Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights

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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,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee[(1)],

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

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[(2)], bearing in mind its status and scope, and the accompanying explanations, reflects the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the Treaty on European Union, the Community Treaties, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the social charters adopted by the Community and by the Council of Europe and the case law of the Court of Justice of the European Communities and of the European Court of Human Rights.

(3) The Community and its Member States must respect fundamental rights when implementing Community law.

(4) Greater knowledge of, and broader awareness of, fundamental rights issues in the Union are conducive to ensuring full respect of fundamental rights. It would contribute to the attainment of this objective to establish a Community agency whose tasks would be to provide information and data on fundamental rights matters. Moreover, developing effective institutions for the protection and promotion of human rights is a common value of the international and European societies, as expressed by Recommendation No R (97) 14 of the Committee of Ministers of the Council of Europe of 30 September 1997.

(5) The Representatives of the Member States, meeting within the European Council on 13 December 2003, agreed to build upon the existing European Monitoring Centre on Racism and Xenophobia established by Regulation (EC) No 1035/97[(3)] and to extend

its mandate to make it a Human Rights Agency. They also decided on that occasion that the seat of the Agency should remain in Vienna.

(6) The Commission agreed and indicated its intention of presenting a proposal to amend Regulation (EC) No 1035/97 in that respect. The Commission subsequently issued its Communication of 25 October 2004 on the Fundamental Rights Agency, 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 when implementing Community law with information, assistance and expertise on fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights.

(8) It is recognised that the Agency should act only within the scope of application of Community law.

(9) The Agency should refer in its work to fundamental rights within the meaning of Article 6(2) of the Treaty on European Union, including the European Convention on Human Rights and Fundamental Freedoms, and as reflected in particular in the Charter of Fundamental Rights, bearing in mind its status and the accompanying explanations. The close connection to the Charter should be reflected in the name of the Agency.

(10) As the Agency is to be built upon the existing European Monitoring Centre on Racism and Xenophobia, the work of the Agency should continue to cover the phenomena of racism, xenophobia and anti-Semitism, the protection of rights of persons belonging to minorities, as well as gender equality, as essential elements for the protection of fundamental rights.

(11) The thematic areas of activity of the Agency should be laid down in the Multiannual Framework, thus defining the limits of the work of the Agency. Due to the political significance of the Multiannual Framework, it is important that the Council itself should adopt it, after consulting the European Parliament on the basis of a Commission proposal.

(12) The Agency should collect objective, reliable and comparable information on the development of the situation of fundamental rights, analyse this information in terms of causes of disrespect, consequences and effects and examine examples of good practice in dealing with these matters.

(13) The Agency should have the right to formulate opinions to the Union institutions and to the Member States when implementing Community law, either on its own initiative or at the request of the European Parliament, the Council or the Commission, without interference with the legislative and judicial procedures established in the Treaty. Nevertheless, the institutions should be able to request opinions on their legislative proposals or positions taken in the course of legislative procedures as far as their compatibility with fundamental rights are concerned.

(14) The Agency should present an annual report on fundamental rights issues covered by the areas of the Agency's activity, also highlighting examples of good practice. Furthermore, the Agency should produce thematic reports on topics of particular importance to the Union's policies.

(15) The Agency should take measures to raise the awareness of the general public about their fundamental rights, and about possibilities and different mechanisms for enforcing them in general, without, however, dealing itself with individual complaints.

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

(17) Since cooperation with the Member States is an essential element for the successful performance of the tasks of the Agency, it should cooperate closely with the Member States through its different bodies, for the purpose of which the Member States should nominate National Liaison Officers, as primary contact points for the Agency in the Member States. The Agency should, in particular, communicate with the National Liaison Officers as regards reports and other documents drawn up by the Agency.

(18) The Agency should collaborate closely with the Council of Europe. Such cooperation should guarantee that any overlap between the activities of the Agency and those of the Council of Europe is avoided, in particular by elaborating mechanisms to ensure complementarity and added value, such as the conclusion of a bilateral cooperation agreement and the participation of an independent person appointed by the Council of Europe in the management structures of the Agency with appropriately defined voting rights.

(19) Recognising the important role of civil society in the protection of fundamental rights, the Agency should promote dialogue with civil society and work closely with non-governmental organisations and with institutions of civil society active in the field of fundamental rights. It should set up a cooperation network called the ‘Fundamental Rights Platform’ with a view to creating a structured and fruitful dialogue and close cooperation with all relevant stakeholders.

(20) Given the particular functions of the Agency, each Member State should appoint one independent expert to the Management Board. Having regard to the principles relating to the status and functioning of national institutions for the protection and promotion of human rights (the Paris Principles), the composition of that Board should ensure the Agency's independence from both Community institutions and Member State governments and assemble the broadest possible expertise in the field of fundamental rights.

(21) In order to ensure the high scientific quality of the work of the Agency, the Agency should avail itself of a Scientific Committee in order to guide its work by means of scientific objectivity.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 168/2007. (See end of Document for details)*

(22) The authorities appointing members of the Management Board, the Executive Board and the Scientific Committee should aim to achieve a balanced participation between women and men on these bodies. Particular attention should also be given to the balanced representation of women and men on the staff of the Agency.

(23) Considering the significant role played by the European Parliament in the defence, mainstreaming and promotion of fundamental rights, it should be involved in the activities of the Agency, including the adoption of the Multiannual Framework for the Agency, and, given the exceptional nature and task of the Agency, the selection of the candidates proposed for the post of the Director of the Agency without setting a precedent for other Agencies.

(24) The Agency should apply the relevant Community legislation concerning public access to documents as set out in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents[(4)], the protection of individuals with regard to the processing of personal data as set out in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(5)], and concerning languages as set out in Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community[(6)] and Regulation (EC) No 2965/94 of 28 November 1994 setting up a Translation Centre for bodies of the European Union[(7)].

(25) Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 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[(8)] should apply to the Agency, as well as Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Antifraud Office (OLAF)[(9)].

(26) The Staff Regulations of officials of the European Communities, the Conditions of Employment of other servants of the European Communities and the rules adopted jointly by the European Community institutions for the purpose of applying these Staff Regulations and Conditions of Employment should apply to the staff and to the Director of the Agency, including their rules relating to the dismissal of the Director.

(27) The Agency should have legal personality and succeed the European Monitoring Centre on Racism and Xenophobia as regards all legal obligations, financial commitments or liabilities carried out by the Centre or agreements made by the Centre as well as the employment contracts with the staff of the Centre.

(28) The Agency should be open to the participation of candidate countries. Furthermore, the countries with which a Stabilisation and Association agreement has been concluded should be allowed to participate in the Agency, since this will enable the Union to support their efforts towards European integration by facilitating a gradual alignment of their legislation with Community law as well as the transfer of know-how and good

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practice, particularly in those areas of the *acquis* that will serve as a central reference point for the reform process in the Western Balkans.

(29) The Agency should initiate the necessary evaluations of its activities in due time, on the basis of which the Agency's scope, tasks and working methods could be reviewed.

(30) Since the objectives of this Regulation, namely the provision of comparable and reliable information and data at European level in order to assist the Union institutions and the Member States in respecting fundamental rights, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the proposed action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(31) The contribution made by the Agency to ensuring full respect of fundamental rights in the framework of Community law is likely to help achieve the Community's objectives. With regard to the adoption of this Regulation, the Treaty does not provide for powers other than those set out in Article 308.

(32) Nothing in this Regulation should be interpreted in such a way as to prejudice the question of whether the remit of the Agency may be extended to cover the areas of police cooperation and judicial cooperation in criminal matters.

(33) As Regulation (EC) No 1035/97 would have to be substantially amended for the establishment of the Agency, it should be repealed in the interests of clarity,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

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

Article 1

Subject matter

The 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.