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COUNCIL REGULATION (EC) No 1035/97
of 2 June 1997
establishing a European Monitoring Centre on Racism and Xenophobia

(OJ L 151, 10.6.1997, p. 1)

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COUNCIL REGULATION (EC) No 1035/97

of 2 June 1997

establishing a European Monitoring Centre on Racism and Xenophobia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 213 and Article 235 thereof,

Having regard to the proposal from the Commission ([1]),

Having regard to the opinion of the European Parliament ([2]),

Having regard to the opinion of the Economic and Social Committee ([3]),

Having regard to the opinion of the Committee of the Regions,

(1) Whereas the Community must respect fundamental rights in formulating and applying its policies and the legal acts which it adopts; whereas, in particular, compliance with human rights constitutes a condition of the legality of Community acts;

(2) Whereas the collection and analysis of objective, reliable and comparable information on the phenomena of racism, xenophobia and anti-Semitism are therefore necessary at Community level to provide full information to the Community on those phenomena so as to enable the Community to meet its obligation to respect fundamental rights and to enable it to take account of them in formulating and applying whatever policies and acts it adopts in its sphere of competence;

(3) Whereas the importance of respect for human rights has been stressed on many occasions by the Community institutions and the Member States;

(4) Whereas in a Joint Declaration of 5 April 1977 ([4]) the European Parliament, the Council and the Commission stressed 'the prime importance they attach to the protection of fundamental rights' and declared that 'in the exercise of their powers and in pursuance of the aims of the European Communities they respect and will continue to respect those rights';

(5) Whereas on 11 June 1986, the European Parliament, the Council, the representatives of the Member States meeting within the Council and the Commission adopted a Joint Declaration on racism and xenophobia ([5]) stressing the 'importance of adequate and objective information and of making all citizens aware of the dangers of racism and xenophobia, and the need to ensure that all acts or forms of discrimination are prevented or curbed';

(6) Whereas on 29 May 1990 the Council and the representative of the governments of the Member States, meeting within the Council, adopted a Resolution on the fight against racism and xenophobia ([6]);

(7) Whereas on 5 October 1995 the Council and the representatives of the governments of the Member States, meeting within the Council, adopted a Resolution on the fight against racism and xenophobia in the fields of employment and social affairs ([7]) and on 23 October 1995 they adopted a Resolution on the

([1]) OJ No C 78, 12. 3. 1987, p. 15.
([2]) OJ No C 132, 28. 4. 1997.
([3]) OJ No C 158, 26. 5. 1997, p. 9.
([4]) OJ No C 103, 27. 4. 1977, p. 1.
([5]) OJ No C 158, 25. 6. 1986, p. 1.
([6]) OJ No C 157, 27. 6. 1990, p. 1.
([7]) OJ No C 296, 10. 11. 1995, p. 13.

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response of educational systems to the problems of racism and xenophobia ([1]);

(8) Whereas on 15 July 1996 the Council, acting on the basis of Article K.3 of the Treaty on European Union, adopted a Joint Action concerning action to combat racism and xenophobia ([2]);

(9) Whereas on 23 July 1996 the Council and the representatives of the governments of the Member States, meeting within the Council, adopted a Resolution concerning the European Year against Racism (1997) ([3]);

(10) Whereas the European Council meeting in Corfu on 24 and 25 June 1994 determined to step up efforts to define, at European Union level, a global strategy aimed at combating acts of racist and xenophobic violence; whereas to this end it set up a Consultative Commission charged with making recommendations on combating racism and xenophobia;

(11) Whereas the European Council meeting in Cannes on 26 and 27 June 1995 called on the Consultative Commission to extend its work in order to study, in close cooperation with the Council of Europe, the feasibility of a European Monitoring Centre on Racism and Xenophobia;

(12) Whereas the conclusions of this feasibility study were submitted to the European Council meeting in Florence on 21 and 22 June 1996;

(13) Whereas the European Council meeting in Florence reaffirmed the Union's determination to combat racism and xenophobia with the utmost resolve and approved the principle underlying the establishment of a European Monitoring Centre;

(14) Whereas in order to carry out this task of collecting and analysing information on racism, xenophobia and anti-Semitism as well and as independently as possible and in order to maintain close links with the Council of Europe, it is necessary to establish an autonomous body, the European Centre on Racism and Xenophobia (Centre), at Community level with its own legal personality;

(15) Whereas the phenomena of racism, xenophobia and anti-semitism involve many complex, closely interwoven aspects which are difficult to separate; whereas, as a result, the Centre must be given the overall task of collecting and analysing information concerning several of the Community's spheres of activity; whereas the Centre's task will concentrate on areas in which sound knowledge of those problems is particularly necessary for the Community in its activities;

(16) Whereas racism and xenophobia are phenomena which manifest themselves at all levels within the Community: local, regional, national and Community, and therefore the information which is collected and analysed at Community level can also be useful to the Member States' authorities in formulating and applying measures at local, regional and national level in their own spheres of competence;

(17) Whereas therefore the Centre will make the results of its work available to both the Community and the Member States;

(18) Whereas, in the Member States, there are numerous outstanding organizations which study racism and xenophobia;

(19) Whereas the coordination of research and the creation of a network of organizations will enhance the usefulness and effectiveness of such work;

([1]) OJ No C 312, 23. 11. 1995, p. 1.
([2]) OJ No L 185, 24. 7. 1996, p. 5.
([3]) OJ No C 237, 15. 8. 1996, p. 1.

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(20) Whereas, in order to enhance cooperation and avoid overlap or duplication of work, the tasks assigned to the Centre pre-suppose close links with the Council of Europe, which has considerable experience in this field, as well as cooperation with other organizations in the Member States and international organizations which are competent in the fields related to the phenomena of racism and xenophobia;

(21) Whereas the Centre will itself be able to decide on the administrative arrangements for cooperating with those organizations; whereas, on the other hand, it is for the Community to conclude, on behalf of the Centre, an agreement with the Council of Europe for the purpose of establishing close cooperation between the latter and the Centre; whereas the same will apply to the conclusion of any agreements with other international organizations or with third countries which may prove necessary for the Centre to carry out its tasks;

(22) Whereas the protection of personal data which are processed and exchanged by the Centre must be ensured in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1];

(23) Whereas the Centre must enjoy maximum autonomy in the performance of its tasks;

(24) Whereas the Court of Justice must have jurisdiction to hear and determine, pursuant to an arbitration clause, disputes regarding the contractual liability of the Centre as well as disputes on the non-contractual liability of the Centre; whereas the Court must also have jurisdiction to rule on actions brought against the Centre under the conditions laid down in Article 173 of the Treaty;

(25) Whereas this Regulation might, where appropriate, be adapted on expiry of a three-year period, with a view to deciding whether or not to modify or extend the Centre's tasks, more especially depending on any changes in Community powers;

(26) Whereas the powers provided for in Article 213 of the Treaty to collect and analyse information on several of the Community's areas of activity do not permit such information to be collected through a specialized, autonomous body with its own legal personality; whereas Article 235 must therefore also be used as the legal basis for the establishment of such a body and to enable the information to be transmitted to Community institutions and bodies and to the Member States,

HAS ADOPTED THIS REGULATION:

Article 1

A European Monitoring Centre on Racism and Xenophobia (hereinafter referred to as ‘the Centre’) is hereby established.

Article 2

Objective and tasks

1. The prime objective of the Centre shall be to provide the Community and its Member States, more especially within the fields referred to in Article 3 (3), with objective, reliable and comparable data at European level on the phenomena of racism, xenophobia and anti-Semitism in order to help them when they take measures or formulate courses of action within their respective spheres of competence.

[1] OJ No L 281, 23. 11. 1995, p. 31.

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2. The Centre shall study the extent and development of the phenomena and manifestations of racism, xenophobia and anti-Semitism, analyse their causes, consequences and effects and examine examples of good practice in dealing with them. To these ends, in order to accomplish its tasks, the Centre shall:

(a) collect, record and analyse information and data, including data resulting from scientific research communicated to it by research centres, Member States, Community institutions, international organizations — particularly those referred to in Article 4 (1) — and non-governmental organizations;

(b) build up cooperation between the suppliers of information and develop a policy for concerted use of their databases in order to foster, where appropriate at the request of the European Parliament, the Council or the Commission, the wide distribution of their information;

(c) carry out scientific research and surveys, preparatory studies and feasibility studies, where appropriate, at the request of the European Parliament, the Council or the Commission. In doing so, the Centre shall take account of already existing studies and other activities (conferences, seminars, ongoing research, publications) especially of those centres and organizations with which it is linked in the European Racism and Xenophobia Information Network (Raxen), in order to avoid duplication and guarantee the best possible use of resources. It shall also organize meetings of experts and, whenever necessary, set up ad hoc working parties;

(d) set up documentation resources open to the public, encourage the promotion of information activities and stimulate scientific research;

(e) formulate conclusions and opinions for the Community and its Member States;

(f) develop methods to improve the comparability, objectivity and reliability of data at Community level by establishing indicators and criteria that will improve the consistency of information;

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(g) publish an annual report on the situation regarding racism and xenophobia in the Community, also highlighting examples of good practice, and an annual report on the Centre's own activities;

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(h) set up and coordinate a European Racism and Xenophobia Information Network (Raxen) consisting of the Centre's own central unit, which shall cooperate with national university research centres, non-governmental organizations and specialist centres set up by organizations in the Member States or international organizations referred to in Article 7;

(i) facilitate and encourage the organization of regular round-table discussions or meetings of other existing, standing advisory bodies within the Member States, with the participation of the social partners, research centres and representatives of competent public authorities and other persons or bodies involved in dealing with racism and xenophobia. The Centre shall take the findings of the national round-table discussions or of other existing, standing advisory bodies into account in its annual report on the situation regarding racism and xenophobia in the Community.

Article 3

Working methods and areas of activity

1. The Centre shall carry out its tasks within the competencies of the Communities and in the light of the objectives adopted in its annual programme and with due regard to the available budgetary resources.

2. In pursuing its activities, the Centre shall, in order to avoid duplication, take account of activities already carried out by the Community institutions and by other institutions, bodies and competent interna-

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tional organizations, particularly the Council of Europe, and shall ensure through close cooperation with the Council of Europe that it provides added value.

3. The information and data to be collected and processed, the scientific research, surveys and studies to be conducted or encouraged shall be concerned with the extent, development, causes and effects of the phenomena of racism and xenophobia, particularly in the following fields:

(a) free movement of persons within the Community;

(b) information and television broadcasts and the other media and means of communication;

(c) education, vocational training and youth;

(d) social policy including employment;

(e) free movement of goods;

(f) culture.

Article 4

European Racism and Xenophobia Information Network (Raxen)

1. To enable the network provided for in Article 2 (2) (h) to be established as rapidly and efficiently as possible, the Member States shall forward to the Centre a list of the centres and organizations of which they are aware referred to in that Article.

2. Taking into account the list referred to in paragraph 1, the Centre's Management Board shall invite the competent organizations in the fields related to the phenomena of racism and xenophobia or those organizations the principal aim of which is the analysis of those phenomena, to be parties to Raxen.

3. The Centre may enter into contractual relations, in particular subcontracting arrangements, with the organizations referred to in paragraph 2, in order to accomplish any tasks which it may entrust to them.

The Centre may also enter into contractual relations, on an ad hoc basis and for specific tasks, with bodies which are not part of Raxen.

The allocation of such tasks shall appear in the Centre's annual programme.

Article 5

Protection and confidentiality of personal data

1. The Centre may collect personal data only for the purposes of carrying out its tasks as provided for under this Regulation. The Centre shall apply to its processing and exchange of personal data under this Regulation the provisions laid down in Directive 95/46/EC. To this effect, rules implementing these provisions shall be adopted, in particular with regard to the rights of the individuals concerned, the confidentiality and security of processing, suitable safeguards for rendering data anonymous before disclosure, and the internal supervision of processing.

2. The implementing rules referred to in paragraph 1 shall be published in the *Official Journal of the European Communities*. The Centre may not process personal data before the entry into force of those rules and unless a supervisory authority within the meaning of Article 28 of Directive 95/46/EC has been set up and is operative.

Pending the appointment of any such authority or authorities set up for the Community institutions and bodies, the Centre's activities as regards data protection rules shall be supervised by the Ombudsman provided for in Article 138e of the Treaty, in the context of the tasks allotted to him by that Treaty.

3. Until the date of implementation of Directive 95/46/EC, where, under the provisions of this Regulation, the Member States transmit or

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receive personal data, they shall apply their respective national data-protection laws to the processing of such data.

Until the abovementioned date, a Member State which has transmitted data to the Centre, can object to the transmission of these data to another Member State or submit that transmission to the fulfilment of conditions, if no data protection standard equivalent to that of Directive 95/46/EC is guaranteed by the receiver for the processing of the transmitted data.

In any event, personal data collected by the Centre and transferred by it to the Community or the Member States shall not be filed and subsequently used by the latter in a way incompatible with the purposes for which they were collected by the Centre.

4. Member States and national bodies cooperating with the Centre shall be under no obligation to provide information classified as confidential under their national law.

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Article 5a

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council (of 30 May 2001) regarding public access to European Parliament, Council and Commission documents [1] shall apply to documents held by the Centre.

2. The Management Board shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of Council Regulation (EC) No 1652/2003 of 18 June 2003 amending Regulation (EC) No 1035/97 establishing a European Monitoring Centre on Racism and Xenophobia [2].

3. Decisions taken by the Centre pursuant to Article 8 of Regulation (EC) No 1049/2001 may give rise to the lodging of a complaint to the Ombudsman or form the subject of an action before the Court of Justice of the European Communities, under the conditions laid down in Articles 195 and 230 of the Treaty respectively.

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Article 6

Legal personality and capacity

The Centre shall have legal personality. It shall enjoy, in each of the Member States, the most extensive legal capacity accorded to legal persons under their laws. In particular, it may acquire or dispose of movable and immovable property and may be a party to legal proceedings.

Article 7

Cooperation with national and international organizations

1. To help it carry out its tasks, the Centre shall cooperate with organizations in the Member States or international, governmental or non-governmental organizations competent in the field of racist and xenophobic phenomena.

2. The administrative arrangements for the cooperation referred to in paragraph 1 shall be subject to the approval of the Management Board.

3. The Centre shall coordinate its activities with those of the Council of Europe, particularly with regard to its programme of activities pursuant to Article 8 (3) (a). To this end, the Community shall, in accordance with the procedure provided for in Article 228 of the Treaty, enter into an agreement, on behalf of the Centre, with the Council of Europe for the purpose of establishing close cooperation between the latter and the Centre. This agreement shall include the

[1] OJ L 145, 31.5.2001, p. 43.
[2] OJ L 245, 29.9.2003, p. 33.

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appointment by the Council of Europe of a person to sit on the Centre's Management Board.

Should agreements with other international organizations or with third countries prove necessary for the Centre to carry out its tasks efficiently, the Community shall, following the same procedure as mentioned above, enter into such agreements, on behalf of the Centre.

Article 8

Management Board

1. The Centre's Management Board shall be composed of one independent person appointed by each Member State, one independent person appointed by the European Parliament, one independent person appointed by the Council of Europe pursuant to Article 7 (3), and a representative of the Commission. The members of the Management Board shall be persons with appropriate experience in the field of human rights and analysis of racist, xenophobic and anti-Semitic phenomena.

Each member shall have a deputy appointed on a similar basis.

2. The names of the members and deputy members of the Management Board shall be notified to the Commission for publication in the *Official Journal of the European Communities*. Their term of office shall be three years, which shall be renewable once. The Management Board shall elect its Chairman and Vice-Chairman and the other members of the Executive Board referred to in Article 9.

Each member of the Management Board, or in his absence, his deputy, shall have one vote. Decisions shall be taken by a two-thirds majority of the votes cast. The Chairman shall vote. The person appointed by the Council of Europe may not vote on decisions referred to in points (d) and (e) of paragraph 3.

3. The Management Board shall take the decisions necessary for the operation of the Centre. In particular, it shall:

(a) determine the Centre's annual programme of activities in accordance with the budget and the available resources; this programme may be reviewed when necessary during the year;

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(b) adopt the two annual reports referred to in Article 2(2)(g) and its conclusions and opinions and forward them to the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Committee of the Regions; it shall ensure publication of the annual reports referred to in Article 2(2)(g); the annual report on the Centre's activities shall be forwarded by 15 June at the latest to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions,

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(c) appoint the Centre's Director;

(d) adopt the Centre's annual draft and final budgets.

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4. The Management Board shall adopt its rules of procedure. The Board shall meet, as convened by its Chairman, at least twice a year.

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5. The Centre shall forward annually to the budgetary authority any information relevant to the outcome of the evaluation procedures.

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Article 9

Executive Board

1. The Executive Board shall be composed of the Chairman of the Management Board, the Vice-Chairman and a maximum of three other members of the Management Board, including the person appointed by the Council of Europe and the Commission representative.

2. The Executive Board shall supervise the work of the Centre, monitor the preparation and execution of programmes and prepare the meetings of the Management Board with the assistance of the Centre's Director. The Executive Board shall also perform any task entrusted to it by the Management Board, in accordance with the latter's rules of procedure.

Article 10

Director

1. The Centre shall be headed by a Director appointed by the Management Board on a proposal from the Commission for a period of four years, which shall be renewable.

2. The Director shall be responsible for:

(a) performance of the tasks referred to in Article 2 (2);

(b) preparing and implementing the Centre's annual programme of activities;

(c) preparing the annual report, conclusions and opinions as referred to in this Regulation;

(d) all staff matters and matters of day-to-day administration.

3. The Director shall be accountable for the management of his activities to the Management Board and shall attend its meetings and the meetings of the Executive Board.

4. The Director shall be the Centre's legal representative.

Article 11

Staff

1. The staff of the Centre shall be subject to the Regulations and Rules applicable to officials and other servants of the European Communities.

2. The Centre shall exercise in respect of its staff the powers devolved to the appointing authority.

3. The Management Board shall, in agreement with the Commission, adopt the appropriate implementing rules.

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Article 12

Drawing up of the budget

1. Estimates of all the revenue and expenditure of the Centre shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the budget of the Centre.

2. The revenue and expenditure shown in the budget of the Centre shall be in balance.

3. The revenue of the Centre shall, without prejudice to other resources, comprise:

(a) a subsidy from the Community, entered in the general budget of the European Union (Commission section);

(b) payments received for services rendered;

(c) any financial contributions from the organisations referred to in Article 7;

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(d) any voluntary contribution from the Member States.

4. The expenditure of the Centre shall include staff remuneration, administrative and infrastructure costs, operating expenses and expenses resulting from contracts entered into with the institutions and bodies belonging to the Raxen network or with third parties.

5. Each year the Management Board, on the basis of a draft drawn up by the director, shall produce an estimate of revenue and expenditure for the Centre for the following financial year. This estimate, which shall include a draft establishment plan, shall be forwarded by the Management Board to the Commission by 31 March at the latest.

6. The estimate shall be forwarded by the Commission to the European Parliament and the Council (hereinafter referred to as the 'budgetary authority') together with the preliminary draft budget of European Union.

7. On the basis of the estimate, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget, which it shall place before the budgetary authority in accordance with Article 272 of the Treaty.

8. The budgetary authority shall authorise the appropriations for the subsidy to the Centre.

The budgetary authority shall adopt the establishment plan for the Centre.

9. The budget of the Centre shall be adopted by the Management Board. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly.

10. The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

Where a branch of the budgetary authority has notified its intention to deliver an opinion, it shall forward its opinion to the Management Board within a period of six weeks from the date of notification of the project.

Article 12a

Implementation of the budget

1. The Director shall implement the budget of the Centre.

2. By 1 March at the latest following each financial year, the Centre's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of the general Financial Regulation.

3. By 31 March at the latest following each financial year, the Commission's accounting officer shall forward the Centre's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for that financial year shall also be forwarded to the European Parliament and the Council.

4. On receipt of the Court of Auditors' observations on the Centre's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Centre's final accounts under his own responsibility and forward them to the Management Board for an opinion.

5. The Management Board shall deliver an opinion on the Centre's final accounts.

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6. The Director shall, by 1 July at the latest following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

7. The final accounts shall be published.

8. The Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.

9. The Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the general Financial Regulation.

10. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Director in respect of the implementation of the budget for year N.

11. The financial rules applicable to the Centre shall be adopted by the Management Board after the Commission has been consulted. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities [1] unless specifically required for the Centre's operation and with the Commission's prior consent.

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Article 13

The translation service required by the operation of the Centre shall, in principle, be provided by the Translation Centre for bodies of the European Union established by Regulation (EC) No 2965/94 [2].

Article 14

Privileges and immunities

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Centre.

Article 15

Jurisdiction of the Court of Justice

1. The contractual liability of the Centre shall be governed by the law applicable to the contract in question.

The Court of Justice shall have jurisdiction pursuant to an arbitration clause contained in a contract concluded by the Centre.

2. In the case of non-contractual liability, the Centre shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by the Centre or its servants in the performance of their duties.

The Court of Justice shall have jurisdiction in disputes relating to compensation for any such damage.

3. The Court of Justice shall have jurisdiction in actions brought against the Centre under the conditions provided for in Article 173 of the Treaty.

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[1] OJ L 357, 31.12.2002, p. 72 with Corrigendum in OJ L 2, 7.1.2003, p. 39.
[2] OJ No L 314, 7. 12. 1994, p. 1.

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Article 16

Reporting arrangements

During the third year following the entry into force of this Regulation, the Commission shall forward to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions a progress report on the Centre's activities, together with proposals, if appropriate, to modify or extend its tasks, taking into account, in particular, the development of Community powers in the field of racism and xenophobia.

Article 17

Entry into force

This Regulation shall enter into force on the day following the date of the decision by the competent authorities on where the seat of the Centre should be located.

This Regulation shall be binding in its entirety and directly applicable in all Member States.