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**HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY  
FOR EVERYONE IN THE EU: FROM THE TREATY OF ROME  
TO THE FUNDAMENTAL RIGHTS AGENCY**

**Introduction**

The year 2017 marks a double anniversary: 60 years since the creation of the European Community and 10 since the establishment of the European Union Agency for Fundamental Rights. These anniversaries tell a story of the EU's evolution from an organization focused mainly on economic cooperation to one in which respect for fundamental rights is a basic pillar of law and policy. At the same time, the past decade witnessed fundamental rights challenges that have not just persisted but in many areas – such as migration, asylum and data protection – have grown more pressing. In fact, despite the many pledges the EU and its Member States made over the last 10 years and more, the fundamental rights system itself is increasingly under attack.

The first aim of the European Community legal order was not the protection of an individual's fundamental rights. The Treaty of Rome, signed in March 1957, primarily focused on economic integration. However, it did leave room for the later commitment to fundamental rights, with reference to an “accelerated raising of the standard of living”, and the introduction of the principle of equal pay for

women and men<sup>1</sup>. Fundamental rights were only gradually recognized and only to limit the discretion of supranational institutions. However, after the Maastricht and Amsterdam Treaties added TEU articles 6 and 7<sup>2</sup>, the concern for fundamental rights contributed to the determination of the Union's objectives and activities, and induced the development of a more constructive policy in that area.

The Charter of Fundamental Rights of the European Union was adopted later the present decade, paving the way for the EU to take a more outspoken stance on fundamental rights<sup>3</sup>. This found expression in the European Union Agency for Fundamental Rights (FRA) creation in March 2007<sup>4</sup>. FRA was set up to provide independent evidence-based advice relating to fundamental rights, in the domain of the Union law. Its mission is to “help to make fundamental rights a reality for everyone in the European Union”.

The objective, scope and tasks of the Fundamental Rights Agency are set out in Articles 2 to 4 of the Council Regulation (EC) No. 168/2007 establishing the agency. To achieve its objective, the agency collects and analyses data to provide independent, evidence-based assistance and expertise to EU institutions and Member States, as well as other stakeholders. The agency situates its work in the wider context of the Charter of Fundamental Rights of the European Union.

When FRA was created, the EU still lacked a legally binding bill of rights to frame its actions and those of the Member States within the scope<sup>5</sup> of the EU law. This changed in 2009, when the Lisbon Treaty entered into force and made the Charter legally binding. Underlining the political ramifications of this new status, the new European Commissioners when taking office in 2010 solemnly declared that they would uphold the Charter as well as the EU treaties. The EU also ratified the UN Convention on the Rights of Persons with Disabilities in 2010 – the first time the EU acceded to an international human rights convention. These develop-

<sup>1</sup> European Communities (1957), Treaty establishing the European Economic Community, 11957E/TXT, 25 March 1957, Art. 2.

<sup>2</sup> The Treaty on the European Union (TEU) confirmed in Article 6(1) the norm that the Union ‘respects the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law’. A significant change to this norm came with the Treaty of Amsterdam in 1997, which amended Article 6(1) so that it read: ‘the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law’. Treaty on European Union OJEC C325/7 (TEU or ‘Maastricht Treaty’), amended by the Lisbon Treaty to: ‘The Union recognizes the rights, freedoms, and principles set out in the Charter of Fundamental Rights of the European Union’ (Article 6(1)). Note the commitment to upholding human rights standards also made in Article 6(2), which states that the Union shall accede to the ECHR.

<sup>3</sup> For the Charter as a catalyst in the EU system, see: G.N. Toggenburg, *A European Fundamental Rights Ornament that turns into a European Fundamental Rights Order: The EU Charter of Fundamental Rights at its fifth birthday*, “Working Paper Series” 2014, No. 4.

<sup>4</sup> Council of the European Union, Council Regulation (EC), establishing a European Union Agency for Fundamental Rights, “Official Journal of the European Union”, No. 168, 15 February 2007, Art. 2.

<sup>5</sup> CJEU, *Opinion of Advocate General Wahl*, Opinion procedure 3/15, 8 September 2016, para. 155.

ments provided further evidence of the EU's transformation into an organization visibly based on and committed to fundamental rights.

The Charter is unique in combining, with equal status, civil and political and social and economic rights in a single document. The potential of the social and economic rights set out in the Charter has not, however, been fully exploited thus far. To increase understanding of how the EU protects human rights and renew faith in their overwhelming significance for both individual development and social cohesion, these less well-known rights enshrined in EU legislation should be given more weight. The purpose of the Charter of Fundamental Rights is to strengthen the protection of fundamental rights in the EU in the light of changes in society, social progress and scientific and technological developments. FRA fulfils its tasks, as defined by its Regulation, by implementing activities within the thematic areas of its five-year Multi-annual Framework, which fall broadly under different chapters of the Charter of Fundamental Rights.

### **European Union's achievements through the prism of human rights**

This paper highlights very briefly some of the key issues facing the EU regarding fundamental rights in the 21st century. It is important to point out, that normative notions, especially human rights and social considerations have come to the fore during the last decade. The broader political mandate of the EU, the EU Charter and the human rights references elevated by the Treaty of Lisbon, the remit of FRA, and evolving case-law of the Court of Justice of the European Union (CJEU) all indicate that human rights have received general application throughout the present decade. Ten years ago, it was difficult to identify the EU bodies or roles specifically tasked with protecting and promoting fundamental rights in general. The then still new offices of the European Data Protection Supervisor and the European Ombudsman were responsible for very specific segments of fundamental rights: data protection and maladministration, respectively. In contrast to the situation in many Member States, no institution at the EU level was responsible for fundamental rights as such.

The EU's transformation into an organization visibly based on and committed to fundamental rights has been varied and complex. This paper focus is on one significant aspect of this process; the role the European Union Fundamental Rights Agency has been playing as an advisory body, issuing opinions, reports and thematic surveys on various aspects of fundamental rights within the Union on the EU's and member states' requests.

By establishing FRA in 2007, the EU supplemented existing tools with an independent centre of fundamental rights expertise that can provide objective, comparable, relevant and reliable data and information as well as advice

and guidance<sup>6</sup>. It also created an agency that contributes to raising awareness of fundamental rights, cooperates with public bodies responsible for human rights at the national level, engages with civil society and coordinates with international human rights organizations. The activities of the agency are organized around three main tasks: data collection, research and analysis; providing independent advice to policymakers and cooperation and networking with stakeholders; communication activities to disseminate the results of its work and to raise awareness of fundamental rights.

FRA is not a monitoring or standard setting institution such as the Council of Europe, nor is it empowered to examine individual complaints such as the European Court of Human Rights (ECHR). The agency has no regulatory decision-making power. Its mandate stipulates that FRA shall formulate conclusions and issue opinions to the European Union institutions, bodies and agencies and to Member States on the situation of fundamental rights in the implementation of the Union law. Moreover, FRA has the capacity to carry out scientific research and comparative analysis, follow cross-cutting trends, raise public awareness and provide advice and guidance to national governments as well as to legislators at the EU level. FRA therefore ultimately aims to contribute to evidence-based policy making across the EU 28 countries. The agency acts as the EU's independent centre of excellence on fundamental rights. Representing a milestone in the EU's approach to human rights, it extended the scope of the previous EU Monitoring Centre on Racism and Xenophobia. This gave the EU its first expert body with authority to address the full breadth of the EU Charter of Fundamental Rights, including questions of racism and discrimination<sup>7</sup>.

FRA has developed a very dynamic cooperation with the EU institutions and some other the EU agencies<sup>8</sup>. FRA, as the EU's human rights agency, cannot issue legal opinions on legislative drafts on its own initiative. Its mandate instead requires that the European Parliament, Council or Commission explicitly request a legal opinion when "it concerns" their proposals or positions in the course of

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<sup>6</sup> On FRA's placement in the overall institutional landscape, see: FRA, *Bringing rights to life: The fundamental rights landscape of the European Union*, Publications Office, Luxembourg 2012.

<sup>7</sup> European Parliament, *Situation of fundamental rights in the EU – Resolution of 8 September 2015 on the situation of fundamental rights in the European Union (2013–2014) (2014/2254(INI))*, Strasbourg, 8 September 2015, para. 20.

<sup>8</sup> FRA cooperates with some the EU agencies on specific human rights topics, especially in the fields of Justice and Home Affairs, by approaching their work through the lens of non-discrimination; that is from a fundamental rights perspective. Agency works closely with the following agencies: European Agency for Management of Operational Cooperation at the External Borders (Frontex), European Institute for Gender Equality (EIGE), European Asylum Support Office (EASO), European Police Office, (EUROPOL), The European Union's Judicial Cooperation Unit (EUROJUST), European Centre for Disease Prevention and Control (ECDC), European Police College (CEPOL).

the legislative process<sup>9</sup>. The EU institutions do not, however, consistently request such independent external fundamental rights scrutiny. While FRA is not involved directly in the debate on the rule of law in the EU institutional system, there are obvious interdependencies between the rule of law and fundamental rights. This led FRA to call for a “more encompassing and substantial reading of the rule of law”<sup>10</sup>. An opinion, requested by the European Parliament, elaborated on this position and proposed a comprehensive approach because the rights “as recognized in the Charter cover most of the values of Article 2 of the Treaty on European Union (TEU)”<sup>11</sup>. In 2016, the European Parliament adopted a resolution advocating for an inter-institutional agreement on arrangements concerning monitoring and follow-up procedures on the situation of democracy, the rule of law and fundamental rights in the Member States and the EU institutions<sup>12</sup>. There is, however, no political consensus in favor of such a coordinated approach to the shared values laid down in Article 2 of the TEU<sup>13</sup>.

FRA research has shown that there is a lack of data on many aspects related to the way in which people in the EU are able to benefit from and are protected by their fundamental rights. To fulfill its mandate, FRA carries out primary data collection on fundamental rights in areas where the EU and its Member States have not been able to collect data in a harmonized way, and where better data are needed to investigate the situation on the ground concerning fundamental rights and emerging concerns; for example, with respect to inequalities in terms of fundamental rights outcomes based on ethnicity, immigrant background, disability, or sexual orientation.

The agency collects and analyses official and non-official data on fundamental rights issues in the EU. Given the differences in data availability across the EU Member States, the agency has also developed methods to improve data quality and comparability. To address the paucity of data, and, in particular of comparable data, FRA also conducts its own primary fieldwork research and surveys. Research activities are interdisciplinary articulating legal and social research. Comparative reports are mostly written in-house by expert staff. All publications follow a rigorous review process to ensure the highest possible quality involving FRA’s Scientific Committee, senior research staff, heads of department and the Director and often

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<sup>9</sup> European Union, Council Regulation (EC) No. 168 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ L 53/1, 22 February 2007.

<sup>10</sup> FRA, *Fundamental rights: challenges and achievements in 2013*, Publications Office of the European Union (Publications Office), Luxembourg 2014.

<sup>11</sup> FRA, *Opinion on the development of an integrated tool of objective fundamental rights indicators able to measure compliance with the shared values listed in Article 2 TEU based on existing sources of information*, FRA Opinion, 2/2016, Art. 2, 8 April 2016.

<sup>12</sup> European Parliament, *Resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, 2015/2254(INL)*, Strasbourg, 10 October 2016.

<sup>13</sup> *Ibidem*.

external experts. The agency's research often spans several years, particularly when addressing more resource- or time-intensive issues or when substantial fieldwork research needs to be undertaken. In addition, horizontal activities allow the agency to cover comprehensively a broad spectrum of fundamental rights issues and respond to needs that might arise during a given year. The data that FRA collects and analysis provide evidence that can aid the other EU agencies when they formulate operational responses by, for example, highlighting the victim's view point. FRA also provides fundamental rights analysis and proposals for the integration or mainstreaming of a fundamental rights dimension into some agencies' activities<sup>14</sup>.

In sum, the creation of FRA database of all its opinions, including recommendations contained in reports, formal opinions, and other public statements allow FRA to keep track of its policy line, and ensure consistency and impact tracking over time. FRA repeats data collection through surveys in key areas every few years and follows up key legal and social projects – activities which over time help it establish a comprehensive overview of fundamental rights trends. While it develops its activity independently, the agency works closely with the EU institutions and advisory bodies, namely the European Parliament, the Council of the EU, the European Commission, the European Economic and Social Committee and the Committee of the Regions, as well as a number the EU agencies<sup>15</sup> FRA is mandated to provide the European Parliament with assistance and expertise relating to fundamental rights, either on its initiative or at the request of the Parliament itself<sup>16</sup>. The European Commission plays a key role in the agency's work and participates in its governing bodies<sup>17</sup>.

The agency cooperates closely with the EU Member States, in particular through its network of National Liaison Officers (NLOs). NLOs are the main contact points for the agency in the Member States. Continuous exchange and regular meetings help to create a strong working partnership, which guarantees that information is shared and national needs are known and addressed. At the national

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<sup>14</sup> FRA has established cooperation with Frontex, EIGE, EASA and the European Foundation for the Improvement of Living and Working Conditions (Eurofound). The aim of cooperation agreement is to formalize close collaboration between the agencies and to ensure that the work in areas of mutual interest is carefully coordinated and managed to avoid duplication.

<sup>15</sup> *Ibidem*.

<sup>16</sup> The agency consults and cooperates with the EP primarily through its committees in particular, the Committee on Civil Liberties, Justice and Home Affairs (LIBE). FRA participates in committee meetings, hearings and public seminars, where it provides fundamental rights expertise to assist ongoing policy and legislative debates. It responds to queries by members and staffers at the EP and also presents the findings of its research to relevant intergroup, such as the Intergroup on LGBT rights, Disability or Anti-Racism, and Diversity.

<sup>17</sup> Commission representatives sit in FRA's Management Board. The Board is responsible for adopting the Agency's work program, approving its budget and monitoring its work. Through its participation in the Management Board's discussions and its right to deliver an opinion on each draft annual work programme, the Commission can help inform the Board about current EU legislative and policy processes, thus ensuring the agency's work focuses on issues of priority.

level, also national human rights institutions, equality bodies and ombudsperson institutions, civil society organizations working in the area of fundamental rights, and other institutions working on fundamental rights issues are also important partners. The agency constitutes a point of reference for civil society, promoting dialogue at European level and contributes to raising awareness of fundamental rights within the general public. FRA engages in structured dialogue with civil society through the Fundamental Rights Platform (FRP)<sup>18</sup>. Regarding the non-governmental organizations (NGO), the behavior of these organizations is also closely observed. FRA is required to cooperate with NGOs and ‘other’ bodies (for example, universities, or trade unions) which together form FRP. FRP is the agency’s channel for cooperation and information exchange with almost 400 civil society organizations, working on numerous fundamental rights issues across the EU. The platform brings together a diverse group of actors on the European, national and local levels. It is a unique forum, meeting once a year, which allows for a truly European debate on fundamental rights. Finally, FRA has a close working relationship with the Council of Europe, employing its standards and recommendations in its work. Strong formal procedures exist between FRA and the Council of Europe and the European Commission. These formal procedures are strengthened by informal channels. FRA works in close cooperation with the Council of Europe. Nevertheless, no duplication of work has been cited and the two organizations offer solid opportunities for complementary work. FRA also cooperates with the United Nations (UN) system and the Organization for Security and Co-operation in Europe (OSCE).

Recent political, social and economic developments have shown that what was often regarded over the last decade as a natural development towards greater respect for fundamental rights can easily backslide. This regression can be partly blamed on the fact that where the EU and national legislators have celebrated progress at a formal level, this has often not translated into improvements in people’s lives. For too many, fundamental rights remain an abstract concept enshrined in law, rather than a series of effective and practical tools that can and do make a difference to their everyday lives. This is a disturbing truth, and one of which the EU Agency for Fundamental Rights is reminded forcefully in its interactions with the people whose rights are often violated as a matter of course, and whose perceptions and experiences figure in the agency’s large-scale surveys and fieldwork projects.

At the same time, the past decade witnessed fundamental rights challenges that have not just persisted but in many areas – such as migration, asylum and data protection – have grown more pressing. In fact, despite the many pledges the EU and its Member States made over the last 10 years and more, the fundamental rights system itself is increasingly under attack.

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<sup>18</sup> Under the Council Regulation 168/2007/EC, Art. 10.

And with this, I come to the second part of my presentation, namely to the tasks of the Agency in the implementation of the EU 2020 strategy<sup>19</sup>. For its part, FRA carries out large-scale surveys on people's experiences of the protection of their fundamental rights. They cover a range of issues, from violence against women to discrimination and criminal victimization of people with minority ethnic backgrounds. These help draw attention to major fundamental rights issues in the EU. Moreover, work with relevant actors helps to raise awareness of and increase coordination on fundamental rights. Networks of government focal points (liaison officers in governments and parliaments), NHRIs, Member States and civil society organizations promote awareness of fundamental rights and offer increased opportunities to share experiences.

FRA work has contributed to a greater knowledge base regarding fundamental rights issues among thousands of court practitioners, including judges, prosecutors and attorneys. The law enforcement officers benefit from practical handbooks developed by FRA in close cooperation with the European Court of Human Rights (ECHR) and the Council of Europe<sup>20</sup>. These handbooks provide hands-on guidance on legal principles in the areas of non-discrimination, data protection, asylum and immigration, children's rights, and access to justice. Published in all EU languages, almost 100,000 copies had been disseminated by the end of 2016, while around 340,000 had been downloaded by mid-2016. Producing practical tools for practitioners is one way in which FRA provides relevant advice on fundamental rights. Concerning FRA's role in providing input to the legislative process at the European level, there are numerous voices in support of an increased role for the agency in providing opinions on future legislation on a more regular basis. It is important to point out that in its Annual Report 2017 the agency has strongly highlighted the need to tackle discriminatory ethnic profiling and misconduct by law enforcement officials. The reference point has been the international human rights monitoring bodies' findings. In its concluding observations on Greece, the UN Committee on the Elimination of Racial Discrimination (CERD) raised concerns that Roma are disproportionately subjected to frequent identity checks<sup>21</sup>. CERD also raised concerns about practices of police discriminatory ethnic profiling in Italy<sup>22</sup> and Spain<sup>23</sup>. Meanwhile, the European Commission against Racism and Intolerance (ECRI) pointed out to Cypriot au-

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<sup>19</sup> Europe 2020 – *A Strategy for Smart, Sustainable and Inclusive Growth*, Communication from the Commission, COM 2020, 3 March 2010.

<sup>20</sup> All FRA handbooks can be downloaded from FRA's website, <http://europa.eu/en/publication-type/handbook> [accessed: 17.10.2017].

<sup>21</sup> UN CERD (2016), *Concluding Observations on the Combined Twentieth to Twenty-First Periodic Reports of Greece*, CERD/C/GRC/CO/20-22, 3 October 2016.

<sup>22</sup> UN CERD, *Concluding Observations on the Nineteenth and Twentieth Periodic Reports of Italy*, CERD/C/ITA/CO/19-20, 9 December 2016.

<sup>23</sup> *Ibidem*.



thorities “that racial profiling by the police is defined and prohibited by law”<sup>24</sup>. ECRI also recommended that the French authorities “intensify the training of law enforcement representatives with regard to the contents of the Code of Ethics”<sup>25</sup>. Similarly, in its reports on Italy<sup>26</sup> and Lithuania<sup>27</sup>, ECRI called on the authorities to set up independent police complaints services with the task of investigating allegations of racist violence committed by law enforcement officials.

In fact, according to the FRA 2016 Report<sup>28</sup>, a number of the EU Member States introduced and pursued educational measures and initiatives to raise human rights awareness among law enforcement officials. Topics covered included legislation in force to counter racism and ethnic discrimination, and policing diverse societies<sup>29</sup>. In 2017, FRA has been updating and expanding the scope of its guide on avoiding discriminatory ethnic profiling. It has been drawing on findings from EU-MIDIS II, and taking into account new technological developments and their increased use by both law enforcement authorities and for border management<sup>30</sup>.

We will now very briefly examine the viability and relevance of FRA activity in three areas in which fundamental rights are particularly at stake since the inception of the agency: violence against women and gender inequality, the tension between protecting privacy and ensuring security, and Roma’s<sup>31</sup> experiences with poverty and discrimination. In each area, FRA’s work brings added value by providing evidence on serious and ongoing fundamental rights violations. This part draws on different types of FRA evidence and on agency opinions examining actions at the EU level. In addition, the materials stemming from the first Fundamental

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<sup>24</sup> Council of Europe, European Commission against Racism and Intolerance (ECRI), *Report on Cyprus (Fifth Monitoring Cycle)*, Strasbourg, 7 June 2016.

<sup>25</sup> ECRI, *Report on France (Fifth Monitoring Cycle)*, Strasbourg, 1 March 2016.

<sup>26</sup> *Ibidem*.

<sup>27</sup> ECRI, *Report on Lithuania (Fifth Monitoring Cycle)*, Strasbourg, 7 June 2016.

<sup>28</sup> FRA, *Fundamental Rights Report 2016*, Publications Office, Luxembourg 2016.

<sup>29</sup> As reported in the *Fundamental Rights Report 2016*, the Dutch National Police adopted a strategic document to achieve more diversity in the police force, entitled *The Power of Difference*. In January 2016, the strategic document was translated into several regional-level policy documents that promote better registration of discriminatory incidents; better cooperation between societal actors, the police and the Public Prosecution Service in tackling discrimination; and the prevention of ethnic profiling by the police. In Spain, the Platform for the Police Management of Diversity adopted a Curricular Design on the police management of diversity and non-discrimination. This tool aims to train police services on how to deal with cases of discrimination and on how to manage hate crime cases.

<sup>30</sup> <http://fra.europa.eu/en/publication/2017/fundamental-rights-report-2017> [accessed: 17.10.2017].

<sup>31</sup> The Council of Europe uses ‘Roma’ as an umbrella term. It refers to Roma, Sinti, Kale and related groups in Europe, including Travellers and the Eastern groups (Dom and Lom), and covers the wide diversity of the groups concerned, including persons who identify themselves as Gypsies.

Rights Forum, which FRA organized in June 2016, also provide a wealth of further information, addressing different aspects of these thematic areas<sup>32</sup>.

While Europe has made step-by-step progress over recent years, thanks to hard work at local, national and European level, gender equality still remains unfinished business. Europe is far from reaching equality, in particular in areas such as participation in the labor market, economic independence, pay and pension, equality in leadership positions, fighting gender-based violence, and gender equality in the EU's external activities.

Violence against women is typically thought of as a human rights issue in the context of war and armed conflict. It is only relatively recently that gender-based violence – ranging from domestic violence to sexual harassment – has been viewed from a rights-based perspective and acknowledged as a particularly severe fundamental rights concern<sup>33</sup>. Many sex discrimination challenges remain including the ‘gender pay gap’ and a better representation of women in decision-making positions. Another issue is gender-based violence against women, which includes experiences of physical, sexual and psychological violence, stalking and sexual harassment.

Despite greater acknowledgement that violence against women involves serious and widespread fundamental rights violations, until recently, few comprehensive data on the extent of the problem were available. In 2014 FRA launched the first EU-wide survey to record women's experiences with violence. That survey was the first of its kind and presented the EU-wide data for the first time on the extent, nature, and consequences of violence against women in all 28 Member states. It was based on face-to-face interviews with 42,000 women across the EU's member states. Women were asked about their experiences of physical, sexual and psychological violence, including incidents of intimate partner violence (domestic violence), childhood victimization, sexual harassment, and stalking, including new mediums for abuse such as the internet. The survey results show the impact of various forms of violence on women across the EU. Violence against women undermines women's core fundamental rights such as dignity, access to justice and gender equality. For example, one in three women (33%) has experienced physical and sexual violence since the age of 15. One in five women (18%) have experi-

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<sup>32</sup> See more details at FRA, ‘Fundamental Rights Forum’, <http://fundamentalrightsforum.eu> [accessed: 17.10.2017].

<sup>33</sup> UN Committee on the Elimination of Discrimination against Women (UN CEDAW), General Recommendation No. 19, 11th session, 1992. See also its recent draft update: UN CEDAW (2016), General recommendation No. 19: Violence against women – Addendum – Draft General Recommendation No. 19 (1992): accelerating elimination of gender-based violence against women, CEDAW/C/GC/19/Add.1, 25 July 2016; Compare both documents with the European Union (2012), Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Victims' Rights Directive), Publications Office, Luxembourg, 25 October 2012, Art. 17.

enced stalking; every second woman (55%) has been confronted with one or more forms of sexual harassment. Given this, violence against women cannot be seen as a marginal issue that touches only on some women's lives.

Based on the detailed findings, FRA has drafted some opinions that suggest courses of action in different areas that are touched by violence against women. These views go beyond the narrow confines of the criminal law, ranging from employment and health to the medium of new technologies. They build on earlier calls by bodies such as the UN and the Council of Europe to take action to combat violence against women, but are primarily based, as was mentioned earlier, on evidence gathered from face-to-face interviews with 42,000 women across the EU.

On the base of FRA's *Fundamental Rights Report 2016*<sup>34</sup>, where the importance of recognizing that violence against women constitutes a fundamental rights abuse was highlighted, the European Institute for Gender Equality (EIGE) published in 2016 selected good practices aimed at improving the quality of data on violence against women in the areas of police and criminal justice, health and social services, and on female genital mutilation<sup>35</sup>. In addition, EIGE published an analysis of the Victims' Rights Directive from a gender perspective<sup>36</sup>. What is unique on FRA's findings is that they are based on EU-wide data. In this regard, the online data explorer tool that accompanies this report allows everybody to use and produce information from the survey dataset in ways that are most useful to them. In this way, therefore, the dataset can be effectively used at the member state level and can encourage further action at the level of the EU.

To sum up, for years intergovernmental organizations and civil society have called for robust and comparative data on violence against women, on which to base policy and courses of action to address this fundamental rights abuse. With the publication of the FRA survey results on violence against women, data are now available for the 28 EU Member States. If action is to be taken to address violence against women, as reported in the survey, the time is now.

From the Madrid and London bombings of 2004 and 2005 to the numerous terrorist attacks of 2015, 2016 and 2017, the last 10 years have seen a rise in major terrorist acts around the EU. With new, often internet-based, technology playing an increasingly important role in both organizing and preventing such acts of mass violence, possible tensions between security and firmly embedded the EU rights to data protection and privacy moved to the fore. As a result, counter-terrorism remained high on both national and the EU agendas and sparked

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<sup>34</sup> FRA, *Fundamental Rights Report 2016*, Publications Office, Luxemburg 2016, p. 175.

<sup>35</sup> European Institute for Gender Equality (EIGE), *How can improved data collection help end violence against women?*, 30 March 2016, <http://ige.europa.eu/news-and-vnts/nws/how-can-improved-data-collection-help-end-violenc-against-women> [accessed: 15.06.2016].

<sup>36</sup> EIGE, *An analysis of the Victims' Rights Directive from a gender perspective*, 2016, [http://eige.europa.eu/sites/default/files/documents/mh0115698enn\\_opdf](http://eige.europa.eu/sites/default/files/documents/mh0115698enn_opdf) [accessed: 15.06.2016].

diverse discussions and policy responses, including regarding intelligence and law enforcement agencies; encryption of data; and the collection of passenger name records (PNR) data.

Policy responses included efforts to provide intelligence and law enforcement agencies with increased powers and to improve their cooperation at both national and European levels. Although these services play a vital role in safeguarding national security and individuals' right to life and security, according to FRA's opinion (The European Parliament asked FRA to research fundamental rights protection in the context of large-scale surveillance, prompting the following observations about developments in this field in 2016) Member States should ensure that their activities – such as surveillance – are conducted in a democratic and lawful manner.

On the base of the FRA's opinions and surveys forcefully underlining the need for a strong legal framework reflecting new technological possibilities for mass surveillance, after four years of negotiation, in 2016 the EU adopted the data protection reform. The reform has the ambitious goal of adapting the European legal framework governing the protection of personal data to the realities and challenges arising from an ever more data-driven society. It consists of the General Data Protection Regulation<sup>37</sup> (GDPR) and the Police Directive<sup>38</sup>. The GDPR will apply as of 25 May 2018, and Member States have until 6 May 2018 to incorporate the Police Directive into national law. Member States have to transpose the GDPR directive into national law by May 2018. The adopted text includes enhanced safeguards that are in line with FRA's suggestions in its 2011 Opinion on the EU PNR data collection system. These include enhanced requirements, accessibility and proportionality, as well as further data protection safeguards. According to the Fundamental Rights Report 2017 examples of recent EU legislation show that privacy rights can be incorporated into security and counter-terrorism measures. Looking ahead, the next step, in FRA's view, is to reshape the relationship between privacy and security so that they are viewed as mutually reinforcing. Rather than speaking of striking a balance between security concerns and the right to privacy and data protection, politicians can use data protection concerns to make security interventions more legitimate. They have already made strong commitments to promote

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<sup>37</sup> European Union (2016), Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 27 April 2016, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32016R0679> [accessed: 17.06.2017].

<sup>38</sup> Directive (EU)2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, 4 May 2016.

a fundamental rights culture within the security union<sup>39</sup>. FRA's evidence can help to ensure that future actions in this area encapsulate this approach<sup>40</sup>.

That was a clear step forward in the protection of fundamental rights. Both documents incorporate several of the privacy safeguards that FRA already proposed in its 2012<sup>41</sup> legal opinion on the data protection reform package. They include strengthening the right to an effective remedy and enabling organizations acting in the interests of individuals to lodge complaints. For example, both instruments provide for strong supervision by independent national data protection authorities (DPAs), who can receive complaints and award compensation to data subjects, as FRA's opinion suggested<sup>42</sup>.

In its opinion on the promotion of rights in the digital age the agency draws particular attention to the fact that to make the right to privacy a reality for all, close cooperation is needed among Data Protection Authorities, the business sector, national governments, civil society, and the EU institutions. Further on, both the business sector and government must respect individual's right to data protection as well as the fact that everyone remains the owner of her/his data. The EU institutions and the EU Member States could create clear rules, working with the private sector, to ensure that the rights of individuals as data 'subjects' are acknowledged and protected. The protection of fundamental rights online is only possible through partnerships between different organizations and industries. The business sector, which is in the lead in developing and rolling out new technologies, could consider closer cooperation with relevant organizations such as National Human Rights Institutions to better understand the place of rights in the workplace.

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<sup>39</sup> European Commission, *The European agenda on security*, COM (2015) 185 final, Strasbourg, 28 April 2015, [https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-security\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-security_en) [accessed: 17.06.2017].

<sup>40</sup> FRA, *Embedding fundamental rights in the security agenda*, Publications Office, Luxembourg 2015, [http://fra.europa.eu/sites/default/files/fra-2015-focus-01-2015-internal-security-1\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2015-focus-01-2015-internal-security-1_en.pdf) [accessed: 17.06.2017].

<sup>41</sup> FRA, *Opinion of the European Union Agency for Fundamental Rights on the proposed data protection reform package*, FRA Opinion 2/2012; FRA, *Fundamental Rights Report 2016*, Publications Office, Luxembourg 2016, FRA, *Opinion of the European Union Agency for Fundamental Rights on the proposed data protection reform package*, FRA Opinion 2/2012; FRA, *Fundamental Rights Report 2016*, Publications Office, Luxembourg 2016, <http://fra.europa.eu/sites/default/files/fra-opinion-data-protection-oct-2012.pdf> [accessed: 17.06.2017].

<sup>42</sup> In line with Directive 95/46/EC, all EU Member States have national authorities that monitor compliance with data protection laws. However, the way in which the Directive has been implemented in national laws varies considerably. This has resulted in discrepancies and deficiencies that have been highlighted by the EU Agency for Fundamental Rights, and also in recent case law of the European Court of Justice. In January 2012, the European Commission presented a package of proposals with the aim to update and reinforce the current legal framework for data protection.

Similar privacy-based concerns accompanied the negotiations of the EU Passenger Name Record Directive (PNR), which is viewed as a central plank of the EU's security agenda<sup>43</sup>. The directive entered into force in 2016 after almost a decade of discussion<sup>44</sup>. The adopted text includes a number of safeguards build on suggestions that FRA made in its 2008 and 2011 legal opinions on the EU PNR data collection system. For example, the directive includes a clearer list of criminal offences that justify the use of PNR data by law enforcement authorities, and requires Member States to appoint dedicated data protection officers within the units responsible for processing PNR data at the national level<sup>45</sup>.

FRA's research has consistently highlighted gaps in the existing legal framework, so prompt implementation of the new legal framework requires inclusion of steps to make individuals aware of their data protection rights and available remedies<sup>46</sup>. In addition, it demands particular focus on effective remedies and independent oversight, in line with recent CJEU case law<sup>47</sup>. This includes ensuring that supervisory authorities are fully independent, and can take action on their own initiative to protect the interests of data subjects proactively and effectively<sup>48</sup>. The wider role for DPAs, pointed out in FRA's opinions, also underlines the importance

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<sup>43</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The European agenda on Security, COM (2015) 185 final, 28 April 2015, <http://eur-lex.europa.eu/lega-content/EN/TXT/?uri=celex:520155DC0185> [accessed: 4.09.2017].

<sup>44</sup> European Union, Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, OJ L 119, 4 May 2016, <http://eur-lex.europa.eu/eli/dir/2016/681/oj> [accessed: 4.09.2017].

<sup>45</sup> FRA, *Opinion of the European Union Agency for Fundamental Rights on the proposal for a Passenger Name Record (PNR) Directive*, FRA Opinion 1/2011, 14 June 2011, <http://fra.europa.eu/en/opinion/2011/fra-opinion-proposal-passenger-name-record-pnr-directive> [accessed: 10.05.2016]; FRA, *Opinion of the European Union Agency for Fundamental Rights on the Proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) data for law enforcement purposes*, 2008, <http://fra.europa.eu/en/opinion/2011/fra-opinion-proposal-council-framework-decision-use-passenger-name-record-pnr-data-law> [accessed: 10.05.2016]; FRA, *Fundamental Rights Report 2016*, Publications Office, Luxembourg 2016, <http://fra.europa.eu/en/publication/2016/fundamental-rights-report-2016>.

<sup>46</sup> FRA, *Access to data protection remedies in EU Member States*, Publications Office, Luxembourg 2013, <http://fra.europa.eu/en/publication/2014/access-data-protection-remedies-eu-members-states> [accessed: 10.05.2016].

<sup>47</sup> CJEU, *Commission v. Germany*, C-518/07, 9 March 2010, <http://eur-lex.europa.eu/egal-content/EN/TXT/?uri=CELEX%3A62007CJ0518> [accessed: 10.05.2016].

<sup>48</sup> FRA, *Opinion of the European Union Agency for Fundamental Rights on the proposal for a Passenger Name Record (PNR) Directive*, FRA Opinion 1/2011, <http://fra.europa.eu/en/opinion/2011/fra-opinion-proposal-passenger-name-record-pnr-directive> [accessed: 10.05.2016]; CJEU, *European Commission v. Republic of Austria*, C-614/1016, October 2012, <http://curia.europa.eu/juris/document.jsf?docid=128563&doclang=EN> [accessed: 10.05.2016]; CJEU, *Euro-pean Commission v. Hungary*, C-288/12, 8 April 2014, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0288> [accessed: 10.05.2016].

of ensuring they have adequate human and financial resources to carry out their supervisory and enforcement tasks<sup>49</sup>.

It is significant that the Fundamental Rights Report 2017 pay special attention to the vigilance. This vigilance will be essential in protecting against some of the fundamental rights risks that remain, particularly concerning PNR. The possibility to extend the system to intra-EU flights would significantly increase its scope, calling into question its compliance with the proportionality criteria set out by the CJEU.<sup>[50]</sup> Furthermore, PNR data, if inappropriately used to assess the risk posed by certain passengers, can amount to discriminatory profiling.

Two practical FRA tools give guidance on how Member States can embed fundamental rights as they incorporate the PNR Directive into national law. First, FRA's guidance on setting up domestic PNR systems addresses issues such as transparency towards passengers and transfer of PNR data<sup>51</sup>. Second, its Guide on discriminatory ethnic profiling – to be updated in 2018 to reflect technological developments – explains when profiling would be considered discriminatory and therefore unlawful<sup>52</sup>.

In 2010, at the height of the economic and financial crisis, the EU adopted Europe 2020, its 10-year strategy for growth and jobs<sup>53</sup>. It set a target of reducing, by 2020, the number of people threatened by poverty or social exclusion by 20 million. Being unemployed and living in conditions of poverty and social exclusion are detrimental to the full enjoyment of rights, as FRA underlined in its 2013 focus on safeguarding fundamental rights in times of crisis<sup>54</sup>. This calls into question compliance with numerous Charter rights, including human dignity (Article 1); the freedom to choose an occupation and the right to engage in work (Article 15); non-discrimination (Article 21); social security and social assistance (Article 34); healthcare (Article 35); and freedom of movement and of residence (Article 45).

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<sup>49</sup> FRA, *Access to data protection remedies in EU Member States*, Publications Office, Luxembourg 2014; FRA, *Handbook on European data protection law*, Luxembourg 2014, Publications Office, June 2014.

<sup>50</sup> CJEU, *Digital Rights Ireland v. Seitlinger and Others*, C-293/12, 8 April 2014; FRA, *Embedding fundamental rights in the security agenda*, Publications Office, Luxembourg 2015; FRA, *Fundamental rights report 2016*, Luxembourg 2016, Publications Office.

<sup>51</sup> FRA, *FRA provides guidance to Member States setting up national PNR systems*, Publications Office, Luxembourg, 13 March 2014.

<sup>52</sup> FRA, *Towards more effective policing, understanding and preventing discriminatory ethnic profiling*, Publications Office, Luxembourg 2010.

<sup>53</sup> European Commission, *Communication from the Commission: Europe 2020 – a strategy for smart, sustainable and inclusive growth*, COM (2010) 2020, 3 March 2010. European Commission, *Communication from the Commission: Europe 2020 – a strategy for smart, sustainable and inclusive growth*, COM (2010) 2020, 3 March 2010.

<sup>54</sup> FRA, 'The European Union as a Community of values: safeguarding fundamental rights in times of crisis', *Fundamental rights: challenges and achievements in 2012 – Annual report*, Publications Office, Luxembourg, July 2013.

Roma are overrepresented among those affected by poverty or social exclusion. FRA's 2011 Roma survey found that at least 80% of the Roma surveyed were at risk of poverty or social exclusion, compared with 24% of all adults living in the UE<sup>55</sup>. At the same time, about half of the Roma surveyed reported that they had experienced discrimination in the year preceding the survey because of their ethnic origin, while only around 40% were aware of laws forbidding discrimination against members of ethnic minorities when applying for a job. Few of the EU's main large-scale surveys sufficiently cover ethnic minorities including Roma, so these data shed new light on the fundamental rights challenges faced by the EU's largest ethnic minority<sup>56</sup>.

Reflecting the urgency of the situation revealed by these and other data, the different EU institutions put in place comprehensive legal and policy commitments specifically aimed at improving Roma socio-economic conditions. Progress on the ground, however, has been notably slower. FRA published data in 2016 – as part of European Union Minorities and Discrimination Survey (EU-MIDIS II) – suggesting that little progress has been achieved<sup>57</sup>. Overall, 80% of Roma live below their country's at-risk-of-poverty threshold, one in three live in housing without tap water and one in 10 live in housing without electricity. Furthermore, a quarter of all Roma and a third of Roma children live in a household that faced hunger at least once in the month preceding the survey. Roma also continue to face intolerable levels of discrimination when looking for work, at work, in education, in healthcare, when in contact with administrative bodies or even when entering a shop: 41% felt discriminated against at least once in one of these areas of daily life in the past five years<sup>58</sup>.

These results support the EU Commission's assessment in 2016 that, whereas the legal, policy and funding instruments put in place had resulted in better coordination and mainstreaming, they were unable to “prevent further deterioration of the living conditions of Roma and widespread hostility of majority societies”<sup>59</sup>. Among the actions proposed by the Commission to improve implementation of

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<sup>55</sup> FRA, *The situation of Roma in 11 EU Member States – Survey results at a glance*, Publications Office, Luxembourg 2012; FRA, *Survey data explorer – Results from the 2011 Roma survey*, Publications Office, Luxembourg 2012.

<sup>56</sup> Surveys such as the EU Statistics on Income and Living Conditions (EU-SILC) and the Labour Force Survey (EU-LFS) currently do not collect information on ethnicity. See: FRA, *Second European Union Minorities and Discrimination Survey (EU-MIDIS II): Roma – selected findings*, Publications Office, Luxembourg 2016.

<sup>57</sup> *Ibidem*.

<sup>58</sup> See: FRA Fundamental Rights Report 2017, <http://fra.europa.eu/en/publication/2017/fundamental-rights-report-2017> [accessed: 12.10.2017].

<sup>59</sup> European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Assessing the implementation of the EU Framework for National Roma Integration Strategies and the Council Recommendation on effective Roma integration measures in the Member States – 2016*, COM(2016) 424, 27 June 2016, p. 16.



Roma inclusion measures, three emerge from FRA's research as particularly important: strengthening the monitoring and evaluation of Roma inclusion measures; empowering Roma and involving them in developing, implementing and monitoring integration measures at local level; reflecting age- and gender-specific vulnerabilities in efforts to tackle poverty and social exclusion.

The importance of effective monitoring and evaluation of initiatives to improve the realization of fundamental rights is a consistent theme of FRA's research, and is firmly embedded in Roma-related initiatives. FRA research also underlines the particularities of poverty and social exclusion experienced by women and children. FRA data show that, of the Roma who are at risk of poverty, 42% are children under 18 years of age, while for non-Roma households the figure is around half of that (22%)<sup>60</sup>. Roma children also lag behind their non-Roma peers on all education indicators: for example, nearly a fifth (18%) of Roma aged between six and 24 attend an educational level lower than that corresponding to their age. Similarly, data show poorer outcomes for women than for men. Roma women report lower employment rates than Roma men, for example: 16% compared with 34%. As many as 72% of young Roma women surveyed are not employed, in education or training, compared with 55% of young Roma men. These findings can help policymakers develop better-targeted responses to promote the social inclusion of Roma women and children more effectively<sup>61</sup>.

Findings of FRA's second the EU Minorities and Discrimination Survey (EU-MIDIS II) show that employment is an area where discrimination against Roma triggers a chain of other vulnerabilities – namely, as regards income, education and housing conditions. Entire households, and not just the unemployed, bear the negative implications of unemployment. Roma children and Roma women constitute especially vulnerable groups, with their rights at risk of violation. In concluding remarks of this survey the agency indicates that tracking progress on Roma integration requires solid data – both on the measures taken, the processes and their outcomes for the people. More needs to be done to ensure the availability of robust data collection and solid monitoring of Roma integration. The lack of comprehensive and robust data remains problematic not only in relation to projects, but also for policymaking at the EU and national level. However, tools allowing for solid monitoring do exist and the relevant actors can make use of these tools.

The second European Union Minorities and Discrimination Survey is a major part of the EU Agency for Fundamental Rights' commitment to collecting and publishing data on groups not covered in general population surveys. The data presented in this report constitute a unique resource for policymakers, making it possible to gauge progress over time and helping to identify both successes and

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<sup>60</sup> FRA, *Second European Union Minorities and Discrimination Survey...*, *op. cit.*

<sup>61</sup> *Ibidem.*

shortfalls in implemented policies. Such insights are vital for formulating effective measures not just on Roma, but for all groups on the margins of society.

In sum, the last decade saw increasing involvement of various stakeholders in Roma inclusion. However, despite efforts at national, European and international level to advance Roma integration, the results on the ground as experienced by Roma people are far from satisfactory. It is significant to point out that for more than a thousand years, Roma people have been an integral part of European civilization. Today, with an estimated population of 10–12 million in Europe, approximately six million of who live in the EU, Roma are the biggest ethnic minority in Europe.

## Conclusions

The 10th anniversary of the European Union Agency for Fundamental Rights offers an opportunity to reflect on some of the dynamics underpinning the major fundamental rights developments in the EU since 2007. Taken together, they seem to tell a story of twin impulses. On the institutional side, the EU has built tools to better promote and protect fundamental rights. Yet profound gaps in the implementation of fundamental rights persist on the ground and – in some areas – are deepening. Addressing this tension requires translating the law on the books into effective measures to fulfill rights in the daily lives of all people living in the EU. In addition to acknowledging that fundamental rights are a precondition for successful law- and policy-making, making the ‘business case’ for human rights, ‘giving rights a face’ and using social and economic rights more consistently will be beneficial. Without a firmly embedded fundamental rights culture that delivers concrete benefits, many people living in the EU will feel little sense of ownership of the Union’s values.

In conclusion, it is necessary to point out that FRA is part of the new governance trend that has swept through the EU in recent years. As a human rights agency, FRA’s potential ‘monitoring’ function was considered as ‘observatory monitoring’ and has now been replaced by ‘assistance and expertise,’ or ‘collective learning and guidance’. The agency’s role has not been confined to that of a complementary administrative body. It has been operating principally with the required independence, impartiality, pluralism and transparency. The agency’s establishing regulation referred to the ‘Paris principles’ adopted by the UN General Assembly in 1993<sup>62</sup>,

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<sup>62</sup> The Paris Principles, a set of international standards which form and guide the work of National Human Rights Institutions were drafted as an international NHRI workshop in Paris 1991. Subsequently, they were adopted by the UN General Assembly in 1993. The UN defined a national human rights institution as a governmental body established by the constitution or by law, whose functions are specifically designed to promote and protect human rights. While the Paris Principles were a good starting point as normative principles, it is significant that over the decade after their endorsement by the UN General Assembly, the principles’ limitations are best illustrated through an

despite the fact that these principles already concern the statute of national human rights institutions. As it can be seen nearly a decade after its inception, the agency operates with a degree of independence as regards European institutions as well as Member States. The legal and regulatory framework governing FRA (Founding Regulation and Multi-annual framework) clearly identifies the mandate, the main tasks as well as the thematic areas of work of the agency. On this basis FRA has put in place a multi annual and annual planning cycle that is integrated with the monitoring and evaluation activities to ensure the review and improvement of both strategic and operational planning. In particular, the Strategy Plan includes the main `strategic goals and key actions necessary to respond to the outcome of the external evaluation. The achievement of the objectives and implementation of actions is ensured through the systematic annual planning (Work Programs and Implementation Plans) which identify and prioritize the operational activities needed for strategy implementation. FRA's key stakeholders are regularly consulted on the multi-annual and annual work of the agency and engaged in a continuous Monitoring and Evaluation process that provides feedback for improving planned activities, results and impacts. These efforts are highlighted in the available reporting tools (Annual Activity Report and Performance Report) as they are integrated in the planning cycle and are aimed at supporting the regular reviews to keep the agency's strategic and operational planning relevant and meaningful.

FRA, looking back over the past decade in its 2017 Report, asserts that, despite progress in many areas, challenges remain too daunting and patterns of abuse too great. Europe is facing persisting high poverty levels, rate of youth unemployment that demoralize young people, political forces that capitalize on fear championing nationalist, populist and sometimes even racist agendas, as well as an overall disappointment in what Europe has to offer to the citizen. Communicating the importance of human rights in this political environment is increasingly difficult.

In 2017 and beyond, the Fundamental Rights Agency will have to focus on today's most urgent human rights quarantines, from migration and asylum, through xenophobia and discrimination, to the very contemporary challenges of privacy, surveillance and hate speech in the digital age. At the same time, the Agency is increasing its efforts to boost public awareness and to arouse support for the protection of human rights, the rights of every individual living in the European Union.

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examination of the record of activities of human rights commissions. It is certainly true that compliance with Paris Principles, many of which set a high standard, will augment the chances of ensuring an active and serious human rights commission. But, as it has been illustrated in various reports, even compliance with these principles in a founding statute has not ultimately guaranteed a robust commission without commissioners who are committed to making respect for human rights a reality and are willing to stand firm in the face of inevitable resistance from other government departments.

## Ochrona praw podstawowych w procesie integracji europejskiej: od Traktatów Rzymskich do Agencji Praw Podstawowych

Unia Europejska zapewnia ochronę praw podstawowych, uznając ją za jedną z ogólnych zasad prawa wspólnotowego. Choć pierwotnie traktaty ustanawiające Wspólnoty Europejskie nie zawierały wyraźnych odniesień do praw człowieka, to jednak ich poszanowanie jest wartością wspólną dla wszystkich państw członkowskich Unii Europejskiej.

Wraz z wejściem w życie traktatu lizbońskiego nastąpiło wzmocnienie ochrony praw podstawowych w UE. Odwołując się do postanowień art. 6 TUE, stworzył on dwie płaszczyzny ochrony praw jednostki: unijną i międzynarodową. Pierwsza ma charakter wewnętrzny i opiera się na dwóch metodach ochrony w oparciu o Kartę Praw Podstawowych, druga ma szerszy charakter i dotyczy ochrony praw podstawowych w oparciu o dotychczasowy schemat, czyli o zasadę ogólną prawa unijnego. Na mocy traktatu Karta Praw Podstawowych uzyskała wiążący charakter. Tym samym może stanowić samoistną podstawę ochrony praw podstawowych w zakresie, w jakim ich naruszenie pozostaje w sferze stosowania prawa unijnego.

Przedmiotem niniejszych rozważań jest próba ukazania roli i znaczenia Agencji Praw Podstawowych Unii Europejskiej (Fundamental Rights Agency, FRA), jednej z trzydziestu czterech agencji unijnych. FRA jest organem podlegającym reżimowi prawa unijnego, jednakże różnym od instytucji takich jak Rada, Parlament Europejski czy Komisja, a odrębność ta uwidacznia się szczególnie w posiadaniu przez nią osobowości prawnej. Podobnie jak inne zdecentralizowane organy wspólnotowe, ustanawiane na mocy aktów prawa pochodnego, FRA powołano pierwotnie w celu wykonywania konkretnych zadań w ramach dawnego I filaru Unii Europejskiej. W trakcie swojej dziesięcioletniej działalności Agencja Praw Podstawowych była i jest traktowana przez państwa członkowskie oraz społeczność międzynarodową jako instytucja wkomponowana w mechanizm europejski, chroniąca i upowszechniająca wiedzę o prawach podstawowych, wspólnej wartości uznawanej i akceptowanej obecnie przez społeczność tworzącą Unię Europejską.

**Słowa kluczowe:** Agencja Praw Podstawowych, prawa człowieka, ochrona praw człowieka, pomoc wobec kobiet, system prawa wewnętrznego UE, społeczeństwo obywatelskie, organizacje pozarządowe

## Helping to Make Fundamental Rights a Reality for Everyone in the EU: From the Treaty of Rome to the Fundamental Rights Agency

Simultaneously with the entry into force of the EU Lisbon Treaty on December 1, 2009, many of the alleged weaknesses of the mechanisms of protection of fundamental rights are in the process of being addressed: the Charter of the Fundamental Rights of the European Union has acquired binding force; the European Union is due to accede to the European Convention of Human Rights and the Fundamental Rights Agency was established as a European Union body in charge of monitoring the correct implementation of fundamental Rights throughout the Union. When the Charter of Fundamental Rights of the EU became legally binding in 2009, the Fundamental Rights Agency was the first EU body with competence stretching across the whole Charter. FRA was tasked to provide the EU institutions and Member States with “assistance and expertise”, particularly through the collection of “objective, reliable on comparable information on the development of the situation of fundamental rights”.

This paper will focus on a single aspect – what impact the EU enlargement had on human rights through its special agencies. For this purpose, we will take a close look at the EU Fundamental Rights Agency. We will address the issue concerning the role being played by the European Union Fundamental Rights Agency as an advisory body, issuing opinions on various aspects of fundamen-

tal rights within the Union on EU's and Member States' requests. The 10th anniversary of the European Union Agency for Fundamental Rights coinciding with the 60th anniversary of the Treaties of Rome seems to be a good moment to look back at what the Agency has done with an objective and critical eye, and identify areas where it should do more and better respond to the challenges, it faces.

**Key words:** Fundamental Rights Agency, human rights, human rights protection, violence against women, EU' internal legal system, civil society, nongovernmental organizations

