

Dear Chairman,

Vienna, January 2006
GZ. 03290.0070/13-A3./2005

Let me thank you for your information regarding the establishment of a European Union Fundamental Rights Agency. The Austrian Parliament regrets the decision taken by the Dutch Senate because it attaches great importance to this future Fundamental Rights Agency and believes it could play a major role in enhancing the coherence and consistency of the EU human rights policy.

The decision to establish a European Human Rights Agency was taken by the Representatives of the Member States meeting with the European Council on 13 December 2003 who agreed to extend the mandate of the existing European Monitoring Centre on Racism and Xenophobia (EUMC) into a fully-fledged Human Rights Agency. This was reaffirmed by the European Council in December 2004. The principle of establishing an Agency was also unanimously welcomed by all participants at the public consultation meeting organised by the Commission in January this year, which was attended by stakeholders from all different backgrounds (Governments, involved international and regional organisations like i.e. the Council of Europe, civil society).

The decision to establish a Fundamental Rights Agency follows from the specific commitments of the Union to respect and strengthen fundamental rights, as laid down in Articles 2, 6 and 7 of the Treaty of the European Union. The Community and its Member States have to respect fundamental rights when implementing Community law.

We share those opinions stating that the establishment of such a Community Agency would contribute to this objective, as the main tasks of this agency would be to provide the relevant institutions and authorities of the Community and its Member States with information and expertise on fundamental rights in order to support them in their political and legal decisions.

We also welcome in general the proposal of the Commission for a Regulation and a Decision establishing the Agency, even though some details of the mandate still need to be discussed in the ongoing Council negotiations, which we follow closely.

The key concern expressed in the decision of the Dutch Senate seems to be the relationship between the Agency and the Council of Europe. It goes without saying that for us it is also essential that the Agency will not duplicate the work of existing actors in the field but should combine and supplement all existing information in order to draft the analyses for EU institutions on the basis of that information.

However, contrary to the Dutch Senate we believe that the current proposal of the Commission overall is in line with the Council of Europe positions. The Secretary General of the Council of Europe, Terry Davis, issued several public statements and documents¹²³ concerning the Agency, in which in general he welcomes the establishment of such an Agency, even though close cooperation with the Council of Europe is necessary in order to avoid duplication.

In our view the Commission proposal takes these necessities into consideration and foresees a number of provisions ensuring the cooperation and coordination with the work of other organisations, such as the Council of Europe, the OSCE or the UN. The planned cooperation agreement between the CoE and the EU, as well as the representation of the CoE in the management structure of the Agency are examples of such coordination efforts.

Moreover we see the proposed mandate for the Agency being complementary to the work of the Council of Europe. The Agency will rather act as a “service institution for EU matters” and not have a classical monitoring function for human rights situation in the Member States, which continue to be a core responsibility of the CoE. Additionally the Agency will also not be involved in standard setting processes or individual human rights protection systems, which again are core functions of the Council of Europe.

It is our belief that the Agency will be able to provide added value to the EU human rights policy, as it can take into account specific community law aspects (“acquis communautaire”) for its analysis and recommendations which is currently not being done by any other human rights organisation.

¹ „The Fundamental Rights Agency of the European Union – A Council of Europe Perspective”; a contribution by the Secretary General of the Council of Europe to the consultation process; 16 December 2004, SG/Inf (2004)34.

² Memorandum of the Secretary General of the Council of Europe, Analysis of the EC’s legislative proposals for the establishment of a EU Agency for Fundamental Rights, 8 September 2005.

³ Joint Declaration by Council of Europe Secretary General Terry Davis and European Commission Vice-President Franco Frattini, July 2005; Doc.379a(2005).

Thus for the above mentioned reasons, we do not share the concerns of the Dutch Senate that the Agency will unnecessarily double the activities of existing institutions, but on the contrary welcomes its establishment.

During the coming months of the Austrian Presidency, Austria is keen to further develop the negotiation process in the Council and make the Agency operational as soon as possible.

Sincerely yours,

Werner Fasslabend
Chairman of the Sub-Committee
on EU-Affairs of the
Austrian Nationalrat

Mr.
P.R.H.M. van der LINDEN
President of the European Cooperation
Organisations committee of the Dutch Senate

Senate
PO Box 20017
2500 EA The Hague
NETHERLANDS