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Committee on Civil Liberties, Justice and Home Affairs

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*****I**

DRAFT REPORT

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))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Carlos Coelho

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* alerts the relevant departments to parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act which the draft act seeks to amend includes a third and fourth line identifying respectively the existing act and the provision in that act affected by the amendment. Passages in a provision of an existing act that Parliament wishes to amend, but the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the amended Commission proposal to Parliament and the Council (COM(2010)0093),
 - having regard to Article 294(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0046/2009),
 - having regard to Article 294(3) and Articles 77(2)(a) and (b), 78(2)(e), 79(2)(c), 74, 82(1)(d) and 87(2)(a) of the Treaty on the Functioning of the European Union,
 - having regard to the Opinion of the European Data Protection Supervisor¹,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Budgets and the Committee on Budgetary Control (A7-0000/2010),
1. Approves its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) In order to ensure the operational management of SIS II, VIS and EURODAC after the transitional period and potentially of other information technology (“IT”) systems in the area of

Amendment

(4) In order to ensure the operational management of SIS II, VIS and EURODAC ***and parts of the communication infrastructure*** after the transitional period and potentially of other

¹ OJ C 70, 19.3.2010, p. 13.

freedom, security and justice, it is necessary to establish a Management Authority.

information technology (“IT”) systems in the area of freedom, security and justice, ***subject to the adoption of separate legal instruments***, it is necessary to establish a Management Authority.

Or. en

Amendment 2

Proposal for a regulation Recital 5a (new)

Text proposed by the Commission

Amendment

(5a) In the joint statements accompanying the SIS II and VIS legal instruments, the European Parliament and the Council invited the Commission to present, following an impact assessment, the necessary legislative proposals entrusting an Agency with the long term operational management of the Central SIS II and parts of the communication infrastructure as well as the VIS.

Or. en

Amendment 3

Proposal for a regulation Recital 8

Text proposed by the Commission

Amendment

(8) In addition, the Agency should ***organize specific VIS and SIS II related training.***

(8) In addition, the Agency should ***perform tasks related to training on the technical use of VIS, SIS II and EURODAC.***

Or. en

Amendment 4

Proposal for a regulation Recital 8a (new)

Text proposed by the Commission

Amendment

(8a) Furthermore, the Agency should be responsible for the operation, management and supervision of a communication infrastructure providing networking and security services for the exchange of data within the framework of each IT system concerned, according to their respective legal instruments.

Or. en

Amendment 5

Proposal for a regulation Recital 9

Text proposed by the Commission

Amendment

(9) Furthermore, the Agency may also be made responsible for the preparation, development and operational management of additional large-scale IT systems ***on the basis of a relevant legislative instrument*** in application of Title V of the Treaty on the Functioning of the European Union. ***In addition, the Agency should be responsible for monitoring of research and for pilot schemes for large-scale IT systems in application of Title V of the Treaty on the Functioning of the European Union, upon specific and precise request of the Commission.***

(9) Furthermore, the Agency may also be made responsible for the preparation, development and operational management of additional large-scale IT systems in application of Title V of the Treaty on the Functioning of the European Union. ***The Agency should be entrusted with such tasks only by means of subsequent and separate legal instruments, preceded by an impact assessment.***

Or. en

Amendment 6

Proposal for a regulation
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) The Agency should be responsible for monitoring of research and for pilot schemes, in accordance with the provisions of Article 49(6)(a) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, for large-scale IT systems in application of Title V of the Treaty on the Functioning of the European Union, at the specific and precise request of the Commission and in accordance with Article 6 of this Regulation.

Or. en

Amendment 7

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

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.

I. A European Agency (“the Agency”) for the operational management of the second-generation Schengen Information System (SIS II), the Visa Information System (VIS) ***and*** EURODAC is hereby established.

Or. en

Amendment 8

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

Text proposed by the Commission

Amendment

1a. The Agency may also be entrusted with the preparation, development and operational management of other large-scale information technology (“IT”) systems, in application of Title V of the Treaty on the Functioning of the European Union. The Agency shall be entrusted with such tasks only by means of separate legal instruments based on Title V of the Treaty on the Functioning of the European Union, following an impact assessment and taking into account the developments in research referred to in Article 5 and the results of pilot schemes referred to in Article 6.

Or. en

Amendment 9

Proposal for a regulation Article 1 – paragraph 1 b

Text proposed by the Commission

Amendment

1b. Operational management shall consist of all the tasks necessary to keep the large-scale IT systems referred to in paragraph 1 functioning in accordance with the specific provisions applicable to each of those IT systems, including responsibility for the communication infrastructure used by the IT systems. There shall be no possibility of interoperability between those large-scale IT systems.

Or. en

Amendment 10

Proposal for a regulation Article 1 a (new)

Text proposed by the Commission

Amendment

Article 1a

Objectives

Without prejudice to the respective responsibilities of the Commission and of the Member States under the instruments governing the IT systems referred to in Article 1, the Agency shall ensure:

- the implementation of effective and secure operation and a continuous, efficient and financially accountable management of the IT systems referred to in Article 1;*
- a high level of service quality for users of those IT systems;*
- continuity and uninterrupted service;*
- an appropriate level of data protection, in accordance with applicable rules, including specific provisions for each IT system referred to in Article 1;*
- a high level of physical security and data integrity and security, in accordance with the applicable rules, including specific provisions for each IT system, as referred to in Article 1;*
- the use of a professional project management structure for efficiently developing large-scale IT systems.*

Or. en

Amendment 11

Proposal for a regulation Article 2

Text proposed by the Commission

The Agency shall perform the tasks conferred on the Management Authority by Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA, organize common training for staff involved in the exchange of supplementary information, in accordance with the SIRENE Manual and perform tasks related to the training of experts on SIS II as provided for in Council Regulation No XXX on the establishment of an evaluation mechanism to verify the application of the Schengen acquis.

Amendment

The Agency shall:

- perform the tasks conferred on the Management Authority by Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA;
- ***perform tasks relating to training in the use of SIS II, in particular to*** organize common training for staff involved in the exchange of supplementary information, in accordance with the SIRENE Manual and perform tasks related to the training of experts on ***the technical aspects of*** SIS II as provided for in Council Regulation No XXX on the establishment of an evaluation mechanism to verify the application of the Schengen acquis.

Or. en

Amendment 12

Proposal for a regulation Article 3

Text proposed by the Commission

The Agency shall perform the tasks

Amendment

The Agency shall:

conferred on the Management Authority by Regulation (EC) No 767/2008 and Decision 2008/633/JHA, **and** perform tasks related to training on the use of VIS.

- perform the tasks conferred on the Management Authority by Regulation (EC) No 767/2008 and Decision 2008/633/JHA;
- perform tasks related to training on the use of VIS, **in particular to the training of experts in the technical aspects of VIS.**

Or. en

Amendment 13

Proposal for a regulation Article 4

Text proposed by the Commission

The Agency shall perform the tasks conferred on the Management Authority by Regulation (EC) XX/2009 concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...].

Amendment

The Agency shall:

- perform the tasks conferred on the Management Authority by Regulation (EC) XX/2009 concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...]
- perform tasks relating to training in the use of EURODAC, in particular to the training of experts in the technical aspects of EURODAC.

Or. en

Amendment 14

Proposal for a regulation Article 4a (new)

Text proposed by the Commission

Amendment

Article 4a

Tasks related to the communication infrastructure

- 1. The Agency shall be responsible for the operational management and control of a communication infrastructure providing networking and security services for the exchange of data within the framework of each IT system concerned, in accordance with their respective legal instruments.***
- 2. The communication infrastructure shall be adequately managed and controlled in order to protect it from threats and to ensure the security of the communication infrastructure and of the IT systems, including data exchanged through it.***
- 3. The tasks concerning the operational management and control of the communication infrastructure may be entrusted to external private-sector entities or bodies in accordance with Article 36(2) of Commission Regulation (EC, Euratom) No 2343/2002.***
- 4. The entity or body referred to in paragraph 3 shall comply with the following criteria in particular:***
 - (a) it shall demonstrate extensive experience of operating the communication infrastructure of a large-scale IT system;***
 - (b) it shall have considerable expertise in the service and security requirements of an IT system with such functionalities;***
 - (c) it shall have sufficient and experienced staff with the appropriate professional expertise and language skills to work in an international cooperation environment such as that required by SIS II, VIS or EURODAC;***

(d) it shall have a secure and custom-built facility infrastructure, in particular a single building dedicated exclusively to the tasks conferred on it under paragraph 3, situated on Union territory and be able to back up and guarantee the continuous functioning of large-scale IT systems;
(e) it shall undertake to refrain from any act which may give rise to a conflict of interests;
(f) it shall ensure that the infrastructure provided serves exclusively the needs of information exchange regarding European and national public administrations.

Or. en

Amendment 15

Proposal for a regulation

Article 5 – paragraph 2

Text proposed by the Commission

2. The Agency shall on a regular basis keep the Commission informed on the developments referred to in paragraph 1.

Amendment

2. The Agency shall on a regular basis keep **the European Parliament, the Council, the Commission, and the European Data Protection Supervisor** informed of the developments referred to in paragraph 1.

Or. en

Amendment 16

Proposal for a regulation

Article 6 – paragraph 1

Text proposed by the Commission

1. **Upon** specific and precise request of the Commission, the Agency **shall** implement pilot schemes for the development and/or the operational management of large-scale IT systems, in application of Title V of the Treaty on the Functioning of the European

Amendment

1. **Only at the** specific and precise request of the Commission **and only after having informed the European Parliament and the Council at least three months in advance**, the Agency **may** implement pilot schemes **as referred to in Article 49(6)(a)**

Union.

of Council Regulation (EC, Euratom) No 1605/2002, for the development and/or the operational management of large-scale IT systems, in application of Title V of the Treaty on the Functioning of the European Union.

The European Parliament, the Council and the European Data Protection Supervisor shall be regularly kept informed of the evolution of these pilot schemes.

Or. en

Amendment 17

Proposal for a regulation Article 7 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The seat of the Agency shall respect the following requirements:

(a) it shall be a central location. A second location shall be maintained for running a backup IT centre hosting backup continuity units of the IT systems managed by the Agency;

(b) it shall be situated in a single building dedicated exclusively to the Agency, which should be owned or rented by the Agency itself;

(c) it shall ensure the highest standards of physical and data security.

(d) it shall provide for the most cost-effective solution;

Or. en

Amendment 18

Proposal for a regulation

Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The structure of the Agency shall also comprise:

(a) a Data Protection Officer;

(b) a Security Officer;

(c) an Accounting Officer.

Or. en

Amendment 19

Proposal for a regulation

Article 9 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) exercise disciplinary authority over the Executive Director;

(b) exercise disciplinary authority over the Executive Director **and oversee his/her performance, including the implementation of Management Board decisions;**

Or. en

Amendment 20

Proposal for a regulation

Article 9 – paragraph 1 – point i

Text proposed by the Commission

Amendment

(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

(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;

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; ensure that the adopted work programme is forwarded to the European Parliament, the Council, the Commission **and the European Data Protection Supervisor** and published;

Or. en

Amendment 21

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 and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the European Economic and Social Committee, the Court of Auditors **and the European Data Protection Supervisor**; the annual activity report shall be published;

Or. en

Amendment 22

Proposal for a regulation

Article 9 – paragraph 1 – point n

Text proposed by the Commission

(n) adopt the necessary security measures, including a security plan;

Amendment

(n) adopt the necessary security measures, including a security plan, **taking into account the possible recommendations of the security experts present in the Advisory Groups and the appointment of**

a security officer;

Or. en

Amendment 23

Proposal for a regulation

Article 9 – paragraph 1 – point r

Text proposed by the Commission

(r) make comments on the European Data Protection Supervisor’s report about the audit pursuant to Article 45 of Regulation (EC) 1987/2006 and Article 42(2) of Regulation (EC) No 767/2008 and decide on *the follow-up of the audit*;

Amendment

(r) make comments on the European Data Protection Supervisor’s report about the audit pursuant to Article 45 of Regulation (EC) No 1987/2006 and Article 42(2) of Regulation (EC) No 767/2008 and decide on *how to implement the recommendations in the most appropriate way*;

Or. en

Amendment 24

Proposal for a regulation

Article 10 – paragraph 1

Text proposed by the Commission

1. The Management Board shall be composed of one representative of each Member State and *two representatives of* the Commission.

Amendment

1. The Management Board shall be composed of one representative of each Member State and the Commission.

Or. en

Amendment 25

Proposal for a regulation

Article 10 – paragraph 2

Text proposed by the Commission

2. Each Member State shall appoint a

Amendment

2. Each Member State *and the*

member of the Management Board as well as an alternate. **The Commission shall appoint two members and their alternates.** The alternates shall represent the members in their absence. They shall be members with voting rights.

Commission shall appoint a member of the Management Board as well as an alternate. The alternates shall represent the members in their absence. They shall be members with voting rights.

Or. en

Amendment 26

Proposal for a regulation Article 10 – paragraph 5

Text proposed by the Commission

5. Countries associated with the implementation, application and development of the Schengen acquis and the *EURODAC related* measures shall participate in the Agency. They shall each appoint one representative and an alternate to the Management Board **who shall be members without voting rights.**

Amendment

5. Countries associated with the implementation, application and development of the Schengen acquis and the *EURODAC-related* measures shall participate in the Agency. They shall each appoint one representative and an alternate to the Management Board.

Or. en

Amendment 27

Proposal for a regulation Article 11 – paragraph 3

Text proposed by the Commission

3. The Chairperson may only be appointed from among those members who are appointed by Member States **that participate fully in the adoption of the** legal instruments governing all the systems managed by the Agency.

Amendment

3. The Chairperson may only be appointed from among those members who are appointed by Member States **which are fully bound by the** legal instruments governing **the establishment, development, operation and use of** all the *IT* systems managed by the Agency.

Or. en

Amendment 28

Proposal for a regulation Article 13 – paragraph 3

Text proposed by the Commission

3. Each member appointed by a Member State which *participates in the adoption of* any legal instrument governing an IT system managed by the Agency may vote on a question which concerns that IT system.

Amendment

3. Each member appointed by a Member State which *is bound by* any legal instrument governing *the establishment, development, operation and use of a large-scale* IT system managed by the Agency may vote on a question which concerns that IT system. *If a Member State takes part only in parts of a large-scale IT system, the member appointed by that Member State may vote only on matters concerning that part of the IT system.*

Or. en

Amendment 29

Proposal for a regulation Article 13 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Regarding countries associated with the implementation, application and development of the Schengen acquis and the EURODAC-related measures Article 33 shall apply.

Or. en

Amendment 30

Proposal for a regulation Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13a

Participation in meetings and access to documents of the Management Board

Without prejudice to the more detailed provisions to be laid down in the rules of procedure of the Agency in this respect, the member of the Management Board appointed by a Member State which is not bound by a legal instrument governing that particular large-scale IT system may neither participate in the respective meetings nor have access to documents which relate only to that IT system and which have no impact on other large-scale IT systems in which that Member State takes part.

Or. en

Amendment 31

Proposal for a regulation Article 14 – paragraph 4

Text proposed by the Commission

Amendment

4. The European Parliament and the Council may invite the Executive Director of the Agency to report on the implementation of his/ her tasks.

4. The Executive Director shall report to the European Parliament on the performance of his duties when invited. The Council may invite the Executive Director to report on the performance of his/ her duties.

Or. en

Amendment 32

Proposal for a regulation Article 15 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. The Executive Director of the Agency shall be appointed by the Management Board for a period of five years ***from among the suitable candidates identified in an open competition organised by the Commission. That 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 new procedure to be initiated if it is not satisfied with the suitability of any of the candidates retained in the first list. The Executive Director shall be appointed on the basis of his/her personal merits, experience in the field of large-scale IT systems and administrative and management skills.***

Or. en

Amendment 33

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

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 its/their members. ***If the European Parliament has adopted an opinion setting out its view of the selected candidate, the Management***

Board shall inform the European Parliament of the manner in which its opinion has been taken into account. The opinion shall be treated as personal and confidential until the appointment of the candidate concerned.

Or. en

Amendment 34

Proposal for a regulation Article 15 – paragraph 5

Text proposed by the Commission

5. The Management Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within a month before the extension of his/her term of office, the Executive Director *may* be invited to make a statement before the competent committee(s) of *the* Parliament and answer questions from its/their members.

Amendment

5. The Management Board shall inform the European Parliament about its intention to extend the Executive Director's term of office. Within a month before the extension of his/her term of office, the Executive Director ***shall*** be invited to make a statement before the competent committee(s) of Parliament and answer questions from its/their members.

Or. en

Amendment 35

Proposal for a regulation Article 16 – paragraph 1

Text proposed by the Commission

1. The following Advisory Groups shall provide the Management Board with the expertise related to the respective IT systems and, in particular, in the context of the preparation of the annual work *program* and the annual activity report:

- (a) SIS II Advisory Group;
- (b) VIS Advisory Group;

Amendment

1. The following Advisory Groups shall provide the Management Board with the expertise related to the respective 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) any other Advisory Group related to a large scale IT system developed or managed by the Agency.

(c) EURODAC Advisory Group;

Or. en

Amendment 36

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 long as that country is bound by a legal instrument governing the respective large-scale IT system***, as well as the Commission shall appoint one member to each of the Advisory Groups, for a three-year term, which may be renewed.

Or. en

Amendment 37

Proposal for a regulation Article 16 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. Article 13a shall apply mutatis mutandis to the participation in meetings and access to documents of the Advisory Groups.

Or. en

Amendment 38

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 European Parliament, the Council **and the European Data Protection Supervisor***. An action plan with a timetable shall be included, if appropriate. Both the evaluation and the recommendations shall be made public.

Or. en

Amendment 39

Proposal for a regulation Article 32

Text proposed by the Commission

1. The Commission shall be responsible for the establishment and initial operation of the Agency ***until the latter has the operational capacity to implement its own budget.***

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.

3. ***The interim Executive Director may authorise all payments covered by credits***

Amendment

1. The Commission shall be responsible for the establishment and initial operation of the Agency.

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 on an interim basis.

3. ***Once the Management Board has been appointed, the Commission shall***

provided in the budget of the Agency, once approved by the Management board and may conclude contracts, including staff contracts following the adoption of the Agency's establishment plan.

immediately launch the selection procedure for the Executive Director of the Agency.

Or. en

Amendment 40

Proposal for a regulation Article 33

Text proposed by the Commission

Under the relevant provisions of their association agreements, arrangements shall be made in order to specify, inter alia, the nature and extent of, and the detailed rules for, the participation by countries associated with the implementation, application and development of the Schengen acquis and the *EURODAC related* measures in the work of the Agency, including provisions on financial contributions *and* staff.

Amendment

Under the relevant provisions of their association agreements, arrangements shall be made in order to specify, inter alia, the nature and extent of, and the detailed rules for, the participation by countries associated with the implementation, application and development of the Schengen acquis and the *EURODAC-related* measures in the work of the Agency, including provisions on financial contributions, staff *and voting rights*.

Or. en

EXPLANATORY STATEMENT

BACKGROUND

In June 2009 the Commission submitted a pair of legislative initiatives with a view to establishing an agency to manage large-scale IT systems within the area of freedom, security, and justice. One was a proposal for a regulation on the first-pillar matters related to the SIS, VIS, and Eurodac systems, and the other, a proposal for a decision on the third-pillar matters related to those systems.

However, with the entry into force of the Treaty of Lisbon, the initiatives were rendered obsolete. On 19 March 2010 the Commission submitted a new proposal amounting essentially to a revised version of the earlier proposal for a regulation incorporating the third-pillar matters.

Although the entry into force of the Treaty of Lisbon has done away with the distinction between the pillars, the proposal under consideration here is symptomatic of the ‘variable geometry’ reflected in different aspects of the area of freedom, security, and justice in general and of Schengen in particular. The legal framework for the systems to be managed by the Agency applies to a disparate group of Member States participating to different degrees (as far as the United Kingdom, Denmark, and Ireland are concerned) and associated third countries (Norway, Iceland, Switzerland, and, in the future, Liechtenstein).

As regards **SIS II**, the United Kingdom and Ireland take no part under the old first pillar (Regulation (EC) No 1987/2006), their involvement being confined to the third pillar (Council Decision 2007/533/JHA). Denmark does participate. Norway and Iceland are associated countries, and Liechtenstein will be in the future.

As regards **VIS**, the United Kingdom and Ireland do not participate, but Denmark does. Norway, Iceland, and Switzerland are associated countries, and Liechtenstein will be in the future.

As regards **Eurodac**, the United Kingdom, Ireland, and Denmark do take part. The United Kingdom has notified the Council that it wishes to participate in the Agency where Eurodac-related matters are concerned, but Ireland has not. Norway, Iceland, and Switzerland are associated countries and Liechtenstein will be in the future.

Regarding these three systems to be managed by the Agency, the United Kingdom and Ireland will take part only to some extent in SIS II and will not participate in the VIS; regarding the Agency, only the United Kingdom will participate where Eurodac-related measures are concerned.

The questions to answer, therefore, are:

- When Member States do not participate in all of the systems, how much of a say should they be allowed in the adoption of the legislative initiative establishing the Agency?

- To what extent is the regulation binding on those Member States?

The Commission proposal is not entirely clear. On the one hand, the Commission believes the proposal as a whole to be a measure building upon the Schengen *acquis*. On the other hand, recitals 24 and 25 of the Commission proposal make reference to the respective participation of United Kingdom and Ireland in the legal framework of each one of the three databases. On this basis, the proposal seeks to determine to what extent those States may participate in the adoption of the legislative proposal and will be bound by the text adopted. However, as regards the United Kingdom, recital 24 only states in a general way that the United Kingdom participates in the adoption and is bound by the application of the regulation in so far as it does not relate to the former first-pillar part of SIS II or to VIS. A similar general formula can be found in recital 25 as regards Ireland.

In its opinion of 7 June 2010 the EP's Legal Service drew attention to the ruling handed down by the Court of Justice on 18 September 2009 in a dispute between the United Kingdom and the Council (Case C-77/05 on the adoption of Regulation (EC) No 2007/2004 – the Frontex Regulation). The Court took the view that although the United Kingdom had formally asked to take part in the adoption of the regulation, it should not be authorised to do so, since it had not agreed to be bound by the relevant part of the Schengen *acquis*. Another action on a similar subject is currently before the Court (concerning the adoption of Council Decision 2008/633/JHA on VIS).

In the view of the Legal Service, recitals 24 and 25 of the Commission's proposal '*are not sufficient to ensure that the adoption of this Regulation would take place in a manner that is transparent and consistent with the above-mentioned case-law of the Court of Justice*'. Moreover, '*it would be impossible (...) to determine the legal effects of the act in relation to the United Kingdom and Ireland, which would therefore create a situation of legal uncertainty, contrary to the principles of Union law*'.

The EP and the Council, which share legislative power, are carefully considering the alternatives to overcome the legal problem highlighted in the legal opinion. Three options are currently being studied by the respective Legal Services:

OPTION 1 – Reject the Commission proposal and call for it to be replaced by other initiatives. (For example a regulation establishing the Agency and separate legal instruments conferring powers on the Agency and governing the management of each system. The say to be accorded to the individual Member States would depend on the extent of their participation in the system in question).

OPTION 2 – Amend the proposal so as to spell out what voting rights each Member State would have where the Agency was concerned. A decision could, in addition, be adopted if the United Kingdom and Ireland were to ask to exercise their right to opt into the regulation establishing the Agency.

OPTION 3 – Split the proposal in two and leave VIS-related matters to be dealt with in another instrument (VIS being the only one of the three systems in which neither Ireland nor the United Kingdom participates in any way at all).

The Commission proposal

When they adopted the legislative instruments on SIS II and VIS, the EP and the Council called on the Commission to submit the legislative initiatives necessary to set up a body to manage the systems.

The Commission has produced an impact assessment in order to determine what would be the best solution from the financial, operational, and institutional point of view.

The rapporteur's view

The rapporteur believes that, among the various options set out in the Commission's study, setting up a European agency is the best.

1. Why we need to establish a new agency

There is plainly no other solution. It would be quite wrong to assign the responsibility to the Commission, especially in view of the protracted problems that have occurred in recent years regarding the development of the systems. Furthermore, the Commission itself has repeatedly pointed out that its running of Eurodac is merely a stopgap solution and that it does not consider itself equal to assuming direct management responsibility for large-scale IT systems.

Why would the solution not lie in an executive agency? Because in that case the legislature would be denied the possibility to shape the agency and exercise its democratic scrutiny. Executive agencies are set up by the Commission entirely under its supervision and responsibility. The Commission lays down their tasks and appoints their managing bodies, including the director. An executive agency has a limited life and would thus be a temporary solution.

2. Extending the Agency's responsibilities to cover other systems

One point which the rapporteur believes has to be made clear is that wider powers for the Agency, allowing it to manage such new systems as might be set up, could be created only under specific legal instruments.

3. Clarifying the Agency's aims and tasks

It is important to stress that the Agency's aims and tasks apply purely at the technical level of operational management. The Agency must not have the power to take policy decisions, for instance to set up new systems or concerning system interoperability.

4. Pilot projects

It would be wise to lay down rules to prevent the Agency's responsibilities being widened de facto through a proliferation of pilot projects beyond the range of supervision and transparency.

5. Siting of the Agency

There are two candidates for the seat of the Agency: Estonia and France. The rapporteur does not think it right to propose a place for the time being, even though Parliament, together with the Council, has the power to take the necessary decision.

Parliament should, however, spell out certain criteria that will need to be observed in order to produce a sound decision:

- For security and budgetary reasons, it would be preferable for the Agency to be based in one place (as opposed to a decentralised arrangement); a plethora of infrastructures and human resources does not seem a good idea.
- The facilities should be owned or rented by the Agency, so as to enhance possibilities to ensure the security of the building, and not shared with any other national system.
- Security standards must be as high as possible, both as regards the physical facilities and as regards data.
- The seat must constitute the most cost-effective solution.

6. Communication infrastructure

As laid down in the SIS II legal framework, the Agency will be partly responsible for the communication infrastructure, specifically as regards its supervision and security, the object being to make the network secure for data exchange within the legal framework for each of the systems involved.

It is vital to protect the network from threats of every kind and guarantee security, not only of the network as such, but also of the data transmitted.

The rapporteur does not believe that an exclusive communication infrastructure should be set up for the three systems, not least because, in budget terms, the impact of this solution would be considerable. The possibility of outsourcing is available, but subject to stringent criteria. Significant changes would need to be made to, for example, the s-TESTA network in order to fulfil the requirements.

7. The structure of the Agency should also comprise

- a Data Protection Officer
- a Security Officer
- an Accounting Officer

8. ‘Variable geometry’

Like Parliament’s Legal Service (see the opinion reproduced above), the rapporteur believes that the ruling of the Court of Justice must be taken into account. He calls on the Commission and Council to seek actively to resolve the legal problems so as to make for the utmost clarity

when the Agency is to be established.

9. Members of the Management Board and voting rights

The Agency's management structure and the Member States' participation are determined by variable geometry. It seems obvious that a Member State which does not take part in a system should not be able to access information or have a say in, or vote on, matters related to that system. A trickier problem is posed by Member States which participate only to some extent in certain aspects of a system.

Through his amendments the rapporteur has attempted to establish clear-cut arrangements for the participation of individual Member States and the associated third countries in each of the systems.

The Chairperson should be chosen from among the members designated by Member States which fully apply all of the instruments relating to the systems managed by the Agency.

10. Greater data protection and democratic scrutiny

The rapporteur has amended a number of articles in an attempt to strengthen Parliament's role and enhance transparency.

He has likewise sought to tighten up the rules on data protection and the integrity and security of personal data by strengthening the role of the European Data Protection Supervisor.

Parliament's role in selecting candidates for the post of executive director should be clearly defined and strengthened.