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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  
CSCI 34  
SAP 12  
COMIX 618  
JAI 781**

**NOTE**

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From: Presidency

To: Working Party on Information Exchange and Data Protection (DAPIX): eu-LISA

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No. prev. doc.: 10820/17 + COR 1

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Subject: Proposal for a Regulation of the European Parliament and of the Council on the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, and amending Regulation (EC) 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) 1077/2011  
- Revised draft

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Delegations will find below a Presidency revised text of the proposal for the aforementioned Regulation, based on the outcome of discussions on this proposal by DAPIX: eu-LISA on 13-14 July 2017 as well as the written drafting suggestions provided by delegations<sup>1</sup>.

Changes to the Commission proposal are marked in ***bold italics*** and ~~strikethrough~~.

Delegations are invited to note that the recitals will be adjusted at a later stage.

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<sup>1</sup> 15 Member States and 2 Schengen Associated Countries provided their written contributions. An overview of drafting suggestions and of specific comments/questions, which are not reflected in the compromise text, is provided in the footnotes.

2017/0145 (COD)

*Proposal for a*

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

*on the European Union Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, and amending Regulation (EC) 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) 1077/2011*<sup>2</sup>

(...)

## **CHAPTER I SUBJECT MATTER**

*Article 1*

*Subject matter*

1. This Regulation concerns<sup>3</sup> the European Union agency for the operational management of large-scale IT systems in the area of freedom, security and justice (the Agency) which was established by Regulation (EU) No 1077/2011.
2. The Agency shall be responsible for the operational management of the Schengen Information System (SIS) the Visa Information System (VIS) and Eurodac.

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<sup>2</sup> NL, PL, SE, UK parliamentary reservations on the proposal.

DK, ES, FI, HU, LT, NL, PT, SI, SE, SK and NO general scrutiny reservations on the proposal.

<sup>3</sup> PL suggests to replace "concerns" with "*regulates the functioning of*".

3. [The Agency shall be responsible for the preparation, development and/or the operational management of [the Entry/Exit System (EES)]<sup>4</sup>, [DubliNet]<sup>5</sup>, [the European Travel Authorisation System (ETIAS)]<sup>6</sup>, [the automated system for registration, monitoring and the allocation mechanism for applications for international protection]<sup>7, 8</sup> and [the *ECRIS-TCN* system and the ECRIS reference implementation]<sup>9, 10, 11</sup>].

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<sup>4</sup> The amendments concerning EES have been foreseen in the EES proposal. They might be subject to amendments in the process of finalisation of negotiations with the EP and Council.

<sup>5</sup> The amendments to the eu-LISA Regulation concerning DubliNet have been foreseen in the Eurodac recast proposal and are subject to the adoption of that proposal.

<sup>6</sup> The amendments to the eu-LISA Regulation on ETIAS have not been foreseen in the ETIAS proposal but could be inserted during the negotiations of the text. In any event they are subject to adoption of that proposal.

<sup>7</sup> The amendments to the eu-LISA Regulation have not been inserted in the Dublin recast proposal and in any event will be subject to adoption of that proposal.

<sup>8</sup> LV disagrees with tasking eu-LISA to establish the automated system for registration, monitoring and the allocation mechanism of applications for international protection.

<sup>9</sup> The amendments to the eu-LISA Regulation have been inserted in the ECRIS-TCN proposals and are subject to the adoption of that proposal.

<sup>10</sup> LV is of an opinion that the role of eu-LISA could and should be further explored and strengthened not only in the field of home affairs, but also in the area of justice (e-CODEX context, for instance).

<sup>11</sup> FR suggests to add here (or in Article 6 or 11): "***The Commission presents the European Parliament and the Council with an assessment of the e-CODEX project; this assessment may be completed with a legislative proposal aiming to amend the present Regulation in order to extend the Agency's responsibilities to the e-CODEX system.***"

4. The Agency may be made responsible for the preparation, development and/or the operational management of large-scale IT systems in the area of freedom, security and justice other than those referred to in paragraphs 2 and 3 including existing systems, only if so provided by relevant legislative instruments, based on Articles 67 to 89 TFEU<sup>12</sup>, taking into account, where appropriate, the developments in research referred to in Article 10 of this Regulation and the results of pilot projects and proofs of concept referred to in Article 11 of this Regulation.<sup>13</sup>
5. Operational management shall consist of all the tasks necessary to keep large-scale IT systems functioning in accordance with the specific provisions applicable to each of them<sup>14</sup>, including responsibility for the communication infrastructure used by them. Those large-scale systems shall not exchange data or enable sharing of information or knowledge, unless so provided in a specific legal basis.
6. The Agency shall also be responsible for the following tasks:
  - ensuring data quality in accordance with Article 8;
  - developing the necessary actions to enable<sup>15</sup> interoperability in accordance with Article 9;

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<sup>12</sup> **PL** considers that without a reference to Article 81 in the recitals, this wording may lead to uncertainty on inclusion of area of judicial cooperation in civil matters in the mandate of eu-LISA (such as BRIS platform or exchange of information from the European Certificate of Succession registers).

<sup>13</sup> **DE** asks to take into account here and in the following that the limitation of responsibility to “development and / or the operational management of large-scale IT systems in the area of freedom, security and justice” is currently not sufficiently clear. It should be emphasized that the Agency's primary competence is limited to central European information systems and not to systems or system components, which are the responsibility of MS. The future negotiations will clarify the extent to which the targeted support for individual MS results in a transfer of responsibilities for operation and development from the national systems of the respective MS to the Agency. At the present time, however, a strict separation of competences between the individual MS and eu-LISA must be observed.

<sup>14</sup> **DE** suggests to insert a reference to Articles 2 to 7 here. The aspect of control should be supplemented

<sup>15</sup> **DE** suggests to replace this part with: "*pursue the necessary measures to enhance*".

- carrying out research activities in accordance with Article 10;
- carrying out pilot projects, proofs of concept and testing activities in accordance with Article 11, and
- providing support to Member States and the Commission in accordance with Article 12<sup>16</sup>.

*Article 2*  
*Objectives*

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

- (a) the development of large-scale scale IT systems using an adequate project management structure for efficiently developing large-scale IT systems;
- (b) effective, secure and continuous operation of large-scale IT systems;
- (c) the efficient and financially accountable management of large-scale IT systems;
- (d) an adequately high quality of service for users of large-scale IT systems;
- (e) continuity and uninterrupted service;
- (f) a high level of data protection, in accordance with the applicable rules, including specific provisions for each large-scale IT system;
- (g)<sup>17</sup> an appropriate level of data and physical security, in accordance with the applicable rules, including specific provisions for each large-scale IT system.

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<sup>16</sup> **FI** suggests to add here: "*and Article 12a*".

<sup>17</sup> **DE** scrutiny reservation on this point.

<sup>18</sup> **FI** suggests to add two points here: "*(h) adequate statistics for the Commission and for the relevant EU decentralised Agencies; (i) further development of interoperability of IT-systems.*"

## **CHAPTER II**

### **TASKS OF THE AGENCY**

#### *Article 3*

##### *Tasks relating to SIS II*

In relation to SIS II<sup>19</sup>, the Agency shall perform:

- (a) the tasks conferred on the Management Authority by Regulation (EC) No 1987/2006 and Decision 2007/533/JHA [or by Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006; by Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police *and judicial* cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU and by Regulation XX of XX of the European Parliament and of the Council on the use of the Schengen Information System for the return of illegally staying third-country nationals];
- (b) tasks relating to training on the technical use of SIS II, in particular for SIRENE-staff (SIRENE — Supplementary Information Request at the National Entries) and training of experts on the technical aspects of SIS II in the framework of Schengen evaluation.

#### *Article 4*

##### *Tasks relating to VIS*

In relation to VIS, the Agency shall perform:

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

#### *Article 5*

##### *Tasks relating to Eurodac*

In relation to Eurodac, the Agency shall perform:

- (a) the tasks conferred on it by Regulation (EU) No 603/2013 [or by Regulation XX of XX on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement and Europol for law enforcement purposes (recast)];
- (b) tasks relating to training on the technical use of Eurodac.

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<sup>19</sup> NL suggests to delete "SIS II".

*[Article 5a  
Tasks relating to EES*

In relation to EES the Agency shall perform:

- (a) the tasks conferred on it by Regulation (EU) XXX/20XX of the European Parliament and of the Council [of X.X.X establishing an Entry/Exit System to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes<sup>20</sup> and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011 (COM(2016) 194 final – 2016/0106 COD)];
- (b) tasks relating to training on the technical use of EES.<sup>21]</sup>

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*[Article 5b  
Tasks relating to ETIAS*

In relation to ETIAS, the Agency shall perform:

- (a) the tasks conferred on it by [Regulation (EU) XXX/20XX of the European Parliament and of the Council establishing the European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 515/2014, (EU) 2016/399, (EU) 2016/794 and (EU) 2016/1624 (COM(2016) 731 final -2016/0357 (COD))];
- (b) tasks relating to training on the technical use of the ETIAS.<sup>23]</sup>

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<sup>20</sup> DE asks to align the wording with the wording of the EES regulation (once adopted) as follows: "for law enforcement ***the purposes of preventing, detecting and investigating terrorist offences or other serious criminal offences***"

<sup>21</sup> NL would like to see that the task in relation to the training of the EES experts is further specified as is also done in article 3 for the SIS/SIRENE bureaus.

<sup>22</sup> FI suggests to add here: "***(c) tasks relating to interoperability with ETIAS***".

<sup>23</sup> NL would like to see that the task in relation to the training of the ETIAS experts is further specified as is also done in article 3 for the SIS/SIRENE bureaus.

<sup>24</sup> FI suggests to add here: "***(c) tasks relating to interoperability with EES***".

*[Article 5c  
Tasks relating to DubliNet*

In relation to DubliNet, the Agency shall perform:

- (a) the tasks conferred on it by [Regulation (EU) No ~~Regulation~~ XX of XX on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement and Europol for law enforcement purposes (recast) (COM(2016) 272 final – 2016/0132 (COD)];
- (b) tasks relating to training on the technical use of DubliNet.<sup>25]</sup>

*[Article 5d  
Tasks relating to the automated system for registration, monitoring and the allocation mechanism  
for applications for international protection<sup>26,27</sup>*

In relation to the automated system for registration, monitoring and the allocation mechanism for applications for international protection referred to in Article 44 of Regulation (EU) XX/20XX [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) COM(2016) 270 final -2016/0133(COD)], the Agency shall perform:

- (a) the tasks conferred on it by that Regulation [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) COM(2016) 270 final -2016/0133(COD)];
- (b) tasks relating to training on the technical use of the automated system for registration, monitoring and the allocation mechanism for applications for international protection.]

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<sup>25</sup> **NL** would like to see that the task in relation to the training of the DUBLINET experts is further specified as is also done in article 3 for the SIS/SIRENE bureaus.

<sup>26</sup> **NL** is not in favour for creating a separate system for this functionality and would like to see that this functionality is incorporated in an existing system like Eurodac. This article should reflect also the option to extend an existing system with this functionality.

<sup>27</sup> **PL** strongly opposes establishment of any obligatory mechanisms of relocation of applications at EU level and any IT tools connected to such mechanism.

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

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

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

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*Article 6  
Tasks relating to the preparation, development and operational  
management of other large-scale-IT systems*

When entrusted with the preparation, development or operational management of other large-scale IT systems referred to in Article 1(4), the Agency shall perform the tasks conferred on it pursuant to the legislative instrument governing the relevant system, as well as tasks relating to training on the technical use of those systems, as appropriate<sup>29</sup>.

*Article 7  
Tasks relating to the communication infrastructure*

1. The Agency shall carry out all the tasks relating to the communication infrastructures of the systems operated by the Agency conferred on it by the legislative instruments governing the large-scale IT systems operated by the Agency, with the exception of those systems making use of the EuroDomain<sup>30</sup> for their communication infrastructure for which the Commission shall be responsible for the tasks of implementation of the budget, acquisition and renewal and contractual matters. According to the legislative instruments governing the systems using the EuroDomain<sup>31</sup>, the tasks regarding the communication infrastructure (including the operational management and security) are divided between the Agency and the Commission. In order to ensure coherence between the exercise of their respective responsibilities, operational working arrangements have been made between the Agency and the Commission and reflected in a Memorandum of Understanding<sup>32</sup>.

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<sup>28</sup> NL is in favour to include also the e-CODEX as part of Article 5.

<sup>29</sup> DE suggests to delete "as appropriate".

<sup>30</sup> DE kindly asks to explain why the term "EuroDomain" is not defined in the article "Definitions". The inclusion of EuroDomain in Recital 13 does not appear to be sufficient.

<sup>31</sup> This is currently only the case of Eurodac but the ECRIS-TCN system will also use the EuroDomain.

<sup>32</sup> PL suggests to move the last two sentences of this paragraph to the recitals.

2. The communication infrastructure shall be adequately managed and controlled in such a way as to protect it from threats, and to ensure its security and that of large-scale IT systems for which the Agency is responsible, including that of data exchanged through the communication infrastructure.
3. Appropriate measures including security plans shall be adopted by the Agency inter alia, to prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or transport of data media, in particular by means of appropriate encryption techniques. All system-related operational information circulating in the communication infrastructure shall be encrypted.
4. Tasks relating to the operational management of the communication infrastructure *as conferred on the Agency by the legislative instruments governing the large-scale IT systems operated by it* may be entrusted to external private-sector entities or bodies in accordance with Regulation (EU, Euratom) No 966/2012. In such a case, the network provider shall be bound by the security measures referred to in paragraph 3 and shall have no access to ~~SIS II, VIS, Eurodac, [EES], [ETIAS], [the automated system for registration, monitoring and the allocation mechanism for applications for international protection] [or the ECRIS-TCN system]~~ **any operational data contained in those systems** or to the ~~SIS II-related SIRENE exchange~~, by any means.
5. Without prejudice to the existing contracts on the communication infrastructures of SIS II, VIS and Eurodac, the management of the encryption keys shall remain within the competence of the Agency and shall not be outsourced to any external private-sector entity.

*Article 8*  
*Data quality*

***Without prejudice to Member States' responsibilities with regard to the data entered into the systems, the Agency, closely involving its Advisory Groups,*** together with the Commission, shall work towards establishing for all systems under the Agency's operational responsibility, automated data quality control mechanisms and common data quality indicators and towards developing a central repository for reporting and statistics, subject to specific ***provisions in the legislative instruments,*** legislative amendments to the existing systems' instruments and/or to specific provisions in new instruments.<sup>33,34,35</sup>

*Article 9*  
*Interoperability*<sup>36,37,38</sup>

The Agency shall also develop the necessary actions to enable interoperability of the systems, subject, where required, to the adoption of the relevant legislative instruments<sup>39</sup>.

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<sup>33</sup> NL suggests to redraft this paragraph as follows: "The Agency, together with the Commission ***and Member States,*** shall work towards establishing for all systems under the Agency's operational responsibility, automated data quality control mechanisms and common data quality indicators, ***while fully taking into account the ownership and decision making responsibility of Member States and possible third parties regarding the information provided to the information systems falling under the mandate of the Agency;*** and towards developing a central repository for reporting and statistics, subject to specific legislative amendments to the existing systems' instruments and/or to specific provisions in new instruments."

<sup>34</sup> CH suggests the following deletion: "The Agency, together with the Commission, shall work towards establishing for all systems under the Agency's operational responsibility, automated data quality control mechanisms and common data quality indicators ~~and towards developing a central repository for reporting and statistics, subject to specific legislative amendments to the existing systems' instruments and/or to specific provisions in new instruments.~~"

<sup>35</sup> DE suggests to complement this Article as regards the provision of training modules; the generation of statistics and data quality reports; the prerequisites for the use of the data in the central repository; the role and the needs of the MS in the data quality process.

<sup>36</sup> UK scrutiny reservation on this Article.

<sup>37</sup> DE, FR, HU, NL suggest to clarify what interoperability means in the context of the Agency.

<sup>38</sup> Further explanation of the concept of interoperability could be added in the recitals on the basis of Commission's Communication on Stronger and Smarter Information Systems for Borders and Security of 6 April 2016.

<sup>39</sup> DE suggests to amend the text here as follows: " The Agency shall also ~~develop~~***pursue*** the necessary ~~actions~~***measures*** to ~~enable~~***enhance*** interoperability of the systems, subject, where required, to the adoption of the relevant legislative instruments."

DE suggests moreover to consider adding a new Article / paragraph concerning the development and definition of rights and role management variants and other means to ensure compliance with data protection regulations.

*Article 10*  
*Monitoring of Research*

1. The Agency shall monitor the developments in research relevant for the operational management of SIS II, VIS, Eurodac, [EES], [ETIAS], [**DubliNet**], [the automated system for registration, monitoring and the allocation mechanism for applications for international protection], the [ECRIS-TCN system] and other large-scale IT systems as referred to in Article 1(4).
- 2.<sup>40,41</sup> The Agency may contribute to the implementation of the parts of the Framework Programme for Research and Innovation<sup>42</sup>, which relate to large-scale IT systems in the area of freedom, security and justice. For that purpose, and where the Commission has delegated the relevant powers to it the Agency shall have the following tasks:
  - a) managing some stages of programme implementation and some phases in the lifetime of specific projects on the basis of the relevant work programmes adopted by the Commission;
  - b) adopting the instruments of budget execution and for revenue and expenditure and carrying out all the operations necessary for the management of the programme;
  - c) providing support in programme implementation.
3. The Agency shall ~~on a regular basis~~ **at least once a year** keep the European Parliament, the Council, the Commission, and, where data protection issues are concerned, the European Data Protection Supervisor informed on the developments referred to in ~~paragraph 1~~ **this Article without prejudice to the reporting requirements in relation to the the implementation of the parts of the Framework Programme for Research and Innovation<sup>43</sup>**.

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<sup>40</sup> SE suggests that such activities should be approved by the Management Board.

<sup>41</sup> CZ, DE, PL, CH would like Article 10(2) to be further explained.

<sup>42</sup> LV remains open to discuss a more flexible solution that would confer similar powers to eu-LISA also *vis á vis* other EU Programmes.

PL sees it justified to extend such possibility not only to Framework Programme, but also to *Europe Connect* and *Justice*.

<sup>43</sup> LV considers it to be important to ensure that reporting on the developments in research to the Commission, to the European Parliament and – to the Council in particular – would be sufficiently regular and practically-oriented (i.e., with a clear understanding what developments might/should be introduced and how).

*Article 11*  
*Pilot projects, proofs of concept and testing activities*

1. Upon the specific and precise request of the Commission<sup>44</sup>, which shall have informed the European Parliament and the Council at least 3 months in advance, and after a decision by the Management Board, the Agency may, in accordance with Article 15(1)(~~u~~)(t) of this Regulation, carry out pilot projects as referred to in Article 54(2)(a) of Regulation (EU, Euratom) No 966/2012, for the development or the operational management of large-scale IT systems, in the application of Articles 67 to 89 TFEU, in accordance with Article 58(1)(c) of Regulation (EU, Euratom) No 966/2012, by way of a delegation agreement.  
The Agency shall on a regular basis keep the European Parliament, the Council and, where data protection issues are concerned, the European Data Protection Supervisor, informed of the evolution of the pilot projects referred to in the first subparagraph.
2. Financial appropriations for pilot projects as referred to in Article 54(2)(a) of Regulation (EU, Euratom) No 966/2012 requested by the Commission shall be entered in the budget for no more than two consecutive financial years<sup>45</sup>.
3. At the request of the Commission<sup>46</sup> or the Council and after a decision of the Management Board the Agency may be entrusted with budget implementation tasks for proofs of concept funded under the instrument for financial support for external borders and visa provided for in Regulation (EU) No 515/2014 in accordance with Article 58(1)(c) of Regulation (EU, Euratom) No 966/2012, by way of a delegation agreement.
4. The Agency may plan and implement testing activities on matters covered by this Regulation and the legislative instruments governing the development, establishment, operation and use of all large-scale IT systems managed by the Agency after a decision of the Management Board.<sup>47,48</sup>

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<sup>44</sup> DE suggests to add here: "*or the Management Board*"

<sup>45</sup> DE suggests to amend this paragraph as follows: " Financial appropriations for pilot projects as referred to in Article 54(2)(a) of Regulation (EU, Euratom) No 966/2012 requested by the Commission *or the Management Board* shall be entered in the budget ~~for no more than two consecutive financial years.~~"

<sup>46</sup> DE suggests to add here: ", *the Management Board*"

<sup>47</sup> DE asks to check if further explanation / clarification is needed as regards: 1) what exactly "testing activities" are; 2) in which way "testing activities" differ from "pilot projects" according to paragraph 1.

<sup>48</sup> FI suggests to add here: "*The Agency shall guarantee adequate level of quality of testing activities and cover all relevant costs.*"

Article 12  
Support to Member States and the Commission<sup>49</sup>

1. The Agency may be requested to provide advice to Member States with regard to the national systems' connection to the central systems and ad-hoc support to Member States<sup>50</sup>. The requests **for national systems' connection shall be submitted directly to the Agency, while requests** for ad-hoc support shall be submitted to the Commission which, **subject to its positive assessment**, shall transmit them to the Agency, **which shall inform the Management Board**. ~~‡~~ **The Agency** may also be requested to provide advice or support to the Commission on technical issues related to existing or new systems including by way of studies and testing.
- 2.<sup>51</sup> The Agency may also be tasked to develop, manage and/or host a common IT system by a group of at least ~~six~~<sup>52</sup> **a quarter of** Member States opting on a voluntary basis for a centralised solution assisting them in implementing technical aspects of obligations deriving from Union legislation on decentralised systems in the area of freedom, security and justice, subject to prior approval by the Commission and after a decision of the Management Board. In such case the Member States concerned shall entrust the Agency with those tasks by way of a delegation agreement including the conditions for the delegation and setting out the calculation of all relevant costs and the invoicing method **for those costs**.<sup>53,54,55</sup>

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<sup>49</sup> UK scrutiny reservation on this Article.

<sup>50</sup> LV, NL suggest to make it more clear in the text that provision of *ad hoc* support is related to exceptional cases, extraordinary or crisis situations.

<sup>51</sup> NL is not in favour of this provision.

SE suggests that the legal preconditions have to be clarified.

<sup>52</sup> RO considers that more details on the composition of the group could be given, to better understand the idea of the proposal and to which systems it could apply. For example, the size and geography of MS making up such a group, any other specificity belonging to them (MS with external border vs. internal border), etc.

SE suggests that the number of six could further be discussed. It may be better to give the Management Board a mandate to consider and decide on any such proposal, as well as the different options to support Member States implementation.

<sup>53</sup> DE suggests to add here: "**The occurring costs shall completely be covered by reimbursements of the relevant Member States.**"

<sup>54</sup> CH considers that adequate safeguards should be formally incorporated with a view to ensure that all required resources must be entirely available to the Agency to enable it to carry out its ordinary tasks. Furthermore, some issues remain unanswered, in particular how the requests shall be submitted and how the fees and costs of services rendered shall be calculated, bearing in mind that, according to CH, all the costs resulting from these activities should be borne by the States concerned.

<sup>55</sup> PL considers that a working paper detailing expected procedure, including its financial aspects, as announced by the Commission during DAPIX meeting, should be presented to streamline and clarify further discussion on this proposal.

## CHAPTER III STRUCTURE AND ORGANISATION

### *Article 13 Legal status and location*<sup>57</sup>

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

The tasks relating to development and operational management referred to in Article 1(3) and (4) and Articles 3, 4, 5, [5a], [5b], [5c], [5d], [5e], 6 and 7<sup>58</sup> shall be carried out in Strasbourg, France.<sup>59</sup>

Where a backup site or a second technical site is provided for in the legislative instruments governing the development, establishment, operation and use of each of the systems, this site shall be installed in Sankt Johann im Pongau, Austria.<sup>60</sup>

5. Both technical sites may be used simultaneously for active operation of the large- scale IT systems provided that the second site remains capable of ensuring their operation in case of failure of one or more of the systems. No further technical sites can be established without an amendment to this Regulation.<sup>61</sup>

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<sup>56</sup> **FI** suggests to add a new "*Article 12a: Statistical support to Member States and to the Commission*" here: "*The Agency shall provide adequate and detailed statistical information to the Commission for purposes of Schengen evaluations in order to monitor the implementation of Council Regulation (EU) 1053/2013. The Agency shall provide adequate and detailed statistics to the European Border and Coast Guard Agency for the purposes of monitoring the implementation of vulnerability assessment in accordance with regulation of the European Parliament and of the Council (EU) 2016/1624. The Agency may provide adequate and detailed information to other Agencies for justified purposes.*"

<sup>57</sup> **UK** scrutiny reservation on this Article.

<sup>58</sup> **FR** suggests to add here: "*10 and 11*".

<sup>59</sup> **NL** states that it is necessary to explicitly specify all the tasks that are carried out in Strasbourg site. By doing this there is no flexibility in assigning tasks to the other site(s).  
<sup>60</sup> **NL** is in favour of adding an option in the regulation to make it possible to create a second technical site in the vicinity of Strasbourg. This will also benefit to overcome the technical difficulties to create a true active-active setup of a system.

<sup>61</sup> **CZ** would like to further discuss the possibility of establishing additional backup site.  
**DE** questions that an active-active mode is technically feasible at two locations that are geographically so far apart from each other. DE therefore sees the need to redraft this paragraph.

*Article 14*  
*Structure*

1. The Agency's administrative and management structure shall comprise:
  - a) a Management Board;
  - b) an Executive Director;
  - c) Advisory Groups.
2. The Agency's structure shall include:
  - a) a Data Protection Officer;
  - b) a Security Officer;
  - c) an Accounting Officer.

*Article 15*  
*Functions of the Management Board*<sup>62</sup>

1. The Management Board shall:
  - a) give the general orientations for the Agency's activities;
  - b) adopt, by a majority of two-thirds of members entitled to vote, the annual budget of the Agency and exercise other functions in respect of the Agency's budget pursuant to Chapter V;
  - c) appoint, the Executive Director, and where relevant extend his/her term of office or remove him or her from office, in accordance with Article 22;
  - d) exercise disciplinary authority over the Executive Director and oversee his performance including the implementation of the Management Board's decisions;
  - e) take all decisions on the establishment of the Agency's organisational structure and where necessary their modification taking into consideration the Agency's activity needs and having regard to sound budgetary management;
  - f) adopt the Agency's Staff Policy;
  - g) establish ~~its~~ the rules of procedure of the Agency;
  - h) adopt an anti-fraud strategy, proportionate to the risk of fraud, taking into account the costs and benefits of the measures to be implemented;
  - i) adopt rules for the prevention and management of conflicts of interest in respect of its members;
  - j) authorise the conclusion of working arrangements in accordance with Article 37;
  - k) approve, following a proposal by the Executive Director, the Headquarters Agreement concerning the seat of the Agency and Agreements concerning the technical and backup sites, set up in accordance with Article 13(4) to be signed by the Executive Director with the host Member States;

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<sup>62</sup> UK scrutiny reservation on this Article.

- l) in accordance with paragraph 2, exercise, with respect to the staff of the Agency, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment ("the appointing authority powers");
- m) in agreement with the Commission, adopt the necessary implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of other Servants in accordance with Article 110 of the Staff Regulations;
- n) adopt the necessary rules on the secondment of national experts to the Agency;
- o) adopt a draft estimate of the Agency's revenue and expenditure, including the ~~provisional~~ **draft** establishment plan and submit them by 31 January each year to the Commission<sup>63</sup>;
- p) adopt the draft single programming document containing the Agency's multiannual programming and its work programme for the following year and a provisional draft estimate of the Agency's revenue and expenditure, including the ~~provisional~~ **draft** establishment plan and submit it by 31 January each year to the European Parliament, the Council and the Commission as well as any updated version of that document;
- q) ~~B~~before 30 November each year, adopt by a two-thirds majority of its members with the right to vote, and in accordance with the annual budgetary procedure, the single programming document taking into account the opinion of the Commission and ensure that the definitive version of this single programming document is transmitted to the European Parliament, the Council and the Commission and published;
- r) adopt an interim report by the end of August of each year on progress on the implementation of planned activities of the current year and submit it to the Commission;
- s) assess and adopt the consolidated annual activity report of the Agency's activities for the previous year comparing, in particular, the results achieved with the objectives of the annual work programme and send both the report and its assessment, by 1 July of each year to the European Parliament, the Council, the Commission and the Court of Auditors; the annual activity report shall be published;
- t) carry out its functions relating to the Agency's budget, including the implementation of pilot projects and proofs of concept as referred to in Article 11;
- u) adopt the financial rules applicable to the Agency in accordance with Article 44;
- v) appoint an Accounting Officer, who may be the Commission's Accounting Officer, subject to the Staff Regulations and the Conditions of Employment, who shall be totally independent in the performance of his or her duties;
- w) ensure adequate follow-up to the findings and recommendations stemming from the various internal or external audit reports and evaluations as well as from investigations of the European Antifraud Office (OLAF);

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<sup>63</sup> NL suggests to add here: "*after consulting the Advisory Groups*".

- x) adopt the communication and dissemination plans referred to in Article 30(4) and regularly update them;
- y) adopt the necessary security measures, including a security plan and a business continuity and disaster recovery plan, taking into account the possible recommendations of the security experts present in the Advisory Groups;
- z) adopt the security rules on the protection of classified information and non-classified sensitive information following approval by the Commission;
- aa) appoint a Security Officer;
- bb) appoint a Data Protection Officer in accordance with Regulation (EC) No 45/2001 **[or Regulation (EU) XX/2018 on protection of personal data for Union institutions and bodies]**;
- cc) adopt the detailed rules for implementing Regulation (EC) No 1049/2001;
- dd) [adopt the reports on the development of the EES pursuant to Article 64(2) of Regulation (EU) XX/XX of XXX establishing the EES] [adopt the reports on the development of ETIAS pursuant to Article 81(2) of Regulation (EU) XX/XX of XXX establishing the ETIAS];
- ee) [adopt the reports on the development of the ECRIS/TCN system pursuant to Article 34(3) of Regulation (EU) XX/XXX establishing the ECRIS/TCN system.];
- ff) adopt the reports on the technical functioning of SIS II pursuant to Article 50(4) of Regulation (EC) No 1987/2006 and Article 66(4) of Decision 2007/533/JHA respectively [or Article 54(7) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006 and Article 71(7) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU] and of VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and Article 17(3) of Decision 2008/633/JHA, [of EES pursuant to Article 64(4) of Regulation (EU) XX/XX of XXX and of ETIAS pursuant to Article 81(4) of Regulation (EU) XX/XX of XXX, and of the ECRIS-TCN system and the ECRIS reference implementation pursuant to Article 34(4) of Regulation (EU) XX/XXX;
- gg) adopt the annual report on the activities of the Central System of Eurodac pursuant to Article 40(1) of Regulation (EU) No 603/2013 [or to Article 42 of Regulation XX of XX on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement and Europol for law enforcement purposes (recast)];

- hh) adopt formal comments on the European Data Protection Supervisor's reports on the audits pursuant to Article 45(2) of Regulation (EC) No 1987/2006, Article 42(2) of Regulation (EC) No 767/2008 and Article 31(2) of Regulation (EU) No 603/2013, [Article 50(2) of Regulation (EU) XX/XX of XXX (establishing the EES)] and [Article 57 of Regulation (EU) XX/XX of XXX (establishing the ETIAS)] and to [Article 27(2) of Regulation (EU) XX/XXXX(establishing the ECRIS-TCN system)] and ensure appropriate follow-up of those audits;
- ii) publish statistics related to SIS II pursuant to Article 50(3) of Regulation (EC) No 1987/2006 and Article 66(3) of Decision 2007/533/JHA respectively *[or publish statistics related to the SIS pursuant to Article 54 of Regulation (EU) XX/XX of XX on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks and repealing Regulation (EC) No 1987/2006; to Article 71 of Regulation (EU) XX/XX of XX on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) 515/2014 and repealing Regulation (EC) 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU and to Article of Regulation (EU) XX/XX of XX on the use of the Schengen Information System for the return of illegally staying third country nationals];*
- jj) compile and publish statistics on the work of the Central System of Eurodac pursuant to Article 8(2) of Regulation (EU) No 603/2013 [or to Article 9(2) of Regulation XX of XX on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person ], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement and Europol for law enforcement purposes (recast)];
- kk) [publish statistics related to the EES pursuant to Article 57 of Regulation (EU) XXX/XX establishing the EES;]
- ll) [publish statistics related to the ETIAS pursuant to Article 73 of Regulation (EU) XX/XXX establishing the ETIAS;]
- mm) [Publish statistics related to the ECRIS-TCN system and to the ECRIS reference implementation pursuant to Article 30 of Regulation XXXX/XX;]

- nn) ensure annual publication of the list of competent authorities authorised to search directly the data contained in SIS II pursuant to Article 31(8) of Regulation (EC) No 1987/2006 and Article 46(8) of Decision 2007/533/JHA, together with the list of Offices of the national systems of SIS II (N.SIS II) and SIRENE Bureaux as referred to in Article 7(3) of Regulation (EC) No 1987/2006 and Article 7(3) of Decision 2007/533/JHA respectively [or ~~by~~ *to* Article 36(8) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006 and by Article 53(8) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU together with the list of Offices of the national systems of SIS II (N.SIS II) and SIRENE Bureaux as referred to in Article 7(3) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks and Article 7(3) of Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation in criminal matters respectively; [as well as the list of competent authorities pursuant to Article 8(2) of Regulation (EU) XX/XXXX establishing the EES]; [the list of competent authorities pursuant to Article 11 of Regulation (EU) XX/XXXX establishing the ETIAS] and [the list of competent authorities pursuant to Article 32 of Regulation XX/XXX establishing ECRIS-TCN];]
- oo) ensure annual publication of the list of units pursuant to Article 27(2) of Regulation (EU) No 603/2013;
- pp) ensure that all decisions and actions of the Agency affecting European scale IT systems in the area of freedom security and justice respect the principle of independence of the judiciary<sup>64</sup>;
- qq) perform any other tasks conferred on it in accordance with this Regulation.

2. The Management Board shall adopt in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the Executive Director and defining the conditions under which this delegation of powers can be suspended. The Executive Director shall be authorised to sub-delegate those powers<sup>65</sup>.

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

<sup>64</sup> CH suggests to delete this point.

<sup>65</sup> DE remarks that this proposal seems to be superfluous as Art. 16(1)(m) already states that the adoption of implementing rules is subject to the competences of the Management Board.

3. The Management Board may advise the Executive Director on any matter strictly<sup>66</sup> related to the development or operational management of large-scale IT systems and on activities related to research, pilot projects, proofs of concept and testing activities.<sup>67</sup>

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#### Article 17

##### Composition of the Management Board

1. The Management Board shall be composed of one representative from each Member State and two representatives of the Commission<sup>69</sup> all with a right to vote, in accordance with Article 20<sup>70</sup>.
2. Each Member of the Management Board shall have an alternate. The alternate shall represent the member in his/her absence. The members of the Management Board and their alternates shall be appointed on the basis of the high level of their relevant experience and expertise in the field of large-scale IT systems in the area of freedom, security and justice, knowledge in data protection taking into account their relevant managerial, administrative and budgetary skills. All parties represented in the Management Board shall make efforts to limit the turnover of their representatives, in order to ensure continuity of the board's work. All parties shall aim to achieve a balanced representation between men and women on the Management Board<sup>71</sup>.
3. The term of office of the members and their alternates shall be four years, ~~extendable~~ **which is renewable**. Upon expiry of their term of office or in the event of their resignation, members shall remain in office until their appointments are renewed or until they are replaced.
4. Countries associated with the implementation, application and development of the Schengen *acquis* and Eurodac-related measures<sup>72</sup> shall participate in the activities of the Agency. They shall each appoint one representative and an alternate to the Management Board.

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<sup>66</sup> NL suggests to delete "~~strictly~~"

<sup>67</sup> DE suggests to also include further activities concerning the production of statistics and data quality reports as well as to ensure the necessary data quality.

<sup>68</sup> NL notes that Article 16 is missing.

<sup>69</sup> MT suggests to replace "~~two representatives~~" by "**one representative**"

LV, PL, SK consider that the question of two Commission representatives requires further discussion.

<sup>70</sup> FR, NL suggest that the Commission has one vote in the Management Board.

FR suggests to reword this paragraph as follows: "The Management Board shall be composed of one representative from each Member State and two representatives from the Commission ~~all with a right to vote~~. **Each Member States' representative shall have one vote, the Commission shall only have one vote**, in accordance with Article 20."

<sup>71</sup> CH suggests to delete the last sentence: "~~All parties shall aim to achieve a balanced representation between men and women on the Management Board~~".

<sup>72</sup> CH suggests to add here: "**or measures related to non-Schengen/Dublin large-scale IT systems**".

*Article 18*  
*Chairperson of the Management Board*

1. The Management Board shall elect a Chairperson and a deputy Chairperson from among those members of the Management Board who are appointed by Member States which are fully bound under Union law by the legislative instruments governing the development, establishment, operation and use of all large-scale IT systems managed by the Agency. The Chairperson and the Deputy Chairperson shall be elected by a majority of two thirds of the members of the Management Board with voting rights.

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

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

*Article 19*  
*Meetings of the Management Board*

1. The Chairperson shall convene the meetings of the Management Board.
2. The Executive Director shall take part in the deliberations, without the right to vote<sup>73</sup>.
3. The Management Board shall hold at least two ordinary meetings a year. In addition, it shall meet on the initiative of its Chairperson, at the request of the Commission, or at the request of at least one third of its members.

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<sup>73</sup> CH suggests to delete "~~without the right to vote~~" (see Article 20(6)).

4. Europol and Eurojust may attend the meetings of the Management Board as observers when a question concerning SIS II, in relation to the application of Decision 2007/533/JHA, is on the agenda. [The European Border and Coast Guard **Agency** may attend the meetings of the Management Board as observers when a question concerning SIS in relation to the application of Regulation (EU) 2016/1624 or of Regulation XXX of XXX<sup>74</sup> is on the agenda]. Europol may also attend the meetings of the Management Board as observer when a question concerning VIS, in relation to the application of Decision 2008/633/JHA, or a question concerning Eurodac, in relation to the application of Regulation (EU) No 603/2013, is on the agenda. [Europol may also attend the meetings of the Management Board as an observer when a question concerning EES in relation to the application of Regulation XX/XXXX (establishing the EES) is on the agenda or when a question concerning ETIAS in relation to Regulation XX/XXXX (establishing ETIAS) is on the agenda. The European Border and Coast Guard **Agency** may also attend the meetings of the Management Board **as an observer** when a question concerning ETIAS in relation with the application of Regulation XX/XX of XXX is on the agenda.] [EASO may also attend the meetings of the Management Board as an observer when a question concerning the automated system for registration, monitoring and the allocation mechanism for applications for international protection referred to in Article 44 of Regulation (EU) establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) COM(2016) 270 final-2016/0133(COD), is on the agenda.] [Eurojust, Europol [the European Public Prosecutor's Office] may also attend the meetings of the Management Board as observers when a question concerning Regulation XX/XXXX (establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS), and amending Regulation (EU) No 1077/2011 (ECRIS-TCN system) is on the agenda.<sup>75</sup>] The Management Board may invite any other person whose opinion may be of interest, to attend its meetings as ~~an~~ **a non-voting** observer.
5. The members of the Management Board and their alternates may, subject to its Rules of Procedure, be assisted by advisers or experts who are<sup>76</sup> members of the Advisory Groups<sup>77</sup>.
6. The Agency shall provide the secretariat for the Management Board.

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<sup>74</sup> Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU. COM(2016)883 final.

<sup>75</sup> **DE** remarks that the direct access of the mentioned agencies to the ECRIS-TCN system has been discussed controversially at the first COPEN-meeting regarding ECRIS. The results of these ongoing negotiations should be taken into account. (see also recital 30 and Art. 23 (3)).

<sup>76</sup> **CH** suggests to replace "~~who are~~" with "**including**".

<sup>77</sup> **DE** suggests to amend this paragraph as follows: " The members of the Management Board and their alternates may, subject to its Rules of Procedure, be assisted by advisers or experts ~~who are members of the Advisory Groups.~~"

*Article 20*  
*Voting rules of the Management Board*

1. Without prejudice to paragraph ~~5~~ **4** of this Article, and to Article 15(1)(b) *and (q)* and Article 22(1) and (8), decisions of the Management Board shall be taken by a majority of all its members with voting rights.
2. Without prejudice to paragraph 3, each member in the Management Board shall have one vote<sup>78</sup>. In the absence of a member with the right to vote, his/her alternate shall be entitled to exercise his/her right to vote.
- 3.<sup>79</sup> Each member appointed by a Member State which is bound under Union law by any legislative instrument governing the development, establishment, operation and use of a large-scale IT system managed by the Agency may vote on a question which concerns that large-scale IT system.  
  
Denmark may vote on a question which concerns such a large-scale IT system, if it decides under Article 4 of the Protocol No 22 on the position of Denmark to implement the legislative instrument governing the development, establishment, operation and use of such a large-scale IT system in its national law.  
  
80
4. In the case of a disagreement among members about whether a specific large-scale IT system is affected by a vote, any decision that it is not so affected shall be taken by a two-thirds majority of the members of the Management Board.
5. The Chairperson shall take part in the voting.<sup>81</sup>
6. The Executive Director shall not ~~take part in the voting~~ *vote*.
7. The Management Board's rules of procedure shall establish more detailed voting arrangements, in particular the conditions under which a member may act on behalf of another member as well as any quorum requirements, where appropriate.

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<sup>78</sup> **FR** suggests to reword this sentence as follows: "Without prejudice to paragraph 3, each ~~member in the Management Board~~ *Member States' representative* shall have one vote, *the Commission shall only have one vote*."

<sup>79</sup> **DE** scrutiny reservation on this paragraph.

<sup>80</sup> **CH** suggests to insert a new paragraph here: "*3a. Regarding countries associated with the implementation, application and development of the Schengen acquis and Eurodac-related measures, Article 38 shall apply*".

**NO** suggests to reinsert the mentioning of the Schengen Associated Countries here.

<sup>81</sup> **NL** asks what this provision means. Does the Chairperson votes on behalf of the MS he/she represents? Or does he/she votes in the capacity of Chairperson and not representing his/her Member State?

*Article 21*  
*Responsibilities of the Executive Director*

1. The Executive Director shall manage the Agency. The Executive Director shall assist and be accountable to the Management Board. The Executive Director shall report to the European Parliament on the performance of his or her duties when invited to do so. The Council may invite the Executive Director to report on the performance of his/her duties<sup>82</sup>.

*1a. The Executive Director shall be independent in the performance of his duties. Without prejudice to the respective competences of the Commission and the Management Board, the Executive Director shall neither seek nor take instructions from any government or other body.*

83

2. The Executive Director shall be the legal representative of the Agency.

3. The Executive Director shall be responsible for the implementation of tasks assigned to the Agency by this Regulation. In particular, the Executive Director shall be responsible for:

- a) the day-to-day administration of the Agency;
- b) the Agency's operation in accordance with this Regulation;
- c) preparing and implementing the procedures, decisions, strategies, programmes and activities adopted by the Management Board, within the limits set out by this Regulation, its implementing rules and the applicable law<sup>84</sup>;
- d) preparing the single programming document and submitting it to the Management Board after consulting the Commission;
- e) implementing the single programming document and reporting to the Management Board on its implementation;
- f) preparing the consolidated annual report of the Agency's activities and presenting it to the Management Board for assessment and adoption;
- g) preparing<sup>85</sup> an action plan following up on the conclusions of internal or external audit reports and evaluations, as well as investigations by the European Anti-fraud Office (OLAF) and reporting on progress twice a year to the Commission and regularly to the Management Board;

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<sup>82</sup> CH suggests to amend the last part of this paragraph as follows: "The Executive Director shall report to the European Parliament *and the Council* on the performance of his or her duties when invited to do so. ~~The Council may invite the Executive Director to report on the performance of his/her duties~~".

<sup>83</sup> CH asks for an explanation why the current Article 17(3) of Regulation (EC) 1077/2011 has been deleted ("*3. Without prejudice to Article 12, the Executive Director shall assume full responsibility for the tasks entrusted to the Agency and shall be subject to the procedure for annual discharge by the European Parliament for the implementation of the budget.*")

<sup>84</sup> CH suggests to either delete this point (see paragraph 4), or to place it at the end of the lists of tasks and reword is as follows: "preparing and implementing ~~the~~ *any other* procedures, decisions, ~~strategies~~ *strategy*, programmes and activities *activity* adopted by the Management Board, within the limits set out by this Regulation, its implementing rules and the applicable law".

<sup>85</sup> NL suggests to add here: "*and implementing*"

- h) protecting the financial interests of the Union by applying preventing measures against fraud, corruption and any other illegal activities, without prejudicing the investigative competence of OLAF, by effective checks and, if irregularities are detected, by recovering amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative including financial penalties;
- i) preparing<sup>86</sup> an anti-fraud strategy for the Agency and submitting it to the Management Board for approval;
- j) preparing draft financial rules applicable to the Agency and submitting them to the Management Board for adoption after consulting the Commission;
- k) preparing the draft budget for the following year, established on the basis of activity-based budgeting;
- l) preparing the Agency's draft statement of estimates of revenue and expenditure;
- m) implementing its budget;
- n) establishing and implementing an effective system enabling regular monitoring and evaluations of:
  - (i) large- scale IT systems, including statistics; and
  - (ii) the Agency, including the effective and efficient achievement of its objectives;
- o) without prejudice to Article 17 of the Staff Regulations, establishing confidentiality requirements in order to comply with Article 17 of Regulation (EC) No 1987/2006, Article 17 of Decision 2007/533/JHA, Article 26(9) of Regulation (EC) No 767/2008 Article 4(4) of Regulation (EU) No 603/2013; [Article 34(4) of Regulation XX/XXXX (establishing the EES), [Article 64(2) of Regulation XX/XXXX (establishing the ETIAS)] and [Article 11(16) of Regulation XX/XXX (establishing the ECRIS-TCN system).];
- p) negotiating and, after approval by the Management Board, signing a Headquarters Agreement concerning the seat of the Agency and Agreements concerning technical and backup sites with the Governments of the host Member States;
- q) preparing the practical arrangements for implementing Regulation (EC) No 1049/2001 and submitting them to the Management Board for adoption;
- r) preparing<sup>87</sup> the necessary security measures including a security plan, and a business continuity and disaster recovery plan and, ***after consultation of the relevant Advisory Group***, submitting them to the Management Board for adoption;
- s) preparing the reports on the technical functioning of each large-scale IT system referred to in Article 15(1)(ff) and the annual report on the activities of the Central System of Eurodac referred to in Article 15(1)(gg), on the basis of the results of monitoring and evaluation and, ***after consultation of the relevant Advisory Group***, submitting them to the Management Board for adoption;

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<sup>86</sup> NL suggests to add here: "***and implementing***"

<sup>87</sup> NL suggests to add here: "***and monitoring***"

- t) [preparing the reports on the development of EES referred to in Article 64(2) of Regulation XX/XXX [*establishing the EES*] and on the development of ETIAS referred to in Article 81(2) of Regulation XX/XXXX [*establishing ETIAS*], the report on the development of the ECRIS-TCN system referred to in Article 34(3) of Regulation XX/XXXX [*establishing the ECRIS-TCN system*] and submitting them to the Management Board for adoption<sup>88</sup>;
- u) preparing the annual list, for publication, of competent authorities authorised to search directly the data contained in SIS II, including the list of N.SIS II Offices and SIRENE Bureaux [and the list of competent authorities authorised to search directly the data contained in the EES, the ETIAS and the ECRIS-TCN system] referred to in Article 15(1)(nn) and the lists of units referred to in Article 15(1)(oo) and submitting them to the Management Board for adoption<sup>89</sup>.

4. The Executive Director shall perform any other tasks in accordance with this Regulation.

5.<sup>90</sup> The Executive Director shall decide whether it is necessary to locate one or more staff in one or more Member States for the purpose of carrying out the Agency's tasks in an efficient and effective manner. Before deciding to establish a local office the Executive Director shall obtain the prior consent of the Commission, the Management Board and the Member State(s) concerned. The decision shall specify the scope of the activities to be carried out at the local office in a manner that avoids unnecessary costs and duplication of administrative functions of the Agency. Activities carried out in technical sites may not be carried out in a local office.

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<sup>88</sup> NL suggests to add here: "*after consultation of the relevant Advisory Group*"

<sup>89</sup> NL suggests to add here: "*after consultation of the relevant Advisory Group*"

<sup>90</sup> CH considers that this paragraph does not provide any added value. It would like to ask for some examples of practical application or some explanations.

Article 22  
Appointment of the Executive Director

1. <sup>91</sup> The Management Board shall appoint the Executive Director from a list of **at least three** candidates proposed by the Commission following an open and transparent selection procedure<sup>92</sup>. The selection procedure shall provide for publication in the *Official Journal of the European Union* and elsewhere of a call for expressions of interest<sup>93,94</sup>. The Management Board shall appoint the Executive Director on the basis of personal merit, experience in the field of large-scale IT systems and administrative, financial and management skills as well as knowledge in data protection. ~~The Management Board shall take its decision to appoint the Executive Director by a two-thirds majority of all its members with a right to vote.~~<sup>95</sup>
2. Before appointment, the candidate selected by the Management Board shall be invited to make a statement before the competent committee(s) of the European Parliament and answer questions from the committee members. After the statement, the European Parliament shall adopt an opinion setting out its view of the selected candidate and send it to the Management Board. The Management Board shall inform the European Parliament of the manner in which that opinion has been taken into account. The opinion shall be treated as personal and confidential until the appointment of the candidate.
3. The term of office of the Executive Director shall be five<sup>96</sup> years. By the end of that period, the Commission shall undertake an assessment that takes into account *its* evaluation of the Executive Director's performance and the Agency's future tasks and challenges.
4. The Management Board, acting on a proposal from the Commission<sup>97</sup> that takes into account the assessment referred to in paragraph 3 may extend the term of office of the Executive Director once for no more than five<sup>98</sup> years.

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<sup>91</sup> UK scrutiny reservation on this paragraph.

<sup>92</sup> NL suggests that not only the Commission that decides on the list of candidates; the Management Board should have a role in this process.

<sup>93</sup> FI suggests to replace this sentence with the following: "~~The selection procedure shall provide for publication in the *Official Journal of the European Union* and elsewhere of a call for expressions of interest.~~ **The Commission shall propose at least three candidates for the post of executive director based on a list following publication of the post in the *Official Journal of the European Union* and, as appropriate, other press or internet sites.**"

<sup>94</sup> FR suggests to reword this part as follows: "The Management Board shall appoint the Executive Director from a list of **eligible** candidates ~~proposed~~ **identified in an open competition organised** by the Commission ~~following an open and transparent selection procedure.~~ The selection procedure shall provide for publication in the *Official Journal of the European Union* and elsewhere of a call for expressions of interest. **The Management Board may require a repeated procedure if it is not satisfied with the suitability of any of the candidates retained in the list.**". UK also suggests to insert the last sentence.

<sup>95</sup> See paragraph 8 of this Article.

<sup>96</sup> FR suggests to replace "five" with "**four**".

<sup>97</sup> SE wonders about the role of the Commission here.

<sup>98</sup> DE, FR suggest to replace "five" with "**four**".

5. The Management Board shall inform the European Parliament if it intends to extend the Executive Director's term of office. ~~Within one month before any such extension, the Executive Director shall be invited to make a statement before the competent committee(s) of the European Parliament and answer questions from the committee members~~<sup>99</sup>.
6. An Executive Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.
- 7.<sup>100</sup> The Executive Director may be removed from office only upon a decision of the Management Board, acting on a proposal from the Commission<sup>101</sup>.
8. The Management Board shall reach decisions on appointment, extension of the term of office or removal from office of the Executive Director on the basis of a two thirds majority of votes of its members with the right to vote.
9. For the purpose of concluding the contract with the Management Board, the Agency shall be represented by the Chairperson of the Management Board<sup>102</sup>. The Executive Director shall be engaged as a temporary agent of the Agency under Article 2(a) of the Conditions of Employment of other Servants.

103

*Article 23*  
*Advisory Groups*<sup>104</sup>

1. The following Advisory Groups shall provide the Management Board with expertise relating to large-scale IT systems and, in particular, in the context of the preparation of the annual work programme and the annual activity report:
  - a) SIS II Advisory Group;
  - b) VIS Advisory Group;
  - c) Eurodac Advisory Group;
  - d) [EES-][ETIAS] Advisory Group];
  - e) [ECRIS-TCN system Advisory Group];

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<sup>99</sup> NL wonders what should be done by the Management Board with the opinion of the European Parliament.

<sup>100</sup> UK scrutiny reservation on this paragraph.

<sup>101</sup> CZ, DE, RO would like to reword this paragraph to enable the Management Board to initiate this procedure.

MT suggests to delete "~~acting on a proposal from the Commission~~".

<sup>102</sup> CH suggests to reword this sentence as follows: "***The Executive Director shall conclude a contract with the Agency. For the purpose of concluding the contract shall be concluded by the Chairperson of the Management Board on behalf of*** with the Management Board, ~~the Agency shall be represented by the Chairperson of the Management Board~~".

<sup>103</sup> BE, CZ suggest to create a position for a Deputy Executive Director [in analogy with Article 69 of the EBCG regulation (2016/1624) and Article 55 of the Europol regulation (2016/794)].

<sup>104</sup> CZ would welcome wider discussion and evaluation of the role of the Advisory groups and their relation to the other bodies such as Working Parties and Commission Committees.

- f) any other Advisory Group relating to a large-scale IT system<sup>106</sup> when so provided in the relevant legislative instrument governing the development, establishment, operation and use of that large-scale IT system.
2. Each Member State which is bound under Union law by any legislative instrument governing the development, establishment, operation and use of a particular large-scale IT system, as well as the Commission, shall appoint one member to the Advisory Group relating to that large-scale IT system, for a four-year term, which may be renewed ~~once~~.
- Denmark shall also appoint a member to an Advisory Group relating to a large-scale IT system, if it decides under Article 4 of the Protocol No 22 on the position of Denmark to implement the legislative instrument governing the development, establishment, operation and use of that particular large-scale IT system in its national law.
- Each country associated with the implementation, application and development of the Schengen *acquis*, Eurodac-related measures and the measures related to other<sup>107</sup> large-scale IT systems which participates in a particular large-scale IT system shall appoint a member to the Advisory Group relating to that large-scale IT system<sup>108</sup>.
3. Europol and Eurojust [and the European Border and Coast Guard **Agency**] may each appoint a representative to the SIS II Advisory Group. Europol may also appoint a representative to the VIS and Eurodac [and EES/ETIAS] Advisory Groups. [The European Border and Coast Guard **Agency** may also appoint a representative to the EES-ETIAS Advisory Group.] [Eurojust, Europol, [and the European Public Prosecutors Office] may also appoint a representative to the ECRIS-TCN system Advisory Group.]<sup>109</sup>
4. Members of the Management Board and their alternates shall not be members of any of the Advisory Groups. The Executive Director or the Executive Director's representative shall be entitled to attend all the meetings of the Advisory Groups as observers.
5. The procedures for the operation and cooperation of the Advisory Groups shall be laid down in the Agency's rules of procedure.
6. When preparing an opinion, the members of each Advisory Group shall do their best to reach a consensus. If such a consensus is not reached, the opinion shall consist of the reasoned position of the majority of members. The minority reasoned position(s) shall also be recorded. Article 20(3) and (4) shall apply accordingly. The members representing the countries associated with the implementation, application and development of the Schengen *acquis* and Eurodac-related measures<sup>110</sup> shall be allowed to express opinions on issues on which they are not entitled to vote.

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<sup>105</sup> **FI** suggests to add a point here: "**API / PNR Advisory Group**".

<sup>106</sup> **FI** suggests to add here: "**or their interoperability**".

<sup>107</sup> **CH** suggests to add here: "**non-Schengen/Dublin**".

<sup>108</sup> **NO** suggests that the wording when the Schengen Associated Countries are concerned should, where relevant, be aligned with this wording.

<sup>109</sup> **DE** reminds that the ongoing negotiations on ECRIS-TCN should be taken into account.

<sup>110</sup> **CH** suggests to add here: "**or measures related to non-Schengen/Dublin large-scale IT systems**".

7. Each Member State and each country associated with the implementation, application and development of the Schengen *acquis* and Eurodac-related measures<sup>111</sup> shall facilitate the activities of the Advisory Groups.
8. For the chairmanship of the Advisory Groups, Article 18 shall apply *mutatis mutandis*.

## CHAPTER IV GENERAL PROVISIONS

### *Article 24 Staff*

1. The Staff Regulations and the Conditions of Employment of Other Servants and the rules adopted by agreement between the institutions of the Union for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants shall apply to the staff of the Agency, including the Executive Director.
2. For the purpose of implementing the Staff Regulations, the Agency shall be considered an agency within the meaning of Article 1a(2) of the Staff Regulations.
3. The staff of the Agency shall consist of officials, temporary staff or contract staff. The Management Board shall give its consent on an annual basis where the contracts that the Executive Director plans to renew would become indefinite pursuant to the Conditions of Employment.
4. The Agency shall not recruit interim staff to perform what are deemed to be sensitive financial duties.
5. The Commission and the Member States may second officials or national experts to the Agency on a temporary basis. The Management Board shall adopt a decision laying down rules on the secondment of national experts to the Agency.
6. Without prejudice to Article 17 of the Staff Regulations of Officials, the Agency shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality.
7. The Management Board shall, in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations.

### *Article 25 Public interest*

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

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

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<sup>111</sup> CH suggests to add here: "***or measures related to non-Schengen/Dublin large-scale IT systems***".

*Article 26*  
*Headquarters Agreement and Agreements concerning the technical sites*

1. The necessary arrangements concerning the accommodation to be provided for the Agency in the host Member States and the facilities to be made available by those Member States, together with the specific rules applicable in the host Member States to the Executive Director, the members of the Management Board, staff of the Agency and members of their families shall be laid down in a Headquarters Agreement concerning the seat of the Agency and in Agreements concerning the technical sites, concluded between the Agency and the host Member States after obtaining the approval of the Management Board.
2. The Agency's host Member States shall provide the best possible<sup>112</sup> conditions to ensure the proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections<sup>113</sup>.

*Article 27*  
*Privileges and immunities*

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

*Article 28*  
*Liability*

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency.
3. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the<sup>114</sup> Member States, make good any damage caused by its departments or by its staff in the performance of their duties.
4. The Court of Justice of the European Union shall have jurisdiction in disputes over compensation for the damage referred to in paragraph 3.
5. The personal liability of its staff towards the Agency shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment of Other Agents applicable to them.

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<sup>112</sup> DE suggests to replace "best possible" with "*necessary*".

<sup>113</sup> NL suggests that maybe this is too specific, it should already be arranged when the host MS were selected. Further there are probably ten other items that should be arranged. Also what is the meaning of "European-oriented schooling"?

<sup>114</sup> NL wonders whether "*host*" should be added here.

*Article 29*  
*Language arrangements*

1. The provisions of Regulation No 1<sup>115</sup> shall apply to the Agency.
2. Without prejudice to decisions taken pursuant to Article 342 TFEU, the single programming document and the annual activity report referred to in Article 15(1) ~~(q)~~ (q) and (s) of this Regulation, shall be produced in all official languages of the institutions of the Union.
3. The Management Board may adopt a decision on working languages without prejudice to the obligations set out in paragraphs 1 and 2.
4. The translation services necessary for the activities of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.

*Article 30*  
*Transparency and communication*

1. Regulation (EC) 1049/2001 shall apply to documents held by the Agency.
2. The Management Board shall adopt the detailed rules for applying Regulation (EC) No 1049/2001 ~~On the basis of a proposal by the Executive Director the Management Board shall adopt rules concerning access to the Agency's documents, in accordance with Regulation (EC) No 1049/2001.~~
3. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the European Ombudsman or of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 TFEU respectively.
4. The Agency shall communicate in accordance with the legislative instruments governing the development, establishment, operation and use of large-scale IT-systems and may engage in communication activities on its own initiative within its field of competence. It shall ensure in particular that in addition to the publications specified in Article 15(1) ~~(q)~~ (q), (s), (ii), (jj), ~~{(kk)}, {(ll)}, {(mm)}~~ and Article 42(9), the public and any interested party are rapidly given objective, accurate, reliable comprehensive and easily understandable information with regard to its work. The allocation of resources to communication activities shall not be detrimental to the effective exercise of the Agency's tasks as referred to in Articles 3 to 12<sup>116</sup>. Communication activities shall be carried out in accordance with relevant communication and dissemination plans adopted by the Management Board.
5. Any natural or legal person shall be entitled to address written correspondence to the Agency in any of the official languages of the Union. ~~He or she~~ **The person concerned** shall have the right to receive an answer in the same language.

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<sup>115</sup> Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community, OJ P 17, 6.10.1958, p. 385

<sup>116</sup> **DE** suggests to amend this sentence as follows: " The allocation of resources to communication activities shall **be met within the annual budget without not being** detrimental to the effective exercise of the Agency's tasks as referred to in Articles 3 to 12."

*Article 31*  
*Data protection*

1. Without prejudice to the provisions on data protection laid down in the legislative instruments governing the development, establishment, operation and use of large-scale IT systems, the processing of personal data by the Agency shall be subject to Regulation (EC) No 45/2001 [Regulation (EU) XX/2018 on protection of personal data for Union institutions and bodies].
2. The Management Board shall establish measures<sup>117</sup> for the application of Regulation (EC) No 45/2001 [Regulation (EU) XX/2018 on protection of personal data for Union institutions and bodies] by the Agency, including those concerning the Data Protection Officer. Those measures shall be established after consultation of the European Data Protection Supervisor.

*Article 32*  
*Purposes of processing personal data*

1. The Agency may process personal data only for the following purposes<sup>118</sup>:
  - (a) performing its tasks related to the operational management of large-scale IT systems entrusted to it by Union law;
  - (b) administrative tasks<sup>119</sup>.
2. Where the Agency processes personal data for the purpose referred to *in* paragraph 1(a), the specific provisions concerning data protection and data security of the respective legislative instruments governing the development, establishment, operation and use of the large-scale IT systems managed by the Agency shall apply<sup>120</sup>.

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<sup>117</sup> DE asks for clarification what „measures“ are referenced here? Art. 46 para 3 of the draft Regulation (EU) XX/2018 on protection of personal data for Union institutions and bodies, or Art. 25 para 1 as well?

<sup>118</sup> DE suggests to add here: "*and if the processing is necessary*"

<sup>119</sup> DE asks for clarification of the term ‘administrative task’. Could the term be described and drafted with greater details?

<sup>120</sup> NL considers that for this article to work the provisions concerning data protection and data security of the respective systems should be in-line with each other.

### Article 33

#### Security rules on the protection of classified information and sensitive non-classified information<sup>121</sup>

1. The Agency shall adopt its own security rules based on the principles and rules laid down in Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information including inter alia provisions for the exchange, processing and storage of such information as set out in Commission Decisions (EU, Euratom) 2015/443<sup>122</sup> and 2015/444<sup>123</sup>. Any exchange of classified information with the relevant authorities of a third State shall have received the Commission's prior approval<sup>124,125</sup>.
2. The security rules shall be adopted by the Management Board following approval by the Commission. The Agency may take all necessary measures to facilitate the exchange of information relevant to its tasks with the Commission and the Member States and where appropriate, the relevant Union agencies. It shall develop and operate an information system capable of exchanging classified information with those actors in accordance with Council Decision 2013/488/EU and Commission Decision (EU, Euratom) 2015/444. The Management Board shall, pursuant to Article 2 and Article 15(1)(y) of this Regulation, decide on the Agency's internal structure necessary to fulfil the appropriate security principles.

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<sup>121</sup> **FR, NL** suggest to rephrase the article so it will reflect a better balance between the role of the Commission and the Member States.

<sup>122</sup> Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 4).

<sup>123</sup> Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

<sup>124</sup> **DE** suggests to redraft this paragraph as follows: "The Agency shall ~~adopt its own security rules based on the principles and rules laid down in~~ **apply the** Commission's security rules for protecting European Union Classified Information (EUCI) and sensitive non-classified information including inter alia provisions for the exchange, processing and storage of such information as set out in Commission Decisions (EU, Euratom) 2015/443 and 2015/444. **Provisions for the protection of unclassified information shall not be equivalent with the relevant provisions for the protection of EUCI.** Any exchange of classified information with the relevant authorities of a third State shall have received the Commission's prior approval."

<sup>125</sup> **PL** requests a clarification whether according to this provision the Commission will also have a role to decide on classified information that was shared with eu-LISA by Member States? What is Member States' role in this procedure?

*Article 34*  
*Security of the Agency*<sup>126</sup>

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

*Article 35*  
*Evaluation*

1. No later than five years from the entry into force of this Regulation, and every five years thereafter, the Commission, ***after consulting the Management Board***, shall assess the Agency's performance in relation to its objectives, mandate, tasks and locations in accordance with the Commission's guidelines<sup>127</sup>. The evaluation shall also assess the contribution of the Agency to the establishment of a coordinated, cost-effective and coherent IT environment at Union level for the management of large scale IT systems supporting the implementation of Justice and Home Affairs (JHA) policies. The evaluation shall in particular assess the possible need to modify the mandate of the Agency and the financial implications of any such modification.<sup>128</sup> ***The Management Board may issue recommendations regarding changes to this Regulation to the Commission.***
2. Where the Commission considers that the continuation of the Agency is no longer justified with regard to its assigned objectives, mandate and tasks, it may propose that this Regulation be amended accordingly or repealed.
3. The Commission shall report to the European Parliament, the Council, and the Management Board on the evaluation findings. The findings of the evaluation shall be made public.

*Article 36*  
*Administrative ~~enquiries~~ inquiries*

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

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<sup>126</sup> NL wonders how MS are informed if measures are not effective or have consequences for the availability of the central systems.

<sup>127</sup> NL suggests to add here: "***in close cooperation with the Management Board***".

<sup>128</sup> DE suggests to delete the last sentence: "~~The evaluation shall in particular assess the possible need to modify the mandate of the Agency and the financial implications of any such modification.~~"

*Article 37*

*Cooperation with Union institutions, bodies, offices and agencies*

1. The Agency shall cooperate with the Commission, with other Union institutions and with other Union bodies, offices and agencies in particular those established in the area of freedom, security and justice, and in particular the European Agency for Fundamental Rights, in matters covered by this Regulation.
2. The Agency shall cooperate with the Commission within the framework of a working arrangement laying down operational working methods.
3. The Agency shall consult and follow the recommendations of the European Network and Information Security Agency regarding network security, where appropriate.
4. Cooperation with Union bodies, offices and agencies shall take place within the framework of working arrangements. Such arrangements shall have received the Commission's prior approval. Such arrangements may provide for the sharing of services between agencies where appropriate either by proximity of locations or by policy area within the limits of the respective mandates and without prejudice to their core tasks.
5. The Union institutions, bodies, offices and agencies referred to in paragraph 1, shall use information received from the Agency only within the limits of their competences and insofar as they respect fundamental rights, including data protection requirements. Onward transmission ~~of~~ *or* other communication of personal data processed by the Agency to Union institutions, bodies, offices or agencies shall be subject to specific working arrangements regarding the exchange of personal data and subject to the prior approval of the European Data Protection Supervisor. Any transfer of personal data by the Agency shall be in line with the data protection provisions laid down in Articles 31 and 32. As regards the handling of classified information, those arrangements shall provide that the Union institution, body, office or agency concerned shall comply with security rules and standards equivalent to those applied by the Agency.

*Article 38*  
*Participation by countries associated with the implementation,*  
*application and development of the Schengen acquis and Eurodac-*  
*related measures*<sup>129,130</sup>

1. The Agency shall be open to the participation of third countries that have entered into association agreements with the Union to this effect<sup>131</sup>.
2. Under the relevant provisions of the association agreements referred to in paragraph 1, arrangements shall be made specifying, in particular, the nature, extent and manner of<sup>132</sup>, and the detailed rules for, the participation by countries associated with the implementation, application and development of the Schengen *acquis* and Eurodac-related measures<sup>133</sup> in the work of the Agency, including provisions on financial contributions, staff and voting rights.

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<sup>129</sup> CH suggests to replace the wording here with: "participation of third countries that have entered into ~~association~~ agreements with the Union *providing for the association of these countries with measures related to large scale IT-System managed by the Agency to this effect*".

<sup>130</sup> DE suggests to add a clarification in a corresponding Recital as regards the data protection provisions for third countries (cf. Art. 41 of the draft Regulation (EU) XX/2018 on protection of personal data for Union institutions and bodies).

<sup>131</sup> CH suggests to replace the wording here with: "participation of third countries that have entered into ~~association~~ agreements with the Union *providing for the association of these countries with measures related to large scale IT-System managed by the Agency to this effect*".

<sup>132</sup> CH suggests to delete "~~and manner of~~".

<sup>133</sup> CH suggests to add here: "*or measures related to non-Schengen/Dublin large-scale IT systems*".

# CHAPTER V

## ESTABLISHMENT AND STRUCTURE OF THE BUDGET

### SECTION 1

#### SINGLE PROGRAMMING DOCUMENT

##### *Article 39*

##### *Single programming document*

1. Each year the Executive Director shall draw up a draft single programming document ~~containing multiannual and annual programming~~ for the following year, as set out in Article 32 of Delegated Regulation (EU) No 1271/2013 and of the Agency's financial rules referred to in Article 44 and taking into account guidelines set by the Commission.  
  
The single programming document shall contain a multiannual programme, an annual work programme as well as its budget and information on its resources, as set out in detail in the Agency's financial rules referred to in Article 44<sup>134</sup>.
2. The Management Board shall adopt the draft single programming document after consulting the Advisory Groups and shall send it to the European Parliament, the Council and the Commission no later than 31 January each year as well as any updated version of that document.
3. Before 30 November each year, the Management Board shall adopt, by a two-thirds majority of its members with the right to vote, and in accordance with the annual budgetary procedure ~~and the Union's~~, the single programming document, taking into account the opinion of the Commission. The Management Board shall ensure that the definitive version of this single programming document is transmitted to the European Parliament, the Council and the Commission and is published<sup>135</sup>. ~~Before 30 November each year, and taking into account the opinion of the Commission, the Management Board shall adopt by a two-thirds majority of its members with the right to vote, and in accordance with the annual budgetary procedure and the Union legislative programme in areas under Articles 67 to 89 TFEU, the single programming document for the following years and ensure that the adopted programming document is transmitted to the European Parliament, the Council and the Commission and published.~~
4. The single programming document shall become definitive after final adoption of the general budget of the Union and if necessary shall be adjusted accordingly. The adopted single programming document shall then be transmitted to the European Parliament, the Council and the Commission and be published.

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<sup>134</sup> CH suggests to redraft this paragraph as follows: "1. Each year the Executive Director shall draw up a draft single programming document containing multiannual and annual programming for the following year, *as well as its budget and information on its resources*, as set out in Article 32 of Delegated Regulation (EU) No 1271/2013 and of the Agency's financial rules referred to in Article 44 and taking into account guidelines set by the Commission.

~~The single programming document shall contain a multiannual programme, an annual work programme as set out in detail in the Agency's financial rules referred to in Article 44".~~

<sup>135</sup> To be checked whether this sentence can be deleted in view of paragraph 4.

5. The annual work programme for the following year shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be coherent with the multiannual work programme referred to in paragraph 6. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year. The Management Board shall amend the adopted annual work programme when a new task is given to the Agency. Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial annual work programme. The Management Board may delegate the power to make non-substantial amendments to the annual work programme to the Executive Director.
6. The multi-annual programme shall set out the overall strategic programming including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff. The resource programming shall be updated annually. The strategic programming shall be updated where appropriate and in particular to address the outcome of the evaluation referred to in Article 35<sup>136</sup>.

*Article 40*  
*Establishment of the Budget*

1. Each year the Executive Director shall draw up, taking into account the activities carried out by the Agency, a draft statement of estimates of the Agency's revenue and expenditure for the following financial year, including ~~an~~ **a draft** establishment plan, and shall send it to the Management Board.
2. The Management Board shall, on the basis of the draft statement of estimates drawn up by the Executive Director, adopt a draft estimate of the revenue and expenditure of the Agency for the following financial year, including the draft establishment plan. The Management Board shall send them to the Commission and to the countries associated with the implementation, application and development of the Schengen acquis and Eurodac-related measures, as a part of the single programming document, by 31 January each year.
3. The Commission shall send the draft estimate to the European Parliament and the Council ("the budgetary authority") together with the preliminary draft general budget of the European Union.
4. On the basis of the draft estimate, the Commission shall enter in the draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 TFEU.
5. The budgetary authority shall authorise the appropriations for the contribution to the Agency.
6. The budgetary authority shall adopt the establishment plan for the Agency.

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<sup>136</sup> **DE** believes that the overall strategic programming should be the guiding principle of the document, i.e. the level of detail should not be too deep so as to reduce the effort of updating an ever-changing mid or long term planning.

7. The Management Board shall adopt the Agency's budget. It shall become final following the final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.
8. Any modification to the budget, including the establishment plan, shall follow the same procedure.
9. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project, which may have significant financial implications for the funding of its budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof<sup>137</sup>. If either branch of the budgetary authority intends to issue an opinion, it shall, within 2 weeks after receipt of the information on the project, notify the Management Board of its intention to issue such an opinion. In the absence of a reply, the Agency may proceed with the planned operation. For any building project likely to have any significant implications for the budget of the Agency the provisions of Delegated Regulation (EU) No 1271/2013 shall apply.

## SECTION 2

### PRESENTATION, IMPLEMENTATION AND CONTROL OF THE BUDGET

#### *Article 41* *Structure of the budget*

1. Estimates of all revenue and expenditure for the Agency shall be prepared each financial year, corresponding to the calendar year, and shall be shown in the Agency's budget.
2. The Agency's ~~revenue~~ **budget** shall be balanced in terms of revenue and of expenditure.
3. Without prejudice to other types of income, the revenue of the Agency shall consist of:
  - (a) a contribution from the Union entered in the general budget of the European Union (Commission section);
  - (b) a contribution from the countries associated with the implementation, application and development of the Schengen *acquis* and Eurodac-related measures<sup>138</sup>, participating in the work of the Agency as established in the respective association agreements and in the arrangement referred to in Article 38 that specify their financial contribution;
  - (c) Union funding in the form of delegation agreements in accordance with the Agency's financial rules referred in Article 44 and with the provisions of the relevant instruments supporting the policies of the Union;
  - (d) contributions paid by Member States for the services provided to them in accordance with the delegation agreement referred to in Article 12;
  - (e) any voluntary financial contribution from the Member States.

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<sup>137</sup> CH suggests to either mention the Associated States here, as in the current Article 32(12) ("*as well as the countries associated with the implementation, application and development of the Schengen acquis and Eurodac-related measures*"), or to delete the whole sentence ("~~It shall inform the Commission thereof~~").

<sup>138</sup> CH suggests to add here: "*or measures related to non-Schengen/Dublin large-scale IT systems*".

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

#### Article 42

##### *Implementation and control of the budget*

1. The Executive Director shall implement the Agency's budget.
2. Each year the Executive Director shall forward to the budgetary authority all information relevant to the findings of evaluation procedures.
3. By 1 March of a financial year N+1, the Agency's Accounting Officer shall communicate the provisional accounts for financial year N to the Commission's Accounting Officer and the Court of Auditors. The Commission's Accounting Officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 147 of Regulation (EU, Euratom) No 966/2012.
4. The ~~Agency~~ **Executive Director** shall send a report on the budgetary and financial management for year N to the European Parliament, the Council, the Court of Auditors and the Commission by 31 March of year N+1.
5. The Commission's Accounting Officer shall send the Agency's provisional accounts for year N, consolidated with the Commission's accounts, to the Court of Auditors by 31 March of year N+1.
6. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 148 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council, the Executive Director shall draw up the Agency's final accounts under his own responsibility and forward them to the Management Board for an opinion.
7. The Management Board shall deliver an opinion on the Agency's final accounts for year N.
8. By 1 July of year N+1, the Executive Director shall send the final accounts, together with the opinion of the Management Board, to the European Parliament, to the Council, to the Commission and to the Court of Auditors as well as to the countries associated with the implementation, application and development of the Schengen *acquis* and Eurodac-related measures<sup>139</sup>.
9. The final accounts for year N shall be published in the Official Journal of the European Union by 15 November of year N+1.
10. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September of year N+1. The Executive Director shall also send that reply to the Management Board.
11. The Executive Director shall submit to the European Parliament at its request, any information required for the smooth application of the discharge procedure for the year N, in accordance with Article 165(3) of Regulation (EU, Euratom) No 966/2012.

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<sup>139</sup> CH suggests to add here: "*or measures related to non-Schengen/Dublin large-scale IT systems*".

12. On a recommendation from the Council acting by a qualified majority, the European Parliament shall, before 15 May of year N+2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.

*Article 43*  
*Prevention of conflicts of interest*

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

*Article 44*  
*Financial rules*

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

*Article 45*  
*Combating fraud*

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

The Court of Auditors shall have the power of audit, on the basis of documents and of on-the-spot inspections, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.
3. OLAF may carry out investigations including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the Agency, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96<sup>140</sup>.
4. Without prejudice to paragraphs 1, 2 and 3, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

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<sup>140</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

## **CHAPTER VI AMENDMENTS TO OTHER UNION INSTRUMENTS**

### *Article 46*

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

In Regulation (EC) No 1987/2006 [or in Regulation XX of XX on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) 1987/2006], Article 15(2) and (3) are replaced by the following:

"(2) The Management Authority shall be responsible for all tasks relating to the communication infrastructure, in particular:

- (a) supervision;
- (b) security;
- (c) the coordination of relations between the Member States and the provider;
- (d) tasks relating to implementation of the budget;
- (e) acquisition and renewal, and
- (f) contractual matters."

### *Article 47*

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

In Council Decision 2007/533/JHA [or, in Regulation XX of XX of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU], Article 15(2) and (3) are replaced by the following:

"2. The Management Authority shall also be responsible for all tasks relating to the communication infrastructure, in particular:

- (a) supervision;
- (b) security;
- (c) the coordination of relations between the Member States and the provider;
- (d) tasks relating to implementation of the budget;
- (e) acquisition and renewal, and

(f) contractual matters."

## **CHAPTER VII TRANSITIONAL PROVISIONS**

### *Article 48*

#### *Transitional arrangements concerning the Executive Director*

The Executive Director of ~~eu-LISA~~ *the Agency* appointed on the basis of Article 18 of Regulation (EU) No 1077/2011 shall, for the remaining term of his office, be assigned to the responsibilities of the Executive Director, as provided for in Article 21 of this Regulation.

## **CHAPTER VIII FINAL PROVISIONS**

### *Article 49 Repeal*

Regulation (EU) No 1077/2011 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation.

### *Article 50*

#### *Entry into force and applicability*

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

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

Done at Brussels,

*For the European Parliament*

*For the Council*

The President      The President

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