



Comments from the Dutch Senate on the Call for evidence of the Sub-Committee E (Law and Institutions) of the House of Lords Select Committee on the European Union regarding the proposed regulation to establish a European Union Agency for Fundamental Rights (FRA) and the decision to empower the FRA to act in Title VI TEU matters (COM(2005)280).

The Dutch Senate firmly opposes the establishment of the FRA. The arguments are:

- The existence of other bodies at national, European and international level that perform the exact activities as foreseen to be also carried out by the FRA. The FRA will unnecessarily double these activities;
- The risk of weakening all these organisations and their activities by establishing the FRA.
- The non compliance with the principle of subsidiarity: the EU should only perform those activities that can not be better or more efficiently performed on another level and/or by any other organisation
- The risk of an undesired distinction (new dividing lines) between the EU25 and the other 21 European countries
- The loss of priority for the fight against xenophobia and racism
- The proposal goes beyond the scope of European jurisdiction and European competencies

In order to answer the specific questions asked by the House of Lords, the arguments of the Senate are amplified below.

### **Council of Europe**

1. The Dutch Senate does not regard the creation of a European Union FRA a useful initiative due to the fact that other international organisations and institutions like the Council of Europe, its European Court of Human Rights and the Organisation for Security and Co-operation in Europe, already efficiently fulfil the task of protecting fundamental rights. When the principle of subsidiarity will be applied also in the context of international organisations and institutions, the proposal to establish a FRA will not be in compliance with this principle. Furthermore, the protection of fundamental rights is also a national responsibility. The Senate therefore is of the opinion that the FRA does not fill a gap in the protection of fundamental rights since there is no real gap. The Senate is of the opinion that duplicating the work of other organisations, especially the Council of Europe, will weaken both the EU and the Council of Europe.
2. The possibility of an extended mandate for the FRA to act outside the EU boundaries should not even be considered. The scope of the European jurisdiction does not go beyond the borders of the EU and neither should go beyond these borders. In general, the EU has to be careful not to become a “big brother watching”. Extending the

mandate for the FRA in geographical terms means a undesired distinction between especially the EU 25 and the other 21 European countries; It holds the potential risk of new dividing lines in Europa. The same risk will become apparent if the mandate of the FRA will be limited to the EU 25 and the tasks of the FRA will not be limited to only gathering and analysing information. Both options will work out badly for the relationship of the EU 25 and the other European countries. This “catch22” as regards the mandate of the FRA is enough argument to oppose a FRA.

In addition, the criteria proposed by the European Commission for conducting research in a non EU country are not exclusive. In practice, every country that has or is about to conclude an agreement with the EU regarding human rights can become subject of EU interference. A notable aspect is that the European Commission does not substantiate in her memorandum why the geographical scope should be extended.

3. The establishment of the FRA will definitely give rise to overlap between the (intended) FRA activities and those of the Council of Europe. If in the end a FRA will be established the absolute pre-conditions are 1.) The only task should be to gather and analyse information and even this should be done in cooperation with the Council of Europe since the experiences and capacities of the Council of Europe in this field are not to be neglected. Otherwise it takes away from the merits of the Council of Europe; 2) a constructive co-operation agreement between the two organisations to be concluded before the actual establishment of the FRA and 3.) an arrangement for the Council of Europe’s participation in the agency’s Management and Executive Bodies (including voting rights) similar to the current arrangement regarding the Centre for Racism and Xenophobia.

### **The European Institute for Gender Equality**

The Senate is not an advocate of the European Institute for Gender Equality from the point of view that he is not an advocate of the (undesired) increase in European agencies in general. The Senate has asked the “Dutch Council of State: advisory body and administrative court” to report on the development of European agencies in general. Specific attention in this report will be (among others) paid to the criteria for creating a new agency, the democratic control and the efficiency of agencies.

Creating the Institute for Gender Equality and the FRA will underline the Senate’s point of view that there is an undesired increase in European agencies.