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## **PROGRESS REPORT**

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to: COUNCIL  
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240 CODEC 792

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Subject: Proposal for a Regulation of the European Parliament and of the Council  
concerning the European Network and Information Security Agency (ENISA)

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## **I. INTRODUCTION**

1. On 1 October 2010 the Commission transmitted to the Council a proposal for a Regulation of the European Parliament and of the Council concerning the European Network and Information Security Agency (hereafter "ENISA"). The proposal, which was referred to in the Digital Agenda for Europe<sup>1</sup>, is intended to strengthen and modernise the ENISA and to establish a new mandate for a period of five years.

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<sup>1</sup> Doc 9981/1/10 REV 1. Key Action 6 of the Digital Agenda for Europe stipulates that in 2010 the Commission will present measures aiming at a reinforced and high level Network and Information Security Policy, including legislative initiatives such as a modernised European Network and Information Security Agency (ENISA), and measures allowing faster reactions in the event of cyber attacks, including a CERT for the EU institutions.

2. The Commission proposes a new list of tasks for the ENISA, updating and broadly reformulating its current tasks without including any operational ones. Additionally, the Commission proposes that the ENISA should act as an interface between cyber-security experts and public authorities involved in the fight against cybercrime. The proposal aims to streamline the ENISA's management structures and suggests a gradual increase of the ENISA's financial and human resources, without prejudice to the Commission's proposal for the post-2013 multi-annual financial framework.
3. On 30 September 2010, the Commission transmitted to the Council a proposal for a Regulation amending Regulation 460/2004 establishing the ENISA as regards its duration. Similarly, it proposed to extend "*à l'identique*" the agency's current mandate expiring in March 2012 for another 18 months, thus extending the duration of the ENISA until 13 September 2013.
4. At the TTE Council of 2-3 December 2010, the Presidency informed Ministers of the progress achieved in the examination of both proposals and identified the political questions to be tackled in the course of the upcoming negotiations. In principle, all delegations welcomed the proposals and acknowledged the growing importance of network and information security in Europe.
5. The European Parliament started its first reading on the two Commission proposals by focusing on the one concerning the extension of the ENISA's duration. On 14 February 2011, Mr Giles Chichester, rapporteur in the ITRE Committee of the European Parliament, proposed that the Commission proposal should be adopted and the duration of the ENISA extended until 13 September 2013.
6. Concerning the modernisation proposal, the European Parliament has not yet concluded its first reading and the draft report is expected in September 2011.

## II. OUTCOME OF PROCEEDINGS

7. The discussions within the Council showed that the tasks of the ENISA, the duration of its mandate, the role and the structure of its bodies as well as its funding would require more discussion to allow the Council to form a common view. This was the case in particular for the issues concerning the role of the ENISA in relation to cybercrime, the limitation of its mandate to the proposed period of five years, the participation of the law enforcement and privacy protection agencies as fully fledged stakeholders to the Permanent Stakeholders' Group, the role of the Management Board in the establishment of the ENISA's work programme, and funding issues.
  
8. Consequently, in the first six months of 2011, the Working Party on Telecommunications and Information Society focused particularly on questions relating to the ENISA's modernisation and those necessitating a more in-depth discussion. Several specific discussions were organised on cyber security in order to provide the Working Party with an overview of "who does what" at European and International level. The bodies of the agency and their tasks were analysed with a view to improving them so that they can best contribute to the efficiency of the ENISA and therefore to its success. The Working Party noted that the current proposal does not contain an estimated financial impact for the period going beyond the current multiannual financial framework covering the period 2007-2013. Consequently, the budgetary issues were discussed without prejudice to the post-2013 multiannual financial framework. The discussion covered budgetary aspects in relation to the ENISA's future work as well as to the wish that it should be conducted in a cost effective manner.

9. The Working Party examined in detail the opinion of the European Data Protection Supervisor with regard to the modernisation proposal. On 1 March 2011, the European Data Protection Assistant Supervisor presented his opinion of 20 December 2010 on the modernisation proposal<sup>2</sup> to the Working Party and replied to questions and comments from delegations. The Working Party also took note of the European Economic and Social Committee's opinion on the modernisation proposal<sup>3</sup>. The Committee of Regions was also consulted.
  
10. In addition, the Working Party examined the Commission proposal on the extension of the duration of the ENISA. In principal, all delegations were supportive of the extension proposal, acknowledging the need to ensure the continuity of the ENISA. Therefore, on 16 March 2011, Coreper decided that the first reading of the European Parliament would in principal be acceptable to the Council. In its plenary meeting on 24 March 2011, the European Parliament voted unanimously in favour of Mr Giles Chichester's report. The Commission proposal concerning the extension of the ENISA's duration and the European Parliament's position will be examined by the TTE Council on 27 May 2011 with a view to a first reading agreement.
  
11. The Presidency submitted several compromise proposals to the Working Party, taking into account the positions expressed by delegations. Currently, there is broad agreement in principle to the annexed text.
  
12. However, the duration of the agency is still an outstanding issue. Several delegations agree in principle to a mandate limited in time, including a longer mandate than that proposed by the Commission. On the other hand, several delegations support an indefinite mandate.

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<sup>2</sup> OJ C 101, 1.4.2011, p. 20.

<sup>3</sup> OJ C107, 6.4.2011, p. 58.

### III. PROGRESS ACHIEVED

13. The progress achieved concerns the tasks of the modernised ENISA, the structure and the role of the ENISA's bodies as well as issues related to the planning of the ENISA's work and its functioning.

#### **a. The tasks**

14. Delegations expressed early the wish to have a clear list of tasks that would allow the ENISA to focus effectively on its core business, which should not include operational tasks. Consequently, the ENISA should support efforts on prevention, detection and response capability to network and information security incidents. The ENISA should furthermore advise the Union and, at their request, the Member States on research needs in the area of network and information security. It should maintain an awareness of the latest state of network and information security in the Union and support cooperation among the competent public bodies and between public and private stakeholders in the Union.

15. Concerning the role of the ENISA in relation to cybercrime, delegations agree in principle that it should liaise and exchange know how and best practices with bodies set up by Union law, including those dealing with cybercrime and data protection, and provide advice on network and information security aspects that might have an impact on their work. Additionally, the ENISA should retain its current duty of independently expressing its own conclusions and giving advice on matters within the scope and the objectives of the proposed regulation.

**b. The bodies of the agency**

16. There is broad agreement among delegations that the Management Board should have greater involvement in the planning of the main activities, priorities and objectives of the agency. The establishment of the multi-annual Staff Policy Plan should take into account the multi-annual outlook of the work programme and the statement of estimates of the agency's revenue and expenditure. A representative of the providers of electronic communications networks or services available to the public appointed by the Commission should be added to the representatives without the right to vote on the Management Board.
17. The post of the Executive Director should be subject to an open competition. The Executive Director should pay particular attention to the drawing up of the draft work programme to ensure that it has clear objectives and provides for the necessary indicators to measure the success of the Agency's activities. The Executive Director should demonstrate a commitment on an ongoing basis to good and efficient management.
18. The Executive Director should be able to propose to the Management Board experts from relevant authorities, including Union law enforcement and privacy protection authorities as members of the Permanent Stakeholders' Group. If they are not members of the Group, other relevant bodies set up under Union law may be invited to be present at the meetings and participate in its work.
19. It should be possible for the Group to be chaired by a member of the Group if the Management Board so decides following a proposal of the Executive Director.

**c. Work programme, report and evaluation**

20. Delegations agree that an early involvement of the Management Board in the establishment of the agency's work programme should be clearly stipulated in the relevant articles. In addition to its reporting function, the general report should measure and publish the impact of the Agency's activities for the previous year. Requests to the ENISA should also take account of the potential resource implications. The evaluation to be undertaken within three years from the date of the entry into force of the modernisation regulation should also determine whether the agency's budget planning is appropriate for the following years.

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**Presidency Compromise Proposal for a**  
**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**Concerning the European Network and Information Security Agency (ENISA)**

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 Article 114 thereof,  
Having regard to the proposal from the European Commission,  
Having regard to the opinion of the European Economic and Social Committee<sup>4</sup>,  
Having regard to the opinion of the Committee of the Regions<sup>5</sup>,  
After transmission of the proposal to the national Parliaments,  
Acting in accordance with the ordinary legislative procedure,

[The recitals were left out in this document]

HAVE ADOPTED THIS REGULATION:

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<sup>4</sup> OJ C107, 6.4.2011, p. 58.

<sup>5</sup> OJ C , , p. .

## SECTION 1 SCOPE, OBJECTIVES AND TASKS

### *Article 1*

#### **Subject matter and Scope**

1. This Regulation establishes a European Network and Information Security Agency (hereinafter ‘the Agency’) for the purpose of contributing to a high level of network and information security within the Union and in order to raise awareness and develop a culture of network and information security in society for the benefit of the citizens, consumers, enterprises and public sector organisations in the Union, thus contributing to the smooth functioning of the internal market.
2. The objectives and the tasks of the Agency shall be without prejudice to the competencies of the Member States regarding network and information security and in any case to activities concerning public security, defence, State security (including the economic well-being of the State when the issues relate to State security matters) and the activities of the State in areas of criminal law.
3. For the purposes of this Regulation “*network and information security*” shall mean the ability of a network or an information system to resist, at a given level of confidence, accidental events or unlawful or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted data and the related services offered by or accessible via these networks and systems.

### *Article 2*

#### **Objectives**

1. The Agency shall develop and maintain a high level of expertise.
2. The Agency shall assist the Union's institutions to develop the necessary policies in network and information security.
3. The Agency shall assist the Member States to implement the policies necessary to meet the legal and regulatory requirements of network and information security in present and future Union legislation, thus contributing to the smooth functioning of the internal market.

4. The Agency shall assist in enhancing and strengthening the capability and preparedness of the Union and of Member States to prevent, detect and respond to network and information security problems and incidents.
5. The Agency shall use its expertise to stimulate broad cooperation between actors both from the public and private sectors.

*Article 3*  
**Tasks**

1. Within the purpose set out in Article 1, the Agency shall perform the following tasks:
  - (a) Assist the Commission, at its request or on its own initiative, on all matters related to network and information security policy by providing it with advice, opinions and analyses, and with preparatory work for developing and updating Union legislation in the field of network and information security;
  - (b) Advise the Union and, at their request, the Member States on research needs in the area of network and information security in view of responding to current and emerging network and information security risks and threats and using risk prevention technologies effectively;
  - (c) Facilitate the cooperation among the Member States and between the Member States and the Union's Institutions in their efforts to prevent, detect and respond to network and information security incidents where this has an impact across borders;
  - (d) Support Member States, at their request, in their efforts to develop and improve network and information security prevention, detection, analysis and response capability, to organize and run national and European exercises and to organise themselves awareness raising campaigns for end users in their territory;

- (e) Assist the Union's institutions and bodies set up by Union law in their efforts to develop network and information security prevention, detection, analysis and response capability;
- (f) Assist the Member States and the Union's institutions and bodies set up by Union law in their efforts to collect, analyse and disseminate network and information security data;
- (g) On the basis of information provided by the Member States and the Union's Institutions in accordance with the Union provisions and national provisions in compliance with the Union law, maintain awareness of the latest state of network and information security in the Union for the benefit of the Member States and the Union's Institutions;
- (h) Liaise, exchange know how and best practices with bodies set up by Union law, including those dealing with cybercrime and data protection, and provide advice on network and information security aspects that might have an impact on their work aiming to deliver synergy between their efforts and the Agency's efforts to promote improved network and information security;
- (i) Support cooperation among the competent public bodies and between public and private stakeholders in the Union, inter alia, facilitate dialogue and efforts to develop and exchange good practices, promote information sharing and awareness raising, facilitate the establishment and take up of European and international standards for risk management and for the security of electronic products, networks and services;
- (j) Contribute to the Union efforts to cooperate with third countries and international organisations, where appropriate with the European External Action Service, to promote international cooperation and a global common approach to network and information security issues;

(k) Express independently its own conclusions, orientations and give advice on matters within the scope and objectives of this Regulation.

2. The Agency shall carry out tasks conferred on it by Union legislative acts.

## **SECTION 2 ORGANISATION**

### *Article 4* **Bodies of the Agency**

The Agency shall comprise:

- (a) a Management Board;
- (b) an Executive Director and the staff; and
- (c) a Permanent Stakeholders' Group.

### *Article 5* **Management Board**

- 1. The Management Board shall define the general direction of the operation of the Agency and ensure that the Agency works in accordance with the rules and principles laid down in this Regulation. It shall also ensure consistency of the Agency's work with activities conducted by the Member States as well as by the Union's Institutions and bodies set up by Union law.
- 2. The Management Board shall adopt its rules of procedure after consulting the Commission.
- 3. The Management Board shall adopt the Agency's internal rules of operation after consulting the Commission. These rules shall be made public.
- 4. The Management Board shall appoint the Executive Director in accordance with Article 10(2) and may dismiss the Executive Director.

5. The Management Board shall be consulted by the Executive Director on the main activities, priorities and objectives that the Agency shall be focusing on for the next year. The first draft of the Agency's work programme shall be based on the result of this consultation.
6. The Management Board shall adopt the Agency's work programme in accordance with Article 12.
7. The Management Board shall adopt the general report on the Agency's activities for the previous year in accordance with Article 13 (2).
8. The Management Board, after consulting the Commission, shall adopt the multi-annual Staff Policy Plan, taking into account the multi-annual outlook of the work programme and the statement of estimates of the Agency's revenue and expenditure. It shall duly inform the Budgetary Authority.
9. The Management Board shall adopt the financial rules applicable to the Agency. They may not depart from 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 Communities, unless such departure is specifically required for the Agency's operation and the Commission has given its prior consent.
10. The Management Board shall adopt appropriate implementing rules, in accordance with Article 110 of the Staff Regulations of officials of the European Union.
11. The Management Board may set up working bodies composed of its members to assist it in carrying out its tasks, including drafting its decisions and monitoring the implementation thereof.

*Article 6*

**Composition of the Management Board**

1. The Management Board shall be composed of one representative of each Member State, authorised to act on behalf of that Member State, three representatives appointed by the Commission, and four representatives without the right to vote, appointed by the Commission, each of whom represent one of the following groups:
  - (a) the information and communication technologies industry;
  - (b) providers of electronic communications networks or services available to the public;
  - (c) consumer groups;
  - (d) academic experts in network and information security.

Management Board members may be replaced by their alternates in accordance with the rules of procedure of the Management Board.

2. Management Board members and their alternates shall be appointed on the basis of their degree of relevant experience and expertise in the field of network and information security.
3. The term of office of the representatives of the groups referred to in points (a) to (d) of paragraph 1 shall be four years. This term of office may be extended once. If a representative ceases his/her affiliation with the respective interest group, the Commission shall appoint a replacement.

*Article 7*

**Chairperson of the Management Board**

The Management Board shall elect its Chairperson and a Deputy Chairperson from among its members for a period of three years, which shall be renewable once. The Deputy Chairperson shall ex officio replace the Chairperson if the latter is unable to attend to his or her duties.

## *Article 8*

### **Meetings**

1. Meetings of the Management Board shall be convened by its Chairperson.
2. The Management Board shall hold an ordinary meeting twice a year. It shall also hold extraordinary meetings at the instance of the Chairperson or at the request of at least a third of its members with the right to vote.
3. The Executive Director shall take part in the meetings of the Management Board, without voting rights.

## *Article 9*

### **Voting**

1. The presence of at least two thirds of the Management Board members with the right to vote or of their alternates is required to enable the Management Board to vote. A member of the Management Board who is prevented from attending a meeting may arrange to be represented in accordance with the rules of procedure of the Management Board. The Management Board shall take its decisions by a majority of its members with the right to vote.
2. A two-thirds majority of all Management Board members with the right to vote is required for the adoption of its rules of procedure, the Agency's internal rules of operation, the budget, the annual work programme, and the appointment, extension of the term of office or dismissal of the Executive Director.

## *Article 10*

### **Executive Director**

1. The Agency shall be managed by its Executive Director, who shall be independent in the performance of his/her duties and demonstrate on an ongoing basis commitment to good and efficient management.

2. The Executive Director shall be appointed by the Management Board from a list of candidates proposed by the Commission after an open competition following publication in the Official Journal of the European Union and elsewhere of a call for expressions of interest. The Executive Director shall be appointed for a period of five years, on grounds of merit and documented administrative and managerial skills, as well as specific competence and experience. Before appointment, the candidate selected by the Management Board may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members.
3. In the course of the nine months preceding the end of the Executive Director's term of office referred to in paragraph 2 and without prejudice to Article 23 (1) and (2), the Commission shall draw up an evaluation report. In the evaluation report, the Commission shall assess in particular:
  - the performance of the Executive Director and
  - 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 requirements of the Agency, may extend the term of office of the Executive Director for a period not longer 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 of the Parliament and answer questions put by its members.
6. The Executive Director shall remain in office until the appointment of his/her successor.
7. The Executive Director shall be responsible for:
  - (a) the day-to-day administration of the Agency;
  - (b) implementing the work programme and the decisions adopted by the Management Board;
  - (c) ensuring that the Agency performs its activities in accordance with the requirements of those using its services, in particular with regard to the adequacy of the services provided;

- (d) all specific staff matters, ensuring compliance with the general directions of the Management Board and with Management Board decisions of a general nature;
  - (e) developing and maintaining contact with the Union's institutions and bodies set up by Union law;
  - (f) developing and maintaining contact with the business community and consumers' organisations to ensure regular dialogue with relevant stakeholders;
  - (g) other tasks assigned to him/her by this Regulation.
8. Where necessary and within the Agency's objectives and tasks, the Executive Director may set up ad hoc Working Groups composed of experts. The Management Board shall be informed in advance. The procedures regarding in particular the composition, the appointment of the experts by the Executive Director and the operation of the ad hoc Working Groups shall be specified in the Agency's internal rules of operation.
9. The Executive Director shall make administrative support staff and other resources available to the Management Board whenever necessary.

#### *Article 11*

#### **Permanent Stakeholders' Group**

1. The Management Board shall set up a Permanent Stakeholders' Group on a proposal by the Executive Director, composed of experts representing the relevant stakeholders, such as the information and communication technologies industry, providers of electronic communications networks or services available to the public, consumer groups, academic experts in network and information security, and relevant authorities, including Union law enforcement and privacy protection authorities.
2. Procedures for, in particular, the number, composition, and appointment of the members by the Management Board, proposal by the Executive Director and the operation of the Group shall be specified in the Agency's internal rules of operation and shall be made public.

3. The Group shall be chaired by the Executive Director. On a proposal of the Executive Director, the Management Board may decide to delegate the task of the Chair of the Group to a Member of the Group.
4. The term of office of the Group's members shall be two-and-a-half years. Members of the Management Board may not be members of the Group. Commission staff and experts from the Member States shall be entitled to be present at the meetings and participate in the work of the Group. If they are not members, other relevant bodies set up by Union law may be invited to be present at the meetings and participate in the work of the Group.
5. The Group shall advise the Agency in the performance of its activities. The Group shall in particular advise the Executive Director on drawing up a proposal for the Agency's work programme, and on ensuring communication with the relevant stakeholders on all issues related to the work programme.

## **SECTION 3 OPERATION**

### *Article 12*

#### **Work Programme**

1. The Agency shall carry out its operations in accordance with its work programme, which shall contain all of its planned activities. The work programme shall not prevent the Agency from taking up unforeseen activities that fall within its objectives and tasks and within the limits of its budget. The Executive Director shall inform the Management Board of activities of the Agency that are not provided for in the work programme.
2. The Executive Director shall be responsible for drawing up the first draft of the Agency's work programme after prior consultation with the Commission, the Management Board and the Permanent Stakeholders Group. The Executive Director shall ensure that the first draft of the Agency's work programme has clear objectives and provides for indicators necessary to measure the success of the Agency's activities.

3. Before 1 March each year the Executive Director shall submit the first draft of the Agency's work programme for the following year to the Management Board.
4. Before 30 November each year, the Management Board shall adopt the Agency's work programme for the following year in consultation with the Commission. The work programme shall include a multi-annual outlook. The Management Board shall ensure that the work programme clearly states the objectives to be achieved, the resources to be allocated, how the results of the Agency's activities shall be measured and that the work programme is consistent with the Agency's objectives and with the Union's legislative and policy priorities in the area of network and information security.
5. The work programme shall be organised in accordance with the Activity-Based Management (ABM) principle. The work programme shall be in line with the statement of estimates of the Agency's revenue and expenditure and the Agency's budget for the same financial year.
6. The Executive Director shall, following adoption by the Management Board, forward the work programme to the European Parliament, the Council, the Commission and the Member States and shall have it published.

### *Article 13*

#### **General report**

1. Each year, the Executive Director shall submit to the Management Board a draft general report covering all the activities of the Agency in the previous year. The general report shall measure and publish the impact of the Agency's activities for the previous year.
2. Before 31 March each year, the Management Board shall adopt the general report on the Agency's activities for the previous year.
3. The Executive Director shall, following adoption by the Management Board, transmit the Agency's general report to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions and shall have it published.

*Article 14*  
**Requests to the Agency**

1. Requests for advice and assistance falling within the Agency's objectives and tasks shall be addressed to the Executive Director and accompanied by background information explaining the issue to be addressed. The Executive Director shall inform the Management Board of the requests received, the potential resource implications and in due course, of the follow-up given to the requests. If the Agency refuses a request, justification shall be given.
2. Requests referred to in paragraph 1 may be made by:
  - (a) the European Parliament;
  - (b) the Council;
  - (c) the Commission;
  - (d) any competent body appointed by a Member State, such as a national regulatory authority as defined in Article 2 of Directive 2002/21/EC.
3. The practical arrangements for applying paragraphs 1 and 2, regarding in particular submission, prioritisation, follow up and information of the Management Board on the requests to the Agency, shall be laid down by the Management Board in the Agency's internal rules of operation.

*Article 15*  
**Declaration of interest**

1. Members of the Management Board, the Executive Director and officials seconded by Member States on a temporary basis shall make a declaration of commitment and a declaration indicating either the absence of any direct or indirect interests which might be considered prejudicial to their independence or any direct or indirect interests which might be considered prejudicial to their independence. Those declarations shall be made annually in writing.

2. Members of the Management Board, external experts participating in ad hoc Working Groups and the Executive Director, shall declare at the latest at each meeting any interest which might be considered prejudicial to their independence in relation to the items on the agenda. The procedure related to the replacement of a member in the meeting or its abstention from participating in the discussions on such points shall be laid down by the Management Board in the Agency's internal rules of operation.

*Article 16*  
**Transparency**

1. The Agency shall ensure that it carries out its activities with a high level of transparency and in accordance with Article 14 and 15.
2. The Agency shall ensure that the public and any interested parties are given objective, reliable and easily accessible information, in particular with regard to the results of its work, where appropriate. It shall also make public the declarations of interest made in accordance with Article 15.
3. The Management Board, acting on a proposal from the Executive Director, may authorise interested parties to observe the proceedings of some of the Agency's activities.
4. In its internal rules of operation, the Agency shall lay down the practical arrangements for implementing the transparency rules referred to in paragraphs 1 and 2.

*Article 17*

**Confidentiality**

1. Without prejudice to Article 14, the Agency shall not divulge to third parties information that it processes or receives for which confidential treatment has been requested.
2. Members of the Management Board, the Executive Director, the members of the Permanent Stakeholders Group, external experts participating in ad hoc Working Groups, and members of the staff of the Agency including officials seconded by Member States on a temporary basis are subject to confidentiality requirements under Article 339 of the Treaty even after their duties have ceased.
3. The Agency shall lay down in its internal rules of operation the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.
4. The Management Board may decide to allow the Agency to handle classified information. In that case the Management Board shall, in agreement with the Commission, adopt internal rules of operation applying the security principles contained in Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal rules of procedure<sup>6</sup>. This shall cover, inter alia, provisions for the exchange, processing and storage of classified information.

*Article 18*

**Access to documents**

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Agency.
2. The Management Board shall adopt arrangements for implementing Regulation (EC) No 1049/2001 within six months of the establishment of the Agency.
3. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Union, under Articles 228 and 263 of the Treaty respectively.

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<sup>6</sup> OJ L 317, 3.12.2001, p. 1.

## SECTION 4 FINANCIAL PROVISIONS

### *Article 19*

#### **Adoption of the budget**

1. The revenues of the Agency shall consist of a contribution from the European Union budget, contributions from third countries participating in the work of the Agency as provided for in Article 28, and voluntary contributions from Member States. Member States providing voluntary contributions cannot claim any specific right or service as a result of this contribution.
2. The expenditure of the Agency shall include staff, administrative and technical support, infrastructure and operational expenses, and expenses resulting from contracts entered into with third parties.
3. By 1 March each year at the latest, the Executive Director shall draw up a draft statement of estimates of the Agency's revenue and expenditure for the following financial year, and shall forward it to the Management Board, together with a draft establishment plan.
4. Revenue and expenditure shall be in balance.
5. Each year, the Management Board, on the basis of a draft statement of estimates of revenue and expenditure drawn up by the Executive Director, shall produce a statement of estimates of revenue and expenditure for the Agency for the following financial year.
6. This statement of estimates, which shall include a draft establishment plan together with the draft work programme, shall, by 31 March at the latest, be sent by the Management Board to the Commission and the States with which the European Union has concluded agreements in accordance with Article 28.
7. This statement of estimates shall be forwarded by the Commission to the European Parliament and the Council (both hereinafter 'the budgetary authority') together with the draft general budget of the European Union.
8. On the basis of this statement of estimates, the Commission shall enter in the draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall submit to the budgetary authority in accordance with Article 314 of the Treaty.

9. The budgetary authority shall authorise the appropriations for the subsidy to the Agency.
10. The budgetary authority shall adopt the establishment plan for the Agency.
11. Together with the work programme, the Management Board shall adopt the Agency's budget. It shall become final following final adoption of the general budget of the European Union. Where appropriate, the Management Board shall adjust the Agency's budget and work programme in accordance with the general budget of the European Union. The Management Board shall forward it without delay to the Commission and the budgetary authority.

*Article 20*  
**Combating fraud**

1. In order to combat fraud, corruption and other unlawful activities, 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)<sup>7</sup> shall apply without restriction.
2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament and the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF)<sup>8</sup> and shall issue, without delay, the relevant provisions applicable to all the employees of the Agency.

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<sup>7</sup> OJ L 136, 31.5.1999, p. 1.

<sup>8</sup> OJ L 136, 31.5.1999, p. 15.

## *Article 21*

### **Implementation of the budget**

1. The Executive Director shall implement the Agency's budget.
2. The Commission's internal auditor shall exercise the same powers over the Agency as over Commission departments.
3. By 1 March at the latest following each financial year, the Agency's accounting officer shall send the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>9</sup> (hereinafter 'the general Financial Regulation').
4. No later than 31 March following each financial year, the Commission's accounting officer shall send the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be sent to the budgetary authority.
5. On receipt of the Court of Auditor's observations on the Agency's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Executive Director shall draw up the Agency's final accounts under his/her own responsibility and send them to the Management Board for an opinion.
6. The Management Board shall deliver an opinion on the Agency's final accounts.
7. The Executive Director shall, no later than 1 July following each financial year, transmit the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.
8. The Executive Director shall publish the final accounts.
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.

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<sup>9</sup> OJ L 248, 16.9.2002, p. 1.

10. The Executive Director shall submit to the European Parliament, at the latter's request, all the information necessary for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the general Financial Regulation.
11. The European Parliament, acting on a recommendation from the Council, shall, before 30 April of year N+2, give a discharge to the Executive Director in respect of the implementation of the budget for the year N.

## **SECTION 5 GENERAL PROVISIONS**

### *Article 22* **Legal status**

1. The Agency shall be a body of the Union. It 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 their laws. It may in particular, acquire and dispose of movable and immovable property and be a party to legal proceedings.
3. The Agency shall be represented by its Executive Director.

### *Article 23* **Staff**

1. The rules and regulations applicable to officials and other staff of the Union shall apply to the staff of the Agency, including its Executive Director.
2. In respect of the Executive Director, the Management Board shall exercise all the powers conferred on the appointing authority by the Staff Regulations of officials of the European Union and on the authority entitled to conclude contracts by the Conditions of Employment.
3. In respect of the staff of the Agency, the Executive Director shall exercise the powers conferred on the appointing authority by the Staff Regulations of officials of the European Union and on the authority entitled to conclude contracts by the Conditions of Employment.

4. The Agency may employ national experts from Member States on secondment. The Agency shall lay down in its internal rules of operation the practical arrangements for implementing this.

*Article 24*

**Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Agency and its staff.

*Article 25*

**Liability**

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.  
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.
2. 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 it or its servants in the performance of their duties.  
The Court of Justice shall have jurisdiction in any dispute relating to compensation for such damage.
3. The personal liability of its servants towards the Agency shall be governed by the relevant conditions applying to the staff of the Agency.

*Article 26*

**Languages**

1. The provisions laid down in Regulation No 1 of 15 April 1958 determining the languages to be used in the European Economic Community<sup>10</sup> shall apply to the Agency. The Member States and the other bodies appointed by them may address the Agency and receive a reply in the European Union language of their choice.
2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.

*Article 27*

**Protection of personal data**

When processing data relating to individuals, in particular while performing its tasks, the Agency shall observe the principles of personal data protection and be subject to the provisions of Regulation (EC) No 45/2001.

*Article 28*

**Participation of third countries**

1. The Agency shall be open to the participation of third countries which have concluded agreements with the European Union by virtue of which they have adopted and applied Union legislation in the field covered by this Regulation.
2. Arrangements shall be made under the relevant provisions of those agreements, specifying in particular the nature, extent and manner in which these countries will participate in the Agency's work, including provisions relating to participation in the initiatives undertaken by the Agency, financial contributions and staff.

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<sup>10</sup> OJ 17, 6.10.1958, p. 385/58. Regulation as last amended by the 1994 Act of Accession.

## SECTION 6 FINAL PROVISIONS

### *Article 29*

#### **Review clause**

1. Within three years from the date of establishment referred to in Article 34, the Commission, taking into account the views of all relevant stakeholders, shall request an independent third party evaluation on the basis of terms of reference agreed with the Management Board. The evaluation shall assess the impact and the effectiveness of the Agency in achieving the objectives set out in Article 2, and the effectiveness of the Agency's working practices. The evaluation shall serve as a basis in order to determine whether an Agency is still an effective instrument, whether its budget planning for the following years is still appropriate [and whether the duration of the Agency should be further extended beyond the period specified in Article 33.]
2. The evaluation findings shall be forwarded by the Commission to the European Parliament and the Council and shall be made public.
3. The Management Board shall receive the evaluation and issue recommendations regarding changes to this Regulation, the Agency, its budget and its working practices to the Commission. The Management Board and the Executive Director shall take the results of the evaluation into consideration in the Agency's multi-annual planning.

### *Article 30*

#### **Cooperation of the host Member State**

The Agency's host Member State shall ensure the best possible conditions for the smooth and efficient operation of the Agency.

### *Article 31*

#### **Administrative control**

The operations of the Agency are subject to the supervision of the Ombudsman in accordance with Article 228 of the Treaty.

*Article 32*

**Repeal and succession**

1. Regulation (EC) No 460/2004 is repealed.  
References to Regulation (EC) No 460/2004 and to ENISA shall be construed as references to this Regulation and to the Agency.
2. The Agency succeeds the Agency that was established by Regulation (EC) No 460/2004 as regards all ownership, agreements, legal obligations, employment contracts, financial commitments and liabilities.

*[Article 33*

**Duration**

The Agency shall be established from [...] for a period of [...] years.]

*Article 34*

**Entry into force**

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*, and shall apply with effect from 14 March 2012 or from the day following that of its publication, whichever comes later.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at [...],

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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