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EUROPEAN COMMISSION

Brussels, 2.12.2010
COM(2010) 708 final

2010/0347 (APP)

Proposal for a

COUNCIL DECISION

**amending Decision (2008/203/EC) of 28 February 2008 implementing Regulation (EC)
No 168/2007 as regards the adoption
of a Multi-annual Framework
for the European Union Agency for Fundamental Rights for 2007-2012**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Grounds for and objectives of the proposal

On 15 February 2007, the Council adopted Regulation (EC) No 168/2007 (the Regulation)¹ 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 by the Council through a Multi-annual Framework. The Council did so by adopting Council Decision (2008/203/EC) of 28 February 2008 implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007-2012 (the Multi-annual Framework)².

The objective of this proposal is to amend the Multi-annual Framework for the Agency in order to allow it to pursue its tasks in the areas of judicial cooperation in criminal matters and police cooperation

1.2. General context

On 30 June 2005, the Commission proposed³ to create a Fundamental Rights Agency. To this end, two instruments were proposed: (i) a Council Regulation "establishing a European Union Agency for Fundamental Rights", based on article 308 of the EC Treaty, and (ii) 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", based on Articles 30, 31 and 34(2)(c) of the EU Treaty.

However, negotiations in the Council allowed for the adoption (15 February 2007) only of the instrument enabling the Agency to carry out its task within the competencies of the Community (Regulation (EC) No 168/2007). The Council decided not to adopt the instrument that would have allowed the Agency to pursue its activities in the areas falling under Title VI of the EU Treaty⁴.

The Commission continues to consider that the Fundamental Rights Agency should be able to pursue its activities (as defined by the Regulation), in the areas of judicial cooperation in criminal matters and police cooperation. The legally binding nature of the Charter of Fundamental Rights and the suppression of the so-called "pillars" make a stronger case for the addition of these areas to the activities of the Agency.

¹ OJ L 53, 22.2.2007, p.1.

² OJ L 63, 7.3.2008, p.14.

³ COM (2005) 280 final.

⁴ At the time, the Council made the following declaration: "*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.*" (Addendum to draft minutes of the 2781st meeting of the Council of the European Union (Justice and home affairs), held in Brussels on 15 February 2007. Document 6396/07 ADD 1, PV/CONS 7 JAI 80, of 27 February 2007).

Regulation (EC) No 168/2007 was adopted on the basis of Article 308 of the former EC Treaty. Following the entry into force of the Lisbon Treaty, an amended version of this article has now become Article 352 of the Treaty on the Functioning of the European Union (TFEU).

Matters previously included in Title VI of the EU Treaty (the former "third pillar") have now become chapters 4 ("Judicial cooperation in criminal matters") and 5 ("Police cooperation") of Title V ("Area of freedom, security and justice") of the TFEU.

Article 352 of the TFEU applies to all matters falling under the scope of this Treaty. Consequently, there is no need to amend Regulation (EC) No 168/2007 in order to extend its scope to matters now covered by Title V of the TFEU. However, the current Multi-annual Framework does not include judicial cooperation in criminal matters and police cooperation among the thematic areas in which the Agency can pursue its activities. Its amendment is therefore necessary in order to enable the Agency to carry out its task in these areas.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

The Commission had launched a wide public consultation before putting forward its proposal for the creation of a Fundamental Rights Agency. Consulted stakeholders had expressed a strong wish for the areas of judicial cooperation in criminal matters and police cooperation to be included in the scope of the Agency's activities. The results of this consultation was part of the impact assessment⁵ accompanying the proposal, which, as explained above, already accounted for the inclusion in the scope of the Agency's activities of matters falling under Title VI of the former EU Treaty.

Ever since, stakeholders have continued to voice their wish for the Agency to work also in those areas.

3. LEGAL ASPECTS OF THE PROPOSAL

3.1. Content of the proposed action

The proposed amendment adds an additional item to the list of thematic areas laid down in Article 2 of the Council Decision.

3.2. Legal basis

The Commission considers that Article 5(1) of Regulation 168/2007 is a secondary legal base within the meaning of the European Court of Justice's judgement in case C-133/06⁶. The legal basis for the current proposal should therefore be the same as that of the Regulation, that is, current Article 352 of the TFEU.

4. BUDGETARY IMPLICATION

The proposal does not have any budgetary implication. It will enlarge the Multi-annual Framework of the Agency in order to allow work in the area of police and judicial

⁵ See Report SEC(2005)849, 30.6.2005.

⁶ C-133/06 Parliament v Council, judgment of 6 May 2008

cooperation in criminal matters within the projects for which the resources have already been earmarked by the budgetary authority.

5. DETAILED EXPLANATION OF THE PROPOSAL

The proposal adds the areas of judicial cooperation in criminal matters and police cooperation to the thematic areas of the current Multi-annual Framework. Pursuant to chapters 4 and 5 of Title V of the TFEU, the European Union can adopt a variety of measures in these areas, which in some cases raise delicate fundamental rights issues.

By performing its activities in the areas of judicial cooperation in criminal matters and police cooperation, the Agency will contribute to the Union's goal of ensuring that the measures it adopts, as well as their implementation, comply with the Charter of Fundamental Rights.

Proposal for a

COUNCIL DECISION

amending Decision 2008/203/EC of 28 February 2008 implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007-2012

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 thereof,

Having regard to the proposal from the European Commission⁷,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the consent of the European Parliament⁸,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) In order for the Agency to carry out its tasks properly, the precise thematic areas of its activity were to be determined by a Multi-annual Framework covering five years as stipulated in Article 5 (2) of Regulation (EC) No 168/2007.
- (2) The first Multi-annual Framework was adopted by the Council in its Decision 2008/203/EC of 28 February 2008 implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007-2012⁹.
- (3) The current Multi-annual Framework however does not include the thematic areas of judicial cooperation in criminal matters and police cooperation.
- (4) At the moment of adoption of Regulation (EC) No 168/2007, the Council had agreed 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, and invited the Commission to submit a proposal to this effect as appropriate.

⁷ OJ C , , p. .

⁸ OJ C , , p. .

⁹ OJ L, 63, 7.3.2008, p. 14.

- (5) Judicial cooperation in criminal matters and police cooperation are regulated in chapters 4 and 5, respectively, of Title V of the Treaty on the Functioning of the European Union. A modification of the Multi-annual Framework is necessary to allow the Fundamental Rights Agency to pursue its activities in these areas,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2008/203/EC is amended as follows:

In Article 2, the following point is added:

"(j) judicial cooperation in criminal matters and police cooperation."

Article 2

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 2010

For the Council
The President