COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.8.2007
COM(2007) 478 final

2007/0173 (CNS)

Proposal for a

COUNCIL DECISION

relating to the conclusion of an Agreement between the European Community and the Council of Europe on cooperation between the European Union Agency for Fundamental Rights and the Council of Europe

(presented by the Commission)

EXPLANATORY MEMORANDUM

On 15 February 2007, the Council adopted Regulation (CE) No 168/2007 (the Regulation)[1] establishing a European Union Agency for Fundamental Rights (the Agency).

According to Article 9 of the Regulation, the Agency shall coordinate its activities with those of the Council of Europe in order to avoid duplication and in order to ensure complementarity and added value. To that end, Article 9 states that the Community shall enter into an agreement with the Council of Europe for the purpose of establishing close cooperation between the latter and the Agency ("the Agreement").

In accordance with Article 300 of the Treaty establishing the European Community, the Council authorized on 15 February 2007 the Commission to negotiate, on behalf of the European Community, the Agreement[2]. On the same day the Council approved the text of the negotiating directives[3] and appointed the ad hoc Working Party on Fundamental Rights and Citizenship as the special Committee to assist the Commission in the negotiations.

The negotiations between the Commission and the Secretary General of the Council of Europe started in March 2007. Negotiations and consultations took place in April and May 2007. The ad hoc Working Party on Fundamental Rights and Citizenship of the Council was consulted on the negotiations. The European Parliament was also informed, in accordance with the Framework Agreement on relations between the European Parliament and the Commission.

The Agreement annexed to this proposal for a Council Decision establishes a cooperation framework between the Agency and the Council of Europe. It organises regular contacts and meetings between officials of the Agency and of the Council of Europe. It arranges exchange of information with due respect for the relevant rules on data protection. It provides for coordination of activities, particularly with regard to preparation of the Agency's annual work programme, in order to avoid duplication of work and to guarantee the best possible use of resources. The Agreement makes possible joint and complementary activities on subjects of common interests.

The Agreement contains also provisions on the appointment by the Council of Europe of an independent person to sit on the Management and Executive Boards of the Agency, together with an alternate. The Agreement defines the role of that person in the Executive Board.

The Agreement gives firmer shape to the cooperation between the Agency and the Council of Europe. Its conclusion will empower the Agency and the Council of Europe to work closely together in order to strengthen the protection of fundamental rights in Europe. It is to be noted that when the Agency will participate in the activities of the Council of Europe, it will act in complete independence as provided in the Regulation.

The Agency is a legal successor of the European Monitoring Centre on Racism and Xenophobia. The cooperation between the Centre and the Council of Europe was covered by the Agreement of 10 February 1999 between the European Community and the Council of

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1 OJ L 53, 22.2.2007, p.1.

2 Document of the Council 6199/07 JAI 70 CATS 13 COHOM 16 COEST 40 FIN 49.

3 Document of the Council 6150/07 JAI 66 CATS 11 COHOM 14 COEST 37 FIN 46 (RESTREINT UE).

Europe for the purpose of establishing, in accordance with Article 7 (3) of Council Regulation (EC) No 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia, close cooperation between the Centre and the Council of Europe[4]. This Agreement abrogates and replaces the said Agreement.

The Council is asked to authorise its President to designate the person authorised to sign, on behalf of the Community, this Agreement in order to express the consent of the Community to be bound by it.

In the light of the above, the Commission proposes that the Council adopts the attached proposal for a Council Decision.

[4] Concluded by Council Decision 1999/132/EC of 21.12.1998, OJ L 44, 18.2.1998, p. 44.

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relating to the conclusion of an Agreement between the European Community and the Council of Europe on cooperation between the European Union Agency for Fundamental Rights and the Council of Europe

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 in conjunction with the first subparagraph of Article 300 (2) and the first subparagraph of Article 300 (3) thereof;

Having regard to the proposal from the Commission[5],

Having regard to the opinion of the European Parliament[6],

Whereas

(1) Article 9 of Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights[7] foresees the establishment of close cooperation between the Agency and the Council of Europe;

(2) The Commission has negotiated on behalf of the European Community an Agreement with the Council of Europe on such cooperation;

(3) The Agreement between the European Community and the Council of Europe should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Council of Europe on cooperation between the European Union Agency for Fundamental Rights and the Council of Europe is hereby approved on behalf of the European Community.

The text of the Agreement is attached to this Decision.

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5 OJ C […], […], p. […].
6 OJ C […], […], p. […].
7 OJ L 53, 22.2.2007, p. 53.

Article 2

The President of the Council is hereby authorised to designate the person empowered to sign the Agreement in order to express the consent of the Community to be bound thereby.

Done at Brussels,

For the Council
The President

ANNEX

Agreement between the European Community and the Council of Europe

on cooperation between the European Union Agency for Fundamental Rights and the Council of Europe

THE EUROPEAN COMMUNITY AND THE COUNCIL OF EUROPE (hereinafter referred to as "the Parties"),

WHEREAS the Council of the European Union adopted, on 15 February 2007, Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights (hereinafter referred to as the 'Agency') ;

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

WHEREAS the Agency shall refer in carrying out its tasks to fundamental rights within the meaning of Article 6 (2) of the Treaty on European Union, including the rights and freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;

WHEREAS the Council of Europe has acquired extensive experience and expertise in intergovernmental cooperation and assistance activities in the field of human rights, having also established several human rights monitoring and control mechanisms, as well as the Council of Europe Commissioner for Human Rights;

WHEREAS, in pursuing its activities, the Agency shall take account, where appropriate, of activities already carried out by the Council of Europe;

WHEREAS the Agency shall, in order to avoid duplication and in order to ensure complementarity and added value, coordinate its activities with those of the Council of Europe, particularly with regard to its annual work programme and to cooperation with civil society;

WHEREAS close links should now be established between the Agency and the Council of Europe in accordance with Article 9 of Council Regulation (EC) no 168/2007;

WHEREAS the Representatives of the Member States of the European Union, meeting within the European Council on 16 and 17 December 2004 agreed that the Agency will play a major role in enhancing the coherence and consistency of the EU Human Rights Policy;

WHEREAS the Guidelines on the relations between the Council of Europe and the European Union, adopted at the Third Council of Europe Summit of Heads of State and Government (Warsaw, 16-17 May 2005) refer to the Agency as an opportunity to further increase cooperation with the Council of Europe and to contribute to greater coherence and enhanced complementarity;

WHEREAS the Memorandum of Understanding between the Council of Europe and the European Union concluded in 23 May 2007 contains a general framework for the cooperation in the area of human rights and fundamental freedoms and highlights the role of the Council of Europe as the benchmark for human rights, the rule of law and democracy in Europe;

WHEREAS, in accordance with the Memorandum of Understanding, the Agency respects the unity, validity and effectiveness of the instruments used by the Council of Europe to monitor the protection of human rights in its member states;

WHEREAS it is for the Council of Europe to appoint an independent person to sit on the Agency's Management Board and on its Executive Board,

HAVE AGREED AS FOLLOWS:

I. Use of terms

1. For the purposes of this Agreement:

a) the term "Council of Europe intergovernmental committees" shall mean any committee or body set up by the Committee of Ministers, or with its authorisation, by virtue of Articles 15 (a), 16 or 17 of the Council of Europe Statute;

b) the term "Council of Europe's human rights monitoring committees" shall mean the European Committee of Social Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Commission against Racism and Intolerance, the Committee of experts of the European Charter for Regional or Minority Languages, the Advisory Committee of the Framework Convention for the Protection of National Minorities and any other such independent bodies that the Council of Europe might set up in the future.

c) the term "Agency" shall comprise the bodies referred to in Article 11 of Council Regulation (EC) No 168/2007 within their respective areas of competence.

II. General cooperation framework

2. This agreement establishes a cooperation framework between the Agency and the Council of Europe in order to avoid duplication and ensure complementarity and added value.

3. Regular contacts shall be established at the appropriate level between the Agency and the Council of Europe. The Director of the Agency and the Council of Europe Secretariat shall each appoint a contact person to deal specifically with matters relating to their cooperation.

4. As a general rule, Council of Europe Secretariat representatives shall be invited by the Agency's Executive Board to attend meetings of the Agency's Management Board as observers. This shall not extend to particular agenda items for which, on account of their internal nature, such attendance would not be justified. Such representatives may also be invited to other meetings organised by the Agency's Management Board, including those referred to in Article 6 (1) of Council Regulation (EC) No 168/2007.

5. Representatives of the Agency shall be invited to attend as observers in meetings of those Council of Europe intergovernmental committees in which the Agency has expressed an interest. Upon invitation by the relevant committee, representatives of the Agency may attend

meetings or exchanges of views organised by Council of Europe human rights monitoring committees or committees set up under partial agreements as observers. Representatives of the Agency may also be invited to participate in exchanges of views organized by the Committee of Ministers of the Council of Europe.

6. Cooperation shall cover the whole range of the Agency's activities, both present and future.

III. Exchange of information and data

7. Without prejudice to the rules on data protection in force for the Agency and Council of Europe respectively, the Agency and the Council of Europe shall provide each other with information and data collected in the course of their activities, including access to online information. Information and data thus provided may be used by the Agency and the Council of Europe in the course of their respective activities. These provisions do not extend to confidential data and activities produced or undertaken.

8. The Agency shall take due account of the judgments and decisions of the European Court of Human Rights concerning the areas of activity of the Agency and, where relevant, of findings, reports and activities in the human rights field of the Council of Europe's monitoring and intergovernmental committees, as well as those of the Council of Europe's Commissioner for Human Rights.

9. Whenever the Agency uses information taken from Council of Europe sources, it shall indicate the origin and reference thereof. The Council of Europe shall proceed in the same way when using information taken from Agency sources.

10. The Agency and the Council of Europe shall ensure, by means of their networks, the widest possible dissemination of the results of their respective activities on a reciprocal basis.

11. The Agency and the Council of Europe shall ensure regular exchanges of information about activities proposed, under way or completed.

IV. Methods of cooperation

12. Regular consultations shall be held between the Agency and the Council of Europe Secretariat, with the aim of coordinating the Agency's activities, in particular carrying out research and scientific surveys as well as drafting conclusions, opinions and reports, with those of the Council of Europe in order to ensure complementarity and the best possible use of available resources.

13. Such consultations shall notably concern:

- the preparation of the Agency's annual work programme;

- the preparation of the Agency's annual report on fundamental rights issues covered by the areas of the Agency's activity;

- cooperation with civil society, in particular association of the Council of Europe with the establishment and functioning of the Agency's Fundamental Rights Platform.

14. On the basis of such consultations, it may be agreed that the Agency and the Council of Europe shall conduct joint and/or complementary activities on subjects of common interest,

such as the organisation of conferences or workshops, data collection and analysis or the setting up of shared information sources or products.

15. Cooperation between the Agency and the Council of Europe may be further promoted through grants awarded by the Agency to the Council of Europe. The 2004 Framework Administrative Agreement between the European Commission and the Council of Europe on the application of the financial checks clause to operations administered by the Council of Europe and financed or co-financed by the European Community shall apply.

16. Temporary exchanges of staff between the Agency and the Council of Europe may be effected by agreement between the Secretary General of the Council of Europe and the Director of the Agency in so far as the relevant applicable staff regulations allow.

V. Appointment by the Council of Europe of an independent person to sit on the Agency's Management and Executive Boards

17. The Committee of Ministers of the Council of Europe shall appoint an independent person to sit on the Management and Executive Boards of the Agency, together with an alternate member. The Council of Europe appointees shall have appropriate experience in the management of public or private sector organisations and knowledge in the field of fundamental rights.

18. The Council of Europe shall notify the Agency and the European Commission of the appointments made.

19. The person appointed by the Council of Europe to the Management Board shall be invited to participate in the meetings of the Executive Board. His or her views shall be duly taken into account, especially to ensure complementarity and added value between the activities of the Agency and those of the Council of Europe. He or she shall have the right to vote in the Executive Board as regards the preparation of decisions of the Management Board on which he or she may vote in accordance with Article 12 § 8 of Council Regulation (EC) No 168/2007.

VI. General and final provisions

20. Nothing in this agreement may be interpreted as preventing the Parties from pursuing their respective activities.

21. This Agreement abrogates and replaces the Agreement of 10 February 1999 between the European Community and the Council of Europe for the purpose of establishing, in accordance with Article 7 (3) of Council Regulation (EC) No 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia, close cooperation between the Centre and the Council of Europe.

22. This Agreement shall enter into force upon signature by the duly authorised representatives of the Parties.

23. This Agreement may be modified by mutual agreement between the Parties. The Parties shall evaluate the implementation of this Agreement not later than 31 December 2013 with a view to revising it if necessary.