

PREPARATORY STUDY FOR IMPACT ASSESSMENT AND EX-ANTE EVALUATION OF FUNDAMENTAL RIGHTS AGENCY

PUBLIC HEARING REPORT

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European Policy Evaluation Consortium (EPEC)

Brussels contact address:
c/GHK, 22-28 Avenue d'Auderghem
B-1040 Brussels
Tel: +32 2 740 2729
Fax: +32 2 238 1078
URL: www.epec.info
Contact for this report:
ingap@ghkint.com

SUMMARY

The Commission organised a public hearing in Brussels on 25 January 2005 concerning a Fundamental Rights Agency. The hearing was part of the public consultation process on the Agency. There were more than 200 participants representing NGOs, Council of Europe, the EUMC, as well as several Member States.

This is a report submitted by the EPEC as part of the preparatory study for the ex-ante evaluation and impact assessment on a Fundamental Rights Agency. The report presents results from discussions in the public hearing. The main conclusions of the panels and the debate in the hearing are as follows:

- The Agency should be a **regulatory** (in the large sense) agency but not a legislative body. It should not be an executive agency.
- The Agency should be (and be seen to be) genuinely **independent**. There are strong voices to point out the importance of the Agency's ability to take autonomous action and issue recommendations and opinions, based on the data collection and analysis.
- The Agency should offer **expertise** in the field of human rights. A strong analytical angle was constantly referred to by participants, based on collection of reliable and comparable data. The tasks of the Agency should not be bureaucratic. It should be proactive, rather than just reactive, regarding the promotion of civic culture and human rights. The awareness raising should belong to the tasks of the Agency. In terms of its tasks and due to subsidiarity, the Agency cannot replace national/transnational networks. It should rather act as a **network of networks**.
- The general reference point for the areas of activity should be **the Charter**. The Agency should set priorities regarding its activities in its work programme. The priorities must include racism and xenophobia.
- In terms of **Article 7 TEU** the opinions varied. Generally, there was not support for general monitoring for the purpose of Article 7. However, the Agency should play a role linked with the provision. The Commission concluded that "the door is not closed as to the Agency's role".
- A vast majority considers that the Agency's geographical scope should **focus on the Union and the Member States**. There is also strong support to cover candidate countries. Furthermore, the action of EU institutions outside the EU is mentioned.
- There were suggestions that the Agency should have a **consultative role** vis-à-vis EU institutions, i.e. the latter could consult the Agency when preparing legislation. For example, consultations should be possible when carrying out fundamental rights impact assessments and ex-post evaluations regarding EU policies, where there is a need for a comprehensive overview. In general, the Agency should be a **supportive instrument** to the Union institutions, and in particular to the Commission and the European Parliament.

- There is a firm consensus that the Agency should **not duplicate** the work of other institutions/mechanisms. The Agency should enhance **complimentarity** and cooperate closely with the Council of Europe and forge close links with NGOs, civil society, etc. One should explore what synergies could be realized between the Agency and other EU Agencies.
- There are hopes that the creation of the Agency would strengthen the position of **national human rights institutes** and motivate the Member States to establish such, if they have not yet done so. The Agency should network the national institutions and it should also develop methodologies and indicators to assist Member States in the field of fundamental rights e.g. in the production of national action plans.
- Finally, many participants found it important that the Agency did not become just the “26th EU Agency”. It should be independent, responsible, and accountable and open to all strands of civil society.

Lastly, a general point raised but not answered was that of the Agency’s name: Fundamental or Human Rights Agency. The Commission has suggested the title Fundamental Rights Agency in order to underline the link to the Charter of Fundamental Rights and to the Constitutional Treaty. The terms “fundamental” and “human” rights are otherwise understood to be equivalent.

INDEX

SUMMARY	2
Introduction.....	5
OPENING REMARKS.....	5
1st discussion topic: The rights and Thematic Areas of work of the Agency, including its Geographical Scope	10
2nd discussion topic: Sustaining and Securing Relations with the Council of Europe, National Institutions, Civil Society and other Entities.....	19
3rd discussion topic: Tasks to be allocated to the Agency	24
4th discussion topic: The Structure of the Agency	31
General Conclusions of the Hearing.....	37
CLOSING REMARKS	38

INTRODUCTION

This a report submitted by the EPEC consortium as part of the preparatory study on the ex-ante evaluation and impact assessment of the Fundamental Rights Agency. The report presents results from discussions in the public hearing which took place on the 25th January 2005 in Brussels.

The report is organised under the following headings (following the discussion structure in the public hearing):

- Introduction and opening remarks,
- Thematic areas for work of Agency,
- Relations with the Council of Europe and other stakeholders,
- Tasks of the Agency,
- Structure of the Agency,
- General conclusions,
- Closing remarks.

The fact that the public hearing was attended by a high number of institutions and organisations from a variety of background reflects the importance and value attached to the establishment of the Agency. The results, issues and perspectives raised in the public hearing will form an integral part of the impact assessment and ex-ante evaluation of the Fundamental Rights Agency.

OPENING REMARKS

- **Mr. Franco Frattini**, Vice-President of the European Commission
- **Mr. Luc Frieden**, Minister of Justice of Luxembourg; President of Council of Ministers for Justice and Home Affairs
- **Mr. Jean Louis Bourlanges**, President of the LIBE Committee of the European Parliament

Mr Franco Frattini opened the hearing by stating his commitment to the promotion of human rights and the launch of the European Agency on Fundamental rights. Indeed, he regarded fundamental rights and citizenship as the foundations of the European social contract and was encouraged that the public hearing had attracted a large number of participants who shared this belief. As he stressed, fundamental rights and anti-discrimination form the guidelines for the whole Barroso Commission. To this end, President Barroso announced in November 2004 the creation of a Group of Commissioners focused on fundamental rights which started its work in December 2004. The remit of this Group is to drive policy and ensure the coherence of Commission initiatives in the areas of fundamental rights, anti-discrimination, equal opportunities and the social integration of minority groups.

Mr Frattini also referred to the recent Commission decision (December 2004) to accompany all important initiatives, particularly legislative ones, by an integrated impact assessment, including an analysis of their respect for fundamental rights as set out in the Charter. In his view, this strengthened the message of the Commission

Communication on the application of the Charter of Fundamental Rights of 2001, which required all services to take the Charter into account in the preparation of any proposal for legislation to be adopted by the Commission.

According to Mr Frattini, the decision to develop an Agency for Fundamental Rights by extending the mandate of the European Monitoring Centre for Racism and Xenophobia (EUMC) was a logical consequence of the growing importance of fundamental rights issues within the EU. It resulted from the proclamation of the Charter of Fundamental Rights in 2000 and its incorporation into the Constitutional Treaty, accompanied by the provision on the accession of the Union to the European Convention on Human Rights in the same Treaty in 2003.

Furthermore, the project on the Agency is in line with the aim of creating an area of freedom, security and justice, as formalised in the Tampere Council conclusions, and strengthened under The Hague programme. Indeed, the Fundamental Rights Agency is explicitly included in the Hague programme. As he stressed, the Commission had always taken seriously the commitment to ensure a balance between the elements of freedom, security and justice.

Mr Frattini explained that the Commission in its process of developing a proposal for a Fundamental Rights Agency launched a wide-ranging public consultation in October 2004 which aimed to elicit and take into account views and comments from the civil society, the European Parliament and the Member States.

Mr Frattini explained that the Commission aimed to adopt a proposal for a Regulation on the Agency by May 2005. He was further encouraged that both the current (Luxembourg) and the next (UK) presidencies, had included the Agency in their agenda. This meant swift negotiations in the Council, in close co-operation with the European Parliament. In view of the fact that the new financial perspectives will apply from 2007 onwards, he believed that it was realistic to expect that the Fundamental Rights Agency would be functional as from 1 January 2007.

In conclusion Mr Frattini reminded the audience that the Charter of Fundamental Rights had been solemnly proclaimed by the three Union institutions, the European Parliament, the Council and the Commission. Indeed, this commitment was proved at the hearing itself where representatives of these institutions were present. To this end, he thanked Mr. Luc Frieden, current President of Council of Ministers for Justice and Home Affairs and Mr. Jean Louis Bourlanges, President of the LIBE Committee of the European Parliament, for taking part in the hearing, thus showing their strong engagement.

Mr. Luc Frieden started his speech by stressing the fact that Luxembourg attached great importance to the promotion of fundamental rights. He also saw the EU as a symbol of human rights. To this end, he was not only encouraged but also felt great responsibility when he heard that Ukraine wanted to join the EU as soon as possible because of EU's record of democracy, freedom and human rights. He was also reminded of the importance of human rights that week in particular when the world was commemorating the liberation of Auschwitz. In his view, the EU had to defend human rights in third countries as well

As Mr Frieden explained, the EU's founding fathers concentrated mainly on economic aspects. However, during the 1960s the European Court of Justice (supported by the national courts of Italy and Germany) passed down rulings affecting the situation of human rights in Europe. For example, the reference to Fundamental Rights in EC law appeared in the case law of this court as early as 1969 (Stauder case) and was even enshrined in the Maastricht Treaty. The Amsterdam Treaty extended the competence of the European Court of Justice in this regard, while the Charter of Fundamental Rights was proclaimed jointly by the Council, the European Parliament and the Commission in December 2000 (Nice Summit) and a relevant declaration attached to the Nice Treaty. Finally, the Charter of Fundamental Rights was incorporated into the EU Constitutional Treaty (signed in Rome in October 2004).

Mr Frieden stated that for Luxembourg the EU Constitutional Treaty, by having human rights enshrined, meant that it could act as a defence of human rights. He strongly believed that this should be stressed in any further discussions. In his view, human rights and justice went together as did judicial and penal co-operation across the EU. Indeed, this equilibrium lay behind when constructing the EU.

As the current President of Council of Ministers for Justice and Home Affairs, he confirmed that the Council was strongly in favour of the creation of a Fundamental Rights Agency. Indeed, the latter emanated from a European Council Decision. He was also delighted that Mr Frattini as the Commission's Vice-President was strongly advocating such an Agency.

According to Mr Frieden, this Agency would seem in the first instance to take over from the Monitoring Centre on Racism and Xenophobia. However, he could not discuss in detail how the Council as a whole saw such an Agency. Still as the President of this Council he had a very clear line as to the Agency's competences and scope of operation. Specifically, (i) the Agency should not be seen as an entity tasked with the monitoring of human rights in Member States. There were already mechanisms for such monitoring and, in his view, there was a danger of duplication of effort and overlap; (ii) the Agency should not be a forum for standards in relation to human rights, since this was the remit of the European Court of Justice and Parliament; (iii) the Agency should be able to make recommendations on the basis of national legislation to European institutions so that they can take action as appropriate. As an example Mr Frieden referred to the proposed Framework Decision on European arrest warrant. He explained that, at present there was a European arrest warrant so that people could be brought to justice without difficult and time-consuming extradition procedures. However, in his view, this was an area where the Agency could take an initiative by ensuring that minimum procedures existed across the EU for people who were thus extradited between Member States. The Agency could also recommend legislation for combating racism and xenophobia, e.g. on how to deal with the manifestations of Nazi symbols across the EU. According to Mr Frieden, the Agency could gather and analyse such information with a view to formulating recommendations. The Agency should also take an analytical angle and be active in the area of human rights. It should not compete with but have good links with the Council of Europe (CoE). It should also have a link with the Network of the Independent Experts.

Mr Frieden stressed that he was keen that the Agency should be independent. He was aware that this might not be welcomed by Member States; still, he strongly believed that it was crucial that the Agency be and be seen to be independent if it was to have any authority and credibility. Linked to this is the need for the Agency to have the appropriate resources to act independently.

In his closing remarks, Mr Frieden stressed that freedom, security and justice should involve side by side in the EU. The Agency could contribute towards maintaining the balance between these three areas. He also stated that the proposal for such an Agency would be examined by the Council under Luxembourg's presidency.

Mr. Jean Louis Bourlanges started his speech by saying that the EU was becoming increasingly heterogeneous which, in turn, made it rather difficult to develop one instrument with universal co-operation. Moreover, the EU was not only an economic but also a political union; as such it aimed to promote systematically the rule of law and co-operation in the area of human rights. In his view, the EU's mission now was not only to protect but also to promote fundamental rights. In this regard EU should not have only a defensive but also a proactive role.

According to Mr Bourlanges, the Agency could be pre-configured as follows:

- 1) the Agency should not be a compiler of data supplied by Member States. Instead, the Agency should be able to collect data independently of Member States. In his view, if the Agency lacked independence in its data collection, it would not have the appropriate authority;
- 2) the Agency should not be another law making body nor become a statutory body in relation to the EU's tripartite legislative process already in place;
- 3) the Agency should not be a passing fad regarding human rights, e.g. promoting certain rights that are more in vogue such as freedom of the press; instead, it should promote the whole range of human rights; and
- 4) the Agency should not become another legal services department, e.g. to state how a piece of legislation should be interpreted. However, the Agency could indeed have some input into enabling institutions to interpret the law. In this sense the Agency should not be the platform when EU lay down the law.

Having described with what the Agency should not be, Mr Bourlanges proceeded to describe what it should be:

- 1) the Agency should be independent from Member States. To this end, there might be a need for the Agency's original status. As Mr Bourlanges explained, in relation to human rights it was difficult for Member States to be both judge and jury. The Agency should also be independent in its structure so that when it issues opinions, gather data and carries out analyses, all these are perceived to be undertaken by a truly independent body;
- 2) the Agency should be a centre for data collection and analysis, e.g. it should analyse the human rights situation in Member States. He strongly believed that such an independent analysis was crucial. In a similar vein, the Agency should highlight best practices in the area of human rights and not be only critical of Member States.
- 3) the Agency could be a decision making body, without however usurping the role of the other European institutions. For example, it could provide the latter

with input in order to inform them. The European Parliament in particular would be very keen to be informed.

In Mr Bourlanges's view there were three issues in relation to the Agency:

- 1) the Agency's geographical scope should not extend to third countries. Instead, the Agency should on Member States and probably on candidate countries. In his experience, no individual Member State in the Council would be willing to criticise a candidate country, while the European Parliament lacked the necessary information to be able to form opinions. As far as future accession countries were concerned, Mr Bourlanges believed that the Agency could play an independent role in highlighting the human rights situation. The same could be done for candidate countries.
- 2) when considering whether the Agency should be selective or cover the whole range of human rights, in his view the Agency should combine the two. In other words, it should have a work programme which each year would lay down priorities and focus on a particular set of rights.
- 3) when considering whether the Agency should cover the Charter of Fundamental Rights in the implementation of EU policy as opposed to having a more general remit, Mr Bourlanges favoured the latter, e.g. the Agency should have competence over Article 7. In his view, if EU institutions systematically breached fundamental rights, the EU would need a global analysis of the system (e.g. Article 7).

Mr Bourlanges closed his speech by confirming that the European Parliament was in favour of creating a Fundamental Rights Agency.

1ST DISCUSSION TOPIC: THE RIGHTS AND THEMATIC AREAS OF WORK OF THE AGENCY, INCLUDING ITS GEOGRAPHICAL SCOPE

- **Mr. Jonathan Faull**, European Commission. Director-General (DG JLS)
- **Mrs. Anastasia Crickley**, Chair of the Management Board of the European Monitoring Centre on Racism and Xenophobia (EUMC)
- **Mr. Dick Oosting**, Director, Amnesty International, EU Office

Mr. Jonathan Faull stressed that the Commission launched the public consultation with a very open mind and that nothing had been finally decided as to the Agency's remit, scope, activities/tasks, etc.

He was aware of the on-going discussion about the Agency's name (i.e. Fundamental as opposed to Human Rights) and, without this being the most pertinent question, he still felt that it was important to clarify the terminology used by the Commission. As he explained, in the eyes of the Commission the terms "Fundamental Rights" and "Human Rights" were equivalent; yet the Commission preferred to use the former, because they wanted to underline the link of the Agency with the Charter. Indeed, the Commission assumed and hoped that other shared this view, that, the later would become the basic frame of reference for the Agency.

Mr Faull went on to discuss a number of key questions that were linked to the creation of the Agency:

- 1) In deciding how selective or comprehensive the Agency's areas of operation should be, Mr Faull stated that one should be aware that some of the rights of the Charter were already dealt with by other structures at European level. For example, the right to a high level of environmental protection was already covered by extensive Community legislation, as well as by the European Environment Agency. Equally, the Community adopted legislation aiming at ensuring the respect of several solidarity rights, and created an Agency dealing with safety and health at work. Mr Faull also mention that European Data Protection Supervisor, although not an Agency, was working actively to ensure the effective protection of personal data by European institutions and bodies. Against this background, he believed that care should be taken so as the new Agency did not duplicate all the work carried out by these structures.
- 2) In trying to define the scope *ratione materiae* for the Agency's mandate, a decision should be taken whether one should also take into account the extent to which the European Union had competence over them? Mr Faull reminded the audience that the Charter did not extend the powers of the Union, and this would remain the case under the Constitutional Treaty.

Mr Faull provided an example to illustrate the difficulty in defining precisely the Agency's areas of operation, especially for the purposes of a legal text. For example, at first sight, one would not say that "torture" would be a matter falling under Community competence. However, the Community as such had taken action (in the form of legislation, international agreements, financial support) to prevent torture. For instance, a legislative proposal aiming at prohibiting the trade and marketing of goods which may be used for torturing was currently under discussion. Although these actions were focused in third countries, the key question would be whether it would be appropriate for the Agency to collect data on cases of torture within the Union.

- 3) As Mr Faull underlined, the Commission believed that the Agency should not deal with issues which were of the exclusive competence of Member States, i.e. when Member States acted outside the framework of EU law.
- 4) However, he was aware that such a stance pegged the following questions related to Article 7. Should the Agency's responsibilities include the identification of the risks of a serious breach of human rights by Member States? Should it permanently monitor the risk or existence of serious and persistent violations of fundamental rights? In his view, it would not seem logical that the Agency would deal with article 7 issues, since in that case, it would be obliged to allocate a significant part of its resources to reporting on an issue that should present itself only in very exceptional cases. Furthermore, by doing that the Agency would run the risk of duplicating the useful work of CoE. Nevertheless, Mr Faull was not sure that one should a priori rule out any intervention of the Agency in the article 7 domain. As he explained, if the situation described in article 7 occurred, there might be a need to gather all expertise available in full respect of the procedures laid down in the Treaty.
- 5) Discussing the Agency's mandate further, Mr Faull considered the question of the potential need of not only excluding some rights from the Agency's mandate in order to avoid duplication with existing mechanisms, but also of further rights in order to focus the Agency's work on just some areas and avoid dispersion of efforts. Alternatively, one could give the Agency a very wide mandate, but ask it to concentrate its attention in some fields that require more immediate attention. In any case, in Mr Faull's view this discussion throws up the need for prioritisation of some sort. Although the Commission shared the view that all rights were equal, and deserved equal protection, for the purposes of establishing the mandate for the Agency, it would not seem unreasonable to identify some sort of "privileged" areas of work. He cited three reasons for this: (i) at its initial stage, the Agency would probably need some time to develop gradually; (ii) it was widely agreed that the extension of the current mandate of the EUMC should not be done to the detriment of its activities on racism and xenophobia. Indeed, fighting all kinds of racism, xenophobia, anti-Semitism and Islamophobia must remain a priority for the Union; and (iii) as indicated by Vice-President Frattini, fighting any type of discrimination was a basic principle of the Commission's policy. As a result, in Mr Faull's view, anti-discrimination activities should be placed high in the Agency's agenda. In the case of focusing the Agency's work on just some areas, one would then have to think how this is done. In other words, it this

done from the outset in the future legal base, or left to the Agency's Management Board?

- 6) Finally, Mr Faull discussed the geographical scope of the Agency's mandate his Directorate General did not think that it would be good for the Agency to have a very wide geographical scope. Mr Faull stressed that this did not necessarily mean that the Agency should not be allowed forever to carry out some type of activity in relation to the situation of fundamental rights in third countries, possibly in countries or matters that were closer to the Union or its main policies.

Mrs. Anastasia Crickley, started by saying that it was particularly significant that the hearing was being held that week which coincided with the Auschwitz commemoration. She also agreed with Mr Frieden in that she would like the EU to be seen as a symbol of fundamental rights. As far as the proposed Agency was concerned, she was encouraged that the Agency was explicitly mentioned in the Hague Programme. However, for such an Agency to be effective, it had to be independent with a strong analytical angle. Within this context, she welcomed equality in the EU on the basis of diversity (as opposed to sameness).

Mr Crickley presented to greater detail the EUMC view on the Agency:

- 1) The consolidation of the human rights culture was essential for the EU. However, this required an adequately resourced agency.
- 2) There was an urgent need to tackle racism and discrimination across the EU. In this sphere, a lot could be learnt from the EUMC.
- 3) There must be a real commitment to safeguard the Agency's independence.
- 4) Similarly, there must be a commitment to develop and maintain proper procedures, e.g. RAXEN network.
- 5) There was a real need for the collection of reliable and comparable data; this had proved to date to be major challenge and further work was required.
- 6) The role of the Agency should not be confined to the collection of data; instead the Agency should carry out data analysis and be able to put forward opinions to inform EU policy and institutions.
- 7) The Agency could be seen as an instrument of EU institutions.
- 8) The Charter was a key reference point within the context of the Hague programme. Similarly important would be the equality agenda and the European Convention of Human Rights
- 9) The focus should be on policy realities and priorities of the EU
- 10) The Agency should not become a mechanism for handling individual complaints.
- 11) The Agency should focus primarily on the EU and neighbouring, candidate and accession countries.
- 12) It should co-operate closely (enhanced co-operation) with the CoE so that there would be no duplication of effort. It should also work with other international organisations (e.g. OSCE) as well as with civil society. It should develop links with the National Human Rights Institutions and equality bodies as well as with the network of independent experts. Finally, it should aim at achieving cohesion with emerging EU agencies, e.g. Gender Institute.

In her closing remarks Mrs Crickley summed up how the EUMC saw the Agency. Specifically, such an Agency was seen as acting as an expert, non-aggressive moderator, adding value in the area of human rights in the EU, allowing for synergies, enhancing dialogue with stakeholders.

In his opening remarks **Mr. Dick Oosting** referred to the lack of clarity in the December 2003 Council's as to the purpose of the proposed Agency. This lack of clarity has in turn bedevilled the debate to date.

As he explained, Amnesty International believed that the answer to the question of purpose must draw on the concept of the EU as a "Union of Values", focus on human rights within the EU and set the following goals: (i) protection of the individual; (ii) capacity of the national and collective systems to correct abuse and effect structural improvement as needed; and (iii) capacity to ensure that human rights protection in law and practice was the effective backbone of the mutual trust and recognition on which the EU aimed to build its Area of Freedom, Security and Justice (AFSJ).

Mr. Oosting stressed that Amnesty International considered the on-going debate about the Agency crucial in that it should address the weaknesses of the EU's global human rights ambitions. These can be summarized as follows: (i) the EU had been complacent in relation to human rights abuse within its own borders. An example of this was the persistent refusal of the Council to accept any accountability at EU level for human rights observance by Member States; (ii) such a stance has led to a double standard (as perceived by candidate countries) when it came to examining their human rights situation; and (iii) the EU credibility problem vis-à-vis third countries.

According to Mr. Oosting, the EU policy in the area of human rights had been an undefined and rather vague broad concept. It included both promotion of human rights globally, and the fulfillment of human rights as the core of the Area of Freedom, Security and Justice (AFSJ) that the EU sought within Europe. Seen within this context, one key question that had to be addressed was the Agency's geographical coverage and mandate.

As Mr. Oosting stressed, there were compelling reasons to limit the Agency's coverage to the EU itself. Crucially such an EU-wide remit could fill the existing vacuum as regards EU action and accountability in the area of human rights. As Mr. Oosting explained, in contrast to the external human rights dimension which had a range of policy instruments and mechanisms, the EU lacked comprehensive policies, instruments and institutional mechanisms in relation to the internal dimension of its human rights policy.

As far as the Agency's mandate was concerned, Mr. Oosting underlined that, due to the lack of clarity from the part of the Council, the debate so far was marked by what the agency should not do. For example, it should not do what others were doing.

In contrast, Amnesty International would like to take the opposite approach, namely what the agency should do by drawing on the very concept of the "Union of values" (mentioned above):

- 1) *Protection of individual rights* - although this was the principal responsibility of Member States which meant that the Agency should not deal with individual complaints, it was important to bear in mind that its ultimate goal

must be to contribute to improving individual protection across the territory of the EU.

- 2) *Capacity of the national and collective systems to correct abuse and effect structural improvement as needed* - in his view, it was in the corrective capacity to respond to abuse with structural improvement that both the national and the EU systems showed their main weaknesses.
- 3) *Capacity to ensure that human rights protection in law and practice was the effective backbone of the mutual trust and recognition on which the EU aimed to build its AFSJ* – as Mr. Oosting stressed, if there were no minimum standards and no level playing field on rights protection, the AFSJ system could too easily break down, subverting effective combating of trans-border crime including terrorism, trafficking in human beings and drugs. In this vision, human rights were not a barrier but a precondition for the EU's aspiration to provide security for all.

Regarding the Agency's overall scope, Amnesty International believed that its prime purpose should be to fill the gap between principle and practice in the way that the EU addressed human rights within its own borders. This, in turn, meant that Agency should be given a broad mandate which would allow it to cover in principle the whole range of the rights contained in the Charter of Fundamental Rights, and to extend that to the human rights situations in Member States as these could affect the ability of the EU to establish a real AFSJ.

Mr. Oosting was aware that Amnesty International appeared to be quite alone in this broader conception. However, he stressed that they believed very strongly that an EU Fundamental Rights Agency worthy of its name could not be narrowed down too much. A limitation to EC law would have no added value in terms of their AFSJ vision. In addition, this would appear at odds with the fact that it was the Commission that was tasked with ensuring compliance with Community law.

As Mr. Oosting stated, the general consensus was that the Agency's scope should be determined by Union law. In his view, to understand this in such a way as to exclude the general human rights situation in Member States where they acted autonomously - although some leave open the possibility that the agency might be involved in respect of situations covered by Article 7 TEU, of a serious and persistent threat to the Union values laid down in Article 6 TEU. Amnesty International believed this approach to be too narrowly conceived on two grounds.

First, EU law and policy increasingly extended into precisely those areas that Member States as well as other interested parties tried to shield. With the recently agreed Hague programme, the Council aimed to give new impulses to the AFSJ, which was to encompass the functioning of the European Arrest Warrant and similar instruments of judicial co-operation, the rights of suspects and defendants in criminal proceedings, the conduct of police cooperating across borders and alternatives to pre-trial detention. In his view, it was impossible to divorce these developments from the actual practice in Member States.

Second, it was precisely for that reason that the Agency should be empowered to identify weaknesses in the way these systems operated at an early stage, before there was a need to bring in the nuclear option of Article 7. Mr Oosting agreed that there was indeed plenty of monitoring, by the CoE, United Nations treaty bodies, the Network of Independent Experts, national human rights institutions and NGOs.

However, in his view, there was very little in the way of analyzing and shaping all that information into remedial action or of translating it into the EU framework. That important function was missing from the system and Amnesty International believed that the Agency should carry it out as a matter of urgency.

As far as the methodology to be used in such an exercise, rather than engaging directly in on-the-ground monitoring, the agency should be active in collecting all the existing information, identify gaps and recommend remedial actions and policy development. A close link to national human rights institutions would also be valuable. In the same vein, Amnesty International would argue that the establishment of the Agency should be accompanied by extending the network of human rights institutions based on the Paris principles to all Member States.

Mr Oosting underlined that the Network of Independent Experts had in a relatively short time become an important element in monitoring human rights within the EU. As a result, one key question would be what added value it could have as a separate entity in the EU system following the establishment of an EU Fundamental Rights Agency. As he added, for the agency to be effective it must contain internal expertise and have expert contact points in Member States from whom it can get local information and analysis. In his view, the important role of this network should be incorporated into the structure of the agency, especially since it was difficult to see the justification for the existence of two parallel mechanisms for human rights monitoring within and for the EU.

Regarding the institutional response, Mr Oosting stressed that for the Agency's aims to be achieved, it would also be necessary to ensure that the Commission and the Council be equipped to deal adequately with human rights within the EU. To this end he welcomed the fact that President Barroso gave a broad assurance that fundamental rights would be at the top of his Commission's agenda, referring to the Fundamental Rights Agency and announcing the establishment of a Group of Commissioners dealing with Fundamental Rights, Anti-discrimination and Equal Opportunities.

As Mr Oosting explained, the Council, on the other hand, had no means to deal with domestic human rights issues. To his knowledge, it had so far not even responded to the Commission's communication of October 2003 on the possible use of Article 7 TEU. Amnesty International believed that the discussion on the agency underlined the urgent need for a Council mechanism that could fill that gap. Indeed, it was interesting to note the Luxembourg Minister of Justice Luc Frieden suggesting recently that there was a need for a domestic equivalent of the Political and Security Committee to deal with matters of internal security and human rights. Amnesty International had already proposed that a Council Working Group for human rights within the EU should be set up to address questions of fundamental rights within the EU in a coherent and consistent manner.

Mr Oosting stressed that there was a real danger that the mix of legal formality and political expediency would sidetrack the agency into a marginal role, rather than in having a real impact to help the EU meet the purposes of individual justice and collective security. It would be difficult to explain to ordinary citizens that an EU Fundamental Rights Agency would be barred from dealing with what they perceived to be fundamental rights.

Finally, in his closing remarks Mr Oosting stressed that the key question in this debate revolved around the purpose and underlying vision of the EU Human Rights Agency. Amnesty International believed that a different kind of debate was needed as opposed to one already witnessed to date, if this question was to be answered meaningfully.

Session 1 discussion with all participants of the hearing

Before opening the floor, Mr Francisco **Fonseca Morillo**, Director of Directorate General Justice, Freedom and Security, (who chaired all sessions) summarised the key questions to be discussed in this session: (i) how to delimit the Agency's areas of action (selective versus comprehensive list of human rights); and (ii) what the Agency's geographical coverage and mandate should be.

Participants from the floor raised the following issues:

Committee of the Regions

The Charter of Fundamental Rights was seen as the pillar of the Agency. However, given the wide range of rights encompassed in the Charter, there was a need for a series of work programmes for the Agency, each setting out priorities as to specific sets of rights.

The Agency would need to develop a reliable methodology to collect data with a view to providing substantive input over and above the production of reports. In addition, the Agency should have a consultative role vis-à-vis EU institutions, i.e. the latter should consult the Agency when preparing legislation. It should also have close ties with the European Court of Justice. The Agency should be involved in awareness raising and educational activities regarding human rights. It should limit itself to Member States and candidate countries. It should not produce individual country reports, since the existing network of independent experts is involved in such an activity.

Regarding Article 7 one should keep "an open door" in opening up the Agency's remit regarding the human rights situation in both Member States and candidate countries. In such a case, the Agency could use this article as an early warning system.

In terms of structure the Agency should have a Management Board and a scientific committee. The Committee of the Regions would like a seat on the Agency's Board.

Care should be taken that one did not replicate the mistakes over the under-resourcing of EUMC (as highlighted by a recent audit). It was important that the Agency be independent and be seen to be independent as well as properly resourced. One was not totally convinced that the appropriate resources would be made available, thus putting at risk the Agency's credibility.

UK Department of Constitutional Affairs

The UK delegation expressed support for the creation of the Agency whose main tasks would include the collection and analysis of data as well as the provision of human rights advice and guidance to both Member States and the EU institutions when implementing community law. They felt that the Agency should take its place among other EU institutions and have a pre-consultative role in the legislative process. It should concentrate on certain rights, e.g. chapters 1, 2, 3 and 6 of the Charter. Attention should be taken that its work did not dilute, but rather build upon, the work already done on racism and xenophobia. The Agency's legal base should be

the same as that of the Charter. The Agency could also provide, upon request from candidate countries, information regarding best practice in the area of human rights.

L'Association européenne pour la défense des droits de l'Homme [FIDH-AE]

FIDH-AE believed that the Agency's remit should not be limited only to the Charter. Instead, they felt that the Copenhagen criteria offered a broader base for human rights. Similarly, they argued that the Agency should cover the whole range of human rights since there was no priority list regarding these rights. They agreed with the view that the EU should be seen as a community of values. In that sense, they wanted the Agency to have a wider geographical coverage, encompassing not only Member States and candidate countries but also third countries with which the EU had association agreements. They also proposed that the Agency should produce reports at both the EU and Member State levels. Indeed, they felt that there was a need for both EU institutions and Member States to subject themselves to human rights self-assessment before the external review by the CoE. In line with other interventions, they stressed the need for an adequately resourced Agency.

The Law Society of England & Wales

They expressed concern regarding the slow progress towards a framework decision regarding procedural safeguards and access to justice (as part of the Hague programme). Similarly, concern was expressed as to progress achieved in the areas of equality and anti-discrimination, e.g. there had been inadequate implementation of the Race Directive. Against this background, the Agency had a major role to play without, however, substituting the work of the national human rights institutions. Indeed, the Agency should promote the work of the latter. It should be founded into EU competence. Regarding Article 7, it should be possible for an EU institution to request the Agency to do an investigation regarding human rights in a Member State.

Society for Threatened People

The Agency should cover all human rights. It should cover not only individual rights but also the rights of groups of people, including the rights of the Roma population, those of asylum seekers, etc. Moreover, its remit should extend beyond EU citizens to anyone who came into the EU. Upon publication of its reports, both Member States and EU institutions (as appropriate) should be obliged to take remedial action regarding the problems identified by the Agency.

National Consultative Committee on Racism and Inter-culturalism, Ireland

The Agency should focus on certain rights, e.g. Articles 20-26 of the Charter. Consideration should be given to the Agency's name. For example, it could be named European Monitoring Centre on Human Rights, Racism and Anti-discrimination. Indeed, racism should remain a central focus of the Agency's work. It is important the legislation should spell out clearly the Agency's remit, e.g. what rights it should cover to combat racism. Its structure should be a continuation of the existing agency (EUMC) but with the involvement of a broader range of people, including NGOs expert bodies, etc. in an attempt to be reflective of the society as a whole.

Office of Government, Czech Republic

The Agency's geographical coverage should not be extended to third countries as such. However, it should provide expertise in relation to EU policy towards third countries, especially those with association agreements with the EU. It should monitor the human rights situation globally.

Fair Trials Abroad

An important theme was that of defendant's guarantees where monitoring across the EU had been very defective. Indeed, the Association of European Lawyers had called for a European Criminal Justice Ombudsman.

Federal Ministry of Foreign Affairs, Austria

Any Article 7 related decision remained a political decision. There was also a need for the European Court of Justice to play a more fundamental role.

Consultative Committee on Human Rights, Turkey

The Agency should concentrate on improving the institutions which deal with human rights.

2ND DISCUSSION TOPIC: SUSTAINING AND SECURING RELATIONS WITH THE COUNCIL OF EUROPE, NATIONAL INSTITUTIONS, CIVIL SOCIETY AND OTHER ENTITIES

- **Mrs. Maud de Boer-Buquicchio**, Deputy Secretary-General of the Council of Europe
- **Mr. Olivier de Schutter**, Co-ordinator of the Network of Independent Experts on Fundamental Rights of the EU; Professor at the University of Louvain
- **Mr. Piotr. Nowina-Konopka**, President of the Polish Robert Schuman Foundation in Warsaw; former Chancellor of the College of Europe, Natolin campus

Mrs. Maud de Boer-Buquicchio welcomed the establishment of an EU Fundamental Rights Agency, which for the CoE was seen as an opportunity to effectively enhance the protection of human rights in the Member States of the EU. In her view, a key role of the Agency, linked to the Constitutional Treaty and the Charter of Fundamental Rights, would be to ensure the incorporation of human rights into EU policies, legal acts and daily practice of EU institutions.

According to Mrs de Boer-Buquicchio the Agency would be most effective if it fulfilled certain conditions. First, it should build upon the existing extensive operational mechanisms. These included: (i) the European Convention of Human Rights and its Protocols; (ii) the European Social Charter; (iii) the European Convention for the Prevention of Torture; (iv) the European Commission against Racism and Intolerance; and (v) the Framework Convention for the Protection of National Minorities. Its work should also be supported by the CoE Commissioner for Human Rights. Within this complex framework, there was a need for the Agency to have a mechanism by which it would complement the other existing mechanisms, including the CoE. Moreover, the Agency would have to respond to specific needs. Crucially, in her view, any new development should preserve the coherence of this framework.

In order to safeguard the coherence of the existing framework, Mrs de Boer-Buquicchio stated the following:

- 1) The creation of the Agency should correspond to specific and actual needs. To this end, she saw the Agency as having two roles: (i) in relation to monitoring human rights, the Agency should collect data, prepare studies on specific problems and propose solutions; and (ii) it should identify best practice on the basis on common European standards (already developed by the CoE). In relation to the latter, Mrs de Boer-Buquicchio underlined the need to avoid duplication and enhance complementarity between the new Agency and the CoE.
- 2) The Agency should be given a mandate that filled an existing gap. For example, the EU was lacking an entity equivalent to that of a National Human Rights Institution. In her view, the Agency could be that equivalent by becoming an European Human Rights Institution.

- 3) In such a role the Agency, acting as an independent Human Rights Institution, should focus on: (i) data collection and analysis; (ii) awareness raising in relation to human rights; (iii) an advisory role in the preparation of EU legislation; (iv) a thematic approach in its work programme with clear priorities, such as racism, xenophobia and anti-discrimination.

In terms of maximising the Agency's effectiveness, Mrs de Boer-Buquicchio stated the following:

- 1) The Agency should focus on the implementation of EU law and policies. In this capacity it should advise EU institutions; use a thematic approach; and not be involved in routine human rights monitoring in Member States.
- 2) The Agency should adopt a cautious approach as to the use of Article 7 due to its exceptional nature of proactive monitoring. As Mrs de Boer-Buquicchio stressed, at present the CoE monitored effectively the human rights situation in Member States.

Mrs de Boer-Buquicchio stressed the need to avoid duplication in the work of the Agency, by ensuring, inter alia, closer co-operation with CoE. Such a co-operation could be secured through the regulation setting up the Agency or a bilateral co-operation agreement between the CoE and the Agency before the latter became operational.

In her closing remarks Mrs de Boer-Buquicchio once again welcomed the creation of the Agency. However, instead of duplication of existing monitoring mechanisms, the Agency should be given a precise mandate that responds to an actual need. The Agency, she proposed, should fit into the already existing network of judicial and monitoring mechanisms in Europe

Mr. Olivier de Schutter agreed with both Mr Bourlanges and Mrs de Boer-Buquicchio in welcoming the Agency. However, as he pointed out, although in public everybody had expressed delight about the creation of such an Agency, in private concerns had been expressed, especially about the Agency's remit. For example, a key concern had been that, by entrusting the protection/promotion of human rights to an Agency, there was a danger of making human rights a peripheral issue. He did not share those fears and thought that the Agency had a key role to play, particularly at present when human rights were not a matter just for the courts but also for the executive and legislative powers.

According to Mr de Schutter, two conditions had to be met for the Agency to be successful:

- 1) The relationship of the Agency to other international bodies and mechanisms, e.g. CoE, the ILO acquis, UN instruments, etc. In general, beyond the Charter of Fundamental Rights there was a panoply of human rights instruments and the work of the Agency should complement existing mechanisms. Indeed, no gap should be created between international human rights standards and the work of the Agency. Still, there were areas where the Agency could play a useful part and where it could convey these international standards into community law and practice. As Mr de Schutter pointed out, although

Member States were subjected to external human rights review, no such system existed for monitoring at EU-level.

- 2) The Agency should not duplicate the work of CoE. However, it could collate human rights information systematically and work closely with the Network of Independent Experts, especially since there was a need for a more systematic monitoring of human rights in Member States.

As Mr de Schutter stressed, fundamental rights were the mortar of the internal market. In his view, just to have a minimum threshold in relation to human rights was not sufficient since it was only when Member States worked together that progress was achieved. For example, one Data Protection System was preferable to 25 different ones. Moreover, he believed that one should progress from a negative/defensive approach regarding human rights to a proactive approach with a view to promoting EU values including human rights.

According to Mr de Schutter, the key question was how one could identify situations where it made more sense to take action at EU as opposed to Member State level in relation to human rights. In his view, the Agency could play the role of a think-tank, especially with the help of the network of independent experts. It should not be selective in relation to Member States, i.e. all Member States should be measured by the same standards.

In concluding Mr de Schutter stressed that human rights had been enshrined into the EU legal order through the Charter of Fundamental Rights in the Constitutional Treaty. The time had come now when the EU should be enshrined into human rights. This could, *inter alia*, be achieved by linking the EU and the proposed Agency to the *acquis* of the other international bodies, e.g. CoE; and establishing how best the EU could exercise its powers and competences in relation to human rights in a wide range of areas, e.g. asylum and migration, social affairs, etc.

Mr. Piotr. Nowina-Konopka pointed out that as far as the Agency was concerned he was against the latter trying to do everything in the area of human rights. The Agency should rather try to create synergies. He also felt that precise name of the Agency was important since there was a difference between fundamental and human rights. In his view, the Agency should focus on fundamental as opposed to human rights and be careful as to who it maintained links with. For example, it is an issue whether the Agency should have links with the wide and varied range of civil society entities. Alternatively, should the Agency try to instill a sense of EU citizenship in order to create a European demos. According to Mr Nowina-Konopka, the Agency should promote such European citizenship which should in turn be seen as inexorably linked to fundamental rights. If one adopted this view, then the Agency should seek the right channels of communication and institutions at both national and EU levels.

Session 2 discussion with all participants of the hearing

Before opening the floor, Mr Fonseca Morillo summarised the key questions to be discussed in this session: (i) what links should it have to other bodies such as the CoE, (ii) how to involve the civil society to the work of the Agency.

Participants from the floor raised the following issues:

Economic and Social Committee

The delegate expressed hope that the Constitutional Treaty will be ratified across the EU with the inclusion of the Charter of Fundamental Rights.

The Agency was important for EU credibility, especially at present when the EU under the steering of Mr. Louis Michel, EU Commissioner for Development and Humanitarian Aid, was making its presence felt all over the world.

The Agency should include all stakeholders; still, it was too early to be able to spell out in great detail what it should look like. However, it was not too early to stress that the Agency should have a reinforced mandate to create an area of freedom, security and justice. This mandate would have more added value, if it was focused on the Agency's role in defending human rights, fighting against bad practice while promoting good/best practice, protecting minorities and most vulnerable groups. Another key issue was the link of human rights to the EU foreign policy.

In line with other participants, it was stressed that the Agency should be adequately resourced if the leap from the Monitoring Centre to an Agency was to succeed. It should be independent and have strong links with civil society. The setting up of a scientific committee seemed to be a good idea and could include representatives from civil society. It was very important that civil society be properly represented in the Agency.

European Trade Union Confederation [ETUC]

The Agency should have a wide remit, based on the Charter of Fundamental Rights and Article 7 of TEU. It should cover Member States, candidate countries and countries with which the EU has a special relationship. The Agency should cover not only individual, but also collective, and especially, social rights. The Agency should not undermine the work of other institutions.

Association of National Institutions for the Promotion of Human Rights

The Agency's structure should respect the principles of pluralism and transparency (as set out in the Paris Principles). National legitimacy was also important, so there was a need to foster the relationship between the Agency and other external bodies, e.g. National Association for the Promotion of Human Rights

The Agency should have a scientific committee consisting of independent experts, national representatives, representatives from organisations which promote human rights, etc.

EU Women's Lobby

The Agency's links with civil society should take account of mainstreaming, e.g. gender mainstreaming. NGOs should be involved in the work of the Agency. It was also important to avoid any overlapping with other institutions, especially since there was a danger that the Agency would focus only on Community law. The Agency should have a complementary role to that of other bodies such as the CoE. Indeed, at

present negotiations were ongoing in the CoE regarding a new Convention on trafficking.

Ministry of Foreign Affairs, Netherlands

The geographical coverage of the Agency should be the EU, not the candidate countries. The latter are covered by the work of CoE and the European Commission. The Agency should also have a clear and broad mandate.

Centre Européen Juif d' Information

In her experience civil society had at present weak links with the Monitoring Centre on Racism and Xenophobia regarding its activities. In the future NGOs should have their rightful place in both the action plan and the structure of the Agency, especially since NGOs had a lot of information and considerable experience regarding mainstreaming, education and training. The Agency should endeavour to obtain as much input as possible from NGOs. Their own work with the CoE could provide a good example of such close co-operation. The Agency could act as the lynchpin for all people and organisations working in the field of human rights.

In her view, there was a gap between research which was conducted in “laboratory” conditions as opposed to what was happening on the ground. As a result, it was difficult in Member States to put into practice research findings, not least due to lack of resources.

European Network Against Racism [ENAR]

The Agency should be linked to civil society, NGOs and grass-roots organisations. The structural aspects of the Agency’s co-operation with NGOs should be carefully worked out.

National Commission for Human Rights, Greece

At present human rights in the EU were under constant threat, especially in the post-September 11 climate. Most of the proposed activities for the Agency were already covered by the CoE. It was absolutely essential that the Agency co-operates closely with the CoE and this should be at the centre of the Agency’s administrative development.

Consultative Committee on Human Rights, Turkey

The Agency’s name was quite important, since in his view the term “fundamental rights” was more limiting than the term “human rights”. There was a need for consistency regarding what terms one used

L'Association européenne pour la défense des droits de l'Homme [FIDH-AE]

In line with other participants, it was stressed that the Agency should be independent and avoid duplication/replication of other work.

3RD DISCUSSION TOPIC: TASKS TO BE ALLOCATED TO THE AGENCY

- **Mrs. Odile Quintin**, the European Commission. Director-General (DG EMPL)
- **Mrs. Kinga Gál**, MEP (PPE-SW) Member of the LIBE Committee of the EP; Member of the human rights sub-committee of the EP
- **Mr. Morten Kjaerum**, President of the international coordinating committee of national institutions for the promotion and protection of human rights

Mrs. Odile Quintin started her speech by reminding the audience of the December 2003 European Council Decision to extend the EUMC remit and of the 2002 Barcelona European Council which defined the EU social model content in a way that was linked to task allocation to such an Agency. As she explained, fundamental rights were closely linked to social affairs. For example, the EU had been since the 1970s developing policies on equal opportunities and anti-discrimination. Overall, there seemed to be panoply of EU legislation which together with the European Court of Justice aimed at ensuring human rights.

Against this backdrop, Mrs Quintin saw the creation of the new Agency as a positive step towards further protecting human rights and strengthening the EU social model. In her view, one key task for the Agency would be to assess conformity of EU legislation in relation to human rights.

According to Mrs Quintin, to maximize its effectiveness the Agency should be selective as regards its areas of competence. To this end, the Agency should be based on the extension of the EUMC remit. Racism and xenophobia should remain high on its agenda. It should build on the EUMC work, while, at the same time addressing weaknesses identified in the latter's operation. For example, it should provide reliable and comparable EU-wide data.

In addition, the Agency should support EU institutions, Member States, civil society, etc. This should be achieved by the Agency:

- 1) carrying out data collection and analysis, especially as regards comparative work in relation to human rights.
- 2) preparing opinions and recommendations for EU institutions.
- 3) complementing the work of CoE, civil society, European Parliament in this area.
- 4) avoiding at all costs duplication with the work of other bodies.
- 5) promoting and sustaining dialogue with civil society, social partners, NGOs, etc.
- 6) raising awareness about and educating on fundamental rights (in collaboration with Member States).
- 7) creating a relevant resource base (e.g. database) in the area of human rights.
- 8) ensuring that it remained genuinely independent.

In her closing remarks, Mrs Quintin underlined that the protection of human rights was one of the pillars of the EU social model as well as a key instrument of EU social policy.

Mrs. Kinga Gál agreed with Mrs Quintin to the Agency's tasks. However, she felt that before finalizing those tasks one should determine whether the Agency was an aim or a tool. In her view, if the aim was the need for monitoring and promoting fundamental rights within the EU, then the Agency could be seen as a means/tool to achieve this. In any case, she believed that one should base the promotion of fundamental rights on the Charter of Fundamental Rights and the Constitutional Treaty. The task of setting up such an Agency would be easier after the ratification of the Constitutional Treaty. Yet, even if the latter would not be ratified, she believed that all the principles regarding fundamental rights were already enshrined in the Treaties of the EU, once again enabling such an Agency to be set up.

As far as its geographical coverage was concerned, Mrs Gál thought that the Agency should concentrate on Member States and on those countries which had signed accession treaties with the EU. The Agency should fulfill three functions:

- 1) It should contribute to legislative process. This did not mean that it would be a regulatory body with a legislative/normative function. Rather, the Agency could help the process of legislation by offering advice on how human rights should be taken into account in the implementation of existing EU legislation. Similarly, it could alert legislators where there was a need for new directives, or laws regarding human rights. The Agency should also collect and analyse data to inform EU institutions. In her view, the Agency could in that way be a supportive instrument to these institutions, and in particular to the European Parliament.
- 2) The Agency should have a political function in terms of defending fundamental rights. It could have a role in providing early warning to the Commission so that it could act in the field of human rights. In this regard, its close co-operation with the CoE was crucial. Indeed, in her view, the Agency should use the CoE experience and legal framework to be able to promote and defend fundamental rights alongside EU standards. As a result, there was a need to find a way to institutionalize the relationship between CoE and the new Agency.
- 3) The Agency should also be involved in awareness raising activities, since considerable work must still be done in promoting fundamental rights among the wider population.

Mrs Gál stressed that within all these function one needed data collection and an element of normative evaluation.

In relation to its structure, she saw the Agency as being a network of networks, a focal point of any one involved in this field. For example, it could promote co-operation among the National Human Rights Institutions on a wide range of issues, e.g. protection of national minorities, gender-related issues, etc. Such issues could belong to specific sectors within the Agency.

According to Mrs Gál, it was important that the Agency be independent and has sufficient authority from the start. Linked to this was the need for the Agency to have adequate resources/budget and high-level representatives from Member States and EU institutions.

Mr. Morten Kjaerum speaking as the President of the International Co-ordinating Committee of National Institutions for the promotion and protection of human rights said that the latter saw the Agency as a great opportunity for both strengthening fundamental rights in the EU and filling in existing gaps. He also expressed the wish of these institutions to establish a formalized link with the new Agency.

Turning to the Agency's tasks, Mr Kjaerum said that it was difficult to delineate such tasks when the Agency's mandate was not known yet. Still, he saw the Agency based on the UN Paris principles in that it should cover: (i) information gathering; (ii) data analysis; (iii) providing advice; and (iv) giving information and undertaking other communications activities. In relation to information gathering the Agency should be active (rather than passive) in the collection of data. For example, it should develop European indicators for human rights to compare developments between Member States and detect human rights progress or regression in Member States. Given the importance of anti-discrimination, he would also like to see the Agency having a permanent department dealing with issues of discrimination of any kind, e.g. religion, race, gender, sex orientation.

The Agency should also have strong and rigorous analytical capacity as well as the key competences to analyse the gathered information appropriately. If the Agency were given mandate on Article 7, its analytical capacity would become even more important.

In terms of the Agency's advisory role Mr Kjaerum stated the following:

- 1) The Agency should scrutinize and carry out in-depth non-discriminatory analysis of all EU directives, legal texts regarding human rights. It should be able to issue opinions automatically (i.e. as a matter of course) on all such legislation. Mr Kjaerum pointed out that despite the current concerns that such a function would hinder the mainstreaming of human rights, since civil servants would expect the Agency to pay attention to such issues, the reality had shown the reverse. In other words, if one expected the proposed legislation to undergo close scrutiny, one was more likely to take account of human rights.
- 2) the Agency should have formal channels of communications with EU institutions (European Commission, Council and Parliament) to inform them of the human rights situation in both Member States and EU institutions.
- 3) the Agency should develop methodologies and indicators to assist Member States in this field, e.g. in the production of National Action Plans against Racism by Member states, especially in view of the little progress made in this regard.
- 4) the Agency should also serve as European focal point regarding human rights.

The Agency should also be able to provide information on all aspects of the human rights dimension in the EU, e.g. access to Court of Justice decisions, EU directives, examples of best practice. Such a function would require the allocation of more resources that initially foreseen.

Mr Kjaerum agreed with Mrs Gál that the Agency should be seen as a network of networks. In particular, he referred to the "sunflower" model which they had used

successfully in Denmark. In such a model, there was an strong inner core, in this case the Agency with its staff, offices, library resources, etc. and the “petals”, representing the various networks (e.g. RAXEN, the Network of independent experts, the European networks of national human rights institutions, the EU Disability Forum, etc.). He strongly believed that this particular model had many strengths and should be considered in setting up the Agency.

Finally, Mr Kjaerum believed that the language/terms one used was important in that it conveyed certain meaning. He did not understand why one had to introduce the term “fundamental rights” when everyone was more familiar with and knew the meaning of human rights. Significantly, the EU itself promoted the latter across the world.

Session 3 discussion with all participants of the hearing

Before opening the floor, Mr Fonseca Morillo summarised the key questions to be discussed in this session: (i) how the Agency could collect objective data and information across the EU; (ii) who should the Agency present such information and in what form; (iii) what might be the best way for the Agency to disseminate human rights information.

Participants from the floor raised the following issues.

Federal Ministry of Foreign Affairs, Austria

As far as the Agency’s name was concerned, there was a need for a Human Rights Agency. One key question concerned the Agency’s beneficiaries, i.e. whom should such an Agency provide services for. In their view, there appeared to be no monitoring mechanism at EU level, the Agency should provide advice and support to EU institutions on the basis of data collection and analysis (as opposed to be involved in monitoring at Member State level). In this sense, the Agency could act as consultant on human rights policy and issues to these institutions as well as play a complementary role to that of CoE. The Agency could also help legislators at the drafting stage of new legislation across the three pillars of the EU, especially the third pillar in relation to external relation and asylum/migration. The Agency should not have a rigid, internal remit regarding human rights since in this field it was difficult to separate the internal from the external dimension.

In relation to Article 7, the Agency should not have a mandate for systematic monitoring of Member States; rather, it should be able to play a supportive role to EU institutions regarding this Article.

Hellenic League for Human Rights

The Agency should carry out data collection and analysis. Racism should continue to be one of the key foci of its work. It should also be able to submit expert opinions and analyses regarding human rights to both EU institutions and Member States. Of crucial importance was the quality of the Agency’s outputs which, in turn, was closely linked to the need for its adequate resourcing. The Agency should have close links with civil society and be involved in awareness raising activities.

Commission Consultative Droits de l' Homme

In line with other participants, it was stressed that one should avoid duplication with existing monitoring mechanisms, e.g. the Network of independent experts. In view of the financial constraints of the EU (as manifested by the current negotiations on the Commission's financial perspectives 2007-2013), the Agency's mandate could not be very broad; rather, certain priorities as to its work should be set. In relation to Article 7, the Agency could not be consulted when it was invoked.

National Consultative Committee on Racism and Inter-Culturalism, Ireland

The Agency should fulfil four main tasks:

- 1) Mainstreaming – The Agency should help EU institutions mainstream equality, anti-racism, human rights, etc. in all their policies.
- 2) Targeting – The Agency should help develop targeted policies in relation to vulnerable groups, e.g. those facing racism. In view of the existing human rights deficits, the Agency would need additional resources.
- 3) Benchmarking – The Agency should collect and analyse data as well as detect progress made by using comparable indicators.
- 4) Synergy/Engagement - The Agency should engage with other bodies, civil society, NGOs, employers, trade unions, etc.

L'Association européenne pour la défense des droits de l'Homme [FIDH-AE]

A key issue in this field was how one could collect reliable and comparable information from the existing wide range of networks and organisations working in this area. The Agency should find ways to capitalise on this wealth of information.

The Agency's recommendations should be presented to the European Parliament. It could also remind national authorities of fundamental rights failures.

The Agency had also a political role to play, especially in influencing and informing legislation. To this end, it should be able to put forward an opinion on a proposed new law, directive, etc.

Ludwig Boltzmann Institute of Human Rights, Vienna

The Agency should be a think-tank to be consulted by the main EU institutions on human rights regarding the EU's both internal and external relations. Indeed, its mandate should cover external relations.

It should produce thematic reports and recommendations on specific sets of human rights. Some of its reports may have to be confidential unless the addressee agreed with their publication.

On the basis of Article 7 it could also provide an early warning and be part of this preventive procedure. The Agency should have competence not only to initiate early warning procedures, but also provide advice on prospective legislation. For example, it could advise the European Parliament whether it complied with the Charter; advise

the Commission if there was a need to start infringement procedures at the European Court of Human Rights, etc.

International Gay and Lesbian Association

The Agency should check EU legislation with a view to establishing whether it complied with international standards, the Charter, CoE, case law, etc. It should carry out impact assessment regarding human rights aspects in all EU legislation. The Agency should not be able to take on individual complaints regarding human rights; however, it could intervene as a third party at the European Court of Human Rights.

Fair Trials Abroad

Concern was expressed that too many tasks were being allocated to the Agency. In their view, the Agency should be a network of networks and not be encumbered by too many tasks. As far as human rights in Member States, civil society could also put pressure at that level. It was important that the Agency had transparent procedures and that its reports were widely accessible.

EU Disability Forum

It was important to note that the disabled people had been often been overlooked in relation to human rights related activities, e.g. in the human rights monitoring work. To this end, the Agency should do periodic reporting regarding vulnerable groups in the area of human rights, e.g. the disabled. It should also be involved in awareness raising and educational/training activities regarding human rights mainstreaming, especially in relation to the disabled.

Faculty of Law, University of Milan

It was observed that little had been said about the Agency's legal basis which remained an open question. The Agency should be able to be of assistance to the Courts, national judicial bodies, EU Court and other institutions, etc. Account should be taken of national legislation, national practice and case law, especially since the role of the national judge was becoming increasingly a "Community" judge in relation to human rights. In this sense, the Agency could help national judges, European Court of Justice, etc. by having an *amicus curiae* role.

European Women's Lobby

The Agency should emphasise mainstreaming in all EU policy areas, e.g. gender mainstreaming. It should also be able to do impact analysis regarding human rights on any planned EU action. It could help fill in gaps in the data available, e.g. most of existing human rights related data were not broken down by gender.

The Agency should help both EU institutions and national bodies, e.g. national Parliaments, NGOs, etc.

The EUMC had already done a lot of work regarding the collection of reliable and objective data, despite definitional difficulties in comparators. In their view, there

was already a dissemination instrument in place which, however, faced considerable budget constraints. There was a need for political will in the allocation of appropriate resources. In their view, one could keep the EUMC name to save resources.

European Ombudsman

The Agency should provide information regarding judicial and non-judicial redress in the field of human rights.

4TH DISCUSSION TOPIC: THE STRUCTURE OF THE AGENCY

- **Mr. Enzo Moavero-Milanesi**, European Commission, Deputy Secretary General
- **Mrs. Beate Winkler**, Director of the EUMC
- **Mr. Kimmo Kiljunen**, Member of the Parliament of Finland; former Member of the Convention on the future of Europe

Mr. Enzo Moavero-Milanesi put the creation of the Agency within a wider context. As he explained, the Commission was in the process of drawing up a common framework regarding the role and operation of EU Agencies (as a result of the 2001 White Paper on European Governance and the Commission 2002 Communication on EU Regulatory Agencies).

According to Mr Moavero-Milanesi, both these documents highlighted good governance rules that should guide the operation of any EU Agency. These were: (i) openness/transparency; (ii) participation; (iii) accountability; (iv) effectiveness; and (v) coherence/consistency. The proposed Agency should be built around these principles, while its structure would be like that of any other EU Agency.

As Mr Moavero-Milanesi explained there were two types of EU Agencies: (i) regulatory, involved in improving the implementation of Community law; and (ii) executive, mainly responsible for helping the Commission in the execution/administration of its financial programmes, e.g. Socrates. Within this context, although the question was still open, the Agency was likely to be a regulatory one. However, the Agency would not adopt binding legislation, as was the case with other regulatory agencies.

The Agency's tasks could include: (i) the collection and analysis of data; (ii) the evaluation of human rights aspects with a view to provide its relevant expertise to the Commission as well as the preparation of opinions and recommendations; (iii) the promotion of co-operation with both national and international bodies working in this field, including Supreme Courts, etc., NGOs, trade unions, professional associations, academia, civil society, etc.

The Agency's structure should be such as to enhance its effectiveness in terms of both rapid decision making and quick completion of tasks. The Agency should be legally, organisationally and financially independent, with genuine autonomy in any action it might take. This autonomy, however, should be closely linked with accountability, responsibility and transparency (e.g. clear/transparent rules and procedures). Its independence should be guaranteed by its Management Board, whose make-up was still undecided. For example, it had not been decided whether the Board should have members nominated by the European Parliament, since this might be a case of being both "judge and jury". However, it had been argued that, regarding the Agency's thematic areas, the European Parliament had a natural role to play. This, in turn, meant that maybe an exception could be made for this particular Agency. Linked to this was the question of the Board's pluralism. It was widely accepted that the new

Agency should work closely and in consistency with the CoE. In case the need for pluralism led to a rather large Management Board, then it would be more effective if the Executive Board worked closely with the Agency's Executive Director and Office. This Director would be nominated on a proposal submitted to the Council by the Commission following a pre-selection procedure.

Mrs. Beate Winkler started her speech by stressing that the EUMC was highly committed to share its knowledge and expertise it had acquired so that they could be used in the setting up of the Agency. To have maximum effectiveness and credibility, the Agency should have a clear structure and set of competences as well as a genuinely independent Management Board.

Mrs Winkler admitted that the current absence of a clear mandate made any discussion as to the Agency's structure difficult. Still, it was possible to discuss, on the basis of the EUMC's experience, how one could implement strategies and develop an organisation efficiently and effectively in order to create best added value and synergies. The structure of the new Agency should be based on the principles of relevance, independence, efficiency, effectiveness, utility and sustainability.

The extension of EUMC mandate linked to the creation of the new Agency meant that the latter could build and capitalise upon the EUMC's experience to date. In setting up the new Agency, the following EUMC's basic principles, tools and processes should be considered:

- 1) Identification of "core competences" - These referred to specific abilities and qualifications of the EUMC e.g. "networking with different actors and different professions from the beginning".
- 2) Experience in setting up the Centre from scratch without support and in developing the whole EUMC system from 15 to 25 within one year.

Both of these had created an atmosphere where EUMC was used to facing challenges permanently and had a positive culture for change.

In designing and implementing the Agency's strategic and organisational processes, one could apply the EUMC processes for strategic developments and implementation so as to give added value from the beginning. These were as follows:

- 1) The underlying basic principle concerned the need for common agreement of stakeholders on a broad common goal in terms of the Agency's mandate; and shared understanding on what was to be achieved within 5 years in a step-by-step approach
- 2) Processes of the EUMC for strategic developments and implementation. In particular, the following should be taken into account:
 - overview of the environment in field of human rights,
 - active identification of needs of target groups/stakeholders and EU priorities via surveys, questionnaires,
 - elaboration of vision/scenarios for the future organisation: vision based on former steps (must be achievable, otherwise "wishful thinking"),
 - overview of internal organisation and resources,

- development of different options and choice of option closest to the “core competences”,
- development of clear concept / basic strategies,
- focus on implementation (strategic programme, controlling etc.).

The upshot of this ground work undertaken by EUMC was the data collection system currently in place for racism and diversity, where RAXEN was permanently evaluated and further developed for maximum high impact. Moreover, it resulted in a more focused and efficient approach with concrete impact.

Another crucial factor for the success of the Agency would be its ability to promote the strong involvement of all relevant stakeholders, key actors and civil society in a consistent and structured way. To this end, the Agency should:

- 1) adopt an inclusive/networking approach to other stakeholders and actors from the beginning in order to great the best synergies and great win/win situations, e.g. EUMC experience in setting up RAXEN
- 2) be an genuine instrument for dialogue with civil society by:
 - integrating civil society (closer context) in the structure and work (Round Tables, Focal Points).
 - identifying specific gaps and needs for information and involvement of the broader civil society (Eurobarometer surveys).
 - developing networks, common projects with the media (e.g. CIVIS media prize) and establishing close cooperation with people who could influence the public discourse.

Finally, the Agency should establish its internal organisation in a way to create added value. To this end the following conditions should be met:

- 1) The importance of Fundamental Rights should be reflected on the Agency having sufficient resources and clear framework. For example, EUMC had faced resource constraints from the start; it was understaffed for its complex and sensitive issue (37 staff members including administration for 25 Member States) as opposed to other “new agencies” having 100 – 200 people from the start. This was crucial since the credibility of the EU would be measured, inter alia, by the allocation of sufficient resources. The Agency should have a clear framework which also meant that it should be consulted for fundamental rights issues and be a centre for public discourse.
- 2) The Agency should develop horizontal and vertical internal structures and integrate quality assurance from the beginning by:
 - integrating the EUMC re-organization experience of the last two years,
 - combining the functional structures (including clear responsibilities) with an internal process structure. This, in turn, meant the development of key procedures including the aspect of “quality assurance” from the beginning, e.g. common view for responsibilities; creation of shared knowledge; more interaction between Units.

- 3) The Agency should have a special focus on “knowledge management” and avoid information overflow by:
 - learning from the experience of the EUMC, e.g. the latter managed to reduce RAXEN related information overflow from 100% to 20%.
 - Integrating from the start a knowledge management system and promoting cross unit-internal knowledge-management by (i) identifying needs for co-operation; (ii) interlinking Units with the help of software; and (iii) integrating the knowledge in the organization itself.
- 4) The Agency should keep the independence of the Management Board to support its credibility and avoid creating double structures. For example, the experience of the EUMC showed that the independence of its Management Board gave the EUMC credibility. It also met the requirements of the Paris Principles. Significantly, the EUMC experience also showed that a scientific committee would create double structures, unclear responsibilities and administrative burdens.

Finally Mrs Winkler explained how the new Agency could give added value to the EU by:

- 1) Enhancing EU credibility: “human rights and human face” of the EU,
- 2) Becoming the centre of information on the basis of being a truly a service organisation. This, in turn, meant that the Agency could be
 - a mechanism for permanent data collection
 - provider of objective, reliable and comparable information
 - an institutional link to EU institutions,
- 3) Becoming the centre for networking and a bridge-builder to key actors and areas. In this sense, the Agency could act as the interface with civil society and co-operate closely with Council of Europe as well as with other international and national organisations.
- 4) Becoming a centre of knowledge and an advisory body. In this capacity it would:
 - Provide in-house EU expertise on fundamental rights,
 - Provide opinions, conclusions and advisory function,
 - Be involved in awareness raising and human rights education.
- 5) Being an instrument for dialogue with civil society by:
 - Networking and integrating stakeholders,
 - Representing the positive “human” face of the European Union,
 - Supporting human rights initiatives at national level,
 - Supporting existing organisations,
 - Acting as a bridge-builder for the European Union to the civil society,
 - Supporting activities on the ground (not working in an “ivory tower”),
 - Working with the media,
 - Raising awareness in relation to human rights.

Mr. Kimmo Kiljunen stressed that how the EU values had been enshrined in the Charter of Fundamental Rights and how the second article of the Constitution

emphasised the values of social Europe, e.g. human dignity, solidarity, equality, tolerance, etc. Although the Charter provided a broad framework of fundamental rights, the key challenge remained how these could be realised in the EU.

According to Mr Kiljunen, the Agency should collect and analyse data as well as make recommendations regarding human rights. In relation to its scope/competence, he strongly believed that it should cover all rights rather than having a priority list. In reality, it could focus on specific sets of right at a particular time. Its geographical coverage should be on Member States and on EU institutions when operating outside the EU, e.g. the EU Rapid Reaction Force. It should work closely with the CoE with which it should agree a division of labour. In his view, the Agency should be politically more ambitious, especially because it would be an EU body. The EUMC should be the basis for the Agency, which should be independent of both Member States and EU institutions. Indeed, the Agency's credibility and authority were highly contingent on its independence. The Agency should not be a public relations agency. It should have independent research staff with strong expertise. To this end, it should have appropriate resources and staffing levels. Evaluation should also be carried out not only on the human rights situation in other countries but also of the Agency itself.

Session 4 discussion with all participants of the hearing

Before opening the floor, Mr Fonseca Morillo summarised the key questions to be discussed in this session: (i) how should the Agency's internal structure look like; (ii) what should be the make-up of its Management Board; etc.

Participants from the floor raised the following issues:

Committee of the Regions

Concern was expressed about the Agency's independence. It was stressed that unless the Agency was seen as independent, it would have no credibility/authority. The issue of the Agency's resources was also an area for concern, especially in view of the EUMC experience of under-resourcing. A view was expressed that the Agency should have about 150 staff.

L'Association européenne pour la défense des droits de l'Homme [FIDH-AE]

Since the Agency's mandate had not been decided yet, it was premature to discuss its structure at that moment. Still one key point was that this Agency should not just become the 26th EU Agency. Moreover, the Agency should be independent and autonomous. This meant that its Management Board should not have representatives from Member States, in which case all decisions would be taken in this light. The Agency's structure should reflect the Paris principles. The NGOs should be integral to the structure of EUMC. The level of resources allocated to the Agency would reflect how important fundamental rights were for the Commission, the Council and the Member States.

German Institute of Human Rights

The importance of the Agency's independence was stressed again as was the need for it having an independent orientation as regards examining human rights policies within the EU. The Paris principles should be factored into the process and be properly fulfilled. The Agency's legal form was not clear yet. In their view, it would

be difficult to have MEPs. The Agency was seen as an instrument linked to the first pillar and as such as having a limited mandate.

National Commission for Human Rights, Greece

A key issue was how the Paris principles could be applied in relation to the Agency. Regarding its Management Board, the EU had already a good example at its disposal, Article 29/Working Party on Data Protection.

A view was expressed that the regulation setting up the Agency should oblige all Member States to have National Human Rights Institutions (as was the case with the setting up of independent national Data Protection Authorities). Member State representatives on the Agency's Board should be designated by those national human rights institutions.

The Agency's monitoring of human rights should cover actions of EU institutions outside the EU. Its remit should cover all three pillars.

European Network Against Racism [ENAR]

The speaker was willing to share with Commission staff experience and methodological points as regard budgetary issues.

Ministry of Justice, France

The resources allocated to the Agency should take into account the increased workload (number of tasks) given to it. The creation of a scientific advisory council was welcomed. Both the EU and Member States should be represented on Board which would establish priorities.

GENERAL CONCLUSIONS OF THE HEARING

- **Mr. Francisco Fonseca Morillo**, European Commission, Director of Civil Justice, Fundamental Rights and Citizenship (DG JLS)

Mr. Francisco Fonseca Morillo thanked all participants for attending the hearing and contributing to a very interesting discussion and summarized the day's proceedings as follows.

He noted that a general point raised but not answered had been that of the Agency's name: Fundamental or Human Rights Agency. Everybody agreed that the Agency should not duplicate the work of other institutions/mechanisms. The Agency would be a regulatory but not a legislative body. It should be (and be seen to be) genuinely independent. It should be an Agency which offered expertise in the field of human rights. Its tasks should not be bureaucratic. It should be proactive, rather than just reactive, regarding the promotion of civic culture and human rights. The Agency should set priorities regarding its activities in its work programme. In terms of Article 7 the door was not closed as to the Agency's role and there were intelligent ways of not ignoring this. The Agency's geographical scope should cover Member States, candidate countries and the action of EU institutions outside the EU. The Agency should carry out human rights impact assessment regarding EU policies, where there was a need for a comprehensive overview. One should explore what synergies could be realized between the Agency and other EU Agencies, including the future Gender Institute. The Agency should co-operate closely with the CoE and forge close links with NGOs, civil society, etc. In terms of its tasks and due to subsidiarity, the Agency would not replace national/transnational networks. It would rather act as a network of networks. There was a political function in the Agency's work which was still to be decided. He noted the importance of the Agency's ability to take autonomous action and issue recommendations and opinions. It was important that the Agency did not become just the 26th ERU Agency. Finally, the Agency should be independent, responsible, accountable and open to all strands of civil society.

CLOSING REMARKS

- **Mr. Franco Frattini**, Vice-President of the European Commission

Mr. Franco Frattini in his closing remarks thanked the participants and expressed his satisfaction that the public consultation, of which the hearing was part, hearing had obviously been a success as manifested by both the high quality of the contributions received by the Commission and by the mobilization of actors that it had given rise to. As he explained, this public consultation was an example of the advanced implementation of Article I-47 of the Constitutional Treaty which stipulated that the EU institutions should initiate and maintain an open, transparent and sincere dialogue with representative associations and civil society.

Mr Frattini underlined that the Commission started this public consultation with an open mind. The consultation had yielded a wealth of material, comments, position papers and recommendations which Mr Frattini promised would all be taken account of before the Commission would finalise its proposal.

Mr Frattini proceeded to discuss certain points pertinent to the creation of the Agency. It was obvious that there had been almost unanimity across the board in welcoming such Agency. There had also been unanimity as regards the need to keep the themes of racism and xenophobia at the heart of the Agency's activities. The actual modalities on how such issues would be included in the Agency's competences would be precisely defined in the forthcoming Commission's proposal.

There had been unanimity about the need for the Agency to avoid duplication of tasks already performed by other human rights organisations, at both national and international levels, e.g. CoE, OSCE, UN specialised agencies, etc. Close co-operation between the Agency and these institutions was essential. The fact that the EU and the CoE were already co-operating closely meant that it was feasible to create a panoply of mechanism that would ensure synergies and avoid competition in the field of human rights. One could choose from a plethora of possible solutions such as the CoE participation in the Agency's Management Board, etc.

Mr Frattini discussed then a number of issues for which a range of opinions exist, although in his view one could still talk of a broad consensus. For example, the Agency should not handle individual complaints, although some NGOs had proposed that it could play an *amicus curiae* role in such cases.

In his view, consensus, though not unanimity, also existed as regards the Agency's geographical scope. Some NGO and at least one Member State had rather ambitious plans for the Agency which they saw as covering third countries, or at least candidate countries. Mr Frattini did not want to exclude such a wide coverage from the start. However, he stressed that the tasks and resources finally allocated to the Agency would determine how far its coverage could extend. He was also aware of others who argued that the Agency should be allowed to establish itself within the EU itself in the first instance, before considering addressing issues in third countries, e.g. after its first

five years of operation. In any case, Mr Frattini stressed that the current consensus was to limit the Agency's geographical coverage to the EU and its Member States.

He was also aware of the sensitive issue of Article 7 of the Treaty of the EU. One position had been to leave this question to Member States. On the other hand, a number of NGOs had advocated the need for the Agency to have a role as regards Article 7. In his view, this question remained open and he felt that one should not a priori preclude the Agency from any work related to Article 7. For example, he found the idea of the Agency intervening upon request quite attractive, especially in view of its expertise in this area.

Mr Frattini was also aware of the current debate about the Agency's name. He pointed out that the Commission considered the terms "fundamental" and "human" rights to be equivalent, but preferred to use the former to maintain a link with the Charter. As for the Agency's scope, one should decide whether it was feasible to expect the Agency to cover all 50 rights on the Charter as opposed to having a set of priorities. Some had suggested that one took an incremental approach and starting with a focus on racism, xenophobia and all aspects of discrimination to allow the Agency to eventually cover all rights in a few years.

The definition of the Agency's tasks had attracted a number of ideas and recommendations from both Member States and NGOs. A first triad of tasks about which there seemed to be wide consensus comprised the following: (i) collection of data; (ii) analysis of data and (iii) production of opinions and recommendations. With regard to the latter, Mr Frattini stressed that he would draw the Commission's attention, since it could be a rather sensitive issue. Another key challenge for the Agency would be to collect reliable and comparable data of good quality. Other tasks that could be given to the Agency would be the dissemination and awareness raising activities in the field of human rights.

As far the Agency's structure was concerned, Mr Frattini stressed that the Agency should be an independent office with freedom and essential resources to collect information and then to advise the EU institutions. Issues that remain to be solved were the composition of its Management Board, the links of the Agency with the network of independent experts, etc.

In closing Mr Frattini stressed that despite the fact that one was facing many questions and challenges as regards the setting up of such a Agency, he was convinced that with the help and commitment of all relevant stakeholders and actors they could transform the political will of Member States and create an Agency for the protection and promotion of fundamental rights within the EU.