

ReNEUAL Model Rules on EU Administrative Procedure

Book VI – Administrative Information Management

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Editorial note and acknowledgements

This publication of the Research Network on EU Administrative Law (ReNEUAL) is the result of a cooperative effort by many people and institutions. ReNEUAL was set up in 2009 upon the initiative of Professors Herwig C.H. Hofmann and Jens-Peter Schneider who coordinate the network together with Professor Jacques Ziller. ReNEUAL has grown to a membership of well over one hundred scholars and practitioners active in the field of EU and comparative public law.

The objectives of ReNEUAL are oriented towards developing an understanding of EU public law as a field which ensures that the constitutional values of the Union are present and complied with in all instances of exercise of public authority. It aims at contributing to a legal framework for implementation of EU law by non-legislative means through a set of accessible, functional and transparent rules which make visible rights and duties of individuals and administrations alike. The Model Rules on EU Administrative Procedure are proof that it is possible to draft an EU regulation of administrative procedures adapted to the sometimes complex realities of implementing EU law by Union bodies and Member States in cooperation.

In order to develop the Model Rules, ReNEUAL established four working groups addressing the main aspects of EU administrative procedure in the EU. These working groups were concerned primarily with executive rule-making (chaired by Deirdre Curtin, Herwig C.H. Hofmann and Joanna Mendes; Book II); single-case decision-making (chaired by Paul Craig, Giacinto della Cananea, Oriol Mir and Jens-Peter Schneider; Book III); public contracts (chaired by Jean-Bernard Auby, Ulrich Stelkens and Jacques Ziller; Book IV); and information management (chaired by Diana-Urania Galetta, Herwig C.H. Hofmann and Jens-Peter Schneider; Books V/VI). The design of these working groups reflected the scope of the ReNEUAL project on Model Rules on EU Administrative Procedure. In order to draft the various books the chairpersons of the working groups established drafting teams. In addition to the chairpersons the following scholars acted as drafting team members: Micaela Lottini (Book VI), Nikolaus Marsch (Book VI), Michael Mirschberger (Book IV), Hanna Schröder (Book IV), Morgane Tidghi (Book VI), Vanessa M. Tünsmeier (Books III, V), Marek Wierzbowski (Book III). Edoardo Chiti, Paul Craig and Carol Harlow actively collaborated in the initial drafting of Book II. Detailed information about the chairpersons and the

additional members of the drafting teams are provided in the respective list following this note and acknowledgements.

A steering committee composed of the chairs and most active members of the working groups undertook the task of management of the project and ensuring the consistency of content and drafting and finally acted as the editorial board of these ReNEUAL Model Rules. It was joined by Professor George Berman (Columbia University, New York) as external member.

The working groups' research and drafting activities benefitted from the insights and critical input in terms of time and expertise by many ReNEUAL members as well as civil servants from the EU institutions and bodies and also other experts from Europe and other parts of the world during presentation at workshops and conferences, and as reactions to earlier publications.

ReNEUAL would like to express its particular gratitude to the support from the European Ombudsman and the European Parliament. In 2011 the European Parliament established a sub-committee to the JURI committee under the presidency of MEP Luigi Berlinguer. The committee heard *inter alia* ReNEUAL steering committee members Paul Craig, Oriol Mir and Jacques Ziller as experts. The EP sub-committee prepared the January 2013 EP resolution requesting the Commission to submit a proposal for an EU Administrative Procedures Act. Following this invitation, the European Commission has undertaken hearings to which ReNEUAL Steering Committee members have contributed.

Since 2011 ReNEUAL has closely cooperated with the European Ombudsman initially with Ombudsman Nikiforos Diamandouros and since 2014 with Ombudsman Emily O'Reilly. Both have publicly supported ReNEUAL's efforts to improve EU administrative procedure law. We are especially grateful for the opportunities they offered to discuss the ReNEUAL project in 2012 and 2014 at conferences in the European Parliament organised by the Ombudsman. We would also like to thank Ian Harden, Secretary General, European Ombudsman's office, for his interest and support of the ReNEUAL project.

ReNEUAL would also like to acknowledge the cooperation with ACA-Europe, an association composed of the Court of Justice of the European Union and the Councils of State or the Supreme administrative jurisdictions of each of the members of the European Union. ACA-Europe's first joint conference with

ReNEUAL was organised in April 2013 at the European Food Safety Authority in Parma, Italy, at which judges from nearly all EU member states of the EU participated and contributed to the discussion of composite decision-making procedures. The meeting had been prepared by a preparatory workshop of members of the French Conseil d'Etat with Herwig Hofmann, under the chairmanship of the vice-President of the Conseil Jean-Marc Sauvé. The second conference in which ACA-Europe cooperated with ReNEUAL was held in Amsterdam (Netherlands) under the Dutch presidency of ACA-Europe with participation of Paul Craig and Jean-Bernard Auby of ReNEUAL, in The Hague in November 2013, in collaboration with the Council of State of the Netherlands.

The European Law Institute (ELI) joined the ReNEUAL project in 2012. In this context, we received many thoughtful comments by members of the ELI Membership Consultative Committee chaired by Marc Clément (Lyon) and Christiaan Timmermans (The Hague) and by participants of two ELI annual general meetings. We would like to thank all individual commentators for contributing their time, energy and knowledge to this joint project as well as ELI for lending its institutional support. A conference organized by the Centre for Judicial Cooperation, Department of Law of the European University Institute in Florence under the directorship of Loïc Azoulai in cooperation with ELI and ReNEUAL in February 2014 allowed for further in-depth discussion. Next to the organisers, we would like to especially thank the participating judges from Member States high jurisdictions.

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Table of Abbreviations

APA(s)	Administrative Procedure Act(s)
Austrian APA	Allgemeines Verwaltungsverfahrensgesetz 1991 (BGBl. Nr. 51/1991) das zuletzt durch Artikel 1 des Bundesgesetzes vom 31. Juli 2013 (BGBl. I Nr. 161/2013) geändert worden ist
CFR	Charter of Fundamental Rights of the European Union [2007] OJ C 303/1
CJEU	Court of Justice of the European Union
CJ	Court of Justice
CoE	Council of Europe
CoE Recommendation	Council of Europe Recommendation of the
CM/Rec(2007)7	Committee of Ministers to member states on good administration CM/Rec(2007)7
Commission Communication on contract awards	Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement directives (2006/C 179/02)
DCFR	Draft Common Frame of Reference: Principles, Definitions and Model Rules of European Private Law - Draft Common Frame of Reference (DCFR) - Outline Edition, Prepared by the Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Group), Based in part on a revised version of the Principles of European Contract Law, available at http://ec.europa.eu/justice/policies/civil/docs/dcfr_outline_edition_en.pdf .
DG	Directorate-General
Dutch GALA	Wet van 4 juni 1992 houdende algemene regels van bestuursrecht (Stb. 1992, 315), in werking getreden op 1 juli 1994, laatstelijk gewijzigd bij Wet van 25 juni 2014, in werking getreden op 1 augustus 2014

ECHR	European Convention on Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EDPS	European Data Protection Supervisor
EO	European Ombudsman
EO Code	European Ombudsman – The European Code of Good Administrative Behaviour
EP	European Parliament
EP Resolution of 15 January 2013	European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union (2012/2024(INI))
EU	European Union
EURODAC	European Data Comparison system for the comparison of fingerprints for the effective application of the Dublin Convention established by Council Regulation (EC) No 2725/2000 of 11 December 2000
GALA	General Administrative Law Act
GC	General Court of the Court of Justice of the European Union
German APA	Verwaltungsverfahrensgesetz in der Fassung der Bekanntmachung vom 23. Januar 2003 (BGBl. I S. 102), das zuletzt durch Artikel 3 des Gesetzes vom 25. Juli 2013 (BGBl. I S. 2749) geändert worden ist
Italian APA	Legge 7 agosto 1990 n. 241, Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi (pubblicata nella Gazzetta Ufficiale del 18 agosto 1990 n. 192)
MoU	Memorandum of Understanding
Polish APA	Ustawa z 14 czerwca 1960 r. Kodeks postępowania administracyjnego (Dziennik Ustaw Nr 30, poz.

	168), tekst jednolity z dnia 30 stycznia 2013 r. (Dziennik Ustaw z 2013 r. poz. 267), zmiana z dnia 10 stycznia 2014 r. (Dziennik Ustaw z 2014 r. poz. 183)
RAPEX	Rapid Exchange of Information System
RASFF	Rapid Alert System for Food and Feed
SIRENE	Supplementary Information Request at the National Entry [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)]
SIS	Schengen Information System
Spanish APA	Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común (BOE núm. 285, de 27.11.1992), modificada por última vez por la Ley 27/2013, de 27 de diciembre, de racionalización y sostenibilidad de la Administración Local (BOE núm. 312, de 30.12.2013)
Swedish APA	Förvaltningslag (1986:223) Utfärdad: 1986-05-07, last amended by Lag (2014:630) om ändring i förvaltningslagen (1986:223)
US APA	Administrative Procedure Act of 1946, Pub.L 79-404, §§ 500 – 596, 60 Stat. 237 (1946)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TFP	European Civil Service Tribunal of the Court of Justice of the Union

ReNEUAL Model Rules on EU Administrative Procedures

Book VI – Administrative Information Management

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A. Introduction to Book VI

I. Scope and application of Book VI and its relation to Books II to V

- (1) Book VI deals with specific categories of inter-administrative information management activities consisting either in **certain forms of inter-administrative information exchange** or in **databases directly accessible to public authorities**.
- (2) Information management is a core feature of each administrative procedure. The sharing of information is **a key element of decentralised yet effective implementation of EU law** within the internal market. Information-related activities are often the essence of composite decision-making procedures already partially addressed in Books II-IV. This is especially true for Book III with extensive rules on information gathering, inspections, hearings, participation of third parties and consultation of other authorities. In addition, mutual assistance, as regulated in Book V, is a core element of EU administrative law and consists to a large extent in informational mutual assistance. This means that Book VI, first, **only** regulates a **specific set of information activities**, and second, it **supplements** the **other books** by regulating certain horizontal aspects which give rise to distinct problems of information law. These various provisions on information management are essential pre-conditions for the realisation of the right to good administration. In requiring fair and impartial decision making good administration depends on procedures which allow administrations taking into account and reasoning about the relevant facts of a case including those which arise from other jurisdictions within the EU.
- (3) Existing information exchange schemes regularly involve EU as well as national authorities¹. Similarly, the most important databases are databases as defined in

¹ For example Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132, Art 3; Commission Regulation (EU) 16/2011 of 10

Article VI-2(3) and thereby accessible to EU as well as to national authorities². Consequently, Book VI follows a **comprehensive approach concerning its scope of application** including not only information management activities of EU authorities but also of national authorities. In other words, Book VI is applicable to all forms of composite information management activities. As these issues can only marginally be regulated by existing national administrative law, such a comprehensive approach offers a competence saving approach vis-à-vis national legal orders.

- (4) At this stage of the ReNEUAL project Book VI focuses only on inter-administrative information management activities as these are the basis of, or at least supportive to, administrative actions regulated in Books II to IV. This includes, importantly, provisions on tracing informational input into decision-making. This feature is an **important gap-filler** enabling judicial review of decision-making procedures with input from various jurisdictions and will thus contribute to ensuring effective judicial review within the EU under the principle restated by Article 47 CFR.

II. Relation to general data protection law and freedom of information rights

- (5) Book VI combines rules on structural issues (procedures, organisation, inter-administrative obligations) as well as on data protection aspects of information law. The rationale behind this is that **data protection needs to be integrated into general information law** provisions in order to be effective. At the same time, it must be applied in the context of the general objectives of information law so as to not be excessively burdensome.
- (6) Therefore, Book VI attempts to find a **fair balance between these objectives of information law**, by not simply duplicating general data protection rules but

January 2011 laying down implementing measures for the Rapid alert system for food and feed [2011] OJ L6/7, Art 1 No 2.

² For example Council Regulation (EC) 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and the cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [1997] OJ L82/ last amended by Regulation (EC) 766/2008 of the European Parliament and of the Council of 9 July 2008 amending Council Regulation (EC) 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [2008] OJ L218/48, Art 24.

rather by adequately adapting them to the problems and needs of inter-administrative information exchange and databases.

- (7) For **example**, Article VI-9 establishes the **principle of transparent information management**, including for instance duties to record data processing activities. This duty supports data protection but it also fosters inter-administrative accountability and interaction with regard to collaborative information gathering. Article VI-19 establishes different obligations, to update, correct or delete data. While Article VI-19(3) explicitly provides an individual 'subjective' right for persons concerned (including data subjects) in line with general data protection principles, other paragraphs are predominantly concerned with establishing obligations and rights applicable in the inter-administrative relationships not confined to data protection. Article VI-19(5) on data flagging combines the latter two approaches. Finally, Article VI-34 provides an obligation to establish internal supervision by data protection officers. This rule is declaratory with regard to EU authorities³ but innovative for national authorities at least at present⁴. Other examples will be highlighted in the respective explanations.
- (8) The process of reform of the EU's general legislative framework governing data protection law might result in the need to adjust these ReNEUAL Model Rules accordingly. However, **including data protection rules** into the general provisions on EU administrative law can be a **contribution to the overall simplification of the legal system** in that sector-specific law so far integrating data protection rules⁵ might, instead of re-regulating data protection rules, in future be able to refer to the general rules on administrative procedure.

³ See the general obligation in Regulation (EC) 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 data [2001] OJ L8/1 last amended by Corrigendum to Regulation (EC) 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 data [2007] OJ L164/35, Art 24.

⁴ It remains to be seen whether the similar Commission Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final, Art 35 will be enacted.

⁵ See Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation

- (9) At this stage of the project Book VI does **not cover rules on access to documents or the proactive display of data** held by public authorities. Therefore, the respective rules in Regulation 1049/2001 on access to documents⁶ as well as in the Directives 2003/4 (Access to environmental information)⁷ and Directive 2007/2 (Infrastructure for Spatial Information in the European Community (INSPIRE))⁸ remain unaffected (see Art VI-1(3)). The same holds true with regard to specific standards for public announcements by public authorities, particularly product warnings.

III. Reasons for a Legal Framework for composite information management activities

- (10) A legal framework for composite information management activities is necessary to **steer the informational course** of composite administrative procedures **and** provide the various actors involved in such procedures with **legal certainty** as to their tasks and obligations. The objectives of such a legal framework are manifold.
- (11) First, such rules must ensure the **transparency** of composite information management actions. When confronted with such composite administrative procedures, natural and legal persons should be in a position to identify the actors, their duties and to allocate responsibility accordingly.
- (12) Second, a framework should ensure that the various stages of the composite information management activities **comply with the procedural rights** afforded to concerned persons and third parties in EU administrative procedures. The complexity of composite procedures enhances the quality of administration in the common interest. At the same time, such complexity should not come at the cost of complying with procedural rights.

through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132, Arts 13ff.

⁶ Regulation (EC) 1049/2001 of the European Parliament and of the Council of 28 May 2001 regarding public access to European Parliament, Council and Commission documents [2001] OJ L145/43.

⁷ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC [2003] OJ L41/26.

⁸ Directive 2007/2/EC of the European Parliament and the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) [2007] OJ L108/1.

- (13) Third, a framework for composite information management activities should provide solutions to **overcome** the challenges stemming from the *inherent fragmentation of composite procedures*. In order to do so, it should address the resulting multi-jurisdictional aspect of composite information management activities and the conflicts of laws stemming therefrom. A legal framework for composite information management activities should also overcome the traditional horizontal and vertical split of supervisory competences. It should provide a solution adapted to the multi-level integrated nature of composite information management activities in addition to securing the effectiveness of judicial protection.
- (14) The supervisory and judicial procedures should ensure the efficiency of administrative action while at the same time guaranteeing that concerned persons are in a position to obtain enforcement of their rights.
- (15) With regard to **multi-jurisdictionalism**, it is also essential to reduce the potential for horizontal and vertical conflicts of laws to a minimum.
- (16) In light of the above considerations, Book VI complements procedural rules on composite information management activities with **suitable organisational structures**. These procedural and institutional structures must provide for satisfactory data quality. They must also regulate the conditions for lawful information gathering, exchange and use within composite information procedures.

IV. Types of information management activities and adequate regulatory standards

- (17) In order to establish a legal infrastructure for information management activities which is not excessively burdensome on the one hand, and to provide the legal standards necessary in a EU based on the rule of law on the other hand, Book VI takes a differentiated approach. Book VI also provides for a very flexible legal infrastructure. We prefer such a **comprehensive**, while **at the same time differentiated and flexible**, legal arrangement to a very selective approach with only a few minimum standards.

- (18) First, the regulatory standards of Book VI **apply only to the specified information management activities** (see Article VI-1 and Article VI-2). These standards vary for the different types of information management activities:
- databases⁹, which are necessarily supported by an information system as defined in Article VI-2(4);
 - duties to inform¹⁰ other authorities, if they are supported by an information system as defined in Article VI-2(4);
 - structured information mechanisms¹¹, if they are supported by an information system as defined in Article VI-2(4);
 - (simple) duties to inform other authorities;
 - (simple) structured information mechanisms.
- (19) As a consequence **only some rules apply to all information management activities** as defined in Article VI-1: Article VI-3 (need for a basic act)¹²; Article VI-4(1), (2) (evaluation); Article VI-6 (competent authorities); Article VI-9 (principle of transparency, data tagging); Article VI-10 (principle of data quality); Article VI-40 (compensation); Article VI-41 (penalties for unlawful data processing).
- (20) **Other rules apply only if an information management activity is supported by an information system** (in the sense of the definition in Article VI-2): Article VI-5 (specific duties of sincere cooperation); Article VI-17 (access management rules); Article VI-21 (duty to independently assess information); Article VI-30 (Supervisory Authority); Article VI-31 (mediation procedure); Article VI-32 (binding inter-administrative decisions); Article VI-33 (powers of the Supervisory Authority to grant access to/to alter/delete data). In this context, some rules are applicable specifically to IT systems only such as Article VI-8 (management authorities for IT systems) and Article VI-29 (security standards).
- (21) **Some rules apply only to databases** (in the sense of the definition in Article VI-2): Article VI-4(3) (duty to report in the context of evaluations); Article VI-13 (General standards); Article VI-26 (Data storage, blocking and deletion under a duty to inform); Article VI-27 (storage, blocking and deletion beyond administrative procedures)); Article VI-34 (internal supervision by data protection officers); Article VI-35 (cooperative external data protection supervision; Article

⁹ As defined in Art VI-2(3).

¹⁰ As defined in Art VI-2(2).

¹¹ As defined in Art VI-2(1).

¹² But note the exemption in para 4 for pilot projects.

VI-36 (external supervision by EDPS); Article VI-37 (external data protection supervision by National Supervisory Authorities); Article VI-38 (cooperation of National Supervisory Authorities and the EDPS); Article VI-39 (data protection supervision by the European Data Protection Board).

- (22) The following **rules apply only to duties to inform**: Article VI-12 (General standards); Article VI-26 (data storage, blocking and deletion under a duty to inform)
- (23) Additionally, **some requirements** in this book are deliberately construed as a **legislative option**. In contrast to the *lex specialis* rule generally adopted in Article I-2 (opt-out solution), these requirements only apply if the legislator renders them expressly applicable in sector-specific law (opt-in solution): Article VI-7 (contact points); Article VI-8(4) (specification of the basic act for IT systems); Article VI-14 (verification); Article VI-18(2) (possibility of assigning the competence to alter/delete information to other persons; Article VI-19(2) (possibility of establishing an obligation to update information regularly); Article VI-39(1) (external supervision of databases by the European Data Protection Board); Article VI-38(4) (representative supervision in the context of the cooperation between National Supervisory Authorities and the EDPS).

V. *Rights, obligations and organisational structures*

- (24) As Book VI regulates inter-administrative information exchange and databases used by different authorities, many of its rules contain obligations of authorities (Article VI-4; VI-5; VI-19(4); VI-22; VI-24(2); VI-31(2), (3); VI-40(2), (3)) or establish organisational structures (Article VI-6 to VI-8; VI-14; VI-16; VI-18; VI-30 to VI-39). The creation of such innovative organisational structures contributes to the **objective of clear allocation of responsibilities and transparent information management**. This would benefit legal certainty and real possibilities of supervision and accountability either through control by a supervisory authority (see Article VI-31 and VI-32) or the Commission when entering into an action for infringement under Article 258, 259 TFEU before the CJEU. From this perspective Book VI contributes to the legal infrastructure for implementing EU law in a decentralised structure for which well-structured information management activities and new general supervisory powers are essential.

(25) Nevertheless, an equally important element of the legal infrastructure provided by Book VI consists in rules which provide, explicitly or implicitly, **subjective rights for individuals** in order to effectively protect their legal interests. Some rights are explicitly provided. These include Article VI-15 (Access for persons concerned); VI-19(3), (5) (Obligations to correct or delete data); VI-26 (Storage, blocking and deletion of data exchanged under a duty to inform)¹³; VI-27 (Storage, blocking and deletion of data beyond administrative procedures)¹⁴; VI-32(3) (Right to be heard by the Supervisory Authority); VI-33 (power to grant access to data and to alter or delete data); VI-37(2) (Obligation of National Supervisory Authorities to assist and advise a person concerned); third sentence of VI-38(1) (Obligation of an incompetent authority to transfer a request of a person concerned to the competent authority); VI-40(1) (Right to compensation in relation to composite information management activities). This does not, however, preclude the possibility that other provisions of this book containing obligations might not also be interpreted to contain rights, such as in: Article VI-13 (General standards for databases); Article VI-14 (Verification); VI-16 (Access for competent authorities); VI-19(1), (2), (4) (Obligations to update, correct or delete data; VI-21 (Duty to independently assess information provided through information systems); VI-24 (Restrictions on the use of data and information); VI-28 (Confidentiality); VI-29 (Security standards for IT systems).

¹³ Read in conjunction with Art VI-19(3).

¹⁴ Read in conjunction with Art VI-19(3).

B. Model Rules

Chapter 1: General Provisions

VI-1 Scope and application of Book VI

(1) Book VI applies to the following information management activities of public authorities based on EU law

- (a) exchange of information according to a structured information mechanism,
- (b) exchange of information under a duty to inform without prior request,
- (c) establishment and use of a database.

Book VI does not apply to information management activities legally confined to a single Member State with no information exchange with either another Member State or an EU authority.

(2) Rules in books I to V of these model rules on other information management activities remain unaffected.

(3) EU law and national laws on access to documents remain unaffected.

VI-2 Definitions

(1) A structured information mechanism means a pre-defined workflow allowing authorities to communicate and interact with each other in a structured manner beyond the general obligations of mutual assistance according to Book V.

(2) A duty to inform is an obligation for an authority which exists under EU law to provide data or information to another authority without prior request.

(3) Database means a structured collection of data supported by an IT system and managed by a public authority, which provides at least one other competent authority at EU or Member State level with access to stored data without prior request.

(4) An information system is either a specific software or IT infrastructure (IT system) or an organizational infrastructure supporting inter-administrative information exchange or establishing a database.

(5) Participating authority means any authority taking part in an information management activity within the scope of this book, be it as a competent authority, a contact point, a management authority, a verification authority or a general supervisory authority.

(6) `Data supplying authority` means a competent authority supplying data to other competent authorities according to a duty to inform or entering data into a database.

(7) `Person concerned` means any natural or legal person identifiable, directly or indirectly, by reference to data exchanged or stored by an information management activity within the scope of this book.

VI-3 Need for a basic act

(1) A basic act shall be adopted before an information management activity within the scope of this book may be performed. No duty to perform such an activity shall exist without a basic act.

(2) A basic act may take the form of a regulation, directive, decision, or any other instrument which has binding legal effect.

(3) Notwithstanding additional requirements in other articles of this book, the basic act shall clearly establish

- (a) either the power or the duty to perform the relevant information management activity,
- (b) the purpose for which the relevant information management activity shall be performed,
- (c) the competent authorities according to Article VI-6 and their responsibilities, or a power to designate such an authority,
- (d) the Management Authority according to article VI-8,
- (e) the Supervisory Authority according to article VI-30,
- (f) limitations on the right to exchange and receive information or to store data in a database,
- (g) the applicable law,
- (h) any specific requirements concerning the mechanism for exchanging information including the structure and security requirements of information systems, and
- (i) additional aspects specified in other articles of this book.

(4) By way of derogation from paragraphs 1 to 3 an information management activity may be performed without a basic act provided that the action falls within the competences of the Union and is performed in order to implement a pilot project of an experimental nature designed to test the feasibility of an action and its usefulness. The relevant information management action may be performed without a basic act for not more than two consecutive years.

VI-4 Evaluation of information management activities

(1) The Commission or another body adopting the relevant basic act shall produce an overall evaluation of each information management activity; the evaluation shall be transmitted to the European Parliament and the Council. The interval for evaluations shall be defined in the basic act.

(2) For this purpose, if applicable, the Management Authority under Article VI-8 for the respective information management activity shall submit to the Commission regular reports on the activity's technical functioning, communication infrastructure, technical and information security and the bilateral and multilateral exchange of information through the system. If a Supervisory Authority has been established pursuant to Article VI-30, it shall submit to the Commission regular reports on its findings resulting from its supervisory activities. These reports shall be annexed to the overall evaluation.

(3) With respect to the processing of personal data in databases, a joint report shall be established by the National Supervisory Authorities and the European Data Protection Supervisor and shall be sent to the European Parliament, the Council, the Commission and the concerned Management Authority or Agency at regular intervals. If the legislator has assigned the external supervision to the European Data Protection Board according to Article VI-39(1) and (3) the board shall establish the report. The report shall take into account the results of data protection audits according to Articles VI-36(3) and VI-37(3).

VI-5 Duties of sincere cooperation with regard to information systems

(1) Public authorities using an information system shall ensure the efficient functioning of the system within their jurisdiction.

(2) Public authorities using an information system shall ensure effective communication between themselves and with the Management Authority.

VI-6 Competent authorities

(1) For every information management activity each relevant Member State shall establish or designate an authority, or authorities, which will be responsible for performing that activity. Each Member State shall communicate to the Commission or, if established, to the Management Authority a list of these competent authorities, as well as any amendments thereto, as soon as possible after their designation. If a Member State designates more than one competent authority the Member State shall clearly define the respective allocation of responsibilities in that list.

(2) The Commission shall maintain a list of all competent EU authorities. If the Union designates more than one competent authority the Commission shall clearly define their respective responsibilities in that list.

(3) The Commission shall maintain an aggregated list of all competent authorities for each information management activity, and shall distribute that list to all authorities involved. Where applicable the aggregated list shall also contain the allocation of responsibilities according to the preceding paragraphs. This aggregated list shall be reviewed and updated at regular intervals and at least once a year.

VI-7 Contact points

(1) If laid down in a basic act each Member State involved and the Union shall designate a contact point.

(2) Contact points shall

- (a) support competent authorities in performing their designated information management activities,
- (b) support the resolution of conflicts, and
- (c) support and coordinate the use of information systems.

(3) Contact points shall ensure the availability of an on-duty officer reachable outside office hours for emergency communications on a 24-hour/7-day-a-week basis.

VI-8 Management authorities for IT systems

(1) If an information management activity is supported by an IT system a management authority is set up or identified in the basic act. The management authority can be the EU's IT System Agency.

(2) The management authority shall be responsible for the operational management of the respective IT system. The tasks of the management authority include:

- (a) ensuring the security, continuous and uninterrupted availability, high quality of service for users, high level of data protection, maintenance and development of the respective IT system,
- (b) registering the competent authorities according to Article VI-6 and, if applicable, the contact points, and granting them access to the respective IT system,
- (c) performing processing operations on personal data in the respective IT system, only where provided for in the respective basic act,
- (d) supporting the evaluation tasks of the Commission or the body adopting the relevant basic act in accordance with Article VI-4(1). For the purposes of performing this evaluation task, the management authority shall have access to the necessary information relating to the processing operations performed in the respective IT system.

(3) The management authority shall not participate in information management activities involving the processing of personal data except where required by a provision of a Union act.

(4) Each basic act may provide for more detailed rules serving the specific needs of an IT system, and may confer additional operational tasks on the management authority.

VI-9 Principle of transparent information management

(1) Information management activities are undertaken in accordance with the principle of transparent and retraceable data processing.

(2) Data processed as a result of an information management activity performed through an IT system shall be tagged. In the absence of detailed regulation within the basic act or implementing acts, the tag shall contain:

- (a) a record of the data supplying authority, the source of data collection, the authority which collected the data if this is not the data supplying

- authority, and whether restrictions on the exchange or subsequent use apply to that item,
- (b) a record of each information exchange between competent authorities or access to data stored in a database, the subsequent use of that data, as well as the corresponding legal basis for each of these information management activities,
 - (c) a flag as provided for in Article VI-19(5) or Article VI-14(3).
 - (d) Where various data are linked, the tag shall identify such linkage, the authority having requested it, and the corresponding legal basis.

VI-10 Principle of data quality

The data supplying authority shall be responsible for ensuring that the data are accurate, up-to-date and lawfully recorded.

Chapter 2: Structured information mechanisms

VI-11 Standards for structured information mechanisms

- (1) A basic act establishing a structured information mechanism should – when applicable – indicate the use of agreed workflows, the use of forms, dictionaries, tracking mechanisms and other standardising instruments for the members of the network to exchange the relevant information and to cooperate internally.
- (2) With regard to information exchanged through a structured information mechanism the duties to update information laid down in Article VI-19 apply *mutatis mutandis*.
- (3) Structured information mechanisms must be subject to a comprehensive data protection framework as provided for in the basic act in line with the principles underlying Articles VI-19, VI-25 to VI-29, VI-34 to VI-39. In any event the obligation to respect the applicable general data protection law remains unaffected.

Chapter 3: Duties to inform other public authorities without prior request and databases

Section 1: General standards for duties to inform and databases

VI-12 General standards for duties to inform

(1) The exchange of information under a duty to inform may either be regular, at certain time intervals, or triggered by an event as specified in the basic act. Personal data may only be exchanged if they are relevant and limited to the minimum necessary in relation to the purposes of the data exchange.

(2) Where a duty to inform exists, information may be exchanged using a variety of notification types. The competent authority supplying data selects the appropriate notification mechanism, taking into account the nature of the information, the circumstances and aim of its provision, and the specific rules laid down in the basic act and in national implementing rules which establish the duty to inform.

(3) Information may be exchanged by using notification types including:

- (a) emergency notifications,
- (b) standard alert notifications,
- (c) simple information notifications,
- (d) information notifications requiring action, and
- (e) follow-up notifications responding to an existing notification.

(4) In principle, the information will be exchanged in electronic form, including by entering data into an information system designed for the purpose of information exchange. In exceptional and duly justified cases, information may be exchanged in other forms.

VI-13 General standards for databases

(1) Data may only be entered into a database for legitimate purposes as specified in the basic act. Personal data may only be entered if they are relevant and limited to the minimum necessary in relation to the purposes of the database.

(2) Data entered into a database is subject to predefined storage times in accordance with Article VI-26 and VI-27.

VI-14 Verification

(1) A basic act may provide that data and information exchanged between competent authorities under a duty to inform, or entered into a database, shall be verified *ex ante* by a separate verification authority. This verification authority may be the Supervisory Authority according to Article VI-30.

(2) The basic act shall specify a time limit for verification. If no limit is specified, the verification authority shall verify the data within the shortest time possible.

(3) Where, due to the nature of the exchange or to time constraints in urgent or emergency situations, it is not possible to verify data before its communication, it shall be flagged by the competent authority providing that data as unverified and efforts shall be made after dissemination to validate the information transmitted.

(4) The basic act shall specify the verification standards. If no standard is specified, the verification authority shall evaluate whether the information is complete, formally accurate, not evidentially false and legible.

Section 2: Management of information

Subsection 1: Access to data and information

VI-15 Information and access for persons concerned

(1) The data supplying authority shall inform the person concerned in accordance with applicable data protection law about the storage and processing of data relating to him or her. The information shall at least include the categories of data relating to him or her being processed, the competent authority supplying this data, the recipients of the data, and the purpose for which the data will be processed, including the legal basis for such processing in accordance with the relevant provisions of national law.

(2) The person concerned shall have the right to obtain from the data supplying authority or, subject to the conditions laid down in Article VI-30 and VI-33, from the supervisory authority at any time, on request, confirmation as to whether or not data relating to the person concerned are being processed.

Where such personal data are being processed, the authority shall provide information in accordance with applicable data protection law. Paragraph (1) sentence 2 applies *mutatis mutandis*.

(3) The competent authority supplying the data shall inform the person concerned of his or her rights to access personal data relating to him or her, including the right to request either that inaccurate data is corrected or that unlawfully processed data is deleted as soon as possible, and the right to receive information on the procedures for exercising these rights.

(4) The supervisory authority shall ensure that persons concerned can effectively exercise their right of access in accordance with applicable data protection law.

(5) Information may only be withheld in the context of paragraphs 1 and 2 for the purpose of:

- (a) prevention, investigation, detection and prosecution of criminal offences;
- (b) national security, public security or defence of the Member States;
- (c) protection of important economic or financial interests of a Member State or of the Union, including monetary, budgetary and taxation matters;
- (d) protection of the rights and freedoms of others.

The authority is obliged to inform the person concerned about the grounds of withholding of information and rights of recourse to the competent data protection supervisor. Article 20(3) to (5) Regulation (EC) No 45/2001 applies *mutatis mutandis*.

VI-16 Access for competent authorities

(1) Access to information supplied under a duty to inform or stored in a database shall be restricted to those authorities for which access is essential for the performance of their duties, and limited to the extent that the data is necessary for the fulfillment of their tasks in accordance with the purposes for which the information was shared.

(2) Clear and comprehensive rules regarding the authorities which may access and use such information, and the conditions under which access and use is permissible, shall be laid down in the basic act and in relevant implementing provisions for each duty to inform or database.

VI-17 Access management rules in information systems

For each information system through which public authorities exchange data under a duty to inform or which establishes a database, clear and comprehensive access management rules shall be established in the basic act and in relevant implementing provisions.

Subsection 2: Alteration and deletion of data and information

VI-18 Competences to alter and delete data

- (1) Information contained within a database may be altered or deleted by:
 - (a) the competent authority which has supplied data under a duty to inform or entered data into a database,
 - (b) the Supervisory Authority under Article VI-33.

- (2) Where explicitly authorised by the basic act, the right to alter or delete information within a database may also be conferred on one of the bodies listed pursuant to Article VI-6.

VI-19 Obligations to update, correct or delete data

- (1) If the competent authority supplying the data finds that information transmitted to other authorities, or that data entered into a database are inaccurate or were processed contrary to the relevant national or EU law, it shall check the information or data and, if necessary, correct or delete them immediately.

- (2) The basic act may create an obligation for competent authorities supplying data to update information at specified regular intervals.

- (3) Any person concerned may request that data relating to him or her which are inaccurate shall be corrected and that data recorded unlawfully or which may no longer be stored shall be blocked or deleted by the data supplying authority without delay.

- (4) If a participating authority which did not supply the data has evidence to suggest that data are inaccurate or were processed contrary to the relevant national or EU law, this body must inform the data supplying authority

immediately. The data supplying authority shall check the data and, if necessary, correct or delete them immediately.

(5) In cases where the person concerned or another participating authority contests the accuracy of the data but the accuracy cannot be established, the data shall, at the request of the person concerned, be marked by the data supplying authority with a flag denoting this dispute. If a flag exists, it may be removed only with the permission of the person concerned or of the other participating authority. Without prejudice to this limitation, a flag may be removed in accordance with a decision of the competent court or an independent data protection authority.

(6) The respective powers of the Supervisory Authority under Article VI-33 remain unaffected.

Subsection 3: Use of data and information

VI-20 Duty to use information in activities and to consult databases

Competent authorities are obliged to consider information supplied by other competent authorities under a duty to inform or entered into a database when carrying out their activities. They are particularly obliged to search for and to consult information available in databases.

VI-21 Duty to independently assess information provided through information systems

(1) Information provided through information systems must be subject to a separate assessment by the competent authority considering an administrative action based on such information. Where the acting competent authority doubts the validity of the information, it shall immediately consult the competent authority supplying that information through the information system.

(2) Competent authorities shall ensure that full use is made of the relevant features of an information system so as to obtain a clear and complete picture of the information and to avoid false statements of facts.

VI-22 Duty to take specific action as a result of information

Where an obligation to act as a result of a notification exists, the competent authorities shall ensure that measures as specified in the basic act are carried out and, where required, inform other relevant competent authorities of the actions taken by sending a follow-up notification.

VI-23 Exemption clause

In exceptional cases, competent authorities may be exempt from complying with the duties listed in Articles VI-21 and VI-22. Such non-compliance must be restricted to a limited number of justified situations which are clearly specified in the basic act or in relevant implementing rules.

VI-24 Restrictions on the use of data and information

- (1) Competent authorities shall exchange and process data only for the purposes defined in the relevant provisions of EU law providing for the exchange of such information.
- (2) Processing for other purposes shall be permitted solely with the prior authorisation of the competent authority supplying data and subject to the applicable law of the receiving or retrieving competent authority. The authorisation may be granted insofar as the applicable law of the supplying authority permits.
- (3) The dissemination of data and information shared between public authorities to third parties requires a specific legislative authorisation.

Subsection 4: Data protection and information security

VI-25 General data protection duties

- (1) All information management activities must comply with the requirements of specific data protection applicable to the matter.
- (2) The basic act shall clearly define for each regulated information management activity the categories of data and information which may be gathered, exchanged and stored. Before supplying information, the competent

authority shall ensure that the information falls within those categories of data and information.

VI-26 Storage, blocking and deletion of data exchanged under a duty to inform

(1) Data relating to a person concerned and stored in a database as a result of an information exchange under a duty to inform, shall be accessible only for so long as necessary to achieve the purposes for which they were supplied. If a duty to inform is triggered by a specified event the data shall only be accessible until the administrative tasks connected with that event are accomplished and no longer than six months after the formal closure of the relevant procedure. After that period personal data shall be blocked. The basic act shall set rules for the standard and maximum period within which data are accessible.

(2) Blocked data shall, with the exception of their storage, only be processed for purposes of proof of an information exchange with the consent of the person concerned, unless processing is necessary for a subsequent court proceeding or is requested for overriding reasons in the public interest.

(3) Blocked data shall not be searchable or accessible to competent authorities using the database. Searches which result in blocked data shall return a negative result to the requesting authority.

(4) Blocked data shall automatically be deleted three years after the start of the blocking period. Any decision to retain data for a longer period must be based on a comprehensive case-specific assessment, and shall regularly be reviewed.

(5) Nothing in this article shall prejudice the right of a Member State to keep national files of data relating to a particular notification issued by that Member State, or a notification in connection with which action has been taken on the Member State's territory. The duration of such data storage shall be governed by national law.

VI-27 Storage, blocking and deletion of data beyond procedures associated with a duty to inform

(1) Data may be accessible through databases irrespective of the limits set out in Article VI-26 in accordance with the rules of the basic act for the respective database.

(2) Without prejudice to the maximum data retention period provided for in the basic act, data stored in a database shall regularly be reviewed by the data supplying authority in order to assess whether they are still required for the purpose for which they were lawfully stored.

(3) Data relating to a person concerned and stored in a database shall be blocked by the supplying authority as soon as they are no longer necessary for the purpose for which they were lawfully stored or after the maximum total storage time provided for in the basic act.

(4) Sentence 4 of paragraph (1) and paragraphs (2) to (5) of Article VI-26 apply to databases *mutatis mutandis*.

(5) This article shall not exclude the possibility of deleting data earlier than the established storage time subject to an explicit request of the data supplying authority and the consent of the person concerned. Such a deletion must be notified to all participating authorities.

VI-28 Confidentiality

Public authorities, their officials and other servants, including independent experts or bodies appointed by a public authority, shall not disclose information which they have acquired through information management activities and which is covered by the obligation of professional secrecy or other equivalent duties of confidentiality. This obligation shall also apply after members of staff leave office or employment, or after the termination of their activities.

VI-29 Security standards for IT systems

For each IT system through which public authorities exchange data under a duty to inform or which establishes a database, clear and comprehensive standards for risk adequate security measures shall be established in the basic act and in relevant implementing provisions.

Chapter 4: Supervision and dispute resolution

Section 1: General supervision and dispute resolution

VI-30 Establishment of a Supervisory Authority

- (1) If an information management activity is supported by an information system, the relevant basic act shall establish or designate a Supervisory Authority and regulate its organisational structure.
- (2) The Functions of the Supervisory Authority shall be:
 - (a) to supervise the information management activities of all participating authorities in order to ensure compliance with these model rules, the basic act and the relevant EU law,
 - (b) to resolve conflicts between participating authorities through mediation procedures according to article VI-31, or through binding inter-administrative decisions according to article VI-32,
 - (c) to assume the role of the appeal authority if EU law establishes an administrative appeal procedure,
 - (d) to assume the role of a verification authority pursuant to article VI-14 if the relevant EU law requires the verification of data or information,
 - (e) notwithstanding the competences of external data protection supervisory authorities according to Section 2 of this chapter, to ensure compliance with the relevant data protection laws. The Supervisory Authority shall cooperate with the data protection authorities in order to establish an effective and efficient data protection supervision,
 - (f) to hear complaints about refusal of access to documents in a database as defined in Article VI-2(3), and to grant such access in accordance with the applicable EU law.

VI-31 Mediation procedure between participating authorities

- (1) Where a participating authority is of the opinion that a measure taken by another participating authority is either incompatible with the basic act or is likely to affect the objectives of the information management activity, it shall refer the matter to the Supervisory Authority. The Supervisory Authority shall serve as mediator.
- (2) The relevant participating authorities and the Supervisory Authority shall make every effort to solve the problem.
- (3) Participating authorities concerned by the outcome of a mediation shall report on follow-up measures undertaken.

VI-32 Binding inter-administrative decisions

(1) The Supervisory Authority shall be vested with the power to review the legality of information management activities against the standards laid down in the basic act and other rules and principles arising from EU law. The Supervisory Authority may adopt a decision to order participating authorities to comply with the relevant provisions.

(2) The Supervisory Authority may act either on its own initiative or on the basis of a request lodged by a participating authority. The Supervisory Authority shall strive to resolve a conflict through a mediation process as per Article VI-31 before adopting a binding inter-administrative decision. The model rules of Book III apply *mutatis mutandis*.

(3) Save for the powers pursuant to Article VI-33, the Supervisory Authority shall hear and investigate complaints of concerned persons with respect to information management activities.

VI-33 Power to grant access to data and to alter or delete data

(1) On the request of a person concerned, the Supervisory Authority shall inform the respective person concerned in accordance with article VI-15 about his or her data introduced into an information system.

(2) On the basis of a request by a person concerned pursuant to article VI-19 (3), or following a decision by a Data Protection Authority, or a judicial authority, the Supervisory Authority shall be afforded the right to delete or alter inaccurate or unlawful data introduced into an information system.

Section 2: Data protection supervision of databases

VI-34 Internal supervision by Data Protection Officers

(1) All public authorities participating in a database shall appoint at least one person as data protection officer.

(2) For the appointment and tasks of the data protection officers, Article 24 of Regulation (EC) No 45/2001 applies insofar as no specific rules are applicable, in case of Member State authorities *mutatis mutandis*.

VI-35 Cooperative external data protection supervision of databases

If the legislator does not assign the external data protection supervision of databases to the European Data Protection Board under Article VI-39 the external data protection supervision of databases is organized in a cooperative structure according to articles VI-36 to VI-38.

VI-36 External supervision by the European Data Protection Supervisor

(1) With respect to the processing of personal data in databases, the European Data Protection Supervisor shall be responsible for ensuring, in accordance with Regulation (EC) No 45/2001 and any other EU law relating to data protection, that the fundamental rights and freedoms of natural persons, and in particular their right to protection of personal data as established in Article 8 of the Charter of Fundamental Rights and Article 16 of the Treaty on the Functioning of the European Union, are respected by the Union institutions and bodies.

(2) With respect to the processing of personal data in databases, the European Data Protection Supervisor shall independently monitor the lawfulness of the processing of personal data by EU authorities, especially the data's transmission to and from the database. If a management authority is set up pursuant to Article VI-8, the European Data Protection Supervisor shall particularly monitor the exchange and further processing of supplementary information or actions undertaken by the management authority.

(3) The European Data Protection Supervisor shall ensure that an audit of the personal data processing activities of participating EU authorities is carried out in accordance with international auditing standards at least every four years. The participating authorities shall supply any information requested by the European Data Protection Supervisor, grant him access to all documents and records, and allow him access to all their premises, at any time.

(4) For the purpose of this article, the European Data Protection Supervisor shall fulfill the duties provided for in Article 46, and exercises the powers granted in Article 47 of Regulation (EC) No 45/2001.

VI-37 External data protection supervision by National Supervisory Authorities

(1) With respect to the processing of personal data in databases, the authority or authorities designated in each Member State and endowed with the powers referred to in Article 28 of Directive 95/46 or Article 25 of Council Framework Decision 2008/977/JHA (the "National Supervisory Authority") shall independently monitor the lawfulness of the processing of personal data by actors of their Member States, including the data transmission to and from the database and the exchange and further processing of supplementary information.

(2) The National Supervisory Authority of the Member State in which the data subject is located and, where necessary, the National Supervisory Authority of the Member State which transmitted the data, shall assist the data subject and, if requested, advise him or her on exercising his or her right to correct or erase data. Both national supervisory authorities shall cooperate to this end. Requests for such assistance may be made to the national supervisory authority of the Member State in which the data subject is located. This authority shall communicate the requests to the authority of the Member State which transmitted the data.

(3) The National Supervisory Authority shall ensure that an audit of the data processing operations by participating Member State authorities is carried out in accordance with international auditing standards at least every four years. The participating authorities shall supply information requested by the respective national data protection supervisory authority, give it access to all documents and records, and allow it access to all their premises, at any time.

VI-38 Cooperation between National Supervisory Authorities and the European Data Protection Supervisor

(1) With regard to the processing of personal data in databases, the National Supervisory Authorities and the European Data Protection Supervisor, both acting within the scope of their respective competences, shall cooperate actively in the context of their responsibilities, and shall ensure coordinated supervision of the databases. To this end, they shall exchange relevant information, assist each other in carrying out audits and inspections, examine difficulties of interpretation or implementation of the applicable data protection rules, study problems related to the exercise of independent supervision or to the exercise of the rights of data subjects, draw up harmonised proposals for joint solutions to any problems and promote awareness of data protection rights, as necessary. If an incompetent authority is addressed by a data subject with a request, the incompetent authority

shall transfer the request to the competent authority and shall inform the data subject of the transmission.

(2) Each supervisory authority shall take all appropriate measures necessary to attend to the request of another supervisory authority without delay and no later than one month after having received the request. Such measures may include, in particular, the transmission of relevant information on the course of an investigation, or enforcement measures to bring about the cessation or prohibition of processing operations contrary to the applicable law.

(3) Book V on mutual assistance shall apply without prejudice to the above paragraphs.

(4) The legislator can assign the supervision of the whole data processing in a database either to the European Data Protection Supervisor, a National Supervisory Authority or a group of Supervisory Authorities (representative supervision).

VI-39 Data protection supervision of databases by the European Data Protection Board

(1) With respect to the processing of personal data in databases, the legislator may assign the entire external supervision of such a database to a European Data Protection Board. The Board shall be composed of the head of one supervisory authority of each Member State and of the European Data Protection Supervisor and it shall take decisions by a simple majority of its members. If a European Data Protection Board is set up by general European data protection law, the supervision of databases can only be assigned to this Board. In this case, the Board shall establish at least one subgroup for the supervision of databases. In no case, the Commission shall have the right to participate in the activities and meetings of the Board concerning the supervision of databases.

(2) The national supervisory authorities and the EDPS shall ensure that the European Data Protection Board or the subgroup is vested with adequate human, technical and financial resources, premises and infrastructure for the effective performance of its duties and tasks.

(3) The European Data Protection Board shall fulfill the tasks and duties provided for in articles VI-36 and VI-37 and shall exercise the powers granted in these articles. For this purpose it shall adopt a supervision plan for each database every year. In this plan parts of the tasks and duties, namely the

supervision of Member States activities, can be delegated to particular national supervisory authorities, groups of national supervisory authorities or the EDPS. In case of a delegation, the national supervisory authorities and the EDPS are bound by the delegation and other decisions of the Board. The delegation can be revoked at any time.

(4) For the purpose of fulfilling its tasks and contributing to foster consistency in the application of the rules and procedures for data processing, the European Data Protection Board shall cooperate as necessary with other supervisory authorities.

Chapter 5: Remedies and Liability

VI-40 Right to compensation in relation to composite information management activities

(1) Any person suffering damage from unlawful processing operation in the context of an information management activity, or any act incompatible with the provisions laid down in the basic act, shall be entitled to receive compensation from the participating authority responsible for the damage suffered or the authority of the jurisdiction in which the claimant is resident or, in the case of a legal person, has its registered offices.

(2) In the event that the participating authority against which an action is brought is not the participating authority responsible for the information management activity having caused the damage, the latter shall be required to reimburse, on request, the sums paid as compensation, unless the use of the data by the participating authority requesting reimbursement infringes the basic act.

(3) If any failure by a participating authority to comply with its obligations under the basic act causes damage to another participating authority, the former authority shall be held liable for such damage, unless and in so far as the other participating authority failed to take reasonable steps to prevent the damage from occurring, or to minimise its impact.

(4) The damages will be calculated and compensated in accordance with the general principles common to the laws of the Member States.

VI-41 Penalties for unlawful data processing

Participating authorities shall ensure that any data processing as part of an information management activity within the scope of this book contrary to the basic act is subject to effective, proportionate and dissuasive penalties.

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C. Explanations

Chapter 1: General provisions

VI-1 Scope and application of Book VI

- (1) As explained in the introduction¹⁵ and in accordance with Article I-1(3) Book VI follows a **comprehensive approach concerning the authorities** to which Book VI applies. The scope of application comprises horizontal and vertical information management activities and therefore not only information management activities of EU authorities but also of national authorities.
- (2) By contrast, the substantial scope of application covers not all existing information management activities. Book VI is **focused on certain inter-administrative information exchange activities** as listed in Article VI-1(1) sentence 1 and defined in Article VI-2(1) to (3), namely via a structured information mechanism, under a duty to inform without prior request, or through the establishment and use of a (shared) database. As stipulated in Article VI-1(1) sentence 2 and following the general approach of the ReNEUAL Model Rules purely internal activities within a single Member State are not covered by the rules of Book VI. As follows from the definitions in Article VI-2(1) to (3) neither are internal information management activities within a single EU authority.¹⁶
- (3) As Article VI-1(2) highlights, **some information management activities are regulated in other books** of these model rules, in particular Book V, dealing with information exchange under the duty to mutual assistance¹⁷, and Chapters 3 and 4 of Book III (Unilateral Single-Case Decision Making) regarding the gathering of information, the right to a hearing and inter-administrative consultations.
- (4) Due to limited resources **a number of information management activities are not regulated** by the ReNEUAL Model Rules at this stage of the ReNEUAL project. In addition, in some cases comprehensive legal provisions already exist

¹⁵ See para 3 of the introduction.

¹⁶ See Book V, paras 6 – 8 of the explanations.

¹⁷ See paras 5, 6 of the introduction.

for such activities. This is especially the case for rules on access for private parties to documents held by public authorities. Relevant legal instruments, including Regulation 1049/2001¹⁸ and the INSPIRE Directive 2007/2¹⁹, therefore remain unaffected. Also, the (public) use of public sector information to inform or warn the general public²⁰ remains outside the scope of the ReNEUAL Model Rules. Such activities may be integrated into these model rules at a later stage.

VI-2 Definitions

- (5) **Article VI-2 complements Article I-4** and contains definitions of terms which are especially important for Book VI. This is for instance the case for the definitions in paragraphs (1) to (3) which concern the sub-categories of information management authorities to which Article VI-1(1) renders Book VI applicable. The definition of the term “information system” is relevant as some rules of this book apply only to activities supported by such a system.²¹ Paragraphs (5) and (6) define types of authorities which are not defined in one of the following ReNEUAL Model Rules.²²

In contrast, **some terms used in Book VI remain undefined**. This is especially the case with regard to terms like for instance “personal data” or “data processing”, which are already well defined in existing EU data protection law

¹⁸ Regulation (EC) 1049/2001 of the European Parliament and of the Council of 28 May 2001 regarding public access to European Parliament, Council and Commission documents [2001] OJ L145/43.

¹⁹ Directive 2007/2/EC of the European Parliament and the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) [2007] OJ L108/1.

²⁰ Regulation (EC) 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Safety Authority and laying down procedures in matters of food safety [2002] OJ L31/1 last amended by Regulation (EC) 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part Four [2009] OJ L188/14, Art 10; Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety [2001] OJ L11/4 last amended by Regulation (EC) 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny [2009] OJ L188/14, Art 5.

²¹ See para 20 of the introduction.

²² In contrast to those types of authorities as defined in Arts VI-6, VI-7, VI-8, VI-14, VI-30.

and need no further definition.²³ The terms “data” and “information” are defined neither in accordance with existing EU law which does not differentiate between the two.²⁴ This is an adequate approach also for these model rules.

- (6) The definition of “**structured information mechanism**” Paragraph 1 is partially inspired by existing EU law.²⁵ In contrast to some existing EU law, the definition in Article VI-2(1) stipulates that this specific and advanced information management activity is to be differentiated from information exchanged under the basic duties to mutual assistance as provided in Book V. The differences between “simple” mutual assistance according to Book V and structured information mechanisms are further developed in Article III-12(1). According to the definition, information workflows within one authority are not covered and therefore Book VI does not apply to them.²⁶
- (7) According to Article VI-2(2) a “**duty to inform**” as regulated by Book VI comprises only duties to inform another authority. The lack of a request differentiates the duty to inform from (informational) mutual assistance as defined in Article V-2. The provision of information may be horizontal from one Member

²³ For example Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/3 last amended by Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty [2003] OJ L284/1, Art 2(a); Commission Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final, Art 4(2).

²⁴ For example Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/3 last amended by Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty [2003] OJ L284/1, Art 2(a); Commission Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final, Art 4(2).

²⁵ Compare Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (‘the IMI Regulation’) [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System (‘the IMI Regulation’) [2013] OJ L354/132, Art 5(d).

²⁶ See also para 2 of the explanations.

State authority to another Member State authority or between separate EU authorities, as well as vertical between Member States' and EU authorities. Consequently, duties to inform another official within the same authority as well as duties to inform the public or private parties are not regulated by the ReNEUAL Model Rules.²⁷ The provision of information may be regular, at specified time intervals or triggered by a specific event.

- (8) The definition of “**database**” in paragraph 3 as the third information management activity regulated by these model rules is inspired by existing EU law defining the term “filing system”.²⁸ In addition to such filing systems a database must be supported by an IT system. Similar to the two other activities regulated by Book VI, and in accordance with the focus of Book VI on composite information management, a database used by only a single authority is not covered by the definition in paragraph 3.²⁹ In addition, databases lawfully used only by authorities from one Member State are not regulated by Book VI according to Article VI-1(1) sentence 2. In other words, Book VI applies only to databases shared by at least two public authorities from different jurisdictions or shared by at least two EU authorities.
- (9) The term “**information system**” is used in very diverse manners by different EU legal acts as well as in the academic literature. Paragraph 4 defines it not as a specific information activity but rather uses the term to further qualify the three activities listed in Article VI-1(1)(a) to (c). Therefore the term is not decisive for the scope of application of Book VI but for the applicability of some more demanding provisions of Book VI.³⁰ In contrast to databases which are by definition supported by an IT system,³¹ structured information mechanisms and duties to inform may, but will not always be supported by an information system.

²⁷ See also para 2 of the explanations.

²⁸ Compare Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/3 last amended by Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty [2003] OJ L284/1, Art 2(c); also Commission Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final, Art 4(4).

²⁹ See also para 2 of the explanations.

³⁰ See also para 20 of the introduction.

³¹ See Article VI-2(3).

- (10) Such qualified standards are justified either if an information activity is supported by an IT system, i.e. either a specific software for the exchange of information or an IT infrastructure,³² or the activity is supported by an organizational infrastructure, i.e. organizational arrangements like contact points (Article VI-7), management authorities (Article VI-8) or supervisory authorities (Book VI, Chapter 4).
- (11) Individual rights established in the context of this book are in principle rights of “**persons concerned**” which includes both natural and legal persons. The definition of the term persons concerned is made irrespective of the fact that rights to data protection might principally be enjoyed by natural persons only. The personal scope of protection of the norms contained in this book therefore needs to be interpreted in each individual situation but taking into account that in principle persons concerned can be both natural and legal persons. The final part of the definition is inspired by data protection rules³³ but extended to legal persons. Like in data protection law a person concerned is identifiable only by means reasonably likely to be used.

³² Compare Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (‘the IMI Regulation’) [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System (‘the IMI Regulation’) [2013] OJ L354/132, Art 8(1)(a); see also Regulation (EU) 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice [2011] OJ L286/1 last amended by Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1.

³³ See Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31 last amended by Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty [2003] OJ L284/1, Art 2(a); Commission Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final, Art 4(1).

VI-3 Need for a basic act

- (12) Article VI-3 stipulates an **obligation to base an information management activity on a basic act** if it falls within the scope of Book VI. In contrast, other books of these model rules contain themselves a legal basis for information management activities like mutual assistance (→ Book V) or basic forms of information gathering (→ Book III). This is not possible in Book VI as this book applies to more advanced activities which need to be specified in greater detail than the general framework of Book VI can provide. Book VI therefore determines certain transversal issues but does not change the need for a basic act.
- (13) The rule of law requires that administrative actions which may infringe fundamental rights are based on a legal justification. This **principle of legality** is also stipulated in Article 52(1) sentence 1 of the Charter of Fundamental Rights. This principle does not only apply to legally binding acts like an administrative decision as regulated by Book III. Article 8(2) sentence 1 of the Charter provides that personal data may only be processed on the basis of the person concerned or some other legitimate basis laid down by law.³⁴ Administrative information management activities will in many if not in most cases concern at least partially personal data. To establish any of the advanced forms of information management activities covered by Book VI solely on the willingness of the persons concerned to give their consent is not an adequate option. Therefore, Article VI-3 is merely reiterating a constitutional obligation with regard to the processing of personal data and insofar only declaratory.
- (14) Consequently, Article VI-3 establishes constitutively the obligation to base an activity on a basic act only for those information management activities which concern absolutely no personal data. This **obligation** is justified for **mainly two reasons**: First, such an approach guarantees legal certainty as in many cases it might still be possible that an information management activity also comprises the processing of personal data. Second, information management activities regulated in Book VI concern the information exchange between at least two and in most cases between a large number of distinct public authorities from various

³⁴ See also European Parliament legislative resolution of 12 March 2014 on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) P7_TA(2014)0212, Art 6(3).

jurisdictions.³⁵ Under such circumstances a clear and stable legal basis for the interaction between those authorities provides not only for a clear allocation of responsibilities but also for administrative effectiveness and efficiency. The derogation clause in Article VI-3(4) provides for needed flexibility in case of pilot projects. In addition, according to Article VI-3(2) the basic act must not necessarily be a legislative act. Thereby, the administration is empowered to choose between different levels of formalization. If feasible and lawful the information management activity may also be based on a cascade of basic acts with different legal nature.

- (15) An important source of inspiration for the wording of Article VI-3(1) and (4) has been Article 54(1) and (2)(a) of the Financial Regulation³⁶ which provides for a similar obligation to base budget implementation activities on a basic act. In addition, Article VI-3(2) has been inspired by Article 2(d) of the Financial Regulation.³⁷
- (16) Article VI-3(3) lists a **number of issues which must be regulated in the basic act** but does not restrict the discretion of the relevant body concerning the concrete arrangements of these issues. These obligatory aspects define the activity in important details (a, b, f, h) and concretize the organizational architecture for its implementation within the abstract framework established by other articles of Book VI (c, d, e). The general list of Article VI-3(4) is complemented by other provisions of Book VI³⁸ for more specific information management activities. In contrast to Article VI-3(3), some of these provisions leave it to the discretion of the relevant body to regulate the respective issue in the basic act or not.

³⁵ See para 3, 13 of the introduction.

³⁶ Regulation (EU, EURATOM) 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) 1605/2002 [2012] OJ L298/1 last amended by Regulation (EU, Euratom) 547/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EU, Euratom) 966/2012 on the financial rules applicable to the general budget of the Union [2014] OJ L163/18.

³⁷ Regulation (EU, EURATOM) 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) 1605/2002 [2012] OJ L298/1 last amended by Regulation (EU, Euratom) 547/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EU, Euratom) 966/2012 on the financial rules applicable to the general budget of the Union [2014] OJ L163/18.

³⁸ See Arts VI-4(1) sentence 3, VI-8(4), VI-9(2) sentence 2, VI-11(1) and (3), VI-12(1) sentence 1 and (2) sentence 2, VI-13(1) sentence 1, VI-14(1) sentence 1, (2) sentence 1, (4) sentence 1, VI-16(2), VI-17, VI-18(2), VI-19(2), VI-22, VI-23, VI-25(2) sentence 1, VI-26(1) sentence 4, VI-27(1), VI-29, and VI-30(1).

VI-4 Evaluation of information management activities

- (17) Obligations to regularly prepare **general evaluative reports** exist for most information management activities to which Book VI is applicable.³⁹ They allow for the relevant administrative bodies as well as for legislative bodies to reconsider the existing organizational and legal arrangements and to propose modifications to optimize them, adapt them to new circumstances or to abolish duties to implement information management activities no longer needed or proved dysfunctional. The intervals specified for reports differ for the various existing activities and these differences seem to be justified. Therefore, they shall be defined in the basic acts.
- (18) In some cases certain information may not be directly accessible to the body which is responsible for the overall report. Where such information is needed by that body, paragraph 2 obliges relevant authorities to provide additional information in specific reports. These specific reports shall be annexed to the overall evaluation in order to allow the addressees of the overall report to double-check.
- (19) While the reports mentioned so far enable an evaluation with regard to the objectives of the information management activity itself, the **data protection reports** regulated in paragraph 3 highlight data protection as an especially important aspect of information management. Data protection reports, similar to

³⁹ For example Proposal for a Regulation of the European Parliament and of the Council Establishing the European Border Surveillance System (EUROSUR), COM(2011) 873 final, Art 20(3); Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 50; Decision 2119/98/EC of the European Parliament and of the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community [1998] OJ L268/1 last amended by Regulation (EC) 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 9/468/EC with regard to the regulatory procedure with scrutiny [2009] OJ L188/14, Art 14; Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety [2001] OJ L11/4 last amended by Regulation (EC) 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny [2009] OJ L188/14, Art 4(d); Regulation (EC) 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) [2006] OJ L381/4, Art 50(4), (5).

general evaluation reports are a wide-spread feature of the recent legal infrastructure for advanced information management activities⁴⁰ and represent a best-practice to be included in the model rules. Data protection reports shall support the political evaluation of information management activities and should be based on results of data protection audits according to Articles VI-36(3) and VI-37(3). The latter directly serve supervisory functions and are therefore supplementary. They do not substitute them.

VI-5 Duties of sincere cooperation with regard to information systems

- (20) Article VI-5 specifies the general duty of sincere cooperation. Thereby, it serves as a standard against which for instance the supervisory authority can evaluate action of participating authorities. Such sincere cooperation is imperative for composite information management and may *inter alia* oblige the participating authorities to establish or to comply with set of interoperability standards.

VI-6 Competent authorities

VI-7 Contact points

VI-8 Management authorities for IT systems

- (21) Articles VI-6, VI-7 and VI-8 establish **basic elements of a legal architecture of EU information systems**, i.e. the functions of competent authorities, contact

⁴⁰ Regulation (EC) 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) [2006] OJ L381/4, Art 46(3); Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) [2007] OJ L205/63, Art 62(3); Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132, Art 21(4); Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 32(3).

points and IT systems management authorities. While the establishment of competent authorities is obligatory for all information management activities, the establishment of a management authority is only obligatory if an activity is supported by an IT system. The establishment of contact points even is depending on a respective obligation in the basic act.

- (22) These basic elements may be **supplemented** for duties to inform and databases **by additional functional elements** regulated in Articles VI-14 (verification), VI-30 to VI-33 (general supervision) and VI-34 to VI-39 (data protection supervision).
- (23) **A separate authority does not need to exist for all these functions.** For instance, a contact point may also serve as a verification authority. In contrast, other functions may not be the responsibility of only one authority. For instance, according to Article 8(3) of the CFR data protection supervisors have to be independent. They may neither act as competent authorities nor as (general) supervisory authorities which are also responsible for the effective implementation of an information management activity. Such joint responsibilities would compromise effective data protection supervision. Similar disfunctions might arise in the case of joint responsibilities as a competent authority and a verification authority, or as a general supervisory authority.

VI-6 Competent authorities

- (24) According to Article VI-6(1), **competent authorities bear the main and direct responsibility** for performing an information management activity. The competent authority in most case will be the authority which is also preparing and implementing the external or final administrative action triggering or supported by the inter-administrative information exchange. In addition, other provisions of these model rules place a number of important responsibilities on the (data supplying) competent authorities.⁴¹
- (25) According to Article VI-6, the **competent authorities must be clearly designated.** In addition, Articles 6 provides for an accessible documentation of those bodies. These requirements allow effective and efficient information exchange between competent authorities and guarantee a clear allocation of

⁴¹ Compare Art VI-12(2), VI-14(3), VI-15, VI-16, VI-18, VI-19, VI-20, VI-21, VI-22, VI-24, VI-25(2).

responsibilities within complex information networks. The wording of this provision has been inspired by existing EU law.⁴²

VI-7 Contact points

- (26) Article VI-7 regulates **contact points** as the second basic element of a legal architecture for composite information management. In contrast to competent authorities, which are an obligatory element of any information management activity, the establishment of contact points is **merely a legislative option**. Contact points which are in existing EU law also referred to as coordinators or liaison offices are a widely used organizational instrument to facilitate inter-administrative information exchange.⁴³

⁴² For example Decision 2119/98/EC of the European Parliament and of the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community [1998] OJ L268/1 last amended by Regulation (EC) 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 9/468/EC with regard to the regulatory procedure with scrutiny [2009] OJ L188/14, Art 9; Regulation (EC) 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) [2006] OJ L381/4, Art 7; Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 6(3); Council Regulation (EC) 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and the cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [1997] OJ L82/1 last amended by Regulation (EC) 766/2008 of the European Parliament and of the Council of 9 July 2008 amending Council Regulation (EC) 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [2008] OJ L218/48, Art 29(2); Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety [2001] OJ L11/4 last amended by Regulation (EC) 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny [2009] OJ L188/14, Art 6; Proposal for a Regulation of the European Parliament and of the Council Establishing the European Border Surveillance System (EUROSUR) COM(2011) 873 final, Art 5.

⁴³ For example Commission Regulation (EU) 16/2011 of 10 January 2011 laying down implementing measures for the Rapid alert system for food and feed [2011] OJ L6/7, Art 2; Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety [2001] OJ L11/4 last amended by Regulation (EC) 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny [2009] OJ L188/14, Art 6 read in conjunction with Section 9 of Annex II; Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market [2006] OJ L376/36, Arts 6, 21(2), 28(2); Council Regulation (EC) 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency and amending Regulation (EEC) 2847/93 establishing a control system

- (27) Although competent authorities bear the main responsibility for the information exchange it may be that they have only very limited experience with multijurisdictional exchange of information or lack relevant knowledge in terms of foreign languages, relevant foreign law or the allocation of responsibilities in another country. In such cases contact points may provide **supplementary resources** as they are regularly involved in composite information management and bundle relevant professional skills and abilities. They may also serve as decentral mediators in case of conflicts between competent authorities.
- (28) Article VI-7 merely establishes contact points as an **organizational option** since some inter-administrative information exchange schemes do not need such supplementary support. This will generally be the case with information exchange between two EU authorities⁴⁴ or between highly specialized central authorities on Member States' level with regular interactions with their counterparts in other Member States or on EU level.
- (29) As contact points serve as an organizational infrastructure supporting inter-administrative information exchange they qualify as an information system according to Article VI-2 (4). This is highlighted by the demanding obligations according to Article VI-7 (3) even if a basic may derogate from it.

VI-8 Management authorities for IT systems

- (30) Article VI-8 stipulates that a basic act shall establish or identify a management authority if an information management activity is supported by an IT system as defined in Article VI-2(4). Therefore, **management authorities are a basic element of the architecture of many, more advanced, EU information**

applicable to the common fisheries policy [2005] OJ L128/1 last amended by Council Regulation (EC) 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) 847/96, (EC) 2371/2002, (EC) 811/2004, (EC) 768/2005, (EC) 2115/2005, (EC) 2166/2005, (EC) 388/2006, (EC) 509/2007, (EC) 676/2007, (EC) 1098/2007, (EC) 1300/2008, (EC) 1342/2008 and repealing Regulations (EEC) 2847/93, (EC) 1627/94 and (EC) 1966/2006 [2009] OJ L343/1, Art 13(2)(b); Regulation (EC) 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) [2006] OJ L381/4, Art 7(2); Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States [2009] OJ L93/23, Art 3.

⁴⁴ But see also Commission Regulation (EC, EURATOM) 1302/2008 of 17 December 2008 on the central exclusion database [2008] OJ L344/12, Art 6.

systems⁴⁵. The basic act can set up a new management authority or designate an existing Member States' or EU authority as management authority. It might be especially effective and efficient to designate the existing EU IT System Agency established by Regulation 1077/2011.⁴⁶

- (31) Paragraph 2 lists a **number of important tasks** of such a **management authority**. This list has been inspired by existing EU law⁴⁷ and comprises operational management tasks with a technical focus. These technical tasks of the management authority are to be differentiated from the substantive administrative tasks of the competent authorities which are supported by the IT system. These different responsibilities of the competent authority on the one hand and of the management authority on the other are underlined by paragraph 3.⁴⁸ Paragraph 4 provides flexibility in this highly technical and dynamic field of

⁴⁵ See also para 24 of the explanations.

⁴⁶ Regulation (EU) 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice [2011] OJ L286/1 last amended by Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1.

⁴⁷ See Regulation (EU) 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice [2011] OJ L286/1 last amended by Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Arts 1(2), 2; Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132, Art 8; Regulation (EC) 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) [2006] OJ L381/4, Art 15.

⁴⁸ Source of inspiration for this paragraph Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative

law. An example for rules under this provision might be rules establishing interoperability standards between the joint IT system and connected systems of the participating EU and Member States' authorities.

VI-9 Principle of transparent information management

VI-10 Principle of data quality

- (32) Articles VI-9 and VI-10 highlight **two important principles for composite information management** and joint data processing,⁴⁹ i.e. the principles of transparency and of data quality. Both principles serve two distinct but interrelated objectives: the provision of reliable inter-administrative information exchange and the protection of subjective rights of persons concerned.
- (33) Inter-administrative information exchange is only reliable if the data provided meets **high standards of data quality** as defined in Article VI-10.⁵⁰ An incentive to provide high data quality is to assign a corresponding responsibility on the data supplying authority⁵¹. In order to hold the data supplying authority accountable

cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132, Art 8(3).

⁴⁹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31 amended by Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty [2003] OJ L284/1, Art 2(b); see also Commission Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final, Art 4(3).

⁵⁰ Compare Regulation (EC) 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) [2006] OJ L381/4, Art 34(1); see also The Schengen acquis - 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 [2000] OJ L239/19, Art 105.

⁵¹ Compare Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety [2001] OJ L11/4 last amended by Regulation (EC) 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny [2009] OJ L188/14, Section 10 of Annex II; Commission Decision 2010/15/EU of 16 December 2009 laying down guidelines for the management of the Community Rapid

Article VI-9 provides for transparent and retraceable data processing. Additional instruments to enhance the quality of data are provided throughout Book VI.⁵²

- (34) If data exchanged between participating authorities **concern individuals**, these persons concerned must be entitled and enabled to protect their (data protection) rights effectively. The starting point is the obligation of the data supplying authority to provide only data of high quality.
- (35) This obligation will only be effective if responsibilities are clearly allocated in order to avoid that responsibilities volatilize in case of composite information management. Consequently, an indispensable component for effective protection of such rights is the possibility of the persons concerned to clearly and easily identify the responsible authority in order to hold that authority accountable. Article VI-9 ensures that this information can be provided to the person concerned in accordance with Article VI-15(1).

Chapter 2: Structures Information mechanisms

VI-11 Standards for structured information mechanisms

Paragraph 1

- (36) The drafting team proposes a definition of “structured information mechanism” in terms of a cooperation system in which the **cooperative obligations are structured in a pre-defined workflow**, allowing authorities to communicate and interact with one another. In particular, the authorities participating in the system are facilitated in contacting the right competent authority in another country, and

Information System ‘RAPEX’ established under Article 12 and of the notification procedure established under Article 11 of Directive 2001/95/EC (the General Product Safety Directive) [2009] OJ L22/1, Part II.3.2.4 of the Annex; The Schengen acquis - 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 [2000] OJ L239/19, Art 105; see also Regulation (EC) 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems [2004] OJ L 166/1 last amended by Commission Regulation (EU) 1372/2013 of 19 December 2013 amending Regulation (EC) 883/2004 of the European Parliament and of the Council on the coordination of social security systems and Regulation (EC) 987/2009 of the European Parliament and of the Council laying down the procedure for implementing Regulation (EC) 883/2004 [2013] OJ L346/27, Art 78(2).

⁵² See especially Articles VI-14 (verification), VI-19 (obligations to update, correct or delete data) and VI-21 (duty to independently assess information).

can overcome the linguistic barriers by use of pre-translated sets of standard questions and answers; the authorities can follow the progress of the information request through tracking mechanisms, and so on. In other words, the system involves the use of standardising instruments, which are aimed at facilitating cooperation and the exchange of information.

- (37) As a **general rule**, and, in accordance with Article VI-3, we assume that, in order to establish a structured information mechanism, a basic act has to be adopted. In this case, the basic act should indicate the standardising instruments, which characterise the specific mechanism. A clear example of this kind of mechanism is the Internal Market Information System (IMI), regulated, as a matter of fact, by Regulation 1024/2012.⁵³

Paragraph 2

- (38) Once the structure of the system is outlined by the basic act, at least two other aspects have to be considered: the **quality of the information** exchanged and the **protection of personal data**. In this sense, paragraph 2 clarifies that the information exchanged through the system has to be accurate and processed in accordance with the relevant national and European regulations. Hence, the competent authorities have to be placed under the obligation to check and, in case, to correct and delete the information exchanged when needed.

Paragraph 3

- (39) The same obligation outlined in paragraph 2 applies to the **exchange of personal data**. In this case, in order to guarantee an even more effective protection, the correction or the deletion of the personal data can intervene at the request of the data subject and after the suggestion of a participating authority which did not supply the data in question. In particular, the structured information mechanism has to be subject a data protection framework to be outlined in the basic act. This must indicate, among other things, the categories of data which may be gathered, exchanged and stored. Also, it has to indicate rules on the accessibility and blockage of data, which has to take place, as a general rule, six

⁵³ Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132.

months after the closure of the procedure in question. Moreover, the basic act has to provide relevant technical measures to assure the security of the exchange of information within the IT system, and has to subject all the authorities involved in the management of information, to confidentiality obligations.

- (40) In relation to the supervision of the data exchanged through structured information mechanisms, this supervision can be assigned to the European Data Protection Board by EU law (Article VI-39).

Chapter 3: Duties to inform other public authorities without prior request and databases

- (41) Chapter 3 regulates duties to inform without prior request and databases. These two information management activities establish highly integrated structures of composite information management. Many issues with regard to these two activities can and should be regulated in the same way. Consequently, many of the following model rules apply to both activities and the drafting team preferred to regulate them in one chapter in order to avoid redundancy and confusion. Nevertheless, this chapter provides specific rules for each of these two actions if appropriate.⁵⁴ These specific rules are integrated into the systematic order of this chapter.
- (42) The chapter comprises **two sections**, one with **general standards** for both activities as such and another concerning the **subsequent management** of the information provided through these activities. The latter section is organized in four subsections, each concerning a specific issue, i.e. access to data, modification of data, use of data, and data protection including data security. Some data protection issues are not regulated in the last subsection. Instead, they are integrated into one of the previous subsections for systematic reasons and in accordance with the general approach of this book to establish a comprehensive and data protection-friendly legal framework for inter-administrative information exchange. Therefore, rules on information to and access for data subjects are part subsection on data access (Article VI-15) and the data subject's right of data erasure is highlighted as one especially important

⁵⁴ See the overview in paras 21 and 22 of the introduction.

alternative for an obligation to update, correct or delete data (Article VI-19(3)). Similarly, rules guaranteeing the data protection principle of purpose limitation are included into the sub-section on use of data and information (Article VI-24).

Section 1: General standards for duties to inform and databases

VI-12 General standards for duties to inform

- (43) Article VI-12 sets general standards for a duty to inform defined in VI-2(2). Exchange of information under a duty to inform without prior request may thereby be **triggered ad hoc by predefined events** as is the case in many warning systems or establish a repetitive flow of information through a permanent or recurring provision of information. An important limitation of the exchange of personal data arises from the data minimisation principle.⁵⁵
- (44) Duties to inform spontaneously pursue **different objectives**. In order to perform the communication between the participating authorities existing EU provisions provide for a predefined set of notifications which indicate different levels of urgency or oblige the recipients to certain follow-up measures or administrative actions. Unfortunately, similar notifications are labelled differently in the respective legal acts. The list in paragraph 3 presents five important notification types in order to promote a more uniform labelling of notifications and to minimise the risk of misconceptions.⁵⁶ If really needed the basic act may provide additional notification types. It is up to the competent data supplying authority to select the adequate notification type. Paragraph 2 highlights factors which should be taken into account for this selection.

⁵⁵ Based on Commission Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final, Art 5(c), Explanatory Memorandum, 3.4.2.

⁵⁶ Similar, but not uniform list of notification types can be found in Commission Decision 2010/15/EU of 16 December 2009 laying down guidelines for the management of the Community Rapid Information System 'RAPEX' established under Article 12 and of the notification procedure established under Article 11 of Directive 2001/95/EC (the General Product Safety Directive) [2009] OJ L22/1, Part II.3.1.1 Alternative 1 and 2 of the Annex; Commission Regulation (EU) 16/2011 of 10 January 2011 laying down implementing measures for the Rapid alert system for food and feed [2011] OJ L6/7, Art 1 Nos 4, 5, 7, 8; Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market [2006] OJ L376/36, Art 35(2), (3).

- (45) *Emergency notification* means a notification in the case of extreme urgency; standard alert notification refers to the notification of a risk which might require rapid action. An information notification requiring action means that the information sent without prior request already implies that a specific action needs to be taken, whereas a simple information notification does not require action. A follow-up notification contains additional information relating to an already existing notification for instance about actions actually taken or new information on a certain risk.
- (46) Information provided under a duty to inform should **in general** be exchanged in **electronic form** and only in exceptional and duly justified cases in writing or orally. The priority of electronic information exchange fosters efficiency as well as effectiveness. It also serves the principle of retraceable data processing.⁵⁷ In the rare cases that information is exchanged orally the competent authority should nonetheless confirm the oral exchange of information in electronic or written form afterwards. This avoids misunderstandings and serves the principle of retraceable data processing.

VI-13 General standards for databases

- (47) According to Article VI-3(3)(b), the basic act establishes the **purpose** for which the relevant **information management activity** shall be performed. In order to reduce the amount of data entered into a database data may only be entered for the purpose defined in the basis act. The data minimisation principle requires that the limitations as in Article VI-12(1) also apply to the entry of personal data into a database.⁵⁸ This principle also requires the deletion of stored data after a certain time limit. The relevant time limits are regulated in Articles VI-26 and VI-27.

VI-14 Verification

- (48) As already mentioned in the explanations to VI-10,⁵⁹ information exchange is reliable if the data provided meets high standards of data quality. An instrument to **enhance the quality of data** is the ex-ante verification of data through a

⁵⁷ See Art VI-9.

⁵⁸ Based on Commission Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final, Art 5(c).

separate verification authority. This approach is already taken in various information systems.⁶⁰ It is up to the legislator to decide whether to establish a duty to verify data or not as the verification needs to be provided in the basic act.

- (49) The existing information systems establish different **verification authorities**. In RAPEX the Contact Points and the Commission verify the data: the Contact Point checks and validates all notifications before transmitting them to the Commission and resolves any unclear issues before a notification is transmitted through RAPEX.⁶¹ The Commission then checks all notifications received through the RAPEX application before transmitting them to the Member States to ensure that they are correct and complete.⁶²
- (50) Paragraph 2 provides as a default rule that the verification should be carried out **within the shortest time possible**. It would be preferable that the basic act provides a clear time limit for verification.
- (51) Circumstances may exist in which it is **not possible to verify the data ex-ante**. According to paragraph 3, such data has to be flagged by the competent authority as unverified and has to be verified after it has been spread. The flag

⁵⁹ See para 33 of the explanations.

⁶⁰ For example Commission Decision 2010/15/EU of 16 December 2009 laying down guidelines for the management of the Community Rapid Information System 'RAPEX' established under Article 12 and of the notification procedure established under Article 11 of Directive 2001/95/EC (the General Product Safety Directive) [2009] OJ L22/1, Part II.2.3.3-4, II.3.4 of the Annex; Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 23; The Schengen acquis - 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 [2000] OJ L239/19, Art 105.

⁶¹ Commission Decision 2010/15/EU of 16 December 2009 laying down guidelines for the management of the Community Rapid Information System 'RAPEX' established under Article 12 and of the notification procedure established under Article 11 of Directive 2001/95/EC (the General Product Safety Directive) [2009] OJ L22/1, Part II.2.3.3-4 of the Annex.

⁶² Commission Decision 2010/15/EU of 16 December 2009 laying down guidelines for the management of the Community Rapid Information System 'RAPEX' established under Article 12 and of the notification procedure established under Article 11 of Directive 2001/95/EC (the General Product Safety Directive) [2009] OJ L22/1, Part II.3.4 of the Annex.

indicates to the receiving authorities that they should especially perform independent assessments of the respective information in accordance with Article VI-21.

- (52) The verification standards should be defined in the basic act in order to **adapt the standards** provided in paragraph 4 to **the specifics of administrative tasks** supported by the respective duty to inform or database. Paragraph 4 establishes a default standard in case that the basic act does not specify the verification standards and has been inspired by a comparative analysis of existing EU law. According to the default rule of paragraph 4 the information needs to be complete, formally accurate, not evidentially false and legible. Information would be evidentially false, for instance, if it does not concern matters within the scope of the duty to inform or the shared database.
- (53) The introduction of a **minimum standard** is necessary as the verification standards can vary quite significantly. Existing EU law uses no uniform terminology and tends to list redundant standards. Whereas the verification standard of RASFF includes the completeness, legibility – i.e. use of Commission dictionaries and understandable language – and correctness of data,⁶³ RAPEX only requires the completeness and correctness of data but not their legibility.⁶⁴ In addition, while in case of the RASFF correctness includes the requirement that the data falls into the scope of RASFF or complies with other requirements of its legal basis,⁶⁵ for RAPEX a purely formal standard of correctness seems to apply.⁶⁶ However, RAPEX provides that the verification authority has to guarantee the accuracy of the data exchanged.⁶⁷ The verification rules of the

⁶³ Commission Regulation (EU) 16/2011 of 10 January 2011 laying down implementing measures for the Rapid alert system for food and feed [2011] OJ L6/7, Art 8.

⁶⁴ Commission Decision 2010/15/EU of 16 December 2009 laying down guidelines for the management of the Community Rapid Information System 'RAPEX' established under Article 12 and of the notification procedure established under Article 11 of Directive 2001/95/EC (the General Product Safety Directive) [2009] OJ L22/1, Part II.3.4.1-2 of the Annex.

⁶⁵ Commission Regulation (EU) 16/2011 of 10 January 2011 laying down implementing measures for the Rapid alert system for food and feed [2011] OJ L6/7, Art 8.

⁶⁶ Commission Decision 2010/15/EU of 16 December 2009 laying down guidelines for the management of the Community Rapid Information System 'RAPEX' established under Article 12 and of the notification procedure established under Article 11 of Directive 2001/95/EC (the General Product Safety Directive) [2009] OJ L22/1, Part II.3.4.1 of the Annex.

⁶⁷ Commission Decision 2010/15/EU of 16 December 2009 laying down guidelines for the management of the Community Rapid Information System 'RAPEX' established under Article 12 and of the notification procedure established under Article 11 of

Schengen Information System deviate even further as they simply stipulate that the verification authority coordinates the quality of data.⁶⁸

- (54) At this stage the ReNEUAL Model Rules do not regulate the impact of verification processes on the allocation of responsibilities and especially the impact of a potential liability of the verification authority.⁶⁹ This evolving field of law is not yet enough stabilized to be codified.

Section 2: Management of information

Subsection 1: Access to data and information

VI-15 Information to and access for persons concerned

- (55) The obligation of data controllers to inform the person concerned⁷⁰ about their data processing relating to that natural or legal person as well as their right to request access to the data relating to him or her processed by a data controller are central instruments of **good information management as well as of data protection law** required by Article 8(2) sentence 2 of the Charta of Fundamental Rights.⁷¹ In accordance with the general approach of this Book⁷² Article VI-15

Directive 2001/95/EC (the General Product Safety Directive) [2009] OJ L22/1, Part II.3.2.4 of the Annex.

⁶⁸ Regulation (EC) 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) [2006] OJ L381/4, Art 7.

⁶⁹ Case T-212/06 *Bowland Dairy Products Ltd v Commission* [2009] ECR II-4073.

⁷⁰ See para 11 of the explanations.

⁷¹ More detailed obligations to inform data subjects are provided by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31 last amended by Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty [2003] OJ L284/1, Arts 10, 11; Regulation (EC) 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 data [2001] OJ L8/1 last amended by Corrigendum to Regulation (EC) 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 data [2007] OJ L164/35, Arts 11, 12; see also European Parliament legislative resolution of 12 March 2014 on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) P7_TA(2014)0212, Art 14; detailed rights to access for data

integrates such rights into the subsection on access to data and information. Having regard to the extensive and detailed requirements in the existing and proposed data protection law Article VI-15(1) and (2) can refer to these provisions including, where applicable, to the respective national data protection law.⁷³

- (56) In order to set clear standards with regard to composite information management Article VI-15(1) and (2) requires as a **minimum standard the provision of information** which is especially important with regard to inter-administrative information exchange as regulated in Book VI. In addition to general data

subjects are established by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31 last amended by Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty [2003] OJ L284/1, Art 12; Regulation (EC) 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 data [2001] OJ L8/1 last amended by Corrigendum to Regulation (EC) 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 data [2007] OJ L164/35, Arts 13ff; see also European Parliament legislative resolution of 12 March 2014 on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) P7_TA(2014)0212, Art 15.

⁷² See paras 5 – 9 of the introduction.

⁷³ Sources of inspiration Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132, Art 19(1); Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime [2008] OJ L210/1, Art 31; Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 37; Regulation (EC) 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) [2006] OJ L381/4, Art 41; Council Regulation (EC) 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and the cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [1997] OJ L82/1 last amended by Regulation (EC) 766/2008 of the European Parliament and of the Council of 9 July 2008 amending Council Regulation (EC) 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [2008] OJ L218/48, Art 36.

protection law, the model rules require to inform the person concerned about the legal basis for the respective information management activity. Another important element of Article VI-15(1) and (2) with regard to composite information management is the clear allocation of responsibility within information networks for providing such information or access to the data supplying authority. In order to provide an alternative route in complex networks the provision stipulates in conjunction with Articles VI-30 and VI-33 supplementing obligations of the Supervisory Authority.

- (57) In defining the person concerned as natural as well as legal persons (Article VI-2(7)), such rights are, where applicable, also **extended to legal persons** despite them not being covered by traditional data protection law.⁷⁴ This innovative proposal supports their rights of confidentiality as provided by Article VI-28 and highlights the relevance of composite information activities for legal persons, which are concerned by many EU information networks such as, for example, early warning systems.
- (58) The drafting team however decided **not to include a right to be heard** for persons concerned before information is transmitted under a duty to inform or entered into a database.⁷⁵ The drafters prefer at this stage of the project to rely on effective rights to be informed ex-post, explained in the previous paragraphs, as well as on the right to erasure as regulated in Article VI-19(3). These rights are fostered by the obligation of the data supplying authority to ensure that persons concerned can effectively exercise their right of access which is highlighted in Article VI-15(4).⁷⁶ In particular, the data supplying authority is obliged to inform

⁷⁴ See the definitions cited in footnote 71. The alternative term would be person concerned as used in Art VI-32(3) and other books of these ReNEUAL Model Rules and especially in Art V-5.

⁷⁵ Such a new right is discussed by the Decision of the European Ombudsman closing his own-initiative inquiry into case OI/3/2008/FOR against the European Commission (06.07.2012), para 152 concerning the Commission's Early Warning System (EWS); see also Case C-276/12 *Jiří Sabou v Finanční ředitelství pro hlavní město Prahu* [2013] OJ C367/16, paras 46, 51(1).

⁷⁶ Sources of inspiration Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 37(1)(f); Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on

the person concerned of these rights of access and erasure as well as about the procedures applicable for exercising these rights.⁷⁷ The latter information about the concrete procedures to exercise the established data protection rights is especially important with regard to the complexities of multi-jurisdictional composite information management.

- (59) The **subjective rights** addressed in paragraphs 1 and 2 of this Article are also essential elements of effective data protection. They should thus not be limited without good justification. Article 13 Data Protection Directive 95/46⁷⁸ delegates the detailed regulation of this topic to the national legislators. In order to have a clear and uniform set of rules applicable to all participating authorities on this important issue Article VI-15(4) stipulates certain possible justifications for refusal of access. Most of these justifications are inspired by Article 20 of the Data Protection Regulation 45/2001.⁷⁹ In addition, access may be denied on grounds of limitations established in the basic act. This provision provides the legislator flexibility required to adjust the framework to sector-specific particularities. Effective legal protection requires that the person concerned is informed about the grounds of refusal and his or her rights of appeal to the competent data protection supervisor either at national or EU level (Book VI, Chapter 4 Section 2).

administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132, Recital (26), Art 19(1).

⁷⁷ Source of inspiration Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 37(1)(f).

⁷⁸ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31 last amended by Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty [2003] OJ L284/1.

⁷⁹ Regulation (EC) 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 data [2001] OJ L8/1 last amended by Corrigendum to Regulation (EC) 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 data [2007] OJ L164/35, Art 20.

VI-16 Access for competent authorities

VI-17 Access management rules in information systems

- (60) The access to information for competent authorities provided through duties to inform or shared databases is an important aspect of the concept of privacy-by-design. Therefore, it is necessary to create a **general rule** about this issue placing an obligation that the basic act and implementing provisions **designate clearly such access rights**.⁸⁰ Access rights should differentiate between different participating authorities. Information necessary for the fulfilment of the duties of one (category of) competent authority must not be relevant for another one. Therefore access rights must be allocated issue specific, i.e. taking into account the specifics of each distinct administrative duty supported through an information management activity.
- (61) Article VI-17 supplements Article VI-16 and Article VI-3(3)(g) which states that the basic act should clearly establish any **specific requirements** concerning the **mechanism for exchanging information** including the structure and security requirements of information systems. Article VI-17 clarifies that the basic act also needs to establish clear and comprehensive access management rules if the information system is used by public authorities to exchange data gathered under a duty to inform or if the information system establishes a database. Therefore, Article VI-17 does not only apply to shared databases but also to duties to inform if they are performed through an information system.

Subsection 2: Alteration and deletion of data and information

- (62) **Subsection 2** regulates the alteration, updating and deletion of data transmitted under a duty to inform or processed through a database. While Article VI-18

⁸⁰ Sources of inspiration Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 6(2); see also Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132, Art 9.

provides a clear allocation of competences with regard to actually alter and delete data stored in a shared database, Article VI-19 stipulates in detail conditions under which the competent authorities are obliged to update, correct or delete data.

(63) **Article VI-18** comprises the **competences to alter and delete data**. It is only applicable to data contained in a database as defined in Article VI-2(3). Information transmitted under a duty to inform, which is solely stored in national repositories and not in such a shared database, is not covered by this provision. Consequently, national law is applicable. This approach is in line with Article VI-26(5) referring to national law with regard to storage of information provided through a duty to inform in national files. In contrast, Article VI-19 applies to all information transmitted under a duty to inform either stored in shared databases or in national data repositories. Nevertheless, the obligation of the data supplying authority to correct data, stipulated in Article VI-19(1), means with regard to data which are not stored in a shared database that the supplying authority is obliged to inform the other authorities about the inaccuracy or illegality of the previous information. Merely the respective Member State's authority is in a position to actually alter the national data repository or file.

(64) According to Article VI-18(1), the information contained in a database may be **altered or deleted either by the competent authority⁸¹ or the Supervisory Authority**. Article VI-33 specifies when the Supervisory Authority has the power to alter or delete data. In all other cases the data supplying authority is the only authority competent to alter and delete data.⁸² Alteration and deletion of data is a

⁸¹ For the definition of competent authority see Art VI-6.

⁸² Sources of inspiration Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 24; Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/, Art 27; Regulation (EC) 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) [2006] OJ L381/4, Art 34(2); Council Regulation (EC) 515/97 of 13 March 1997 on mutual assistance

form of data processing. It therefore is covered by the principle of transparent and retraceable data processing, laid down in Article VI-9. This means that the tag, made obligatory under Article VI-9(2), also includes details about the alteration and deletion of data. The derogation clause in paragraph 2 of this Article provides the legislator with the necessary flexibility and is inspired by existing EU law.⁸³ However, the competent authority needs to be one of the competent bodies designated pursuant to Article VI-6.

- (65) The **duty** for the competent authority **to update, correct or delete outdated, incorrect or unlawful data**⁸⁴, stipulated in **Article VI-19**, aims at enhancing data quality. Paragraph 2 highlights, that the legislator may also include an additional obligation in the basic act for the competent authority supplying the data to

between the administrative authorities of the Member States and the cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [1997] OJ L82/1 last amended by Regulation (EC) 766/2008 of the European Parliament and of the Council of 9 July 2008 amending Council Regulation (EC) 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [2008] OJ L218/48, Art 32; Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) [2007] OJ L205/63, Art 49(2); The Schengen acquis - 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 [2000] OJ L239/19, Art 106(1).

⁸³ For example Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 3(3); Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2004] OJ L243/1 last amended by Regulation (EU) 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) 1683/95 and (EC) 539/2001 and Regulations (EC) 767/2008 and (EC) 810/2009 of the European Parliament and of the Council [2013] OJ L182/1, Art 34(1); Commission Decision 2010/15/EU of 16 December 2009 laying down guidelines for the management of the Community Rapid Information System 'RAPEX' established under Article 12 and of the notification procedure established under Article 11 of Directive 2001/95/EC (the General Product Safety Directive) [2009] OJ L22/1, Part II.3.2.3 of the Annex;.

⁸⁴ Partially inspired by Regulation (EC) 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) [2006] OJ L381/4, Art 34.

update the information regularly.⁸⁵ The intervals of mandatory updates need to be specified in the basic act.

- (66) Article VI-19(3) underlines the **right of erasure**. For natural persons such a right is already established by the applicable data protection law.⁸⁶ But for legal persons this is an innovative proposal. The concerned persons may *inter alia* demand that his or her data which may no longer be stored shall be blocked and finally deleted. The relevant conditions and time-limits for blocking and deletion are stipulated in Articles VI-26 and VI-27.⁸⁷
- (67) Paragraph 4 establishes an **obligation** for any participating authority **to inform the data supplying authority** immediately if they have doubts about the accuracy or lawfulness of the data processed. The data supplying authority shall then check the provided information and if necessary correct or delete the data. Similar provisions exist in various EU laws⁸⁸ in order to ensure and enhance the

⁸⁵ Source of inspiration Commission Proposal for a Council Framework Decision on the organization and content of the exchange of information extracted from criminal records between Member States, COM(2005) 690 final, Art 5; see also Opinion of the European Data Protection Supervisor on the Proposal for a Council Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States (COM (2005) 690 final) [2006] OJ C313/26, Section IV.32.

⁸⁶ Source of inspiration Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 38(2). The relevant data protection provisions are Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31 last amended by Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty [2003] OJ L284/1, Art 12(b).

⁸⁷ See paras 75 – 80 of the explanations.

⁸⁸ Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 24(2); Council Regulation (EC) 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and the cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [1997] OJ L82/1 last amended by Regulation (EC) 766/2008 of the European Parliament and of the Council of 9 July 2008 amending Council Regulation (EC) 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [2008] OJ L218/48, Art 32; Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective

accuracy of data. Apart from this, it is important to highlight that a follow-up notification⁸⁹ sent by another competent authority shall not be considered an amendment to a previous notification in the sense of this paragraph as both notifications will be accessible in the database. It may therefore be transmitted without the agreement of the competent authority which sent the previous notification.

- (68) Paragraph 5 deals with the question how to handle the situation that data that has been contested in its accuracy but the **accuracy or inaccuracy has not been established**. It resolves this issue by proposing a flag indicating this dispute.⁹⁰ The person concerned or another authority is therefore entitled to have the data he or she contests flagged. Consequently, the authority using the data is

application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 25(4); Regulation (EC) 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) [2006] OJ L381/4, Art 34(3); Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) [2007] OJ L205/63, Art 49(3); Commission Decision 2008/333/EC of 4 March 2008 adopting the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II) [2008] OJ L123/1, Section 2.7 of the Annex; Commission Decision 2008/334/JHA of 4 March 2008 adopting the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II) [2008] OJ L123/39, Section 2.7 of the Annex.

⁸⁹ Art VI-12(3)(e).

⁹⁰ Sources of inspiration Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime [2008] OJ L210/1, Art 28; Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 29(8) stating that the Member State should give a written explanation why it is not prepared to correct or erase the data; see also Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132, Art 19(2) stating that if the data subject contests the accuracy of the data this fact should be recorded.

informed about the existing dispute and, in accordance with Article VI-21, it is obliged to assess the provided information even more carefully. Paragraph 5 does not regulate the procedure for the final dispute resolution. Instead, this issue is regulated by Chapter 4 establishing – in conjunction with the applicable data protection law – a coordinated data protection supervision structure as well as the (general) Supervisory authority. The latter is highlighted in paragraph 6 and especially important for the resolution of inter-administrative disputes which do not fall into the jurisdiction of data protection supervisors.

Subsection 3: Use of data and information

- (69) The establishment of duties to inform and databases is not an end in itself, but an instrument for the effective implementation of EU policies. Therefore, the **use of the information provided through such composite information management is crucial and cannot be taken for granted** as the use of “foreign” information is a matter of mutual trust. Therefore, in order to guarantee that competent authorities make effectively use of the relevant information **Article VI-20** establishes a duty for the competent authority to consider the supplied information. This is a common provision that can be found in existing EU legislation.⁹¹ The second sentence of Article VI-20 stressed that this obligation especially applies for the search and the consult of information in databases.⁹²

⁹¹ For example Council Decision 87/600/Euratom of 14 December 1987 on Community arrangements for the early exchange of information in the event of a radiological emergency [1987] OJ L 371/76, Art 4; Council Regulation (EC) 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) 847/96, (EC) 2371/2002, (EC) 811/2004, (EC) 768/2005, (EC) 2115/2005, (EC) 2166/2005, (EC) 388/2006, (EC) 509/2007, (EC) 676/2007, (EC) 1098/2007, (EC) 1300/2008, (EC) 1342/2008 and repealing Regulations (EEC) 2847/93, (EC) 1627/94 and (EC) 1966/2006 [2009] OJ L343/1 last amended by Council Regulation (EU) 1385/2013 of 17 December 2013 amending Council Regulations (EC) 850/98 and (EC) 1224/2009, and Regulations (EC) 1069/2009, (EU) 1379/2013 and (EU) 1380/2013 of the European Parliament and of the Council, following the amendment of the status of Mayotte with regard to the European Union [2013] OJ L354/86, Art 72; Proposal for a Regulation of the European Parliament and of the Council Establishing the European Border Surveillance System (EUROSUR), COM(2011) 873 final, Art 9.

⁹² Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 15; Decision 2119/98/EC of the European Parliament and of the Council of 24 September 1998 setting up a network for the epidemiological surveillance and control of communicable diseases in the Community [1998] OJ L268/1 last amended by Regulation (EC) 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty

While the transmission of new information under a duty to inform will usually attract the attention of the participating authorities, it is less self-evident that they consult shared databases actively especially if they are additional to existing national data repositories or need the involvement of specially designated officers or contact points.

- (70) **Article VI-21** is inspired by the jurisprudence of the CJEU which obliges users of the Schengen Information System to take advantage of the SIRENE offices in order to validate sensitive information provided through that system.⁹³ Consequently, information provided through information systems, as defined in Article VI-2(4) **have to be assessed by the competent authority** considering an administrative action based on such information. Consequently the acting authority may not solely refer to the information provided through the information system to justify its action. If the competent authority has doubts about the accuracy of the information it has to consult the information supplying authority in order to guarantee the accuracy of data in an early stage of processing.⁹⁴ Thereby, Article VI-21 supplements the functions of information systems. They are both necessary for the effective discharge of public powers as well as the effective protection of individual's rights. In order to base its decision on correct facts the competent authority has the obligation to make full use of the relevant features of the information system.⁹⁵

to Council Decision 9/468/EC with regard to the regulatory procedure with scrutiny [2009] OJ L188/14, Art 6; Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 9(3).

⁹³ See Case C-503/03 *Commission v Kingdom of Spain* [2006] ECR I-1097.

⁹⁴ Second sentence inspired by Regulation (EC) 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) [2006] OJ L381/4, Art 25(2).

⁹⁵ For example Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1 last amended by Regulation (EU) 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) 1683/95 and (EC) 539/2001 and Regulations (EC) 767/2008 and (EC) 810/2009 of the European Parliament and of the Council [2013] OJ L182/1, Art 21(2); Regulation (EC) 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general

- (71) **Article VI-22** supplements Article VI-12(3)(a), (b) and (d) and obliges the competent authority to **take the action** as specified in the basic act. If necessary the acting competent authority has to send a **follow-up notification**⁹⁶ to inform the other participating authorities.
- (72) According to **Article VI-23**, competent authorities may **deviate from the duties** to independently assess information⁹⁷ and to take specific actions as a result of information.⁹⁸ However, the principle of legal certainty requires that these cases are clearly specified in the basic act or the relevant implementing rules. Consequently, Article VI-23 is not directly applicable.
- (73) In line with the **principle of data minimisation Article VI-24** stipulates that an exchange of data is only permitted for purposes which are clearly defined in the relevant provisions of EU law. This rule reflects common practice in the relevant EU legislation.⁹⁹ Nevertheless, in some cases there is a need to use the provided

principles and requirements of food law, establishing the European Safety Authority and laying down procedures in matters of food safety [2002] OJ L31/1 last amended by Regulation (EC) 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part Four [2009] OJ L188/14, Art 35; Regulation (EC) 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) [2006] OJ L381/4, Arts 8, 25 (obligation to use the communication infrastructure SIRENE for exchange of supplementary information).

⁹⁶ See Art VI-12(3)(e).

⁹⁷ See Art VI-21.

⁹⁸ See Art VI-22.

⁹⁹ For example Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132, Art 9(5); Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union [2006] OJ L386/89 last amended by Corrigendum to Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union [2007] OJ L75/26, Art 8(3); Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States [2009] OJ L93/23, Art 9(1); Council Regulation (EC) 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and the cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [1997] OJ L82/1 last amended by Regulation (EC) 766/2008 of the European Parliament and of the

information for purposes different from the ones justifying the previous information exchange. Therefore, paragraph 2 provides a restrictive exemption clause for such cases.¹⁰⁰ According to paragraph 3, the distribution of data and information to third parties also requires a specific legislative authorisation.

Subsection 4: Data protection and information security

- (74) **Article VI-25** underlines the **need to comply with existing data protection provisions**, which supplement these model rules in some cases with more specific rules. Paragraph 2 complements Article VI-3 as well as Article VI-10 by specifying the relevance of defined data categories for compliance with the principle of data minimisation.¹⁰¹

Council of 9 July 2008 amending Council Regulation (EC) 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [2008] OJ L218/48, Art 26(b); Regulation (EC) 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) [2006] OJ L381/4, Art 3; Commission Regulation (EC, EURATOM) 1302/2008 of 17 December 2008 on the central exclusion database [2008] OJ L344/12, Art 1(2).

¹⁰⁰ Wording based on Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union [2006] OJ L386/89 last amended by Corrigendum to Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union [2007] OJ L75/26, Art 8(3); also inspired by Council Regulation (EC) 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and the cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [1997] OJ L82/1 last amended by Regulation (EC) 766/2008 of the European Parliament and of the Council of 9 July 2008 amending Council Regulation (EC) 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [2008] OJ L218/48, Art 30(1).

¹⁰¹ Sources of inspiration Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 5; Council Regulation (EC) 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and the cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [1997] OJ L82/1 last amended by Regulation (EC) 766/2008 of the European Parliament and of the Council of 9 July 2008 amending Council Regulation (EC) 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [2008] OJ L218/48, Arts 24, 25.

- (75) **Article VI-26** creates the **obligation to block and the right to request blocking** of data stored in a database as a result of an information exchange under a duty to inform is blocked after a specified period. In line with the approach followed in Article VI-15 the right to request blocking or deletion of data is not confined to natural persons but is also granted to legal persons. As mentioned earlier,¹⁰² some duties to inform are combined with a respective shared database while others rely on de-central data storage in national repositories with no direct for authorities from other Member States or from another level in the EU multi-level-structure. Article VI-26 reflects these two options in paragraphs 1 to 4 on one hand and paragraph 5 on the other.
- (76) Paragraphs 1 to 4 solely regulate **storage of personal data in shared databases**. In contrast to Article VI-27, accessibility of data is only justified by these paragraphs as long as the relevant data is necessary to achieve the legally justified purposes for which they originally are supplied. Storage of the data beyond that period of time requires an additional explicit legal basis as required by Article VI-27.
- (77) Sentence 2 of Article VI-26(1) refers to the **formal closure of** the relevant **procedure** initiated by a notification as defined in Article VI-12(2) and (3). This procedure can be a (formal) administrative procedure as defined in Article I-4(2) if it ends in a decision as defined in Article III-2(1).¹⁰³ Nevertheless, it is also possible that the applicable sector-specific law does not empower the competent authority to adopt such a (formal) decision, but only to issue a warning or take another non-legally binding measure. To cover such cases, sentence 2 uses the broader term “procedure” instead of “administrative procedure”. In line with this reasoning, the heading of Article VI-27 refers to data storage “beyond procedures associated with a duty to inform”.
- (78) Article VI-26(1) sentence 1 and 2 use the generic term “**accessible**”. This allows for a differentiated regulation with two stages before data is finally completely deleted on the second stage. Between full accessibility for the purposes of the information exchange and its complete deletion data shall – and can – be blocked (sentence 3). Paragraphs 2 and 3 specify how the relevant authorities

¹⁰² See paras 62 – 68 of the explanations concerning competences and obligation to delete data.

¹⁰³ Compare Book III, para 5 of the explanations.

have to deal with blocked data.¹⁰⁴ Especially important are the purposes for further data processing which are limited to legal protection,¹⁰⁵ ensuring data security or verified overriding reasons in the public interest. This last derogation clause must be interpreted narrowly. Paragraph 4 regulates the final stage of deletion and provides for another derogation clause. It is important to stress that any decision that entails retaining the data for a longer period needs special justification and must be reviewed regularly

- (79) Article VI-26(5) is inspired by existing EU law and clarifies that the right of Member States to keep national files shall not be affected.¹⁰⁶
- (80) As already explained, **Article VI-27** regulates storage of data in shared databases beyond procedures associated with a **duty to inform**.¹⁰⁷ By contrast to Article VI-26 Article VI-27(1), (2) are not confined to personal data but regulate **all kinds of data**. Nevertheless, the basic act may stipulate different storage rules between personal data on one hand and other data on the other. Paragraph 3 provides a rule on blocking of personal data which is adapted to the specific of data storage beyond procedures associated with a duty to inform while paragraph 4 can refer to rules set in Article VI-26. Paragraph 5 provides the

¹⁰⁴ Partially inspired by Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 18(2).

¹⁰⁵ Sources of inspiration Council Regulation (EC) 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and the cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [1997] OJ L82/1 last amended by Regulation (EC) 766/2008 of the European Parliament and of the Council of 9 July 2008 amending Council Regulation (EC) 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [2008] OJ L218/48, Art 33(4); Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132, Recital (22).

¹⁰⁶ Regulation (EC) 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) [2006] OJ L381/4, Art 38(3).

¹⁰⁷ See paras 76, 77 of the explanations.

option to delete data earlier than at the established storage time if the data supplying authority requests this explicitly and if the person concerned agrees.¹⁰⁸

In order to ensure that data is not deleted as long as an authority or the person concerned is interested in its storage the data supplying authority's request is as necessary as the consent of the person concerned.

- (81) **Article VI-28** is inspired by conventional provisions about **confidentiality**.¹⁰⁹ The confidentiality should also apply after members of staff leave office or employment.¹¹⁰
- (82) **Article VI-29** introduces an obligation to establish proper **security standards for IT systems**. It seems appropriate to introduce such an obligation, which supplements the general rule concerning the need for a basic act, not only for shared databases but also for duties to inform when they are performed through information systems as defined in Article VI-2.¹¹¹ The rules which are going to be

¹⁰⁸ Based on Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132, Art 14(5).

¹⁰⁹ Compare Council Regulation (EC) 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [1999] OJ L83/1 last amended by Council Regulation (EC) 1791/2006 of 20 November 2006 adapting certain Regulations and Decisions in the fields of free movement of goods, freedom of movement of persons, company law, competition policy, agriculture (including veterinary and phytosanitary legislation), transport policy, taxation, statistics, energy, environment, cooperation in the fields of justice and home affairs, customs union, external relations, common foreign and security policy and institutions, by reason of the accession of Bulgaria and Romania [2006] OJ L363/1, Art 24;

¹¹⁰ Based on Regulation (EC) 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) [2006] OJ L381/4, Art 11; also similar in Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety [2001] OJ L11/4 last amended by Regulation (EC) 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny [2009] OJ L188/14, Art 16; similar obligation on the Management Authority in Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 26(9).

¹¹¹ For similar provisions see Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009]

established following this provision must provide a level of information security at best equal to the one established by Directive 95/46¹¹² and Regulation 45/2001.¹¹³

Chapter 4: Supervision and dispute resolution

- (83) Inter-administrative information exchange as regulated in this book affects the interests of a **great number of participating authorities** as well as of **concerned persons**. In addition, the quality of this information exchange depends on the **performance and sincere cooperation** of the participating authorities. The clear allocation of responsibilities and the legal obligations of the various actors as stipulated in Chapters 1, 2 and 3 of this book shall enhance the effectiveness and efficiency as well as the lawfulness of such inter-administrative information exchange. Nevertheless, under the complex circumstances of such composite information management, additional instruments must be in place in

OJ L243/1, Arts 26(2)(b), 29(2), 32 where the Management Authority has the responsibilities. The Member States responsible shall ensure the security of data before and during transmission and each Member State shall ensure the security of the data which it receives from VIS. In addition each Member State shall adopt specific security measures in relation to national system; Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2004] OJ L243/1 last amended by Regulation (EU) 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) 1683/95 and (EC) 539/2001 and Regulations (EC) 767/2008 and (EC) 810/2009 of the European Parliament and of the Council [2013] OJ L182/1, Art 44 on data encryption; Regulation (EC) 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) [2006] OJ L381/4, Art 10 lists responsibilities of Member States in field of technical security whereas Arts 15 and 16 state that the Management Authority is responsible for security of the communication infrastructure.

¹¹² Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31 last amended by Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty [2003] OJ L284/1.

¹¹³ Regulation (EC) 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 data [2001] OJ L8/1 last amended by Corrigendum to Regulation (EC) 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 data [2007] OJ L164/35.

order to support and require compliance with these rules and objectives, i.e. effective accountability mechanisms.

- (84) Book VI regulates such **accountability mechanisms** in Chapter 4 and 5. Chapter 5 on remedies and liability provides some important mechanisms in this regard although it does not cover all relevant instruments of judicial protection in accordance with the general approach of the ReNEUAL Model Rules.¹¹⁴ Against this background, Chapter 4 establishes effective and coordinated mechanisms for supervision and dispute resolution in order to provide a comprehensive framework for inter-administrative accountability. As already highlighted the objectives of this framework are twofold and comprise effective composite information management on the one hand and protection of individual rights on the other.
- (85) Chapter 4 sets necessary framework rules for the supervision of information management activities supported by information systems with participating authorities from various jurisdictions within the EU. Such composite information management helps to ensure **that in the context of de-central but integrated administration** all relevant facts of a matter can be collected and shared prior to decision-making by a national or Union body but often creates situations in which administrative action takes effect beyond the territorial limits of the jurisdiction of the decision-making body.
- (86) Such regulatory framework for de-central implementation and administration of EU law through information systems raises not only the **question of effective discharge of administrative duties**, it can have considerable implications for the **exercise of rights of individuals** including rights to data protection and protection of business secrets. Such rights also include procedural rights of good administration such as rights to a fair hearing, rights of defence, rights of access to information and – more generally but importantly – the right to an effective judicial remedy.
- (87) As explained in the introduction to this book, Book VI is based on the observation that data **protection law and the general law of composite information management are interdependent** and need an integrated regulatory approach. This is also the case for the supervision of such composite information exchange.

¹¹⁴ See Book I, para 5 of the explanations.

The starting point for considerations on the administrative structures is Article 8(3) of the CFR, which establishes the obligation to create an independent supervisory authority for data protection. This independency under a widely held interpretation of Article 8(3) CFR could be compromised if the data protection supervisors would also be responsible for tasks other than data protection *strictu sensu* such as supervisory functions fostering effective inter-administrative information exchange.

(88) Therefore, a comprehensive supervisory framework unavoidably needs a **twofold structure**: The first element is a coordinated framework for the effective data protection supervision of information systems with components within the jurisdiction of various data protection supervisors (see section 2).

(89) The **objective of the general supervisory authority** – as the second element – is described in Section 1 (Article VI-30(2)). It is designed to ensure several objectives: First, individuals will have the possibility of turning to a single interlocutor in cases of protection of their rights. This is especially important with regard to rights which are not protected by data protection law, for instance business secrets. Individuals would enjoy more effective protection and benefit from access to European courts in case of non-satisfaction with the decisions of such authority. Also, the instrument of a single supervisory authority allows for using it as an administrative appeals body against decisions of participating authorities. Second, the general supervisory authority is an effective instrument to enforce compliance with the numerous objective obligations affiliated with inter-administrative information exchange. In this regard the general supervisory authority can also serve as arbiter in case of conflicts amongst the participating authorities or can resolve such conflicts through binding inter-administrative decisions.

Section 1: General supervision and dispute resolution

(90) The **supervisory authority** of each information system must be designated or created in the basic act. It will have the right to take binding decisions in the sense of Book III.

(91) Its **functions** include to manage the relations within the participating authorities by supervising the activities within the network (Article VI-30(2)(a)) and resolving

conflicts between the participating authorities in the context of their work in the system (Article VI-30(3)(b)).

- (92) This **mediating activity** is further developed in Article VI-31. This process is modelled on a similar feature in the European food safety network in which the Commission is in charge of mediating in case of disputes between participating authorities.¹¹⁵
- (93) **Supervisory tasks** (Article VI-30(2)(c)) and **verification tasks** (Article VI-30(2)(d)) conferred on the supervisory authority in the basic act will require that authority to be able to oblige other participating authorities in the information system (Article VI-32) to conform with its interpretation. The supervisory authority will be authorised to review the legality of information management activities for compliance with all sources of EU law including general principles of EU law. The supervisory authority will have the power to direct orders at the participating authorities to ensure compliance with EU law. Such controlling activity can take place, under Article VI-32(2), (3) upon
- the supervisory authority's own initiative.
 - a complaint lodged by another participating authority.¹¹⁶
 - complaints lodged by concerned persons.
- (94) The supervisory authority will also have the obligation to **protect individual data protection and access to information rights** (Article VI-30(2)(e),(f)) in cooperation with the EDPS and the national data protection authorities.
- (95) In order to be able to effectively protect these fundamental rights of individuals, the supervisory authority will have the **power to itself grant access, alter or delete data** in the information system (Article VI-33). This is a key provision establishing a centralised 'one-stop-shop' style remedy for individuals. It is an

¹¹⁵ See Regulation (EC) 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Safety Authority and laying down procedures in matters of food safety [2002] OJ L31/1 last amended by Regulation (EC) 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part Four [2009] OJ L188/14, Art 60(2).

¹¹⁶ See Regulation (EC) 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed [2003] OJ L268/1 last amended by Regulation (EC) 298/2008 of the European Parliament and of the Council of 11 March 2008 amending Regulation (EC) 1829/2003 on genetically modified food and feed, as regards the implementing powers conferred on the Commission [2008] OJ L97/64, Art 36.

essential element to ensure individual protection in de-central organisation of implementation of EU law.

- (96) Granting individuals the possibility to inquire about existing data and requesting the correction or deletion of incorrect or illegally obtained and held data is necessary in order to **avoid** that – depending on the technical design of the information system – an individual would have to make **several simultaneous requests of correction** in various jurisdictions in order to have an effective remedy against violations of their rights or risk addressing the wrong participating authority. A single supervisory authority with the powers to grant remedies therefore not only allows individuals an effective remedy against the wrong, it also opens the way, in case of a negative decision of the supervising authority to have access to the EU courts to bring an action for annulment against a decision refusing to act or an action for failure to act in case of non-action.
- (97) Other specific tasks can be added in the basic act of an information system.

Section 2: Data protection supervision of databases

- (98) Section 2 is based on **two alternative solutions** which are models from which the legislature in specific policy areas can chose from. One is the model of a cooperation of data protection supervisors provided for in Articles VI-36 – VI-38. The other is the model of the draft EU General Data Protection Regulation to establish a European Data Protection Board (Article VI-39). The choice between these two alternatives will allow the legislator to find solutions which are adapted to the specific design of individual information systems.
- (99) In addition to this external data protection supervision, Article VI-34 provides for the mandatory appointment of one **data protection officer** per database. Data protection officers serve as central contact points for the Data Protection Authorities. The obligation to appoint a Data Protection Officer for Union institutions, bodies, offices and agencies dealing with data already arises from Article 24 of the Regulation 45/2001.¹¹⁷ In addition to this existing obligation,

¹¹⁷ Regulation (EC) 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 data [2001] OJ L8/1 last amended by Corrigendum to Regulation (EC) 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

Article VI-34(1) obliges Member State authorities to also appoint a Data Protection Officer when acting in the context of EU databases.¹¹⁸

- (100) Article VI-34(2) clarifies that the **appointment and tasks of data protection officers** is governed by Article 24 of Regulation 45/2001¹¹⁹ as *lex generalis*,¹²⁰ as long as the basic act establishing the database does not contain specific rules.¹²¹

and bodies and on the free movement of such data [2007] OJ L164/35; see also Regulation (EU) 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice [2011] OJ L286/1 last amended by Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 28(2); Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) [2009] OJ L121/37, Art 28; Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime [2002] OJ L 63/1 last amended by [2009] Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime OJ L138/14, Art 17.

¹¹⁸ The existing Data Protection Directive does not oblige data processing bodies to establish Data Protection Officers, but provides this as an option for them. The proposed obligation is in line with Commission Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final, Art 35.

¹¹⁹ Regulation (EC) 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 data [2001] OJ L8/1 last amended by Corrigendum to Regulation (EC) 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 data [2007] OJ L164/35.

¹²⁰ For example Regulation (EU) 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice [2011] OJ L286/1 last amended by Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 28(2).

¹²¹ For example Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) [2009] OJ L121/37, Art 28; Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime [2002] OJ L 63/1 last amended by [2009] Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending

As the Regulation 45/2001¹²² applies per se to institutions, bodies, offices and agencies of the Union, Member States authorities are only bound *mutatis mutandis*. Data protection officers of Member States authorities collaborate with their respective National Data Protection Authority and the European Data Protection Board, where applicable, under Article VI-39¹²³ and they shall be registered with their respective National Data Protection Authority.

(101) **Option One: Cooperative Supervision under Articles VI-36 to 38:**

(102) The first of the two options mentioned above, the **default option** formulated in Article VI-36 to 38, is in line with several newer legal acts establishing databases. Under this model, the supervisory competences can be split up between the **EDPS and the National Supervisory Authorities**, which have to cooperate to fulfil their task in an effective way.¹²⁴ Such a *cooperative supervision* is concretised by articles VI-36 to VI-38 as the general rules of external data protection supervision of databases. In most of the recently adopted basic acts concerning shared databases the external supervision is organized in a cooperative structure similar to the model under option one described in Articles VI-36 to VI-38. Examples are the Regulation 1024/2012¹²⁵ and the Regulation 603/2013.¹²⁶

Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime OJ L138/14, Art 17.

¹²² Regulation (EC) 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 data [2001] OJ L8/1 last amended by Corrigendum to Regulation (EC) 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 data [2007] OJ L164/35.

¹²³ The Data Protection Officers of Community institutions and bodies collaborate with the EDPS.

¹²⁴ See Regulation (EC) 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) [2006] OJ L381/4, Arts 44-46; Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132, Art 21; Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013, Arts 30-32.

¹²⁵ Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the

(103) Article VI-36 concretises the **tasks, duties and competences** of the **EDPS** who is competent to monitor the lawfulness of the processing of personal data *by EU authorities* and – if a Management Authority is set up pursuant to Article VI-8 – *by the Management Authority*.¹²⁷ Paragraphs 1, 2 and 4 of Article VI-36 essentially consist of a slightly updated adaptation of Article 41(2) of Regulation 45/2001¹²⁸ to this system of cooperative supervision between the EDPS and the national supervisory authorities. Further, the EDPS will be in charge of auditing all data

Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132.

¹²⁶ Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1.

¹²⁷ Regulation (EC) 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) [2006] OJ L381/4, Art 45(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) [2007] OJ L205/63, Art 61(1); Regulation (EC) 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) [2008] OJ L218/60 VIS Management Authority has responsibilities and Member States have obligations concerning data security, Art 42(1); Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 31(1); Council Regulation (EC) 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and the cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [1997] OJ L82/1 amended by Regulation 766/2008 of the European Parliament and of the Council of 9 July 2008 amending Council Regulation (EC) 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters [2008] OJ L218/48, Art 37(3).

¹²⁸ Regulation (EC) 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 data [2001] OJ L8/1 last amended by Corrigendum to Regulation (EC) 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 data [2007] OJ L164/35.

processing on a regular basis. Such an auditing is foreseen by several basic acts establishing databases¹²⁹ and is generalized by Article VI-36(3). The auditing competence of the EDPS in a system of cooperative supervision is restricted to the data processing of EU authorities and the data processing of a Management Authority.

- (104) On the other hand, the supervision of data processing by Member States authorities is fulfilled by the **National Supervisory Authorities** (Article VI-37(1)) designated in article 28 of Directive 95/46¹³⁰ or Article 25 of Council Framework Decision 2008/977/JHA, depending on which of the two rules is applicable to the specific data processing. For the fulfilment of this task, the National Supervisory Authorities are endowed with the powers referred to in the Directive 95/46¹³¹, respectively the Council Framework Decision 2008/977/JHA.
- (105) Given that data processing in databases often suffers from a lack of transparency for the data subject, he or she can hardly be expected to be able to identify the

¹²⁹ Regulation (EC) 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) [2006] OJ L381/4, Art 45(2); Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) [2007] OJ L205/63, Art 61(2); Regulation (EC) 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) [2008] OJ L218/60 VIS Management Authority has responsibilities and Member States have obligations concerning data security, Art 42(2), (3); Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 31(2).

¹³⁰ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31 last amended by Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty [2003] OJ L284/1.

¹³¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31 last amended by Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty [2003] OJ L284/1.

responsible data processing authority. It will therefore be the general task of Data Supervisory Authorities to **assist the data subject in the exercise of her or his rights**. In order to assure an effective assistance, both, the Supervisory Authority of the Member State in which the data subject is located and the Supervisory Authority of the Member State which transmitted the data are competent to advise the data subject; the two Authorities shall cooperate to this end. In order to facilitate the exercise of his rights, the data subject may only lodge a request with the Supervisory Authority of the Member State where he is located, which has to communicate the request to the authority of the Member State which transmitted the data (Article VI-37(2)).¹³² National Supervisory authorities are also required to audit data processing of the Member States authorities. This is complementary to the auditing task of the EDPS (Article VI-36(3)).¹³³

- (106) The system of **cooperation between the national supervisory authorities and the EDPS** is addressed in Article VI-38. They are under a duty to cooperate which is a concretisation of the general obligation of loyal cooperation arising from Article 4 TEU modelled on specific provisions of EU law.¹³⁴ Article VI-38(1)

¹³² Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 29(13).

¹³³ See Regulation (EC) 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) [2006] OJ L381/4, Art 44(2); Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 41(2); Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) [2007] OJ L205/63, Art 60(2).

¹³⁴ Compare Regulation (EC) 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) [2006] OJ L381/4, Art 46(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) [2007] OJ L205/63, Art 62(1); Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 43(1); Regulation (EU) 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and

and (2) concretise this cooperation by imposing specific duties and time limits.¹³⁵ These obligations exist irrespective of general rules and ensuing obligations to mutual assistance as described in Book V.

- (107) The basic act can also assign the supervision of the data processing within a database to a **single authority** – either the EDPS or one of the National Supervisory Authority – or a **group of Supervisory Authorities**. Such a representative supervision shall allow a holistic approach of supervision similar to the Supervision by a European Data Protection Board under Article VI-39. However, the representative supervision only concerns the data processing *within* the database, but not the entry into the database and the retrieval from the database, which – in a system of cooperative supervision – stay in the competences of either the EDPS or the National Supervisory Authorities under Articles VI-36 and VI-37. The supervision of the whole database, including the

repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132, Art 21(3); Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 32(1).

¹³⁵ Compare Regulation (EC) 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) [2006] OJ L381/4, Art 46(2), (3); Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) [2007] OJ L205/63, Art 62(2); Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 43(2), (3); Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 32(3), (4); Commission Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final, Art 55(2).

entry into and the retrieval from the database can only be assigned to the European Data Protection Board under Article VI-39.

(108) **Option Two: Integrated Supervision under Article VI-39:**

(109) Article VI-39 allows for assigning the external supervision to a **European Data Protection Board**. As the data processing in shared databases represents a particularly integrated form of composite administrative procedures, there might be good reason in practice to assign the entire external supervision to one body integrating the supervisory authorities from the European as well as from the national level. This is the basis of the model contained in Article VI-39.

(110) A **similar integrated model** was essentially developed in the pre-Lisbon period. Before the entry into force of the Treaty of Lisbon, Directive 95/46 and the Regulation 45/2001¹³⁶ were only applicable to the former ‘first pillar’ Community law. These acts did not apply to former ‘third pillar’ matters. In view of this, especially in the field of the ‘third pillar’ Justice and Home Affairs, the European legislator established several Joint Supervisory Bodies with the competence for several shared data resources like the VIS or agencies like Europol. These Joint Supervisory Bodies were normally composed of one or two representatives of the National Supervisory Authorities and they monitored the application of the data protection provisions of the basic legal act and/or the Framework Decision 2008/977/JHA.¹³⁷

(111) Some newer legal instruments like the Regulation and the Council Decision regarding the SIS II, abandoned the concept of Joint Supervisory Bodies and instead established a system of cooperation between the EDPS and the National Supervisory Authorities similar to the model under Articles VI-36 to VI-38.¹³⁸

¹³⁶ Regulation (EC) 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 data [2001] OJ L8/1 last amended by Corrigendum to Regulation (EC) 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 data [2007] OJ L164/35.

¹³⁷ See Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) [2009] OJ L121/37, Art 34(1); Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes [2009] OJ L323/20, Art 25(1).

¹³⁸ See Regulation (EC) 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) [2006] OJ L381/4, Arts 44-46; Regulation (EU)

- (112) Other legal instruments maintained the concept of Joint Supervisory Bodies.¹³⁹ The draft General Data Protection Regulation further developed this integrated model of composite data protection under the label of a European Data Protection Board as an **organizational structure for enhancing the coherence of the implementation of data protection law**. In contrast to the draft regulation, these model rules develop the European Data Protection Boards under the second option not only as a preparatory or advisory body but as a body with powers to take binding decisions on data protection problems arising from composite information management. These boards are developed here for cases where the legislator opts for a more integrative way of supervision. When assigning the external data protection supervision of databases to the European Data Protection Board (Article VI-39), such an assignment has to be enshrined in the basic act establishing the database.
- (113) Under the model proposed by Article VI-39, the **legislator may assign** the supervision of the processing of personal data in databases to a European Data Protection Board. The rules concerning the composition and the decision-making of the Board are strongly influenced by the Proposal for a General Data Protection Regulation.¹⁴⁰ If the Proposal is adopted or if the Directive 95/46¹⁴¹ is

1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') [2012] OJ L316/1 last amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) 1024/2012 on administrative operation through the Internal Market Information System ('the IMI Regulation') [2013] OJ L354/132, Art 21(3); Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 30-32.

¹³⁹ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) [2009] OJ L121/37, Art 34; Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes [2009] OJ L323/20, Art 25 – both adopted one day before the entry into force of the Lisbon Treaty in order to maintain for a transitional period the initial inter-governmental structure in this field.

¹⁴⁰ See Commission Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final, Arts 64(2), 68(1).

amended in the sense, that the Article 29 Working Party becomes a Data Protection Board, the assignment has to be made to the Board after the General Data Protection Regulation¹⁴² or after the modified Directive 95/46.¹⁴³ However, the Commission is not allowed to participate in the Data Protection Board, as it is acting as a participating authority or even as a Management Authority in several databases. For that reason, a participation of the Commission in a Data Protection Board has to be regarded incompatible with Article 16(2) TFEU and Article 8(3) CFR, which state that the Data Protection Supervision has to be carried out by an independent body.

- (114) If the legislator has assigned the supervision to the Data Protection Board, the Board is granted the powers set out in Articles IV-36 and IV-37. To structure the supervision of databases, the Board shall adopt a supervision plan for each databases every year. A revocable delegation of parts of the supervision tasks to the EDPS, or to one or a group of Supervisory Authorities can be made in these plans. They will be binding upon the EDPS and the National Supervisory Authorities. A duty to cooperate with other supervisory authorities is enshrined in Article VI-39(4).

¹⁴¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31 last amended by Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty [2003] OJ L284/1.

¹⁴² See Commission Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final; European Parliament legislative resolution of 12 March 2014 on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) P7_TA(2014)0212.

¹⁴³ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31 last amended by Regulation (EC) 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty [2003] OJ L284/1.

Chapter 5: Remedies and Liability

VI-40 Right to compensation in relation to composite information management activities

- (115) Compensation rights under the first paragraph of Article VI-40 are designed to protect individuals. It is **based on a system of choice**. Under the first alternative, an individual can seek damages directly from the authority which had conducted the unlawful act leading to the damage. This is the model currently provided for in several EU policy fields such as in the area of Visas, Schengen or the EURODAC system.¹⁴⁴
- (116) The alternative under Article VI-40(2) provides for an individual to **seek damages** in the jurisdiction of residence or of registration. This is a measure protecting individuals against the potential disadvantages of de-central administration of EU law through information systems with participants from various jurisdictions in the EU whose Court systems, law and language may not be familiar to the person suffering a damage. Such system of representative liability has been developed on the basis of these specific considerations for example in the context of the Schengen area.¹⁴⁵

¹⁴⁴ See Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 33(1); Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 37(1); Regulation (EC) 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) [2006] OJ L381/4, Art 48(1); See Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) [2007] OJ L205/63, Art 64(1).

¹⁴⁵ See Regulation (EC) 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) [2006] OJ L381/4, Art 48(2); See Council Decision

- (117) Provisions allowing for **inter-administrative damage claims** are common in EU policies. They are included in Article VI-40 (3).¹⁴⁶
- (118) Article VI-40(4) takes up the example of the existing rules for the European Food Safety Authority referring to the **General Principles of EU law on damages as criteria for award**.¹⁴⁷ This is included in order to limit possibilities of so called ‘forum shopping’ under which individuals could seek out the jurisdiction offering the highest levels of damage payments to the detriment of the authorities which would need to internally reimburse the paying authority.

VI-41 Penalties for unlawful data processing

- (119) The **principle of loyal cooperation** (Article 4(3) TEU) requires Member States of the EU not only to ensure that they afford equal means of enforcement to rights and obligations arising out of EU law as they would to those arising under national law (known as the principle of equivalence). It also requires that the Member States ensure effective enforcement of rights and obligations arising from EU law (principle of effectiveness). Article VI-41 is a provision ensuring that this general principle of EU law is specifically enforced with regard to data processing. The specific requirement of requiring ‘effective, proportionate and

2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) [2007] OJ L205/63, Art 64(2); The Schengen acquis - 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 [2000] OJ L239/19, Art 116(2).

¹⁴⁶ See Regulation (EC) 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) [2006] OJ L381/4, Art 48(3); See Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) [2007] OJ L205/63, Art 64(3); Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 33(2).

¹⁴⁷ See Regulation (EC) 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Safety Authority and laying down procedures in matters of food safety [2002] OJ L31/1 last amended by Regulation (EC) 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part Four [2009] OJ L188/14, Art 47(2).

dissuasive penalties' stems from provisions in the Schengen, Visa and EURODAC cooperation in the context of granting the right of Asylum.¹⁴⁸

¹⁴⁸ See Regulation (EC) 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) [2006] OJ L381/4, Art 49; see Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) [2007] OJ L205/63, Art 65; Regulation (EC) 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) [2008] OJ L218/60 last amended by Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) [2009] OJ L243/1, Art 36; Regulation (EU) 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L180/1, Art 41.