

OPINION OF THE MANAGEMENT BOARD OF THE EU AGENCY FOR FUNDAMENTAL RIGHTS ON THE EUROPEAN COMMISSION'S PROPOSAL FOR A NEW MULTI-ANNUAL FRAMEWORK (2013–2017) FOR THE AGENCY

According to Art. 5 (1) of Council Regulation 168/2007 of 15 February 2007 (Regulation) the Commission shall consult the Management Board (MB) of the EU Agency for Fundamental Rights (FRA) when proposing a new Multi-annual Framework (Framework) for the FRA. A first consultation of the MB on the Framework took place in May 2011 and resulted in the “Opinion of the MB on a new MAF” (including an Explanatory Memorandum), containing concrete and reasoned proposals, which were submitted to the European Commission on 8 and 10 June 2011 respectively. In response to a second request by the Commission, the MB expresses with the present Opinion its comments on the Commission’s proposal on possible thematic areas, and explanations thereto, for a new Framework. As requested by the Commission, the present Opinion also includes the results of the consultation that was open to the Fundamental Rights Platform from 20 July 2011 to 16 September 2011 (see details below).

SPECIFIC COMMENTS ON THE COMMISSION'S PROPOSAL

Referring to the concrete thematic areas that the Commission proposes to include in the Framework for the years 2013-2017, the MB notes the following:

a) Access to justice

The MB supports the Commission proposal to maintain access to justice in the new Framework. However, access to justice would more appropriately be included in the general framework of ‘**Effective judicial protection, including access to justice**’, a general principle of EU law and a source of individual rights, as recalled and explained in the first MB Opinion (Art. 2 (f)). Effective judicial protection should be dealt with as a horizontal issue in all areas.

b) Victims of crime

The MB welcomes the Commission proposal to include victims of crime beyond their compensation into the new Framework. Expanding this Framework area from compensation of victims to the rights of victims of crime is an important step given the on-going developments within the EU. (See the first MB Opinion (Art. 2 (f)).)

c) Information society and, in particular, respect for private life and protection of personal data

The MB supports the Commission proposal to include issues such as information society and, in particular, respect for private life and protection of personal data. (See first MB Opinion (Art. 2(g)). However, for mainly practical reasons, the MB would suggest a modification of

the title to '**Information, privacy and personal data**'; this would capture the same meaning, while being more concrete and easier to understand for stakeholders.

d) Roma integration

The MB welcomes the Commission proposal to explicitly include Roma integration in the new MAF.

e) Police cooperation

Given the developments since the Treaty of Lisbon, the MB finds it important for the FRA to expand its work to the former 'third pillar' area. At the present progressive phase of this area, a strong fundamental rights perspective is essential. The inclusion of police cooperation is therefore highly welcome.

f) Judicial cooperation

Given the developments since the Treaty of Lisbon, the MB finds it important for the FRA to expand its work to this former 'third pillar' area as well, for the reasons stated above (e). Areas e) and f) were in the first MB Opinion (Art. 2(e)) proposed as forming one area.

g) Rights of the Child

The MB welcomes the Commission proposal to maintain the rights of the child in the new Framework. Children's protection and participation can be elements of this area, as proposed and explained in MB Opinion (Art. 2 (c)).

h) Discrimination based on race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation

The MB welcomes the inclusion in the Commission proposal of discrimination, which is identical to Art. 21 of the Charter, except for the removal of the ground of 'sex'. Its Regulation explicitly mandates the FRA to work on gender equality (recital 10), which should be a horizontal issue, as required by the Treaties and the Charter (see first MB Opinion Art. 2(b) and Art. 3(3).) The FRA's cooperation agreement with EIGE (also stipulated in recital 16 of the Regulation) ensures complementarity between these institutions. The MB therefore reiterates that full consistency should be maintained with Art. 21 (1) of the Charter. Revised 'h' could therefore either restate Art. 21 without excluding the ground of sex, or read:

'Discrimination as defined in Article 21 of the Charter of Fundamental Rights'

The relationship with EIGE, as well as other EU agencies could be expressed in the text of the Framework (see first MB Opinion, Art. 3(3)).

h-bis) Participation in the EU independent framework pursuant to Article 33 (2), UN Convention on the Rights of Persons with Disabilities

The MB proposes the introduction of a new area in the Framework 2013–2017 related to Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities, in light of the

expected role of the Agency in a future “framework [...] to promote, protect and monitor implementation” of the Convention.

i) Immigration and integration of migrants; border control and visa; asylum

The MB welcomes the Commission proposal to merge these two areas in the new Framework, which coincides with the proposal in the first MB Opinion (Art. 2(d)).

j) Racism, xenophobia and related intolerance

The MB supports the Commission proposal to maintain this area, in which the FRA has several years of experience, in the new Framework. (See first MB Opinion (Art. 2 (a).)

The MB notes the removal in the Commission proposal of the existing Framework area of “**participation of the citizens of the Union in the Union’s democratic functioning**”. The right to political participation is firmly guaranteed in the Charter, and its inclusion would add to the Framework covering political rights. However, given that it has not been possible to identify viable projects under this area, and that there is a need to prioritise, the MB takes note of the Commission’s proposal to exclude this area. (See, however, the first MB Opinion (Art. 2(h).)

In the first Opinion, the MB proposed the introduction of a new area in the Framework entitled: ‘**Social rights**’, which would also include social security, with a special focus on poverty reduction and social exclusion and the protection of employees and consumers (see first MB Opinion Art. 2 (i)). The MB is of the opinion that the new Framework should include social rights explicitly. This would ensure a balance of coverage of the rights listed in the Charter, which take up almost a quarter of this instrument and are of particular relevance to everyone. A recent Resolution by the European Parliament (B7-0475/2011, 14 September 2011) underscores this need: “[The European Parliament ...] 15. Urges the EU Agency for Fundamental Rights (FRA) to work more on the implications of extreme poverty and social exclusion in terms of access to and enjoyment of fundamental rights, bearing in mind that the fulfilment of the right to housing is critical for the enjoyment of a full range of other rights, including political and social rights.”

As recalled in the first MB Opinion (Art. 2 (i)), according to Art. 3 (3) TEU, social rights are EU horizontal objectives relevant for all people, closely interwoven with its economic objectives and their implementation is a *conditio sine qua non* for the success of EU economic policies. The Court of Justice of the European Union also recognises the importance of social rights and has formulated several social rights as fundamental principles of and individual rights under EU law. The importance of shared social values was also underscored recently by Commission President Barroso in his State of the Union address to Parliament¹

¹ Under the title ‘European Renewal’ (28 September 2011), he warned that “we are facing the biggest challenge in the history of our Union” and that “[t]his crisis is financial, economic and social”. Barroso consequently stressed the need for both stability and growth, which he linked to social rights as EU fundamental values.

The MB would suggest re-ordering the proposed new Framework areas so as to place related issues consecutively:

- a) Effective judicial protection, including access to justice
- b) Victims of crime
- c) Judicial cooperation
- d) Police cooperation
- e) Immigration and integration of migrants; border control and visa; asylum
- f) Racism, xenophobia and related intolerance
- g) Roma integration
- h) Discrimination as defined in Article 21 of the Charter of Fundamental Rights
- i) Participation in the EU independent framework pursuant to Article 33 (2), UN Convention on the Rights of Persons with Disabilities
- j) Rights of the child
- k) Information, privacy and personal data
- l) Social rights

Furthermore, the MB wishes to recall the points made in its first MB Opinion related to the recitals and the articles of the Framework other than Art. 2, enumerating the areas.

NOTE ON THE RESULTS OF THE FUNDAMENTAL RIGHTS PLATFORM CONSULTATION

As mentioned in the introduction, when preparing this opinion, the MB took due account of the results of the consultation that was open to the Fundamental Rights Platform (FRP) and took place from 20 July 2011 to 16 September 2011. The consultation was open to all organisations participating in the FRP, which brings together 319 civil society organisations from across the European Union (i.e. organisations active on the European, national as well as grass-root levels and covers all areas of the FRA's work). The total responses received were 108. The MB wishes to make two specific points about the results of this consultation. First of all, the FRP was particularly supportive when it comes to include a new area for social rights and social security (47 out of 108). Secondly, the FRA's involvement in the field of judicial and police cooperation was supported by all respondents that actively work in this area (7 out of 7; the composition of the organisations active in the FRP corresponds to the present Framework).

18 October 2011

OPINION OF THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS ON A NEW MULTI-ANNUAL FRAMEWORK (2013-2017) FOR THE AGENCY

Having regard to the Treaty on European Union and the Treaty on the Functioning of the European Union

[...]

Whereas²

(1) Bearing in mind the objectives of the foundation of the European Union Agency for Fundamental Rights (hereinafter the Agency) and in order for the Agency to carry out its tasks properly, the precise thematic areas of its activity are to be determined by a Multi-annual Framework covering five years as stipulated in Article 5(2) of Regulation (EC) No 168/2007.

(2) Bearing in mind the recent developments in EU law, in particular with the entry into force of the Treaty of Lisbon, and the specificities of EU substantive and procedural law in the field of fundamental rights.³

(3) Having regard to Recitals 2, 9 and 10 as well as Articles 3 and 5 of Regulation (EC) No 168/2007 establishing the Agency, and in light of the fundamental values and objectives of the Union, including social justice and protection, non-discrimination and equality between men and women including gender equality as a horizontal requirement, according to Article 2 and Article 3 (1) and (3), as well as of the fundamental rights frame of the Union according to Article 6 (1) and (3) of the Treaty on European Union, referring to the aims of the Union mentioned in Articles 8, 9 and 10 of the Treaty on the Functioning of the European Union, and, finally, taking into account the Charter of Fundamental Rights of the European Union, which has the same legal value as the Treaties.⁴

(4) The Framework should be in line with Union's priorities, taking due account of the orientations resulting from the European Parliament resolutions and Council conclusions in the field of fundamental rights, including the 'Stockholm Programme', COM (2009) 262 final, the Commission's Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, COM (2010) 573 final, the Conclusions of the Council on the Council's actions and initiatives for the implementation of the Charter of Fundamental

² Recitals are now revised and structured logically from more general to more specific observations.

³ FRA's mission and *raison d'être* are to highlight the specificities of EU law regarding human rights, as they result from EU primary and secondary law and the case law of the CJEU.

⁴ After the entry into force of the Lisbon Treaty, the Charter has, by virtue of Article 6(1) TEU, "the same legal value as the Treaties". It is opportune to recall this, as Regulation (EC) No 168/2007 (Recitals 2 and 9) stipulates that the FRA shall refer to the Charter, "bearing in mind its status and scope".

Rights of the European Union,, and the mechanism set up under Rule 36, Respect for the Charter of Fundamental Rights of the European Union, of the Rules of Procedures of the European Parliament,

(5) The Framework should continue to include the fight against racism, xenophobia and related intolerance amongst the thematic areas of the Agency's activity.

(6) The accession of the EU to the UN Convention on the Rights of Persons with Disabilities should be acknowledged within the work of the Agency.

(7) The Framework should have due regard to the Agency's financial and human resources and should be conducted only within the scope of Union law.

(8) The Framework should include provisions with a view of ensuring complementarity with the remit of other Union bodies, offices and agencies, as well as with the Council of Europe – especially so with the accession of the Union the European Convention on Human Rights – and other international organisations active in the field of fundamental rights. The most relevant Union agencies and bodies in relation to this Multi-annual Framework are the European Institute for Gender Equality established by Regulation (EC) No 1922/2006 of the European Parliament and of the Council of 20 December 2006 establishing a European Institute for Gender Equality and the European Data Protection Supervisor established by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, and the European Ombudsman, the objectives of which should consequently be taken into account.

(9) The Commission, while preparing its proposal, has consulted the Management Board of the Fundamental Rights Agency during its meeting of 19 and 20 May 2011.

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

(11) The Agency, upon a request of the European Parliament, the Council or the Commission, provided its financial and human resources so permit, can work outside the thematic areas determined in the Multi-annual Framework, in accordance with Article 5(3) of the Regulation (EC) No 168/2007,

HAS DECIDED AS FOLLOWS:

[... *Article 1* new period]

Article 2

Thematic areas

The thematic areas shall be the following:

- a) racism, xenophobia and related intolerance;⁵
- b) discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination),⁶ taking into account diversity;⁷
- c) protection and participation of children;⁸
- d) asylum, immigration and integration of migrants, visa and border control;⁹
- e) judicial and police cooperation;¹⁰
- f) effective judicial protection,¹¹ including access¹² to efficient and independent justice¹³, the guarantees of a fair trial¹⁴ as well as protection, compensation and support of victims^{15,16}
- g) information society and, in particular, respect for private life and protection of personal data;¹⁷
- h) participation of the citizens of the Union in the Union's democratic functioning and development;¹⁸

⁵ Current thematic area.

⁶ Current thematic area.

⁷ The need of diversity management as a tool combatting discrimination has to be mentioned in the Explanatory Memorandum.

⁸ We should focus on thematic areas and not on rights, therefore we deleted 'rights' but added 'participation' as an active element.

⁹ Current thematic areas merged.

¹⁰ See former 3rd pillar, but minus 'criminal matters' in order not to restrict the thematic area on that aspect. See the Commission's proposal for amending the existing MAF, COM(2010) 708 final as of 2 December 2010, online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0708:FIN:EN:PDF>.

¹¹ It is the principle of and right to effective judicial protection, a general principle of EU law formulated by the Court, which includes a wide range of more particular rights that Articles 47 to 50 of the Charter embody. See for example CJEU judgments of 22 December 2010, C-444/09 and C-456/09, *R. M. Gavieiro*, and C-279/09, *DEB*, referring to well established case law of the Court. It also comprises real and effective sanctions, see CJEU judgment of 10 April 1984, C-14/83, *von Colson and Kamann*.

¹² Under EU law, access to justice includes *inter alia* the right to interim measures, the standing of organisations to bring cases to national courts and other competent authorities on behalf of victims of violations of EU law and to intervene in cases that such victims have initiated themselves, as well as appropriate legal aid (see *DEB* case, *supra*). This should be highlighted in the Explanatory Memorandum.

¹³ Current thematic area.

¹⁴ Under EU law, a fair trial includes, *inter alia*, effective judicial control, the presumption of innocence, equality of arms and the transfer of the burden of proof under certain conditions. This should be highlighted in the Explanatory Memorandum.

¹⁵ The importance of measures against trafficking in human beings should be highlighted in the Explanatory Memorandum.

¹⁶ Current thematic areas merged.

¹⁷ Current thematic area.

- i) social rights and social security, with a special focus on poverty reduction and social inclusion, and including the protection of employees and consumers.¹⁹

Article 3

Complementarity and cooperation with other bodies

1. The Agency shall ensure appropriate cooperation and coordination with relevant Union bodies, offices and agencies (including the JHA Agencies cluster, Eurofound and EIGE), Member States, international organisations, national human rights institutions and civil society, under the terms of Articles 6, 7, 8 and 10 of Regulation (EC) No 168/2007, for the implementation of this Framework.

2. In particular, the Agency shall coordinate its activities with those of the Council of Europe under the terms of Article 9 of Regulation (EC) No 168/2007 and in the agreement referred to in that Article.

3. The Agency shall deal with issues relating to discrimination based on sex only as part of, and to the extent relevant to, its work to be undertaken on general issues on discrimination referred to in Article 2 point (b); it shall observe gender equality as a horizontal requirement in all areas of its activities,²⁰ as required by the Treaties, in particular Articles 2 and 3 (3) of the Treaty on European Union, Article 8 of the Treaty on the Functioning of the European Union, and Article 23 of the Charter of Fundamental Rights of the European Union, and in accordance with Recital 10 of Regulation (EC) No 168/2007, also taking into account that the overall objectives of the European Institute of Gender Equality established by Regulation

¹⁸ Current thematic area, but supplemented with the term 'dynamic' we would like to underline that democracy and its structure has not only to be understood in an erratic ('functioning') but a dynamic sense.

¹⁹ Social rights were already proposed by the FRA MB for the first MAF. The MAF cannot ignore social rights, the more so as, according to the Article 3 (3) TEU. Social objectives are EU horizontal objectives, closely interwoven with its economic objectives and their implementation is a *conditio sine qua non* for the success of EU economic policies. Moreover, social rights are all the most topical and crucial nowadays, in the framework of the economic crisis. The CJEU recognises the importance of social rights. It has stressed that the EU is not merely and economic union, but is intended to ensure social progress and it has held that EU economic aims prevail over its economic aims (Cases C-50/96 *Schröder*; C-270-271/97 *Sievers* [2000] ECR I-774 and I-933). It has also formulated several social rights as fundamental principles of EU law, going even beyond written EU law and recognising their horizontal effect (e.g. C-173/99 *BECTU*, C-144/04 *Mangold*).

Health protection and consumer protection are within legal competences of the Union; see also Article 35 and 38 of the Charter of Fundamental Rights of the European Union.

In the Explanatory Memorandum integration of Roma and immigrants should be mentioned as important issues in this regard.

²⁰ The Treaties and the Charter do not merely prohibit discrimination on grounds of sex. They also explicitly and specifically impose the promotion of gender equality as a positive obligation on all EU institutions, bodies and agencies. This requirement is in particular expressed in Article 23 in conjunction with Article 51 (1) of the Charter, Article 3 (3) 2nd subparagraph TEU (promotion of gender equality is a specific horizontal EU objective) and Article 8 TFEU (specific requirement to promote gender equality in all EU activities), in the light of Article 2 TEU, which lists gender equality as a fundamental EU value, in addition to non-discrimination. See for example CJEU judgment of 1st March 2011 C-236/09 *Association belge des Consommateurs Test-Achats ASBL*; AG Chr. Stix Hackl in Case 186/01 A. *Dory v. Federal Republic of Germany* [2003] ECJ I-2479.

(EC) No 1922/2006 shall be to contribute to and strengthen the promotion of gender equality, including gender mainstreaming in all Union policies and the resulting national policies, and the fight against discrimination based on sex and to raise EU citizens' awareness of gender equality by providing technical assistance to Union institutions, in particular to the Commission and the authorities of the Member States..

4. The Agency shall carry out its tasks in the area of human rights issues relating to the information society without prejudice to the responsibilities of the European Data Protection Supervisor for ensuring that the fundamental rights and freedoms of natural persons, and in particular their right to privacy, are respected by Union institutions and bodies in accordance with his or her duties and powers stipulated in Articles 46 and 47 of Regulation (EC) No 45/2001.

8 June 2011

EXPLANATORY MEMORANDUM ACCOMPANYING THE OPINION OF THE MANAGEMENT BOARD OF THE EU AGENCY FOR FUNDAMENTAL RIGHTS ON A NEW MULTI-ANNUAL FRAMEWORK (2013–2017) FOR THE AGENCY

The FRA MB considers that some clear elements still require consideration and reference in the new Framework:

- the coming into force of the Treaty of Lisbon;
- the Charter of Fundamental Rights of the European Union becoming legally binding and having an equal status to that of the treaties (primary law);²¹
- the relevant sections of the ‘Stockholm Programme’²²;
- the implementation measures taken by the Commission, the Council, and the Parliament in relation to the Charter of Fundamental Rights;²³
- the implications for the work of the FRA with the accession of the EU to the UN Convention on the Rights of Persons with Disabilities, notably in relation to Article 33 (2); and
- non-discrimination and equality between men and women including gender equality as a horizontal requirement.²⁴
- The need to enhance the cooperation with the Council of Europe, in particular in the perspective of the accession of the EU to the ECHR

As for specific thematic areas, the FRA MB, moreover, considers that the Framework must reflect the following areas:

²¹ After the entry into force of the Lisbon Treaty, the Charter has, by virtue of Article 6(1) TEU, “the same legal value as the Treaties”. It is opportune to recall this, as Regulation (EC) No 168/2007 (Recitals 2 and 9) stipulates that the FRA shall refer to the Charter, “bearing in mind its status and scope”.

²² COM (2009) 262 final.

²³ The Commission’s Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, (COM (2010) 573 final, the Conclusions of the Council on the Council’s actions and initiatives for the implementation of the Charter of Fundamental Rights of the European Union,, and the mechanism set up under Rule 36, Respect for the Charter of Fundamental Rights of the European Union, of the Rules of Procedures of the European Parliament,

²⁴ The Treaties and the Charter do not merely prohibit discrimination on grounds of sex. They also explicitly and specifically impose the promotion of gender equality as a positive obligation on all EU institutions, bodies and agencies. This requirement is in particular expressed in Article 23 in conjunction with Article 51 (1) of the Charter, Article 3 (3) 2nd subparagraph TEU (promotion of gender equality is a specific horizontal EU objective) and Article 8 TFEU (specific requirement to promote gender equality in all EU activities), in light of Article 2 TEU, which lists gender equality as a fundamental EU value, in addition to non-discrimination. See for example CJEU judgment of 1st March 2011 C-236/09 *Association belge des Consommateurs Test-Achats ASBL*; AG Chr. Stix Hackl in Case 186/01 A. *Dory v. Federal Republic of Germany* [2003] ECI-2479.

- the continued inclusion of the fight against racism, xenophobia and related intolerance amongst the thematic areas of the Agency’s activity;
- the implications of the Treaty of Lisbon in terms of the consolidation of former ‘third pillar’ issues – bringing judicial and police cooperation into the remit of mainstream EU law;²⁵ and
- the addition of social justice and protection as an essential area in which the FRA must be active.²⁶

With these principles in mind, nine thematic areas were proposed:

a) Racism, xenophobia and related intolerance

A current Framework area (a) in which the FRA is presently active; it remains integral part of FRA’s mandate as built on the work of its predecessor the European Monitoring Centre on Racism and Xenophobia (EUMC), in accordance with Recital 10 and Article 5(2)(b) of Regulation (EC) No 168/2007.

b) Discrimination based on sex, race or ethnic origin, religion or belief, disability, age, or sexual orientation and against persons belonging to minorities and any combination of these grounds (multiple discrimination), taking into account diversity

A current Framework area in which the FRA is presently active; it is closely related to (a), and retains horizontal relevance for fundamental rights generally. The general discrimination provision is provided in accordance with Articles 2 and 3(3) TEU, 8 and 10 TFEU and 21 and 23 of the Charter. The inclusion of diversity is in accordance with Article 3(3) TEU and Article 22 of the Charter. The need of diversity management as a tool to combat discrimination must be kept in mind when interpreting this Framework area.

c) Protection and participation of children

A current Framework area (d) in which the FRA is presently active. In order to ensure the broadest possible scope of work for the FRA in this area, the proposed wording takes a broader stance but must be read to include the rights of the child at its core, in

²⁵ See also the Commission’s proposal for amending the existing MAF, COM (2010) 708 final as of 2 December 2010, online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0708:FIN:EN:PDF>.

²⁶ See Article 3 (3) TEU and Chapter IV of the Charter of Fundamental Rights of the European Union. Also the CJEU recognises the importance of social rights. It has stressed that the EU is not merely and economic union, but is intended to ensure social progress and it has held that EU economic aims prevail over its economic aims (Cases C-50/96 *Schröder*; C-270-271/97 *Sievers* [2000] ECR I-774 and I-933). It has also formulated several social rights as fundamental principles of EU law, going even beyond written EU law and recognising their horizontal effect (e.g. C-173/99 *BECTU*, C-144/04 *Mangold*, C-555/07 *Kücükdeveci*).

accordance with Article 24 of the Charter. After all, the first Framework made explicit mention of the rights of the child.

d) Asylum, immigration and integration of migrants, visa and border control

Two current MAF areas ((e) and (f)) in which the FRA is active have been merged into one given the close relationship between the two areas. This area remains topical, in view of EU legislative developments, CJEU case law and constantly increasing migration flow.

e) Judicial and police cooperation

Area in which the FRA should become active; it includes the former ‘third pillar’ of judicial cooperation in criminal matters and police cooperation. In order not to restrict the thematic area unnecessarily, “criminal matters” have been left out.²⁷

f) Effective judicial protection, including access to efficient and independent justice as well as protection, compensation and support of victims

The former Framework area (i) “access to efficient and independent justice” has been broadened to enable FRA initiatives that are as relevant as possible. “Effective judicial protection” denotes the principle of and right to effective judicial protection, a general principle of EU law formulated by the Court, which encompasses a wide range of more particular rights embodied in Articles 47 to 50 of the Charter.²⁸ Under EU law, these rights are in particular related to access to justice (including, *inter alia*, the right to interim measures, the standing of organisations to bring cases to national courts and other competent authorities on behalf of victims of violations of EU law and to intervene in cases that such victims have initiated themselves, as well as appropriate legal aid²⁹), fair trial (including, *inter alia*, effective judicial control, the presumption of innocence, equality of arms and the transfer of the burden of proof under certain conditions), as well as real and effective sanctions³⁰.

The area has also been merged with former area (c) “compensation of victims; again, this has been broadened to retain relevance in respect of, for instance, the legislative developments of the EU in this area. In this context, the importance of measures against trafficking in human beings must be underscored.

²⁷ See the Commission’s proposal for amending the existing MAF, COM(2010) 708 final as of 2 December 2010, online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0708:FIN:EN:PDF>.

²⁸ See for example CJEU judgments of 22 December 2010 C-444/09 and C-456/09 *R. M. Gavieiro*, and C-279/09 *DEB*, referring to well established case law of the Court.

²⁹ See CJEU, *DEB*, *supra*.

³⁰ See e.g. CJEU judgment of 10 April 1984, C-14/83, *von Colson and Kamann* and relevant requirements of several instruments of secondary EU law.

g) Information society and, in particular, respect for private life and protection of personal data

A current Framework area (h) in which the FRA is active. It should be noted that freedom of the media is an integral part of information society, in accordance with Article 11 of the Charter. However, the presumption of innocence should be taken into account in this area as well.

h) Participation of the citizens of the Union in the Union's democratic functioning and development

A current Framework area (g) in which the FRA should become active. The text has been supplemented with the term "development" in order to underline that democracy and its structures have not only to be understood in a static way but also in a dynamic sense, taking into account developments and potentials (e.g. European citizens' initiative).

i) Social rights and social security, with a special focus on poverty reduction and social inclusion, and including the protection of employees and consumers

Social rights were already proposed by the FRA MB for the first Framework. This new Framework cannot ignore social rights, especially in view of the horizontal nature of social objectives, as proclaimed in Article 3 (3) TEU. These objectives are closely interwoven with the economic objectives of the EU and their implementation is a *conditio sine qua non* for the success of EU economic policies. Moreover, social rights are all the more topical and crucial nowadays, in the light of the economic crisis. In this context the integration of Roma as well as of immigrants must be emphasized.³¹

Finally, as for complementarity and cooperation with other bodies, the FRA MB proposes inclusion of references to the Justice and Home Affairs cluster of Agencies (Frontex, Europol, Eurojust and the European Asylum Support Office (EASO)). Even more so, given the increasing cooperation among these agencies and the FRA and the need for greater fundamental rights considerations in their activities. Other agencies, including Eurofound and European Institute of Gender Equality (EIGE) should also be mentioned given the clear links in terms of the existing cooperation with the FRA and the many shared substantive issues. The other changes introduced only relate to the transition from the Community to the Union and from EIGE having become operational.

Given the accession of the EU to the European Convention on Human Rights, the importance of cooperation with the Council of Europe has been further emphasised (in recital 10). In this regard, while highlighting the specificities of EU law, the FRA will duly take into account the valuable work of the Council of Europe in various human rights' fields which are of relevance to the thematic areas of the Framework

10 June 2011

³¹ The CJEU also recognises the importance of social rights. See footnote 6. Health protection and consumer protection are within legal competences of the Union; see also Article 35 and 38 of the Charter of Fundamental Rights of the European Union.