



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**JAI 67
CATS 12
COHOM 15
COEST 39**

"I/A" ITEM NOTE

from : General Secretariat of the Council

to : COREPER/Council

No. Cion prop. : 10774/05 JAI 246 CATS 42 COHOM 13 COEST 105

Subject : Proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights

In December 2003, the European Council agreed to extend the mandate of the European Monitoring Centre on Racism and Xenophobia and transform this Centre into a European Union Agency for Fundamental Rights.

On 5 July 2005, the Commission submitted to the Council a proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights and a proposal for a Council Decision empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI TEU.¹

The European Parliament delivered its opinion on the proposal on 30 November 2006.

¹ 10774/05 JAI 246 CATS 42 COHOM 13 COEST 105.

The Justice and Home Affairs Council reached on 4-5 December 2006 a general approach on the text of the proposal for Council Regulation establishing a European Union Agency for Fundamental Rights, on the basis of document 16018/06 JAI 663 CATS 184 COHOM 180 COEST 337.

COREPER is invited to recommend to the Council to adopt the proposal on a Council Regulation establishing a European Union Agency for Fundamental Rights as set out in document 16241/06 JAI 671 CATS 187 COHOM 188 COEST 345 OC 994 + REV 1 (NL).

The declarations that will be recorded in the minutes of the Council are set out in the Annex.

**Declaration by the Council
on Proceedings under Article 7 of the Treaty on European Union**

The Council **considers** that neither the Treaties nor the Regulation establishing the European Union Agency for Fundamental Rights preclude the possibility for the Council to seek the assistance of the future European Union Agency for Fundamental Rights when deciding to obtain from independent persons a report on the situation in a Member State within the meaning of Article 7 TEU when the Council decides that the conditions of Article 7 TEU are met.

**Declaration by the Council, the European Parliament and the Commission
on the Procedure for the Appointment of the Director for the Agency**

The European Parliament, the Council and the Commission stress the exceptional nature, in comparison to other agencies, of the European Union Agency for Fundamental Rights, the objective of which is to provide the institutions of the Union with assistance and expertise within a domain where the legislature has been given significant powers.

This exceptional nature of the Agency for Fundamental Rights justifies that the solutions generally followed in the nomination of directors for agencies are not, in their entirety, followed in the nomination of the director for the Agency for Fundamental Rights, and that, in the case of this Agency, a more prominent role is given to the Parliament and to the Council under Article 13 of the Regulation.

This solution cannot in any way be regarded as constituting a precedent which could be referred to when nominating the director of any other agency, nor for the extension of his or her mandate.

**Declaration by the Council on the Review of the Remit
of the Agency under Title VI of the Treaty on European Union**

The Council agrees to re-examine, before 31 December 2009, the remit of the Agency for Fundamental Rights, with a view to **the possibility of** extending it to cover the areas of police and judicial cooperation in criminal matters. The Council invites the Commission to submit a proposal to this effect **as appropriate**.

**Declaration by the Council on the Consultation of the Agency
within the Areas of Police and Judicial Cooperation in Criminal Matters**

The Council,

Bearing in mind that, when fulfilling its mandate under Regulation (EC) 2006/XXX, the European Union Agency for Fundamental Rights will acquire general expertise on fundamental rights,

Considers that the Union institutions may, **within the framework of the legislative process and with due regard to each others' powers**, each benefit, as appropriate and on a voluntary basis, from such expertise also within the areas of police and judicial cooperation in criminal matters, and

Considers that this general expertise may also be of use to the Member States that wish to avail themselves thereof when **they are** implementing legislative acts of the Union in that area.

**Statement by the Kingdom of the Netherlands concerning the Regulation establishing
a European Union Agency for Fundamental Rights**

The Netherlands is of the opinion that the *Declaration by the Council on the consultation of the Agency within the areas of Police and Judicial Cooperation in Criminal matters* does not attribute competences to the Agency on the basis of Title VI of the Treaty on European Union.

The Netherlands emphasises that the above-mentioned declaration does not in any way 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.

The Netherlands declares that it does not envisage to use the possibility mentioned in paragraph 3 of the said declaration.

**Statement by the Italian Government concerning the Regulation establishing
a European Agency for Fundamental Rights**

Italy reiterates its position in favour of the extension of the Agency's remit to include police and judicial cooperation in criminal matters. Since respect for fundamental rights must be considered an essential element in the creation of an area of freedom, security and justice, the extension of the Agency's activities to include the "third pillar" should be regarded as forming an integral part of the new body's remit.

Italy therefore wishes the declaration by the Council on the consultation of the agency within the areas of police and judicial cooperation in criminal matters, annexed to the Regulation establishing the Agency, to be regarded by the institutions and Member States as a political commitment to make constant use of the Agency's assistance in the areas of police and judicial cooperation in criminal matters.

We therefore call on the Commission to find appropriate legal means of extending the Agency's remit to include Title VI of the Treaty on European Union in the near future.
