
Amnesty International's observations with regard to the first Multi-Annual Framework of the EU Fundamental Rights Agency

May 2007

At the occasion of the drafting of the first Multi-Annual Framework of the EU Fundamental Rights Agency, Amnesty International takes the opportunity to reiterate and add its recommendations with regard to the work of the Agency, inaugurated on 1 March 2007.

1. Added value of the Fundamental Rights Agency

A good deal of human rights monitoring is already being carried out by the Council of Europe, by United Nations treaty bodies, by national human rights institutes and by NGOs. However, there is very little in way of analysing and shaping all that information into remedial action or of translating it into the EU framework. It is precisely that function that is missing in the EU system, and it is precisely that function that Amnesty International believes the Agency should aim to fulfil.

2. A vision for a "European human rights system"

Developing a meaningful internal dimension of the EU's overall human rights policy is the primary responsibility of the EU Council and should be pursued in close collaboration with the Council of Europe as the originator and guardian of Europe's human rights architecture. It would be incumbent upon the EU Council to build on the existing discourse on EU – Council of Europe relations with a view to shaping a vision of a comprehensive "European human rights system". The Agency should contribute to reviewing the existing institutional, legal and remedial human rights architecture to that end.

3. Complementarity between EU institutions and the Council of Europe

3.1. The Agency should engage in close dialogue with the Council of Europe to develop structural connections between the standard-setting, monitoring and judicial functions of the Council of Europe on the one hand and the legislative, political and enforcement capabilities of the EU on the other hand.

3.2. To develop remedial action for human rights problems within EU borders and thereby benefit from existing human rights work by other bodies, the Agency should identify standard setting instruments and engage in developing recommendations for their implementation at EU level

4. Mapping of existing monitoring bodies

4.1. In order to avoid duplication and identify gaps in monitoring human rights in the EU, the Agency should map monitoring functions and reporting from other bodies and seek to fill gaps with its own data collection. This mapping exercise should pay particular attention to the work of the Council of Europe including the Commissioner for Human Rights, the Committee for the Prevention of Torture and the European Court of Human Rights. The work of the Agency should involve extensive consultation with such bodies to ensure that its work is complementary and provides added value within the EU.

4.2. The comprehensive annual human rights reporting by the EU Network of Independent Human Rights Experts until 2005 covered the Member States' performance when implementing the full scale of human rights as enshrined in the EU Fundamental Rights Charter. In comparison to the Network's reports the Agency's Annual Report will be limited not only by its narrow mandate, but also by the issues determined in the Multi-Annual Framework and by the Agency's annual operational plans. A way must be found to substitute for the more comprehensive reporting and analysis on the Member States' human rights performance as this is an important ingredient for shaping the EU's overall human rights policy.

5. Human rights in the EU: issues and remedies

5.1. With regard to the Agency's mandate, Amnesty International would like to stress once more that human rights issues cannot be divided along the lines of the more or less artificial division into first, second and third pillar issues that EU Member States have chosen to define the EU's competences.

5.2. Shaping the activities for the Fundamental Rights Agency should be based on a comprehensive picture of the state of human rights within EU borders, rather than on a catalogue of first pillar competences. Therefore, it is necessary to first gain an overview of relevant human rights issues in EU Member States beyond the strict EU framework. This overview should not limit itself to the existing EU agenda, nor to EU specific legal and policy instruments. It should identify persistent and current human rights concerns in Member States and consider all existing international and European human rights mechanisms.

5.3. The final Multi-Annual Framework should seek to influence the EU human rights agenda to address key issues concerning human rights in the EU. It should take into account all the different human rights tools which could help elaborate action and remedies at EU level. Such tools include international and European standards and mechanisms but also policy recommendations and implementation guidelines. It is only through a comprehensive analysis that the Agency can effectively complement the work already carried out by other European monitoring bodies and by EU institutions, as well as by national bodies.

The following examples are indicative only.

- Critical assessments of the EU asylum directives' conformity with the 1951 UN Convention on Refugees have been made by many different sources. It could be useful for the Agency to explore how EU legislation could be upgraded in EU Member States and at EU level to respond to these concerns; the Agency could also address concrete recommendations for implementation of EU asylum law based on the best practices and policy guidelines compiled by the EU, the Council of Europe, UNHCR and NGOs.
- In the area of counter-terrorism, it has been argued that some practices of *refoulement* go against the EU's own guidelines on torture. It could be useful for the Agency to suggest a coherent EU approach to the issue of torture, which would encompass the domestic dimension.
- Regarding the fight against trafficking in human beings, the EU Council has called for all the EU Member States to ratify the Council of Europe Convention on trafficking. It could be useful for the Agency to spell out what would be the added value of the EU becoming a party to this Convention.
- With regards to human rights compliance in the domain of trade, the Agency could look at how the EU could play an active role in the implementation of UN mechanisms, such as the Kimberley process.

5.4. In order to be instrumental in shaping a coherent and overall human rights policy, the Agency should liaise with all EU institutions, in order to build on their mandate and work when defining priorities and strategies. Particular attention should be paid to the role of the European Commission as guardian of the treaties and to the specific tasks of the Group of Commissioners for Fundamental Rights and the European Parliament's committees.

6. Multi-Annual Framework of the Agency

As for the issues to be covered in the Multi-Annual Framework, Amnesty International would like to highlight the following issues for priority earmarking. This indicative list is based on the urgency of substantive human rights concerns in conjunction with competence at EU level and accountability of Member States.

Some issues fall clearly within the mandate of the Agency while raising serious human rights concerns throughout the EU.

They include:

- the right to asylum
- immigration policies
- the right to non-discrimination and the fight against racism
- the issue of human rights compliance in trade practices

Thorough and regular human rights monitoring reveals persistent human rights violations and structural deficiencies in these three domains. It is urgent for the EU to address these concerns to ensure that EU harmonisation leads to legal security and effective protection of the rights of individuals.

The variety of findings, reports and analysis which already exist could serve to assist the Agency in shaping clear recommendations to the EU institutions. In the area of asylum for instance, Amnesty International has consistently raised concerns regarding: the actual limitations to the right to access the asylum procedure in EU territory; the lack of fair and efficient examination of asylum claims, including the deadlocks created by the Dublin Regulation. With regards to return policies in the EU, Amnesty International has denounced human rights violations in the course of forced return operations and the lack of monitoring of returns. Concerning trade practices, Amnesty International has documented how the lack of adequate safeguards in arms exports, trade in security equipment or diamonds can lead to serious human rights violations in conflict regions fuelling torture and violence.

Other issues can be defined as “mixed” issues, which cut across the EU “pillar” system.

They include in particular:

- trafficking in human beings
- violence against women
- the fight against terrorism

Amnesty International considers that such transversal issues should figure in the Multi-Annual Framework. Not only do they raise some serious, complex and new questions in terms of human rights protection but most of these issues have been identified by the EU itself as both policy priorities and political challenges. In this context, it is essential for the Agency to be involved at the earliest stage in the debate, to assist the EU institutions in developing policies which are in line with and fully integrate Member States’ international human rights obligations.

7. Incomplete EU human rights policy and architecture

Given the limited remit of the Fundamental Rights Agency, a number of key issues concerning human rights in the EU risk remaining unaddressed. Furthermore, the establishment of the Agency does not in any way remedy what is essentially a lack of accountability of EU Member States for domestic human rights problems. Amnesty International holds that if the Agency is to work effectively to implement its work program and contribute to the development of a comprehensive European human rights system, the EU’ s accountability deficit should be addressed simultaneously at political level.

Amnesty International therefore urges the EU Council to address the deficiencies in the EU’s domestic human rights legal framework, policy and architecture.

There is an urgent need for:

- an overarching EU human rights policy that accounts for the dramatically changed global situation regarding security, development and human rights, and that provides the parameters for a credible internal human rights policy;
- a vision of a European human rights system providing complementarity between the Council of Europe and the EU;
- closure of the institutional gap by designating a proper structure in the Council to deal with domestic human rights questions;
- accession of the EU to the European Convention on Human Rights;
- incorporation of a legally binding EU Fundamental Rights Charter;
- responsibility within the EU for effective follow-up of the Fundamental Rights Agency’s work and for addressing human rights problems which would fall outside the remit of the Fundamental Rights Agency; and
- a Council response to the Commission Communication on Article 7 TEU ‘Respect for and promotion of the values on which the Union is based’¹ of October 2003 as a first step to EU level accountability.

¹ COM (2003) 606 final