



EUROPEAN COMMISSION

Brussels, 10. 9. 2012
C(2012) 5534 final

Dear President,

The European Commission would like to thank the Czech Senate for its Opinion on the Commission proposal for a Council Decision establishing a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2013-2017 {COM(2011) 880 final} and apologizes for the delay in replying.

Police cooperation and judicial cooperation in criminal matters are particularly sensitive areas from the point of view of the protection of fundamental rights. There is an imminent need for further data collection and exchange of good practices in these areas. As in other areas covered by the Multiannual Framework, the work of the Agency for Fundamental Rights would focus on collecting, analysing and disseminating objective and comparable EU-level data with a view to ensuring that EU institutions and Member States have as much updated information available as possible when they are planning or implementing their policies in these areas. The Management Board of the Agency and civil society, who were consulted before putting forward the proposal, expressed a strong wish that the areas of police cooperation and judicial cooperation in criminal matters be included in the scope of the Agency's activities.

The Commission has acknowledged the political sensitivity of these areas in its proposal, by presenting indents (e) and (f) of Article 2 (Thematic areas) as, respectively, "police cooperation, taking into account the specific nature of this field" and "judicial cooperation, taking into account the specific nature of this cooperation when it relates to criminal matters".

By virtue of the entry into force of the Treaty of Lisbon, the areas of police cooperation and judicial cooperation in criminal matters are now among the competences of the Union (see Chapters 4 and 5 of Title V of Part Three of the Treaty on the Functioning of the European Union).

Article 1 of the Treaty on European Union states that the "Union shall replace and succeed the European Community", and Article 5(3) of the Treaty of Lisbon states that all references to recitals, articles, sections etc. of the former Treaties made in secondary law instruments shall be understood as references to the corresponding recitals, articles, sections etc. of the new Treaties.

*Mr Milan ŠTĚCH
President of the Senate
of the Parliament of the Czech Republic
Valdštejnské náměstí 17/4
CZ – 118 01 PRAGUE 1*

Therefore the references to "the Community", "Community law", "competences of the Community" and the "Treaty establishing the European Community" in Regulation 168/2007 shall be understood as referring to "the Union", "Union law", "competences of the Union" and the "Treaty establishing the Functioning of the European Union", including Chapters 4 and 5 of Title V of Part Three thereof.

Recital 32 of Regulation 168/2007 confirms the neutrality of the Regulation as regards the possible inclusion of these areas among the areas of activity of the Fundamental Rights Agency. Had the legislator wished to exclude the former third pillar matters from the scope of activities of the Agency, it would have expressed explicitly such an exclusion in the Regulation. More importantly, recital 32 is also neutral as regards the way in which such possible inclusion could be made. Nothing in this recital says that the only way for achieving such an extension would be to amend the Regulation. As explained above, the entry into force of the Lisbon Treaty with the intrinsic replacement of the Community by the Union enables the Agency to work in police cooperation and judicial cooperation in criminal matters.

The Multiannual Framework 2007-2012 was adopted in accordance with Article 5(1) of Regulation 168/2007. However, this provision 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 168/2007, which was adopted on the basis of Article 308 of the former Treaty of the European Community. Following the entry into force of the Lisbon Treaty, an amended version of this provision has now become Article 352 of the Treaty of the Functioning of the European Union.

As required by Regulation 168/2007, the proposal has due regard to the Agency's financial and human resources. The proposal ensures continuity with the Multiannual Framework 2007-2012 and the data collection activities of the Agency, and reflects as well the effects of the entry into force of the Treaty of Lisbon. However, the Multiannual Framework is not a work programme. The Agency's annual work programmes (and budget) are adopted each year by its Management Board within the thematic areas determined by the Multiannual Framework. It is therefore for the Management Board to decide the projects to be developed by the Agency each year according to the Agency's budget, which is sufficient to allow the Agency to collect data on the thematic areas included in the proposal.

The Commission hopes that these clarifications address the issues raised in your Opinion and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*