

# Mainstreaming fundamental rights: turning words into action



*To strengthen the European Union's evidence base on fundamental rights helps to identify how these rights are respected and promoted, not only 'on paper' but 'on the ground'. Fundamental rights are part of the founding values of the European Union (EU) that are minimum standards to which the EU's institutions and Member States are held accountable and which they should respect and promote. Mainstreaming fundamental rights can help turning words into action, especially if linked to relevant indicators. FRA has therefore developed rights-based indicator frameworks in areas of its competence, such as for the rights of the child, Roma and persons with disabilities. This allows to assess the status and outcomes of efforts to implement policy goals and policy cycles such as the European Semester. Using these rights-based indicators to assess whether specific actions or measures have reached their targets could facilitate a better understanding of drivers and barriers in policy implementation. From a fundamental rights perspective, this will allow for better law making and render policymaking more transparent while also holding policymakers accountable for their actions. In the long run, this will strengthen democratic legitimacy and entrench a fundamental rights culture in whatever the EU does.*

## Fundamental rights at the forefront

In the European Union (EU), the European Parliament elections and the appointment of a new European Commission marked the year 2014. Taking his oath of office on 10 December 2014, the European Commission President, Jean-Claude Juncker, confirmed the Commission's commitment to ensure that the Charter of Fundamental Rights of the EU is respected and complied with in all EU policies.

*"[I]t is an oath of independence and of respect of our Charter of Fundamental Rights. This is a strong political commitment from the whole College to ensure that the Charter is respected and complied with in all EU policies for which the Commission is responsible. This is no trifling matter – we are nothing if not for our values."*

European Commission (2014), 'Juncker Commission takes oath of independence at the European Court of Justice', Press release, Luxembourg, 10 December 2014

These strong words reflect the EU's pledge to continue its efforts to uphold fundamental rights through legal and policy measures.

Fundamental rights have gained in importance within the EU (for details, see Box on 'Mainstreaming fundamental rights in the EU', p. 12). Article 3 of the Treaty on European Union (TEU),<sup>1</sup> taking the EU's internal market as its starting point, notes in paragraph 1 that the Union's aim is to promote its values and in paragraph 3 that it "shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child". This is an invitation to mainstream fundamental rights in all EU policies.

EU institutions are bound to comply with the EU Charter of Fundamental rights in all areas in which they act. EU Member States are also obliged to do so when they take action, for instance, by means of legislation, policies or decisions that are based on EU law or are in an area where EU law applies.<sup>2</sup> Case law from the Court of Justice of the EU (CJEU), particularly the *Åkerberg Fransson* (C-617/10) case, has stressed that this obligation should be interpreted broadly.<sup>3</sup>

This 2014 FRA Annual report Focus examines how compliance with and promotion of the EU's

fundamental rights can be strengthened through the application of robust methodologies that can accurately and systematically assess progress in policy and legislative developments. FRA has already developed a formidable body of evidence in the form of statistical data and qualitative information, as well as rights-based indicator frameworks in areas of its competence. These are used in a compartmentalised way, focusing on specific issues, which limits the possibilities of mainstreaming important fundamental

rights issues. Indicators could be developed and applied in a more systematic way to support evidence-based policymaking in key EU policy cycles, at the same time as promoting a 'fundamental rights culture' to raise awareness among both 'duty bearers' and 'rights holders'. One way of achieving this is by using rights-based indicators more systematically and extensively, which reflect the way policy decisions correspond to and fulfil specific fundamental rights standards.

## Mainstreaming fundamental rights in the EU

Fundamental rights are a prominent part of the EU's founding values as listed in Article 2 of the TEU. Like the global set of international human rights, they are minimum standards to which the EU and its Member States are held accountable. For states to "respect, protect and fulfil" human and fundamental rights – stemming from the 1993 Vienna Declaration and Programme of Action\* – they must abstain from any action that may infringe on these rights, ensuring that rights violations are prevented and remedied, but also drawing attention to them and providing resources.

Human rights were traditionally emphasised in the EU's relations with third countries, and especially vis-à-vis states seeking EU membership. There is an increasing commitment to 'walk the talk' and increase efforts to protect and promote human rights – fundamental rights – within the EU system itself more systematically and effectively. From the early case law of the Court of Justice of the European Union (CJEU) in the 1960s, through the Amsterdam Treaty of 1999, which explicitly placed human rights at the core of EU values, to the Lisbon Treaty becoming law in 2009, the EU steadily expanded its commitment to protect fundamental rights within the EU.\*\*

With the Lisbon Treaty, the Charter of Fundamental Rights of the European Union became legally binding as primary law – on an equal level to the EU treaties – and applicable to EU institutions, as well as EU Member States when they are acting within the scope of EU law. It is important to note that the Charter is more comprehensive than the European Convention on Human Rights. It includes not only civil and political rights, but also economic and social rights, thus spanning the full spectrum and putting all rights on an equal footing in the EU system. The Council of Europe system covers economic and social rights through an additional human rights instrument, the European Social Charter (ESC).

Therefore, today it is possible to say that fundamental rights are at the very heart of EU affairs. With the EU institutions increasingly committed to promoting a culture of fundamental rights in both their internal and external actions, the EU Charter of Fundamental Rights is becoming an essential element in the normative core of all EU action. It is thereby transformed from a fundamental rights "ornament" to a fundamental rights "order".\*\*\*

The Commission's First Vice-President, responsible for fundamental rights, Frans Timmermans, also raised the importance of mainstreaming fundamental rights – a 'culture' that should influence EU and national action. He stressed, when taking his oath of office, that the European interest

*"is to make a difference for citizens. That is why we will focus on the big priorities – growth, jobs and investment. And by checking that every one of our proposals matches up to the standards of the Charter, we will carry forward the real fundamental rights culture which has developed in the EU, not to replace but to complement national systems of fundamental rights."\*\*\*\**

\* United Nations, Office of the High Commissioner for Human Rights, 1993 Vienna Declaration and Programme of Action, *World Conference on Human Rights, Vienna, 25 June 1993*; see also *International Human Rights Law*.

\*\* See, for instance, FRA (2012), *Bringing rights to life: The fundamental rights landscape of the European Union*, Luxembourg, Publications Office, p. 11–12.

\*\*\* Toggenburg, G.N. (2015), 'The EU Charter: Moving from a European fundamental rights ornament to a European fundamental rights order' in: Palmisano, G. (ed.), *Making the Charter of Fundamental Rights a living instrument*, Leiden, Brill.

\*\*\*\* European Commission (2014), 'Juncker Commission takes oath of independence at the European Court of Justice', *Press release, Luxembourg, 10 December 2014*.

This brief introduction seeks to stress that fundamental rights are at the heart of EU action. The next section presents FRA's experience with the development and testing of rights-based indicators, focusing on two examples, namely indicators that relate to the rights of persons with disabilities and indicators on Roma integration. The third section shows how a system of transparent indicators can be useful for evaluating and designing policy, and can even enhance transparency and citizen engagement.

## “What gets measured gets done”: experience with fundamental rights indicators

“What gets measured gets done.”<sup>4</sup> The preamble to FRA's founding regulation (Regulation (EC) No. 168/2007) notes that greater knowledge and broader awareness of fundamental rights issues in the Union help to ensure full respect of fundamental rights. Indeed, FRA was created to contribute to attaining this objective by providing and communicating information and data on fundamental rights matters. FRA has carried out these tasks by collecting and analysing comparable statistical data, conducting studies, publishing reports and analysis, both policy driven and policy relevant, and communicating these to its main stakeholders, EU institutions and Member State authorities. It thus fulfils the needs of the EU's institutions and Member States, as they are reflected in FRA's multiannual framework, and ad hoc requests.

At the same time, to identify, collect and analyse the relevant data it became necessary to develop guidance in the form of indicators that reflect the status and outcomes of efforts to implement policy goals respecting fundamental rights standards. Therefore, in 2007, following a European Commission request, FRA started to develop an indicator framework to guide its collection and analysis of data in the area of the rights of the child. It followed this up with efforts to develop indicator frameworks for the areas of the rights of persons with disabilities and Roma integration.

The need for indicators in following up the implementation of any process is unquestionable. Organisations – be they private companies or public authorities – steer their strategic decisions on the basis of what are commonly known as key performance indicators (KPIs). Such indicators are selected among a wide range of possible indicators on the basis of what is sought to be achieved. Using well-selected indicators enables organisations to better measure their performance and focus on improvements with a view to reaching strategic goals. Corporations may look at sales or turnover but also much more technical details related to, for instance, finances. The 40-odd

EU agencies around Europe, among which FRA numbers, have committed to using KPIs to guide their work.<sup>5</sup>

Indicators guide work in many other contexts serving different purposes. At a global level, there is a wide array of indicator systems broadly related to human rights. Some focus on specific areas, such as the environment or sustainable development, while others create indices with aggregate indicators and league tables ranking states' performance on a range of human rights. Among the more prominent indicator sets are the Millennium Development Goals and their successor, the Sustainable Development Goals.<sup>6</sup> The United Nations' Human Development Index ranks countries by issues such as life expectancy and schooling using gross national income (GNI) converted into purchasing power parity (PPP) terms to eliminate differences in national price levels.<sup>7</sup> The United Nations (UN) also has an Inclusive Wealth Index, which places a monetary value on issues such as education and health. The World Bank covers a range of issues using indicators such as governance and justice.<sup>8</sup> Significant non-governmental initiatives include the World Justice Project, comparing the rule of law across states globally.<sup>9</sup> The World Bank also developed a study looking specifically and in depth at the use of human rights-based indicators in economic and social development. It notes that the importance of these indicators lies both in linking the conceptual discussion about human rights compliance to implementation practices and in this way promoting human rights mainstreaming.

*“Why are human rights indicators important? First, they link the conceptual discussion about human rights compliance to implementation practices. They link the normative level of international legal obligation with the practical level of empirical data. At a different level, the employment of human rights indicators in development practice implies some form of human rights mainstreaming or some effort to integrate human rights.”*

*World Bank, McInerney-Lankford, S. and Sano, H.-O., (2010), Human rights indicators in development: An introduction, Washington DC, The World Bank, p. 14*

In the EU, some Member States use indicators to help them make policy choices related to human rights. In the **United Kingdom**, for instance, the Human Rights Measurement Framework published in 2011 by the Equality and Human Rights Commission is an “analytical tool” providing evidence for human rights analysis and assessments to meet the need for a comprehensive evidence base to evaluate compliance with and progress towards the implementation of human rights.<sup>10</sup> In **Portugal**, the National Committee for Human Rights has embarked on a cross-cutting project to establish indicator lists for the right to education, and the right to liberty and security of the person, to assess the implementation of these rights at national level, and to document reports to the human rights treaty-monitoring bodies.<sup>11</sup> Using indicator-based

schemes, the **Swedish** Agency for Participation looks at the situations of persons with disabilities and the Swedish Ombudsperson at those of children.<sup>12</sup> The European Council on Foreign Relations, an international think tank, keeps a scorecard on European foreign policy, showing in which areas the respective EU Member States as well as the EU institutions are taking the lead on foreign policy issues, and where they lag behind.<sup>13</sup>

The EU also uses indicators in a range of areas. This provides accessible, precise overviews based on data, such as the number of infringement proceedings by EU Member State. An example of this is the EU Single Market Scoreboard.<sup>14</sup> In its international development and cooperation policies, it also makes efforts to apply indicators to measure results.<sup>15</sup> Another example is the scoreboard of the Alert Mechanism Report. It provides evidence for the European Commission's Annual Growth Survey (AGS), which informs the deliberations of the European Semester using a number of economic and social indicators, such as the proportion of people who are at risk of poverty and social exclusion. Furthermore, the EU Justice Scoreboard, part of the AGS, has indicators central to fundamental rights – such as access to justice – measuring the efficiency and quality of justice systems, and the independence of the judiciary.

Rights-based indicators linked to a normative framework, for example the EU Charter of Fundamental Rights, can measure more than outcomes. They can be used to assess specific actions or measures that are put in place to reach targets. This could facilitate a better understanding of drivers and barriers in policy implementation, including through the disbursement of national and EU funds. As will be shown below, such an endeavour, although necessary, is complex. Establishing a robust and rights-based indicator framework has, however, several positive effects, in particular it strengthens the accountability and transparency of duty bearers' actions. Such elements can go a long way to bolster democratic legitimacy.

## Developing fundamental rights-based indicators: the work of FRA

*“Human rights indicators are useful tools for both analysing the situation of human rights in a given state and communicating best practices and institutional solutions that can be of interest to local and regional authorities within the state and between member states.”*

*Council of Europe, Congress of Local and Regional Authorities, Monitoring Committee (2011), Developing indicators to raise awareness of human rights at local and regional level, CG(21)10, 6 October 2011*

FRA is mandated to “develop methods and standards to improve the comparability, objectivity and reliability of data at European level, in cooperation with the European Commission and the Member States”.<sup>16</sup>

Indicators are a tool that provides guidance about the type of data and methodologies of data collection that would be relevant to policy. FRA started its indicator work in relation to the rights of the child following a European Commission request. It published a report in 2010, which was followed up in 2012 by an additional set of indicators on family justice.<sup>17</sup> FRA's work in this area has continued in response to requests from or collaboration with the Commission. Indicators are at various stages of development in relation to Roma integration<sup>18</sup> and rights of persons with disabilities,<sup>19</sup> and work is starting on migrant integration indicators. In its work, FRA has identified four lessons learned in regard to indicator development.

First, indicators have to be agreed through a deliberative process with the actors who will be assessed through their application. These would be primarily ‘duty bearers’, namely EU institutions and Member States, but also other stakeholders representing the ‘rights holders’, such as social partners and civil society, to ensure a wide consensus through informed participatory processes.

Second, they must be based on rigorous methodological criteria and principles, such as those of the Social Protection Committee Indicators Sub-group.<sup>20</sup>

Third, they need to have a clear normative interpretation. Regarding fundamental rights, they should refer to EU law, including the Charter of Fundamental Rights, as well as international standards accepted by EU Member States and, in the case of the UN Convention on the Rights of Persons with Disabilities (CRPD), by the EU.

Fourth, they should be populated promptly and efficiently with relevant data. This can be a complex task involving qualitative evidence – for example analysis of legislation, case law, strategies or action plans – and quantitative data, such as official statistics or results of scientifically validated academic research.

FRA has worked together with one of the early and most authoritative actors when it comes to indicator work in this area, the OHCHR. The OHCHR defines a human rights indicator as specific information on the state or condition of an object, event, activity or outcome.

*“A human rights indicator is specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights.”*

*Office of the High Commissioner for Human Rights (OHCHR) (2012), Human rights indicators: A guide to measurement and implementation, p. 16*

## Assessing the fulfilment of fundamental rights

The data populating social indicators, for instance those that are already used in the European Semester, can provide useful information on fundamental rights-related aspects, such as gender equality and the impact of age. They cannot, however, measure differences in individual characteristics protected against unequal treatment by EU secondary law, such as racial or ethnic origin, religion or belief, disability or sexual orientation, because such data are not available at EU level. These data are needed to assess the fulfilment of fundamental rights, as well as the need for targeted social protection measures to enhance social inclusion. FRA has collected such data on the socio-economic situation, discrimination experiences and criminal victimisation of specific population groups that are not targeted by the European statistical system, such as Roma and other migrant or national minority ethnic and/or religious groups, as well as lesbian, gay, bisexual and transgender persons.

In the area of Roma integration, FRA collected these data broken down by ethnic origin through its surveys. FRA provided the data to the European Commission for using them broadly in its evaluation of the national Roma integration strategies, thereby informing country-specific recommendations in the European Semester. EU agencies, such as the European Foundation for Living and Working Conditions (Eurofound), the European Centre for Disease Control (ECDC) and the European Environment Agency (EEA), also have data that would be relevant to a broader set of social indicators related to fundamental rights, as proposed by the European Parliament, such as on quality of work, child poverty levels, access to healthcare and homelessness. A range of data, knowledge and expertise relevant to fundamental rights and rule of law issues is also available from diverse sources, such as the Council of Europe monitoring bodies' reports, outcomes of the work of the European Commission for the Efficiency of Justice (CEPEJ), the Venice Commission, UN entities, such as the Office of the High Commissioner for Human Rights (OHCHR), the World Bank, the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF), and the OECD, as well as data collected by civil society, such as by members of the 'Semester Alliance'.

To obtain a coherent and comprehensive view of fundamental rights implementation using such indicators, it is important to have a framework in which these can be placed. The OHCHR developed a framework for assessing human rights compliance as a tool

that can assess outcomes as well as efforts made to achieve them.

This framework, now applied by FRA in its work, identifies three categories of indicators, designed to

**Figure 0.1: Indicator framework: structural–process–outcome**

<b>Structural</b>	Legal, policy and institutional framework	<b>Commitment</b>	Commitment to international human rights law Legislation in place Policies, strategies, action plans, guidelines adopted Institutional framework Complaint and support mechanisms exist	<b>Duty bearers</b>
<b>Process</b>	Policy implementation, effectiveness of complaints and support systems	<b>Effort</b>	Budgetary allocations Implementation of policies, strategies action plans, guidelines Effectiveness of complaint and support mechanisms	<b>Duty bearers</b>
<b>Outcome</b>	Situation on the ground – rights realised in practice	<b>Results</b>	Actual awareness of rights Actual impact of policies and other measures Actual occurrence of violations Comparative data	<b>Duty bearers</b>

Source: FRA, 2015, based on OHCHR (2012), *Human rights indicators: A guide to measurement and implementation*, Geneva, United Nations

capture duty bearers' commitment, efforts and results towards fundamental rights obligations.<sup>21</sup> These three categories or levels are labelled structural, process and outcome. They capture the legal and policy framework; the implementation of policies and effectiveness of measures, complaint mechanisms and support systems; and the situation on the ground concerning the fulfilment of rights (Figure 0.1).

Structural and process indicators are useful in measuring efforts to achieve results, not least for social and economic rights, some of which may be only progressively realised. These efforts include specific measures and budgetary allocations to implement them. The assessment of national and EU fund allocations on social inclusion and social protection could benefit from including such indicators, which could provide additional information about the implementation of ex ante conditionalities of the European Structural and Investment Fund regulations on equality and non-discrimination.

### Example of Roma integration rights-based indicators

Since 2011 and in response to the Commission's Communication on an EU framework for national Roma integration strategies, each Member State has developed a national Roma integration strategy (NRIS) or integrated sets of policy measures.<sup>22</sup> The communication also called on FRA to work with Member States to assist them in developing monitoring methods to measure progress in the EU. In response, FRA set up a working party on Roma integration indicators in 2011 in close collaboration with the European Commission (namely the Directorate-General for Justice and Consumers and the Directorate-General for Employment, Social Affairs and Inclusion), also involving other stakeholders, such as Eurostat, Eurofound, the World Bank, the UNDP, the Organization for Security and Co-operation in Europe, the Council of Europe, EEA and Norway Grants, and Open Society Foundations. Seventeen EU Member States are parties to the working group, which first met in 2012 and has had six meetings since then.

This working party gradually developed a set of common core indicators on Roma integration. In 2014, it started to test populating them with relevant, ethnically disaggregated data, as far as possible. In parallel, statistical offices from some Member States became more involved, to identify ways to generate such data through the use of ethnic identifiers or other means. The indicators are based on the structural-process-outcome (S-P-O) model, described earlier, and show progress in implementing existing policy targets outlined in the EU Framework on national Roma integration strategies and the Council Recommendation on effective Roma integration of 9 December 2013,<sup>23</sup>

as well as wider policy goals, including those in Europe's 2020 strategy.<sup>24</sup> The indicators cover the core policy areas for Roma integration, namely employment, education, health and housing, as well as issues such as non-discrimination and rights awareness.

Structural indicators show the extent to which the commitments and policy goals in regard to Roma integration are in line with relevant fundamental rights standards and contribute to respecting and fulfilling them. As an illustration, in the area of education, the Council Recommendation on effective Roma integration measures calls on Member States to take effective measures to ensure that Roma children have equal treatment and full access to quality mainstream education, and that all Roma pupils complete at least compulsory education. Structural indicators address whether or not legal and policy provisions are in place guaranteeing the right to quality education for Roma. Examples are the NRIS and mainstream policies which address equitable access to education for Roma children in reference to specific human rights standards on the right to education, such as the EU Charter of Fundamental Rights, as well as other EU, national and international instruments, such as the ESC. Assessing the extent to which legal and policy provisions fulfil these standards would be the task of competent authorities, for example the European Commission, as guardian of the treaties.

Process indicators inform policymakers about challenges faced at the implementation level. They do this by showing whether the way that strategies and policies are implemented achieves their intended results, and helps to identify possible implementation deficits. Process indicators on Roma integration are linked to measures proposed by the Council recommendation, which are reflected in the targets outlined in NRISs. In most cases, several measures are needed to achieve the targets. Having in place the measures, as required by the recommendation, is a necessary but insufficient precondition for achieving change. The measures should be matched by resources (inputs) that are later absorbed and translated into immediate results (outputs) – the indicator framework also reflects this element. The real results on the ground and the fulfilment of rights are then captured through the outcome indicators. In the example of education, process indicators would examine specific measures and relevant resources in place to: eliminate any school segregation; put an end to the placement of Roma pupils in special schools; reduce early school leaving; increase access to and improve the quality of early childhood education and care; provide inclusive teaching and learning methods; encourage greater involvement of parents; or widen access to second-chance education and adult learning. Assessing the extent to which such specific measures are instrumental in reaching policy targets and fulfilling fundamental rights standards would again

be a task of competent authorities, which in this case can include FRA.

Finally, outcome indicators show the success or failure of efforts made. They capture results concerning the status of the actual fulfilment of fundamental rights, which is the culmination of the entire process, from legal and policy commitments, through the supported measures required, to the end enjoyment of a right. These outcomes consolidate the overall impact of a series of processes over time and cannot always be expected to show change over a short period. Again, in the example of education, outcome indicators could include: enrolment rates of Roma children in early childhood education and care; enrolment rates in primary, secondary and/or tertiary education; attendance and drop-out rates at various levels of education; attainment rates at various levels of education; and proportions of children in segregated schools. Specific measures, such as using buses to reduce school segregation resulting from residential segregation, may show a change over a short period of time, but other measures targeting educational performance or attainment may require considerable time before they are reflected in significant change that is recorded statistically. Assessing the extent to which such specific outcomes are satisfactory and fulfil fundamental rights standards will depend on if and how such policy targets include specific benchmarks. This would be a task to be undertaken by competent authorities, such as the European Commission and Member States themselves.

### Example of rights-based indicators for the rights of persons with disabilities

Another area in which FRA is developing rights-based indicators using the same S-P-O framework concerns the rights of persons with disabilities. The EU acceded to the CRPD in 2010; since then, the Union is bound by the convention within the limits of its competences, and EU law must be interpreted in a manner consistent with the CRPD.<sup>25</sup>

FRA has a particular role to play in developing indicators related to the CRPD, as it is part of the EU framework to promote, protect and monitor the implementation of the convention, set up under Article 33 (2) of the CRPD (see [Chapter 1](#)). Under the Council decision establishing the framework, FRA's primary responsibility is to collect and analyse data, and to develop indicators and benchmarks.<sup>26</sup> The 26 specific articles of the CRPD create opportunities for indicators covering many different aspects of life. The framework's activities, however, are limited to areas of EU competence, such as non-discrimination and employment, so the rights covered by these indicators are considerably fewer.

With this in mind, FRA developed indicators on the right to political participation of persons with disabilities.

It populated them with data and information, and published them ahead of the European Parliament elections in May 2014.<sup>27</sup> These indicators are linked primarily to Article 29 of the CRPD on participation in political and public life, but they also relate to areas of EU competence. Under EU law, the right of EU citizens to vote and stand for election in European and municipal elections is grounded in Article 20 (2) (b) of the Treaty on the Functioning of the European Union (TFEU), as well as in Articles 39 and 40 of the Charter.

Working in close cooperation with the European Commission and the Commission-funded Academic Network of European Disability Experts (ANED), FRA identified 29 (S-P-O) indicators to measure how the right to political participation is respected, promoted and fulfilled across the EU. To ensure the indicators' applicability and usability, FRA consulted extensively on them with representatives of the Member States, as well as other Article 33 monitoring mechanisms and civil society organisations, including disabled persons' organisations. Responsibility for data collection was divided between FRA and ANED, each employing its network of in-country researchers.

Within the broad scope of political participation, the indicators focus on four key areas which reflect different aspects of Article 29 of the CRPD:

- legal frameworks regarding the right to vote and stand for election;
- accessibility of elections and voting processes;
- opportunities for participation in political and public life;
- awareness of the right to political participation of persons with disabilities.

Within each of these areas, relevant structures, processes and outcomes were identified.<sup>28</sup> For example, one structural indicator looked at the link between being deprived of legal capacity and limits on the right to vote.<sup>29</sup> Data collected by FRA show that Member States fall into three groups (see [Table 0.1](#)): those where all persons with disabilities, including all persons with intellectual or psychosocial disabilities, have the right to vote (full participation); those where, for people deprived of legal capacity, retaining the right to vote is contingent on a judicial or medical decision (limited participation); and those where all persons deprived of their legal capacity are automatically deprived of the right to vote (exclusion).

Building on the expertise gained during this process, FRA is expanding its indicator work to another aspect of the CRPD related to EU competence: the right to live independently and be included in the community

**Table o.1: Right to vote of people deprived of legal capacity in the EU, by Member State**

	Exclusion	Limited participation	Full participation
AT			✓
BE	✓		
BG	✓		
CY	✓		
CZ		✓	
DE	✓		
DK	✓		
EE	✓	✓	
EL	✓		
ES		✓	✓
FI		✓	✓
FR		✓	✓
HR			✓
HU		✓	
IE	✓		✓
IT			✓
LT	✓		
LU	✓		
LV			✓
MT	✓	✓	
NL			✓
PL	✓		
PT	✓		
RO	✓		
SE			✓
SI		✓	
SK	✓		
UK			✓

Note: An EU Member State can be represented in more than one group, as persons with psychosocial and intellectual disabilities can be treated differently according to the national law of the respective Member State.

Source: FRA, 2014

(Article 19). In 2014, FRA developed draft human rights indicators on Article 19, which will be populated, in part, with data collected in 2015 and 2016.<sup>30</sup>

In summary, rights-based indicators placed in a framework as described and applied in the case of Roma and of persons with disabilities and their rights would ground efforts made and efforts required in a specific

normative framework stemming from basic EU and international law; they would allow the measurement of commitment and efforts in addition to results and thus allow the assessment of policy measures on the basis of scientific evidence; and they would reinforce the interrelatedness of EU action with its values, improving the situation on the ground. All this would strengthen the credibility of EU policies where it



is applied and of the EU as whole. More concretely, applying indicators in this way would link legal and policy initiatives better to outcomes, to identify specific 'barriers' and 'drivers'. More importantly, this approach would raise awareness among 'duty bearers' of their obligations and among 'rights holders' about what they should expect for their rights to become reality. Ultimately, it would boost transparency and accountability and ensure the integration of fundamental rights in EU action, reinforcing the credibility of the EU.

## Making the fundamental rights culture operational by providing a broader evidence base in EU policy cycles

Strengthening the fundamental rights culture concerns not only the EU's institutions and Member States, as duty bearers, but also the Union's citizens, as rights holders. More than half of the respondents in an EU survey said that their voice "does not count in the EU" – that is an improvement over past results, but it conceals large variations between countries.<sup>31</sup>

Citizens increasingly see the EU as the main arena for decision making on measures that affect their everyday lives. National debates reflected this in 2014, as well as the media attention on discussions and decisions in the different structures and processes coordinating

the EU's economic governance. To increase ownership and hence the legitimacy of the relevant processes, two complementary avenues could be considered. One is to improve citizens' participation through their parliamentary representation; another is to support their engagement in civil society initiatives.

### Placing fundamental rights at the core

There have been a series of important actions at EU level aimed at operationalising fundamental rights, such as the creation of FRA (2007), the appointment of commissioners responsible for fundamental rights in the European Commission (2009, 2014), the 'fundamental rights check-lists' for Commission services but also for the other main EU institutions (2010), the EU Justice Scoreboard (2013) and others. Despite these, it would be useful to consider a more comprehensive approach in assessing how fundamental rights are respected and fulfilled within and across the Union in important EU policy cycles. Whereas the most all-encompassing approach would be to mirror the EU strategic framework and its action plan on human rights and democracy, as adopted by the Council of the European Union in 2012 for the EU's external relations, and adapt these instruments to the EU's internal life. There are also other, more sectorial or incremental, avenues.

Regardless of the specific avenues selected in future, FRA's experience suggests that an EU fundamental rights indicator framework that reflects the provisions of the EU Charter of Fundamental Rights would be useful to keep

### European Semester: the EU's annual policy cycle

The European Semester is an annual policy cycle introduced in 2010 involving all EU institutions, which have distinct roles in its different procedures. It provides guidance to national governments on the basis of Article 121 of the TFEU. The semester has a major impact on decisions concerning national budgets and impacts on fundamental rights guaranteed by the EU's Charter of Fundamental Rights, for example the rights of the child, the elderly and persons with disabilities as well as non-discrimination and equality between men and women. The semester starts with the publication of the Commission's assessment of the national macroeconomic and social situation, the AGS. For assessment, the AGS uses a scoreboard of economic and social indicators populated with data from the Employment Performance Monitor (EPM),<sup>34</sup> the Social Protection Performance Monitor (SPPM),<sup>35</sup> the Joint Assessment Framework (JAF) and other sources.

At the same time, the European Commission publishes the Alert Mechanism Report (AMR), which identifies Member States that would require in-depth review based on a scoreboard of indicators. The scoreboard is composed of 11 economic and social indicators, including unemployment rates, and a set of 'auxiliary indicators' with particular relevance to fundamental rights; these include long-term and youth unemployment, employment and activity rates, at risk of poverty or social exclusion rates, severe material deprivation rates, rates of those not in education, employment or training, and rates of persons living in households with very low work intensity. Based on this evidence, the Commission may provide guidance in the form of country-specific recommendations to the Council of the EU, which discusses the AGS and adopts conclusions, while the European Council provides further policy orientation. The European Parliament discusses the AGS, engages in the 'economic dialogue' process and issues an opinion on employment guidelines; it can also publish a report on its own initiative.

fundamental rights in focus more systemically. Such an indicator-based approach would add value where it can inform decisions of major importance for the daily lives of citizens. It would do this by strengthening the fundamental rights culture and improving accountability, transparency and participation, and thus democratic legitimacy. One example of a policy cycle where such decisions are made is the European Semester (see Box on 'European Semester: the EU's annual policy cycle', p. 19).<sup>32</sup> The European Parliament in its Resolution of 22 October 2014 on the European Semester for economic policy coordination: Implementation of 2014 priorities<sup>33</sup> calls on FRA to thoroughly assess the impact of the European Semester on fundamental rights and to issue alerts in case of breaches of the Charter. The resolution also calls for improved assessment of the fundamental rights impact of fiscal and structural reforms and for the inclusion of additional indicators in the scoreboard, such as quality of work, child poverty levels, access to healthcare and homelessness.

An important dimension of fundamental rights assessment already present in the AGS 2015, as in previous years, is the EU Justice Scoreboard.<sup>36</sup> In 2014, the second edition was released. It continued to draw mainly on data from CEPEJ, the Council of Europe expert body. The scoreboard consists of a number of comparative tables which serve as indicators measuring the efficiency and quality of justice systems, and the independence of the judiciary. The comparative assessment provides for the identification of outliers which may or may not be explained by contextual factors. The AGS argues that enhancing "the efficiency and securing the fairness of independent judicial systems" is an important prerequisite "for a more business- and citizen-friendly environment, which in turn fosters investment". In this regard, the AGS identifies "a clear need to tackle issues such as the length of proceedings, the number of pending cases, the insufficient use of ICT [information and communication technologies], the promotion of alternative dispute resolution mechanisms and the independence of judicial systems."<sup>37</sup>

## EU policies and economic and social rights

As seen above, major EU policies relate to civil and political rights, such as fair trial, including reasonable length of proceedings, as well as economic and social rights, such as those exemplified in the European Semester. Mainstreaming fundamental rights in the EU would require emphasising all types of rights. For social and economic rights, rights-based indicators can be particularly useful, since they can measure steps towards the gradual fulfilment of the obligations flowing from these rights and allow follow-up on progress made in structural reforms. The need to ensure respect for fundamental rights through structural reforms of social protection systems was reflected in the European Commission's

AGS 2015 of 28 November 2014. It acknowledged that "the economic crisis triggered an ongoing social crisis", and it included "modernising social protection systems" among seven proposed areas for reform aiming for sustainable job creation and economic growth. The AGS notes that "[t]here is a need for simplified and better targeted social policies complemented by affordable quality childcare and education, prevention of early school leaving, training and job assistance, housing support and accessible health care".<sup>38</sup> The findings of the AGS back up the findings of FRA's research, showing that the economic situation affects the way fundamental rights are fulfilled, such as the right to education; the right to engage in work; the right to non-discrimination, including equality between men and women; the rights of the child; the rights of the elderly; the rights of persons with disabilities; the right to health; and the right to an effective remedy and a fair trial.

Compliance with economic and social rights may also raise the issue of the obligations of EU Member States under the ESC. The possible impact of EU action on Member States' social protection systems, for example, cannot justify non-compliance with the Council of Europe treaty.<sup>39</sup> The European Committee of Social Rights has provided guidance in this respect by emphasising that any fiscal consolidation measures necessary to ensure the maintenance and sustainability of social security systems should not undermine the core framework of these systems or deny individuals the opportunity to enjoy protection against serious social and economic risk.<sup>40</sup> The ESC has, however, not been materially incorporated in the EU legal order in the way that the European Convention on Human Rights (ECHR) has been.<sup>41</sup> Whereas the ECtHR accepted a certain presumption of compatibility of EU law with the ECHR, the European Committee of Social Rights considers that it would be premature to presume that the measures adopted under EU law are in conformity with the ESC: "The Committee considers that neither the situation of social rights in the European Union legal order nor the process of elaboration of secondary legislation would justify a similar presumption – even rebuttable – of conformity of legal texts of the European Union with the European Social Charter."<sup>42</sup>

The relevance of social rights was also emphasised in the framework of the Council of Europe's 'Turin Process' for the ESC, aiming to reinforce the ESC's normative system within the Council of Europe and in its relationship with EU law. Those EU Member States that had not yet ratified the ESC were called upon to do so and the others were encouraged to allow collective complaints and to harmonise their commitments. In particular, they were all called upon to ratify the revised charter and accept all the provisions in the charter which are most directly related in substance to the provisions of EU law and the competences of the

EU (such as equal pay for women and men, and reasonable working hours). Another proposal for increasing the synergies between the Council of Europe and the EU in the context of economic and social rights aims to define an EU-relevant 'Community core' within the ESC to be drawn up to indicate to EU Member States which parts of the ESC are especially relevant in the EU context. One of the recommendations coming out of the Turin conference was to "[i]ntegrate social rights in economic recovery plans, adapt social impact indicators and new reference values to measure social well-being".<sup>43</sup> A follow-up conference organised by the Belgian Chairmanship of the Council of Europe Committee of Ministers in February 2015 led to a 'Brussels' document', intended to generate renewed efforts to strengthen social rights in Europe.<sup>44</sup>

## In conclusion: from paper to action

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

consolidating a fundamental rights culture and helping turn words into action.

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

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

The Charter of Fundamental Rights of the EU, as was argued in last year's Focus, puts flesh on the bones of all the values that are listed in Article 2 of the TEU and shared between the EU and its Member States. Further operationalising the commitment to the Charter could contribute to resolving the 'Copenhagen dilemma': bridging the artificial separation between the EU's value commitment vis-à-vis third and enlargement countries on the one hand and its Member States on the other. Fundamental rights indicators can help to further entrench a fundamental rights culture in whatever the EU does so that it can lead by example.<sup>45</sup>

## Endnotes

All hyperlinks accessed on 30 April 2015.

- 1 All EU legal instruments and case law are available at: <http://eur-lex.europa.eu>.
- 2 See, for instance, the Focus in FRA (2012), 'Bringing rights to life: The fundamental rights landscape of the European Union' in: *Fundamental rights: Challenges and achievements in 2011. Annual report 2011*, Luxembourg, Publications Office of the European Union (Publications Office). See also Chapter 10 on 'EU Member States and international obligations' in FRA (2014), *Fundamental rights: Challenges and achievements in 2013. Annual report 2013*, Luxembourg, Publications Office, as well as the online overview tables and figures on *International obligations*.
- 3 CJEU, C-617/10, Åkerberg Fransson, 26 February 2013.
- 4 Douglas Daft, Chief Executive Officer of Coca-Cola, as reported in: United Nations Development Programme (2000), *Human development report 2000: Human rights and human development*, Oxford and New York, Oxford University Press, p. 126.
- 5 EU Agencies Network (2014), *Performance indicators in EU agencies: Report from the Working Group on Performance Measurement of the Performance Development Network of the EU Agencies*, October 2014.
- 6 United Nations Department of Economic and Social Affairs, *Sustainable development goals*.
- 7 United Nations Development Programme (UNDP), *Human Development Index (HDI)*.
- 8 World Bank (2014), *Worldwide Governance Indicators*, The World Bank Group.
- 9 World Justice Project (2014), *WJP Rule of Law Index 2014*, Washington DC, The World Justice Project.
- 10 Equality and Human Rights Commission (2011), *The Human Rights Measurement Framework*.
- 11 United Nations Economic and Social Council (2013), 'Human rights indicators – a guide to measurement and implementation' – *launching of new publication and panel discussion*, Statement of Virginia Bras Gomes, 10 May 2013.
- 12 Sweden, Myndigheten för delaktighet, *Nationella indikatorer för mänskliga rättigheter*, Johanneshov, Handisam, and Barnombudsmannen, *Statistik om barn och unga*.
- 13 European Council on Foreign Relations (2015), *European Foreign Policy Scorecard*.
- 14 European Commission (2014), *Single Market Scoreboard*. For an overview of initiatives in the EU, see Frame (2014), *Baseline study on human rights indicators in the context of the European Union: Work package no. 13 – Deliverable No. 1*, 24 December 2014.
- 15 European Commission (2015), *Building partnerships for change in developing countries*; see also European Commission (2013), *Paving the way for an EU Development and Cooperation Results Framework*, Commission staff working document, SWD(2013) 530 final, 10 December 2013.
- 16 Council Regulation (EC) No. 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ 2007 L 53, 22 February 2007, Art. 4 (1) (b).
- 17 FRA (2010), *Developing indicators for the protection, respect and promotion of the rights of the child in the European Union*, Vienna, FRA.
- 18 FRA, *Multi-annual Roma programme*.
- 19 FRA (2014), *Indicators to assess the political participation of persons with disabilities in the EU*, Luxembourg, Publications Office
- 20 Social Protection Committee Indicators Sub-group, *Guiding principles for the selection of indicators and statistics*.
- 21 *Ibid.*, p. 33.
- 22 European Commission (2011), *An EU Framework for National Roma Integration Strategies up to 2020*, COM(2011) 173 final, Brussels, 5 April 2011.
- 23 Council of the European Union (2013), *Council Recommendation 378/1. 9 December 2013 on effective Roma integration measures in the Member States*, OJ 2013 C 278.
- 24 European Commission (2010), *A European strategy for smart, sustainable and inclusive growth*, COM(2010) 2020, Brussels, 3 March 2010, p. 9.
- 25 See the approach taken in the context of the report on the application of the equality directives: European Commission (2014), *Joint report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive) and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Employment Equality Directive)*, COM (2014) 2 final, Brussels, 17 January 2014, p. 14.
- 26 Council of the European Union (2012), '3196<sup>th</sup> Council meeting Transport, Telecommunications and Energy', Press release, PRES/12/447, Luxembourg, 29 October.
- 27 FRA (2014), *The right to political participation of persons with disabilities: Human rights indicators*, Luxembourg, Publications Office.
- 28 See FRA (2014), *Indicators on the right to political participation of people with disabilities*.
- 29 This followed up on previous FRA research published in 2010. See FRA (2010), *The right to political participation of persons with mental health problems and persons with intellectual disabilities*, Luxembourg, Publications Office.
- 30 For an overview of the project, see FRA, *Rights of persons with disabilities (the right to independent living)*.
- 31 European Commission (2014), *Standard Eurobarometer 82: Public opinion in the European Union*.
- 32 A stronger social focus for the EU and integration of broader indicators in the European Semester has been proposed, for instance, by the think tank Friends of Europe (2014), *A European social union: 10 tough nuts to crack*, p. 90; see also Friends of Europe (2015), *Unequal Europe: Recommendations for a more caring EU*, p. 27. A coalition of civil society organisations has also called for changes in this direction; see EU Alliance for a Democratic, Social and Sustainable European Semester (2014), *Let's make the European semester smart, sustainable and inclusive*, EU Semester Alliance, p. 5
- 33 European Parliament (2014), *Resolution of 22 October 2014 on the European Semester for economic policy coordination: Implementation of 2014 priorities (2014/2059(INI))*.
- 34 Council of the European Union (2014), *European Semester 2014: Contribution to the European Council (Brussels, 26-27 June 2014) (e) Employment Performance Monitor and Benchmarks (prepared by EMCO) - Endorsement*, ST 10763/1/14 REV 1, Brussels, 16 June 2014.
- 35 National social reports available online, see: European Commission, *Employment, social affairs & inclusion*.
- 36 European Commission (2014), *The 2014 EU Justice Scoreboard*, COM(2014) 155 final, 17 March 2014.

- 37 European Commission (2014), *Annual Growth Survey 2015*, Brussels, COM(2014) 902 final, 28 November 2014, p. 14.
- 38 *Ibid.*, pp. 3 and 12.
- 39 On the impact of the financial crisis, see, for example, European Parliament, LIBE (2015), *The impact of the crisis on fundamental rights across Member States of the EU: Comparative analysis*.
- 40 European Committee on Social Rights, *GENOP-DEI and AEDDY v. Greece*, Complaint No. 66/2011, para. 47.
- 41 Support for EU accession to the European Social Charter has been expressed by both the European Parliament (2014), Resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2013/2078(INI)), para. 8, and the Council of Europe, Parliamentary Assembly (PACE) (2014), Resolution of 8 December 2014 on the implementation of the Memorandum of Understanding between the Council of Europe and the European Union, para. 7.
- 42 European Committee on Social Rights, *Confédération générale du travail (CGT) v. France*, Complaint No. 55/2009, Decision, 23 June 2010, paras. 33–42.
- 43 Nicoletti, M. (PACE Vice-President) (2014), *High-Level Conference on the European Social Charter. General Report*, Council of Europe, Italian Presidency of the EU and City of Turin, 17–18 October 2014.
- 44 Council of Europe, Belgian Chairmanship of the Committee of Ministers (2015), ‘Brussels’ document on the future of the protection of social rights in Europe’, European Conference on the future of the protection of social rights in Europe, 12–13 February 2015.
- 45 For a recent example of the Union’s outspoken approach in the enlargement context, see Council of the European Union (2014), *Conclusions of the Council of the European Union and the member states meeting within the Council on ensuring respect for the rule of law*, General Affairs Council meeting, Brussels, 16 December 2014.