# Briefing
## EU Legislation in Progress

European Parliament

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18 December 2018

Second edition of a briefing originally drafted by Costica Dumbrava.

The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure. Please note this document has been designed for on-line viewing.

# European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA)
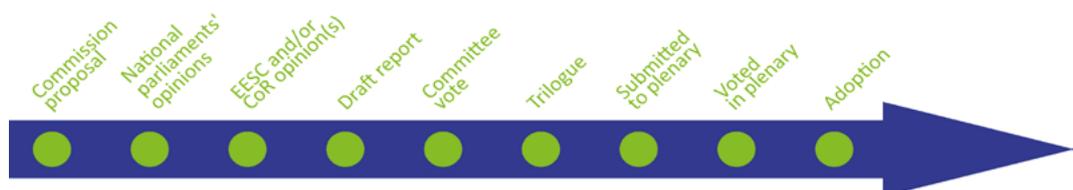
The European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) is responsible for the operational management of the three large-scale EU information systems: the Schengen Information System (SIS II), the Visa Information System (VIS), and Eurodac. The Commission proposed to strengthen the mandate of eu-LISA, as part of a broader set of measures aimed at addressing current migration and security challenges by making better use of information technologies. Adopted by parliament and Council in autumn 2018, the Agency's new tasks, applicable from 11 December 2018, include ensuring interoperability of EU information systems, upgrade of existing and development of future systems and technical and operational support to Member States.

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| **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** | |
| COM(2017)352, 29.6.2017, 2017/0145(COD) , Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision') | |
| Committee responsible:<br>Rapporteur:<br>Shadow rapporteurs: | Civil Liberties, Justice and Home Affairs (LIBE)<br>Monica Macovei (ECR, Romania)<br>Barbara Kudrycka (EPP, Poland)<br>Caterina Chinnici (S&D, Italy)<br>Cecilia Wikström (ALDE, Sweden)<br>Marie-Christine Vergiat (GUE/NGL, France)<br>Jan Philipp Albrecht (Greens/EFA, Germany) |
| Procedure completed. | Regulation (EU) 2018/1726<br>OJ L 295, 21.11.2018, pp 99-137 |

Commission proposal | National parliaments' opinions | EESC and/or CoR opinion(s) | Draft report | Committee vote | Trilogue | Submitted to plenary | Voted in plenary | Adoption

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## Introduction

The EU Agency for the operational management of large scale IT systems in the area of freedom, security and justice (eu-LISA or 'the Agency') is responsible for the operational management of the Schengen Information System (SIS), the Visa Information System (VIS) and Eurodac. On 29 June 2017, the European Commission adopted a proposal to strengthen the mandate of eu-LISA in view of improving and developing the EU information systems for security, border management and migration and of ensuring interoperability between these systems.

As stated in the European agendas on migration and on security, addressing current migration and security challenges requires a strengthening of the management of EU external borders, which includes making better use of the opportunities offered by IT systems and technologies. Along with putting forward a series of measures and proposals aiming at improving the management of external borders, the Commission initiated a process to encourage the interoperability of information systems in the area of freedom, security and justice. According to the Commission, terrorist attacks have revealed 'the urgent need for information systems to be interoperable, and to eliminate the current blind spots where terrorist suspects can be recorded in different, unconnected databases under different aliases'.

The proposal to revise the mandate of eu-LISA is part of this approach, which aims to achieve this interoperability between EU information systems by 2020. In its 2018 work programme, the Commission stated that 'we will reinforce our efforts to make the European Union a safer society, in full compliance with fundamental rights, with a proposal on the interoperability of information systems'.

## Existing situation

The agency was established in 2011 by Regulation (EU) No 1077/2011, responsible for the operational management of the Schengen Information System (SIS) and the Visa Information System (VIS). The agency became operational in December 2012. Regulation (EU) No 603/2013 further entrusted eu-LISA with the operational management of the Eurodac.

eu-LISA pro-actively supports and promotes effective cooperation and information exchange between EU law enforcement bodies by ensuring the uninterrupted operation of large-scale IT systems. Against the background of a rapidly evolving policy area, and despite human resource limitations, eu-LISA has been able to take up new responsibilities. The agency has been working on the implementation of the automated fingerprint identification system in the SIS, and the development of the technical infrastructure for the Entry/Exit System (EES). It has also supported the work of the High-level Expert Group on Information Systems and Interoperability (HLEG). In early 2016, at the peak of the European refugee crisis, the Commission requested the agency to provide support to hotspots in Greece by increasing the capacity of the Eurodac server and participating in the EU regional task forces.

A number of legislative proposals aiming to revise the rules governing existing EU information systems or to create new systems will, if adopted, affect the mandate and work of eu-LISA. The agency will, for example, be required to provide detailed statistics on the use of the SIS and will be tasked with developing and managing the new information systems.

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## Parliament's starting position

The European Parliament has consistently advocated more effective cooperation between Member States' law enforcement authorities, provided that appropriate safeguards on data protection and privacy are maintained. In its resolution of 11 February 2015 on anti-terrorism measures, the Parliament called on the Member States to make optimal use of existing platforms, databases and alert systems at European level and expressed 'the need to improve, intensify and accelerate global law enforcement information sharing', provided that 'all data collection and sharing, including by EU agencies such as Europol, should be compliant with EU and national law and based on a coherent data protection framework'. In its resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, the Parliament stressed that the integrity of the Schengen area and the abolition of internal border controls are dependent on having effective management of external borders and efficient exchange of information between Member States. In its resolution of 6 July 2016 on the strategic priorities for the Commission 2017 work programme, the Parliament called on the Commission to present proposals to improve and develop existing information systems, address information gaps and move towards interoperability, while putting the necessary data protection safeguards in place.

## Council and European Council starting position

In its June 2014 strategic guidelines for justice and home affairs, the **European Council** stressed the need to improve the link between the EU's internal and external policies by 'intensifying operational cooperation while using the potential of information and communication technologies' innovations, enhancing the role of the different EU agencies and ensuring the strategic use of EU funds'. In its June 2017 conclusions, the European Council invited the Commission to prepare, as soon as possible, draft legislation on interoperability, underlining that 'swift and targeted exchanges of information between law enforcement authorities' and improved interoperability between databases are essential for enhancing internal security.

In its conclusions on the renewed European Union internal security strategy 2015-2020, of 10 June 2015, the **Council** called for improved 'information exchange and accessibility, especially by ensuring the interoperability of different information systems'. In June 2016, the Council put forward a roadmap to enhance information exchange and information management including interoperability solutions in the area of justice and home affairs. The roadmap emphasised the need to fully implement and use the existing information exchange instruments and to ensure effective interconnectivity of European initiatives with national processes. It envisaged an enhanced role for eu-LISA, particularly in developing a central monitoring capacity for data quality, pursuing interoperability solutions, and ensuring compliance with data protection and data security requirements.

# Proposal

## Preparation of the proposal

The Commission communication of 6 April 2016 on stronger and smarter information systems for borders and security identified a number of key shortcomings in EU information systems and explored options on how existing and future information systems could enhance external border management and internal security. The Commission announced its intention to amend the eu-LISA mandate to enable the agency to develop its monitoring capacity for data quality, implement technical changes to existing systems, establish new information systems and work towards achieving interoperability between systems.

Following the presentation of the final report by the High-level Expert Group on Information Systems and interoperability in May 2017, the Commission's seventh progress report, 'Towards an effective and genuine security Union' set out 'a new approach to the management of data for borders and security where all centralised EU information systems for security, border and migration management are interoperable, in full respect of fundamental rights'. The approach is built on three pillars: maximising the benefits of existing information systems by making full use of these systems; developing new systems and complementary actions to address gaps in the EU data management architecture; and improving the information system interoperability. Within this framework, eu-LISA is set to 'play a crucial role in the work towards the interoperability of information systems, including with ongoing and further technical analysis'.

In accordance with Article 31 of the regulation establishing eu-LISA, the Commission carried out an evaluation on the functioning of the agency. In the evaluation report, published together with the proposal, the Commission stated that the agency 'effectively contributed to the establishment of a more coordinated, effective and coherent IT environment for the management of large-scale IT systems supporting the implementation of JHA policies'. The report also identified 'the need for limited revision of, or extension of, the tasks entrusted to eu-LISA', emphasising that entrusting the agency with additional tasks, such as developing new IT systems and implementing interoperability solutions, would require increasing its resources and capacities. Given that the changes envisaged by the evaluation were minimal and rather technical in nature, the Commission considered that no further impact assessment was necessary.

## The changes the proposal would bring

The proposal aims to expand the mandate of eu-LISA in order to enable the agency to:

> **Ensure the centralised operational management of existing EU information systems** (SIS II, VIS and Eurodac) and of those that are currently discussed by the co-legislators: the Entry/Exit System (EES), the DubliNet, the European Travel Information and Authorisation System (ETIAS), the automated system for registration, monitoring, and the allocation mechanism for applications for international protection and the European Criminal Records Information System (ECRIS-TCN) – subject to the adoption of the respective proposals. Additionally, eu-LISA may also be tasked to develop, manage and/or host **common systems established by a group of at least six Member States** opting for a centralised solution on a voluntary basis, subject to prior approval by the Commission;

> **Develop the necessary technical solutions to achieve the interoperability** of EU information systems: the European search portal, a shared biometric matching service and a common identity repository, subject to the adoption of the relevant legislative instrument on interoperability;

> **Deliver proactive advice and assistance to Member States** on technical issues related to the existing or new IT systems, including ad hoc support for Member States facing specific and disproportionate migratory challenges;

> **Develop automated data quality control mechanisms** and common data quality indicators, generate and publish statistics, and engage in pilot projects and research activities;

> **Work more effectively by taking full responsibility for the management of the eu-LISA communication infrastructure** (including transfer of the related budget), which is currently shared with the Commission;

> **Cooperate more thoroughly and under a clearer legal mandate** with other EU institutions, bodies, offices and agencies.

## Budgetary implications

The proposal envisages an increase in the agency's subsidy of **€78.3 million** for the period 2018-2020. This amount does not include the budgetary reinforcements that are provided for in the related legislative proposal: the EES (€287.9 million), Eurodac (€29.9 million), the SIS (€15.7 million and €3.6 million) and ETIAS (€22.8 million).

# Views

## Advisory committees

There is no mandatory consultation of the advisory committees on this proposal.

## National parliaments

The deadline for the subsidiarity check elapsed on 23 October 2017. Chambers of national parliaments in 14 Member States considered the proposal, and a number submitted comments for political dialogue.

## Stakeholders' views[1]

In its opinion of 9 October 2017, the **European Data Protection Supervisor (EDPS)** recommended that the proposal should be 'accompanied by a detailed impact assessment of the right to privacy and the right to data protection which are enshrined in the Charter of Fundamental Rights of the EU'. This is because the information systems managed by the agency 'contain very sensitive information about individuals'. With regard to the interoperability of information systems, the EDPS recommended that, in the absence of clearly formulated policy objectives and of a comprehensive legal framework, all references to interoperability should be deleted. The EDPS raised concerns about the possibility that the agency could develop and host a common centralised solution for large-scale IT systems, which are in principle decentralised, maintaining that such changes require the revision of the appropriate legislative basis, which should be accompanied by adequate impact assessment and feasibility studies.

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1  This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

# Legislative process

The legislative proposal on eu-LISA (COM(2017) 352) was adopted by the Commission on 29 June 2017.

Within the European Parliament, the proposal was assigned to the Committee on Civil Liberties, Justice and Home Affairs (LIBE). The rapporteur, Monica Macovei (ECR, Romania) presented her draft report on 4 October 2017, welcoming the proposal. The draft report was discussed in the committee on 10 October. The Committee on Budgets adopted an opinion on 9 November.

The LIBE committee adopted its report on 7 December 2017, and the mandate for trilogue negotiations was confirmed at the January plenary. Amendments put forward by the rapporteur and voted by the committee included measures related to: changing the procedure for submitting requests for ad hoc support by Member States – direct submission to the agency instead of the Commission; providing for the possibility to establish other technical sites; add further rules on transparency (including on the protection of whistle-blowers); allowing the agency to request financial compensation for services offered to other EU bodies and agencies; clarifying the legal basis for the agency to establish and maintain relations with international organisations and other relevant entities or bodies.

In the Council, the proposal was discussed several times in July and October 2017. Several issues in the debate mirror ongoing discussions in the context of related legislative proposals, such as the issue of the establishment of any obligatory mechanisms of relocation of applications at EU level and the corresponding IT system. On the proposal to extend the tasks of the agency with regard to ensuring data quality, several countries wished to reinstate Member States' responsibilities with regard to the data entered into the systems. Another key issue concerns the lack of clarification regarding what interoperability means in the context of the eu-LISA mandate. On 7 December 2017, the Council agreed a general approach on the proposal, which is the basis for commencing negotiations with the European Parliament.

On 24 May 2018, after four trilogue meetings (31 January, 8 February, 6 March and 24 May 2018), the Council Presidency and the European Parliament negotiators reached an informal agreement on the draft regulation on eu-LISA. They agreed on provision of support to Member States, the procedure for the appointment of the Executive Director and his/her Deputy, working arrangements with international organisations, data protection, internal rules regarding potential conflicts of interest, and references to a number of other legal instruments under negotiation in parallel. The Parliament and Council negotiators agreed that the reformed eu-LISA will:

> Develop and operate new systems, such as the entry-exit system (EES), the European travel information and authorisation system (ETIAS) and European criminal records information system for third-country nationals and stateless persons (ECRIS-TCN);

> Develop technical solutions to achieve interoperability of EU information systems once the rules on interoperability have been adopted; and

> Deliver proactive advice and assistance to Member States on technical issues related to the existing of new IT systems, for example ad hoc support to deal with migratory challenges.

On 5 July the agreed text was approved by the European Parliament. Council adopted the text of the regulation on 9 November 2018. The regulation was signed by the presidents of both institutions on 12 November 2018 and applies as of 11 December 2018.

# References

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