



Information Documents

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The Fundamental Rights Agency of the European Union - A Council of Europe Perspective

Contribution by the Secretary General of the Council of Europe

In December 2003, the member States of the European Union meeting within the European Council decided to convert the European Monitoring Centre on Racism and Xenophobia into a Fundamental Rights Agency. In October 2004, the European Commission prepared a communication on the future Agency with a view to launching a public consultation (COM(2004)693 Final). This memorandum presents the contribution of the Secretary General of the Council of Europe to the dialogue on the Agency.

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1. Introduction

1. From the Council of Europe's perspective, the decision to establish a Fundamental Rights Agency ("the Agency") within the European Union (EU) is to be welcomed, as it reflects the commitments of the EU to respect fundamental rights. The **Joint Declaration on cooperation and partnership between the Council of Europe and the European Commission** of 3 April 2001 recognised that our organisations share the same values and pursue common aims, in particular with regard to the protection of human rights and fundamental freedoms is concerned. As a pan-European organisation which now comprises 46 European member States, including all EU member States, the Council of Europe is working to promote and protect these values throughout Europe. Instead of duplicating activities, we must enhance the complementarity of our actions and ensure maximum benefit for all countries and citizens concerned.

2. It is in this spirit that the following observations and ideas for the future relationship between the Council of Europe and the Agency are presented. This memorandum addresses certain key questions raised in the Commission's communication:

- the Agency's field of action;
- its tasks;
- its operational structures;
- its relationship with the Council of Europe.

3. Based on its rich experience in the field of human rights protection, the Council of Europe stands ready to bring its full support to help ensure that the Agency leads to genuine progress in the protection of fundamental rights throughout Europe.

2. Defining a useful field of action for the Agency: opportunities and risks

4. The European Union has gradually acquired more and more competences in areas affecting the daily lives – and the fundamental rights – of individuals. Both the integration of the EU Charter of Fundamental Rights in the Treaty establishing a Constitution for Europe and the commitment to accede to the European Convention on Human Rights (ECHR) are responses to this development. These steps ensure that the legal protection of human rights is strengthened internally – within the legal order of the EU – as well as externally, by making that legal order subject to the judicial review of the European Court of Human Rights. It is the combination of these measures that will ensure legal certainty and coherence in fundamental rights protection all over Europe. It is against this background that the role and functions of the proposed Fundamental Rights Agency should be considered.

2.1 The fields covered by Council of Europe human rights mechanisms and standards

5. The Council of Europe and the European Union share the same values and pursue common aims with regard to the protection of democracy, respect for human rights and fundamental freedoms and the rule of law.¹ On the basis of common standards, which go even beyond the rights of the EU Charter of Fundamental Rights, the Council of Europe already carries out general human rights monitoring of its member States, including all EU member States. The Council of Europe's *acquis*, which served as a basis for the drafting of the EU Charter of Fundamental Rights², includes in particular, standards on civil and political rights, social, cultural and economic rights, minority rights, the treatment of persons deprived of their liberty and the fight against racism and intolerance. Over the past five decades, a broad arsenal of human rights mechanisms, functioning with recognised expertise and professionalism have been developed:

- the European Convention on Human Rights and its Protocols;
- the Revised European Social Charter;
- the European Convention for the Protection of Torture and Inhuman or Degrading Treatment or Punishment;
- the European Commission against Racism and Intolerance;
- the Framework Convention for the Protection of National Minorities;

6. Independent human rights bodies, most of them treaty-based, actively monitor respect for common European standards on a country-by-country basis, including through country visits and on-the-spot investigations and, increasingly, also thematically. They identify issues of non-compliance, address recommendations and, in the case of the European Court of Human Rights, binding judgments to the member States in case of non-respect of these standards. In addition, the Parliamentary Assembly, the Committee of Ministers and the Congress of Local and Regional Authorities of the Council of Europe, carry out political monitoring, both thematic and country-specific, in which issues relating to human rights, democracy and the rule of law play a predominant role. The work of the European Commission for Democracy through Law ("Venice Commission") which assists the organs of the Council of Europe as well as member States in constitutional matters, also encompasses these issues.

7. Since 1999, the work of these bodies is being complemented and supported by the work of the **Council of Europe Commissioner for Human Rights** who has a general mandate to promote the effective respect for, awareness of and education in human rights standards in the member States, notably through visits, dialogue and the preparation of reports, opinions and recommendations.³

¹ Joint Declaration on Co-operation and Partnership between the Council of Europe and the European Commission of 3 April 2001, § 2.

² According to the Charter's Preamble: "This Charter reaffirms [...] the rights as they result, in particular, from the [...] European Convention for the Protection of Human Rights and Fundamental Freedoms, the social charters adopted by the Community and by the Council of Europe and the case-law of the Court of Justice of the European Communities and of the European Court of Human Rights.

³ Resolution (99)50 on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999, at its 104th Session.

8. The work of the Council of Europe in the field of human rights does not only follow a country-by-country approach but also a thematic one. This is true not only in the framework of intergovernmental and parliamentary activities (adoption of recommendations, guidelines, reports, studies, etc.) but also, and more and more often, in the work of the various independent human rights mechanisms (see, for instance, general policy recommendations of the European Commission against Racism and Intolerance, the thematic sections in the annual reports of the European Committee for the Protection of Torture and Inhuman or Degrading Treatment or Punishment). The case-law of the European Court of Human Rights as well as that of the European Committee of Social Rights, under the Social Charter, are also often considered from a thematic angle. This case-law as well as the results of the work of the various independent human rights mechanisms in general are instrumental in identifying problematic areas which are regularly taken up by the Parliamentary Assembly and the Committee of Ministers. This may lead to the adoption of new standard-setting instruments or other activities, such as cooperation programmes, aiming at assisting countries in achieving the required standards.

2.2 The Agency as an independent EU human rights institution

9. The establishment of the Agency must respond to an actual need. Being part of the EU framework, the Agency can usefully contribute to the promotion and protection of human rights within the European Union, exercising functions, which are to some extent similar to those carried out by independent national human rights institutions in several European countries. The Council of Europe encourages its member States to set up such human rights institutions since it is convinced that there is a role to be played by non-judicial institutions in providing objective information and advice to national authorities in relation to human rights issues and in raising awareness about human rights in society.⁴

10. In theory, there would be no particular reason to prevent the Agency from covering the entire range of human rights and fundamental freedoms coming within the field of application of EU law. It could be expected that the Charter of Fundamental Rights serves as the main reference document for the Agency. While the Charter is not yet formally binding *per se*, the European Parliament, the Council and the Commission have committed themselves to observing its standards and it has already started to play a certain role in the case-law of the European Court of Justice, the Court of First Instance as well as the European Court of Human Rights. The Charter has now been integrated into the Treaty establishing a Constitution for Europe, which was signed in Rome on 29 October 2004. Taking into account the broad scope of the rights covered, this would constitute a qualitative leap compared to the rather limited remit of the existing Monitoring Centre. It will, no doubt, be necessary to determine priorities in the Agency's work, reflecting the main policy areas of the European Union, such as the fight against racism and xenophobia. A thematic approach, concentrating on areas having a special connection with Community policies or the Union (immigration, asylum, non-discrimination), would make the Agency's action more focused and effective.

⁴ See Recommendation No. R (97) 14 of the Committee of Ministers to member States on the establishment of independent national institutions for the promotion and protection of human rights. See also Resolution 48/134 of the General Assembly of the United Nations on national institutions for the promotion and protection of human rights.

11. The data collected and supplied by the Agency would provide information for the work of all EU institutions – each acting within its own competences – and make a useful contribution to mainstreaming human rights standards in the definition of EU legislation and policies. The European Union would thus, like several EU and Council of Europe member States have done, be filling a gap in its internal “human rights infrastructure” by creating an Agency whose role would be complementary to those of the Luxembourg Courts and of the European Ombudsman.

2.3 Should the Agency cover action by member States within the scope of EU competences?

12. In accordance with consistent case-law of the European Court of Justice, EU member States are bound to comply with the Union’s fundamental rights standards whenever they act within the context of EU law.⁵ It could thus be considered legitimate for the Agency to cover to some extent the implementation of EU law and policies by the member States. In this area, the Agency could collect and analyse information and data communicated to it by the member States, including national human rights institutions and ombudspersons, non-governmental organisations as well as by the EU institutions and the Council of Europe.

13. That being said, there would be no particular added value in the Agency advising EU member States directly. The various Council of Europe human rights bodies already monitor the situation in EU member States irrespective of whether a specific matter can be regarded as implementation of EU law or a “purely” domestic issue. Every State party to the European Convention on Human Rights is required to guarantee to everyone within its jurisdiction effective observance of the protection laid down by the Convention, including protection vis-à-vis the effects of EU law in its domestic legal system.⁶ It must be emphasised that human rights questions have typically a transversal character, transcending the lines according to which competences are distributed between the European Union and its member States. They call for a broad and comprehensive approach, which is precisely the approach followed by the relevant human rights bodies of the Council of Europe. Close collaboration with the monitoring mechanisms of the Council of Europe would not only be a useful complement for the Agency, but a real necessity.

14. Moreover, the scrutiny of member States may raise concerns about the reach of EU competences in the field of fundamental rights. The Commission has no doubt rightly suggested to follow a thematic approach, which would avoid extending the remit of the Agency to matters outside the scope of EU competence. Concentrating on matters which are of special relevance to the Union, the Agency’s reports and opinions could thus inform EU institutions, drawing attention to human rights concerns which have been identified in the implementation of EU law and policies. Any problems or deficiencies noted would no doubt have to be brought to the attention of and addressed by the competent EU institutions, in particular the Commission, through the applicable

⁵ ECJ, judgment of 13 July 1989, Case 5/88 Wachauf, [1989] ECR 2609, judgment of 18 June 1991, ERT, [1991] ECR I-2925. See also Article II-111 of the Constitutional Treaty.

⁶ Cantoni v. France, judgment of 15 November 1996; Matthews v. the United Kingdom, judgment of 18 February 1999; T.I. v. the United Kingdom, Decision of 7 March 2000.

procedures. From that perspective, it would not seem advisable that the Agency's mandate extends to issuing recommendations addressed directly to EU member States.

2.4 Should the Agency monitor member States outside the remit of EU competences?

15. The Commission's Communication mentions Article 7 of the Union Treaty as a possible legal basis to monitor the general human rights situation in EU member States, even in areas where the latter act autonomously, outside the remit of EU competences. Article 7 TEU provides for an exceptional procedure to be applied in extreme situations: a clear threat of a serious breach of the common values on which the Union is founded (according to Article 6 TEU, liberty, democracy, respect for human rights and fundamental freedoms and the rule of law). As the Commission itself points out, these values go well beyond the traditional area of fundamental rights protection which the European Council described as the Agency's field of action. Even assuming that it were possible to construe a competence for the Agency under Articles 6 and 7 TEU, the question arises whether it would make sense to monitor all EU member States routinely in order to identify very exceptional situations of the scale and dimension envisaged in this provision?

16. There can be no doubt that the existing Council of Europe mechanisms are sufficient to ensure that situations such as those contemplated in Article 7 TEU are identified at an early stage. In addition to the above-mentioned human rights mechanisms (§ 6), the human rights situation in all member States receives close attention from the Committee of Ministers, the Parliamentary Assembly and the Secretary General, who may also use his powers of inquiry under Article 52 of the ECHR.⁷ The EU Commission itself has recognised the role of the Commissioner for Human Rights in securing respect for and promotion of common values on the basis of Article 7 TEU.⁸ The various Council of Europe bodies may usefully assist the EU Commission and Council in the exercise of their functions under this provision.

17. It would appear evident that Article 7 TEU is an exceptional provision to be applied only in extreme situations. As such, it could not serve as a basis for the Agency to monitor regularly and routinely respect for human rights by EU member States acting within their own domestic legal orders. As the Commission rightly acknowledges, such an approach would duplicate the work already being done, notably by the Council of Europe. Indeed, the duplication of monitoring mechanisms runs the risk of weakening the overall protection offered and undermining legal certainty in this field. It would be unfortunate if assessments by the Agency were to diverge from, or even contradict, assessments made by Council of Europe bodies. Indeed, such diverging or conflicting assessments relating to the same human rights would not only result in great confusion for citizens and member States, but could even provide opportunities for forum shopping, with one assessment being set against the other. All this is hardly conducive to ensuring compliance with human rights standards. It risks weakening the authority and diluting the credibility of the respective EU and Council of Europe bodies, thereby

⁷ "On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention."

⁸ Communication from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union, COM(2003)606 final of 15 October 2003, point 2.3.

affecting the overall effectiveness of fundamental rights protection in Europe. Both citizens and member States have a right to see clearly who is responsible.

18. There is also a broader political dimension to this question. Having parallel monitoring systems operating for the 25 countries making up the European Union on the one hand, and for the 46 countries making up the Council of Europe on the other, could create new dividing lines in Europe in the human rights field, an area *par excellence* where Europe should be united by the same common standards and values. If Europe wishes to be convincing and credible when it defends the universality of human rights or ethical globalisation, it must also prove itself capable of uniting around those common standards and values.

2.5 Geographical scope of the Agency's activities

19. The Commission's Communication rightly emphasises that the remit of the Agency should not extend to third countries. Indeed, confining the Agency's scope to the Union would underline the will to emphasise the importance of fundamental rights within the internal functioning of the Union and would be an effective means of reminding its institutions of their responsibilities in the field of fundamental rights.

3. A clear definition of the Agency's tasks

20. The Agency's success will depend to a large extent on a clear definition of its tasks and functions. Although some inspiration may be drawn from the principles set out in Resolution 48/134 of the General Assembly of the United Nations, it would neither be appropriate nor materially possible for the Agency to exercise all the responsibilities mentioned therein, in particular those relating to quasi-judicial functions. On the one hand, the effective functioning of the existing Council of Europe human rights mechanisms must be preserved. On the other hand, due regard must be paid to the specific characteristics of the Union and Union law. It would therefore appear appropriate for the Agency to concentrate on the core functions of data collection, analysis, awareness raising as well as the preparation of opinions and studies for the EU institutions.

3.1. Data collection, analysis and awareness raising

21. The European Council Conclusions stressed "the importance of human rights data collection and analysis with a view to defining Union policy in this field" as the main functions of the Agency. As indicated by the Commission, the Agency should primarily focus on collecting and disseminating data on fundamental rights at European level to enable the Union to take these rights fully into account when drafting and implementing its policies.⁹ It will be of paramount importance to ensure that such data are objective and reliable. The Agency could use a wide variety of sources, including independent national human rights institutions, ombudspersons, non-governmental organisations and research centres. The Council of Europe will be a reliable partner in this respect. A fruitful exchange of information and data takes already place between the European Commission against Racism and Intolerance and the Monitoring Centre on

⁹ Communication point 5.1.

Racism and Xenophobia on the basis of an Agreement concluded in 1998.¹⁰ Such exchange should be extended to cover all Council of Europe human rights mechanisms. Their data are based not only on governmental sources, but also on information provided by non-governmental organisations and social partners and have been verified by independent experts.

22. The Agency could also play an important role in generally raising awareness of the general public, member States and the relevant EU institutions about the importance of human rights for the work of the European Union. The Council of Europe, which has a proven track record of awareness raising and education activities in the area of human rights, stands ready to collaborate actively in the development of the Agency's communications and dialogue strategy. This is an ideal area for synergy and for possible joint Council of Europe/European Union initiatives, which could be used to stress that both our organisations defend the same values and standards.

3.2. Opinions and views intended for EU institutions

23. The Commission's Communication mentions the possibility of addressing opinions and views to the EU institutions. The Agency might indeed play a useful advisory role whenever human rights questions arise in the preparation or application of EU legislation or policies. More and more EU legislation directly affects fundamental rights. One only needs to look, for example, at the numerous legislative proposals made or under preparation with a view to establishing an area of freedom, security and justice (in particular in the context of the common asylum and immigration policies, access to justice, combating crime and terrorism, procedural safeguards for suspects and defendants in criminal proceedings throughout the Union, etc.) to realise that the proposed Agency could play a useful role in providing independent information about the relevant human rights standards to the EU institutions. This could possibly extend to giving advice to the EU institutions on draft EU legislation, notably as regards its compatibility with the EU Charter of Fundamental Rights and the European Convention on Human Rights as well as with the Revised European Social Charter. By carrying out research and studies, the Agency could, in this context, usefully support the work already carried out in particular by the EU Commission. The Council of Europe recommends that member States verify regularly the compatibility of draft legislation with human rights standards with a view to preventing human rights violations.¹¹ In many countries, national human rights institutions perform this task and make recommendations in order to ensure that legislative and administrative provisions conform to national and international human rights standards.

¹⁰ Agreement between the European Community and the Council of Europe for the purpose of establishing, in accordance with Article 7(3) of Council Regulation (EC) No 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia, close cooperation between the Centre and the Council of Europe, Official Journal of the EC, L 44/33 of 18 February 1999. The text is also contained in Doc. CM/Inf(99)5 of 18 January 1999.

¹¹ See Recommendation Rec(2004)5 of the Committee of Ministers to member States on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights.

3.3. Opinions and views intended for member States

24. For the reasons explained above (§§ 13 to 18), there would appear to be no added value for the Agency to address opinions and views directly to individual EU member States.

4. Synergy with the Council of Europe

25. Close cooperation and synergies with the Council of Europe will be key factors for the Agency's success. This would be particularly necessary if the Agency were to collect information and provide advice about human rights issues that arise in the EU member States acting in the context of EU law. The Agency must not only be aware that such issues are already covered by the various Council of Europe monitoring mechanisms and institutions operating in the human rights field. It should also use the standards developed by them and other substantive results of their work. The Agency's mandate should contain a general provision to the effect that its tasks and activities shall not duplicate the role and functions of Council of Europe institutions and mechanisms operating in the human rights field, but on the contrary cooperate actively with them.

26. Exchange of information and data would clearly not be sufficient to ensure meaningful cooperation between the Agency and the Council of Europe. Practical experience concerning relations with the European Monitoring Centre on Racism and Xenophobia ("the Centre") has underscored the importance of direct participation of Council of Europe representatives in the Centre's institutional structure. Under the agreement on cooperation between the Centre and the European Commission against Racism and Intolerance (ECRI),¹² an independent person from among ECRI's members serves on the Centre's management board, together with a deputy. The current arrangements with ECRI, which also include joint conferences and regular meetings of the respective bureaux, should be used as a basis for developing the future relationship between the Agency and the Council of Europe. We would propose concluding a cooperation agreement between the European Union and the Council of Europe, building upon and expanding the example of the existing agreement concerning relations between the Centre and ECRI.

27. In drawing up its programme of activities, it would be essential that the Agency takes account of activities already carried out by the Council of Europe and avoids unnecessary *duplication in practice*, that is in its operational activities. It will thus be essential for the Agency to consult with Council of Europe institutions and mechanisms operating in the human rights field, including on a day-to-day technical basis. Every opportunity for concrete cooperation activities between the Agency and the relevant Council of Europe institutions should be seized (for example joint activities in the field of human rights education and awareness).

¹² See footnote 10.

5. The Agency's operational structures

28. In the light of the Council of Europe's experience, and taking into account in particular the above-mentioned Committee of Ministers' Recommendation No. R (97) 14, there is no single model for the institutional arrangements of national human rights institutions. Irrespective of the organisational arrangements and management structure eventually chosen, the inherent characteristics of such institutions and thus of the Agency are that they are independent, impartial, pluralistic in their composition and possess sufficient human rights expertise.

29. As acknowledged by the EU Commission, the Agency would only benefit from the participation of Council of Europe representatives in its management bodies. Taking into account the broadened remit of the Agency, all Council of Europe human rights mechanisms, including the Commissioner for Human Rights, should be represented in those bodies.

6. Concluding remarks

30. From the Council of Europe's perspective, the decision to set up a Fundamental Rights Agency is to be welcomed as a further sign of the European Union's commitment to human rights. In order for the Agency to play a useful role in filling existing gaps in the promotion and protection of human rights in Europe and avoid unnecessary duplication with the work of the Council of Europe, it should be conceived as an "independent human rights institution" of the European Union. Such a body, whose remit would be limited to matters falling within EU competence, could usefully contribute to mainstreaming and promoting human rights in EU decision making. Its main task would be to collect, record and analyse information, in particular from independent national human rights institutions, ombudspersons, non-governmental organisations, member States, EU institutions, the Council of Europe and other international governmental organisations. In cooperation with national authorities and the Council of Europe, it should develop a communications and dialogue strategy aimed at raising awareness among the public about the importance of human rights in the policies, legislation and other activities of the European Union. It may also usefully be given the task of assisting the EU Commission in examining the compatibility of draft EU legislation with the Charter of Fundamental Rights, the European Convention on Human Rights and the Revised European Social Charter.

31. There will be a need for close coordination with the Council of Europe and its mechanisms operating in the human rights field, including the Commissioner for Human Rights, in order to avoid duplication and guarantee the best possible use of resources. This needs to be reflected in the Agency's mandate, its organisational structures (direct participation of Council of Europe representatives), and in a cooperation agreement to be concluded between the European Union and the Council of Europe.

32. The Council of Europe and the European Union must use all possible synergies and enhance the complementarity of their activities in the field of human rights protection, thereby ensuring maximum benefit for all citizens and countries concerned. The increased convergence in membership between the two organisations calls for a coherent system of fundamental rights protection for the whole of Europe. The setting up of the Agency provides an excellent opportunity for synergy, which must find its expression in the definition of the Agency's remit and organisational structures as well as in the conclusion of a cooperation agreement with the Council of Europe. Instead of creating new dividing lines in an area of such vital importance as the protection of human rights and fundamental freedoms, Europe should be united by the same common standards and values.

Appendix

Reply to the questionnaire prepared by the European Commission

(1) How can the remit of the Agency be defined in order to ensure both added-value for the EU institutions and Member States and its efficient operation?

The Fundamental Rights Agency (“Agency”) could usefully contribute to the promotion and protection of human rights within the European Union (“EU”), in a similar way as independent national human rights institutions (NHRIs) do in this field in several European countries by providing information and advice to national authorities in relation to human rights and increasing awareness of human rights in society.

The Agency’s remit should respond to an actual need and therefore focus primarily on the EU institutions themselves. In view of the numerous legislative proposals having a direct impact on human rights and fundamental freedoms, in particular those made or under preparation with the view to establishing an area of freedom, security and justice, the Agency could play a useful role in providing independent information about relevant human rights standards to the EU institutions. This might also extend to giving advice to the EU institutions on draft EU legislation, notably as regards compatibility of draft legislation with the EU Charter of Fundamental Rights, the European Convention on Human Rights and with the Revised European Social Charter, thus complementing the work of the EU Commission. The information collected and provided by the Agency could provide information useful to the work of the EU institutions – each acting within its own competence – and make a helpful contribution to mainstreaming human rights standards in the definition of internal EU policies.

The Agency’s field of action might also extend to the implementation of EU law by the member States. In this area, the Agency could collect and analyse information and data communicated to it by the member States, including national human rights institutions and ombudspersons, non-governmental organisations and by the EU institutions. Following a thematic approach and concentrating on matters which are of special relevance to the Union, the Agency’s reports and opinions could provide information to the EU institutions, drawing their attention to human rights concerns which have been identified in the implementation of EU law and policies. Any problems or deficiencies noted will have to be addressed by the competent EU institutions, in particular the Commission, through the applicable procedures.

It would not be advisable to give the Agency a general mandate to monitor regularly and routinely the respect for human rights by EU member States acting within their own domestic legal orders. Since these are already monitored by the various human rights mechanisms of the Council of Europe, such a role would create an obvious risk of overlap and unnecessary duplication of as well as potential contradictions with the work being already carried out by the Council of Europe. Indeed, the duplication of monitoring mechanisms runs the risk of weakening the overall protection offered and undermining legal certainty in this field. Assessments by the Agency might diverge from, or even contradict, assessments made by Council of Europe bodies. Such diverging or conflicting assessments relating to the same human rights would not only result in great confusion for citizens and member States, but could even provide opportunities for forum shopping, with one assessment being set against another. All this is hardly conducive to ensuring compliance with human rights standards, but might also weaken the authority and dilute the credibility of the respective bodies, thereby affecting the overall effectiveness of fundamental rights protection in Europe. Finally, on a broader political level, the existence of two parallel monitoring systems operating, one operating for the 25 member States of the EU and the other for the 46 member States of the Council of Europe could create new dividing lines in Europe in the human rights field, an area *par excellence* where Europe should be united by the same common standards and values.

Furthermore, with regard to the procedure under Article 7 TEU and given that the Council of Europe and the EU share the same values and pursue common aims notably of respect for human rights and fundamental freedoms, the existing Council of Europe mechanisms are sufficient to ensure that situations of serious violations of human rights such as those contemplated in this provision will be identified at an early stage.

(2) In which areas should the Agency operate? Should these areas be defined in relation to the Charter of Fundamental Rights of the Union and if so how (by article or by chapter?). Should certain priorities be established? If so how? How can we ensure that the current remit of the EUMC (racism and xenophobia) is maintained and built on?

The Agency's mandate could cover the entire range of human rights and fundamental freedoms coming within the field of application of EU law with the Charter of Fundamental Rights as the main reference document. While the Charter is not yet formally binding *per se*, the European Parliament, the Council and the Commission have committed themselves to observe its standards and it has already started to play a certain role in the case-law of the European Court of Justice, the Court of First Instance as well as the European Court of Human Rights. Moreover, it has now been integrated into the Treaty establishing a Constitution for Europe.

Taking into account the broad scope of the rights covered by the Charter, it would no doubt be necessary to determine priorities in the Agency's work, reflecting the main policy areas of the European Union, such as the fight against racism and xenophobia. In doing so, the Agency should take account of already existing studies and other activities (conferences, seminars, ongoing research) both nationally and on the level of the Council of Europe in order to avoid duplication and to guarantee the best possible use of resources.

(3) How can the geographic coverage of the Agency be best defined, bearing in mind the need to avoid overlap with existing organisations and the need to ensure that the Agency operates in the most efficient manner possible?

The Agency's field of action should be confined to the European Union, thus underlining both the importance of fundamental rights protection in the Union and the corresponding responsibility of EU institutions in this field.

(4) Which tasks should the Agency be given? How can the Agency gather objective, reliable and comparable data at European level? How can cooperation with Member States and civil society to obtain this information be best assured? How should the Agency present its conclusions and recommendations? How should the work of the Agency be disseminated?

The Agency's main task would be to collect, record and analyse information. It will be of paramount importance to ensure that such data are objective and reliable. The Agency should use a wide variety of sources, including independent national human rights institutions, ombudspersons, non-governmental organisations and research centres. The Council of Europe will be a reliable partner in this respect.

A fruitful exchange of information and data takes already place between the European Commission against Racism and Intolerance and the Monitoring Centre on Racism and Xenophobia on the basis of the 1998 agreement between the Council of Europe and the European Community. Such exchange should be extended to cover all Council of Europe human rights monitoring mechanisms. Their data are based not only on governmental sources, but also on information provided by non-governmental organisations and social partners and have been verified by independent experts. In cooperation with national authorities and the Council of Europe, it should develop a communication and dialogue strategy aimed at raising

awareness among the public about the importance of human rights for EU policies and legislation. It may also usefully be given the task of assisting the Commission in examining the compatibility of draft EU legislation with the Charter of Fundamental Rights and the European Convention on Human Rights.

As said under (1), the information collected and provided by the Agency could provide information useful to the work of the EU institutions and make a helpful contribution to mainstreaming human rights standards in the definition of internal EU policies.

(6) How can close cooperation with other stakeholders be assured, notably with the Council of Europe? How can the agency capitalise on the wealth of experience of the national bodies for the protection and promotion of fundamental rights and other similar national agencies? Following the creation of the Agency, how can the added value of the Network of Independent Experts be assured?

(7) Which structures should be put in place to ensure that the Agency operates in an independent and efficient manner? Who should be represented on the Management Board of the Agency? Should a scientific advisory committee be established?

Close cooperation with the Council of Europe will be a key factor for the Agency's success, especially if it is to collect information and provide advice about human rights issues that arise in EU member States. The Agency should be fully aware of and draw on the substantive results of the various Council of Europe monitoring mechanisms and institutions and the standards developed by them. In drawing up its programme of activities, it should avoid duplicating the human rights work carried out by the Council of Europe.

There will be many opportunities for concrete cooperation activities (for example joint activities in the field of human rights education and awareness) between the Agency and the relevant bodies of the Council of Europe and mutual exchange of information wherever possible.

The mandate of the Agency should contain a general provision to the effect that its tasks and activities shall not duplicate the role and functions of Council of Europe institutions and mechanisms operating in the human rights field but on the contrary cooperate actively with them.

In order to achieve synergies and avoid duplication in practice, it would be essential, analogous to the current arrangements concerning the EUMC and the European Commission against racism and Intolerance (ECRI), for the human rights bodies of the Council of Europe to be represented in the management structures to be created for the Agency and to conclude a cooperation agreement between the EU and the Council of Europe, which provides for active cooperation with the Council of Europe institutions and mechanisms, including on a day-to-day technical basis.