



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 12 October 2012**

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**Interinstitutional File:  
2010/0275 (COD)**

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**14865/12**

**LIMITE**

**TELECOM 180  
MI 622  
DATAPROTECT 117  
JAI 693  
CAB 25  
INST 579  
CODEC 2370**

**NOTE**

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from: PRESIDENCY  
to : COREPER  
No. Cion prop.: 14358/10 TELECOM 99 MI 346 DATAPROTECT 70 JAI 794 CAB 16 INST 361  
CODEC 943  
No prev. doc. 14694/12 TELECOM 177 MI 609 DATAPROTECT 115 JAI 677 CAB 24 INST  
573 CODEC 2322

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Subject: Proposal for a Regulation of the European Parliament and of the Council  
concerning the European Network and Information Security Agency (ENISA)  
*- Preparations for the informal dialogues with the European Parliament*

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1. On 17 October, the Cyprus Presidency will seek the agreement from the Coreper to start the negotiations with the European Parliament with the aim to reach a first-reading agreement on the above mentioned proposal (hereinafter: ENISA proposal). The existing ENISA Regulation will expire by 13 September 2013, by which time the current proposal should have entered into force. The first trialogue is scheduled to take place on 23 October in Strasbourg.

2. On 6 February 2012, the European Parliament's Committee on Industry, Research and Energy (ITRE) provisionally adopted amendments on the draft Regulation.<sup>1</sup> In an informal meeting with the Presidency and the Commission on 25 September, Rapporteur Mr. Chichester informed that the Parliament had taken the decision not to proceed with a final, first-reading vote in plenary but rather to seek to conclude the file with the Council at first-reading.
3. Following Ministerial exchanges of views on the basis of progress reports at the TTE Councils of 3 December 2010<sup>2</sup> and of 27 May 2011<sup>3</sup>, the Council considered a third progress report as well as an updated Presidency text on the draft Regulation on 13 December 2011.<sup>4</sup> At the beginning of its term in office and with the aim to assess the level of support for ITRE's amendments, the Cyprus Presidency put together a four-column document<sup>5</sup> and consulted Member States on their positions and/or suggestions for compromises on the various provisions. At the WP TELE meeting of 11 September, there was general support from the delegations for the Presidency's summary of the replies to the consultation<sup>6</sup>, which was also communicated to Parliament's Rapporteur on 17 September.
4. In parallel to the examination of the proposal in the Parliament and the Council and in order to contribute to the efficiency of the operations of ENISA, negotiations took place between the Greek authorities and the European Commission on the establishment of a branch office of ENISA in Athens, an outcome on which was identified by the Parliament as a *sine qua non* for first-reading negotiations with the Council. The Commission and the Greek authorities announced at the WP TELE meeting of 27 September that an exchange of verbal notes between the Greek authorities and ENISA had taken place on 26 September to the effect that the Greek authorities shall provide ENISA with appropriate office space for its branch office in the metropolitan area of Athens by the end of 2012.

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<sup>1</sup> Available at:  
<http://www.europarl.europa.eu/document/activities/cont/201202/20120215ATT38139/20120215ATT38139EN.pdf>

<sup>2</sup> Doc. 16835/10.

<sup>3</sup> Doc. 10296/11.

<sup>4</sup> Doc. 18156/11.

<sup>5</sup> Doc. 11330/12. In this document are reflected: the Commission's original proposal, the Parliament's amendments as voted in ITRE on 6 February and the Council's position as established at the TTE Council of 13 December 2011.

<sup>6</sup> Doc. 1587/12.

5. Before setting out the general positions the Presidency proposes to take in the forthcoming informal trialogues, it is worthwhile recalling a number of principles with regard to the ENISA proposal, which delegations generally appear to share:

- Since its creation in 2004, ENISA has made a significant contribution to network and information security in Europe and, in view of rapid developments in this area and the ever increasing need for cooperation and coordination of actions at pan-European and international level, there is an urgent need to extend and update the agency's mandate.
- The updating of the agency's mandate should as far as possible take into account the recently agreed Common Approach on decentralised agencies, which provide the European Parliament, the Council and the Commission with legally non-binding orientations in all their future decisions on EU decentralised agencies, in particular on the role and position of agencies, their structure and governance, their operation, the programming of activities and resources, and accountability, controls and transparency, role of the host country and relations with stakeholders.<sup>7</sup>
- Duplication or overlap with the activities of other relevant Union bodies, which have a bearing on network and information security, should be avoided although close co-ordination and co-operation with such bodies should be catered for.
- As network and information security also relates to wider national security policies, for which the Member States bear sole responsibility, ENISA's mandate should, on the one hand, provide it with the opportunity to be pro-active in pursuing its mission while, on the other hand, fully respecting the Member States' competence in this area.

With the above mentioned principles in mind and further to the discussions in the WP TELE on the Commission's proposal and on ITRE's amendments, the Presidency proposes to take the following preliminary positions in the first dialogue:

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<sup>7</sup> Doc. 11450/12.

- i. With regard to the scope, objectives and tasks (articles 1-3), and following a request by the Parliament's Rapporteur to deal with these articles at the outset of the negotiations, the Presidency has put together compromise text with the aim to bridge the positions of the Parliament and the Council. This compromise text was discussed at the meeting of the WP TELE on 11 October. The purpose of the compromise text is to find the right balance between being sufficiently detailed regarding ENISA's (new) tasks while maintaining a certain level of flexibility in the fast moving sector of network and information security. At the same time, the compromise text seeks to better structure and clarify the various tasks. Article 3 now also includes tasks with regard to *Computer Emergency and Response Teams* (CERTs) and concerning *capability-building*, which are both areas mentioned in ITRE's amendments. For easy reference and because of the fact that a one-to-one comparison with the Commission's original proposal and/or with ITRE's amendments is editorially not possible, the text of the Presidency's compromise proposals for articles 1-3 is given in full in ANNEX 1.
- ii. With regard to the organisation of the agency (articles 4-11 on the *management board, meetings, voting, executive director, permanent stakeholder's group*), the Presidency proposes to maintain the Council's preliminary position established at the TTE Councils in May and December 2011, possibly subject to an assessment of these articles against the Common Approach on decentralised agencies. This means, *inter alia*, that the suggestion by Parliament's ITRE committee to establish an Executive Board in addition to the Management Board has not been taken on board as delegations continue to argue that adding a further layer of bureaucracy in ENISA could be counterproductive in terms of administrative efficiency and transparency.
- iii. Concerning the operation of the agency (articles 12- 18 on the *work programme, general report, requests to the agency, declaration of interests, transparency, confidentiality and access to documents*), here again the Presidency proposes to take the Council's preliminary position established at the TTE Councils in May and December 2011 as a basis for the discussions with the Parliament at this stage.

- iv. The Council's preliminary position established at the TTE Councils in May and December 2011 shall also be the basis to start talks with the Parliament on the *financial provisions* (articles 19- 21 on *adoption of the budget, combating fraud and implementation of the budget*). In this context it should be noted that, pending an agreement on the Multiannual Financial Framework (MFF), the Commission's original proposal only anticipates a "gradual increase of the financial and human resources of the agency" and announces the submission of an "amended Legislative Financial Statement". The Council would welcome to receive from the Commission such Statement as a matter of urgency in order to be able to assess with the Parliament to which extent an increase in ENISA's tasks and staff are feasible.
- v. Regarding the *general provisions* in the ENISA proposal (articles 22-28 on *legal status, staff, privileges and immunities, liability, languages, protection of personal data and participation of third countries*) and the *final provisions* (articles 29-34 on *review clause, cooperation of the host member state, administrative control, repeal and succession, duration and entry into force*), the Presidency proposes to consider these articles further, on the basis of the Council's preliminary position of May and December 2011, with the Parliament and the Commission, in the light of the Common Approach on decentralised agencies.

The Presidency intends to come back to the Coreper with a proposed position to take on articles 22 (*legal status*) 30 (*cooperation of the member state*) and 33 *duration* in particular, closer towards the third triologue, planned to take place at the beginning of December .

6. The preliminary positions on the ENISA proposal, as established in the European Parliament and in the Council and as given in the respective second and third columns of the attached 4-column document (ANNEX 2), as well as preliminary contacts between Parliament's Rapporteur and the Presidency, appear to indicate that the co-legislators share the objective to renew the mandate for ENISA and, in view of past and future developments in the network and information security sector, to update it, particularly with regard to ENISA's tasks.

In ANNEX 2 and in the 4th-column, the Presidency has indicated to which extent ITRE's amendments could be acceptable or not.

7. The Presidency seeks the agreement from the Coreper to start the negotiations with the Parliament on the basis of the general positions set out above as well as in ANNEXES 1 and 2, which were unanimously endorsed by the delegations in the WP TELE at its meeting on 11 October. The Presidency intends to inform the Coreper on the outcome of the first trialogue on 24 October.

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DRAFT

Presidency Compromise Proposals for articles 1-3 of the

Proposal for Regulation of the European Parliament and of the Council concerning the  
European Network and Information Security Agency (ENISA)

*Article 1*

**Subject matter and Scope**

1. This Regulation establishes a European Network and Information Security Agency (hereinafter "the Agency") to undertake the tasks assigned to it for the purpose of contributing to a high level of network and information security within the Union and in order to raise awareness and develop and promote a culture of network and information security in society for the benefit of the citizens, consumers, enterprises and public sector organisation in the Union, thus contributing to the establishment and smooth functioning of the internal market.
2. The objectives and the tasks of the Agency shall be without prejudice to the competencies of the Member States regarding network and information security and in any case to activities concerning public security, defence, State security (including the economic well-being of the State when the issues relate to State security matters) and the activities of the State in areas of criminal law.
3. For the purposes of this Regulation "network and information security" shall mean the ability of a network or an information system to resist, at a given level of confidence, accidental events or unlawful or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted data and the related services offered by or accessible via these networks and systems.

## *Article 2*

### **Objectives**

1. The Agency shall develop and maintain a high level of expertise.
2. The Agency shall assist the Union's institutions in developing the relevant policies in network and information security.
3. The Agency shall assist the Member States to implement the policies necessary to meet the legal and regulatory requirements of network and information security in present and future Union legislation, thus contributing to the smooth functioning of the internal market.
4. The Agency shall assist in enhancing and strengthening the capability and preparedness of the Union and of the Member States to prevent, detect and respond to network and information security problems and incidents.
5. The Agency shall use its expertise to stimulate broad cooperation between actors from the public and private-sectors.

## *Article 3*

### **Tasks**

1. Within the purpose set out in Article 1, the Agency shall perform the following tasks:
  - a. Support the development of Union policy and legislation, by:
    - i. Assisting and advising the Union institutions and relevant Union bodies at their request or on its own initiative, and the Member States and relevant Member State bodies at their request, on all matters related to Union network and information security policy and legislation;
    - ii. Providing preparatory work, advice and analyses related to the development or update of Union network and information security policy and legislation;

- b. Support capability building by the Member States and Union institutions and bodies, by:
- i. Supporting Member States, at their request, in their efforts to develop and improve network and information security prevention, detection, analysis and response capability, and providing them with the necessary knowledge, if requested;
  - ii. Promoting and facilitating voluntary cooperation among the Member States and between the Member States and the Union's institutions in their efforts to prevent, detect and respond to network and information security problems and incidents where these have an impact across borders;
  - iii. Assisting the Union's institutions and bodies set up by Union law in their efforts to develop network and information security prevention, detection, analysis and response capability, in particular by supporting the operation of a Computer Emergency Response Team (CERT) for the Union's institutions, bodies and agencies and supporting the raising of the level of capabilities of national and governmental CERTs, including by promoting dialogue and exchange of information;
  - iv. Supporting the organisation and running of Union network and information security exercises, and, at their request, advising Member States on national exercises;
  - v. Assisting the Member States and the Union's institutions and bodies set up by Union law in their efforts to collect, analyse and, in line with Member States' security requirements, disseminate relevant network and information security data; and on the basis of information provided by the Member States and the Union's institutions in accordance with the Union provisions and national provisions in compliance with Union law, maintaining awareness of the latest state of network and information security in the Union for the benefit of the Member States and the Union's institutions;
  - vi. Supporting the development of a European early warning mechanism that is complementary to Member States' mechanisms;
  - vii. Offering network and information security training for relevant public bodies, where appropriate in cooperation with stakeholders.

- c. Support voluntary co-operation among competent public bodies, and between public and private stakeholders including universities and research centres in the Union, inter alia, by:
  - i. Promoting cooperation between national and governmental CERTs or Computer Security Incident Response Teams (CSIRTs), including the CERT for the Union institutions, bodies and agencies;
  - ii. Promoting the development and sharing of best practice with the aim to arrive at an advanced level of network and information security;
  - iii. Facilitating dialogue and efforts to develop and exchange good practices;
  - iv. Promoting best practice in information sharing and awareness raising;
  - v. Supporting the Member States, at their request, and the Union's Institutions to organise awareness raising and other outreach activities to increase network and information security and its visibility.
  
- d. Support research and development and standardisation, by:
  - i. Facilitating the establishment and take up of European and international standards for risk management and for the security of electronic products, networks and services;
  - ii. Advising the Union and, at their request, the Member States on research needs in the area of network and information security with a view to enabling effective responses to current and emerging network and information security risks and threats and to using risk prevention technologies effectively.
  
- e. Cooperate with bodies set up by Union law, including those dealing with cybercrime and the protection of privacy and personal data, to address issues of common concern, including by:
  - i. Exchanging know-how and best practice;
  - ii. Providing advice on relevant network and information security aspects in order to develop synergies.

- f. Contribute to the Union efforts to cooperate with third countries and international organisations to promote international cooperation on network and information security issues, including by:
- i. Being engaged, where appropriate, as an observer and in the organisation of international exercises, and reporting on the outcome of such exercises;
  - ii. Facilitating exchange of best practices of relevant organisations.
2. The Agency shall carry out tasks conferred on it by Union legislative acts.
3. The Agency shall express independently its own conclusions, orientations and advice on matters within the scope and objectives of this Regulation.
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**Proposal for a**  
**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**Concerning the European Network and Information Security Agency (ENISA)**

HAVE ADOPTED THIS REGULATION:

<b>COMMISSION PROPOSAL</b>	<b>ITRE OPINION</b>	<b>PRELIMINARY COUNCIL POSITION</b>	<b>POSSIBLE COMPROMISE SOLUTION</b>
	According to doc. A7-0000/2012: this is an unofficial document, which will not be translated, and which reflects the amendments adopted at the ITRE vote on 6 February 2012. The vote included a mandate for the Rapporteur and Shadows, in consultation with the ITRE Chair, to enter into negotiations with Council and Commission in view of a possible agreement on the file.	Doc. 18156/11: the text in this column comes from the Presidency compromise proposal for the Regulation, which was attached to the Presidency's progress report on the file, which the Council took note of at its meeting on 13 December 2011.	

**SECTION 1: SCOPE, OBJECTIVES AND TASKS**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
<p>Article 1 <i>Subject matter and Scope</i></p>	<p>Article 1 <i>Subject matter and Scope</i></p>	<p>Article 1 <i>Subject matter and Scope</i></p>	
<p>1. This Regulation establishes a European Network and Information Security Agency (hereinafter ‘the Agency’) for the purpose of contributing to a high level of network and information security within the Union and in order to raise awareness and develop a culture of network and information security in society for the benefit of the citizens, consumers, enterprises and public sector organisations in the Union, thus contributing to the smooth functioning of the internal market.</p>	<p>1. This Regulation establishes a <b>Union</b> Network and Information Security Agency (hereinafter ‘the Agency’) <b>to undertake the tasks assigned to it</b> for the purpose of contributing to a high level of network and information security within the Union and in order to raise awareness and develop <b>and promote</b> a culture of network and information security in society for the benefit of the citizens, consumers, enterprises and public sector organisations in the Union, thus contributing to the <b>establishment and</b> smooth functioning of <b>a digital</b> internal market.</p>	<p>[no change]</p>	<p>See ANNEX 1 for a PRES compromise proposal for articles 1-3</p>

**Art.1: Subject matter and scope**

	<i>1a. The Agency shall develop and maintain a high level of expertise in order to establish itself globally as a centre of excellence on all matters concerning network and information security.</i>		
	<i>1b. The Agency shall support the Commission, the other Union institutions, the Member States and industry, in particular SMEs, in meeting the requirements of network and information security in existing and future Union legislation, thus contributing to the smooth functioning of the digital internal market.</i>		
	<i>1c. The Agency shall assist in enhancing and strengthening the capability and preparedness of the Member States and of the Union to prevent, detect and respond to network and information security problems and incidents.</i>		

**Art.1: Subject matter and scope**

	<i>Id. The Agency shall use its expertise to stimulate broad cooperation between public and private actors.</i>		
	<i>Ie. The Agency shall be a Union point of contact for third countries and international organisations on issues falling within the Agency's tasks.</i>		
2. The objectives and the tasks of the Agency shall be without prejudice to the competencies of the Member States regarding network and information security and in any case to activities concerning public security, defence, State security (including the economic well-being of the State when the issues relate to State security matters) and the activities of the State in areas of criminal law.	<i>[no change]</i>	<i>[no change]</i>	See ANNEX 1 for a PRES compromise proposal for articles 1-3

**Art.1: Subject matter and scope**

<p>3. For the purposes of this Regulation “<i>network and information security</i>” shall mean the ability of a network or an information system to resist, at a given level of confidence, accidental events or unlawful or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted data and the related services offered by or accessible via these networks and systems.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p>See ANNEX 1 for a PRES compromise proposal for articles 1-3</p>
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**Art.2: Objectives**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
Article 2 <i>Objectives</i>	Article 2 <i>Objectives</i>	Article 2 <i>Objectives</i>	
		<b>0.a.. The Agency shall develop and maintain a high level of expertise.</b>	
		<b>0.b. The Agency shall assist the Union's institutions to develop the necessary policies in network and information security.</b>	
1. The Agency shall assist the Commission and the Member States to meet the legal and regulatory requirements of network and information security in present and future Union legislation, thus contributing to the smooth functioning of the internal market.	<del>1. The Agency shall assist the Commission and the Member States to meet the legal and regulatory requirements of network and information security in present and future Union legislation, thus contributing to the smooth functioning of the internal market.</del>	1. The Agency shall assist the Commission and the Member States to <b>implement the policies necessary to</b> meet the legal and regulatory requirements of network and information security in present and future Union legislation, thus contributing to the smooth functioning of the internal market.	See ANNEX 1 for a PRES compromise proposal for articles 1-3

**Art.2: Objectives**

<p>2. The Agency shall enhance the capability and preparedness of the Union and of Member States to prevent, detect and respond to network and information security problems and incidents.</p>	<p><del>2. The Agency shall enhance the capability and preparedness of the Union and of Member States to prevent, detect and respond to network and information security problems and incidents.</del></p>	<p>2. The Agency shall <b>assist in enhancing and strengthening</b> the capability and preparedness of the Union and of Member States to prevent, detect and respond to network and information security problems and incidents.</p>	<p>See ANNEX 1 for a PRES compromise proposal for articles 1-3</p>
<p>3. The Agency shall develop and maintain a high level of expertise and shall use this expertise to stimulate broad cooperation between public and private-sector actors.</p>	<p><del>3. The Agency shall develop and maintain a high level of expertise and shall use this expertise to stimulate broad cooperation between public and private-sector actors.</del></p>	<p>3. The Agency shall <del>develop and maintain a high level of expertise and</del> shall use <del>this</del> <b>its</b> expertise to stimulate broad cooperation between <b>actors from the</b> public and private-sectors actors.</p>	<p>See ANNEX 1 for a PRES compromise proposal for articles 1-3</p>

**Art.3: Tasks**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
Article 3 <i>Tasks</i>	Article 3 <i>Tasks</i>	Article 3 <i>Tasks</i>	
1. Within the purpose set out in Article 1, the Agency shall perform the following tasks:	1. Within the purpose <b>and for the objectives</b> set out in Article 1, the Agency shall perform the following tasks:	[no change]	See ANNEX 1 for a PRES compromise proposal for articles 1-3
(a) Assist the Commission, at its request or on its own initiative, on network and information security policy development by providing it with advice and opinions and with technical and socio-economic analyses, and with preparatory work for developing and updating Union legislation in the field of network and information security;	(a) Assist <b>and advise</b> the <b>Union institutions, the Member States and relevant Union and Member State bodies</b> , at <b>their</b> request or on its own initiative, <b>regarding</b> :	(a) Assist the Commission, at its request or on its own initiative, on <b>all matters related to</b> network and information security policy <del>development</del> by providing it with advice and opinions <del>and with technical and socio-economic analyses</del> , and with preparatory work for developing and updating Union legislation in the field of network and information security;	See ANNEX 1 for a PRES compromise proposal for articles 1-3
	- <b>all matters relating to</b> network and information security policy;		
	- <b>the collection, analysis, sharing and dissemination of network and information security data;</b>		

**Art.3: Tasks**

	<i>- the development and improvement of network and information security detection, analysis and response capability, including on site if requested;</i>		
	<i>- the organisation and running of Union exercises, and, at the request of a Member State, national exercises, covering areas such as preparedness and resilience;</i>		
	<i>- identifying and promoting risk-prevention behaviours and technologies;</i>		
	<i>- defining research needs in the area of network and information security with a view to enabling effective responses to current and emerging network and information security risks and threats;</i>		
	<i>- the use of risk management and security good practice and network and information security standards for electronic products, systems, networks, software and services;</i>		

**Art.3: Tasks**

<p>(b) Facilitate the cooperation among the Member States and between the Member States and the Commission in their efforts with a cross-border dimension to prevent, detect and respond to network and information security incidents;</p>	<p>(b) <i>Promote and facilitate close cooperation and exchange of good practice among the Union institutions, the Member States and relevant Union and Member State bodies, as well as</i> between stakeholders on the Union level, regarding:</p>	<p>(b) Facilitate the cooperation among the Member States and between the Member States and the <b>Union's Institutions Commission</b>—in their efforts <del>with a cross border dimension</del> to prevent, detect and respond to network and information security <b>problems and incidents where these have an impact across borders;</b></p>	<p>See ANNEX 1 for a PRES compromise proposal for articles 1-3</p>
	<p>- <i>their efforts to prevent, detect and respond to network and information security incidents with a cross-border dimension;</i></p>		
	<p>- <i>development and take-up of practices and standards concerning risk management, network and information security and the security, including by way of design, of electronic products, systems, networks, software and services;</i></p>		
	<p>- <i>information sharing and awareness raising;</i></p>		

**Art.3: Tasks**

	<p><i>- network and information security, including aspects of the fight against cybercrime, in which area the Agency shall in particular establish cooperation with Union bodies such as Europol;</i></p>		
<p>(c) Assist the Member States and the European institutions and bodies in their efforts to collect, analyse and disseminate network and information security data;</p>	<p>(c) Assist the Member States in <i>raising the awareness of end-users in matters relating to network and information security, the fight against cybercrime and protection of privacy and personal data, including in producing standardised public interest information as provided for in Article 21(4) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)</i><sup>8</sup>, and also by assisting in the development of such information to be included with the supply of new devices intended for use on public communications networks;</p>	<p><del>(c) Assist the Member States and the European institutions and bodies in their efforts to collect, analyse and disseminate network and information security data;</del></p> <p>(c) Advice the Union and, at their request, the Member States on research needs in the area of network and information security with a view to enabling effective responses to current and emerging network and information security risks and threats and to using risk prevention technologies effectively;</p>	<p>See ANNEX 1 for a PRES compromise proposal for articles 1-3</p>

<sup>8</sup> OJ L 108, 24.4.2002, p.51.

**Art.3: Tasks**

<p>(d) Regularly assess, in cooperation with the Member States and the European institutions, the state of network and information security in Europe;</p>	<p>(d) <b><i>In</i></b> cooperation with <b><i>the Commission, other relevant Union institutions, the Member States and relevant Union and Member State bodies, including those dealing with cybercrime and data protection:</i></b></p>	<p><del>(d) Regularly assess, in cooperation with the Member States and the European institutions, the state of network and information security in Europe;</del></p> <p><b>(d) Support Member States, at their request, in their efforts to develop and improve network and information security prevention, detection, analysis and response capability, to organize and run national and European network and information security exercises;</b></p>	<p>See ANNEX 1 for a PRES compromise proposal for articles 1-3</p>
	<p><b><i>- define common minimum cybersecurity certifications, norms of behaviour and cooperation practices between and among national and Union CERTs;</i></b></p>		
	<p><b><i>- define compatible cyber-security measures for networks and infrastructures;</i></b></p>		

**Art.3: Tasks**

	- <i>liaise, advise and exchange know-how and best practices on network and information security aspects that might have an impact on their work, with the aim of achieving a mutual strengthening of their and the Agency's efforts to promote improved network and information security;</i>		
	- <i>coordinate the establishment of a Union point-of-contact directory, taking due account of confidentiality aspects;</i>		
	- <i>regularly assess</i> the state of network and information security in Europe;		
(e) Support cooperation among competent public bodies in Europe, in particular supporting their efforts to develop and exchange good practices and standards;	(e) <i>Assist the Commission:</i>	<del>(e) Support cooperation among competent public bodies in Europe, in particular supporting their efforts to develop and exchange good practices and standards;</del>  <b>(e) Support and promote voluntary co-operation between relevant organizations e.g. CSIRTs/CERTs and continually develop and regularly share best practices in their co-operation with the aim to arrive at an advanced level of network and information security;</b>	See ANNEX 1 for a PRES compromise proposal for articles 1-3

**Art.3: Tasks**

	<i>- on policy developments that take into account network and information security aspects of the fight against cybercrime;</i>		
	<i>- by preparing a comprehensive Union strategy on network and information security, inter alia by presenting a comprehensive analysis for that purpose, following necessary consultations with all stakeholders;</i>		
	<i>- by providing advice on an action plan to implement the comprehensive Union strategy;</i>		
	<i>- by providing preparatory work for developing and updating Union legislation in the field of network and information security, including with respect to the protection of personal data and privacy;</i>		

**Art.3: Tasks**

<p>(f) Assist the Union and the Member States in promoting the use of risk management and security good practice and standards for electronic products, systems and services;</p>	<p><del>(f) Assist the Union and the Member States in promoting the use of risk management and security good practice and standards for electronic products, systems and services;</del></p>	<p><del>(f) Assist the Union and the Member States in promoting the use of risk management and security good practice and standards for electronic products, systems and services;</del></p> <p><b>(f) Support the Member States, at their request, and the Union's Institutions to organise awareness raising and other outreach activities to increase network and information security and its visibility;</b></p>	<p>See ANNEX 1 for a PRES compromise proposal for articles 1-3</p>
<p>(g) Support cooperation between public and private stakeholders on the Union level, inter alia, by promoting information sharing and awareness raising, and facilitating their efforts to develop and take up standards for risk management and for the security of electronic products, networks and services;</p>	<p><del>(g) Support cooperation between public and private stakeholders on the Union level, inter alia, by promoting information sharing and awareness raising, and facilitating their efforts to develop and take up standards for risk management and for the security of electronic products, networks and services;</del></p>	<p><del>(g) Support cooperation between public and private stakeholders on the Union level, inter alia, by promoting information sharing and awareness raising, and facilitating their efforts to develop and take up standards for risk management and for the security of electronic products, networks and services;</del></p> <p><b>(g) Assist the Member States and the Union's institutions and bodies set up by Union law in their efforts to collect, analyse and disseminate network and information security data;</b></p>	<p>See ANNEX 1 for a PRES compromise proposal for articles 1-3</p>

**Art.3: Tasks**

<p>(h) Facilitate dialogue and exchange of good practice among public and private stakeholders on network and information security, including aspects of the fight against cybercrime; assist the Commission on policy developments that take into account network and information security aspects of the fight against cybercrime;</p>	<p><del>(h) Facilitate dialogue and exchange of good practice among public and private stakeholders on network and information security, including aspects of the fight against cybercrime; assist the Commission on policy developments that take into account network and information security aspects of the fight against cybercrime;</del></p>	<p><del>(h) Facilitate dialogue and exchange of good practice among public and private stakeholders on network and information security, including aspects of the fight against cybercrime; assist the Commission on policy developments that take into account network and information security aspects of the fight against cybercrime;</del></p> <p><b>(h) On the basis of information provided by the Member States and the Union's Institutions in accordance with the Union provisions and national provisions in compliance with the Union law, maintain awareness of the latest state of network and information security in the Union for the benefit of the Member States and the Union's Institutions;</b></p>	<p>See ANNEX 1 for a PRES compromise proposal for articles 1-3</p>
<p>(i) Assist the Member States and the European institutions and bodies, at their request, in their efforts to develop network and information security detection, analysis and response capability;</p>	<p><del>(i) Assist the Member States and the European institutions and bodies, at their request, in their efforts to develop network and information security detection, analysis and response capability;</del></p>	<p><del>(i) Assist the Member States and the European Union's institutions and bodies set up by Union law, at their request, in their efforts to develop network and information security prevention, detection, analysis and response capability;</del></p>	<p>See ANNEX 1 for a PRES compromise proposal for articles 1-3</p>

**Art.3: Tasks**

<p>(j) Support Union dialogue and cooperation with third countries and international organisations in cooperation where appropriate with the EEAS, to promote international cooperation and a global common approach to network and information security issues;</p>	<p><del>(j) Support Union dialogue and cooperation with third countries and international organisations in cooperation where appropriate with the EEAS, to promote international cooperation and a global common approach to network and information security issues;</del></p>	<p><del>(j) Support Union dialogue and cooperation with third countries and international organisations in cooperation where appropriate with the EEAS, to promote international cooperation and a global common approach to network and information security issues;</del></p> <p><b>(j) Contribute to the Union efforts to cooperate with third countries and international organisations, where appropriate with the EEAS, to promote international cooperation and a global common approach to network and information security issues for instance by supporting cooperation with the relevant organisations e.g. CSIRTs/CERTs and promoting involvement in international network and information security exercises;</b></p>	<p>See ANNEX 1 for a PRES compromise proposal for articles 1-3</p>
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**Art.3: Tasks**

		<p><b>(j-0 new) Liaise, exchange know how and best practices with bodies set up by Union law, including those dealing with cybercrime and data protection, and provide advice on network and information security aspects that might have an impact on their work aiming to deliver synergy between their efforts and the Agency's efforts to promote improved network and information security;</b></p>	
		<p><b>(j-1 new) Support and promote cooperation among the competent public bodies and between public and private stakeholders, including universities and research centres in the Union, inter alia, facilitate dialogue and efforts to develop and exchange good practices, promote information sharing and awareness raising, facilitate the establishment and take up of European and international standards for risk management and for the security of electronic products, networks and services;</b></p>	

**Art.3: Tasks**

		(j-m new) Provide Member States, at their request, with the necessary knowledge and other resources available to strengthen their network and information security capability;	
		(j-n new) Express independently its own conclusions, orientations and give advice on matters within the scope and objectives of this Regulation.	
(k) Carry out tasks conferred on the Agency by Union legislative acts.	<del>(k) Carry out tasks conferred on the Agency by Union legislative acts.</del>	<del>(k) Carry out tasks conferred on the Agency by Union legislative acts.</del>	See ANNEX 1 for a PRES compromise proposal for articles 1-3
	<b>2. The Agency shall furthermore:</b>	<b>2. The Agency shall carry out tasks conferred on it by Union legislative acts.</b>	
	<i>- be engaged in international exercises, analyse the outcome of such exercises and recommend steps to be taken by Member States and at Union level;</i>		
	<i>- in the event of a serious cyber-threat, and at the request of a Member State or a Union institution or body, assist it in operational tasks for securing the affected network, infrastructure or data;</i>		

**Art.3: Tasks**

	<p><i>- assist in coordinating, in consultation with the Commission and other relevant Member State and Union bodies, responses to breaches of applicable civil law affecting several Member States;</i></p>		
	<p><i>- support, through offering its expertise and advice, Union dialogue and cooperation with third countries and international organisations, in cooperation, where appropriate, with the relevant Union institutions or bodies, in order to promote a global common approach to network and information security issues;</i></p>		
	<p><i>- carry out tasks conferred on the Agency by Union legislative acts, as well as any ancillary tasks necessary in order to perform the tasks referred to in paragraphs 1 to 2 or in other Union legislative acts.</i></p>		

**Art.3: Tasks**

	<p><i>3. The Agency may act on its own initiative within the scope and objectives of this Regulation, including where such action is not specifically provided for. Where a Member State has requested the Agency to act, the Agency shall make recommendations and the Member State shall inform the Agency of whether and how its recommendations have been taken into account.</i></p>		
	<p><i>4. The Member States and Union institutions shall regularly inform the Agency of the main components of their network and information security activities.</i></p>		

**Art.3a (new): CERTs**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
	Article 3a <sup>9</sup> <i>Computer Emergency and Response Teams (CERTs)</i>		Partially acceptable; relevant text included in article 3
	<i>1. The Agency shall support the establishment and the functioning of a full-scale European Union Computer Emergency Response Team (EU CERT), in order to counter cyber attacks against the Union institutions, bodies and agencies.</i>		

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<sup>9</sup> CA 1

	<p><i>2. The Agency shall support all CERTs (Member State CERTs and the EU CERT) and the establishment and operation of a network of CERTs, including the members of the European Governmental CERTs Group, and promote cooperation between the CERTs. To assist in ensuring that each of the CERTs has sufficiently advanced capabilities and that those capabilities correspond as far as possible to the capabilities of the most advanced CERTs, the Agency shall assist in benchmarking of the teams and shall promote dialogue and exchange of information and best practices between them and the European Governmental CERTs Group. The Agency shall promote and support cooperation between the relevant CERTs in the event of incidents, attacks or disruptions on networks or infrastructure managed or protected by them and involving or potentially involving at least two of them.</i></p>		
	<p><i>3. The Agency shall facilitate contacts and exchanges of information and best practices with Member State CERTs and relevant CERTs, groups and fora in third countries.</i></p>		

**Art.3b (new): Capability-building**

<b>COMMISSION PROPOSAL</b>	<b>ITRE OPINION</b>	<b>PRELIMINARY COUNCIL POSITION</b>	<b>POSSIBLE COMPROMISE SOLUTION</b>
	Article 3b <sup>10</sup> <i>Capability-building</i>		Partially acceptable; relevant text included in article 3
	<i>The Agency shall support capability-building by the Member States and Union institutions and bodies. It shall:</i>		
	<i>(a) offer network and information security training, including to Member State officials engaged in the fight against cybercrime, if appropriate in cooperation with stakeholders, in fields including network, information and application security, forensics and audit;</i>		

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<sup>10</sup> CA 1

	<i>(b) monitor and analyse new and emerging ICT technologies to enable effective responses to, and prevention of, security risks and threats posed by them;</i>		
	<i>(c) develop an early warning and response mechanism of European scope that could function in a complementary way to the Member States' own mechanisms, and enable timely reporting on the state of network and information security in the Union;</i>		

**SECTION 2: ORGANISATION**

<b>COMMISSION PROPOSAL</b>	<b>ITRE OPINION</b>	<b>PRELIMINARY COUNCIL POSITION</b>	<b>POSSIBLE COMPROMISE SOLUTION</b>
Article 4 <i>Bodies of the Agency</i>	Article 4 <i>Bodies of the Agency</i>	Article 4 <i>Bodies of the Agency</i>	
The Agency shall comprise:	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
(a) a Management Board;	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
	<i>(aa) an Executive Board;</i> <sup>11</sup>		Not acceptable
(b) an Executive Director and the staff; and	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
(c) a Permanent Stakeholders' Group.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

<sup>11</sup> AM 57

**Art.5: Management Board**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
<p>Article 5 <i>Management Board</i></p>	<p>Article 5 <i>Management Board</i></p>	<p>Article 5 <i>Management Board</i></p>	
<p>1. The Management Board shall define the general direction of the operation of the Agency and ensure that the Agency works in accordance with the rules and principles laid down in this Regulation. It shall also ensure consistency of the Agency's work with activities conducted by the Member States as well as at Union level.</p>	<p>1. The Management Board shall define the general direction of the operation of the Agency and ensure that the Agency works in accordance with the rules and principles laid down in this Regulation. It shall <b><i>ensure the efficient running of the Agency. It shall</i></b> also ensure consistency of the Agency's work with activities conducted by the Member States as well as at Union level. <b><i>The Management Board shall adopt any administrative arrangements with third countries and approve any other initiatives with an international dimension.</i></b></p>	<p>1. The Management Board shall define the general direction of the operation of the Agency and ensure that the Agency works in accordance with the rules and principles laid down in this Regulation. It shall also ensure consistency of the Agency's work with activities conducted by the Member States as well as <b>by the Union's Institutions and bodies set up by Union law.</b></p>	<p>Not acceptable</p>

**Art.5: Management Board**

<p>2. The Management Board shall adopt its rules of procedure in agreement with the relevant Commission services.</p>	<p>2. The Management Board shall adopt <i>the</i> rules of procedure <i>for itself and for the Executive Board</i> in agreement with the Commission. <i>The rules of procedure shall provide for balanced representation of Management Board members on the Executive Board, taking into account the need to reflect Member State capabilities in the area of network and information security and continuity and efficiency of the Executive Board. The rules of procedure shall allow for expedited decisions through either written procedure or by remote conferencing.</i></p>	<p>2. The Management Board shall adopt its rules of procedure <del>in agreement with</del> <b>after consulting</b> the Commission services. <b>These rules shall be made public.</b></p>	<p>Acceptable subject to further drafting</p>
<p>3. The Management Board shall adopt the Agency's internal rules of operation in agreement with the relevant Commission services. These rules shall be made public.</p>	<p>3. The Management Board shall adopt the Agency's internal rules of operation in agreement with the Commission. These rules shall be made public.</p>	<p>3. The Management Board shall adopt the Agency's internal rules of operation <del>in agreement with</del> <b>after consulting</b> the <del>relevant</del> Commission services. These rules shall be made public.</p>	<p>Acceptable</p>

**Art.5: Management Board**

<p>4. The Management Board shall appoint the Executive Director in accordance with Article 10(2) and may remove the Executive Director. The Management Board shall exercise disciplinary authority over the Executive Director.</p>	<p>4. The Management Board shall appoint the Executive Director <i>after confirmation by the European Parliament</i> in accordance with Article 10(2) and may <i>dismiss</i> the Executive Director. The Management Board shall exercise disciplinary authority over the Executive Director.</p>	<p>4. The Management Board shall appoint the Executive Director in accordance with Article 10(2) and may <del>remove</del> <b>dismiss</b> the Executive Director. <del>The Management Board shall exercise disciplinary authority over the Executive Director.</del></p>	<p>Not acceptable</p>
	<p><i>4a. The Management Board shall be consulted by the Executive Director on the main activities, priorities and objectives that the Agency shall be focusing on for the next year. The first draft of the Agency's work programme shall be based on the result of this consultation.</i></p>	<p><b>4a. The Management Board shall be consulted by the Executive Director on the main activities, priorities and objectives that the Agency shall be focusing on for the next year. The first draft of the Agency's work programme shall be based on the result of this consultation.</b></p>	<p>Acceptable</p>
	<p><i>4b. The Management Board shall decide on the establishment of liaison and branch offices.</i></p>		<p>Not acceptable</p>
<p>5. The Management Board shall adopt the Agency's work programme in accordance with Article 13(3) and the general report on the Agency's activities for the previous year in accordance with Article 14(2).</p>	<p>5. The Management Board shall adopt the Agency's work programme in accordance with Article 13(3) and the general report on the Agency's activities for the previous year in accordance with <i>Article 13(2)</i>.</p>	<p>5. The Management Board shall adopt the Agency's work programme in accordance with Article <del>13(3)</del> <b>12</b>.</p>	<p>Acceptable subject to further drafting</p>

**Art.5: Management Board**

		5a. The Management Board shall adopt [...] the general report on the Agency's activities for the previous year in accordance with Article <del>14</del> <b>13</b> (2).	Acceptable
	<i>5a. The Management Board shall perform its duties in relation to the Agency's budget pursuant to Articles 19 and 21 and monitor and give adequate follow-up to the findings and recommendations stemming from audit reports and evaluations, whether internal or external.</i>		Partially acceptable subject to further drafting

**Art.5: Management Board**

		<b>5b. The Management Board, after consulting the Commission, shall adopt the multi-annual Staff Policy Plan, taking into account the multi-annual outlook of the work programme and the statement of estimates of the Agency's revenue and expenditure. It shall duly inform the Budgetary Authority.</b>	Acceptable, see paragraph 9
6. The Management Board shall adopt the financial rules applicable to the Agency. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>12</sup> , unless such departure is specifically required for the Agency's operation and the Commission has given its prior consent.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

<sup>12</sup> OJ L 357, 31.12.2002, p. 72.

**Art.5: Management Board**

<p>7. The Management Board, in agreement with the Commission, shall adopt appropriate implementing rules, in accordance with Article 110 of the Staff Regulations.</p>	<p><i>[no change]</i></p>	<p>7. The Management Board, <del>in agreement with the Commission</del>, shall adopt appropriate implementing rules, in accordance with Article 110 of the Staff Regulations <b>of officials of the European Union.</b></p>	<p>Maintain the Council's preliminary position</p>
<p>8. The Management Board may set up working bodies composed of its members to assist it in carrying out its tasks, including drafting its decisions and monitoring the implementation thereof.</p>	<p>8. The Management Board <b>shall</b> set up <b>an Executive Board</b> composed of its members to assist it in carrying out its tasks, including drafting its decisions and monitoring the implementation thereof.</p>	<p><i>[no change]</i></p>	<p>Not acceptable</p>
<p>9. The Management Board may adopt the Multi-Annual Staff Policy Plan, after consulting the Commission services and having duly informed the Budgetary Authority.</p>	<p>9. The Management Board <b>shall, after consulting the Commission</b>, adopt the Multi-Annual Staff Policy Plan, <b>taking into account the multi-annual outlook of the work programme and the statement of estimates of the Agency's revenue and expenditure. It shall</b> duly <b>inform</b> the Budgetary Authority.</p>	<p>[moved to 5b]</p>	<p>Acceptable, see paragraph 5b</p>

**Art.6: Composition of the management board**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
<p align="center">Article 6 <i>Composition of the Management Board</i></p>	<p align="center">Article 6 <i>Composition of the Management Board</i></p>	<p align="center">Article 6 <i>Composition of the Management Board</i></p>	
<p>1. The Management Board shall be composed of one representative of each Member State, three representatives appointed by the Commission, and three representatives without the right to vote, appointed by the Commission, each of whom represent one of the following groups:</p>	<p>1. The Management Board shall be composed of one representative of each Member State, <i>authorised to act on behalf of that Member State, and</i> three representatives appointed by the Commission. <i>Management Board members may be replaced by their alternates in accordance with the rules of procedure of the Management Board.</i></p>	<p>1. The Management Board shall be composed of one representative of each Member State, <b>authorised to act on behalf of that Member State</b>, three representatives appointed by the Commission, and <del>three</del> <b>four</b> representatives without the right to vote, appointed by the Commission, each of whom represent one of the following groups:</p>	<p>Acceptable, subject to further drafting</p>
<p>(a) the information and communication technologies industry;</p>	<p>[deleted]</p>	<p>[no change]</p>	<p>Not acceptable</p>

**Art.6: Composition of the management board**

		<b>(aa) providers of electronic communications networks or services available to the public;</b>	Maintain the Council's preliminary position
(b) consumer groups;	[deleted]	<i>[no change]</i>	Not acceptable
(c) academic experts in network and information security.	[deleted]	<i>[no change]</i>	Not acceptable
		<b>Management Board members may be replaced by their alternates in accordance with the rules of procedure of the Management Board.</b>	Maintain the Council's preliminary position

**Art.6: Composition of the management board**

<p>2. Board members and their alternates shall be appointed on the basis of their degree of relevant experience and expertise in the field of network and information security.</p>	<p>2. Board members and their alternates shall be appointed on the basis of their degree of relevant experience and expertise in the field of network and information security. <i>They shall also have the necessary managerial, administrative and budgetary skills to fulfil the tasks listed in Article 5. Board members appointed by the Commission shall be at the level of director or higher. Board members appointed by Member States shall have a seniority corresponding to that of the board members appointed by the Commission. The entity intending to appoint a board member and alternate shall provide information on their degree of relevant experience and expertise in sufficient time prior to the appointment to enable the other Member States and the Commission to comment. Any reasoned objection to the intended appointment of a board member shall be taken into account by the Commission and the Member States.</i></p>	<p>2. <b>Management B</b>board members and their alternates shall be appointed on the basis of their degree of relevant experience and expertise in the field of network and information security.</p>	<p>Not acceptable</p>
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**Art.6: Composition of the management board**

<p>3. The term of office of the representatives of the groups referred to in paragraph 1(a), (b) and (c) shall be four years. This term of office may be extended once. If a representative ceases his/her affiliation with the respective interest group, the Commission shall appoint a replacement.</p>	<p>3. The term of office of <b>Management Board members</b> shall be four years. <b>Their</b> term of office may be <b>renewed</b> once.</p>	<p>3. The term of office of the representatives of the groups referred to in <b>points (a) to (d)</b> <del>paragraph 1(a), (b) and (c)</del> shall be four years. This term of office may be extended once. If a representative ceases his/her affiliation with the respective interest group, the Commission shall appoint a replacement.</p>	<p>Not acceptable</p>
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**Art.7: Chairperson of the management board**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
<p align="center">Article 7 <i>Chairperson of the Management Board</i></p>	<p align="center">Article 7 <i>Chairperson of the Management Board</i></p>	<p align="center">Article 7 <i><del>Chairperson</del> of the Management Board</i></p>	
<p>The Management Board shall elect its Chairperson and a Deputy Chairperson from among its members for a period of three years, which shall be renewable. The Deputy Chairperson shall ex officio replace the Chairperson if the latter is unable to attend to his or her duties.</p>	<p>1. The Management Board shall elect its <i>Chair</i> and a Deputy <i>Chair</i> from among its members for a period of three years, which shall be renewable. The Deputy <i>Chair</i> shall ex officio replace the <i>Chair</i> if the latter is unable to attend to his or her duties.</p>	<p>The Management Board shall elect its <del>Chairperson</del> and a Deputy <del>Chairperson</del> from among its members for a period of three years, which shall be renewable <b>once</b>. The Deputy <del>Chairperson</del> shall ex officio replace the <del>Chairperson</del> if the latter is unable to attend to his or her duties.</p>	<p>Maintain the Council's preliminary position</p>
	<p><i>1a. 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 committee members. After that statement, the European Parliament shall adopt an opinion setting out its view of the selected candidate. The Management Board shall inform the European Parliament of the manner in which that opinion has been taken into account.</i></p>		<p>Partially acceptable subject to further drafting</p>

**Art.8: Meetings**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
Article8 <i>Meetings</i>	Article8 <i>Meetings</i>	Article8 <i>Meetings</i>	
1. Meetings of the Management Board shall be convened by its Chairperson.	1. Meetings of the Management Board shall be convened by its <b>Chair</b> .	1. Meetings of the Management Board shall be convened by its Chair <del>person</del> .	Acceptable
2. The Management Board shall hold an ordinary meeting twice a year. It shall also hold extraordinary meetings at the instance of the Chairperson or at the request of at least a third of its members with the right to vote.	2. The Management Board shall hold an ordinary meeting <b>once</b> a year. It shall also hold extraordinary meetings at the instance of the <b>Chair</b> or at the request of at least a third of its members with the right to vote.	2. The Management Board shall hold an ordinary meeting twice a year. It shall also hold extraordinary meetings at the instance of the Chair <del>person</del> or at the request of at least a third of its members with the right to vote.	Not acceptable
3. The Executive Director shall take part in the meetings of the Management Board, without voting rights.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

**Art.9: Voting**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
<p>Article 9 <i>Voting</i></p>	<p>Article 9 <i>Voting</i></p>	<p>Article 9 <i>Voting</i></p>	
<p>1. The Management Board shall take its decisions by a majority of its members with the right to vote.</p>	<p>1. The Management Board shall take its decisions by a majority of members <i>present</i> with the right to vote.</p>	<p>1. <b>The presence of at least two thirds of the Management Board members with the right to vote or of their alternates is required to enable the Management Board to vote. A member of the Management Board who is prevented from attending a meeting may arrange to be represented in accordance with the rules of procedure of the Management Board.</b> The Management Board shall take its decisions by a majority of its members with the right to vote.</p>	<p>Maintain the Council's preliminary position</p>

**Art.9: Voting**

<p>2. A two-thirds majority of all Management Board members with the right to vote is required for the adoption of its rules of procedure, the Agency's internal rules of operation, the budget, the annual work programme, and the appointment, extension of the term of office or removal of the Executive Director.</p>	<p>2. A two-thirds majority of Management Board members <i>present</i> with the right to vote is required for the adoption of its rules of procedure, the Agency's internal rules of operation, the budget, the annual work programme, and the appointment, extension of the term of office or <i>dismissal</i> of the Executive Director.</p>	<p>2. A two-thirds majority of all Management Board members with the right to vote is required for the adoption of its rules of procedure, the Agency's internal rules of operation, the budget, the annual work programme, and the appointment, extension of the term of office or <del>removal</del> <b>dismissal</b> of the Executive Director.</p>	<p>Acceptable</p>
	<p><i>2a. A quorum of two-thirds of the Management Board members with the right to vote or their alternates, shall be required for any vote taken by the Management Board. If the quorum is not met, the Chair may convene an extraordinary meeting at which decisions may be taken with a quorum of one-third. The rules of procedure shall provide for adequate notice for convening an extraordinary meeting.</i></p>		<p>Not acceptable</p>

**Art.9a (new): Executive board**

<b>COMMISSION PROPOSAL</b>	<b>ITRE OPINION</b>	<b>PRELIMINARY COUNCIL POSITION</b>	<b>POSSIBLE COMPROMISE SOLUTION</b>
	<i>Article 9a Executive Board</i>		Not acceptable
	<i>1. The Executive Board shall be composed of members of the Management Board including two representatives of the Commission. Its size shall not exceed one third of that of the Management Board. It shall meet at least on a quarterly basis. The Chair of the Management Board shall also be the Chair of the Executive Board.</i>		
	<i>2. The Management Board shall mandate the Executive Board with at least the following tasks, without prejudice to the tasks of the Executive Director:</i>		
	<i>(a) monitoring the implementation of the Management Board's decisions;</i>		
	<i>(b) monitoring administrative and budgetary issues on behalf of the Management Board;</i>		

**Art.9a (new): Executive board**

	<i>(c) assisting and advising the Executive Director;</i>		
	<i>(d) taking all necessary measures for the proper management of the Agency between the Management Board meetings;</i>		
	<i>(e) preparing decisions, programmes and activities to be adopted by the Management Board.</i>		
	<i>3. All documents distributed to members of the Executive Board shall be distributed simultaneously to members of the Management Board. All members of the Management Board shall be allowed to attend meetings of the Executive Board at their own expense, but only members of the Executive Board shall have voting rights. The Executive Board shall submit an activity report to each Management Board meeting.</i>		
	<i>4. The Executive Board shall be convened by the Chair whenever necessary to prepare the decisions of the Management Board and to assist and advise the Director. It shall adopt its decisions by simple majority.</i>		

**Art.9a (new): Executive board**

	<p><i>5. The Director shall take part in the meetings of the Executive Board, but shall not have voting rights.</i></p>		
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**Art.10: Executive director**

<b>COMMISSION PROPOSAL</b>	<b>ITRE OPINION</b>	<b>PRELIMINARY COUNCIL POSITION</b>	<b>POSSIBLE COMPROMISE SOLUTION</b>
Article 10 <i>Executive Director</i>	Article 10 <i>Executive Director</i>	Article 10 <i>Executive Director</i>	
1. The Agency shall be managed by its Executive Director, who shall be independent in the performance of his/her duties.	1. The Agency shall be managed by its Executive Director, who shall be independent in the performance of his <i>or</i> her duties.	1. The Agency shall be managed by its Executive Director, who shall be independent in the performance of his/her duties <b>and demonstrate on an ongoing basis commitment to good and efficient management.</b>	Maintain the Council's preliminary position

**Art.10: Executive director**

<p>2. The Executive Director shall be appointed and dismissed by the Management Board. The appointment shall be done from a list of candidates proposed by the Commission for a period of five years, on grounds of merit and documented administrative and managerial skills, as well as specific competence and experience. Before appointment, the candidate selected by the Management Board may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members.</p>	<p>2. The Executive Director shall be appointed by the Management Board <i>after confirmation by the European Parliament</i>. The appointment shall be done from a list of candidates proposed by the Commission for a period of five years, on grounds of merit and documented administrative and managerial skills, as well as specific competence and experience <i>in network and information security</i>. <i>The Commission shall arrange an open recruitment procedure for the purpose of establishing a list of suitable candidates</i>. Before appointment, the candidate selected by the Management Board <i>and the other candidates on the list of candidates proposed by the Commission shall</i> be invited to make <i>statements</i> before the competent committee of the European Parliament and answer questions put by its members.</p>	<p>2. The Executive Director shall be appointed <del>and dismissed</del> by the Management Board. <del>The appointment shall be done</del> from a list of candidates proposed by the Commission <b>after an open competition following publication in the Official Journal of the European Union and elsewhere of a call for expressions of interest</b>. <b>The Executive Director shall be appointed</b> for a period of five years, on grounds of merit and documented administrative and managerial skills, as well as specific competence and experience. Before appointment, the candidate selected by the Management Board may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members.</p>	<p>Partially acceptable subject to further drafting</p>
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**Art.10: Executive director**

	<i>2a. The Executive Director may be dismissed only by the Management Board.</i>		Not acceptable
3. In the course of the nine months preceding the end of this period, the Commission shall undertake an evaluation. In the evaluation, the Commission shall assess in particular:	3. <i>At the latest six months before</i> the end of <i>the five year period set out in paragraph 2</i> , the Commission shall, <i>after undertaking</i> an evaluation, <i>submit an evaluation report to the Management Board and to the competent committee of the European Parliament</i> . In the evaluation <i>report</i> , the Commission shall assess in particular:	3. In the course of the nine months preceding the end of <del>this period</del> <b>the Executive Director's term of office referred to in paragraph 2 and without prejudice to Article 23 (1) and (2)</b> , the Commission shall <del>undertake</del> draw up an evaluation <b>report</b> . In the evaluation <b>report</b> , the Commission shall assess in particular	Not acceptable
- the performance of the Executive Director;	<i>[no change]</i>	- the performance of the Executive Director, <b>and</b>	Maintain preliminary Council position
- the Agency's duties and requirements in the coming years.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

**Art.10: Executive director**

<p>4. The Management Board, acting on a proposal from the Commission, taking into account the evaluation report and only in those cases where it can be justified by the duties and requirements of the Agency, may extend the term of office of the Executive Director for no more than three years.</p>	<p>4. The Management Board, acting on a proposal from the Commission, taking into account the evaluation report and only in those cases where it can be justified by the duties and requirements of the Agency, may extend the term of office of the Executive Director for no more than <i>five</i> years, <i>after obtaining the views of the European Parliament</i>.</p>	<p>4. The Management Board, acting on a proposal from the Commission, taking into account the evaluation report and only in those cases where it can be justified by the duties and requirements of the Agency, may extend the term of office of the Executive Director for <del>no more</del> <b>a period not longer</b> than three years.</p>	<p>Acceptable subject to further drafting</p>
<p>5. The Management Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within a month before the extension of his/her term of office, the Executive Director may be invited to make a statement before the competent committee of the Parliament and answer questions put by its members.</p>	<p>5. The Management Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within <i>three months</i> before the extension of his/her term of office, the Executive Director <i>shall, if</i> invited, make a statement before the competent committee of the Parliament and answer questions put by its members.</p>	<p>5. The Management Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within a <del>month</del> <b>three months</b> before the extension of his/her term of office, the Executive Director <del>may be</del> <b>shall, if</b> invited, <del>to</del> make a statement before the competent committee of the Parliament and answer questions put by its members.</p>	<p>Acceptable</p>
<p>6. If the term of office is not extended, the Executive Director shall remain in office until the appointment of his/her successor.</p>	<p>6. The Executive Director shall remain in office until the appointment of his or her successor.</p>	<p><del>If the term of office is not extended, t</del> The Executive Director shall remain in office until the appointment of his/her successor.</p>	<p>Acceptable</p>
<p>7. The Executive Director shall be responsible for:</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>

**Art.10: Executive director**

(a) the day-to-day administration of the Agency;	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
	<b><i>(aa) preparing the work of the Management Board and the Executive Board;</i></b>		Not acceptable
(b) implementing the work programme and the decisions adopted by the Management Board;	(b) implementing the work programme and the decisions adopted by the Management Board <b><i>and the Executive Board;</i></b>	(b) implementing the work programme and the decisions adopted by the Management Board;	Not acceptable
(c) ensuring that the Agency performs its activities in accordance with the requirements of those using its services, in particular with regard to the adequacy of the services provided;	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
(d) all specific staff matters, ensuring compliance with the general directions of the Management Board and with Management Board decisions of a general nature;	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
(e) developing and maintaining contact with the European institutions and bodies;	<i>[no change]</i>	(e) developing and maintaining contact with the <del>European</del> <b>Union's</b> institutions and bodies <b>set up by Union law;</b>	Maintain the Council's preliminary position

**Art.10: Executive director**

<p>(f) developing and maintaining contact with the business community and consumers' organisations to ensure regular dialogue with relevant stakeholders;</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
<p>(g) other tasks assigned to him/her by this Regulation.</p>	<p>(g) other tasks assigned to him or her by this Regulation, <b><i>including preparing and updating the Agency's multi-annual strategy and action plan.</i></b></p>	<p><i>[no change]</i></p>	<p>Not acceptable</p>
<p>8. Where necessary and within the Agency's objectives and tasks, the Executive Director may set up ad hoc Working Groups composed of experts. The Management Board shall be informed in advance. The procedures regarding in particular the composition, the appointment of the experts by the Executive Director and the operation of the ad hoc Working Groups shall be specified in the Agency's internal rules of operation.</p>	<p>8. Where necessary and within the Agency's objectives and tasks, the Executive Director may set up ad hoc Working Groups composed of experts. The <b><i>Executive</i></b> Board shall be informed in advance. The procedures regarding in particular the composition, the appointment of the experts by the Executive Director and the operation of the ad hoc Working Groups shall be specified in the Agency's internal rules of operation.</p>	<p>8. Where necessary and within the Agency's objectives and tasks, the Executive Director may set up ad hoc Working Groups composed of experts, <b>including from the Member States competent authorities.</b> The Management Board shall be informed in advance. The procedures regarding in particular the composition, the appointment of the experts by the Executive Director and the operation of the ad hoc Working Groups shall be specified in the Agency's internal rules of operation.</p>	<p>Not acceptable</p>

**Art.10: Executive director**

9. The Executive Director shall make administrative support staff and other resources available to the Management Board whenever necessary.	9. The Executive Director shall make administrative support staff and other resources available to the Management <b><i>and Executive Boards</i></b> whenever necessary.	<i>[no change]</i>	Not acceptable
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**Art.11: Permanent stakeholder's group**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
<p>Article 11 <i>Permanent Stakeholders' Group</i></p>	<p>Article 11 <i>Permanent Stakeholders' Group</i></p>	<p>Article 11 <i>Permanent Stakeholders' Group</i></p>	
<p>1. The Management Board shall set up a Permanent Stakeholders' Group on a proposal by the Executive Director, composed of experts representing the relevant stakeholders, such as the information and communication technologies industry, consumer groups, academic experts in network and information security, and law enforcement and privacy protection authorities.</p>	<p>1. The Management Board shall set up a Permanent Stakeholders' Group on a proposal by the Executive Director, composed of <i>peer-acknowledged</i> experts representing the relevant stakeholders, <i>authorities, and the Body of European Regulators for Electronic Communications (BEREC)</i>.</p>	<p>1. The Management Board shall set up a Permanent Stakeholders' Group on a proposal by the Executive Director, composed of experts representing the relevant stakeholders, such as the information and communication technologies industry, <b>providers of electronic communications networks or services available to the public</b>, consumer groups, academic experts in network and information security, <b>and relevant authorities, including</b> Union law enforcement and privacy protection authorities.</p>	<p>Not acceptable</p>

**Art.11: Permanent stakeholder's group**

<p>2. Procedures for, in particular, the number, composition, and appointment of the members by the Management Board, proposal by the Executive Director and the operation of the Group shall be specified in the Agency's internal rules of operation and shall be made public.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
<p>3. The Group shall be chaired by the Executive Director.</p>	<p>3. The Group shall be chaired by the Executive Director <i>or by any person he or she should appoint on a case-by-case basis.</i></p>	<p>3. The Group shall be chaired by the Executive Director. <b>On a proposal of the Executive Director, the Management Board may decide to delegate the task of the Chair of the Group to a Member of the Group.</b></p>	<p>Acceptable</p>

**Art.11: Permanent stakeholder's group**

<p>4. The term of office of the Group's members shall be two-and-a-half years. Members of the Management Board may not be members of the Group. Commission staff shall be entitled to be present at the meetings and participate in the work of the Group.</p>	<p>4. The term of office of the Group's members shall be two-and-a-half years. Members of the Management Board may not be members of the Group. Commission staff <b><i>and experts from the Member States</i></b> shall be entitled to be present at the meetings and participate in the work of the Group. <b><i>If they are not members, representatives of other bodies deemed relevant by the Executive Director may be invited to be present at the meetings and participate in the work of the Group.</i></b></p>	<p>4. The term of office of the Group's members shall be two-and-a-half years. Members of the Management Board may not be members of the Group. Commission staff <b>and experts from the Member States</b> shall be entitled to be present at the meetings and participate in the work of the Group. <b>If they are not members, other relevant bodies set up by Union law may be invited to be present at the meetings and participate in the work of the Group.</b></p>	<p>Acceptable</p>
<p>5. The Group shall advise the Agency in the performance of its activities. The Group shall in particular advise the Executive Director on drawing up a proposal for the Agency's work programme, and on ensuring communication with the relevant stakeholders on all issues related to the work programme.</p>	<p>[no change]</p>	<p>[no change]</p>	<p>[no change]</p>

SECTION 3: SECTOR OPERATION			
COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
Article 12 <i>Work Programme</i>	Article 12 <i>Work Programme</i>	Article 12 <i>Work Programme</i>	
1. The Agency shall carry out its operations in accordance with its work programme, which shall contain all of its planned activities. The work programme shall not prevent the Agency from taking up unforeseen activities that fall within its objectives and tasks and within the limits of its budget. The Executive Director shall inform the Management Board of activities of the Agency that are not provided for in the work programme.	1. The Agency shall carry out its operations in accordance with its work programme, which shall contain all of its planned activities. The work programme shall not prevent the Agency from taking up unforeseen activities that fall within its objectives and tasks and within the limits of its budget. The Executive Director shall <b><i>promptly</i></b> inform the <b><i>Executive Board</i></b> of activities of the Agency that are not provided for in the work programme. <b><i>At the request of Executive Board members representing at least one-third of all members with voting rights, the issue of whether an unforeseen activity may be undertaken by the Agency shall be decided by the Executive Board. Any such request shall be made within ten days of the Executive Director informing the Executive Board of the unforeseen activity.</i></b>	[no change]	Not acceptable

**Art.12: Work programme**

<p>2. The Executive Director shall be responsible for drawing up the Agency's draft work programme after prior consultation with the Commission services. Before 15 March each year the Executive Director shall submit the draft work programme for the following year to the Management Board.</p>	<p>2. The Executive Director shall be responsible for drawing up the Agency's draft work programme after prior consultation with the Commission. Before <b>1 March</b> each year the Executive Director shall submit the draft work programme for the following year to the Management Board. <b><i>The Executive Director shall ensure that the draft work programme has clear objectives and that it provides for indicators necessary to measure the success of the Agency's activities.</i></b></p>	<p>2. The Executive Director shall be responsible for drawing up the <del>Agency's</del> <b>first draft of the Agency's</b> work programme after prior consultation with the Commission services. <del>Before 15 March each year the Executive Director shall submit the draft work programme for the following year to the Management Board,</del> <b>the Management Board and the Permanent Stakeholders Group.</b> The Executive Director shall ensure that the first draft of the Agency's work programme has clear objectives and provides for performance indicators allowing for an effective assessment of the results achieved.</p>	<p>Acceptable subject to further drafting</p>
		<p><b>2a. Before 1 March each year the Executive Director shall submit the first draft of the Agency's work programme for the following year to the Management Board.</b></p>	<p>Maintain the Council's preliminary position</p>

**Art.12: Work programme**

<p>3. Before 30 November each year, the Management Board shall adopt the Agency's work programme for the following year in consultation with the Commission services. The work programme shall include a multi-annual outlook. The Management Board shall ensure that the work programme is consistent with the Agency's objectives and with the Union's legislative and policy priorities in the area of network and information security.</p>	<p>3. Before 30 November each year, the Management Board shall adopt the Agency's work programme for the following year in consultation with the Commission. The work programme shall include a multi-annual outlook <b>and cover all aspects of the Agency's operations, activities and commitments.</b> The Management Board shall ensure that the <b>work programme clearly states the objectives to be achieved, the resources to be allocated, how the results of the Agency's activities are to be measured, and that the</b> work programme is consistent with the Agency's objectives and with the Union's legislative and policy priorities in the area of network and information security.</p>	<p>3. Before 30 November each year, the Management Board shall adopt the Agency's work programme for the following year in consultation with the Commission <del>services</del>. The work programme shall include a multi-annual outlook, <b>which shall cover main aspects of the Agency's operations, activities and commitments.</b> The Management Board shall ensure that the work programme <b>clearly states the objectives to be achieved, the resources to be allocated, how the results of the Agency's activities shall be measured and that the work programme</b> is consistent with the Agency's objectives and with the Union's legislative and policy priorities in the area of network and information security.</p>	<p>Maintain the Council's preliminary position</p>
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**Art.12: Work programme**

<p>4. The work programme shall be organised in accordance with the Activity-Based Management (ABM) principle. The work programme shall be in line with the statement of estimates of the Agency's revenue and expenditure and the Agency's budget for the same financial year.</p>	<p>4. The work programme shall be organised in accordance with the Activity-Based Management (ABM) principle, <i>with an indication of the anticipated human and financial resources allocated to each activity. To this end, the Executive Director shall establish, in agreement with the Commission, tailored performance indicators allowing an effective assessment to be made of the results achieved.</i> The work programme shall be in line with the statement of estimates of the Agency's revenue and expenditure and the Agency's budget for the financial year <i>covered by the programme.</i></p>	<p>4. The work programme shall be organised in accordance with the Activity-Based Management (ABM) principle, <b>with an indication of the anticipated human and financial resources allocated to each activity.</b> The work programme shall be in line with the statement of estimates of the Agency's revenue and expenditure and the Agency's budget for the same financial year.</p>	<p>Not acceptable</p>
<p>5. The Executive Director shall, following adoption by the Management Board, forward the work programme to the European Parliament, the Council, the Commission and the Member States and shall have it published.</p>	<p>5. The Executive Director shall, following adoption by the Management Board, forward the work programme to the European Parliament, the Council, the Commission and the Member States and shall have it published. <i>At the invitation of the European Parliament's competent committee, the Executive Director shall present and hold an exchange of views on the annual work programme.</i></p>	<p><del>5. The Executive Director shall, following adoption by the Management Board, forward the work programme to the European Parliament, the Council, the Commission and the Member States and shall have it published.</del></p>	<p>Not acceptable</p>

**Art.12: Work programme**

	<p><i>5a. The Executive Director shall also prepare the Agency's multi-annual strategy and submit it to the Management Board after consulting the European Parliament and the Commission at least 8 weeks before the relevant Management Board meeting.</i></p>		<p>Not acceptable</p>
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**Art.13: General report**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
<p>Article 13 <i>General report</i></p>	<p>Article 13 <i>General report</i></p>	<p>Article 13 <i>General report</i></p>	
<p>1. Each year, the Executive Director shall submit to the Management Board a draft general report covering all the activities of the Agency in the previous year.</p>	<p>1. Each year, the Executive Director shall submit to the Management Board a draft general report covering all the activities of the Agency in the previous year <i>and including a report on budgetary and financial management. The general report shall include tailored performance indicators allowing an effective assessment to be made of the results achieved.</i></p>	<p>1. Each year, the Executive Director shall submit to the Management Board a draft general report covering all the activities of the Agency in the previous year. <b>The general report shall measure and publish the impact of the Agency's activities for the previous year.</b></p>	<p>Maintain the Council's preliminary position</p>
<p>2. Before 31 March each year, the Management Board shall adopt the general report on the Agency's activities for the previous year.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
<p>3. The Executive Director shall, following adoption by the Management Board, transmit the Agency's general report to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions and shall have it published.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>

**Art.14: Requests to the agency**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
<p>Article 14 <i>Requests to the Agency</i></p>	<p>Article 14 <i>Requests to the Agency</i></p>	<p>Article 14 <i>Requests to the Agency</i></p>	
<p>1. Requests for advice and assistance falling within the Agency’s objectives and tasks shall be addressed to the Executive Director and accompanied by background information explaining the issue to be addressed. The Executive Director shall inform the Management Board of the requests received, and in due course, of the follow-up given to the requests. If the Agency refuses a request, justification shall be given.</p>	<p>1. Requests for advice and assistance falling within the Agency’s objectives and tasks shall be addressed to the Executive Director and accompanied by background information explaining the issue to be addressed. The Executive Director shall inform the <i>Executive</i> Board of the requests received, <i>the potential resource implications</i>, and, in due course, of the follow-up given to the requests. If the Agency refuses a request, justification shall be given.</p>	<p>1. Requests for advice and assistance falling within the Agency’s objectives and tasks shall be addressed to the Executive Director and accompanied by background information explaining the issue to be addressed. The Executive Director shall inform the Management Board of the requests received, <b>the potential resource implications</b> and in due course, of the follow-up given to the requests. If the Agency refuses a request, justification shall be given.</p>	<p>Maintain the Council's preliminary position</p>

<p>2. Requests referred to in paragraph 1 may be made by:</p> <p>(a) the European Parliament;</p> <p>(b) the Council;</p> <p>(c) the Commission;</p> <p>(d) any competent body appointed by a Member State, such as a national regulatory authority as defined in Article 2 of Directive 2002/21/EC.</p>	<p><del>2. Requests referred to in paragraph 1 may be made by:</del></p> <p><del>(a) the European Parliament;</del></p> <p><del>(b) the Council;</del></p> <p><del>(c) the Commission;</del></p> <p><del>(d) any competent body appointed by a Member State, such as a national regulatory authority as defined in Article 2 of Directive 2002/21/EC.</del></p>	<p>[no change]</p>	<p>Not acceptable</p>
<p>3. The practical arrangements for applying paragraphs 1 and 2, regarding in particular submission, prioritisation, follow up and information of the Management Board on the requests to the Agency, shall be laid down by the Management Board in the Agency's internal rules of operation.</p>	<p>3. The practical arrangements for applying paragraph 1, regarding in particular submission, prioritisation, follow up and information of the <b>Executive and Management Boards</b> on the requests to the Agency, shall be laid down by the Management Board in the Agency's internal rules of operation.</p>	<p>[no change]</p>	<p>Not acceptable</p>

**Art.15: Declaration of interest**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
<p>Article 15 <i>Declaration of interest</i></p>	<p>Article 15 <i>Declaration of interest</i></p>	<p>Article 15 <i>Declaration of interest</i></p>	
<p>1. The Executive Director and officials seconded by Member States on a temporary basis shall make a written declaration of commitments and a written declaration indicating the absence of any direct or indirect interest which might be considered prejudicial to their independence.</p>	<p>1. <b>Members of the Management Board</b>, the Executive Director and officials seconded by Member States on a temporary basis shall make a declaration of commitments and a declaration indicating the absence <b>or otherwise</b> of any direct or indirect <b>interests</b> which might be considered prejudicial to their independence. <b>The declarations shall be accurate and complete, made annually in writing and updated whenever necessary.</b></p>	<p>1. <b>Members of the Management Board</b>, the Executive Director and officials seconded by Member States on a temporary basis shall make a <del>written</del> declaration of commitment and a <del>written</del> declaration indicating either the absence of any direct or indirect interests which might be considered prejudicial to their independence <b>or any direct or indirect interests which might be considered prejudicial to their independence.</b> Those declarations shall be made annually in writing and updated whenever necessary.</p>	<p>Acceptable subject to further drafting</p>

<p>2. External experts participating in ad hoc Working Groups shall declare at each meeting any interest which might be considered prejudicial to their independence in relation to the items on the agenda and abstain from participating in the discussions on such points.</p>	<p><i>2. Members of the Management and Executive Boards, external experts participating in ad hoc Working Groups and the Executive Director shall accurately and completely declare at the latest at each meeting any interest which might be considered prejudicial to their independence in relation to the items on the agenda.</i></p>	<p><b>2. Members of the Management Board, external experts participating in ad hoc Working Groups and the Executive Director, shall declare at the latest at each meeting any interest which might be considered prejudicial to their independence in relation to the items on the agenda and abstain. The procedure related to the replacement of a member in the meeting or its abstention from participating in the discussions on such points shall be laid down by the Management Board in the Agency's internal rules of operation.</b></p>	<p>Maintain the Council's preliminary position</p>
	<p><i>2a. The procedure for replacing a member in the meeting or for obliging him or her to abstain from attending the discussions on such agenda items as referred to in paragraph 2 shall be laid down by the Management Board in the Agency's internal rules of operation. The rules of operation shall also provide for the possibility of independent, external review of any alleged issues of conflicts of interests.</i></p>		<p>Not acceptable</p>

**Art.16: Transparency**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
<p>Article 16 <i>Transparency</i></p>	<p>Article 16 <i>Transparency</i></p>	<p>Article 16 <i>Transparency</i></p>	
<p>1. The Agency shall ensure that it carries out its activities with a high level of transparency and in accordance with Article 13 and 14.</p>	<p><i>[no change]</i></p>	<p>1. The Agency shall ensure that it carries out its activities with a high level of transparency and in accordance with Article <del>13</del> and <b>17 and 18</b>.</p>	<p>Maintain the Council's preliminary position</p>
<p>2. The Agency shall ensure that the public and any interested parties are given objective, reliable and easily accessible information, in particular with regard to the results of its work, where appropriate. It shall also make public the declarations of interest made by the Executive Director and by officials seconded by Member States on a temporary basis, together with the declarations of interest made by experts in relation to items on the agendas of meetings of the ad hoc Working Groups.</p>	<p>2. The Agency shall ensure that the public and any interested parties are given <i>appropriate</i>, objective, reliable and easily accessible information, in particular with regard to the results of its work. It shall also make public the declarations made <i>in accordance with Article 15</i>.</p>	<p>2. The Agency shall ensure that the public and any interested parties are given objective, reliable and easily accessible information, in particular with regard to the results of its work, where appropriate. It shall also make public the declarations of interest made <b>in accordance with article 15</b><del>by the Executive Director and by officials seconded by Member States on a temporary basis, together with the declarations of interest made by experts in relation to items on the agendas of meetings of the ad hoc Working Groups.</del></p>	<p>Acceptable</p>

**Art.16: Transparency**

3. The Management Board, acting on a proposal from the Executive Director, may authorise interested parties to observe the proceedings of some of the Agency's activities.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
4. In its internal rules of operation, the Agency shall lay down the practical arrangements for implementing the transparency rules referred to in paragraphs 1 and 2.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

**Art.17: Confidentiality**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
Article 17 <i>Confidentiality</i>	Article 17 <i>Confidentiality</i>	Article 17 <i>Confidentiality</i>	
1. Without prejudice to Article 14, the Agency shall not divulge to third parties information that it processes or receives for which confidential treatment has been requested.	1. Without prejudice to Article 14, the Agency shall not divulge to third parties <i>non-classified</i> information that it processes or receives for which <i>a reasoned request for confidential treatment, in whole or in part, has been made. If the Agency finds that the information can be disclosed, in whole or in part, it shall consult with the party that has provided the information prior to disclosure.</i>	<i>[no change]</i>	Acceptable subject to further drafting
2. Members of the Management Board, the Executive Director, the members of the Permanent Stakeholders Group, external experts participating in ad hoc Working Groups, and members of the staff of the Agency including officials seconded by Member States on a temporary basis are subject to confidentiality requirements under Article 339 of the Treaty even after their duties have ceased.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

<p>3. The Agency shall lay down in its internal rules of operation the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
<p>4. The Management Board may decide to allow the Agency to handle classified information. In that case the Management Board shall, in agreement with the relevant Commission services, adopt internal rules of operation applying the security principles contained in Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure<sup>13</sup>. This shall cover, inter alia, provisions for the exchange, processing and storage of classified information.</p>	<p>4. <b><i>In order</i></b> to allow the Agency to handle classified information, the Management Board shall, in agreement with the Commission, adopt internal rules of operation applying the security principles contained in Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure. This shall cover, inter alia, provisions for the exchange, processing and storage of classified information.</p>	<p><i>[no change]</i></p>	<p>Not acceptable</p>

<sup>13</sup> OJ L 317, 3.12.2001, p. 1.

**Art.18: Access to documents**

<b>COMMISSION PROPOSAL</b>	<b>ITRE OPINION</b>	<b>PRELIMINARY COUNCIL POSITION</b>	<b>POSSIBLE COMPROMISE SOLUTION</b>
Article 18 <i>Access to documents</i>	Article 18 <i>Access to documents</i>	Article 18 <i>Access to documents</i>	
1. Regulation (EC) No 1049/2001 shall apply to documents held by the Agency.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
2. The Management Board shall adopt arrangements for implementing Regulation (EC) No 1049/2001 within six months of the establishment of the Agency.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
3. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Union, under Articles 228 and 263 of the Treaty respectively.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

**SECTION 4 FINANCIAL PROVISIONS**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
<p>Article 19 <i>Adoption of the budget</i></p>	<p>Article 19 <i>Adoption of the budget</i></p>	<p>Article 19 <i>Adoption of the budget</i></p>	
<p>1. The revenues of the Agency shall consist of a contribution from the European Union budget, contributions from third countries participating in the work of the Agency as provided for in Article 29, and contributions from Member States.</p>	<p>1. The revenues of the Agency shall consist of a contribution from the European Union budget, contributions from third countries participating in the work of the Agency as provided for in Article 29, and <i>voluntary</i> contributions from Member States, <i>in money or in kind. Member States that provide voluntary contributions may not claim any specific right or service as a result thereof.</i></p>	<p>1. The revenues of the Agency shall consist of a contribution from the European Union budget, contributions from third countries participating in the work of the Agency as provided for in Article <del>29</del><b>28</b>, and <b>voluntary</b> contributions from Member States <b>in money or in kind. Member States providing voluntary contributions cannot claim any specific right or service as a result of this contribution.</b></p>	<p>Maintain the Council's preliminary position</p>
<p>2. The expenditure of the Agency shall include staff, administrative and technical support, infrastructure and operational expenses, and expenses resulting from contracts entered into with third parties.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	

**Art.19: Adoption of the budget**

<p>3. By 1 March each year at the latest, the Executive Director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following financial year, and shall forward it to the Management Board, together with a draft establishment plan.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
<p>4. Revenue and expenditure shall be in balance.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
<p>5. Each year, the Management Board, on the basis of a draft statement of estimates of revenue and expenditure drawn up by the Executive Director, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
<p>6. This statement of estimates, which shall include a draft establishment plan together with the draft work programme, shall, by 31 March at the latest, be sent by the Management Board to the Commission and the States with which the European Union has concluded agreements in accordance with Article 24.</p>	<p>6. This statement of estimates, which shall include a draft establishment plan together with the draft work programme, shall, by 31 March at the latest, be sent by the Management Board to the Commission and the States with which the European Union has concluded agreements in accordance with <b>Article 28</b>.</p>	<p>6. This statement of estimates, which shall include a draft establishment plan together with the draft work programme, shall, by 31 March at the latest, be sent by the Management Board to the Commission and the States with which the European Union has concluded agreements in accordance with Article <del>24</del><b>28</b>.</p>	<p>Acceptable</p>

**Art.19: Adoption of the budget**

7. This statement of estimates shall be forwarded by the Commission to the European Parliament and the Council (both hereinafter ‘the budgetary authority’) together with the draft general budget of the European Union.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
8. On the basis of this statement of estimates, the Commission shall enter in the draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall submit to the budgetary authority in accordance with Article 314 of the Treaty.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
9. The budgetary authority shall authorise the appropriations for the subsidy to the Agency.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
10. The budgetary authority shall adopt the establishment plan for the Agency.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

**Art.19: Adoption of the budget**

<p>11. Together with the work programme, the Management Board shall adopt the Agency's budget. It shall become final following final adoption of the general budget of the European Union. Where appropriate, the Management Board shall adjust the Agency's budget and work programme in accordance with the general budget of the European Union. The Management Board shall forward it without delay to the Commission and the budgetary authority.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
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**Art.20: Combating fraud**

<b>COMMISSION PROPOSAL</b>	<b>ITRE OPINION</b>	<b>PRELIMINARY COUNCIL POSITION</b>	<b>POSSIBLE COMPROMISE SOLUTION</b>
Article 20 <i>Combating fraud</i>	Article 20 <i>Combating fraud</i>	Article 20 <i>Combating fraud</i>	
1. In order to combat fraud, corruption and other unlawful activities, Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-fraud Office (OLAF) <sup>14</sup> shall apply without restriction.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament and the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF) <sup>15</sup> and shall issue, without delay, the relevant provisions applicable to all the employees of the Agency.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

<sup>14</sup> OJ L 136, 31.5.1999, p. 1.

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

**Art.21: Implementation of the budget**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
<p>Article 21 <i>Implementation of the budget</i></p>	<p>Article 21 <i>Implementation of the budget</i></p>	<p>Article 21 <i>Implementation of the budget</i></p>	
<p>1. The Executive Director shall implement the Agency's budget.</p>	<p>1. The Executive Director shall <i>be responsible for the implementation of the</i> Agency's budget.</p>	<p>[no change]</p>	<p>Acceptable</p>
<p>2. The Commission's internal auditor shall exercise the same powers over the Agency as over Commission departments.</p>	<p>[no change]</p>	<p>[no change]</p>	<p>[no change]</p>

**Art.21: Implementation of the budget**

<p>3. By 1 March at the latest following each financial year, the Agency's accounting officer shall send the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>16</sup> (hereinafter 'the general Financial Regulation').</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
<p>4. No later than 31 March following each financial year, the Commission's accounting officer shall send the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be sent to the budgetary authority.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>

<sup>16</sup> OJ L 248, 16.9.2002, p. 1.

**Art.21: Implementation of the budget**

5. On receipt of the Court of Auditor's observations on the Agency's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Executive Director shall draw up the Agency's final accounts under his/her own responsibility and send them to the Management Board for an opinion.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
6. The Management Board shall deliver an opinion on the Agency's final accounts.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
7. The Executive Director shall, no later than 1 July following each financial year, transmit the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.	7. The Executive Director shall, no later than 1 July following each financial year, transmit the final accounts, <b><i>including the report on the budgetary and financial management for that financial year and the Court of Auditor's observations</i></b> , to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.	<i>[no change]</i>	Acceptable
8. The Executive Director shall publish the final accounts.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

**Art.21: Implementation of the budget**

9. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He/she shall also send this reply to the Management Board.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
10. The Executive Director shall submit to the European Parliament, at the latter's request, all the information necessary for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the general Financial Regulation.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
11. The European Parliament, acting on a recommendation from the Council, shall, before 30 April of year N+2, give a discharge to the Executive Director in respect of the implementation of the budget for the year N.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

**SECTION 5 GENERAL PROVISIONS**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
<p>Article 22 <i>Legal status</i></p>	<p>Article 22 <i>Legal status and seat</i></p>	<p>Article 22 <i>Legal status</i></p>	
<p>1. The Agency shall be a body of the Union. It shall have legal personality.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
<p>2. In each of the Member States the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may in particular, acquire and dispose of movable and immovable property and be a party to legal proceedings.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
<p>3. The Agency shall be represented by its Executive Director.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
	<p><i>3a. The Agency shall have its seat in Greece. It shall have its headquarters in Heraklion, Crete. Staff engaged in the operational implementation of the Agency's mandate shall be based in a branch office located in Athens.</i></p>		<p>Not acceptable</p>

**Art.23-26: Staff, Privileges and immunities, Liability, Languages**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
Article 23 <i>Staff</i>	Article 23 <i>Staff</i>	Article 23 <i>Staff</i>	
1. The rules and regulations applicable to officials and other staff of the European Union shall apply to the staff of the Agency, including its Executive Director.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
2. In respect of the Executive Director, the Management Board shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment.	<i>[no change]</i>	2. In respect of the Executive Director, the Management Board shall exercise <b>all</b> the powers conferred on the appointing authority by the Staff Regulations <b>of officials of the European Union</b> and on the authority entitled to conclude contracts by the Conditions of Employment.	Maintain the Council's preliminary position
3. In respect of the staff of the Agency, the Executive Director shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment.	<i>[no change]</i>	3. In respect of the staff of the Agency, the Executive Director shall exercise the powers conferred on the appointing authority by the Staff Regulations <b>of officials of the Europea Union</b> and on the authority entitled to conclude contracts by the Conditions of Employment.	Maintain the Council's preliminary position

**Art.23-26: Staff, Privileges and immunities, Liability, Languages**

4. The Agency may employ national experts from Member States on secondment. The Agency shall lay down in its internal rules of operation the practical arrangements for implementing this.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>	
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<p align="center">Article 24 <b><i>Privileges and immunities</i></b></p>	<p align="center">Article 24 <b><i>Privileges and immunities</i></b></p>	<p align="center">Article 24 <b><i>Privileges and immunities</i></b></p>	
The Protocol on the Privileges and Immunities of the European Communities shall apply to the Agency and its staff.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

**Art.23-26: Staff, Privileges and immunities, Liability, Languages**

<p>Article 25 <b><i>Liability</i></b></p>	<p>Article 25 <b><i>Liability</i></b></p>	<p>Article 25 <b><i>Liability</i></b></p>	
<p>1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.</p> <p>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.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
<p>2. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or its servants in the performance of their duties.</p> <p>The Court of Justice shall have jurisdiction in any dispute relating to compensation for such damage.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
<p>3. The personal liability of its servants towards the Agency shall be governed by the relevant conditions applying to the staff of the Agency.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>

**Art.23-26: Staff, Privileges and immunities, Liability, Languages**

Article 26 <i>Languages</i>	Article 26 <i>Languages</i>	Article 26 <i>Languages</i>	
1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community <sup>17</sup> shall apply to the Agency. The Member States and the other bodies appointed by them may address the Agency and receive a reply in the European Union language of their choice.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

<sup>17</sup> OJ 17, 6.10.1958, p. 385/58. Regulation as last amended by the 1994 Act of Accession.

**Art.27: Protection of personal data**

COMMISSION PROPOSAL	ITRE OPINION	PRELIMINARY COUNCIL POSITION	POSSIBLE COMPROMISE SOLUTION
Article 27 <i>Protection of personal data</i>	Article 27 <i>Protection of personal data</i>	Article 27 <i>Protection of personal data</i>	
When processing data relating to individuals, the Agency shall be subject to the provisions of Regulation (EC) No 45/2001.	When processing data relating to individuals, <i>in particular while performing its tasks</i> , the Agency shall <i>observe the principles of personal data protection in, and</i> be subject to, the provisions of Regulation (EC) No 45/2001.	When processing data relating to individuals, <b>in particular while performing its tasks</b> , the Agency shall <b>observe the principles of personal data protection in, and</b> be subject to the provisions of Regulation (EC) No 45/2001.	Acceptable
	<i>1a. The Management Board shall establish measures for the application of Regulation (EC) No 45/2001 by the Agency, including those concerning the Data Protection Officer of the Agency.</i>		Acceptable subject to further drafting

**Art.28: Participation of third countries**

Article 28 <i>Participation of third countries</i>	Article 28 <i>Participation of third countries</i>	Article 28 <i>Participation of third countries</i>	
1. The Agency shall be open to the participation of third countries which have concluded agreements with the European Union by virtue of which they have adopted and applied Union legislation in the field covered by this Regulation.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
2. Arrangements shall be made under the relevant provisions of those agreements, specifying in particular the nature, extent and manner in which these countries will participate in the Agency's work, including provisions relating to participation in the initiatives undertaken by the Agency, financial contributions and staff.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

**Art.28: Participation of third countries**

	<p><i>2a. The Agency may liaise and cooperate with other third countries, as well as international organisations and intergovernmental bodies related to Network and Information Security, and allow them to participate in relevant areas of the Agency's work as appropriate. Their participation should be submitted, by the Executive Director, for approval to the Management Board.</i></p>		Acceptable subject to further drafting
	<p><i>2b. The Agency shall support the external policies of the Union in the area of network and information security in close cooperation with the European External Action Service (EEAS).</i></p>		Acceptable subject to further drafting

<b>SECTION 6 FINAL PROVISIONS</b>			
<b>COMMISSION PROPOSAL</b>	<b>ITRE OPINION</b>	<b>PRELIMINARY COUNCIL POSITION</b>	<b>POSSIBLE COMPROMISE SOLUTION</b>
Article 29 <i>Review clause</i>	Article 29 <i>Review clause</i>	Article 29 <i>Review clause and evaluation</i>	
1. Within three years from the date of establishment referred to in Article 34, the Commission, taking into account the views of all relevant stakeholders, shall carry out an evaluation on the basis of terms of reference agreed with the Management Board. The evaluation shall assess the impact and the effectiveness of the Agency in achieving the objectives set out in Article 2, and the effectiveness of the Agency's working practices. The Commission shall undertake the evaluation notably in order to determine whether an Agency is still an effective instrument and whether the duration of the Agency should be further extended beyond the period specified in Article 34.	1. Within <i>five</i> years from the date of establishment referred to in <i>Article 33</i> , the Commission, taking into account the views of all relevant stakeholders, shall <i>request an independent third-party</i> evaluation on the basis of terms of reference agreed with the <i>Executive</i> Board. The evaluation shall assess the impact and the effectiveness of the Agency in achieving the objectives set out in Article [2], and the effectiveness of the Agency's working practices. The evaluation <i>shall serve as a basis for determining</i> whether <i>the</i> Agency is still an effective instrument <i>and, if so, whether its budget planning for the following years is still appropriate, whether its tasks should be adapted, what measures are necessary to increase its effectiveness</i> , and whether the duration of the Agency should be further extended beyond the period specified in <i>Article 33</i> .	1. <b>By [...] and every four</b> <del>Within three years thereafter from the date of establishment referred to in Article 34,</del> the Commission, taking into account the views of all relevant stakeholders, shall <del>carry out</del> <b>request an independent third party</b> evaluation on the basis of terms of reference agreed with the Management Board.	Acceptable subject to further drafting, also in connection with 1a and 1b of the Council's preliminary position

**Art.29: Review clause**

		<p><b>1a.</b> The evaluation shall assess the <del>impact and the</del> effectiveness of the Agency in achieving the objectives set out in Article 2, <b>the relevance of the activities pursued and their relationship and/or complementarity with existing Union policies</b> and the effectiveness of the Agency's working practices.</p>	
		<p><b>1b</b> The <del>Commission</del> evaluation shall <del>undertake the evaluation</del> notably <b>serve as a basis</b> in order to determine whether an Agency is still an effective instrument, <del>and</del> whether <b>its budget planning for the following years is still appropriate and whether and for which period</b> the duration of the Agency should be further extended beyond the period specified in Article 34<b>33</b>.</p>	
<p>2. The evaluation findings shall be forwarded by the Commission to the European Parliament and the Council and shall be made public.</p>	<p><i>[no change]</i></p>	<p>2. The evaluation <del>findings</del> <b>report</b> shall be forwarded by the Commission to the European Parliament and the Council and shall be made public.</p>	<p>Maintain the Council's preliminary position</p>

**Art.29: Review clause**

<p>3. The Management Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission. The Management Board and the Executive Director shall take the results of the evaluation into consideration in the Agency's multi-annual planning.</p>	<p>3. The Management Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency, <i>its budget</i> and its working practices to the Commission. The Management Board and the Executive Director shall take the results of the evaluation into consideration in the Agency's multi-annual planning.</p>	<p>3. The Management Board shall receive the evaluation <b>report</b> and issue recommendations regarding changes to this Regulation, the Agency, <b>its budget</b> and its working practices to the Commission. The Management Board and the Executive Director shall take the results of the evaluation into consideration in the Agency's multi-annual planning.</p>	<p>Maintain the Council's preliminary position</p>
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**Art.30: Cooperation of the host member state**

<p align="center">Article 30 <i>Cooperation of the host Member State</i></p>	<p align="center">Article 30 <b>Cooperation of the host Member State and headquarters agreement</b></p>	<p align="center">Article 30 <i>Cooperation of the host Member State</i></p>	
<p>The Agency's host Member State shall ensure the best possible conditions for the smooth and efficient operation of the Agency.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
	<p><i>The necessary arrangements concerning the accommodation to be provided for the Agency in the Member State where its seat is located and the facilities to be made available by that Member State, as well as the specific rules applicable to the Executive Director, the members of the Management Board, the staff of the Agency and members of their families, shall be laid down in a Headquarters Agreement between the Agency and the Member State where the seat is located concluded after obtaining the approval of the Management Board.</i></p>		<p>To be considered further</p>

**Art.30: Cooperation of the host member state**

	<p><i>The Member State in which the Agency has its seat shall provide the best possible conditions to ensure the proper functioning of the Agency, including appropriate building infrastructure, communications facilities, multilingual, European-oriented schooling, appropriate transport connections and other sufficient transport infrastructure.</i></p>		<p>To be considered further</p>
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**Art.31-32: Administrative control, Repeal and succession**

Article 31 <i>Administrative control</i>	Article 31 <i>Administrative control</i>	Article 31 <i>Administrative control</i>	<b>POSSIBLE COMPROMISE SOLUTION</b>
The operations of the Agency are subject to the supervision of the Ombudsman in accordance with Article 228 of the Treaty.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

Article 32 <i>Repeal and succession</i>	Article 32 <i>Repeal and succession</i>	Article 32 <i>Repeal and succession</i>	<b>POSSIBLE COMPROMISE SOLUTION</b>
1. Regulation (EC) No 460/2004 is repealed.  References to Regulation (EC) No 460/2004 and to ENISA shall be construed as references to this Regulation and to the Agency.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>
2. The Agency succeeds the Agency that was established by Regulation (EC) No 460/2004 as regards all ownership, agreements, legal obligations, employment contracts, financial commitments and liabilities.	<i>[no change]</i>	<i>[no change]</i>	<i>[no change]</i>

**Art.33: Duration**

Article 33 <i>Duration</i>	Article 33 <i>Duration</i>	Article 33 <i>Duration</i>	<b>POSSIBLE COMPROMISE SOLUTION</b>
The Agency shall be established from [...] for a period of five years.	The Agency shall be established from <b>13 September 2013</b> for a period of <b>seven</b> years.	[The Agency shall be established from [...] <b>the date specified in art.34</b> for a period of <del>five</del> [...] years.]	To be considered further

**Art.34: Entry into force**

<p>Article 34 <i>Entry into force</i></p>	<p>Article 34 <i>Entry into force</i></p>	<p>Article 34 <i>Entry into force</i></p>	<p><b>POSSIBLE COMPROMISE SOLUTION</b></p>
<p>This Regulation shall enter into force on the day following that of its publication in the <i>Official Journal of the European Union</i>, and shall apply with effect from 14 March 2012 or from the day following that of its publication, whichever comes later.</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>
<p>This Regulation shall be binding in its entirety and directly applicable in all Member States.</p> <p>Done at [...],</p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>	<p><i>[no change]</i></p>

