



Council of the
European Union

Brussels, 3 June 2015
(OR. en)

8988/15

JAI 333
FREMP 110

COVER NOTE

From: European Union Agency for Fundamental Rights

To: Working Party on Fundamental Rights, Citizens' Rights and Free
Movement of Persons (FREMP)

Subject: Fundamental rights: challenges and achievements in 2014

Delegations will find in the annex the conclusions of the European Union Agency for Fundamental Rights (FRA) as contained in the 2014 annual report of FRA.

The full text of the report will be available on the website of FRA as from 25 June 2015.



Fundamental rights: challenges and achievements in 2014

FRA CONCLUSIONS

FOCUS

Last year, the Annual report Focus discussed a renewed commitment to fundamental rights through an EU strategic framework and presented a variety of tools that could characterise such a framework. This year, the Focus elaborates on the ‘how’ by concentrating on one of the tools presented last year: the fundamental rights indicators. It examines how a rights-based indicator framework could support relevant actors in policy evaluation and design, thus consolidating a fundamental rights culture and helping turn words into action.

Strengthening the EU’s evidence base with a clear focus on fundamental rights would help identify how these rights are respected and promoted, not only ‘on paper’ but ‘on the ground’, through concrete measures and reforms. In line with Article 9 of the TFEU, for instance, they could ensure that the Union:

“in all its activities [aims to] take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.”

The Charter of Fundamental Rights of the EU, as was argued in last year’s Focus, puts flesh on the bones of all the values that are listed in Article 2 of the TEU and shared between the EU and its Member States. Further operationalising the commitment to the Charter could contribute to resolving the ‘Copenhagen dilemma’: bridging the artificial separation between the EU’s value commitment vis-à-vis third and enlargement countries on the one hand and its Member States on the other. Fundamental rights indicators can help to further entrench a fundamental rights culture in whatever the EU does so that it can lead by example.¹

Chapter 1. Equality and non-discrimination

- FRA evidence consistently shows that levels of discrimination remain high, including in areas other than employment. Nevertheless, in 2014, six years after it was first proposed, the Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation has still not been adopted.

For the EU to fulfil its obligation to become a truly inclusive society, EU institutions and Member States should explore every means at their disposal to ensure the adoption of the proposed equal treatment directive.

- The European Structural and Investment Funds (ESIF) are a key instrument in the EU's drive to ensure the inclusion of those most vulnerable to discrimination and unequal treatment, as well as meeting the targets of the Europe 2020 strategy. Member States allocated around 10 % of the overall budget available under ESIF to promote social inclusion, and to combat poverty and any discrimination during the programming period 2014–2020.

EU Member States should ensure that ESIF funds are invested in ways compliant with fundamental rights, leading to sustainable and tangible results with respect to social inclusion. Increased cooperation and coordination of activities between the European Commission, EU bodies and Member States will be needed to assist Member States in meeting their objectives in this field.

- Evidence shows that EU Member States took concrete steps towards fulfilling their obligation to ensure that operational programmes funded under ESIF respect the principle of non-discrimination and the rights of persons with disabilities. This is reflected in steps taken by Member States to meet the five general ex ante conditionalities relating to anti-discrimination and disability before the deadline of 31 December 2016.

Member States are encouraged to continue efforts to meet these conditionalities fully, while engaging relevant public bodies and civil society organisations in committees set up to monitor the disbursement of funds under ESIF, thereby increasing transparency and accountability.

- Reforms to ensure that national legislation meets the requirements of the Convention on the Rights of Persons with Disabilities (CRPD) increasingly take into account the cross-cutting provisions of the convention regarding equality and non-discrimination. These are set out in Article 3 of the CRPD, on general principles, and Article 5, on equality and non-discrimination.

Member States should ensure that they incorporate the principles of equality and non-discrimination when adapting their legal frameworks in line with the human rights-based approach to disability which underpins the convention. All reforms should take into account the needs of persons with different types of impairments.

- The composition and role of bodies to implement and monitor the CRPD, required under Article 33 of the convention, were not finalised in five Member States at the end of 2014, although the last of these Member States had ratified the convention in 2012.

Those Member States that have not yet designated these bodies should take steps to establish them as soon as possible. All Member States should ensure that Article 33 CRPD bodies have sufficient financial and human resources to carry out their functions, and that disabled persons organisations (DPOs) participate fully in the monitoring process.

Chapter 2. Racism, xenophobia and related intolerance

- Evidence in 2014 shows that across the EU members of minority ethnic groups, including migrants and refugees, continue to face discrimination in access to key areas of social life, such as employment, education, health and services, including housing.

EU Member States should intensify efforts to implement the Racial Equality Directive fully and effectively, in particular concerning the reporting of discrimination incidents to national equality bodies to combat discrimination more effectively.

- Evidence suggests that underreporting of incidents of discrimination experienced by migrant and ethnic groups persists. Article 10 of the Racial Equality Directive requires Member States to inform persons concerned of their rights to non-discrimination.

In this light, EU Member States should intensify awareness-raising activities targeting such persons effectively, including among bodies that can help to disseminate information such as national equality bodies, NGOs, trade unions and employers.

- Evidence in 2014 shows that incidents of racist, antisemitic and xenophobic hate crime and hate speech persist. Continuous victimisation of members of minority ethnic groups can contribute to feelings of social exclusion and alienation of entire communities, and incite radicalisation.

EU Member States should proceed with the full and correct transposition and effective implementation of the Framework Decision on Racism and Xenophobia. In addition, Member States are encouraged to adopt and implement policies and measures aiming at combating racism and hate crime, as well as deradicalisation programmes.

- Evidence shows that the internet remains a critical tool for spreading hate speech. A number of EU Member States have taken steps to counter hate speech online in 2014.

To prevent the misuse of the internet as an area where hate speech can be committed with impunity, EU Member States should assess if the police and public prosecutors' offices are sufficiently staffed and equipped to investigate and prosecute hate crime on the internet, to address cyber hate as far as necessary to meet Member States' responsibilities and standards of due diligence.

- Although several EU Member States have made efforts to improve the recording and prosecuting of hate crimes in 2014, evidence collected by FRA shows that persistent gaps exist in data collection when it comes to recording of hate crimes.

EU Member States are encouraged to provide law enforcement and judicial authorities with specialist training that will enable them to effectively identify, investigate and prosecute crimes committed with a discriminatory motive. Such specialist training would improve their understanding of the rights and needs of victims of hate crimes, and ensure that such victims are offered assistance and support in compliance with the provisions of the Victims' Directive.

- There is evidence in several EU Member States of incidents involving discriminatory misconduct and discriminatory ethnic profiling by law enforcement officials in 2014. This can undermine trust in law enforcement officials.

EU Member States should consider providing specialist training to law enforcement officials, adopting codes of conduct for the prevention of racism, and consider approaches, such as community policing, that can strengthen community relations and trust in the police's ability to respond sensitively to the rights and needs of victims.

Chapter 3. Roma integration

- Evidence shows that, in 2014, efforts by the EU and its Member States to fulfil the fundamental rights of Roma are ongoing, with modest progress in the implementation of NRISs. The Commission's report on the application of the equality directives confirms that there is insufficient use of positive action. Such measures can usefully fight discrimination against Roma.

EU Member States should intensify efforts using the ESIF to speed up the implementation of their national Roma integration strategies. Moreover, they have to make sure to observe obligations flowing from EU legislation, including the Racial Equality Directive.

- FRA research shows that, although structures of cooperation among actors involved in Roma integration are gradually being put in place, their operational coordination remains a challenge. Barriers are also identified in the capacity and willingness of local actors, including Roma, to participate effectively and in a meaningful way.

Member States are encouraged to ensure that their NRCs are empowered and resourced to coordinate actions, especially by local authorities, more effectively on the ground and to promote the active and meaningful participation of Roma residents in planning, implementing and evaluating relevant local actions.

- Past surveys of Roma households show important differences in the socio-economic and living conditions of Roma and their non-Roma neighbours, which can be influenced by intolerance and discrimination.

Member States are encouraged to include measures specifically addressing intolerance and racism in all actions implementing their National Roma Integration Strategies.

- FRA research, as well as other evidence, shows that building mutual trust and respect fosters community cohesion and is an essential element for successful social integration efforts. These elements can be incorporated in actions implementing national Roma integration strategies on the ground.

Member States should consider incorporating trust-building and community cohesion measures in all actions implementing their National Roma Integration Strategies.

- Given the continuing forms of discrimination, segregation and exclusion, there is a need for comprehensive monitoring of Roma integration efforts, to ensure that they are on track and produce positive results.

The rights-based indicator framework developed by several Member States, FRA and the Commission can be a valuable tool for assessing concrete actions, measures and outcomes against rights standards and EU policy targets. Member States should consider testing and using the rights-based indicator framework developed by the working party on Roma integration indicators.

- There is evidence of continuing segregation of Roma children in education and of Roma women facing particular challenges.

Member States are encouraged to continue their efforts to stop any practice segregating Roma children in education and to secure their fundamental right to equal access to good-quality schooling. Promoting gender equality should be an important priority in the implementation of national Roma integration strategies. Outcomes in this respect should be effectively monitored.

Chapter 4. Asylum, borders, immigration and integration

- For the first time since the Second World War, the number of refugees, asylum seekers and internally displaced people worldwide exceeded 50 million in 2013, according to the UNHCR figures released in 2014. More people in need of international protection therefore try to reach safety in Europe. Given that opportunities to enter the EU lawfully are limited, many remain in refugee camps in neighbouring countries, exposed to security and other risks, or try to reach the EU via smuggling networks. This situation raises concerns about fundamental rights and security that the EU and Member States should consider.

A FRA focus paper, released in February 2015, presents a toolbox to promote legal entry channels. EU Member States should offer more legal possibilities for persons in need of international protection to enter the EU, as a viable alternative to risky irregular entry. The European Commission should support this by proposing common approaches, encouraging Member States to take action and share promising practices, and helping to ensure sufficient solidarity funds are available to Member States for this purpose.

- In March 2014, the European Commission published a communication on EU return policy. The Commission noted positive developments in national law regarding fundamental rights – for example on stopping detention when there are no reasonable prospects of removing a person – but also shortcomings. To promote consistent practices compliant with fundamental rights, the Commission announced the plan to adopt a handbook on return policy in 2015; it will cover topics, such as apprehension practices, alternatives to detention, and safeguards concerning the detention of persons in return procedures. It will also build on the guidance provided by the CJEU.

EU Member States should continue their efforts to implement fundamental rights safeguards included in the EU return acquis, making full use of existing and future guidance and tools issued by UN treaty bodies, the Council of Europe system, and EU institutions and agencies. EU funds in the area of Migration and Home Affairs should be used proactively for this purpose.

- Two new funding mechanisms were set up to promote the application of EU law in the field of migration in 2014–2020: the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF). The AMIF will support measures in the areas of asylum, legal migration and integration and return, whereas the ISF includes two separate instruments, one to support action in the field of borders and visa and a second for activities relating to police cooperation, preventing and combating crime, and crisis management.

The European Commission and EU Member States should ensure that all actions funded under the EU funds are compatible with the EU Charter of Fundamental Rights. They are encouraged to use such funds to explore innovative ways to implement fundamental rights safeguards included in the EU acquis.

- The new European Commission identified migration as one of its 10 priorities and committed itself to developing a new European policy on regular migration. The Commission also expressed the need to promote skilled persons' labour migration to the EU and announced a review of the Blue Card Directive.

As concluded at the FRA Fundamental Rights Conference in November 2014, the EU and its Member States should develop a comprehensive and sustainable migration policy and make efforts to shift the public discourse on migration to show its benefits for economic development and growth. Immigration schemes should also consider the contribution, in terms of talent and skills, that persons in need of international protection can make to society.

- Evidence from 2014 shows that EU societies continue to face challenges in integrating migrants and their descendants. Integration policies normally target employment and language learning, but rarely address broader issues of social inclusion, community cohesion, respect for human rights or political participation. The January 2015 attacks in Paris emphasise the need for such an approach, and the relevance of social inclusion policies that target the wider community (migrants, their descendants and nationals). Most Member States have social inclusion policies and measures that target not just migrants but also the general population, particularly training for public administration and media campaigns.

EU Member States need to address more effectively the challenges of social inclusion for migrants and their descendants, and confront xenophobia, intolerance and prejudice. Existing training programmes, including those targeting the general population, should be systematically monitored to assess their impact on the ground. Efforts to promote social inclusion as a process of mutual accommodation by all – migrants, their descendants and the general population – and based on universal human rights should be further supported.

- Evidence collected by FRA shows that diversity and intercultural education are included as core elements in the general principles and objectives of 10 EU Member States. Most Member States' primary or secondary education teaches about different cultures in society. Eight Member States, however, do not include such elements in the national curriculum, and one Member State addresses diversity in extracurricular activities. Active political and social participation of migrants is also essential for successful integration. This is particularly relevant for women and for young people who are descendants of migrants. As education modules on diversity in society are integrated in school curricula in most Member States, it shows the efforts made to nurture inclusive, participatory and cohesive societies with equal opportunities for all.

EU Member States should ensure that educational systems promote respect for diversity and universal human rights. Education modules on diversity, as exist in many Member States, should be introduced throughout the EU as a core component of education systems.

Chapter 5. Information society, privacy and data protection

- The EU institutions and Member States have been negotiating the data protection package since January 2012. Despite the evidence that challenges to data protection remain part of today's information society, no political agreement has yet been reached on the legislative proposals.

EU Member States should promptly adopt the data protection package to provide the EU with an enhanced data protection framework that could be complemented with specialised legislation in other areas of EU competence.

- Following the Snowden revelations concerning mass surveillance, the role of intelligence services and the implications of surveillance activities were discussed in the political arena, as well as in courts and by the public. Against this background, a number of EU Member States have engaged in a reform of security and intelligence services, as FRA comparative research shows.

EU Member States should take the opportunity to enhance privacy and data protection guarantees when reforming their services. These could include adequate guarantees against abuse, which entails effective supervision by independent bodies and efficient redress mechanisms. Member States should consider such guarantees in any reforms of intelligence systems.

- Data protection authorities play an important role in safeguarding general data protection legislation. Evidence collected by FRA shows their mandates differ widely. In several EU Member States, DPAs have the legal mandate to play a significant role in supervising security and intelligence services.

Where an EU Member State allows its DPA to supervise security and intelligence services, it should further strengthen the authority's independence and role and ensure that it is supported by adequate financial and human resources.

- In 2014, various revelations concerning mass surveillance highlighted the occurrence of data security breaches. The legal obligations of actors, such as electronic communications service providers, thus moved to the forefront.

EU Member States should ensure that data controllers, such as electronic communications service providers, adhere to their legal obligation as laid down in Article 4 of Directive 2002/58/EC and Article 17 of Directive 95/46/EC: taking into account the risks represented by data processing and the nature of the data involved, service providers have to implement appropriate technical security measures. The use of secure encryption technologies should be considered in this context, as well as the development of user-friendly encryption tools.

- The CJEU's judgment on the Data Retention Directive spelled out crucial fundamental rights principles and suggested specific safeguards related to, for example, the scope of data retention, its aim and limits to law enforcement agencies' access to the data and the retention time. FRA mapped the Member States' reactions to this core CJEU judgment, identifying a variety of approaches in terms of both judicial and legislative reactions.

When assessing the legal implication of this judgment, the European Commission and Member States should carry out research on data retention's positive impact or lack thereof. If no significant advantages are found, less invasive alternatives should be preferred.

- Discussions on creating an EU framework for acquiring and processing passenger name records played a significant part in the internal security debate in 2014.

The EU co-legislators should ensure that the potential setting up of an EU passenger name records system be accompanied by enhanced fundamental rights safeguards, including limitations on purpose, transparency towards passengers and protection of their personal data.

Chapter 6. Rights of the Child

- Child poverty and social exclusion rates have remained entrenched at high levels in recent years, data show.

To address this, at its 2015 mid-term review of the EU 2020 Strategy, the EU should consider adopting a specific child poverty target. The European Semester process could monitor progress towards achieving this target, recommending evidence-based measures to tackle child poverty.

- The 2014–2020 European Structural and Investment Funds – and the legal obligation to ensure that operational programmes funded by these funds fulfil the requirement to respect the principles of gender equality, non-discrimination, the rights of persons with disabilities and Roma inclusion – open a new avenue to address well-being and poverty for all children.

EU Member States, with the engagement of civil society, should make better use of EU funds to ensure the provision of quality services for children, using the comprehensive approach to child well-being established in the European Commission's recommendation on investing in children. Specifically, efforts should continue to promote the transition from institutional care to family- and community-based care, particularly for children with disabilities. As children suffer disproportionately from poverty, effective monitoring of the use of structural funds to achieve the poverty reduction target of the Europe 2020 Strategy, including child specific actions and the implementation of ex ante conditionalities, is key to enhancing children's well-being and enjoyment of their fundamental rights.

- FRA evidence published in 2014 shows that the level of coordination between central governments and municipalities remains insufficient in the context of decentralised child protection systems. This also affects the way that services are provided in the different municipalities and by different service providers.

EU Member States are encouraged to enhance coordination mechanisms and develop quality standards and monitoring mechanisms to ensure compliance with children's rights by public and private service providers.

- FRA evidence analysed in 2014 shows that, while child-friendly justice is often a well-recognised legal concept in national legal systems, it could be applied more in practice. Protection measures established in the Victims' Directive, such as video recording of child victims' statements, although a legal possibility in most EU Member States, are not widely used.

EU Member States should make sure that the Victims' Directive, which has a transposition deadline of November 2015, is properly transposed and implemented. Moreover, the approval of a new directive on procedural safeguards for children suspected or accused in criminal proceedings will be a step forward in ensuring that all children, including those that have violated the law, are adequately treated by the justice system.

- FRA research on child-friendly justice, children with disabilities and child protection shows that professionals working with children greatly benefit from continuous support and capacity building.
All relevant professionals should take a consistent and rights-compliant approach in their work with children and their families. Competent authorities are thus encouraged to provide specific guidance, training and practical protocols. The EU Guidance on integrated child protection systems is expected to facilitate this process.

Chapter 7. Access to justice, including rights of crime victims

- Evidence collected in 2014 shows that EU Member States adopted various measures following the transposition and implementation of the EU directives on the right to translation and interpretation, and to information in criminal proceedings.

For these rights to become a reality, EU Member States are, however, encouraged to further review their existing laws and complement them with relevant policy measures, as well as exchange promising practices in this area to ensure implementation in practice.

- In the run-up to the transposition deadline of November 2015 for the Victims' Directive, legislation on the rights of victims of crime improved in EU Member States. FRA evidence on the extent and nature of support services for victims shows, however, that the actual situation on the ground needs to be strengthened.

EU Member States should adopt further measures to establish comprehensive victim support services and enable victims to access those services, for example by providing clear information to victims, ensuring effective referral of victims – particularly certain groups of victims who may have specific protection needs – and training police officers and legal practitioners in how to establish trust and confidence with victims and support them throughout proceedings. In addition, Member States should strengthen efforts to gather data regularly on how crime victims have accessed their rights, including improving data collection and ensuring the effective use of that data to inform relevant policies aimed at combating crime, supporting victims and empowering them to exercise their rights.

- Evidence collected by the FRA survey on violence against women shows alarmingly high rates of incidents of physical and sexual violence, alongside psychological abuse, harassment and stalking, in all 28 EU Member States. In addition, the survey reveals the significant number of women who have experienced abuse in childhood at the hands of an adult.

EU Member States should review their legislation to ensure that it is in line with the Council of Europe's Istanbul Convention and the EU Victims' Directive, both of which set new standards for responding to victims of gender-based violence. In this context, the need for all EU Member States to ratify the Istanbul Convention at their earliest opportunity is to be highlighted. Going further, Member States should develop and implement national action plans to combat violence against women on the basis of the FRA evidence, alongside other data that draw directly on women's experiences of violence.

Chapter 8. EU Charter of Fundamental Rights and its use by Member States

- At the end of 2014, the Charter had been in force for over five years, with the strong upward trend of references to the Charter in the Court of Justice of the European Union (CJEU) continuing. In some cases, Member States' high courts also turn to the Charter for guidance and inspiration, sometimes also in cases falling outside the scope of EU law and sometimes not using the full potential of the Charter. Court decisions handed down in 2014 confirm that the Charter plays a role in the cooperation between the CJEU and the national courts. In over a tenth of the cases where national courts ask the CJEU for advice, the Charter is explicitly used.

Given this situation, EU Member States should assess and address training needs among practising lawyers and in the judiciary. It is worth considering positive incentives for practitioners to participate in such training so that the relevant key actors are made aware of both the potential and the limitations of the Charter.

- The evidence available to FRA shows that national courts frequently use the Charter in combination with other prominent human rights sources, such as national constitutional law or international law. In half of the 2014 national court decisions that FRA collected and analysed, the Charter was used in combination with the European Convention on Human Rights (ECHR).

Based on this evidence, EU Member States should make sure that training on the Charter is not offered in isolation but embedded in the wider fundamental rights framework, including the ECHR and the case law of the European Court of Human Rights (ECtHR).

- In only a very small proportion of the total decisions by national courts referring to the Charter is the CJEU asked for a preliminary ruling. National judges are regularly left to their own devices when using the Charter, without having readily available means to easily access the experiences of judges from other EU Member States in this regard.

To foster a shared understanding and interpretation of the Charter, the EU and its Member States could pool forces to allow for increased levels of exchange between and among national judiciaries. Relevant instruments for this would be the extension of existing databases, such as Charterpedia, the extended use of the European Case Law Identifier (ECLI) and the establishing of regular transnational exchanges on the application of the Charter among judges, thereby also enhancing mutual trust.

- The role of the Charter in the national legislative process depends on the respective procedural rules in place. There is a diversity of existing procedures, practices and approaches on how to assess upcoming national legislation's (de jure) compliance with and (de facto) impacts on fundamental rights. Evidence collected in 2014 shows that these rules not only differ between EU Member States, but may also differ depending on whether governments submitted or parliaments prepared draft legislation. Moreover, assessments of impact and legal scrutiny can be limited to the initial policy options and bills proposed, whereas later changes to those bills might not be subject to such checks.

Based on this variety of experiences, the EU and its Member States should use untapped potential for the exchange of promising practices and mutual learning with regard to Charter checks and Charter impact assessments. Building on earlier discussions in the Council Working Group dealing with fundamental rights (FREMP), FREMP could provide a forum for Member States and EU institutions to exchange experiences of the Charter, allow mutual learning and thereby contribute to making national and EU legislation more fundamental rights friendly.

- As the evidence collected for the annual report shows, the Charter was referred to in various 2014 fundamental rights policy documents at national level, but there appear to be hardly any Charter-specific policies aiming to strengthen knowledge and awareness of the Charter.

EU Member States could consider developing national policies for the implementation of the Charter, including awareness-raising campaigns, training of professionals and enhanced use of the Charter (and the corresponding CJEU case law) in legality checks and impact assessments in government services.

ⁱ For a recent example of the Union's outspoken approach in the enlargement context, see Council of the European Union (2014), [Conclusions of the Council of the European Union and the member states meeting within the Council on ensuring respect for the rule of law, General Affairs Council meeting, Brussels, 16 December 2014](#).