

**HANDBOOK
ANNEX**



Annex
to the Handbook on
the establishment and accreditation
of National Human Rights Institutions
in the European Union

The path to A-status:
Contributions from selected EU Member States



FRA

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS



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Annex

to the Handbook on the establishment and accreditation of National Human Rights Institutions in the European Union

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Introduction

To illustrate the challenges and offer practical suggestions regarding the establishment and/or accreditation of the national human rights institutions (NHRIs) described in the *Handbook on the establishment and accreditation of National Human Rights Institutions in the European Union*, this separate Annex provides several national case studies outlining EU Member State experiences in establishing NHRIs and/or applying for accreditation.

More specifically, the next two sections provide concrete examples of different paths EU Member States have taken when seeking to establish an NHRI or obtain an accreditation status for it. Representatives of the respective NHRI or experts from national governments or civil society submitted these examples, which highlight the specific challenges that individual states have faced in the course of such processes and therefore offer useful insights. The examples focus either on: establishing an NHRI (Belgium, Finland, Italy, Netherlands and Sweden); or applying for (re)accreditation (Denmark, Germany, Hungary, Portugal, Romania and the United Kingdom (Scotland)).



1

Establishing an NHRI



This Annex to the *Handbook on the establishment and accreditation of National Human Rights Institutions in the European Union* draws on the experiences of EU Member States in setting up NHRIs, and also examines cases where states opted to replace the existing mechanism with a new one. The case studies illustrate the various challenges that are necessarily linked to such a process, including, among others, the drafting of new legislation, institutional questions and issues specifically related to merging various bodies into a single institution. The examples demonstrate the importance for EU Member States to ensure an effective and well-functioning NHRI that meets the criteria for International Coordinating Committee on National Institutions for the Promotion and Protection of Human Rights (ICC) accreditation.

Establishing a Paris Principles-compliant National Human Rights Institute, a checklist:

- Consider an advance consultation on the draft legislation establishing the NHRI with the relevant stakeholders, including, for example, civil society, the Office of the High Commissioner for Human Rights (OHCHR) and the European group of NHRIs.
- Seek inspiration from the relevant legal provisions of other EU Member States with accredited NHRIs.
- Involve national stakeholders, including civil society actors, in the negotiations on the establishment of the NHRI.
- Avoid gaps and overlaps in the human rights mandates of separate institutions; an NHRI with a broad and all-encompassing human rights mandate offers an alternative to maintaining several bodies with varying mandates, as could a one-stop shop that ensures coordination among diverse mechanisms.

Source: Based on the experience of NHRIs that contributed to this Annex

Belgian Ministry of Justice

Following a 2003 Government Agreement envisaging the creation of a new A-status NHRI in Belgium, the United Nations (UN) OHCHR requested a detailed review in 2006 with the aim of exploring two concrete options: either to expand the mandate of the Centre for Equal Opportunities and Opposition to Racism (CEOR)¹ – currently a B-status NHRI – to make it fully compliant with the Paris Principles, or to create a new Belgian Fundamental Rights Commission, as proposed by a group of Belgian non-governmental organisations (NGOs).² The subsequent review submitted to the OHCHR evaluated these two options but did not advocate one or the other. The current government has reinserted a proposal to create an A-status NHRI in the 2011 Government Agreement. The creation of an overarching Belgian NHRI would raise numerous institutional questions, two of which deserve special attention: how to assess the added value of an overarching institution given the number of targeted human-rights related institutions currently and how to address the human rights-related competences at federal, community and regional level.

Belgium has several specific institutions which carry out some of the functions of an NHRI, including, for example:

- The Centre for Equal Opportunities and Opposition to Racism (CEOR), which was created in 1993 and is currently categorised as a B-status NHRI, aims to: promote equal opportunity; fight against any type of distinction, exclusion, restriction or preferential treatment exercised against individuals, including migrant workers, based on specific criteria; initiate a debate on the importance of respecting the fundamental rights of migrants; stimulate the fight against human trafficking and smuggling, as well as provide public authorities with information on the extent and nature of migration flows. In addition, Belgium made CEOR the national monitoring body under the UN Convention on the Rights of Persons with Disabilities (CRPD) in accordance with Article 33 (2) on 12 July 2011.
- The Institute for the Equality of Women and Men³ created in 2002, aims to: ensure respect for equality between women and men and combat any form of discrimination and inequality based on gender.

¹ See: www.diversiteit.be. All hyperlinks were accessed in July 2012.

² See the proposal in: Belgium, Commission for Fundamental Rights (2006).

³ See: <http://igvm-iefh.belgium.be>.

- The National Commission on the Rights of the Child,⁴ created in 2007, is a consultation platform on matters related to the rights of the child and is characterised by a wide representation of all levels of power, including civil society.
- The Commission for the protection of privacy,⁵ which aims to: interpret the provisions of the Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data.⁶

Given the number of different Belgian institutions dealing with human rights issues, authorities would need to assess the added value of establishing an additional national human rights institution with an expanded mandate, and examine how such an NHRI would interact with the current institutions.

In addition, Belgium, a federal state made up of three communities and three regions, divides competences up among the federal state, the communities and the regions, all of which have competences that affect human rights. Specifically: the communities and regions are responsible for matters related to language, culture and education as well as territory, housing, employment and energy, while the federal state retains competence over matters pertaining to national defence, justice, finance, social security as well as a significant portion of public health and home affairs.

Given that the three levels all have human-rights related competences, negotiations must take place among all these entities on the creation of an NHRI.

⁴ See: www.ncrk.be.

⁵ See: www.privacycommission.be.

⁶ Belgium (1992).

Finnish Institute for Human Rights⁷

Although Finland has no major perceived gaps as regards the substantive scope of the protection and implementation of human rights,⁸ the existing structures for the protection of human rights in the country are quite fragmented. Various actors are involved in monitoring, implementing and promoting human rights but no systematic and comprehensive mechanisms are in place to adequately coordinate their activities.⁹

In an attempt to remedy this, Finland established a Human Rights Centre within its NHRI in early 2012 with responsibilities for the promotion, implementation and monitoring of fundamental and human rights.¹⁰ The Finnish NHRI now comprises three components: the Human Rights Centre, the Human Rights Delegation and the Parliamentary Ombudsperson Institution.

While operationally autonomous and independent, administratively, the Centre falls under the purview of the Office of the Parliamentary Ombudsperson Institution. The Parliamentary Ombudsperson Institution appoints the Centre's director for a period of four years.¹¹

The Human Rights Delegation, which consists of a minimum of 20 and a maximum of 40 members representing various interest groups in society, ensures the pluralist representation of civil society. The delegation decides on major policy lines and approves the Centre's annual Action Plan. It also functions as a key platform for cooperation between the different actors in the field of human rights.

The Human Rights Centre, designed in accordance with the Paris Principles, has a broad mandate, but it does not deal with individual complaints. Instead, the Parliamentary Ombudsperson Institution, the Chancellor of Justice and thematic Ombudsperson Institutions will continue to handle these.

The Human Rights Centre has the potential to play a significant role in co-ordinating the fragmented human rights infrastructure in Finland. The Centre's

⁷ See: www.abo.fi.

⁸ Finland (2010a).

⁹ Lempiinen, M., *et al.* (2002); and Finnish League for Human Rights (2006).

¹⁰ Finland (2011); see also: Finland (2010b); and Finland, Constitutional Committee (2010).

¹¹ See: www.yle.fi/uutiset/kotimaa/2011/12/ihmisoikeuskeskuksen_johtajaksi_sirpa_rautio_3103228.html.

broad mandate, however, presents a variety of new challenges, specifically the high expectations it raises, especially given scarce resources.

In addition to national considerations, Finland established the Human Rights Centre in order to attain a stronger position in the international network of NHRIs, both within Europe and globally. Finnish authorities see the Human Rights Centre's creation as a necessary step to enable Finland to achieve its goal of having an A-status NHRI.

Italian Committee for the Promotion of Human Rights¹²

Italy does not have an independent NHRI.¹³ Instead, it has two independent bodies with a human rights remit: the Ombudsperson Institution for data protection and the recently established Ombudsperson for the Child.¹⁴

Italy established an anti-discrimination and racism equality body¹⁵ in 2004 in accordance with the EU Racial Equality Directive 43/2000, which operates within the Ministry for Equal Opportunities under the Office of the Prime Minister. In addition, at local level, a number of different equality bodies exist, but they lack a nationally coordinated human rights policy.

Since early 2000, civil society representatives have pushed for an independent human rights body. In 2002, a group of legal experts under the newly established Committee for the promotion and protection of human rights (*Comitato per la promozione e protezione dei diritti umani*), an umbrella organisation for 86 Italian human-rights related NGOs, drafted a first proposal for a law establishing an NHRI.¹⁶

¹² See: www.comitatodirittiumani.net.

¹³ The Italian government proposes the new draft legislation on NHRI (*Schema di disegno di legge Commissione Nazionale per la promozione e la protezione dei diritti umani*) which consists of 12 articles.

¹⁴ See: www.garanteprivacy.it/garante/navig/jsp/index.jsp.

¹⁵ See official website of the Anti-discrimination and racism equality body (*Ufficio nazionale antidiscriminazioni razziali*, UNAR) at: www.unar.it.

¹⁶ See: www.comitatodirittiumani.org.

Since 2003, all the UN Treaty Bodies that have reviewed Italy – Committee on the Rights of the Child (CRC) in 2003,¹⁷ Committee on Economic, Social and Cultural Rights (CESCR) in 2004,¹⁸ the Human Rights Committee in 2005,¹⁹ Committee Against Torture (CAT) in 2007,²⁰ and the Committee on the Elimination of Racial Discrimination (CERD) in 2008²¹ and in 2012²² – have raised the issue of the lack of an NHRI and recommended its establishment without further delay. In response, civil society organisations and the Committee for the promotion and protection of human rights have taken various steps.

In 2005, the Committee's proposal became a draft bill entitled: Creation of the Italian Commission for the promotion and protection of human rights as per Resolution no. 48/134 UN General Assembly of December 20, 1993 (no. 3300).²³ But despite the UN Treaty Bodies' recommendations and civil society pressure, the bill remained blocked in the Senate.

In 2006, the draft bill was again presented both in the Senate and the Chamber of Deputies and in April 2007, following a complex examination process, the Chamber of Deputies adopted it with the new title of: Creation of a national commission for the promotion and protection of human rights and the protection of the rights of people in prison or deprived of their personal freedom (no. 1463).²⁴ Although diverse political forces participated in drafting the text of the draft bill,²⁵ the Senate did not pass it and, therefore, it did not become law. The whole procedure was nullified by a change in the Italian political scene and the establishment of a new government in June 2008.

On 10 December 2008, the new government formally announced a draft bill.²⁶ No public consultation with civil society, however, took place, although the Paris Principles require this.

¹⁷ UN, CRC (2003), paras. 14-15.

¹⁸ UN, CESCR (2004), paras. 14 and 32.

¹⁹ UN, Human Rights Committee (2006), para. 7.

²⁰ UN, CAT (2007), para. 8.

²¹ UN, CERD (2008), para. 13.

²² UN, CERD (2012), para. 13.

²³ The text of the draft bill is available at: www.senato.it/leg/14/BGT/Schede/Ddliter/22534.htm.

²⁴ See: www.senato.it/leg/15/BGT/Schede/Ddliter/28039.htm.

²⁵ See: www.senato.it/leg/15/BGT/Schede/Ddliter/27294.htm, www.senato.it/leg/15/BGT/Schede/Ddliter/26331.htm, www.senato.it/leg/15/BGT/Schede/Ddliter/25689.htm and www.senato.it/leg/15/BGT/Schede/Ddliter/25049.htm.

²⁶ See: www.senato.it/service/PDF/PDFServer/DF/211257.pdf, p. 8.

During the 2010 UN Universal Periodic Review several states again recommended that Italy establish an NHRI.²⁷

Draft legislation has addressed the possibility of establishing National Commissions for Human Rights or Ombudsperson Institutions for certain specific sectors such as detainees or migrants, but none of these parliamentary initiatives came to fruition, with the exception of the recently established Ombudsperson for the Child. There are those who are concerned that introducing numerous initiatives for various human rights mechanisms runs the risk of postponing or even derailing the establishment of an all-encompassing NHRI with a broad mandate.

In 2007, a joint draft bill was pending debate but was not scheduled for discussion in the Senate (*Senato della Repubblica*).

In 2007 and in 2011, on the occasion of both the first and second candidatures to the UN Human Rights Council, Italy committed itself twice with its 'voluntary pledge' to establish an NHRI.²⁸

The Undersecretary for Foreign Affairs announced a draft bill²⁹ on 3 March 2011, prepared by the Government and presented to the Council of Ministers. Both the Chamber of Deputies (*Camera dei Deputati*) and the Senate were to discuss the draft bill.

On June 28, 2011, the Commission for Constitutional Affairs of the Senate (*Commissione Affari Costituzionali del Senato*) approved the draft bill on the creation of a National Commission for the promotion and protection of human rights in line with the Paris Principles and UN General Assembly Resolution 48/134 of 20 December 1993. The draft bill was transmitted to the second chamber, the Chamber of Deputies, for approval and should return to the Senate for passage. The official text of the latest revision of this draft bill has yet to be distributed. It is unclear what changes have been made in this revision, because,

²⁷ Such recommendations were made by, among others, Algeria, Azerbaijan, Bosnia and Herzegovina, Burkina Faso, Chile, Denmark, France, India, Iran, Kuwait, Malaysia, Norway, Pakistan, the Philippines and the Russian Federation. See: UN, Human Rights Council (HRC) (2010), para. 84.11-84.15; see also: UN, HRC (2009), paras. 4-7.

²⁸ UN, General Assembly (2007).

²⁹ Presented to the Council of Ministers on 3 March 2011, available at: www.governo.it/Governo/Provvedimenti/dettaglio.asp?d=62616&pg=1%2C2319%2C4643%2C7166%2C9374%2C12422%2C14519%2C16543%2C18569%2C20782%2C23001%2C24536&pg_c=1.



in contravention of the Paris Principles, civil society has not been involved in the drafting work.

Dutch Equal Treatment Commission³⁰

The Dutch Equal Treatment Commission (ETC) was accredited as an NHRI for the first time in 1999, but received only B-status, due largely to its limited mandate. In 2004, the ETC won re-accreditation at B-status, with a short document outlining its budget, mandate and structure sufficing for the re-accreditation.

In November 2009, the ETC provided the Sub-Committee on Accreditation with a detailed 14-page statement, in line with the sub-committee's guidelines, plus hundreds of pages of supporting information, such as the various equal treatment laws that establish the mandate of the ETC, the annual report, the strategic plan, the legal position of Commission members and much more.

At the same time, the Dutch government took the important step of initiating the legislative process required to establish a Paris Principles-compliant NHRI. After several years of discussions in the Netherlands, the government decided to incorporate the ETC into a NHRI, the so-called Human Rights and Equal Treatment Board, keeping the equal treatment mandate within the broader human rights mandate of the NHRI.³¹

In late 2009, the ETC informed the OHCHR's National Institutions and Regional Mechanisms Section about this development. In their March 2010 re-accreditation decision, the Sub-Committee on Accreditation suggested that the ETC ask the OHCHR for advice on the draft bill. It did so, sending the OHCHR and civil society a translation of the draft bill for review and consultation, respectively.

The OHCHR's National Institutions and Regional Mechanism Section provided practical feedback on the draft bill with several examples of legal provisions from other countries. The section suggested ways to improve the mandate and bring it in line with the Paris Principles,³² addressing matters including the appointment of Commissioners by the Minister of Justice, budget issues and ways

³⁰ See: www.cgb.nl.

³¹ Netherlands, Ministry of Interior and the Ministry of Justice (2009).

³² UN, Office of the High Commissioner for Human Rights National Institutions and Regional Mechanisms Section/Irish Human Rights Commission (2010).

to involve civil society. The ETC shared the advice with the Dutch government which addressed most of the recommendations in the final version of the draft bill sent to parliament in August 2010. The government also sent this final version to the OHCHR, in order to ensure that it reflected the recommendations in an appropriate manner. Once again, the OHCHR offered advice, including some final recommendations and comments, all of which have now been shared with parliament.

The Dutch Senate adopted the draft bill on the establishment of a NHRI on 22 November 2011.³³ The new NHRI will open its doors in summer 2012. The ETC, which currently holds B-status, will be integrated into the new NHRI.

Swedish Equality Ombudsman³⁴

The Swedish Equality Ombudsman Institution, the result of a merger of four former equality bodies, took up its work on 1 January 2009, giving Sweden, for the first time, a single, cohesive agency responsible for combating discrimination and promoting equal rights and opportunities regardless of a person's sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age.

The Equality Ombudsman Institution's mandate is rooted in international law, including the Paris Principles. The EU Gender Equality Directive and the Racial Equality Directive stipulate that EU Member States must have national bodies for the promotion and support of equal treatment irrespective of sex, race or ethnic origin. Sweden took the specific instructions in these principles and directives into account when elaborating its law governing the duties of the Equality Ombudsman Institution.³⁵ The newly formed Equality Ombudsman Institution faces a considerable challenge in first taking stock of the institutional knowledge and hands-on experience of combating discrimination gathered by the previous four institutions, and then in incorporating that knowledge and experience to create a dynamic new organisation.

³³ Netherlands (2011).

³⁴ See: www.do.se.

³⁵ Equinet (2009).

The new merged institution is expected to have an enhanced ability to combat multiple-discrimination, although the merger will require – at least initially – concerted internal efforts to identify common ground.

Due to the merger, the joint ICC accreditation received by the four previous ombudsperson institutions lapsed on 1 January 2009.

In January 2011, the Swedish Equality Ombudsperson Institution submitted all the necessary documentation to the ICC Sub-Committee on Accreditation which accorded it B-status in May 2011.³⁶

³⁶ ICC, Sub-Committee on Accreditation (2011).

2

Applying for (re)accreditation



On the basis of concrete national examples, this section of the handbook's Annex describes issues of general interest related to the process of applying for accreditation. It refers, in particular, to the application timeframe, paper work and necessary consultations, in addition to several other technicalities. Because the accreditation body may also lodge additional ad hoc requests for further evidence or greater detail, the applicant must remain flexible.

Practical tips for applicant states

- Start early on: appoint a coordinator and ensure the involvement of the right persons within the organisation, such as the human resources department; those responsible for budgetary issues; the communication department; and the legal and policy departments. The questions that NHRIs are obliged to answer are very broad and the involvement of many experts is the most effective way of ensuring the best responses quickly.
- Translate the relevant documents: decide which documents need translation, such as the most recent annual report, the legislation establishing the organisation and other supporting documents. Remember, translations take time and should be carefully factored into the planning to avoid missing the delivery deadline.
- ‘It is not over until it is over’: after all relevant documents have been delivered, the OHCHR will ask for clarifications and for a review of the summary that they produce. This is a good opportunity to make sure that the members of the Sub-Committee on Accreditation have received the right information and ensure that there are no outstanding uncertainties about organisational matters.
- Communicate with the OHCHR: the staff is helpful and insightful on accreditation process questions.
- Seek assistance from other NHRIs and the ICC regional coordinating body: remember that, upon request, other NHRIs may provide feedback and practical support during the accreditation process.

Source: The NHRIs mentioned in this Chapter, particularly the Dutch NHRI



Danish Institute for Human Rights³⁷

The Danish Institute for Human Rights (DIHR), an A-status institution, began preparations in 2010 for its re-accreditation, due in the second half of 2012. At a meeting in June 2010, the DIHR board discussed the upcoming accreditation process and the previous accreditation report of 2007, focusing on those aspects of the report critical of the DIHR. The report highlighted the pluralism in the DIHR's steering structures, its financing structure and independence in the politically constructed organ – the Danish Centre for International Studies and Human Rights (DCISM).³⁸

DIHR's action plan for the next accreditation is:

- review re-accreditation process questions, noting deadlines for the submission of the application and supporting documents and identifying and informing relevant departments and focal points;
- conduct preparatory meeting/communication with the ICC on the process and expected documentation;
- submit relevant documents including: mandate, organisational structure (including council, board and staff), *Monitoring human rights in Denmark report – Status report*, annual report, description of financing structure and, finally, strategy;
- present accreditation report to the DIHR board and council;
- pursue dialogue and communication – internally and externally – concerning the re-accreditation process with stakeholders such as the Ministry of Foreign Affairs, media and parliament.

³⁷ See: www.humanrights.dk.

³⁸ DIHR is part of the DCISM which also includes a sister institute, the Danish Institute for International Studies.

German Institute for Human Rights³⁹

Germany founded the German Institute for Human Rights in 2001, following strong civil society backing and a unanimous Federal Parliament (*Bundestag*) decision to set up a Paris Principles-compliant NHRI. It put a high priority on seeking ICC accreditation during the early phase of the institute's work, and the director, deputy director and the board of trustees, the institute's supervisory body, have since ensured that re-accreditation remains a top priority. The institute was awarded A-status in 2001 and re-accredited with A-status in 2008.⁴⁰ It is currently preparing for its next application for re-accreditation, which is due in 2013.

The federal parliament and the institute's constitution laid down compliance with the Paris Principles as the institute's central tenet, based upon consensus that reliance on an international standard and its supervisory mechanism ensures the NHRI's independence and its role as a liaison between the state and civil society.

Germany invested the NHRI with a strong policy advisory role to ensure the state's compliance with all applicable international human rights standards. The NHRI should: strive to be an agenda-setter; contribute a human rights perspective to all relevant political debates; and work towards bringing about any structural changes needed. Among the different models of NHRIs, members of parliament, government and civil society considered an institute as the most appropriate structure for the German political system. They viewed an institute – and one with a strong scientific foundation and expertise in international and national human rights law and its application – as best equipped to serve these purposes because it would bridge gaps between: the state and civil society, the international and the national levels, and theory and practice. The Danish Institute for Human Rights served as an example. Stakeholders and policy makers also regarded human rights education, monitoring, documentation and information as equally important functions to help sustain the structures necessary for respect of human rights at all levels of the state. Germany reinforced the role of its NHRI in 2009 by entrusting it with the national monitoring role for the CRPD.

³⁹ See: www.institut-fuer-menschenrechte.de.

⁴⁰ In 2001, A-status was granted with reserve (R) because no annual report was available. Upon provision of the annual report for 2002, the sub-committee lifted the R qualification and bestowed full A-status in 2003. The possibility of granting A-status under reserve (category A(R)) has since been abolished.



As the Sub-Committee on Accreditation developed and refined the understanding of the Paris Principles, it also clarified and tightened the requirements for keeping A-status. Even when it recommends (re)accrediting an NHRI with A-status, for example, the Sub-Committee makes recommendations for improvement. When recommending renewal of the German Institute for Human Rights A-status in 2008, the Sub-Committee made three recommendations: adopting a stronger legal basis, strengthening the protection function and ensuring pluralism at all institute levels.

Consequently, the Board of Directors discussed these recommendations with the other bodies of the Institute (the Board of Trustees and the General Assembly), the staff, as well as the federal parliament, government and NGOs. The board informed all these stakeholders in detail about the Paris Principles, the Sub-Committee's interpretation, its recommendations and the timeframe for their implementation. The board identified the steps to be taken to address each recommendation and developed an informal schedule to ensure their timely implementation. Germany welcomed the Sub-Committee's recognition of the NHRIs' independent and effective work. Preparing for re-accreditation is seen as a way of reinforcing the NHRIs' independence and effectiveness.

Hungarian Commissioner for Fundamental Rights⁴¹

The Hungarian Ombudsperson Institution emerged during the democratisation process of the early 1990s and the office was formally established in 1995. The overall organisational structure is complex as it comprises a range of ombudsperson institutions, including a general ombudsperson institution (Parliamentary Commissioner for Civil Rights, sometimes referred to as the human rights ombudsman or general commissioner) and three independent and equally ranked specialised ombudsperson institutions assigned to safeguard specific constitutional rights including data protection and freedom of information, rights of national and ethnic minorities and environmental rights.

The Parliamentary Commissioner for Civil Rights⁴² is regarded as an independent human rights institution in Hungary. Various public opinion polls as well as the 8,000 complaints citizens lodge with the Commissioner each year make clear

⁴¹ See: www.obh.hu.

⁴² See: www.obh.hu/allam/index.htm.

that Hungarian citizens are aware of and respect the Commissioner's activities and recommendations.

In early 2010, the Civil Rights Commissioner initiated research to clarify questions regarding requirements under the Paris Principles and consulted various stakeholders, including the Scottish Human Rights Commission⁴³ and the OHCHR's National Institutions and Regional Mechanisms Section.⁴⁴ It completed its research and filed its application to the ICC on 11 October 2010. The ICC decided to accredit the Parliamentary Commissioner for Civil Rights with B-status in May 2011.⁴⁵ Under the new Fundamental Law, which entered into force on 1 January 2012, the name of the institution was changed to Commissioner for Fundamental Rights⁴⁶ from Parliamentary Commissioner for Civil Rights.

Romanian Institute for Human Rights⁴⁷

The Romanian Institute for Human Rights (RIHR) was established in 1991,⁴⁸ in part as a result of a cooperation agreement between the Romanian government and the predecessor organisation of the OHCHR.

In 2006, the RIHR drafted and deposited accreditation documentation for the first time. The file submitted included the accreditation form, the Establishing Act and the annual record of activities (annual report). After reviewing these documents, the ICC's Sub-Committee on Accreditation gave RIHR C-status in 2007.

Following this decision, the RIHR undertook a series of measures to improve its performance. The RIHR started, for example, to accept individual complaints on human rights violations, offering advice on the appropriate complaint mechanisms. It also supported, through its consultative opinions and publications, Romanian ratification of human rights treaties. The Standing Orders – the permanent instructions to the RIHR – were amended accordingly in 2008. Since

⁴³ For further information, see the contribution from the Scottish Human Rights Commission in this Annex.

⁴⁴ See: www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx.

⁴⁵ ICC, Sub-Committee on Accreditation (2011).

⁴⁶ Hungary (2011). For more information, see: www.eoi.at/d/Sonderberichte%20-%20Brosch%C3%BCren/Ungarn/Hu-Introduction%20of%20the%20Office.pdf.

⁴⁷ See: www.irdo.ro.

⁴⁸ Romania (1991).



that year, the RIHR has participated in the meetings of the European Group of NHRIs and the sessions of the ICC.

The issue of C-status came up in the 2008 Universal Periodic Review process as supplementary questions addressed to Romania. In response, Romania presented RIHR's progress since the Sub-Committee's 2007 decision.

As a result of the experience of 2006, the institute considered that it was important to undertake a new analysis on RIHR's status based on a complete file with all necessary information reflecting the position and mandate of the RIHR, including all the changes made.

The RIHR was scheduled for re-accreditation at the Sub-Committee for Accreditation at its May 2011 session. It filed its application with the OHCHR's National Institutions and Regional Mechanisms Section and included the RIHR's statement of compliance and 20 documents (in English and Romanian) including the RIHR Establishment Act, standing orders, organisational structure, budget documents, a list of collaboration protocols, annual reports and human rights reports.

The National Institutions and Regional Mechanisms section of the OHCHR, in its capacity as Secretariat to the ICC, prepared an 18-page summary for the RIHR to review. The summary pointed out, among other things, that the Establishment Act is not lengthy.⁴⁹

The Sub-Committee scheduled the RIHR for a one-hour telephone interview on 26 May 2011. The Sub-Committee's questions related to RIHR's mandate, the composition of its main bodies and whether it collaborates with other Romanian institutions, referring to one specific institution. The Sub-Committee also asked about Roma-related activities.

⁴⁹ The RIHR had 14 comments on the summary and stressed that: the Institute's Establishment Act is a framework law, which regulates the general framework for the functioning of the RIHR within constitutional limits. According to Art. 8 "The Institute shall organise its activity in compliance with its Standing Orders that shall be approved by the General Board". By this provision, the law maker had in mind those situations when what was not provided for under the law was to be regulated under the Standing Orders. Thus, the intention was to conceive the law so that regardless of the changes possibly occurring at national, regional or international level, the institute should be able to function and, by means of the Standing Orders, adapt its working means and methods.

The Sub-Committee wanted to know whether two particular factors had changed since 2007; the RIHR replied that the Standing Orders had indeed been amended and that it had started to receive individual complaints on human rights violations.

On the basis of all the information submitted, the Sub-Committee renewed RIHR's C-status in May 2011.⁵⁰

Scottish Human Rights Commission⁵¹

The Scottish Executive announced in 2001 its intention to create an NHRI in full compliance with the international standards set out in the Paris Principles. Following extensive public consultation, civil society involvement and careful study of best practice of commissions in other countries including Ireland, Canada, Australia and New Zealand, legislation was brought before Parliament in 2005.

The Scottish Commission for Human Rights Act 2006 created the Scottish Human Rights Commission (SHRC),⁵² which was officially launched on Human Rights Day, 10 December 2008. The Commission consists of a full-time Chair and three other Members, who act on a part-time basis, and 10 support staff.

In the course of the accreditation process, the SHRC drew on the experience of a number of NHRIs and also benefited from the invaluable support of the Irish Human Rights Commission, which held the position of chair of the European Group of NHRIs from 2006 to 2011. Both the legislation establishing the SHRC and the work ethic it adopted followed best practice, an approach which made the accreditation process easier. Nevertheless, the process is necessarily robust and therefore time consuming.

As an example of the detailed procedures which the accreditation process requires, the SHRC's statement of compliance ran to 52 pages and was supported by 12 annexures, including the legislative texts, strategic plan, operational plan, organisational chart, annual report, budget documents and examples of work.

⁵⁰ ICC, Sub-Committee on Accreditation (2011).

⁵¹ See: www.scottishhumanrights.com.

⁵² *Ibid.*

In addition to the above requirements, the SHRC was subject to the requirements set out by the Sub-Committee on Accreditation in General Observation 6.6 which provides that only in very exceptional circumstances should there be more than one national institution in a state. Therefore, the SHRC had to submit letters of support from the Government of the United Kingdom, the Equality and Human Rights Commission and the Northern Ireland Human Rights Commission along with a Memorandum of Understanding between the commissions.

Since November 2008, the Sub-Committee on Accreditation has invited regional coordinators to attend its sessions as observers. In the case of the SHRC, this meant that the Irish Human Rights Commission was able to assist the Sub-Committee in understanding the legal and political contexts in which the SHRC operates. During the Sub-Committee meeting, the SHRC provided further evidence by telephone.

In relation to the SHRC, the Sub-Committee was particularly interested in how civil society was involved, the independence of commissioners, the budget, staffing and legal powers. Unsurprisingly, the Sub-Committee's interest also focused on the particular constitutional arrangements in the United Kingdom and whether the SHRC met the test prescribed in General Observation 6.6.

Following its meeting, the Sub-Committee makes a recommendation which is sent to the ICC Bureau for approval. In the case of the SHRC, the Sub-Committee opted not to make a recommendation and deferred the application to the next meeting in March 2010, because it wanted to see evidence of the SHRC's effectiveness over a longer period as well as further information on the very exceptional circumstances justifying more than one NHRI in the United Kingdom.

The SHRC provided additional evidence on the two outstanding issues and was exceptionally pleased to receive the sub-committee's positive recommendation in March 2010. Following acceptance by the ICC Bureau, the SHRC received accreditation in May 2010 as an A-status NHRI in full compliance with the Paris Principles.

Since its accreditation, the SHRC has continued to emphasise its involvement in the ICC. In 2010, the SHRC hosted the 10th Biennial Conference of the ICC which produced the *Edinburgh Declaration on Business and Human Rights, the role of national human rights institutions*.⁵³ The SHRC has also become the chair of the

⁵³ See: www.scottishhumanrights.com/international/biennial/edinburghdec.

Commonwealth Forum working group on climate change and joined the European legal working group. Currently, the SHRC chairs the European Group.

Portuguese Ombudsman Office⁵⁴

The Portuguese Ombudsperson Institution (*Provedor de Justiça*) was created in April 1975 and became fully operational in June 1976. In 1999, following the Subcommittee on Accreditation's examination of its application, the Ombudsman obtained A-status as fully compliant with the Paris Principles.

In November 2006, the ICC secretariat informed the Ombudsperson Institution that it would be re-accredited at the ICC meeting in March 2007, and should, therefore, submit the information required for the re-accreditation by the end of December 2006.

The documents required for this review comprised: a detailed statement showing compliance with the Paris Principles, using the framework document provided by the ICC Secretariat as a guide; a completed accreditation grid also provided by the latter, and related support documentation; a copy of the legal instruments establishing and empowering the Ombudsperson Institution, such as the relevant constitutional provisions, statute and organic law; an outline of its organisational structure; a copy of its most recent annual report at the time (a French summary of the report was also sent); information, in English, available and accessible to the public on the role, mandate and powers of the Portuguese Ombudsperson Institution, submitted as an additional relevant document to support the application.

The most challenging exercise in the Portuguese Ombudsperson Institution's re-accreditation process was perhaps to demonstrate how an Ombudsperson Institution, inspired by the Scandinavian model, fully meets the Paris Principles requirements, in particular when it comes to the requirement of the pluralist representation in its composition and functioning, as well as the development of relations with civil society and other human rights institutions beyond complaints handling. Indeed, frequently Ombudsperson Institutions – and this is also the case for the Portuguese Ombudsperson Institution – are single-member institutions which primarily work with complaints.

⁵⁴ See: www.provedor-jus.pt.

In the course of the re-accreditation process, the Portuguese Ombudsperson Institution succeeded in illustrating how pluralism is guaranteed, namely in the process of selection and designation of the mandate holder, which requires a qualified majority vote in the Parliament, as well as with regard to office staff. To illustrate its work with civil society and other human rights institutions, the Ombudsperson Institution provided specific examples of how it promotes this interaction beyond complaints handling. The Ombudsperson Institution, for example, grants hearings to civil society organisations and also promotes regular contacts with NGOs working in the human rights field. It held meetings with migrants' associations and NGOs in order to raise awareness about the role of the Ombudsperson Institution as well as to deepen the Ombudsperson Institution's knowledge on the specific concerns of migrants. The Ombudsperson Institution is mandated to promote awareness and dissemination of information on the content and meaning of each of the fundamental rights which it does by, for example, joint initiatives with academic institutions.

The re-accreditation process resulted in the Ombudsperson Institution retaining its A-status. In addition to re-accrediting the Ombudsperson Institution with the A-status, the ICC encouraged the Ombudsperson Institution to intensify collaboration with international and regional human rights systems. To implement this recommendation, the Ombudsperson Institution has since undertaken additional efforts in this area, seeking to intensify provision of information to and participation in meetings with various foreign and international institutions, such as the Human Rights Council and other UN bodies, the Council of Europe committees and the European Union Agency for Fundamental Rights (FRA). In this context, special mention should be made of the Ombudsperson institution's independent and active engagement in Portugal's Universal Periodic Review process in March 2010. The Ombudsperson Institution, in its capacity as a Paris Principles-compliant NHRI, can, and indeed has, participated in meetings of the National Commission for Human Rights, a Portuguese governmental body created in 2010, which ensures inter-ministerial co-ordination in the definition of national positions before international human rights bodies and compliance with international human rights instruments and obligations, including relevant reporting obligations.

The FRA wishes to thank those institutions that contributed to this Annex; thus providing useful insight into the challenges faced as well as lessons learned with regard to establishing or (re)accrediting an NHRI which can serve as concrete points of reference for other EU Member States.

References

Belgium (1992), Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data (*Loi du 8 décembre 1992 relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel*).

Belgium, Commission for Fundamental Rights (*La Commission Belge des Droits Fondamentaux commission*) (2006), *Proposal and Project Agreement (Présentation et Projet d'Accord)*, available at: www.justicepaix.be/IMG/pdf/2006-CBDFondamentaux.pdf. All hyperlinks were accessed in July 2012.

Equinet (2009), *Strategic Roles of Equality Bodies*.

Finland (2010a), *Government Report to Parliament on the Human Rights Policy of Finland 2009*.

Finland (2010b), Government Bill to amend the Parliamentary Ombudsman Act (HE 205/2010).

Finland, Constitutional Committee (2010), *Report of the Constitutional Committee (PeVM 12/2010)*.

Finland (2011), Act No. 535/2011 on the amendment of the Parliamentary Ombudsman Act.

Finnish League for Human Rights (2006), *Assessment of the need to develop the human rights field in Finland and establish a national human rights institution (Arvioita Suomen ihmisoikeuskentän kehittämistarpeista ja tarpeesta perustaa kansallinen ihmisoikeusinstituutio)*.

Hungary (2011), Act CXI of 2011 on the Commissioner for Fundamental Rights.

International Coordinating Committee of National Institutions for the Promotion and Protection of Fundamental Rights (ICC), Sub-Committee on Accreditation (2011), *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA) Geneva, 23-27 May 2011*, available at: [http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20MAY%202011%20-%20FINAL%20\(with%20annexes\).pdf](http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20REPORT%20MAY%202011%20-%20FINAL%20(with%20annexes).pdf).



Lempinen, M., Pohjolainen, A.-E., and Scheinin, M. (2002), *The need for a national human rights institution in Finland: the tasks according to the Paris Principles, their implementation in Finland and the shaping the developments possibilities* (Kansallisen ihmisoikeusinstituution tarve Suomessa: 'Pariisin periaatteiden' mukaiset tehtävät, niiden toteuttaminen Suomessa ja kehittämismahdollisuuksien hahmottelu), Abo Akademi University, 2002.

Netherlands (2011), Draft bill on the establishment of a National Human Rights Institute, available at: www.naarenmensenrechteninstituut.nl/62/english.

Netherlands, Ministry of Interior and the Ministry of Justice (2009), Draft Bill on the Board for Human Rights and Equal Treatment. Explanatory Memorandum (*Conceptwetsvoorstel College coor mensenrechten en gelijke behandeling. Memory van toelichting*), available at: www.internetconsultatie.nl/collegevoormensenrechtenengelijkebehandeling/document/58.

Romania (1991), Law No. 9 of 29 January 1991 on the establishment of the Romanian Institute for Human Rights.

United Nations (UN), Committee against Torture (CAT) (2007), *Concluding observations: Italy*, UN doc. CAT/C/ITA/CO/4, 16 July 2007.

UN, Committee on Economic, Social and Cultural Rights (CESCR) (2004), *Concluding observations: Italy*, UN doc. E/C.12/1/Add.103, 14 December 2004.

UN, Committee on Rights of the Child (CRC) (2003), *Concluding observations: Italy*, UN doc. CRC/C/15/Add.198, 18 March 2003.

UN, Committee on the Elimination of Racial Discrimination (CERD) (2008), *Concluding observations: Italy*, UN doc. CERD/C/ITA/CO/15, 16 May 2008.

UN, CERD (2012), *Concluding observations: Italy*, UN doc. CERD/C/ITA/CO/16-18, 9 March 2002.

UN, General Assembly (2007), *Letter dated 17 April 2007 from the Permanent Representative of Italy to the United Nations addressed to the President of the General Assembly*, 61st session, UN doc. A/61/863, 17 April 2007.

UN, Human Rights Commission (1992), *Paris Principles*, Resolution 1992/54, 7-9 October 1991.

UN, Human Rights Committee (2006), *Concluding observations: Italy*, UN doc. CCPR/C/ITA/CO/5, 24 April 2006.

UN, Human Rights Council (HRC) (2009), *Compilation prepared by the Office of the High commissioner for Human Rights, in accordance with paragraph 15(b) of the annex to Human Rights Council Resolution 5/1 – Italy, 7th session*, UN doc. A/HRC/WG.6/7/ITA/2, 20 November 2009.

UN, HRC (2010), *Report of the Working Group on the Universal Periodic Review*, UN doc. A/HRC/14/4, 18 March 2010.

UN, Office of the High Commissioner for Human Rights National Institutions and Regional Mechanisms Section/Irish Human Rights Commission (2010), *Confidential legal advice on the draft law of the Commission for human rights and equal treatment (CHRET) of the Netherlands*, available at: www.europa-nu.nl/9353000/1/j4nvg5kkg27kof_j9vvikqpopjt8zm/vikkuyre47zt/f=/blg88365.pdf.



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National Human Rights Institutions (NHRIs) protect and promote human rights at the national level, tackling systemic problems and raising fundamental rights awareness. To equip NHRIs to perform their role well, they should have, among other qualities, independence, powers and a broad mandate, in accordance with the so-called 'Paris Principles' which were adopted by the United Nations General Assembly in 1993 and set forth the primary minimum standards for an effective NHRI. As relatively few European Union (EU) Member States have NHRIs that fully comply with these criteria and some Member States still do not have an NHRI, the FRA developed this handbook to explain and simplify the road to establishing such institutions and enabling their full compliance with the Paris Principles. As an additional guide, the FRA is publishing this separate Annex which outlines several EU Member States' experiences in establishing NHRIs and applying for their accreditation.



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