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Annex to the

Proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights, and to the

Proposal for a Council Decision empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI of the Treaty on European Union

IMPACT ASSESSMENT REPORT

{COM(2005)280 final}

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1. TITLES OF PROPOSALS

Proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights

Proposal for a Council Decision empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI of the Treaty on European Union

2. DOCUMENT REFERENCE NUMBER

COM(2005)280 final

3. INTRODUCTION

The representatives of the Member States meeting within the European Council in Brussels on 12 and 13 December 2003 decided to extend the remit of the European Monitoring Centre on Racism and Xenophobia[1] (EUMC) in order to convert it into a Fundamental Rights Agency. Earlier in June 1999 the Cologne European Council had suggested examining the need for an Agency for human rights, an idea supported by the European Parliament in several resolutions. The December decision thus ended a long debate in which support for setting up such an Agency was widely expressed.

The decision for the establishment of the Agency is line with the specific commitments of the Union to respect fundamental rights, as embodied, inter alia, in the proclamation of the Charter of Fundamental Rights of the European Union[2] in 2000 and in its incorporation to the Treaty establishing a Constitution for Europe[3] signed on 29 October 2004. It continues the policy begun with the objectives entrusted to the EUMC. The EUMC supports the Community institutions in drawing up and implementing policies and fulfilling their obligations to respect fundamental rights in the specific field of discrimination on the basis of race. To that end, the main tasks of the EUMC are to collect, analyse data on and to study the causes of racism and xenophobia.

It should be stressed from the beginning that any Community agency will be able to act only within the competence of the Union, it will have to respect the general operating framework for the Community agencies, and it must have a proper legal base.

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1 Council Regulation (EC) No 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia, OJ L 151, 10.6.1997, p.1.

2 OJ C 364, 18.12.2000, p. 1.

3 OJ C 310, 16.12.2004, p. 1.

The Commission announced in 2003[4] that it would present the necessary legislative proposal in response to the decision of the representatives of the Member States. Before making its proposal, the Commission has carefully assessed the impacts of possible Union measures under different policy options. The assessment procedure was supported by the preparatory study for the impact assessment and ex-ante evaluation of Fundamental Rights Agency, which was conducted by the European Policy Evaluation Consortium (EPEC).[5] The assignment was undertaken under the guidance of an Inter-Service Steering Group, which included the representatives from DG Justice, Freedom and Security, DG Employment, Social Affairs and Equal Opportunities, DG External Relations, DG Budget, Legal Service and the Secretariat-General. DG Enlargement was also involved. The assessment took account of the results of the external evaluation of the EUMC carried out in 2002 and the related Commission Communication.[6] The conclusions of the assessment are presented by this Impact Assessment Report.

The assessment included an integrated ex-ante evaluation in the context of the Financial Regulation. The evaluation covered issues required by Article 21 of the Financial Regulation such as:

- the needs to be met in short and long term;
- objectives and, where appropriate, indicators;
- different policy options as regards the mandate and structure of the Agency, including alternative zero;
- the results expected from different alternatives;
- value added by the Community-level action;
- assessment of risks related to the project;
- lessons learned from similar experiences in the past;

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4 Conclusions of the representatives of the Member States of 13.12.2003, annexed to the Presidency Conclusions, Brussels 12-13 December 2003.

5 EPEC's methodological approach to the preparatory study consisted of the following elements:
*Inception Phase: meeting with the Inter-Service Steering Group, agreement on methodological approach, the definition of policy options and the identification of relevant information sources.
*Review of available documentation to elaborate the problems in the current situation and policy objectives (Commission and Council documents, additional studies, reports, evaluations and research).
*Review of the results of the public consultation (that took place between October 2004 and January 2005 and attracted 100 written contributions from all stakeholder groups).
*Participation in the public hearing held on the 25th January 2005, attended by over 200 participants from a variety of organisations, as well as from Member States and Union bodies.
*Visit to the EUMC, carried out on 2 February 2005. Meetings were held with the Director, Chair of Management Board, Head of Raxen/Research Unit and Head of the Communications Unit.
*Interviews with national human rights institutions (as supplement to the public consultation)
*Presentation, discussion and refinement of study conclusions in the Inter Service Steering Group meetings in early 2005.
The Preparatory study is available in the Freedom, Justice and Security website http://europa.eu.int/comm/justice_home/news/consulting_public/fundamental_rights_agency/index_en.htm. The study has been prepared by a private consultant, and the Commission cannot accept responsibility for its contents.

6 Commission Communication on the Activities of the European Monitoring Centre on Racism and Xenophobia, together with proposals to recast Council Regulation (EC) 1035/97. COM(2003)483 final, 5.8.2003.

– cost effectiveness including estimations on volume of appropriations, human resources and other administrative expenditure; and

– monitoring and evaluation.

The results of the ex-ante evaluation are mainly reproduced in the financial statement annexed to the proposals.[7]

4. PROBLEMS AND NEEDS IN THE CURRENT SITUATION

Possible problems and needs in the current situation of observing fundamental rights in the Union relate to the following issues, each of which is elaborated below:

– problems with the availability, comparability and quality of data and information on fundamental rights across the Union;

– shortcomings in systematic observation of the situation of fundamental rights in practice in the Union and the Member States when implementing Union law and policies;

– shortcomings in EU screening mechanisms for the purposes of Article 7 of TEU, which enables the EU act against a Member States when there is a clear threat or actual breach of common values;

– deficiencies in coordination and networking between national human rights institutions and European level bodies;

– lack of systematic and permanent dialogue between the EU and national and European non-governmental organisations operating in the field of fundamental rights;

– lack of awareness amongst the public within the EU of their fundamental rights;

– need for more coherence in respecting the fundamental rights in the EU policies.

Problems of availability, comparability and quality of fundamental rights data and information

The concept of fundamental rights is complex and multifaceted. It is ambiguous and it is difficult to observe fundamental rights problems quantitatively. The definitions of fundamental rights are open to interpretation; the relevant data can be highly subjective, originate from multiple sources and require complex verification processes. Collecting data on compliance with fundamental rights standards is not a value-neutral activity. There are ethical considerations in the quantification of breaches of fundamental rights. In practice it is difficult and always contentious to make comparisons on ordinal, interval or ratio scales between the extent of compliance with fundamental rights in one context or other. The particular problems of limited availability of information; differences in definition; and, poor quality of data are elaborated below.

Lack of information on fundamental rights: Member State governments and NGOs have relatively long traditions of monitoring and reporting on compliance with international human rights standards,

[7] COM(2005)[NUMBER]final.

having been signatories to the most important UN and Council of Europe human rights conventions. However, there is a lack of fundamental rights information at the European level, which would provide a readily available overview of how the Member States are respecting fundamental rights standards. Data sources about respect for the different rights secured by the Charter are varied and the responsibility of different international organisations. They cover different time periods. Very often identical information is not available for all Member States. These characteristics mean that information may not be used systematically to inform EU policy making and even if the data is carefully assembled it may still be of limited value.

The availability of fundamental rights data in some Member States is also problematic. Valuable information on how countries have implemented fundamental rights standards has been collected by the Commission through the accession process from a variety of sources. The monitoring of compliance with human rights issues has been regularly reported in the annual country reports submitted to the Council. However, the problems of data availability persist

It is true that there is a plethora of information on the respect of fundamental rights available from a wide range of sources, ranging from the international institutions such as UN and the Council of Europe to NGOs and individual complaints made to the Commission. This brings a problem of 'information and knowledge management'. Thus there would be benefit in the all the relevant information being collected in one place and processes put in place to verify and ensure its reliability and comparability.

Lack of comparability of fundamental rights data: Fundamental rights data are extremely difficult to collect and analyse. The variations in interpretation of fundamental rights make cross-national comparisons between recorded violations of fundamental rights difficult. Member States also have different data collection mechanisms, stemming from different national statistical traditions and systems of defining and collecting information in the human rights field.

Limited quality of fundamental rights data: A variety of international and national, official and unofficial sources provide a wealth of information and data on fundamental rights. However, there are a number of issues in respect of the quality of information: Official sources are often based on self-reporting by institutions and agencies concerned with or responsible for ensuring rights are observed. These arrangements may not ensure that all violations are reported. Statistics from the national systems need to be used with caution, as countries use different definitions of fundamental rights and of their breaches. Information stemming from public opinion surveys could be of limited value. Information from NGOs is very important as they are often close to the field and maintain up-to-date information on the issues of interest to them. However, NGOs cannot be relied upon to provide a complete picture on all the fundamental rights in all the Member States. Relatively few NGOs such as Amnesty International or Human Rights Watch focus on fundamental rights in general; most NGOs operate in very specific areas.

Shortcomings in systematic observation of situation of fundamental rights on the ground by the Union and the Member States when implementing Union law

As its core task, the Commission controls the legal implementation of the measures adopted by the EU. This extends to respect for fundamental rights as part of the check on the legality of measures.

With reference to the Charter, the Union institutions and bodies and the Member States when implementing Community law are committed to respect the fundamental rights, observe the principles and to promote the application thereof in accordance with their respective powers. This context is important for the development of models and best practices for benchmarking the mainstreaming of fundamental rights and for the process of assessing the impacts from proposed legislation on fundamental rights.

There are a number of institutional mechanisms to monitor the impacts on fundamental rights when Member States are implementing Union policies both at the national and at the European and international levels. Table 1 provides an overview of the existing mechanisms to monitor and collect information on respect for fundamental rights in the EU.[8]

Table 1 Overview of existing monitoring mechanisms/information sources

	Self-reporting	**Annual country reports**	**Thematic studies**	**Opinions, recommendations**	**Judicial enforcement**	**Geographical scope**
EU institutions (EP, Council, Commission)		X	X	X	X	25 EU Member States, various9
UN	X		X	X		Worldwide
Council of Europe	X			X	X	46 European countries
Organisation for Security and Cooperation in Europe (OSCE)		X	X	X		55 states in Europe, Central Asia and North America
National human rights institutions			X	X		11 EU Member States
NGOs		X	X	X		Worldwide, various
US State Department		X				Worldwide

The main issues arising from the review of existing monitoring and reporting pertinent to this impact assessment are:

– despite considerable amount of observatory activity by the Union institutions and several international organisations, there is insufficient comparability of monitoring and reporting in terms of timing and coverage of issues (that is: to cover the identical matter for the whole Union and for the same time period);

– there is considerable reliance on self-reporting mechanisms by states at the international level, and active data collection on the impacts of Member States' actions at the ground level is scarce;

– the institutional map in the area of observing fundamental rights is complex. There is a need to be complementary and to develop co-operative relations;

8 The existing monitoring mechanisms are described in section 3 of the Preparatory study, ref. footnote 5.

9 As part of assessments on the political criteria for the accession to the Union, DG Enlargement has regular monitoring mechanisms (e.g. annual country reports) on respect for fundamental rights in the candidate countries. DG External relations has mechanisms for regular monitoring of respect for human rights in third countries. Council's and EPs Annual Reports on the state of human rights cover the whole world. In addition, EP issues a report concerning the EU.

– despite the body of activity, there is a lack of collection of quantitative data on respect of fundamental rights by the Member States when implementing the Union law;

– there is a large body of work. This requires data management to pick up the relevant information needed in the Union policy making;

– at national level, courts in the Member States monitor compliance with fundamental rights standards through dealing with cases of alleged fundamental rights violations brought up by individual citizens. Although this monitoring is very important, it is not systematic and comprehensive;

– different Member States have different institutional arrangements for national human rights institutions.[10] The scope of competence, degree of independence, and level of resources of the institutions differ substantially across the Member States;

– at the European level, the Network of independent experts in fundamental rights, established and financed by the Commission, issues annual and thematic reports on the situation in the Member States and the European Union. However, it is not permanent and does not have resources for comprehensive monitoring of the fundamental rights situation in the Member States.

Although the Member States have developed various strategies, policies and mechanisms to respect and mainstream fundamental rights when implementing Union law and policies, there is a lack of systematic observation of how the Member States do this. Such a lack represents a missed opportunity, as the potential for sharing of experiences and good practices and mutual learning is not met.

Issue of screening mechanisms for the purposes of Article 7 TEU

Article 7 of the Union Treaty gives the Union institutions the means of ensuring that all Member States respect the common values stipulated in Article 6 TEU. The Council can take action against a Member State in the event of a clear threat of a serious breach of the common values and in the event of the serious breach of common values. This provision is intended to prevent any such situations arising, by giving the Union the capacity to react as soon as a clear risk of a breach is identified in a Member State, and, also, to penalise and remedy a serious and persistent breach.

One of the main issues in relation to Article 7 procedures is how the EU institutions identify such situations to initiate Union action. Some have argued that, given the seriousness of implications of invoking Article 7 procedures, the basis for such identification should be a regular, systematic and independent monitoring of respect

[10] Eleven countries, Czech Republic, Denmark, Germany, Estonia, Greece, France, Ireland, Cyprus, Latvia, Luxembourg and Slovak Republic, have a national body charged with monitoring compliance with human rights standards within the meaning of Paris principles (ref. Resolution 48/134 of 20 December 1993 of the General Assembly of United Nations and Recommendation No R (97) 14 of 30 September 1997 of the Committee of Ministers of the Council of Europe).
Fourteen Member States, Belgium, Spain, Italy, Lithuania, Hungary, Malta, Netherlands, Poland, Portugal, Slovenia, Austria, Finland, Sweden, and UK, have not yet established such specific institutions.

for common values in all Member States. Currently, the Union institutions can draw on the reports of the Council of Europe and other international organisations, the Network of independent experts in fundamental rights, the decisions of regional, national and international courts and NGOs.[11] However, on that view, information is dispersed amongst many such sources, and it is arguable whether the Union institutions have reliable, systematic and independent information on the breaches of common values when they need it.

Another issue is to ensure the high-quality information during a possible Article 7 procedure. In such cases, an agency capable of providing the Council with reliable, systematic and independent information relating to common values and fundamental rights would be useful.

Lack of coordination and networking between national and European level human rights institutions

Coordination and cooperation between the national human rights institutions is uneven.[12] Cooperation mostly takes place in the Council of Europe, and via the Commissioner for Human Rights in particular. However, the cooperation appears to be confined to the bi-annual round table meetings, which, although useful, are not sufficient to maximise cooperation opportunities between national human rights institutes within the Union.[13] This was acknowledged in the declaration of the round table meeting in November 2004. Given the wide scope of fundamental rights in the Charter, the large body of extant and prospective EU policies that have implications for fundamental rights and the very varied contexts across the Member States, the resources and tools currently available for coordination and networking to ensure the good communication of existing information and to improve the information base so as to better inform EU policy making are insufficient.

Lack of systematic and permanent dialogue between the EU and national and European non-governmental organisations operating in the field of fundamental rights

The public consultation highlighted the lack of structured, systematic and continuing dialogue with civil society concerning fundamental rights, which is essential for the open and multi-valued Union. There is a need to exchange and share information and expertise. What is lacking is a tool that would be flexible enough to have systems allowing a broad dialogue including all the relevant actors of the civil society as well as the capacity to use specific NGOs to bring in a more detailed understanding of certain topics to the Union policy making in the field of fundamental rights. Dialogue with civil society should be a forum for debating and reflection to help the work of independent experts and civil society. However, no regular and systematic formal process is used to involve and consult with the civil society in developing, implementing and assessing the Union's fundamental rights policy as many NGOs

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11 It can be simply argued that potential situations where Article 7 procedures have to be evoked represent cases of such an extraordinary character that a major constitutional crisis has to occur within the EU. Such crisis would be identified without any specific mechanisms at the EU level.

12 As mentioned above, 11 of the current 25 EU Member States have national human rights institutions within the meaning of the Paris principles.

13 The latest, 3rd in the series, took place in Berlin in November 2004.

rely on good personal contacts and networking with the Commission and relevant DGs.

Lack of public awareness of their fundamental rights

The Charter brought together in a single document the sets of rights otherwise scattered across the landscape of Union law It makes clear the nature and scope of fundamental rights across the Union and provides a degree of coherence. However, public opinion surveys indicate a lack of public awareness of fundamental rights and the Charter. The Eurobarometer survey carried out by the Commission in October 2002 revealed that only one in five EU citizens felt that they were well informed about their rights as Union citizens. Only one third know what Union citizenship meant and only 8% were aware of the Charter. There were also differences in public awareness of fundamental rights between countries. The Irish and the Finns were most aware of their rights as Union citizens while UK respondents considered they were the least well informed.[14]

Another, more recent, public opinion survey conducted in November 2004 shows continuing lack of awareness of the Charter. A third of EU citizens stated that they had never heard of the draft Constitution (incorporating the Charter), this figure being 65% in Cyprus, around 50% in the UK, and 45% in Greece and Ireland.[15]

Need for more coherence in respecting and promoting fundamental rights in EU policies

Political initiatives by the Union institutions over the last few decades to strengthen human rights protection in the EU have centred on accession to the European Convention on Human Rights and the adoption of an EU constitutional 'bill of rights', the Charter of Fundamental Rights. Both of these objectives will be fulfilled if the Charter, proclaimed in 2000, becomes legally binding through the ratification of the Constitution, which also provides for the EU to accede to the European Convention of Human Rights.

Important day-to-day work on fundamental rights is already an integral part of many EU policies. For example, in its relations with third countries the EU scrutiny of how third countries comply with fundamental rights can be intrusive and effective, and systems of enforcement, increasingly wide in scope and strong, have been applied. Since the early 1990s, the EU has more or less systematically included a human rights clause in its bilateral trade and cooperation agreements with third countries. More than 50 such agreements have been signed. Another example of such a policy is the funding of activities to promote human rights and democratisation, for instance, the European Initiative for Democracy and Human Rights aimed specifically at NGOs.[16] However, similar efforts as regards internal policies are not so visible.

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14 Flash Eurobarometer 133 '10 years of Union citizenship', October 2002.

15 Eurobarometer special 214, 'The Future Constitutional Treaty, First results', January 2005.

16 Detailed description of EU activities in the human rights field in its external relations can be found at http://europa.eu.int/comm/external_relations/human_rights/intro/index.htm.

There is currently no dedicated centre of expertise within the EU institutions to advise them on the political and social impacts on fundamental rights of legislation and policy throughout the policy cycle. The recent measures of the Commission, such as the Group of Commissioners on Fundamental Rights, Anti-Discrimination and Equal Opportunities that has a mandate to ensure the coherence of Commission action in the area of fundamental rights, already move towards ensuring better policy coordination. Because policy developments within many, if not all, of the policy areas of the EU have potential implications for fundamental rights it is clearly important that officials and policy makers across the EU institutions both actively consider these implications and are well informed of them.

5. POLICY OBJECTIVES SET BY THE COUNCIL

The European Council defined the following policy aims for an agency:

"*…The Representatives of the Member States meeting within the European Council, 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.*"[17]

The Council on 16-17 December 2004 also called "*for further implementation of the agreement by the representatives of the Member States meeting within the European Council in December 2003 to establish an EU Human Rights Agency which will play a major role in enhancing the coherence and consistency of the EU Human Rights Policy*".

The Council thus explicitly set the objectives of collecting and analysing data to help to define Union's policy, and reform the existing EUMC and enhancing the coherence and consistency of the Union's human rights policy.

For the purposes of the impact assessment process, the aims expressed by the Council were elaborated as possible operational objectives/tasks for an agency. The following possible objectives and tasks were identified:

- improve definitions, existence and comparability of data on fundamental rights;
- objectively follow and analyse existing reports, studies, judgements and other evidence on fundamental rights pertaining to EU policy;
- develop a strong analytical capacity and to act as a centre of expertise on fundamental rights;
- observe the application of fundamental rights standards in practice stemming from EU policy and its institutions;
- monitor the application of fundamental rights standards on the ground by Member States outside of Union law framework for the purposes of Article 7 of the TEU;
- identify and promote good practice in respecting and promoting fundamental rights by the EU institutions, bodies and agencies and Member States;

[17] Presidency Conclusions of 12-13 December 2003, Brussels.

– have independent opinions on fundamental rights policy developments in the EU;

– promote dialogue with civil society, coordinate and network with various actors in the field of fundamental rights;

– raise public awareness in the EU of fundamental rights;

– provide incentives for candidate to fully respect fundamental rights.

The following chapter identifies solutions and defines a number of policy options that could to a greater or lesser degree meet the concerns and needs presented in Chapter 2 and achieve the objectives identified above. The range of objectives ultimately chosen and the degree of emphasis on one objective or another will depend upon the resources and the legal and institutional arrangements adopted. The purpose of considering different policy options is to provide an explicit review of the likely advantages and disadvantages, (including financial costs) of alternative ways of advancing the Council's objectives.

6. IDENTIFYING SOLUTIONS: POLICY OPTIONS

To address the above-mentioned problems and to meet Council's objectives, five policy options[18] were identified. These policy options were elaborated in terms of tasks and outputs:

– **Policy option 1 – 'status quo'**, where current structures such as EUMC and the Network of independent experts in fundamental rights would continue. There would also be a number of short and medium-term developments (such as establishment of the European Institute for Gender Equality).

– **Policy option 2 – 'Focused Observation Agency'**, which could collect information on fundamental rights in a limited number of thematic areas having strongest links to EU policies. The remit of the Agency would be considered 'technical assistance' to the EU institutions.

– **Policy option 3 – 'General Observation Agency'** that would be similar in the scope of its tasks to policy option 2, but would cover more thematic areas.

– **Policy option 4 – 'Focused Observation and Assessment Agency on Union Policies'** that would include all the objectives and activities of policy option 3. In addition, the Agency would have greater responsibilities as regards observing EU institutions and Member States when they implement Union law. Based on data collection, the Agency would carry out assessments and issue opinions to EU institutions and Member States.

– **Policy option 5 – 'Widest Possible Observation and Assessment Agency', covering both Union and non-Union policies,** that would include all the objectives and activities identified for policy option 4. But the Agency would also

[18] The starting point for Options 2-5 is that the activities of the new agency are based on the existing operation of the EUMC. An option to establish a totally new agency in the field of fundamental rights, to operate parallel with the EUMC, was abandoned after the initial screening, since it was considered excessive and going outside of the objectives set by the Council.

monitor respect for fundamental rights in the Member States for the purposes of Article 7 TEU, i.e. it would monitor Member States also when they act autonomously, outside EU law. In practice, this would require the Agency to have substantial presence in each EU Member State.

7. ASSESSMENT OF THE POLICY OPTIONS

The policy options were assessed according to how far they address the problems identified in the current situation and how far they achieve the policy objectives set by the Council. Anticipated costs were estimated for each option. In addition, a number of horizontal issues were taken into account in the determination of the best policy option:

Article 7 TEU competences. This provision enables the Union to suspend the rights of a Member State if it seriously and consistently breaches fundamental rights, regardless of whether a Member States acts within or outside the framework of Union law. Article 7 TEU procedures have not been invoked in the Union so far, and they refer to an extraordinary incident and a constitutional crisis. The breach of fundamental rights to warrant the activation of Article 7 would be so serious and extraordinary that it does not require a special mechanism to notice such a breach.

Coverage of third countries. Requiring the future agency to observe third countries generally would entail substantial resources and duplicate the existing work of international governmental and non-governmental sources. It is therefore considered that the Agency should not cover third countries in general. Nevertheless, the Agency should be allowed to collect information on third countries on case-by-case basis, at the request of the Commission. It is also envisaged that the Agency could have a role in relation to actual and potential candidate countries during the accession period.

Focus on racism and xenophobia. The loss of focus on racism and xenophobia was one of the major concerns in the public consultation over the establishment of EU Human Rights Agency. Maintaining the focus was therefore one of the determining factors.

The following conclusions can be drawn on the basis of the assessments:

– **The 'Status quo' policy option (1)** would not meet the policy objectives of the Council to establish an EU Fundamental Rights Agency. The idea of establishing the Agency was also almost unanimously supported in the public consultation launched by the Commission. The status quo option would also not address the problems in the current situation.

– **The 'Focused Observation Agency' policy option (2)** would address the problems in the current situation but only to a very limited extent. The impact on improving fundamental rights data quality, the key objective of the Council, would be marginal. So the potential of this policy option to contribute to the policy objectives is very limited. The opinions expressed in the course of the public consultation were divided about the effectiveness of this policy option.

– **The 'General Observation Agency' policy option (3)** would be inefficient and face the risk of spreading resources too thinly by working in all the areas of fundamental rights. It would duplicate the work of other international, European and national organisations. The focus on racism and xenophobia, a key concern in the public consultation, could be diluted were the Agency to observe generally the fundamental rights.

– **The 'Observation and Assessment Agency' policy option (5)** which would observe the practical impacts on fundamental rights both within and outside the Union law and policy framework would be the most effective option to reach policy objectives and address all problems in the current situation. However, it raises the complex issue of limits of Union legislative competencies. It would entail a very large financial commitment (see table 2 below). It would also risk being overburdened with work in all the fundamental rights in a very large area. It could duplicate the work of other institutions in this field. The focus on racism and xenophobia, a key concern in the public consultation, could easily be diluted. Such a mandate for an EU Fundamental Rights Agency would (as shown in the public consultation) also face considerable opposition from the Member States.

These considerations point to **policy option 4 – 'Focused Observation and Assessment Agency limited to Union law'** – as the preferred way to achieve the policy objectives and address the problems identified. It addresses the problems in the current situation efficiently; it entails a medium financial cost, and has a considerable degree of political acceptability. Naturally, this option would also have to be set up within the general institutional requirements for Community agencies, which means that the "Focused Observation and Assessment Agency limited to Union law" would perform technical missions and exercise only limited political discretion. The margins of such discretion are to be laid down in a Community procedure involving the politically accountable institutions, by defining a number of areas where the Agency's input are most needed for the development of Community policies through, for example, a multiannual thematic framework.

Table 2 indicates the anticipated costs of the five policy options. They have been divided into costs associated with core staff and operational costs associated with the main functions of the prospective Agency within each policy option. Budget lines have been introduced for work on third countries in a manner that allows for the policy options to be considered with and without these functions.

Table 2 Estimated costs of the policy options

Possible tasks/outputs	Description	Policy option 1'Status quo'	Policy option 2	Policy option 3	Policy option 4	Policy option 5
			'Focused observation'	'General observations'	'Focused observation and assessment, Union policies only'	'Observation and assessment, within and outside Union policies'
Administrative staff	Staff at grades B, C, D		8	10	20	25
Operational staff	Staff at grade A		17	45	80	125
Total staff			25	55	100	150
Total staff cost	This has been calculated using average grade B2 cost (€84,868)		€ 2,121,699	€ 4,667,739	€ 8,486,798	€ 12,730,196
Overhead	The overhead has been calculated at €21,167 per person (standard DG BUDGET rate from 2001 budgetary execution)		€ 529,173	€ 1,164,180	€ 2,116,700	€ 3,175,036
Total			€ 2,650,872	€ 5,831,919	€ 10,603,498	€ 15,905,233
OPERATIONAL ACTIVITIES						
Cost of national focal points in MS to collect secondary data19			€ 1,500,000 (€60,000 average per Member State)	€ 3,750,000 (€150,000 average per Member State)	€ 7,500,000 (€300,000 average per Member State)	€ 18,750,000 (€750,000 per Member State)
Cost of national focal points in MS to produce assessments			No assessment	No assessment	€ 2,500,000	€ 5,000,000
Pro-active work with MS on definitions and comparability of FR data	Regular meetings with MS, studies, guidance,		€ 500,000	€ 1,500,000	€ 2,000,000	€ 7,000,000

19 This line presents the costs of national focal points to collect secondary data. It is envisaged that it would be the same network that would be used to produce assessments, presented in the next line. The costs have been separated to account for the lack of assessment function in policy options 2 and 3. In practice, there could be several networks, depending on the expertise required.

Possible tasks/outputs	Description	Policy option 1'Status quo'	Policy option 2	Policy option 3	Policy option 4	Policy option 5
			'Focused observation'	'General observations'	'Focused observation and assessment, Union policies only'	'Observation and assessment, within and outside Union policies'
External grants	Studies, grants to NGOs to start dialogue with MS; capacity building in MS without national human rights institutions		No such task	No such task	€ 2,000,000	€ 3,000,000
Capacity to identify and validate good practice	Peer review process (meetings, visits)		No such task	No such task	€ 500,000	€ 2,000,000
Liaison with NGOs	Annual roundtable, regular networking and events		€ 500,000	€ 500,000	€ 1,000,000	€ 1,000,000
Awareness-raising	Initiatives with schools, annual awards, press and web campaigns, public aspects of the Agency's website		No such task	No such task	€ 2,000,000	€ 4,000,000
Subtotal of operational costs (excluding activities with candidate and third countries)[20]			€ 2,500,000	€ 5,750,000	€ 17,500,000	€ 40,750,000
Total cost of Agency			€ 5,150,872	€ 11,581,919	€ 28,103,498	€ 56,655,233
Cost of CC and 3rd country activities			€ 1,200,000	€ 1,400,000	€ 1,600,000	€ 1,600,000
Total agency cost including CC etc.			€ 6,350,872	€ 12,981,919	€ 29,703,498	€ 58,255,233

[20] Existing Community Agencies have used the PHARE programme to fund work with the candidate countries. It therefore seems appropriate to fund the Fundamental Rights Agency's work with candidate and third countries in a similar way.

8. OBJECTIVES OF THE PROPOSAL

Maintaining and further securing fundamental rights, as safeguarded by Union law, depends on a more thorough knowledge and widespread awareness of fundamental rights issues in the Union. The fulfilment of these conditions can be profitably entrusted to an independent agency to be responsible for drawing the Union institutions' attention to, and advising them on, fundamental rights matters and promoting the provision of fundamental rights information and education for the public. The objective of the proposal is, by building on the existing operations of the EUMC, to create such Fundamental Rights Agency, along the lines of policy option 4. The Agency aims to provide the relevant institutions and authorities of the Union and its Member States when implementing the Union law with assistance and expertise relating to fundamental rights in order to help them when they take measures or formulate courses of action within their respective spheres of competence.

The proposal will thus respond to the objectives explicitly set by the Council: create an agency collecting and analysing data to help to define Union's policy, and reform the existing EUMC and enhance the coherence and consistency of the Union's human rights policy.

A precondition to the proposal is to continue and integrate the EUMC into the Agency. This means that the new Agency is building on the legacy of the EUMC, which will allow the expertise, knowledge and network management experience accumulated there to be incorporated into the new Agency. It will also mean that the initial establishment phase, which is one of most risky phases in an organisation's life, is greatly facilitated by the existence of the EUMC.

Another issue to be considered is the fate of the Network of independent experts on fundamental rights. In the relatively short time of its operation, the Network has made a valuable contribution in the form of its annual reports on the situation of fundamental rights in the EU and thematic opinions. However, the Network lacks a legal basis, legitimacy and continuity. When establishing an agency, the existence of a separate Network is difficult to justify, as it would entail the existence of two parallel mechanisms for fundamental rights monitoring within and for the EU. On the other hand, for the Agency to be effective, it must have access to legal expertise in the Member States to get local information and analysis. The expertise of the Network would not be lost, if the network would be integrated in the work of the Agency. Therefore, one solution could be that the Network of independent experts would be incorporated into the structure of the Agency by becoming one of the networks operated by the Agency. In consequence, the focus of the work of a legal network would concentrate on fundamental rights within implementation of Union law.

9. DESCRIPTION OF THE PROPOSAL

The proposal extends the remit of the EUMC and builds on its current work so that a European Union Agency for Fundamental Rights is created. It will establish a centre of expertise on fundamental rights issues at the EU level. The creation of an Agency will make the Charter of Fundamental Rights more tangible.

The Agency must be managed independently, as the consensus in the public consultation underlined. It has a right to define annual work programme after a consultation with principal stakeholders. In this context, it must be underlined that the Agency will be able to act only within the competence of the Union. The Charter of Fundamental Rights is considered as the primary reference document for the functioning of the Agency. The thematic areas of activity will be laid down through a Multiannual Framework, to be adopted by the Commission in accordance with a comitology procedure. This will ensure that the political margins of the discretion of the Agency are within the appropriate limits. At this stage, the Agency will concern its operations primarily in the European Union and its Member States.[21]

The Agency is expected to perform the following tasks and deliver the following outputs:

– collect and analyse secondary data and information on how fundamental rights are affected by the implementation of Community policies and regulations. This would be done by establishing and maintaining national focal points in each EU Member State. Such information networks will collect, analyse and channel the relevant data and information to the Agency;[22]

– work with national statistical institutes and other government departments to improve the comparability and quality of the fundamental rights data collected at national level. Such a consensual approach would serve to identify the gaps in information and agree on the common definitions for collecting new primary data and information;

– carry out research and surveys as well as give grants or contracts to fund research, according to the needs identified in the work of the Agency. The ability to provide grants could foster long term cooperation and capacity building. The research activities will be carried out taking into account the general context of the Union research programmes;

– identify good practice in how fundamental rights are respected by EU institutions, bodies and agencies and Member States when implementing Union law. A number of mechanisms have been tried and tested at EU level for identification and sharing of good practice;

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21 There is a possibility for actual and potential candidate countries to participate to the operations through decision of the Association Council concerned.

22 There was a wide consensus in the public consultation that the Agency should not use passive data collection methods (i.e. require Member States to send regular reports to the Agency) but actively and independently collect fundamental rights data.

– produce annual reports on how fundamental rights are respected in the Union by EU institutions, bodies and agencies and Member States when implementing Union law. The reports would be presented on a sectoral basis (no country reports) and would consist of descriptive and analytical parts, identification of good practice and recommendations for improvements;

– produce thematic reports in the topics of particular importance to the Union's policies, which would consist of descriptive and analytical parts, identification of good practice and recommendations for improvements;

– formulate conclusions and issue opinions, both confidential and public, to the Union's institutions, bodies and agencies and Member States on situation of fundamental rights in the implementation of Union policies and regulations. There will be sufficient safeguards built into the work of the Agency so that opinions are not affected by outside political interference;

– raise public awareness, promote dialogue with civil society and coordinate and network with various actors in the field of fundamental rights.

The Agency is not established in a vacuum. One of the primary underlying principles and aims of the Agency is therefore to build consensus on understanding and interpreting fundamental rights between a wide range of stakeholders in the field. In the course of public consultation, it was continuously emphasised that the Agency must have strong formal links with various stakeholders to avoid duplication of effort and work. The objective is to strive for synergies and to collaborate closely with relevant international, European and national organisations and bodies. Table 3 presents an overview of institutional relationships the Agency will have to maintain in its work.

Table 3 Institutional relationships between the Agency and other stakeholders

Institution	Nature of relationship	Possible tools
Council of Europe and other international organisations (UN, OSCE)	Coordinate work, consult and gather information	Council of Europe – formal participation on the management board, cooperation agreement, regular meetings and contacts
EU institutions (EP, Council, Commission)	Observe, issue opinions, influence agenda and policy formulation, raise awareness	Rapid response function to requests from EU institutions (EP, Council, Commission)23
Community agencies and Union bodies	Coordinate work, consult and gather information	Memorandum of understanding, participation of directors to the board meeting as observers
Member States	Cooperate on gathering information, liaise with national statistical institutions to improve data, engage and support peer review process	Liaison network of officials in Member States, members of management board appointed by the Member States, peer review process, working groups on thematic issues
Civil society (NGOs, social partners, local and regional government)24	Consult, gather information	Forum, liaison network, annual thematic meetings
Citizens	Awareness raising	Press and internet campaigns, annual prizes, competitions, work on school textbooks

The appropriateness of combining the proposed tasks with those of the future European Institute for Gender Equality, proposed by the Commission[25], was examined in the ex-ante evaluation of that Institute.[26] The advanced state of development and the specificity of gender equality policy, which goes beyond the fight against discrimination and the respect of fundamental rights, are such that justify a separate institute. Any financial savings that might result from the inclusion of gender equality within the scope of the Agency would therefore be outweighed by the disadvantages highlighted in the above-mentioned ex-ante evaluation report.

23 In the course of public consultation, there was an opinion expressed by a number of Member States that the Agency could, upon request, draw up opinions and respond flexibly and rapidly to specific requests from the EU institutions.

24 The need for dialogue between the Agency and the civil society was widely stressed in the public consultation. Views were expressed that civil society assists in the information collection, definition of work priorities, debate and exchange of views.

25 COM(2005)81final, 8.3.2005.

26 See Point 4.3 Option 2 (extend the remit of an existing institution), SEC(2005)328 of 8.3.2005.

10. IMPACT OF THE PROPOSAL

The proposed establishment of a Fundamental Rights Agency would have an impact in several positive respects relating to the quality of information as well as to systematic observation of impact on fundamental rights resulting from EU action and from implementation of EU law by the Member States.

The Agency will increase the availability, quality and comparability of data and information by closely working with Member States' statistical institutes and other stakeholders to improve the current situation. In contrast to policy option 3, the task of issuing opinions will provide an additional impetus to ensure that data and information are valid, comparable and available. The Agency will establish comprehensive systems to observe the impact of EU and Member States' action on the ground through better availability of information and issuing of opinions. The focus on the areas of Union competence means, however, that observation and assessment of issues is limited to how the implementation of EU law and policies affects fundamental rights in practice.[27]

The creation of the Agency will lead to better coordination of national human rights institutions and engagement with NGOs, when the Agency will work with them for consultation, information gathering purposes. It will also increase awareness of citizens of their fundamental rights. This will be done via publicity campaigns, public website, access to Agency resources etc, in accordance with a communication strategy to be prepared by the Agency.

The Agency will increase the coherence and consistency of applying fundamental rights standards in the Union policies by acting as a centre of expertise for the Union institutions. The Agency will also have a duty to respond rapidly to requests for information and assistance from the Union institutions. By observing and assessing the impacts on fundamental rights from the Union policies and legislation, the Agency will have ability to improve the coherence of fundamental rights policy of the EU.

Efficiency is expected as work will be targeted and focused on Union priorities. Focus on EU level priorities ensures relevance of the Agency to the Union's policies. It will also contribute avoiding duplication of work by other institutions at the international, European and national levels.

Lastly, by keeping racism and xenophobia as one of the prime fields to observe and assess, the Agency will ensure EUMC work on racism and xenophobia will not be diluted. Continuation of EUMC work will facilitate the transformation into an Agency and retain EUMC expertise and institutional learning.

The screening did not reveal any significant negative impacts of the proposal in economic, social or environmental area. On the contrary, a high level of respect of fundamental rights will affect positively to other policy areas of the Union, and thus

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[27] The Agency will not observe and comment on Member States when they act autonomously, contrary to policy option 5.

indirectly lead also to high economic, social and environmental standards for the advantage of the Europeans.[28]

11. STAKEHOLDER CONSULTATION

To thoroughly prepare its proposal, the Commission launched a public consultation, by means of a Communication presented on 25 October 2004 and accompanied by a Commission Staff Working Paper.[29] It also prepared a list of questions that could be used as guidelines for comments.

The written public consultation attracted around 100 responses from a variety of stakeholders, including international organisations, Union level organisations, Member States' governments and parliaments, national human rights institutions, academia, NGOs and individual citizens. The response demonstrates considerable interest in the establishment of the Agency and the value of the public consultation as part of the Commission's impact assessment process. All the contributions were analysed in an interim report during the assessment procedure.

The Commission further pursued public consultation by organising a public hearing on 25 January 2005. It was announced by the Communication and by a notice on the website, with a deadline for registrations on 14 January 2005. There were more than 200 registered participants, representing the above-mentioned stakeholders. The hearing was opened by Mr Franco Frattini, Vice-President of the European Commission, Mr Luc Frieden, Minister of Justice of Luxembourg, and Mr Jean-Louis Bourlanges, Chairman of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs. Panellists came from the EU institutions, the EUMC, the Council of Europe, Amnesty International, academia and national parliaments. A report on the hearing containing the interventions and reporting on debates was posted to the website.

All documents relating to the consultation are available on the website:

http://europa.eu.int/comm/justice_home/news/consulting_public/fundamental_rights_agency/index_en.htm

The principle of establishing an agency was welcomed unanimously. The need for the Agency to be independent from the EU institutions, Member States and NGOs was also unanimously stressed. Most contributors emphasized the need to avoid duplication with work already carried out at national and international level. Synergy should be the principle, on which the Agency builds its relations with other bodies, not least with the Council of Europe.

There was a broad consensus in considering that the Charter should be the primary point of reference when defining the mandate of the Agency. Stakeholders also requested that the areas covered by the current remit of the EUMC, fighting against

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[28] The economic, social or environmental impacts of the extension of the EUMC headquarters into an Agency will not be relevant. The headquarters is situated in a big city, and the extension of current operations with an increase of staff of about 60 persons will not have major impacts.

[29] COM(2004)693 final and SEC(2005)2181, 25.10.2004.

racism and xenophobia remain at the core of the future Agency's activities. As regards the Agency's geographic scope, there was a certain consensus that it should focus on the Union and its Member States. However, quite a number of stakeholders

Respondents → **Issue↓**	**Member States and European institutions**	**National human rights institutes**	**NGOs**	**Individuals**
1. Should the Agency be given competence under Article 7?30	☹ ☺ (1)	☹ ☺ (2)	☺	☺
2. Should the Agency deal with individual complaints?	☹	☹	☺	-
3. Should the Agency concentrate on certain thematic priorities in the Charter?	☺ ☹ (4)	☹	☺ (17) ☹ (15)	☺ (4) ☹ (5)
4. Should the Agency cover the third countries?	☹ ☺ (2)	☹	☹ (19) ☺ (7)	☹
5. Should the Agency be given quasi-judicial powers?31	☹	☹	☺	-
6. Should the Agency use passive data collection methods?	☹	☹	☹	-
7. Should the Network of Independent Experts be maintained separately from the Agency?	☺ ☹ (2)	☺	☹ (2)	-
8. Should a Scientific Committee be established in the Agency?	☺ ☹ (1)	☺ (6) ☹ (1)	☺	-

made other proposals, such as the extension of the Agency's remit as regards candidate countries.

The issue of the possible competence of the Agency with respect to Article 7 TEU was the subject of divergent views: while Member States were in general very prudent on this issue, NGOs wished the Agency to play a strong role in this respect.

Table 4 provides an overview of responses to a number of selected issues raised in the process of public consultation. Responses are classified by the type of respondents and give a summary of opinions expressed on a particular question. Where no consensus existed on a particular question, the scale of differences in opinions is also indicated by the number of respondents (in brackets) who expressed a contrary opinion.

Table 4 Summary of responses to selected issues from the public consultation

Key to symbols: ☺ Yes (most respondents) /☹ No (most respondents) /- No opinion expressed

This proposal takes on board those issues mentioned above, on which there was a broad consensus.

12. MONITORING SYSTEM OF THE AGENCY, INCLUDING POTENTIAL INDICATORS TO MEASURE RESULTS AND IMPACTS

Monitoring and evaluation of the Agency is an important element for ensuring the efficiency and effectiveness of the organisation. However, existing evaluations of the Community agencies have focused on the process issues. Table 5 suggests several indicators to evaluate the progress made by the Agency towards achieving each of the objectives set for such an organisation by the Council. They could be categorised:

– result or output indicators (e.g. provision of comparable data);

– impact indicators (e.g. rising public awareness). The most important impact indicator in the work of Agency would be the decrease in the level of breaches of fundamental rights. It would be, however, very difficult to prove a causal link between the work of the Agency and the level of fundamental rights breaches.

The progress on monitoring indicators should be reported on by the Agency on an annual basis to its Management Board and published in its annual activity report. The Agency should also be subject to an external evaluation every three years of its operation. Such an external evaluation, in addition to covering the questions of efficiency and effectiveness, should also consider the following questions:

– agency's place in, and contribution to, the system of European governance (as a means of delivering on Community policy objectives);

– the coherence of the Agency's activities with those of other international organisations such as the Council of Europe and with relevant Community agencies and Union bodies, such as European Institute for Gender Equality;

– the value added by the Agency;

– the longer-term impact of the Agency's activities on citizens and their level of awareness of their fundamental rights.

Table 5 Potential monitoring and evaluation indicators of the Agency

Objectives	Potential monitoring indicators
To improve the existence and comparability of data on fundamental rights.	Provision of comparable data on fundamental rights in the annual report Satisfaction rates of data users
To objectively review and analyse existing reports, studies, judgments and other evidence on fundamental rights pertaining to the EU policy.	Existence of reports reviewing the 'state of the art' in the latest research Existence of publicly available online resource library
To develop a strong analytical capacity and to act as a centre of expertise on fundamental rights.	Citation rates (how often Agency's outputs are mentioned in other documents)
To observe the situation of fundamental rights on the ground in the Union and in Member States when they are implementing Community law.	Quality of annual and thematic reports - regular surveys of users
To identify good practice in respecting and promoting fundamental/human rights by the EU institutions, bodies and agencies and Member States.	Quality of annual and thematic reports - regular surveys of users
To raise public awareness of fundamental rights.	Level of awareness of citizens – public opinion surveys Use of Agency's website, downloading of its reports
To promote dialogue with civil society, coordinate and network with various actors in the field of fundamental rights.	Existence of networks Effectiveness of networks – surveys of participants
To work in a complementary way and to avoid overlap with the relevant international organisations, in particular with the Council of Europe, and with the relevant Community agencies and Union bodies when pursuing its objectives	Low level of overlapping outputs (reports, surveys, campaigns) Number of cooperation projects Effectiveness of cooperation – surveys of international organisations, Community agencies and Union bodies
To provide effective assistance and expertise to the Union institutions and relevant authorities of the Member States	Citation rates (how often the Union institutions and national authorities exploit the results of the work of the Agency as starting point for necessary measures)