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Committee on Budgets

2009/0089(COD)

3.6.2010

DRAFT OPINION

of the Committee on Budgets

for the Committee on Civil Liberties, Justice and Home Affairs

on the amended proposal for a regulation of the European Parliament and of the Council establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (COM((2010)0093 – C7-0046/2009 – 2009/0089(COD))

Rapporteur: Jutta Haug

PA_Legam

SHORT JUSTIFICATION

On 24 June 2009, the Commission adopted a legislative proposal package to establish an Agency responsible for the operational management of large-scale information technology ("IT") systems in the area of freedom, security and justice.

Following the entry into force of the Lisbon Treaty, the initial legislative package (proposals for a Regulation and a Council's Decision) needed to be merged into the proposed single amended proposal for a Regulation of the European Parliament and of the Council.

The Agency's core task will be to fulfil the operational management tasks for SIS II, VIS and EURODAC, keeping the systems functioning 24 hours a day, seven days a week, thus ensuring a continuous, uninterrupted flow of data exchange, without having responsibility for the data entered in the systems.

Although supporting the political goals aimed at by the creation of the Agency, your Rapporteur must however raise some questions from the budgetary point of view, bearing in mind that the points relating to the mission and tasks of the agency or even the opportunity of the latter's creation fall under the lead Committee's remit.

Budget

Two new budget lines will be created for the funding of the agency from the EU budget under Chapter 18 02. Total cost until the end of the financial framework is expected to be EUR 113 million, distributed as follows:

	Million EUR				
	2010	2011	2012	2013	Total
Total financial cost	1.500	15.500	55.700	40.300	113.000

As mentioned in the legislative financial statement, those appropriations will come from those budget lines currently devoted to the IT systems considered: 18 02 04 "Schengen Information System (SIS II)", 18 02 05 "Visa Information System (VIS)" and 18 03 11 "EURODAC". The proposal is therefore compatible with existing financial programming.

These budget lines are founded as follows for the period 2010-2013, according to the latest financial programming figures:

	Million EUR				
	2010	2011	2012	2013	Total
VIS, SIS II, Eurodac FP	58.000	112.000	109.000	122.000	401.000

Since the remaining appropriations (some EUR 288 million) presented in the budget lines for VIS, SIS II and Eurodac remained necessary despite the creation of the agency, your Rapporteur would like to share her surprise that the overall amount deemed necessary, including for the creation of an agency, perfectly matches the amounts initially foreseen in the financial programming (no savings, no extra costs).

Your Rapporteur would further recall that the creation of decentralised agencies amounts to a way of using operational funds to cover administrative expenses. The issue of financing a part of the expenditure of the agencies via Heading 5 should be tackled. The limited margin available in heading 3a reinforces the argument for doing so as other priorities by the European Parliament might not be able to be financed. Your Rapporteur underlines that the inter-institutional working group on regulatory agencies will allow for some further discussion in this area.

Staff

At cruising speed, the agency is expected to employ 120 staff, to be recruited gradually from early 2011 onwards.

Even though the agency's tasks will be transferred from the Commission, no transfer of posts is expected from the Commission to the agency:

- for Eurodac, 4 officials and temporary agents and 1 external agent currently in Brussels will become "freed" and will be redeployed to other Commission priorities;
- and around 20 officials and 25 external staff (contractual agents and seconded national experts) assigned to the development and preparation of operations of SIS II and VIS will be redeployed in accordance with the Commission's annual policy strategy and management procedures.

Your Rapporteur therefore deplores that the outsourcing of tasks to an agency is used to free some posts that will be affected to other priorities. As acknowledged by the Commission, it is only through outsourcing of tasks that the Commission manages to stick to its commitment not to request extra staff.

Impact assessment

Your Rapporteur considers that the Impact Assessment (IA) provided by the Commission presents some significant weaknesses in terms of legislative authority's sound and complete information.

In particular, it is not explicitly addressed why an agency is needed to accomplish a technical task that was until now falling under the Commission's remit.

In addition, the impact assessment was carried out in 2007 and appears outdated / inadequate for several reasons, despite qualitative improvements as compared to those carried out for previous agencies:

- not all current possible options were considered;
- no mention is made as to how it would possibly better address the difficulties encountered by the Commission or how its tasks would be articulated with the Commission's, in particular given the difficult transition to SIS II;
- some additional concerns were raised by national parliaments that are not addressed, notably as to data protection and the disconnection between the proposed responsibility and the lack of access to data;
- the overall budgetary impact of the creation of such an agency is not clearly presented in the impact assessment, both for the Commission's and, possibly, national budgets.

This is not the first time the Commission presents an inconsistent impact assessment or cost-benefit- analysis (CBA). Your Rapporteur considers that the EP should analyse the possibility that, in future, the Commission should send its IA/CBA concerning the creation of a new agency to the Court of Auditors, so that they may give an opinion on the consistency of the impact assessments in order to avoid this kind of situation.

Amendments

The amendments proposed cover the following aspects of the proposal:

- Reference to the complete set of legal bases (AM 1, 3);
- Protection of EP prerogatives in the budgetary and discharge procedures, as well as parliamentary scrutiny (AM 2, 11, 19, 20);
- Tasks of the Court of Auditors (AM 2, 22);
- Duties of the host Member States (AM 4, 14);
- Implementation of ABB-ABM for a better monitoring of agency's activities and budget (AM 5, 9, 10, 16, 17, 20);
- Real management and supervision activities by the Management board and adequate competences of its members (AM 6, 7);
- Follow up of audit reports (AM 8);
- Length of the director's mandate (AM 12);
- Reasonable size of the advisory boards (AM 13);
- Outcome of the evaluations of the agency and information of the EP (AM 15, 21);
- Adaptation to the Lisbon treaty budgetary terminology (AM 18, 19);
- Agency's start-up phase and Commission's support (AM 23, 24).

AMENDMENTS

The Committee on Budgets calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation Citations 1 a and 1 b (new)

Text proposed by the Commission

Amendment

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹ (Financial Regulation), and in particular Article 185 thereof,

Having regard to the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline

*and sound financial management*² (IIA of 17 May 2006), and in particular Point 47 thereof,

¹ OJ L 248, 16.9.2002, p. 1.

² OJ C 139, 14.6.2006, p. 1.

Or. en

Justification

The Financial Regulation (art 185) and the Interinstitutional agreement on budgetary management and budgetary discipline (art. 47) should be referred to as legal basis for the establishment of a new EU agency.

Amendment 2

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) In order to guarantee its full autonomy and independence, the Agency should be granted an autonomous budget with revenue from the general budget of the European Union. The Union budgetary procedure should be applicable *as far as the Union contribution and any other subsidies chargeable to the general budget of the European Union are concerned*. The auditing of accounts should be undertaken by the Court of Auditors.

Amendment

(12) In order to guarantee its full autonomy and independence, the Agency should be granted an autonomous budget with revenue from the general budget of the European Union. ***The financing of the Agency is subject to an agreement by the budgetary authority as set out in Point 47 of the IIA of 17 May 2006.*** The Union budgetary ***and discharge procedures*** should be applicable. The auditing of accounts ***and of the legality and regularity of the underlying transactions*** should be undertaken by the Court of Auditors.

Or. en

Justification

A reference to the need for an agreement between the two branches of the budgetary authority on the financing of the Office, as required by the IIA, should be inserted in the recital. The recitals should also make reference to the discharge procedure and reflect that the latter discharge applies not only to EU financed activity. In addition, as is current practice for other EU agencies, the Agency should be subject of an audit of the legality and regularity and the transactions underlying the accounts.

Amendment 3

Proposal for a regulation

Article 1

Text proposed by the Commission

A European Agency ("the Agency") for the operational management of the second-generation Schengen Information System (SIS II), the Visa Information System (VIS), EURODAC and for developing and managing other large-scale information technology ("IT") systems, in application of Title V of the Treaty on the Functioning of the European Union is hereby established.

Amendment

A European Agency ("the Agency") for the operational management of the second-generation Schengen Information System (SIS II), the Visa Information System (VIS), EURODAC and for developing and managing other large-scale information technology ("IT") systems, in application of Title V of the Treaty on the Functioning of the European Union is hereby established, ***in accordance with Article 185 of the Financial Regulation.***

Or. en

Justification

A reference to the basic rule of the financial regulation concerning the establishment of decentralised agencies under which the Agency is to be established should be added in the article concerning its legal definition and status.

Amendment 4

Proposal for a regulation

Article 7 - paragraph 4

Text proposed by the Commission

4. The seat of the Agency shall be [...]

Amendment

4. The seat of the Agency shall be [...]. ***The host Member State shall ensure that the Agency benefits from attractive conditions in respect of the accommodation to be provided to the Agency and the rules applicable to staff and members of the Agency's governing bodies, to be set out in a headquarters agreement.***

Or. en

Justification

The provision of such attractive conditions should not only rely on the goodwill of the

designated host Member State.

Amendment 5

Proposal for a regulation

Article 9 - paragraph 1 - point j

Text proposed by the Commission

(j) before 31 March each year, adopt the Agency's annual activity report for the previous year and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors; the annual activity report shall be published;

Amendment

(j) before 31 March each year, adopt the Agency's annual activity report for the previous year ***comparing, in particular, the results achieved with the objectives of the annual work programme*** and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors; the annual activity report shall be published;

Or. en

Justification

In line with the principles of Activity based management and Activity based budgeting (ABM-ABB), the Agency's annual activity report should be relative to the objectives set out in the work programme, to allow a sound monitoring of Agency's achievements.

Amendment 6

Proposal for a regulation

Article 9 - paragraph 1 - point m a (new)

Text proposed by the Commission

Amendment

(ma) monitor and give adequate follow-up to the findings and recommendations stemming from various audit reports and evaluations, whether internal or external;

Or. en

Justification

For a better ownership and follow-up of audit and evaluations findings, the Management Board, to whom the Director is accountable, should explicitly be entrusted with their monitoring.

Amendment 7

Proposal for a regulation Article 10 - paragraph 3

Text proposed by the Commission

3. The members of the Management Board shall be appointed on the basis of their high level relevant experience and expertise in the field of large-scale IT systems in the area of freedom, security and justice.

Amendment

3. The members of the Management Board shall be appointed on the basis of their high level relevant experience and expertise in the field of large-scale IT systems in the area of freedom, security and justice. ***They shall also have the necessary administrative and management skills to fulfil the tasks listed in Article 9 .***

Or. en

Justification

The skills of the members of the Management Board should be in line with the functions assigned to them.

Amendment 8

Proposal for a regulation Article 14 - paragraph 5 - point d

Text proposed by the Commission

(d) establish and implement an effective system enabling regular monitoring and evaluations of the IT systems, including statistics, and of the Agency;

Amendment

(d) establish and implement an effective system enabling regular monitoring, ***auditing*** and evaluations of the IT systems, including statistics, and of the Agency, ***also in terms of effective and efficient achievement of Agency's objectives;***

Or. en

Justification

In line with amendment 6 above / Article 9, par. 1, indent ma, a system for following up and addressing audit findings shall also be put in place, not only regarding financial and compliance but also performance auditing.

Amendment 9

Proposal for a regulation

Article 14 - paragraph 6 - point a

Text proposed by the Commission

(a) the Agency's annual work programme and its annual activity report, after prior consultation of the Advisory Groups;

Amendment

(a) the Agency's annual work programme and its annual activity report, ***with an indication of the resources allocated to each activity***, after prior consultation of the Advisory Groups;

Or. en

Justification

In line with the principles of Activity based management and Activity based budgeting (ABM-ABB), the Agency's work programme and annual activity report should provide information on the resources allocated to the activities which are necessary to reach the Agency's objectives.

Amendment 10

Proposal for a regulation

Article 14 - paragraph 6 - point c

Text proposed by the Commission

(c) the budget for the coming year;

Amendment

(c) the budget for the coming year, ***established on the basis of activity-based budgeting***;

Or. en

Justification

In line with the principles of Activity based management and Activity based budgeting (ABM-ABB), the Agency's budget should explicitly be based on the Agency's objectives and activities, making the link between the Agency's mission and objectives and its activities and resources.

Amendment 11

Proposal for a regulation Article 15 - paragraph 2

Text proposed by the Commission

2. Before appointment, the candidate selected by the Management Board may be invited to make a statement before the competent committee(s) of the European Parliament and answer questions from its/their members.

Amendment

2. Before appointment, the candidate selected by the Management Board may be invited to make a statement before the competent committee(s) of the European Parliament and answer questions from its/their members. ***Its/their opinion, if any, shall be considered before appointment.***

Or. en

Justification

Any Parliament's opinion on the selected candidate shall be taken into consideration before its appointment.

Amendment 12

Proposal for a regulation Article 15 - paragraph 4

Text proposed by the Commission

4. The Management Board, acting on a proposal from the Commission, taking into account the evaluation report, and only in those cases where it can be justified by the duties and requirement of the Agency, may extend the term of office of the Executive Director once for not more than three years.

Amendment

4. The Management Board, acting on a proposal from the Commission, taking into account the evaluation report, and only in those cases where it can be justified by the duties and requirement of the Agency, may extend the term of office of the Executive Director once for not more than three years. ***The Executive Director shall hold office for a period of not exceeding eight years.***

Or. en

Justification

Given the sensitivity of the post, it should not be possible for the Executive Director to stay in office for more than eight years, including through an external application for the same post after the extension of his/her term of office.

Amendment 13

Proposal for a regulation

Article 16 - paragraph 2

Text proposed by the Commission

2. Each Member State, each country associated with the implementation, application and development of the Schengen *acquis* and the EURODAC related measures as well as the Commission shall appoint one member to ***each of the*** Advisory Groups for a three-year term, which may be renewed;

Amendment

2. Each Member State, each country associated with the implementation, application and development of the Schengen *acquis* and the EURODAC related measures as well as the Commission shall appoint one member to ***one of the three*** Advisory Groups for a three-year term, which may be renewed, ***on a rotating basis***;

Or. en

Justification

To avoid a governance structure, in which member of various Boards would be as many as staff members of the Agency, the Advisory Committees should be composed of no more than 1/3 of the number of Member States. This is compatible with their advisory nature and counterbalanced by the full representation of Member States in the Management Board.

Amendment 14

Proposal for a regulation

Article 19

Text proposed by the Commission

The necessary arrangements concerning the accommodation to be provided for the Agency in the host Member State and the facilities to be made available by that State, as well as ***the*** specific rules applicable in the Agency's host Member State 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 between the Agency and the host Member State concluded after obtaining the approval of the Management Board. The Agency's host Member State should provide the best possible conditions to

Amendment

The necessary arrangements concerning the accommodation to be provided for the Agency in the host Member State and the facilities to be made available by that State, as well as specific rules ***aiming at ensuring the Agency's attractiveness to staff***, applicable in the Agency's host Member State 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 between the Agency and the host Member State concluded after obtaining the approval of the Management Board. The Agency's host

ensure proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

Member State should provide the best possible conditions to ensure proper functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

Or. en

Justification

The purpose of such provisions should be explicitly mentioned.

Amendment 15

Proposal for a regulation Article 27 - paragraph 2

Text proposed by the Commission

2. The evaluation shall assess the utility, relevance and effectiveness of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level.

Amendment

2. The evaluation shall assess the utility, relevance and effectiveness of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level. ***It shall, in particular, address the possible need to modify or extend the Agency's tasks or to put an end to its activities in the event of its role having become superfluous.***

Or. en

Justification

It should be mentioned that regular evaluations may also result in the reconsideration of the Agency's tasks or existence, should this need be.

Amendment 16

Proposal for a regulation Article 28 - paragraph 2

Text proposed by the Commission

2. The expenditure of the Agency shall include, inter alia, staff remuneration, administrative and infrastructure expenses, operating costs and expenditure relating to

Amendment

2. The expenditure of the Agency shall include, inter alia, staff remuneration, administrative and infrastructure expenses, operating costs and expenditure relating to

contracts or agreements concluded by the Agency. Each year the Executive Director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following financial year, together with the establishment plan, and shall transmit it to the Management Board.

contracts or agreements concluded by the Agency. Each year the Executive Director shall draw up, ***on the basis of the activities carried out by the Agency***, a draft statement of estimates of the Agency's revenue and expenditure for the following financial year, together with the establishment plan, and shall transmit it to the Management Board.

Or. en

Justification

In line with the principles of Activity based management and Activity based budgeting (ABM-ABB), the Agency's budget should explicitly be based on the Agency's objectives and activities, making the link between the Agency's mission and objectives and its activities and resources.

Amendment 17

Proposal for a regulation

Article 28 - paragraph 6 - point a

Text proposed by the Commission

Amendment

(a) its draft work programme;

(a) its draft work programme, ***together with the anticipated human and financial resources associated with each programmed activity***;

Or. en

Justification

In line with the principles of Activity based management and Activity based budgeting (ABM-ABB), the Agency's work programme should provide information on the resources allocated to the activities which are necessary to reach the Agency's objectives.

Amendment 18

Proposal for a regulation

Article 28 - paragraph 7

Text proposed by the Commission

Amendment

7. The statement of estimates shall be forwarded by the Commission to the

7. The statement of estimates shall be forwarded by the Commission to the

European Parliament and the Council (referred to as the budgetary authority) together with the *preliminary* draft general budget of the European Union.

European Parliament and the Council (referred to as the budgetary authority) together with the draft general budget of the European Union.

Or. en

Justification

Application of Lisbon Treaty nomenclature

Amendment 19

**Proposal for a regulation
Article 28 - paragraph 8**

Text proposed by the Commission

8. On the basis of the statement of estimates, the Commission shall enter in the *preliminary* 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 Article 314 of the Treaty on the Functioning of the European Union.

Amendment

8. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 314 of the Treaty on the Functioning of the European Union, ***together with a description of and justification for any difference between the Agency's statement of estimates and the subsidy to be charged to the general budget.***

Or. en

Justification

The first part of the amendment refers to the application of Lisbon Treaty nomenclature. The second aims at providing the budgetary authority with adequate information in case the Agency's estimates have been modified by the Commission.

Amendment 20

Proposal for a regulation Article 28 - paragraph 10

Text proposed by the Commission

10. The Agency's budget shall be adopted by the Management Board. It shall become final following the final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

Amendment

10. The Agency's budget shall be adopted by the Management Board. It shall become final following the final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly, ***together with the annual work programme.***

Or. en

Justification

In case of significant budgetary cuts by Commission, the Agency should not be requested to carry out the same tasks and activities with reduced resources.

Amendment 21

Proposal for a regulation Article 29 - paragraph 2

Text proposed by the Commission

2. The Executive Director shall forward annually to the budgetary authority any information ***relevant to*** the outcome of the evaluation procedures.

Amendment

2. The Executive Director shall forward annually to the budgetary authority any information ***regarding*** the outcome of the evaluation procedures.

Or. en

Justification

It should not be up to the Agency's Director to decide on what is relevant to the Parliament.

Amendment 22

Proposal for a regulation Article 29 - paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The European Court of Auditors shall audit the accounts of the Agency and the legality and regularity of the underlying transactions. It shall also provide, when available, any finding regarding the Agency's performance in achieving its objectives in an efficient and effective manner.

Or. en

Justification

Information on the performance of agencies is often missing when the Parliament has to assess the achievement of their objectives. While performance auditing of each agency cannot be requested to the ECA with its current resources, available performance information should be forwarded to the discharge authority.

Amendment 23

Proposal for a regulation Article 32 - paragraph 2

Text proposed by the Commission

Amendment

2. For that purpose, until such time as the Executive Director takes up his/her duties following his/her appointment by the Management Board in accordance with **article** 15 of this Regulation, the Commission **may** assign a limited number of officials including one to fulfil the functions of the Executive Director, on an interim basis.

2. For that purpose, until such time as the Executive Director takes up his/her duties following his/her appointment by the Management Board in accordance with **Article** 15 of this Regulation, the Commission **shall** assign a limited number of officials including one to fulfil the functions of the Executive Director, on an interim basis.

Or. en

Justification

Before the Agency acquires its autonomy, the Commission's assistance at the starting-up of the Agency should not be hypothetical.

Amendment 24

Proposal for a regulation Article 34 - paragraph 2

Text proposed by the Commission

2. The Agency shall take up its responsibilities set out in Articles 2 to 6 from 1 January 2012.

Amendment

2. The Agency shall take up its responsibilities set out in Articles 2 to 6 from 1 January 2012, ***provided that the Member States have agreed on the location of its seat sufficiently in advance to allow its basic infrastructure and procedures to become operational at that seat.***

Or. en

Justification

This addition is intended to prevent situations - like it happened with EMSA - in which an agency is provisionally established in one place different from the one of its definitive seat and has to face additional substantial costs for its later transfer.