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Opinion of the Management Board of the EU Agency for Fundamental Rights on a new Multi-annual Framework (2018–2022) for the agency

The work of the EU Agency for Fundamental Rights (FRA) is based on its founding regulation and a Multi-annual Framework (MAF). Whereas the former defines its overall mandate, including its objective and tasks, the latter lists the thematic areas in which FRA should carry out these tasks, without prejudice to responses of the Agency to requests from the European Parliament, the Council of the European Union or the European Commission outside these thematic areas, provided its financial and human resources so permit. The MAF is revised every five years, with the current MAF covering the years 2013 to 2017.

The present document contains the Management Board's (MB) opinion on the upcoming revision of the current MAF. It builds on the institutional experience of the Agency over the last years, including the evidence resulting from requests by EU institutions and from external input by stakeholders, as well as from the execution of FRA projects and the results and impact achieved. It also takes into account a stakeholder consultation carried out in September 2015 among a large number of civil society organisations and national human rights bodies throughout the EU Member States. For the nine existing MAF thematic areas, on average, 86% of the 116 respondents wanted all of these areas to be maintained in the future MAF. Against this background, the MB argues for continuity and preserving the current MAF areas. The MB proposes, however, the following four changes.

1. Add social inclusion to the MAF

The MB recommends forming a new thematic area on 'Roma integration, and social inclusion'. This would underline the continuing need to deal with the priority of Roma integration and at the same time reflect the importance of the fundamental rights dimension of the increasingly relevant debate on (social) inclusion and vulnerability. Given specific socio-economic conditions, persons of Roma descent or migrant background and their descendants can, along with other social groups, be vulnerable in respect to their equitable participation in social, cultural and political life. The challenges members of such groups face are specific manifestations of more general challenges to the enjoyment of fundamental rights in our societies. An explicit focus on social inclusion is also in line with the priorities of the EU's 2020 strategy for smart, sustainable and inclusive growth. The European Parliament has called for an additional MAF area on 'extreme poverty and social exclusion'. Finally, in the context of the stakeholder consultation, five different new MAF areas were proposed to the participants in the consultation. The one that clearly received the most positive feedback covered social inclusion and related themes.

2. Cover criminal matters and policing

The MB recommends removing the exclusion of "criminal matters" from the MAF area 'judicial cooperation'. The time when the Lisbon Treaty was not yet in force and the EU had three separate pillars is long over. Europe is witnessing the increasing importance of EU initiatives in the field of police and judicial cooperation, which has given rise to fundamental rights considerations. The European Parliament has repeatedly stressed that as police and judicial cooperation in criminal matters has

become “standard EU policy”, it should explicitly be included in the MAF. In this context – and given increasing requests for the Agency to comment on proposals undertaken in these areas – the MB strongly recommends adding police cooperation to the MAF areas. This is an area where fundamental rights are at great risk, and excluding it from the own-initiative mandate of FRA limits the agency’s role in this area. Indeed, a stronger role of the FRA could encourage trust in the EU and its justice system among people in the EU, and benefit the status of the EU externally. To date, FRA has worked on these issues following requests from EU institutions for expert input by the Agency – for example, with respect to specific projects and the production of legal opinions. While ‘Justice and fundamental rights’ is increasingly a Union priority, the Agency’s ability to fully contribute to this area with balanced, expert input is limited because it is not explicitly referred to within the MAF.

3. Stress the relevance of the charter of fundamental rights

The Charter entered into force at the end of 2009 and forms the legal backbone of the EU’s human rights obligations. The MAF should therefore prominently and explicitly refer to the Charter. Moreover, the MAF should make explicit that the agency carries out data collection and analysis that serve to raise awareness regarding all relevant fundamental rights of the Charter when conducting work in the thematic areas defined by the MAF. Finally, the MAF should clearly indicate that raising awareness of fundamental rights issues and especially the Charter of Fundamental Rights is a permanent task of the agency, thereby contributing to the development of a European culture of fundamental rights. These references could be made in the preamble and build on Articles 3(2) and 4(1) as well as on the considerations 2 and 9 of the founding regulation. At the same time, the preamble should stress that the European Convention on Human Rights, the constitutional traditions common to the Member States and relevant international agreements are also relevant sources.

4. Mention horizontal obligations and activities

Like the first MAF, the text of the third MAF should explicitly recall that there are prominent horizontal activities of the agency that cut across various MAF areas, such as its communication strategy and activities related to the agency’s special role under the UN Convention on the Rights of Persons with Disabilities. Moreover, the MAF should recall that a variety of horizontal obligations under EU primary law cut across all MAF areas and affect the way in which the agency addresses the latter. Finally, it should be stressed that the different MAF areas are not to be read in isolation but form a net of thematic focus areas that are linked to each other (for instance, access to justice and the information society).

Conclusion

A revised MAF should cover the following eight thematic areas (the order simply reflects the order of the current MAF):

- (a) *access to justice and victims of crime;*

- (b) *information society and, in particular, respect for private life and protection of personal data;*
- (c) *Roma integration, and social inclusion;*
- (d) *judicial and police cooperation;*
- (e) *rights of the child;*
- (f) *equality and non-discrimination;*
- (g) *migration, borders, asylum and integration of refugees and migrants;*
- (h) *racism, xenophobia and related intolerance.*

INTRODUCTION: The Multi-annual Framework and its revision

The EU Agency for Fundamental Rights (FRA) carries out its tasks based on its founding regulation, in the thematic areas specified in the Multi-annual Framework (MAF),¹ without prejudice to responses to requests from the European institutions.² The MAF lists the “thematic areas” of policy relevance; FRA’s work should address all fundamental rights relevant to these areas.

The current MAF identifies the areas as follows:³

- (a) *access to justice;*
- (b) *victims of crime, including compensation to victims of crime;*
- (c) *information society and, in particular, respect for private life and protection of personal data;*
- (d) *Roma integration;*
- (e) *judicial cooperation, except in criminal matters;*
- (f) *rights of the child;*
- (g) *discrimination based on sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation;*
- (h) *immigration and integration of migrants, visa and border control and asylum;*
- (i) *racism, xenophobia and related intolerance.*

The MAF is negotiated in the Council after consulting the European Parliament, and based on a proposal by the European Commission.⁴ When selecting MAF areas, the Council has to respect the following conditions:

- the selected areas must include “the fight against racism, xenophobia and related intolerance”;⁵
- they have to “be in line with the Union's priorities, taking due account of the orientations resulting from EP resolutions and Council conclusions in the field of fundamental rights”;⁶

¹ Art. 5(3) and Art. 5(2)(a) of Council Regulation (EC) 168/2007 in OJ L 53 as of 22 February 2007 (the founding regulation).

² Art. 5(3) of the founding regulation.

³ Council Decision No 252/2013/EU of 11 March 2013 establishing a Multiannual Framework for 2013-2017 for the European Union Agency for Fundamental Rights, in OJ L 79 as of 21 March 2013.

⁴ Art. 5(1) of the founding regulation.

⁵ Art. 5(2)(b) of the founding regulation.

⁶ Art. 5(2)(c) of the founding regulation.

- they have to have “due regard to the Agency's financial and human resources”;⁷ and
- they must ensure “complementarity” with the remit of other EU bodies and international bodies, including the Council of Europe.⁸

According to Art. 5(1) of Council Regulation 168/2007 of 15 February 2007 (the founding regulation), the Commission shall consult the Management Board (MB) of the FRA when proposing a new MAF for the FRA. This document provides the MB’s recommendations for revising the current MAF. These are based on the agency’s institutional experience since its inception in 2007, including the evidence resulting from requests and assessments received from stakeholders, the execution of FRA projects and the results and impacts achieved.

A targeted online stakeholder consultation was carried out in September 2015. 593 emails were sent to contacts in 352 civil society organisations and 121 emails to 70 national human rights bodies, leading to an online questionnaire with 12 questions about the MAF and its revision. FRA received 116 responses⁹ from civil society organisations and national human rights bodies (NHRBs: equality bodies, National Human Rights Institutions and Ombuds institutions). For the nine existing MAF areas, an average of 86 % of all respondents wanted to keep these in the future MAF. In addition, 46 out of the 116 respondents agreed that areas dealing with “social inclusion, including social security, poverty reduction, the protection of employees and the inclusion of persons with disabilities” should be added in the next MAF. Other relevant stakeholders, including the Agency’s Scientific Committee, were also consulted to integrate their input into this opinion.

This opinion follows the revised structure of the thematic areas as proposed above, with the main recommendations for change outlined in boxes.

⁷ Art. 5(2)(d) of the founding regulation.

⁸ Art. 5(2)(e) of the founding regulation.

⁹ The response rate was 27%.

1. PREAMBLE: The relevance of the Charter, horizontal tasks and obligations

The founding regulation establishes that the MAF defines the “limits of the work of the Agency”¹⁰ with regard to those activities that are carried out on the Agency’s own initiative.¹¹ The tasks and activities of the Agency¹² and the fundamental rights the Agency is entitled to address¹³ are defined in the founding regulation. The wording of the MAF should therefore reflect this by listing “thematic areas of activity” (as opposed to “activities” or “rights”).¹⁴ Moreover, the MAF should make explicit that the Agency’s work should cover all fundamental rights that are pertinent to each MAF area. In any case, the founding regulation specifies that in carrying out its tasks the Agency should refer to all fundamental rights “as defined in Article 6 (2) of the Treaty on the European Union”.¹⁵ This provision predates the Lisbon Treaty and should now be read as a reference to the current version of Article 6 TEU, enshrining a reference not just to the European Convention on Human Rights and the general principles of EU law but to the Charter, as well.¹⁶

Recommendation:

In line with the founding regulation, the MAF should make explicit that, when dealing with the listed thematic areas, the agency takes into consideration all relevant rights referred to in the different legal sources mentioned in Article 6 of the Treaty on the European Union, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, the constitutional traditions common to the Member States and, in particular, the Charter of Fundamental rights of the European Union.

The Agency’s founding regulation was adopted when the Charter of Fundamental Rights was not legally binding and its normative future was impossible to predict. This explains why the operational part of the regulation does not refer to the Charter, although the preamble notes a “close connection” between the Charter and the Agency. The next MAF, which will be adopted several years after

¹⁰ Consideration 11 of the founding regulation.

¹¹ See Art. 5(3) in the founding regulation.

¹² This is done in Art. 4 of the founding regulation.

¹³ The substantial scope of the FRA is defined in Art. 3(2) of the founding regulation.

¹⁴ Consideration 11 of the founding regulation.

¹⁵ See Art. 3(2) of the founding regulation.

¹⁶ See considerations 2 and 9 of the founding regulation. Consideration 9 reads as follows: “The Agency should refer in its work to fundamental rights within the meaning of Article 6(2) of the Treaty on European Union, including the European Convention on Human Rights and Fundamental Freedoms, and as reflected in particular in the Charter of Fundamental Rights, bearing in mind its status and the accompanying explanations. The close connection to the Charter should be reflected in the name of the Agency.”

the entry into force of the Charter, should therefore take the opportunity to prominently reference the Charter.¹⁷

Recommendation:

Based on Article 3(2) of the founding regulation and the Lisbon Treaty's entry into force, the Charter – as the normative backbone of the EU's fundamental rights engagement – should be referred to explicitly and prominently in the MAF.

Following the example of consideration 8 in the current MAF, the legislator could also mention in the preamble important themes and obligations that cut across different areas. Consideration 8 reads as follows:

"In view of the importance of the fight against poverty and social exclusion for the Union, which has made it one of the five targets of the Europe 2020 growth strategy, the Agency should take into consideration the economic and social preconditions enabling an effective enjoyment of fundamental rights when collecting and disseminating data within the thematic areas established by this Decision."

This provision is an appropriate reflection of the primary law obligation in Article 3 TEU and Article 9 TFEU to combat social exclusion and promote social justice and protection. Even if social inclusion or a related MAF area is explicitly introduced as one of the thematic areas, a horizontal provision should be maintained in the preamble of the MAF to underscore that the Agency – like other EU institutions and bodies – has certain horizontal obligations under EU primary law.

In addition to the horizontal obligations the Agency has to take into consideration when delivering on the thematic areas, the MAF could explicitly recognise certain horizontal tasks and activities of the Agency.

In consideration 7 of the Agency's first MAF, this was reflected as follows:

"This Framework defines the precise thematic areas of the work of the Agency, whereas several permanent tasks of the Agency are determined in Article 4 of Regulation (EC) No 168/2007, inter alia, the task of raising the awareness of the general public about their fundamental rights and about active dissemination of information about the work of the Agency."¹⁸

¹⁷ See already the MB opinion of 19 November 2007 on the first MAF.

¹⁸ See consideration 7 in the Council Decision of 28 February 2008 implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007-2012 (first MAF).

For example, raising awareness about the Charter of Fundamental Rights of the European Union is an important element of promoting a fundamental rights culture within the EU.

Another important horizontal activity area is the Agency's work as member of the EU Framework to monitor the Convention on the Rights of Persons with Disabilities (CRPD).¹⁹

Recommendation:

As in the first MAF, the third MAF should explicitly underline that the Multi-annual Framework lists thematic areas of work, whereas the founding regulation determines permanent tasks – including the task of raising the general public's awareness of their fundamental rights as enshrined in the Charter of Fundamental Rights and the tasks of the Agency under the monitoring framework of the Convention on the Rights of Persons with Disabilities (Article 33 of the CRPD).

Moreover, the MAF should recall that a variety of horizontal obligations under EU primary law cut across all MAF areas and affect the way in which the Agency addresses the latter. These include the fight against exclusion and discrimination, the promotion of social justice and protection, the protection of the child, gender equality and respect for diversity.

2. Access to justice²⁰ and victims of crime²¹

This thematic area is a merger of the two MAF areas "access to justice" and "victims of crime, including compensation to victims of crime". The two areas are closely related, so it is proposed to merge them to keep the list of MAF areas short.

Consultation

With regard to the thematic area "access to justice", the consultation with national human rights bodies (NHRBs) revealed that stakeholders want this area

¹⁹ See the MB opinion on the second MAF, which already called for its consideration in the preamble: "The accession of the EU to the UN Convention on the Rights of Persons with Disabilities should be acknowledged within the work of the Agency".

²⁰ Regarding the wording of the current MAF area "access to justice", the last MB opinion proposed: "Effective judicial protection, including access to justice". The COM proposal for the first MAF and the first MAF itself used this wording: "access to efficient and independent justice". The current wording reflects the COM proposal for the second MAF.

²¹ Regarding the wording of the current MAF area "victims of crime, including compensation to victims of crime", the last MB opinion aligned with the COM proposal for the second MAF, which was "victims of crime". The specification regarding compensation was introduced later, reflecting the first MAF, which was "compensation of victims". By contrast, the proposal of the COM for the first MAF was quite long: "Compensation of victims, prevention of crime and related aspects relevant to the security of citizens".

to be kept in the future MAF. 38 out of 42 NHRBs affirmed that this thematic area should be maintained. No respondent said it should not (the remaining 4 did not respond to this question). According to the consultation with civil society organisations, 69 out of 74 affirmed that this thematic area should be maintained. No respondent said it should not (the remaining 3 did not respond to this question).

With regard to the thematic area "victims of crime, including compensation to victims of crime", 27 out of 42 NHRBs affirmed that this thematic area should continue, 10 affirmed that it should not, and the remaining 5 did not respond to this question. According to the consultation with civil society organisations, 63 out of 74 affirmed that this thematic area should continue and only 7 affirmed that it should not (the remaining 4 did not respond to this question).

Current and upcoming EU priorities

A key consideration in relation to access to justice is the effective implementation and completion of the criminal procedure roadmap – creating a minimum level of rights for suspects and accused persons across the EU. This roadmap is also clearly linked to the parallel process of improving rights for victims of crime (see Section on victims of crime). Therefore, it is suggested to merge the two areas for the purpose of FRA's Multi-annual Framework.

Also, by ensuring the effectiveness of justice systems for individuals and businesses, the EU legislative and policy instruments aim to facilitate the effective implementation of EU law and to provide much-needed tools in light of the EU's economic growth strategy 'Europe 2020'.

In the area of victims' rights, the implementation of the Victims' Directive (Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012) remains central. Building on the previous Framework Decision on the standing of victims in criminal proceedings, it establishes minimum standards on the rights, support and protection of victims of crime, and represents a significant development towards recognition of victims' rights. (The transposition deadline was 16 November 2015.) However, it must be borne in mind that, in light of continuing austerity policies and budgetary constraints across the EU, Member States may be reluctant to commit sufficient resources to improve services for victims. The Victims' Directive forms part of a roadmap with instruments on victims of crime. The roadmap has close ties to the roadmap on criminal justice – FRA's work on access to justice and victims of crime is thus closely integrated.

Institutional experience of the Agency

Under the area of "access to justice", FRA has over the years delivered evidence-based advice on a range of issues:

- General reports on access to justice (2010 and 2012), focusing on the context of discrimination

- FRA-ECtHR Handbook on European law relating to access to justice (2016)
- Reports on access to justice in specific settings (e.g. asylum seekers (2010), data protection (2014) and children (2015), as well as in relation to the freedom to conduct a business)
- Work related to non-judicial bodies (National Human Rights Institutions (NHRI) report in 2010, Handbook on NHRIs in 2012, Clarity online guidance on where to turn launched in 2015, as well as direct advice to a number of states and organisations).

The Agency's contributions to the Expert Group on fundamental rights under the Council Working Group on e-Law exemplify the policy relevance of FRA's work. Here, a very practical project, which was initiated by FRA, is the development of "Clarity" – an online application guiding users through the various options of complaints mechanisms at national and European level in cases of fundamental rights violations. "Clarity" has been presented and discussed in the previously mentioned Council constellation on e-law as well as in the Council Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP). "Clarity" is scheduled to be transferred to the EU's e-Justice Portal.

Regarding "victims of crime", the MB supports maintaining the MAF area and acknowledges that extending the MAF area in the second MAF (from "compensation of victims" to victims more generally) was an important step that already five years ago signalled the increased relevance of judicial cooperation in criminal matters. As is also noted in Section 6, the process of European integration increasingly raised fundamental rights questions in this area.

Under this area, FRA has over the years delivered evidence-based advice on a range of issues:

- Four large-scale surveys that include sets of questions on respondents' experiences as victims of crime, including whether they report incidents and where they turn for assistance: EU-MIDIS I and II (European Union Minorities and Discrimination Survey); survey on LGBT persons; survey on Jewish people's experiences and perceptions of antisemitism; violence against women survey.
- Report on support services for victims of crime in general (2015) and specifically for victims of hate crime (2016); online resources covering support for victims of crime (as of 2014); deliverables highlight 'promising practices' at the level of individual Member States. The research was originally requested by the European Commission.
- Report on severe labour exploitation (2015) and planned follow-up research (2016-17).
- Other related research and publications that address "victims of crime", including: child-friendly justice (2015), child trafficking (2009), and irregular migrants employed in domestic work (2011).

The policy relevance of the Agency's work is exemplified by FRA's expert input into European Commission-organised events with EU Member States on the implementation of the Victims' Directive. In 2015, FRA hosted a European Commission-coordinated regional event with experts from eight Member States to discuss the implementation of the Victims' Directive. Building on its report on generic victim support services, FRA is currently finalising a specific report on victims of hate crime and their access to justice. The research has been linked with a legal analysis related to FRA's survey results. In this regard, FRA is in the unique position of being able to present its large-scale survey data on respondents' experiences of criminal victimisation alongside a legal analysis of the law in key areas relating to victims.

In 2014, FRA presented – in over 20 Member States – the findings of its survey on violence against women, which was done at the invitation of governments, national parliaments, national human rights bodies and civil society. FRA also reported on the findings at events organised by EU institutions, the United Nations, the Council of Europe and the OSCE. The findings supported three draft Council conclusions as well as a Commission report and EP resolution with recommendations to the Commission on combating violence against women. The survey launch resulted in over 1,500 media items in the space of a few days – which both raised attention to the issue of violence against women and, in parallel, enhanced recognition of the Agency's work.

Recommendation:

In view of the evidence examined, the MB concludes that "access to justice" should remain a thematic area covered by the MAF. For the sake of thematic coherence it could be merged with the thematic area of "victims of crime". In view of the evidence examined, "victims of crime" should remain a thematic area covered by the MAF. There is a need to reflect in the MAF the increased expectation vis-à-vis the Agency to deliver expertise and assistance in areas linked to judicial and police cooperation in criminal matters (see Section 6 below).

3. Information society and, in particular, respect for private life and protection of personal data²²

Consultation

According to the public consultation with NHRBs, 30 out of 42 affirmed that this thematic area should continue, and 8 affirmed that it should not (4 did not complete this question). According to the public consultation with civil society organisations, 64 out of 74 affirmed that this thematic area should continue, and only 6 affirmed that it should not (4 did not complete this question).

Current and upcoming EU priorities

With the Digital Agenda for Europe, the European Commission underlined the crucial role of ICT and particularly the internet as “a vital medium of economic and societal activity: for doing business, working, playing, communicating and expressing ourselves freely.” The Digital Single Market Strategy confirmed this approach. One of the challenges faced in implementing the Digital Agenda for Europe, and also addressed in the Digital Single Market strategy, relates to security (especially cybercrime) and the low levels of trust internet users have in the privacy of online communications and interactions. Specific legislation enhancing EU law, such as the new EU legislative framework for data protection, the enhanced e-Privacy Directive as well as the Network and Information Security Directive are particularly significant in this regard. Given the rapidly evolving landscape in the ICT field and its implications with respect to fundamental rights, FRA will closely monitor these changes through targeted research, and will expand its current work with other EU agencies and actors that are tasked with technical developments and assistance in these fields, such as ENISA and eu-LISA.

Institutional experience of the Agency

In line with FRA’s strategic objectives, FRA is enhancing its activities in the area of “information society” and the protection of fundamental rights in the digital age, including available redress mechanisms. These issues are touched upon in an ongoing project covering the specific context of mass surveillance by intelligence services. FRA published a first report on surveillance by intelligence services in November 2015, in response to a 2014 request by the European Parliament. A follow-up fieldwork phase, currently implemented, will provide

²² Regarding the wording of this MAF area, the last MB opinion proposed “Information, privacy and personal data”; the COM went for a broader title – “Information society and, in particular, respect for private life and protection of personal data” – which was taken up in the final MAF. For the first MAF, the COM had proposed “human rights issues relating to the information society”, whereas the final wording of the first MAF was equal to the wording of the second MAF.

insight into the day-to-day implementation of the surveillance legal framework in the EU. In the years to come, in line with policy developments, FRA will broaden its expertise to the wider area of the protection of privacy and other related fundamental rights in the digital age.

In terms of publications, the Agency met the interests and needs of stakeholders. In 2013, FRA prepared a handbook in partnership with the Council of Europe and the ECtHR, explaining European data protection law in a straightforward manner. After its initial launch, an updated edition of the handbook was published. In 2014 and 2015, the handbook was downloaded over 113.000 times.

Recommendation:

In view of the evidence examined, the MB concludes that “information society and, in particular, respect for private life and protection of personal data” should remain a thematic area covered by the MAF.

4. Roma integration²³ and social inclusion

Roma integration must remain a major concern and top priority for the European Union. FRA’s work on Roma should remain visible in the MAF because the Agency will have to continue to work on the rights of Roma, who as a group experience the most discrimination and exclusion in the EU. At the same time, Roma integration should be put into the wider context of social inclusion to link it more specifically to the Europe 2020 process.

Consultation

According to the public consultation with NHRBs, 37 out of 42 affirmed that this thematic area should continue; only 1 affirmed that it should not (the remaining 4 did not complete this question). According to the public consultation with civil society organisations, 65 out of 74 affirmed that this thematic area should continue; only 6 affirmed that it should not (the remaining 3 did not complete this question).

Current and upcoming EU priorities

In the area of social inclusion, the Agency will follow up on the developments noted in the Commission’s Work Programme 2016 in respect to the new pillar of “social rights”,²⁴ developing work that will deliver useful evidence for the EU institutions and Member States. In particular, the Agency could assist by operationalizing fundamental “social rights” with explicit reference to the

²³ This MAF area was only introduced by the COM in the second MAF, with no alternative wording proposed by the MB or the legislator.

²⁴ See *No time for business as usual, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, Commission Work Programme 2016, p. 9.

Charter, addressing data gaps and testing data collection methodologies as well as new indicators on multidimensional phenomena, such as “social inclusion”, “deprivation” or “vulnerability”. This work would boost various stakeholders’ awareness of the economic and social determinants of effective enjoyment of fundamental rights by all EU citizens.

Furthermore, as the Commission notes in its Annual Work Programme 2016, “the 2016 European Semester [...] will enhance further the emphasis on Member States’ employment and social performance”. The Commission aims at “modernising and addressing the gaps in existing social policy legislation [...] and...] identifying social benchmarks”. On the basis of the Europe 2020 Strategy and the disbursement of European Structural and Investment Funds, the issue of social inclusion is expected to feature more prominently in EU policy cycles (such as the European Semester, with a focus on minority ethnic groups, as well as persons with disabilities). In parallel, it is expected that age will emerge as an issue of growing concern, such as the impact of age on societal participation.

Institutional experience of the Agency

The last five years showed that the Agency’s work is relevant for policymakers. The European Commission’s Communication on the implementation of National Roma Integration Strategies acknowledged the importance of FRA’s data collection through surveys, as well as the work on Roma integration indicators (undertaken together with the European Commission, 18 Member States, as well the Council of Europe and other international organisations). The European Parliament resolution of 12 December 2013 on the progress made in the implementation of the National Roma Integration Strategies acknowledged FRA’s work. The Council also recommends using FRA’s support in making “use of any relevant core indicators or methods of empirical social research or data collection for monitoring and evaluating progress on [...] enabling efficient reporting on the situation of Roma in the Member States”.²⁵ The Agency was invited to provide evidence-based assistance and expertise at national/bilateral level, including to Bulgaria, Austria, Slovakia, Ireland and Italy.

In terms of “social inclusion”, it is underlined that despite calls by important stakeholders, the MAF area so far does not include broader issues of social inclusion, participation and solidarity-related issues. The European Parliament has called for the addition of a MAF area on “extreme poverty and social exclusion”²⁶ and called on the Agency to work more “on the implications of

²⁵ Council Recommendation on Effective Roma Integration Measures in the Member States, 9 December 2013.

²⁶ See amendment number 15 in European Parliament legislative resolution of 17 January 2008 on the proposal for a Council decision implementing Regulation (EC) No 168/2007 as regards the adoption of a Multiannual Framework for the European Union Agency for

extreme poverty and social exclusion in terms of access to and enjoyment of fundamental rights, bearing in mind that the fulfilment of the right to housing is critical for the enjoyment of a full range of other rights, including political and social rights.”²⁷

It is important that a specific thematic area promoting a fundamental rights-based approach to social inclusion be included in the MAF. Furthermore, FRA has identified the need to go beyond the limited approach to social inclusion as related to the fight against poverty, economic inequalities and exclusion to signal a focus on broader aspects of societal participation and social cohesion. Although FRA has carried out work on these issues under the current MAF areas of “Roma integration” and “immigration and integration of migrants, visa and border control and asylum”, specific reference to social inclusion in the new MAF would allow the Agency to build up work in the new pillar of social rights, identified in the Commission’s Work Programme for 2016. Work in this area would be conducted in close cooperation with Eurofound, the EU’s agency on working and living conditions, with which FRA has already signed a Memorandum of Understanding, setting out cooperation modalities to guarantee synergies and complementarity.

Recommendation:

In view of the evidence examined, the MB concludes that the area of “Roma integration” should remain a thematic area covered by the MAF. Moreover, it should be put into the wider context of “social inclusion”, which would also more clearly spell out the Agency’s mandate to engage on social rights more broadly.

5. Judicial²⁸ and police cooperation

Consultation

According to the consultation with NHRBs, 21 out of 42 affirmed that the current thematic area of “judicial cooperation, except in criminal matters” should be maintained; 16 affirmed that it should not (the remaining 5 did not complete this question). According to the consultation with civil society organisations, 56

Fundamental Rights for 2007-2012 (COM(2007)0515 — C6-0322/2007 — 2007/0189(CNS)).

²⁷ European Parliament (B7-0475/2011, 14 September 2011), par. 15.

²⁸ This MAF area was only introduced in the second MAF, with the COM proposing two separate areas, namely: “Police cooperation, taking into account the specific nature of this field” (not accepted by the Council and hence not part of the MAF) and “Judicial cooperation, taking into account the specific nature of this cooperation when it relates to criminal matters” (accepted but changed by the Council into the current wording). The MB opinion on the second MAF proposed the two areas “police cooperation” and “judicial cooperation”.

out of 74 affirmed that this thematic area should be maintained; 13 affirmed that it should not (the remaining 5 did not respond to this question).

These approval rates are lower than for the other thematic areas, which might be influenced by the very restrictive wording of the current area and the composition of the sample of respondents.²⁹ In its current form, the MAF area excludes a core aspect of judicial cooperation that is of obvious importance from a human rights perspective: criminal matters. The European Parliament has argued consistently for the inclusion of the former third pillar in the MAF and stated e.g. in 2012 that it was “*unacceptable that police and judicial cooperation in criminal matters, which has become standard EU policy, [...] which are essential elements of the Charter, are still not explicitly included in the mandate of the FRA [and asked] the Council to include the above matters in the next multiannual framework of the FRA*”.³⁰ In fact, the non-inclusion of criminal matters in the context of judicial cooperation was criticised in countless statements by stakeholders and also raised in the external evaluation of the Agency carried out in 2012. That evaluation concluded as follows:

“While the question was not treated specifically during the evaluation, due to the pending proposal on the new MAF, the potential “gap” in the Agency’s mandate was mentioned in several interviews, in particular with the FRA Management Board and Fundamental Rights Platform. The explicit omission in the MAF of justice cooperation in criminal matters was seen to restrict the FRA’s work in the field of fundamental rights in the EU. It could thus be discussed, whether it is reasonable for the area of criminal matters to be excluded from the competence of the FRA, who as the Fundamental Rights Agency of the EU has as an objective to support the full respect of the Charter, by providing assistance and expertise to the European Union and its Member States.”

(Ramboll, *Evaluation of the European Union Agency for Fundamental Rights*, Final report, November 2012, p. 63)

Against this background, there appears an obvious need to enlarge the thematic area as proposed here. Such an enlargement is not only in line with current and upcoming EU priorities but can also build on earlier work and existing experience of the Agency.

Current and upcoming EU priorities

What will remain important in relation to judicial cooperation, as with access to justice more generally, is the effective implementation and completion of the criminal procedure roadmap – creating a minimum level of rights for suspects

²⁹ It should be stressed that the respondents’ work focuses on different areas. While most deal with issues related to equality and non-discrimination as a main area of their organisation’s work, only seven out of the 116 respondents focus mainly on the area of police and judicial cooperation in criminal matters.

³⁰ European Parliament resolution of 12 December 2012 on the situation of fundamental rights in the European Union (2010-2011), par. 45.

and accused persons across the EU. Recent developments related to terrorism and security and related EU responses have further underscored the need for a strong fundamental rights perspective. Given that 'Justice and Fundamental Rights' is one of the top ten priority areas under the Juncker Commission, the need for the Agency to be able to address this policy priority is evident, and would support FRA's work in areas such as police cooperation and fundamental rights.

Institutional experience of the Agency

Under this area, FRA has over the years delivered evidence-based advice on a range of issues:

- Criminal justice reports (on cross-border transfers of suspects and accused as well as sentenced persons, and on rights of suspects and accused to interpretation, translation, and information, both in 2016) – requested by the European Commission
- Criminal justice opinions (on the European Investigation Order in 2011, confiscation of proceeds of crime in 2012, the European Public Prosecutor's Office in 2014, and expansion of the European Criminal Records Information System to include third-country nationals in 2015) – requested by the European Parliament and the European Commission (the Council has also requested FRA to adopt an opinion, on racism and xenophobia)
- Policing and fundamental rights training requests to FRA have led to the development of a FRA manual and numerous training activities on the topic.

The number of requests for research and opinions underscore the need for FRA to deal with issues covered by the former third pillar.

Recommendation:

In view of the evidence examined, the MB concludes that the area of "judicial cooperation" should remain a thematic area covered by the MAF. However, against the background of the current fundamental rights challenges and the new legal reality introduced by the Treaty of Lisbon, it is considered of great importance to delete the limitation "except in criminal matters". Moreover, it is suggested that the MAF extends the area on judicial cooperation to the closely related thematic area of "police cooperation".

6. Rights of the child³¹

Consultation

According to the public consultation with NHRBs, 36 out of 42 affirmed that this thematic area should continue, and only 2 affirmed that it should not (the remaining 4 did not complete this question). According to the public consultation with civil society organisations, 68 out of 74 affirmed that this thematic area should be maintained, and only 3 affirmed that it should not (3 did not complete this question).

Current and upcoming EU priorities

With more than a hundred million children living in Europe today, the EU institutions and Member States will continue developing legislative, policy and programme efforts in this field. FRA's research, handbooks and awareness-raising material on the rights of the child, child protection and children in justice proceedings, will support the implementation of existing legislation in the field, in particular the Sexual Abuse and Exploitation Directive,³² the Trafficking Directive,³³ and the Victims' Directive,³⁴ as well as the transposition of forthcoming instruments, such as the Directive on procedural safeguards for children suspected or accused in criminal proceedings. Acknowledging that children are at greater risk of poverty than adults (27.7% versus 23.6%), FRA will support EU institutions' and Member States' efforts towards reaching the EU 2020 goals. In this regard, FRA will continue to develop indicators and research the well-being of children, including migrant and refugee children arriving in Europe. In this regard it should be noted that 25% of all asylum applications in Europe come from children, and that children's integration, their full access to services, as well as the prevention of radicalisation will be important points on the agendas of EU institutions and Member States. Age will emerge as an issue of growing concern, especially in regard to reforming services to ensure and support autonomy and the right to live in the community.

Institutional experience of the Agency

Over the past five years the Agency has increased its delivery of assistance and expertise in this area. The European Parliament drafted its own-initiative report

³¹ Regarding the wording of this MAF area, the last MB opinion aligned with the COM proposal for the second MAF, which was "rights of the child" – the wording that was also adopted by the Council. The COM proposal for the first MAF was "protection of children, including rights of the child", whereas the MB opinion had proposed "children's rights and the protection of children".

³² Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.

³³ Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

³⁴ Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

on the situation of unaccompanied minors in the EU, to which FRA provided relevant evidence. This fed into a European Parliament resolution adopted on 12 September 2013. The Council of Europe (CoE) European Committee on Legal Cooperation invited FRA to become a member of the informal network on child-friendly justice to develop a strategy to assist national actors in implementing the CoE guidelines on child-friendly justice. FRA's research on the rights of the child also provided evidence to the Council Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP) in 2014 and for the 2014 Council Conclusions on the Promotion and Protection of the Rights of the Child and Child Well-being. Preliminary results from research on children in judicial proceedings informed 2015 Council discussions and a Committee on Civil Liberties, Justice and Home Affairs (LIBE) report on the draft Directive on procedural rights of children suspected or accused of crime.

These activities were complemented by research activities providing solid data and analysis. For instance, since 2012 the Agency has conducted research on children and justice in close cooperation with the European Commission, including on guardianship systems in the 28 Member States and on national child protection systems. The Agency published a report on guardianship for children deprived of parental care in cooperation with the EU Anti-trafficking Coordinator office. In 2015, it published, together with the CoE and the European Court of Human Rights, a practical handbook on European law relating to the rights of the child. These will complement the earlier and upcoming reports on child-friendly justice and the newly released report on violence against children with disabilities. To raise awareness of its findings, FRA has also specifically engaged with key national stakeholders and reached out to professionals working with children and children themselves.

In terms of methodology, the Agency developed guidance for conducting trans-national research with children for all phases of the research process. This includes guidelines on how to conduct research with and for children, instructions for protection measures and interviewer training, schedules for semi-structured and narrative interviews, consultations and focus groups as well as consent material. This guidance goes hand in hand with efforts at FRA to mainstream child rights into other areas of its work.

Recommendation:

In view of the evidence examined, the MB concludes that the area of "rights of the child" should remain a thematic area covered by the MAF.

7. Equality and non-discrimination³⁵

Consultation

According to the public consultation with NHRBs, 38 out of 42 affirmed that this thematic area should continue, and none said it should not (the remaining 4 did not complete this question). According to the public consultation with civil society organisations, 71 out of 74 affirmed that this thematic area should continue, and none said it should not (the remaining 3 did not complete this question).

Current and upcoming EU priorities

The Lisbon Treaty renders the principle of non-discrimination a horizontal provision guiding the Union in defining and implementing its policies and activities. The Charter of Fundamental Rights prohibits discrimination on the grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation (Article 21). The equality directives offer comprehensive protection against discrimination on the grounds of sex and on the grounds of racial or ethnic origin, with discrimination on the grounds of religion or belief, disability, age or sexual orientation prohibited in the areas employment, occupation and vocational training. The Audiovisual Media Services Directive prohibits commercial communication from including or promoting any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation. The EU and most of its Member States are party to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and FRA is part of the EU framework to promote, protect and monitor the convention. The implementation of the CRPD by the EU and its Member States leads to legal and other reforms mainly at national level.

Institutional experience of the Agency

Over the last five years the Agency has collected comparable data on equality issues – for example, through its LGBT survey – as well as large-scale qualitative research. This allowed FRA to provide evidence-based assistance and expertise to EU institutions and Member States in this thematic area. More recent examples include the Governmental LGBT Focal Point meetings, the European

³⁵ The MB opinion on the second MAF proposed the wording “Discrimination as defined in Article 21 of the Charter of Fundamental Rights”, whereas the COM proposal already contained the wording that was finally adopted by the Council. The COM proposal for the first MAF was: “Discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation or of persons belonging to minorities”. The wording of the final first MAF accommodated multiple discrimination and was thus: “discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination)”.

Commission's High Level Group on Disability and the Work Forum on implementation of the CRPD in the EU. FRA delivered an opinion on the situation of equality in the European Union 10 years from initial implementation of the equality directives. This opinion addressed shortcomings that hinder the implementation of legal provisions and other mechanisms designed to improve protection against discrimination.

With regard to the rights of persons with disabilities, a number of key reports were published. The Agency published a report focusing on Article 12 of the CRPD on equal recognition before the law, commonly known as 'legal capacity'. It developed indicators relevant to two Articles of the CRPD, namely on the right to participation in political and public life (Article 29), and on the right to living independently and being included in the community (Article 19). The Agency published a number of comparative reports relating to findings of its large-scale surveys, all of which are relevant to equality and non-discrimination: violence against women survey; Roma survey; antisemitism survey; and the European Union lesbian, gay, bisexual and transgender (EU-LGBT) survey. It updated its report on homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity and finalised the analysis of the evidence collected in the framework of its project on views and experiences of public officials and professionals in relation to respecting, protecting, promoting and fulfilling the fundamental rights of LGBT people. In 2014 alone there were 65.693 downloads of FRA products in the area of discrimination.

The Agency is carrying out the second wave of its European Union minorities and discrimination survey (EU-MIDIS II), as well as the Fundamental Rights Survey, the Agency's first survey of the general population. This survey concerns people's experiences of and opinions on fundamental rights, including as regards equality and non-discrimination.

Recommendation:

In view of the evidence examined, the MB concludes that "discrimination based on sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of national minority, property, birth, disability, age or sexual orientation" should remain a thematic area covered by the MAF. However, it would be preferable to simplify this MAF area title by changing the wording to "equality and non-discrimination", with the various protected grounds explicitly listed in the preamble of the MAF decision.

Moreover, since effective protection against discrimination needs to be augmented by proactive policy intervention for socially cohesive and inclusive societies, the important issues of social inclusion and participatory societies should be covered explicitly under a thematic area "Roma integration, and social inclusion" (see Section 5).

8. Migration, borders, asylum and integration of refugees and migrants³⁶

Consultation

According to the public consultation with NHRBs, 36 out of 42 affirmed that the thematic area “immigration and integration of migrants, visa and border control and asylum” should continue; only 2 affirmed that it should not (the remaining 4 did not complete this question). According to the public consultation with civil society organisations, 71 out of 74 affirmed that this thematic area should continue, and only 1 affirmed that it should not (the remaining 2 did not complete this question).

Current and upcoming EU priorities

Since May 2015, when the Commission published the European Agenda on Migration, EU institutions have produced a significant number of policy tools to address the situation, working essentially on five parallel policy areas: border management, asylum, combatting human smuggling, return and, more generally, internal security. Several activities were initiated in each of these policy areas. A considerable number of these relate to past or current work by FRA. The establishment of EU “hotspots” (centres where relevant JHA agencies coordinate their work on the ground) in Greece and Italy indicates that the focus of EU action is increasingly adding an operational dimension to the policy-level work. With regards to migrant integration, the EU Agenda reiterates that this competence lies primarily with Member States but mentions the relevant funding possibilities offered by the Asylum Migration and Integration Fund, the European Regional Development Fund and the European Social Fund.

Institutional experience of the Agency

Over the last five years the Agency has become a key actor providing robust, relevant and timely advice on fundamental rights in the context of asylum and migration. The European Commission has requested the Agency to submit written analysis of fundamental rights challenges in the application of the Schengen acquis. The Agency has provided input to the Commission on a number of documents, such as the Eurosur Handbook, the Return Handbook, and the Schengen Evaluation questionnaire, and has presented its findings in the European Parliament. Upon request by EU Council Presidencies during 2013-

³⁶ The opinion of the MB on the second MAF corresponds (apart from the sequence) to the COM proposal that was adopted without changes by the Council. The COM proposal for the first MAF had three separate MAF areas (“immigration and integration of migrants”, “asylum”, “visa and border control”), with the Council then merging asylum with immigration and integration of migrants. The relevant element in the MB opinion on the first MAF was the proposal to add “and mobility” to the immigration and integration of migrants – a proposal that was not taken up by COM.

15, seven presentations of FRA evidence and advice were delivered in the Council working parties on frontiers and Schengen matters, as well as the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA). Finally, it is underlined that the FRA advised and supported Frontex and EASO. FRA also published numerous relevant reports. For instance, together with the European Court of Human Rights, FRA produced a Handbook on European law relating to asylum, borders and immigration, which was well received by practitioners. The handbook was downloaded over 82.000 times and, in 2014 alone, almost 10.000 relevant FRA publications were disseminated.

Recommendation:

In view of the evidence examined, the MB concludes that issues related to immigration should remain within the scope of the Agency's relevant thematic area. However, the wording should be simplified and the important element of integration highlighted by extending it explicitly to both refugees and migrants.

9. Racism, xenophobia and related intolerance³⁷

Consultation

According to the public consultation with NHRBs, 37 out of 42 affirmed that this thematic area should continue, and only 1 affirmed that it should not (the remaining 4 did not complete this question). According to the public consultation with civil society organisations, 70 out of 74 affirmed that this thematic area should continue, and only 1 affirmed that it should not (the remaining 3 did not complete this question).

Current and upcoming EU priorities

The Lisbon Treaty grants the EU powers to combat discrimination on the grounds of racial or ethnic origin, with the Charter of Fundamental Rights prohibiting discrimination on the grounds of race, colour or ethnic origin (Article 21). The Racial Equality Directive offers comprehensive protection against direct and indirect discrimination or harassment on the grounds of racial or ethnic origin in a range of areas of social life. The Framework Decision on racism and xenophobia establishes legally binding minimum standards for countering severe forms of racism and xenophobia (including through computer systems) via criminal law. In addition, the Audiovisual Media Services Directive prohibits commercial communications from including or promoting any discrimination based on racial or ethnic origin (Article 9). Xenophobic reactions in some

³⁷ This is a permanent MAF area under the current founding regulation and was hence never subject to proposals for changes.

Member States linked to the arrival of refugees and asylum seekers in large numbers in 2015 prompted responses at EU and national level. The Agency will follow up and analyse these to identify how the acquis is implemented and assess the impact of relevant legal and policy measures on the ground, with that impact likely to be felt for years to come.

Institutional experience of the Agency

The Agency continuously collects evidence and publishes comparative reports on racism, xenophobia and ethnic discrimination. The overall aim of this body of work is to provide evidence-based advice to EU institutions and Member States to support their efforts to counter these phenomena when implementing EU law. FRA collects and analyses data on racism, xenophobia and ethnic discrimination as part of its work on the Annual Report on the situation of fundamental rights in the EU. The second wave of the European Union Minorities and Discrimination Survey (EU-MIDIS II) covers issues pertaining to racism, xenophobia and ethnic discrimination. FRA produced an opinion on the Framework decision on racism and xenophobia with special attention to the rights of victims of crime, at the request of the Council Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP). As required by article 17 of the Racial Equality Directive, FRA delivered an opinion on the implementation of the equality directives in the EU. The Agency publishes an annual overview of recorded incidents of antisemitism in the EU. FRA conducted a survey on discrimination and hate crime against Jews. The Agency engages with Member States to facilitate exchanges of practices on reporting and recording of hate crime, in close cooperation with the European Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR). Responding to emerging fundamental rights concerns, FRA published a thematic situation report on "Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary".

Recommendation:

In view of the evidence examined, the MB concludes that the Agency has delivered considerable work and impact in this permanent MAF area. It has no recommendation in this regard for the new MAF.

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