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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 29 June 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

Subject: Opinion by the Management Board of eu-LISA on the recommendations of
the Commission on changes to the Establishing Regulation of eu-LISA

Delegations will find attached the Opinion by the Management Board of eu-LISA on the
recommendations of the Commission on changes to the Establishing Regulation of eu-LISA.



Protection level LIMITED BASIC

2017-004 REV 1

From: The Chairman of the Management Board

To: Members of the Management Board

Prev. Doc: -

Subject Opinion on the recommendations of the Commission on changes to the Establishing Regulation of eu-LISA

eu-LISA LIMITED BASIC

European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
Rävala pst 4 • 10143 Tallinn • Estonia

Opinion on the recommendations of the Commission on changes to the Establishing Regulation of eu-LISA

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Releasable to Management Board

Subject: Opinion on the recommendations of the Commission regarding changes to the Establishing Regulation of eu-LISA

Dear Members of the Management Board,

In compliance with Article 31(1) of the Regulation (EU) 1077/2011 (establishing Regulation), the Commission carried out in 2015-2016 the evaluation of the eu-LISA, in close consultation with the Management Board, and examined the way and extent to which the Agency effectively contributes to the operational management of large-scale IT systems in the area of freedom, security and justice and fulfils its tasks laid down in this Regulation.

The establishing Regulation (Article 31(2)) provides that, on the basis of the evaluation, the Commission, after consulting the Management Board, shall issue recommendations regarding changes to the Regulation and forward them together with the opinion of the Management Board, as well as appropriate proposals to the European Parliament, the Council and the European Data Protection Supervisor.

With the letter dated 25 November 2016 the Director General for Migration and Home Affairs of the Commission requested the Management Board to launch consultations on the Recommendations regarding changes to Regulation (EU) 1077/2011, on the basis of the Evaluation of the Agency, in order to be able to finalise the evaluation report on the action of eu-LISA.

The consultation was launched on 5 December 2016 with a deadline 12 January 2017. Within established period 6 members of the Board and the Agency provided their contribution. The present document aims to consolidate collected input and to formulate official position of the Management Board that will be further transmitted to the European Commission, in particular:

1. General remarks:

- a. The Management Board of eu-LISA welcomes the recommendations of the of the Commission regarding changes to Regulation (EU) 1077/2011, on the basis of the evaluation of the Agency and finds it comprehensive and covering all different aspects of operations of eu-LISA.
- b. The Management Board takes note of the fact that there were bilateral discussions between the Agency and the Commission for detailed input in the form of Impact Assessments on possible changes that might derive from eu-LISA's programming documents on technical developments.
- c. The recommendations suggest several new additional tasks to be allocated to the Agency. The Board welcomes the intention of the Commission to enlarge responsibilities of eu-LISA. At the same time the Board emphasizes the need of providing the Agency with additional budgetary and human resources in order to ensure sustainability of its operations.

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- d. The Board welcomes the intention of the Commission to transfer all the responsibilities with regards to the management of the communication infrastructure. At the same time the Board emphasizes the importance of having this approach reflected not only in the revised establishing Regulation of the Agency but also in the new legislative instruments introduced by the Commission.
- e. The Board supports the intention of the Commission to extend the mandate of the Agency in order to enable it to provide broader support and advice to the Member States. At the same time the Board notes that it should be provided only upon request of concerned Member States, in full respect of their sovereignty.
- f. Last but not least, the Board wants to draw attention to the fact that finding chairpersons and deputy-chairpersons for the Advisory Groups represents a challenge to the Agency. Furthermore, there is a substantial workload linked to their responsibilities, and most of the Member States are not in favour to take up this extra workload. In this respect the Board is in opinion that duration of the mandate of the chairperson / deputy-chairperson of an Advisory Group should be extended, ideally through removing the limit of the number of years for one person being chair of vice-chair of an Advisory Group.

2. Detailed remarks:

- a. The Board finds the recommendation of the Commission to define a new provision on the cooperation framework of eu-LISA with other JHA agencies very useful. At the same time the Board is in the opinion that this new cooperation framework shall be based on Common Approach as defined in the Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies dated 19.7.2012. It calls, amongst others, for synergies and service sharing between decentralised EU agencies. It will be also beneficial need of closer cooperation with ENISA to be emphasized.
- b. The Board shares the view of the Commission that introduction of ex-ante assessments for the projects above certain value does not require amendment in Agency's establishing Regulation as long as this requirement has already been established in Art. 29(5) of the Framework Financial Regulation. However, the Board is in opinion that it is its responsibility and prerogative to decide upon modalities of implementation of this requirement. In this respect the Board intends to ask the Agency to provide a proposal which will be further discussed in one of the forthcoming Board meetings.
- c. With regards to possible changes in the establishing Regulation of the Agency stemmed from technical developments of the systems entrusted to eu-LISA, the Board is in a view that suggested approach might not be advantageous for the Agency. At one hand, it is prerogative of the Executive Director, yearly assessed by the MB, to guarantee stable functioning of the systems and their supporting infrastructure. On the other hand, it is clear that technologies evolve very rapidly and much faster than the legislative world can follow. In this respect encoding particular technical solutions or technologies in the establishing Regulation (or legal instruments governing systems entrusted to eu-LISA) might prevent the

Agency to deliver its objectives as set in Art. 2. In the particular example with active/active configuration between central and back-up systems it should be noted that it is one of the possible technical solutions for back up (other solutions could be active/passive, hot back up, cold back up etc.). As long as legal instruments governing individual systems set only the requirement a back-up solution to be established, Agency should have the possibility to identify and implement most effective and efficient technical solution.

- d. The Board is in opinion that to enable the Agency to increase resilience of systems under its management it will be beneficial arrangements for the technical sites of the Agency to be made more flexible. Agency should be able to setup addition technical sites, after approval of the Management Board, in addition to existing ones in Strasbourg and Sankt Johann im Pongau.
- e. The Board considers that in order to increase added value of the Agency towards the Member States, the mandate and tasks of eu-LISA should be expanded also more in the area of R&D, beyond present monitoring of technology developments. That will increase ability of the Agency to be more pro-active suggesting relevant and necessary technical changes in the IT systems under its responsibility.
- f. The Board welcomes the intention of the Commission to extend ability of the Agency to provide statistics on the different systems. At the same time the Board is in opinion that the Agency should be able not only to generate technical statistics but also to provide upon request analytical reports to support decision-making in the Member States and Commission.
- g. The Board welcomes the intention of the Commission to introduce changes in the establishing Regulation to allow eu-LISA to provide advice to the Member States with regards the national system's connection to the central systems and for ad-hoc assistance/support. At the same time the Board is in opinion that this concept should be developed further towards the possibility of the Agency to provide broader range of services upon request to the Member States. This is also in line with recommendation R 6.2 of Evaluation report of the Agency and with recent discussions in the Management Board with regards to some initiatives introduced by eu-LISA (namely the concept for EU Technology Hub). Furthermore, the possibility to provide services should eventually be extended to the other JHA Agencies in the context of the new cooperation framework. That would require also amendment of Art. 32(1).c of establishing Regulation of the Agency.
- h. Last, but not least, the Board is in opinion that as part of forthcoming revision of its establishing Regulation, the role and the responsibilities of eu-LISA with regards to DubliNet, VIS Mail and SIRENE should be further clarified.

The Management Board looks forward for the report of the Commission to the European Parliament and the Council as well as for the detailed proposal for amendment of the Agency's establishing Regulation, where this opinion will be duly reflected.