Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011

REGULATION (EU) 2018/1726 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 November 2018

on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011

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 74, Article 77(2)(a) and (b), Article 78(2)(e), Article 79(2)(c), Article 82(1)(d), Article 85(1), Article 87(2)(a) and Article 88(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure[(1)],

Whereas:

(1) The Schengen Information System (SIS II) was established by Regulation (EC) No 1987/2006 of the European Parliament and of the Council[(2)] and by Council Decision 2007/533/JHA[(3)]. Regulation (EC) No 1987/2006 and Decision 2007/533/JHA provide that the Commission is to be responsible, during a transitional period, for the operational management of the central system of SIS II (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.

(2) The Visa Information System (VIS) was established by Council Decision 2004/512/EC[(4)]. Regulation (EC) No 767/2008 of the European Parliament and of the Council[(5)] provides that the Commission is to be responsible, during a transitional period, for the operational management of the VIS. After that transitional period, a Management Authority is to be responsible for the operational management of the central VIS and of the national interfaces and for certain aspects of the communication infrastructure.

(3) Eurodac was established by Council Regulation (EC) No 2725/2000[(6)]. Council Regulation (EC) No 407/2002[(7)] laid down necessary implementing rules. Those legal acts were repealed and replaced by Regulation (EU) No 603/2013 of the European Parliament and of the Council[(8)] with effect from 20 July 2015.

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) 2018/1726 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) The European Agency for the operational management of large-scale IT (information technology) systems in the area of freedom, security and justice, commonly referred to as eu-LISA, was established by Regulation (EU) No 1077/2011 of the European Parliament and of the Council[(9)] in order to ensure the operational management of SIS, the VIS and Eurodac and of certain aspects of their communication infrastructures and potentially that of other large-scale IT systems in the area of freedom, security and justice, subject to the adoption of separate Union legal acts. Regulation (EU) No 1077/2011 was amended by Regulation (EU) No 603/2013 in order to reflect the changes introduced to Eurodac.

(5) Since the Management Authority required legal, administrative and financial autonomy, it was established in the form of a regulatory agency (the 'Agency') with legal personality. As was agreed, the seat of the Agency was established in Tallinn, Estonia. However, since the tasks relating to the technical development and the preparation for the operational management of SIS II and the VIS were already being carried out in Strasbourg, France, and a backup site for those systems had been installed in Sankt Johann im Pongau, Austria, in line also with the locations of SIS II and the VIS as established under the relevant Union legal acts, this should continue to be the case. Those two sites should also continue to be the locations, respectively, where the tasks relating to operational management of Eurodac are carried out and where a backup site for Eurodac is established. Those two sites should also be the locations, respectively, for the technical development and operational management of other large-scale IT systems in the area of freedom, security and justice and for a backup site capable of ensuring the operation of a large-scale IT system in the event of failure of that large-scale IT system. In order to maximise the possible use of the backup site, that site could also be used to operate systems simultaneously provided that it remains capable of ensuring their operation in the event of failure of one or more of the systems. Due to the high-security, high-availability and mission-critical nature of the systems, if the hosting capacity of the existing technical sites becomes insufficient, it should be possible for the Agency's Management Board (the Management Board), where justified on the basis of an independent impact assessment and cost-benefit analysis, to propose the establishment of a second separate technical site either in Strasbourg or in Sankt Johann im Pongau or in both locations, as required, in order to host the systems. The Management Board should consult the Commission and take its views into account before notifying the European Parliament and the Council (the 'budgetary authority') of its intention to implement any project related to property.

(6) Since taking up its responsibilities on 1 December 2012, the Agency took over the tasks conferred on the Management Authority in relation to the VIS by Regulation (EC) No 767/2008 and Council Decision 2008/633/JHA[(10)]. In April 2013, the Agency also took over the tasks conferred on the Management Authority in relation to SIS II by Regulation (EC) No 1987/2006 and Decision 2007/533/JHA after SIS II went live and, in June 2013, it took over the tasks conferred on the Commission in relation to Eurodac in accordance with Regulations (EC) No 2725/2000 and (EC) No 407/2002.

***Changes to legislation:** There are outstanding changes not yet made to Regulation (EU) 2018/1726 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(7) The first evaluation of the Agency's work, based on an independent external evaluation and carried out in the period 2015-2016 concluded that the Agency effectively ensures the operational management of the large-scale IT systems and other tasks entrusted to it but also that a number of changes to Regulation (EU) No 1077/2011 are necessary such as the transfer to the Agency of the communication infrastructure tasks retained by the Commission. Building on that external evaluation, the Commission took into account policy, legal and factual developments and proposed, in particular in its report of 29 June 2017 on the functioning of the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) (the evaluation report), that the mandate of the Agency be extended to carry out the tasks deriving from the adoption by the co-legislators of legislative proposals entrusting new systems to the Agency and the tasks referred to in the Commission's Communication of 6 April 2016 entitled 'Stronger and Smarter Information Systems for Borders and Security', in the High-Level Expert Group on Information Systems and Interoperability's final report of 11 May 2017 and in the Commission's Communication of 16 May 2017 entitled 'Seventh progress report towards an effective and genuine Security Union', subject to the adoption of the relevant Union legal acts, where required. In particular, the Agency should be tasked with the development of solutions regarding interoperability defined in the Communication of 6 April 2016 as the ability of information systems to exchange data and to enable the sharing of information.
Where relevant, any actions carried out with regard to interoperability should be guided by the Commission's Communication of 23 March 2017 entitled 'European Interoperability Framework — Implementation Strategy'. Annex 2 of that Communication provides the general guidelines, recommendations and best practices for achieving interoperability or for, at least, creating the environment to achieve better interoperability when designing, implementing and managing European public services.

(8) The evaluation report also concluded that the Agency's mandate should be extended to enable it to provide Member States with advice with regard to the connection of national systems to the central systems of the large-scale IT systems it manages (the 'systems') and with ad hoc assistance and support, where requested, and to provide the Commission services with assistance and support on technical issues related to new systems.

(9) The Agency should be entrusted with the preparation, development and operational management of the Entry/Exit System (EES), established by Regulation (EU) 2017/2226 of the European Parliament and of the Council[(11)].

(10) The Agency should also be entrusted with the operational management of DubliNet, a separate secure electronic transmission channel set up under Article 18 of Commission Regulation (EC) No 1560/2003[(12)], which Member States' competent asylum authorities should use for the exchange of information on applicants for international protection.

(11) The Agency should further be entrusted with the preparation, development and operational management of the European Travel Information and Authorisation System

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) 2018/1726 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(ETIAS), established by Regulation (EU) 2018/1240 of the European Parliament and of the Council[13].

(12) The core function of the Agency should continue to be the fulfilment of the operational management tasks for SIS II, the VIS, Eurodac, the EES, DubliNet, ETIAS and, if so decided, other large-scale IT systems in the area of freedom, security and justice. The Agency should also be responsible for technical measures required as a result of the non-normative tasks with which it is entrusted. Those responsibilities should be without prejudice to the normative tasks reserved for the Commission alone or for the Commission assisted by a Committee in the respective Union legal acts governing the systems.

(13) The Agency should be able to implement technical solutions in order to comply with the availability requirements laid down in the Union legal acts governing the systems, while fully respecting the specific provisions of those acts with regard to the technical architecture of the respective systems. Where those technical solutions require a duplication of a system or a duplication of components of a system, an independent impact assessment and cost-benefit analysis should be carried out and a decision should be taken by the Management Board following the consultation of the Commission. That impact assessment should also include an examination of the hosting capacity needs of the existing technical sites related to the development of such technical solutions and the possible risks related to the current operational set up.

(14) It is no longer justified for the Commission to retain certain tasks related to the communication infrastructure of the systems and those tasks should therefore be transferred to the Agency in order to improve the coherence of the management of the communication infrastructure. However, for those systems that use EuroDomain, a secured communication infrastructure provided by TESTA-ng (Trans-European Services for Telematics between Administrations-new generation) and set up as part of the ISA Programme that was established by Decision No 922/2009/EC of the European Parliament and of the Council[14] and continued as part of the ISA2 Programme that was established by Decision (EU) 2015/2240 of the European Parliament and of the Council[15], the tasks in relation to the implementation of the budget, acquisition and renewal and contractual matters should be retained by the Commission.

(15) The Agency should be able to entrust tasks relating to the delivery, setting up, maintenance and monitoring of the communication infrastructure to external private-sector entities or bodies in accordance with Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[16]. The Agency should have sufficient budgetary and staff resources at its disposal in order to limit as much as possible the need to outsource its tasks and duties to external private-sector entities or bodies.

(16) The Agency should continue to perform tasks relating to training on the technical use of SIS II, the VIS and Eurodac and other systems entrusted to it in the future.

(17) In order to contribute to evidence-based Union migration and security policy-making and to the monitoring of the proper functioning of the systems, the Agency should compile and publish statistics and produce statistical reports and make them available to relevant actors in accordance with the Union legal acts governing the systems,

***Changes to legislation:** There are outstanding changes not yet made to Regulation (EU) 2018/1726 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

for example in order to monitor the implementation of Council Regulation (EU) No 1053/2013[(17)] and for the purposes of carrying out risk analysis and vulnerability assessment in accordance with Regulation (EU) 2016/1624 of the European Parliament and of the Council[(18)].

(18) It should be possible to make the Agency responsible for the preparation, development and operational management of additional large-scale IT systems pursuant to Articles 67 to 89 of the Treaty on the Functioning of the European Union (TFEU). Possible examples of such systems could be the centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons to supplement and support the European Criminal Records Information System (ECRIS-TCN system) or the computerised system for cross-border communication in civil and criminal proceedings (e-CODEX). However, the Agency should be entrusted with such systems only by means of subsequent and separate Union legal acts, preceded by an impact assessment.

(19) The mandate of the Agency with regard to research should be extended in order to increase its ability to be more proactive in suggesting relevant and necessary technical changes to the systems. The Agency should not only be able to monitor research activities relevant to the operational management of the systems but also be able to contribute to the implementation of relevant parts of the European Union Framework Programme for Research and Innovation, where the Commission delegates the relevant powers to the Agency. At least once a year, the Agency should provide information on such monitoring to the European Parliament, to the Council and, where the processing of personal data is concerned, to the European Data Protection Supervisor.

(20) It should be possible for the Commission to entrust the Agency with responsibility for carrying out pilot projects of an experimental nature designed to test the feasibility of an action and its usefulness, which may be implemented without a basic act in accordance with Regulation (EU, Euratom) 2018/1046. In addition, it should be possible for the Commission to entrust the Agency with budget implementation tasks for proofs of concept funded under the instrument for financial support for external borders and visa established by Regulation (EU) No 515/2014 of the European Parliament and of the Council[(19)] in accordance with Regulation (EU, Euratom) 2018/1046, after informing the European Parliament. It should also be possible for the Agency to plan and implement testing activities on matters strictly covered by this Regulation and the Union legal acts governing the development, establishment, operation and use of the systems, such as testing virtualisation concepts. When tasked with carrying out a pilot project, the Agency should pay particular attention to the European Union Information Management Strategy.

(21) The Agency should, as regards the connection of national systems to the central systems provided for in the Union legal acts governing the systems, provide advice to Member States at their request.

(22) The Agency should also provide ad hoc support to Member States at their request, subject to the procedure set out in this Regulation, where required by extraordinary security or migratory challenges or needs. In particular, a Member State should be