

**Feedback and suggestions on the follow-up of
the FRA Annual Report 2009**

from

the Fundamental Rights Platform

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1. SUMMARY

1.1. Background

The Council Regulation establishing the FRA recognizes the particular importance to the Agency of engaging with civil society in order to fulfil its main objective of providing assistance and expertise relating to fundamental rights. The Agency has established a Fundamental Rights Platform in order to cooperate more closely with civil society stakeholders.

In accordance with the Regulation (Art. 10, 4 (b)) the Platform is called upon to give feedback and suggest follow-up to the Management Board on the Agency's Annual Report.

The FRA invited all civil society organisations participating in the Fundamental Rights Platform to give feedback and suggestions on the follow up of the Annual Report 2009. This consultation took place in August - October 2009 and the FRA received contributions from 16 organisations.

This report was prepared by the operational services of the FRA in consultation with the Advisory Panel of the FRP and present a summary of the main suggestions received. All the individual contributions will be available on the FRA website.

1.2. Main outcomes

Many respondents congratulate the FRA on the work done on the Annual Report 2009, which this time covers a much broader range of thematic areas, taking in other fundamental rights issues falling within the scope of the FRA's mandate. More varied and targeted activities reflecting the large mandate are recommended.

The link between the data collected and the legal and social context with respect to fundamental rights is appreciated. The correlation between gaps in legislation and policies in force and the failure to protect rights is clearly established. Therefore, the report succeeds better this year in analysing and shaping into remedial action at EU level all the information on the human rights situation in the EU. The wealth of information provided by the report is appreciated. It is said to provide a good overview of fundamental rights issues in the EU in terms of existing laws, case laws and registered complaints, but also on the experiences of discrimination.

EU-MIDIS is considered by many as a powerful tool for knowledge and having the potential to become a crucial reference for both research and policy making.

The feedback on the report welcomes the attention given by the Agency to the voice of civil society, e.g. through consultations. The consultation process of feedback and suggestions on the FRA Annual Report 2009 is seen to be of significant importance for the protection and promotion of fundamental rights in the European Union, while the Agency develops specific projects and horizontal activities within the thematic areas of Multi Annual Work Programme.

A number of suggestions were received for further developing of the report concerning methodology, technical aspects and presentation of the report, as well as issues concerning the relevance of the content for civil society, follow up of the outcomes and possible forms of cooperation in aiming to strengthen the impact of the annual report.

On a more general level an emphasis was put on the importance of an on-going effort to monitor the extent to which EU institutions and member states take into account FRA's opinions and findings of the reports, as well as raising awareness among public on fundamental rights. The main challenge remains to ensure the follow-up of FRA's recommendations at EU and national executive level.

2. RESULTS OF THE CONSULTATION: FEEDBACK ON THE FRA ANNUAL REPORT 2009

2.1. Feedback on methods and relevance of research topics

2.1.1. Appropriateness and assessment of methods used for data collection and reporting at national level

It is welcomed that FRA is increasingly using victim-based surveys as a source of data. The scarcity of statistical data makes it important that other sources and techniques can be considered. In this regard the EU-MIDIS study is commended. It is considered as a crucial tool to raise awareness about the discrimination faced by different ethnic minorities group in the European Union. However, a disappointment was expressed with regard to the fact that the first data-in focus report on Roma did not present its results in a gender-disaggregated way, especially given the EUMC previous work on Romani Women and health care.

The data collected through the EU-MIDIS surveys of immigrant and ethnic minority groups' experiences of discrimination is a positive development and will prove useful in filling the gaps in data collection on discrimination experienced by ethnic minorities. However, some respondents would like to see an analysis of the results of these surveys, for instance in terms of the variations between member states. In addition, it is stated that FRA should ensure that a better balance is reached in its reporting between statistical and empirical data collection and the data resulting from the contribution of civil society experiential research. NGOs offer a vital alternative data source that comes directly from experiences of those individuals and communities suffering from racism on a daily basis.

Further to the EU-MIDIS survey on migrant and minority groups' perceptions of discrimination, it is regretted that the survey did not include traditional or autochthonous minorities in Europe.

Some respondents ask for more explanations in terms of the methodologies used. For instance, in the paragraph 1.1.2. "Complaints data from Equality Bodies", an explanation is requested on methodology FRA used to come to the following conclusion that "some Member States have already gone beyond these minimum standards, providing more comprehensive protection against racial/ethnic discrimination". Also, for the reader who is reading the FRA Report for the first time the Racial Equality Directive could be briefly explained and not only its reference 2000/43/EC mentioned.

A recommendation to FRA is made to include a transversal gender equality and women's rights perspective in all the thematic areas of the Multi-Annual Framework and subsequent activities. Gender mainstreaming in the work of the FRA must be strongly implemented, and as part of a gender mainstreaming perspective, gender-disaggregated data collection and results are necessary. It would also be important to systematically involve women's organizations in all data collection process and not only in the research mentioning explicitly gender. FRA is urged to

establish strong links and cooperation with the EU Gender Institute as soon as possible.

It is suggested that FRA in close cooperation with OSCE/ODIHR, the UN Special Procedure Mandate Holders (including specifically the Special Rapporteur for Freedom of Religion and Belief), the relevant Treaty Bodies, UNESCO, and the Council of Europe (in particular ECRI) would undertake studies on discrimination based on religion or belief against individuals, communities of faith or belief and ethno-religious groups.

A lack of emphasis on age and disability is mentioned, both in the section reporting on key developments in the EU and in FRA activities so far. Despite the broadening of the thematic areas since last year, the report on key developments is still in majority devoted to race discrimination.

Age should be a cross-cutting theme with relevance to each thematic area of the Multi-Annual Framework. The demographic changes which European societies are undergoing reinforce the importance of the Agency developing a more comprehensive approach to the age ground in its future activities.

The quality of comparative legal analysis in matters relating to homophobia and discrimination based on sexual orientation (2008) is commended together with the report published in March 2009 on the social situation of LGBT people.

Some respondents noticed, that in the Annual Report there were no criteria of selection of example of described cases. The reader may therefore be confused whether these are the only examples of violations or some selected cases from a much detailed and complete collection.

In general, several respondents wish that the report could be more analytical, that is, to focus less on raw statistical data and analyse more in depth the links between the data and the EU legal and policy framework. Information on national legislations is welcomed.

2.1.2. Relevance of issues and structure of opinions covered for civil society concerns

Some respondents are of the opinion that one of the major challenges for FRA is moving to cover the new areas of discrimination. The so called new grounds of discrimination should be given a greater priority. One area is related to those of no belief, the religiously unconcerned and the so called religious moderates. Discrimination of these groups is insufficiently recognised. An unspoken and unrecognised source of this discrimination is often religious groups. Also, a suggestion is made to include work on ethnic, traditional or national minorities in the Agency's remit.

The reference made to relevant jurisprudence by the European Court of Justice and the European Court of Human Rights is very useful. Such guidance is mentioned to be a key to assist civil society in its human rights advocacy work towards the EU institutions.

Some regret that the analysis of the Racial Equality Directive only focuses on the implementation of the provisions on equality bodies, but not on other important provisions. It is suggested to undertake a comprehensive assessment of the state of implementation of all key provisions of the Racial Equality Directive in the report. The fact that the FRA report gives an overview of complaints mechanisms in the EU member states is welcomed. However, there is no analysis of

the effects of complaints on the actual implementation of the Racial Equality Directive, nor any mention of strategic litigation and its potential value in this respect.

It is acknowledged that in the part concerning “Developments regarding Fundamental Rights Issues in the EU” the report provides useful information. However, some respondents think that this part of the report remains on a too general and descriptive level without any real analysis of the situation. Also, some respondents would like to see an analysis between the national level developments and the European one. The report confirms again that there is a lack of data in several member states. A question is raised how the Annual Report could support the engagement of civil society in improving the availability of data.

The pilot media project is commended, as well as FRA's continuing work in monitoring the impact of the directive 2000/43/EC is commended.

It is suggested to make the policy recommendations more visible. Very interesting policy recommendations can be currently found in the report, but they are not visible enough for an audience who might not have the time to read the entire report. It is recommended to have a recommendations' section addressed to different audiences.

2.2. Technical aspects of the report

2.2.1. Size, content and structure of the report

Some found the report in some ways difficult to read. It is also said that the size of the report is considerable and may deter readers from reading the whole document. More clarity with regard to the graphics of the report would be needed. Graphics concerning racist violence and crime are mentioned as an example where additional explanations would be needed.

The EU-MIDIS survey is mentioned transversally throughout the report but there is no explanation of the survey before Part II, which is confusing for readers. It would therefore be useful to include an introductory section on the EU-MIDIS survey at the beginning of the chapter on racism and discrimination in the EU.

The report, specifically the executive summary, does not always refer to precise countries when presenting violations of fundamental rights or good practices. There is a fear that keeping countries anonymous does not offer incentives for countries to make changes. E.g., the report often vaguely refers to "some member states". The information relating to racism and discrimination in areas of social life is found useful, but it is noted that information is fragmented and descriptive. While it provides some useful data, a more comprehensive analysis in a human rights and EU perspective is called.

In the section on developments at EU level, there is a lack of clarity as to what legal concepts are referred to - sometimes reference is made to the Council of Europe mechanisms and other times to EU legislation. This is sometimes confusing and it would therefore be useful to have an introduction for each of the themes presenting the legal framework for assessing the developments. Overall, an analysis of the extent to which the EU political and legal context has either contributed to promoting the enjoyment of rights and/or contributed to a reduced level, is lacking, in particular in relation to immigration.

In the future the annual report could include a section highlighting some activities of the Fundamental Rights Platform member organisations and their mutual cooperation emphasizing the FRP's role as a platform for know-how and exchange of information.

In order to make the report more dynamic and relevant for the stakeholders it would be good to specify any follow-up activities and planned actions for the future.

2.3. Suggestions for the follow up on the annual report

2.3.1. How well does the report meet civil society needs?

Several respondents suggest that FRA would produce more targeted material, such as fact sheets, in order to make visibility to its findings and opinions. In addition, awareness-raising events and meetings with the relevant national stakeholders would be much welcomed.

Concerning the statement that “the EU-MIDIS survey, completed in December 2008, found that awareness of anti-discrimination legislation among the migrant and minority groups surveyed is equally minimal”, a question is raised how the FRA is going to respond to this challenge and what will its strategy be to combat the situation of lack of awareness about fundamental rights of all groups in the EU. Similarly, the report reveals that there are very few examples (the reports mentions only one) of efforts for better and fairer access to education. A respondent asks how FRA will take this into account in its future work plans.

The rights of child perspective should be taken into account in FRA’s future work in the area of asylum and immigration, which in the current report is missing. Some of the consultation replies suggest that FRA should produce one comprehensive report on discrimination based on religion or belief. Some replies stressed the importance to work on bullying against teenagers on the European level as this phenomenon has catastrophic consequences and should not be forgotten when working with different groups: LGBT, ethnic minorities.

Recommendations are needed on the empowerment of disadvantaged groups and their participation in developing and implementing policies. Reporting on best practices coming from civil society need to be systematic. In addition, the executive summary should include a ‘Conclusion’ section which would analyse trends compared to previous years and put forward major recommendations.

It is considered very useful that FRA highlights important differences between the levels of protection granted by national legislation, while stressing that a majority of member states currently have basic instruments for protection. With regard to LGBT people’s rights the report underlines (the social study) the presence of discrimination in a number of areas of society. The problem of invisibility is a major hurdle to LGBT people who represent a disproportionate under-reporting of incidents. This reinforces the need for further work in this area. One specific area will be the rights related to LGBT families.

2.3.2. What topics of the report could be further researched?

FRA is asked to develop methodology and criteria for measuring the impact of FRA work on EU institutions and public opinion.

Within the framework of rights of child the link between the protection of privacy and the protection of children should be examined.

Multiple discrimination research should have a clear place in the Agency's work. Although the issue of intersectionality is not absent, e.g. in the chapter about the social situation concerning homophobia and discrimination on the ground of sexual orientation, it seems to be still weak in the analysis of racial discrimination and of immigration legislation and policies.

The agency could contribute to training programs intended for journalists in the area of sexual orientation and gender identity.

Reference is made to the EU Charter of Fundamental Rights stating that all actions relating to children, whether taken by public authorities or private institutions, must have child's best interest as a primary consideration. In this regard the Agency is suggested to pay a closer attention to the right to education in mother tongue for vulnerable groups and/or ethnic minorities. The Agency should monitor that education is made available and accessible at all levels to the members of minority and vulnerable groups.

The access of non-citizens to political and civil participation is seen as a critical point which FRA should address. FRA is recommended to research the ways to improve and extend the political participation of non-citizens to the EU democratic life.

A suggestion is made that FRA will develop activities for the European Year against Poverty in 2010. One area could be social inclusion policies and their implications for ethnic minorities and migrants.

With regard to more immediate responses to human rights violations within the EU, it is suggested that FRA would undertake more incident reports (on the model of the one on the attacks against Roma in the Ponticelli district in Italy).

More systematic insights on the linkages between the various developments (at EU, Council of Europe, and other international levels) and how these can strengthen human rights protection in the EU would be welcomed. For instance, it would be interesting for the Agency to explore the added-value of the EU becoming a party to the Council of Europe Convention against Trafficking. Some analysis by the Agency on how future EU institutional reform could influence the EU human rights framework could be interesting.

2.3.3. How can FRA together with civil society organizations follow up on the opinions?

It would be useful to have templates for the members of the Fundamental Rights Platform which would be designed to help civil society organisations to measure the influence of the annual reporting by FRA. Feedback from FRA on the FRP's suggestions should be regular.

FRA is encouraged to develop a set of materials and products which place the human rights in a day to day context which all citizens and residents in EU, including older people, can relate to.

This should be done in close cooperation with a selected group of stakeholders. For instance, FRA should seek advice from child rights' organisations within the Fundamental Rights Platform when developing child related publications, research and other documents.

The annual report systematically refers to the important lack of reliable data. Reliable quantitative data is an essential step in the development of evidence based policies. As stated in the Council Regulation establishing the FRA, the Agency should collect, record, analyse and disseminate relevant, objective, reliable and comparable data. The collection of quantitative data should complement the work realised by the Agency in the field of qualitative research through the development of indicators. In doing so, the FRA should liaise with child rights organisations within the Fundamental Rights Platform and include their collection of data on child protection issues, among which the problems of missing and sexually exploited children. Where the lack of uniform definitions hampers the collection of data, the Agency should develop specific proposals on the issue.

A number of studies carried out by FRA's partners have put forward the difficulties undergone by many LGBT adolescents in their place of education. These studies provide data about the situation in some Member States, but they remain still partial and they do not show the entirety of the across the EU. It would be useful if Agency deals with this problem at the European level.

The launch of the annual report of the Agency is a key opportunity to raise awareness of the issues that are highlighted by the data and for the use of the data in advocacy work of civil society organisations. At the moment the potential for synergies between the awareness raising work of FRA and the role of civil society are underutilised and it is therefore unable to have the extent of impact or visibility that would otherwise be the case. In this context FRA is urged to explore the possibility of working with key organisations, e.g, through FRP, to develop joint strategies around the launch of the report.

FRA should organise events in partnership with older people's organisations at both the grass roots level and at the European level.

The annual report should come up with more analytic, specific and stronger EU wide suggestions for solutions to discrimination. FRA in general should take a more decisive and affirmative role in promoting human rights and pointing out fundamental rights violations within EU. Through its unique mandate among the European institutions FRA should emphasize its value added in EU. FRA should also become more active and rapid towards taking a stand concerning actual fundamental rights violations in the EU. In order to achieve this FRA should review some its working methods. Closer cooperation in information exchange with civil society could be one element in this.

3. FOLLOW UP

The outcomes of this consultation will be fed into the discussions and decisions on the FRA's future designing of the annual reports, as well as more generally in the planning of the Agency's work in 2010 and 2011. The number of valuable concrete suggestions will feed into to the developing of the Agency's operational work in different areas, such as research and analysis, communication, awareness-raising, networking and educational work.

ANNEX: List of participating organizations:

1. AGE – the European Older People’s Platform
2. Amnesty International
3. Association Européenne pour la Défense des droits de l’Homme (AEDH)
4. Black and Ethnic Minorities Infrastructure in Scotland (BEMIS)
5. Centro d’Iniziativa per l’Europa (CIE)
6. Child Helpline International
7. Conference of European Churches – Church and Society Commission
8. European Network Against Racism (ENAR)
9. European Women’s Lobby (EWL)
10. Federation of Western Thrace Turks in Europe
11. Helsinki Foundation for Human Rights Poland
12. Human Rights Without Frontiers
13. International Humanist and Ethical Union/National Secular Society, UK
14. Mental Health Europe
15. Missing Children Europe
16. Rainbow Rose