



Introduction

The Treaty of Lisbon's 'first year' shapes the political landscape

The new treaty base provided by the Treaty of Lisbon set the scene for the work of the European Union (EU) in 2010. Various components of this treaty promise a more fundamental rights-orientated and more accessible EU. Indeed, during 2010 the major EU institutions highlighted the importance of fundamental rights in the context of legislation undertaken at EU level. The FRA Annual Report identifies challenges and achievements as they emerged in 2010. Its chapters cover the nine areas identified by the Agency's Multi-annual Framework 2007-2012. Chapter 10 is new and provides an overview of international obligations relevant to the areas of EU law covered in this report. The report's appearance – including 'Promising practices' and 'FRA Activity' boxes – also reflects a new development, following a multi-modular approach where single chapters can stand alone.

Last year's annual report analysed in its introduction the positive potential the Treaty of Lisbon has for the protection of fundamental rights at the European level. Now, we can look back at the first year the EU was operating on the basis of a legally binding bill of rights of its own – the Charter of Fundamental Rights of the European Union. 2010 also saw – after many years of discussion in this context – concrete negotiations on the upcoming formal accession of the EU to the European Convention on Human Rights (ECHR). In addition to providing this new double-entrenchment in fundamental rights standards, the Lisbon Treaty moves the EU closer to citizens. For instance, it offers increased access to justice. Measures adopted in areas formerly covered by the third pillar, including criminal law, are now included in the jurisdiction of the Court of Justice of the European Union (CJEU). Moreover, the treaty establishes a new instrument of direct democracy – the European Citizens' Initiative. The latter innovation will allow EU citizens to articulate their ideas and wishes for EU engagement in a specific policy field. Another innovation of the new treaty is a renewed commitment to diversity and against discrimination. On the basis of this new legal environment, the European Commission concluded in its Communication on a *Strategy for the effective implementation of the Charter of Fundamental Rights of the European Union* in the autumn of 2010 that "[a]ll the components of an ambitious fundamental rights policy are therefore present". This also holds true from an

institutional perspective. Increasingly, the EU is equipped with a 'fundamental rights architecture' that goes beyond the establishment of a Fundamental Rights Agency at EU level.

For the first time, with European Commission Vice-President Viviane Reding, a member of the Commission is specifically responsible for the protection of fundamental rights. As EU Commissioner for Justice, Fundamental Rights and Citizenship, she announced a "zero-tolerance policy" vis-à-vis violations of the Charter in a Commission Communication on EU policy in the area of fundamental rights, as well as a regular annual report on the implementation of the Charter of Fundamental Rights. In its Communication on a strategy for the effective implementation of the Charter of Fundamental Rights, the European Commission stated that it will "make the fundamental rights provided for in the Charter as effective as possible". Part of this strategy is a detailed assessment of the impact of proposed legislation on fundamental rights. In this context, the European Commission also declared that it would "strongly defend" its position when it comes to the standards of fundamental rights protection contained in its legislative proposals, and it would notify the Council and the Parliament of its opposition if they seek to lower those standards. In its first *Report on the application of the EU Charter of Fundamental Rights*, which was published at the end of March 2011, the

European Commission highlights various fundamental rights challenges, including the need to address the correct bodies when lodging complaints in relation to rights enshrined in the EU Charter of Fundamental Rights. In those areas where the EU Charter does not apply, citizens' fundamental rights are guaranteed by national authorities according to their constitutional systems.¹ The European Commission report is accompanied by a Staff working paper providing clear examples when the Charter applies and when it does not. These examples are all taken from letters from the general public as well as from questions and petitions sent to the European Commission in the course of 2010.²

"People's interest in and expectations about the enforcement of the Charter are high. However, the Charter does not apply to all situations in which fundamental rights are at issue in the European Union. In 2010, the Commission received more than 4,000 letters from the general public regarding fundamental rights. Approximately three quarters of these concerned cases outside the remit of EU law. This reflects a frequent misunderstanding about the purpose of the Charter and the situations where the Charter applies or does not apply. ... The Charter applies to actions by all EU institutions and bodies. It concerns in particular the legislative work of the European Parliament, the Council and the Commission. ... The Charter applies to Member States only when they are implementing EU law."

European Commission, 2010 Report on the application of the EU Charter of Fundamental Rights, p. 3

The other major institutional players, the European Parliament and the Council of the European Union, have equally underlined their commitment to fundamental rights. At the end of 2009, when the Treaty of Lisbon entered into force, the European Parliament amended its rules of procedure. The new rules provide for a mechanism that a Committee, a political group or at least 40 Members of Parliament can refer a proposal for a legislative act to the Civil Liberties, Justice and Home Affairs (LIBE) Committee if they consider that the proposal or parts of it "do not comply with rights enshrined in the Charter". The opinion of the LIBE Committee shall be included in an annex to the report of the committee responsible for the subject matter, according to rule No. 36 of the rules of procedure. One year later, the European Parliament again underlined its commitment to an efficient fundamental rights protection system at EU level. In its 2010 resolution on fundamental rights and the Treaty of Lisbon, the Parliament calls "on the EU decision-making institutions to use the data and facts provided by the FRA during the preparatory stage of legislative activity, in decision-making and/or monitoring processes and to be in constant and close cooperation with the FRA".³

Similarly, the Council of the European Union set up a new permanent Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP) in December 2009, replacing a working party that had dealt with human rights but whose focus had been on external relations. The working group is "tasked with all matters relating to fundamental rights and citizens' rights including free movement of persons, negotiations on accession of the Union to the ECHR [and] the follow-up of reports from the EU Agency for Fundamental Rights".⁴ This change is symptomatic of the increasing emphasis on the situation of fundamental rights *within* the EU. The establishment of the fundamental rights and citizens' rights working group signals an increasing awareness of the fact that the EU has to confront new responsibilities in the area of fundamental rights. More recently, in February 2011, the Council adopted conclusions "on the role of the Council of the European Union in ensuring the effective implementation of the Charter".⁵ The conclusions state that the Council disposes of a number of tools to assess and ensure the compatibility with fundamental rights "of any amendment it proposes as well as of the Member States' initiatives" in the context of EU legislation. According to the Council, these compatibility checks will ensure that the Council only delivers acts with a 'fundamental rights label'. The Council also invited the FREMP Working Party to elaborate methodological guidelines dealing with the main aspects of fundamental rights scrutiny by 30 June 2011. These guidelines should serve as guidance for the work of the preparatory instances of the Council where relevant. Furthermore, the Council reaffirmed its commitment to take into account the reports and opinions of the FRA on specific thematic topics, while encouraging FREMP to maintain and reinforce the cooperation with the Agency, including the follow-up of FRA reports relevant to its work.

The EU Charter of Fundamental Rights "is addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law", according to its Article 51, paragraph 1. Moreover, the Charter emphasises that it "does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties" (Article 51, paragraph 2).⁶ Nonetheless, as the European Commission's first annual report on the Charter's application shows, it is frequently misunderstood. The general public is often unclear about the scope of application of the EU Fundamental Rights Charter, judging from the letters sent to the Commission. This has been underlined by survey findings of the European Ombudsman in March 2011, according to which 72% of European citizens do not feel well informed about the EU Charter of Fundamental Rights.⁷

1 European Commission, COM(2011) 160 final, 30 March 2011.

2 European Commission, SEC(2011) 396 final, 30 March, 2011.

3 European Parliament Resolution of 15 December 2010 on the situation of fundamental rights in the European Union (2009) – effective implementation after the entry into force of the Treaty of Lisbon (2009/2161(INI), point 33.

4 Council of the European Union, Document 17653/09 as of 16 December 2009, p. 5.

5 Council of the European Union, 3071st Justice and Home Affairs Council meeting, 24-25 February 2011.

6 Charter of Fundamental Rights of the European Union, OJ 2010 C 83/389, Article 51, paragraphs 1 and 2.

7 European Ombudsman, press release No. 6/2011, 18 March 2011.

While the European Commission Annual Report focuses on the implementation and application of the EU Charter of Fundamental Rights, the FRA Annual Report covers more general fundamental rights issues within the competencies of the European Union. On the other hand, the FRA Annual Report is also more limited in scope than the European Commission report as it only covers the areas of the Agency's current Multi-annual Framework (MAF) 2007-2012, which defines the thematic areas the Agency has to focus its work on. The Council of the European Union decides on the MAF, which runs for five years. The current one covers nine thematic areas: asylum, immigration and integration; border control and visa policy; information society and data protection; the rights of the child and protection of children; equality and non-discrimination; racism and ethnic discrimination; participation of EU citizens in the Union's democratic functioning; access to efficient and independent justice; and protection of victims.⁸

An issue falls within the EU competencies, if the EU has, for instance, a shared or supportive competence to deal with a matter, regardless of whether it has made use of the respective competence. This report is therefore not necessarily limited to existing secondary EU law. It deals with fundamental rights in the sense of Article 6 of the Treaty on the European Union (TEU), following thereby three different normative sources: the EU Charter of Fundamental Rights, fundamental rights as guaranteed by the ECHR, as well as rights as they result from the constitutional traditions common to the EU Member States. The latter two sources constitute general principles of the Union's law. Since the Court of Justice of the European Union (CJEU), when identifying general principles of law, occasionally "draws inspiration from [...] the guidelines supplied by international treaties for protection of human rights on which the Member States have collaborated or to which they are signatories",⁹ the FRA Annual Report also looks in Chapter 10 at selected international obligations of the EU Member States.

A new face for FRA's Annual Report

According to the FRA Founding Regulation,¹⁰ the Agency is required to "publish an annual report on fundamental-rights issues covered by the areas of the Agency's activity, also highlighting examples of good practice".¹¹ This is FRA's third Annual Report, the concept of which was developed in line with feedback from various Agency stakeholders. The feedback also includes that of participants in the Fundamental Rights Platform (FRP) who gave their views on

the previous year's annual report.¹² This reform, which is an ongoing rather than a one-off exercise, aims to increase the report's accessibility and its relevance.

The report also has a new layout, including 'quotes' and boxes highlighting 'FRA Activities' and 'Promising practices' in the field of fundamental rights – these elements are designed to facilitate its use. The promising practice boxes are intended to encourage stakeholders to consider and emulate initiatives, where appropriate, and to allow for an exchange of experiences. Please note that they are deliberately called "promising" instead of "good" practice, since these practices have not been directly scrutinised or evaluated by the FRA. To avoid any confusion between the FRA Annual Report and its annual Activity Report, which provides detailed information on what the Agency has done over the respective year, the title of the Annual Report was changed to *Fundamental rights: challenges and achievements in 2010*. The FRA activity boxes, nonetheless, allow the reader to gain an overview of the type of work that the Agency carries out, by providing short examples of FRA activities over the year.

With the new modular approach, single chapters of the Annual Report can stand alone. This approach allows readers and FRA stakeholders to quickly access the thematic area in which they are interested. Each chapter begins with a brief summary of the main developments in the respective fundamental rights area over the past year, thereby identifying major developments in the fields at stake. Each chapter also has its own outlook which outlines the major fundamental rights challenges to be expected in the coming year 2011. This introduces a forward-looking element which contains information about prospective developments. Each chapter also includes a bibliography, which does away with the need for an overall bibliography. This FRA Annual Report is organised using a colour code based on the different titles of the Charter of Fundamental Rights of the European Union – **Freedoms** (Title II), **Equality** (Title III), **Citizens' Rights** (Title V) and **Justice** (Title VI). A 16-page stand-alone summary highlights selected legal and policy developments to provide readers with an overview of key findings in 2010.

Furthermore, the multi-modular approach allows a more in-depth treatment of the various policy fields where fundamental rights apply. The structure of the report continues to be based on the Agency's MAF. In contrast to earlier reports, the 2011 Annual Report dedicates a chapter to each MAF area. It also substantially expands the chapters that are not related to equality and racism to provide information about mainstream areas such as citizens' rights, data protection and access to justice. This more balanced coverage of thematic areas helps to underline that the Agency does not only address issues in the fundamental rights field that are of special relevance to specific population groups, such as

⁸ Council Decision (2008/203/EC) implementing Regulation (EC) No. 168/2007 as regards the adoption of a Multi-annual Framework (MAF) for the FRA for 2007-2012.

⁹ Opinion of the Court of Justice of the European Union (1996).

¹⁰ Council Regulation (EC) No. 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ 2008 L 53.

¹¹ *Ibid.*, Article 4, paragraph 1 (e).

¹² The contributions delivered in the framework of the FRP consultations are available at: fra.europa.eu/fraWebsite/networks/frp/frp-contributions/frp-contributions_en.htm.

immigrants, ethnic minorities or Lesbian Gay Bisexual and Transgender (LGBT) people.

The section on international human rights instruments and obligations, which was introduced for the first time in an annex to the previous year's Annual Report, has been expanded into a full chapter, following positive feedback from the European Parliament.¹³ The chapter is part of an effort to underline the multilevel-relevance of fundamental rights: an efficient protection of fundamental rights is only possible if local, national, European and international norms and administrations interact. To raise awareness of the international dimension of fundamental rights, this chapter will be updated in each subsequent report. This year's chapter already includes Croatia, the fundamental rights situation of which will also be covered in other chapters of future FRA annual reports. This results from the EU-Croatia Stabilisation and Association Council decision of 25 May 2010 on the participation of Croatia in the FRA's work.¹⁴

The FRA Annual Report covers developments and events in the area of fundamental rights that took place between 1 January 2010 and 31 December 2010. However, where relevant, events that took place between October and December 2009 or in early 2011 have also been taken into consideration. Similar to last year, the report draws on data and information collected by the Agency's RAXEN National Focal Points (NFPs) and its FRALEX group of senior legal experts in each of the 27 EU Member States, as well as on the findings of primary research projects carried out by the Agency itself. The Agency's various research projects are referred to throughout the report at points where the findings are directly relevant to the thematic areas being discussed. These findings, rooted in research and expert analysis, enable comparisons to be made between the 27 EU Member States and also provide evidence upon which future policies can be based. The data and information provided is checked for accuracy by 27 liaison officers from the governments of each Member State, and the report has undergone internal quality review processes. Feedback on this report is always welcome and can be sent to: annualreport@fra.europa.eu.

¹³ European Parliament Resolution of 15 December 2010, paragraph 32.

¹⁴ Decision No. 1/2010 of the EU-Croatia Stabilisation and Association Council of 25 May 2010 on the participation of Croatia as an observer in the European Union Agency for Fundamental Rights' work and the respective modalities thereof, OJ 2010 L 279.

