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DATAPROTECT 203
CODEC 1993
ENFOPOL 602
EUROJUST 200
FRONT 497
VISA 447
EURODAC 48
ASILE 97
SIRIS 211
SCHENGEN 85
CSCI 71
SAP 24
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NOTE

From: Presidency
To: Council

No. prev. doc.: 10820/17 + COR1, 14807/17

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
- General approach

I. INTRODUCTION

On 29 June 2017 the Commission presented a 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) 1077/2011¹.

¹ 10820/17 + COR 1

The aim of the proposal is to make legislative amendments stemming from the evaluation of the Agency, to improve the functioning of the Agency and enhance and strengthen its role to ensure that its mandate meets current and future challenges at EU level in the area of freedom, security and justice. It also aims to reflect the fact that new systems will be entrusted to the Agency, such as Entry-Exit system (EES) as well as the European Travel Information and Authorisation System (ETIAS) (subject to agreement by the co-legislators). The Agency should also be tasked with contributing to the development of interoperability between large-scale IT systems in the follow-up to the final report of the High-level expert group on information systems and interoperability of 11 May 2017² and the Commission's Seventh progress report towards an effective and genuine Security Union of 16 May 2017³. The proposal also addresses the recommendations for amendments suggested by the Management Board of the Agency. Finally, the proposal aims to align the Agency's founding act with the principles of the Joint Statement of the European Parliament, the Council and the European Commission on decentralised agencies of 19 July 2012 ("the Common Approach").

The European Parliament is in the process of establishing its position on the proposal.

Monica Macovei (ECR, RO) has been appointed rapporteur. The shadow rapporteurs are Barbara Kudrycka (EPP, PL), Caterina Chinnici (S&D, IT), Cecilia Wikstrom (ALDE, SE), Marie-Christine Vergiat (GUE/NGL, FR), Jan Albrecht (Greens/EFA, DE).

The European Data Protection Supervisor submitted his Opinion 9/2017 on the proposal on 10 October 2017 (13188/17).

II. STATE OF PLAY

The proposed Regulation was examined by the Working Party on Information Exchange and Data Protection (DAPIX) in its dedicated eu-LISA format at its meetings on 13-14 July 2017, 19 September 2017, 9 and 30 October 2017. The text was revised by the Presidency on the basis of delegations' comments following each of these meetings.

² 8434/1/17 REV 1

³ 9348/17

At the meeting of JHA Counsellors on 22 November 2017 delegations could broadly support the compromise proposals presented by the Presidency. At this meeting, a few additional changes were proposed by delegations, which were reflected in the revised text.

The revised text was submitted to the COREPER meeting on 1 December 2017. At this meeting some of the remaining reservations were lifted. A few comments on the text were made by some delegations and the Commission, but it was concluded by the Presidency that there was broad support in COREPER for the text set out in the Annex to this note, and that it would be submitted to the Council in view of reaching general approach.

The changes in the text of the draft Regulation compared to the Commission's proposal are marked in *bold italics* and ~~striketrough~~.

III. CONCLUSION

The Presidency invites the Council to endorse, as a general approach, the text as set out in the Annex to this note, which will constitute the basis for negotiations with the European Parliament in the framework of the ordinary legislative procedure (Article 294 TFEU).

2017/0145 (COD)

Proposal for a

REGULATION 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) 1077/2011⁴

The EUROPEAN PARLIAMENT and the COUNCIL,

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 procedure (⁵),

Whereas:

- (1) The Schengen Information System (SIS) was established by Regulation (EC) No 1987/2006 of the European Parliament and of the Council⁶ and by Council Decision 2007/533/JHA⁷. 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.

⁴ **SI, UK** parliamentary reservations on the proposal.

⁵ ~~Position of the European Parliament of 5 July 2011 (not yet published in the Official Journal) and Decision of the Council of 12 September 2011.~~

⁶ 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).

⁷ 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).

- (2) The Visa Information System (VIS) was established by Council Decision 2004/512/EC⁸. Regulation (EC) No 767/2008 of the European Parliament and of the Council⁹ 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.
- (3) Eurodac was established by Council Regulation (EC) No 2725/2000¹⁰. Council Regulation (EC) No 407/2002¹¹ laid down necessary implementing rules. These instruments were repealed and replaced by Regulation (EU) No 603/2013 of the European Parliament and of the Council¹² 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 Council¹³ 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) 1077/2011 was amended by Regulation (EU) No 603/2013 in order to reflect the changes introduced to Eurodac.

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

⁹ 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).

¹⁰ 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).

¹¹ 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).

¹² 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) 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) of the European Parliament and of the Council No 1077/2011 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 180, 29.6.2013, p. 1).

¹³ Regulation (EU) 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, ~~if so provided in the relevant legislative instrument,~~ 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 ~~should also be able to operate systems~~ **could also be used to operate systems** simultaneously ~~in an active mode~~ provided that it remains capable of ensuring their operation in case of failure of **one or more of** the systems.

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/JHA¹⁴. It took over the tasks conferred to the Management Authority in relation to SIS II by Regulation (EC) No 1987/2006 and Council 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 eu-LISA 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 on the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA)¹⁵ 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, the High Level Expert Group's *on Information Systems and Interoperability* final report of 11 May 2017 and in the Commission's Seventh progress report towards an effective and genuine Security Union of 16 May 2017¹⁶, 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: a European Search Portal, a shared biometric matching service and a Common Identity Repository, subject to the adoption of the relevant legislative instrument on interoperability*. Where relevant, any actions carried out on interoperability should have to be guided by the Commission Communication on the European Interoperability Framework – Implementation Strategy.¹⁷

- (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.

¹⁴ 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).

¹⁵ COM(2017) 346, 29.6.2017.

¹⁶ COM(2017) 261, 16.5.2017.

¹⁷ COM(2017) 134, 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.

- (7) [The Agency should therefore be entrusted with the preparation, development and operational management of the Entry/Exit system, established by Regulation XX/XX of XX *[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 Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011].*]
- (8) {[It should be entrusted with the operational management of DubliNet, a separate secure electronic channel set up under Article 18 of Commission Regulation (EC) No 1560/2003¹⁸, in accordance with Regulation XX/XX of XX 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*, for identifying an illegally staying third country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement and Europol for law enforcement purposes (recast)].
- (9) [It should be entrusted with the preparation, development and operational management of the European Travel Authorisation System (ETIAS) established by Regulation XX/XX *[of XX establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 515/2014, (EU) 2016/399, (EU) 2016/794 and (EU) 2016/1624].*]
- (10) [It should be entrusted with the preparation, development and operational management of the automated system for registration, monitoring and the allocation mechanism for applications for international protection referred to in Article 44 of Regulation (EU) XX/20XX *[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 (recast)].*
- (11) [It should also be entrusted with the preparation, development and operational management of the centralised system for the identification of Member States holding criminal information on third-country nationals and stateless persons established by Regulation XX/XX *[of XX establishing a centralised system for the identification of Member States holding criminal information on third-country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS) and amending Regulation (EU) No 1077/2011 (ECRIS-TCN system)*, and the maintenance of the ECRIS reference implementation referred to in that Regulation.].

¹⁸ 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).

- (12) ~~The Agency should remain the same legal person, with full continuity of all its activities and procedures.~~
- (13) The core function of the Agency should continue to be to fulfil the operational management tasks for SIS, VIS and Eurodac, [EES], [DubliNet], [ETIAS], [the automated system for registration, monitoring and the allocation mechanism for applications for international protection] and [the ECRIS-TCN system] 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 to the Commission alone or to 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 components of a system not requiring a technical copy (the so called active/active set up), 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 communications 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.
- (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.

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.

- (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 of risk analysis and vulnerability assessment in accordance with Regulation of the European Parliament and of the Council (EU) 2016/1624²¹.*
- (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 secure ICT-solution for cross-border exchange of sensitive data by the judicial authorities (e-CODEX)²² or the European Image Archiving System FADO (False and Authentic Documents Online)²³. However, the Agency should be entrusted with such tasks 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 but also contribute to the implementation of *parts of the Framework Programme for Research and Innovation's* research activities relevant to the operational management of the systems it manages, *where the Commission has delegated the relevant powers to the Agency*. It should send information on such monitoring to the European Parliament, the Council and the European Data Protection Supervisor *regularly at least once a year*.

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 (L 251, 16.9.2016, p. 1).*

²² *This recital may need to be updated in the light of the outcome of the ongoing assessment by the Commission in relation to e-CODEX, expected in January 2018.*

²³ *Council Joint Action 98/700/JHA of 3 December 1998 concerning the setting up of a European Image Archiving System (FADO) (OJ L 333, 9.12.1998, p. 4).*

- (17) The Agency ~~should~~ **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 Council²⁴. 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 Council²⁵ in accordance with Article 58(1)(c) of Regulation (EU, Euratom) No 966/2012. 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 and shared infrastructure**. When tasked with carrying out a pilot project, the Agency should pay particular attention to the European Union Information Management Strategy.
- (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 ~~with regard to the national systems' connection to the central systems~~ **at their request**.

²⁴ 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).

²⁵ 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).

- (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, ~~the Member States should be able to rely on technical and operational reinforcements~~. ***Such reinforcements*** should be provided in hotspot areas by migration management support teams composed of experts from relevant Union agencies. Where the support of eu-LISA 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*** ~~should be sent to the Agency by the Commission, which should inform the Management Board~~.
- (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 also be possible that the Agency is tasked with developing, managing and/or hosting a common IT system for a group of Member States ~~opting~~ ***requesting*** on a voluntary basis ~~for~~ a centralised solution assisting them to implement technical aspects of obligations deriving from Union legislation on decentralised large-scale IT systems in the area of freedom, security and justice. This should require prior approval by the Commission and a decision of the Management Board and should be reflected in a delegation agreement between the Member States concerned and the Agency and financed by way of a contribution charged to the relevant Member States to cover all the costs. ***This task should not adversely affect the operational management of large-scale 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) The Member States and the Commission should be represented on a Management Board, in order to control the functions of the Agency effectively. 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, appoint an Executive Director and establish procedures for taking decisions relating to the operational tasks of the Agency by the 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. 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 ~~Police Office~~ **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 [*or Regulation XX of XX on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU*], 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 of the European Parliament and of the Council²⁶ and of Regulation XXX [*on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters*]²⁷ should have observer status ~~in~~ **at the meetings of** the Management Board when a question in relation to the application of Regulation (EU) 2016/1624 or of Regulation XXX of XXX [*on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters*] 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.

²⁶ 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).

²⁷ Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU. COM(2016)883 final.

- (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 Council 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 [*or Regulation XX of XX 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*]}for identifying an illegally staying third country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement and Europol for law enforcement purposes (recast)} 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 XX/XXXX [*establishing the EES*] 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.]
- (29) [As regards the automated system for registration, monitoring and the allocation mechanism for applications for international protection referred to in Article 44 of Regulation (EU) .../... [*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*] **European Asylum Support Office** (EASO) should have observer status ~~in~~ **at** the meetings of the Management Board when a question concerning this system is on the agenda.]
- (30) [As regards the ECRIS-TCN system, Eurojust, Europol [and the European Public Prosecutor's Office] should have observer status ~~in~~ **at** the meetings of the Management Board when a question concerning Regulation XX/XXXX [*establishing the ECRIS-TCN system*] is on the agenda}. Eurojust, Europol and [the European Public Prosecutor's Office] should be able to appoint a representative to the ECRIS-TCN system Advisory Group].

- (31) Member States should have voting rights on the Management Board of the Agency 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 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, in particular as regards interoperability between the systems.***
- (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 47 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management²⁸. 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.
- (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 the relevant authorities of the third countries and should be able 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.

²⁸ OJ C 139, 14.6.2006, p. 1.

- (36) Regulation (EC) No 45/2001²⁹ [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 ~~for~~ *by the* Union institutions, ~~and~~ *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. 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 ~~XX XX~~ *10 October 2017*.
- (37) In order to ensure the transparent operation of the Agency, Regulation (EC) No 1049/2001 of the European Parliament and of the Council³⁰ 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 Council³¹ 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)³².

²⁹ 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).

³⁰ 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).

³¹ 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).

³² OJ L 136, 31.5.1999, p. 15.

- (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 Regulation (EEC, Euratom, ECSC) No 259/68³³ (together referred to as the 'Staff Regulations'), should apply to the staff (including the Executive Director of the Agency), including the rules of professional secrecy or other equivalent duties of confidentiality.
- (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 1271/2013³⁴ on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 should apply to the Agency.
- (42a) *The Agency as established by this Regulation replaces and succeeds the Agency for the operational management of large-scale IT systems in the area of freedom, security and justice as established by Regulation (EU) 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) 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) 1077/2011 without prejudice to any amendments thereto required by this Regulation.***
- (42b) *To enable the Agency to continue to fulfil the tasks of the Agency for the operational management of large-scale IT systems in the area of freedom, security and justice as established by Regulation (EU) 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) 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) 1077/2011, which, as a consequence, should be repealed.***

³³ OJ L 56, 4.3.1968, p. 1.

³⁴ 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).

- (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 the Treaty on European Union and to the Treaty on the functioning of European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation, 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 Convention³⁵, Denmark is to notify the Commission whether it will implement the contents of this Regulation, insofar as it relates to Eurodac- [*DubliNet* and the automated system for registration, monitoring and the allocation mechanism for applications for international protection referred to in Article 44 of Regulation (EU) XX/XX 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 (recast)]. [Insofar as it relates to the ECRIS-TCN system, in accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and the TFEU, Denmark does not take part in the adoption of this Regulation and is not bound by it nor subject to its application.]

³⁵ OJ L 66, 8.3.2006, p. 38.

- (45) Insofar as its provisions relate to SIS 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 the Treaty on European Union and to the Treaty on the Functioning of the European Union (Protocol on the Schengen *acquis*) and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*³⁶.

Insofar as its provisions relate to SIS as governed by Regulation (EC) No 1987/2006 and to VIS, [to EES] [and to ETIAS] which constitute developments of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Decision 2000/365/EC, the United Kingdom 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, [~~*DubliNet*~~, and the automated system for registration, monitoring and the allocation mechanism for applications for international protection referred to in Article 44 of Regulation (EU) XX/XX 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 (recast) *and ECRIS-TCN system*] ~~the United Kingdom may notify to the President of the Council, its wish to take part in the adoption and application of this Regulation,~~ in accordance with Article 3 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 the *Treaty on European Union and to the Treaty on the Functioning of the European Union* TEU and to the TFEU (Protocol on the position of the United Kingdom and Ireland), *the United Kingdom has notified, by letter of 23 October 2017, its wish to take part in the adoption and application of this Regulation.* Insofar as its provisions relate to the ECRIS-TCN system, in accordance with Articles 1 and 2 and Article 4a(1) of Protocol 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and the TFEU the United Kingdom is not taking part in the adoption of this Regulation and is not bound or subject to its application. In accordance with Article 3 and Article 4a(1) of Protocol 21, the United Kingdom may notify its wish to take part in the adoption of this Regulation.

Since the United Kingdom notified on 29 March 2017 its intention to leave the Union, pursuant to Article 50 of the Treaty on European Union, the Treaties will cease to apply to the United Kingdom from the date of the entry into force of the withdrawal agreement or, failing that, two years after the notification, unless the European Council, in agreement with the United Kingdom, decides to extend that period. As a consequence, and without prejudice to any provisions of the withdrawal agreement, this above-mentioned description of the participation of the UK in proposal only applies until the United Kingdom ceases to be a Member State.

³⁶ 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 the Treaty on European Union and to the Treaty on the functioning of the European Union (Protocol on the Schengen *acquis*), and Article 6(2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*³⁷.

Insofar as its provisions relate to SIS as governed by Regulation (EC) No 1987/2006 and to VIS, [to EES] [and to ETIAS] ~~this Regulation constitutes a development~~ **which constitute developments** of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC, of 28 February 2002 concerning Ireland's request to take part in some of the provisions in some of the provisions the Schengen *acquis*³⁸. 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 ~~on~~ **of** the Protocol on the Schengen *acquis*.

Furthermore, insofar as its provisions relate to Eurodac [**DubliNet**, and the automated system for registration, monitoring and the allocation mechanism for applications for international protection referred to in Article 44 of Regulation (EU) XX/XX 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 (recast) **and ECRIS-TCN system**], ~~Ireland may notify to the President of the Council, its wish to take part in the adoption and application of this Regulation, in accordance with Article 3 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 the Treaty on European Union and to the Treaty on the functioning of the European Union (Protocol on the position of the United Kingdom and Ireland).~~ Insofar as its provisions relate to the ECRIS-TCN system, 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 the TEU and the TFEU **Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol**, Ireland is not taking part in the adoption of this Regulation and ~~are~~ **is** not bound **by it** or subject to its application. ~~In accordance with Article 3 and Article 4a(1) of Protocol 21, Ireland may notify its wish to take part in the adoption of this Regulation.~~

³⁷ OJ L 64, 7.3.2002, p. 20.

³⁸ OJ L 131, 1.6.2000, p. 43.

(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 acquis³⁹ which fall within the area referred to in Article 1, points A, B and G of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement⁴⁰. As regards Eurodac [*DubliNet* and the automated system for registration, monitoring and the allocation mechanism for applications for international protection referred to in Article 44 of Regulation (EU) XX/XX 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 (recast)], 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 Norway⁴¹. 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.

³⁹ OJ L 176, 10.7.1999, p. 36.

⁴⁰ OJ L 176, 10.7.1999, p. 31.

⁴¹ 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 *acquis*⁴² 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/EC⁴³. As regards Eurodac [**DubliNet** and the automated system for registration, monitoring and the allocation mechanism for applications for international protection referred to in Article 44 of Regulation (EU) XX/XX 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 (recast)], 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 Switzerland⁴⁴. 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.

⁴² OJ L 53, 27.2.2008, p. 52.

⁴³ OJ L 53, 27.2.2008, p. 1.

⁴⁴ 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 *acquis*⁴⁵ 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/EU⁴⁶. As regards Eurodac, [*DubliNet* and the automated system for registration, monitoring and the allocation mechanism for applications for international protection referred to in Article 44 of Regulation (EU) XX/XX 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 (recast)] 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 Switzerland⁴⁷. 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:

⁴⁵ OJ L 160, 18.6.2011, p. 21.

⁴⁶ OJ L 160, 18.6.2011, p. 19.

⁴⁷ OJ L 160, 18.6.2011, p. 39.

CHAPTER I

SUBJECT MATTER

Article 1 Subject matter

1. ~~This Regulation concerns~~ 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)]⁴⁸, [DubliNet]⁴⁹, [the European Travel Authorisation System (ETIAS)]⁵⁰, [the automated system for registration, monitoring and the allocation mechanism for applications for international protection]⁵¹ and [the *ECRIS-TCN* system and the ECRIS reference implementation⁵²].
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.

⁴⁸ 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.

⁴⁹ 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.

⁵⁰ 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.

⁵¹ The amendments to the eu-LISA Regulation have not been inserted in the Dublin recast proposal and in any event will be subject to adoption of that proposal.

⁵² The amendments to the eu-LISA Regulation have been inserted in the ECRIS-TCN proposals and are subject to the adoption of that proposal.

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 the applicable rules, 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 [or by Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006; by Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police *and judicial* cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU and by Regulation XX of XX of the European Parliament and of the Council on the use of the Schengen Information System for the return of illegally staying third-country nationals];
- (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 [or by Regulation XX of XX 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], for identifying an illegally staying third country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement and Europol for law enforcement purposes (recast)];
- (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) XXX/20XX of the European Parliament and of the Council [of X.X.X establishing an Entry/Exit System to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011 (COM(2016) 194 final – 2016/0106 COD)];
- (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 (EU) XXX/20XX of the European Parliament and of the Council establishing the European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 515/2014, (EU) 2016/399, (EU) 2016/794 and (EU) 2016/1624 (COM(2016) 731 final -2016/0357 (COD))];
- (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 DubliNet*

In relation to DubliNet, the Agency shall perform:

- (a) the tasks conferred on it by [Regulation (EU) No ~~Regulation~~ XX of XX 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], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement and Europol for law enforcement purposes (recast) (COM(2016) 272 final – 2016/0132 (COD)];
- (b) tasks relating to training on the technical use of DubliNet.]

*[Article 5d
Tasks relating to the automated system for registration, monitoring and the allocation mechanism for applications for international protection*

In relation to the automated system for registration, monitoring and the allocation mechanism for applications for international protection referred to in Article 44 of Regulation (EU) XX/20XX [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 (recast) COM(2016) 270 final -2016/0133(COD)], the Agency shall perform:

- (a) the tasks conferred on it by that Regulation [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 (recast) COM(2016) 270 final -2016/0133(COD)];
- (b) tasks relating to training on the technical use of the automated system for registration, monitoring and the allocation mechanism for applications for international protection.]

*[Article 5e
Tasks related to the ECRIS-TCN system*

In relation to the ECRIS-TCN system, the Agency shall perform:

- (a) the tasks conferred on it by Regulation XX/XXX [establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (TCN) to supplement and support the European Records Information System (ECRIS) and amending Regulation (EU) No 1077/2011 (ECRIS TCN-system), including the further development and maintenance of the ECRIS reference implementation.];
- (b) tasks relating to training on the technical use of the ECRIS-TCN system and the ECRIS reference implementation.]

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, the Agency shall implement technical solutions to meet those requirements. Where those technical solutions require a duplication of components of a system not requiring a technical copy, 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 EuroDomain⁵³, 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 ~~have been~~ **shall be** made between the Agency and the Commission and reflected in a Memorandum of Understanding.
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.

⁵³ This is currently only the case of Eurodac but the ECRIS-TCN system will also use the EuroDomain.

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 operational management of the communication infrastructure **as conferred on the Agency by the legislative instruments governing the large-scale IT systems operated by it** may be entrusted to external private-sector entities or bodies in accordance with Regulation (EU, Euratom) No 966/2012. In such a case, the network provider shall be bound by the security measures referred to in paragraph 3 and shall have no access to SIS II, VIS, Eurodac, [EES], [ETIAS], [the automated system for registration, monitoring and the allocation mechanism for applications for international protection] [or the ECRIS-TCN system] **any** operational data **stored in those systems** or to the SIS II-related SIRENE exchange, by any means.
5. ~~Without prejudice to the existing contracts on the communication infrastructures of SIS II, VIS and Eurodac, t~~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, tThe Agency, ***closely involving its Advisory Groups***, together with the Commission, shall work towards establishing for all systems under the Agency's operational responsibility, automated data quality control mechanisms and common data quality indicators and towards developing a central repository for reporting and statistics, subject to specific ***provisions in the legislative instruments***, legislative amendments to the existing systems' instruments and/or to specific provisions in new instruments.

Article 9
*Interoperability*⁵⁴

The Agency shall also develop the necessary actions to enable interoperability of the systems, subject, where required, to the adoption of the relevant legislative instruments.

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*], [the automated system for registration, monitoring and the allocation mechanism for applications for international protection], the [ECRIS-TCN system] 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~~ **at least once a year** keep the European Parliament, the Council, the Commission, and, where **personal data protection issues are processing is** concerned, the European Data Protection Supervisor informed on the developments referred to in paragraph 1 **this Article without prejudice to the reporting requirements in relation to the the implementation of the parts of the Framework Programme for Research and Innovation.**

⁵⁴ This Article could be updated in the light of the upcoming legislative proposal on interoperability between EU information systems.

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 European 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)(~~u~~)(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 European Parliament, the Council and, where *personal* data ~~protection issues are~~ *processing 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 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. ~~The Agency may be requested to provide advice to Member States with regard to the national systems' connection to the central systems and ad hoc support to Member States.~~
~~The~~ **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 shall be submitted to the Commission which, subject to its positive assessment that such support is required by security or migratory extraordinary needs, shall transmit them~~ **it to the Agency, which shall inform the Management Board.**
 - 1b. ~~It~~ **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. The Agency may also be tasked to develop, manage and/or host a common IT system by a group of at least ~~six~~ **five** Member States ~~opting~~ **requesting** on a voluntary basis for a centralised solution assisting them in implementing technical aspects of obligations deriving from Union legislation on decentralised systems in the area of freedom, security and justice, subject to prior approval by the Commission and after a decision of the Management Board. In such case the Member States concerned shall entrust the Agency with those tasks by way of a delegation agreement including the conditions for the delegation and setting out the calculation of all relevant costs and the invoicing method **for those costs. All relevant costs shall be covered by the participating Member States. Other Member States may request to participate in such a centralised 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 amended accordingly following the prior approval by the Commission and after a 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], [5d], [5e], 6 and 7 shall be carried out in ***the technical site in*** Strasbourg, France.

~~Where a A backup site or a second technical site is provided for in the legislative instruments governing the development, establishment, operation and use of each of the systems, this 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 ~~simultaneously~~ for ~~the active~~ ***simultaneous*** operation of the large- scale IT systems-provided that the ~~second~~ ***backup*** site remains capable of ensuring their operation in case of failure of one or more of the systems. ~~No further technical sites can be established without an amendment to this Regulation.~~

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 Deputy Executive Director*, and where relevant extend his/her term of office or remove him or her from office, in accordance with Article 22;
 - d) exercise disciplinary authority over the Executive Director and oversee his 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;
 - j) authorise the conclusion of working arrangements in accordance with Article 37 *and Article 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 ~~provisional~~ **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 ~~provisional~~ **draft** establishment plan and submit it by 31 January each year to the European Parliament, the Council and the Commission as well as any updated version of that document;
- q) ~~B~~**b**efore 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 European 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 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 European Parliament, the Council, the Commission and 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);
- 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 64(2) of Regulation (EU) XX/XX of XXX establishing the EES] [adopt the reports on the development of ETIAS pursuant to Article 81(2) of Regulation (EU) XX/XX of XXX establishing the ETIAS];
- ee) [adopt the reports on the development of the ECRIS/TCN system pursuant to Article 34(3) of Regulation (EU) XX/XXX establishing the ECRIS/TCN system];
- 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 [or Article 54(7) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006 and Article 71(7) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation *and judicial cooperation* in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU] 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 64(4) of Regulation (EU) XX/XX of XXX and of ETIAS pursuant to Article 81(4) of Regulation (EU) XX/XX of XXX, and of the ECRIS-TCN system and the ECRIS reference implementation pursuant to Article 34(4) of Regulation (EU) XX/XXX];
- 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 [or to Article 42 of Regulation XX of XX 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], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement and Europol for law enforcement purposes (recast)];

- 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 50(2) of Regulation (EU) XX/XX of XXX (establishing the EES)] and [Article 57 of Regulation (EU) XX/XX of XXX (establishing the ETIAS)] and to [Article 27(2) of Regulation (EU) XX/XXXX(establishing the ECRIS-TCN system)] 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 *[or publish statistics related to the SIS pursuant to Article 54 of Regulation (EU) XX/XX of XX on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks and repealing Regulation (EC) No 1987/2006; to Article 71 of Regulation (EU) XX/XX of XX on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) 515/2014 and repealing Regulation (EC) 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU and to Article 11 of Regulation (EU) XX/XX of XX on the use of the Schengen Information System for the return of illegally staying third country nationals];*
- 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 [or to Article 9(2) of Regulation XX of XX 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], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement and Europol for law enforcement purposes (recast)];
- kk) [publish statistics related to the EES pursuant to Article 57 of Regulation (EU) XXX/XX establishing the EES;]
- ll) [publish statistics related to the ETIAS pursuant to Article 73 of Regulation (EU) XX/XXX establishing the ETIAS;]
- mm) [publish statistics related to the ECRIS-TCN system and to the ECRIS reference implementation pursuant to Article 30 of Regulation XXXX/XX;]

- 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 [or ~~by~~ **to** Article 36(8) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006 and ~~by~~ **to** Article 53(8) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation **and judicial cooperation** in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU 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 XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks and Article 7(3) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation **and judicial cooperation** in criminal matters respectively]; [as well as the list of competent authorities pursuant to Article 8(2) of Regulation (EU) XX/XXXX establishing the EES]; [the list of competent authorities pursuant to Article 11 of Regulation (EU) XX/XXXX establishing the ETIAS] and [the list of competent authorities pursuant to Article 32 of Regulation XX/XXX establishing ECRIS-TCN];]
- 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 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~~ **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**. 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, ~~extendable~~ **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/she is prevented from attending to his/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, 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 **non-voting** 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 **a non-voting** observers when a question concerning SIS in relation to the application of Regulation (EU) 2016/1624 or of Regulation XXX of XXX⁵⁵ is on the agenda]. Europol may also attend the meetings of the Management Board as **a non-voting** 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 ~~a~~ **non-voting** observer when a question concerning EES in relation to the application of Regulation XX/XXXX (establishing the EES) is on the agenda or when a question concerning ETIAS in relation to Regulation XX/XXXX (establishing ETIAS) is on the agenda. The European Border and Coast Guard **Agency** may also attend the meetings of the Management Board **as a non-voting observer** when a question concerning ETIAS in relation with the application of Regulation XX/XX of XXX is on the agenda.] [EASO may also attend the meetings of the Management Board as ~~a~~ **non-voting** observer when a question concerning the automated system for registration, monitoring and the allocation mechanism for applications for international protection referred to in Article 44 of Regulation (EU) 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 (recast) COM(2016) 270 final-2016/0133(COD), is on the agenda.] [Eurojust, Europol [the European Public Prosecutor's Office] may also attend the meetings of the Management Board as **non-voting** observers when a question concerning Regulation XX/XXXX (establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS), and amending Regulation (EU) No 1077/2011 (ECRIS-TCN system) is on the agenda.] The Management Board may invite any other person whose opinion may be of interest, to attend its meetings as ~~a~~ **a non-voting** observer.

⁵⁵ Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU. COM(2016)883 final.

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 ~~5~~ **4** of this Article, and to Article 15(1)(b) *and (q)*, **Article 18(1)** and Article 22(~~4~~) *and* (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/her alternate shall be entitled to exercise his/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. *Regarding countries associated with the implementation, application and development of the Schengen acquis, and with Dublin and Eurodac-related measures, Article 38 shall apply.***
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 shall ~~take part in the voting~~ *not vote. The Chairperson's right to vote shall be exercised by his/her alternate member.*
6. The Executive Director shall ~~take part in the voting~~ *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 European 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.
 - 1a. *The Executive Director shall be independent in the performance of his duties. Without prejudice to the respective competences of the Commission and the Management Board, the Executive Director shall neither seek nor take instructions from any government or other body.***
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 investigations by the European Anti-fraud Office (OLAF) 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 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;
- 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 34(4) of Regulation XX/XXXX (establishing the EES), [Article 64(2) of Regulation XX/XXXX (establishing the ETIAS)] and [Article 11(16) of Regulation XX/XXX (establishing the ECRIS-TCN system)];
- 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 64(2) of Regulation XX/XXX [establishing the EES] and on the development of ETIAS referred to in Article 81(2) of Regulation XX/XXXX [establishing ETIAS], the report on the development of the ECRIS-TCN system referred to in Article 34(3) of Regulation XX/XXXX [establishing the ECRIS-TCN system] 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, the ETIAS and the ECRIS-TCN system] 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 basis of personal merit, experience in the field of large-scale IT systems and administrative, financial and management skills as well as knowledge in data protection. ~~The Management Board shall take its decision to appoint the Executive Director by a two-thirds majority of all its members with a right to vote.~~
2. Before appointment, the candidate selected by the Management Board shall be invited to make a statement before the competent committee(s) of the European Parliament and answer questions from the committee members. After the statement, the European Parliament shall adopt an opinion setting out its view of the selected candidate and send it to the Management Board. The Management Board shall inform the European Parliament of the manner in which that opinion has been taken into account. The opinion shall be treated as personal and confidential until the appointment of the candidate.
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 European 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 European 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 *two thirds 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 ~~Management Board~~ *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. The Executive Director shall define his/her tasks.*
2. *All provisions of Article 22 shall apply to the Deputy Executive Director.*

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];
 - e) [ECRIS-TCN system Advisory Group];
 - 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 ~~once~~.

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 ~~and the measures related to other large-scale IT systems~~ 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.] [Eurojust, Europol, [and the European Public Prosecutors Office] may also appoint a representative to the ECRIS-TCN system 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 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 Internet site.***

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

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 ~~best possible~~ **necessary** conditions to ensure the proper functioning of the Agency, including 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 Regulation No 1⁵⁶ 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) ~~(q)~~ **(q)** and (s) of this Regulation, shall be produced in all official languages of the institutions of the Union.
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 the Management Board shall adopt rules concerning access to the Agency's documents, in accordance with Regulation (EC) No 1049/2001.~~
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)~~ **(q)**, (s), (ii), (jj), ~~{(kk)}~~, ~~{(ll)}~~, ~~{(mm)}~~ 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. ~~He or she~~ **The person concerned** shall have the right to receive an answer in the same language.

⁵⁶ Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community, OJ P 17, 6.10.1958, p. 385

Article 31
Data protection

1. 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, the processing of personal data by the Agency shall be subject to Regulation (EC) No 45/2001 [Regulation (EU) XX/2018 on the protection of *individuals with regard to the processing of personal data for by the Union institutions, and 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 [Regulation (EU) XX/2018 on the protection of *individuals with regard to the processing of personal data for by the Union institutions, and 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 performing* 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. *Without prejudice to the application of Regulation (EC) No 45/2001 [Regulation (EU) XX/2018 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],* where the Agency processes personal data for the purpose referred to in paragraph 1(a), 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 shall apply.

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) 2015/443⁵⁷ and 2015/444⁵⁸. 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 ~~Council Decision 2013/488/EU~~ and 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.

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.

⁵⁷ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 4).

⁵⁸ 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 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 assess the Agency's performance in relation to its objectives, mandate, tasks and locations in accordance with the Commission's guidelines. The evaluation shall also assess the contribution of the Agency to the establishment of a coordinated, cost-effective and coherent IT environment at Union level for the management of large scale IT systems supporting the implementation of Justice and Home Affairs (JHA) policies. 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 changes 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 European Parliament, the Council, and the Management Board on the evaluation findings. The findings of the evaluation shall be made public.

Article 36
Administrative enquiries inquiries

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

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.
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 security, where appropriate.
4. Cooperation with Union bodies, offices and agencies shall take place within the framework of working arrangements. Such arrangements shall have received the Commission's prior approval **and be authorised by the Management Board**. 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 ~~of~~ **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 ~~third~~ countries that have entered into ~~association~~ agreements with the Union **on their association with the implementation, application and development of the Schengen acquis and with Dublin and Eurodac-related measures** ~~to this effect~~.
2. Under the relevant provisions of the ~~association~~ agreements referred to in paragraph 1, arrangements shall be made specifying, in particular, the nature, extent ~~and manner of~~, and the detailed rules for, the participation by countries associated with the implementation, application and development of the Schengen *acquis* **and with Dublin** and Eurodac-related measures in the work of the Agency, including provisions on financial contributions, staff and voting rights.

Article 38a

Cooperation with relevant authorities of third countries

1. ***Where so provided by a Union act, in matters covered by its activities and to the extent related to the fulfilment of its tasks, the Agency may establish and maintain cooperative relations with the relevant authorities of third 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. They shall not be binding on the Union or on its Member States.***

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 ~~containing multiannual and annual programming~~ 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 European 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 ~~and the Union's~~, 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 European Parliament, the Council and the Commission and is published. ~~Before 30 November each year, and taking into account the opinion of the Commission, 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 and the Union legislative programme in areas under Articles 67 to 89 TFEU, the single programming document for the following years and ensure that the adopted programming document is transmitted to the European Parliament, the Council and the Commission and 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 European 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 ~~an~~ **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 European 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. 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 2 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 ~~revenue~~ **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 arrangement 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;
 - (e) 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 ~~Agency~~ **Executive Director** shall send a report on the budgetary and financial management for year N to the European 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 of the European Parliament and of the Council, 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 European 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 European 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.

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 shall apply.
2. The Agency shall accede to the Inter-institutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-fraud Office (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 2185/96⁵⁹.
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 and OLAF to conduct such audits and investigations, according to their respective competences.

⁵⁹ 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) [or to Regulation XX of XX on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) 1987/2006]

In Regulation (EC) No 1987/2006 [or in Regulation XX of XX on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) 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 Council Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II) [or to Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation **and judicial cooperation** in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU]*

*In Council Decision 2007/533/JHA [or, in Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation **and judicial cooperation** in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU], 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) 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) 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~~ *the Agency* appointed on the basis of Article 18 of Regulation (EU) No 1077/2011 shall, for the remaining term of his office, be assigned to the responsibilities of the Executive Director, as provided for in Article 21 of this Regulation.

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, R*ferences 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 be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament

The President

For the Council

The President