

Berlin, December 2004

**Human Rights Agency of the EU
Response of the German Institute for Human Rights to the
Communication of the Commission “The Fundamental Rights Agency”
KOM (2004) 693**

The German Institute for Human rights welcomes the establishment of a Human Rights Agency for the promotion of human rights in the European Union modelled on the Paris principles of the United Nations. The Agency could supplement the enhanced implementation and promotion of human rights by EU institutions.

The German Institute for Human Rights offers the following recommendations:

1. The Agency’s field of action

The Agency’s field of action should be aligned to the nature of the European Union, being a union of integration and common values, as confirmed in Art. 6, 7 TEU. The Agency can only be effective and credible if its field of action covers all three pillars of European Union law. Within the EU, integration has deepened considerably, leading to multiple interdependencies between the national and the EU level. A restriction of the Agency’s mandate to the monitoring of EU institutions would significantly impair the promotion of human rights through the Agency . The conformity of the developing area of freedom, security and justice with human rights standards cannot be judged upon with a view only to EU policies and EU law, because the conformity with human rights and thus the functioning of this area characterized by transnational cases depends essentially on national law and practice. Whether the developing area of freedom, security and justice conforms with standards cannot be determined taking only EU policies and EU law into account. Rather, conformity with human rights standards, and thus the functioning of this area characterized by transnational cases, depends essentially on national law and practice.

Hence the mandate of the Agency should cover European Union law of all three pillars as well as law and policies of the Member States.

To avoid duplicity of work already done by other institutions and to guarantee a surplus value for the EU institutions and the Member States the Agency should concentrate on the monitoring of EU law(-making) and policies and their impact on the Member States. However the

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mandate should not be restricted to the monitoring of Member State implementation of EU-law in a narrow sense. Such a restriction would leave large areas of human rights related action initiated by EU law unchecked.

Human rights may be promoted through critical monitoring of EU policies or through the support of the implementation of EU law.

Beyond its general tasks the Agency should not assume special tasks with a view to the political procedure of Art. 7 TEU. The serious breach of principles under Art. 7 is not subject to judicial control by the Court of Justice in its substance. A special role of the Agency in the procedure would endanger its independence and impair its cooperation with Member States.

2. Rights and thematic areas to be covered by the activities of the Agency

The rights and thematic areas to be covered by the activities of the Agency are partly defined by the above described field of action. The EU acquis in the field of human rights should be the legal basis and the yardstick of the Agency's activities. This acquis is partly defined in Art. 6, 7 TEU. The Court of Justice derives EU human rights standards from the constitutional traditions common to the Member States and from international treaties for the protection of human rights¹ to which the Member States are signatories. Those have to be the yardstick of the Agency as well. By including international treaties as a yardstick the agency could contribute to the implementation of International human rights treaties, as do national human rights Institutions.

Restricting the mandate to the Charter of Fundamental Rights, to certain international treaties or specific rights would contradict the indivisibility of human rights and the independence of the Agency necessary for its efficiency. The rights the Agency seeks to promote and the thematic fields of action should not be limited. The determination of priorities should likewise be left to the Agency.

3. Geographic scope

For capacity reasons the mandate of the Agency should be limited to the promotion of human rights within the European Union. The European Union is bound to human rights in its external policies as well

¹ This implies that not only the European Convention for the Protection of Human Rights and Fundamental Freedoms has to be taken into account, but also other treaties elaborated within the Council of Europe (e.g. the European Convention for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment, 1967) or within the United Nations (e.g. the Convention on the Elimination of All Forms of Discrimination against Women, 1979).

however. EU primary law defines the development and the respect for human rights and fundamental freedoms as an objective of Foreign and Security Policy. Hence the human rights situation in third countries has to fall within the scope of the Agency as far as it is of relevance for the external relations of the EU (e. g. in the framework of development cooperation, the Common Foreign and Security Policy, the conclusion of partnership agreements or the allocation of financial and technical support).

4. Tasks of the Agency

The Agency should monitor the human rights situation, collect and analyse information, form academic opinions and recommendations. It should advise EU institutions and the Member States on devising political strategies and during the process of lawgiving. The Agency should formulate programmes for human rights education and public information. Analyses, opinions, recommendations, as well as programmes for human rights education should be published on the Internet and generally accessible to the public.

Concerning third-pillar issues, the Agency should have a special right to access to information and documents in order to facilitate a human rights-oriented monitoring of lawgiving.

To ensure the independence necessary for efficient functioning, the Agency must have an active approach to the collection of information. The Agency should not be limited to information emerging from reports of EU-institutions and Member States, but should be able to make unlimited use of all relevant information. The Agency should make use of the work and expertise of non-governmental organizations, the Council of Europe, the UN treaty bodies and the specialized agencies of the United Nations.

Non-discrimination as well as the gender perspective in content and structure should constitute a cross-cutting issue in the Agency. The current tasks of EUMC should be developed further. A close cooperation with the future EU Gender Institute should be pursued.

5. Structure and independence of the Agency

To ensure the Agency's independence and efficiency, the following features are necessary:

- a wide mandate of the Agency (see above, point 1 and 2)
- a right to free collection of information
- a special right to access to information and documents vis-à-vis the EU institutions and the Member States

- independence from instructions by EU institutions and the Member States
- the right to act on its own initiative
- the right to free cooperation
- the right to publish
- adequate financial and personnel resources
- a gender-balanced appointment of the members of the management body in conformity with the principles of the United Nations for National Human Rights Institutions. This means a pluralistic representation should be ensured by including representatives of
 - non-governmental organizations
 - religious communities
 - universities
 - independent experts of the Member States
 - the European Parliament
 - Council and Commission as advisory institutions without a right to vote
- an academic advisory committee.