

Promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency

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The representatives of the Member States meeting within the European Council in Brussels in December 2003 decided to extend the remit of the European Monitoring Centre on Racism and Xenophobia in order to convert it into a Fundamental Rights Agency.

That decision ended a long debate in which support for setting up such an Agency was widely expressed. In June 1999, the Cologne European Council had suggested examining the need for an Agency for human rights and democracy, an idea supported by the European Parliament. The Commission fully supports the decision, which is in line with the specific commitments of the Union to respect fundamental rights.

Furthermore, accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) will strengthen the EU's commitment to protecting human rights by introducing external judicial review of the Union's respect for fundamental rights.

The decision to set up a Fundamental Rights Agency clearly continues the policy begun with the objectives entrusted to the Centre, which already has the task of giving the Community institutions the means to fulfil their obligation to respect fundamental rights in drawing up and implementing policies and acts adopted within their fields of competence. To that end, the main task of the Centre, which at present has limited staff and resources, is to collect and analyse data on racism and xenophobia and study the causes.

At the time the December 2003 decision was adopted, the Commission had presented a proposal to recast the regulation establishing the Centre following an external assessment of the Centre. Although the proposal was withdrawn, the conclusions of the assessment remain valid as regards the Centre and will be taken into consideration when the Agency is set up.

The establishment of the Agency raises delicate questions such as the legal basis (the Commission will carefully examine the impact of the Community's limited powers in the area of fundamental rights when drafting its proposal for a regulation setting up the Agency), the financial resources it will be given and the questions linked to the definition of its field of action, its missions and tasks and the relations it might develop with the Council of Europe and other international institutions. It also raises problems concerning the adaptation of the existing structure to ensure that the Agency is effective.

The solutions to these problems should be sought with an eye to the beneficiaries of the Agency's activities: the EU institutions, the Member States and civil society in general. The Agency should be a crossroads facilitating contact between the different players in the field of fundamental rights, allowing synergies and increased dialogue between all concerned. This should benefit the holders of fundamental rights, citizens and all those within the EU.

The national institutions for the protection and promotion of human rights, set up by some Member States on the basis of UN principles (13) (14), can serve as a source of inspiration when establishing the Agency, even though care should be taken to avoid simply transposing these examples, given the specificity of the

EU. According to those principles, the institutions must have consultative, informative and monitoring functions and be able in particular to formulate opinions and draw up studies and reports and education and information schemes.

Several national institutions also have quasi-judicial powers (dealing with complaints and petitions). The Agency will not have similar powers as the Treaty has already conferred them on the institutions: the Commission's role of supervising the proper application of Community law must be respected.

The tasks of the Agency, which will be set up by an instrument of secondary legislation, must not encroach on the powers conferred on the EU institutions by the Treaties. Like any other Community agency, it will be a European public-law entity, separate from the Community institutions and possessing its own legal personality. It will carry out highly specific technical, scientific or administrative tasks defined in the instrument setting it up and will have no decision-making powers. Its task will thus be to provide support for the institutions, the Member States, the members of civil society and individuals.

Lastly, as the Agency is to operate in a global environment, it must ensure that it is receptive to that environment. Dialogue with the different actors in the field of fundamental rights must be encouraged at this level too.

Public consultation: In 2005, the Commission will present a proposal for a regulation relating to the Agency, following in-depth consultations with all those involved in the development of fundamental rights in the EU.

Contributions received will be published on "Your Voice in Europe" with the authors' names, unless they wish to remain anonymous or request that their entire contribution be treated as confidential.

The dialogue on the Agency will end with a hearing, attended by the interested parties, to be held on 30 November 2004.