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DATO 19.6.2006

J.NR.

European Group of National Human Rights Institutions

Til Folketingets Europaudvalg.

I forlængelse af diskussion vedrørende etablering af et EU agentur tillader jeg mig hermed at fremsende henvendelse fra den europæiske gruppe af nationale menneskerettighedsinstitutioner til Det Europæiske Råd.

Med venlig hilsen

Morten Kjærum, direktør

EUROPEAN GROUP OF NATIONAL HUMAN RIGHTS INSTITUTIONS

N°413 - JT/SD

Paris, June 14th 2006

Your Excellency,

On behalf of the European Group of National Institutions for the promotion and protection of Human Rights (NHRIs), I would like to express our deepest concerns regarding the fact that the negotiation process for the establishment of a Fundamental Rights Agency of the European Union (thereafter referred to as « the Agency ») seems to be stalled.

The European Group of NHRIs had welcomed the steps forward in the past months in view of establishing such an Agency with a focus on EU law and its implementation in the member States. With this focus, the Agency cannot be conceived as an additional bureaucratic body but has the potential to bring added value and play a role in impetus in the field of human rights. We consider that the establishment of such an Agency is fundamental in order to create a focal point for all human rights work within the European Union.

The European Group of NHRIs urges the member States of the European Union to reaffirm their commitment to Fundamental Rights by discussing the remaining outstanding questions in view of an agreement thereon, in order to coherently implement the decision taken by the European Council on December 13, 2003.

Regarding these remaining outstanding questions, the European Group of NHRIs wishes to stress its main concerns¹, hoping they will be duly considered. These major concerns relate to the areas of activity of the Agency, its tasks, structure, cooperation with other bodies, and resources. They are developed in the enclosed document.

Very sincerely,



Joël THORAVAL

Chairman of the European Group of National Human Rights Institutions

To: -Permanent representatives of Member States to the Council of the European Union,
-Secretariat of the Council

Copy to: - European Parliament, Committee on Civil liberties, Justice and Home Affairs
- European Commission, DG Justice, Liberty, Security

¹ These concerns have been developed when the European Group of NHRIs expressed itself at different occasions on the issue: on 17/12/04 during the public consultation organised by the European Commission; on 06/07/05 on the structure of the Agency; and on 17/01/06 regarding the Commission's proposals for a Council regulation.

EUROPEAN GROUP OF NATIONAL HUMAN RIGHTS INSTITUTIONS

Important concerns regarding the drafting of a Council regulation Establishing a European Union Agency for Fundamental Rights

1. The European Group of NHRIs considers that the establishment of such an Agency is only of interest if this new institution is given the means to fulfill its mission with **legitimacy, efficiency and credibility**.
2. To this end, the Agency must comply with the principles of **independence, pluralism and transparency**. In this regard, the European Group of NHRIs reckons that it is useful to seek guidance from the UN "Paris Principles"², in order to facilitate the setting up of a strong and efficient Agency. Within the institutional framework of the European Union, this implies that the Agency be endowed with complete independence in carrying out its tasks.

Areas of activity

3. The instruments relating to the operation, areas of activity and discharge of the tasks of the Agency (in particular the **multi-annual and annual programmes**) should be adopted by the Agency itself. The Agency should indeed be able to determine its own program of work and be given the ability to take up issues upon its own initiative, within the framework of its statutory mandate. Its field of action should not be limited by a Multi-annual framework determined by the EU Commission or the Council, as the Agency should be independent from member States and EU institutions.
4. It is essential that the Agency, in order to be effective, be given a role in the fields of **police and judicial cooperation in criminal matters** because of their clear link to human rights. The European Group therefore welcomed article 28 of the Commission's proposal for a Council regulation as well as its proposed decision empowering the Agency to pursue its activities in areas referred to in Title VI of the Treaty on European Union. The legal opinion that there is no competence for third pillar activities in the treaties is not convincing and runs counter to the Court's case law and the generous interpretation of the treaties by the Council itself in other cases. Indeed, according to the Court's case law³, the Union institutions and member States are obliged to respect fundamental rights also within the framework of the 3rd pillar. Therefore, Union institutions have the duty to control the respect of fundamental rights by member States within the framework of this pillar as well, and nothing in the Treaties prevents them from seeking the assistance of any natural or legal person, including the Agency, in fulfilling this duty.
5. Moreover, it should be clear that the Agency's expertise and assistance can be sought within the framework of the procedure provided by **Article 7 TEU**, since nothing in the Treaties precludes this, according to the Council Legal Service recent opinion.

² « Principles concerning the status of national institutions for the promotion and protection of human rights », adopted by the General Assembly of the United Nations in its resolution 48/134 of December 20 1993.

³ See in particular judgment of 16.6.2005, C-105/03, *Pupino* [2005] ECR I-5285, paras. 41-43, 58-60.

Tasks

6. It is necessary that the Agency be able to play a significant role in the four areas where human rights hold a central position, i.e : the compatibility of the EU Directives with the EU Fundamental Rights, the respect of fundamental rights by the EU member States, the human rights requirements imposed on candidate states to the EU, and the human rights clauses existing in EU cooperation agreements with third countries.

Structure

7. An efficient work of the Agency requests in particular that the **members of the Agency** (management board, executive board, scientific committee and director) will be guaranteed as **independent and impartial**, through a **transparent appointment process**.
8. It is essential that these members be persons of high standing, knowledge and activity in human rights. To this end, the appointment of members of national human rights institutions, where they exist, should be encouraged in the Council regulation, so that these institutions can be represented within the management board, and also the executive board.

Cooperation with national bodies, international organizations, and civil society

9. The European Group of National Institutions stresses the **need for a close cooperation** of the Agency with **already existing institutions** in order to ensure that the Agency bring an added value, taking into account the existing resources in the field of human rights. Specific cooperation provisions with international organizations, and particularly the Council of Europe (including the possibility for an independent person appointed by the Council of Europe to sit in the management board of the Agency) are highly necessary.
10. The European Group of NHRIs welcomes the provision stating that the Agency shall cooperate with national human rights institutions, and would add that through the European Group of NHRIs, the Agency will benefit from a solid human rights base within the member states as well as strong links with local communities. It is therefore fundamental that the complementarity between the Agency and NHRIs be reflected both in the structure of the Agency and through a formal cooperation agreement.
11. Finally, the European Group welcomes the general consensus which seems to disagree with the Commission's proposal of a Fundamental Rights Forum which did not ensure an effective openness to civil society, as it had a very weak power of proposal, and was to meet rarely. Because the Agency cannot be a mere bureaucratic tool, without a **permanent and structured dialogue with the strong forces of civil society**, the European Group of NHRIs is very anxious that the final Regulation to be adopted by the Council ensure appropriate cooperation and consultation mechanisms.

Resources

12. In order to effectively bring the intended added-value, it is of utmost importance that the Agency be given the **adequate financial and human resources**. These resources should be at least comparable to those foreseen in the Commission's proposal.