



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

**PROPOSAL TO CREATE A EUROPEAN UNION HUMAN RIGHTS AGENCY**

**THE VIEWS OF THE NORTHERN IRELAND HUMAN RIGHTS COMMISSION**

- 1 The Northern Ireland Human Rights Commission (the NIHRC) is a *statutory* body created at the Parliament in Westminster by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights, advising on legislative and other measures which ought to be taken to protect human rights, advising on whether a Bill is compatible with human rights and promoting understanding and awareness of the importance of human rights in Northern Ireland. In all of that work the NIHRC bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding or “soft law” standards developed by the human rights bodies.
- 2 The NIHRC warmly welcomes the proposed establishment of a Human Rights Agency (the Agency) within the European Union in accordance with the decision adopted by the Council of the European Union on 12 December 2003.
- 3 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. We would like to stress, however, that if the new Agency is to play a significant role in relation to the protection of human rights in the European Union’s member States, it needs to be well anchored at national level.
- 4 We also have the following concerns and would respectfully request that serious consideration be given to these points before arrangements are finalised for the creation of the Agency.

## Context

- 5 The significance of the decision to convert the European Monitoring Centre on Racism and Xenophobia (EUMC) into a Human Rights Agency should be considered from three different angles. First, from within the EU system itself. It is important to recognise that the EU is at a milestone, marked not only by the recent expansion in the number of member states from 15 to 25 but also by the adoption of the constitutional treaty affirming the central role of the Charter of Fundamental Rights of the European Union. Within this ever-changing framework, an assessment of the EUMC and other institutions such as the European Ombudsman, as well as of other related recent initiatives, must be fully taken into account before new institutions are established. The role of the *EU Annual Report on Human Rights* and the creation of an EU network of independent experts on fundamental rights (which has drafted a report on the situation of fundamental rights in the European Union and its member states) should in particular be carefully considered.
- 6 Second, from outside the EU system. Resources outside of the EU system must not be disregarded and we strongly recommend that a tight co-operation be developed between the proposed new Agency and existing national, regional and international institutions and organisations. More particularly, there should be co-operation with the European network of national human rights institutions (NHRIs) (which is in close liaison with the Commissioner for Human Rights of the Council of Europe), with the European Commission against Racism and Intolerance (ECRI) and with the Venice Commission, also known as “Democracy through Law”. More generally, the new Agency should develop close links with bodies within the Council of Europe that have been working over many years to build a culture of human rights throughout the continent. Nor should the Agency ignore other regional systems which are currently being developed, such as OSCE bodies, particularly the Office for Democratic Institutions and Human rights (ODIHR) and the High Commissioner for National Minorities. In addition, the institutions of and the guarantees provided by the United Nations system (including within the International Labour Organisation) should be respected, as should the imperative to respect the universality and indivisibility of human rights in the light of the Universal Declaration of Human Rights. The work of these non-EU human rights inter-governmental institutions should inform and help to shape the work of the new EU Agency.
- 7 Third, from a national standpoint. Attention should be paid to the practice and experience – both national and international – of existing NHRIs and institutions such as ombudsmen and other relevant bodies qualified in the fight against discrimination. The principle of subsidiarity requires close collaboration between these national bodies and any EU-wide human rights body.

## *Mandate*

- 8 The mandate of the Agency must be focused on the implementation of the Charter of Fundamental Rights of the European Union and favour dialogue and co-operation with the already-existing institutions, particularly at the national level. The Agency should not duplicate the work of already-existing institutions at the national, regional or international levels, but should seek to address the failure at the EU level to meet specific practical objectives.
- 9 It is important that the Agency plays a role in the four areas where human rights hold a central position in EU work, i.e.:
  - (1) the compatibility of EU Directives with the EU Charter of Fundamental Rights,
  - (2) the respect of fundamental rights by EU member States,
  - (3) the human rights requirements imposed on candidate states to the EU, and
  - (4) the human rights clauses in EU co-operation agreements with third countries.
- 10 This implies that the Agency must:
  - (a) Carry out thematic studies, prioritising the fight against racism and xenophobia as well as against all discrimination with respect to the rights provided for by the EU Charter. (We would welcome a commitment from the new Agency that it will maintain, at least, the existing level of ant-racist work currently being conducted by the EUMC.)
  - (b) Analyse, make proposals and conduct follow-up work before the relevant institutions, based on the above-mentioned standards as well as all other available data.
  - (c) Define European indicators and contribute to harmonising national assessment procedures, in close co-operation with the existing networks and local partners, without requesting national reports, scrutinising human rights situations within each country, or drawing up rankings.
  - (d) Be consulted by EU institutions, particularly the Council, the Commission and the Parliament, in the preparation of technical files, comparative law analyses and “impact studies”, all of which constitute tools for decision-making by these institutions, particularly in the implementation of Article 7 of the EU Treaty.
  - (e) Pay attention to demands from non-governmental organisations and establish regular contacts with those bodies.
  - (f) Not deal with individual complaints, because of the existence of numerous remedies, formal or informal, already available at national and international levels.

However, a power to intervene as *amicus curiae* before European jurisdictions should be provided for.

(g) Be competent over matters solely internal to the European Union, or to candidate states, without seeking to assess the human rights situation in third countries, but without prejudice to the Agency's right to monitor EU internal human rights work and policies relating to candidate States.

#### *Structures and resources*

- 11 In order to fulfil its mandate with legitimacy, efficiency and credibility, the Agency must comply with the principles of independence, pluralism and transparency contained in the UN's Paris Principles on National Human Rights Institutions.
- 12 The independence of the Agency implies not only that it must have its own legal status but also that its members must be independent and impartial. There should be a transparent and pluralistic appointment process, a specified term of office for its members and specific rules limiting the number of mandates that may be held consecutively by a member.
- 13 The pluralism of the Agency implies close co-operation with the already existing institutions, particularly NHRIs and other national independent bodies. The EU's subsidiarity requirement and the need for local input should guarantee the Agency's legitimacy and efficiency. The Agency must not be conceived as an additional bureaucratic body but as a body which can add value and ensure co-ordination of activities.
- 14 Transparency implies being open to civil society, particularly to non-governmental human rights organisations, trade unions, the academic community, and research and study centres. The public nature of the activities of the Agency should be ensured through the duty to submit an annual report to the European Parliament.
- 15 NHRIs have a national mandate and a national legitimacy. Through the European network of NHRIs, the Agency will benefit from a solid human rights base within the member states as well as from 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 co-operation agreement. Next to a board of directors composed of qualified figures appointed in an individual capacity, a panel of experts composed of NHRI and independent experts should be established to provide advice to the Agency.
- 16 Given the size and importance of the mandate of the Agency it is vital that it be properly resourced in terms both of finance and of expertise. Too many NHRIs are under-resourced and are rendered partially ineffective as a result.

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