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Plenary sitting

A7-0361/2012

8.11.2012

RECOMMENDATION

on the draft Council decision establishing a Multiannual Framework for 2013-2017 for the European Union Agency for Fundamental Rights
(10449/2012 – C7-0169/2012 – 2011/0431(APP))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Tatjana Ždanoka

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

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

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the draft Council decision establishing a Multiannual Framework for 2013-2017 for the European Union Agency for Fundamental Rights
(10449/2012 – C7-0169/2012 – 2011/0431(APP))**

(Special legislative procedure – consent)

The European Parliament,

- having regard to the draft Council decision (10449/2012),
 - having regard to the request for consent submitted by the Council in accordance with Article 352 of the Treaty on the Functioning of the European Union (C7-0169/2012),
 - having regard to Rule 81(1) of its Rules of Procedure,
 - having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs (A7-0361/2012),
1. Consents to the draft Council decision;
 2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

EXPLANATORY STATEMENT

Objective

On 15 February 2007, the Council adopted Regulation (EC) No 168/2007 (the Regulation) establishing a European Union Agency for Fundamental Rights (the Agency). The Agency became operational on 1 March 2007.

According to Article 5 of the Regulation, the thematic areas of activity of the Agency shall be determined through a five-year Multiannual Framework. The Agency shall carry out its tasks within these thematic areas. The Multiannual Framework is not a work programme. The Agency's work programmes are adopted each year by its Management Board within the thematic areas determined by the Multiannual Framework. Following requests from the European Parliament, the Council or the Commission under Article 4(1)(c) and (d) of the Regulation, the Agency work can outside these thematic areas, provided its financial and human resources so permit.

The current Multiannual Framework (2007-2012) expires at the end of 2012. Therefore it is necessary to establish the Multiannual Framework of the Agency for the period 2013-2017, as required by Article 5 of the Regulation.

Multiannual Framework 2007-2012

On 28 February 2008, the Council adopted Decision 2008/203/EC implementing Regulation (EC) No 168/2007 as regards the adoption of a Multiannual Framework for the European Union Agency for Fundamental Rights for 2007-2012. Article 2 of this Decision sets out the following thematic areas:

1. racism, xenophobia and related intolerance;
2. discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination);
3. compensation of victims;
4. the rights of the child, including the protection of children;
5. asylum, immigration and integration of migrants;
6. visa and border control;
7. participation of the citizens of the Union in the Union's democratic functioning;
8. information society and, in particular, respect for private life and protection of personal data;
9. access to efficient and independent justice.

Legal basis

The legal basis of the Multiannual Framework 2007-2012 was Article 5(1) of Council Regulation (EC) No 168/2007 establishing the Agency. However, this legal basis can no

longer be used because it is a secondary legal basis within the meaning of judgment of the European Court of Justice in case C-133/06. The legal basis for the current proposal should therefore be a provision of the Treaty. In the absence of any other (more specific) provision, the legal basis should be that of the Regulation (currently Article 352 of the Treaty of the Functioning of the European Union). The change of the legal basis also has an effect upon the involvement of the European Parliament: consultation is replaced by consent.

Thematic areas

Several stakeholders have taken a part in consultations during the preparation of the new Multiannual Framework. In July - September 2011 all organisations participating in the Fundamental Rights Platform were consulted. One hundred and eight organisations took part in the consultation process. Most organisations support the Agency's work in the current areas, and would like it to continue its activities, particularly in the areas of discrimination (72%), asylum and migration (43%), racism and xenophobia (38%) and access to justice (31%). Strong support was expressed for the future Agency's work in the area of social rights and social security (44%). Among additional areas to be covered, several organisations mentioned disability rights and the importance to increase work in the former 'third pillar' policy areas.

The Agency's Management Board has identified the following thematic areas:

- (a) Effective judicial protection, including access to justice;
- (b) Victims of crime;
- (c) Judicial cooperation;
- (d) Police cooperation;
- (e) Immigration and integration of migrants, border control and visa; asylum;
- (f) Racism, xenophobia and related intolerance;
- (g) Roma integration;
- (h) Discrimination as defined in Article 21 of the Charter of Fundamental Rights;
- (i) Participation in the EU independent framework pursuant to Article 33(2) of the UN Convention on the Rights of Persons with Disabilities;
- (j) Rights of the child;
- (k) Information, privacy and personal data;
- (l) Social rights.

The Commission has proposed the following thematic areas:

- (a) Access to justice;
- (b) Victims of crime;
- (c) Information society and, in particular, respect for private life and protection of personal data;
- (d) Roma integration;
- (e) Police cooperation, taking into account the specific nature of this field;
- (f) Judicial cooperation, taking into account the specific nature of this cooperation when it relates to criminal matters;
- (g) Rights of the child;
- (h) Discrimination based on race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation;

- (i) Immigration and integration of migrants; visa and border control; asylum;
- (j) Racism, xenophobia and related intolerance.

The European Group of National Human Rights Institutions asked the Council and the European Parliament to take the following recommendations into consideration:

- the European Group strongly commends the inclusion of the highly human rights sensitive area of police and judicial cooperation in consequence of the merging of the three pillars and the strengthening of EU action in this field by the Lisbon Treaty;
- the European Group endorses the increased focus on Roma as a group in a vulnerable situation in the EU Member States exposed to discrimination and multiple human rights violations. Yet, the thematic area should preferably be reformulated to emphasize the fundamental rights-based approach in Agency's work;
- while acknowledging the creation of the European Institute for Gender Equality (EIGE) and its mandate, the European Group is amazed that "sex" was removed from the list of grounds of discrimination covered in the draft Multiannual Framework; - the European Group is concerned that the Multiannual Framework does not reflect the potential of the Agency to perform a particular role with regard to the independent monitoring of the UN Convention on the Rights of Persons with Disabilities (CRPD) within the EU;
- bearing in mind the indivisibility and interrelatedness of human rights, enshrined in the EU Charter on Fundamental Rights and UN human rights instruments, the Agency's area of work should explicitly encompass economic, social and cultural rights.

Finally, the Council has proposed the following thematic areas:

- (a) access to justice;
- (b) victims of crime, including compensation to victims of crime;
- (c) information society and, in particular, respect for private life and protection of personal data;
- (d) Roma integration;
- (e) judicial cooperation, except in criminal matters;
- (f) rights of the child;
- (g) discrimination based on sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation;
- (h) immigration and integration of migrants, visa and border control and asylum;
- (i) racism, xenophobia and related intolerance.

Position of the rapporteur

The rapporteur believes that the Multiannual Framework of the Agency for the period 2013-2017 could and should be formulated better. First, the rapporteur agrees with the Fundamental Rights Platform, the Agency's Management Board and the European Group of National Human Rights Institutions that the Agency's area of work should explicitly encompass social rights and a particular role with regard to the independent monitoring of the UN Convention on the Rights of Persons with Disabilities (CRPD). Also the thematic area concerning Roma integration should preferably be reformulated. In the meantime, the rapporteur welcomes the inclusion of discrimination based on sex into the proposal of the Council – all areas mentioned in Article 21 of the Charter of Fundamental Rights are to be

covered by the Agency's work. The concept of multiple discrimination should also be explicitly mentioned and included.

The rapporteur deeply regrets the lack of agreement in the Council as regards the inclusion of the proposed new thematic areas of police cooperation and judicial cooperation in criminal matters in the new Multiannual Framework. Following the entry into force of the Treaty of Lisbon, police cooperation and judicial cooperation in criminal matters have become part of the law of the Union and are therefore covered by the scope of the tasks of the Agency. The rapporteur also expresses concern over the message signalled by Council, which hinders constructive contribution to strengthening fundamental rights protection in the EU.

Last but not least, the rapporteur is concerned by reported attempts of several Member States in the Council to exclude discrimination based on membership of a national minority from the thematic areas. The rapporteur finds such attempts unacceptable and reminds that the European Union is founded on the values of respect for human rights, including the rights of persons belonging to minorities (Article 2 of the Treaty on European Union).

In other circumstances the rapporteur would invite the European Parliament to decline to consent – in order to find a better solution. However, the Agency needs new thematic areas to work on to ensure continuity in its activities. Unless there is a new Multiannual Framework in place by the beginning of 2013, the Agency can only work if there is a specific request from an institution (Article 4(1) (c) and (d) of the Regulation) and not on its own initiative.

Given such considerations, the rapporteur suggests that the European Parliament gives its consent to the new Multiannual Framework by the end of 2012. In the meantime, the rapporteur hopes that the Commission will evaluate and propose to revise tasks, areas of activity and working methods of the Agency in 2013 in order to guarantee effective monitoring and implementation of the Charter of Fundamental Rights. The rapporteur expects the readiness of the Council to agree in that context on the inclusion of police cooperation and judicial cooperation in criminal matters in the list of thematic areas and invites the Council to declare it explicitly.

MINORITY OPINION

pursuant to Rule 52(3) of the Rules of Procedure

Louis Michel on behalf of the ALDE Group Members of the Committee on Civil Liberties,
Justice and Home Affairs

The ALDE Members of the LIBE Committee did not support the proposal consenting to the draft decision of the Council as they wished to reaffirm their dissatisfaction at the exclusion of police and judicial cooperation in criminal matters from the Multiannual Framework for the European Union Agency for Fundamental Rights (FRA) for 2013-2017. The exclusion, which was decided on by the Council in spite of the Commission proposal, is regrettable on both a judicial and a political level. It contravenes the Treaties, which brought the former Third Pillar within the Community sphere, thereby making any exclusion of these sectors from the FRA's mandate unlawful, and it contravenes the wishes of Parliament, which has called repeatedly for the competences, powers and independence of the FRA to be bolstered. Some Member States have also expressed reservations about the Multiannual Framework, thereby jeopardising its adoption and entry into force in good time for 1 January 2013. The ALDE Members of the LIBE Committee therefore call for the clear commitment of the Commission to the revision and reinforcement of the Regulation of the Agency and of the Council and the adoption of a multiannual framework which includes police and judicial cooperation in criminal matters and thus complies fully with the Treaties.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	6.11.2012
Result of final vote	+: 43 -: 11 0: 0
Members present for the final vote	Jan Philipp Albrecht, Edit Bauer, Mario Borghezio, Rita Borsellino, Emine Bozkurt, Arkadiusz Tomasz Bratkowski, Simon Busuttil, Philip Claeys, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Ioan Enciu, Frank Engel, Cornelia Ernst, Tanja Fajon, Monika Flašíková Beňová, Hélène Flautre, Kinga Gál, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Timothy Kirkhope, Juan Fernando López Aguilar, Baroness Sarah Ludford, Monica Luisa Macovei, Svetoslav Hristov Malinov, Véronique Mathieu, Anthea McIntyre, Nuno Melo, Louis Michel, Claude Moraes, Antigoni Papadopoulou, Georgios Papanikolaou, Jacek Protasiewicz, Judith Sargentini, Birgit Sippel, Csaba Sógor, Nils Torvalds, Wim van de Camp, Axel Voss, Renate Weber, Josef Weidenholzer, Cecilia Wikström, Tatjana Ždanoka, Auke Zijlstra
Substitute(s) present for the final vote	Michael Cashman, Stanimir Ilchev, Jean Lambert, Antonio Masip Hidalgo, Kārlis Šadurskis
Substitute(s) under Rule 187(2) present for the final vote	Martina Anderson