



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.9.2007
COM(2007) 515 final

2007/0189 (CNS)

Proposal for a

COUNCIL DECISION

**implementing Regulation (EC) No 168(2007 as regards the adoption
of a Multiannual Framework
for the European Union Agency for Fundamental Rights for 2007-2012**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

On 15 February 2007, the Council adopted Regulation (EC) No 168/2007 (the Regulation)¹ establishing a European Union Agency for Fundamental Rights (the Agency). The Agency became operational on 1 March 2007.

The objective of the Agency is to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights.

The Agency carries out its tasks for the purpose of meeting this objective within the competencies of the Community as laid down in the Treaty establishing the European Community, and refers, in carrying out its tasks, to fundamental rights as defined in Article 6(2) of the Treaty on European Union, including the European Convention on Human Rights and Fundamental Freedoms and the European Social Charter. These fundamental rights are reflected in particular in the Charter of Fundamental Rights of the European Union, bearing in mind its status and the accompanying explanations. The tasks entrusted to the Agency relate to the collection and analysis of information and data; to the provision of advice through reports and opinions; and to cooperation with civil society and awareness-raising.

According to Article 5 of the Regulation, the thematic areas of activity of the Agency shall be determined by the Council through a Multiannual Framework. Within these thematic areas, the Agency will, in complete independence, carry out the above-mentioned tasks. This is however without prejudice to requests of the European Parliament, the Council or the Commission under Article 4(1)(c) and (d) of the Regulation outside these thematic areas, provided its financial and human resources so permit.

The objective of this proposal is to establish the Multiannual Framework for the Agency as required by Article 5 of the Regulation.

- **General context**

The Regulation lays down the basic elements of the Multiannual Framework in Article 5(2), which stipulates first that the Framework should cover five years. Secondly, it must include a fight against racism, xenophobia and related intolerance amongst the thematic areas. The preamble of the Regulation clarifies that, besides the phenomena of racism, xenophobia and anti-Semitism, the work of the Agency as successor of the European Monitoring Centre on Racism and Xenophobia² should continue to cover also the protection of rights of persons belonging to minorities as well as gender equality, as

¹ OJ L 53, 22.2.2007, p.1.

² The Agency is built upon the previous EUMC established by Council Regulation (EC) No 1035/97 of 2 June 1997 (OJ L 151, 10.6.1997, p.1. As amended by Regulation (EC) No 1652/2003, OJ L 245, 29.9.2003, p. 33).

essential elements for the protection of fundamental rights.

Thirdly, the Multiannual Framework must be in line with Union's priorities, taking due account of the orientations resulting from the European Parliament resolutions and Council conclusions in the field of fundamental rights. The following fields relating to fundamental rights have been raised through the European Parliament resolutions in last years³:

- racism and xenophobia;
- non-discrimination and equality;
- discrimination on the grounds of sexual orientation; homophobia in Europe;
- discrimination on the grounds of disability, disability issues;
- freedoms of expression, assembly and association and thought; freedom of expression in internet;
- the right to participate under equal conditions in election processes;
- the right to education, liberty of education and training of girls and women;
- solidarity and social rights;
- children's rights;
- gender equality, women's rights, violence against women; female genital mutilation;
- trafficking in human beings;
- citizen's rights and justice;
- right to asylum;
- immigration; integration of immigrants;
- protection of national minorities, minority rights and Roma issues;
- respect for cultural, religious and linguistic diversity;
- death penalty;
- mental health.

The priority orientations issued by the Council can be listed on the basis of the conclusions of the European Councils in recent years as follows⁴:

- European Migration Policy, including integration and asylum policy;
- visa issues and border control;
- trafficking in human beings;

³ Resolutions of 17.1.2006, 18.1.2006, 2.2.2006, 16.2.2006, 15.3.2006, 1.6.2006, 14.6.2006, 15.6.2006, 6.7.2006, 6.9.2006, 28.6.2006, 26.10.2006, 15.11.2006, 16.11.2006, 30.11.2006, 26.5.2005, 18.1.2007, 1.2.2007, 13.3.2007 and 26.4.2007.

⁴ Brussels European Councils of 22-23.3.2005, 16-17.6.2005, 15-16.12.2006, 23-24.3.2006, 15-16.6.2006 and 14-15.12.2006.

⁵ OJ C 139, 14.6.2006, p. 1.

⁶ SEC(2007)500 final of 2 May 2007.

⁷ OJ L 403, 30.12.2006, p. 9.

⁸ OJ L 8, 12.1.2001, p. 1.

- gender equality;
- counter-terrorism;
- youth.

The Multiannual Framework must have due regard to the Agency's financial and human resources. The financial resources of the Agency for the period covered by this Multiannual Framework have been set by the financial framework annexed to the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management of 17 May 2006⁵, and presented in Document V Financial Programming 2008-2013 of Statement of Estimates of the Commission for 2008⁶.

Finally, the Multiannual Framework must include provisions with a view of ensuring complementarity with the remit of other Community and Union bodies, offices and agencies, as well as with the Council of Europe and other international organisations active in the field of fundamental rights. The most relevant Community agencies and bodies in relation to this Multiannual Framework are the European Institute for Gender Equality established by Regulation (EC) No 1922/2006⁷ and the European Data Protection Supervisor established by Regulation (EC) No 45/2001⁸.

Because the gender equality issues will be dealt by the European Institute for Gender Equality in accordance with Article 2 of Regulation (EC) No 1922/2006, a memorandum of understanding will be concluded between the Agency and the Institute once the latter is in place to ensure appropriate coordination pursuant to Article 7 of the Regulation.

These elements constitute the criteria, on which the Multiannual Framework must be based on, together with the scope of the Agency under Article 3 of the Regulation.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

The Commission issued a Communication on the Fundamental Rights Agency on 25 October 2004 launching thereby a public consultation, which discussed also the issue of thematic areas. There were one hundred responses to written consultation. The contributors included ten Member States, European and international bodies, national bodies for human rights, antidiscrimination and equal opportunities, members of academia, private citizens and almost 60 non-governmental organisations. A public hearing took place on 25 January 2005. There were more than 200 registered participants, representing the above-mentioned stakeholders. The consulted stakeholders agreed on giving certain thematic priorities to the Agency, and in particular following areas were mentioned:

- discrimination (including in workplace);
- data protection;
- asylum;
- immigration;
- mainstreaming of fundamental rights to all Community policies;
- rights of victims;
- minority rights;

- access to justice;
- conditions of detention;
- counter-terrorism measures;
- fundamental social rights;
- gender issues

The consultation was part of the impact assessment⁹, which supported the option of creating a "Focused Observation and Assessment Agency on Union policies".

This option was realized by the Regulation containing criteria to define a number of areas where the Agency's input are most needed for the development of Community policies. Furthermore the Commission, while preparing its proposal, has consulted the Management Board of the Fundamental Rights Agency during its meeting of 12- 13 July and received written comments by letter of 25th July 2007. The Commission took account of comments made during the consultation in this proposal. All documents relating to the consultation and impact assessment are available in the address:

http://ec.europa.eu/justice_home/fsj/rights/fsj_rights_agency_en.htm

3) LEGAL ASPECTS OF THE PROPOSAL

- **Summary of the proposed action**

Derived from the criteria set in the Regulation, the Commission proposes the following thematic areas to be included for the Multiannual Framework of the Agency for years 2007-2012:

- a) racism, xenophobia and related intolerance;
- b) discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation or of persons belonging to minorities;
- c) compensation of victims, prevention of crime and related aspects relevant to the security of citizens;
- d) protection of children, including rights of the child;
- e) immigration and integration of migrants;
- f) asylum;
- g) visa and border control;
- h) participation in the Union's democratic functioning;
- i) human rights issues relating to the information society; and

⁹ See Report SEC(2005)849, 30.6.2005.

- j) access to efficient and independent justice.

The list is "topical" or "policy-based", which would allow the Agency to look into all fundamental rights problems that might arise within a given thematic area. When these thematic areas are included in the Multiannual Framework, all Chapters of the Charter of Fundamental Rights of the European Union would be touched to some extent, limiting however the thematic areas to appropriate numbers.

- **Legal basis**

The legal basis for the proposed Council Decision is Article 5(1) of Council Regulation (EC) No 168/2007.

- **Choice of instruments**

Proposed instruments: Council Decision, which is an appropriate legal instrument to establish the Multiannual Framework for a Community agency.

4) BUDGETARY IMPLICATION

The proposal has no direct implication for the EU budget.

5) DETAILED EXPLANATION OF THE PROPOSAL

- The thematic areas of the Agency's activity (Article 2) allows the Agency to look into all fundamental rights problems that might arise within a given thematic area.
- *Racism, xenophobia and related intolerance*: This thematic area is prescribed by the Regulation itself.
- *Discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, or of persons belonging to minorities*: Virtually all stakeholders expect that the Agency will deal with the discrimination grounds of Article 13 TEC, that is besides racial and ethnic origin, also sex, religion or belief, disability, age or sexual orientation. The last ground, the persons belonging to minorities, is reflected in the preamble of the Regulation. The other areas are contiguous to "racial and ethnic origin", and the Agency may therefore benefit from economy of scales as regards expertise and data collection methods. Additionally, this thematic area will allow covering for instance "multiple discrimination", discrimination at the work place, or aspects related to "social inclusion" issues. As regards specifically "sexual orientation", both recent developments in the EU as well as strong demand from the European Parliament resolutions on homophobia speak for this area to be included into the Multiannual Framework. Under this heading the Agency could deal also with "gender issues including gender mainstreaming" on a complementary way and in close cooperation with the actions of the European Institute for Gender Equality on the basis of the memorandum of understanding to be concluded between the Agency and the Institute.
- *Compensation of victims, prevention of crime and related aspects relevant to the security of citizens*: The establishment of the area of freedom, security and justice has made the security policy essential also within the EC, with aim to facilitate the free

movement of persons while ensuring safety and security of citizens. Crime prevention is an indispensable part of this work. "Victims rights" should be included to thematic areas corresponding to Community law on state compensation to crime victims or victims of human trafficking. There is a proven interest by the stakeholders to these areas.

- *Protection of children, including the rights of the child;* . This area would cover the rights of the child, the link of which with Community priorities is obvious. The work would relate in particular to the areas of free movement, education, social inclusion and youth policies, the media and other relevant Community policies.
- *Immigration:* The same can be said for immigration; in particular, the treatment at the borders and conditions in detention centres for illegal immigrants as well as aspects related to victims of human trafficking have been the subject of particular concerns from the point of view of fundamental rights. *Integration of migrants* is closely related to immigration. This is an area of which fundamental rights constitute an important consideration and where the EU is also expected to play a role. Under this thematic area, the relevant aspects of social inclusion, "freedom of religion", as well as the subjects "female mutilation" or "forced marriages" could also be dealt with by the Agency.
- *Asylum:* This is obvious thematic area for the Agency given that it concerns a specifically vulnerable group of people and it is subject of extensive Community legislation of which fundamental rights are an essential component. It is also widely expected among all stakeholders that the Agency will work on asylum.
- *Policy on "Borders and Visas"* is a concrete side of the fundamental right for free movement. The area is suggested as the possible behaviours of the state agents in this area may affect not only third country nationals but also Union citizens. In most of the legislative instruments in the area of borders and visas there are specific clauses for the respect of the fundamental rights and freedoms.
- *Participation in the Union's democratic functioning.* This thematic area concerns the Union's citizens' right to participate in local elections and the European Parliament elections.
- *Human rights issues relating to the information society* cover such major issues like private life and data protection. It is closely linked with the transparency of Community policy and administration and countervailing privacy rights and contains thus these issues. This thematic area was mentioned a number of times by stakeholders. It would also touch issues like internet and other electronic communication mechanisms, radio frequency identification, freedom of speech and public interests of security and fighting crime as well as intellectual property.
- *Access to efficient and independent justice:* There is Community legislation to facilitate access to justice (legal aid, simplified civil procedures, consumer law), which is an important part of the European area of civil justice.

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**implementing Regulation (EC) No 168(2007 as regards the adoption
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for the European Union Agency for Fundamental Rights for 2007-2012**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights¹⁰, and in particular Article 5(1) thereof,

Having regard to the proposal from the Commission¹¹,

Having regard to the opinion of the European Parliament¹²,

Whereas:

- (1) In order for the Agency to carry out its tasks properly, the precise thematic areas of its activity are to be determined by a Multiannual Framework covering five years as stipulated in Article 5 (2) of Regulation (EC) No 168/2007.
- (2) The Framework should include the fight against racism, xenophobia and related intolerance amongst the thematic areas of the Agency's activity.
- (3) The Framework should be in line with Union's priorities, taking due account of the orientations resulting from the European Parliament resolutions and Council conclusions in the field of fundamental rights.
- (4) The Framework should have due regard to the Agency's financial and human resources..
- (5) The Framework should include provisions with a view of ensuring complementarity with the remit of other Community and Union bodies, offices and agencies, as well as with the Council of Europe and other international organisations active in the field of fundamental rights. The most relevant Community agencies and bodies in relation to this Multiannual Framework are the European Institute for Gender Equality established by Regulation (EC) No 1922/2006 of the European Parliament and of the

¹⁰ OJ L 53, 22.2.2007, p. 1.

¹¹ OJ C , , p. .

¹² OJ C , , p. .

Council of 20 December 2006 establishing a European Institute for Gender Equality¹³ and the European Data Protection Supervisor established by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to processing of personal data by the Community institutions and bodies and on the free movement of such data¹⁴, the objectives of which should consequently be taken into account.

- (6) The Commission, while preparing its proposal, has consulted the Management Board of the Fundamental Rights Agency during its meeting of 12- 13 July and received written comments by letter of 25th July 2007.
- (7) In accordance with Article 5(3) of the Regulation, the Agency is able to reply to requests from the European Parliament, the Council or the Commission under Article 4(1)(c) and (d) of the Regulation outside the thematic areas of activity determined by this Multiannual Framework.

HAS ADOPTED THIS DECISION:

Article 1
Multiannual Framework

1. A Multi-Annual Framework for the European Union Agency for Fundamental Rights (hereinafter "the Agency") for the period 2007-2012 is hereby established.
2. The Agency shall carry out the tasks defined in Article 4(1) of Regulation (EC) No 168/2007 within the thematic areas laid down in Article 2.

Article 2
Thematic areas

The thematic areas shall be the following:

- a) racism, xenophobia and related intolerance;
- b) discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation or of persons belonging to minorities;
- c) compensation of victims, prevention of crime and related aspects relevant to the security of citizens;
- d) protection of children, including rights of the child;
- e) immigration and integration of migrants;
- f) asylum;
- g) visa and border control;

¹³ OJ L 403, 30.12.2006, p. 9.

¹⁴ OJ L 8, 12.1.2001, p. 1.

- h) participation in the Union's democratic functioning
- i) human rights issues relating to the information society; and
- j) access to efficient and independent justice.

Article 3

Complementarity and cooperation with other bodies

1. The Agency shall ensure appropriate coordination with relevant Community bodies, offices and agencies, Member States, international organisation and civil society, in the terms established in Articles 7, 8 and 10 of Regulation (EC) No 168/2007, for the implementation of this Framework.

2. In particular, the Agency shall coordinate its activities with those of the Council of Europe in the terms established in Article 9 of Regulation (EC) No 168/2007 and in the agreement referred to in that Article.

3. The Agency shall deal with issues relating to discrimination based on sex only as part of, and to the extent relevant to its work to be undertaken on general issues on discrimination referred to in Article 2 point (b), taking into account that the overall objectives of the European Institute for Gender Equality established by Regulation (EC) No 1922/2006 shall be to contribute to and strengthen the promotion of gender equality, including gender mainstreaming in all Community policies and the resulting national policies, and the fight against discrimination based on sex and to raise EU citizens' awareness of gender equality by providing technical assistance to Community institutions, in particular to the Commission and the authorities of the Member States.

4. The Agency shall carry out its tasks in the area of human rights issues relating to the information society without prejudice to the responsibilities of the European Data Protection Supervisor for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to privacy, are respected by Community institutions and bodies in accordance with his or her duties and powers stipulated in Article 46 and 47 of Regulation (EC) No 45/2001.

Done at Brussels,

For the Council
The President