COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.06.2005
COM(2005) 280 final

2005/0124 (CNS)
2005/0125 (CNS)

Proposal for a

COUNCIL REGULATION

establishing a European Union Agency for Fundamental Rights

Proposal for a

COUNCIL DECISION

empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI of the Treaty on European Union

{SEC(2005)849}

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSALS

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

Respect for and promotion of fundamental rights are founding principles and major objectives of the European Union and its Member States. Fundamental rights are general principles of Community law and accordingly amenable to judicial control. Their importance was highlighted by the proclamation of the Charter of Fundamental Rights of the European Union in 2000. Securing fundamental rights depends on appropriate governance mechanisms to ensure that they are taken fully into account in policy setting and decision-making in the Union. Not only an adequate legislative framework but also appropriate structures and adequate resource allocations are needed for that purpose

On 13 December 2003, the Representatives of the Member States meeting within the European Council, stressing the importance of human rights data collection and analysis with a view to defining Union policy in this field, agreed to build upon the existing European Monitoring Centre on Racism and Xenophobia (EUMC) and to extend its mandate to become a Human Rights Agency to that effect. The Commission agreed and indicated its intention of submitting a proposal to amend Council Regulation (EC) No 1035/97 of 2 June 1997 establishing the EUMC in that respect.

The idea of a Human Rights Agency is included in the Hague Programme; strengthening freedom, security and justice in the European Union, adopted on 4-5 November 2004. On 16-17 December 2004, the European Council called for further implementation of the agreement to establish an EU Human Rights Agency, which will play a major role in enhancing the coherence and consistency of the EU human rights policy. According to the Strategic objectives 2005-2009, Europe 2010: A Partnership for European Renewal - Prosperity, Solidarity and Security adopted by the Commission on 26 January 2005, the protection of fundamental rights must be put at the forefront of European action by establishing a European Agency of Fundamental Rights.

The European Parliament called on the Commission to submit a legislative proposal concerning the Agency in its Report on Promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency, adopted on 26 May 2005.

The objective of the proposal is to extend the mandate of the EUMC and to establish a European Union Agency for Fundamental Rights. It will establish a centre of expertise on fundamental rights issues at the EU level. Establishing an Agency will make the Charter more tangible, and the close relation to the Charter is reflected in the Agency's name.

- **General context**

The decision to extend the mandate of the EUMC to become a Fundamental Rights Agency is in line with the specific commitments of the Union to respect and strengthen fundamental rights, as laid down in Articles 2, 6 and 7 of the Treaty on European Union.

The establishment of the Agency continues the policy begun with the objectives given to

the EUMC, which already has the task of giving the Union institutions and the Member States the means of fulfilling their obligation to respect fundamental rights in drawing up and implementing Union policies. To that end, the main task of the EUMC is to collect and analyse data on racism and xenophobia and study the causes.

When taking office, the current Commission undertook to promote full respect for fundamental rights and to launch the European Agency on Fundamental Rights as soon as possible. The initiative was included in the Commission Work Programme for 2005.

For legal reasons the Commission is presenting two separate proposals concerning the establishment of Agency, one for a Regulation under the Treaty establishing the European Community and a second for a Decision under the Treaty on European Union to entrust the Agency with tasks in areas referred to in Title VI TEU. This explanatory memorandum applies to both proposals.

- **Existing provisions in the area of the proposal**

The operation of the EUMC is currently governed by Regulation (EC) No 1035/97. This will be repealed by the proposed Regulation.

The main difference between the existing legislation and the proposals is that the proposals extend the scope from racism and xenophobia to cover all areas of fundamental rights referred to in the Charter, without prejudice to those areas which are already covered by operations of other Community agencies. The main tasks will remain the same although being defined more carefully.

The conclusions of the 2002 assessment of the EUMC are taken into account. They require concentration on data collection function, closer cooperation with national authorities, focusing the work on the priorities of the Union, tightening the management and improving efficiency.

The proposal takes into account horizontal rules relating to financial management, access to documents and Community agencies.

- **Consistency with other Union policies and objectives**

All Union policies are required to respect fundamental rights. By providing expertise and assistance in fundamental rights, the Agency will improve the quality of other Union policies.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

The Commission issued a Communication on the Fundamental Rights Agency on 25 October 2004, thereby launching a public consultation on the remit, rights and thematic areas, tasks and structure of an agency. The consultation was in two parts – written consultation and a public hearing.

The written consultation was opened by posting the Communication on the Freedom,

Security and Justice website with a deadline of 17 December 2004 for contributions to be sent by e-mail. One hundred responses were received. The contributors included ten Member States, European and international bodies, national bodies for human rights, and equal opportunities, members of academia, private citizens and almost 60 non-governmental organisations.

The public hearing took place on 25 January 2005. There were more than 200 registered participants, representing the above-mentioned stakeholders.

All documents relating to the consultation, including the written replies, a report analysing them as well as a report on the hearing were posted on the Freedom, Security and Justice website and are accessible at

http://europa.eu.int/comm/justice_home/news/consulting_public/fundamental_rights_agency/index_en.htm

Summary of replies and how they have been taken into account

The principle of establishing an Agency was welcomed unanimously. The need for the Agency to be independent from EU institutions, Member States and NGOs was also unanimously stressed. Most contributors emphasized the need to avoid duplication with work already carried out at national and international level. Synergy should be the principle on which the Agency builds its relations with other bodies, not least with the Council of Europe.

There was a broad consensus in considering that the Charter should be the point of reference for the mandate of the Agency. Stakeholders also requested that the fight against racism and xenophobia remain at the core of the future Agency's activities. As regards the Agency's geographic scope, there was a certain consensus that it should focus on the Union and its Member States. However, quite a number of stakeholders made other proposals, such as the extension of the Agency's remit as regards candidate countries.

The issue of the possible competence of the Agency with respect to Article 7 TEU was the subject of divergent views: while Member States were in general very prudent on this issue, NGOs wished the Agency to play a strong role in this respect.

Many useful suggestions were made as to the tasks of the Agency: collection of data; processing data with a view to reinforcing its comparability from one Member State to another; analysis of the data obtained; preparing reports, opinions and possibly recommendations; networking; and proactively promoting fundamental rights by raising public awareness, disseminating the results of its work and preparing educational material.

This proposal takes on board those issues mentioned above, on which there was a broad consensus.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The impact assessment studied five possible policy options to achieve the policy objectives. It found that the **'Status quo' option** would fail to give the due importance to the Charter and would not address the problems of the current situation, which are explained in detail in the assessment report.

Two **options** included only observation functions: a **'Focused Observation Agency'** would collect information on fundamental rights in a limited number of thematic areas having strongest links to EU policies. The remit would be 'technical assistance'. A **'General Observation Agency'** would be broadly similar but would cover more thematic areas. These options would address the problems in the current situation but only to a limited extent. In the first one, the impact on improving data quality would be marginal. The second would be inefficient and face the risk of spreading resources too thinly. It would duplicate the work of other international, European and national organisations. The opinions expressed in the public consultation were divided on the effectiveness of these options. The focus on racism and xenophobia could be diluted in the second case.

In **the 'Widest Possible Observation and Assessment Agency' option**, the Agency would observe fundamental rights both within and outside the Union policy framework, also for the purposes of Article 7 TEU. It would be a very effective option as a means of achieving policy objectives. However, the legal limits of Community powers must be taken into account. Second, the option would entail a very heavy financial commitment. It would also risk being overburdened with work because of its wide scope and would duplicate the work of other institutions. The focus on racism and xenophobia could be diluted. In the light of the public consultation such a mandate could cause friction between the EU and the Member States and international organisations.

These considerations point to the **'Focused Observation and Assessment Agency on Union policies' option** as the preferred way to achieve the policy objectives and address the problems identified. It is an effective option as a means of achieving the objectives but it entails only a medium financial cost and has a considerable degree of political acceptability. Under this option, the Agency's mandate would be open to collecting and analysing data on fundamental rights with reference to, in principle, all rights listed in the Charter, but the thematic areas within the scope of Union law would periodically be defined for the Agency's actions.

The Commission carried out an impact assessment listed in the Work Programme. The report is accessible at

http://europa.eu.int/comm/justice_home/news/consulting_public/fundamental_rights_agency/index_en.htm.

3) LEGAL ELEMENTS OF THE PROPOSAL

- Summary of the proposed action

The Charter is the point of reference for the Agency's mandate. The Agency is to pursue its activities within the competencies of the Community under the Regulation, but the scope is extended to matters relating to police and judicial cooperation in criminal matters

with the parallel Council Decision.

The Agency deals with fundamental rights in the Union and the Member States when implementing Union law and in those candidate countries and potential candidate countries which participate in the Agency. In addition, the Commission may ask the Agency to submit information and analysis on third countries with which the Community has concluded association agreements or agreements containing provisions on respect of human rights, or has opened or is planning to open negotiations for such agreements.

The objective of the Agency is to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights. The thematic areas of activity will be defined through a Multiannual Framework determined by an implementing regulation involving the politically accountable Community institutions, thus setting limits for the Agency's work. This is in the interest of efficiency and takes into account the strict limits of the discretion enjoyed by Community agencies, which are to perform technical tasks and not set their own political agendas. Within these thematic areas, the Agency will, in complete independence, collect and assess data on the practical impact of Union measures on fundamental rights and on good practices in respecting and promoting fundamental rights, express opinions on fundamental rights policy developments and raise public awareness and promote dialogue with civil society, and coordinate and network with various actors in the field of fundamental rights. It is to be underlined that the Agency has no complaint resolution mechanism.

The Council may exploit the expertise of the Agency if it finds it useful when acting on a proposal by one third of the Member States, by the European Parliament or by the Commission during the procedure under Article 7 TEU. The Agency will not, however, carry out systematic and permanent monitoring of the Member States for the purposes of Article 7.

The Agency will complement the existing international, European and national mechanisms for monitoring fundamental rights. It aims to collaborate closely with relevant organisations and bodies in order to gain synergies, as presented in Chapter 7 of the Impact Assessment Report. The work on statistics will be in line with the actions developed in the context of the Community Statistical Programme. In order to cooperate and to avoid any overlapping, the Agency will build close institutional relationship with the Council of Europe and the relevant Community agencies and Union bodies, especially with the European Institute for Gender Equality, concerning which the Commission presented a proposal on 8 March 2005. Mutual respect for competences and adequate synergies between these bodies will be guaranteed, particularly by provisions in the Multiannual Framework

The proposal takes into account the guidelines established in the draft Interinstitutional Agreement on the operating framework for the European regulatory agencies, adopted by the Commission on 25 February 2005. Nevertheless, given the independence and specific functions of this EU Agency, the need to ensure continuity with the EUMC upon which it builds and for the benefit of synergies with the Council of Europe and with national bodies in charge of monitoring the fundamental rights bodies, the proposal concludes keeping would preserve the exceptional structure of the current EUMC as regards the Management

Board. The presence of one independent expert appointed by each Member State, by the Council of Europe and by the European Parliament is accordingly maintained. This formula appropriately ensures independence both from the Community institutions and from the Member States' governments, which is corollary to the particular functions of this Agency in the field of fundamental rights, and assembles broad expertise in Community policies and the Council of Europe's perspective. Since the member appointed by the European Parliament must also be independent from the Parliament and entirely unaffiliated to it, participation of that member in the Agency's management is not incompatible with the Parliament's budgetary control function. The voting rights of the member appointed by the Council of Europe are limited in such a way as not to interfere with the principle of institutional autonomy of a Community body.

- **Legal basis**

The legal basis for the proposed Regulation is Article 308 TEC. It is a general objective of the Community to ensure that its own action fully respects fundamental rights. The Agency's establishment will further that objective, without there being specific powers provided for in the Treaty to that end.

The appropriate legal basis for the proposal for a Council Decision entrusting the Agency with tasks in the area referred to in Title VI TEU is Articles 30, 31 and 34 TEU.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason:

The Agency's main activities will be the Union-wide collection and analysis of information, opinions and the dissemination of information, helping the Union itself to fully respect fundamental rights in its action. It is the corollary of the genuinely European dimension of these tasks that the objectives of the Agency cannot be sufficiently achieved by the Member States.

Community action will better achieve the objectives of the proposal for the following reasons:

The Agency will have to apply a uniform system governing the collection and analysis of information that ensures the compatibility and comparability of that data and thus allows a methodologically sound comparative scrutiny of the situation in European level. This can be achieved successfully only by action at EU level.

By acting at European level, the Agency is designed to provide information, which enable the effectiveness of policies within and between the Member States to be assessed and thus adds value in terms of devising and targeting policies.

The scope of the proposal is confined to where the objectives cannot be satisfactorily achieved only the Member States.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

Building upon the existing body will make it possible to exploit existing expertise and experience and thus achieve the objectives in the most proportionate way.

According to the impact assessment, the policy option chosen for the creation of the Agency will give good "value for money" for the allocation of proposed resources considering the objective of the work of the Agency – the ideal condition where the rights of all EU citizens and residents are respected.

- **Choice of instruments**

Proposed instruments: regulation, decision.

Other means would not be adequate for the following reasons:

A Regulation is the appropriate legal instrument for establishing a Community agency.

The most appropriate legal instrument to empower the Agency to pursue activities in the areas referred to in Title VI of the TEU is a Council Decision.

4) BUDGETARY IMPLICATION

The EUMC has an annual budget of €8.2 million and a staff of 37. It is proposed that Agency become operational on 1 January 2007, with a mandate that is extended considerably. History shows that establishment of an Agency takes between two and three years, and it is expected that a major extension will require the same period of time. It is therefore proposed to have a growing budget for the period 2007-13 in order to take account of the inevitable transition period. Indicative financial planning is as follows: Budget 2007: €16 million; 2008: €20 million; 2009: €21 million; 2010: €23 million; 2011: €26 million; 2012: €28 million; 2013: €29 million. Total staffing of 100 is proposed.

5) ADDITIONAL INFORMATION

- **Simplification**

The proposal provides for simplification of legislation.

It replaces Regulation (EC) No 1035/97, as already amended by Council Regulation (EC) No 1652/2003. Replacing that Regulation will simplify the legislation and improve its clarity.

- **Repeal of existing legislation**

The adoption of the proposal will entail the repeal of existing legislation.

- **Review/revision/sunset clause**

The proposal includes a review clause.

2005/0124 (CNS)

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[1],

Having regard to the opinion of the European Parliament[2],

Having regard to the opinion of the European Economic and Social Committee[3],

Having regard to the opinion of the Committee of the Regions[4],

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.

(2) The Charter of Fundamental Rights of the European Union[5] reaffirms 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[6], 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 when implementing Community law must respect fundamental rights.

(4) A more thorough knowledge and widespread 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

---

1 OJ C , , p. .
2 OJ C , , p. .
3 OJ C , , p. .
4 OJ C , , p. .
5 Proclaimed in Nice on 7 December 2000, OJ C 364, 18.12.2000, p. 1.
6 Signed in Rome on 4 November1950.

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 communities, 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[7] and to extend its mandate to make it a Human Rights Agency.

(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[8], on the basis of which a large public consultation was carried out.

(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 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) When establishing the Agency, due attention will be paid to the operating framework for the European regulatory agencies proposed by the Commission in the draft Inter-institutional Agreement[9] on 25 February 2005.

(9) The Agency should refer in its work to fundamental rights as defined in Article 6(2) of the Treaty on European Union and as set out in particular in the Charter of Fundamental Rights. The close connection to the Charter should be reflected in the name of the Agency. The thematic areas of activity of the Agency should be laid down in the Multiannual Framework, thus defining the limits of the work of the Agency, which in accordance with general institutional principles, should not set a political fundamental rights agenda of its own.

(10) The Agency should gather objective, reliable and comparable information on the development of the situation of fundamental rights, analyse this information for causes of disrespect, consequences and effects and examine examples of good practice in dealing with these matters. Networks are effective tools for active information collection and assessment.

(11) 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.

---

7 OJ L 151, 10.6.1997, p.1. As amended by Regulation (EC) No 1652/2003, OJ L 245, 29.9.2003, p. 33.
8 COM (2004)693final, 25.10.2004.
9 COM (2005)59final, 25.2.2005.

(12) The Council should have the possibility of requesting the Agency's technical expertise in the context of proceedings commenced under Article 7 of the Treaty on European Union.

(13) The Agency should present an annual report on the situation of fundamental rights in the Union and the respect thereof by the EU institutions, bodies and agencies and the Member States when implementing Union law. Furthermore, the Agency should produce thematic reports in the topics of particular importance to the Union's policies.

(14) 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.

(15) The Agency should work as closely as possible with all relevant Community programmes, bodies and agencies and Union bodies in order to avoid duplication, in particular as regards the future European Institute for Gender Equality.

(16) 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 synergies, such as 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 as in the current EUMC.

(17) Given the particular functions of the Agency, each Member State should appoint one independent expert to the Management Board. 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;

(18) The European Parliament plays a significant role in the area of fundamental rights. It should appoint one independent person as a member of the Management Board of the Agency;

(19) A consultative Forum should be established to ensure the pluralist representation of the social forces of civilian society active in the field of fundamental rights within the structures of the Agency with view to establish effective cooperation with all stakeholders.

(20) 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,[10] 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,[11] and languages, as

[10] OJ L 145, 31.5.2001, p. 43.
[11] OJ L 8, 12.1.2001, p. 1.

set out in Regulation No 1 of 15 April 1958[12] and in Council Regulation (EC) No 2965/94 of 28 November 1994.[13]

(21) Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002[14] 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[15] applies to the Agency, as well as Regulation (EC) No 1073/1999 of 25 May 1999 of the European Parliament and the Council[16] concerning investigations conducted by the European Antifraud Office (OLAF).

(22) 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. The seat of the Agency should remain located in Vienna, as determined by Decision of the Representatives of the Governments of the Member States of 2 June 1997 determining the seat of the European Monitoring Centre on Racism and Xenophobia.[17]

(23) Since the measures needed for the implementation of this Regulation are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission,[18] they should be adopted by the regulatory procedure provided for in Article 5 of that Decision.

(24) 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.

(25) 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. The Treaty does not provide, for the adoption of this Regulation, powers other than those set out in Article 308.

---

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

13 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.

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

15 OJ L 248, 16.9.2002, p. 1.

16 OJ L 136, 31.5.1999, p. 1.

17 OJ C 194, 25.6.1997, p. 4.

18 OJ L 184, 17.7.1999, p. 23.

(26) The Council should have the possibility of adopting a Decision pursuant to Title VI of the Treaty on European Union to empower the Agency to pursue its activities also with respect to areas covered by that Title.

(27) As Council Regulation (EC) No 1035/97 would have to be substantially amended for the establishment of the Agency, it should be replaced 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 and as set out in particular in the Charter of Fundamental Rights of the European Union as proclaimed in Nice on 7 December 2000.

3. When pursuing its activities, the Agency shall concern itself with the situation of fundamental rights in the European Union and in its Member States when implementing Community law, without prejudice to paragraph 4 and to Articles 4(1)(e), 27 and 28.

4. Without prejudice to Article 27, the Agency shall, at the request of the Commission, provide information and analysis on fundamental rights issues identified in the request as regards third countries with which the Community has concluded association agreements or

agreements containing provisions on respect of human rights, or has opened or is planning to open negotiations for such agreements, in particular countries covered by the European Neighbourhood Policy.

Article 4

Tasks

1. To meet the objective set in Article 2, 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, Community agencies, research centres, national bodies, non-governmental organisations, relevant third countries and international organisations;

(b) develop methods to improve the comparability, objectivity and reliability of data at European level, in cooperation with the Commission and the Member States;

(c) carry out, cooperate with or encourage scientific research and surveys, preparatory studies and feasibility studies, also, where appropriate and compatible with its priorities and its annual work programme, at the request of the European Parliament, the Council or the Commission. It shall also organize meetings of experts and, whenever necessary, set up ad hoc working parties;

(d) formulate conclusions and opinions on general subjects, 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) make its technical expertise available to the Council, where the Council, pursuant to Article 7(1) of the Treaty on European Union, calls on independent persons to submit a report on the situation in a Member State or where it receives a proposal pursuant to Article 7(2), and where the Council, acting in accordance with the procedure set out in these respective paragraphs of Article 7 of the Treaty on European Union, has requested such technical expertise from the Agency;

(f) publish an annual report on the situation of fundamental rights, 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;

(i) enhance cooperation between civil society, including non-governmental organisations, the social partners, research centres and representatives of competent public authorities and other persons or bodies involved in dealing with fundamental rights, in particular by networking, promoting dialogue at European level and participating where appropriate in discussions or meetings at national level;

(j) organise, with relevant stakeholders, conferences, campaigns, round tables, seminars and meetings at European level to promote and disseminate its work; and

(k) develop a communication strategy aimed at raising the awareness of the general public, set up documentation resources accessible to the public and prepare educational material, promoting cooperation and avoiding duplication with other sources of information.

2. The conclusions, opinions and reports formulated by the Agency when carrying out the tasks mentioned in paragraph 1 shall not concern questions of the legality of proposals from the Commission under Article 250 of the Treaty, positions taken by the institutions in the course of legislative procedures or the legality of acts within the meaning of Article 230 of the Treaty. They shall not deal with the question whether a Member State has failed to fulfil an obligation under the Treaty within the meaning of Article 226 of the Treaty.

Article 5

Areas of activity

1. The Commission shall adopt a Multiannual Framework for the Agency in accordance with the regulatory procedure referred to in Article 29(2). The Framework shall:

(a) cover five years;

(b) determine the thematic areas of the Agency's activity, always including the fight against racism and xenophobia;

(c) be in line with the Union priorities as defined in the Commission's strategic objectives;

(d) have due regard to the Agency's financial and human resources; and

(e) include provisions with a view to avoiding thematic overlap with the remit of other Community bodies, offices and agencies.

2. The Agency shall carry out its tasks within the thematic areas determined by the Multiannual Framework. This shall be without prejudice to the possibility for the Agency to respond to requests from the European Parliament, the Council or the Commission under Articles 3(4), 4(1)(d) and (e) outside these thematic areas, provided its financial and human resources so permit.

3. 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.

4. The Annual Work Programme, adopted in accordance with Article 11(4)(a), shall be in line with the Commission's annual work programme, including its research work and its actions on statistics undertaken in the context of the Community Statistical Programme.

CHAPTER 2

WORKING METHODS AND COOPERATION

Article 6

Working methods

1. The Agency shall set up and coordinate the necessary information networks. They shall be designed so as to ensure the provision of objective, reliable and comparable information, 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.

2. In pursuing its activities, the Agency shall, in order to avoid duplication and guarantee the best possible use of resources, take account of existing information from whatever source, and in particular of activities already carried out by

(a) Community institutions, bodies, offices and agencies;

(b) institutions, bodies, offices and agencies of the Member States; and

(c) the Council of Europe 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, European 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 European level

1. To help it carry out its tasks, the Agency shall cooperate with governmental and non-governmental organisations and bodies competent in the field of fundamental rights at the Member State or at European level.

2. The administrative arrangements for the cooperation provided for by paragraph 1 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

The Agency shall coordinate its activities with those of the Council of Europe, particularly with regard to its Annual Work Programme pursuant to Article 5. 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 obligation of the Council of Europe to appoint an independent person to sit on the Agency's Management Board, in accordance with Article 11.

CHAPTER 3

ORGANISATION

Article 10

Bodies of the Agency

The Agency shall comprise:

(a) a management board;

(b) an executive board;

(c) a director;

(d) a forum.

Article 11

Management Board

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

(a) one independent person appointed by each Member State;

(b) one independent person appointed by the European Parliament;

(c) one independent person appointed by the Council of Europe; and

(d) two representatives of the Commission.

The persons referred to in point (a) shall be persons:

– with high level responsibilities in the management of an independent national human rights institution; or,

– with thorough expertise in the field of fundamental rights gathered in the context of other independent institutions or bodies.

Each member of the Management Board may be represented by an alternate member meeting the above requirements.

The list of the members of the Board shall be made public and shall be updated by the Agency on its web site.

2. The term of office of the members of the Management Board appointed shall be five years. It may be renewed once.

However, where a member no longer meets the criteria by reason of which he or she was appointed, he or she shall forthwith inform the Commission and the Director of the Agency. The party concerned shall appoint a new member for the remaining term of the office.

3. The Management Board shall elect its Chairperson and Vice-Chairperson to serve for a two-and-a-half year term, which may be renewed once.

Each member of the Management Board, or, in his or her absence, his or her alternate shall have one vote.

4. 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 on the basis of a draft submitted by the Agency's Director after the Commission has delivered an opinion. It shall be in accordance with the available financial and human resources. 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 particular, the results achieved with the objectives of the annual work programme; these 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 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 has 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); and

(j) adopt the procedures for applying Regulation (EC) No 1049/2001 of the European Parliament and of the Council, in accordance with Article 16(2).

5. The Management Board may delegate any of its responsibilities to the Executive Board, except for the matters referred to in points (a), (b), (c), (d), (g) and (h) of paragraph 4.

6. Decisions by the Management Board shall be taken by a simple majority of the votes cast, except as regards the decisions referred to in points (a), (c), (d) and (e) of paragraph 4, where a two-thirds majority of all members shall be required. The Chairperson shall have the casting vote. The person appointed by the Council of Europe may vote only on decisions referred to in points (a) and (b) of paragraph 4.

7. The Chairperson shall convene the Board once a year, without prejudice to extraordinary supplementary 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.

8. The Director of the European Institute for Gender Equality may attend meetings of the Management Board as an observer. The Directors of other relevant Community agencies and Union bodies 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 and two Commission representatives.

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 13

Director

1. The Agency shall be headed by a Director, appointed by the Management Board on the basis of a list of candidates proposed by the Commission. The Director shall be appointed on the basis of his or her personal merit, administrative and management skills and experience in the field of fundamental rights. Before being appointed, the candidate selected by the

Management Board may be asked to make a statement before the competent committee of the European Parliament and answer questions from its members.

2. The Director's term of office shall be five years. On a proposal from the Commission and after evaluation, this may be extended once for a period of no more than five years. In the evaluation, the Commission shall assess in particular the results achieved during the first term of office and the way in which they were achieved, and the Agency's duties and requirements in the coming years.

3. The Director shall be responsible for:

(a) performance of the tasks referred to in Article 4;

(b) preparation and implementation of the Agency's Annual Work Programme;

(c) all staff matters, and in particular exercising powers provided for in Article 23(2);

(d) matters of day-to-day administration;

(e) implementation of the Agency's budget, in accordance with Article 20; and

(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.

4. The Director shall be accountable for the management of his/her activities to the Management Board and shall participate in its meetings without voting rights.

5. The Director may be dismissed by the Management Board before his or her term has expired, on the basis of a proposal from the Commission.

Article 14

Fundamental Rights Forum

1. The Forum shall be composed of representatives of non-governmental organisations responsible for fundamental rights and efforts to combat racism, xenophobia and anti-Semitism, trade unions and employer's organisations, relevant social and professional organisations, churches, religious, philosophical and non-confessional organisations, universities and qualified experts and European and international bodies and organisations.

2. The members of the Forum shall be selected by an open selection mechanism to be determined by the Management Board. Their maximum number shall be 100. Their term of office shall be five years, which may be renewed once.

3. Members of the Management Board shall not be members of the Forum, but may attend its meetings.

4. The Forum shall constitute a mechanism for the exchange of information in relation to fundamental rights issues and the pooling of knowledge. It shall ensure close cooperation between the Agency and relevant stakeholders.

5. The Forum shall:

– make suggestions for the purpose of drawing up the Annual Work Programme to be adopted under Article 11(4)(a); and

– give feedback and suggest follow up on the basis of the annual report on the situation regarding fundamental rights adopted under Article 11(4)(b).

6. The Forum shall be chaired by the Director. It shall meet annually, or at the request of the Management Board. Its operational procedures shall be specified in the Agency's internal rules and shall be made public.

7. The Agency shall provide the technical and logistic support necessary for the Forum and provide a secretariat for its meetings.

CHAPTER 4

OPERATION

Article 15

Independence and public interests

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

2. The members of the Management Board, the Director and the members of the Forum shall undertake to act in the public interest. For this purpose, they shall make a statement of commitment.

The members of the Management Board appointed under Article 11(1)(a), (b) and (c), the Director and the members of the Forum shall undertake to act independently. 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.

Both statements shall be made annually in writing.

Article 16

Access to documents

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

2. The Management Board shall adopt arrangements to implement Regulation (EC) No 1049/2001 within six months of the commencement of the Agency's operation.

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

Administrative review

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) a subsidy from the Community, entered in the general budget of the European Union (Commission section); and

(b) payments received for services rendered.

This revenue may be complemented by

(a) voluntary contributions from the Member States; and

(b) financial contributions from the organisations or third 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.

2. In respect of its staff, the Agency shall exercise the powers conferred on the appointing authority.

3. The Management Board shall, in agreement with the Commission, adopt the necessary implementing measures, in accordance with arrangements provided for in Article 110 of the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities.

4. The Management Board may adopt provisions to allow national experts from Member States to be employed on secondment at the Agency.

Article 24

Language arrangements

1. The provisions of Regulation No 1 of 15 April 1958 shall apply to the Agency.

2. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.

Article 25

Privileges and immunities

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

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 of candidate or potential candidate countries

1. The Agency shall be open to the participation of those countries which have concluded an association agreement with the Community and have been identified by the European Council as candidate countries or potential candidate countries for accession to the Union where the relevant Association Council decides on such participation.

2. In that event, the modalities of their participation shall be determined by a decision of the relevant Association Council. The decision shall specify the expertise and assistance to be offered to the country in question and indicate in particular the nature, extent and manner in

which these countries will participate in the Agency's work, 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.

3. The Agency shall concern itself with the situation of fundamental rights in the countries, which participate in accordance with this Article, to the extent it is relevant for the respective association agreement. Articles 4 and 5 shall apply by analogy to that effect.

Article 28

Activities under Title VI of the Treaty on European Union

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

CHAPTER 7

FINAL PROVISIONS

Article 29

Procedure

1. The Commission shall be assisted by a committee, composed of representatives of the Member States and chaired by the representative of the Commission.

2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) thereof.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be one month.

Article 30

Transitory arrangements

1. The current term of office of the members of the Management Board of the European Monitoring Centre on Racism and Xenophobia shall terminate on 31 December 2006. The Commission shall take the necessary measures to ensure that a Management Board established in accordance with Article 11 shall start its term of office on 1 January 2007.

2. The Commission 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.

3. The Management Board, acting on a proposal from the Commission, may extend the current term of the Director of the European Monitoring Centre on Racism and Xenophobia for a maximum period of 18 months, pending the appointment procedure referred to in paragraph 2.

4. If the Director of the Centre is unwilling or unable to act in accordance with paragraph 3, the Management Board shall appoint an interim Director on the same conditions.

Article 31

Evaluations

1. The Agency shall regularly carry out ex-ante and ex-post evaluations of its activities when these necessitate significant expenditure. It 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 2009, the Agency shall commission an independent external evaluation of its achievements during the first three 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 and shall include an analysis of the synergy effects and the financial implications of any extension of the tasks. The evaluation shall take into account the views of the stakeholders at both Community and national levels.

The evaluation shall also assess the possible need to modify or extend the Agency's tasks, scope, areas of activity or structure, including in specific structural modifications needed to ensure compliance with horizontal rules on regulatory agencies once they enter into force.

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 32

Review

1. The Management Board shall examine the conclusions of the evaluation referred to in Article 31 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 33

Commencement of the Agency's operation

The Agency shall become operational by 1 January 2007.

Article 34

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 35

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

2005/0125 (CNS)

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 European Union

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission[19],

Having regard to the opinion of the European Parliament[20],

Whereas:

(1) The Union is based on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles, which are common to the Member States, and must respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law, in accordance with Article 6 of the Treaty.

(2) The objectives of the Union, as laid down in the Treaty, include strengthening the protection of rights and interests of the nationals of its Member States, maintaining and developing an area of freedom, security and justice, preserving and strengthening peace and liberty and promoting democracy on the basis of the fundamental rights recognized in the constitutional traditions and laws of the Member States and in the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(3) In accordance with Article 29 of the Treaty, the Union's objective is to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial co-operation in criminal matters and by preventing and combating racism and xenophobia.

(4) Council Regulation (EC) No 2006/[…][21] establishes a European Union Agency for Fundamental Rights, with the objective of providing the relevant institutions and authorities of the Community and its Member States with assistance and expertise relating to

---

19 OJ C , , p. .
20 OJ C , , p. .
21 OJ C , , p. .

fundamental rights, in order to help them when they take measures of formulate action within their respective spheres of competence to fully respect fundamental rights.

(5) This Decision constitutes the necessary legislative basis for empowering that Agency with the performance of the same tasks and under the same conditions in the area referred to in Title VI 'Provisions on police and judicial co-operation in criminal matters' of the Treaty.

(6) The establishment of an area of freedom, security and justice with reference to actions under Title VI of the Treaty require that the fundamental rights of individuals should be safeguarded. Articles 30, 31 and 34(2)(c) of the Treaty are accordingly the appropriate legal base for this proposal,

HAS DECIDED AS FOLLOWS:

Article 1

In conformity with Article 28 of Council Regulation (EC) No 2006/[…], the European Agency for Fundamental Rights is hereby empowered to pursue its activities defined in Regulation (EC) No 2006/[…] in the areas covered by Title VI of the Treaty.

Article 2

Articles 2 to 32 of Regulation (EC) No 2006/[…] shall apply by analogy in the context of the Agency's activities under this Decision. References to Community law in these provisions of Regulation No (EC) 2006/[…] shall be understood as referring to Union law in the area of Title VI of the Treaty. References to relevant Community bodies, agencies and offices shall be understood as referring also to Union relevant bodies established in or on the basis of Title VI.

Article 3

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

Done at Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSALS

Proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights and 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 European Union.

2. ABM / ABB FRAMEWORK

Policy Area(s) concerned and associated Activity/Activities:

- Police area: **18 Area of freedom, security and justice**
- Activity: **18 04 Citizenship and fundamental rights**

3. BUDGET LINES

3.1. Budget lines:

Financial perspectives 2007-2013: Heading 3

Current nomenclature:

- 18.04 05 01: European Monitoring Centre on Racism and Xenophobia - Subsidy to titles 1 & 2
- 18 04 05 02: European Monitoring Centre on Racism and Xenophobia – Subsidy to title 3

3.2. Duration of the action and of the financial impact: ***1 January 2007 – 31 December 2013***

From 2007 onwards the allocation of appropriations will depend on the new financial perspective 2007-2013.

3.3. Budgetary characteristics:

Budget line	**Type of expenditure**		**New**	**EFTA contribution**	**Contributions from applicant countries**	**Heading in financial perspective**
18.04 05	Non-comp	Diff[22]	NO	NO	YES/NO (open, in accordance with bilateral agreements)	**No** 3

[22] Differentiated appropriations

4. SUMMARY OF RESOURCES

4.1. Financial Resources

The following figures, both in terms of financial and human resources, have been allocated in full respect of the cost-effectiveness principle, supported by the analysis carried out during the ex-ante evaluation[23].

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		2007	2008	2009	2010	2011	2012	2013	Total
Subsidy for Title 1 – Staff Schedule of commitment/payment appropriations										
Commitment/ Payments Appropriations (CA/PA)	8.1	a	4,806	6,318	7,560	8,640	9,720	10,800	10,800	58,644
Subsidy for Title 2 – Other administrative Schedule of commitment/payment appropriations										
Commitment/ Payments Appropriations (CA/PA)	8.1	b	1,200	1,550	1,900	2,150	2,400	2,700	2,700	14,600
Subsidy for Title 3 - Operational Schedule of commitment/payment appropriations										
	8.1	c	9,894	12,132	11,540	12,810	14,280	14,600	16,400	91,656
TOTAL REFERENCE AMOUNT			**15,900**	**20,000**	**21,000**	**23,600**	**26,400**	**28,100**	**29,900**	**164,900**

Commitment appropriations			15,900	20,000	21,000	23,600	26,400	28,100	29,900	164,900
Payment appropriations			15,900	20,000	21,000	23,600	26,400	28,100	29,900	164,900
Administrative expenditure <u>not</u> included in reference amount[24]										
Human resources and associated expenditure (NDA)	8.2	d	0,162	0,165	0,168	0,230	0,234	0,238	0,238	1,435

[23] The evaluation procedure was supported by the preparatory study for the impact assessment and ex-ante evaluation of Fundamental Rights Agency, conducted by the European Policy Evaluation Consortium (EPEC), accessible at http://europa.eu.int/comm/justice_home/news/consulting_public/fundamental_rights_agency/index_en.htm.

[24] Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2	e	0,200	0,200	0,200	0,200	0,200	0,200	0,200	1,400

Total indicative financial cost of intervention

TOTAL CA including cost of Human Resources	a+b+c+d+e	16,262	20,365	21,368	24,030	26,834	28,538	30,338	167,735
TOTAL PA including cost of Human Resources	a+b+c+d+e	16,262	20,365	21,368	24,030	26,834	28,538	30,338	167.735

Co-financing details

If the proposal involves co-financing by Member States, or other bodies (please specify which), an estimate of the level of this co-financing should be indicated in the table below (additional lines may be added if different bodies are foreseen for the provision of the co-financing):

EUR million (to 3 decimal places)

Co-financing body			2007	2008	2009	2010	2011	2012-2013		Total
……		f	*NONE*							
TOTAL CA including co-financing		a+c+d+e+f								

4.1.2. Compatibility with Financial Programming

x Proposal is compatible with the Commission's proposals for the new financial perspective 2007-2013 (heading 3)

☐ Proposal will entail reprogramming of the relevant heading in the financial perspective.

☐ Proposal may require application of the provisions of the Interinstitutional Agreement[25] (i.e. flexibility instrument or revision of the financial perspective).

4.1.3. Financial impact on Revenue

x Proposal has no financial implications on revenue

[25] See points 19 and 24 of the Interinstitutional agreement.

☐ Proposal has financial impact – the effect on revenue is as follows:

NB: All details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.

EUR million (to one decimal place)

		Prior to action	Situation following action					
Budget line	Revenue	[Year n-1]	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5][26]
	a) Revenue in absolute terms							
	b) Change in revenue	*Δ*						

(Please specify each revenue budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line.)

4.2. Agency Human Resources FTE (including officials, temporary and external staff) – see detail under 8.1.1.

Annual requirements	2007	2008	2009	2010	2011	2012	2013	
Total number of statutory personnel of the proposed Agency	52	65	75	85	95	100	100	

4.3 Commission Human Resources FTE (including officials, temporary and external staff) – see detail under 8.2.1.

Annual requirements	2007	2008	2009	2010	2011	2012	2013	
Officials and temporary staff (18 04 05 01)	1,5	1,5	1,5	1,5	1,5	1,5	1,5	

5. CHARACTERISTICS AND OBJECTIVES

Details of the context of the proposal are required in the Explanatory Memorandum. This section of the Legislative Financial Statement should include the following specific complementary information:

5.1. Need to be met in the short or long term:

Possible needs in the current situation of fundamental rights in the European Union relate to the following issues:

[26] Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years

- Need for fundamental rights data, available for all EU Member States, comparable and of sufficient quality to inform the policy makers and improve decisions made in the fundamental rights area,

- Need for systematic and regular observation of how the institutions, bodies, offices and agencies of the Community and the Union both respect standards with respect to fundamental rights on the ground and promote awareness of fundamental rights on the ground,

- Need for systematic and regular observation of how Member States both respect and promote fundamental rights standards in practice when implementing EU law and policies,

- Need for better coordination and networking between national human rights institutions and European level bodies,

- Need for social dialogue and networking with the civil society.

- Need for growing awareness amongst the public within the EU of their fundamental rights,

- Need for coherence in respecting fundamental rights in EU policies.

In order to assist the Union institutions and the Member States to make further progress in the field of the fundamental rights policy, in particular in an enlarged Union, reliable and comparable data, dialogue at European level, appropriate methodological tools, awareness-raising activities and collection and dissemination of information across the Union, are essential.

There is no existing structure which could provide the Union institutions and the Member States with such support in a comprehensive way. If no action is taken, the potential to improve the implementation of this priority policy area and also to bring Europe closer to the citizens through raising awareness will not be availed of and progress in relation to the achievement of the full respect of fundamental rights in the European Union will remain slow, in particular in the context of an enlarged Union. The Explanatory Memorandum and the impact assessment report explain in detail the reasons why there is a need for an Agency.

5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

The Union added value through establishment of the European Union Agency for Fundamental Rights can be identified in the following areas:

The Agency will complement existing mechanisms of observing fundamental rights standards at the international, European and national level (both governmental and non-governmental) by observing systematically and consistently the impact on fundamental rights of the implementation of Union law by the Union institutions and the Member States. Its added value would be that the Agency would be required to make overviews of the EU situation on a regular basis, covering the same time period and using the Charter as a common frame of reference.

The Agency will add considerable value in the policy cycle of the Union by providing independent expertise and advice, public and confidential, to the Union policy makers on how they can best meet their obligations to respect and promote fundamental rights when proposing, negotiating and implementing policies at the Union level.

An illustrative example of the value added by the Agency is the provision of comparable and consistent data and information as well as assessed opinions on fundamental rights on all EU Member States. This will improve the Union policy-making processes in relation to fundamental rights by pinpointing what is (potentially) wrong with a situation and indicating steps to remedy it. An integrated approach and use of several indicators will do away with the problem that one source of information alone does not bring sufficient knowledge of actual fundamental rights conditions. The possibility to measure trends in observance of fundamental rights over time would furnish more reliable interpretations of conditions and give better knowledge than one-off readings of sporadic events.

Given that the Agency would cost around €28-30 million annually, the resources allocated are good 'value for money' considering the object of the work of the Agency – the area where the fundamental rights of about 500 million European citizens and residents are respected and promoted.[27]

The Agency will network and include in its work a wide range of key stakeholders in the fundamental rights field across the Union – Member States governments, enforcement agencies, statistical institutes, national human rights institutions, national and European NGOs, legal experts, international organisations. The Agency will be sufficiently resourced to bring together those networks and enable synergies, learning and awareness raising amongst a wide range of stakeholders.

Care must be taken to ensure that the Agency avoids duplication of work with the relevant international organisations, in particular the Council of Europe, with Community activities and with relevant Union bodies and Community agencies, such as the European Institute for Gender Equality. The Commission proposal will put a number of mechanisms in place to ensure coherence, avoid overlap and ensure the best use of resources, given the limitations of the budget. In particular:

- the proposed Regulation will lay down mechanisms to collaborate closely with the Council of Europe. Such mechanisms include a cooperation agreement between the Agency and the Council of Europe and the participation of the Council of Europe to the boards of the Agency;

- the proposed Regulation will provide for cooperation between the Agency and other relevant Community agencies and Union bodies. For example, the Directors of these agencies will be invited to attend the meetings of the Management Board of the Agency when appropriate, as observers. In addition, "memoranda of understanding" could also be signed to define possible areas of synergies among the agencies;

- the Multiannual Framework and the Work Programme of the Agency will be in line with the Union policy strategy, Community priorities and the work of the Commission, including its statistical and research work.

As regards the timing of the establishment of the Agency, the Regulation would establish a centre of expertise in fundamental rights issues at the Union level at a time when the Treaty establishing a Constitution for Europe has been agreed by the Governments of the Member States and is being ratified in each of Member States. The Constitution includes the Charter of Fundamental Rights, which, if the Treaty is ratified, will become legally binding on Union institutions and Member

---

[27] This covers the Union after the expected accession of Bulgaria and Romania, since the Agency should be operational at the time when these countries have joined the Union.

States when they implement Union law. The Charter does not add any new rights, but it embodies in one document fundamental rights which stem from Member States' participation in international human rights treaties and conventions and constitutional traditions common to the Member States. Establishing an Agency would make the Charter more tangible.

5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The objective of the Agency is to provide the relevant Union institutions and authorities of the Member States when implementing Union 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 the fundamental rights.

For this purpose, the Agency will produce the necessary objective and reliable information and data, comparable at European level, as well as methodological tools. It will formulate assessed opinions on the basis of the data. The Agency's role is also to promote the visibility of fundamental rights through the development of awareness rising and dissemination of information activities, including the creation of a documentation centre addressed to the stakeholders and the public at large.

The Agency can thus be expected to perform the following operational objectives/tasks and deliver the following results:

- collect, record, analyse and disseminate data and information on how fundamental rights are affected by the implementation of Community policies, including results from research and monitoring communicated to it by Member States, Union institutions, national bodies, international organisations etc. This would be done by establishing and maintaining information networks with focal points in each Member State. National focal points will collect, analyse, assess and channel the relevant data and information to the Agency;
- the above-mentioned task also covers identification and validation of good practice in how fundamental rights are respected by Union institutions, bodies and agencies and Member States when implementing the Union law. There are a number of mechanisms tried and tested at the Union level for identification, validation and sharing of good practice. One avenue could be to use external experts to validate the good practices identified within the network of the Agency;
- develop methods to improve the comparability and quality of the fundamental rights data collected at European and national levels, working together with national statistical institutes and other government departments as well as with the Commission. Such a consensual approach would serve to identify the gaps in information and agree on the common definitions for collecting new primary data and information;
- carry out, cooperate with or encourage scientific research and surveys, preparatory studies and feasibility studies. This might require organizing meetings of experts and, whenever necessary, set up ad hoc working parties. The Agency would also be able to give grants (or contracts) to fund research, according to the needs identified in the work of the Agency. The ability to provide grants could foster long-term cooperation and capacity building;
- formulate conclusions and issue opinions to the Union's institutions, bodies and agencies and the Member States on the fundamental rights situation in the implementation of Union policies and regulations. There should be sufficient safeguards built into the work of the Agency so that opinions are not affected by outside political interference;
- produce annual reports on the state of play of fundamental rights in the Union, when Union policies are applied by EU institutions, bodies and agencies and Member States when

implementing EU policies. These reports take a sectoral approach, and are not country reports, in order to avoid overlap with existing reporting systems. The reports would consist of descriptive and analytical parts, identification of good practice and recommendations for improvements;

– produce thematic reports in the topics of particular importance to the Union's policies, which would consist of descriptive and analytical parts, identification of good practice and recommendations for improvements;

– enhance cooperation between civil society, including non-governmental organisations, the social partners, research centres and representatives of competent public authorities and other persons or bodies involved in dealing with fundamental rights, in particular by networking, promoting dialogue at European level and participating where appropriate in discussions or meetings at national level. This means for example organising, with relevant stakeholders, conferences, campaigns, round tables, seminars and meetings at European level;

– develop a communication strategy aimed at awareness-raising among the general public, set up documentation resources accessible to the public and prepare educational material, promoting cooperation and avoiding duplication with other sources of information.

The indicators in Table 1 can be applied to monitor the results and impacts of the Agency.

Table 1 – Potential monitoring and evaluation indicators of the Agency

Objectives	**Potential monitoring indicators**
To improve definitions, existence and comparability of data on fundamental rights.	Provision of comparable data on fundamental rights in the annual report. Satisfaction rates of data users
To objectively review and analyse existing reports, studies, judgements and other evidence on fundamental rights pertaining to the EU policy.	Existence of reports reviewing the 'state of the art' in the latest research Existence of publicly available online resource library
To develop a strong analytical capacity and act as a centre of expertise on fundamental rights.	Citation rates (how often Agency's outputs are mentioned in other documents)
To monitor the application of fundamental rights standards in practice by the EU institutions, bodies and agencies.	Quality of annual and thematic reports - regular surveys of users
To monitor the application of fundamental rights standards on the ground by Member States when they are implementing Community law.	Quality of annual and thematic reports - regular surveys of users
To identify good practice in respecting and promoting fundamental rights by the EU institutions, bodies and agencies and Member States.	Quality of annual and thematic reports - regular surveys of users
To express opinions on fundamental rights policy developments in the EU.	Perception of the quality and relevance of the opinions by the EU institutions
To raise public awareness of fundamental rights.	Level of awareness of citizens – public opinion surveys Use of Agency's website, downloading of its reports

To promote dialogue with civil society, coordinate and network with various actors in the field of fundamental rights.	Existence of networks Effectiveness of networks – surveys of participants
To provide effective assistance and expertise to the Union institutions and relevant authorities of the Member States	Citation rates (how often the Union institutions and national authorities exploit the results of the work of the Agency as starting point for necessary measures)

5.4. Method of Implementation (indicative)

Show below the method(s)[28] chosen for the implementation of the action.

x ***Centralised Management***
 Directly by the Commission
x Indirectly by delegation to:
 Executive Agencies
x Bodies set up by the Communities as referred to in Art. 185 of the Financial Regulation
 National public-sector bodies/bodies with public-service mission
 Shared or decentralised management
 With Member states
 With Third countries
 Joint management with international organisations (please specify)

6. MONITORING AND EVALUATION

6.1. Monitoring system

The Director will be responsible for the implementation of effective monitoring and evaluation of the performance of the Agency against its objectives according to professionally recognised standards and shall report annually to the Management Board on the results of the evaluation.

The Director will prepare an annual report on the activities of the Agency which will compare, in particular, the results achieved with the objectives of the annual Work Programme; this report, following adoption by the Management Board, will be forwarded by 15 June at the latest to the European Parliament, the Council, the Commission and the Court of Auditors.

The Agency should also be subject to periodic external evaluation. The first external evaluation should be carried out after three years of operation. Such an external evaluation, in addition to questions of efficiency and effectiveness, should also consider the following questions:

- the Agency's place in, and contribution to, the system of European governance (as a means of delivering Community policy objectives);

- the consistency of the Agency's activities with those of other international organisations, such as the Council of Europe, OSCE and UN, and other relevant European bodies, such as the European Institute for Gender Equality;

[28] If more than one method is indicated please provide additional details in the "Relevant comments" section of this point.

- the value added by the Agency as a type of implementation of Community policy (compared to "in-house" implementation by Commission departments);

- the longer-term impact of the Agency's activities on citizens and their level of awareness of their fundamental rights.

Table 2 suggests several indicators which can be used to evaluate the progress made by the Agency towards achieving each of the objectives described above. They include both output indicators (e.g. provision of comparable data) and impact indicators (e.g. rising public awareness).

Table 2 Potential monitoring and evaluation indicators of the Agency

Objectives	Potential monitoring indicators
To improve definitions, existence and comparability of data on fundamental rights.	Provision of comparable data on fundamental rights in the annual report Satisfaction rates of data users
To objectively review and analyse existing reports, studies, judgments and other evidence on fundamental rights pertaining to the EU policy.	Existence of reports reviewing the 'state of the art' in the latest research Existence of publicly available online resource library
To develop a strong analytical capacity and act as a centre of expertise on fundamental rights.	Citation rates (how often Agency's outputs are mentioned in other documents)
To monitor the application of fundamental rights standards in practice by the Union institutions, bodies and agencies.	Quality of annual and thematic reports - regular surveys of users
To monitor the application of fundamental rights standards on the ground by Member States when they are implementing Community law.	Quality of annual and thematic reports - regular surveys of users
To identify good practice in respecting and promoting fundamental rights by the Union institutions, bodies and agencies and Member States.	Quality of annual and thematic reports - regular surveys of users
To express opinions on fundamental rights policy developments in the EU.	Perception of the quality and relevance of the opinions by the Union institutions Citation rates (how often Agency's outputs are mentioned in the measures taken by Union institutions)
To raise public awareness of fundamental rights.	Level of awareness of citizens – public opinion surveys Use of Agency's website, downloading of its reports
To promote dialogue with civil society, coordinate and network with various actors in the field of fundamental rights.	Existence of networks Effectiveness of networks – surveys of participants
To work in a complementary way and to avoid overlap with the relevant international organisations, in particular with the Council of Europe, and with the relevant Community agencies and Union bodies when pursuing its objectives	Low level of overlapping outputs (reports, surveys, campaigns) Number of cooperation projects Effectiveness of cooperation – surveys of international organisations, Community agencies and Union bodies
To provide effective assistance and expertise to the Union institutions and relevant authorities of the Member States	Citation rates (how often the Union institutions and national authorities exploit the results of the work of the Agency as starting point for necessary measures)

6.2. Evaluation

6.2.1. Ex-ante evaluation

The ex-ante evaluation supporting this proposal was conducted in late 2004 and early 2005 by the Commission departments in charge of the policy area of fundamental rights, in particular DG Justice, Freedom and Security. It is based mainly on the Preparatory Study for impact assessment and ex-ante evaluation of the Fundamental Rights Agency, 2005[29] and on the Meta-Evaluation Report on the Community Agency System, 2003[30] and the evaluation of the functioning of the European Monitoring Centre on Racism and Xenophobia.[31] These studies allowed for a comprehensive identification of existing needs; the formulation of objectives and respective indicators; the scoping of different policy options as regards mandate and structure of the Agency, including alternative zero and their potential results; the evaluation of the value added by Community-level action; assessment of associated risks, also on the basis of similar experiences in the past; the definition of monitoring and evaluation systems; and a preliminary cost effectiveness analysis, covering estimations on appropriations, human resources and other administrative expenditure.

6.2.2. Measures taken following an intermediate/ex-post evaluation and risk assessments (lessons learned from similar experiences in the past)

The establishment of the European Union Agency for Fundamental Rights takes account of similar experience in the establishment of other Community agencies. Table 3 presents a description of a number of lessons learnt in the establishment and operation of those agencies and possibilities for addressing the risks in the work of the Agency, based on the experiences of establishing Community agencies in the past.[32].

---

29 Conducted by European Policy Evaluation Consortium (EPEC), February 2005)

30 European Commission, Budget Directorate General, 15/9/2004

31 Communication from the Commission on the activities of the European Monitoring Centre on Racism and Xenophobia, together with proposals to recast Council Regulation (EC) 1035/97, COM(2003) 483, 5.08.2004

32 The table is primarily based on: the external EUMC evaluation report from 2002; EPEC visit to EUMC in February 2005; and the Meta-Evaluation of the Community Agency system carried out by DG Budget in 2003.

Table 3 Main risks in the work of the Agency

Risk	What could be done about addressing the risk? (lessons from the past)
Difficulties in major extension of the mandate of the EUMC	Master plan, including a feasibility study, planning of team, infrastructure etc.
Failure to ensure high quality (e.g. as regards comparability) of the data collected and of the results of its analysis	Ensure that the staffing of the research unit within the Agency is sufficient in the establishment phase Monitor closely (on an annual basis) the quality of outputs delivered by the Agency
Lack of focus in collecting data	Mechanism of consultation with main stakeholders, mapping of existing data and mapping of needs
Incomplete coverage of Member States in establishing the network of national focal points	Flexibility in financing could mean that the Agency could give grants to organisations to act as a national focal point for a 'trial period' and build capacity of data collection locally
Lack of close work with Member States in providing comparable or compatible data	Ensure that the establishment of a liaison network with the officials from the Member State governments is taken as a prime task in the establishment phase Establish a formal liaison network with national statistical institutes and other stakeholders
Lack of effectiveness in disseminating the outputs of work	Clear and targeted communications strategy identifying key audiences and best ways to reach them
Lack of engagement with the Union institutions Lack of clarity on primary beneficiaries of the Agency[33]	Agency has an obligation to respond quickly to requests for information and assessment from EU Institutions Agency's outputs need to reflect EU priorities and needs
Difficulty of producing tailor made and timely outputs matching the Union institutions' needs	Good communication between the Agency and Union institutions (memorandum of understanding, regular informal meetings, consultation over annual work programmes)
Risk of duplicating the work of other institutions	Good communication between 1) the Agency and the Union institutions; 2) the Agency and the Council of Europe and other international organisations such as the OSCE and the UN, and 3) the Agency and relevant Community agencies and Union bodies (memorandums of understanding, regular informal meetings, consultation over annual work programmes)
High expectations from non-governmental organisations and citizens	Clarity in the Communication Strategy about objectives and tasks of the Agency
Failure to get good value for money	Focus on the objective and keep good contacts with all the stakeholders, including Union institutions, while acting in fully independence
Failure to respect all rules for financial procedure laid down in the Financial Regulation	Set down and implement 24 internal control standards Ensure that there is sufficiently staff with financial expertise and experience

[33] This was an issue also raised in the course of public consultation.

6.2.3. Terms and frequency of future evaluation

By the end of the third year following the entry into force of this Regulation, the Agency is to commission an independent external evaluation of its achievements, on the basis of terms of reference drawn up by the Management Board in agreement with the Commission. The Commission is to transmit the evaluation report accompanied by the recommendations of the Management Board to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions and make them public. After assessment of the evaluation report and the recommendations, the Commission may submit any proposal for amendments to this Regulation which it deems necessary.

7. ANTI-FRAUD MEASURES

The financial rules applicable to the Agency are to be adopted by the Management Board following consultation with the Commission. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 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[34]. In accordance with Art.71 of Commission Regulation 2343/2002, the Agency is to have an internal auditing function that must be performed in compliance with the relevant international standards while the Commission's internal auditor will exercise the same powers with respect to the Agency as with respect to Commission departments.

All measures developed by the Agency are to form part of its Multiannual Framework, adopted by the Commission in accordance with a comitology procedure, and of its annual Work Programme agreed by the Management Board. The Director will be accountable for the management of his/her activities to the Management Board. In addition, controls by the Commission or the Court of Auditors of the European Communities may be carried out on the spot.

[34] OJ L 357, 21.12.2002, p. 72 with Corrigendum in OJ L 2, 7.1.2003, p. 39.

8. DETAILS OF RESOURCES

8.1. Resources included in reference amount

Information below is indicative. It will be developed after a more detailed examination, taking into account the final tasks and needs of the Agency as regards the human and administrative resources.

8.1.1. Number and type of human resources – title 1

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (**number of posts/FTEs**)						
		2007	2008	2009	2010	2011	2012	2013
Officials or temporary staff (XX 01 01)	A*/AD	Existing EUMC: 15	23	27	31	35	37	37
		New: 5						
	B*, C*/AST	Existing EUMC: 22	42	48	54	60	63	63
		New: 10						
Staff financed by art. XX 01 02								
Other staff financed by art. XX 01 04/05								
TOTAL		**52**	**65**	**75**	**85**	**95**	**100**	**100**

- For 2007 the full cost per official or temporary staff is € 108,000. This amount includes personnel costs and administrative expenditure (buildings, IT, etc). From 2008 an annual deflator of 2 % is used.

- 15 new persons will be recruited for the first year on average by mid year so the number of new staff is half of 15 for calculation purposes. For 2007, the calculation is (37 + 7,5) * 108.000 =€ 4.806.000

8.1.2. Description of tasks deriving from the action

- Collect information and data on fundamental rights situation, policies and practices within the European Union through administrations, NGOs, experts; carry out surveys, when necessary;

- Record this information eventually in a common database;
- Analyse the information gathered directly or by experts, publish and disseminate results of such analysis,
- Develop methods to improve the comparability, objectivity and reliability of data on fundamental rights at Community level; develop analyse and evaluate relevant methodological tools; develop common standards for the establishment and collection of those data,
- Prepare and organise meetings of experts on legal, economical and social aspects of fundamental rights;
- Organise conferences, round tables and meetings at European level on topics directly relevant for fundamental rights;
- Organise campaigns for promotion of fundamental rights in the European medias;
- Edit, publish and distribute results of studies and other information (annual report, magazine, posters, videos, CD ROM, etc.), in formats that take into account also the needs of disabled persons;
- Edit publish and distribute reports and conclusions based on the results of the studies and meetings organised;
- Set up and coordinate an internet information network on issues related to fundamental rights: the Agency is to establish permanent cooperation with the relevant academic, research, governmental and non-governmental organisations at national level in each Member State;
- Disseminate best practices and the results of concrete cooperation, be it through the organization of conferences and seminars, the publication of booklets or other information materials and/ or the use of electronic means of communication;
- Develop training material on fundamental rights for Member States' administrations and organisations involved in fundamental rights policies or wishing to develop actions in this field,
- Launch call for tenders and proposals for the relevant actions, manage contracts and grant agreements, proceed to commitments and payments, evaluate results and outputs,
- Organise meetings of the Management Board, Executive Board and the Fundamental Rights Forum.

8.1.3. Sources of human resources (statutory)

(When more than one source is stated, please indicate the number of posts originating from each of the sources)

The European Monitoring Centre on Racism and Xenophobia currently has 37 posts, of which 15 are A*, 13 B* and 9 C* posts. The contracts of the current holders of these posts will be continued in the framework of the Agency.

X Posts currently allocated for the European Monitoring Centre on Racism and Xenophobia to be replaced or extended (**37**)

☐ Posts pre-allocated within the APS/PDB exercise for year n

X Posts to be requested in the next APS/PDB (2007) procedure (**15**)

☐ Posts to be redeployed using existing resources within the managing service (internal redeployment)

☐ Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

8.1.4 Objectives of the proposal in terms of their financial cost –title 3

(The subsidy of administrative expenditure – title 2 will cover the operational objectives 4 and 5 under heading of 18 04 05 01 the Community budget)

Commitment appropriations in EUR million (to 3 decimal places)

(Headings of Objectives, actions and outputs should be provided)	**Cost year 2007**	**Cost year 2008**	**Cost year 2009**	**Cost year 2010**	**Cost year 2011**	**Cost year 2012**	**Cost year 2013**	**Number of output**	**Total**
OPERATIONAL OBJECTIVE No.1 [35] **Provision of assistance to Union Institutions, and the Member States**									
Action 1: to collect, record, analyse and disseminate data and information on how fundamental rights are affected by the implementation of Community policies, including results from research and monitoring communicated to it by Members States, Union institutions, national bodies, international organisations etc. Data collection would be done by establishing and maintaining information networks with focal points in each Member State. National focal points will collect, analyse, assess and channel the relevant data and information to the Agency.	2,700	3,700	4,750	5,000	6,100	6,100	6,900		
- Output: This appropriation is intended to cover the specific reports which will contribute to the implementation of the Work Programme and will necessitate external contractors. It is also intended to cover the setting-up and coordination of appropriate tools for the collect of data, including information networks.									
Action 2: to identify and to validate good practice in how fundamental rights are respected by Union institutions, bodies and agencies and Member States when implementing Union law. There are a number of mechanisms tried and tested at the Union level for identification, validation and sharing of good practice. One avenue could be to use external experts to validate good practices identified within the network of the Agency.	1,050	1,300	1,300	1,000	1,000	1,000	1,500		
- Output: This appropriation is intended to cover all the costs relevant to the above-mentioned meetings.									
Action 3: to develop methods to improve the comparability and quality of the fundamental rights data collected at the European and national level, working together with national statistical institutes and other government departments as well as with the Commission. Such consensual approach would serve to identify the gaps in information and agree on the common definitions for collecting new primary data and information.	1,000	1,000	1,000	1,050	0,500	0,100	0,100		
- Output:									

[35] As described under Section 5.3

Action 4: to carry out, cooperate with or encourage scientific research and surveys, preparatory studies and feasibility studies. This might require organizing meetings of experts and, whenever necessary, set up ad hoc working parties. The Agency would also be able to give grants (or contracts) to fund research, according to the needs identified in the work of the Agency. The ability to provide grants could foster long-term cooperation and capacity building.	2,000	2,000	2,000	2,000	1,750	1,950	1,950		
- Output: This appropriation is intended to cover the organisation of the above-mentioned activities, including travel and subsistence expenses, interpretation costs, etc.									
Sub-total Objective 1	***6,750***	***8,000***	***9,050***	***9,050***	***9,350***	***9,150***	***10,450***		
OPERATIONAL OBJECTIVE No.2 **Promotion of networking of stakeholders and dialogue at European level:**									
Action 1: To enhance cooperation between civil society, including non-governmental organisations, the social partners, research centres and representatives of competent public authorities and other persons or bodies involved in dealing with fundamental rights, in particular by networking, promoting dialogue at European level and participating where appropriate in discussions or meetings at national level. This means for example organising, with relevant stakeholders, conferences, campaigns, round tables, seminars and meetings at European level.	1,000	1,600	1,000	1,000	1,500	2,000	2,000		
- Output:									
Sub-total Objective 2	***1,000***	***1,600***	***1,000***	***1,000***	***1,500***	***2,000***	***2,000***		
OPERATIONAL OBJECTIVE No3 **Promotion and dissemination of information and awareness - raising activities to enhance visibility on fundamental rights:**									
Action 1: to produce annual reports of sectored type on the state of play of fundamental rights in the Union, when Union policies are applied by EU institutions, bodies and agencies and Member States when implementing EU policies. The report would consist of descriptive and analytical parts, identification of good practice and recommendations for improvements.	0,500	0,500	0,200	0,500	0,500	0,500	0,500		
- Output: Publication, editing and distribution costs including databases and mailing of results of surveys , other information activities (annual report, magazine, posters, videos, CD ROM, etc. and organisation of a library on fundamental rights research).									
Action 2: to produce thematic reports in the topics of particular importance to the Union's policies, which would consist of descriptive and analytical parts, identification of good practice and recommendations for improvements.	0,250	0,250	0,100	0,250	0,250	0,250	0,250		
- Output:									

Action 3: to develop a communication strategy aimed at awareness raising of general public, set up documentation resources accessible to the public and prepare educational material, promoting cooperation and avoiding duplication with other sources of information.	0,400	0,750	0,150	1,000	1,500	1,500	2,000		
- Output:									
Sub-total Objective 3	***1,150***	***1,500***	***0,450***	***1,750***	***2,250***	***2,250***	***2,750***		
OPERATIONAL OBJECTIVE No.4: Effective functioning of management structure									
Action 1 Meetings of the Management Board, the Executive Board and the Fundamental Rights Forum**.**	0,300	0,300	0,300	0,300	0,300	0,300	0,300		**2,100**
- Output: This appropriation is intended to cover the operating expenses including travel and subsistence expenses and interpretation costs. (1 regular and 1 supplementary meeting for the Management Board, 4 meetings of Executive Board and 1 meeting for the consultative Forum of 100 persons per year).									
Sub-total Objective 4	***0,300***	***0,300***	***0,300***	***0,300***	***0,300***	***0,300***	***0,300***		***2,100***
OPERATIONAL OBJECTIVE No.5: Costs related to effective implementation of operations									
Action 1 Mission, representation expenses, etc**.**	0,174	0,200	0,200	0,190	0,360	0,380	0,380		**2,005**
- Output: This appropriation is intended to cover expenditure on transport, daily mission allowances and other exceptional expenses incurred by established staff in the interest of the service, in accordance with the staff regulations									
Action 2 Cost of translation of studies, reports, working documents, leaflets, etc.	0,500	0,500	0,500	0,500	0,500	0,500	0,500		**1,500**
- Output: This appropriation is intended to cover the translation of studies, reports, as well as working documents for the Management Board and Forum and for conferences, seminars, etc. into the different Community languages. The translation work will mainly be carried out by the Translation Centre for the bodies of the EU in Luxembourg									
Action 3 Interpretation costs for non-routine conferences	0,020	0,032	0,040	0,020	0,020	0,020	0,020		**0,140**
- Output: This appropriation is intended to cover interpreting services to be billed to the Agency by the European Commission. It is also intended to cover the payment of freelance interpreters hired for non-routine conferences for which the Commission is unable to provide interpreting.									
Sub-total Objective 5	***0,694***	***0,732***	***0,740***	***0,710***	***0,880***	***0,900***	***0,900***		***3,645***
TOTAL COST	9,894	12,132	11,540	12,810	14,280	14,600	16,400		91,656

8.1.5. Other Administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)

None

EUR million (to 3 decimal places)

Budget line (number and heading)	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
Technical and administrative assistance (including related staff costs)							
Executive agencies[36]							
Other technical and administrative assistance							
- *intra muros*							
- *extra muros*							
Total Technical and administrative assistance							

8.2 Resources not included in reference amount

8.2.1. Financial cost of human resources and associated costs not included in the reference amount

EUR million (to 3 decimal places)

Type of human resources	2007	2008	2009	2010	2011	2012-2013
Officials and temporary staff (18 04 05 01)	0.162 (1.5 x 0,108)	0.165 (1.5 x 110)	0.168 (1.5 x 0,112)	0.230 (2 x 0,115)	0.234 (2 x 0,117)	0.238 (2 x 0,119)2
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.)						
Total cost of Human Resources and associated costs (NOT in reference amount)	**0.162**	**0.165**	**0.168**	**0.23**	**0.234**	**0.238**

This is the cost of the staff devoted to evaluation, control and coordination of the Agency within the Commission.

[36] Reference should be made to the specific legislative financial statement for the Executive Agency(ies) concerned.

Calculation – ***Officials and Temporary agents***

In 2007-2009, 1,5 officials/year are allocated to the tasks of control, budget drafting and funding and coordination between the Commission and the Agency. Later, when the Agency will be reaching its full capacity, there is a need for 2 officials/year for these tasks. See details in table 8.2.1. The estimation of the workload is based on the experience with existing agencies, in particular the EUMC. The staff needed is A-grade officials.

Calculation – ***Staff financed under art. XX 01 02***

No such staff foresee, ref. table 8.2.1.

8.2.2 Other administrative expenditure <u>not</u> included in reference amount

EUR million (to 3 decimal places)

	2007	2008	2009	2010	2011	2012-2013	TOTAL
XX 01 02 11 01 – Missions	0,2	0,2	0,2	0,2	0,2	0,2	1,400
XX 01 02 11 02 – Meetings & Conferences							
.57XX 01 02 11 03 – Committees[37]							
XX 01 02 11 04 – Studies & consultations							
XX 01 02 11 05 – Information systems							
Total Other Management Expenditure (XX 01 02 11)							
Other expenditure of an administrative nature (specify including reference to budget line)							
Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)	0,2	0,2	0,2	0,2	0,2	0,2	1,400

Calculation – ***Other administrative expenditure <u>not</u> included in reference amount***

The needs for human and administrative resources will be covered within the allocation granted to the managing service in the framework of the annual allocation procedure.

[37] Specify the type of committee and the group to which it belongs.