

PRELIMINARY REMARKS

of the
European Monitoring Centre on
Racism and Xenophobia (EUMC)

on the
Communication from the
European Commission paper
COM (2004) 693 of 25 October 2004

regarding the extension of the
EUMC into Fundamental Rights Agency

December 2004

1. General introduction

The EUMC welcomes the European Commission's Communication (COM (2004) 693 final of 25 October 2004) on the Fundamental Rights Agency. The Communication paper sets a basis for public consultation and provides a framework for a future proposal for adoption by the Council of Ministers. The EUMC notes the exploratory nature of the Communication paper and presents these preliminary remarks with a view to providing further input to these discussions as they proceed.

The EUMC's preliminary remarks are guided by two factors, namely to support the development of an effective and adequately resourced Fundamental Rights Agency and to ensure that the focus on the fight against racism and xenophobia is enhanced by its incorporation into a fundamental rights¹ framework. In drafting these remarks, the EUMC has listened to a variety of stakeholders and has noted their views and opinions.

The European Union (EU) Charter of Fundamental Rights offers protection for EU citizens and in many cases non-EU citizens living in EU countries.

The Fundamental Rights Agency will inevitably be associated with the Charter in the public mind and will thus be called upon to play a key role in its monitoring and observance. The EUMC believes that its working experience in the area of racism and xenophobia provides a firm basis to extend its mandate into fundamental rights, and looks forward to the challenge of extending its scope, field of operation and relations.

The expansion into a Fundamental Rights Agency will support the EU's policy development in the field of fundamental rights, and support its objectives of bringing the EU closer to its citizens and creating an area of freedom, security and justice.

This is important, especially at a time when the EU is facing new issues of fundamental rights in the aftermath of the 11 September terrorist attacks on the USA, with a reported resurgence of xenophobic attitudes, well-publicised anti-Semitic and Islamophobic incidents in some parts of the EU and widespread racism and intolerance experienced by Roma throughout the Union.

The "Hague Programme: Strengthening freedom, security and justice in the EU" adopted in November 2004, states that fundamental rights are not only to be respected but also to be actively promoted, recalls its firm commitment to oppose any form of racism, antisemitism and xenophobia and welcomes the

¹ The EUMC uses the term fundamental rights in this paper solely for the reason that it is responding to a document on the Fundamental Rights Agency.

Commission's communication on the extension of the mandate of the EUMC. The commitment of the EU to fight against racism and xenophobia is also positioned in the Lisbon Strategy for an inclusive Europe and the Green Paper "Equality and non-discrimination in an enlarged European Union". Furthermore, Commissioner Frattini stated, in his presentation to the European Parliament, his desire to "do everything necessary to implement the decision to extend the mandate of the EUMC to a Human Rights Agency. Due to the growing importance of fundamental rights issues within the EU, the Agency will have a key role in the development of a real fundamental rights culture in Europe."

The proposed Fundamental Rights Agency should be an important instrument to support combating these phenomena of racism and xenophobia and operate with added strength by linking its work on to the broader fundamental rights framework.

The objective of collecting and analysing reliable and comparable data on the exercise of fundamental rights by different groups is essential for policy makers to develop and target their measures and to assess and review the effectiveness of policies and practices across the EU.

2. Context

The suggestion for an independent European Agency for Human Rights built upon the EUMC was first mentioned by the Comité des Sages in 1998. The idea was taken up by the Austrian presidency in 1999 and was mentioned in the conclusions of the Cologne European Council in 1999. At the December 2003 European Council in Brussels the representatives of the Member States adopted the following conclusion: "The Representatives of the Member States meeting within the European Council in Brussels on 12 and 13 December 2003, stressing the importance of human rights data collection and analysis with a view to defining EU policy in this field, agreed to build upon the existing EUMC and to extend its mandate to make it a Human Rights Agency to that effect. The Commission also agreed and indicated its intention of submitting a proposal to amend Council Regulation 1035/97 of 2 June 1997 in that respect (5381/04 EC)".

3. The EUMC: Past, Present and Future

The EUMC was established by Council Regulation 1035/97 (EC) in 1997 and is based in Vienna. It has the prime objective "to provide the Community and the Member States with objective, reliable and comparable data at the European level on the phenomena of racism, xenophobia and anti-Semitism in order to help them

when they take measures or formulate courses of action within their respective spheres of competence”.

The EUMC has set up and coordinates the European Racism and Xenophobia Network (RAXEN). RAXEN is one of the central tools for the EUMC in providing the European Union and its Member States with objective, reliable and comparable data (including examples of good practices) at European level on the phenomena of racism, xenophobia and anti-Semitism. RAXEN is composed of 25 National Focal Points (NFPs), one in each Member State.

The EUMC produces Annual Reports on the situation of racism and xenophobia in the Community and its Member States as well as comparative and specific reports on legislative developments, employment, education, housing and racist violence, partly based on in-house research. It has published the results of attitude surveys. It cooperates with a variety of stakeholders through its round table programme at the national and European level. It undertakes awareness raising activities in support of non-governmental organisations and in cooperation with the EU institutions. It has also developed its cooperation with inter-governmental organisations such as the Council of Europe, the UN and the OSCE. The Council of Europe, through direct participation at Management Board level and joint meetings and initiatives, has been integrated with the EUMC from the outset.

By moving into the future as a Fundamental Right Agency the EUMC will bring in its own experience and knowledge to combine with that of key actors in the field of fundamental and human rights. It will identify the needs of its stakeholders, integrate the results of the consultation process of the European Commission, develop a vision and scenarios for the organisation, view its internal situation and resources, and develop from this – in close cooperation with its stakeholders - a concept for the extension of the mandate.

In the following pages of this document, the EUMC initiates participation in the consultation process. The sections of this preliminary paper follow the structure of themes contained in the Communication of the Commission COM (2004) 693 of 25 October 2004.

4. Comments to the Communication of the Commission COM (2004) 693

4.1. INTRODUCTION

The Communication of the Commission refers to the Paris principles adopted by the UN General Assembly in 1993 concerning national institutions for the

promotion and protection of human rights as “a source of inspiration” and adds that care should be taken to avoid simply transposing these examples, given the specificity of the EU, when establishing the Fundamental Rights Agency (see appendix II). The Commission underlines that the tasks of the Agency, which will be set up by an instrument of secondary legislation, must not encroach on the powers conferred on the EU institutions by the Treaties. Like any other Community agency, it will be a European public-law entity, separate from the Community institutions and possessing its own legal personality. It will carry out highly specific technical, scientific or administrative tasks defined in the instrument setting it up and will have no decision-making powers.

Taking into account these existing legal limitations of EC law, the EU should nevertheless aim at an Agency which realises the maximum possible as indicated earlier in the Paris principles and in the Recommendation of the Committee of Ministers of the Council of Europe No. R (97) 14 on the establishment of independent national institutions for the promotion and protection of human rights. As mentioned in the Communication Paper, the Agency should reinforce the implementation of human rights in EU institutions and the Member States by providing expertise and policy recommendations based on research, data collection and analysis. The Agency should provide support to members of civil society and individuals by providing public documentation resources (reports, studies and databases), by networking with key actors in the field and by providing information.

4.2. THE AGENCY’S FIELD OF ACTION

Since the adoption of the European Constitution there has been a move towards the replacement of the old “pillar” conception. In the view of the EUMC on the extension of the mandate, as decided in the conclusion of the representatives of the Member States meeting within the European Council, the Agency should therefore cover racism, xenophobia and human rights, in particular the Charter of Fundamental Rights, with a focus on specific key issues according to requests by European Institutions and EU Member States as well as on its own initiative. It is suggested that the Agency, in consultation with its stakeholders and other experts, should begin to extend its mandate in a collaborative way which avoids duplication regarding the work of others.

4.2.1. Remit confined to the scope of Community (or EU) Law

As the Commission highlights, Article 6(1) of the EU Treaty lays down the principles on which the Community is founded and one of these is respect for human rights and fundamental freedoms. Article 6/2 of the EU Treaty reflects the continuing case-law of the European Court of Justice, according to which the EU respects fundamental rights, as guaranteed in the European Convention for the

Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, as general principles of Community law.²

Under the EU Treaty, a community agency is required to deal with matters falling under community competence. This is a consequence of the fact that community agencies are European public-law entities based on secondary legislation under the community legal order (this is meant as a reference to the first pillar of the EU). Recently, agencies were also created to deal with matters falling under the third pillar of the EU: police cooperation and judicial cooperation in criminal matters. The Fundamental Rights Agency should cover the maximum legally possible remit under the community legal order in line with the Paris principles. This implies that the Fundamental Rights Agency should cover at least the first and the third pillar of the EU, since the Constitution for Europe will also set aside the structure of the pillars. In addition, this would correspond to Article 51 of the EU Charter of Fundamental Rights which states that the Charter applies to Member States only when they apply or implement EU law. This limitation would also be helpful to avoid duplication of work done by other international organizations such as the Council of Europe, and promote synergies in this respect.

The Charter, which has been included in Part II of the Treaty establishing a Constitution for Europe, should serve as the central reference document for the Agency. The Agency should deal with all aspects of the Charter following the Paris principles. It requires the broadest possible mandate in order to comprehensively promote and protect human rights.

4.2.2. Remit covering Article 7 of the EU Treaty

Legal limitations developed by the European Court of Justice that community agencies should have only specific tasks of a technical or scientific nature and no discretionary or decision-making powers (the “Meroni” doctrine) might pose difficulties. Nevertheless, a role of the Fundamental Rights Agency concerning Article 7, advising and informing the institutions, especially in matters falling within community competence and matters falling within the third pillar of the EU, might be legally possible. Legal possibilities to give the Fundamental Rights Agency a role concerning the procedure under Article 7 need further consideration.

² (case “Stauder v. Ulm” 1969, case “Nold”1974). According to the Courts’ case-law, the respect for human rights is a prerequisite for the lawfulness of Community legal instruments.

4.3. RIGHTS AND THEMATIC AREAS TO BE COVERED BY THE ACTIVITIES OF THE AGENCY

Following the decision by the European Council on 13 December 2003, the European Council meeting on 4-5 November 2004 referred, in its conclusions to the newly adopted “The Hague Programme”, to the importance of human rights and noted that according to the Charter of Fundamental Rights, the EU including its institutions, will be under a legal obligation to ensure that in all its spheres of competence, human rights are not only respected but also actively promoted. In this context it also confirmed the decision to extend the mandate of the EUMC towards a Human Rights Agency.

According to the Paris principles, a human rights institution should be given as broad a mandate as possible. The Agency should monitor fundamental rights protected by Community Law and the Charter of Fundamental Rights and focus on priorities which would include racism and xenophobia.

Racism and xenophobia should be maintained in the founding regulation as a priority theme for the work of the Agency, as a political signal on the continued importance the EU attaches to the fight against racism and xenophobia. Other priority themes should not be entrenched in the founding regulation; rather, the Agency should be empowered to define priority themes on its own. This method ensures the independence of the Agency and gives it the necessary flexibility to take account of the evolution of European competences and priorities as they arise in the course of the enlargement of the EU.

The extent and nature of activities and the setting of priorities would be determined by the Agency itself after consultation with key stakeholders. The Agency would also use its operational activities related to cooperation with civil society, human rights institutions and specialised bodies. In this process the Agency would be guided by the principles of relevance, independence, efficiency, effectiveness, utility and sustainability, with a particular focus on EU priorities.

The Agency should avoid duplicating the work done by other specialized bodies of the EU such as the European Data Protection Supervisor, the future European Gender Institute and the expert networks.

4.4. GEOGRAPHIC SCOPE

The geographic scope of the work of the Agency should follow from its field of activity. If the Agency works on the area of human rights as proclaimed by the Charter of Fundamental Rights, the geographic scope of the work of the Agency should be determined by the geographic scope of the Charter, which applies primarily within the EU.

According to the case-law of the European Court of Human Rights, the European Convention of Human Rights applies also outside the territory of its Member States, if State jurisdiction over the individual through State organs or authorities is exercised abroad (including in embassies or in potential refugee camps situated outside the EU through military forces on foreign soil). This case law might also influence the geographic scope of the Charter as it needs to be interpreted in correspondence with the European Convention of Human Rights according to Article 52 of the Charter.

The EUMC believes that the geographic scope of the mandate of the Fundamental Rights Agency should be limited to the EU and accession countries. In addition, the EU is already well-equipped to deal with matters involving third countries through the Commission's work in external relations and the administrative and operational structures in place dealing with the common foreign and security policy. A broader geographic scope of the Agency could be reassessed at a later date (e.g. five years).

4.5. TASKS TO BE ENTRUSTED TO THE AGENCY

The Commission mentions that the Agency should collect data on fundamental rights to enable the EU to take fundamental rights fully into account when drafting and implementing its policies.

The Commission's Communication also underlines that "data should be collected in cooperation with the Member States and the members of civil society dealing with fundamental rights, notably NGOs, National Institutes for Human Rights and the Council of Europe. The network of independent experts for fundamental rights could also be an important source of information for the Agency."

Through its data collection and reporting structure the EUMC currently monitors the situation regarding racism and xenophobia on the basis of its current mandate in all EU Member States, providing policy makers with essential information regarding both the problems and the solutions (positive measures and initiatives), as well as providing EU institutions and the Member States with opinions and recommendations.

In addition, the Agency should publish an Annual report, on the situation regarding fundamental rights, including the highlighting of examples of good practices and an Annual report on the Agency's activities. The Agency should set up documentation resources accessible to the public. Taken together, these tasks and products will be important to the Agency to accomplish its objectives and meet the needs of its stakeholders.

4.5.1. Data collection and analysis

Currently the EUMC uses for its data collection and reporting requirements the “Racism and Xenophobia Network” (RAXEN) of 25 National Focal Points in each Member State composed of contracted independent consortia of key actors in the field, such as research organisations, NGOs, special bodies, social partners etc, contracted by the EUMC to collect objective, reliable and, as far as possible, comparable data and information. The active data collection and reporting methodologies rely on common guidelines, criteria and indicators developed by the EUMC with the support of experts in the field in order to ensure the highest possible level of comparability. The data are checked for accuracy and the reports are evaluated by EUMC expert staff and independent experts. The RAXEN methodology was revised in 2003 on the basis of accumulated experience and an interactive consultation process to correspond to the needs of key target groups. Currently the methodology employed represents a compromise between active and passive data collection, as civil society actors collect both official and unofficial data.

The data collected and analysed is incorporated into the Annual Report of the EUMC and into comparative thematic studies and is also used in response to ad-hoc requests by EU Institutions and Member States. Data analyses set out common trends and national differences and identify gaps in the data using a great deal of qualitative explanatory material of national context. The EUMC also provides, according to the requirements of its current mandate, significant information resources freely available to the public: a database with more than 50.000 entries on organisations combating racism and xenophobia, related activities and publications; substantial national and comparative reports on racism and xenophobia in five key areas of social life: employment, legislation, education, racist violence, and housing; special national and comparative reports on a variety of issues and “rapid response” reports on key issues of immediate concern to EU institutions and the Member States.

The lack of official monitoring mechanisms in most Member States and the different methodologies used for data collection by both official and unofficial mechanisms affect the level of comparability achievable in an analysis. The EUMC presently makes up for this shortcoming by using a more qualitative approach and thus achieving a level of comparability that allows the production of objective and reliable reports regarding the situation in the Member States. Consistent with its required objective to produce data which is comparable, the EUMC also outsources research using the principle of a common methodology applied in different Member States. These studies produce a far higher degree of comparability in data across different European countries, but at very high cost.

Monitoring fundamental rights is a highly complex and sophisticated task involving two main activities: the monitoring and analysis of legal instruments and their development over time, and the monitoring and analysis of social reality,

which includes measuring the actual social impact of legal instruments; these are two key complementary and mutually reinforcing aspects and should constitute a key function in the context of the new mandate. In this sense the work of the EU Network of Independent Legal Experts on Fundamental Rights presently coordinated by DGJLS could in the future be more directly coordinated with the work of networks collecting data on the social situation regarding fundamental rights.

In view of the EUMC's future task to cover fundamental rights, the present system of data collection will be reviewed, revised and supplemented by additional monitoring mechanisms, procedures and methodologies to improve comprehension of the social situation and facilitate a more comparative analysis: the specific structure and function of these mechanisms will ultimately depend upon the areas that will be covered by the new mandate. It is important to note that the resulting data collection processes and activities should support, supplement and complement the work of the European Institutions and other European mechanisms in the field, especially the European Ombudsman and the European Data Protection Supervisor. Additionally, to avoid the risk of duplicating work by sending similar multiple requests to the Member States, existing passive data collection mechanisms of the Council of Europe, the OSCE, ICERD and others should be well coordinated.

The monitoring and data collection systems that will need to be developed in the future should be the result of a feasibility study examining existing national data collection mechanisms and methodologies, and issues regarding concepts, definitions, indicators and classifications. The measurement, comparison and interpretation of data will present a formidable challenge. The use of information management techniques and advanced statistical analysis would be able to provide more reliable, objective, and comparable information, after the necessary national data collection systems are in place in the Member States and sufficiently harmonised. To compensate for and supplement deficiencies and/or gaps in monitoring and data collection, a qualitative approach would enhance understanding of the situation.

There are four key methodological issues regarding data collection and analysis: objectivity, reliability, validity and comparability. These constitute the four pillars for producing reports and studies that will provide policy makers with essential and accurate information. All represent formidable challenges that the EUMC has addressed by introducing and operating innovative data collection and reporting instruments in the context of its current remit. These issues will have to be addressed again in the context of its extended mandate in order to develop the appropriate data collection instruments and analytical tools:

- I The level of objectivity achieved depends on the active involvement of key actors in the process of data collection. The Commission paper presents the methods of active and passive data collection as possible alternatives: however,

both methods can and should be simultaneously used to achieve results that are both more objective and more accurate, thus ensuring a high level of credibility that will be crucial for the Agency's impact upon policy makers.

- II The level of reliability largely depends on the use of quantitative, statistical data. Statistical data may, however, not be available in all Member States and, even where they are, experience shows that national data collection structures are not harmonised and therefore the data are not comparable. Reliability can also be enhanced through comparative primary research carried out under common guidelines and using common indicators. The cost of quantitative social research producing reliable information for a European population of approximating half a billion will naturally be very high. However, it is possible to combine productively quantitative and qualitative methodologies in order to maintain a balance between reliability, validity and cost.
- III The level of validity depends upon the degree of comprehensive understanding of a given situation and is usually linked to the use of qualitative methodologies employed to collect data and information. Achieving a high level of validity will be particularly important in monitoring fundamental rights, because it allows a deeper understanding of both the general social context, as well as the behaviour and motivation of the actors involved. Although qualitative research is sometimes seen as "subjective", it may be preferable to "pure" quantitative research that is more costly, while allowing only a limited understanding of the context. Again, a combination of both qualitative and quantitative data collection, research and analysis would, as noted above, be preferable, as it could result in a good compromise between the levels of reliability and validity possible.
- IV The issue of comparability is a key issue that must be addressed both at national and European level. As a long-term strategy concerted efforts should be made by both EU institutions and Member States to harmonise statistical structures and processes. For the short and medium term and given the present differences and gaps in the national data collection structures and methodologies it is impossible to achieve direct statistical comparability. However, it is possible to produce data with a high degree of comparability through the use of specifically designed EU wide primary quantitative, qualitative or combined triangulated research. For the future, though, it will be necessary to develop official monitoring systems providing data capable of being aggregated and disaggregated at national level to allow sophisticated comparative statistical analyses at EU level. Finally, it should again be stressed that before embarking on an extended data collection process regarding fundamental rights, and given the diversity of the issues involved, further study and consultation regarding the development of appropriate and innovative methodologies, measurement and standardization techniques and common indicators will be essential to achieve meaningful comparability.

4.5.2. Opinions and views intended for the EU institutions and the Member States

The EUMC agrees with the view of the Commission that data collection and analysis should be targeted on the drafting of opinions for the institutions and the Member States, with the Agency setting out its own analyses. The EUMC welcomes in particular the suggestion that this could take the form of published reports or other means of communication. This recognises the current role of the EUMC as an active and flexible expert facility for the Community and its Member States and its involvement in supporting the Community and its Member States in a variety of fora on subjects and activities relevant to its scope and in this area.

In addition, the EUMC believes that recognition should be given to the information which the Agency will receive in addition to its data collection activities and upon which it will be required to give an opinion and a view. This may take the form of contributions to EU operational and strategic priorities, campaigns, programmes and ad hoc actions.

Opinion and views should be addressed in the context of the Agency's role in providing the Community with the information required to enable it to meet its obligation to respect fundamental rights and to take account of them in formulating and applying policies, within in its sphere of competence.

4.5.3. A communications and strategy dialogue

The EUMC agrees with the Commission view that a clearly defined communications strategy is an important component of the dissemination of information and the development of dialogue with a variety of key stakeholders. The communications strategy should be linked to the operational activities of the Agency and the delivery of its products to target groups. The communications strategy would also draw on the experience of the EUMC in its work with the media.

The communication strategy would build on the communication tools currently employed by the EUMC, to meet the challenges of providing information on fundamental rights. The EUMC currently publishes a quarterly magazine, a monthly newsletter, an Annual Report and thematic reports, organises press releases and press conferences, workshops and events. It has in place a database available to the public. The use of tools and products would also complement the outreach activities related to dialogue and relations with civil society and other stakeholders.

In order to have the best impact in line with the target groups needs, the principles of efficiency, effectiveness, utility and sustainability must be regarded. The communication strategy must therefore make clear distinctions between different groups and aspects. Main target groups are: European Union Institutions

(European Parliament, European Commission, European Council and Member States); European and national stakeholders in the field of Human Rights (Council of Europe, National Human Rights Institutions, NGOs, etc); civil society and the media. Therefore for each target group a strategic process has to be developed in order to clarify the specific needs. Questions to be answered are for example: in which other way can the Agency support EU policies? How can the new Agency be of use for the stakeholders? How can common initiatives be launched for a Human Rights culture? The electronic media will play an important role in addressing civil society in a broader sense. The influence and importance of the media cannot be underestimated regarding the influence towards the civil society. The aim would be to continue to explore the use of new technology to increase outreach and effectiveness of communication and explore relations with the media with a view to educating and informing the public on the issues.

The EUMC believes that the proposed tasks to be entrusted to it underline the proposed Fundamental Rights Agency to function as a centre of networking, public discourse and knowledge, thus becoming an Agency that will have a key role in supporting the developments of a fundamental rights culture in the European Union. These tasks could be complemented by a special role of the proposed Agency regarding awareness raising and functioning as a centre of public discourse for EU fundamental rights topics (by organising, conferences, regular meetings, discussions etc.). In addition, discussion about the remit of the Agency should be guided by the following principles: relevance, independence, efficiency, effectiveness, utility and sustainability. The issues of non-duplication and coherence in the light of the EU's policies and activities can be viewed as related to these principles.

4.6. RELATIONS WITH CIVIL SOCIETY

The EUMC believes that relations with civil society form an important component of any action to address fundamental rights in the EU. These relations extend beyond cooperation in the field of data collection to examining ways to use expertise, experience and information to integrate civil society in the work of the Agency in order to meet the objectives of the Agency and complement the activities of the EU institutions. This approach allows also identifying the specific needs regarding information and communication with the other actors in the field.

The EUMC agrees with the Commission's view that the Agency should establish relations with NGOs, the social partners, universities and other partners involved in fundamental rights, as well as specialist bodies dealing with the protection of fundamental rights in the field of personal data and privacy. Though the list of organisations highlighted in the Communication of the Commission is not exhaustive, representatives of competent public authorities should be included to allow the Agency's remit to meet developments at the national level in the Member States. In addition, these relations should aim to develop a

comprehensive approach to dealing with fundamental rights which draws on the expertise and experience of the various actors, including the national human rights institutions and single equality bodies where these exist as well as bodies concerned with racism within an inter-disciplinary framework. To this end networks should be formed among the partners and the Agency would have a role to facilitate and encourage this development.

The EUMC's existing regulation requires the Agency to "facilitate and encourage the organisation of regular round table discussions or meetings of other existing, standing advisory bodies within the Member States..." with the aim of taking the findings of national round table discussions into account in its annual report on the situation regarding racism and xenophobia in the Community. The EUMC in its discussion with its key stakeholders introduced the mechanism of a European Round table conference as a means to bring an interdisciplinary group of stakeholders together to discuss specific topics or coordinate thematic priorities at the European level for the year ahead. The EUMC's view is that the round table format should continue as a mechanism to engage with civil society. The EUMC is also of the opinion that the form and method of cooperation with civil society should not be too prescriptive and should allow the Agency a degree of flexibility particularly at the European level.

5. Synergies with other bodies

The EUMC has developed synergies with international organisations (the UN, Council of Europe and the OSCE). A result of this development has been the sharing of information, the prioritisation of activities, cross referencing issues, and complementary development of respective work programmes. In particular, ongoing synergies with ECRI and the OSCE have taken place in the field of the collection and analysis of data, working towards the definition of indicators both reliable and comparable throughout all the Member States. The Agency's cooperation with other bodies should be based on the principles outlined above of relevance, efficiency, effectiveness, utility and sustainability, without duplication and ensuring coherence to the EU's activities.

In order to follow these principles the Agency must have an overview of the activities of the other actors in the field, including the identification of the gaps. It should be clarified what the other actors perceive as a "successful and efficient synergy" and how the success can be observed and measured. A common view on the priorities and the criteria for successful synergy with the partners has to be developed. In order to control the implementation and the follow up of the cooperation a monitoring process should be installed and regularly revised.

Examples of partners for synergies are:

5.1.1. With the Council of Europe

The EUMC agrees with the Commission view that close cooperation must be established with the Council of Europe in the human rights field, and the example of ECRI's relation with the EUMC should guide how that cooperation is administered and operationalised. The EUMC also agrees with the view that the nature, form and intensity of the cooperation should be left to bilateral discussions with the Council of Europe. At this stage the EUMC supports the view that close cooperation should be established with the Commissioner for Human Rights, that the cooperation with ECRI should continue, and that the Agency should cooperate with the Council of Europe in a variety of areas such as social cohesion and the broader human rights programme at an operational level. Questions related to Council of Europe representation in the structure of the Agency would be agreed bilaterally on the basis of relevance, competence, complementarity and the aim of the cooperation in respective areas.

5.1.2. With the national institutions for the promotion and protection of Human Rights and single equality bodies

The EUMC believes that links with national bodies for the promotion and protection of human rights and also single equality bodies should be developed, and should be considered during the mandate extension phase of the Agency. The EUMC is conscious that whatever nature or form the cooperation takes the independence of the Agency and the national bodies and authorities must be respected.

5.1.3. With the network of independent experts on fundamental rights

The EUMC agrees with the Commission view that it will be necessary to identify the synergies the Agency could develop with the network of independent experts on fundamental rights in order to determine whether retaining the two structures will give real added value to the promotion and protection of fundamental rights. The EUMC is also aware that the decision on the structure of the Agency will have an impact on the nature of this relationship. The Agency could cooperate very closely with the network in its field of competence.

5.2. STRUCTURE OF THE AGENCY

The internal structure of the proposed Agency should be elaborated under clear principles: e.g. legitimacy, liability, efficiency, effectiveness and transparency as with the current EUMC structures. These principles should also guide the whole process of change.

5.2.1. Independence and bodies of the EUMC

The Commission's Communication highlights that the Agency must be independent in order to carry out its tasks objectively. The Agency should be established in accordance with a procedure which affords all necessary guarantees to ensure its independence, and the pluralist representation of the forces of civil society involved in addressing racism and the promotion and protection of human rights. The appointment of members of the Management Board of the Agency should be guided by specified parameters which need to be defined by regulation to guarantee the Agency's independence, and to ensure the necessary expertise to define the Agency's work programme and administer it.

The construction of the different bodies of the EUMC is based on the Council Regulation 1035/97 (EC) in 1997. The EUMC has a Management Board, an Executive Board and a Director. The Management Board of the EUMC consists mainly of independent experts in the field of racism and human rights. They are nominated by the Member States. The Management Board takes the decisions which are necessary for the operation of the EUMC. The Management Board, in particular, determines the Work Programme of the EUMC, adopts the Annual Reports of the EUMC, adopts the EUMC's annual draft and final budgets and appoints the EUMC Director. In this way the Board is responsible for the overall strategy of the EUMC.

The work of the Management Board is supported by an Executive Board. The Executive Board's tasks consist of the supervision of the work of the EUMC, the monitoring of the preparation and execution of programmes and the preparation of meetings of the Management Board. The Director is the legal representative of the EUMC and responsible mainly for performance of all tasks of the EUMC and the preparation and implementation of the decision of the Management Board and all staff matters and matters of day-to-day administration, including procurement procedures and contracts and recruitment procedures. The Director is accountable to the Management Board and gets the discharge in respect of the budget from the European Parliament.

OPTIONS FOR THE FUTURE MANAGEMENT BOARD

The Members of the Board have to meet the criteria set out in the Paris Principles (independent and pluralistic). A clear distinction between operational activities and the overall strategies is crucial. An additional Scientific Committee would increase the administrative burden. Therefore it is proposed to link scientific advice to the operational activities.

5.2.2. Knowledge Management

In order to be able to cope with the enlarged mandate in the most efficient way a special focus should be put on “knowledge management”. The Fundamental Rights Agency may have to face considerable information demands and must be focused and targeted from the outset. This approach means “internal knowledge-management” identifying the needs for cooperation and interlinks. This approach supports the acceleration of deliveries which become more timely and sustainable.

5.2.3. Budget

The Fundamental Rights Agency will have to deal with very complex and sensitive issues. In order to be able to achieve its objectives effectively, it should be given sufficient human and financial resources. Precise estimations of the necessary resources depend on the final decision on the mandate of the Agency. More information will be given at a later stage.

6. Conclusion

The EUMC is highly committed to deal with the challenge of extending its mandate into the Fundamental Rights Agency. The EUMC is honoured by this task. The EUMC is confident that, in close cooperation with the key stakeholders and target groups, it can identify its unique place in the field, in order to provide the best added value. To achieve this common goal the support of the European Parliament, the European Commission, the European Council and the existing actors in the fields of Human Rights is required. By bringing these different actors together the extension of the EUMC into an independent and inclusive EU Agency for Fundamental Rights could make a real difference to the lives of people in the European Union.

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