COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

pursuant to the second subparagraph of Article 251(2) of the EC Treaty

on the

common position adopted by the Council with a view to adopting a Regulation of the European Parliament and of the Council setting up a European Institute for Gender Equality
1. BACKGROUND

| Date on which the proposal was forwarded to the EP and Council: COM(2005) 81 final - 2005/0017(COD) | 8.3.2005 |
| Date on which the opinion of the European Economic and Social Committee was adopted: | 27.9.2005 |
| Date on which the position of the European Parliament was adopted at first reading: | 14.3.2006 |
| Date on which the amended proposal was sent to the EP and the Council: | 8.5.2006 |
| Date on which the Council came to a political agreement on the common position: | 1.6.2006 |
| Date on which the Council formally adopted the common position: | 21.9.2006 |

2. PURPOSE OF THE COMMISSION’S PROPOSAL

The proposed Institute is intended to provide technical support to both the Member States and the Community institutions, especially the Commission, thereby developing and ensuring optimum implementation of Community policy for gender equality. To this end, it will collect and analyse objective and reliable data which can be compared at Community level; develop suitable methodological tools, particularly to integrate gender considerations into Community policies; facilitate the exchange of good practice, dialogue between the parties concerned and development of the knowledge base; and will give this policy a higher profile vis-à-vis European citizens.
The proposal is in keeping with the Communication of 2002 on the operating framework for the regulatory agencies and the draft Interinstitutional Agreement on these agencies (proposed in February 2005 and currently under discussion) particularly with regard to the following points:

– the restricted Management Board, which is made up of six representatives of the Council (and no longer one representative per Member State), six representatives of the Commission and three members representing employers, employees and NGOs at European level without voting rights;

– an equal number of representatives of the Council and the Commission: the Institute is intended to provide technical support to the European institutions, especially the Commission, and the Member States and equal representation on the Management Board is intended to strike a balance between the pursuit of Community objectives and taking account of national interests;

– provision for an Advisory Forum where experts of all the Member States (and also three members representing employers, workers and NGOs at European level) will be represented, whose task it will be to facilitate cooperation and the exchange of information between the Institute and the institutions and the competent bodies in the Member States;

– the provisions concerning the procedures for selecting the director and extending his contract.

3. COMMENTS ON THE COMMON POSITION

3.1. General remarks

The Commission takes the view that the Council’s common position, adopted unanimously, is generally in line with the Commission’s initial proposal and its amended proposal with the exception of an important point regarding the composition of the Institute’s Management Board.

The Council made some improvements to the initial text which do not alter the substance of the Commission’s proposal. It also largely abided by the Commission’s amended proposal and incorporated in the common position the majority of the amendments proposed by the European Parliament and accepted by the Commission in its amended proposal. The Council did not accept some amendments, which were also rejected by the Commission, regarding horizontal issues for all Community agencies in order to maintain a consistent approach.

As regards the question of the composition of the Management Board, the EP opted for a more restricted Management Board than that proposed by the Commission of 13 members (nine representatives of the Council, one of the Commission and three of the social partners and NGOs without voting rights). The Commission accepted this proposal as long as, in the very few cases where Commission’s responsibility is involved, the voting rights of its representative are reinforced in order to maintain the balance between the two institutions. The Commission also included in its amended
proposal a rotation system for the members of the Management Board in order to ensure that there is a geographical balance between the Member States.

The Commission regrets that the Council opted for a large Management Board made up of 31 members, comprising one representative per Member State. It holds that a restricted Management Board would make the Institute more effective, given its limited budget and its technical nature. The Commission stood by this position and posted a declaration in the minutes of the Council meeting of 1 June 2006.

The Commission also regrets that the Council did not accept the proposal to set a minimum level of representation for each sex (at least 40% of men and women) on the Management Board as requested by the European Parliament and included in the amended proposal (see 3.2.2).

3.2. How the European Parliament’s amendments have been taken into account

The European Parliament adopted 50 amendments designed to:

a) make the text clearer;

b) upgrade/clarify the tasks of the Institute and its working methods;

c) address horizontal issues;

d) introduce some clarifications which, although constructive, have not been included in the Regulation.

The Commission accepted 40 of these amendments, 28 of which in their entirety and 12 after slight rewording. It rejected 10 which fell into the last two categories (c and d).

The Council followed suit and accepted the majority of the amendments either in their entirety or as reworded by the Commission or slightly amended by itself (a total of 35 amendments). The Council rejected 15 amendments (five in addition to the 10 not accepted by the Commission). One of the five amendments rejected is the amendment relating to the composition of the Management Board. The Commission does not agree with this rejection.

3.2.1. Amendments of the EP accepted in their entirety, in part or in essence in the amended proposal of the Commission and the Council’s common position.

The common position includes the majority of the amendments accepted by the Commission to make the text clearer and to upgrade/clarify the tasks of the Institute and its working methods either as they stood (2, 6, 9, 59/74, 18, 64/80, 65/81, 29, 35, 36, 38, 41, 42, 45, 53 and 55) or as amended by the Commission (3 in part, 4, 5, 7, 8, 10, 59/74, 13, 15 in part, 60/76 in part, 61rev/77 in part, 17, 20, 24, 25, 28, 29, 62/78, 63/79, 40 and 48 in part).
3.2.2. Amendments of the EP accepted in their entirety, in part or in essence in the Commission’s amended proposal but not in the Council’s common position.

These are as follows:

Amendment 66/82 (composition of the Management Board): this amendment to Article 10(1) provides for a restricted Management Board of 13 members (nine from the Council from a list drawn up by the Commission and after consultation with the European Parliament, one only from the Commission and three representatives of the social partners and NGOs without voting rights)\(^1\). The European Parliament’s position is in keeping with its resolution of 1 December 2005 on the draft interinstitutional agreement on the operating framework for future regulatory agencies.

The Commission accepted the European Parliament’s position on condition that, in cases where the Commission’s responsibility is involved (namely when adopting the programme of work and the budget), the balance between the two institutions is preserved. To this end the Commission proposed adding the following provision to Article 10(7):

“\(\text{In the case of decisions referring to Article 10(5)(a) and (d), the vote of the Commission’s representative will have the same weight as the votes of all the members appointed by the Council taken together.}\)\(\)“.

It suggested accompanying the amendment by the following recital:

"In order to ensure that the Institute operates effectively and having regard to its size and its technical nature, it shall be managed by a restricted Management Board composed of nine representatives of the Council, a single Commission representative and three stakeholder representatives without voting rights. The balance between the two institutions – the Council and the Commission – must be preserved in cases where the Commission’s responsibility is involved (when adopting the programme of work and the budget)\(\)“.

The Commission, taking into account the request by those Member States that might adopt the Commission’s approach in favour of a restricted Management Board if geographical balance was respected and in view of the fact that the composition of the Management Board proposed by the European Parliament allows, through a rotation system, representatives of all the Member States to sit on the Management Board over a period of three terms of office (9 x 3 = 27), proposed this rotation system as added to amendment 66/82:

“\(\text{The Council ... The list drawn up by the Commission on the basis of proposals by the Member States and following a rotation system in the order of the Presidencies, is forwarded ...}\)“.

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\(^1\) This option is inspired by the Food Safety Agency set up in 2002, which has a restricted Management Board made up of 18 members (14 Council representatives, only one Commission representative and three representatives of interested parties without voting rights).
And it accompanied this provision by the required recital:

"With a view to ensuring the necessary geographical balance between the Member States, the representatives of the Council will be appointed for each rotating term of office in accordance with the order of the Presidencies of the Council".

Lastly, the Commission proposed that the term of office of the members of the Management Board be reduced from five to three years so that the rotation of the Member State representatives can take place within a reasonable period of time. The fourth subparagraph of Article 10(2) is therefore amended as follows:

"The duration of the term of office shall be non-renewable period of three years".

Despite the proposed system of rotation, the Council rejected this amendment and stuck to the formula adopted in the general approach in June 2005 in line with its standard position on the Management Boards of Community agencies (a large Management Board with one representative per Member State, three representatives of the Commission and three representatives of the social partners and the NGOs without voting rights, accompanied by an executive bureau of six members, given the large size of the Management Board).

Amendment 67/83 and 68/84 on the Advisory Forum: Amendment 67/83 to Article 12(1) restricts the participants in the Forum to representatives of the Member States alone, dispensing with the involvement of the three representatives of NGOs and social partners at European level because they are members without voting rights of the Management Board. The Commission, in keeping with Amendment 66/82 on the limited composition of the Management Board, accepted the reduction of the Advisory Forum to representatives of the Member States alone and held that it was sufficient for the three stakeholders simply to sit on the Management Board. Amendment 68/84 to Article 12(4) adds that the Forum shall support the director in preparing the institute's annual and medium term programmes of activity. In the context of a restricted Management Board where not all the Member States will be represented, it is important to reinforce the role of the Advisory Forum, which is made up of representatives of all the Member States. The Council, which is in favour of representation of all the Member States on the Management Board, dispensed with the Advisory Forum, adding an annual meeting of gender equality experts of the Member States to the Institute's tasks, see Article 3.1(e).

Amendment 39: this amendment to Article 10(2) subparagraph 2 provides that the three institutions shall see that men and women are represented equally and that neither men nor women have less than 40% of the seats on the Management Board. The Commission accepted this amendment in view of the need to ensure that decisions taken by the Management Board reflect the needs of the whole of society. The Council rejected this amendment, emphasising the problems the Member States would have in implementing this minimum threshold. The Commission regretted this, as indicated in the declaration annexed to the minutes of the Council meeting of 1 June 2006.

Amendment 26: this amendment to Article 3(1) adds a new point (c) on the dialogue which the Institute should develop at international level with the organisations responsible for gender equality. This cooperation is already provided for by Article...
8(1) but the European Parliament wanted to place more emphasis on it by including it in the Institute’s tasks too. Cooperation with organisations at international level is important but should not be excessive, given the size and the budget of the institute in its initial launch phase.

In this context the Commission accepted the amendment after rewording it to simplify the task and to bring it into line with other agencies: the text is therefore to be replaced by the following text inspired by the European Agency for Safety and Health at Work: "collect and make available information on gender equality issues from and to third countries and international organisations". The Council did not accept this amendment, not even as amended by the Commission, deeming Articles 4(3) and 8 to cover this aspect sufficiently.

Some parts of the following amendments were also rejected by the Council:

**Amendments 3 and 60/76 (on the Institute’s tasks)**: Amendment 3 to recital 10 is made up of two additions which make the text clearer and replacement of the word “collection” by “documentation” of information and data in order to make it clear that the Institute will concentrate on analysis of information and data collected by other institutes and research centres at Member State level and by Eurostat which will clearly give it an added value; in the same vein, Amendment 60/76 to Article 3(1)(a) deletes the words “collect, record” to place the emphasis on analysis and not on collection. These amendments were accepted by the Commission, since to analyse information it has to be collected first, although the word “collect” was deleted to give greater prominence to analysis; documentation is, moreover explicitly mentioned in recital No 10 through Amendment 3. The Council did not follow the Commission’s lead and reinstated the term “collect” in recital 10 and Article 3, emphasising that collecting data is an important stage and already features in the tasks of other similar agencies.

**Amendment 15**: this amendment to Article 3(1)(b) is intended to strengthen cooperation with Eurostat and the national statistical services. The Council rejected the part concerning cooperation of the Institute with the national statistical services, preferring these contacts to be made only via EUROSTAT.

**Amendment 48**: This amendment to Article 11(4) provides that the Director may be called upon at any time by the European Parliament and by the Council to attend a hearing on any matter linked to the Institute’s activities. The Council rejected the part referring to the Council, arguing that if all the Member States are represented on the Management Board the Council does not need to be informed.

**Amendment 61rev/77**: This amendment to Article 3(1)(c) provides for three additions: dissemination and promotion of the use of methodological tools, ensuring that the methodological tools will support not only Community policies but all national policies resulting from them, and support for integration of the gender dimension in all Community institutions and bodies. The Council rejected the promotion of utilisation of methodological tools, holding this to be a matter for the political bodies.
3.3. New provisions introduced by the Council which correspond to the Commission positions

The Council warmly welcomed the Commission’s proposal with the exception of the issue of the composition of the Management Board and the associated question of the Advisory Forum.

Otherwise it made some slight amendments to make the text clearer, especially in Article 2 (aims), Article 5 (definition of the Institute’s independence), etc.

3.4. Problems encountered when the common position was adopted

At its meeting on 1 June 2006, the Council came to a political agreement on the Commission position, including the question of the composition of the Management Board, by a unanimous vote. The Commission maintains the position adopted in its amended proposal and regrets that the position of the Commission and the European Parliament in favour of a restricted Management Board was rejected. The Commission also regretted the Council’s rejection of a minimum threshold for representation of each sex on the Management Board (40%). The Commission posted a declaration on these two points in the minutes of the Council meeting (see Annex).

4. CONCLUSIONS

On the whole, the Commission holds the Council’s common position to be in line with its proposal and to take account of the amendments proposed by the EP at the first reading and the Commission’s amended proposal.

However, the Commission regrets that the Council has unanimously come out in favour of a Management Board made up of 31 members accompanied by an Executive Bureau of six members. These cumbersome arrangements are not justified by an agency with a staff of 15 persons in 2007 (30 in 2013) and an annual budget of approximately 7.5 million euros. The Commission also takes the view that the Advisory Forum, which has been dispensed with by the Council, would allow each Member State to contribute to preparing and implementing the work programme and to making the Institute and the other Member States aware of their own needs.

The Commission also regrets that the Council has rejected the minimum threshold for representation of each sex on the Management Board (40%). These various points have been included in the statement by the Commission to the Council minutes of 1 June 2006.
The Commission regrets that the Council has opted for an enlarged Management Board composed of one representative per Member State, three representatives from the Commission, and three non-voting members. The Commission disagrees with the Council and is in favour of a Management Board of a limited size.

The Commission recalls that, in line with the European Parliament’s legislative resolution of 14 March 2006 on the proposal establishing a European Institute for Gender Equality and in particular amendment 66/82 on the composition of the Administrative Board, its Amended Proposal [COM(2006)209] provided for an Administrative Board composed of thirteen members: nine members appointed by the Council plus one representative of the Commission and three non-voting members who would be appointed by the Commission to represent relevant stakeholder groups.

The Commission considers, in accordance with the European Parliament's resolution of 1 December 2005 on the draft Interinstitutional Agreement on a Framework for European Regulatory Agencies, that a Management Board of limited size would ensure a better functioning of the Institute for Gender Equality, having regard to its mission and size.

The Commission also regrets that the Council has not accepted the proposal that the three institutions must ensure that neither women nor men constitute less than 40% of the membership of the Management Board.