

New Institutions for Human Rights Protection

Edited by
KEVIN BOYLE
Professor of Law at the University of Essex

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The EU Fundamental Rights Agency: Genesis and Potential

Olivier De Schutter

1. Introduction

*'On voit que l'histoire est une galerie de tableaux où il y a peu d'originaux et beaucoup de copies'*¹... Alexis de Toqueville, with his usual lucidity, understood that our institutional imagination was limited: whatever we call new is generally made up of bits and pieces from earlier constructions, which we assemble in ways often already familiar. The Fundamental Rights Agency of the European Union is no exception. Formally, the Agency has been in existence since 1 March 2007. Its aim is to 'provide the relevant institutions, bodies, offices and agencies of the Community and its member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights'.² It thus constitutes a pillar of expertise which the institutions of the European Union³ and the EU member states may rely upon in order to improve compliance with fundamental rights, as part of EU law.

A brief look at the genesis of the Fundamental Rights Agency, and at the context in which it was set up, is perhaps more instructive than a description of its structure and mandate, since it allows us to identify what it replicated and which alternatives, present in the discussions in 2003–5, its creators deliberately steered away from. This contribution recalls the context in which the Agency was

¹ Alexis de Toqueville, *L'Ancien régime et la révolution* (1860) at 119.

² Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ L53, 2 February 2007, 1 (Art 2). Hereafter this Regulation shall be referred to as 'the founding Regulation'. See also Fundamental Rights Agency, Annual Work Programme 2008, April 2008, <http://www.fra.europa.eu/fra/material/pub/WP/wp08_en.pdf>

³ In this chapter, the expression 'European Union (EU)' will be used to denote either the EU or the European Community, although these remain, until the entry in force of the Treaty of Lisbon, two separate organizations.