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COEST 311**

NOTE

from : Presidency

to : Coreper

Subject : – Proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights
– Proposal for a Council Decision empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI of the Treaty of the European Union

I. INTRODUCTION

In December 2003 the European Council agreed to extend the mandate of the European Monitoring Centre on Racism and Xenophobia and to make it a Human Rights Agency.

On 5 July 2005, the Commission submitted to the Council a proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights and a proposal for a Council Decision empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI of the Treaty on the European Union.¹

¹ 10774/05 JAI 246 CATS 42 COHOM 13 COEST 105 COM(2005) 280 final.

The Ad hoc Working Party on Fundamental Rights and Citizenship met sixteen times during the Austrian Presidency to discuss the proposals. The compromise proposal of the Austrian Presidency with regard to a consolidated text and the Preamble of the Regulation is set out in document 10755/06 JAI 321 CATS 128 COHOM 114 COEST 187.

The European Council of June 2006 took note of the progress achieved on the setting up of the European Union Agency for Fundamental Rights and called for the necessary steps to be taken as soon as possible, so that the Agency is up and running as from 1 January 2007.

From July to October 2006 the Presidency has held a series of informal bilateral consultations aimed at solving the outstanding questions. In the course of those discussions it has emerged that the principal outstanding question is the extension of the competence of the Agency to the issues covered by Title VI TEU. It is the understanding of the Presidency that finding a compromise solution to this question is an essential precondition for reaching an overall agreement on the establishment of the Agency.

The Presidency presented the results of its bilateral consultations in Coreper on 27 September 2006 and in the JHA Council on 6 October 2006. The Presidency proposed to look for a compromise that would enable the extension of the Agency's tasks to Title VI but in a more limited form than that originally proposed by the Commission. The majority of delegations that took the floor in the JHA Council on 6 October 2006 gave their support to the approach of the Presidency. Stressing the importance of giving the Agency certain tasks under Title VI, these delegations urged the Presidency to continue to seek a solution to the question concerning Title VI. A number of delegations emphasised that empowering the Agency to act under Title VI constituted in their view an indispensable element of the establishment of the Agency. Since a number of delegations expressed their concern about the legal basis of the proposed decision, the Presidency indicated it would place special emphasis on solving this question.

The various alternatives concerning the mandate of the Agency under Title VI of TEU have been prepared and discussed by an informal group, consisting of the Presidency, the previous and incoming Presidencies, representatives of the Commission and the Council Secretariat, and the legal services of the Council and the Commission. The group has met twice, on 24 October and 6 November 2006.

An informal Trialogue meeting focusing on the question of the extension of the Agency's remit in respect of issues governed by Title VI TEU was held between the Presidency, the Commission and the European Parliament on 3 October 2006. Another Trialogue meeting is scheduled to take place in Strasbourg on 15 November 2006.

At its meetings of 9 and 24 October 2006, the Ad hoc Working Party on Fundamental Rights and Citizenship examined the text of Article 29 (transitory arrangements) of the proposed Council Regulation (see document 14401/06 JAI 530 CATS 158 COHOM 156 COEST 279 FIN 502).

In the present document, the Presidency submits to COREPER all questions that, in the view of the Presidency, remain outstanding, with a view to adopting a general approach on the text. These questions are set out in point II.

The text of the proposal for a Council Regulation, based on document 10755/06 JAI 321 CATS 128 COHOM 114 COEST 187, is set out in Annex I. Compromise proposals by the Presidency are indicated in italics.

A compromise proposal by the Presidency for the text of a Council Decision giving the European Union Agency for Fundamental Rights certain tasks in areas referred to in Title VI of the Treaty on European Union is set out in Annex II.

The European Parliament has not delivered its opinion yet.

The draft is subject to reservations (see below point III).

II. OUTSTANDING QUESTIONS

Reference of the Charter of Fundamental Rights of the European Union in the proposed Regulation

During the Austrian Presidency it was discussed whether the text of the proposed Regulation could include references to the Charter of Fundamental Rights of the European Union, or whether such a reference should rather be included in the Preamble of the Regulation.

In the compromise proposal by the Austrian Presidency, it was suggested to delete Article 3(2) in its entirety and to transfer its content, including the reference to the Charter, to the Preamble.

In the context of the discussions concerning the Charter it has emerged that the majority of the delegations would prefer to make reference to the Charter in the text of the Regulation. However, they have indicated that they might accept a solution where reference was made to the Charter only in the Preamble, as a part of a wider compromise package on the establishment of the Agency. In this context, they have stressed the importance of extending the Agency's mandate to questions covered by Title VI of the TEU.

On the basis of the informal consultations conducted by the Presidency, and in the light of the present state of the discussions concerning the Agency's remit under Title VI, it seems likely that the Agency's powers under Title VI will be limited considerably as compared to the Commission's original proposal. It is the understanding of the Presidency that the solution to be found to the question concerning Title VI ought to be taken into consideration when possible compromise solutions to the question of the Charter are explored.

In the view of the Presidency, the operative part of the Regulation will need to contain a definition of the fundamental rights that the Agency refers to when fulfilling its mandate. For this purpose, the Presidency proposes a new wording for Article 3(2). The wish of the majority of the delegations to underline the importance of the Charter has been taken account of by omitting the reference to the explanations of the Charter from paragraphs 2 and 9 of the Preamble.

The Committee is invited to examine this compromise solution.

Geographical Scope of the Agency

During the Austrian Presidency it was agreed that the main focus of the Agency's work would be on the European Union and its Member States. In addition, in order to ensure coherence in the EU human rights policy especially in the enlargement process, an expansion of the Agency's competence to candidate countries seemed to be acceptable to all Member States.

As regards the so-called potential candidate countries (i.e. Western Balkan countries), and in follow-up to the COREPER meeting on 8 June 2006, a compromise solution seemed to emerge with regard to the proposal set out in Annex I (Articles 3(3) and 27). The proposal is the same as the one set out in document 10289/06 JAI 300 CATS 121 COHOM 104 COEST 177 + COR 1, prepared by the Austrian Presidency for the General Affairs and External Relations Council of 12 June 2006.

The proposed wording provides for a possibility for the potential candidate countries to participate in the work of the Agency as observers. The proposal does not foresee an automatic extension of the Agency's scope to the potential candidate countries but merely states an option. As is well-known, no Stabilisation and Association Agreement with a potential candidate country is currently in force, and according to estimates of the Commission, it will still take a considerable number of years until such agreements will be in place. Even after the entry into force of a relevant agreement, a decision of the respective Association Council on the participation in the Agency's work will be required for the extension of the Agency's activities to the country in question. As the Agency could deal with fundamental rights issues in this country only to the extent necessary for its gradual alignment to Community Law, the scope of the Agency's activities in this country would be more limited than in relation to the Community and its Member States.

The Committee is invited to agree on the proposal as set out in Articles 3(3) and 27 of the proposed Regulation.

Possible role of the Agency in proceedings based on Article 7 TEU

In follow-up to the discussions in the framework of COREPER on 8 June 2006, a compromise solution seemed to emerge along the lines of the proposal consisting of omitting the reference to proceedings based on Article 7 TEU from Article 4(1)(e) of the Regulation and replacing this by a declaration by the Commission and the Council stating that nothing prevents the Council from having recourse to the Agency in a situation within the meaning of Article 7 TEU.

While agreement on the general characteristics of the compromise has been reached, the text of the declaration has not yet been discussed. The Presidency thus proposes the following wording for the declaration:

"The Council and the Commission consider that neither the Treaties nor the Regulation establishing the European Union Agency for Fundamental Rights preclude the possibility for the Council to seek the assistance of the future European Union Agency for Fundamental Rights when deciding to obtain from independent persons a report on the situation in a Member State within the meaning of Article 7 TEU if it considers that the European Union Agency for Fundamental Rights offers the necessary guarantees of independence."

The Committee is invited to examine the proposal for the text of the declaration in order to agree to this compromise solution.

Procedure for the Appointment of the Director of the Agency

During the Austrian Presidency it was discussed whether the appointment procedure of the Director of the Agency should follow the horizontal principles currently examined by the Working Party on the Staff Regulations or whether a specific appointment procedure should be opted for. In the light of the exceptional character of this Agency, agreement was reached in COREPER on 8 June 2006 on the application of a particular appointment procedure. It was agreed that a declaration by the Council, the Commission and the European Parliament would be included in the minutes of the Council stating that the procedure laid down by Article 13 of the Regulation is only applied in the context of the Fundamental Rights Agency and will thus not set a precedent for future Agencies. The text of the declaration on the appointment procedure has so far not been discussed. The Presidency proposes the following wording for the declaration:

"The European Parliament, the Council and the Commission stress the exceptional nature, in comparison to other agencies, of the European Agency for Fundamental Rights, the objective of which is to provide the institutions of the Union with assistance and expertise within a domain where the legislature in general and the European Parliament in particular has been given significant powers."

This exceptional nature of the Agency for Fundamental Rights justifies that the solutions generally followed in the nomination of directors for agencies are not, in their entirety, followed in the nomination of the director for the Agency for Fundamental Rights, and that, in the case of this Agency, a more prominent role is given to the Parliament and to the Council under Article 13 of the Regulation.

This solution cannot in any way be regarded as constituting a precedent which could be referred to when nominating the director of any other agency, nor for the extension of his or her mandate."

The Committee is invited to examine the proposal for the text of the declaration in order to agree to this compromise solution.

Competence of the Agency regarding issues governed by the Title VI TEU

In the view of the Presidency, finding an overall compromise of the establishment of the Agency presumes that a solution is found whereby the Agency can exercise certain functions under Title VI as of its establishment. The Presidency considers that there are currently two alternative ways for fulfilling this objective.

First, the scope of application of the Council Decision empowering the Agency to act in areas referred to in Title VI TEU could be narrowed down so as to take account of the specific nature of co-operation under Title VI TEU (hereinafter referred to as "Option 1"). At the JHA Council on 6 October 2006 this approach received the support from the majority of the Member States that took the floor as well as from the Commission. At the Trialogue meeting of 3 October 2006, the European Parliament also indicated its preliminary support for this solution.

Alternatively, the Agency could be given certain tasks under Title VI through a model whereby the Union's institutions and the Member States could, on a voluntary basis, benefit from the general expertise on fundamental rights acquired by the Agency also within the areas of police and judicial cooperation in criminal matters. In addition, there would be a review ("*rendez-vous*") clause whereby the Council would agree to reconsider, before 31 December 2009, the possibilities to empower the Agency to pursue its activities in the areas of covered by Title VI ("Option 2").

Council Decision giving the Agency certain tasks in areas referred to in Title VI TEU (Option 1)

As the first option, the Presidency proposes a Council Decision, based on Articles 30, 31 and 34(2)(c) of the TEU, whereby the Agency would be given certain tasks in the areas covered by Title VI of the TEU. In this option, however, the Agency's powers would be delimited in three principal ways compared to the original proposal from the Commission.

First, the Agency's powers under Title VI would be limited to Union institutions only. While recognising the different functions of the Council of Europe bodies and the future Agency, such a limitation could be justified since, based on the case law of the European Court of Human Rights, the main lacuna in fundamental rights protection with respect to the European Union concerns the measures taken by the Union institutions.

Secondly, the right of the Agency to respond to requests made by the European Parliament, the Council or the Commission could be further circumscribed under Title VI. The Presidency proposes that right to be limited to the thematic areas determined in the decision itself or by the Multi-annual Framework.

Thirdly, the powers of the Agency's action would be confined more closely and more explicitly to measures taken in the areas of police cooperation and judicial cooperation in criminal matters. In the current proposal, a closer link has been created between the activities of the Agency and the tasks and powers of the Union institutions under Title VI.

In addition, a limitation of the temporal validity of the Council Decision should be foreseen so as to avoid, in the future, a situation where the mandate of the Agency would be more restricted under the Council Decision than in the case where no Council Decision on the extension of the Agency's remit to Title VI were adopted. Under the Constitutional Treaty, for example, the existing acquis would remain in place until replaced by a new act and, consequently, the Council Decision adopted under Title VI would continue to apply, unless otherwise provided in the decision itself.

The text of a Council Decision based on this option is set out in Annex II.

The Committee is invited to examine this option with a view to reaching a compromise solution.

A combination of a review clause and a possibility for informal consultation (Option 2)

Alternatively, since the Agency will gather a broad spectrum of expertise in fundamental rights questions, the Union institutions and the Member States could, as appropriate and on a voluntary basis, avail of this expertise also within the areas of police and judicial cooperation in criminal matters. Such a possibility would be acknowledged in a specific declaration to be adopted by the Council and would exist as of the entry into force of the Council Regulation establishing the Agency. The declaration to be adopted by the Council would not require a legal basis.

In addition, there would be a review ("rendez-vous") clause whereby the Council would agree to reconsider, before 31 December 2009, the possibilities to empower the Agency to pursue its activities in the areas covered by Title VI. Such reconsideration would be separate from the wider review process concerning the Agency's tasks under Articles 30 and 31 of the Regulation.

More specifically, this option would consist of the following elements:

First, Article 28 of the Regulation could be deleted and replaced by a new recital as follows:

"Nothing in this Regulation should be interpreted to prejudice the question of whether the remit of the Agency should be extended to cover the areas of police cooperation and judicial cooperation in criminal matters;"

Secondly, the following declarations would be inserted in the minutes of the Council:

1. Declaration on the review (the "rendez-vous"):

"The Council agrees to re-examine, before 31 December 2009, the possibilities for extending the remit of the Agency for Fundamental Rights to cover the areas of police and judicial cooperation in criminal matters."

2. Declaration on the possibility for the institutions and the Member States to benefit from the expertise on fundamental rights acquired by the Agency:

"The Council

Bearing in mind that, when fulfilling its mandate under Regulation (EC) 2006/XXX, the European Union Agency for Fundamental Rights will acquire general expertise on fundamental rights,

Considers that the Union institutions, when acting in the legislative process, may benefit, as appropriate and on a voluntary basis, from such expertise also within the areas of police and judicial cooperation in criminal matters, and

Considers that this general expertise may also be of use to the Member States that wish to avail themselves thereof when implementing legislative acts of the Union in that area."

The Committee is invited to examine this option with a view to reaching a compromise solution.

III. RESERVATIONS

The draft Regulation is subject to following reservations:

Parliamentary scrutiny reservations by **CZ, IT, SE, and PL**.

General scrutiny reservations by **PT, IE, FR and SK**.

HU lodged a parliamentary scrutiny reservation on Article 5.

NL entered a parliamentary scrutiny reservation on the proposal for a Council Decision empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI of the Treaty of the European Union.

Delegations are invited to lift the above mentioned reservations.

Proposal for a

COUNCIL REGULATION

establishing a European Union Agency for Fundamental Rights

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Whereas:

- (1) The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, which are common values to the Member States.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ C , , p. .

- (2)¹ The Charter of Fundamental Rights of the European Union ²*and the accompanying explanations*, bearing in mind its status, reflects the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms³, the social charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.
- (3) The Community and its Member States must respect Fundamental Rights when implementing Community law.
- (4) Greater knowledge of and broader awareness of Fundamental Rights issues in the Union are conducive to ensuring full respect of Fundamental Rights. It would contribute to this objective to establish a Community agency whose tasks would be to provide information and data on Fundamental Rights matters. Moreover, developing effective institutions for the protection and promotion of human rights is a common value of the international and European societies, as expressed by Recommendation No R (97) 14 of the Committee of Ministers of the Council of Europe of 30 September 1997.
- (5) The Representatives of the Member States, meeting within the European Council on 13 December 2003, agreed to build upon the existing European Monitoring Centre on Racism and Xenophobia established by Council Regulation (EC) No 1035/97 of 2 June 1997⁴ and to extend its mandate to make it a Human Rights Agency. They also decided on that occasion that the seat of the Agency should remain in Vienna.
- (6) The Commission agreed and indicated its intention of presenting a proposal to amend Council Regulation (EC) No 1035/97 in that respect. The Commission subsequently issued its Communication on the Fundamental Rights Agency of 25 October 2004⁵, on the basis of which a large public consultation was carried out.

¹ Delegations underlined that in a spirit of compromise and without prejudice to the global balance of the text as a whole, they were willing to accept the text of this recital.

² Proclaimed in Nice on 7 December 2000, OJ C 364, 18.12.2000, p. 1.

³ Signed in Rome on 4 November 1950.

⁴ OJ L 151, 10.6.1997, p.1. As amended by Regulation (EC) No 1652/2003, OJ L 245, 29.9.2003, p. 33.

⁵ COM(2004) 693 final, 25.10.2004.

- (7) A European Union Agency for Fundamental Rights should accordingly be established, building upon the existing European Monitoring Centre on Racism and Xenophobia, to provide the relevant institutions and authorities of the Community and its Member States when implementing Community law with information, assistance and expertise on 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.
- (8) It is recognised that the Agency should act only within the scope of application of Community law.¹
- (9) The Agency should refer in its work to Fundamental Rights within the meaning of Article 6(2) of the Treaty on European Union, including the European Convention on Human Rights and Fundamental Freedoms, and as reflected in particular in the Charter of Fundamental Rights, ~~and the accompanying explanations~~ bearing in mind its status.² The close connection to the Charter should be reflected in the name of the Agency.
- (10) As the Agency is to be built upon the existing European Monitoring Centre on Racism and Xenophobia, the work of the Agency should continue to cover the phenomena of racism, xenophobia and anti-Semitism, the protection of rights of persons belonging to³ minorities, as well as gender equality, as essential elements for the protection of Fundamental Rights.
- (11) The thematic areas of activity of the Agency should be laid down in the Multi-annual Framework, thus defining the limits of the work of the Agency. Due to the political significance of the Multi-annual Framework, it is important that the Council itself should adopt it, after consulting the European Parliament on the basis of a Commission proposal.

¹ DK supported by PL wished following drafting for this recital: "It is recognised that the Agency should deal with Fundamental Rights issues in the European Union and its Member States, when implementing Community law.

² See above p. 12, footnote 1.

³ PL lodged a scrutiny reservation.

- (12) The Agency should collect objective, reliable and comparable information on the development of the situation of Fundamental Rights, analyse this information in terms of causes of disrespect, consequences and effects and examine examples of good practice in dealing with these matters.
- (13) The Agency should have the right to formulate opinions to the Union institutions and to the Member States when implementing Community law, either on its own initiative or at the request of the European Parliament, the Council or the Commission, without interference with the legislative and judicial procedures established in the Treaty. Nevertheless, the institutions should be able to request opinions on their legislative proposals or positions taken in the course of legislative procedures as far as their compatibility with Fundamental Rights are concerned.
- (14) The Agency should present an annual report on Fundamental Rights issues covered by the areas of the Agency's activity, also highlighting examples of good practice. Furthermore, the Agency should produce thematic reports on topics of particular importance to the Union's policies.
- (15) The Agency should take measures to raise the awareness of the general public about their Fundamental Rights, and about possibilities and different mechanisms for enforcing them in general, without, however, dealing itself with individual complaints.
- (16) The Agency should work as closely as possible with all relevant Union institutions as well as the bodies, offices and agencies of the Community and the Union in order to avoid duplication, in particular as regards the future European Institute for Gender Equality.
- (17) Since the co-operation with the Member States is an essential element for the successful performance of the tasks of the Agency, it should co-operate closely with the Member States through its different bodies, for the purpose of which the Member States should nominate National Liaison Officers, as primary contact points for the Agency in the Member States. The Agency should, in particular, communicate with the National Liaison Officers as regards reports and other documents drawn up by the Agency.

- (18) The Agency should collaborate closely with the Council of Europe. Such cooperation should guarantee that any overlap between the activities of the Agency and those of the Council of Europe is avoided, in particular by elaborating mechanisms to ensure complementarity and added value, such as the conclusion of a bilateral cooperation agreement and the participation of an independent person appointed by the Council of Europe in the management structures of the Agency with appropriately defined voting rights.
- (19) Recognising the important role of civil society in the protection of Fundamental Rights, the Agency should promote dialogue with civil society and work closely with non-governmental organisations and with institutions of civil society active in the field of Fundamental Rights. It should set up a cooperation network called the "Fundamental Rights Platform" with a view to creating a structured and fruitful dialogue and close cooperation with all relevant stakeholders.
- (20) Given the particular functions of the Agency, each Member State should appoint one independent expert to the Management Board. Having regard to the principles relating to the status and functioning of national institutions for the protection and promotion of human rights (so called Paris Principles,) the composition of that Board should ensure the Agency's independence from both the Community institutions and the Member State's governments, and assemble the broadest possible expertise in the field of Fundamental Rights;
- (21) In order to ensure the high scientific quality of the work of the Agency, the Agency should avail itself of a Scientific Committee in order to guide its work by means of scientific objectivity.
- (22) The authorities appointing members of the Management Board, the Executive Board and the Scientific Committee should aim to achieve a balanced participation between women and men on these bodies. Particular attention should also be given to the balanced representation of women and men on the staff of the Agency.

- (23) Considering the significant role played by the European Parliament in the defence, mainstreaming and promotion of Fundamental Rights, it should be involved in activities of the Agency, including the adoption of the Multi-annual Framework for the Agency and given the exceptional nature and task of the Agency, the selection of the candidates proposed for the post of the Director of the Agency without setting a precedent for other Agencies.¹
- (24) The Agency should apply the relevant Community legislation concerning public access to documents as set out in Regulation (EC) No 1049/2001 of 30 May 2001 of the European Parliament and of the Council,² the protection of individuals with regard to the processing of personal data as set out in Regulation (EC) No 45/2001 of 18 December 2000 of the European Parliament and of the Council,³ and concerning languages, as set out in Regulation No 1 of 15 April 1958⁴ and in Council Regulation (EC) No 2965/94 of 28 November 1994.⁵
- (25) Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002⁶ on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities⁷ should apply to the Agency, as well as Regulation (EC) No 1073/1999 of 25 May 1999 of the European Parliament and the Council⁸ concerning investigations conducted by the European Antifraud Office (OLAF).
- (26) The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the European Community institutions for the purpose of applying these Staff Regulations and Conditions of Employment should apply to the staff and to the Director of the Agency, including their rules relating to the dismissal⁹ of the Director.

¹ The exceptional character of this procedure will be underlined in a joint statement by the European Parliament, the Council and the Commission.

² OJ L 145, 31.5.2001, p. 43.

³ OJ L 8, 12.1.2001, p. 1.

⁴ OJ 17, 6.10.1958, p. 385/58. Regulation as last amended by the 2003 Act of Accession.

⁵ OJ L 314, 7.12.1994, p. 1. Regulation as last amended by Regulation (EC) No. 1645/2003, OJ L 245, 29.9.2003, p. 13.

⁶ OJ L 357, 21.12.2002, p. 72, with Corrigendum in OJ L 2, 7.1.2003, p. 39.

⁷ OJ L 248, 16.9.2002, p. 1.

⁸ OJ L 136, 31.5.1999, p. 1.

⁹ The Council Legal Service considers that this recital should be deleted.

- (27) The Agency should have legal personality and succeed the European Monitoring Centre on Racism and Xenophobia as regards all legal obligations, financial commitments or liabilities carried out by the Centre or agreements made by the Centre as well as the employment contracts with the staff of the Centre.¹ [...].
- [(28) The Agency should be open to the participation of candidate countries. Furthermore, the countries with which a Stabilisation and Association agreement has been concluded should be allowed to participate in the Agency, since this will enable the Union to support their efforts towards European integration² by facilitating a gradual alignment of their legislation with Community law as well as the transfer of know-how and good practice, particularly in those areas of the *acquis* that will serve as a central reference point for the reform process in the Western Balkans.]³.
- (29) The Agency should initiate the necessary evaluations of its activities in due time, on the basis of which the Agency's scope, tasks and working methods could be reviewed.
- (30) Since the objectives of the action to be taken, namely the provision of comparable and reliable information and data at European level in order to assist the Union institutions and the Member States in respecting Fundamental Rights, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

¹ PL reminded its reservation on Article 34 (2).

² IT wished a more neutral wording.

³ NL, IT, PT, BE, ES, PL, DE and UK wished to put this recital in square brackets. NL pointed out that there is a discrepancy between this wording and Article 27 (2).

- (31) The contribution made by the Agency to ensuring full respect of Fundamental Rights in the framework of Community law is likely to help achieve the Community's objectives.¹ With regard to the adoption of this Regulation, the Treaty does not provide for powers other than those set out in Article 308.
- (32) [The Council should have the possibility of adopting a Decision pursuant to Title VI of the Treaty on European Union to empower the Agency to pursue its activities, also with respect to areas covered by that Title.].
- (33) As Council Regulation (EC) No 1035/97 would have to be substantially amended for the establishment of the Agency, it should be repealed in the interests of clarity.

HAS ADOPTED THIS REGULATION.

CHAPTER 1

SUBJECT MATTER, OBJECTIVE, SCOPE, TASKS AND AREAS OF ACTIVITY

Article 1

Subject matter

A European Union Agency for Fundamental Rights ("the Agency") is hereby established.

¹ The Council Legal Service thought that the first sentence should be deleted. The Commission representative indicated that the Commission Legal Service should be first consulted. UK proposed as a solution, to draft two recitals, with each one of the sentences at a time.

Article 2

Objective

The objective of the Agency shall be 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.

Article 3

Scope

1. The Agency shall carry out its tasks for the purpose of meeting the objective set in Article 2 within the competencies of the Community as laid down in the Treaty establishing the European Community.

2. *The Agency shall refer in carrying out its tasks to fundamental rights as guaranteed by international human rights treaties, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and its Protocols, and as they result from the constitutional traditions common to the Member States as general principles of Community law.*

3¹ The Agency shall deal with fundamental rights issues in the European Union and in its Member States when implementing Community law. In addition, it may deal with fundamental rights issues within the scope of paragraph 1 in those countries as defined in Article 27 (1) to the extent necessary for the gradual alignment to Community Law of the respective country and in accordance with Article 27(2).

¹ Reservation by NL and DE.

Article 4

Tasks¹

1. To meet the objective set in Article 2 and within its competences laid down in Article 3, the Agency shall:
 - (a) collect, record, analyse and disseminate relevant, objective, reliable and comparable information and data, including results from research and monitoring communicated to it by Member States, Union institutions as well as bodies, offices and agencies of the Community and the Union, research centres, national bodies, non-governmental organisations, third countries and international organisations and in particular by the competent bodies of the Council of Europe;
 - (b) develop methods and standards to improve the comparability, objectivity and reliability of data at European level, in cooperation with the Commission and the Member States;
 - (c) carry out, cooperate with or encourage scientific research and surveys, preparatory studies and feasibility studies, also, where appropriate and compatible with its priorities and its annual work programme, at the request of the European Parliament, the Council or the Commission.
 - (d) formulate and publish conclusions and opinions on specific thematic topics, for the Union institutions and the Member States when implementing Community law, either on its own initiative or at the request of the European Parliament, the Council or the Commission;

¹ PL wished introduction of a new point at the end of Article reading as follows: "Without prejudice to Article 4(1) the Agency shall not produce country specific reports".

(e)¹ [...]

(f) publish an annual report on fundamental rights issues covered by the areas of the Agency's activity, also highlighting examples of good practice;

(g) publish thematic reports based on its analysis, research and surveys;

(h) publish an annual report on its activities; and

(i) develop a communication strategy and promote dialogue with civil society, in order to raise public awareness of fundamental rights and actively inform about its work.

2. The conclusions, opinions and reports referred to in paragraph 1 may concern proposals from the Commission under Article 250 of the Treaty or positions taken by the institutions in the course of legislative procedures only where a request by the respective institution has been made in accordance with Article 4(1)(d). They shall not deal with the legality of acts within the meaning of Article 230 or with the question whether a Member State has failed to fulfil an obligation under the Treaty within the meaning of Article 226 of the Treaty.

Article 5²

Areas of activity

1. The Council shall, acting on a proposal from the Commission and after consulting the European Parliament, adopt a Multi-annual Framework for the Agency. When preparing its proposal, the Commission shall consult the Management Board³.

¹ Deletion in follow-up to the wish of the delegations. Delegations indicated that they preferred instead, a declaration by the Council and the Commission or a relevant recital stating that nothing precludes the possibility for the Council to have recourse to the Agency in a situation according to the meaning of Article 7 TEU.

² HU was of the view that a reference to national minorities should be included not only in the Preamble but also in this Article. Reservation by PL on such a proposal (see also footnote 3 on page 13).

³ DK, NL, EL and SE emphasized the active role of the Management Board.

2. The Framework shall:
 - (a) cover five years;
 - (b) determine the thematic areas of the Agency's activity, which must include the fight against racism, xenophobia and related intolerance;
 - (c) be in line with the Union priorities, taking due account of the orientations resulting from the European Parliaments resolutions and Council conclusions in the field of fundamental rights;
 - (d) have due regard to the Agency's financial and human resources; and
 - (e) include provisions with a view to 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.
3. The Agency shall carry out its tasks within the thematic areas determined by the Multi-annual Framework. This shall be without prejudice to the responses of the Agency to requests from the European Parliament, the Council or the Commission under Articles 4 (1) c) and d) [...] outside these thematic areas, provided its financial and human resources so permit.
4. The Agency shall carry out its tasks in the light of its Annual Work Programme and with due regard to the available financial and human resources.

CHAPTER 2

WORKING METHODS AND COOPERATION

Article 6

Working Methods

1. In order to ensure the provision of objective, reliable and comparable information, the Agency shall, drawing on the expertise of a variety of organizations and bodies in each Member State and taking account of the need to involve national authorities in the collection of data

- (a) set up and co-ordinate information networks as well as use existing networks;
 - (b) organize meetings of external experts and,
 - (c) whenever necessary, set-up ad hoc working Parties.
2. In pursuing its activities, the Agency shall, in order to achieve complementarity and guarantee the best possible use of resources, take account, where appropriate, of information collected and of activities undertaken, in particular by
- (a) Union institutions as well as bodies, offices and agencies of the Community and the Union, and by bodies, offices and agencies of the Member States;
 - (b) the Council of Europe, by referring to the findings and activities of the Council of Europe's monitoring and control mechanisms, as well as of the Council of Europe Commissioner for Human Rights; and
 - (c) the Organisation of Security and Co-operation in Europe (OSCE), the United Nations and other international organisations.
3. The Agency may enter into contractual relations, in particular subcontracting arrangements, with other organisations, in order to accomplish any tasks which it may entrust to them. The Agency may also award grants to promote appropriate cooperation and joint ventures, in particular to national and international organizations referred to in Articles 8 and 9.

Article 7

Relations with relevant Community bodies, offices and agencies

The Agency shall ensure appropriate coordination with relevant Community bodies, offices and agencies. The terms of the cooperation shall be laid down in memoranda of understanding where appropriate.

Article 8

Cooperation with organisations at Member State and international level

1. In order to ensure close co-operation with Member States, each Member State shall nominate a government official as a National Liaison Officer, who shall be the main¹ contact point for the Agency in the Member State. The National Liaison Officers may, *inter alia*, submit opinions on the draft Annual Work Programme to the Director prior to its submission to the Management Board. The Agency shall communicate to the National Liaison Officers all documents drawn up in accordance with Article 4(1)(a), (b), (c), (d), (e), (f), (g), (h) and (i).
2. To help it carry out its tasks, the Agency shall cooperate with
 - governmental organisations and public bodies competent in the field of fundamental rights in the Member States, including national human rights institutions;
 - the Organisation for Security and Co-operation in Europe (OSCE), especially the Office for Democratic Institutions and Human Rights (ODIHR) the United Nations² and other international organisations.
3. The administrative arrangements for the cooperation provided for by paragraph 2 shall comply with Community law and shall be adopted by the Management Board on the basis of the draft submitted by the Director after the Commission has delivered an opinion. Where the Commission expresses its disagreement with these arrangements, the Management Board shall re-examine and adopt them, with amendments where necessary, by a two-thirds majority of all members.

¹ PL wished deletion of the word "primary", but could accept instead the word "main".

² EL supported by PL wished following addition: "...including the Human Rights Council, the office of the High Commissioner for Human rights, the Treaty bodies and relevant specialized UN Agencies..."

Article 9

Cooperation with the Council of Europe

In order to ensure complementarity and added value, the Agency shall coordinate its activities with those of the Council of Europe, particularly with regard to the Annual Work Programme pursuant to Article 11(6)(a) and to cooperation with civil society in accordance with Article 9a. To this end, the Community shall, in accordance with the procedure provided for in Article 300 of the Treaty, enter into an agreement with the Council of Europe for the purpose of establishing close cooperation between the latter and the Agency. This agreement shall include the appointment of an independent person by the Council of Europe, to sit on the Agency's Management Board and on its Executive Board, in accordance with Articles 11 and 12.

Article 9a

Cooperation with Civil Society; Fundamental Rights Platform

1. The Agency shall closely cooperate with non-governmental organisations and with institutions of civil society, active in the field of fundamental rights including in combating racism and xenophobia¹ at national, European or international level. To that end, the Agency shall establish a cooperation network¹ (Fundamental Rights Platform), composed of non-governmental organisations dealing with human rights, trade unions and employer's organisations, relevant social and professional organisations, churches, religious, philosophical and non-confessional organisations, universities and other qualified experts of European and international bodies and organisations.
2. The Platform shall constitute a mechanism for the exchange of information and the pooling of knowledge. It shall ensure close cooperation between the Agency and relevant stakeholders.
3. The Platform shall be open to all interested and qualified stakeholders according to paragraph 1. The Agency may address the members of the Platform in accordance with specific needs related to areas identified as a priority of the Agency's work.

¹ EL reminded its proposal with regard to the criteria for selecting the civil society organisations that would participate to the platform as included in document 7297/06 JAI 101 CATS 39 COHOM 47 COEST 72 FIN 92, p. 5.

4. The Agency shall call upon the Platform in particular, to:
 - (a) make suggestions to the Management Board on the Annual Work Programme to be adopted under Article 11(6)(a);
 - (b) give feedback and suggest follow up to the Management Board on the annual report provided for in Article 4(1)(f) and
 - (c) communicate outcomes and recommendations of conferences, seminars and meetings relevant to the work of the Agency to the Director and the Scientific Committee.
5. The Platform shall be coordinated under the authority of the Director.

CHAPTER 3

ORGANISATION

Article 10

Bodies of the Agency

The Agency shall comprise:

- (a) a Management Board;
- (b) an Executive Board;
- (c) a Scientific Committee; and
- (d) a Director.

Article 11

Management Board

1. The Management Board shall be composed of persons¹ with appropriate experience in the management of public or private sector organisations and, in addition, knowledge in the field of fundamental rights, as follows:

¹ As it follows from Article 3(2) TEC that gender should be taken account of, the specific reference to the balanced participation between women and men in the Board has been included in a specific recital.

- (a) one independent person appointed by each Member State, having high level responsibilities in an independent national human rights institution or other public or private sector organisation;¹
 - (b) one independent person appointed by the Council of Europe; and
 - (c) two representatives of the Commission.
2. Each member of the Management Board may be represented by an alternate member meeting the above requirements and appointed by the same procedure. The list of the members and alternate members of the Board shall be made public and shall be updated by the Agency on its web site.
3. The term of office of the members and alternate members of the Management Board shall be five years. It shall not be renewable.
4. Apart from normal replacement or death, the term of office of the member or the alternate member shall end only when he or she resigns. However, where a member or an alternate member no longer meets the criteria of independence, he or she shall forthwith inform the Commission and the Director of the Agency. The party concerned shall appoint a new member or a new alternate member for the remaining term of office. The party concerned shall also appoint a new member or a new alternate member for the remaining term of office, if the Management Board has established, based on a proposal of one third of its members or of the Commission, that the respective member or alternate member no longer meets the criteria of independence. In case the remaining term of office is less than two years, the mandate of the new member or alternate member may be extended for a full term of five years.
5. The Management Board shall elect its Chairperson and Vice-Chairperson and the other two members of the Executive Board referred to in Article 13 from its members appointed under paragraph 1(a) to serve for a two-and-a-half year term, which may be renewed once.

¹ FI supported by EL wished reference of the Paris Principles in the Preamble.

6. The Management Board shall ensure that the Agency performs the tasks entrusted to it. It shall be the Agency's planning and monitoring body. In particular, it shall:
- (a) adopt the Agency's Annual Work Programme in accordance with the Multi-annual Framework, on the basis of a draft submitted by the Agency's Director after the Commission and the Scientific Committee have delivered an opinion. It shall be in accordance with the available financial and human resources and shall take into account the research and statistical work of the Community. The Annual Work Programme shall be transmitted to the European Parliament, the Council and the Commission;
 - (b) adopt the annual reports referred to in Article 4(1)(f) and (h), comparing in the latter one, in particular, the results achieved with the objectives of the annual work programme; without prejudice to Article 12a(5), the Scientific Committee shall be consulted before adoption of the report referred to in Article 4(1)(f); the reports shall be transmitted not later than 15 June to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions;
 - (c) appoint and, if necessary, dismiss the Agency's Director;
 - (d) adopt the Agency's annual draft and final budgets;
 - (e) exercise the powers laid down in Article 23(2) in respect of the Director and disciplinary authority over the Director;
 - (f) draw up an annual estimate of expenditure and revenue for the Agency and send it to the Commission, in accordance with Article 19(5);

- (g) adopt the Agency's rules of procedure on the basis of a draft submitted by the Director after the Commission , the Scientific Committee and the person mentioned in (1)(b)¹ have delivered an opinion;
 - (h) adopt the financial rules applicable to the Agency on the basis of a draft submitted by the Director after the Commission has delivered an opinion, in accordance with Article 20(11);
 - (i) adopt the necessary measures to implement the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities, in accordance with Article 23(3);
 - (j) adopt the arrangements on transparency and access to documents in accordance with Article 16(2);
 - (k) appoint and revoke the members of the Scientific Committee in accordance with Article 12a(1) and (3) ; and
 - (l) establish that a member or an alternate member of the Management Board no longer meets the criteria of independence, in accordance with paragraph 4.
7. The Management Board may delegate its responsibilities except for matters referred to in points (a), (b), (c), (d), (e), (g), (h), (k) and (l) of paragraph 6 to the Executive Board.

¹ Addition along the lines of a compromise in follow-up to the COREPER meeting on 8 June 2006.

8. Decisions by the Management Board shall be taken by a simple majority of the votes cast, except as regards the decisions referred to in paragraph 5 as well as in the points (a), (b), (c), (d), (e), (g), (k) and (l) of paragraph 6, where a two-thirds majority¹ of all members shall be required. Each member of the Management Board, or, in his or her absence, his or her alternate shall have one vote. The Chairperson shall have the casting vote. The person appointed by the Council of Europe may vote² on decisions referred to in points (a), (b), [...] ³ and (k) of paragraph 6.
9. The Chairperson shall convene the Board twice a year, without prejudice to extraordinary meetings. The Chairperson shall convene extraordinary meetings on his or her own initiative or at the request of at least one third of the members of the Management Board.
10. The Chairperson or Vice-Chairperson of the Scientific Committee and the Director of the European Institute for Gender Equality may attend meetings of the Management Board as observers. The Directors of other relevant Community agencies and Union bodies as well as of other international institutions mentioned in Articles 8 and 9 may also attend as observers when invited by the Executive Board.

Article 12

Executive Board

1. The Management Board shall be assisted by an Executive Board. The Executive Board shall be made up of the Chairperson and the Vice-Chairperson of the Management Board, two other members of the Management Board elected by the Management Board in accordance with Article 11(5) and one of the representatives of the Commission in the Management Board. The person appointed by the Council of Europe in the Management Board may participate in the meetings of the Executive Board [...] ⁴.

¹ ES entered a reservation and supported by IT, and PT suggested that the Management Board should decide by unanimity on the internal language arrangements of the Agency. FR entered a reservation.

² IT supported by ES and PT entered reservations on the voting rights of the Council of Europe.

³ Deletion along the lines of a compromise in follow-up to the COREPER meeting on 8 June 2006.

⁴ Deletion along the lines of a compromise in follow-up to the COREPER meeting on 8 June 2006.

2. The Executive Board shall be convened by the Chairperson whenever necessary to prepare the decisions of the Management Board and to assist and advise the Director. It shall adopt its decisions by simple majority.
3. The Director shall take part in the meetings of the Executive Board, without voting rights.

Article 12a

Scientific Committee

1. The Scientific Committee shall be composed of eleven independent persons, highly qualified in the field of fundamental rights. The Management Board shall appoint the members following a transparent call for applications and selection procedure after having consulted the competent committee of the European Parliament. The Management Board shall ensure even geographical representation. The members of the Management Board shall not be members of the Scientific Committee. The rules of procedure referred to in Article 11(6) (g) shall lay down the detailed conditions governing the appointment of the Scientific Committee.
2. The term of office of the members of the Scientific Committee shall be five years. It shall not be renewable.
3. The members of the Scientific Committee shall be independent. They may be replaced only at their own request, or in the event of their being permanently prevented from fulfilling their duties. However, where a member no longer meets the criteria of independence, he or she shall forthwith inform the Commission and the Director of the Agency. Alternatively the Management Board may declare, on a proposal of one third of its members or of the Commission, the lack of independence and revoke the person concerned. The Management Board shall appoint a new member for the remaining term of the office in accordance with the procedure for ordinary members. In case the remaining term of office is less than two years, the mandate of the new member may be extended for a full term of five years. The list of members of the Scientific Committee shall be made public and shall be updated by the Agency on its web site.
4. The Scientific Committee shall elect its Chairperson and Vice-Chairperson for a term of office of one year.

5. The Scientific Committee shall be the guarantor of the scientific quality of the Agency's work, guiding the work to that effect. For that purpose, the Director shall involve the Scientific Committee as early as appropriate in the preparations of all documents drawn up in accordance with Article 4(1) (a), (b), (c), (d), [...], (f), (g), and (i).
6. The Scientific Committee shall pronounce itself by two thirds majority. It shall be convened by its Chairperson four times per year. If necessary, the Chairperson shall launch a written procedure or shall convene extraordinary meetings on his or her own initiative or at the request of at least four members of the Scientific Committee.

Article 13

Director

1. The Agency shall be headed by a Director appointed by the Management Board in accordance with a co-operation ("concertation") procedure provided for in paragraph 2.
The Director shall be appointed on the basis of his or her personal merit, experience in the field of fundamental rights and administrative and management skills.
2. This cooperation procedure shall be as follows¹:
 - (a) On the basis of a list drawn up by the Commission after a call for candidates and a transparent selection procedure, applicants will be asked before an appointment is made to address the Council and the competent European Parliament Committee and to reply to questions.
 - (b) The European Parliament and the Council of the European Union will then give their opinions and state their orders of preference.
 - (c) The Management Board will appoint the Director taking these opinions into account.

¹ Due to the exceptional character of this appointment procedure, the Ad hoc working Party envisaged the inclusion in the Council minutes of a relevant declaration by the three Institutions stating that this solution will not set a precedent for future Agencies. FI wished addition of following sentence in the Preamble: "...therefore and given the exceptional nature of the tasks entrusted upon the Agency"...

3. The Director's term of office shall be five years.

In the course of nine months preceding the end of this period, the Commission shall undertake an evaluation. In the evaluation, the Commission shall assess in particular:

- the performance of the Director;
- the Agency's duties and requirements in the coming years.

The Management Board, acting on a proposal from the Commission, taking account of the evaluation report, and only in those cases where it can be justified by the duties and the requirements of the Agency, may extend the term of office of the Director once for not more than three years.

The Management Board shall inform the European Parliament and the Council about its intention to extend the Director's mandate. Within a delay of one month before the Management Board formally takes its decision to extend this mandate, the Director may be asked to make a declaration before the competent committee of the Parliament and answer questions from its members.

If the term of office is not extended, the Director shall remain in office until the appointment of his/her successor.

4. The Director shall be responsible for:
 - (a) performance of the tasks referred to in Article 4; in particular the preparation and publication of the documents drawn up in accordance with Article 4(1) (a), (b), (c), (d), [...], (f), (g), (h) and (i) in cooperation with the Scientific Committee;
 - (b) preparation and implementation of the Agency's Annual Work Programme;
 - (c) all staff matters, and in particular exercise in respect of staff the powers laid down in Article 23(2);

- (d) matters of day-to-day administration;
 - (e) implementation of the Agency's budget, in accordance with Article 20;
 - (f) implementation of effective monitoring and evaluation procedures relating to the performance of the Agency against its objectives according to professionally recognised standards. The Director shall report annually to the Management Board on the results of the monitoring system;
 - (g) cooperation with National Liaison Officers; and
 - (h) cooperation with Civil Society, including coordination of the Fundamental Rights Platform in accordance with Article 9a.
5. The Director shall perform his/her tasks independently. He or she shall be accountable for the management of his/her activities to the Management Board and shall participate in its meetings without voting rights.
 6. The Director may be called upon at any time by the European Parliament or by the Council to attend a hearing on any matter linked to the Agency's activities.
 7. The Director may be dismissed by the Management Board before his or her term has expired, on the basis of a proposal of a third of its members or of the Commission.

CHAPTER 4

OPERATION

Article 15

Independence and public interests

1. The Agency shall fulfil its tasks in complete independence.

2. The members and alternate members of the Management Board, the members of the Scientific Committee and the Director shall undertake to act in the public interest. For this purpose, they shall make a statement of interests indicating either the absence of any interests which might be considered prejudicial to their independence or any direct or indirect interests which might be considered prejudicial to their independence. The statement shall be made in writing when taking the office and shall be revised in case changes occur with regard to the interests. It shall be published by the Agency on its website.

Article 16

Transparency and access to documents

1. The Agency shall develop good administrative practices in order to ensure the highest possible level of transparency concerning its activities.

Regulation (EC) No 1049/2001 of the European Parliament and of the Council shall apply to the documents held by the Agency.

2. The Management Board shall, within six months of the commencement of the Agency's operation adopt specific rules for the practical implementation of paragraph 1.

These shall include *inter alia* rules for:

- the openness of meetings;
- the publication of the works of the agency , including those of the Scientific Committee; and
- arrangements to implement Regulation (EC) No 1049/2001.

3. Where the Agency takes decisions under Article 8 of Regulation (EC) No 1049/2001, a complaint may be lodged with the Ombudsman or an action may be brought in the Court of Justice of the European Communities, as provided by Articles 195 and 230 of the Treaty respectively.

Article 17

Data protection

Regulation (EC) No 45/2001 of the European Parliament and of the Council shall apply to the Agency.

Article 18

Review by the Ombudsman

The operations of the Agency are subject to the supervision of the Ombudsman in accordance with the provisions of Article 195 of the Treaty.

Chapter 5

FINANCIAL PROVISIONS

Article 19

Drawing up of the budget

1. Estimates of all the revenue and expenditure of the Agency shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the budget of the Agency.
2. The revenue and expenditure shown in the budget of the Agency shall be in balance.
3. The revenue of the Agency shall, without prejudice to other resources, comprise a subsidy from the Community, entered in the general budget of the European Union (Commission section).

This revenue may be complemented by

- (a) Payments received for services rendered in the framework of the implementation of tasks listed in Article 4 and
- (b) financial contributions from the organisations or countries referred to in Articles 8, 9 or 27.

4. The expenditure of the Agency shall include staff remuneration, administrative and infrastructure costs and operating expenses.
5. Each year the Management Board, on the basis of a draft drawn up by the Director, shall produce an estimate of revenue and expenditure for the Agency for the following financial year. This estimate, which shall include a draft establishment plan, shall be transmitted by the Management Board to the Commission by 31 March at the latest.
6. The estimate shall be transmitted by the Commission to the European Parliament and the Council (hereinafter the "budgetary authority") together with the preliminary draft budget of the European Union.
7. On the basis of the estimate, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it considers necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.
8. The budgetary authority shall authorise the appropriations for the subsidy to the Agency. The budgetary authority shall adopt the Agency's establishment plan.
9. The Agency's budget shall be adopted by the Management Board. It shall become final following the adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.
10. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.
Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Management Board within six weeks from the date of notification of the project.

Article 20

Implementation of the budget

1. The Director shall implement the Agency's budget.
2. By 1 March at the latest following each financial year, the Agency's accounting officer shall communicate the provisional accounts to the Commission's accounting officer, together with a report on the budgetary and financial management for that financial year.
The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002 ("the Financial Regulation").
3. No later than 31 March following each financial year, the Commission's accounting officer shall transmit the Agency's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be transmitted to the European Parliament and the Council.
4. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, pursuant to Article 129 of the Financial Regulation, the Director shall draw up the Agency's final accounts under his own responsibility and forward them to the Management Board for an opinion.
5. The Management Board shall deliver an opinion on the Agency's final accounts.
6. The Director shall, no later than 1 July following each financial year, transmit the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.
7. The final accounts shall be published.

8. The Director shall send the Court of Auditors a reply to its observations no later than 30 September. He/she shall also send this reply to the Management Board.
9. The Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the Financial Regulation.
10. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Director in respect of the implementation of the budget for year N.
11. The financial rules applicable to the Agency shall be adopted by the Management Board after the Commission has been consulted. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002, unless specifically required for the Agency's operation and with the Commission's prior consent.

Article 21

Combating fraud

1. In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council shall apply without restrictions to the Agency.
2. The Agency shall accede to the Inter-institutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-fraud Office (OLAF) and shall issue, without delay, the appropriate provisions applicable to its entire staff.
3. The decisions concerning funding and the implementing agreements and instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may carry out, if necessary, on-the-spot checks on the recipients of the Agency's funding and the staff responsible for allocating it.

Chapter 6

GENERAL PROVISIONS

Article 22

Legal status and location

1. The Agency shall have legal personality.
2. In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. In particular it may acquire and dispose of movable and immovable property and may be a party to legal proceedings.
3. The Agency shall be represented by its Director.
4. The Agency shall legally succeed the European Monitoring Centre on Racism and Xenophobia. It shall assume all legal rights and obligations, financial commitments or liabilities of the Centre. Employment contracts concluded by the Centre before the adoption of this Regulation shall be honoured.
5. The seat of the Agency shall be Vienna.¹

Article 23

Staff

1. The Staff Regulations of Officials of the European Communities, the Conditions of Employment of Other Servants of the European Communities and the rules adopted jointly by the European Community institutions for the purpose of applying these Staff Regulations and Conditions of Employment shall apply to the staff of the Agency and its Director.

¹ A clarification regarding the decision on the seat of agencies has been included in the recitals.

2. In respect of its staff, the Agency shall exercise the powers conferred on the appointing authority by the Staff Regulations of Officials of the European Communities and on the authority entitled to conclude contracts by the Conditions of Employment of Other Servants of the European Communities.
3. The Management Board shall, in agreement with the Commission, adopt the necessary implementing measures, in accordance with arrangements provided for in Article 110 of the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities.
4. The Management Board may adopt provisions to allow national experts from Member States to be employed on secondment at the Agency.

Article 24

Language arrangements

1. The provisions of Regulation No 1 of 15 April 1958 shall apply to the Agency.
2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.¹

¹ EL, wished addition of a relevant provision indicating that the Agency should translate the main of the documents it produces in all official languages.

Article 25

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Agency.¹

Article 26

Jurisdiction of the Court of Justice

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.
The Court of Justice shall have jurisdiction pursuant to an arbitration clause contained in a contract concluded by the Agency.
2. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by the Agency or its servants in the performance of their duties.
The Court of Justice shall have jurisdiction in disputes relating to compensation for any such damage.
3. The Court of Justice shall have jurisdiction in actions brought against the Agency under the conditions provided for in Article 230 or 232 of the Treaty.

Article 27²

Participation of candidate countries and countries with which a Stabilisation and Association Agreement has been concluded

1. The Agency shall be open to the participation of candidate countries or of countries with which a Stabilisation and Association Agreement has been concluded by the European Community as observers.

¹ DE, supported by SE and NL made following statement: "Given the continuing integration of the Member States of the EU, the question arises of how far it is necessary to grant privileges and immunities in the EU, particularly in the case of decentralised institutions. Germany, along with other Member States, has already requested a general discussion of this issue on a number of occasions. In this context, Germany would remind the Commission of its undertaking, given in March 2004 in connection with the European Border Management Agency, to organise such a debate within a reasonable period of time".

² NL, PT, UK, ES, DE and SE entered reservations on this article.

2. The participation and the respective modalities shall be determined by a decision of the relevant Association Council, taking into account the specific status of each country. The decision shall indicate in particular the nature, extent and manner in which these countries will participate in the Agency's work, within the framework set in Articles 4 and 5, including provisions relating to participation in the initiatives undertaken by the Agency, to the financial contribution and to staff. The decision shall be in line with this Regulation and with the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities. The decision shall provide that the participating country may appoint an independent person fulfilling the qualifications for persons referred to in Article 11(1)(a) as observer to the Management Board without right to vote.

Article 28¹

Activities under Title VI of the Treaty on European Union

This Regulation shall be without prejudice to the possibility for the Council, acting in accordance with Title VI of the Treaty on European Union, to empower the Agency to pursue its activities under this Regulation also with respect to the areas covered by Title VI of the Treaty on the European Union.

CHAPTER 7

FINAL PROVISIONS

Article 29

Transitory arrangements

1. *The term of office of the members of the Management Board of the European Monitoring Centre on Racism and Xenophobia ("the Centre") shall terminate on 31 December 2006.*

¹ SK, UK, DE, MT, IE, LV and CY opposed the inclusion of this article.

2. *With regard to the appointment of the Management Board:*
- (a) *The Commission shall take the necessary measures without delay after the entry into force of this Regulation to ensure that a Management Board to be established in accordance with Article 11 shall start its work in due course.*
- (b) *Within four¹ months from the entry into force of this Regulation, the Member States shall notify the Commission of the names of the persons whom they have appointed as member and alternate member of the Management Board, in accordance with Article 11(1) and (2). After expiry of this period, the Commission shall convene the Management Board, provided that at least 17 members have been appointed. In such a case and by derogation from Article 11(8), the decisions of the Management Board shall be taken by a two thirds majority of the votes of the appointed members. Once 23 members of the Management Board have been appointed, Article 11(8) shall apply.*
- (c) *In the first meeting of the Management Board, after all appointments have been completed, the Commission shall choose by lot 15 members of the Management Board, whose duties are to end, by way of derogation from Article 11(4), upon expiry of the first three years of their term of office.*
3. *The parties concerned shall start the procedure for appointing a Director of the Agency as provided for in Article 13(1) without delay after the entry into force of this Regulation.*
4. *Pending the establishment of the Management Board in accordance with paragraph 2(b) and Article 11(1) and (2), the Commission shall convene an interim Management Board consisting of the persons, currently appointed by the Member States, the Council of Europe and the Commission to the Management Board of the Centre on the basis of Article 8 of Regulation (EC) 1035/97. The interim Management Board shall have the mandate to:*

¹ PL wished three months. IT wished at least six months.

- *issue an opinion on a proposal from the Commission concerning the text of the call for candidates for the post of the Director in accordance with Article 13(1) in order to start the selection procedure;*
- *appoint, acting on a proposal from the Commission, an interim Director or extend the current term of the Director of the Centre for the shortest possible period, pending the appointment procedure referred to in paragraph 3; and*
- *adopt the Agency's budget for year 2007 in accordance with Article 19(9) and a draft budget for year 2008 in accordance with Article 19(5).¹*
- *adopt the annual report on the Centre's own activities for 2006, in accordance with Article 11(6) (b).*

Article 30

Evaluations

1. The Agency shall regularly carry out ex-ante and ex-post evaluations of its activities when these necessitate significant expenditure. The Director shall notify the Management Board of the results of these evaluations.
2. The Agency shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures.
3. No later than 31 December 2011, the Agency shall commission an independent external evaluation of its achievements during the first five years of operations on the basis of terms of reference issued by the Management Board in agreement with the Commission. This evaluation shall
 - take into account the tasks of the Agency, the working practices and impact of the Agency on the protection and promotion of fundamental rights;

¹ DE entered reservation for financial reasons.

- assess the possible need to modify the Agency's tasks, scope areas of activity or structure
 - include an analysis of the synergy effects and the financial implications of any modification of the tasks; and
 - take into account the views of the stakeholders at both Community and national levels; and
4. The Management Board, in agreement with the Commission, shall determine the timing and scope of the following external evaluations, which shall be carried out periodically.

Article 31

Review

1. The Management Board shall examine the conclusions of the evaluation referred to in Article 31(3) and (4) and issue to the Commission such recommendations as may be necessary regarding changes in the Agency, its working practices and the scope of its mission. The Commission shall transmit the evaluation report and the recommendations to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions and make them public.
2. After having assessed the evaluation report and the recommendations, the Commission may submit any proposals for amendments to this Regulation which it considers necessary.

Article 32

Commencement of the Agency's operation

The Agency shall become operational by 1 January 2007.

Article 33

Repeal

1. Regulation (EC) No 1035/97 is repealed with effect from 1 January 2007.

2. References to the repealed Regulation shall be construed as references to this Regulation.¹

Article 34

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels,

For the Council

The President

¹ PL awaiting a list by the Commission on the instruments of the Community acquis, where the EUMC is referred to, entered a reservation on this paragraph. The Commission representative indicated that there were few if not any instruments of the Community acquis which made reference to the EUMC.

Proposal for a

COUNCIL DECISION

giving the European Union Agency for Fundamental Rights certain tasks in areas referred to in Title VI of the Treaty on European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 30, 31 and 34(2)(c) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

(1) [...] ³

HAS DECIDED AS FOLLOWS:

Article 1

In conformity with Article 28 of Council Regulation (EC) No 2006/[...], the European Agency for Fundamental Rights shall have the tasks enumerated in Article 2 of this decision under Title VI of the Treaty on European Union.

¹ OJ C , , p. .

² OJ C , , p. .

³ The Preamble of the Decision will be drafted after the finalisation of the text of the Council decision.

Article 2

The Agency shall provide the Union institutions, bodies, offices and agencies with assistance and expertise relating to fundamental rights in order to support them to fully respect fundamental rights when they take measures or formulate courses of action under the following provisions of the Treaty on European Union:

- *Article 30*
- *Article 31*
- *Article 32*

Article 3

The Council shall, acting on a proposal from the Commission and after consulting the European Parliament adopt a Decision containing a Multi-annual Framework for the Agency in relation to thematic areas subject to Title VI of the Treaty. When preparing its proposal, the Commission shall consult the Management Board.

Paragraphs 2 and 4 of Article 5 of Regulation (EC) No. 2006/[...] shall apply mutatis mutandis to the Multi-annual Framework adopted in accordance with paragraph 1.

Article 4

Subject to Article 2, the conclusions and opinions on specific thematic topics formulated by the Agency under Title VI at the request of the European Parliament, the Council or the Commission shall be confined to the thematic areas determined by the Multi-annual Framework.

Article 5

The operation of the Agency under Title VI shall be reviewed by the Council three years after the entry into force of this Decision with a view to extending the mandate of the Agency under Title VI. The Commission shall submit a proposal for amendments to this decision.

Article 6

Without prejudice to Articles 2 to 5 of this decision, Articles 3, 4 and 6 to 32 of Regulation (EC) No 2006/[...] shall apply by analogy in the context of the Agency's activities under this Decision.

References to Community law in these provisions of Regulation (EC) No 2006/[...] shall be understood as referring to Union law in the area of Title VI of the Treaty. References to relevant Community bodies, agencies and offices shall be understood as referring also to Union relevant bodies established in or on the basis of Title VI.

Article 7

This decision shall cease to apply in the event and to the extent that action in areas referred to in Title VI should come within the scope of Regulation (EC) No 2006/[...] as a result of a decision adopted pursuant to Article 42 of the Treaty on European Union or of an amendment to the Treaties pursuant to Article 48 of that Treaty.

Article 8

This Decision shall take effect on the twentieth day following that of its publication in the Official Journal of the European Union.

Done at Brussels,

For the Council

The President
