



EUROPEAN PARLIAMENT

2009 - 2014

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*Committee on Budgetary Control*

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**2009/0089(COD)**

14.7.2010

## **OPINION**

of the Committee on Budgetary Control

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 on 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: Marian-Jean Marinescu

PA\_Legam

## SHORT JUSTIFICATION

A new regulatory Agency implies additional expenses. Therefore it is of paramount importance to ensure the most appropriate balance between efficiency, results and costs.

Based on different assessment reports, the conclusion is that there are a few aspects to seriously take into consideration.

First of all, the need to produce a document to convert the Agency's Strategy into a multiannual framework with clear objectives and performance indicators. This will improve the performance, financial management and control of the Agency.

Secondly, the need to reduce the number of the Management Board's members. This will ensure a more efficient working scheme and would prevent a rise in the governance costs and also a structural deficit for the Agency. The reduction of the members of the Management Board will naturally lead to a reduction of the members of the Audit Committee that will assist the Management Board in its duties.

Thirdly, for good governance, the composition of the Management Board should offer the possibility of fair representation of the Member States and this could be guaranteed, among other things, through alternation.

## AMENDMENTS

The Committee on Budgetary Control 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

#### Article 7 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. The Agency shall be under the supervision of the Commission.***

*Justification*

*Even if the Agency is to be established as a legally independent administrative body, compliance by the administration with the law must be ensured within the context of a supervisory role for the Commission.*

## Amendment 2

### Proposal for a regulation

#### Article 9 – paragraph 1 – point g a (new)

*Text proposed by the Commission*

*Amendment*

***(ga) adopt a multi-annual work-programme based on the tasks referred to Chapter II- Tasks, using as its basis a draft submitted by the Executive Director referred to in Article 14, after consulting the Advisory Groups referred to in Article 16, and receiving the Commission's opinion. The multi-annual work-programme shall, without prejudice to the annual Union budgetary procedure, include a multi-annual budget estimate and ex ante evaluations in order to structure the objectives and the different stages of the multi-annual planning;***

*Justification*

*The Framework Financial Regulation applicable to agencies foresees an obligation concerning multiannual programming only for staff. In its Special Report No 5/2008 "European Union's Agencies: getting results", the Court of Auditors recommends that agencies produce a document converting their strategy into a multiannual work programme that has clear objectives and performance indicators. This has also been requested in the EP resolution on "the 2008 discharge: performance, financial management and control of EU agencies"(Texts adopted of 5 May 2010, P7\_TA(2010)0139).*

## Amendment 3

### Proposal for a regulation

#### Article 9 – paragraph 1 – point h

*Text proposed by the Commission*

*Amendment*

(h) adopt the multi-annual staff policy plan and submit **it** by 31 March each year at the latest to the Commission and the budgetary authority;

(h) adopt the multi-annual staff policy plan, **and a draft annual work programme** and submit **them** by 31 March each year at the latest to the Commission and the budgetary authority;

*Justification*

*For consistency with Article 28(6)(a).*

#### Amendment 4

##### Proposal for a regulation

##### Article 9 – paragraph 1 – point i

*Text proposed by the Commission*

(i) before 30 September each year, and after receiving the opinion of the Commission, adopt by a two-thirds majority of its members with the right to vote, and in accordance with the annual Union budgetary procedure and the Union legislative programme in areas of Title V of the Treaty on the Functioning of the European Union, the Agency's annual work programme for the coming year; and ensure that the adopted work programme is forwarded to the European Parliament, the Council and the Commission and published;

*Amendment*

(i) ***under the multi-annual programme,*** before 30 September each year, and after receiving the opinion of the Commission, adopt by a two-thirds majority of its members with the right to vote, and in accordance with the annual Union budgetary procedure and the Union legislative programme in areas of Title V of the Treaty on the Functioning of the European Union, the Agency's annual work programme for the coming year; and ensure that the adopted work programme is forwarded to the European Parliament, the Council and the Commission and published;

#### Amendment 5

##### Proposal for a regulation

##### Article 14 – paragraph 6 – point b a (new)

*Text proposed by the Commission*

*Amendment*

***(ba) the multi-annual work programme;***

#### Amendment 6

##### Proposal for a regulation

##### Article 15 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. The Executive Director of the Agency shall be appointed by the Management Board, from a list of candidates proposed by the Commission, for a period of five years.

1. The Executive Director of the Agency shall be appointed by the Management Board, from a list of candidates proposed by the Commission, for a period of five years. ***The candidates shall have the qualities and skills required to effectively***

*perform the duties of Executive Director of the Agency, particularly with regard to the financial rules applicable to the Agency.*

*Justification*

*Consistency with Article 14(3).*

**Amendment 7**

**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 *Advisory Group shall have 10 members. The Commission shall appoint one member of each Advisory Group. Nine members of each Advisory Group shall be appointed by the Council. All members shall be appointed* for a three-year term, which may be renewed.

*Justification*

*Given that advisory bodies should make every effort to achieve consensus in their opinions, overly large bodies are not conducive to reaching an opinion. Overly large advisory bodies may therefore make the Agency's work unnecessarily more difficult.*

**Amendment 8**

**Proposal for a regulation  
Chapter IV – Title**

*Text proposed by the Commission*

**OPERATION**

*Amendment*

**STAFF**

*Justification*

*A new title on staff provision.*

## Amendment 9

### Proposal for a regulation Article 17 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. The Agency shall not recruit interim staff to perform what are deemed to be sensitive financial duties.***

*Justification*

*Recruiting interim staffs to perform sensitive financial duties could affect the agency's performance due to unqualified/ not trained staff/not motivated staff. This could also expose the agency to financial fraud as the interim staff is more exposed to be influenced in order to get a renewal of his/her contract. See also the EP Resolution on "The 2008 discharge: performance, financial management and control of EU agencies" paragraph 7(Texts adopted of 5 May 2010, P7\_TA(2010)0139).*

## Amendment 10

### Proposal for a regulation Article 17 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. If the Commission establishes that there have been repeated infringements of the Staff Regulations or the Conditions of Employment of Other Servants and that the Agency's Management Board is not fulfilling the monitoring role assigned to it in this area, the Commission may demand, in the context of its supervisory role, to take action itself in the area of staff management in place of the Agency.***

*Justification*

*In the past, in the case of other agencies, the powers of the Executive Director have proved not to be subject to adequate monitoring by the Management Board in the area of personnel management. Even when there have clearly been repeated infringements of the Staff Regulations, management boards in other agencies have been reluctant to fulfil their monitoring role. This amendment is intended to give the Commission a last resort option within the context of its supervisory role.*

## Amendment 11

### Proposal for a regulation Article 17 a (new)

*Text proposed by the Commission*

*Amendment*

**Article 17a**  
**Privileges and immunities**  
**The Protocol on the Privileges and Immunities of the European Union shall apply to the Agency.**

*Justification*

*Article 20 of the Commission proposal is now moved to Article 17 a (new).*

## Amendment 12

### Proposal for a regulation Chapter IV a (new)– before Article 18

*Text proposed by the Commission*

*Amendment*

**CHAPTER IVa**  
**GENERAL PROVISIONS**

*Justification*

*New Chapter.*

## Amendment 13

### Proposal for a regulation Article 18

*Text proposed by the Commission*

*Amendment*

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 this purpose, they shall make, annually and in writing, a statement of commitment.

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 this purpose, they shall make, annually and in writing, a statement of commitment. ***The list of members of the Management Board shall be published on the Agency's internet site.***



*Justification*

*The aim is to increase transparency, as agencies do not follow uniform practices in this connection.*

**Amendment 14**

**Proposal for a regulation**  
**Article 19 – Title**

*Text proposed by the Commission*

*Amendment*

Headquarters Agreement

Headquarters Agreement ***and Operating Conditions***

*Justification*

*Change in the Title.*

**Amendment 15**

**Proposal for a regulation**  
**Article 20**

*Text proposed by the Commission*

*Amendment*

***Article 20***

***deleted***

***Privileges and immunities***

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

*Justification*

*Redundancy due to amendment 11.*

**Amendment 16**

**Proposal for a regulation**  
**Article 23 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 23a***

*Administrative controls*

*The activities of the Agency shall be subject to the scrutiny of the European Ombudsman in accordance with Article 228 of the Treaty on the Functioning of the European Union.*

**Amendment 17**

**Proposal for a regulation**  
**Article 27 – Title**

*Text proposed by the Commission*

*Amendment*

Evaluation

Evaluation *and review*

*Justification*

*Possibilities of review should also need to be taken into account.*

**Amendment 18**

**Proposal for a regulation**  
**Article 27 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Within three years from the date of the Agency having taken up its responsibilities, and every **five** years thereafter, the Management Board shall commission an independent external evaluation of the implementation of this Regulation on the basis of terms of reference issued by the Management Board after consultation with the Commission.

1. Within three years from the date of the Agency having taken up its responsibilities, and every **three** years thereafter, the Management Board shall commission an independent external evaluation of the implementation of this Regulation on the basis of terms of reference issued by the Management Board after consultation with the Commission.

**Amendment 19**

**Proposal for a regulation**  
**Article 27 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. The evaluation shall assess the utility, relevance and effectiveness of the Agency and its working practices. The evaluation

2. The evaluation shall assess the utility, relevance and effectiveness of the Agency and its working practices. **That evaluation**

shall take into account the views of stakeholders, at both European and national level.

***shall also look at whether the management structure is appropriate for carrying out the Agency's tasks.*** The evaluation shall take into account the views of stakeholders, at both European and national level.

#### *Justification*

*This evaluation shall also look at whether the management structure is appropriate for carrying out the Agency's tasks.*

### **Amendment 20**

#### **Proposal for a regulation Article 27 – paragraph 3**

##### *Text proposed by the Commission*

3. The Management Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which shall forward them, together with its own opinion as well as appropriate proposals, to the Council and the European Parliament. ***An action plan with a timetable shall be included, if appropriate.*** Both the evaluation and the recommendations shall be made public.

##### *Amendment*

3. The Management Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency and its working practices to the Commission, which shall forward them, together with its own opinion as well as appropriate proposals, to the Council and the European Parliament. Both the evaluation and the recommendations shall be made public.

#### *Justification*

*The timing of future evaluations, taking into account the findings of the evaluation report referred to in paragraph 2 should be treated in a separate and more detailed paragraph. See amendment 21 below.*

### **Amendment 21**

#### **Proposal for a regulation Article 27 – paragraph 3 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***3a. The Management Board, in agreement with the Commission, shall decide the timing of future evaluations, taking into account the findings of the***

*evaluation report referred to in paragraph 2.*

*Justification*

*See the justification of the amendment 20.*

**Amendment 22**

**Proposal for a regulation  
Article 28 – paragraph 6 – point a**

*Text proposed by the Commission*

(a) its draft work programme;

*Amendment*

(a) its draft **annual** work programme;

*Justification*

*See amendment 2.*

**Amendment 23**

**Proposal for a regulation  
Article 28 – paragraph 6 – point b a (new)**

*Text proposed by the Commission*

*(ba) its updated multi-annual work programme;*

*Amendment*

**Amendment 24**

**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 **a report summarising the number and type of internal audits conducted by the internal auditor, the recommendations made and the action taken on those**

*recommendations, in accordance with Article 72(5) of Regulation (EC, Euratom) No 2343/2002<sup>1</sup>.*

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<sup>1</sup> OJ L 357, 31.12.2002, p. 72.

*Justification*

*The requirements made of the Executive Director pursuant to the financial regulation should be specified.*

**Amendment 25**

**Proposal for a regulation  
Article 32 – Title**

*Text proposed by the Commission*

*Amendment*

***Preparatory actions***

***Start of the Agency's Activities***

*Justification*

*Change the title.*

**Amendment 26**

**Proposal for a regulation  
Article 34 – Title**

*Text proposed by the Commission*

*Amendment*

Entry into force ***and applicability***

Entry into force

## PROCEDURE

<b>Title</b>	Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
<b>References</b>	COM(2010)0093 – C7-0046/2009 – COM(2009)0293 – 2009/0089(COD)
<b>Committee responsible</b>	LIBE
<b>Opinion by</b> Date announced in plenary	CONT 14.7.2009
<b>Rapporteur</b> Date appointed	Marian-Jean Marinescu 1.10.2009
<b>Discussed in committee</b>	31.5.2010
<b>Date adopted</b>	12.7.2010
<b>Result of final vote</b>	+: 18 -: 2 0: 1
<b>Members present for the final vote</b>	Marta Andreasen, Jean-Pierre Audy, Inés Ayala Sender, Zigmantas Balčytis, Luigi de Magistris, Tamás Deutsch, Martin Ehrenhauser, Jens Geier, Gerben-Jan Gerbrandy, Ingeborg Gräble, Ville Itälä, Bogusław Liberadzki, Monica Luisa Macovei, Jan Olbrycht, Aldo Patriciello, Theodoros Skylakakis, Georgios Stavrakakis, Søren Bo Søndergaard
<b>Substitute(s) present for the final vote</b>	Zuzana Brzobohatá, Edit Herczog, Ivailo Kalfin, Olle Schmidt, Derek Vaughan