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Follow-up to the Third Summit: the Council of Europe and the proposed fundamental rights agency of the European Union

Recommendation 1744 (2006)

Reply from the Committee of Ministers
adopted at the 984th meeting of the Ministers' Deputies (17-18 January 2007)

1. The Committee of Ministers shares the Parliamentary Assembly's view that the creation of a fundamental rights agency within the European Union merits detailed attention from the Council of Europe in view of its potential implications for the overall European human rights protection system set up by the Council of Europe. Such attention has indeed been given to the matter, not only by the Parliamentary Assembly, but also by the Secretary General and the Committee of Ministers itself. The Committee of Ministers recalls its reply of 13 October 2005 to Parliamentary Assembly Recommendation 1696 (2005) and the positions expressed therein, which it reaffirms. More recently, the creation of the agency was discussed in September and December 2006 within the context of the Committee of Ministers' Follow-up Committee on the Third Summit. On both occasions, detailed information was provided on behalf of the EU Presidency about the state of progress of work on the draft regulation setting up the agency.

2. A key concern underlying virtually all points raised in the Assembly's recommendation is to avoid duplication with the role, functions and activities of the Council of Europe and its human rights institutions and mechanisms. This means ensuring that the agency's role, tasks and activities will offer genuine added value and complementarity. The Committee has already endorsed this view in its reply of 13 October 2005, which is therefore the basis for its assessment of the agency's final shape.

3. The Assembly will be aware that the EU Justice and Home Affairs Council in December reached an agreement on the establishment of the agency. The Committee of Ministers draws particular attention to the statement by the EU Council Chair, Ms Leena Luhtanen, who underlined that the establishment and work of the agency would not affect the Council of Europe's position as the primary source and interpreter of European human rights standards but instead add value to the important work carried out by the Council of Europe and other institutions. She also stressed that the new agency will focus on the fundamental rights in the area of Community law. It will not monitor the state of fundamental rights in individual member states. Furthermore, the EU Council regulation establishing the agency will acknowledge the human rights work carried out by the Council of Europe and contain detailed provisions designed to foster synergies, such as:

- the obligation for the agency to take into account existing information from the Council of Europe, by referring to the findings and activities of the Council of Europe's monitoring and control mechanisms as well as its Commissioner for Human Rights;
- the obligation for the agency to co-ordinate its activities with the Council of Europe, in order to avoid duplication and in order to ensure complementarity and added value;
- the commitment of the Community to conclude a bilateral co-operation agreement with the Council of Europe for the purpose of establishing close co-operation with the agency;
- the participation of an independent person appointed by the Council of Europe with voting rights in the management structures of the agency (Management Board and Executive Board).

4. The agency's mandate will cover the institutions of the European Union and its member states when they are implementing Community law. The candidate countries may participate in its work as observers, and the agency's mandate can be extended to them, if the relevant Association Council so decides. Similarly, the Council may decide to invite the countries participating in the Stabilisation and Association Process to take part in the agency's work. In the latter two situations, the agency's role will be limited to dealing with fundamental rights issues falling within the scope of community competence to the extent necessary for the gradual alignment to Community law of the country concerned.

5. On the basis of these different elements, the Committee considers that the agency's remit and tasks, which are clearly confined and internal to the distinct legal order of the Community, respect the pre-eminent role of the Council of Europe in the promotion and protection of human rights in Europe, including as regards the Community and its member states. Within that legal order, the agency can contribute to promoting the human rights standards and activities of the Council of Europe. Attention should now be turned to ensuring that these points will also be reflected in the practice of the agency. The Committee is confident that a good basis has therefore been created in the draft regulation itself but this should be consolidated in the future co-operation agreement and, last but not least, in the practice of the Council of Europe's participation in, and co-operation with, the agency. The Committee will follow these matters closely.

6. Since the mandate of the agency has now been agreed and as it will become operational early this year, negotiations on the aforementioned co-operation agreement between the Community and the Council of Europe regarding the agency will start in February as soon as the EU Council has approved the Commission's negotiating mandate.

7. Furthermore, the Committee of Ministers stresses the importance of applying the current agreement on co-operation between the EUMC and the Council of Europe on an interim basis, pending the conclusion of a new agreement, thus avoiding any temporal gap in Council of Europe participation in, and co-operation with, the agency.

8. Finally, the Committee of Ministers remains convinced that, as was reiterated in the decisions of the Warsaw Summit, the Council of Europe is and must remain the primary forum for human rights protection in Europe. In this respect, it recalls that paragraph 4 of the Guidelines on the Relations between the Council of Europe and the European Union adopted at the Third Summit provides that "early accession of the European Union to the European Convention on Human Rights would strongly contribute to ensuring coherence in the field of human rights in Europe".