

EUROPEAN PARLIAMENT

2004



2009

Committee on Civil Liberties, Justice and Home Affairs

PROVISIONAL
2005/0124(CNS)

7.2.2006

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DRAFT REPORT

on the proposal for a Council regulation establishing a European Union
Agency for Fundamental Rights
(COM(2005)0280 – C6-0288/2005 – 2005/0124(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Kinga Gál

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council regulation on establishing a European Union Agency for Fundamental Rights
(COM(2005)0280 – C6-0288/2005 – 2005/0124(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2005)0280)¹,
 - having regard to Article 308 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0288/2005),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs and the Committee on Women's Rights and Gender Equality (A6-0000/2006),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;
 5. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 6. Instructs its President to forward its position to the Council and Commission.

¹ OJ C xx, xx, p. xx.

Amendment 1

Recital 2

(2) The Charter of Fundamental Rights of the European Union 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, 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.

(2) The Charter of Fundamental Rights of the European Union reaffirms the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, ***such as the ones deriving from the Universal Declaration of Human Rights of the United Nations***, 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.

Amendment 2

Recital 4

(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 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.

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 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 ***community, as evoked in particular by Resolution no. 48/134 of 1993 of the General Assembly of the United Nations on National Institutions for the Promotion and Protection of human rights***, 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.

Amendment 3
Recital 6 bis (new)

(6bis) An Agency for Fundamental Rights could provide the Parliament with valuable support notably when it acts in a legislative capacity and when it debates the progress made by the European Union, in particular its development towards establishing an area of freedom, security and justice, as adopted in its Resolution of May 26 2005 on the promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency.

Amendment 4
Recital 8

(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 Agreement¹ on 25 February 2005. *deleted*

Amendment 5
Recital 9

(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

(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

¹ COM (2005)59final, 25.2.2005.

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.

defining *the specific objectives of its mission*, which in accordance with general institutional principles, should not set a political fundamental rights agenda of its own.

Amendment 6
Recital 10

(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.

(10) The Agency should gather objective, reliable and comparable information on the development of the situation of fundamental rights, *develop methods to improve the comparability, objectivity and reliability of data at European level*, analyse this information for causes of disrespect, consequences and effects and examine examples of good practice in dealing with these matters. Networks *of national institutions in the field of fundamental rights, as well as the networks of constitutional courts, supreme courts, NGOs and independent experts can be* effective tools for active information collection and assessment.

Amendment 7
Recital 11

(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.

(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 *this creating an obligation in the framework of* the legislative and judicial procedures established in the Treaty.

Amendment 8
Recital 12

(12) The Council should have the

(12) The Council *and the European*

possibility of requesting the Agency's technical expertise in the context of proceedings **commenced** under Article 7 of the Treaty on European Union.

Parliament should have the possibility of requesting the Agency's technical expertise in the context of proceedings under Article 7 of the Treaty on European Union.

Amendment 9

Recital 13

(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.

(13) The Agency should present **to the European Parliament, the Council and the Commission** 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.

Amendment 10

Recital 15

(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.

(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 European Institute for Gender Equality.

Amendment 11

Recital 16

(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

(16) The Agency should collaborate closely with the Council of Europe. Such cooperation should **allow a synergy, while avoiding duplication** between the activities of the Agency and those of the Council of Europe, 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.

structures of the Agency with appropriately defined voting rights as in the current EUMC.

Amendment 12

Recital 17

(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;

(17) Given the particular functions of the Agency, each Member State should appoint one independent expert to the Board **of Experts**. The composition of this board – **open to former Members of the Constitutional Courts of the member states and those of European courts** - should ensure the Agency's independence from both the Community institutions and the Member State's governments **by assembling** the broadest possible expertise in the field of fundamental rights.

Amendment 13

Recital 18

(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;**

(18) The European Parliament **as an institution directly elected by European citizens, designates the President of the Board of Experts.**

Amendment 14

Recital 23

(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,¹ they should be adopted by the regulatory procedure provided for in Article 5 of that Decision.

deleted

¹ OJ L 184, 17.7.1999, p. 23.

Amendment 15
Article 3, point 2

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.

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, ***with due regard to existing international human rights standards, including those set out by the Council of Europe, in particular in the European Convention on Human Rights and its Protocols.***

Amendment 16
Article 3, point 4

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.***

4. The Agency shall, at the request of the Commission, ***the Council and the European Parliament,*** provide information and analysis on fundamental rights issues identified in the request as regards third countries, ***to the extent an external dimension of applying Community law or of an internal policy is concerned. This task should not be at the expense of the primary focus of the Agency, which covers the Member States of the Union. Account shall be taken of any relevant activities of the Council of Europe, with the aim of avoiding duplication of work, as foreseen in Article 9.***

Amendment 17
Article 4, point 1 (a)

(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,

(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;

non-governmental organisations, relevant third countries and international organisations, ***in particular by the competent bodies of the Council of Europe;***

Amendment 18
Article 4, point 1 (d)

(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;

(d) formulate ***recommendations*** and opinions on general subjects ***as well as on projects of legislative acts and special international agreements relevant for community law. It addresses its recommendations and opinions to*** the Union institutions and the Member States when ***they concern the implementation*** Community law, either on its own initiative or at the request of the European Parliament, the Council or the Commission;

Amendment 19
Article 4, point 1 (e)

(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;

(e) makes its technical expertise available ***to the European Parliament and 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;

Amendment 20
Article 4, point 1 (e a) (new)

(ea): makes its technical expertise available to national parliaments, as well

as to national authorities or their European networks, thus facilitating the development of comparative law initiatives;

Amendment 21
Article 4, point 1 (f)

(f) **publish** an annual report on the situation of fundamental rights, also highlighting examples of good practice;

(f) **addresses** an annual report *to the Parliament, the Council and the Commission* on the situation of fundamental rights, also highlighting examples of good practice, **making it available to the public;**

Amendment 22
Article 5, point 1

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:

1. **Upon consultation with the Agency**, the Commission shall **propose and the European Parliament shall** adopt a Multiannual Framework for the Agency. The Framework shall:

Amendment 23
Article 5, point 1 (b)

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

(b) determine the thematic areas of the Agency's activity, always including the fight against **discriminations**, racism and xenophobia, **including the protection of traditional national minorities, as well as the protection of human dignity and the promotion of integration. The Agency takes due account of the orientations resulting from the annual European Parliament resolutions and the Council conclusions in the field of fundamental rights;**

Amendment 24
Article 5, point 1 (d)

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

deleted

Amendment 25
Article 5, point 1 (e)

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

(e) include provisions with a view to ***assure synergy with*** other Community bodies, offices and agencies, ***as well as with the competent organs of the Council of Europe, the UN High Commissioner for Human Rights and the OSCE.***

Amendment 26
Article 5, point 2

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***

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.

Amendment 27
Article 6, point 3

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.***

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.

Amendment 28
Article 7

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.

The Council and the Commission shall define the framework of the exchange of information between the Agency and the relevant Community bodies, offices and agencies. The terms of the cooperation shall be laid down in memoranda of understanding where appropriate.

Amendment 29
Article 8, point 1

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.

1. To help it carry out its tasks, the Agency shall cooperate with governmental and nongovernmental organisations and bodies, *independent experts, existing networks* competent in the field of fundamental rights at the Member State or at European level.

Amendment 30
Article 8, point 2

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

2. The administrative arrangements for the cooperation provided for by paragraph 1 shall comply with Community law and shall be adopted by the Board *of Experts* 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 Board *of Experts* shall re-examine and adopt them, with amendments where necessary, by a two-thirds majority of all members.

(The adoption of this amendment will necessitate changes throughout.)

Amendment 31
Article 9

The Agency shall coordinate its activities with those of 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.

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 a **bilateral** agreement with the Council of Europe for the purpose of establishing close cooperation between the latter and the Agency. This agreement **among others** shall include:

(a) the **possibility for** the Council of Europe to appoint **its Commissioner on Human Rights** to sit on the Agency's Board **of Experts**, in accordance with Article 11;

(b) **enhanced cooperation between the Agency and the relevant bodies of the Council of Europe in relation to third countries which are members of the Council of Europe.**

Amendment 32
Article 10

The Agency shall comprise:

- (a) a **management** board;
- (b) an executive board;
- (c) a director;
- (d) a forum.

The Agency shall comprise:

- (a) a **Board of Experts; headed by a President**
- (b) an executive board;
- (c) a director;
- (d) a forum.

Amendment 33
Article 11, point 1

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;

1. The Board **of Experts** 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 **chosen from among former judges of constitutional courts or the highest national jurisdictions, or a national body in charge of fundamental rights conform to the Paris Principles or**

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

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

deleted

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

(b) the representative designated by the Council of Europe as foreseen in Article 9;

(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.

(c) two people nominated by the Commission:
- one independent person designated by the Commission from among personalities, the competence of whom in fundamental rights field is universally recognized;
- one representative of the Commission.

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.

Each member of the Board **of Experts** 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.

Amendment 34
Article 11, point 3

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.

3. The Board **of Experts** is chaired by a **President in accordance with Article 11 and elects** a **Vice-President** 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.

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

Amendment 35
Article 11, point 7

7. The **Chairperson** shall convene the

7. The **President** shall convene the **Board**

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**.

of Experts, at least 2 times a year, without prejudice to supplementary meetings. The **President** shall convene on his or her own initiative or at the request of **the Director or that** of at least one third of the members of the Board **of Experts**.

Amendment 36
Article 11, point 8

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**.

8. The Director of the European Institute for Gender Equality may attend meetings of the Board **of Experts** as an observer. The Directors of other relevant Community agencies and Union bodies, **as well as representatives of international organisations, such as the UN High Commissioner on Human Rights and OSCE** may also attend as observers when invited by the **President of the Board of Experts**.

Amendment 37
Article 11, points 9,10,11 (new)

9. The Parliament shall appoint the President from a list of candidates proposed by the Commission and approved by the Council; the candidates shall appear at a hearing before the relevant parliamentary Committee. The President shall be appointed on the basis of his or her personal merit, experience in the field of fundamental rights, as well as administrative and management skills.

10. The President's term of office shall be five years and may be extended once, to a maximum period of five years.

11. The President is in charge of:

(a) performing the tasks listed in Article 4;

(b) preparing and implementing the annual work programme of the Agency;

(c) representing the Agency;

(d) presenting the Agency's work programme and, when it is appropriate, the annual report to the competent parliamentary committee, and answering the questions raised by the committee members.

Amendment 38
Article 12, points 1 and 2

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.

1. The Board *of Experts* shall be assisted by an Executive Board. The Executive Board shall be made up of the **President** and the Vice-**President** of the Board *of Experts, of the two persons designated by the Commission to the Scientific Board, as well as the Commissioner for Human Rights of the Council of Europe, who may only vote on decisions referred to in points (a) and (b) of paragraph 4, Article 11.*

2. The Executive Board shall be convened by the **President** whenever necessary to prepare the decisions of the Board *of Experts* and to assist and advise the Director. It shall adopt its decisions by simple majority, *the President having the decisive vote.*

Amendment 39
Article 13, point 1

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*

1. The Agency shall be **managed** by a Director, appointed by the Board *of Experts* 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, experience in the field of fundamental rights.

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

Amendment 40
Article 14, point 1

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.***

1. The Forum shall be composed of representatives of ***the different networks the Agency cooperates with, representing civil society.***

Amendment 41
Article 14, point 2

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.

2. The members of the Forum shall be selected by an open selection mechanism to be determined by the Board ***of Experts***. Their maximum number shall be ***50***. Their term of office shall be five years, which may be renewed once.

Amendment 42
Article 22, point 4

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.***

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.

Amendment 43
Article 27, title

Participation of candidate *or potential candidate* countries

Participation of candidate countries

Amendment 44
Article 27, point 1

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.***

1. The Agency shall be open to the participation of those countries which have ***signed an Accession Treaty*** with the Community.

Amendment 45
Article 27, point 2

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.

2. In that event, the modalities of their participation shall be determined by a decision ***that specifies*** 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 Board ***of Experts*** without right to vote.

Amendment 46
Article 27, point 3

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.

3. The Agency shall concern itself with the situation of fundamental rights in the countries, which participate in accordance with this Article.

Articles 4 and 5 shall apply by analogy to that effect.

Amendment 47
Article 30, title

Transitory arrangements

Transitional arrangements

Amendment 48
Article 30, point 3

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.

deleted

EXPLANATORY STATEMENT

In view of the actually suspended constitution-making process of the European Union (EU), the rapporteur considers that it is the right moment for Europe to flag the protection and promotion of fundamental human rights.

When discussing the role of the European Parliament (EP) in the process of creating a European Union Agency for Fundamental Rights, it is very important to keep the high level of ambition of its first proposal on the matter. Therefore in the detailed interinstitutional discussion on the Agency's mandate and structure, one needs to stick to the principles formulated in the EP Resolution of May 26, 2005 on the promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency.

In accordance with this resolution and the rapporteur's current view, it is essential to create an Agency, which is at the same time *independent and responsible*. Thus a balance needs to be found between these two requirements, always keeping in mind that the most important is to create a functional and efficient body. In order to achieve this aim, an active and close cooperation is needed among the three European institutions; above all a political consensus has to be achieved.

Such an Agency is only of interest if able to fulfil its mission with *legitimacy, efficiency and credibility*. In this process a balance needs to be found between two competing challenges: reinforcing its independence and ensuring its responsibility vis-à-vis the institutions of the European Union. A sufficiently legitimate and accountable Agency needs to primarily concentrate on the Member States of the Union, not excluding the possibility of addressing issues related to third countries - to the extent this is relevant in the implementation of Community law and internal EU policies.

The rapporteur has amended the original Commission proposal to guarantee that these aspects indeed become characteristic of the newly established body. These amendments can be grouped around *three main lines of argument*.

Firstly, in order to enhance the legitimacy of the Agency, when designing its mandate and structure *the role of the European Parliament* needs to be further emphasized than it was done in the Commission proposal (Amendment no. 8, Amendment no. 9, Amendment no. 13, Amendment no. 19, Amendment no. 21 and Amendment no. 39 aim at fulfilling this objective).

Secondly, when defining the Agency's role, geographical remit and tasks, due account needs to be taken of *the work of the Council of Europe*, in order to avoid duplication and to assure synergies (Amendment no. 11, Amendment no. 17, Amendment no. 25, Amendment no. 31, Amendment no. 33 and Amendment no. 40 ensure this).

Thirdly, in its structure, *the independence of the Agency* can only be ensured if its members and decision-taking bodies are themselves independent and designated through a transparent process. Besides the Commission the Parliament also needs to be involved in the definition of

its Multiannual Framework Programme (Amendment no. 22.) A possibility should be left open for the Agency to take up issues upon its own initiative (Amendment no. 32, Amendment no. 33, Amendment no. 38, Amendment no. 39 and Amendment no. 40 aim at fulfilling this many-folded objective).

As far as *the geographical remit of the Agency* is concerned, the rapporteur is of an opinion that the primary role of the Agency is to assist the EU institutions and its Member States comply with their duty under Community law to respect fundamental rights in their policies. However, third countries cannot be excluded either from its remit, since there is a need for equally considering the external dimensions of a relevant Community law or that of an internal policy. In reaching a compromise concerning this issue, due account was taken of the enhanced cooperation with the AFET committee (Amendment no. 16 represents this agreement).

Through these amendments the ambition is to place the Agency at the centre of the European movement towards better protection of fundamental rights and any existing experience must be used in this process. Fundamental rights should be at the heart of all EU policies and measures so that Europe is indeed referred to as a symbol of fundamental rights.