encryption keys shall remain within the competence of the Agency and shall not be outsourced to any external private-sector entity. ***This is without prejudice to the existing contracts on the communication infrastructures of SIS II, VIS and Eurodac.***

Article 8
Data quality

*Without prejudice to Member States' responsibilities with regard to the data entered into the systems under the Agency's operational responsibility, the Agency, closely involving its Advisory Groups, together with the Commission, shall work towards establishing for all those systems automated data quality control mechanisms and common data quality indicators and towards developing a central repository **containing only anonymised data** for reporting and statistics, subject to specific **provisions in the legislative instruments governing the development, establishment, operation and use of large-scale IT systems managed by the Agency.***

Article 9
Interoperability

Where interoperability of large-scale IT systems has been stipulated in a relevant legislative instrument, the Agency shall develop the necessary actions to enable *that* interoperability.

Article 10
Monitoring of Research

1. The Agency shall monitor the developments in research relevant for the operational management of SIS II, VIS, Eurodac, **■ EES ■** , **■ ETIAS ■** , *DubliNet* and other large-scale IT systems as referred to in Article 1(4).

2. The Agency may contribute to the implementation of the parts of the Framework Programme for Research and Innovation which relate to large-scale IT systems in the area of freedom, security and justice. For that purpose, and where the Commission has delegated the relevant powers to it, the Agency shall have the following tasks:
 - (a) managing some stages of programme implementation and some phases in the lifetime of specific projects on the basis of the relevant work programmes adopted by the Commission;
 - (b) adopting the instruments of budget execution and for revenue and expenditure and carrying out all the operations necessary for the management of the programme;
 - (c) providing support in programme implementation.
3. The Agency shall on a regular basis ***and at least once a year*** keep the Parliament, the Council, the Commission, and, where ***processing of personal data is*** concerned, the European Data Protection Supervisor informed on the developments referred to in ***this Article without prejudice to the reporting requirements in relation to the implementation of the parts of the Framework Programme for Research and Innovation.***

Article 11

Pilot projects, proofs of concept and testing activities

1. Upon the specific and precise request of the Commission, which shall have informed the Parliament and the Council at least 3 months in advance, and after a decision by the Management Board, the Agency may, in accordance with Article 15(1)(t) of this Regulation, carry out pilot projects as referred to in Article 54(2)(a) of Regulation (EU, Euratom) No 966/2012, for the development or the operational management of large-scale IT systems, in the application of Articles 67 to 89 TFEU, in accordance with Article 58(1)(c) of Regulation (EU, Euratom) No 966/2012, by way of a delegation agreement.

The Agency shall on a regular basis keep the Parliament, the Council and, where *the processing of personal data is* concerned, the European Data Protection Supervisor informed of the evolution of the pilot projects referred to in the first subparagraph.

2. Financial appropriations for pilot projects as referred to in Article 54(2)(a) of Regulation (EU, Euratom) No 966/2012 requested by the Commission shall be entered in the budget for no more than two consecutive financial years.
3. At the request of the Commission or the Council, *after having informed the Parliament*, and after a decision of the Management Board the Agency may be entrusted with budget implementation tasks for proofs of concept funded under the instrument for financial support for external borders and visa provided for in Regulation (EU) No 515/2014 in accordance with Article 58(1)(c) of Regulation (EU, Euratom) No 966/2012, by way of a delegation agreement.
4. The Agency may plan and implement testing activities on matters covered by this Regulation and the legislative instruments governing the development, establishment, operation and use of all large-scale IT systems managed by the Agency after a decision of the Management Board.

Article 12

Support to Member States and the Commission

1. *Any Member State may request the Agency to provide advice with regard to its national systems' connection to the central systems.*

1a. *Any Member State may submit a request for ad-hoc support to the Commission which, subject to its positive assessment that such support is required by security or migratory extraordinary needs, shall transmit it, without delay, to the Agency, which shall inform the Management Board. The Member State shall be informed in case the Commission's assessment is negative.*

The Commission shall monitor whether the Agency has provided a timely response to the Member State's request. The Annual Activity Report shall report in detail on the actions the Agency has carried out to provide ad-hoc support to Member States and on the costs incurred in that respect.

- 1b. The Agency* may also be requested to provide advice or support to the Commission on technical issues related to existing or new systems including by way of studies and testing. *The Management Board shall be informed about such requests.*
2. *A group of at least five Member States may entrust the Agency* ■ *to develop, manage and/or host a common IT component to assist them in implementing technical aspects of obligations deriving from Union legislation on decentralised systems in the area of freedom, security and justice. Those common IT solutions shall be without prejudice to the obligations of the requesting Member States under the applicable Union legislation, in particular with regard to the architecture of those systems.*

In particular, the requesting Member States may task the Agency to establish a common component or router for advance passenger information and passenger name record data as a technical support tool to facilitate connectivity with air carriers to assist Member States in the implementation of Council Directive 2004/82/EC⁵⁰ and Directive (EU) 2016/681 of the European Parliament and of the Council⁵¹. In such case eu-LISA is to collect centrally the data from air carriers and transmit those data to the Member States via the common component or router. The requesting Member States are to adopt the necessary measures to ensure air carriers transfer the data via eu-LISA.

The Agency shall be entrusted with the task of developing, managing and/or hosting a common IT component only after prior approval by the Commission and subject to a positive decision of the Management Board.

⁵⁰ Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJ L 261, 6.8.2004, p. 24).

⁵¹ Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (OJ L 119, 4.5.2016, p. 132).

The requesting Member States shall entrust the Agency with those tasks by way of a delegation agreement setting out the conditions for the delegation of the tasks and the calculation of all relevant costs and the invoicing method. All relevant costs shall be covered by the participating Member States. The delegation agreement shall be in compliance with the Union legislation on the relevant IT systems. The Agency shall inform the Parliament and the Council of the approved delegation agreement and of any modifications thereto.

Other Member States may request to participate in the common IT solution if this possibility is provided for in the delegation agreement setting out in particular the financial implications of such participation. The delegation agreement shall be modified accordingly following the prior approval by the Commission and after a positive decision of the Management Board.

CHAPTER III
STRUCTURE AND ORGANISATION

Article 13
Legal status and location

1. The Agency shall be a body of the Union and shall have legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.
3. The Agency shall be represented by its Executive Director.

4. The seat of the Agency shall be Tallinn, Estonia.

The tasks relating to development and operational management referred to in Article 1(3) and (4) and Articles 3, 4, 5, 5a, 5b, 5c, 6 and 7 shall be carried out *in the technical site* in Strasbourg, France.

A backup site capable of ensuring the operation of a large-scale IT system in the event of failure of such a system shall be installed in Sankt Johann im Pongau, Austria.

5. Both technical sites may be used for *the simultaneous* operation of the large-scale IT systems, provided that the *backup* site remains capable of ensuring their operation in case of failure of one or more of the systems.

5a. *Due to the specific nature of the large-scale IT systems, should it become necessary for the Agency to establish a second separate technical site either in Strasbourg or in Sankt Johann im Pongau or in both locations, as required, in order to host the systems, such need shall be justified on the basis of an independent impact assessment and cost-benefit analysis. The Management Board shall consult the Commission and take into account the Commission's views before notifying the budgetary authority of its intention to implement any project related to property in accordance with Article 40(9).*

Article 14
Structure

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

2. The Agency's structure shall include:
 - (a) a Data Protection Officer;
 - (b) a Security Officer;
 - (c) an Accounting Officer.

Article 15
Functions of the Management Board

1. The Management Board shall:
 - (a) give the general orientations for the Agency's activities;
 - (b) adopt, by a majority of two-thirds of members entitled to vote, the annual budget of the Agency and exercise other functions in respect of the Agency's budget pursuant to Chapter V;
 - (c) appoint the Executive Director *and the Deputy Executive Director* and, where relevant, extend *their respective terms* of office or remove *them* from office in accordance with Article 22 *and Article 22a respectively*;

- (d) exercise disciplinary authority over the Executive Director and oversee his *or her* performance, including the implementation of the Management Board's decisions, *as well as over the Deputy Executive Director, in agreement with the Executive Director*;
- (e) take all decisions on the establishment of the Agency's organisational structure and, where necessary, their modification taking into consideration the Agency's activity needs and having regard to sound budgetary management;
- (f) adopt the Agency's Staff Policy;
- (g) establish its the rules of procedure of the Agency;
- (h) adopt an anti-fraud strategy, proportionate to the risk of fraud, taking into account the costs and benefits of the measures to be implemented;
- (i) adopt rules for the prevention and management of conflicts of interest in respect of its members *and publish them on the Agency's website*;
- (ia) adopt detailed internal rules and procedures for the protection of whistleblowers, including appropriate channels of communication for reporting misconduct;*

- (j) authorise the conclusion of working arrangements in accordance with Articles 37 *and 38a*;
- (k) approve, following a proposal by the Executive Director, the Headquarters Agreement concerning the seat of the Agency and Agreements concerning the technical and backup sites, set up in accordance with Article 13(4) to be signed by the Executive Director with the host Member States;
- (l) in accordance with paragraph 2, exercise, with respect to the staff of the Agency, the 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 a Contract of Employment ("the appointing authority powers");
- (m) in agreement with the Commission, adopt the necessary implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of other Servants in accordance with Article 110 of the Staff Regulations;

- (n) adopt the necessary rules on the secondment of national experts to the Agency;
- (o) adopt a draft estimate of the Agency's revenue and expenditure, including the *draft* establishment plan, and submit them by 31 January each year to the Commission;
- (p) adopt the draft single programming document containing the Agency's multiannual programming and its work programme for the following year and a provisional draft estimate of the Agency's revenue and expenditure, including the *draft* establishment plan, and submit it by 31 January each year to the Parliament, the Council and the Commission as well as any updated version of that document;
- (q) before 30 November each year, adopt by a two-thirds majority of its members with the right to vote, and in accordance with the annual budgetary procedure, the single programming document taking into account the opinion of the Commission and ensure that the definitive version of this single programming document is transmitted to the Parliament, the Council and the Commission and published;

- (r) adopt an interim report by the end of August of each year on progress on the implementation of planned activities of the current year and submit it to *the Parliament, the Council and to* the Commission;
- (s) assess and adopt the consolidated annual activity report of the Agency's activities for the previous year comparing, in particular, the results achieved with the objectives of the annual work programme and send both the report and its assessment, by 1 July of each year, to the Parliament, to the Council, to the Commission and to the Court of Auditors; the annual activity report shall be published;
- (t) carry out its functions relating to the Agency's budget, including the implementation of pilot projects and proofs of concept as referred to in Article 11;
- (u) adopt the financial rules applicable to the Agency in accordance with Article 44;

- (v) appoint an Accounting Officer, who may be the Commission's Accounting Officer, subject to the Staff Regulations and the Conditions of Employment, who shall be totally independent in the performance of his or her duties;
- (w) ensure adequate follow-up to the findings and recommendations stemming from the various internal or external audit reports and evaluations as well as from investigations of the European Antifraud Office (OLAF) *and the European Public Prosecutor's Office (EPPO)*;
- (x) adopt the communication and dissemination plans referred to in Article 30(4) and regularly update them;
- (y) 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;
- (z) adopt the security rules on the protection of classified information and non-classified sensitive information following approval by the Commission;

- (aa) appoint a Security Officer;
- (bb) appoint a Data Protection Officer in accordance with Regulation (EC) No 45/2001 *[or Regulation (EU) XX/2018 on protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC]*;
- (cc) adopt the detailed rules for implementing Regulation (EC) No 1049/2001;
- (dd) adopt the reports on the development of the EES pursuant to Article 72(2) of Regulation (EU) 2017/2226; adopt the reports on the development of ETIAS pursuant to Article 92(2) of Regulation (EU) XX/XX *[insert correct number of COD 2016/357A on ETIAS]* ;

■

- (ff) adopt the reports on the technical functioning of SIS II pursuant to Article 50(4) of Regulation (EC) No 1987/2006 and Article 66(4) of Decision 2007/533/JHA respectively ■ and of VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and Article 17(3) of Decision 2008/633/JHA, of EES pursuant to Article 72(4) of Regulation (EU) 2017/2226 and of ETIAS pursuant to Article 92(4) of Regulation (EU) XX/XX [insert correct number of COD 2016/357A on ETIAS];
- (gg) adopt the annual report on the activities of the Central System of Eurodac pursuant to Article 40(1) of Regulation (EU) No 603/2013 ■ ;
- (hh) adopt formal comments on the European Data Protection Supervisor's reports on the audits pursuant to Article 45(2) of Regulation (EC) No 1987/2006, Article 42(2) of Regulation (EC) No 767/2008 and Article 31(2) of Regulation (EU) No 603/2013, ■ Article 56(2) of Regulation (EU) 2017/2226 ■ and ■ Article 67 of Regulation (EU) XX/XX [insert correct number of COD 2016/357A on ETIAS] ■ and ensure appropriate follow-up of those audits;

- (ii) 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;
- (jj) compile and publish statistics on the work of the Central System of Eurodac pursuant to Article 8(2) of Regulation (EU) No 603/2013 ;
- (kk) publish statistics related to the EES pursuant to Article 63 of Regulation (EU) 2017/2226;
- (ll) publish statistics related to the ETIAS pursuant to Article 84 of Regulation (EU) XX/XXX [*insert correct number of COD 2016/357A on ETIAS*];

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- (nn) ensure annual publication of the list of competent authorities authorised to search directly 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 Offices of the national systems of SIS II (N.SIS II) 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 ***as well as the list of competent authorities pursuant to Article 62(2) of Regulation (EU) 2017/2226; the list of competent authorities pursuant to Article 87(2) of Regulation (EU) XX/XXXX [insert correct number of COD 2016/357A on ETIAS].***

Without prejudice to the provisions on publication of the lists of relevant authorities foreseen under the legislative instruments referred to above and where an obligation to publish and continuously update those lists on the Agency's website is not already foreseen in those instruments, the Management Board shall ensure such publication and update;

- (oo) ensure annual publication of the list of units pursuant to Article 27(2) of Regulation (EU) No 603/2013;

(pp) ensure that all decisions and actions of the Agency affecting European *Union large-scale IT* systems in the area of freedom security and justice respect the principle of independence of the judiciary;

(qq) perform any other tasks conferred on it in accordance with this Regulation.

2. The Management Board shall adopt in accordance with Article 110 of the Staff Regulations a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers.

Where exceptional circumstances so require, the Management Board may by way of a decision temporarily suspend the delegation of the appointing authority powers to the Executive Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Executive Director.

3. The Management Board may advise the Executive Director on any matter strictly related to the development or operational management of large-scale IT systems and on activities related to research, pilot projects, proofs of concept and testing activities.

Article 17

Composition of the Management Board

1. The Management Board shall be composed of one representative from each Member State and two representatives of the Commission all with a right to vote, in accordance with Article 20.

2. Each *member* of the Management Board shall have an alternate. The alternate shall represent the member in his/her absence *or in the case when the member is elected a Chairperson or a Deputy Chairperson of the Management Board and is chairing the Management Board meeting*. The members of the Management Board and their alternates shall be appointed on the basis of the high level of their relevant experience and expertise in the field of large-scale IT systems in the area of freedom, security and justice, knowledge in data protection taking into account their relevant managerial, administrative and budgetary skills. All parties represented in the Management Board shall make efforts to limit the turnover of their representatives, 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 the members and their alternates shall be four years, ***which is renewable***. Upon expiry of their term of office or in the event of their resignation, members shall remain in office until their appointments are renewed or until they are replaced.

4. Countries associated with the implementation, application and development of the Schengen acquis ***and with Dublin and*** Eurodac-related measures shall participate in the activities of the Agency. They shall each appoint one representative and an alternate to the Management Board.

Article 18

Chairperson of the Management Board

1. The Management Board shall elect a Chairperson and a deputy Chairperson from among those members of the Management Board 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 large-scale IT systems managed by the Agency. The Chairperson and the Deputy Chairperson shall be elected by a majority of two thirds of the members of the Management Board with voting rights.

The Deputy Chairperson shall automatically replace the Chairperson if he or she is prevented from attending to his or her duties.

2. The term of office of the Chairperson and the deputy Chairperson shall be four years. Their term of office may be renewed once. If, however, their membership of the Management Board ends at any time during their term of office, their term of office shall automatically expire on that date.

Article 19

Meetings of the Management Board

1. The Chairperson shall convene the meetings of the Management Board.
2. The Executive Director shall take part in the deliberations, without the right to vote.
3. The Management Board shall hold at least two ordinary meetings a year. In addition, it shall meet on the initiative of its Chairperson, at the request of the Commission, ***at the request of the Executive Director*** or at the request of at least one third of its members.

4. Europol and Eurojust may attend the meetings of the Management Board as observers when a question concerning SIS II, in relation to the application of Decision 2007/533/JHA, is on the agenda. ■ The European Border and Coast Guard *Agency* may attend the meetings of the Management Board as observers when a question concerning SIS in relation to the application of Regulation (EU) 2016/1624 ■ is on the agenda ■ . Europol may also attend the meetings of the Management Board as observer when a question concerning VIS, in relation to the application of Decision 2008/633/JHA, or a question concerning Eurodac, in relation to the application of Regulation (EU) No 603/2013, is on the agenda. Europol may also attend the meetings of the Management Board as an observer when a question concerning EES in relation to the application of Regulation 2017/2226 is on the agenda or when a question concerning ETIAS in relation to Regulation XX/XXXX [*insert correct number of COD 2016/357A on ETIAS*] is on the agenda. The European Border and Coast Guard *Agency* may also attend the meetings of the Management Board *as observer* when a question concerning ETIAS in relation with the application of Regulation XX/XX [*insert correct number of COD 2016/357A on ETIAS*]. ■ The Management Board may invite any other person whose opinion may be of interest to attend its meetings as an observer.

5. The members of the Management Board and their alternates may, subject to its Rules of Procedure, be assisted by advisers or experts, *in particular* who are members of the Advisory Groups.
6. The Agency shall provide the secretariat for the Management Board.

Article 20

Voting rules of the Management Board

1. Without prejudice to paragraph 4 of this Article, and to Article 15(1)(b) *and (q)*, **Article 18(1) and** Article 22(8), decisions of the Management Board shall be taken by a majority of all its members with voting rights.
2. Without prejudice to paragraph 3, each member in the Management Board shall have one vote. In the absence of a member with the right to vote, his or her alternate shall be entitled to exercise his or her right to 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.

Denmark may vote on a question which concerns such a large-scale IT system, if it decides under Article 4 of the Protocol No 22 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. *Article 38 shall apply to countries that have entered into agreements with the Union on their association with the implementation, application and development of the Schengen acquis and with Dublin and Eurodac-related measures.*

4. In the case of a disagreement among members about whether a specific large-scale IT system is affected by a vote, any decision that it is not so affected shall be taken by a two-thirds majority of the members of the Management Board.

5. The Chairperson, *or the Deputy Chairperson when he or she is replacing the Chairperson*, shall *not vote. The right to vote of the Chairperson or the Deputy Chairperson when he or she is replacing the Chairperson shall be exercised by his or her alternate member.*
6. The Executive Director shall not *vote*.
7. The Management Board's rules of procedure shall establish more detailed voting arrangements, in particular the conditions under which a member may act on behalf of another member as well as any quorum requirements, where appropriate.

Article 21

Responsibilities of the Executive Director

1. The Executive Director shall manage the Agency. The Executive Director shall assist and be accountable to the Management Board. The Executive Director shall report to the Parliament on the performance of his or her duties when invited to do so. The Council may invite the Executive Director to report on the performance of his/her duties.
2. The Executive Director shall be the legal representative of the Agency.
3. The Executive Director shall be responsible for the implementation of tasks assigned to the Agency by this Regulation. In particular, the Executive Director shall be responsible for:
 - (a) the day-to-day administration of the Agency;
 - (b) the Agency's operation in accordance with this Regulation;

- (c) preparing and implementing the procedures, decisions, strategies, programmes and activities adopted by the Management Board, within the limits set out by this Regulation, its implementing rules and the applicable law;
- (d) preparing the single programming document and submitting it to the Management Board after consulting the Commission *and the Advisory Groups*;

- (e) implementing the single programming document and reporting to the Management Board on its implementation;
- (ea) preparing the interim report on progress on the implementation of planned activities of the current year and, after consulting the Advisory Groups, submitting it to the Management Board for adoption by the end of August of each year;*
- (f) preparing the consolidated annual report of the Agency's activities and, *after consulting the Advisory Groups*, presenting it to the Management Board for assessment and adoption;
- (g) preparing an action plan following up on the conclusions of internal or external audit reports and evaluations, as well as *on* investigations by OLAF and *by the EPPO and* reporting on progress twice a year to the Commission and regularly to the Management Board;

- (h) protecting the financial interests of the Union by applying preventing measures against fraud, corruption and any other illegal activities, without prejudicing the investigative competence of *the EPPO and OLAF*, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative including financial penalties;
- (i) preparing an anti-fraud strategy for the Agency and submitting it to the Management Board for approval *as well as monitoring the proper and timely implementation of that strategy*;
- (j) preparing draft financial rules applicable to the Agency and submitting them to the Management Board for adoption after consulting the Commission;

- (k) preparing the draft budget for the following year, established on the basis of activity-based budgeting;
- (l) preparing the Agency's draft statement of estimates of revenue and expenditure;
- (m) implementing its budget;
- (n) establishing and implementing an effective system enabling regular monitoring and evaluations of:
 - (i) large- scale IT systems, including statistics; and
 - (ii) the Agency, including the effective and efficient achievement of its objectives;

- (o) without prejudice to Article 17 of the Staff Regulations, establishing confidentiality requirements in order to comply with Article 17 of Regulation (EC) No 1987/2006, Article 17 of Decision 2007/533/JHA, Article 26(9) of Regulation (EC) No 767/2008, Article 4(4) of Regulation (EU) No 603/2013; ■ Article 37(4) of Regulation 2017/2226 and Article 74(2) of Regulation XX/XXXX [*insert correct number of COD 2016/357A on ETIAS*] ■ ;
- (p) negotiating and, after approval by the Management Board, signing a Headquarters Agreement concerning the seat of the Agency and Agreements concerning technical and backup sites with the Governments of the host Member States;
- (q) preparing the practical arrangements for implementing Regulation (EC) No 1049/2001 and submitting them to the Management Board for adoption;
- (r) preparing the necessary security measures including a security plan, and a business continuity and disaster recovery plan and, *after consultation of the relevant Advisory Group*, submitting them to the Management Board for adoption;
- (s) preparing the reports on the technical functioning of each large-scale IT system referred to in Article 15(1)(ff) and the annual report on the activities of the Central System of Eurodac referred to in Article 15(1)(gg), on the basis of the results of monitoring and evaluation and, *after consultation of the relevant Advisory Group*, submitting them to the Management Board for adoption;

- (t) ■ preparing the reports on the development of EES referred to in Article 72(2) of Regulation 2017/2226 ■ and on the development of ETIAS referred to in Article 92(2) of Regulation XX/XXXX [*insert correct number of COD 2016/357A on ETIAS*], ■ and submitting them to the Management Board for adoption; ■
- (u) preparing the annual list, for publication, of competent authorities authorised to search directly the data contained in SIS II, including the list of N.SIS II Offices and SIRENE Bureaux ■ and the list of competent authorities authorised to search directly the data contained in the EES *and* the ETIAS ■ referred to in Article 15(1)(nn) and the lists of units referred to in Article 15(1)(oo) and submitting them to the Management Board for adoption.

4. The Executive Director shall perform any other tasks in accordance with this Regulation.
5. The Executive Director shall decide whether it is necessary to locate one or more staff in one or more Member States for the purpose of carrying out the Agency's tasks in an efficient and effective manner. Before deciding to establish a local office the Executive Director shall obtain the prior consent of the Commission, the Management Board and the Member State(s) concerned. The decision shall specify the scope of the activities to be carried out at the local office in a manner that avoids unnecessary costs and duplication of administrative functions of the Agency. Activities carried out in technical sites may not be carried out in a local office.

Article 22

Appointment of the Executive Director

1. The Management Board shall appoint the Executive Director from a list of *at least three* candidates proposed by the Commission following an open and transparent selection procedure. The selection procedure shall provide for publication in the Official Journal of the European Union and elsewhere of a call for expressions of interest. The Management Board shall appoint the Executive Director on the *grounds* of **■** merit, *proven* experience in the field of large-scale IT systems and administrative, financial and management skills as well as knowledge in data protection. **■**
2. Before appointment, the *candidates proposed* by the *Commission* shall be invited to make a statement before the competent committee *or committees* of the Parliament and answer questions from the committee members. After the statement, the Parliament shall adopt an opinion setting out its view *and may indicate a preferred* candidate.

- 2a. *The Management Board shall appoint the Executive Director taking those views into account.*
- 2b. *If the Management Board takes a decision to appoint a candidate other than the candidate whom the Parliament indicated as its preferred candidate, the Management Board shall inform the Parliament and the Council in writing of the manner in which the opinion of the Parliament was taken into account.*
3. The term of office of the Executive Director shall be five years. By the end of that period, the Commission shall undertake an assessment that takes into account *its* evaluation of the Executive Director's performance and the Agency's future tasks and challenges.

4. The Management Board, acting on a proposal from the Commission that takes into account the assessment referred to in paragraph 3 may extend the term of office of the Executive Director once for no more than five years.
5. The Management Board shall inform the Parliament if it intends to extend the Executive Director's term of office. Within one month before any such extension, the Executive Director shall be invited to make a statement before the competent committee(s) of the Parliament and answer questions from the committee 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 office only upon a decision of the Management Board, acting on a proposal from a *majority of its members or from* the Commission.
8. The Management Board shall reach decisions on appointment, extension of the term of office or removal from office of the Executive Director on the basis of a two thirds majority of votes of its members with the right to vote.
9. For the purpose of concluding the contract with the *Executive Director*, the Agency shall be represented by the Chairperson of the Management Board. 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.

Article 22a

Deputy Executive Director

- 1. A Deputy Executive Director shall assist the Executive Director. He or she shall also replace the Executive Director in his or her absence. The Executive Director shall define the tasks of the Deputy Executive Director.*

- 2. The Deputy Executive Director shall be appointed by the Management Board on the proposal of the Executive Director. The Deputy Executive Director shall be appointed on the grounds of merit and appropriate administrative and management skills, including relevant professional experience. The Executive Director shall propose at least three candidates for the post of Deputy Executive Director. The Management Board shall take its decision by a two-thirds majority of all members with a right to vote. The Management Board shall have the power to dismiss the Deputy Executive Director by means of a decision adopted by a two-thirds majority of all members with a right to vote.*

3. *The term of the office of the Deputy Executive Director shall be five years. It may be extended by the Management Board once, for a period of no more than five years. The Management Board shall adopt this decision by a two-thirds majority of all members with the right to vote.*

Article 23

Advisory Groups

1. The following Advisory Groups shall provide the Management Board with expertise relating to large-scale IT systems and, in particular, in the context of the preparation of the annual work *programme* and the annual activity report:
- (a) SIS II Advisory Group;
 - (b) VIS Advisory Group;
 - (c) Eurodac Advisory Group;

(d) EES-ETIAS Advisory Group ;

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(f) any other Advisory Group relating to a large-scale IT system when so provided in the relevant legislative instrument governing the development, establishment, operation and use of that large-scale IT 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 relating to that large-scale IT system, for a four-year term, which may be renewed █ .

Denmark shall also appoint a member to an Advisory Group relating to a large-scale IT system, if it decides under Article 4 of the Protocol No 22 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.

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

3. Europol and Eurojust [and the European Border and Coast Guard *Agency*] may each appoint a representative to the SIS II Advisory Group. Europol may also appoint a representative to the VIS and Eurodac ■ and EES-ETIAS ■ Advisory Groups. ■ The European Border and Coast Guard *Agency* may also appoint a representative to the EES-ETIAS Advisory Group ■ .

4. Members of the Management Board and their alternates shall not be members of any of the Advisory Groups. The Executive Director or the Executive Director's representative shall be entitled to attend all the meetings of the Advisory Groups as observers.
5. *Advisory Groups shall cooperate with each other when necessary.* 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, the members of each Advisory Group shall do their best to reach a consensus. If such a consensus is not reached, the opinion shall consist of the reasoned position of the majority of members. The minority reasoned position(s) shall also be recorded. Article 20(3) and (4) shall apply accordingly. The members representing the countries associated with the implementation, application and development of the Schengen acquis *and with Dublin* and Eurodac-related measures shall be allowed to express opinions on issues on which they are not entitled to vote.

7. Each Member State and each country associated with the implementation, application and development of the Schengen acquis *and with Dublin* and Eurodac-related measures shall facilitate the activities of the Advisory Groups.
8. For the chairmanship of the Advisory Groups, Article 18 shall apply mutatis mutandis.

CHAPTER IV GENERAL PROVISIONS

Article 24 Staff

1. The Staff Regulations and the Conditions of Employment of Other Servants and the rules adopted by agreement between the institutions of the Union for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants shall apply to the staff of the Agency, including the Executive Director.

2. 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.
3. The staff of the Agency shall consist of officials, temporary staff or contract staff. The Management Board shall give its consent on an annual basis where the contracts that the Executive Director plans to renew would become indefinite pursuant to the Conditions of Employment.
4. The Agency shall not recruit interim staff to perform what are deemed to be sensitive financial duties.
5. The Commission and the Member States may second officials or national experts to the Agency on a temporary basis. The Management Board shall adopt a decision laying down rules on the secondment of national experts to the Agency.

6. 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.
7. The Management Board shall, in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations.

Article 25

Public interest

The members of the Management Board, the Executive Director, *the Deputy Executive Director* and the members of the Advisory Groups shall undertake to act in the public interest. For that purpose they shall issue an annual, written, public statement of commitment, *which shall be published on the Agency's website.*

The list of members of the Management Board *and of members of the Advisory Groups* shall be published on the Agency's *website.*

Article 26

Headquarters Agreement and Agreements concerning the technical sites

1. 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 Member States, together with 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 sites, concluded between the Agency and the host Member States after obtaining the approval of the Management Board.
2. The Agency's host Member States shall provide the *necessary* conditions to ensure the proper functioning of the Agency, including, *inter alia*, multilingual, European-oriented schooling and appropriate transport connections.

Article 27
Privileges and immunities

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

Article 28
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 staff in the performance of their duties.

4. The Court of Justice of the European Union shall have jurisdiction in disputes over compensation for the damage referred to in paragraph 3.
5. The personal liability of its staff towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment of Other Agents applicable to them.

Article 29

Language arrangements

1. The provisions of EEC Council Regulation No 1⁵² shall apply to the Agency.
2. Without prejudice to decisions taken pursuant to Article 342 TFEU, the single programming document and the annual activity report referred to in Article 15(1)(g) and (s) of this Regulation, shall be produced in all official languages of the institutions of the Union.

⁵² EEC Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

3. The Management Board may adopt a decision on working languages without prejudice to the obligations set out in paragraphs 1 and 2.
4. The translation services necessary for the activities of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.

Article 30

Transparency and communication

1. Regulation (EC) 1049/2001 shall apply to documents held by the Agency.
2. The Management Board shall adopt the detailed rules for applying Regulation (EC) No 1049/2001 *on* the basis of a proposal by the Executive Director *without delay*.

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 European Ombudsman or of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 TFEU respectively.
4. The Agency shall communicate in accordance with the legislative instruments governing the development, establishment, operation and use of large-scale IT-systems and may engage in communication activities on its own initiative within its field of competence. It shall ensure in particular that in addition to the publications specified in Article 15(1)(q), (s), (ii), (jj), (kk) , (ll) and Article 42(9), the public and any interested party are rapidly given objective, accurate, reliable comprehensive and easily understandable information with regard to its work. The allocation of resources to communication activities shall not be detrimental to the effective exercise of the Agency's tasks as referred to in Articles 3 to 12. Communication activities shall be carried out in accordance with relevant communication and dissemination plans adopted by the Management Board.

5. Any natural or legal person shall be entitled to address written correspondence to the Agency in any of the official languages of the Union. ***The person concerned*** shall have the right to receive an answer in the same language.

Article 31

Data protection

1. ■ The processing of personal data by the Agency shall be subject to Regulation (EC) No 45/2001 *for* Regulation (EU) XX/2018 on ***the*** protection of ***individuals with regard to the processing of*** personal data ***by the*** Union institutions ***or*** bodies, ***offices and agencies and on the free movement of such data and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC***.
2. The Management Board shall establish measures for the application of Regulation (EC) No 45/2001 *for* Regulation (EU) XX/2018 on ***the*** protection of ***individuals with regard to the processing of*** personal data ***by the*** Union institutions ***or*** bodies, ***offices and agencies and on the free movement of such data and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC*** by the Agency, including those concerning the Data Protection Officer. Those measures shall be established after consultation of the European Data Protection Supervisor.

Article 32

Purposes of processing personal data

1. The Agency may process personal data only for the following purposes:
 - (a) *where necessary to perform* its tasks related to the operational management of large-scale IT systems entrusted to it by Union law;
 - (b) *where necessary for its* administrative tasks.
2. Where the Agency processes personal data for the purpose referred to in paragraph 1(a), ***Regulation 45/2001 [or Regulation (EU) XX/2018 on the protection of individuals with regard to the processing of personal data by the Union institutions or bodies, offices and agencies and on the free movement of those data and repealing Regulation (EC) 45/2001 and Decision No 1247/2002/EC] shall apply without prejudice to*** the specific provisions concerning data protection and data security of the respective legislative instruments governing the development, establishment, operation and use of the large-scale IT systems managed by the Agency ■ .

Article 33

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

1. The Agency shall adopt its own security rules based on the principles and rules laid down in Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information including inter alia provisions for the exchange *with third states*, processing and storage of such information as set out in Commission Decisions (EU, Euratom) 2015/443⁵³ and 2015/444⁵⁴. Any *administrative arrangement on the* exchange of classified information with the relevant authorities of a third State *or, in the absence of such arrangement, any exceptional ad hoc release of EUCI to those authorities* shall have received the Commission's prior approval.
2. The security rules shall be adopted by the Management Board following approval by the Commission. The Agency may take all necessary measures to facilitate the exchange of information relevant to its tasks with the Commission and the Member States and where appropriate, the relevant Union agencies. It shall develop and operate an information system capable of exchanging classified information with those actors in accordance with Commission Decision (EU, Euratom) 2015/444. The Management Board shall, pursuant to Article 2 and Article 15(1)(y) of this Regulation, decide on the Agency's internal structure necessary to fulfil the appropriate security principles.

⁵³ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 4).

⁵⁴ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

Article 34
Security of the Agency

1. The Agency shall be responsible for the security and the maintenance of order within the buildings, premises and land used by it. The Agency shall apply the security principles and relevant provisions of the legislative instruments governing the development, establishment, operation and use of large-scale IT systems.
2. The host Member States shall take all effective and adequate measures to maintain 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 concerning the seat of the Agency and the Agreements concerning the technical and backup sites, whilst guaranteeing free access to these buildings, premises and land to persons authorised by the Agency.

Article 35

Evaluation

1. No later than five years from the entry into force of this Regulation, and every five years thereafter, the Commission, *after consulting the Management Board*, shall *evaluate, in accordance with the Commission's guidelines, the performance of the Agency* in relation to its objectives, mandate, **■** locations *and tasks*. *That* evaluation shall also *include an examination of the implementation of the provisions of this Regulation and the way and the extent to which the Agency effectively contributes to the operational management of large-scale IT systems and* to the establishment of a coordinated, cost-effective and coherent IT environment at Union level *in the area of freedom, security and justice*. The evaluation shall in particular assess the possible need to modify the mandate of the Agency and the financial implications of any such modification. *The Management Board may issue recommendations regarding amendments to this Regulation to the Commission.*

2. Where the Commission considers that the continuation of the Agency is no longer justified with regard to its assigned objectives, mandate and tasks, it may propose that this Regulation be amended accordingly or repealed.
3. The Commission shall report to the Parliament, the Council, and the Management Board on the evaluation findings. The findings of the evaluation shall be made public.

Article 36

Administrative *inquiries*

The activities of the Agency shall be subject to the *inquiries* of the European Ombudsman in accordance with Article 228 TFEU.

Article 37

Cooperation with Union institutions, bodies, offices and agencies

1. The Agency shall cooperate with the Commission, with other Union institutions and with other Union bodies, offices and agencies in particular those established in the area of freedom, security and justice, and in particular the European Agency for Fundamental Rights, in matters covered by this Regulation, ***in order to achieve, inter alia, coordination and financial savings, to avoid duplication and to promote synergy and complementarity as regards their activities.***
2. The Agency shall cooperate with the Commission within the framework of a working arrangement laying down operational working methods.
3. The Agency shall consult and follow the recommendations of the European Network and Information Security Agency regarding network ***and information*** security, where appropriate.

4. Cooperation with Union bodies, offices and agencies shall take place within the framework of working arrangements. Such arrangements shall ***be authorised by the Management Board and shall take into account the opinion of the Commission. Should the Agency not follow the Commission's opinion, it shall justify the reasons.*** Such arrangements may provide for the sharing of services between agencies where appropriate either by proximity of locations or by policy area within the limits of the respective mandates and without prejudice to their core tasks, ***and may establish the mechanism for cost recovery.***
5. The Union institutions, bodies, offices and agencies referred to in paragraph 1, shall use information received from the Agency only within the limits of their competences and insofar as they respect fundamental rights, including data protection requirements. Onward transmission ***or*** other communication of personal data processed by the Agency to Union institutions, bodies, offices or agencies shall be subject to specific working arrangements regarding the exchange of personal data and subject to the prior approval of the European Data Protection Supervisor. Any transfer of personal data by the Agency shall be in line with the data protection provisions laid down in Articles 31 and 32. As regards the handling of classified information, those arrangements shall provide that the Union institution, body, office or agency concerned shall comply with security rules and standards equivalent to those applied by the Agency.

Article 38

Participation by countries associated with the implementation, application and development of the Schengen acquis *and with Dublin* and Eurodac-related measures

1. The Agency shall be open to the participation of ■ countries that have entered into agreements with the Union *on their association with the implementation, application and development of the Schengen acquis and with Dublin and Eurodac-related measures*.
2. Under the relevant provisions of the ■ agreements referred to in paragraph 1, arrangements shall be made specifying, in particular, the nature, extent ■ of and the detailed rules for, the participation *of* countries *as referred to in paragraph 1* in the work of the Agency, including provisions on financial contributions, staff and voting rights.

Article 38a

Cooperation with international organisations and other relevant entities

- 1. Where so provided by a Union act, in so far as it is necessary for the performance of its tasks, the Agency may, by means of the conclusion of working arrangements, establish and maintain relations with international organisations and their subordinate bodies governed by public international law or other relevant entities or bodies, which are set up by, or on the basis of, an agreement between two or more countries.*

- 2. In accordance with paragraph 1, working arrangements may be concluded specifying, in particular, the scope, nature, purpose and extent of such cooperation. The working arrangements may be concluded only with the authorisation of the Management Board after having received the Commission's prior approval.*

CHAPTER V
ESTABLISHMENT AND STRUCTURE OF THE BUDGET

SECTION 1
SINGLE PROGRAMMING DOCUMENT

Article 39
Single programming document

1. Each year the Executive Director shall draw up a draft single programming document █ for the following year, as set out in Article 32 of Delegated Regulation (EU) No 1271/2013 and of the Agency's financial rules referred to in Article 44 and taking into account guidelines set by the Commission.

The single programming document shall contain a multiannual programme, an annual work programme as well as its budget and information on its resources, as set out in detail in the Agency's financial rules referred to in Article 44.

2. The Management Board shall adopt the draft single programming document after consulting the Advisory Groups and shall send it to the Parliament, the Council and the Commission no later than 31 January each year as well as any updated version of that document.
3. Before 30 November each year, the Management Board shall adopt, by a two-thirds majority of its members with the right to vote, and in accordance with the annual budgetary procedure █ , the single programming document, taking into account the opinion of the Commission. The Management Board shall ensure that the definitive version of this single programming document is transmitted to the Parliament, the Council and the Commission and is published █ .

4. The single programming document shall become definitive after final adoption of the general budget of the Union and if necessary shall be adjusted accordingly. The adopted single programming document shall then be transmitted to the Parliament, the Council and the Commission and be published.
5. The annual work programme for the following year shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be coherent with the multiannual work programme referred to in paragraph 6. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year. The Management Board shall amend the adopted annual work programme when a new task is given to the Agency. Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial annual work programme. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the Executive Director.

6. The multi-annual programme shall set out the overall strategic programming including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff. The resource programming shall be updated annually. The strategic programming shall be updated where appropriate and in particular to address the outcome of the evaluation referred to in Article 35.

Article 40

Establishment of the Budget

1. 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, including **a draft** establishment plan, and shall send it to the Management Board.

2. The Management Board shall, on the basis of the draft statement of estimates drawn up by the Executive Director, adopt a draft estimate of the revenue and expenditure of the Agency for the following financial year, including the draft establishment plan. The Management Board shall send them to the Commission and to the countries associated with the implementation, application and development of the Schengen acquis *and with Dublin* and Eurodac-related measures, as a part of the single programming document, by 31 January each year.
3. The Commission shall send the draft estimate to the Parliament and the Council ("the budgetary authority") together with the preliminary draft general budget of the European Union.
4. On the basis of the draft estimate, 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 Articles 313 and 314 TFEU.

5. The budgetary authority shall authorise the appropriations for the contribution to the Agency.
6. The budgetary authority shall adopt the establishment plan for the Agency.
7. The Management Board shall adopt the Agency's budget. It shall become final following the final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.
8. Any modification to the budget, including the establishment plan, shall follow the same procedure.

9. *Without prejudice to Article 13(5a)*, 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. 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. In the absence of a reply, the Agency may proceed with the planned operation. For any building project likely to have any significant implications for the budget of the Agency the provisions of Delegated Regulation (EU) No 1271/2013 shall apply.

SECTION 2
PRESENTATION, IMPLEMENTATION AND CONTROL OF THE BUDGET

Article 41
Structure of the budget

1. Estimates of all revenue and expenditure for the Agency shall be prepared each financial year, corresponding to the calendar year, and shall be shown in the Agency's budget.
2. The Agency's *budget* shall be balanced in terms of revenue and of expenditure.
3. Without prejudice to other types of income, the revenue of the Agency shall consist of:
 - (a) a contribution 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 with Dublin** and Eurodac-related measures, participating in the work of the Agency as established in the respective association agreements and in the **arrangements** referred to in Article 38 that specify their financial contribution;
- (c) Union funding in the form of delegation agreements in accordance with the Agency's financial rules referred in Article 44 and with the provisions of the relevant instruments supporting the policies of the Union;
- (d) contributions paid by Member States for the services provided to them in accordance with the delegation agreement referred to in Article 12;
- (da) cost recovery paid by Union bodies, offices and agencies for services provided to them in accordance with the working arrangements referred to in Article 37;**
- (f) any voluntary financial contribution from the Member States.

4. The expenditure of the Agency shall include staff remuneration, administrative and infrastructure expenses and operational expenditure.

Article 42

Implementation and control of the budget

1. The Executive Director shall implement the Agency's budget.
2. Each year the Executive Director shall forward to the budgetary authority all information relevant to the findings of evaluation procedures.
3. By 1 March of a financial year N+1, the Agency's Accounting Officer shall communicate the provisional accounts for financial year N to the Commission's Accounting Officer and the Court of Auditors. The Commission's Accounting Officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 147 of Regulation (EU, Euratom) No 966/2012.

4. The *Executive Director* shall send a report on the budgetary and financial management for year N to the Parliament, the Council, the Court of Auditors and the Commission by 31 March of year N+1.
5. The Commission's Accounting Officer shall send the Agency's provisional accounts for year N, consolidated with the Commission's accounts, to the Court of Auditors by 31 March of year N+1.

6. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 148 of Regulation (EU, Euratom) No 966/2012, the Executive Director shall draw up the Agency's final accounts under his own responsibility and forward them to the Management Board for an opinion.
7. The Management Board shall deliver an opinion on the Agency's final accounts for year N.
8. By 1 July of year N+1, the Executive Director shall send the final accounts, together with the opinion of the Management Board, to the Parliament, to the Council, to the Commission and to the Court of Auditors as well as to the countries associated with the implementation, application and development of the Schengen acquis *and with Dublin* and Eurodac-related measures.

9. The final accounts for year N shall be published in the Official Journal of the European Union by 15 November of year N+1.
10. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September of year N+1. The Executive Director shall also send that reply to the Management Board.
11. The Executive Director shall submit to the European Parliament at its request, any information required for the smooth application of the discharge procedure for the year N, in accordance with Article 165(3) of Regulation (EU, Euratom) No 966/2012.
12. On a recommendation from the Council acting by a qualified majority, the Parliament 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 43

Prevention of conflicts of interest

The Agency shall adopt internal rules requiring the members of its bodies and its staff members to avoid any situation liable to give rise to a conflict of interest during their employment or term of office and to report such situations. ***These internal rules shall be published on the website of the Agency.***

Article 44

Financial rules

The financial rules applicable to the Agency shall be adopted by the Management Board after consulting the Commission. They shall not depart from Delegated Regulation (EU) No 1271/2013 unless such departure is specifically required for the Agency's operation and the Commission has given its prior consent.

Article 45
Combating fraud

1. In order to combat fraud, corruption and other unlawful activities, Regulation (EU, Euratom) No 883/2013 *and Regulation 2017/1939* shall apply.
2. The Agency shall accede to the Inter-institutional Agreement of 25 May 1999 concerning internal investigations by OLAF and shall adopt, without delay, the appropriate provisions applicable to all the employees of the Agency using the template set out in the Annex to that Agreement.

The Court of Auditors shall have the power of audit, on the basis of documents and of on-the-spot inspections, 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 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, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96⁵⁵.
4. Without prejudice to paragraphs 1, 2 and 3, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the Court of Auditors, OLAF *and EPPO* to conduct such audits and investigations, according to their respective competences.

⁵⁵ 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 (OJ L 292, 15.11.1996, p. 2).

CHAPTER VI
AMENDMENTS TO OTHER UNION INSTRUMENTS

Article 46

Amendment to Regulation (EC) No 1987/2006 on the establishment, operation and use of the
second generation Schengen Information System (SIS II) ■

In Regulation (EC) No 1987/2006 ■ , Article 15(2) and (3) are replaced by the following:

- "(2) The Management Authority shall be responsible for all tasks relating to the communication infrastructure, in particular:
- (a) supervision;
 - (b) security;
 - (c) the coordination of relations between the Member States and the provider;
 - (d) tasks relating to implementation of the budget;
 - (e) acquisition and renewal, and
 - (f) contractual matters."

Article 47

Amendment to Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II) ■

In Decision 2007/533/JHA ■, Article 15(2) and (3) are replaced by the following:

- "2. The Management Authority shall also be responsible for all tasks relating to the communication infrastructure, in particular:
- (a) supervision;
 - (b) security;
 - (c) the coordination of relations between the Member States and the provider;
 - (d) tasks relating to implementation of the budget;
 - (e) acquisition and renewal, and
 - (f) contractual matters."

CHAPTER VII
TRANSITIONAL PROVISIONS

Article 47a

Legal succession

1. *The Agency as established by this Regulation shall be the legal successor in respect of all contracts concluded by, liabilities incumbent upon and properties acquired by the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice as established by Regulation (EU) No 1077/2011.*
2. *This Regulation shall not affect the legal force of agreements, working arrangements and memoranda of understanding concluded by the Agency as established by Regulation (EU) No 1077/2011 without prejudice to any amendments thereto required by this Regulation.*

Article 47b

Transitional arrangements concerning the Management Board and the Advisory Groups

1. *The members, the Chairperson and the deputy Chairperson of the Management Board, appointed on the basis of Articles 13 and 14 of Regulation (EU) No 1077/2011 respectively, shall continue to exercise their functions for the remaining term of their office.*
2. *The members, the Chairpersons and deputy Chairpersons of the Advisory groups appointed on the basis of Article 19 of Regulation (EU) No 1077/2011, shall continue to exercise their functions for the remaining term of their office.*

Article 47c

Maintenance in force of the internal rules adopted by the Management Board

Internal rules and measures adopted by the Management Board on the basis of Regulation (EU) No 1077/2011 shall remain in force after [date of the entry into force of this Regulation], without prejudice to any amendments thereto required by this Regulation.

Article 48

Transitional arrangements concerning the Executive Director

The Executive Director of eu-LISA appointed on the basis of Article 18 of Regulation (EU) No 1077/2011 shall, for the remaining term of his *or her* office, be assigned to the responsibilities of the Executive Director *of the Agency*, as provided for in Article 21 of this Regulation. *The other conditions of his or her contract shall remain unchanged. If a decision extending the mandate of the Executive Director in accordance with Article 18(4) of Regulation (EU) No 1077/2011 is adopted prior to the entry into force of this Regulation, the term of office shall be extended automatically until 31 October 2022.*

CHAPTER VIII
FINAL PROVISIONS

Article 49

Replacement and Repeal

Regulation (EU) No 1077/2011 is ***hereby replaced for the Member States bound by this Regulation with effect from [the date of entry into force of this Regulation].***

Therefore, Regulation (EU) No 1077/2011 is repealed with effect from [the date of entry into force of this Regulation].

With regard to the Member States bound by this Regulation, references to the repealed Regulation shall be construed as references to this Regulation.

Article 50

Entry into force and applicability

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

This Regulation shall apply from the date of its entry into force, with the exception of the references to the EPPO in Article 15(1)(w), Article 21(3)(g) and (h) and Article 45(1) and (4), which shall apply from the date determined by the Commission decision provided for in Article 120(2), second subparagraph, of Regulation 2017/1939.

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

Done at ...

For the European Parliament

For the Council

The President

The President
