

Plans to set up a Fundamental Rights Agency of the European Union

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Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Kevin McNamara, United Kingdom, Socialist Group

For debate in the Standing Committee — see Rule 15 of the Rules of Procedure

Summary

At the European Council meeting on 12 and 13 December 2003, the representatives of the member states of the European Union (EU) decided to extend the mandate of the existing European Monitoring Centre on Racism and Xenophobia to become a human rights agency.

The report recalls the considerable human rights acquis developed by the Council of Europe, encompassing not only a broad range of standards but also active European monitoring of respect of these standards by its member states by several well-established independent human rights bodies. It also carries out an important volume of intergovernmental work, political monitoring, practical assistance work and activities in the field of human rights education and awareness-raising. This work results in innumerable practical improvements in the respect for human rights in the member states, including in the EU member states, demonstrating the pre-eminence of the Council of Europe as regards the protection and promotion of human rights in Europe.

The supranational nature of the EU and the expansion of its competence in human-rights-sensitive areas make it desirable and necessary that human rights are fully promoted and protected in the EU's legal order. An EU fundamental rights agency could make a helpful contribution, provided that a useful role and field of action is defined for it, filling a gap and presenting added value and complementarity. Duplication with the work of the Council of Europe should be avoided. A mere multiplication of European human rights institutions will easily lead to a dilution and weakening of the authority of each of them, to the detriment of the protection of the human rights of individuals all over Europe.

The draft resolution therefore expresses the view that the agency should be an independent institution for the promotion and protection of human rights within the legal order and areas of competence of the EU only, along the lines of similar national institutions that exist in several member states. The agency should collect and provide to EU institutions information, relevant to their activities, about fundamental rights and thus contribute to mainstreaming human rights in EU decision-making. The draft resolution and the draft recommendation contain concrete proposals to that effect, including on the need for close co-ordination and co-operation with the Council of Europe and the latter's full participation in the management structures of the agency.

I. Draft resolution

1. At the European Council meeting in Brussels on 12 and 13 December 2003, the representatives of the member states of the European Union (EU) "stressing the importance of human rights data collection and analysis with a view to defining Union policy in this field, agreed to build upon the existing European Monitoring Centre on Racism and Xenophobia and to extend its mandate to become a Human Rights Agency to that effect."

2. On 25 October 2004, the Commission of the European Communities (EC) published a Communication containing a public consultation document on the establishment of a Fundamental Rights Agency of the EU (document COM(2004)693 final), setting out detailed ideas, options and questions regarding the field of action of such an agency, the tasks to be entrusted to it, its relations with civil society, the Council of Europe and other bodies and its operational structures.

3. The Parliamentary Assembly, as the parliamentary organ of a European organisation with a statutory mission and unparalleled expertise in the area of the promotion and protection of human rights, the rule of law and pluralist democracy, owes it to itself to make a timely and substantial contribution to the debate on the definition of the EU Agency's remit, tasks, *modus operandi* and working structures.

4. In stating its views on this subject, the Assembly is mindful of the considerable human rights acquis developed by the Council of Europe over the past fifty-five years, encompassing not only standards on civil and political rights, social rights, minority rights, treatment of persons deprived of their liberty and the fight against racism, but also active European monitoring of respect of these standards by its member states. Such monitoring is carried out by several well-established independent human rights bodies with recognised expertise and professionalism, both on a country-by-country basis (including through country visits and on-the-spot investigations) and, increasingly, also thematically. Through these mechanisms, the Council of Europe monitors respect for the whole range of human rights obligations of its member states (including the 25 member states of the European Union), identifies issues of non-compliance and addresses recommendations to member states and, in the case of the European Court of Human Rights, issues judgments binding on States Parties whenever these standards are not respected.

5. The Assembly also recalls the important volume of intergovernmental work carried out by the Council of Europe on various human rights themes, leading to the adoption of reports and new legal instruments (treaties, recommendations, guidelines, etc.) by the Committee of Ministers, as well as the latter's political monitoring procedure. In addition, there are significant human rights achievements resulting from the practical assistance work designed to facilitate attainment of the requisite standards as well as from the work of Council of Europe institutions with a broader remit. Linked to this are numerous activities in the field of human rights education and awareness-raising which seek to develop a genuine human rights culture in European societies.

6. The Assembly itself attaches the highest importance in its own work to human rights questions – both thematic issues and country-specific questions – as is witnessed by the frequent resolutions and recommendations adopted on such questions. Finally, the Congress of Local and Regional Authorities of the Council of Europe and the European Commission for Democracy through Law (Venice Commission) also regularly address human rights-related issues.

7. In no small part thanks to the effectiveness of its human rights mechanisms, the work of the Council of Europe results in innumerable practical improvements in the respect for human rights in its member states, including in the member states of the European Union. All these achievements and the underlying statutory mission of the Organisation demonstrate the pre-eminence of the Council of Europe as regards the protection and promotion of human rights in Europe.

8. As regards the European Union, the Assembly considers that, given the supra-national nature of EC/EU integration and EC/EU law and the expansion of EC/EU competencies in recent times also in such broad and human-rights-sensitive areas as justice and home affairs, it is not only legitimate and understandable but also desirable and necessary that human rights are given their rightful place in the EU's legal order.

9. The various steps taken so far to strengthen human rights protection within the EU – notably the incorporation of the Charter of Fundamental Rights in the Constitutional Treaty and the latter's provisions committing the EU to accession to the European Convention on Human Rights – are therefore welcomed by the Assembly as is, by the same token, any further step that presents added value by contributing to ensuring respect for human rights in the EU's decision-making processes.

10. Against this background, the Assembly considers that the creation of a Fundamental Rights Agency within the EU could make a helpful contribution, provided that a useful role and field of action is defined for it – one which genuinely “fills a gap” and which thus presents added value and complementarity in terms of promoting respect for human rights. Defining such a role presupposes careful reflection within the EU about the aims, content, scope, limits, and instruments of its own internal human rights policy. Conversely, there is no point in re-inventing the wheel by giving the Agency a role which is already performed by existing human rights institutions and mechanisms in Europe. That would simply be a waste of taxpayers' money.

11. Avoiding duplication is not only a matter of upholding the pre-eminent role of the Council of Europe in the protection and promotion of human rights in Europe: it is first and foremost about the vital interest of hundreds of millions of individuals in Europe in the effective enjoyment and protection of human rights. A multiplication of European institutions in the field of human rights will not necessarily mean a better protection

of those rights. On the contrary, creating institutions with mandates which overlap with those of existing ones can in practice easily lead to a dilution and weakening of the authority of each of them, which in turn will mean a lesser, not a stronger, protection of human rights to the detriment of the individual.

12. Finally, the existence of such parallel mechanisms (one for the 25 member states of the Union and one for the 46 member states of the Council of Europe) would be a serious blow to the principle that there should be no dividing lines in Europe, especially in an area – human rights – where, more than anywhere else, Europe should be united by the same common standards and values. All this militates in favour of giving the EU Agency a well-defined, focused and complementary role.

13. Bearing in mind, on the one hand, the significant development and substantive expansion of the legal order of the EU and, on the other, the broad arsenal of existing human rights mechanisms of the Council of Europe and the need to avoid overlap with their roles and competences, the Assembly takes the view that the role of the Agency should be that of an independent institution for the promotion and protection of human rights within the legal order of the EU, along the lines of similar national institutions that exist in several member states. The Agency should collect and provide to the EU institutions information, relevant to their activities, about fundamental rights and thus contribute to mainstreaming human rights standards in the EU decision-making processes.

14. The Assembly therefore recommends that the European Union and its member states:

i. proceed, before setting up the Agency, to a careful reflection about the aims, content, scope, limits, and instruments of the EU's own internal human rights policy, taking into account the role played by the Council of Europe in the promotion and protection of human rights in Europe and considering the need for a stronger, more structural and better defined relationship between the two Organisations, bearing in mind the forthcoming Third Summit of the Council of Europe;

ii. give the future Agency a well-defined mandate which presents added value in terms of promoting respect for human rights within the legal order of the European Union and at the same time avoids any duplication with the competences of the human rights mechanisms and institutions of the Council of Europe, in particular by:

a. determining that the field of action of the Agency should be that of the scope of Community/EU law, giving it a role in promoting compliance with fundamental rights of both Community law and policies and implementation of the latter by the EU member states but not as regards areas outside Community/EU competence, where its member states act autonomously - subject to supervision by the European human rights bodies set up by the Council of Europe;

b. determining that the Agency should, following the model of the current European Monitoring Centre on Racism and Xenophobia, work on a thematic, not a country-by-country, basis, focusing on certain specified themes having a special connection with the policies of the Community or the Union;

c. providing, in order to ensure that the information given by the Agency is coherent with existing European instruments in the field of human rights and with a view to the future accession of the EU to the European Convention on Human Rights (ECHR), that both the EU Charter of Fundamental Rights and the ECHR are among the main reference instruments to be used by the Agency, along with the European Social Charter, the European Convention for the Prevention of Torture and the Framework Convention for the Protection of National Minorities;

d. bearing in mind that action by EU member states at the national level in areas within the scope of EU law is already covered by the human rights monitoring conducted by the Council of Europe bodies the findings of which are addressed directly to those member states individually and, consequently, providing that the Agency's thematic reports shall be addressed to the relevant institutions of the Union only (Commission, Council, Parliament);

e. determining that the Agency shall be independent and that its tasks will be to collect, record and analyse information about human rights issues and to provide such information to the EU institutions with a view to mainstreaming and promoting human rights in EU decision-making; this task will be especially useful in the context of assisting those institutions in examining the compatibility of draft EU legislation with human rights standards;

iii. ensure, building on the example of the provisions of the regulation setting up the European Monitoring Centre on Racism and Xenophobia, that the future regulation setting up the Agency shall also provide that the activities of the Agency shall not duplicate those of the Council of Europe but, on the contrary, be conducted in close co-ordination and co-operation with the Council of Europe, in particular by:

a. including provisions establishing the rule of non-duplication with the role, functions and activities of the institutions and mechanisms of the Council of Europe and setting out a duty of co-operation and co-ordination with the Council of Europe, notably as regards the drawing up and implementation of the Agency's programme of activities;

b. making mandatory provision for the full participation of the Council of Europe in the management structures of the Agency;

c. providing that the Community shall enter into an agreement with the Council of Europe for the purpose of establishing close co-operation between the latter and the Agency.

II. Draft recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2005) on the plans to set up a Fundamental Rights Agency of the European Union.

2. The Assembly accordingly recommends that the Committee of Ministers:

i. see to it that, notably in the context of the Third Summit, the pre-eminent role of the Council of Europe in the European institutional architecture in matters concerning the promotion and protection of human rights is reaffirmed and the foundations are laid for a stronger, more structural and better defined relationship with the European Union which:

a. recognises the role of the Council of Europe, also in relation to the EU, as an institutional framework for external supervision of respect for human rights as set out in its instruments as well as its role as a pan-European framework for co-operation, notably in matters concerning human rights, democracy and the rule of law;

b. anchors the EU more firmly to Council of Europe structures and instruments to that effect, bearing in mind the increased relevance of the work of the Council of Europe to the activities of the EU as a result of the expansion of the EU/EC areas of competence;

ii. draw the attention of the EU to the need, when drawing up the mandate for the Agency and defining its organisational structures and modus operandi, to avoid any duplication with the Council of Europe and its mechanisms operating in the human rights field, as set out in more detail in the above-mentioned Resolution.

III. Explanatory memorandum by Mr Kevin McNamara, Rapporteur

A. Introduction

1. On 7 September 2004, the Bureau referred the motion contained in Doc 10241 to the Committee on Legal Affairs and Human Rights for report (Reference No 2991). The Committee appointed its Rapporteur on 16 September 2004.

2. The motion recalls the leading role of the Council of Europe in human rights protection at European level and expresses the expectation – given the centrality of human rights to the construction of democracy and respect for the rule of law in Europe – that other European organisations will increasingly feel a need to take them into account as their membership and competences expand. While this central role enjoyed by human rights can only be welcomed, there is nevertheless a risk that a lack of co-ordination between the Council of Europe and other organisations could lead to unnecessary duplication of activities. This could in turn create problems by placing excessive strain on scarce budgetary resources, by establishing competing activities and bodies, and even by

setting standards whose inconsistency creates confusion and ultimately undermines effective respect for the basic standards.

3. For these reasons, the motion envisages a study of the situation of relevant international institutions, instruments, mechanisms and activities for the protection of human rights in Europe and making any appropriate recommendations for their rationalisation and reform.

4. The area covered by the motion is very broad since, apart from the Council of Europe, there are several other organisations which conduct certain activities in the human rights field: in particular the European Union (EU) and the Organisation for Security and Co-operation in Europe (OSCE). In addition, the Rapporteur's mandate would not exclude examination of the role played by the United Nations and its specialised agencies in this part of the world.

5. Since the above-mentioned motion was referred to the Committee, an important development has occurred within the EU. On 25 October 2004, the Commission of the European Communities has published a Communication containing a public consultation document on the establishment of a Fundamental Rights Agency of the EU (document COM(2004)693 final), setting out detailed ideas, options and questions regarding the field of action of such an agency, the tasks to be entrusted to it, its relations with civil society, the Council of Europe and other bodies, and its operational structures. The publication of the Communication coincided with the launch of a public consultation phase on the future agency, which is expected to result in a proposal for a regulation relating to the agency which the Commission intends to present in 2005 (probably in May).

6. Clearly, the Assembly, as the parliamentary organ of a European Organisation with a Statutory mission and unparalleled expertise in the area of the promotion and protection of human rights, the rule of law and pluralist democracy, should make a timely and substantial contribution to the debate on the definition of the EU Agency's remit, tasks, *modus operandi* and working structures.

7. Preparing a full report covering all the activities and mechanisms set up by Council of Europe, OSCE, EU and United Nations would require much more time than is available now for preparing input into this recent development within the EU. The Assembly should state its views on the future EU Agency in the first few months of 2005. At its meeting on 16 December 2004 the Committee agreed with the Rapporteur's proposal to limit the scope of this report to the plans to create a Fundamental Rights Agency within the EU. It should be stressed that this proposal was made on practical grounds only; the important remaining issues could and should be addressed in a separate report to be prepared subsequently, which could give particular attention to the activities of the OSCE in areas where the Council of Europe has its own mechanisms and activities, notably those of the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities (HCNM) and the OSCE Representative on Freedom of the Media.

8. There was another practical reason to focus on the EU Agency in this report: it is a matter of common sense that it is easier and more efficient to avoid duplication from the outset (ie: before a new human rights mechanism or institution is created) than afterwards, when it is more difficult to remedy and remove instances of unnecessary duplication in the operational practice of such mechanisms. There is now, therefore, a unique opportunity to avoid such duplication in the conceptual phase of the setting up of a human rights agency and it would be a pity to miss it.

9. This specific focus on the future EU Agency necessitated a change of the title of the report, and the Committee agreed on the new title "Plans to set up a Fundamental Rights Agency of the European Union".

10. The Committee authorised the Rapporteur to undertake a visit to Brussels in order to collect information and views about the setting up of the Agency. This took place on 11 and 12 January 2005 and the Rapporteur would like to express his gratitude to his various interlocutors, both EU officials and NGO representatives, for the meetings which he found most interesting and valuable for the preparation of this report.[1] The present report also draws on two recent documents of the Council of Europe: the document presenting the contribution of the Secretary General to the dialogue on the Agency ("The Fundamental Rights Agency of the European Union – A Council of Europe Perspective", document SG/Inf (2004)34 of 16 December 2004) and a document of the Directorate General of Human Rights (DG II) on "Practical impact of the Council of Europe human rights mechanisms in improving respect for human rights in member States" (document DGII (2004)018 of 13 December 2004).

11. This report first gives a brief overview of steps taken by the EU to strengthen the status and protection of fundamental rights within the EU legal order (see section B below), followed by an equally brief recapitulation of the existing Council of Europe mechanisms and institutions in the human rights field (section C). Section D contains some observations about the role, functions and working methods that could usefully be assigned to the future Agency without creating overlap with existing human rights mechanisms and institutions of the Council of Europe. The report's conclusions and recommendations are set out in Section E.

B. The protection and promotion of human rights^[2] within the EU

12. The gradual development of human rights standards and activities within the EU has been well documented and there is no need to provide a comprehensive overview here.^[3] It is sufficient to recall the main stages of that process here.

ECJ case-law developments

13. Whilst no reference was made to fundamental rights in the founding treaty of the European Community (the 1957 Rome Treaty) they have gradually been integrated in the legal order of the EC and subsequently of the EU in a process that began with the development of the case-law of the European Court of Justice (ECJ) since the 1969 Stauder case.^[4] In this case-law, the ECJ declared fundamental rights to form part of the general principles of Community law the observance of which that Court ensures. Since 1969, that case-law has referred more and more clearly to the European Convention on Human Rights (ECHR), including statements that the ECJ attaches "special significance" to the ECHR, and to the case-law of the European Court of Human Rights, individual judgments of which it does not hesitate to quote and take into account in its own rulings.^[5] However, under this ECJ case-law, the EC/EU legal order is not formally and directly legally bound by fundamental rights in general or by the ECHR rights in particular; they play a role as general principles of Community (EU) law.

The Treaty on European Union

14. The ECJ case-law was codified in Article 6 of the 1997 Treaty on European Union (the Amsterdam Treaty: TEU) which declares that respect of human rights is one of the founding principles of the EU and (in paragraph 2) that: "The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law." In addition, Article 7 TEU provides for a special procedure regarding the compliance of member states with the common principles mentioned in Article 6 § 1, i.e. including respect for fundamental rights. This procedure has:

(a) a preventive aspect: on a reasoned proposal from either one third of member states or the Commission or the European Parliament (EP), the EU Council acting by a majority of four fifths and after obtaining the assent of the EP, may determine that there is a clear risk of a serious breach of human rights in a member state. It is also provided that the Council shall regularly verify that the grounds on which such a determination was made continue to apply (Article 7 § 1 TEU);

(b) a repressive aspect: the Council acting by unanimity on a proposal by one third of the member states or by the Commission and after obtaining the assent of the EP may determine the existence of a serious and persistent breach by a member state of fundamental rights (Article 7 § 2 TEU). The Council may suspend certain rights of the member state concerned, such as the right to vote. This mechanism has certain intrinsic limits: a clear and strong political agreement is needed, the violation should be massive and exclusion is not envisaged as sanction (Article 7 § 3 TEU).

The EU Charter of Fundamental Rights

15. The next main stage was the drafting of the EU Charter of Fundamental Rights, in which process Council of Europe observers took an active part. The Charter, which was officially proclaimed on 7 December 2000 but which is not legally binding as such, embodies a catalogue of rights largely inspired by the ECHR and its case-law, as well as the European Social Charter. It also contains certain rights specific to the context of the EU. It establishes several links with the ECHR, notably for the purpose of ensuring coherence with the interpretation of the ECHR rights in the case-law of the European Court of Human Rights. The Charter does not seek to give new competences or tasks to the EU (concerning human rights in general) beyond the powers and tasks defined by the Treaties.

The Constitutional Treaty

16. The Treaty establishing a Constitution for Europe, signed in Rome on 29 October 2004, will, once in force, clearly strengthen the legal status of the EU Charter since the latter was integrated in it (albeit with some changes). In addition, the Constitutional treaty unequivocally responds to a long-standing desire (expressed by the Assembly, the European Parliament, the Commission and many others) that the EU become a party to the ECHR. Article I-9, paragraph 2, of the Treaty provides that the EU shall accede to the ECHR. This provision thus creates not only a legal basis in EU law for such accession, but also a legal obligation to accede. On the Council of Europe side, the Committee of Ministers has also prepared the ground for EU accession to the ECHR by including a provision on such accession in the recent Protocol No. 14 to the ECHR (see Article 17 of the Protocol, amending Article 59 of the Convention).

17. These steps, taken together, will provide a solid reinforcement of the legal protection of human rights in respect of the EU. They are perfectly complementary. While the Charter is an internal constitutional instrument, the ECHR will, after EU accession, provide an external framework of judicial control of compliance with European human rights standards. However, the same should also apply to the European Social Charter. EU accession to the Social Charter is necessary and desirable to make the EU subject to external control of compliance with the social rights contained in the Charter. It would be wrong to interpret Article I-9 of the Constitutional Treaty as a provision excluding EU accession to the Social Charter, since it constitutes a legislative response to the finding by the ECJ in 1996 that the EC, as community law then stood, lacked the competence to accede to the ECHR given the constitutional significance of such a step.[6]

Further initiatives

18. In addition, there have been in recent years some further institutional initiatives which also underline the growing importance attached to human rights within the EU.

- by the European Parliament

19. Since 2001, the European Parliament prepares an annual report on the fundamental rights situation in the EU. Their aim is to examine respect for the rights laid down in the Charter of Fundamental Rights, on the basis of several main sources of information, national and international, which include the findings of the European Court of Human Rights and of other human rights bodies of the Council of Europe. It should be noted that the draft resolution contained in the 2003 report proposed the setting up of a fundamental rights unit within the European Parliament responsible for drawing up the annual report, as well as the creation, within the Commission, of a Commissioner for Fundamental Rights.[7] However, while this text was adopted by the Committee on Citizen's Freedoms and Rights on 18 March 2004, the European Parliament voted against adoption at its plenary session of 29 March-1 April 2004. A human rights unit has meanwhile been created in the secretariat of the European Parliament, linked to the Committee on Foreign Affairs' Subcommittee of human rights.

- by the Commission

20. In response to a recommendation made by the European Parliament in its Resolution on the 2000 annual report (adopted 5 July 2001), the Commission set up, in September 2002, a network of independent experts with the task of drafting an annual report on the state of fundamental rights in the EU and its Member states, providing the Commission on request with specific opinions on fundamental rights issues, and assisting the Commission and the Parliament in developing EU policy on fundamental rights. The annual reports (two have been drawn up so far) and opinions (six so far) of the network, which are published on the website of the Commission (DG Justice and Home Affairs) (<http://europa.eu.int>) without the latter (or the Parliament) taking any responsibility for the judgements they contain, draw extensively on the case-law and the findings of the Council of Europe's human rights mechanisms such as the Court, the Committee of Social Rights set up under the Social Charter, the Committee for the Prevention of Torture, etc., as well as on texts (Conventions, Recommendations) adopted by the Committee of Ministers and the Parliamentary Assembly.

- by the Council: creation of the European Monitoring Centre on Racism and Xenophobia

21. A further development which requires a special mention here because it concerns the precursor to the future Fundamental Rights Agency, was the creation of the European Monitoring Centre on Racism and Xenophobia (EUMC) in 1997. The prime objective of this Vienna-based Centre, is "to provide the Community

and its Member States (...) with objective, reliable and comparable data at European level on the phenomena of racism, xenophobia and anti-Semitism in order to help them when they take measures of formulate course of action within their respective spheres of competence.” (Article 2, paragraph 1, of Council Regulation (EC) No. 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia). Article 2, paragraph 2 specifies that the Centre shall “study the extent and development of the phenomena and manifestations of racism, xenophobia and anti-Semitism, analyse their causes, consequences and effects and examine examples of good practice in dealing with them” and enumerates the activities which the Centre is to carry out to these ends (such as collection of data, scientific research and surveys at the request of one of the institutions of the Community, organising meetings of experts and with relevant bodies in the member states, setting up documentation resources, publishing an annual report, and formulating conclusions and opinions for the Community and its Member states.

22. The areas of activity of the EUMC are defined in Article 3 of the Regulation: it shall “carry out its tasks within the competencies of the Communities and in the light of the objectives adopted in its annual programme” and “in pursuing its activities, the Centre shall, in order to avoid duplication, take account of activities already carried out by the Community institutions and by other institutions, bodies and competent international organisations, particularly the Council of Europe, and shall ensure through close co-operation with the Council of Europe that it provides added value”. Furthermore, Article 3 specifies that the work of the Centre “shall be concerned with the extent, development, causes and effects of the phenomena of racism and xenophobia, particularly in the following fields:

- (a) free movement of persons within the Community;
- (b) information and television broadcasts and the other media and means of communication;
- (c) education, vocational training and youth;
- (d) social policy including employment;
- (e) free movement of goods;
- (f) culture.”

This list reflects a recital of the preamble of the Regulation (§ 15) according to which the Centre’s task will concentrate on areas in which sound knowledge of the problems of racism, xenophobia and anti-Semitism is particularly necessary for the Community in its activities.

23. Article 7 of the EUMC Regulation contains a duty of co-operation with national and international organisations. Under paragraph 3, the Centre shall coordinate its activities with those of the Council of Europe, particularly with regard to its programme of activities. This paragraph also provides that the Community shall to this end enter into an agreement with the Council of Europe for the purpose of establishing close co-operation between the latter and the centre, which shall include the appointment by the Council of Europe of a person to sit on the Centre’s Management Board.

24. Accordingly, a co-operation agreement between the Community and the Council of Europe was concluded in 1999 (see EU Council Decision of 21 December 1998, 1999/132/EC; the text is also contained in Council of Europe document CM/Inf(99)5). This agreement provides for regular contacts between secretariats (for the Council of Europe, in particular the secretariat of the European Commission against Racism and Intolerance – ECRI)), exchange of information and data, consultations between the Centre and ECRI to coordinate their activities and, in particular, to draw up the Centre’s work programme; the purpose of such consultations shall be to ensure that the respective programmes are complementary and avoid, in so far as possible, unnecessary duplication. Finally, the agreement provides that the Secretary General of the Council of Europe shall appoint an independent person from among the ECRI members to serve on the Centre’s Management Board, together with a deputy. In practice, the Centre’s Management Board is also invited to be represented at meetings of ECRI.

25. The EUMC and ECRI have so far cooperated not only through intersecretariat contacts, exchange of information and consultations to avoid duplication of efforts, but also through joint conferences and regular meetings between their respective bureaux. There can be little doubt that this level of co-operation is in no small part the result of the relevant provisions in the EUMC Regulation and the EU-Council of Europe co-operation

agreement and, in particular, of the ensuing participation of Council of Europe representatives in the institutional structures of the EUMC.

- by the President of the Commission

26. Finally, reference should be made here to a statement recently made by the President of the Commission to the European Parliament, according to which he expressed a commitment – apparently in the context of the concerns raised at the time in the Parliament about Mr Buttiglione’s candidature for membership of the Commission – to set up a group of Commissioners to deal with fundamental rights, the fight against discrimination, and equal opportunities. This new group will apparently be chaired by Mr Barroso himself, assisted by Commissioner Frattini.[8] From the indications which the Rapporteur’s received during his visit to Brussels, it seems too early to say what particular role this new group will have, apart from noting that it has had a first meeting on 22 December 2004 and that it is intended to be an informal group for ex ante political reflection on the themes indicated.

C. Recapitulation of existing Council of Europe mechanisms and institutions in the human rights field

27. Over the past fifty-five years, the Council of Europe has developed a considerable human rights acquis, encompassing not only standards on civil and political rights, social rights, minority rights, treatment of persons deprived of their liberty and the fight against racism, but also active European monitoring of respect of these standards by its member states. Such monitoring is carried out by several well-established independent human rights bodies with recognised expertise and professionalism, both on a country-by-country basis (including through country visits and on-the-spot investigations) and, increasingly, also thematically. Through these mechanisms, the Council of Europe monitors respect for the whole range of human rights obligations of its member states (including the 25 member states of the European Union), identifies issues of non-compliance and addresses recommendations to member states and, in the case of the European Court of Human Rights, issues judgments binding on States Parties whenever these standards are not respected.

28. The Organisation’s main human rights mechanisms are those set up by the European Convention on Human Rights (individual and inter-state cases brought before the European Court of Human Rights; supervision of execution of judgments by the Committee of Ministers; powers of investigation of the Secretary General under Article 52 of the Convention), the European Social Charter (reporting procedure; collective complaints procedure), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (preventive machinery based on a system of visits of places of detention by the European Committee for the Prevention of Torture), the Framework Convention for the Protection of National Minorities (reporting procedure, systematic country visits) as well as the European Commission against Racism and Intolerance (country-by-country visits and reports, general policy recommendations on thematic issues) and the Council of Europe Commissioner for Human Rights (role complementary to that of the other institutions, inter alia: identifying shortcomings in the law and practice of member states with regard to human rights, promoting the effective implementation of human rights standards by advice and assistance to member states, promoting human rights awareness, networking with national human rights institutions, etc.).

29. The work of these human rights mechanisms of the Council of Europe has resulted in innumerable practical improvements in the respect for human rights in the member states of the European Union. The Directorate General of Human Rights has prepared a document containing a selection of examples of cases where EU Member states have taken measures to improve the human rights situation directly or indirectly as a result of the action of the various Council of Europe Human Rights mechanisms.[9]

30. Apart from these dedicated human rights mechanisms, it is important to recall also the important volume of intergovernmental work carried out by the Council of Europe on various human rights themes, leading to the adoption of reports and new legal instruments (treaties, recommendations, guidelines, etc.) by the Committee of Ministers, as well as the latter’s political monitoring procedure. In addition, there are significant human rights achievements resulting from the practical assistance work designed to facilitate attainment of the requisite standards as well as from the work of Council of Europe institutions with a broader remit. Linked to this are numerous activities in the field of human rights education and awareness-raising, which seek to develop a genuine human rights culture in European societies. Our own Assembly attaches the highest importance to human rights questions – both thematic issues and country-specific questions – as is witnessed by the frequent resolutions and recommendations adopted on such questions, based on reports from its Committee on Legal Affairs and Human Rights, the Monitoring Committee, and other committees. Finally, the Congress of Local and

Regional Authorities and the European Commission for Democracy through Law (Venice Commission) also regularly address human rights-related issues.

31. Having regard to all these achievements and to the underlying Statutory mission of the Organisation, it is not an exaggeration to speak of the pre-eminence of the Council of Europe as regards the protection and promotion of human rights in Europe.

D. Role, tasks and working methods of the future EU Agency

32. At the European Council meeting in Brussels on 12 and 13 December 2003, the representatives of the EU member states “stressing the importance of human rights data collection and analysis with a view to defining Union policy in this field, agreed to build upon the existing European Monitoring Centre on Racism and Xenophobia and to extend its mandate to become a Human Rights Agency to that effect.”

33. As was mentioned in paragraph 5 above, the Commission recently published a communication, intended for public consultation, on the possible remit, areas of activity, tasks, synergies with other bodies and relations with civil society, and structure of the Agency. On the whole, the document reflects a welcome awareness on the part of the Commission of the need to avoid duplication of work of the Council of Europe and other international and national organisations and bodies in the field of human rights. This is evident not only from the specific sections on synergies with other bodies and on the Agency’s structure, but also from the general sections dealing with the Agency’s remit and tasks. The document repeatedly stresses the need to develop co-operation and synergies with the Council of Europe.

34. Before formulating some specific observations on the ideas and options expressed in the consultation document, it is important to make some general preliminary remarks from the perspective of the Assembly.

1. General remarks

35. The decision of the European Council to transform the EUMC into a Human Rights Agency does not appear to have been the result of a considered prior reflection on the more fundamental question what the EU’s own human rights policy should be. In a sense therefore, the decision to set up such an Agency amounts to putting the cart before the horse. As was pointed out by several of the Rapporteur’s interlocutors in Brussels, this state of affairs does not make the job of defining a proper role for the Agency any easier. It also suggests that little or no thought has been given by the Council to the existing human rights protection machinery of the Council of Europe, or indeed the broader question: who does what in Europe? The Rapporteur does note, however, that the latter question and the related issue of the relationships between the Council of Europe and the EU are likely to figure as an important item on the agenda of the Council of Europe’s Third Summit in May 2005. At all events, it is especially important that such reflections take place now, prior to the adoption of the regulation creating the Agency.

36. In the Rapporteur’s opinion, the approach of the Parliamentary Assembly to the plans to set up a Fundamental Rights Agency of the European Union and the role and functions of such an agency should be based on the following general considerations:

(a) given the supra-national nature of EC/EU integration and EC/EU law and the expansion of EC/EU competencies in recent times also in such broad and human rights-sensitive areas as justice, judicial co-operation in civil and criminal matters, immigration, asylum, visas, police co-operation, the fight against organised crime etc, it is not only legitimate and understandable but also desirable and necessary that human rights are given their rightful place in the EU’s legal order. The various steps taken so far to strengthen human rights protection within the EU – notably the incorporation of the Charter of Fundamental Rights in the Constitutional Treaty and the latter’s provisions committing the EU to ECHR accession - should therefore be welcomed by the Assembly as should, by the same token, any further step that would present added value by contributing to ensuring respect for human rights in the EU’s decision-making processes;

(b) against this background, the creation of a Fundamental Rights Agency within the EU could be a helpful step to take, provided of course that a useful role and field of action is defined for it – one which genuinely “fills a gap” and which thus presents added value and complementarity in terms of promoting and furthering respect for human rights. Conversely, there is no point in re-inventing the wheel by giving the Agency a role which is already performed by existing human rights institutions and mechanisms in Europe. That would simply be a

waste of taxpayers' money. Avoiding duplication is not only a matter of upholding the pre-eminent role of the Council of Europe in the protection and promotion of human rights in Europe: it is first and foremost about hundreds of millions of individuals in Europe and their vital interest in the effective enjoyment and protection of human rights. It would be naïve, to say the least, to think that a multiplication of European institutions in the field of human rights will necessarily mean: better protection of those rights. On the contrary, creating institutions with mandates which overlap with those of existing ones can in practice easily lead to a dilution and weakening of the authority of each of them, which in turn will mean a lesser, not a stronger, protection of human rights, to the detriment of the individual. All this militates in favour of giving the EU Agency a well-defined, focused and complementary role;

(c) bearing in mind, on the one hand, the significant development and substantive expansion of the legal order of the EU and, on the other, the broad arsenal of existing human rights mechanisms developed over decades by the Council of Europe, it seems quite clear that the most useful role that could be given to the Agency would be that of an independent institution for the promotion and protection of human rights within the legal order of the EU, along the lines of similar national institutions that exist in several member states, the creation of which is in fact actively encouraged by the Council of Europe and the United Nations. Committee of Ministers' Recommendation No. R (97) 14 on the establishment of independent national institutions for the promotion and protection of human rights (which also refers to the so-called "Paris Principles" adopted by the United Nations) encourages member states to set up such institutions on account of the useful role that can be played by non-judicial institutions empowered to provide objective information and advice to national authorities in relation to human rights issues and in raising awareness about human rights in society. In other words, the role of the Agency should be to collect and provide to the EU institutions information, relevant to their activities, about fundamental rights and thus contribute to mainstreaming human rights standards in the EU decision-making processes (leading up to the adoption of legislation and policies); that is a role that neither the Community Courts, nor the European Ombudsman are able to play and which would thus be complementary to their functions. For that role to be meaningful, it will be essential that the Agency be independent from the institutions of the EU and the governments of its member states. Its relations with the European Parliament, the Council and the Commission will also need to be clarified;

(d) such an approach towards the definition of the Agency's role would also reduce the risk of duplication with the monitoring of member states' compliance with European human rights standards performed by the Council of Europe (including as regards all the EU member states) as concerns civil and political rights, social and economic rights, minority rights, treatment of persons deprived of their liberty and the fight against racism and intolerance (see section C above).

2. Specific observations

37. Several specific observations flow from the general approach outlined above. They are presented below in the form of comments on the main points raised in the Commission's consultation document.

a. The Agency's field of action: confined to Community (Union) law or also covering Article 7 TEU?

38. The Commission's observations take as a starting point that the Agency will be required to monitor fundamental rights by area and not to prepare reports by country. The question then arises: how should the scope of its field of action be defined? Should it be confined to areas covered by Community (or Union) law or should it be extended to cover the scope of Article 7 TEU (as to which, see paragraph 14 above)? While taking no explicit position on this choice, the presentation of the arguments in favour and against each of these options suggest that the Commission has a preference for the former.

39. The Rapporteur also strongly favours such a choice, both for reasons of principle and on practical grounds. As the Commission rightly stresses, it must be ensured that the field of action chosen for the Agency gives "real added value" to the protection of fundamental rights and does not affect the Agency's efficiency. Confining the field of action to areas covered by EU law would complement existing arrangements within the EU for the protection and promotion of fundamental rights. It would be perfectly in line with the approach advocated in paragraph 36 (c) above: the Agency as an internal independent human rights institution operating within the framework of the legal order of the EU. This in itself already presents a broad and useful area of work, given the wide scope of existing EC/EU competence and the relevance of human rights to key areas covered by that competence (see paragraph 36 (a) above).

40. On the other hand, extending the scope to Article 7 TEU (ie: covering areas where EU member states act autonomously, outside the scope of EU law) could, as the document rightly points out, easily lead to overlaps with the work of the Council of Europe and with that of national human rights institutions and would carry a very real risk of duplication and contradiction. It would completely blur the status and role of the Agency, since it would make it into a “hybrid” institution: both internal to the EU (in so far as its remit covers EU competence) and external (in so far as it would monitor the acts and omissions of EU member states within their own autonomous sphere, outside EU law). This would also sit ill with the logic of the EU’s own Charter of Fundamental Rights – presumably a key reference text for the future work of the Agency – which applies only to the EU institutions and to Member states when implementing EU law. It would even contradict the distribution of responsibilities and competences between EU and its member states which was carefully negotiated and agreed in the Constitutional Treaty and might, albeit unwittingly, provide political ammunition to those who oppose ratification of that Treaty. In fact, it was pointed out to the Rapporteur in Brussels that it was highly dubious whether Article 7 TEU provided a legal basis for such a competence of the Agency. Furthermore, it would be an “overkill” to give the Agency, on the basis of Article 7 TEU, a monitoring role vis-à-vis each of the EU member states, even apart from practical considerations (such a role would require much more than the “lightweight” structure in terms of staff and budget envisaged by the Commission - see p. 10 of the consultation document). The situations and the procedures envisaged in Article 7 are wholly exceptional (clear threat of a serious breach/existence of a serious and persistent breach). It is unconceivable that potential Article 7 situations would not be recognised or identified by the existing EU institutions and, in view of the close monitoring carried out by its bodies on a permanent basis, by the Council of Europe. In all likelihood, such situations would be spotted by both the EU and the Council of Europe.

41. Finally, and most importantly, there is a serious risk – if the Agency were to monitor autonomous action by member states – that there would be parallel monitoring systems (with the same remit but not necessarily leading to the same results and assessments!) operating on the Continent: one for the 25 member states of the Union and one for the 46 member states of the Council of Europe. That would be a disaster, from a political point of view as well as from the point of view of effective human rights protection. In the area of human rights more than in any other area, there should be no dividing lines in Europe. On the contrary, Europe should be united by the same common standards and values.

b. To what extent should the Agency monitor the action of individual EU member states?

42. In the preceding paragraphs (§§ 38-41) arguments have been given as to why it would be undesirable to empower the Agency to monitor the human rights performance of member states, acting within their own autonomous sphere of competence (outside the framework of EU law). The question however remains as to whether the Agency should monitor the member states in so far as the latter act (or fail to act) in implementation of EU law.

43. This is, again, an area of potential overlap with the monitoring work of Council of Europe bodies, since, for their competence, it is irrelevant whether a national measure was taken in implementation of EU law or not. No national action or inaction is a priori excluded from their supervisory competence.

44. On the other hand, it is of course legitimate and indeed necessary for the EU to control whether its member states adequately implement EU legislation at the national level. This is what happens already today, notably through the powers given by the Treaties to the Commission and the European Court of Justice. In so far as human rights issues arise in the implementation of EU law by member states (for example, of the implementation of non-discrimination directives), there could therefore be a role for the Agency in collecting and analysing information and data about them.

45. The question then is: how to avoid duplication with existing monitoring carried out by the Council of Europe? First of all, it seems highly advisable that the results of the Agency’s work (reports, conclusions) be addressed to the EU institutions, not to member states individually. The latter scenario could well lead to diverging or even contradictory assessments by the Agency and a Council of Europe body, respectively. It might even encourage forum-shopping and give a member state the possibility to play one assessment off against another. In addition, the EU institutions have been given relevant powers under the Treaties in this area and it would be more appropriate that the Agency would, by providing information and advice, assist them in the exercise of their powers. Were the Agency to advise individual member states directly, it would easily assume a supervisory role which properly belongs to institutions of the Union. Secondly, the Commission’s consultation document (page 5) places welcome emphasis on certain thematic areas of EU competence where the Agency could play a useful role (as opposed to country-by-country monitoring of the kind carried out by Council of

Europe mechanisms).[10] By focusing the Agency's mandate on specific thematic areas having a special relevance in the context of the EU (as is currently also the case in the mandate of the EUMC – see paragraph 22 above), the Agency's work would appear to be properly geared towards its main role of assisting the EU in the development of its policies, its field of action would be more workable, and last but not least, co-operation and co-ordination of activities with the Council of Europe with a view to avoiding duplication of work would be much easier to manage for both sides.

3. Co-operation of the future Agency with the Council of Europe

46. The Commission's consultation document raises some further issues of importance to the Council of Europe. Amongst these are the co-operation of the future Agency with the Council of Europe (p. 10 of the document), and the participation of the Council of Europe in the management bodies of the Agency (*ibidem*).

47. The Rapporteur welcomes this recognition of the need to cooperate closely with the Council of Europe. Such a duty of co-operation as well as a general provision according to which the Agency's tasks and activities shall not duplicate the role and the functions of the Council of Europe's institutions and mechanisms should indeed be included in the provisions of the regulation setting up the Agency which the Commission will prepare. The same should apply to Council of Europe participation in the management structures of the Agency: this will help ensure that there will be no duplication both at the stage of the drawing up the Agency's programme of activities and the implementation thereof. In addition, an extensive co-operation agreement should be concluded between the EU and the Council of Europe (an expanded version of the existing co-operation agreement concerning the EUMC and ECRI (see paragraph 24 above). This will usefully contribute to seizing concrete opportunities for co-operation, for example in the form of joint projects or activities.

E. Conclusions and recommendations

48. The Rapporteur accordingly would make the following recommendations as regards the plans to set up a Fundamental Rights Agency of the European Union:

i. As regards the European Union and its member states

49. The Rapporteur proposes that the European Union and its member states:

i. proceed, before setting up the Agency, to a careful reflection about the aims, content, scope, limits, and instruments of the EU's own internal human rights policy, taking into account the role played by the Council of Europe in the promotion and protection of human rights in Europe and considering the need for a stronger, more structural and better defined relationship between the two Organisations, bearing in mind the forthcoming Third Summit of the Council of Europe;

ii. give the future Agency a well-defined mandate which presents added value in terms of promoting respect for human rights within the legal order of the European Union and at the same time avoids any duplication with the competences of the human rights mechanisms and institutions of the Council of Europe, in particular by:

a. determining that the field of action of the Agency should be that of the scope of Community/EU law, giving it a role in promoting compliance with fundamental rights of both Community law and policies and implementation of the latter by the EU member states but not as regards areas outside Community/EU competence, where its member states act autonomously - subject to supervision by the European human rights bodies set up by the Council of Europe;

b. determining that the Agency should, following the model of the current European Monitoring Centre on Racism and Xenophobia, work on a thematic, not a country-by-country, basis, focusing on certain specified themes having a special connection with the policies of the Community or the Union;

c. providing, in order to ensure that the information given by the Agency is coherent with existing European instruments in the field of human rights and with a view to the future accession of the EU to the European Convention on Human Rights (ECHR), that both the EU Charter of Fundamental Rights and the ECHR are among the main reference instruments to be used by the Agency, along with the European Social Charter, the European Convention for the Prevention of Torture and the Framework Convention for the Protection of National Minorities;

d. bearing in mind that action by EU member states at the national level in areas within the scope of EU law is already covered by the human rights monitoring conducted by the Council of Europe bodies the findings of which are addressed directly to those member states individually and, consequently, providing that the Agency's thematic reports shall be addressed to the relevant institutions of the Union only (Commission, Council, Parliament);

e. determining that the Agency shall be independent and that its tasks will be to collect, record and analyse information about human rights issues and to provide such information to the EU institutions with a view to mainstreaming and promoting human rights in EU decision-making; this task will be especially useful in the context of assisting those institutions in examining the compatibility of draft EU legislation with human rights standards;

iii. ensure, building on the example of the provisions of the regulation setting up the European Monitoring Centre on Racism and Xenophobia, that the future regulation setting up the Agency shall also provide that the activities of the Agency shall not duplicate those of the Council of Europe but, on the contrary, be conducted in close co-ordination and co-operation with the Council of Europe, in particular by:

a. including provisions establishing the rule of non-duplication with the role, functions and activities of the institutions and mechanisms of the Council of Europe and setting out a duty of co-operation and co-ordination with the Council of Europe, notably as regards the drawing up and implementation of the Agency's programme of activities;

b. making adequate provision for the full participation of the Council of Europe in the management structures of the Agency;

c. providing that the Community shall enter into an agreement with the Council of Europe for the purpose of establishing close co-operation between the latter and the Agency.

ii. As regards the Committee of Ministers

50. The Rapporteur proposes that the Committee of Ministers:

i. see to it that, notably in the context of the Third Summit, the pre-eminent role of the Council of Europe in the European institutional architecture in matters concerning the promotion and protection of human rights is reaffirmed and the foundations are laid for a stronger, more structural and better defined relationship with the EU which:

a. recognises the role of the Council of Europe, also in relation to the EU, as an institutional framework for external supervision of respect for human rights as set out in its instruments as well as its role as a pan-European framework for co-operation, notably in matters concerning human rights, democracy and the rule of law;

b. anchors the EU more firmly to Council of Europe structures and instruments to that effect, bearing in mind the increased relevance of the work of the Council of Europe to the activities of the EU as a result of the expansion of the EU/EC areas of competence;

ii. draw the attention of the EU to the need, when drawing up the mandate for the Agency and defining its organisational structures and modus operandi, to avoid any duplication with the Council of Europe and its mechanisms operating in the human rights field, as set out in more detail in paragraph 49 above.

Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: Doc 10241, Reference No 2991 of 7 September 2004

Draft resolution and draft recommendation adopted unanimously by the Committee on 27 January 2005

Members of the Committee: Mr Serhiy Holovaty (Chairperson), Mr Jerzy Jaskiernia, Mr Erik Jurgens, Mr Eduard Lintner (Vice-Chairpersons), Mrs Birgitta Ahlqvist, Mr Athanasios Alevras, Mr Gulamhuseyn Alibeyli,

Mr Alexander Arabadjiev (alternate: Mr Loutvi Mestan), Mr Miguel Arias, Mr Giorgi Arveladzé, Mr Abdülkadir Ates, Mrs Maria Eduarda Azevedo, Mr Jaume Bartumeu Cassany, Mrs Meritxell Batet, Mrs Soledad Becerril, Mrs Marie-Louise Bemelmans-Videc, Mr Sali Berisha, Mr Rudolf Bindig, Mr Malcolm Bruce, Mr Erol Aslan Cebeci, Mrs Pia Christmas-Møller, Mr Boriss Cilevics, Mr Viorel Coifan, Mr András Csáky, Mr Marcello Dell'Utri, Mr Mehdi Eker, Mr MartinEngeset, Mrs Lydie Err, Mr Václav Exner, Mr Valeriy Fedorov (alternate: Mr Akhmar Zavgayev), Mr Robert Fico, Mr György Frunda, Mr Jean-Charles Gardetto, Mr József Gedei, Mr Stef Goris, Mr Valery Grebennikov, Mrs Gultakin Hajiyeva, Mrs Karin Hakl, Mr Rafis Haliti, Mr Michel Hunault, Mr Sergei Ivanov, Mr Tomš Jirsa (alternate: Mrs Alena Gajdušková), Mr Neven Jurica, Mr Antti Kaikkonen, Mr Hans Kaufmann, Mr Ulrich Kelber, Mr Nikolay Kovalev (alternate: Mr Yuri Sharandin), Mr Jean-Pierre Kucheida, Mrs Darja Lavižar-Bebler, Mr Andrzej Lepper, Mrs Sabine Leutheusser-Schnarrenberger, Mr Tony Lloyd, Mr Andrea Manzella, Mr Alberto Martins, Mr Dich Marty, Mr Tito Masi, Mr Kevin McNamara, Mr Philippe Monfils, Mr Philippe Nachbar, Mr Tomislav Nikolic, Mr Ionel Olteanu, Mrs Ann Ormonde, Mrs Agnieszka Pasternak, Mr Ivan Pavlov (alternate: Mr Latchezar Toshev), Mr Johan Pehrson, Mr Piero Pellicini, Mrs Sólveig Pétursdóttir, Mr Rino Piscitello, Mr Petro Poroshenko, Mrs Maria Postoica, Mr Christos Pourgourides, Mr Jeffrey Pullicino Orlando, Mr Martin Raguz, Mr François Rochebloine (alternate: Mr Michel Dreyfus-Schmidt), Mr Armen Rustamyan, Mr Michael Spindelegger, Mr Petro Symonenko, Mr Egidijus Vareikis, Mr Miltiadis Varvitsiotis, Mr John Wilkinson (alternate: Mr Syd Rapson), Mrs Renate Wohlwend, Mr Vladimir Zhirinovskiy, Mr Zoran Žižic

N.B. The names of those members who were present at the meeting are printed in bold.

Secretariat of the Committee: Mr Schokkenbroek, Mr Schirmer, Mrs Clamer, Mr Milner

Voetnoten:

[1] The Rapporteur met Mr Francisco Fonseca Morillo (Director of the Directorate Civil Justice, Rights and Citizenship, Directorate General of Justice and Home Affairs) and his staff member Ms Salla Saastamoinen; Mr Gilles de Kerchove d'Ousselgem (Director in the Secretariat of the EU Council) and Mr Hans Nilsson (Head of Division in the same Secretariat); Mr Matthew Heim of the "think-do tank" "The Centre", and Mr Dick Oosting and Ms Susie Alegre, respectively Director and legal adviser of Amnesty International's EU Office. Unfortunately, for practical reasons, it was not possible to meet fellow parliamentarians from the European Parliament, which was in session in Strasbourg at the time of the Rapporteur's visit.

[2] The expressions « human rights » and « fundamental rights » will be used interchangeably in this report since they essentially denote the same rights, even if the former term is more often used in the context of international instruments while the latter usually refers to rights in the context of an internal legal order (a constitutional context).

[3] See, e.g., Philip Alston (ed.), *The EU and Human Rights* (Oxford 1999).

[4] ECJ, Stauder, 12.11.1969, 29/69.

[5] See, e.g. ECJ, *Baustahlgewebe GmbH v. Commission*, 17.12.1998, C-185/95 P (Right to a fair hearing within reasonable time); *Montecatini SpA v. Commission*, 8.7.1999, C-235/92 P (presumption of innocence); *Roquette frères SA*, 22.10.2002, C-94/00 (respect for home extending in certain circumstances to a company's premises) *Aalborg Portland v. Commission*, 7.1.2004, C-204/00 (Right of access to a file); *KB*, 7.1.2004, C-117/01 (equality of treatment of transsexuals).

[6] ECJ, Opinion 2/94, *European Convention on Human Rights* [1996] ECR I-1759.

[7] EP, A5-0207/2004 Final.

[8] Agence Europe, 18 November 2004.

[9] See the document “ Practical impact of the Council of Europe human rights mechanisms in improving respect for human rights in member States” (DGII (2004)018 of 13 December 2004). It should be recalled, of course, that these human rights mechanisms have an equally important practical impact in respect of the other 21 Council of Europe member States, based on the same common standards.

[10] The consultation document (page 7) mentions the following areas : immigration, asylum, non-discrimination, ethical questions, guarantee of criminal proceedings, violence).