



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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from :            Presidency

to :                Council

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Subject :        – Proposal for a Council Regulation establishing a European Union Agency for  
Fundamental Rights

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**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.<sup>1</sup>

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

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 held a series of informal bilateral consultations aimed at solving the outstanding questions. The Presidency presented the results of those consultations in COREPER on 27 September 2006 and in the JHA Council on 6 October 2006, with a proposal to look for a compromise that would enable the extension of the Agency's tasks to Title VI in a more limited form than the one originally proposed by the Commission.

During the Finnish Presidency, informal Trialogue meetings on the outstanding questions have been organised between the Presidency, the Commission and the European Parliament on 3 October 2006 and 15 November 2006.

COREPER examined, most recently at its meeting of 23 November 2006, the outstanding questions relating to the establishment of the Agency. These included the reference to the Charter of Fundamental Rights of the European Union, the geographical scope of the Agency, the powers of the Agency regarding issues governed by Title VI TEU and the procedure to be applied in the Management Board when deciding on the internal language arrangements of the Agency. On the basis of the proposal made by the European Parliament at the Trialogue meeting of 15 November 2006, COREPER also examined the wording of the Declaration on Proceedings under Article 7 of the Treaty on European Union.

In the present document, the Presidency submits to the Council all outstanding questions, as they stand after the meeting of COREPER of 23 November 2006, with a view to adopting a general approach on the text. The Presidency believes that a solution to the outstanding questions, set out in Point II below, should be sought by means of a overall compromise package and, accordingly, the proposals submitted to the Council should be regarded as forming part of a wider compromise solution on the establishment of the Agency.

The text of the proposal for a Council Regulation is set out in Annex I, with modifications to the document 15274/06 JAI 616 CATS 171 COHOM 171 COEST 323 indicated in bold.

The texts of the Declaration by the Council on the Proceedings under Article 7 of the Treaty on European Union, the Declaration by the Council, the European Parliament and the Commission on the Procedure for the Appointment of the Director for the Agency, the Declaration by the Council on the Review of the Remit of the Agency under Title VI of the Treaty on European Union and the Declaration by the Council on the Consultation of the Agency within the Areas of Police and Judicial Cooperation in Criminal Matters are 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 to the Charter of Fundamental Rights of the European Union**

As regards the Charter of Fundamental Rights of the European Union, the Presidency proposes to place a reference to the Charter in paragraphs 2 and 9 of the Preamble. No reference to the Charter would be made in the Regulation's operative part.

*The Council is invited to agree on the Presidency proposal.*

### **Geographical Scope of the Agency**

There is consensus among the delegations that while the main focus of the Agency's work would be on the European Union and its Member States, the candidate countries should have the possibility to participate in the Agency as observers. Moreover, the Agency should also have the power to deal with fundamental rights issues in these countries to the extent necessary for their gradual alignment to Community law.

The principal point of disagreement among the Member States has concerned the powers of the Agency in relation to the so-called potential candidate countries (i.e. Western Balkan countries) and whether these countries could be provided with a possibility to participate in the work of the Agency as observers.

In respect of this question, the Presidency proposes a solution whereby both the possibility to invite a potential candidate country to participate in the Agency and the extension of the geographical scope of the Agency's powers to cover the country concerned would in each case depend not only on the decision of the relevant Association Council but also, and as a preceding step, on a unanimous decision of the Council.

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

### **Competence of the Agency Regarding Issues Governed by Title VI TEU**

In the effort to reach an overall agreement on the establishment of the Agency, the principal challenge has been to find a solution that would enable the extension of the Agency's powers to cover the areas of Title VI of the Treaty on European Union. Given the utmost political importance of enabling the Agency to act in the field of police cooperation and judicial cooperation in criminal matters, it has been clear that no prospect for an overall agreement on the establishment of the Agency could be envisaged until common ground would be found on this question.

In this respect, the main question on which agreement has been difficult to find among the delegations relates to the existence of a legal basis for the proposed Decision empowering the Agency to pursue its activities in the areas covered by Title VI of the TEU. While a majority of delegations have taken the view that Articles 30, 31 and 34(2)(c) TEU form an appropriate legal basis for the Decision, a minority has denied the existence of a legal basis for the proposed Decision. Despite extensive efforts to reach a common understanding on the issue, the Presidency acknowledges that there is no prospect of finding agreement among all delegations on the interpretation of the existing legal framework within the time limit set for the establishment of the Agency by the European Council in June 2006.

Against this background, the Presidency has proposed a solution that would enable the Agency to perform, as of its establishment, certain tasks in the areas covered by Title VI, without there being any need to address the question of the existence of a legal basis. In this solution, the Union institutions and the Member States could, as appropriate and on a voluntary basis, avail of the expertise of the Agency 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. In addition, the Council would adopt a separate declaration whereby it 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. The two declarations would be made by the Council upon the adoption of the Council Regulation establishing the Agency and are included in Annex II. Finally, there would be a preambular paragraph (para. 32 of the Preamble) replacing Article 28 of the Commission's original proposal.

At the meetings of COREPER of 15 and 23 November there was an emerging consensus on the above described proposal by the Presidency. It was acknowledged that the proposed solution would be entirely without prejudice to the question of the existence of a legal basis while at the same time enabling the Agency to perform certain tasks under Title VI as of its establishment.

However, certain delegations took the view that some of the wordings proposed by the Presidency required further clarification insofar as concerns the possibility of the Union institutions and the Member States to avail of the expertise of the Agency. To accommodate these concerns, the Presidency proposes certain changes to the wording of the two Declarations and paragraph 32 of the Preamble.

The Presidency proposal consists of the following elements:

Paragraph 32 of the Preamble would read as follows:

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

The Declaration by the Council on the Review of the Remit of the Agency under Title VI of the Treaty on European Union would read as follows:

*"The Council agrees to re-examine, before 31 December 2009, the remit of the Agency for Fundamental Rights, with a view to **the possibility of** extending it to cover the areas of police and judicial cooperation in criminal matters. The Council invites the Commission to submit a proposal to this effect **as appropriate**.*

The Declaration by the Council on the Consultation of the Agency within the Areas of Police and Judicial Cooperation in Criminal Matters would read:

*"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 may, **within the framework of the legislative process and with due regard to each others' powers**, each 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 **they are** implementing legislative acts of the Union in that area."*

*The Council is invited agree on the Presidency proposal.*

### **Decision-making Procedure to be Applied in the Management Board to the Internal Language Arrangements of the Agency**

In the light of the discussions in COREPER on 15 and 23 November 2006 the Presidency proposes the internal language arrangements of the Agency to be adopted by the Management Board acting unanimously.

*The Council is invited to agree on the proposal as set out in Articles 11(8) and 24 of the proposed Regulation.*

### **III. RESERVATIONS**

The draft Regulation is subject to following reservations:

Parliamentary scrutiny reservations by four delegations.

General scrutiny reservations by four delegations.

*Delegations are invited to lift the above mentioned reservations.*

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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 Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,

Having regard to the opinion of the Committee of the Regions<sup>4</sup>,

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.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ C , , p. .

- (2)<sup>1</sup> The Charter of Fundamental Rights of the European Union<sup>2</sup>, bearing in mind its status and scope, and the accompanying explanations, 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 Freedoms<sup>3</sup>, 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 1997<sup>4</sup> 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 2004<sup>5</sup>, on the basis of which a large public consultation was carried out.

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<sup>1</sup> Four delegations were prepared to accept the text of this recital on the condition that reference is made to the Charter of Fundamental Rights in Article 3(2) of the Regulation.

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

<sup>3</sup> Signed in Rome on 4 November 1950.

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

<sup>5</sup> 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.
- (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, bearing in mind its status and the accompanying explanations.<sup>1</sup> 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 to 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.

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<sup>1</sup> See above p. 8, footnote 1.

- (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.
- (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,<sup>1</sup> 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,<sup>2</sup> and concerning languages, as set out in Regulation No 1 of 15 April 1958<sup>3</sup> and in Council Regulation (EC) No 2965/94 of 28 November 1994.<sup>4</sup>
- (25) Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002<sup>5</sup> on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>6</sup> should apply to the Agency, as well as Regulation (EC) No 1073/1999 of 25 May 1999 of the European Parliament and the Council<sup>7</sup> 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 dismissal of the Director.

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<sup>1</sup> OJ L 145, 31.5.2001, p. 43.

<sup>2</sup> OJ L 8, 12.1.2001, p. 1.

<sup>3</sup> OJ 17, 6.10.1958, p. 385/58. Regulation as last amended by the 2003 Act of Accession.

<sup>4</sup> 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.

<sup>5</sup> OJ L 357, 21.12.2002, p. 72, with Corrigendum in OJ L 2, 7.1.2003, p. 39.

<sup>6</sup> OJ L 248, 16.9.2002, p. 1.

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

- (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.
- (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 integration 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.
- (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.

- (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. With regard to the adoption of this Regulation, the Treaty does not provide for powers other than those set out in Article 308.
- (32) **Nothing in this Regulation should be interpreted to prejudice the question of whether the remit of the Agency may be extended to cover the areas of police cooperation and judicial cooperation in criminal matters.**
- (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.

#### *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 defined in Article 6(2) of the Treaty on European Union.<sup>1</sup>
3. The Agency shall deal with fundamental rights issues in the European Union and in its Member States when implementing Community law. [...]

### Article 4

#### **Tasks**

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;

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<sup>1</sup> See above p. 8, footnote 1.

- (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;
  - (e)<sup>1</sup> [...]
  - (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.

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<sup>1</sup> Deletion in follow-up to the wish of the delegations. Delegations indicated that they preferred instead, a declaration by the Council 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. The text of the Declaration agreed by COREPER of 23 November 2006 is set out in Annex II.

*Article 5*

**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 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 main 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 Nations 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.

#### *Article 9*

#### **Cooperation with the Council of Europe**

In order to avoid duplication and 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 xenophobia at national, European or international level. To that end, the Agency shall establish a cooperation network (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.
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 persons with appropriate experience in the management of public or private sector organisations and, in addition, knowledge in the field of fundamental rights, as follows:
  - (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;
  - (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.
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) 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.

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 majority<sup>1</sup> of all members shall be required, **and as regards the decisions referred to in Article 24, paragraph 2, where the Management Board shall act by unanimity.** 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 vote on decisions referred to in points (a), (b) 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.

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<sup>1</sup> Two delegations took the view that the Management Board should decide by unanimity on the internal language arrangements of the Agency.

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 follows<sup>1</sup>:
  - (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.

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<sup>1</sup> Due to the exceptional character of this appointment procedure, the delegations envisaged the inclusion in the Council minutes of a declaration by the three Institutions stating that this solution will not set a precedent for future Agencies. The text of the Declaration agreed by COREPER of 15 November 2006 is set out in Annex II.

(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.

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.

#### *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.

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 Management Board shall decide on the internal language arrangements for the Agency.**
3. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.

*Article 25*

**Privileges and immunities**

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

*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 27*

**Participation and scope in respect 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 [...] as observers.

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<sup>1</sup> One delegation, supported by two delegations, 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. 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. **Upon the decision of the Association Council the Agency may deal with fundamental rights issues within the scope of Article 3(1) in the respective country, to the extent necessary for the gradual alignment to Community Law of the country concerned.**
  
3. **The Council, acting unanimously on a proposal by the Commission, may decide to invite a country with which a Stabilisation and Association Agreement has been concluded by the European Community to participate in the Agency as an observer. In that case, paragraph 2 shall apply accordingly.**

*Article 28*

**Activities under Title VI of the Treaty on European Union**

[...]<sup>1</sup>

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<sup>1</sup> See paragraph 32 of the Preamble.

## 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.
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 four 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:
  - 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).
  - adopt the annual report on the Centre's own activities for 2006, in accordance with Article 11(6) (b).
5. Until the first Multiannual Framework for the Agency has been adopted in accordance with Article 5(1), the Agency shall carry out its tasks in the thematic areas of the fight against racism, xenophobia and related intolerance referred to in Article 5(2)(b), without prejudice to the second sentence of Article 5(3).

*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;
  - 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.

*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*

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**Declaration by the Council**  
**on Proceedings under Article 7 of the Treaty on European Union**

The Council **considers** 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 when the Council decides that the conditions of Article 7 TEU are met.

**Declaration by the Council, the European Parliament and the Commission**  
**on the Procedure for the Appointment of the Director for the Agency**

The European Parliament, the Council and the Commission stress the exceptional nature, in comparison to other agencies, of the European Union 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 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.

**Declaration by the Council on the Review of the Remit  
of the Agency under Title VI of the Treaty on European Union**

The Council agrees to re-examine, before 31 December 2009, the remit of the Agency for Fundamental Rights, with a view to **the possibility of** extending it to cover the areas of police and judicial cooperation in criminal matters. The Council invites the Commission to submit a proposal to this effect **as appropriate**.

**Declaration by the Council on the Consultation of the Agency  
within the Areas of Police and Judicial Cooperation in Criminal Matters**

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 may, **within the framework of the legislative process and with due regard to each others' powers**, each 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 **they are** implementing legislative acts of the Union in that area.