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Amended Proposal for a

**REGULATION (EU) No .../... 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**

(presented by the Commission pursuant to Article 293(2) of the Treaty on the Functioning of
the European Union)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of the proposal

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.

The legislative package initially consisted of two proposals: A proposal for a Regulation establishing the Agency, and a proposal for a Council Decision conferring upon the Agency established by this Regulation tasks regarding the operational management of SIS II and VIS in application of Title VI of the EU Treaty. The proposed Regulation covered the SIS II, VIS and EURODAC to the extent they were governed by the EC Treaty. The proposed Decision covered the SIS II and VIS to the extent they were governed by the EU Treaty.

Upon entry into force of the Lisbon Treaty on 1 December 2009, the former distinction between EC Treaty and EU Treaty legal bases in the area of freedom, security and justice disappeared. Moreover, as notified to the European Parliament and to the Council by the Communication COM(2009)665 of 2 December 2009, the proposal for a Council Decision lapsed and was formally withdrawn.

Therefore, the above mentioned legal texts need to be merged into this single amended proposal for a Regulation of the European Parliament and of the Council, which takes into account the changes resulting from the entry into force of the Lisbon Treaty and which contains the substantive provisions initially proposed as a Council Decision.

The Agency will be responsible for the long-term operational management of the second-generation Schengen Information System (SIS II), the Visa Information System (VIS) and EURODAC. This proposal for a Regulation also aims to lay down the framework for the development and the operational management by the Agency of other large-scale IT systems in application of Title V of the Treaty on the Functioning of the European Union and potentially for other large-scale IT systems in the area of freedom, security and justice. However, any such integration of further systems will require a specific mandate by the legislator not given by this proposal.

In order to identify the best solution for the long-term operational management of SIS II, VIS and also EURODAC, the Commission has conducted an Impact Assessment.¹ In joint statements accompanying the SIS II and VIS legal instruments², the Council and the European

¹ Commission Staff Working Document, Accompanying document to the 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 and Proposal for a Council Decision conferring upon the Agency established by Regulation XX tasks regarding the operational management of SIS II and VIS in application of Title VI of the EU Treaty, COM (2009) 293 final.

² Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the Second Generation Schengen Information System (SIS II), OJ L 381, 28.12.2006, p. 4.

Parliament invited the Commission, following an Impact Assessment containing a substantive analysis of alternatives, from the financial, operational and organisational perspective, to present the necessary legislative proposals entrusting an agency with the long term operational management of SIS II and VIS. After the analysis of different options, a new Regulatory Agency was found to be the most feasible alternative for carrying out the tasks of a "Management Authority" for these systems in the long term.

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. Beyond these operational tasks, the corresponding responsibilities for adopting security measures, reporting, publishing, monitoring, information, organising specific VIS and SIS II related trainings, implementing pilot schemes upon specific and precise request of the Commission and monitoring of research will be assigned to the Agency. Combining the systems in a joint Agency will make it possible to exploit synergies and share facilities and staff. The Agency's governance structure reflects the existing variable geometry which denotes a heterogeneous group of participating countries (EU Member States with different levels of participation in the information systems and associated countries).

This proposal does not impact on the financial framework for 2007-2013. The legislative financial statement annexed to this proposal is mainly founded on estimates and figures from the impact assessment conducted in 2007. This legislative financial statement is also based on the assumption that this proposal will be adopted in 2010 in order for the Agency to be legally established in 2011 and become a fully fledged Agency able to take over all the tasks related to the operational management of SIS II, VIS and EURODAC and other large-scale IT systems in 2012. In the joint statement accompanying the SIS II and VIS legal instruments the European Parliament and the Council committed themselves to dealing with the proposals on the long term operational management of SIS II and VIS as quickly as possible and to having them adopted in time to allow the Agency to take up fully its activities before the end of a five year period following the entry into force of the SIS II and VIS legal instruments.

Finally, the Council should bear in mind the implications linked to the choice of the location of the Agency.

1.2. General context

Article 67 of the Treaty on the Functioning of the European Union (referred to hereinafter as "TFEU") provides that the Union shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external control. In

Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding the access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates, OJ L 381, 28.12.2006, p. 1.

Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II), OJ L 205, 7.8.2007, p. 63.

Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ L 218, 13.8.2008, p. 60.

Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, OJ L218, 13.8.2008, p. 129.

that respect Article 77 of the TFEU requires the adoption of measures concerning the common policy on visas, the checks to which persons crossing external borders are subject, the conditions under which nationals of third countries shall have the freedom to travel within the Union, measures necessary for the gradual establishment of an integrated management system for external borders, and the absence of any control on persons, whatever their nationality when crossing internal borders.

In this context, on the basis of the Schengen Convention³, the Schengen Information System (SIS) was established to maintain public policy and public security, including national security. The second-generation Schengen Information System (SIS II) was established by Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 and Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second-generation Schengen Information System (SIS II)⁴. Its aim is to contribute to ensuring a high level of security within the area of freedom, security and justice of the European Union, including the maintenance of public security and public policy and the safeguarding of security in the territories of the Member States.

The Visa Information System (VIS) was established by Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)⁵. VIS will enable consulates and other competent authorities of the Member States to exchange visa information for the purposes of facilitating the visa application procedure, preventing 'visa shopping', contributing to the fight against fraud, facilitating checks at external border crossing points and within the Member States, assisting in the identification of third country nationals, facilitating the application of the Dublin Regulation and contributing to the prevention of threats to the internal security of any of the Member States.

EURODAC, a Union-wide information technology system, was created to facilitate the application of the Dublin Convention,⁶ which aimed to establish a mechanism for determining responsibility for asylum applications lodged in one of the EU Member States. The Convention was replaced by a Union law instrument, Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (ie. the Dublin Regulation)⁷.

The legal frameworks of SIS II, VIS and EURODAC are characterized by variable geometry. On the one hand, Ireland and the United Kingdom participate in EURODAC but are only partly involved in SIS II, and do not participate in VIS, while Denmark is involved in all three systems on a different legal basis. On the other hand, a number of non-EU countries, namely Iceland, Norway, Switzerland and Liechtenstein, are or will be associated with the implementation, application and development of the Schengen *acquis*, and therefore participate both in SIS II and VIS.

³ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239, 22.9.2000, p. 19.

⁴ OJ L 381, 28.12.2006, p. 4. and OJ L 205, 7.8.2007, p. 63.

⁵ OJ L 218, 13.8.2008, p. 60.

⁶ OJ C 254, 19.8.1997, p. 1.

⁷ OJ L 50, 25.2.2003, p. 1.

1.3. Existing provisions in the area covered by the proposal

Owing to the former cross-pillar elements of the SIS II, the legal framework of SIS II is composed of first pillar Regulations and Decisions and third pillar Decisions. Although this distinction disappeared upon entry into force of the Lisbon Treaty on 1 December 2009, existing instruments still reflect the former pillar structure:

- Council Regulation (EC) No 2424/2001 of 6 December 2001 on the development of the second-generation Schengen Information System (SIS II);⁸
- Council Decision 2001/886/JHA of 6 December 2001 on the development of the second-generation Schengen Information System (SIS II);⁹
- Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second-generation Schengen Information System (SIS II);¹⁰
- Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding the access to the second-generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates;¹¹
- Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second-generation Schengen Information System (SIS II);¹²
- Commission Decisions 2007/170/EC and 2007/171/EC of 16 March 2007 laying down the network requirements for the Schengen Information System II¹³;
- Council Regulation (EC) No 189/2008 of 18 February 2008 on the tests of the second-generation Schengen Information System (SIS II)¹⁴;
- Council Decision 2008/173/EC of 18 February 2008 on the tests of the second-generation Schengen Information System (SIS II)¹⁵;
- Commission Decisions 2008/333/EC and 334/2008/JHA of 4 March 2008 adopting the SIRENE Manual and other implementing measures for the second-generation Schengen Information System (SIS II)¹⁶;
- Council Regulation (EC) No 1104/2008 of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second-generation Schengen Information System (SIS II)¹⁷;

⁸ OJ L 328, 13.12.2001, p. 4.

⁹ OJ L 328, 13.12.2001, p. 1.

¹⁰ OJ L 381, 28.12.2006, p. 4.

¹¹ OJ L 381, 28.12.2006, p. 1.

¹² OJ L 205, 7.8.2007, p. 63.

¹³ OJ L 79, 20.3.2007, p. 20.

¹⁴ OJ L 57, 1.3.2008, p. 1.

¹⁵ OJ L 57, 1.3.2008, p. 14.

¹⁶ OJ L 123, 8.5.2008, p. 1.

¹⁷ OJ L 299, 8.11.2008, p. 1.

- Council Decision 2008/839/JHA of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second-generation Schengen Information System (SIS II)¹⁸.

As opposed to the SIS II, VIS was established under the former first pillar. However, a VIS third pillar instrument was adopted to allow designated law enforcement authorities to access the system for consultation regarding the commitment of certain offences. The following legal instruments are relevant for VIS:

- Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS)¹⁹ constitutes the legal basis for including in the general budget of the European Union of the necessary appropriations for the development of the VIS;
- Commission Decision 2006/752/EC of 3 November 2006 establishing the sites for the Visa Information System during the development phase²⁰;
- Commission Decision 2006/648/EC of 22 September 2006 laying down the technical specifications on the standards for biometric features related to the development of the Visa Information System²¹;
- Commission Decision 2008/602/EC of 17 June 2008 laying down the physical architecture and requirements of the national interfaces and of the communication infrastructure between the central VIS and the national interfaces for the development phase;²²
- Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation);²³
- Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences.²⁴

EURODAC was established under the former first pillar:

- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention²⁵;

¹⁸ OJ L 299, 8.11.2008, p. 43.

¹⁹ OJ L 213, 15.6.2004, p. 5.

²⁰ OJ L 305, 4.11.2006, p. 13.

²¹ OJ L 267, 27.9.2006, p. 41.

²² OJ L 194, 23.7.2008, p. 3.

²³ OJ L 218, 13.8.2008, p. 60.

²⁴ OJ L 218, 13.8.2008, p. 129.

²⁵ OJ L 316, 15.12.2000, p. 1. A recast version has been submitted to the European Parliament and the Council COM (2008) 825 final

- Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention²⁶.

1.4. Consistency with other policies and objectives of the European Union

The proposal is consistent with existing policies and objectives of the European Union, in particular the objective to create an area of freedom, security and justice.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

2.1. Collection and use of expertise, consultation of interested parties

The Impact Assessment report is based on a preparatory study, carried out by an external contractor²⁷. Twenty seven interviews were conducted in the framework of the study, involving representatives from the EU Member States, Norway, the European Parliament, the Commission, the European Data Protection Supervisor, the Schengen Joint Supervisory Authority, the European Environmental Agency, the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX), Europol, the Strasbourg C.SIS site responsible for the operational management of SIS 1+ and industry experts. Furthermore, an Inter-Service Steering Group, composed of the relevant Commission Directorates General was set up to support the impact assessment process.

2.2. Impact assessment

Following a pre-screening process, five possible options to achieve the objective of long-term operational management of SIS II, VIS and EURODAC were retained and further analysed.

- Option 1 - baseline: the operational management solution for SIS II and VIS identified for the transitional period (the Commission entrusting the operational management tasks to Member States' authorities) would be continued as a permanent solution. Currently, EURODAC is managed by the Commission and this solution would also be maintained.
- Option 2 - baseline+ under which the Commission would entrust the operational management tasks related to SIS II, VIS and EURODAC to Member States' authorities.
- Option 3 - a new Regulatory Agency that would assume responsibility for the long-term operational management of SIS II, VIS and EURODAC.
- Option 4 - FRONTEX would manage the three systems, which would entail changes to both its basic act and its management structure.

²⁶ OJ L 62, 5.3.2002, p. 1.

²⁷ Assessment of options for the long-term management of the second-generation Schengen Information System (SIS II), the Visa Information System (VIS) and EURODAC and other large-scale IT systems in the area of Justice, Freedom and Security, Final report, 15 October 2007, RAND Europe.

- Option 5 - EUROPOL would manage SIS II, whereas the Commission would manage VIS and EURODAC. This option was considered while negotiations on the conversion of the current Europol Convention into a Community act were still ongoing.

As a result of a comparative analysis, the new Regulatory Agency option, which aims to create a joint operational management structure for SIS II, VIS and EURODAC scored highest.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

This proposal aims to establish an Agency responsible for the operational management of SIS II, VIS, EURODAC and other large-scale IT systems in application of Title V of the Treaty on the Functioning of the European Union.

Entrusting an Agency with the operational management of large-scale IT systems in the area of freedom, security and justice does not affect the specific rules governing the purpose, access rights, security measures and further data protection requirements applicable to those systems.

The regulatory Agency shall be established as a Union body, having legal personality. The first tasks to be conferred on the Agency are operational, that is to say, ensuring the overall management of the information systems and the operation of the systems. It would thus become a "centre of excellence" with specialised operational staff. A dedicated, specialised organisation would also ensure the highest level of efficiency and responsiveness, also for the development and operational management of other potential systems in the area of freedom, security and justice.

The Agency shall be responsible for the tasks relating to the Communication Infrastructure which are referred to in Articles 15(2) of the SIS II Regulation and Decision and Article 26(2) of the VIS Regulation and Article [5(2)...] of the Regulation (EC) XX/2010 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...] ²⁸. In addition, the Agency shall perform tasks related to the training of experts on VIS and SIS II including training related to the exchange of supplementary information, as well as monitoring of research activities and implementation of pilot schemes upon specific and precise request of the Commission.

The Agency could also potentially be responsible for developing and managing other large-scale IT systems in the area of freedom, security and justice. This would be subject to legislative instruments establishing such systems that in turn would provide the Agency with the respective competences.

The main body governing the Agency shall be a Management Board with an adequate representation of the Member States and the Commission. The representation of Member States should reflect each Member State's Treaty rights and obligations. The countries

²⁸ Commission proposal submitted to the European Parliament and the Council, COM(2009) 342 final (Recast version)

associated with the implementation, application and development of the Schengen *acquis* and the EURODAC related measures shall also participate in the Agency.

3.2. Legal basis

This amended proposal for a Regulation is based on 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.

Article 74 of the TFEU, provides for the adoption of appropriate measures to encourage and strengthen administrative cooperation between the relevant departments of Member States' administrations. This constitutes an appropriate legal basis since the Agency will facilitate the communication and cooperation between the relevant departments of the Member States' administrations in the areas mentioned above.

The operational management tasks to be entrusted to the Agency shall support the policy aspects underlying the SIS II and VIS Regulations. In accordance with Articles 77(2)(b), 79(2)(c) of the TFEU, which provide an appropriate legal basis for SIS II -related tasks of the Agency, the Agency shall technically cover matters related to checks on persons at external borders as well as measures in the area of illegal immigration and illegal residence, respectively. As for VIS matters, the Agency's activities shall technically support the procedures for issuing visas by Member States; it is therefore founded on 77(2)(a) of the TFEU.

Regarding EURODAC matters, the operational management tasks to be entrusted to the Agency shall technically support the determination of which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States (78(2)(e) of the TFEU).

Article 82(1)(d) of the TFEU provides for the adoption of measures to facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matter and the enforcement of decisions. In addition, Article 87(2)(a) of the TFEU provides that for the purpose of establishing police cooperation involving Member States competent authorities, measures concerning the collection, storage, processing, analysis and exchange of relevant information shall be adopted. These provisions constitute an appropriate legal basis for conferring upon the Agency tasks in this area.

Measures referred to in Articles 77(2)(a) and (b), 78(2)(e), 79(2)(c), 82(1)(d) and 87(2)(a) TFEU, shall be adopted in accordance with the ordinary legislative procedure. Therefore, the ordinary legislative procedure applies to the adoption of the Regulation as an integral whole.

3.3. Variable geometry

As the legal basis for this proposal for a Regulation is to be found in Title V of the Treaty on the Functioning of the European Union, it is affected by the variable geometry arising from the Protocols on the positions of the United Kingdom, Ireland and Denmark. This proposal for a Regulation builds upon the Schengen *acquis* and the provisions of the EURODAC related measures. Therefore the following consequences in relation to the various protocols and association agreements have to be considered.

Denmark:

Under the Protocol on the position of Denmark, annexed to the TEU and the TFEU, Denmark does not take part in the adoption by the Council of the measures pursuant to Title V of the TFEU, with the exception of "measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas". This proposal builds on the Schengen *acquis* and Article 4 of the Protocol applies. In accordance with Article 4 of the said Protocol, Denmark decided to implement Regulation (EC) No 1987/2006 and Regulation (EC) No 767/2008 in national law.

As far as it concerns EURODAC, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark attached to the Treaties, Denmark does not take part in the adoption of this Regulation and is not bound by it nor subject to its application. However, Denmark applies the current EURODAC Regulation, following an international agreement²⁹ that it concluded with the EC in 2006.

United Kingdom and Ireland:

To the extent it relates to SIS II as governed by Regulation (EC) No 1987/2006 and VIS, this proposal builds on the provisions of the Schengen *acquis*, in which the United Kingdom and Ireland do not participate, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* and Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*. Therefore, to the extent it relates to SIS II as governed by Regulation (EC) No 1987/2006 and VIS, the United Kingdom and Ireland are not bound by this Regulation or subject to its application.

The United Kingdom and Ireland are bound by the EURODAC Regulation (EC) No 2725/2000 following their notice of their wish to take part in the adoption and application of that Regulation based on the Protocol on the position of the United Kingdom and Ireland attached to the Treaties. The position of these Member States with regard to the EURODAC Regulation does not affect their possible participation regarding this proposal.

Norway and Iceland:

As regards Norway and Iceland, this proposal constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*³⁰.

In parallel to the association of several non-EU Member States to the Schengen *acquis*, the former Community (now the Union) concluded, or is in the process of doing so, several

²⁹ Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention, O.J. L66, 8.3.2006, p. 38.

³⁰ OJ L 176, 10.7.1999, p. 36.

agreements associating these countries also to the EURODAC related measures. The agreement associating Iceland and Norway was concluded in 2001³¹.

Switzerland:

As regards Switzerland, this proposal constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen *acquis*³².

As regards the EURODAC related measures, the agreement associating Switzerland was concluded on 28 February 2008 and is applicable as of 12 December 2008³³.

Liechtenstein:

As regards Liechtenstein, this proposal constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which falls within the area referred to in Article 1, point A, B and G of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC³⁴.

As regards the EURODAC related measures, the agreement associating Liechtenstein was signed on 28 February 2008 and is subject to conclusion at a later stage³⁵.

Common provisions for the countries associated with the EURODAC related measures:

In accordance with the three above-cited agreements, the associated countries shall accept the EURODAC related measures and its development without exception. They do not take part in the adoption of any acts amending or building upon the EURODAC related measures (including therefore this proposal) but have to notify to the Commission within a given time-frame of their decision whether or not to accept the content of that act, once approved by the Council and the European Parliament. In case Norway, Iceland, Switzerland or Liechtenstein do not accept an act amending or building upon the EURODAC related measures, the respective agreements will be terminated, unless the Joint/Mixed Committee established by the agreements decides otherwise by unanimity.

³¹ Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway, OJ L 93, 3.4.2001, p. 40-47.

³² OJ L 53, 27.2.2008, p. 52

³³ Council Decision of 28 January 2008 on the conclusion on behalf of the European Community of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland, OJ L 53, 27.2.2008, p. 3.

³⁴ OJ L 83, 26.3.2008, p. 3.

³⁵ Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a the Member State or in Switzerland, OJ ...

In order to create rights and obligations between Denmark – which as explained above has been associated to the EURODAC related measures via an international agreement – and the associated countries mentioned above, two other instruments have been concluded between the former Community (now the Union) and the associated countries.³⁶

3.4. Subsidiarity principle

The proposal respects the principle of subsidiarity, as the objective of the proposed action, the conferring of the operational management of Central SIS II, Central VIS and the National Interfaces, Central EURODAC, as well as certain aspects of their communication infrastructure, on an Agency, cannot be achieved by the Member States individually.

3.5. Proportionality principle

The Agency, financed from the EU budget, would be given the competences to manage only the central parts of SIS II, central parts of VIS and the national interfaces, the central part of EURODAC, as well as certain aspects of the communication infrastructure, without having responsibility for the data entered in the systems. Member States are competent for their national systems. Therefore, the Agency's competences are kept to the minimum necessary for supporting effective, secure and continuous data exchange between the Member States. Setting up a dedicated structure is considered proportionate to the legitimate interests of users and the high-security, high-availability and mission-critical nature of the systems.

3.6. Choice of instruments

A Regulation of the European Parliament and of the Council based on Articles 77(2)(a) and (b), 78(2)(e), 79(2)(c), 74, 82(1)(d) and 87(2)(a) of the TFEU is the most appropriate instrument for establishing a body under Title V of the TFEU.

4. BUDGETARY IMPLICATION

The Agency will be funded by the general budget of the European Union. The corresponding financial statement was annexed to the original proposal package of 24 June 2009 and is not being modified.

5. ADDITIONAL INFORMATION

5.1. Simplification

The proposal provides for simplification of legislation by establishing a single operational management structure for several IT-systems in the area of freedom, security and justice.

³⁶ Protocol between the European Community, Switzerland and Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a member State, in Switzerland or in Liechtenstein OJ... and Protocol to the Agreement between the European Community, the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway OJ L 57, 28.2.2006, p.16.

5.2. Evaluation

Article 27 of the proposed Regulation includes an evaluation clause.

Amended Proposal for a

REGULATION (EU) No .../... 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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union and in particular Articles 77(2)(a) and (b), 78(2)(e), 79(2)(c), 74, 82(1)(d) and 87(2)(a) thereof,

Having regard to the proposal from the European Commission³⁷,

After transmission of the proposal to the national parliaments³⁸,

Having consulted the European Data Protection Supervisor³⁹,

Acting in accordance with the ordinary legislative procedure⁴⁰,

Whereas:

- (1) The second-generation Schengen Information System (SIS II) was established by Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second-generation Schengen Information System (SIS II)⁴¹ and by Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second-generation Schengen Information System (SIS II)⁴². In accordance with Regulation (EC) No 1987/2006 and Decision 2007/533/JHA the Commission is to be responsible, during a transitional period, for the operational management of Central SIS II. After that transitional period, a Management Authority is to be responsible for the operational management of Central SIS II and certain aspects of the communication infrastructure.

³⁷ OJ...

³⁸

³⁹ OJ...

⁴⁰ Opinion of the European Parliament of xxx and Council Decision of xxx (not yet published in the Official Journal).

⁴¹ OJ L 381, 28. 12. 2006, p. 4.

⁴² OJ L 205, 7. 8. 2007, p. 63.

- (2) The Visa Information System (VIS) was established by Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS)⁴³. In accordance with Regulation (EC) No 767/2008 of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)⁴⁴ the Commission is to be responsible, during a transitional period, for the operational management of VIS. After that transitional period a Management Authority is to be responsible for the operational management of the Central VIS, the national interfaces and certain aspects of the communication infrastructure.
- (3) EURODAC was established by Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention⁴⁵. In accordance with Regulation (EC) XX/2009 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EC) No [...] the Commission is to be responsible, during a transitional period, for the operational management of EURODAC. After that transitional period a Management Authority is to be responsible for the operational management of the Central System and certain aspects of the communication infrastructure.
- (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 freedom, security and justice, it is necessary to establish a Management Authority.
- (5) With a view to achieving synergies, it is necessary to provide for the operational management of these systems in one entity, benefiting from economies of scale, creating critical mass and ensuring the highest possible utilisation rate of capital and human resources.
- (6) Since the Management Authority should have legal, administrative and financial autonomy it should be established in the form of a regulatory agency having legal personality.
- (7) Consequently, the tasks of the Management Authority set out in Regulation (EC) No 1987/2006, in Regulation (EC) No 767/2008 and in Regulation (EC) XX/2009 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EC) No [...] should be exercised by the Agency. These tasks comprise further technical development.
- (8) In addition, the Agency should organize specific VIS and SIS II related training.
- (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

⁴³ OJ L 213, 15. 6. 2004, p. 5.

⁴⁴ OJ L 218, 13.8.2008, p. 60.

⁴⁵ OJ L 316, 15.12.2000, p. 1.

of Title V of the Treaty on the Functioning of the European Union, upon specific and precise request of the Commission.

- (10) Entrusting an Agency with the operational management of large-scale IT systems in the area of freedom, security and justice does not affect the specific rules applicable to those systems. In particular, the specific rules governing the purpose, access rights, security measures and further data protection requirements for each of the systems the operational management of which the Agency is entrusted with, are fully applicable.
- (11) The Member States and the Commission should be represented within a Management Board, in order to effectively control the functions of the Agency. The Management Board should be entrusted with the necessary powers, in particular to adopt the annual work programme, carry out its functions related to the Agency's budget, adopt the financial rules applicable to the Agency, appoint the Executive Director and establish procedures for taking decisions related to the operational tasks of the Agency by the Executive Director.
- (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.
- (13) Within the framework of their respective competences, the Agency should cooperate with other agencies of the European Union, especially agencies established in the area of freedom, security and justice.
- (14) When ensuring the operational management of IT systems, the Agency should follow European and international standards taking into account the highest professional requirements.
- (15) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁴⁶ applies to the processing of personal data by the Agency. This Regulation provides, *inter alia*, that the European Data Protection Supervisor shall have the power to obtain from the Agency access to all information necessary for his or her enquiries.
- (16) In order to ensure the transparent operation of the Agency, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁴⁷ should apply to the Agency.
- (17) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁴⁸ should apply to the Agency, which should accede to the Inter-institutional

⁴⁶ OJ L 8, 12.1.2001, p. 1.

⁴⁷ OJL 145, 31.5.2001, p. 43.

⁴⁸ OJ L 136, 31.5.1999, p. 1.

Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)⁴⁹.

- (18) In order to ensure open and transparent employment conditions and equal treatment of staff, the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities ("the Staff Regulations") should apply to the staff and to the Executive Director of the Agency, including the rules of professional secrecy or other equivalent duties of confidentiality.
- (19) The Agency is a body set up by the Union in the sense of Article 185(1) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁵⁰ and should adopt its financial rules accordingly.
- (20) Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities⁵¹ should apply to the Agency.
- (21) Since the objectives of the proposed action, namely the creation of an Agency at the level of the European Union, responsible for the operational management of large-scale IT systems in the area of freedom, security and justice cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.
- (22) This Regulation respects fundamental rights and observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union.
- (23) Insofar as it relates to SIS II and VIS, in accordance with Articles 1 and 2 of the Protocol on the Position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis* under the provisions of Title V of Part Three of the Treaty on the Functioning of the European Union Denmark should, in accordance with Article 4 of the said Protocol, decide within a period of six months after the date of adoption of this Regulation whether it will implement it in its national law or not. In accordance with Article 5 of the former Protocol on the Position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark decided to implement Regulation (EC) No 1987/2006 and Regulation (EC) No 767/2008 in national law. On the basis of the

⁴⁹ OJ L 136, 31.5.1999, p. 15.

⁵⁰ OJ L 248, 16.9.2002, p. 1.

⁵¹ OJ L 357, 31.12.2002, p. 72.

Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention⁵², Denmark has implemented Council Regulation (EC) No 2725/2000 in national law.

- (24) Insofar as it relates to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS, this Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*⁵³. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application to the extent that its measures develop provisions of the Schengen *acquis* insofar as they relate to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS. In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of the said Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application to the extent that its measures do not develop provisions of the Schengen *acquis* insofar as they relate to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS. However, the United Kingdom is taking part in this Regulation insofar as its provisions relate to SIS II as governed by Council Decision 2007/533/JHA, in accordance with Article 8(2) of Council Decision 2000/365/EC of 29 May 2000, concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*. Furthermore, by letter of 23 September 2009 to the President of the Council, the United Kingdom notified its intention to take part in the adoption of this Regulation, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty Establishing the European Community. Insofar as this Regulation does not relate to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS, the United Kingdom therefore takes part in its adoption, is bound by it and subject to its application.
- (25) Insofar as it relates to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS, this Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*⁵⁴. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application to the extent that its measures develop provisions of the Schengen *acquis* insofar as they relate to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS. In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4

⁵² O.J. L66, 8.3.2006, p. 38.

⁵³ OJ L 131, 1.6.2000, p. 43.

⁵⁴ OJ L 64, 7.3.2002, p. 20.

of the said Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application to the extent that its measures do not develop provisions of the Schengen *acquis* insofar as they relate to SIS II as governed by Regulation (EC) No 1987/2006 and to VIS. However, Ireland is taking part in this Regulation insofar as its provisions relate to SIS II as governed by Council Decision 2007/533/JHA, in accordance with Article 6(2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*.

- (26) As regards Iceland and Norway, this Regulation constitutes, insofar as it relates to SIS II and VIS, a development of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the EU and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*⁵⁵, which falls within the area referred to in Article 1, points A, B and G of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement⁵⁶. As regards EURODAC, this Regulation constitutes a new measure related to EURODAC within the meaning of the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway. Consequently, subject to their decision to implement it in their internal legal order, delegations of the Republic of Iceland and the Kingdom of Norway should participate in the Management Board of the Agency, albeit without voting rights. In order to determine the further modalities allowing for the participation of the Republic of Iceland and the Kingdom of Norway in the Agency's activities, a further arrangement should be concluded between the Union and these States.
- (27) As regards Switzerland, this Regulation constitutes, insofar as it relates to SIS II and VIS, a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*⁵⁷, which fall within the area referred to in Article 1, points A, B and G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC on the conclusion, on behalf of the European Community, of the Agreement. As regards EURODAC, this Regulation constitutes a new measure related to EURODAC within the meaning of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland. Consequently, subject to its decision to implement it in their internal legal order, the delegation of the Swiss Confederation should participate in the Management Board of the Agency, albeit without voting rights. In order to determine the further modalities allowing for the participation of the Swiss Confederation in the Agency's activities, a further arrangement should be concluded between the Union and the Swiss Confederation.

⁵⁵ OJ L 176, 10.7.1999, p. 36.

⁵⁶ OJ L 176, 10.7.1999, p. 31.

⁵⁷ OJ L 53, 27.2.2008, p. 52.

- (28) As regards Liechtenstein, this Regulation constitutes, insofar as it relates to SIS II and VIS, a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, points A, B and G of Council Decision 1999/437/EC of 17 May 1999 read in conjunction with Article 3 of Council Decision 2008/261/EC⁵⁸. As regards EURODAC, this Regulation constitutes a new measure related to EURODAC within the meaning of the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland⁵⁹. Consequently, the delegation of the Principality of Liechtenstein should participate in the Management Board of the Agency, albeit without voting rights. In order to determine the further modalities allowing for the participation of the Principality of Liechtenstein in the Agency's activities, a further arrangement should be concluded between the Union and the Principality of Liechtenstein.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER

Article 1

Establishment of the Agency

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.

CHAPTER II

TASKS

Article 2

Tasks related to SIS II

⁵⁸ OJ L 83, 26.3.2008, p. 3.

⁵⁹ OJ...

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 acquis⁶⁰.

Article 3

Tasks related to VIS

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

Article 4

Tasks related to EURODAC

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 [.../...].

Article 5

Monitoring of research

1. The Agency shall monitor the developments in research relevant for the operational management of SIS II, VIS, EURODAC and other large-scale IT systems in application of Title V of the Treaty on the Functioning of the European Union.
2. The Agency shall on a regular basis keep the Commission informed on the developments referred to in paragraph 1.

Article 6

Pilot Schemes

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 Union.
2. Financial appropriations for pilot schemes as requested by the Commission shall be entered in the budget for no more than two successive financial years.

⁶⁰ OJ...

CHAPTER III

STRUCTURE AND ORGANISATION

Article 7

Legal status

1. The Agency shall be a Union body and shall have legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under national legislation. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. It shall also be empowered to conclude a Headquarters Agreement with its host Member State.
3. The Agency shall be represented by its Executive Director.
4. The seat of the Agency shall be [...]

Article 8

Structure

The Agency's administrative and management structure shall comprise:

- (a) a Management Board;
- (b) an Executive Director;
- (c) Advisory Groups.

Article 9

Powers of the Management Board

1. In order to ensure that the Agency carries out its tasks, the Management Board shall in particular:
 - (a) appoint, and if relevant, dismiss the Executive Director, in accordance with Article 15;
 - (b) exercise disciplinary authority over the Executive Director;
 - (c) establish the Agency's organisational structure after consultation of the Commission;
 - (d) establish the rules of procedure of the Agency after consultation of the Commission;

- (e) establish the rules governing the use of languages by the Agency in accordance with Article 22 of this Regulation;
- (f) approve the Headquarters Agreement to be signed by the Executive Director with the host Member State following a proposal by the Executive Director;
- (g) in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations;
- (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;
- (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;
- (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;
- (k) carry out its functions relating to the Agency's budget, pursuant to the provisions of Articles 28, 29(6) and 30 of this Regulation;
- (l) adopt the financial rules applicable to the Agency in accordance with Article 30 of this Regulation;
- (m) appoint an Agency staff member as accounting officer who shall be functionally independent in the performance of his/her duties;
- (n) adopt the necessary security measures, including a security plan;
- (o) appoint an Agency staff member as a Data Protection Officer in accordance with Regulation (EC) No 45/2001;
- (p) adopt, within 6 months after the date of application of this Regulation, the practical arrangements for implementing Regulation (EC) No 1049/2001;
- (q) adopt the reports on the technical functioning of SIS II pursuant to Article 50(4) of Regulation (EC) No 1987/2006 and Article 66(4) of Decision 2007/533/JHA respectively, of VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and 17(3) of Decision 2008/633/JHA and of EURODAC pursuant to Article [28] of Regulation (EC) XX/2009 concerning the establishment of "Eurodac" for the

comparison of fingerprints for the effective application of Regulation (EC) No [.../...];

- (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;
 - (s) publish statistics related to SIS II pursuant to Article 50(3) of Regulation (EC) No 1987/2006 and Article 66(3) of Decision 2007/533/JHA respectively;
 - (t) ensure the annual publication of the list of competent authorities authorised to directly search the data contained in SIS II pursuant to Article 31(8) of Regulation (EC) No 1987/2006 and Article 46(8) of Decision 2007/533/JHA, together with the list of N.SIS II Offices and SIRENE Bureaux as referred to in Article 7(3) of Regulation (EC) No 1987/2006 and Article 7(3) of Decision 2007/533/JHA respectively;
 - (u) perform any other tasks conferred on it in accordance with this Regulation.
2. The Management Board may advise the Executive Director on any matter strictly related to the development or operational management of the IT systems.

Article 10

Composition of the Management Board

1. The Management Board shall be composed of one representative of each Member State and two representatives of the Commission.
2. Each Member State shall appoint a 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.
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.
4. The term of office of the members shall be four years. It may be renewed once. Upon expiry of their term of office or in the event of their resignation, members shall remain in office until their appointments are renewed or until they are replaced.
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.

Article 11

Chairmanship of the Management Board

1. The Management Board shall elect a Chairperson from among its members.
2. The term of office of the Chairperson shall be four years and may be renewed once. His/her term of office shall expire earlier if his/her membership of the Management Board ceases.
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.

Article 12

Meetings of the Management Board

1. The meetings of the Management Board shall be convened at the initiative of its Chairperson or at the request of at least a third of its members or at the request of the Commission. The Management Board shall hold at least two ordinary meetings a year.
2. The Executive Director of the Agency shall take part in the meetings.
3. The members of the Management Board may be assisted by experts who are members of the Advisory Groups.
4. Europol and Eurojust shall be granted observer status at the meetings of the Management Board when a question concerning SIS II, in relation to the application of Council Decision 2007/533/JHA, is on the agenda. Europol shall also be granted observer status at the meetings of the Management Board when a question concerning VIS, in relation to the application of Council Decision 2008/633/JHA, is on the agenda.
5. The Management Board may invite any other person, whose opinion may be of interest, to attend its meetings as an observer.
6. The secretariat for the Management Board shall be provided by the Agency.

Article 13

Voting

1. Without prejudice to paragraph 4 of this Article as well as Article 9(1) (i), decisions of the Management Board shall be taken by a simple majority of its members with a right to vote.
2. Without prejudice to paragraph 3 of this Article, each member in the Management Board shall have one vote.

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.
4. In case of disagreement among members over whether or not a specific IT system is affected by a vote, members shall decide by a two-thirds majority, that it is not affected.
5. The Executive Director of the Agency shall not vote.
6. More detailed voting arrangements shall be established in the rules of procedure of the Agency, in particular, the conditions under which a member may act on behalf of another member as well as any quorum requirements, where appropriate.

Article 14

Functions and powers of the Executive Director

1. The Agency shall be managed and represented by its Executive Director.
2. The Executive Director shall be independent in the performance of his/her duties. Without prejudice to the respective competences of the Commission and the Management Board, the Executive Director shall neither seek nor take instructions from any government or from any other body.
3. Without prejudice to Article 9, the Executive Director shall assume full responsibility for the tasks entrusted to the Agency and shall be subject to the procedure for annual discharge by the European Parliament for the implementation of the budget.
4. The European Parliament or the Council may invite the Executive Director of the Agency to report on the implementation of his/her tasks.
5. The Executive Director shall in particular:
 - (a) ensure the Agency's day-to-day administration;
 - (b) take any action necessary to ensure the Agency's operation in accordance with this Regulation;
 - (c) prepare and implement the procedures, decisions, strategies, programmes and activities adopted by the Management Board, within the limits specified by this Regulation, its implementing rules and any applicable law;
 - (d) establish and implement an effective system enabling regular monitoring and evaluations of the IT systems, including statistics, and of the Agency;
 - (e) participate, without the right to vote, in the meetings of the Management Board;

- (f) exercise in respect to the Agency's staff the powers laid down in Article 17 (2) and manage staff matters;
 - (g) without prejudice to Article 17 of the Staff Regulations, establish confidentiality requirements to comply with Article 17 of Regulation (EC) No 1987/2006, Article 17 of Decision 2007/533/JHA and Article 26(9) of Regulation (EC) No 767/2008 respectively and Article [4(6)] of Regulation (EC) XX/2009 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...];
 - (h) negotiate and, after approval by the Management Board, sign a Headquarters Agreement with the Government of the host Member State.
6. The Executive Director shall submit to the Management Board for adoption the drafts for:
- (a) the Agency's annual work programme and its annual activity report, after prior consultation of the Advisory Groups ;
 - (b) the financial rules applicable to the Agency;
 - (c) the budget for the coming year;
 - (d) the multi-annual Staff Policy Plan;
 - (e) the terms of reference for the evaluation referred to in Article 27;
 - (f) the practical arrangements for implementing Regulation (EC) No 1049/2001;
 - (g) the necessary security measures including a security plan;
 - (h) reports on the technical functioning of each IT system referred to in Article 9(1)(q) of this Regulation, on the basis of the results from the monitoring and evaluation;
 - (i) annual publication of the list of competent authorities authorised to directly search the data contained in SIS II, including the list of N.SIS II Offices and SIRENE Bureaux, referred to in Article 9(1)(t) of this Regulation.
7. The Executive Director shall perform any other tasks conferred on him/her in accordance with this Regulation.

Article 15

Appointment of the Executive Director

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.
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.

3. In the course of the nine months preceding the end of the five-year period, the Commission shall undertake an evaluation. In the evaluation, the Commission shall assess in particular:
 - (a) the results achieved in the first term of office and the way they were achieved;
 - (b) the Agency's duties and requirements in the coming years.
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.
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.
6. The Executive Director shall be accountable to the Management Board for his/her activities.
7. The Executive Director may be dismissed by the Management Board.

Article 16

Advisory Groups

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;
 - (c) EURODAC Advisory Group;
 - (d) any other Advisory Group related to a large-scale IT system developed or managed by the Agency.
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.
3. Europol and Eurojust may each appoint a representative to the SIS II Advisory Group. Europol may appoint a representative to the VIS Advisory Group.

4. Members of the Management Board shall not be members of the Advisory Groups. The Agency's Executive Director or his/her representative shall be entitled to attend all the meetings of the Advisory Groups as observers.
5. The procedures for the operation and cooperation of the Advisory Groups shall be laid down in the Agency's rules of procedure.
6. When preparing an opinion, each Advisory Group shall do its best to reach a consensus. If such a consensus cannot be reached, the opinion shall consist of the position of the majority of members, including its grounds. The minority position(s), including their grounds, shall also be recorded. Article 13(3) shall apply accordingly. The members representing the countries associated with the implementation, application and development of the Schengen *acquis* and the EURODAC related measures shall be allowed to express opinions which are not taken into account in the calculation of the majority required.
7. Each Member State, each country associated with the implementation, application and development of the Schengen *acquis* and the EURODAC related measures shall facilitate the activities of the Advisory Groups.
8. For the chairmanship, Article 11 shall apply *mutatis mutandis*.

CHAPTER IV

OPERATION

Article 17

Staff

1. The Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the European Union institutions for the purpose of applying these Staff Regulations and Conditions of Employment shall apply to the Staff of the Agency, including the Executive Director.
2. The powers conferred on the Appointing Authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment of Other Servants shall be exercised by the Agency in respect of its own staff.
3. Without prejudice to Article 17 of the Staff Regulations, the Agency shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality.
4. The Management Board shall, in agreement with the Commission, adopt the necessary implementing measures referred to in Article 110 of the Staff Regulations.

Article 18

Public interest

The members of the Management Board, the Executive Director and the members of the Advisory Groups shall undertake to act in the public interest. For this purpose, they shall make, annually and in writing, a statement of commitment.

Article 19

Headquarters Agreement

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

Article 20

Privileges and immunities

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

Article 21

Liability

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

Article 22

Linguistic regime

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the language to be used in the European Economic Community⁶¹, shall apply to the Agency.
2. Without prejudice to decisions taken pursuant to Article 342 of the Treaty on the Functioning of the European Union, the annual work programme and the annual activity report referred to in Article 9 (1)(i) and (j), shall be produced in all official languages of the Union.
3. The translation services necessary for the activities of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.
4. The Management Board shall establish the practical arrangements for the implementation of the language regime.

Article 23

Access to documents

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁶² shall apply to documents held by the Agency.
2. The Management Board shall, within 6 months after the date of applicability of this Regulation, adopt the practical arrangements for implementing Regulation (EC) No 1049/2001.
3. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the European Ombudsman or form the subject of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 of the Treaty on the Functioning of the European Union respectively.

Article 24

Information and communication

1. The Agency may communicate on its own initiative in the fields within its mission. It shall ensure in particular that, in addition to the publication specified in Article 9(1) (i),(j),(s),(t), Article 27(3) and Article 29(8), the public and any interested party are rapidly given objective, reliable and easily understandable information with regard to its work.
2. The Management Board shall lay down the practical arrangements for the application of paragraph 1.

⁶¹ OJ 17, 6.10.1958, p. 385.

⁶² OJ L 145, 31.5.2001, p. 43.

Article 25

Data protection

1. The information processed by the Agency in accordance with this Regulation shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁶³.
2. The Management Board shall establish measures for the application of Regulation (EC) No 45/2001 by the Agency, including those concerning the Data Protection Officer of the Agency.

Article 26

Security rules on the protection of classified information and non-classified sensitive information

1. The Agency shall apply the security principles contained in Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure⁶⁴. This shall cover, inter alia, provisions for the exchange, processing and storage of classified information.
2. The Agency shall also apply the security principles relating to the processing of non-classified sensitive information as adopted and implemented by the European Commission.

Article 27

Evaluation

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.
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.
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

⁶³ OJ L 8, 12.1.2001, p. 1.

⁶⁴ OJ L 317, 03.12.2001, p. 1.

with a timetable shall be included, if appropriate. Both the evaluation and the recommendations shall be made public.

CHAPTER V

FINANCIAL PROVISIONS

Article 28

Budget

1. The revenue of the Agency shall consist, without prejudice to other types of income, of:
 - (a) a subsidy from the Union entered in the general budget of the European Union (Commission section) ;
 - (b) a contribution from the countries associated with the implementation, application and development of the Schengen *acquis* and the EURODAC related measures;
 - (c) any financial contribution from the Member States.
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.
3. Revenue and expenditure of the Agency shall be in balance.
4. The Management Board, on the basis of a draft drawn up by the Executive Director, shall adopt a draft statement of estimates of the revenue and expenditure of the Agency for the following financial year.
5. The draft statement of estimates of the Agency's revenue and expenditure and the general guidelines underlying that estimate, shall be transmitted by the Management Board to the Commission and to the countries associated with the implementation, application and development of the Schengen *acquis* and the EURODAC related measures by 10 February each year and the final statement of estimates by 31 March.
6. By 31 March each year at the latest, the Management Board shall submit to the Commission and to the budgetary authority :
 - (a) its draft work programme;
 - (b) its updated multi-annual Staff Policy Plan, established in line with the guidelines set by the Commission;

- (c) information on the number of officials, temporary and contract staff as defined in the Staff Regulation for the years n-1 and n as well as an estimate for the year n+1;
 - (d) information on contributions in kind granted by the host Member State to the Agency;
 - (e) an estimate of the balance of the outturn account for the year n-1.
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.
 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.
 9. The budgetary authority shall authorise the appropriations for the subsidy to the Agency. The budgetary authority shall adopt the establishment plan for the Agency.
 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.
 11. Any modification to the budget, including the establishment plan, shall follow the same procedure.
 12. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project, which may have significant financial implications for the funding of its budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof as well as the countries associated with the implementation, application and development of the Schengen *acquis* and the EURODAC related measures. If either branch of the budgetary authority intends to issue an opinion, it shall within two weeks after receipt of the information on the project, notify the Management Board of its intention to issue such an opinion. Failing a reply, the Agency may proceed with the planned operation.

Article 29

Implementation of the budget

1. The Agency's budget shall be implemented by its Executive Director.
2. The Executive Director shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures.
3. The Agency's Accounting Officer shall send to the Commission's Accounting Officer and the Court of Auditors by no later than 1 March of the following year its

provisional accounts, together with the report on budgetary and financial management during the year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Regulation (EC, Euratom) No 1605/2002⁶⁵.

4. The Agency's accounting officer shall also send to the European Parliament and the Council, by 31 March of the following year at the latest, the report on budgetary and financial management.
5. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of Regulation (EC, Euratom) No 1605/2002, the Executive Director shall draw up the Agency's final accounts under his/her own responsibility and forward them to the Management Board for an opinion.
6. The Management Board shall deliver an opinion on the Agency's final accounts.
7. By 1 July of the following year at the latest, the Executive Director shall send the final accounts, together with the opinion of the Management Board, to the Commission's Accounting Officer, the Court of Auditors, the European Parliament and the Council as well as the countries associated with the implementation, application and development of the Schengen *acquis* and the EURODAC related measures.
8. The final accounts shall be published.
9. The Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He/she shall also send this reply to the Management Board.
10. The Executive Director shall submit to the European Parliament, at the latter's request, all information necessary for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of Regulation (EC, Euratom) No 1605/2002.
11. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 15 May of year $n + 2$, give a discharge to the Executive Director in respect of the implementation of the budget for year n .

Article 30

Financial rules

The financial rules applicable to the Agency shall be adopted by the Management Board after consultation of the Commission. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002⁶⁶ of 19 November 2002 unless such departure is specifically required for the Agency's operation and the Commission has given its prior consent.

⁶⁵ OJ L 248, 16.9.2002, p. 1.

⁶⁶ OJ L 357, 31.12.2002, p. 72.

Article 31

Combating fraud

1. In order to combat fraud, corruption and other unlawful activities the provisions of Regulation (EC) No 1073/1999⁶⁷ shall apply.
2. The Agency shall accede to the Inter-institutional Agreement concerning internal investigations by the European Anti-fraud Office (OLAF) and shall issue, without delay, the appropriate provisions applicable to all the employees of the Agency.
3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks among the recipients of the Agency's funding and the agents responsible for allocating it.

⁶⁷ OJ L 136, 31.5.1999, p.1.

CHAPTER VI

FINAL PROVISIONS

Article 32

Preparatory actions

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 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.

Article 33

Participation by Countries associated with the implementation, application and development of the Schengen *acquis* and the EURODAC related measures

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.

Article 34

Entry into force and applicability

1. This Regulation shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.
2. The Agency shall take up its responsibilities set out in Articles 2 to 6 from 1 January 2012.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL

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

2. ABM / ABB FRAMEWORK

Policy Area: Area of freedom, security and justice (title 18)

Activities:

Solidarity – External borders, visa policy and free movement of people (chapter 18.02)

3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B.A lines)) including headings:

Financial framework 2007-2013: Heading 3 A

Under Chapter 18.02: Solidarity — External borders, visa policy and free movement of people creation of the appropriate structure for the Agency for the operational management of large-scale IT systems in the area of freedom, security and justice i.e:

- creation of an article 18 02 XX - entitled "Agency for the operational management of large-scale IT systems in the area of freedom, security and justice"
- creation of an item 18 02 XX XX – entitled "Agency for the operational management of large-scale IT systems in the area of freedom, security and justice" – Subsidy under Titles 1 and 2
- creation of an item 18 02 XX XX – entitled "Agency for the operational management of large-scale IT systems in the area of freedom, security and justice" – Subsidy under Title 3

The choice of article and items, under Chapter 18 02, will be determined under the budget procedure for 2011.

3.2. Duration of the action and of the financial impact:

It is envisaged that the Agency will be legally established in 2011 and become a fully fledged Agency able to take over all the tasks related to the operational management of SIS II, VIS and EURODAC and other large scale IT systems in 2012. Preparatory work for this purpose will be undertaken as of 2010 and will be funded on the basis

of the existing legal basis: Regulation (EC) No 1987/2006 for SIS II⁶⁸, Regulation (EC) No 767/2008 for VIS⁶⁹, and Regulation (EC) XX/2010 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...] for EURODAC.

3.3. Budgetary characteristics:

| Budget line | Type of expenditure | | New | EFTA contribution | Contributions from applicant countries | Heading in financial perspective |
|---------------|---------------------|--------------------|-----|-------------------|--|----------------------------------|
| See Point 3.1 | Non-comp | Diff ⁷⁰ | YES | NO | NO | 3A |
| | | | | | | |

4. SUMMARY OF RESOURCES

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 1 decimal place)

| Expenditure type | Section no. | | Year 2010 | 2011 | 2012 | 2013 | n+4 | n + 5 and later | Total |
|------------------|-------------|--|-----------|------|------|------|-----|-----------------|-------|
|------------------|-------------|--|-----------|------|------|------|-----|-----------------|-------|

Operational expenditure⁷¹

| | | | | | | | | | |
|--------------------------------|------|---|-------|------|------|------|--|--|-------|
| Commitment Appropriations (CA) | 8.1. | a | 0.000 | 13.7 | 54.5 | 39.4 | | | 107.6 |
| Payment Appropriations (PA) | | b | 0.000 | 13.7 | 54.5 | 39.4 | | | 107.6 |

Administrative expenditure within reference amount⁷²

| | | | | | | | | | |
|---|--------|---|-------|-------|-------|-------|--|--|-------|
| Technical & administrative assistance (NDA) | 8.2.4. | c | 0.000 | 0.000 | 0.000 | 0.000 | | | 0.000 |
|---|--------|---|-------|-------|-------|-------|--|--|-------|

TOTAL REFERENCE AMOUNT

⁶⁸ Regulation (EC) No 1987/2006 of the European Parliament and the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II), OJ L 381, 28.12.2006, p. 4.

⁶⁹ Regulation (EC) No 767/2008 of the European Parliament and the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ L 218, 13.8.2008, p. 60.

⁷⁰ Differentiated appropriations

⁷¹ Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

⁷² Expenditure within article xx 01 04 of Title xx.

| | | | | | | | | | |
|----------------------------------|--|-----|-------|------|------|------|--|--|-------|
| Commitment Appropriations | | a+c | 0.000 | 13.7 | 54.5 | 39.4 | | | 107.6 |
| Payment Appropriations | | b+c | 0.000 | 13.7 | 54.5 | 39.4 | | | 107.6 |

Administrative expenditure not included in reference amount⁷³

| | | | | | | | | | |
|---|--------|---|-----|-----|-----|-----|--|--|-----|
| Human resources and associated expenditure (NDA) | 8.2.5. | d | 1.2 | 1.5 | 0.9 | 0.6 | | | 4.2 |
| Administrative costs, other than human resources and associated costs, not included in reference amount (NDA) | 8.2.6. | e | 0.3 | 0.3 | 0.3 | 0.3 | | | 1.2 |

Total indicative financial cost of intervention

| | | | | | | | | | |
|---|--|-----------------|-----|------|------|------|--|--|-----|
| TOTAL CA including cost of Human Resources | | a+c +d +e | 1.5 | 15.5 | 55.7 | 40.3 | | | 113 |
| TOTAL PA including cost of Human Resources | | b+c +d +e | 1.5 | 15.5 | 55.7 | 40.3 | | | 113 |

Co-financing details

In addition to the EU budget line, the Agency will benefit from a co-financing from the countries associated with the implementation, application and development of the Schengen acquis and the EURODAC related measures in line with *Article 28.1.b* of this Regulation.

4.1.2. Compatibility with Financial Programming

- X Proposal is compatible with existing financial programming. The necessary appropriations to cover the activities of the Agency will come from the appropriations currently foreseen in the Financial Programming 2011-2013 in the budget lines 18 02 04 "Schengen Information System (SIS II)", 18 02 05 "Visa Information System (VIS)" and 18 03 11 "EURODAC".
- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement⁷⁴ (i.e. flexibility instrument or revision of the financial perspective).

⁷³ Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

⁷⁴ See points 19 and 24 of the Interinstitutional agreement.

4.1.3. Financial impact on Revenue

Proposal has no financial implications on revenue

Proposal has financial impact – the effect on revenue is as follows:

EUR million (to one decimal place)

| Budget line | | Revenue | Prior to action [Year n-1] | Situation following action | | | | | | |
|-------------|--|-------------------------------------|-------------------------------|----------------------------|-------|-------|-------|-------|---------------------|--|
| | | | | [Year n] | [n+1] | [n+2] | [n+3] | [n+4] | [n+5] ⁷⁵ | |
| | | <i>a) Revenue in absolute terms</i> | | | | | | | | |
| | | <i>b) Change in revenue</i> | Δ | | | | | | | |

4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

| Annual requirements | Year 2010 | 2011 | 2012 | 2013 | n + 4 |
|---------------------------------|-----------|------|------|------|-------|
| Total number of human resources | 10 | 12 | 7 | 5 | |

5. CHARACTERISTICS AND OBJECTIVES

5.1. Need to be met in the short or long term

In the short term there is a necessity to carry out several preparatory and start-up activities for the Agency to become fully operational. This work potentially includes carrying out feasibility studies on potential sites, acquiring new sites to host the systems, construction or adaptation works, relocating the systems, recruiting and training of staff and ensuring that the Agency has all the necessary equipment, resources and procedures in place.

In the long term, the Agency will provide an effective management solution for SIS II, VIS, EURODAC and other large-scale IT systems in the area of freedom, security and justice.

There is a need to set up an Agency that would meet the following key requirements:

- Effective and secure operation and management of the systems, guaranteeing adequate quality of service for users of these systems, continuity and uninterrupted service, data security and integrity and compliance with data protection rules;

⁷⁵ Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years

- Provision of an adequate governance structure addressing the requirements of EU institutions, participating Member States and other stakeholders. The structure should accommodate the multi-pillar elements of the legal bases of these systems;
- Sound continuous, efficient and accountable financial management of these IT systems, optimising possible synergies and economies of scale, creating critical mass, ensuring the highest possible utilisation rate of capital and human resources and increasing productivity of staff;
- Effective organisation, optimising the use of human resources and productivity.

5.2. Value-added of EU involvement and coherence of the proposal with other financial instruments and possible synergy

This proposal will provide a long term solution for managing SIS II, VIS, EURODAC and other large-scale IT systems in the area of freedom, security and justice, optimising synergies and ensuring economies of scale.

5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The objective of this proposal is, first of all, to establish an Agency responsible for the long-term operational management of SIS II, VIS and EURODAC.

In addition, the Agency should be given a responsibility for the operational management of other large-scale IT systems in the area of freedom, security and justice.

The indicators would be the statistics associated with the hits recorded for the various alerts (system by system).

5.4. Method of Implementation (indicative)

Centralised Management

- directly by the Commission
- indirectly by delegation to:
 - executive Agencies
 - bodies set up by the Union as referred to in art. 185 of the Financial Regulation
 - national public-sector bodies/bodies with public-service mission

Shared or decentralised management

- with Member states
- with Third countries

6. MONITORING AND EVALUATION

6.1. Monitoring system

The Executive Director will be responsible for establishing and implementing effective monitoring and evaluation of the Agency's performance. The Executive Director will prepare an annual report on the activities of the Agency which will compare, in particular, the results achieved with the objectives of the annual work programme. This report, following consultation of the Advisory Groups and adoption by the Management Board, will be forwarded by 15 June of the subsequent year at the latest to the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors. The first report will be delivered in 2013 and published.

Each year the Agency shall publish statistics showing the number of records per category of alert, the number of hits per category of alert and how many times the SIS II was accessed, in total and for each Member State.

Within two years from the date of the Agency having taken up its responsibilities, and every two years thereafter, the Agency shall submit to the European Parliament and the Council a report on the technical functioning of the Central SIS II system and the Communication Infrastructure, including the security thereof and the bilateral and multilateral exchange of supplementary information between Member States.

Within two years from the date of the Agency having taken up its responsibilities, and every two years thereafter, the Agency shall submit to the European Parliament, the Council and the Commission a report on the technical functioning of VIS, including the security thereof.

As far as EURODAC is concerned, the Agency should, every two years, submit to the European Parliament, the Council and the Commission a report on the technical functioning of the Central System, including the security thereof as well as an annual report on the activities of the Central System.

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 on the implementation of this Regulation. The evaluation shall examine how effectively the Agency fulfils its mission. It shall also assess the impact of the Agency and its working practices. The evaluation shall take into account the views of stakeholders, at both European and national level. The Management Board shall receive the evaluation and issue recommendations to the Commission regarding changes to this Regulation, the Agency and its working practices. The Commission shall forward these recommendations 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.

6.2. Evaluation

6.2.1. Ex-ante evaluation

The ex-ante evaluation has been included in the impact assessment.

6.2.2. *Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)*

The establishment of a Regulatory Agency to manage SIS II, VIS and EURODAC is a new and innovative approach to exchanging information. Consequently there is no previous comparable experience to draw direct lessons from.

However, best practices from setting up other Union agencies have been duly taken into account.

6.2.3. *Terms and frequency of future evaluation*

Within three years from the date on which the Agency takes up its responsibilities, and every five years thereafter, the Management Board shall commission an independent external evaluation on the implementation of this Regulation.

7. ANTI-FRAUD MEASURES

In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 shall apply without restriction to this Agency.

The Agency shall accede to the Inter institutional Agreement of 25 May 1999 concerning internal investigations by OLAF and shall issue, without delay, the appropriate provisions applicable to its entire staff.

The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on the spot checks of the recipients of the Agency's funding and the agents responsible for allocating it.

8. DETAILS OF RESOURCES⁷⁶

8.1. Objectives of the proposal in terms of their financial cost

Commitment appropriations in EUR million (to 1 decimal place)

| (Headings of Objectives, actions and outputs should be provided) | Type of output | Av. cost | Year 2010 | | Year 2011 | | Year 2012 | | Year 2013 | | Year n+4 | | Year n+5 and later | | TOTAL | | |
|---|----------------|----------|-------------|------------|-------------|------------|-------------|------------|-------------|------------|-------------|------------|--------------------|------------|-------------|------------|------|
| | | | No. outputs | Total cost | No. outputs | Total cost | No. outputs | Total cost | No. outputs | Total cost | No. outputs | Total cost | No. outputs | Total cost | No. outputs | Total cost | |
| OPERATIONAL OBJECTIVE No.1 Ensuring effective operational management of SIS II, VIS and EURODAC. | | | | | | | | | | | | | | | | | |
| Action 1 Start of operations | | | | | | | | | | | | | | | | | |
| Initial training- (equipment, trainers, facilities) Output 1 | | | | 0.0 | | 0.4 | | 0.3 | | 0.0 | | | | | | | 0.7 |
| Agency staff- Output 2 | | | | 0.0 | | 9.2 | | 14.0 | | 14.6 | | | | | | | 37.8 |

⁷⁶ The figures are principally based on the impact assessment

| | | | | | | | | | | | | | | | | |
|--|--|--|--|-----|--|-----|--|------|--|-----|--|--|--|--|--|------|
| Acquiring the site - Output 3 | | | | 0.0 | | 1.3 | | 11.3 | | 0.0 | | | | | | 12.6 |
| Moving the systems- Output 4 | | | | 0.0 | | 0.0 | | 0.8 | | 0.0 | | | | | | 0.8 |
| Action 2 Operational management of the systems | | | | | | | | | | | | | | | | |
| Ensuring daily operations of the systems ⁷⁷ - Output 1 | | | | 0.0 | | 0.0 | | 3.2 | | 3.2 | | | | | | 6.4 |
| Software and hardware refreshments and developments in system functionality – Output 2 | | | | 0.0 | | 0.0 | | 4.4 | | 4.4 | | | | | | 8.8 |
| Development and operation of biometric features ⁷⁸ -Output 3 | | | | 0.0 | | 0.0 | | 5.0 | | 5.0 | | | | | | 10.0 |
| External assistance for IT project management- Output 4 | | | | 0.0 | | 0.0 | | 2.0 | | 2.0 | | | | | | 4.0 |

⁷⁷

The costs include: running costs, energy, security control, insurance.

⁷⁸

Estimated figures that will need adjustment.

| | | | | | | | | | | | | | | | | |
|---|--|--|--|-----|--|------|--|------|--|------|--|--|--|--|--|------|
| Sub-total Objective 1 | | | | 0.0 | | 10.9 | | 41.0 | | 29.2 | | | | | | 81.1 |
| OPERATIONAL OBJECTIVE No.2 Ensuring effective administration | | | | | | | | | | | | | | | | |
| Action 1 Meetings of the Management Board and Advisory groups⁷⁹ | | | | | | | | | | | | | | | | |
| Organisation of meetings- Output 1 | | | | 0.0 | | 0.2 | | 0.5 | | 0.5 | | | | | | 1.2 |
| Action 2 Translation | | | | | | | | | | | | | | | | |
| Translation of studies, reports, working documents, leaflets ⁸⁰ - Output 1 | | | | 0.0 | | 0.1 | | 0.1 | | 0.1 | | | | | | 0.3 |
| Action 3 Travel | | | | | | | | | | | | | | | | |
| Missions, representation- Output 1 | | | | 0.0 | | 0.1 | | 0.2 | | 0.2 | | | | | | 0.5 |

⁷⁹ This appropriation is intended to cover the operating expenses including travel and subsistence expenses and interpretation costs (2 meetings for the Management Board, 6 meetings of the Advisory groups per year).

⁸⁰ The translation work will mainly be carried out by the Translation Centre for the bodies of the EU in Luxembourg.

| | | | | | | | | | | | | | | | | | |
|--|--|--|--|-----|--|-----|--|-----|--|-----|--|--|--|--|--|--|-----|
| Action 4 Training | | | | | | | | | | | | | | | | | |
| Equipment, trainers, facilities- Output 1 | | | | 0.0 | | 0.2 | | 0.3 | | 0.3 | | | | | | | 0.8 |
| Training - SIS II, SIRENE, VIS - Output 2 | | | | 0.0 | | 0.1 | | 0.2 | | 0.2 | | | | | | | 0.5 |
| Action 5 – Monitoring and evaluations | | | | | | | | | | | | | | | | | |
| Statistics, studies, evaluations- Output 1 (sites etc) | | | | 0.0 | | 0.3 | | 0.3 | | 0.2 | | | | | | | 0.8 |
| Action 6 – Information campaign | | | | | | | | | | | | | | | | | |
| Publications, leaflets, website, cooperation with national supervisory authorities and the European Data Protection Supervisor- Output 1 | | | | 0.0 | | 0.0 | | 0.6 | | 0.0 | | | | | | | 0.6 |
| Sub-total Objective 2 | | | | 0.0 | | 1.0 | | 2.2 | | 1.5 | | | | | | | 4.7 |
| OPERATIONAL OBJECTIVE No.3 Development of new systems | | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | | |
|--|----------|--|--|------------|--|-------------|--|-------------|--|-------------|--|--|--|--|--|--------------|
| Action Feasibility studies⁸¹ | 1 | | | | | | | | | | | | | | | |
| Studies and pilot schemes Output 1 | | | | 0.0 | | 0.0 | | 4.2 | | 3.6 | | | | | | 7.8 |
| Sub-total Objective 3 | | | | 0.0 | | 0.0 | | 4.2 | | 3.6 | | | | | | 7.8 |
| Total without overheads | | | | 0.0 | | 11.9 | | 47.4 | | 34.3 | | | | | | 93.6 |
| Overheads (15%) | | | | 0.0 | | 1.8 | | 7.1 | | 5.1 | | | | | | 14 |
| TOTAL COST | | | | 0.0 | | 13.7 | | 54.5 | | 39.4 | | | | | | 107.6 |

⁸¹ This figure includes feasibility studies and pilot schemes to be carried out in accordance with Article 5 and 6 respectively of this Regulation.

8.2. Administrative Expenditure

There are two types of administrative expenditures: the first is earmarked for the Commission and the second one is earmarked for the Agency.

The administrative expenditure earmarked for the Commission is linked to the proposal for a Regulation establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.

It does not include administrative expenditure already covered by existing legislative instruments related to the development and operational management by the Commission of SIS II, VIS and EURODAC which are listed in point 1.3 of the Explanatory Memorandum.

Regarding EURODAC, the Commission currently ensures the operational management of the system. Once the operational management of EURODAC has been taken over by the Agency as of 2012, 4 officials and temporary agents and 1 external agent currently in Brussels dedicated to the remote operational management of EURODAC will become "freed" and will be redeployed to other Commission priorities.

Currently around 20 officials and 25 external staff (contractual agents and seconded national experts) are assigned to the development and preparation of operations of SIS II and VIS. Once the development of these systems is completed, these resources will be redeployed in accordance with the Commission's annual policy strategy and management procedures, taking into account a necessary phase-out period.

Furthermore, the administrative expenditure does not include the development and operational management by the Agency of other IT systems than SIS II, VIS and EURODAC, on the basis of future relevant legislative instruments yet to be proposed or adopted.

8.2.1. Number and type of human resources

| Types of post | | Staff to be assigned to management of the action using existing and/or additional resources (number of posts/FTEs) | | | | | |
|--|------------|---|-----------|-----------|-----------|----------|----------|
| | | Year 2010 | Year 2011 | Year 2012 | Year 2013 | Year n+4 | Year n+5 |
| Officials or temporary staff ⁸² (XX 01 01) | A*/AD | 6 | 7 | 4.5 | 3.5 | | |
| | B*, C*/AST | 4 | 5 | 2.5 | 1.5 | | |
| Staff financed ⁸³ by art. XX 01 02 | | | | | | | |
| Other staff ⁸⁴ financed by art. XX 01 04/05 | | | | | | | |

⁸² Cost of which is NOT covered by the reference amount

⁸³ Cost of which is NOT covered by the reference amount

⁸⁴ Cost of which is included within the reference amount

| | | | | | | |
|--------------|----|----|---|---|--|--|
| TOTAL | 10 | 12 | 7 | 5 | | |
|--------------|----|----|---|---|--|--|

8.2.2. *Description of tasks deriving from the action*

Preparatory activities related to entrusting the Agency with the long-term operational management of SIS II, VIS and EURODAC then coordination and follow-up of the Agency by the Commission.

8.2.3. *Sources of human resources (statutory)*

- Posts currently allocated to the management of the programme to be replaced or extended
- Posts pre-allocated within the APS/PDB exercise for year n
- Posts to be requested in the next APS/PDB procedure
- Posts to be redeployed using existing resources within the managing service (internal redeployment)
- Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

The needs for human and administrative resources shall be covered within the allocation that can be granted to the Directorate General in charge in the framework of the annual allocation procedure in the light of budgetary constraints.

Number of human resources in the agency (start-up and operational phase)

The information below is indicative. It will be detailed at a later stage once the final tasks and needs of the Agency as regards the human and administrative resources are known.

| Year | Staff to be recruited gradually |
|-------------------|---------------------------------|
| 2011 1st semester | 15 |
| 2011 2nd semester | 60 |
| 2012 | 40 |
| 2013 | 5 |
| TOTAL | 120 |

External recruitment will be managed by the Agency.

The staff in the Agency will comprise both operational and administrative staff giving a total of 120 people. This is an estimate of the human resources needed based on updated figures from the impact assessment.

An estimated 75 persons are needed for the operational management of the SIS II and VIS (including the biometric capacity). The remaining 45 persons would be allocated to the operational management of EURODAC and all administrative tasks within the Agency. This figure also takes into account responsibilities allocated to the agency related to the monitoring of research, the implementation of pilot schemes upon specific and precise request of the Commission as well as the assistance to Advisory Groups.

Description of tasks deriving from the action (start-up and operational phase)

Ensuring the operational management of SIS II, VIS, EURODAC, ensuring training on VIS and SIS II including training related to the exchange of supplementary information, monitoring of research activities and implementation of pilot schemes upon specific and precise request of the Commission.

8.2.4. *Other Administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)*

EUR million (to 1 decimal place)

| Budget line (number and heading) | Year n | Year n+1 | Year n+2 | Year n+3 | Year n+4 | Year n+5 and later | TOTAL |
|--|-----------|-------------|-------------|-------------|-------------|-----------------------------|-------|
| 1 Technical and administrative assistance (including related staff costs) | | | | | | | |
| Executive agencies ⁸⁵ | N/A | N/A | N/A | N/A | | | |
| Other technical and administrative assistance | N/A | N/A | N/A | N/A | | | |
| - <i>intra muros</i> | N/A | N/A | N/A | N/A | | | |
| - <i>extra muros</i> | N/A | N/A | N/A | N/A | | | |
| Total Technical and administrative assistance | | | | | | | |

8.2.5. *Financial cost of human resources and associated costs not included in the reference amount*

EUR million (to 1 decimal place)

| Type of human resources | Year 2010 | Year 2011 | Year 2012 | Year 2013 | Year n+4 | Year n+5 and later |
|-------------------------|--------------|--------------|--------------|--------------|-------------|-----------------------------|
| | | | | | | |

⁸⁵ Reference should be made to the specific legislative financial statement for the Executive Agency(ies) concerned.

| | | | | | | |
|--|-----|-----|-----|-----|--|--|
| Officials and temporary staff (18 01 01) | 1.2 | 1.5 | 0.9 | 0.6 | | |
| Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.) ⁸⁶ (specify budget line) | | | | | | |
| Total cost of Human Resources and associated costs (NOT in reference amount) | 1.2 | 1.5 | 0.9 | 0.6 | | |

This is the cost of the staff devoted to preparing, evaluating, controlling and coordinating the Agency within the Commission.

Calculation– Officials and temporary staff - average annual cost: 122000 EUR /per capita

8.2.6. Other administrative expenditure not included in reference amount

EUR million (to 1 decimal place)

| | Year 2010 | Year 2011 | Year 2012 | Year 2013 | Year n+5 | Year n+6 and later | TOTAL |
|---|-----------|-----------|-----------|-----------|----------|--------------------|-------|
| 18 01 02 11 01 – Missions | 0.3 | 0.3 | 0.3 | 0.3 | | | 1.2 |
| XX 01 02 11 02 – Meetings & Conferences | | | | | | | |
| XX 01 02 11 03 – Committees ⁸⁷ | | | | | | | |
| XX 01 02 11 04 – Studies & consultations | | | | | | | |
| XX 01 02 11 05 - Information systems | | | | | | | |
| 2 Total Other Management Expenditure (XX 01 02 11) | | | | | | | |
| 3 Other expenditure of an administrative nature (specify including reference to budget line) | | | | | | | |
| Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount) | 0.3 | 0.3 | 0.3 | 0.3 | | | 1.2 |

⁸⁶ At this stage, no need for external staff (auxiliary, END, contract staff, etc.) has been identified.

⁸⁷ Specify the type of committee and the group to which it belongs.

Calculation - Other administrative expenditure not included in reference amount

Missions include visits to the Member States that host the systems and to the headquarters of the Agency including participation in the meetings of the Management Board and Advisory Groups.

The needs for human and administrative resources shall be covered within the allocation that can be granted to the Directorate General in charge in the framework of the annual allocation procedure in the light of budgetary constraints.