

WEDNESDAY 15 FEBRUARY 2006

Present

Brown of Eaton-under-Heywood, L (Chairman)
Clinton-Davis, L.
Lucas of Crudwell and Dingwall, L.
Neill of Bladen, L.
Norton of Louth, L.

Witnesses: **Mr Francisco Fonseca Morillo** and **Mrs Saastamoinen**, DG Justice, Freedom and Security, and **Mrs Lisa Pavan-Woolfe**, DG Employment and Opportunities, examined.

Q80 Chairman: Can I formally greet you on behalf of the Committee? Alas, not everybody has been able to be here today but we are extremely grateful to you for coming to assist us in this inquiry. As you know, this is a public hearing. There will be a transcript which will be sent to you in due time. Mr Morillo, I think you have a lady who is going to assist in interpretation if necessary but we shall treat you, I suspect entirely accurately, as somebody amply fluent in the English tongue. I gather that you would like to start by making brief preliminary observations and, just so that everybody knows where we are, you are of course yourself from the Directorate General Justice, Freedom and Security and therefore concerned principally with the proposed new Fundamental Rights Agency. Mrs Pavan-Woolfe, you are of course from the Directorate General of Employment and Opportunities, and it is that Directorate which is, so to speak, sponsoring the proposal for the Institute for Gender Equality. I think you are going to make one or two opening remarks but perhaps most conveniently, just before we get to that chapter of our inquiry which starts at question 15, and I know you have had a copy of the questions that we would like your assistance on. Mr Morillo, would you like to start?

Mr Fonseca: My Lord Chairman, thank you for inviting me here. I am very grateful to be able to come before this Committee. I will begin by saying I am sorry – I am Spanish; nobody is perfect. If I were Portuguese, I would be Mr Morillo. As it is, I am Mr Fonseca. Fundamental rights and anti-discrimination form the guidelines for the European Commission under the leadership of President Barroso. Our ambition is to put the protection and the promotion of fundamental rights in the place they deserve, namely, at the heart of all the policies and measures of the Union. This is for the direct benefit of all Europeans. The decision to develop a European Union Agency for Fundamental Rights, as requested by the Heads of State or Government in December 2003, by extending the mandate of the European Monitoring Centre on Racism and Xenophobia in Vienna is a logical consequence of the growing importance of fundamental rights issues within the European Union. Indeed, the present position of fundamental rights in the European Union's institutional system is the outcome of a lengthy historical, legal and political process which one could summarise as a number of dynamics which created the current situation in the European Union in this field. The first dynamic, of course, was the evolution of the Court of Justice of the European Community's case law starting in 1969 where the Court stated that fundamental rights are part of the general principles of Community law that the Court is to protect. The second dynamic consisted of the gradual incorporation into the treaties of provisions aimed at the protection of fundamental rights, the most important of them being the current Articles 6 and 7 of the Treaty of the European Union introduced by the Treaty of Amsterdam and, last but not least, thirdly, it resulted from the proclamation of the Charter of Fundamental Rights in December 2000. I would like to use the opportunity here to show my respect for Lord Goldsmith, who represented the UK Government in the Convention which adopted the Charter of Fundamental Rights, and in particular for the two representatives of the House of Lords in this Convention, Lord Bowness and Baroness Howells of St Davids. The project for the Agency

is in line with the aim of strengthening the area of freedom, security and justice. European integration in this area is based on a rigorous concept of the protection of fundamental rights. Responding to the decision of 2003 and the challenge made to the European Commission by the Heads of State or Government, the Commission adopted on 30 June 2005 two proposals: a proposal for a Council Regulation establishing the Agency of Fundamental Rights and a proposal for a Council Decision empowering the Agency to pursue its activities in the areas referred to in Title VI of the Treaty on the European Union. Before presenting the proposals, of course, the Commission carried out a wide-ranging public consultation with civil society, the European Parliament, the Member States and international organisations. The Council of Ministers and the European Parliament are currently negotiating over the Commission proposals. The United Kingdom Presidency already progressed well by starting the first reading of the proposed Regulation and Decision. The negotiations under the Austrian Presidency also look promising. The Austrian Presidency is committed at the highest level to do its utmost for the adoption of the proposals in 2006. We are thus positive that the European Union Agency for Fundamental Rights will become operational from January 2007.

Q81 Chairman: Thank you very much. It is right, as I think you reminded us, that it was in December 2003 that representatives of Member States within the Council agreed to extend the European Monitoring Centre on Racism and Xenophobia into a larger Fundamental Rights Agency, but shortly before that is it right that there had already been established a Network of Independent Experts on Fundamental Rights? How do you see those two relating to each other, this Network already in existence and then an Agency to come into being after that?

Mr Fonseca: Of course, the Network of Independent Experts on Fundamental Rights is a well-established body in the European landscape. This Network was established and financed by the Commission and issues annual reports on the situation of fundamental rights in the Member States and the European Union. However, this European Network is placed at the

European level on a contractual basis. I mean that the Network does not have the capacity to continue to work beyond September 2006. Why? Because, and Lord Clinton-Davis will remember personally, in the European Union all the preparatory actions, all the budgetary lines without a legal basis, can only have a life for a maximum of five years, but usually between three and five years. That means that in September of this year this European Network will be over. That is simply a financial and budgetary question. However, we think that this European Network has an important role and must continue to play an important role in the future framework of the Agency of Fundamental Rights because the Agency of Fundamental Rights is for the European Commission a network of networks. We consider that the European Network of Experts on Fundamental Rights can continue to work on the wider basis which will be essential for the future work of the Agency but it cannot continue to work with an independent life because it will be over in September 2006. It is a question of finding a good synergy between the work of the future Agency and the work of the European Network of Independent Experts on Fundamental Rights.

Q82 Lord Clinton-Davis: Why can the European Network not be extended beyond 2006? I am not an enemy of the Commission, as you rightly say. I served on the Commission from 1985 to 1989 but I fail to understand why the European Network cannot be extended beyond 2006.

Mr Fonseca: Because there is no primary or secondary legal basis for permitting the life of the European Network of Experts to continue. I must stress that now we are, in parallel with the negotiations on the future Agency of Fundamental Rights, negotiating the adoption for the Council and the European Parliament of a wide financial programme in citizenship, justice and fundamental rights issues. If the Council and the Parliament accept the proposal of the European Commission for the Agency, the solution for this European Network would be to have a contractual relationship with the future Agency so that it would be linked to the future

Agency but it would not be like a body financed by the European Commission because we do not have a legal basis for that.

Q83 Chairman: So you propose that the new Fundamental Rights Agency takes over the work both of the Monitoring Centre on Racism and Xenophobia and effectively the Network of Independent Experts?

Mr Fonseca: Yes.

Q84 Chairman: Does it need to do any more than that? What other gap, once those two bodies have completed their business, will there be to fill?

Mr Fonseca: My Lord Chairman, that is an excellent question because I must confess that when the Commission received the mandate to extend the Observatory in Vienna to a future Agency of Fundamental Rights, the first question for me, and at this time for Commissioner Vittorino, was to say, “But we have the Council of Europe and its Member States have national institutions protecting fundamental rights. What are the gaps? Before we begin preparing a formal proposal we need two things. First, we need to open a wide public debate asking civil society, national parliaments and Member States, ‘What do you think of that?’ Would it be really useful to establish a future Agency? And second, at the same time we need to carry out an impact assessment of why we should create a Fundamental Rights Agency.” Of course, there are already many bodies in the European landscape who promote the protection of different fundamental rights but I would like to underline that they are not part of a system. We need one specialised body which would deal expressly with the fundamental rights issues in the field of European Union legislation, in the field of how the European institutions act, how they decide, how they implement the law. There is no specific body to deal with this issue. In answer to your question, there is a battery of problems that the future Agency can help to avoid. First, we consider that there is insufficient compatibility of

monitoring and reporting in terms of timing and coverage of issues relating to European Union adopted legislation. Secondly, for us there is also a lack of collection of quantitative data in respect of fundamental rights both by new and old Member States to implement the European Union law. Thirdly, we think that the vast body of data requires a real data management tool in order to pick up the information which is needed in Union policy making. Last but not least, we believe that at the national level courts in the Member States monitor compliance with fundamental rights standards. How? Through dealing with cases of a legal fundamental regulation propped up by individual decisions, but we think also that this monitoring which is carried out by the national courts of justice is not systematic and comprehensive. Each Member State has also different institutional, administrative and political arrangements for the national human rights institutions dealing with these questions. On a broad institutional map in the area of fundamental rights at European level, we believe that there is a need to have a complementary tool, the Agency, and to be able together to develop co-operative relationships between the future Agency, the national institutions dealing with human rights and, of course, the Council of Europe.

Q85 Chairman: Have you discussed these four areas of need that you have just described to us with the Council of Europe to see whether they share your view that these are identifiable gaps in the present scheme for promoting human rights?

Mr Fonseca: Yes. Before we presented our proposals one of the first preparations was to discuss them, of course in an informal way, with our colleagues at the Council of Europe. I would like to stress that we discussed not only these questions with them but also the fact that the main task to be given to the future Agency is the monitoring. We think that the best way to show the complementarity of the action of the future Agency of Fundamental Rights and the current work of the Council of Europe is, first, that the future Agency will focus on monitoring the situation on fundamental rights within the scope of Community law at

European level and not on studying the valuation of the national situations as such. Secondly, the Commission is going to propose, and we have already begun to discuss this with our colleagues at the Council of Europe in Strasbourg, signing a memorandum of understanding between the Agency and the Council of Europe in order to avoid unnecessary overlapping of work. Just to sum up, in the field of human rights the big brother is the Council of Europe. The Agency will be created to fill the gap on the control of the application of fundamental rights for Community legislation.

Q86 Chairman: Who have you been discussing this with in the Council of Europe?

Mr Fonseca: First of all, my Lord Chairman, of course there have been informal discussions with the European Court of Human Rights, with the people -----

Q87 Chairman: With whom at the court?

Mr Fonseca: With the Registrar, who was (because now he has retired) our friend Mr Mahoney, with the Director General in the Registrar's office, and with people who are working daily with the predecessor of Mr Terry Davis because now, with the arrival of Mr Terry Davis as a Secretary General, it is at a political level that Mr Frattini and Mr Davis discuss the matter. We have met with people in the Cabinet of the General Secretary and the Deputy of the General Secretary, Mrs Maud de Boer-Buquicchio in the Council of Europe and, of course, with my colleagues, for example, Mr de Vel, who is the Director General for Legal Affairs in the Council of Europe. Those are the informal discussions. Also, in the current discussions at ambassador level in the Council of Europe the Commission has based in Strasbourg a special adviser who participates in all the discussions with the Council of Europe ambassadors in Strasbourg and we introduce and discuss all these questions, including the future memorandum of understanding between the Council of Europe and the future Agency.

Q88 Lord Lucas of Crudwell and Dingwall: In drawing the boundaries between yourselves and the Council of Europe and yourselves and the Agency and the national institutions do you foresee that any functions currently performed by the Council of Europe or by national institutions will naturally transfer to the Fundamental Rights Agency?

Mr Fonseca: It is very difficult to answer that in this situation, of course, because we are negotiating now the legal instruments. Frankly, I do not think so. The Commission's idea is to guarantee the independence of the future Agency. We have established a job description for the members of the management board that in our opinion ensures a cross-fertilisation of responsibilities between the national institutions of human rights and the members of the future management board of the Agency. I do not think we really feel that there will be a transfer of tasks between those carried out by the national institutions and those carried out by the Agency in order to monitor how we, the Commission, the European Parliament and the Council of Ministers act in political life and in the execution of European law. I do not think that really there is a transfer of competence. It is clearly a repetition of that. A few minutes ago I said to My Lord Chairman that our intention is to fill the gaps because we feel that at European level there is not a body able in an independent way to indicate that we are acting well or badly or that we need to implement this or that. It is a question really of monitoring.

Q89 Chairman: Did I understand you to say that one of the gaps was in terms of scrutinising proposed legislation in Brussels to ensure that the Commission's proposals were compliant with fundamental human rights; and, in turn, as the legislation passes through the Parliament and into the Council, likewise is that a role that you foresee for the Agency? If so, do you see that it is provided for in the present statement or mandate of the Agency? Where are we to find it in the proposal? Is it there as a task to be fulfilled, pre-legislative scrutiny?

Mr Fonseca: In our opinion the question of scrutinising the proposals of the European Commission is not a hard-core business action for the future Agency. Why? Because the

Commission solemnly decided to self-constrain in 2000 with the Charter of Fundamental Rights and in April 2005 we adopted a Communication on the compliance of each proposal with the Charter of Fundamental Rights.

Q90 Chairman: I interrupt you only to say that, as perhaps you know, last year we ourselves carried out an inquiry into that and have submitted a report. Have you had an opportunity to study our report on that Communication by the Commission?

Mr Fonseca: Yes.

Q91 Chairman: You have seen our report?

Mr Fonseca: Yes.

Q92 Chairman: Therefore, of course, we understand what the Commission's proposal was but we noted that it lacked any independent monitoring proposal. It was wholly dependent upon internal self-discipline by the Commission.

Mr Fonseca: Of course, we have studied your report of November 2005. My Lord Chairman, excuse my being very direct in this question but it may be my Spanish character. What is the situation? What is the picture? We have a legislative proposal made by the Commission. With the Communication we have set internal standard controls in order to be sure that our proposal is in compliance with the Charter of Fundamental Rights. We adopt the proposal and we send the proposal to the European Parliament, the Council and you, the national parliaments according to the protocol of the role of national parliaments in the European decision-making process, and according to the subsidiarity principles. I think that between the moment when we adopt the proposal and when you, the people, find a problem in terms of compliance with fundamental rights in this piece of legislation, you have the right, you have the duty, to intervene and to say, "We cannot accept that". Let us take an example.

I do not agree with the position of the Dutch Senate against the future Agency but that is the expression of the people. That is their voice. Jesus Christ said, “Give unto Caesar the things that are Caesar’s”. The Commission has internal control standards. You must intervene in the process of adopting a regulation and, when the regulation is adopted, if there is a problem we have the Agency of Fundamental Rights to monitor the situation and to point out what is the problem. I think that is a multi-step approach. It is probably a classical European soapbox.

Q93 Chairman: Do you see that role provided for in the Regulation for the establishment of this Agency as presently drafted? Is it provided for? I do not follow where we find that set out as one of its tasks. I am looking at Article 4 under the heading “Tasks”.

Mr Fonseca: If I understood you, my Lord Chairman, you read paragraph (d) of Article 4.

Q94 Chairman: It was Article 4(1)(d), “formulate conclusions and opinions on general subjects, for the Union institutions and the Member States when implementing Community law,” -----

Mr Fonseca: ----- “either on its own initiative or at the request of the European Parliament, the Council or the Commission”.

Q95 Chairman: So “implementing Community law” also means evolving, devising, proposing, legislating?

Mr Fonseca: No. I fully understand your point. In our opinion, but I do not ask you to agree with me, we cover that pre-legislative assessment with the self-obligation of the Commission. We are having the political debate on this at this moment, and the European Parliament and the Council have the right to modify the Agency proposal and you have the right to intervene on the focus of the Agency, because it is a question of coherence. There is not a universal

scope Agency. Its scope is to focus on the implementation of the legislation but, of course, in a concrete drafting concerning our proposal for the Agency it is crystal clear that the Agency could intervene because they are independent. They do not receive instructions from anybody.

Q96 Chairman: So the Agency would come in after the adoption of the legislation?

Mr Fonseca: Yes, in principle. That is the current rule. Mrs Saastamoinen tells me that according to paragraph (d) it is not excluded for the Agency to intervene before, so maybe I was misleading you before. My point is that the core business of the Agency will be exposed in the implementation of the legislation but paragraph (d) does not prevent them from intervening before. It is a question of positive priorities, to use administrative language.

Q97 Chairman: While we are looking at the proposal and discussing the independence of the Agency, Article 15, of course, provides expressly that the Agency “shall fulfil its tasks in complete independence”, but Article 5(1)(c) says that the Multiannual Framework which the Commission has to adopt for the Agency “shall be in line with the Union priorities as defined in the Commission’s strategic objectives”. Do you see any tension, any conflict, any prospective threat there to the absolute independence of the Agency?

Mr Fonseca: My Lord Chairman, you are absolutely right in your appreciation of this kind of possible contradiction or problem between Article 15 and Article 5. For the Commission, we think it is clear in the proposal that the general reference point for the Agency is, of course, the Charter of Fundamental Rights but the Charter of Fundamental Rights is not clear. I must express that in this House. The Charter is very broad and includes a large number of different rights, not only rights but also a large number of principles. We have a situation in which we must decide the areas in which the independent Agency works. Therefore, in order to focus the work of the Agency and use it as well as possible, we suggest, you are right, that

the main areas of activity of the Agency will be focused through the Multiannual Framework. Regarding the Multiannual Framework we propose that the Commission establishes the draft of the Multiannual Framework and discusses it with Member States in the so-called Regulatory Committee under Article 5 of the Comitology Decision, and remember too that in the Regulatory Committee Member States have the right to say no to the Commission. If they say no, the proposal can continue to the Council, and the European Parliament can ignore the Regulatory Committee and also establish the principle that it prefers the discussion to go to a full legislative discussion. It is a Regulatory Committee procedure. That means that we have the Commission and we have the national administration in this kind of commissary administration in Brussels to set the Framework, but, of course, the Agency will stay completely independent within this Framework, because it is the Agency which will, in the Annual Work Programme, respecting the general Framework, decide in which field of fundamental rights they are going to focus their annual programme. We think that this is a balance between absolute independence and the need to avoid the possibility of unguided missiles. There is also a question of accountability and we need to be sure that the future Agency is independent and answers to the criterion of accountability.

Q98 Lord Norton of Louth: Can I pursue that because the Agency is going to be a monitoring agency so it is not going to be a loose cannon that can actually fire anything, so I cannot quite see where the problem is, why it needs to be given guidance by a body which itself is largely monitoring for compliance with human rights provisions. Why not just allow it to monitor? Does it really matter if the Agency itself is determining at any particular time what priorities it should have? Would that not be preferable to allowing the Commission perhaps to determine priorities which might move it in a direction in which the Commission wishes it to go but which might be moving against something the Commission itself is doing?

Mr Fonseca: No. It is not a question that the Commission, if I understand your question, shall obey or not the work of the Agency. We think that the Agency, as a body of the European Union landscape, needs to be set in the general mood, and the general mood is the pluri-annual legislative priorities adopted. The Agency's mandate originates from the political understanding between the Commission, the Council and the European Parliament. After that the Agency in its day-to-day business is completely independent. Who is governing this Agency is the management board, and the management board, according to the proposal of the Commission, will need 29 members and the Commission will have only two members, only two votes. The Agency will stay independent and the Agency will need to decide important matters by two-thirds. That means 20 votes. I think this guarantee of independence and autonomy is safer, if I can express it like that.

Q99 Chairman: In fulfilling its task that you told us you envisaged for it of collecting quantitative data and also managing data, what sort of data have you in mind? Are you thinking of going out into Member States to see how they are complying with various fundamental rights? If so, are we talking about ECHR Convention rights or are we talking about that whole range of rights that the Charter has beyond the scope of the Convention?

Mr Fonseca: First of all, the fundamental rights that we envisage are the fundamental rights included in the Charter of Fundamental Rights because the action of the Agency will focus on the European institutions' actions.

Q100 Chairman: Can I just interrupt. These include such matters as freedom of the arts and sciences, freedom to conduct a business, rights of the elderly, access to services of global economic interest, a host of rights that clearly would not be found within the basic rights set out in the Convention. Are these the sorts of rights where data as to those will be covered by the Agency?

Mr Fonseca: My Lord Chairman, I think we can find the answer in Article 51 of the Charter of Fundamental Rights. The scope of the action in the field of fundamental rights at the European level depends on the intensity of the action that the European Union institutions can develop. For this reason our intention is to establish – excuse me for coming back to this question – a general framework of reference to focus the work of the Agency with a view to helping the Agency to be accountable, as I said before. Concerning the collection of data, I think I said at the beginning of my intervention that for us the future Agency will constitute a network of networks. The Fundamental Rights Agency must be the central reference to which all the different networks – NGOs, civil society, national parliaments, the European Network of Independent Experts and so on – contribute to supply the information, adequate reliable data, and the future Agency will run this network of networks. For this reason in this proposal we have advanced the idea to create not a single scientific committee but an open forum in order to ensure we have the whole expertise, the academic scientific and concrete scientific expertise, in the field of fundamental rights and who will participate in the forum in order to help the Agency to provide this work. I am sure that the final result will not be perfect but that is life, we are in human life.

Q101 Chairman: Your very distinguished fellow countryman, Mr Gil-Robles, came to help us a week or two ago. I imagine you will have read certain of his reports when he has visited countries, as he visited this country two years ago and produced a report last year. To what extent do you expect the Agency's inspections and collection of data to mirror the sort of work that he does when he visits Member States?

Mr Fonseca: Clearly the work distinction is that the High Commissioner of the Council of Europe has the right to realise inspections, to go to the countries and to go *in situ*, to use a Latin expression. He produces national reports saying, "In this aspect, the situation concerning that, that and that is very dangerous or is a problem". The Agency will benefit

from these reports, first of all for the monitoring of diplomatic situations and what that means for discrimination, for minorities, for the problems of refugees and so on and so on. If the question is really, really, really very serious we have established in the proposal for the Regulation that the Council of Ministers can ask the Agency to establish a report for the Council in order to decide if, yes or no, it is a serious persistent violation of fundamental rights according to Article 7 of the European Union Treaty (TEU). If the council decides that it is, there is the question of sanctions to be established against a Member State. For us there is common work, there is the work of the High Commissioner of the Council of Europe, very political, very sensitive, focused in a national way, there is monitoring of the situation according to the competence of the treaties. If the situation is very, very serious the Agency could provide only to the Council – I would like to stress only to the Council – a report, an opinion, concerning the possible application of procedures of Article 7 of the European Union Treaties. My Lord Chairman, I insist there is common work, it is team work, and we think that the Council of Europe, the Agency of Fundamental Rights and the political institutions of the European Union can work with team spirit in this matter. I am getting a bit poetic, excuse me.

Q102 Chairman: Mr Gil-Robles thought that the proposed structure, organisation of this Agency is too weighted in favour of the Commission as against the Council of Europe. On the management board one member only from the Council of Europe, two from the Commission; on the executive board nobody from the Council and two Commission representatives. Would you sympathise with that view?

Mr Fonseca: My Lord Chairman, I have a clear answer to your question. The Council of Europe participates now in the management board of the Observatory of Racism and Xenophobia in Vienna. We want to keep this role for a representative of the Council of Europe. That is the first point. The second point is it is true that the difference between the

current situation and the future situation is that the representative of the Council of Europe will not sit on the executive board. That is the situation now. The Commission decided in February 2005 to propose to the Council and the European Parliament an inter-institutional agreement for a common structure for all the agencies of the European Union. In the proposal from the Commission we were obliged to follow the official position of the Commission. That is one of the questions that have been discussed politically by the Council but we, as civil servants from the Commission, were obliged to follow the official decision taken by the Commission in February 2005. That concerned the role of the Council of Europe. I would like to stress that the representative of the Council of Europe on the management board will keep his right to be on the board, as is the current situation now. Concerning the presence of the members of the Commission, the situation now is there is one member of the Commission on the management board, in the future there will be two. That means now there is a management board of 28 persons, one vote for the Commission, but with the Agency it will be 29 persons, two votes. We do not feel that is a seriously imbalanced situation.

Chairman: The Council of Europe might be expected to be an influential vote though. They have a considerable expertise and pre-eminence in this field. However, Lord Neill has a question.

Q103 Lord Neill of Bladen: I apologise for my late arrival, also to my Lord Chairman, but I think I have heard most of your evidence. I want to take you back to the work that the Agency will carry out on the ground in the Member States. I completely understand what you said about the Agency being well-placed to receive reports coming in from NGOs, all sorts of bodies, all round the Union, but is it envisaged that they will do some serious work on the ground to investigate whether there are dark corners, whether there are fundamental rights, really important rights, which are not being observed in a particular Member State,

notwithstanding when inquiries are made all is said to be well? Do you understand my question?

Mr Fonseca: I understand perfectly your question. The Agency will be a small body of the European Union. They do not have the capacity to be a big war machine. That is my first statement. Secondly, we want to establish coherence in our approach so that the Agency works in a complementary way with the work and expertise of the Council of Europe. The Council of Europe has more competences. For example, in the current discussion now on the CIA flights the Commission does not have any investigation powers but the Council of Europe does under Article 52 of the Convention. We need to keep this complementarity. We want to benefit from the work of the High Commissioner on Human Rights of the Council of Europe and from the extensive data collection, extensive expertise and reports made by the Council of Europe. We do think that the main role of the Agency will be to make inquiries in the field because we are monitoring the implementation of Community law. If there is a problem in terms of fundamental rights because there is a breach in one of the Member States according to the European Community *acquis*, we have the judicial control that begins at the national level. We do not think that this Agency has investigation powers, which in this field are very well filled by the Council of Europe.

Q104 Lord Neill of Bladen: It seems to me by that answer you have cut down the role of the Agency as being the assistant handmaiden – you speak Latin – *ancilla* to Strasbourg. Strasbourg is the big player making the inquiries and you, with this new Agency, are the assistant, not yourself making these inquiries on the ground in 25 Member States.

Mr Fonseca: I think that will be the final picture. The Agency is not there to establish inquiries in the field except in a very, very serious situation. Five minutes ago I referred to this question of Article 7 TEU. We believe that Article 7 TEU is like the nuclear weapon; we need to have a nuclear weapon but never use it.

Q105 Chairman: We are very conscious that we have yet to bring Mrs Pavan-Woolfe in and we are quite anxious to reach the Gender Institute but can we just touch on the geographical aspect. As I understand it, so far as candidate countries are concerned and other non-EU states that already have agreements with the Union which have human rights provisions in them, the Commission has assistance at the moment from the Council of Europe. Is that right? They assist you in evaluating the human rights situation in candidate states, states who are trying to accede to the Union, and other non-EU states that have already got agreements with the Union? How does the Commission in practice currently monitor human rights protections in these states?

Mr Fonseca: In the third countries?

Q106 Chairman: Yes, in the other countries.

Mr Fonseca: You are absolutely right as regards the current evaluations. We have a special clause in the proposal for the third countries. Again, for us it is a question of intensity. First of all, we have the situation of the candidate countries. All European states who want to become members of the European Union need to fulfil the Copenhagen criteria and the first criterion is fundamental rights. In negotiations for accession to the European Union, after the Copenhagen criteria we have a new chapter, chapter 23, to implement the situation of fundamental rights in those countries. We deal with that in the Directorate General of justice, freedom and security. With the enlargement we are monitoring the evolution of fundamental rights in the candidate countries. We think that is wise and has a political sense in that the Council or the Commission can request of the Agency to establish a specific report or specific item on the situation of fundamental rights in one candidate country because unless they fulfil the fundamental rights criterion they cannot become members of the European Union. We also suggest that when the negotiation has moved forward and we are in the heart of the discussion we can accept the participation of one person from the candidate country on the

management board as observer. By the way, that is the current situation in the Observatory of Vienna. We are now discussing whether the Croatians will become an observer next year. The second situation is the European States called Neighbourhood Countries. With this second category of countries, there is no question that they would become observers on the management board of the Agency but we think that if we have established an association agreement with these European countries, neighbouring countries, and in this association agreement the clause on fundamental rights is in the heart of the agreement, it is important that, at the request of the Commission, before signing the association agreement, we have a technical report from the Agency. That is not obligatory, it is on request only. Thirdly, there is the broadest situation. If the Commission considers that it is important for the policymaking on the promotion of fundamental rights in the world to have a specific advice in this matter of a third country, it can request advice, again it is not obligatory, it is a question of request and only if we have an international agreement of association with these third countries.

Q107 Chairman: Can we move to the section that Mrs Pavan-Woolfe is principally concerned with, the Gender Equality Institute. Will you perhaps make your preliminary comments about that, please?

Mrs Pavan-Woolfe: Good afternoon, and thank you, my Lord Chairman, and Members of the Committee for inviting me today. I will make a very short statement. My name is Lisa Pavan-Woolfe and I am the Director for Equal Opportunities in the European Commission. The proposal to set up an Institute for Gender Equality has been prompted by the need to have a new instrument with which to further develop policies for equality between women and men in Europe. Under Article 3(2) of the Treaty, the European Union must promote gender equality in all its activities and policies. This mission is in addition to the specific competences that the Union has had for some decades in this area, in particular to ensure

equal opportunities in employment. We now have 13 Directives and almost 200 rulings of the European Court of Justice in this area. They are proof of the importance of this policy, of its maturity, and of the concrete impact that this policy has had on the lives of women and men in Europe. The policy of gender equality is not only about the right to work, it is not only about the right not to be discriminated against, the right to be equal; it also aims at achieving a variety of objectives and I will give you a few examples. One is better reconciliation between work and family life. Equality between women and men also aims at a more balanced share of responsibilities between women and men in the economy, in society, in politics. It is also about integrating a gender dimension in a variety of policies. Gender equality is a lot more than the observance of a fundamental right to non-discrimination; it is a specific comprehensive policy which is based on a variety of instruments of which legislation is only one. The European Commission's reports on equality between women and men show that progress has been achieved but it has been slow and remains insufficient. The increased diversity of the enlarged Union with regard to gender equality has made it even more necessary to have technical support both for the Member States and for the Community institutions, and in particular for the Commission in the area of equality between women and men. This, my Lord Chairman, is the backdrop against which the Commission has presented the proposal for the creation of the Institute.

Q108 Chairman: Thank you very much. As I am sure you know, at national level a number of Member States are on the whole bringing various strands of fundamental rights together to be protected by one central body, and indeed that is what is happening in this very country, we are going to mirror the Northern Ireland body to look across the entire spectrum. So it seems rather an oddity here in the Union that almost at the same time as you bring into being this proposal for a Fundamental Rights Agency there is also a proposal for an Institute for

Gender Equality which is so closely related a concern. Is that possibly because there are different Directorate-Generals who are concerned with each of these aspects?

Mrs Pavan-Woolfe: I do not think it is because of that, my Lord Chairman. There is only one Commission, although there are various departments within the Commission, and the proposals for both the Institute and the Agency have come from the Commission. First of all, the trend that you have noticed is true in some countries but by no means in all Member States. Some Member States have gone for an overarching approach and they are setting up equality bodies which will look at anti-discrimination on the various grounds of discrimination: race, age, sex, sexual orientation, ethnicity and religion. This is not true of all the Member States. The Commission, before tabling the proposal for the Institute, carried out an evaluation and did consider the possibility of giving these new tasks either to existing agencies or, indeed, to the future Agency for Fundamental Rights. We felt that for a variety of reasons – but mainly because we are dealing with a very specific policy and a well-established one and because the future Institute on Gender Equality is going to look not only at questions of anti-discrimination – we needed a separate agency, a separate institute. This departure is not unique to the Commission. This is what the UN has done. I am sure you are aware at the United Nations separate bodies look at human rights and then you have a separate committee for the status of women. If you look at fundamental rights in the Union you have specialised agencies which now deal with specific fundamental rights. This is the case for the environment and health and safety at work. On the whole, we felt that the possible advantages of merging the Institute of Gender Equality with the future Agency on Fundamental Rights would be outweighed by the possible disadvantages of not giving enough visibility and enough weight to a policy which is partly encompassed by the fundamental rights question and issue but it is not only about fundamental rights.

Q109 Chairman: Racism and xenophobia is obviously a crucially important theme in human rights and yet that now is being brought into the mainstream of consideration of human rights. Plainly it is going to be one of the principal themes of the work of the proposed new Agency. Do you think that same approach could satisfactorily meet the needs of the promotion of gender equality?

Mrs Pavan-Woolfe: No, because when you talk about race you are talking about fundamental rights and anti-discrimination. When you are talking about gender, you are talking about that but other issues as well, and I have given you some examples such as the question of reconciling work and family life, the question of childcare, issues to do with equal pay. Equal pay is a right, and it is a fundamental right, but even though we have legislation on equal pay we still have a wage gap on average of 15 per cent in the Union. That is an issue that goes beyond the question of fundamental rights.

Q110 Chairman: Looking at the structures of the bodies concerned, the proposed Gender Equality Institute, as I understand it, is to have a staff of somewhere between 15 and 30 but of course a management board of however many Member States there are, 25, plus one or two supernumeraries to represent the Council and all the rest of it. To those of us who pay our taxes that smacks of being a bit top heavy. How do you think you are going to be able to persuade everybody across the Union that that is a good idea?

Mrs Pavan-Woolfe: The original proposal from the Commission foresaw six representatives from the Member States and six from the Commission. Discussions in Council have evolved in the direction that you have rightly pointed out. Recently we have had an opinion from two of the European Parliament committees and they go to plenary in March.

Chairman: I know you had been warned of the possibility of a division. We will break for a short time.

The Committee suspended from 5.30pm to 5.37pm for a division in the House.

Q111 Chairman: Can we then pass to question 17 on the list which notes the absence of any proposal in your Institute's scheme to participate in the agreement of the Annual Work Programme of the FRA, the Agency. Do you think you ought to be playing a role in setting the Agency's Annual Work Programme?

Mrs Pavan-Woolfe: Before I answer that question, if I could finish what I was saying just a moment or two ago.

Q112 Chairman: I am so sorry, you are absolutely right. We were rudely interrupted by the division bell.

Mrs Pavan-Woolfe: I had almost got to the end but not quite. The Commission proposes six members on the board representing the Commission and six from the Council. The Council is now proposing 25-plus representatives from the Commission and Parliament seems to be going in the direction of nine from the Member States plus one from the Commission. We will have to see what the final result will be. We are hoping that the management board will be a manageable size. You are absolutely right, it would not make sense to have 25-plus members in the board when the Institute is meant to be a very small and agile structure.

Q113 Chairman: Are there any comparable EU agencies which have a small number, significantly fewer than the number of Member States represented?

Mrs Pavan-Woolfe: I am not sure at present. This is certainly the new trend that the Commission is trying to follow. We put on the table an institutional framework for future agencies in 2002 and this is what we propose, parity between Member State representation and Commission representation, but the numbers that we propose are six for each.

Q114 Chairman: That is helpful. I apologise for having overlooked that you had not completed that answer. Can we now move to question 17 which is the question as to whether

you feel it would be sensible for the Gender Equality Institute to take part in agreeing the Agency's Annual Work Programme?

Mrs Pavan-Woolfe: We do and we have the mechanisms in place to do that. Article 4 lays down a duty of co-operation and co-ordination between the Institute and the Agency. The Women's Committee of the Parliament has proposed an interesting amendment there, amendment 45, whereby this co-ordination between the Institute and other agencies would ensure work programme co-ordination between the agencies in the area of gender mainstreaming. Apart from this general duty of co-operation and co-ordination, in Article 10 we have a provision whereby the directors of the relevant agencies will be called as observers at the meetings of the management board. There is another provision which lays down that the Commission has to be consulted on the work programme of the Institute and to prepare its position the Commission will have to consult internally. In a way that will ensure that from the Commission's representatives on the management board will come not instructions but some directions to the work of the Institute, so that there is proper co-ordination between its work programme and the work programme of the Agency for Fundamental Rights.

Q115 Chairman: These are the matters that are basically catered for in Article 4 of the proposal. Article 4(2) requires that your work programme - I say "your", I am speaking of the Institute - "shall be in line with the Community priorities and the Commission's work programme" and then in (3), to avoid duplication et cetera, to take account of information from wherever else, activities carried out by other institutions and so forth, "and work closely with competent Commission services". Do you see the need for concretising, crystallising, some of these obviously sensible underlying tensions into a more formal way of ordering your affairs?

Mrs Pavan-Woolfe: I do not think that it is really necessary, we have got everything in place there. If you look at the end of 4(3), the last sentence, it refers to this general duty of co-

operation and co-ordination with all relevant agencies. That implicitly means that the Institute will have to co-ordinate its work programme with the work programme of the Fundamental Rights Agency.

Q116 Chairman: Do those answers also address question 18 dealing with the problem of overlap and the provisions that bear on that? Again, we are looking at Article 4, are we?

Mrs Pavan-Woolfe: Yes. As I said, we have things in place to ensure both that the Institute work programme is in line with the European Commission's work programme but also with the work of other relevant agencies and duplication is avoided through these mechanisms and through the presence of the directors of the other agencies in the management board of the Institute. That is Article 10.

Q117 Chairman: Now perhaps as to where this new Institute, if it is to come into being, is to be located. We know that the Fundamental Rights Agency is to be in Vienna, what is the present thinking in terms of the Gender Equality Institute?

Mrs Pavan-Woolfe: I am sure you know that it is not for the Commission to propose the seats of the agencies.

Q118 Chairman: I am sure they have their ear to the ground.

Mrs Pavan-Woolfe: We know that some Member States have proposed their own countries as the seat of the Agency.

Q119 Chairman: Is that always the way it works, a Member State proposes itself? Does it ever propose some other Member State?

Mrs Pavan-Woolfe: Not that I am aware of. They might side with the proposal coming from other Member States. As these deals are done in packages at the European Council, it might well be that some Member States side with others in the final make-up of a deal. The

Commission does not take sides on questions like these, the decision comes from heads of state.

Q120 Lord Clinton-Davis: Does it discuss the situation or not?

Mrs Pavan-Woolfe: Not really.

Q121 Chairman: Are there not significant advantages in possible locations as opposed to others?

Mrs Pavan-Woolfe: We looked at this when we were looking at the advantages of having one agency. We obviously thought of Vienna because the Observatory is there and we also thought of Dublin, and we were not the only ones, some Member States thought of that too because the Foundation for Working and Living Conditions is there. I do not think there will be any particular advantage. There might be some cost savings in things like general running costs, sharing costs of IT or some infrastructure. The main cost of the Institute will be its expertise, its personnel, and because we are convinced it is quite separate expertise from that that will be required in the Agency for Fundamental Rights we do not see a particular advantage of locating the Institute in Vienna. There might be some, only some, slight financial advantage to be gained in sharing fixed costs.

Lord Clinton-Davis: I was not in the room when question 16 arose, I only heard it in part.

Chairman: Can we tell you that a little later? The answer is it looks now as if they are going to propose something rather smaller than the suggestion in the question. Are there any other questions because we must keep an eye on the clock? We have rather extended your visit, in part because of the division bell, but we are aware you have got to catch a train and get back to Brussels tonight.

Q122 Lord Norton of Louth: A general question. You have stressed the limitations, and this will apply to both the FRA and the Institute, in the sense that the primary role is going to be a monitoring one, or possibly building on that, but what it is monitoring may be in some cases rights that as yet are not well defined. Presumably the Agency - I do not know whether this applies to the Institute as well - will have some scope in terms of interpreting what in some cases are rights expressed in fairly broad terms.

Mrs Pavan-Woolfe: Do you want me to answer first? I did not go into the role of the Institute but the Institute is supposed to be a very technical body which will gather data, statistics, carry out some research, provide methodological expertise to the Commission, so it has a very limited and very technical role. It is by no means a political role, it will not intervene in the implementation of legislation.

Q123 Lord Norton of Louth: But even the data collection must be within the scope of some interpretation of what equality means?

Mrs Pavan-Woolfe: As I said, in the area of gender equality there are well and long-established policies. We have 30-plus years of interpretation by the Court of Justice on legislation. We also have a consistent body of work at international level, such as the United Nations with the Beijing platform for action. In this area there is much less uncertainty. It is a vast area to explore but I think the contours of the research are quite clear.

Q124 Lord Norton of Louth: So the contours of the Institute are very well defined, whereas presumably with the Agency we may be dealing with a very different situation?

Mr Fonseca: I would like to answer Lord Norton, if I can. For the Agency the question is clear. The provision of Article 51 of the Charter of Fundamental Rights – it is our bible – applies to institutions and bodies, like the Agency, of the Union with due regard for the principle of subsidiarity. This Charter does not establish any new powers or tasks for the

Community or the Union. Of course, in the field of fundamental rights the borders are not so clear but I think that is under control.

Q125 Lord Norton of Louth: I was not concerned at the level in terms of subsidiarity, it was merely the scope of definition. How does one define freedom of the arts if one is limiting it to the institutions of the Union, which is what they are doing? It is not so much the scope but the actual interpretation of the rights being applied within that limited scope.

Mr Fonseca: As you know, during the negotiations of the Constitutional Treaty one of the points that was stressed more strongly by the UK delegation was that the comments on the articles of the Charter – I refer to the question of the arts – which were explicit in their restrictions in interpretation will be an integral part of the constitutional body. We have a full declaration on that. We are *In the Mood*, like in the Glen Miller song.

Chairman: I think on that note, we had better be on the move too. Thank you for coming, it is a long way to come but it has been of great assistance to us. Thank you very much indeed.