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Proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights and a proposal for a Council Decision empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI of the TEU (Docs 10774/05, 10774/05 ADD 1 and COM (2005) 280)

Sub-Committee E (Law and Institutions) examined the proposal at its meeting on 19 October 2005.

While you acknowledge the need for careful consideration of various aspects of the proposal, you do not give any indication of the Government's view on these matters. Nor, I am sure you will agree, is the list of subjects you identify exhaustive. There is a need for further examination of the proposal, and the Committee would be grateful for a full statement of the Government's position on the following matters:

- the adequacy of the legal basis of the proposal and whether or not a Regulation creating an EU (as distinct from an EC) agency can be based on Article 308 of the EC Treaty. We note that the Commons European Scrutiny Committee has also raised this point;
- the extent to which the Agency may "refer" to international human rights instruments other than the EU Charter (Article 3(2));
- whether the remit of the Agency should extend beyond Community law to encompass Foreign Common and Security Policy (Article 2 refers only to Community law);
- the geographical scope of the Agency, in particular the extent to which it should include participation by non Member States and therefore stretch beyond the Union;
- the extent to which the Agency should be involved in pre-legislative scrutiny;
- the extent to which the Agency should be involved in monitoring Member States' compliance with fundamental rights under Art. 7 TEU;
- the degree of any overlap between the Agency and the Council of Europe and other agencies (at national, Community and international level) in the field (including in particular the proposed EU Institute for Gender Equality) and how this can be minimised;
- the structure of the Agency and its independence and accountability (particularly the role of the Commission in setting the Agency's Work Programme and whether or not its representatives on the Management Board ought to be subject to the requirement of independence which applies to the other board members).

The Committee has decided to hold this document under scrutiny pending receipt of the information requested.

I am copying this letter to Jimmy Hood MP, Chairman of the Commons European Scrutiny Committee; and to Simon Patrick, Clerk to the Commons Committee; Michael Carpenter, Legal Adviser to the Commons Committee; Les Saunders (Cabinet Office); and Stuart Young, Departmental Scrutiny Co-ordinator.

GRENFELL

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