

**FRA Opinion – 2/2016**  
**[Art. 2]**

Vienna, 8 April 2016

Opinion of the  
European Union Agency for Fundamental Rights  
on the development of an integrated tool of  
objective fundamental rights indicators able to  
measure compliance with the shared values  
listed in Article 2 TEU based on existing sources  
of information

THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA),

Bearing in mind the Treaty on European Union (TEU), in particular Article 6 thereof,

Recalling the obligations set out in the Charter of Fundamental Rights of the European Union (the Charter),

In accordance with Council Regulation 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (FRA), in particular Article 2 with the objective of FRA *“to provide the relevant institutions, bodies, offices and agencies of the Community and its EU Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights”*,

Having regard to Article 4 (1) (d) of Council Regulation 168/2007, with the task of FRA to *“formulate and publish conclusions and opinions on specific thematic topics, for the Union institutions and the EU Member States when implementing Community law, either on its own initiative or at the request of the European Parliament, the Council or the Commission”*,

Having regard to Recital 13 of Council Regulation 168/2007, according to which *“the institutions should be able to request opinions on their legislative proposals or positions taken in the course of legislative procedures as far as their compatibility with fundamental rights are concerned”*,

Having regard to previous opinions of FRA on related issues, in particular on the EU and its monitoring framework under the UN Convention on the Rights of Persons with Disabilities,<sup>1</sup> but also to other FRA work, including studies on indicators and on the European ‘fundamental rights landscape’,<sup>2</sup>

Having regard to the request of the European Parliament of 14 March 2016 to FRA for an opinion *“on the development of an integrated tool of objective fundamental rights indicators able to measure compliance with the shared values as listed in Article 2 TEU [...] based on existing sources of information”*,

Emphasising that this opinion provides an overview that could be followed up with additional assistance and expertise, if requested,

SUBMITS THE FOLLOWING OPINION:

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<sup>1</sup> FRA (2016), Opinion concerning requirements under Article 33 (2) of the United Nations Convention on the Rights of Persons with Disabilities within an EU context (forthcoming May 2016).

<sup>2</sup> See the following FRA publications: [Using indicators to measure fundamental rights in the EU: challenges and solutions](#), Vienna, FRA, 2011; [Developing Indicators for the protection, respect and promotion of the rights of the child in the European Union](#), Conference edition, Vienna, FRA, 2010; [The right to political participation for persons with disabilities: human rights indicators](#), Luxembourg, Publications Office of the European Union (Publications Office), 2014. See also FRA’s ongoing project on Roma that involves indicators in a significant way, details available at: <http://fra.europa.eu/en/project/2013/multi-annual-roma-programme>; as well as the overview of FRA’s work on Roma and indicators in FRA (2015), [Fundamental rights: challenges and achievements in 2014](#), pp. 16–17.

# Opinions

## Relevance of fundamental rights for developing an integrated tool measuring compliance with Article 2 values: recognising international human rights as a central and overarching element

*EU law builds on international human rights law; and the rights enshrined in the Charter of Fundamental Rights of the European Union cover the full spectrum of human rights. Human rights as recognised in the Charter cover most of the values of Article 2 of the Treaty on European Union (TEU), including rule of law and democracy. Any European Union (EU) mechanism to monitor the respect of the values listed in Article 2 of the TEU needs to take as a basis the obligations reflected in the Charter and acknowledge the importance of existing international human rights law mechanisms.*

## Effective and credible fundamental rights indicators and the implementation of obligations beyond the ‘law in the book’: capturing commitments, efforts and results in an Article 2 context

*To effectively assess adherence to the values of Article 2 of the TEU, its measurement has to go beyond legislation or the creation of institutions. Emphasis should be given to implementing concrete policies and analysing their ‘real-life’ effect on the ground, namely to what extent people fully enjoy fundamental rights. Therefore, indicators that are developed to monitor compliance with Article 2 of the TEU need to capture three aspects: commitment (structural indicators), effort (process indicators) and results (outcome indicators). In doing so, indicators will capture EU Member States commitment to international human rights instruments, their implementation efforts and the outcome for the rights holders. To achieve a comprehensive picture of the situation on the ground, a contextual analysis (for example based on monitoring information of human rights treaty bodies or input by other expert or civil society actors) should complement the indicators’ measurement of fundamental rights compliance.*

## Populating indicators and providing context using United Nations and Council of Europe data and information

*Any EU mechanism put in place to monitor the respect of the values of Article 2 of the TEU should build on the valuable existing data and information from international human rights monitoring mechanisms. To bring together the most comparable and EU-relevant data from these sources, a filter is needed. Rendering these sources more accessible and visible in an EU context will give them greater prominence, which in turn will increase the efficiency of the existing United Nations and Council of Europe monitoring bodies. By refraining from adding new Article 2 reporting obligations, states would benefit from avoiding overlapping reporting obligations.*

*These sources will, however, only insufficiently cover certain areas and aspects; additional data and information collection, as well as analysis, will therefore be needed, for instance,*

*by obtaining sound evidence on people's – the rights holders' – experiences through administrative data and repeated surveys.*

## **Populating indicators and providing context using EU and national data and information**

*Any EU mechanism put in place to monitor the respect of the values of Article 2 of the TEU should build on existing data and information from various mechanisms and institutions at EU level. These produce various tools that monitor and document the implementation of the EU acquis, including the annual report on monitoring the application of EU law, the EU Justice Scoreboard, the corruption report and Schengen evaluations. Regarding fundamental rights, FRA's mandate is to collect and analyse relevant, objective, reliable and comparable information and data. This allows the Agency to deliver on its statutory objective to offer "assistance and expertise" relating to fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union. The Agency provides such data and services within the areas of EU competence. Any future monitoring mechanism for the values of Article 2 of the TEU should make full use of FRA's opinions, surveys and comparative reports.*

*All EU Member States have in place various structures with a human rights remit, ranging from courts to equality bodies and National Human Rights Institutions (NHRIs). These institutions generate data and analysis that should be taken into account in any monitoring mechanism for the values of Article 2 of the TEU. Input by civil society organisations should be used to contextualise this information. Such national input is also important to guarantee sufficient engagement in the process of assessing compliance with Article 2 values, resulting also in greater prominence of human rights bodies at national level.*

## **Operationalising existing data through an EU fundamental rights information system to populate indicators and generate regular synthesis reports**

*There is a wide range of data, information and analysis available under the existing monitoring mechanisms and other human rights-related processes at national, European and international levels. This richness of resources is, however, not easily accessible, and the various levels and instruments are not sufficiently linked; the information about a given state is scattered in a variety of different sources. Awareness and use of these sources could be enhanced by creating a single access point, an EU fundamental rights information system. Such a system could be used to populate indicators to systematically monitor the respect of the values of Article 2 of the TEU.*

*Such an integrated EU fundamental rights information system should allow to generate regular synthesis reports, thereby providing an objective evidence base of information and contextual analysis of indicators. These synthesis reports could complement the various reports related to fundamental rights delivered by the three EU institutions, the European Parliament, Council of the EU and the European Commission. They could also contribute to the annual dialogue on the rule of law in the Council of the EU, as well as other debates on the situation in EU Member States that risk undermining mutual trust in the common area of freedom, security and justice.*

## Introduction

FRA received a request from the European Parliament dated 14 March 2016 to deliver an opinion *“on the development of an integrated tool of objective fundamental rights indicators able to measure compliance with the shared values as listed in Article 2 [of the Treaty on European Union] TEU (democracy, rule of law, fundamental rights) based on existing sources of information and evaluation instruments already in place in this field”*. FRA understands that the request aims to support the preparation of the legislative own-initiative report by the European Parliament (LIBE) *“on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights”* (2015/2254(INL)).

Article 2 of the TEU lists the values that the “Union is founded on” and that are “common to the Member States”. They are closely linked to the available enforcement mechanisms in Article 7. The ultimately political decisions on taking action under Article 7 of the TEU need to be underpinned by objective and comparative analysis based on comparable and reliable information and data to guarantee full equality in the treatment of individual Member States. A range of actors have raised the benefits of objective criteria to be able to assess the situation across the EU in a fair manner.<sup>3</sup>

Indicators can contribute greatly to such analysis by ‘indicating’ possible areas of concern, which would then require further in-depth analysis. ‘Indicators’ refers to selected key aspects of an issue, such as a particular fundamental right, that can be used to assess the overall situation of the enjoyment of that right. Data and information are needed to ‘populate’ an indicator. For indicators to be useful by capturing situations objectively, the data need to be comparable, in the sense that the same criteria should be used to analyse the situation across the EU Member States.

A concrete example of human rights indicators may be useful. The United Nations Office of the High Commissioner for Human Rights (OHCHR) has developed a methodology for human rights indicators (further addressed in Section 2 of this opinion). The guidance provided by the OHCHR includes elaboration on indicators for specific rights under the Universal Declaration of Human Rights (UDHR). Article 19 of the UDHR, on the right to freedom of opinion and expression, includes in the OHCHR-example close to 40 indicators, ranging from: commitment to related international human rights law instruments that include the freedom of expression; national legislation giving effect to the right; number of media outlets in relation to concentration of ownership; number of recognised or supported media institutions by ethnic minorities; and number of complaints by journalists on restrictions to media freedom.<sup>4</sup> While the OHCHR’s examples of indicators are sometimes insufficiently detailed for the EU context, they nicely illustrate the nature of human rights indicators. Section 2 of this opinion provides a FRA-specific example.

This FRA opinion examines whether:

1. human rights can be used as an overarching concept for the values listed in Article 2 of the TEU;
2. indicators can effectively be used to measure compliance with the shared EU values;

<sup>3</sup> For an overview of such calls, see FRA (2011), [Using indicators to measure fundamental rights in the EU: challenges and solutions](#), Vienna, FRA; see also FRA (2014), [Fundamental rights: challenges and achievements in 2013, FRA Annual report](#), p. 16.

<sup>4</sup> OHCHR (2012), [Human Rights Indicators: A guide for Measurement and Implementation](#), Geneva, United Nations, p. 97.

3. existing data and information from international monitoring mechanisms would provide credible sources for populating indicators and additionally needed context;
4. existing data and information from EU and national level bodies would provide credible sources for populating indicators and additionally needed context;
5. additional practical tools could be developed to operationalise existing data and indicators and support various EU processes concerned with fundamental rights and EU values more broadly.

The overall approach of this opinion is both conservative and innovative, as it proposes using already existing mechanisms and information in a more efficient and synergetic manner. FRA remains available to provide more specific advice or input.

The European Parliament's attention to compliance with the values in Article 2 of the TEU relates to developments the EU has witnessed in recent years in some Member States, which have raised concerns about the commitment to the values on which the EU is founded: *"respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities [and exist] in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail"*.<sup>5</sup>

The Irish Presidency of the Council of the EU in the first half of 2013 asked FRA to look into the feasibility of using indicators to measure EU values such as fundamental rights. This led to an informal and explorative process involving, at technical level – apart from FRA and Ireland – also Finland and the Netherlands, which elaborated indicators on a very limited set of aspects and piloted these with a view to seeing to what extent such indicators could be 'populated' using existing data and information from international and European human rights monitoring bodies. A number of useful lessons were drawn from this exercise, which can be built on in this opinion.

FRA's experience with indicators dates back to its early years, almost a decade ago, and has come to concern a range of fundamental rights issues.<sup>6</sup> Indicators have been applied to the fundamental rights of children, persons with disabilities, and Roma, but also to other contexts, such as the rights of victims of crime. FRA's extensive work on large-scale surveys on issues such as discrimination and violence against women is closely related to its work on indicators – and more comprehensive work in this regard is forthcoming. This conforms well to the EU Regulation laying down the work of the Agency, which includes among the Agency's tasks to *"develop methods and standards to improve the comparability, objectivity and reliability of data at European level, in cooperation with the Commission and the Member States"*.<sup>7</sup>

Without being exhaustive, this opinion underlines the importance of drawing on existing data and information in any assessment of the values in Article 2 TEU, and outlines how this could be done.

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<sup>5</sup> On the Article 2 values, see [The European Union as a Community of values: safeguarding fundamental rights in times of crisis](#), Vienna, FRA, 2013.

<sup>6</sup> An overview is available in FRA (2015), [Fundamental rights: challenges and achievements in 2014](#), FRA Annual Report, pp. 11 et seq.

<sup>7</sup> Article 4 (1) (b) of Council Regulation 168/2007.

## 1. Relevance of fundamental rights for developing an integrated tool measuring compliance with Article 2 values: recognising international human rights as a central and overarching element

The values of the European Union, listed in Article 2 of the TEU, cover a range of issues that can be summarised as involving three main components:

1. democracy
2. the rule of law
3. human/fundamental rights

The three components are intimately related and overlap.<sup>8</sup> The fact that human rights cover or overlap significantly with the first two of the three components of Article 2 – rule of law and democracy – supports the argument that fundamental rights – largely to be equated with human rights – could be used as the main framework for assessing the EU values. A second and maybe even more persuasive point is that, for fundamental rights, the EU is already equipped with a well-defined instrument – the Charter of Fundamental Rights of the European Union, which stems from international and European human rights texts. Definitions for, and the scope of, the other two main components – rule of law and democracy – are not defined in any comparable EU ‘catalogue’.

### Article 2 of the TEU

*“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.*

*These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”*

The rule of law is a wide concept that has been interpreted in different ways, ranging from ‘thin’ to ‘thick’ notions of the rule of law. The Council of Europe Venice Commission recently distilled the principle of the rule of law into a very useful checklist. The checklist covers a relatively wide (thick) set of aspects and overlaps significantly with fundamental rights on most of the overall headings (such as ‘equality before the law and non-discrimination’ and ‘access to justice’ including ‘fair trial’), but also adds dimensions that overlap less (such as ‘legality’ and ‘legal certainty’).<sup>9</sup>

Democracy is an even less clear-cut value than the rule of law and there is no generally accepted ‘list’ that would define democratic governance in Europe. However, the EU Charter of Fundamental Rights also includes – apart from a number of rights on which democracy is built, such as freedom of expression – Title V on Citizens’ rights, which includes EU-specific democratic rights on voting and standing for election to the European Parliament (Article 39) and municipal elections (Article 40). Elements of democracy have otherwise been laid down

<sup>8</sup> The strong link between the rule of law and human rights is also underscored by the European Commission for Democracy through Law (‘Venice Commission’), Rule of law checklist, CDL-AD(2016)007, 18 March 2016, paragraph 31.

<sup>9</sup> European Commission for Democracy through Law (‘Venice Commission’), Rule of law checklist, CDL-AD(2016)007, 18 March 2016.

in a Council of Europe convention, the European Charter of Local Self-Government.<sup>10</sup> At a global level, UN instruments include central elements of democracy (such as the ICCPR, Article 25 (b)).<sup>11</sup> Regionally, the European Convention of Human Rights deals with essential aspects (such as Article 11, on freedom of assembly and association, or Article 3 to protocol 1, on the right to free elections), while another regional instrument elsewhere could elaborate in quite some detail on democracy.<sup>12</sup>

The values listed in Article 2 of the TEU, with its three constituent components – the rule of law (■), democracy (■) and human rights (■) – are shown in Figure 1, visualising the significant role that human rights play in each of the components (see ■ boxes). The TEU Article 2 values also single out a number of specific aspects of human rights (■), which are equally included in Figure 1 as smaller boxes within the human rights-box.

**Figure 1: Schematic visualisation of values of Article 2 of the TEU, emphasising the role of human rights**



Source: FRA, 2016

The three constituent components – *the rule of law, democracy and human rights* – of the values listed in Article 2 of the TEU are well captured by the rights enshrined in the Charter of Fundamental Rights of the European Union.

## FRA opinion

***EU law builds on international human rights law; and the rights enshrined in the Charter of Fundamental Rights of the European Union cover the full spectrum of human rights. Human rights as recognised in the Charter cover most of the values of Article 2 of the Treaty on European Union (TEU), including rule of law and democracy. Any European Union (EU) mechanism to monitor the respect of the values listed in Article 2 of the TEU needs to take as a basis the obligations reflected in the Charter and acknowledge the importance of existing international human rights law mechanisms.***

<sup>10</sup> Council of Europe, [European Charter of Local Self-Government](#).

<sup>11</sup> The passage reads: “To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”.

<sup>12</sup> See, for example, [African Convention on Democracy, Elections and Governance](#).



## 2. Effective and credible fundamental rights indicators and the implementation of obligations beyond the ‘law in the book’: capturing commitments, efforts and results in an Article 2 context

To adequately capture an issue with indicators, a methodology is needed that gives systematic direction to what needs to be assessed. This section contains two parts: the first presents the leading framework for human rights indicators, and the second gives a concrete example of its application, drawing on FRA’s experience.

### Using a framework of structural, process, and outcome indicators

Indicators should ideally capture as much of reality as possible, covering not only ‘the law on the books’ but also the ‘reality on the ground’. The framework developed by the OHCHR, which aims to do just this, is therefore split into three levels: structural, process and outcome. The framework (outlined in Figure 2) thus captures commitments, efforts, and results. The commitments at the structural level (adoption of legislation, creation of institution) and the efforts at the process-level (adoption and implementation of concrete policies) assess the actions of the duty-bearers – mainly governments. The outcome-level focuses on results, assessing the situation on the ground as seen by the rights-holder, mainly individual persons. In doing so, the indicator framework seeks to reflect more than the formal legalistic façade, and to move towards the socio-legal reality.

**Figure 2: Schematic overview of the methodological framework: structural, process, and output levels**

<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, etc 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	<b>Rights holders</b>

Source: Visualisation based on OHCHR (2012), [Human rights indicators: A guide for measurement and implementation](#), New York/Geneva, United Nations

Results from an informal and small-scale FRA pilot project initiated by the Irish EU Presidency indicate that data and information from international and European human rights monitoring mechanisms deliver relevant and credible indicators to assess the structural level. When it comes to the process level (policy implementation), this is less the case. At the outcome level, the results

on the ground for rights holders are – depending on what needs to be captured – less comprehensive and difficult to compare. Here, FRA’s work with large scale surveys and other EU surveys can in part already fill gaps, alongside administrative data and resources available at national level – such as assessments by National Human Rights Institutions.

FRA has already conducted, and published the results from, large-scale surveys dealing with discrimination based on race and related intolerance; gender (violence against women); hate crime; lesbian, gay, bisexual, transgender and intersex (LGBTI) people; and Roma.<sup>13</sup> FRA has also made advances in developing a large-scale quantitative survey that will look at a range of fundamental rights issues as experienced by the general population in the EU’s 28 Member States. The survey is being undertaken with a view to producing comparable indicators for EU Member States on key fundamental rights.<sup>14</sup>

When it comes to selecting and formulating indicators, it is advantageous to apply a participatory approach, bringing in the viewpoints of both government structures and civil society organisations.<sup>15</sup> This contributes to indicators being of high quality, useful and credible.

Indicators must also be designed with a view to capturing as many nuances as possible, such as through drawing on data disaggregated between women and men.<sup>16</sup>

Moreover, as has been noted, to obtain a comprehensive picture of the situation on the ground, indicators’ measurement of fundamental rights compliance needs to be supplemented by contextual analyses that address the wider picture – for example, based on monitoring information of human rights treaty bodies or input by other expert or civil society actors. These may reveal ‘legitimate reasons’ for matters flagged by the indicators.

## A concrete example drawing on FRA’s work with indicators

Since 2010, the EU itself is party to the UN Convention on the Rights of Persons with Disabilities (CRPD).<sup>17</sup> Article 33 (2) of the convention requires parties to designate or establish a monitoring framework. As a member of the EU framework, FRA has a particular role to play in developing human rights indicators on the rights of persons with disabilities.<sup>18</sup> Under the Council decision establishing the Framework, FRA’s primary responsibility is to collect and analyse data, and to develop indicators and benchmarks.<sup>19</sup>

FRA has so far developed indicators on two of the specific rights set out in the CRPD: participation in political and public life (Article 29),<sup>20</sup> and living independently and being included in the

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<sup>13</sup> In addition to FRA publications, see the data explorer at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps?mdq1=theme>.

<sup>14</sup> See <http://fra.europa.eu/en/project/2015/fundamental-rights-survey>.

<sup>15</sup> OHCHR (2012), *Human Rights Indicators: A guide for Measurement and Implementation*, Geneva, United Nations, see e.g. p. 43.

<sup>16</sup> OHCHR (2012), *Human Rights Indicators: A guide for Measurement and Implementation*, Geneva, United Nations, see e.g. p. 68.

<sup>17</sup> Depository notification with the UN on 23 December 2010, available at: <https://treaties.un.org/doc/Publication/CN/2010/CN.860.2010-Eng.pdf>; the instrument was submitted based on Council Decision 2010/48, 26 November 2009, OJ L23/35, 27 January 2010, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1456938324513&uri=CELEX:32010D0048>. The treaty entered into force in respect of the EU on 21 January 2011.

<sup>18</sup> For more information, please see FRA (2015), *Fundamental rights: challenges and achievements in 2014*, *FRA Annual Report*.

<sup>19</sup> European Commission (2012), *Commission non-paper on the setting-up at EU level of the framework required by Art. 33.2 of the UN Convention on the Rights of Persons with Disabilities*.

<sup>20</sup> FRA (2014), *The right to political participation for persons with disabilities: human rights indicators*, Luxembourg, Publications Office; an online presentation of the indicators is available at:

community (Article 19).<sup>21</sup> Working in close cooperation with the European Commission and the Commission-funded Academic Network of European Disability Experts, and following consultation with civil society organisations, FRA’s indicators on Article 29 of the CRPD were published in May 2014. The 29 structural, process and outcome indicators measure how the right to political participation is respected, promoted and fulfilled across the EU.

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 and administrative barriers regarding the right to vote and stand for election;
- accessibility of elections and voting processes;
- expanding opportunities for participation in political and public life;
- awareness of the right to political participation.

Within each of these areas, relevant structures, processes and outcomes were identified. For example, a structural indicator concerning legal and administrative barriers looked at whether EU Member States entered a reservation or declaration to Article 29 when they accepted the CRPD. Only one EU Member State had entered a reservation, limiting or qualifying its obligation to implement the provision.

A key process indicator looked at whether disabled persons’ organisations (DPOs) are consulted and involved in the development of laws and policies. This indicator captures whether there are procedures in place to implement Article 4 (3) of the CRPD, which requires States parties to closely consult with and actively involve persons with disabilities, through DPOs, in the development and implementation of legislation and policies to implement the convention. Evidence collected by FRA indicates that in almost half of Member States, such involvement is provided for in law; and in another 11 Member States, systematic procedures for consultation with DPOs are in place.

Applying FRA’s outcome indicators on Article 29 of the CRPD posed a particular challenge given the lack of reliable and comparable data. For example, one indicator looked at the accessibility of polling stations, a requirement set out in Article 29 (a) (i). The analysis highlighted that in 11 Member States no relevant data could be identified. Even where data are available, the lack of common definitions and methodologies, which hampers disaggregating data, makes it difficult to accurately assess the political participation of persons with disabilities in the EU.

Building on the experience gained during this process, FRA is currently applying its indicators on Article 19 of the CRPD (living independently and being included in the community). In an effort to ensure stronger outcome indicators, FRA is conducting new analyses of existing statistical data from EU social surveys. These statistical outcome indicators will shed new light on the impact of human rights commitments and policy efforts on outcomes for persons with disabilities in the EU, particularly if repeated to allow analysis of trends over time.

The CRPD Committee emphasised the importance of this indicator-related work in its concluding observations on the EU’s implementation of the CRPD, published in September 2015. In its comments on the EU’s implementation of Article 31 on statistics and data collection, the

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<http://fra.europa.eu/en/publications-and-resources/data-and-maps/comparative-data/political-participation>.

<sup>21</sup> Indicators available at: <http://fra.europa.eu/en/project/2014/rights-persons-disabilities-right-independent-living/indicators>.

committee recommended that the EU “develop a human rights-based indicator system in cooperation with persons with disabilities and their representative organizations”.<sup>22</sup>

## FRA opinion

***To effectively assess adherence to the values of Article 2 of the TEU, its measurement has to go beyond legislation or the creation of institutions. Emphasis should be given to implementing concrete policies and analysing their ‘real-life’ effect on the ground, namely to what extent people fully enjoy fundamental rights. Therefore, indicators that are developed to monitor compliance with Article 2 of the TEU need to capture three aspects: commitment (structural indicators), effort (process indicators) and results (outcome indicators). In doing so, indicators will capture EU Member States commitment to international human rights instruments, their implementation efforts and the outcome for the rights holders. To achieve a comprehensive picture of the situation on the ground, a contextual analysis (for example based on monitoring information of human rights treaty bodies or input by other expert or civil society actors) should complement the indicators’ measurement of fundamental rights compliance.***

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<sup>22</sup> CRPD Committee (2015), [Concluding observations on the initial report of the European Union](#), CRPD/C/EU/CO/1, 4 September 2015, para. 73.

### 3. Populating indicators and providing context using United Nations and Council of Europe data and information

To populate indicators, data and information from international human rights mechanisms, in particularly of the United Nations and Council of Europe, offer a wealth of resources that must be made good use of to monitor the respect of the values of Article 2 of the TEU. International human rights here includes both global mechanisms and those at European level. The Council of Europe has a particular relevance for the EU, as expressed in the Memorandum of Understanding between the two organisations, in which the EU recognises that “the Council of Europe will remain the benchmark for human rights, the rule of law and democracy in Europe”, and regards the Council of Europe as the Europe-wide reference source for human rights. Consequently, the EU and the Council of Europe have a shared responsibility for preserving the coherence and efficiency of the European human rights system.<sup>23</sup>

This section consists of six parts. The first looks at the formal commitment to international human rights treaties. The second part addresses the commitment to enlarged scope and enhanced monitoring mechanisms available under some treaties. The third part deals with assessments made by international human rights monitoring mechanisms. The fourth part focuses on monitoring mechanisms based on complaints, such as the European Court of Human Rights. The final part brings the section together by arguing for the development of an ‘EU core’ of international human rights obligations and concluding on the benefits and challenges of the discussed data and information.

#### Assessing formal commitment to international human rights treaties

There is a solid set of international human rights obligations that all Member States of the EU share. For instance, of the around 60 Council of Europe and UN instruments (treaties as well as specific features, such as acceptance of individual complaints) included in FRA’s online overview of international obligations,<sup>24</sup> around 20 enjoy acceptance by all 28 EU Member States, and another 20 instruments enjoy acceptance by at least 20 EU Member States. For the EU context, the Court of Justice of the European Union has also recognised general principles of EU law on the basis of international agreements that were not *ratified* by all EU Member States. It “draws inspiration from [...] the guidelines supplied by international treaties for protection on which member states *have collaborated or to which they are signatories*” (emphasis added).<sup>25</sup>

The instruments accepted<sup>26</sup> by all 28 EU Member States include:

- European Convention on Human Rights (ECHR) (and some of its protocols)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

<sup>23</sup> [Memorandum of Understanding between the Council of Europe and the European Union](#), signed in May 2007, Para. 11.

<sup>24</sup> See: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.

<sup>25</sup> CJEU, Opinion 2/94 – Accession to the European Convention on Human Rights, ECR I-1759 (1789), para. 33.

<sup>26</sup> Accepted is here used in a non-technical sense, meaning that the instrument (treaty or protocol, or features that needs separate acceptance within these) has been accepted and is binding for the state. This acceptance could be done through procedures such as ratification or declaration (opting in or out as the case may be). Acceptance in the technical sense in the context of international law would be equivalent to becoming party to a treaty (or protocol) only.

- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data
- European Charter of Local Self-Government
- International Convention on the Elimination of All forms of Racial Discrimination (ICERD)
- International Covenant on Civil and Political Rights (ICCPR) (and Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the rights of the Child (CRC) (Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict)
- Convention and Protocol relating to the Status of Refugees

If the scope is enlarged to include instruments that at least 20 Member States have accepted, it would add, for instance:

- European Social Charter (ESC) and European Social Charter (revised) (ESC revised)
- Framework Convention for the Protection of National Minorities (FCNM)
- Convention on Cybercrime
- Council of Europe Convention on Action against Trafficking in Human Beings
- Convention on the Rights of Persons with Disabilities (CRPD)
- Individual complaints mechanisms under several UN instruments:
  - International Convention on the Elimination of All forms of Racial Discrimination (ICERD)
  - International Covenant on Civil and Political Rights (ICCPR)
  - Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
  - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
  - Convention on the Rights of Persons with Disabilities (CRPD)

The 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) on 1 April 2016 had 12 EU Member States as parties and an additional 13 signatories – so this instrument will very soon reach the level of at least 20 of the 28 EU Member States, if not all 28.<sup>27</sup>

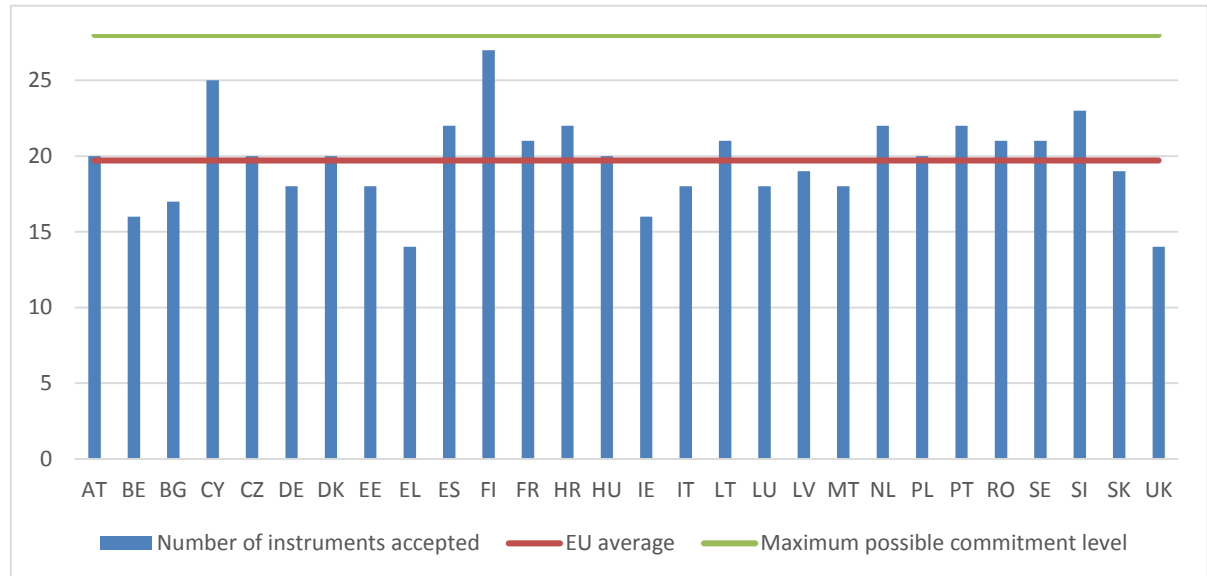
States' commitment to international human rights law, in the form of becoming party to conventions, is an objective action that captures their formal commitment. Figure 3 shows

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<sup>27</sup> For details, see [Council of Europe, Convention on preventing and combating violence against women and domestic violence \(Istanbul Convention\)](#).

the commitment to 28 key Council of Europe instruments by EU Member State and the EU average (including the Council of Europe instruments listed above).<sup>28</sup>

**Figure 3: Commitment to 28 key Council of Europe instruments, by EU Member State including EU average**



Source: FRA 2016, data extracted from <http://www.coe.int/en/web/conventions/full-list>

A similar overview of the 35 most central UN instruments is included in Figure 7 in the Annex.<sup>29</sup>

Providing a further example of what could be useful to include, the Annex also contains an overview of the number of accepted provisions of either of the two versions of the European Social Charter (Figure 8). When becoming party to a convention, it is often possible to make reservations to particular provisions, or interpretative declarations, both of which may limit the scope of the obligations. This is an additional element that would be important to consider (see also the example from FRA’s work in the second part of the second section of this opinion).<sup>30</sup>

## Assessing acceptance of expanded scope and enhanced human rights monitoring

Human rights treaties often also contain some additional features that states may decide to be bound by, through either opting in or out. In some instances, these additional features are in separate instruments – protocols – while in others, these are built-in with a requirement to express consent to being bound by (or being excluded from) a particular provision. These can concern an enlarged scope of protection, but more commonly involve enhanced monitoring mechanisms, such as individual complaints. Figure 4 shows the

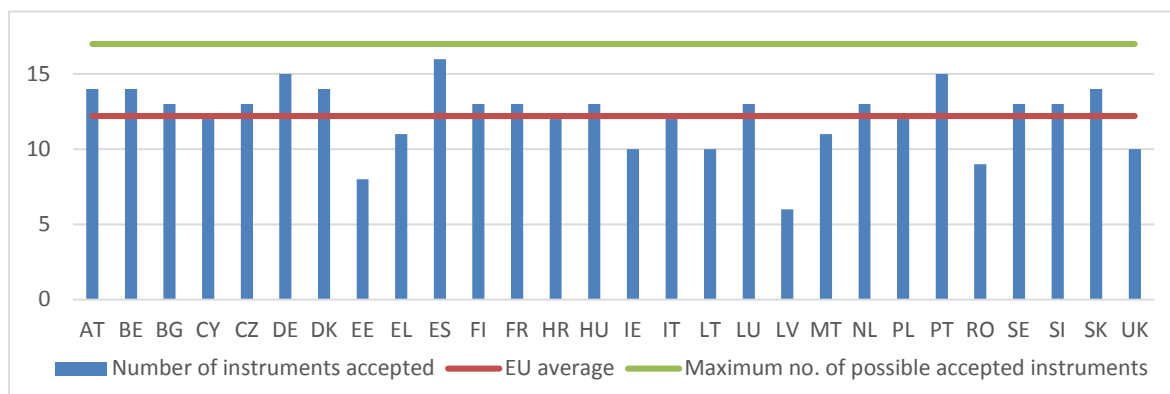
<sup>28</sup> The full list of the 28 key Council of Europe instruments, including details on acceptance, is available at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations/coe>.

<sup>29</sup> The full list of the 35 most central UN instruments, including details on acceptance, is available at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations/un>.

<sup>30</sup> Another possible element to look at would be the objections to reservations, which states may make in protest of other states’ attempts to delimit obligations.

acceptance<sup>31</sup> of these features under the core UN conventions by EU Member State, and the EU average. The figure shows that some Member States are much more willing to accept enlarged scopes and enhanced monitoring. In this way, the figure indicates the extent of states' commitment to the international human rights machinery.

**Figure 4: Number of instruments (additional obligations) accepted (enlarged scope and monitoring mechanisms) under the core UN conventions, by EU Member State including EU average**



*Note: The measures included are all 'opt-ins', in the sense of requiring the party to take active measures to be applicable, save for the CAT and CEDAW inquiry procedures for which there is a need for a party to actively make a declaration to 'opt-out'. Not all optional measures are included. Dispute settlement by the International Court of Justice is not, since a link to a stronger human rights commitment to an acceptance of this is not clear. The individual complaints mechanism under the ICRMW is not yet in force. The figure does not take signatures only into consideration (possible only for protocols), only full acceptance.*

Source: FRA 2016, Data extracted from <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

The Annex (Figure 9) also contains a more general overview of the number of EU Member States that have accepted individual complaints under the nine core UN conventions.

As noted, the acceptance (as shown in Figure 4) of an enlarged scope of the substantial commitment and, maybe even more so, of the procedural aspect of enhanced monitoring, says a lot more than acceptance of the treaties alone. The enhanced monitoring very often gives teeth to more general commitments and adds justiciability at an international level – a welcome development as it provides (quasi-)judicial avenues complementing the traditional mechanisms to access justice at national level. This justiciability also reinforces the very rights-based nature of fundamental rights – in that they can be claimed by rights holders. These kinds of data can contribute to an assessment of the commitment to the values of Article 2 TEU at the 'structural' level.

## Drawing on assessments by monitoring bodies

In addition to the commitment to treaties and the various instruments within these, the assessments by monitoring carried out under these treaties, as well as other human rights monitoring mechanisms, should be made use of. At each of the 'governance levels' – from the United Nations to the Organization for Security and Co-operation in Europe (OSCE), the

<sup>31</sup> This opinion uses 'acceptance' in its ordinary sense, here to denote becoming party to a treaty, irrespective of what process (with the various technical labels) was used – and not as the technical term that has the same meaning as 'ratification'. For treaty law terminology, see [https://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1\\_en.xml](https://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml).



Council of Europe, the EU, the national and even sub-national level – a range of monitoring mechanisms with a human rights remit exist.<sup>32</sup>

The United Nations have nine core human rights conventions, each equipped with a monitoring body (in the case of the Torture Convention, also an additional ‘Sub-Committee’) that assesses state performance against the human rights in the respective treaty. Some of them also process individual complaints. The International Labour Organization (ILO) also has a monitoring mechanism examining both procedural and substantive compliance with their wide range of instruments.<sup>33</sup> Different from these expert committees is the United Nations peer-review mechanism set up under its Human Rights Council, which screens all United Nations members against the rights of the UDHR (the Universal Periodic Review, UPR).

Turning to the next layer, the OSCE has, for instance, the High Commissioner on National Minorities and the Representative on Freedom of the Media, as well as a number of Special Representatives of the OSCE Chairperson-in-Office (such as on combatting anti-Semitism; racism, xenophobia and discrimination; gender issues; and combatting trafficking).

The Council of Europe has its well-known European Court of Human Rights (ECtHR) and its less known European Committee of Social Rights (ECSR), which jointly monitor the full spectrum of human rights, from civil and political (ECtHR), to economic, social and cultural (ECSR). The Council of Europe also offers a range of additional monitoring bodies, including on national minorities, on discrimination, and on violence against women.

The European Union has a dedicated body to advise the EU institutions and Member States on issues relating to the whole spectrum of fundamental rights – FRA – as well as other bodies focusing on specific fundamental rights aspects, such as the European Data Protection Supervisor and the European Ombudsman.

At national level, which Section 4 of this opinion addresses in more detail, there are also a number of monitoring mechanisms with a human rights remit.

The monitoring of human rights performance carried out by these mechanisms at all levels provides a rich amount of information and analysis that should be used in any assessment of the values in Article 2 of the TEU. All of them provide needed context that can situate findings from indicators. Not all of these bodies, however, presently produce data and information that can be used to populate indicators. Their task is first and foremost to assess the states against the standards, which does not necessarily require a *modus operandi* that enables comparison. For this to happen, the assessments have to be relatively stringent so that comparative conclusions can be drawn. Some of the monitoring mechanisms do provide for such elements of comparison. Complaints-based mechanisms such as the European Court of Human Rights would lend themselves to such comparison, but such data will be dealt with separately in the next section.

Prominent examples of monitoring mechanisms that do produce very useful comparative assessments include the European Committee of Social Rights. This guardian of the European Social Charter considers the compliance of a state’s performance as a whole. States are free to accept different provisions of the Charter. They are then assessed by the Committee in terms of compliance with these provisions. The Committee’s assessment clearly indicates

<sup>32</sup> For a more comprehensive overview of UN treaty bodies and Council of Europe monitoring mechanisms, see FRA (2012), [Bringing rights to life: The fundamental rights landscape of the European Union](#), Luxembourg, Publications Office.

<sup>33</sup> See International Labour Organization (ILO) (2016), [Report of the Committee of Experts on the Application of Conventions and Recommendations, Application of International Labour Standards](#) Geneva, ILO. See also the follow up: <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/conference-committee-on-the-application-of-standards/lang--en/index.htm>.

conformity or non-conformity with accepted provisions, and can thus generate a percentage of conformity of national legislation with accepted provisions of the Charter. The periodic assessments cover different provisions every year, in a four-year cycle.

Another monitoring mechanism that generates more comparable assessments is the European Committee for the Prevention of Torture (CPT), the Council of Europe monitoring body on deprivation of liberty. Following up on its visits, the CPT issues reports that are first shared with the government in question and will be made public at governments' request. States' agreement to have the monitoring reports published automatically is a promising sign. Apart from such commitments by Moldova and Ukraine, two EU Member States have recently allowed for this, namely Bulgaria and Luxembourg.<sup>34</sup>

More tellingly, however, is a mechanism at the disposal of the CPT to address severe situations, the so called Public statement (Article 10 (2)).<sup>35</sup> Where a state fails to implement the Committee's actual recommendations, the CPT may, as a last resort, make a public statement. As of 1 April 2016, there are public statements with regard to four Member States of the Council of Europe,<sup>36</sup> including two EU Member States.<sup>37</sup> The reports issued by the CPT would also state whether an Article 10 (2) procedure is open or that opening one is being considered, which – like the public statements – gives an indication of the level of severity of concerns. However, it should be noted that it is not a system of absolute comparability since the CPT may base its decision to warn about or open an Article 10 (2) procedure, or indeed issue a public statement, on strategic choices as to what will have the best impact. Still, the procedure does indicate systemic concerns as well as a general unwillingness or inability to act on the CPT advice. CPT reports also include other comparative aspects relating to the quality of detention, using clear and precise standards.

The Committee of Ministers of the Council of Europe follows up on assessments by monitoring mechanisms, such as the judgements of the European Court of Human Rights. There are also useful follow-up procedures by some of the monitoring bodies themselves; in the Council of Europe context, the European Commission against Racism and Intolerance and the Group of Experts on Action against Trafficking in Human Beings (GRETA) can bring more comparative assessments.

The mentioned ILO monitoring mechanisms offer a comparative framework, with a distinct and consistently used vocabulary for the level of 'concern' used by the Committee of Experts on the Application of Conventions and Recommendations.

A number of other mechanisms, including the mentioned Universal Periodic Review, could be similarly useful, by looking at the rate of acceptance of the recommendations made. This could at least reveal something about the level of commitment (even though this hinges in part on the quality of the recommendations). Bringing together data and information from this range of monitoring mechanisms through an 'EU filter' would facilitate access and application. Such increased visibility would also give the work they do greater prominence, which in turn would increase the efficiency of the existing monitoring bodies. Also, by

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<sup>34</sup> Council of Europe news item, 7 March 2016, available at: <http://www.coe.int/en/web/human-rights-rule-of-law/-/bulgaria-and-luxembourg-agree-to-automatic-publication-of-reports-by-council-of-europe-anti-torture-committee?inheritRedirect=true&redirect=/en/web/human-rights-rule-of-law/home>.

<sup>35</sup> The provision of the ECPT reads: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter."

<sup>36</sup> See <http://hudoc.cpt.coe.int/eng>.

<sup>37</sup> Bulgaria and Greece. On Greece, see [CPT/Inf \(2011\) 10](#), 15 March 2011; on Bulgaria, see [CPT/Inf \(2015\) 17](#), 26 March 2015.

refraining from adding new Article 2 reporting obligations, states would benefit from not having further overlapping reporting obligations.

While the various monitoring mechanisms work in distinct ways and have their respective strengths, the assessments made are important for tracking fundamental rights in the EU and would significantly contribute to monitoring at least aspects of the commitment towards, and efforts regarding, the values of Article 2 TEU.

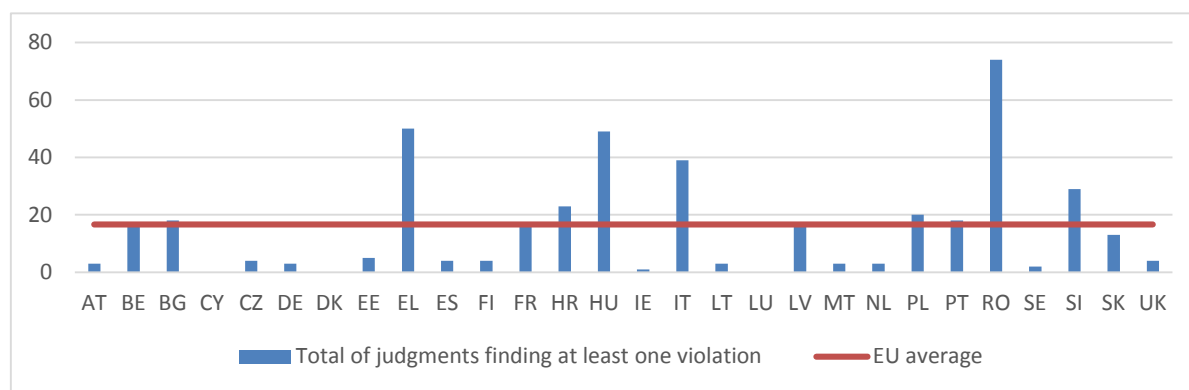
It should, however, be stressed that these sources will not always sufficiently cover certain areas and aspects. Additional data and information collection, as well as analysis, will therefore be needed; for instance, by obtaining sound evidence on people’s – the rights holders’ – experiences through administrative data and repeated surveys.

### Drawing on assessments based on particular data from complaints mechanisms

Data from complaints mechanisms, such as the European Court of Human Rights (ECtHR), can be most useful for populating indicators. It should be underscored, however, that a high number of complaints does not necessarily indicate a greater human rights problem. Instead, it could reveal stronger rights awareness or a better capacity to bring cases ‘to Strasbourg’. At the same time, the number of violations of certain rights identified by the Court can point to structural problems, even though the absence of violations in other states could be due to reasons other than the situation there being ‘better’. This shows that a mechanical ‘bringing together’ of monitoring data is not sufficient, because the information needs to be contextualised and analysed with appropriate expertise.

Nevertheless, Figure 5 shows the number of ECtHR judgments issued in 2015 that find at least one violation of the European Convention on Human Rights (ECHR), by EU Member State including the EU average.

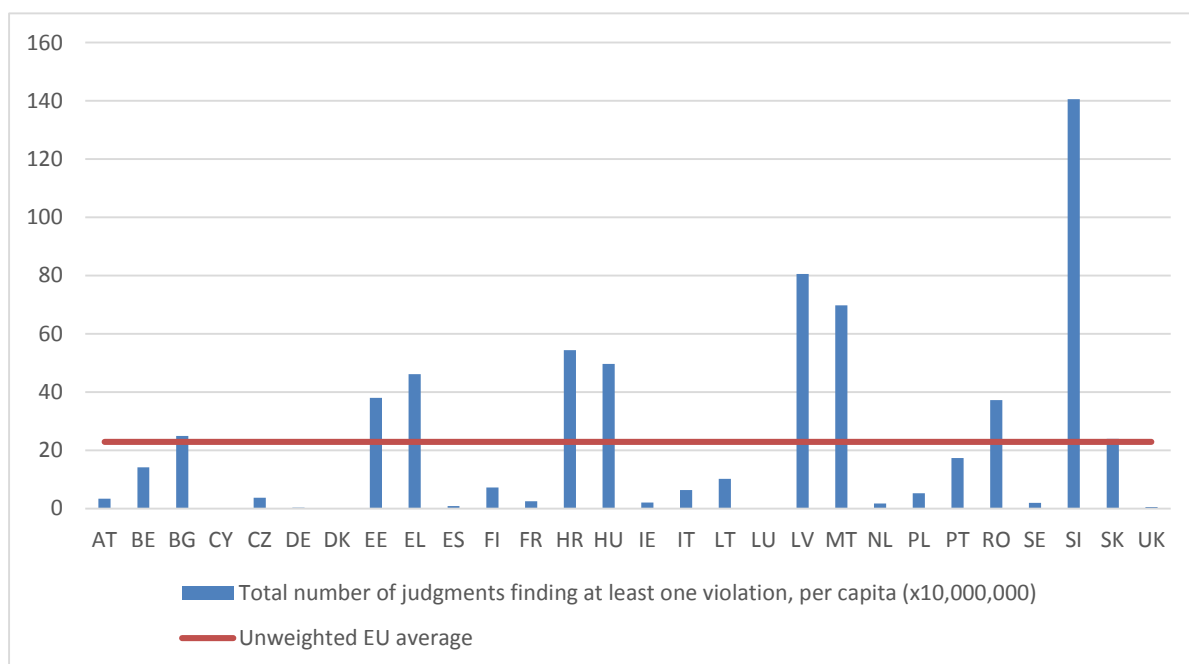
**Figure 5: Number of ECtHR judgments in 2015 finding at least one violation of the ECHR, by EU Member State including EU average**



Source: FRA 2016, Data extracted from

[http://www.echr.coe.int/Pages/home.aspx?p=reports&c=#n1347956867932\\_pointer](http://www.echr.coe.int/Pages/home.aspx?p=reports&c=#n1347956867932_pointer)

The number of cases from a country is to some extent related to the size of its population. If this factor is taken into consideration, an adjusted picture emerges. An overview is provided in Figure 6, which shows the number of ECtHR judgments during 2015 finding at least one violation, per capita, by EU Member State and against the EU average.

**Figure 6: Number of ECtHR judgments in 2015 finding at least one violation, per capita, by EU Member State including EU average**

Source: FRA 2016, data from <http://www.echr.coe.int/Pages/home.aspx?p=reports&c=#n1347956867932> pointer

A more in-depth and stable analysis of cases can be achieved by looking at a longer time period, and by focusing on specific violations by Member State. This reveals more apparent systemic violations (which have been complained about, and processed by the European Court of Human Rights).

A further possibility with complaints-based data would be to look at specific rights, such as those on a fair trial (Article 6 of the ECHR). It is also possible to draw on the execution of judgments, where the Council of Europe has data available.<sup>38</sup> The ECtHR also issues so-called ‘pilot judgments’ for repetitive types of cases from a particular country that come before the court, which would be a further way of analysing the more systemic problems identified.<sup>39</sup>

## An ‘EU core’ of human rights obligations

Given the overlaps between the European Social Charter and various provisions in primary and secondary EU law, the European Committee of Social Rights – the Committee that monitors the European Social Charter – underlined that it would be useful “to provide a definition of a kind of ‘Community core’ within the Charter to give EU member states clear indications in this respect”.<sup>40</sup> “Community core” here means the degree to which the Council of Europe instrument at stake is thematically covered by EU legislation (or, at least, by potential EU legislation, i.e. the legislative competences of the EU). Arguably, every relevant international human rights instrument has a core of provisions that are of direct relevance for EU law. It

<sup>38</sup> See e.g. the [annual reports of the Committee of Ministers of the Council of Europe, on the Supervision of the execution of judgments and decisions of the European Court of Human Rights](#), see also FRA’s overview of the EU28 in this regard, available at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations/leading-cases>.

<sup>39</sup> See [http://www.echr.coe.int/Documents/FS\\_Pilot\\_judgments\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf).

<sup>40</sup> European Committee of Social Rights, [The relationship between European Union law and the European Social Charter, Working document](#), 15 July 2014.

would indeed be useful to distil from all existing international monitoring the information that is of relevance for the implementation of existing EU law.

The exercise of identifying the ‘EU core’ of international obligations would have the additional benefit that it could highlight and help tap the EU’s potential to contribute to a better implementation of Member States’ international human rights obligations. With regard to the conventions concluded in the framework of the Council of Europe, the heads of state and government agreed in 2005 that the “European Union shall strive to transpose those aspects of Council of Europe Conventions within its competence into European Union Law”.<sup>41</sup>

However, it should be recalled that in an Article 2 / Article 7 TEU context, the relevance of international human rights law goes beyond this ‘EU core’ as “the scope of Article 7 is not confined to areas covered by Union law”, but also applies to situations where the Article 2 values are breached “in an area where the Member States act autonomously”.<sup>42</sup>

### Drawing on existing international mechanisms: multidimensional benefits

There are various arguments for drawing in particular on existing international and European monitoring mechanisms to better ‘join-up’ layers of governance, linking – for example – the work of the UN with that of the Council of Europe and that of the EU and its Member States.<sup>43</sup> These include the following three:

1. Bringing together the decisions or recommendations of existing human rights monitoring efforts would provide a consolidated picture that reinforces the message of identified patterns and reduces the complexity of the overall advice, thus enhancing the impact of mechanisms and structures already in place.
2. By doing so, joining up the various levels should also improve EU Member States’ commitment to the existing standards, as well as adding incentives ‘from the EU’ for better reporting under, and follow up to, the various mechanisms established at other layers of governance.
3. As a result, a more strongly joined-up approach may also lead to more efficient reporting, reducing ‘reporting fatigue’; to improved and better coordinated monitoring between the levels; and to enhanced comparativeness between states and over time.

Also, international and European monitoring mechanisms have been established by states and so benefits from a level of credibility that is difficult to achieve with alternative sources, such as academia- or civil society-led data or information.

The feasibility and usefulness of drawing on already existing data and information is underscored by FRA’s experience with the previously mentioned pilot project initiated by the Irish Presidency of the Council of the EU. A concern with some of the data from the monitoring bodies is less frequent periodicity (up to five years), which could reduce their usefulness. Still, some data are annual or even *ad hoc* on ‘a need to’ basis, and would better lend themselves to comparison.

<sup>41</sup> See Guideline No. 5 of the [Guidelines on the relations between the Council of Europe and the European Union](#), attached to the Action Plan CM(2005)80 final as of 17 May 2005.

<sup>42</sup> European Commission, *Communication from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union. Respect for and promotion of the values on which the Union is based*, Brussels, COM (2003) 606 final, p. 5.

<sup>43</sup> See also, for example, the UN Office of Drugs and Crime (UNODC) and Eurostat are coming together to coordinate the collection of data – across countries – on crime statistics.

There are certainly a range of other most credible and useful sources for data and information, and even indicators available from other actors. These should be considered and assessed, and could supplement the sources – largely based on systematic expert assessments – highlighted here. As is further explored in the next section, sources in addition to those outlined here will be needed for a comprehensive methodology that captures the ‘depth of reality’ – including national legislation, institutional set-up, policy and policy implementation, large scale surveys and administrative data. Survey and administrative data are important to capture the experience of people – the rights holders – on the ground. Survey data can capture particular nuances, while administrative data from a variety of sources, systematically collected by governments, may feed into the EU statistical system via national statistical offices and Eurostat and capture more general aspects. Although this data collection may not seem to lend itself to indicators relating to Art. 2, this issue warrants further exploration. As stated, commitment indicators are relatively easy to capture, but efforts and results indicators much less so, even though administrative data and surveys may contribute significantly in this regard; the next section addresses this in more detail.

## FRA opinion

***Any EU mechanism put in place to monitor the respect of the values of Article 2 of the TEU should build on the valuable existing data and information from international human rights monitoring mechanisms. To bring together the most comparable and EU-relevant data from these sources, a filter is needed. Rendering these sources more accessible and visible in an EU context will give them greater prominence, which in turn will increase the efficiency of the existing United Nations and Council of Europe monitoring bodies. By refraining from adding new Article 2 reporting obligations, states would benefit from avoiding overlapping reporting obligations.***

***These sources will, however, only insufficiently cover certain areas and aspects; additional data and information collection, as well as analysis, will therefore be needed, for instance, by obtaining sound evidence on people’s – the rights holders’ – experiences through administrative data and repeated surveys.***

## 4. Populating indicators and providing context using EU and national data and information

To populate indicators, data and information should not only come from international human rights mechanisms, even though this opinion focuses on such mechanisms. Various resources are also available at EU and national levels, and these must also be considered for monitoring the respect of the values of Article 2 of the TEU.

At EU level, FRA’s work with comparative studies and surveys has already been mentioned. FRA’s socio-legal approach, extensive in-house research capacity and connection to networks in all EU Member States means the Agency is well-situated for EU-level assessments of fundamental rights. FRA’s mandate is to collect and analyse relevant, objective, reliable and comparable information and data. This allows the Agency to deliver on its statutory objective to offer “*assistance and expertise*” relating to fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union.

The European Institute for Gender Equality (EIGE) – FRA’s sister agency – produces comparative data and information within its sphere of the fundamental rights spectrum, something that should also be made good use of.

The European Commission certainly offers a range of sources for data and information, well-known in an EU context, including:

- implementation monitoring of EU legislation in the Member States;<sup>44</sup>
- EU Justice Scoreboard, which draws almost exclusively on data provided from the Council of Europe body the European Commission for the Efficiency of Justice;<sup>45</sup>
- anti-corruption report;<sup>46</sup>
- European Semester, EU’s macro-economic policy cycle that also involves social aspects, indicators and a scoreboard;<sup>47</sup>
- Eurostat data, including surveys on living conditions;<sup>48</sup>
- Schengen evaluation.<sup>49</sup>

Linked to the EU at a national level are equality bodies, required to be designated or established under EU law.<sup>50</sup> Similarly required are Data Protection Authorities.<sup>51</sup> Such bodies could be used in comparative assessments to capture in particular the efforts made in relation to equality and the right to privacy, by looking at their powers, human and financial resources, and impact.

<sup>44</sup> See [http://ec.europa.eu/atwork/applying-eu-law/implementation-monitoring/index\\_en.htm](http://ec.europa.eu/atwork/applying-eu-law/implementation-monitoring/index_en.htm).

<sup>45</sup> See [http://ec.europa.eu/justice/effective-justice/scoreboard/index\\_en.htm](http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm); see also CEPEJ [http://www.coe.int/T/dghl/cooperation/cepej/default\\_en.asp](http://www.coe.int/T/dghl/cooperation/cepej/default_en.asp).

<sup>46</sup> See [http://ec.europa.eu/dqs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index\\_en.htm](http://ec.europa.eu/dqs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm).

<sup>47</sup> See [http://ec.europa.eu/economy\\_finance/economic\\_governance/the\\_european\\_semester/index\\_en.htm](http://ec.europa.eu/economy_finance/economic_governance/the_european_semester/index_en.htm); see also FRA’s overview on this in relation to fundamental rights, FRA (2015), *Fundamental rights: challenges and achievements in 2014, FRA Annual Report*, pp. 11–21.

<sup>48</sup> See <http://ec.europa.eu/eurostat>.

<sup>49</sup> See [http://ec.europa.eu/dqs/home-affairs/what-we-do/policies/borders-and-visas/schengen/schengen-evaluation/index\\_en.htm](http://ec.europa.eu/dqs/home-affairs/what-we-do/policies/borders-and-visas/schengen/schengen-evaluation/index_en.htm).

<sup>50</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>51</sup> Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

National Human Rights Institutions, not required by EU law but central for fundamental rights, have a solid comparative accreditation system which makes clear if they are independent and effective enough as per the so-called Paris Principles.<sup>52</sup>

The important work of these bodies should of course also be considered. At a national level, administrative and survey data should also be used, to the extent they are sufficiently comparable.

Linked to the United Nations but at a national level are other useful resources that can contribute to assessing human rights. The second part of Section 2 of this opinion outlined FRA's experience in working with indicators in relation to persons with disabilities. The CRPD's obligation to designate or establish national monitoring frameworks makes comparisons across Member States possible. Similarly to the CRPD, the optional protocol to the United Nations Torture Convention (OPCAT) obliges states to set up a National Preventive Mechanism (NPM). The effectiveness of such bodies also offers an objective criteria that lends itself to comparison. There are other statutory bodies with human rights remit – such as Parliamentary Ombudspersons (which could also be designated as CRPD monitoring framework, NPM, or accredited as an NHRI) – that could also be useful in this regard.

Finally, at national level, civil society organisations – as well as 'international NGOs' – constitute, as mentioned earlier, a useful resource in 'validating' indicators and providing needed context to understand fully what indicators indicate. As stated repeatedly in this opinion, while data and information, including from the national level, can contribute to populating EU-level indicators, concerns regarding comparability and the general quality of data should not be underestimated – not the least when it comes to capturing efforts and results. This speaks for an integrated approach that takes additional sources into account.

## FRA opinion

***Any EU mechanism put in place to monitor the respect of the values of Article 2 of the TEU should build on existing data and information from various mechanisms and institutions at EU level. These produce various tools that monitor and document the implementation of the EU acquis, including the annual report on monitoring the application of EU law, the EU Justice Scoreboard, the corruption report and Schengen evaluations. Regarding fundamental rights, FRA's mandate is to collect and analyse relevant, objective, reliable and comparable information and data. This allows the Agency to deliver on its statutory objective to offer "assistance and expertise" relating to fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union. The Agency provides such data and services within the areas of EU competence. Any future monitoring mechanism for the values of Article 2 of the TEU should make full use of FRA's opinions, surveys and comparative reports.***

***All EU Member States have in place various structures with a human rights remit, ranging from courts to equality bodies and National Human Rights Institutions (NHRIs). These institutions generate data and analysis that should be taken into account in any monitoring mechanism for the values of Article 2 of the TEU. Input by civil society organisations should be used to contextualise this information. Such national input is also important to guarantee sufficient engagement in the process of assessing compliance with Article 2 values, resulting also in greater prominence of human rights bodies at national level.***

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<sup>52</sup> See forthcoming FRA (2016, forthcoming in May), Opinion concerning requirements under Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities within an EU context, which will be available at: <http://fra.europa.eu/en/publications-and-resources/opinions> and FRA (2012), [Handbook on the establishment and accreditation of National Human Rights Institutions in the European Union](#) Luxembourg, Publications Office.



## 5. Operationalising existing data through an EU fundamental rights information system to populate indicators and generate regular synthesis reports

The request for this FRA opinion referred to the feasibility of developing an “integrated tool of objective fundamental rights indicators able to measure compliance with the shared values as listed in Article 2 TEU”. The previous four sections concluded that:

1. human rights can be used as an overarching concept capturing most of three main constituent components of Article 2 of the TEU – democracy, the rule of law and fundamental rights – thereby offering well-developed and recognised standards to measure compliance with the values listed in Article 2;
2. to measure compliance with the shared EU values, indicators can effectively be used; to capture the depth of a situation, these should deal with commitment to human rights, efforts to make them a reality, and the results of these commitments and efforts in terms of rights actually enjoyed;
3. existing data and information from international and European monitoring mechanisms provide credible sources to populate indicators and provide additional needed context;
4. existing data and information from EU and national level bodies provide credible sources to populate indicators and provide additional needed context.

Against this background, the question arises how to best realise the potential to develop an integrated tool of objective fundamental rights indicators able to measure compliance with the shared values listed in Article 2 of the TEU based on existing sources of information.

A first step would be the pooling of existing data, information and analyses. This could be done through an EU fundamental rights information system. Such a system would pool all relevant monitoring data and assessments delivered under the different international and European instruments mentioned above in a single online entry point. The vast amount of existing information would be tagged by thematic areas (like discrimination based on disability, access to justice, victims’ rights, child rights, etc.) and made searchable by these and various other relevant categories – like time and Member State – thereby allowing for instant comparisons across Member States and the identification of trends over time.

A second step would be to make sure that the data pooled in the fundamental rights information system feeds into EU policy processes and policy cycles, where relevant. This would provide the European Semester, the Justice Scoreboard, the European Commission’s annual report on the implementation of the Charter, the European Parliament’s resolution on the situation of fundamental rights, and many other EU processes with a new, wide-ranging evidence base on which to build findings and recommendations. To ensure that such a European fundamental rights information is sufficiently drawn on by the relevant EU actors, an interinstitutional agreement could provide for the necessary inter-institutional ownership over the system by identifying the actor responsible for hosting, developing and maintaining the system, and reminding all EU actors of the different processes in which the system should be consulted.

A third step could be to move from such a passive to a more active approach, which would consolidate and streamline the input flowing from the European fundamental rights information system by developing a regular (annual) synthesis report based on the data, information and analyses pooled in the system. Such a report could prominently feed into,

amongst others, the annual report of the European Parliament, the Council’s Annual Debate on the rule of law, and the rule of law mechanism of the European Commission. Any synthesis report would have to make assessments and prioritise – leaving some areas less covered – but would offer an objective overview of central concerns and identified patterns and trends.

A fourth step would be to further improve the comparability and user-friendliness of both the European fundamental rights system as well as the synthesis report by developing further fundamental rights indicators. The elaboration and refinement of indicators is a process rather than a singular step. In this sense, “the development of an integrated tool of objective fundamental rights indicators able to measure compliance with the shared values listed in Article 2 TEU based on existing sources of information”, as requested by the European Parliament, is also a process rather than a binary decision.

As noted, indicators will ‘indicate’ possible problems that will help narrow down issues that need to be covered by a more thorough contextual assessment to determine if there is a genuine risk to Article 2 values. FRA’s networks of civil society organisations, Equality Bodies, and other bodies with a human rights remit – such as ombudspersons (that may also be NHRIs and Equality Bodies) – could be drawn upon to ensure that a credible and validated system of indicators is developed, and that needed context is provided to potential problems indicated by the indicators. This would have a two-fold effect. On the one hand, it allows contextualising data and assessments collected from the above-mentioned international monitoring mechanisms, and, on the other hand, it would allow for a bottom-up approach that integrates national actors into the assessment of national situations.

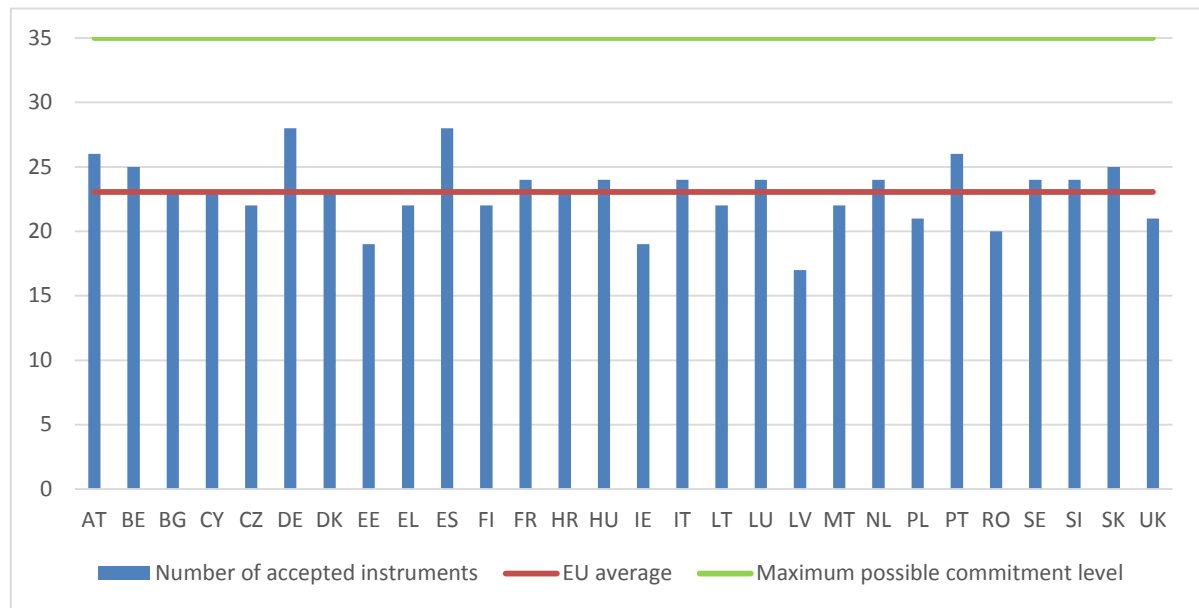
## FRA opinion

***There is a wide range of data, information and analysis available under the existing monitoring mechanisms and other human rights-related processes at national, European and international levels. This richness of resources is, however, not easily accessible, and the various levels and instruments are not sufficiently linked; the information about a given state is scattered in a variety of different sources. Awareness and use of these sources could be enhanced by creating a single access point, an EU fundamental rights information system. Such a system could be used to populate indicators to systematically monitor the respect of the values of Article 2 of the TEU.***

***Such an integrated EU fundamental rights information system should allow to generate regular synthesis reports, thereby providing an objective evidence base of information and contextual analysis of indicators. These synthesis reports could complement the various reports related to fundamental rights delivered by the three EU institutions, the European Parliament, Council of the EU and the European Commission. They could also contribute to the annual dialogue on the rule of law in the Council of the EU, as well as other debates on the situation in EU Member States that risk undermining mutual trust in the common area of freedom, security and justice.***

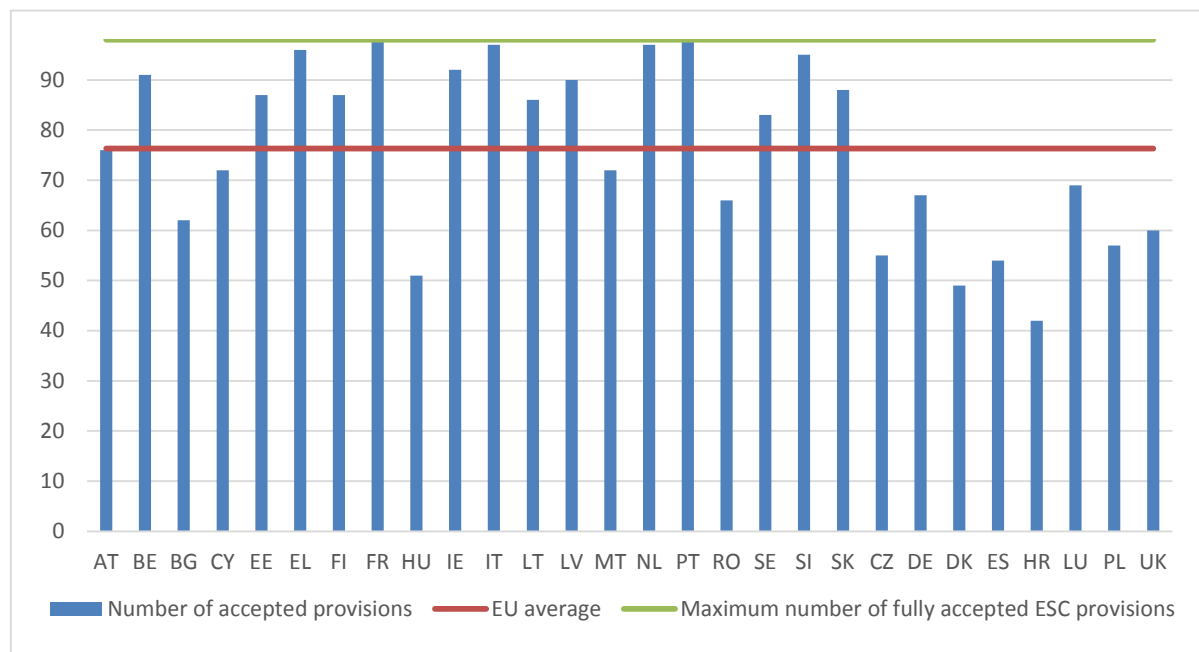
## Annex

**Figure 7: Commitment to 35 selected United Nations instruments (including built-in mechanisms), by EU Member State including EU average**



Source: FRA 2016, Data extracted from <https://treaties.un.org/Pages/ParticipationStatus.aspx>

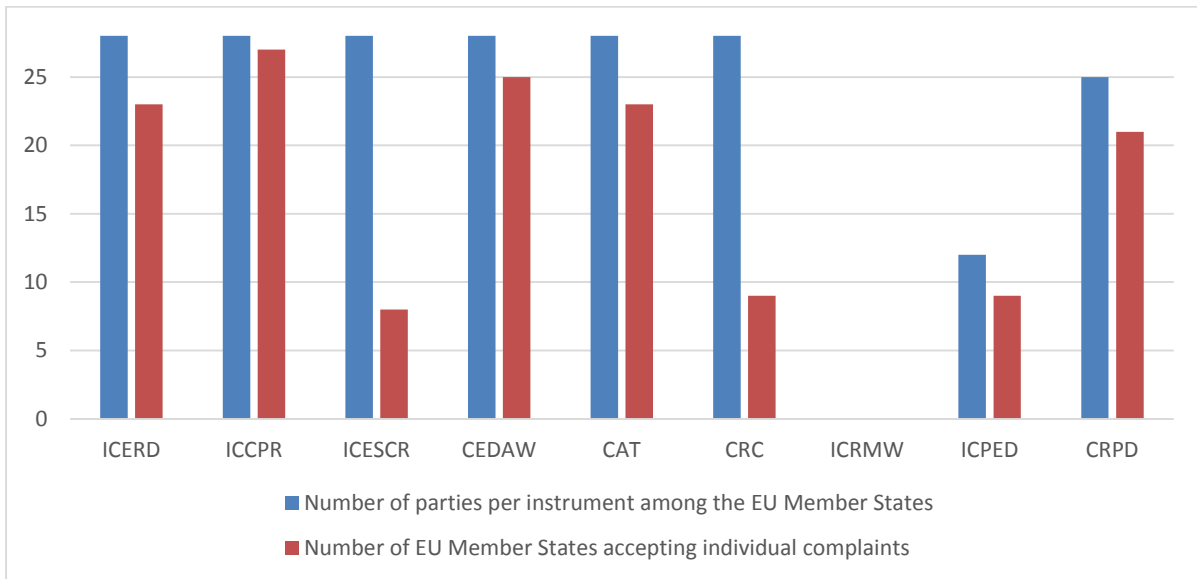
**Figure 8: Number of fully accepted provisions of either of the two versions of the European Social Charter (ESC), by EU Member State including EU average**



Note: EU Member States are sorted alphabetically, showing first the parties to the ESC (revised), followed by the parties to the original version of the charter. The total maximum number of fully accepted provisions is 98; those EU Member States that have not yet accepted the revised ESC (the Czech Republic (CZ) to the United Kingdom (UK)), the maximum number of fully accepted provisions is 76.

Source: FRA 2016, Data extracted from <http://www.coe.int/en/web/turin-european-social-charter/accepted-of-provisions>

**Figure 9: Commitment to the nine core United Nations conventions (and respective individual complaints mechanism), EU-28**



Source: FRA 2016, Data extracted from <https://treaties.un.org/Pages/ParticipationStatus.aspx>