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LIMITE

**DAPIX 286
DATAPROTECT 141
CODEC 1394
ENFOPOL 409
EUROJUST 138
FRONT 382
VISA 340
EURODAC 28
ASILE 57
SIRIS 146
SCHENGEN 48
COMIX 618
JAI 781**

NOTE

From:	Presidency
To:	Working Party on Information Exchange and Data Protection (DAPIX): eu-LISA
No. prev. doc.:	10870/17 + COR 1, 11182/17
Subject:	Member States general observations in relation to the proposal for the Regulation on eu-LISA

Following the DAPIX: eu-LISA meeting of 13-14 July 2017, fifteen Member States and two Schengen Associated Countries provided their written contributions in relation to the proposal for the Regulation on eu-LISA (set out in 10870/17 + COR 1), as well as in relation to the questions raised by the Presidency in its note 11182/17.

The specific drafting suggestions and questions or observations have already been reflected by the Presidency in the revised draft text or in the footnotes (see 11884/17).

The aim of this note is to provide an overview of the general comments made by delegations and their replies to the questions raised by the Presidency in relation to the broadening of the mandate of eu-LISA.

In general, as regards the new tasks of eu-LISA, a number of Member States welcomed the proposed developments, while some delegations also underlined that the additional tasks should not adversely affect the performance of its core functions. A few delegations also stated that the broader mandate of the agency should be matched with adequate financial and human resources.

In relation to *specific new or broadened tasks of the agency*, delegations provided the following feedback:

- *as regards the advice by the agency with regard to the national systems' connection to the central systems and ad hoc support to Member States (Article 12(1))*, a number of delegations expressed their support for this provision. Some Member States saw a need to further clarify the procedures in such cases, in particular as regards the role of the Commission and the possible role of the Management Board, as well as the financial aspects of this provision, for example, by providing a clear methodology and detailed guidelines specifying how the fees and costs of services rendered shall be calculated (if possible/necessary, also in the form of an implementing or delegated act). A few delegations also stated that adequate resources would be needed for fulfilling this task without undermining the overall functioning of the agency. One delegation also underlined that the agency's support should focus solely on possible connection problems between national and EU-level systems as well as interfaces between them, while requests to support strictly national systems should be avoided in order not to overload the agency. In relation to ad hoc support, it was suggested that the role of the agency should be to ensure technical functionality of all EU-wide systems and communication infrastructure and if needed, to give priority to crisis area queries and entries. One delegation also suggested that the nature of the support that the agency is expected to provide to the Commission (Article 12(1), last sentence), should be clarified and defined in the Regulation, including its financial aspects. It was suggested that the supporting activities should have a strong relevance for the tasks of the agency and also provide added value to Member States. Thus, the Management Board should be involved in the assessment of the requests and the decision to start the proposed activities;

- as regards the tasking of the agency to develop, manage and/or host a common IT system by a group of Member States (Article 12(2)), some delegations saw the merit of this new task as it would contribute to the improvement of the overall IT environment in the area of freedom, justice and security and it would ensure a more effective use of Member States' resources. Some delegations had further questions regarding the expected procedure, including its financial aspects, as even if financed through Member States' contributions, such activities might have an effect on the agency. It was therefore suggested that there should be appropriate safeguards to ensure that such services are delivered in a competitive market and that the Management Board should make sure that such activities should not increase costs or otherwise negatively affect other activities of the agency. One delegation suggested that the legal aspects should be clarified, as the current wording could make the Article applicable to decentralised systems for which the technical solution is already regulated in the legal act of the respective system. It was also mentioned that the responsibilities and ownership of data must be clear and not overlap in order to avoid the situation of a lack of traceability/responsibility and security. Three delegations underlined that any IT instrument for a group of Member States under this provision should be developed on voluntary basis, without imposing any obligations to other Member States. The wording should be as flexible as possible and should not affect the existing national systems. One delegation suggested that this possibility should be based on prioritised operational end-users' needs, agreed at the EU level in order to provide maximum added value, and should not lead to incoherence of the systems. Examples of such activities could be the facilitation of interoperability between EES and ETIAS and further development of the exchange and use of API data. One delegation said it could not support this task suggesting that such services could be outsourced/bought by Member States on the open market;

- as regards monitoring of research (Article 10), a few delegations expressed strong support for the role of the agency in this field, underlining that it should be active in the field of research in order to gain better efficiency, functionality and security, and some suggested that this could even go further, for example, it could include the cooperation with other bodies (for example, CEPOL, Europol, EBCG, Interpol) for research purposes. Research in the field of communication infrastructure would also be welcomed. In addition, eu-LISA should explore (and promote) technological solutions and innovations in relation to biometrics. One delegation suggested that the agency should focus in its research efforts on such activities that lead to establishment of concrete, tailor-made and demand-driven solutions;

- *as regards interoperability (Article 9)*, a few Member States welcomed the future role of eu-LISA, but one delegation underlined that interoperability also raises questions in relation to data protection which must be answered.

One Member State suggested that agency should also be able to provide *statistical reports* upon request to support decision-making by the Commission and other Agencies. In particular this would help Schengen evaluations. Common architectural structures and design platform would also bring added value to all parties involved if the usage of common data could be expanded in a secure and controlled way.

One delegation would welcome further discussion about possible creation of *eu-LISA communication platform (website)* intended for users of the IT systems as well as the general public.

A few Member States raised more specific questions about the *future budget of the agency* (for example, as regards the specific figures in the explanatory memorandum and the financial impact assessment or as regards the reduction of Commission's costs after the transfer of communication infrastructure), and welcomed Presidency's intention to hold a separate discussion on this issue. One Member State stated that new expenses must be avoided as far as possible, and any proposal for increases of staff should be accompanied by a corresponding proposal for staff cuts in other agencies.

As regards agency's staff, one Member State also mentioned that in order to ensure better continuity and thus effectiveness of the overall functioning of eu-LISA, the agency should foresee hiring staff for a longer period of time (for instance, by replacing interim staff by contract agents). Another Member State suggested that the staff should have the necessary skills, not only the technical knowledge of the systems but skills for creating desired architectural models of the systems, overall planning capabilities and wide understanding of data protection and cyber security needs when renewing existing and developing new systems.

Two delegations suggested that the *position of the Schengen Associated Countries* outlined in the current Regulation be maintained in the future Regulation.