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An EU internal strategic framework for fundamental rights: joining forces to achieve better results



EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS



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Introduction

The European Council will map out new strategic priorities in 2014 for the European Union (EU) in policy fields linked to fundamental rights. A new European Parliament and European Commission will support the EU in concluding the ratification of the European Convention on Human Rights (ECHR). To make sure that the EU and its Member States, which form a community of values, fulfil their legal obligations, fundamental rights must become more firmly embedded in the EU's policy cycle: public authorities at all layers of governance must join up to guarantee that the EU and its Member States fully conform to the Charter of Fundamental Rights of the EU in Justice and Home Affairs, and all other policy fields in which they interact. This could best be provided in a 'Strategic EU Framework on fundamental rights' complementing the newly presented EU Framework on strengthening the rule of law. This focus presents some first thoughts on how fundamental rights considerations could feed more systematically into concrete policy making at national and EU level without interfering with the principle of subsidiarity and the balance between the different layers of governance. Rather than describing the format of such a strategic EU framework, this focus presents ideas for some of its potential content ('tools').

This focus explores how to improve the protection of fundamental rights within EU Member States and the Union they are collectively building. It thus forms the third pane in a triptych of focus sections. The first presented the fundamental rights landscape in Europe, that is the standards, institutions and mechanisms existing at all levels of governance of the United Nations (UN), the Council of Europe, the EU and its Member States.¹ The second pane analysed whether and how to safeguard fundamental rights in times of crisis, be it economic, social or political.²

The evidence FRA has collected over the years consistently shows that there is no room for complacency. If fundamental rights are to be safeguarded, all those involved must commit to them with vigour. The rule of law debates, which gained intensity in 2013, confirmed this, by focusing on how to ensure that all EU Member States uphold the values of the Union as enshrined in Article 2 of the Treaty on European Union (TEU). The debates signalled clearly that respect for these values cannot be taken for granted but requires a shared and regularly renewed commitment by all those concerned, at all levels of governance.³

"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."

Treaty on European Union (TEU), Article 2, OJ 2012 C 326

The year 2014 offers a window of opportunity to underline and promote these shared values. Indeed, as the Stockholm Programme runs its course by the end of the year, the EU will again need to define its strategic priorities in policy fields relevant to fundamental rights, including immigration, asylum, visa, border control, integration, criminal justice and civil justice.⁴

During the year, the EU will continue to take decisive steps towards acceding to the ECHR, thereby submitting the Union to an external fundamental rights scrutiny and further improving fundamental rights protection in the EU. At the end of 2014, the transitional period for police cooperation and judicial cooperation in criminal matters elapses. In practice, this means that the jurisdiction of the Court of Justice of the European Union (CJEU) will be extended and the European Commission will be entitled to bring infringement procedures in additional areas of relevance to fundamental rights to the court.⁵

The question then arises how the EU and its Member States could establish a more structured framework for developing and implementing fundamental rights-related policies at various levels of governance, and this in a joint effort. Such an internal framework could be equivalent to the EU Strategic Framework and Action plan, which has been guiding the EU's external human rights policies since 2012. Adopting such a framework would show that EU practices at home accord with what the EU projects to the outside world.⁶

Before suggesting 20 tools that could be used to make such a framework a reality, this focus outlines how discussions on the EU's values gained momentum in 2013 and how fundamental rights fit into that picture.



1

Debate on EU values gains momentum in 2013



The debate on the EU's values gained intensity and depth in 2013 as a result of proposals and ideas tabled by the European Commission,⁷ the European Parliament,⁸ ministers,⁹ academic writers¹⁰, policy consultants¹¹ and civil society organisations.¹² The idea of a new instrument to protect the EU values in Article 2 of the TEU garnered increasing consensus, but views diverged on the actors to involve, the procedures to apply and whether or not to impose sanctions.¹³

In May 2013, the Council of the European Union called for “consensus on what needs to be done in a systematic way to protect fundamental rights even at a time of severe economic crisis and to promote the rule of law, while also respecting the national constitutional traditions of the Member States”.¹⁴ The Council further stressed the need “to take forward the debate [on the rule of law] in line with the Treaties on the possible need for and shape of a collaborative and systematic method to tackle these issues”.

The Council of the European Union raised seven points to guide this debate, stressing that the discussion and respective proposals should:

1. be inclusive in terms of relevant bodies and participation of civil society;
2. be based on an agreed understanding of the problems to be addressed and methods applied;
3. guarantee full synergy and avoid overlaps, especially with the Council of Europe;
4. identify the EU's added value of action;
5. consider the full range of possible avenues and seek consensus among Member States;
6. be based on transparency and equality;

7. aim at real positive impact on the lives of ordinary persons.

The European Parliament also voiced its views, calling on the European Council, the European Commission and national parliaments to take action in order to protect Article 2 values. It underlined, vis-à-vis the European Commission, that infringement procedures are insufficient to guarantee such respect. It also provided benchmarks for “a new and more effective method of safeguarding fundamental values”, including judicial independence, synergy or respect for national constitutional traditions and equality among Member States. The European Parliament called on national parliaments to “enhance their role in monitoring compliance with fundamental values and to denounce any risks of deterioration of these values that may occur within the EU borders”.¹⁵

On a more operational level, the European Parliament reiterated that “the setting up of such a mechanism [to safeguard fundamental rights] could involve a rethinking of the mandate of the European Union Agency for Fundamental Rights [FRA], which should be enhanced to include regular monitoring of Member States' compliance with Article 2 TEU”.¹⁶ The parliament recommended the creation of a “monitoring mechanism, to be dealt with by the [European] Commission with exclusive priority and urgency, coordinated at the highest political level and taken fully into account in the various EU sectoral policies”.¹⁷

The European Parliament also recommended setting up a commission to ensure the continued and robust use of the eligibility prerequisites that states must currently fulfil to join the EU, known as the Copenhagen criteria. This commission would be a high-level group that would cooperate with existing mechanisms and structures to ensure the Copenhagen criteria's continued use.¹⁸ In early 2014,

the European Parliament reiterated these proposals and called on the European Commission, “in collaboration with the FRA, to adopt a decision establishing this ‘new Copenhagen mechanism’, as it did for the monitoring of corruption in the EU and in the Member States, and to revise the FRA rules in order to give it enhanced powers and competences”.¹⁹

In November 2013, the European Commission convened the ‘Assises de la justice’ conference, where over 100 contributions to the discussions on the rule of law and future of justice policies were submitted.²⁰ The discussions and submissions fed into the Commission’s EU Justice Agenda for 2020²¹ and into a new framework to strengthen the Rule of Law.²²

“Today everybody mentions the situation in Hungary and Romania. Are we sure that we will not see such a situation again in a couple of weeks in another EU country? Now let us be honest – and some of the parliamentarians have said it very clearly – we face a Copenhagen dilemma. We are very strict on the Copenhagen criteria, notably on the rule of law in the accession process of a new Member State but, once this Member State has joined the European Union, we appear not to have any instrument to see whether the rule of law and the independence of the judiciary still command respect.”

“We as a European Union need to stand firm on our values and on the rule of law, and that is why I think that we need to put in place an objective mechanism to assess the judicial systems in all of our [...] Member States, because our infringement procedures are too technical and too slow to react to high-risk situations concerning the rule of law, and because the Article 7 procedure is a nuclear option that should only be used by the Commission, Parliament and the Council when there is really no other solution.”

Viviane Reding, Vice President of the European Commission, speech to the European Parliament on 12 September 2012, Doc. 13780/12, PE 413, Annex III, available at: <http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%2013780%202012%20INIT>

This framework is meant “to address and resolve a situation where there is a systemic threat to the rule of law”, complementing the infringement procedure under Article 258 of the TFEU as well as the procedures under Article 7 of the TEU.²³ Rule of law is referred to as “a constitutional principle with both formal and substantive components [...] intrinsically linked to respect for democracy and for fundamental rights”.²⁴

The framework as presented by the European Commission is “not designed to be triggered by individual breaches of fundamental rights or by a miscarriage of justice”. Rather it will be activated in “situations where the authorities of a Member State are taking measures or are tolerating situations which are likely to systematically and adversely affect the integrity, stability or the proper functioning of the institutions and the safeguard

mechanisms established at national level to secure the rule of law.”²⁵

The European Commission envisages a three-stage process for the mechanism. First, the Commission assesses if there are “clear indications of a systemic threat to the rule of law”. Such an “assessment can be based on the indications received from available sources and recognised institutions, including notably the bodies of the Council of Europe and the European Union Agency for Fundamental Rights”.²⁶ In this first stage, the Commission could send a “rule of law opinion” substantiating its concerns and allowing the EU Member State to respond. The opinion would be made public, but the exchanges with the Member States would, as a rule, be kept confidential.

At a possible second stage, if the European Commission finds that there is “objective evidence of a systemic threat and that the authorities of that Member State are not taking appropriate action to redress it”, it would issue a “rule of law recommendation”. The Commission’s assessment and conclusions would be based on a dialogue with the Member State concerned.

At a third stage, the European Commission would monitor the follow-up to that recommendation. If the EU Member State does not follow up the recommendation in satisfactory fashion, the Commission will assess the possibility of activating one of the procedures laid down in Article 7 of the TEU.

This new rule of law framework clarifies how the European Commission will, in the future, proceed in situations where an EU Member State runs the risk of violating the Article 2 values. It complements both the European Commission’s first corruption report as presented in early 2014²⁷ and its efforts to assist the EU and Member States to “achieve more effective justice by providing objective, reliable and comparable data on the functioning of the justice systems of all Member States” through its annual “Justice Scoreboard”.²⁸

Protecting and promoting fundamental rights is a means to prevent rule of law crises proactively. Moreover, less regard for fundamental rights can indicate systemic deficiencies in the rule of law.²⁹ Given the persisting fundamental rights challenges that FRA evidence consistently identifies, and recognising the window of opportunity offered by the incoming 2014–2019 legislative period, EU Member States and institutions could, therefore, consider complementing this rule of law framework with a strategic fundamental rights framework. Bearing in mind the interdependencies between the rule of law and fundamental rights (Table 1), a renewed and enlarged commitment to fundamental rights could

be beneficial to the European Commission's rule of law framework.

Complementing the European Commission's framework on the rule of law with a strategic framework on fundamental rights would allow the EU to take three steps forward:

- ▶ **enable a more encompassing and substantial reading of the rule of law**, covering explicitly all fundamental rights corresponding largely to the values in Article 2 of the TEU (see [Table 1](#)) – areas where the EU undoubtedly plays a role and has much to offer in terms of standards and procedures;
- ▶ **render the EU's role more inclusive by involving all relevant players**, including the European Parliament, the Council of the European Union and other relevant EU bodies as well as relevant actors at national level, such as national parliaments, bodies with a human rights remit and civil society;
- ▶ **not only address the behaviour of EU Member States but also put emphasis on the EU's own performance** in terms of upholding the rule of law and safeguarding fundamental rights.

Table 1: TEU Article 2 values compared with the Charter of Fundamental Rights

Values as listed in Article 2 TEU	Equivalence in the Charter (shaded Charter titles cover the corresponding Article 2 values only partly)
Human dignity	Human dignity (Title I)
Freedom	Freedoms (Title II)
Democracy	Citizens' rights (Title V)
Equality	Equality (Title III)
The rule of law	Justice (Title VI); Citizens' rights (Title V)
Respect for human rights	All titles of the Charter
Rights of persons belonging to minorities	Equality (Title III)
Pluralism	Equality (Title III)
Non-discrimination	Equality (Title III)
Tolerance	Equality (Title III)
Justice	Justice (Title VI)
Solidarity	Solidarity (Title IV)
Equality between women and men	Equality (Title III)

Source: FRA

2

Towards an EU strategic framework on fundamental rights



A renewed commitment to fundamental rights could be instrumental in ensuring that the EU and its Member States conform to their obligation to “respect the rights [as laid down in the Charter of Fundamental Rights], observe the principles and promote the application thereof”.³⁰ Moreover, providing a new internal EU strategic framework would be beneficial to promote “the well-being of its peoples”, including social progress and social inclusion, “social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child” – which are all explicit and overarching EU aims.³¹ Adopting such a framework would increase the consistency between the EU’s policies towards other countries and the Union’s commitment to its own institutions and its Member States.

Three questions arise when proposing a strategic framework on fundamental rights:

- **What would an EU strategic framework deliver?** A well-designed and implemented EU strategic framework could help render the interventions of the European Parliament, the Council of the EU and the European Commission in the area of fundamental rights more structured, better coordinated and effective. Such a framework, which would include existing strategies in specific sectors, would help give effect to the Union’s obligation to comply with fundamental rights in the development of its legislation and policies, as well as that of EU Member States when they implement EU law. Such effects would enhance the levels of trust between Member States’ legal systems and, among those who live there, in the EU. The protection of fundamental rights is considered as the value that is most representative of the EU.³² The protection of fundamental rights is not only

expected but also instrumental for the EU’s functioning. High levels of trust between national legal systems are essential in a system such as the EU’s, which is built on mutual recognition and makes use of such instruments as the European Arrest Warrant.³³

Whereas the values in Article 2 are “common to the Member States”, the fulfilment of these fundamental rights standards varies within the EU. As the CJEU confirmed in the context of asylum law, “European Union law precludes the application of a conclusive presumption that the [responsible] Member State [...] observes the fundamental rights of the European Union.”³⁴ An EU strategic framework could make evidence and assessments accessible to form a basis for trust, allowing for reliable but not “conclusive”, presumptions that Member States reach the shared standards. Equally, such a strategic framework could provide further instruments to guarantee that the EU itself conforms with the Charter of Fundamental Rights, the ECHR and other human rights standards.

- **How would an EU strategic framework achieve this aim?** Whereas the rule of law framework is reaching out to areas beyond the scope of EU law, an EU strategic framework on fundamental rights would concentrate on areas covered by EU law and pay respect to the principle of subsidiarity. It would also be more encompassing than the framework for strengthening the rule of law, as it would cover all Charter rights (see [Table 1](#)); it would bring all actors together; and it would establish a policy cycle making the respect for the Charter a permanent and operational policy consideration rather than an ad hoc and crisis-driven concern.

An EU strategic framework should start with the EU itself, including the way EU law is created: legislation that is understood by both those to whom it is addressed and its intended beneficiaries, and that is perceived as legitimate, could be better implemented at all layers of governance. An EU strategic framework would – through tools such as those proposed in the following section – help ensure that fundamental rights are taken into account at all stages of enforcement. EU law is typically implemented not by EU bodies but by a variety of actors at different layers of governance, including the local level. An EU strategic framework could substantially contribute to more coordination, cooperation and participation. The 20 tools proposed below should be able to enhance the quality of legislation and to lead to better implementation and higher levels of trust without any of them extending the field of EU law application or necessitating any changes to the EU treaties.

- **Who are the relevant actors in such an EU strategic framework?** Against the backdrop of the EU system’s multilevel character, a strategic EU framework would need to involve the EU level as well as the national, regional and local levels so that all fundamental rights actors can join efforts within their respective competencies. Such a joined-up approach would aim at achieving shared objectives while optimising the potential for synergies.

FRA evidence shows that institutions and procedures at international, European, national, regional and local levels tasked with the protection of fundamental rights should better coordinate responses to fundamental rights, ensuring that the various components work well together without leaving gaps in rights protection.³⁵

By way of illustration, FRA submits for consideration 20 tools that could form part of a future EU strategic framework. To facilitate readability, these tools are divided into clusters at three levels: EU, Member State and general. Taken together, the three clusters form building blocks for a genuine EU internal fundamental rights strategy that would link all relevant actors in a fundamental rights policy cycle. Investing in the implementation of only some of these tools could contribute to increasing consistency between the EU’s external and internal behaviour in the area of fundamental rights protection.

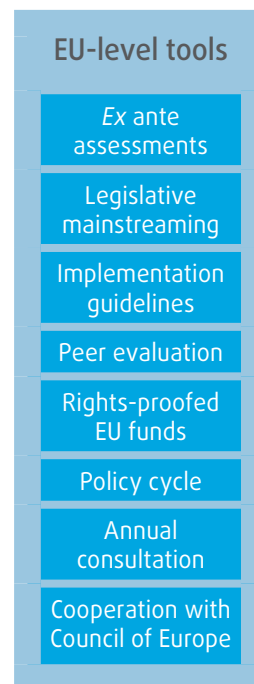
2.1. Tools at EU level

1. Assessing fundamental rights implications

To avoid the EU legislature unnecessarily compromising fundamental rights and exceeding “the limits imposed by compliance with the principle of proportionality in the light of [...] the Charter”,³⁶ various EU mechanisms assess fundamental rights impacts and the compatibility of forthcoming EU legislation with human rights standards. These could be reviewed to identify potential improvements. Such an exercise could look into the practical application of different mechanisms such as the European Commission’s Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union,³⁷ the Council’s Guidelines on methodological steps to be taken to check fundamental rights compatibility in the Council’s preparatory bodies³⁸ or the European Parliament’s Rule 36 on “respect for the Charter of Fundamental Rights of the European Union”.³⁹ It would also be worth exploring how to involve independent external expertise where doubts arise about compatibility with the Charter of Fundamental Rights; and how to involve grass-roots civil society organisations when assessing upcoming EU legislation’s potential impacts.⁴⁰ Such avenues could further increase the efficiency and transparency of the existing mechanisms. Moreover, such mechanisms should also be used where the EU is involved in austerity measures: the European Parliament called on the Troika composed of the European Central Bank, the European Commission and the International Monetary Fund to ensure compliance with fundamental rights, “as failure to comply constitutes an infringement of EU primary law”.⁴¹

2. Mainstreaming fundamental rights as required by primary law

Fundamental rights should not be reduced to a function of imposing limits on legislation and public administration. Fundamental rights have a dual role: they do not act just as a shield; they are also an enabling ‘sword’ that can point towards the design, adoption and implementation of certain initiatives, thereby fencing potential violations.⁴² In certain instances, this active, galvanising function is not an option but a legal



obligation. According to the TFEU, the Union must “in all its activities” aim to “eliminate inequalities, and to promote equality, between men and women” (Article 8), 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” (Article 9) and to “combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation” (Article 10). As the Lisbon Treaty approaches its fifth anniversary as a binding treaty in late 2014, it is time to assess how the EU legislator has delivered on this transversal fundamental rights obligation to promote fundamental rights actively throughout all policy fields. It is also important to check the competence basis in EU treaties that can be used to improve the enjoyment of fundamental rights in the different policy fields (see [Tool 8](#), on the cooperation between the EU and the Council of Europe).⁴³

3. Developing implementation guidelines

EU law is often the result of difficult compromises achieved after long negotiations, so sometimes it is vague or contains broad scope for exceptions or derogation at national level. The CJEU has, for example, issued over 20 rulings since 2009 clarifying provisions of the EU asylum *acquis* alone.⁴⁴ It would therefore be useful to introduce, especially in policy contexts that are sensitive in terms of fundamental rights, explanations that can guide national authorities in implementing EU legislation in a way that avoids violating fundamental rights. Recent examples include the European Commission’s guidance on the implementation of the Family Reunification Directive,⁴⁵ the Victims Directive⁴⁶ and the Free Movement Directive.⁴⁷ Where such guidance aims specifically at protecting and promoting fundamental rights – such as the guidance FRA offers on personal name records⁴⁸ or on apprehending irregular migrants⁴⁹ – it could form an important element of an EU strategic framework on fundamental rights. Implementing guidelines could also serve the strategic framework in advising on how fundamental rights concerns should be taken into consideration when implementing legislation that is not specific to fundamental rights, such as a regulation on specific EU funds (see [Tool 5](#)).

4. Establishing peer-monitoring and peer-evaluation practices

A true fundamental rights culture requires the regular and independent monitoring of how relevant legislation is applied. Schengen evaluations covering sea borders should review, for example, as part of their overall assessment, if instructions and training provided to law enforcement officers patrolling sea borders adequately address fundamental rights and in particular the principle

of *non-refoulement*. To this end, evaluators should be provided with appropriate guidance and training on fundamental rights. Ex post evaluation of legislation is especially useful if fed into a reform of EU legislation and policies as part of a fundamental rights policy cycle. To provide for a general evaluation format across all Justice and Home Affairs policies, the European Commission could submit a proposal according to Article 70 of the TFEU, “laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies”. The results of such an evaluation, which involves input from independent expert bodies and civil society organisations, should be reported back to the European and national parliaments and feed directly into the fundamental rights policy cycle (see [Tool 7](#)).

5. Guaranteeing that use of EU funds is ‘fundamental-rights-proof’

EU funds are administered in a decentralised way. It is important to ensure that all EU-financed projects and activities adhere to the obligations flowing from the Charter of Fundamental Rights. The EU should make this explicit in the operational parts of the respective legal instruments rather than in their preambles.⁵⁰ In addition, ex ante conditionalities could be introduced whenever the EU provides funds. The regulation laying down such conditionalities for Structural Funds disbursements adopted at the end of 2013⁵¹ was an encouraging example but could be expanded and improved. When reviewing expenditures, the Court of Auditors should take into account ex ante conditionalities, and other provisions related to fundamental rights, in ‘basic measures’, or secondary provisions on which an expenditure is based. The possibility of introducing sanctions should be considered in cases where the use of EU funds infringes fundamental rights. Moreover, it appears important that any bodies set up at national level to decide which projects receive EU funding, such as boards, include ‘fundamental rights focal points’ from relevant departments of the administration as well as independent fundamental rights experts. These fundamental rights experts could be selected from academia, national human rights institutions (NHRIs) or non-governmental organisations (NGOs). All tools developed for the planning, implementation and evaluation of EU-funded projects should incorporate fundamental rights in an effective and meaningful manner. This not only helps protect and promote fundamental rights but also avoids tensions with EU primary law and obligations under international law.⁵²

6. Creating an EU fundamental rights policy cycle

At the end of 2012, the European Parliament called for “the launch of a ‘European fundamental rights policy cycle’, detailing on a multiannual and yearly basis the objectives to be achieved and the problems to be solved”.

Such a cycle should “foresee a framework for institutions and the FRA, as well as Member States, to work together by avoiding overlaps, building on each others’ [...] reports, taking joint measures and organising joint events with the participation of NGOs, citizens, national parliaments, etc.”⁵³ It would help ensure that national experiences feed into EU-level policy developments, and that EU-level developments are implemented on the ground. It would further allow better coordination of the policies of the European Parliament, the Council of the European Union and the European Commission that are relevant to fundamental rights, rendering their respective roles and interventions more efficient. A policy cycle would also, for example, assign specific objectives to the different fundamental rights reports which the European Parliament, the European Commission and FRA deliver annually. Such a policy cycle would ensure that these reports are presented in a timely manner to feed best into the relevant processes. The development of an EU action plan on fundamental rights would be an appropriate framework for a fundamental rights cycle; such an action plan could be inspired by some of the promising practices existing at national level (see [Tool 12](#)).

7. Increasing coordination at EU level through an annual consultation meeting

Assigning ‘fundamental rights focal points’ in relevant units of the European Parliament, Council of the EU and European Commission administrations could support the work and impact of the parliament’s Committee on Civil Liberties, Justice and Home Affairs (LIBE), the Council of the EU’s Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP) and the relevant units in the European Commission’s Directorate-General Justice. Moreover, the European Commission, the European Parliament and the Council of the EU could benefit from periodic consultation with relevant stakeholders and experts, bringing them together with independent EU expert bodies, such as FRA, the European Data Protection Supervisor (EDPS), the European Ombudsman and representatives from the Committee of the Regions, the European Economic and Social Committee, the European network of national equality bodies (Equinet), the European Network of NHRIs and the European Network of Ombudsmen, as well as EU-level umbrella organisations representing NGOs. Such an annual consultation meeting should establish communication channels with national-level actors by, for instance, allowing prior online submissions to a dedicated web forum, which could structure input and feedback in a systematic way. Such a regular fundamental rights consultation meeting would ideally take place before the European Commission finalises its annual work programme, to guarantee that its results feed into EU-level legislative and policy planning. The exercise should ensure that those attending have an opportunity to provide feedback, including on the

effectiveness of measures taken to safeguard fundamental rights in the implementation of EU law. There should be full transparency on whether and how such feedback and input are taken into account.

8. Developing greater synergies between the EU and the Council of Europe

In line with the “guidelines on the Relations between the Council of Europe and the European Union” adopted in 2005 by the Heads of State and Government of the Member States of the Council of Europe, both international organisations “should work towards joint activities, when they add value to their respective endeavours [...] and] consult regularly at all appropriate levels, including the political level, to make better use of each other’s relevant expertise”.⁵⁴ In addition to the EU joining selected Council of Europe conventions, the cooperation,⁵⁵ which at technical level is already active, fruitful and efficient,⁵⁶ should be construed as a two-way process also covering the Council of Europe’s political bodies. To increase the level of implementation of Council of Europe standards, the EU could offer its legal leverage, including the principles of supremacy and direct effect. In this regard, the guidelines stress that the “European Union shall strive to transpose those aspects of Council of Europe Conventions within its competence into European Union Law”.⁵⁷ To make this commitment more operational, it would be timely to map existing EU legislation covering issues dealt with in Council of Europe conventions and explore the potential to complement the already existing *acquis* with new EU legislation. Another concrete project of close cooperation providing added value would be the establishment of a shared European fundamental rights information system that would increase the accessibility and visibility of the standards, reports and analysis produced by the Council of Europe (see [Tool 18](#)).

2.2. Tools at Member State level

9. Recognising the local dimension of multilevel protection of rights

The subnational – that is, regional and local – dimension of fundamental rights is the one that is closest to the individual and hence of the utmost importance. For the EU’s external relations,



the Council of the EU emphasised that local authorities and their associations are “important actors for change in reducing poverty and in promoting human rights and democracy [and] are key to the enhancement of public sector accountability to citizens, as well as promoting justice and core principles of equality including the rights of women and girls, ensuring transparency, and broad-based participation in the public sphere, building resilience and reaching out to all citizens, including vulnerable groups”.⁵⁸ The same could be said for the situation within the EU. FRA has underlined in various contexts that it is important that different actors at the national and the sub-national level join their efforts to protect and promote fundamental rights, which play an essential role in this regard. The Committee of the Regions adopted the Charter for multilevel governance in Europe, reaffirming the importance of “coordinated action by the European Union, the Member States and regional and local authorities according to the principles of subsidiarity, proportionality and partnership, taking the form of operational and institutional cooperation in the drawing up and implementation of the European Union’s policies”.⁵⁹ This Charter emphasises that multilevel governance helps governments at different levels and in different states “to learn from each other, experiment with innovative policy solutions, share best practices and further develop participatory democracy, bringing the European Union closer to the citizens.” One of the objectives of multilevel governance as outlined in the Charter is precisely “ensuring maximum fundamental rights protection at all levels of governance”. Pilot research conducted by FRA has identified a number of steps that can be taken to enhance the implementation of fundamental rights at local and regional levels. A joined-up e-toolkit for local, regional and national public officials is available at the FRA website.⁶⁰

10. Increasing cooperation at national level

Cooperation between different bodies contributes to the effectiveness of the rights enshrined in the Charter. The need is not so much to establish new mechanisms and procedures as to develop further the available resources, existing channels and forums for regular exchanges and synergies between existing structures.⁶¹ Such increased levels of cooperation and coordination are particularly important in countries organised in a federal structure, in which the implementation of fundamental rights falls under the competences of different levels of authorities. Ombudsperson institutions, NHRIs, equality bodies, data protection authorities, national parliamentary committees dealing with fundamental rights issues and local authorities that are closest to the citizens could develop more concrete synergies, for example by setting up formal and/or informal fundamental rights networks (see also [Tool 14](#)).

11. Recognising the role of national parliaments

EU directives are binding on the Member States about the result to be achieved, but leave to national parliaments the choice of form and methods. This is of special relevance where directives are likely to raise fundamental rights concerns, as was the case, for instance, with the Data Retention Directive. The Treaty of Lisbon increased the relevance of national parliaments by giving them a role in evaluating EU policy implementation in the former third pillar and in the activities of Eurojust and Europol.⁶² National parliaments also play a special role at EU level in developing judicial cooperation in civil matters based on the principle of mutual recognition of judgments.⁶³ Against this background, the national parliamentary committees dealing with fundamental rights could possibly be brought together in an EU-wide network and gain more direct access to the relevant EU developments.⁶⁴

12. Establishing national action plans

National action plans (NAPs) in the area of fundamental rights protection have proved to be “useful tools for clarifying the authorities’ responsibilities and for identifying and addressing gaps in human rights protection”.⁶⁵ EU Member States such as Croatia, Finland, the Netherlands, Spain, Sweden and the United Kingdom (Scotland) have experience with such action plans and a number of other Member States including Austria and Greece are considering introducing NAPs. The integration of international reporting obligations into a NAP process can improve the coordination of reporting and would render it more efficient and cost-effective. Such a combined approach could also provide for the exchange of promising practices between Member States. Moreover, NAPs and their evaluations could feed into the national positions in the EU legislative process and hence link the different layers of governance so that experiences and evidence from the ground do not get lost but rather contribute to an EU fundamental rights policy cycle (see [Tool 6](#)).

13. Increasing rights awareness within the EU

Data collected by FRA, as well as Eurobarometer surveys, show that rights awareness tends to be very low among both the general population and minority groups. This is true of the Charter of Fundamental Rights, in general,⁶⁶ as well as with relevant legislation, more specifically. In the case of equality legislation, for example, almost 60 % of 23,500 immigrants and ethnic minorities interviewed by FRA “were either unaware or unsure about the existence of legislation covering [...] non-discrimination on the basis of racial or ethnic origin.”⁶⁷ In relation to equality legislation, such low rates of rights

awareness are especially striking since the relevant EU directives set out an explicit obligation to make rights known.⁶⁸ EU Member States, with the support of the EU, should revamp their plans to better target their awareness-raising efforts.

14. Ensuring strong and independent national-level monitoring

To improve access to justice, the EU and its Member States should keep non-judicial and quasi-judicial bodies, as well as courts, in mind. All EU Member States should appoint or establish NHRIs with a view to their full accreditation (A-status) under the so-called Paris Principles.⁶⁹ Currently, only 11 of the 28 EU Member States have fully compliant (A-status) NHRIs and an additional seven have NHRIs with B-status. The EU could establish or promote similar minimum standards for the independence and effectiveness of other bodies with a human rights remit, in particular those required under EU law, such as equality bodies or data protection authorities. Current EU legislation does not provide clear standards, but recent CJEU jurisprudence points to shortcomings in the independence of data protection authorities.⁷⁰

15. Creating a business environment that respects and promotes fundamental rights

EU law establishes duties between private parties and regulates large areas of economic activity in EU Member States. It is, therefore, important that EU law recognise economic players' special responsibilities with regard to fundamental rights as the proposed Directive on non-financial information disclosure does,⁷¹ or that it acknowledge the importance of social, labour and environmental concerns as the legislative package for the modernisation of public procurement does.⁷² The renewed EU strategy on corporate social responsibility (CSR) identifies human rights as a prominent aspect and requires enterprises to have in place a process to integrate human rights into their business operations in close collaboration with their stakeholders.⁷³ As part of its strategy, the European Commission published an *Introductory guide to human rights for SMEs* and human rights guidance for three sectors: employment and recruitment agencies; information and communication technology; and oil and gas. The guide and other guidance strengthen the link between the EU's CSR activities and the United Nations Guiding Principles on Business and Human Rights (UNGPs). EU Member States are encouraged to develop national action plans to implement the UNGPs. Where Member States decide to develop stand-alone action plans,⁷⁴ (see [Section 10.5.3](#)), they should make sure that fundamental rights protection is prominently integrated into these.

2.3. General tools

16. Involving civil society organisations (CSOs) in policy development and assessment

Civil society is a main stakeholder in the field of fundamental rights protection. For the EU's external relations, it is recognised that there is a need to "develop country roadmaps for engagement with CSOs, to improve the impact, predictability and visibility of EU actions, ensuring consistency and synergy throughout the various sectors".⁷⁵ Increasingly, the EU is also involving civil society within the EU in contexts relevant to fundamental rights. The experience of FRA with its Fundamental Rights Platform,⁷⁶ for instance, inspired the establishment of similar mechanisms at Frontex and Easo. It appears the right time to make civil society input possible on a wider scale, so that relevant NGOs are heard when the impact of upcoming EU legislation is assessed or where the implementation of existing legislation is reviewed. It would also be beneficial to provide at national level regular channels and allow key civil society actors to meet, exchange experiences and best practices and formulate proposals for the improvement and implementation of policies. Building on FRA's experience with its Fundamental Rights Platform, establishing similar platforms at national level could be considered where comparable tools do not yet exist. The shaping of fundamental rights policies through participation of various segments of society is one of the key concerns of the Paris Principles for NHRIs.

17. Investing in transnational trust and accessibility of fundamental rights knowledge

Mutual trust can be enhanced by fostering transnational contacts between practitioners. National judges and other law enforcement agencies should be trained to make certain that, in cooperating with their counterparts from other EU Member States, they take into account their duty under EU law to ensure that no decision implementing EU law violates either substantive standards or procedural rights that are embodied in the EU Charter of Fundamental Rights or in the general principles of EU law. To underpin such measures, the EU should provide sufficient funds for the relevant EU funding schemes. Training modules and a general guide on the scope of the Charter might also be helpful instruments.⁷⁷ FRA has developed – in cooperation with



the Council of Europe and the European Court of Human Rights (ECtHR) – a series of handbooks on CJEU and ECtHR case law in targeted areas.⁷⁸ Additional handbooks could be prepared to raise awareness among legal practitioners about the scope of the Charter’s safeguards. The European fundamental rights information system, proposed below, could also cover national case law referring to the Charter as well as the role of the Charter before non-judicial bodies, thereby providing evidence of how the Charter is, de facto, used at national level.

18. Establishing a European fundamental rights information system

The EU could also provide funds for the creation of a European fundamental rights information system that would form a hub, bringing together, in an accessible manner, existing information from the United Nations (UN) (mainly from the treaty bodies and special procedures but also from other sources), the Council of Europe (monitoring mechanisms and expert bodies), the Organization for Security and Co-operation in Europe, the EU (data from the European Commission, including Eurostat; FRA; Council working parties such as Genval, the Working Party on General Matters including Evaluation, or SchEval, the Working party on Schengen Evaluation Mechanisms; the European Ombudsman; etc.). Such a system would enhance transparency and objectivity and increase awareness about European and international standards, especially those of the Council of Europe in the EU context. It would also allow practitioners to make an informed assessment of a given country’s fundamental rights situation in a specific area.

19. Developing fundamental rights indicators

To allow comparable assessments of fundamental rights legislation, policies and their effects, it is important to develop fundamental rights indicators. The indicators should be organised in a systematic framework, such as that applied by FRA, which is built on that of the UN Office of the High Commissioner for Human Rights. This ‘S-P-O’ (structure–process–outcome) framework captures the situation on the ground (outcome) and policy and structure levels. Reliance on such an information system should not, of course, be a substitute for a case-by-case assessment required in the practical application of mutual recognition, since each individual case confronting a national authority may present its own particularities. A system of indicators would also only indicate concerns, not replace a thorough contextualisation and analysis in detail when indicators point to the need for such. The need for developing reliable and objective fundamental rights indicators is increasingly recognised. For instance, in the context of monitoring and evaluating national strategies for Roma integration, the Council

recommended Member States to make use of “any relevant core indicators or methods of empirical social research or data collection for monitoring and evaluating progress on a regular basis, particularly at the local level, enabling efficient reporting on the situation of Roma in the Member States with the optional support of the European Union Agency for Fundamental Rights”.⁷⁹

20. Exchanging promising practices across borders in a spirit of a shared ‘fundamental rights culture’

The EU and its Member States should approach the revamping of their shared ‘fundamental rights culture’ by exchanging promising practices through more and better-structured multilateral and bilateral contacts. Such a culture would perceive constructive critique as a natural part of a shared desire to pool forces and experiences to raise the bar in the area of fundamental rights protection. To give just one example: the European e-justice portal could become a suitable access point for promising practices on how best to live up to EU standards on justice.⁸⁰ It could, for instance, offer a search function for vetted practices. FRA initiated a modest attempt in this regard with an online toolkit for public officials, which includes examples under various headings of how to better join up fundamental rights.⁸¹ Simple and practical tools are needed to ensure that fundamental rights standards are upheld in practice. The identification of such practical tools is again to be based on an open exchange of experiences. To give an example from the area of home affairs: Member States’ experts and the European Commission in collaboration with FRA developed concrete practical guidance on apprehension practices in the form of ‘dos and don’ts’ for immigration law enforcement officials.⁸² Practical support to mainstream fundamental rights at the operational level should be a priority for the allocation of funds (for instance under the future Internal Security Fund and the Asylum and Migration Fund; see [Tool 5](#)).

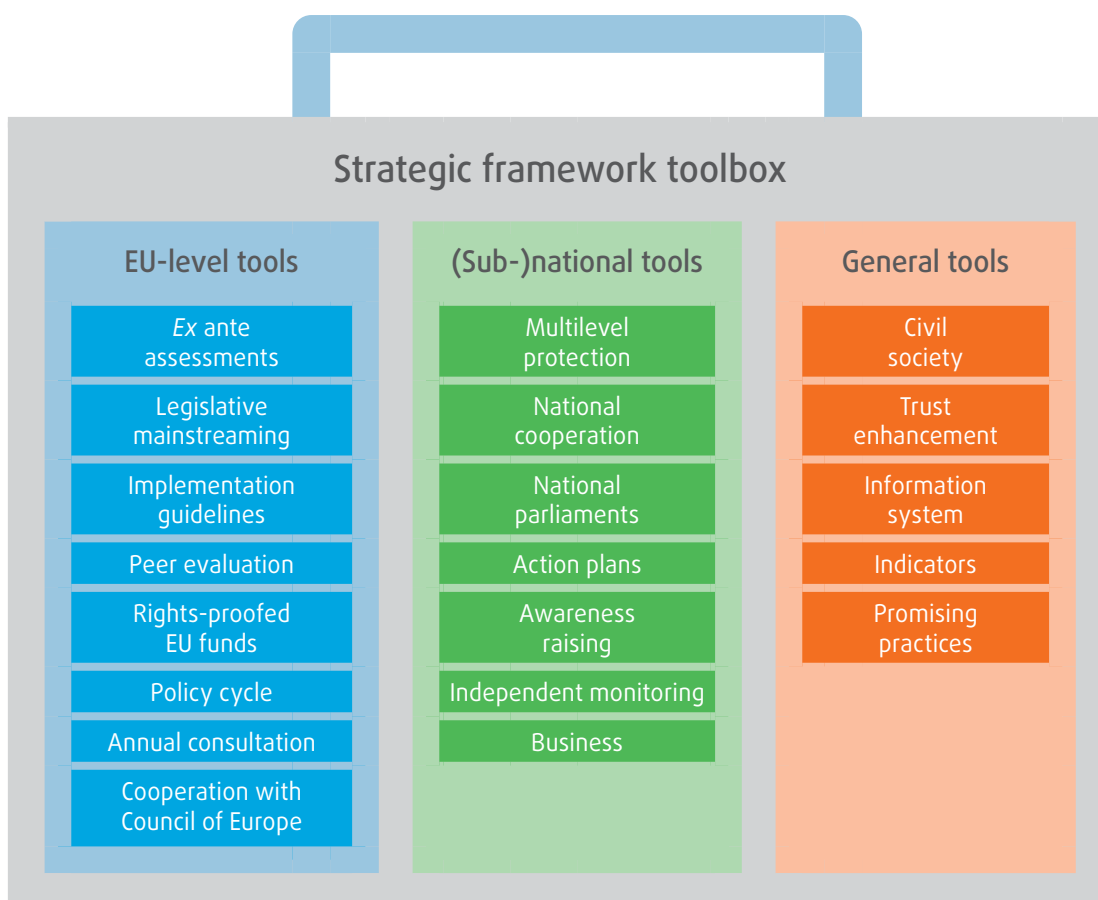
Conclusion

The EU and its Member States have come a long way in developing their community of values, even if economic, social and political crises in several Member States put these values under stress. Debates on how to safeguard the EU's founding values, as enshrined in Article 2 of the TEU, gained in depth and intensity in 2013. These values are shared between the EU and its Member States and include respect for human dignity, freedom, democracy, equality, the rule of law, respect for human rights and the rights of persons belonging to minorities, but also pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men. The Charter of Fundamental Rights largely covers these values and further defines them.

Against the backdrop of major policy discussions and developments that will occur in 2014, this focus section proposes a toolbox with which a new EU strategic fundamental rights framework could be shaped. Since such

a framework would be 'co-owned' by the EU and its Member States, it could strengthen the commitment to fundamental rights at the EU, national and sub-national levels. Some of the tools proposed here are relevant mainly at the EU level, others at the (sub-)national level and still others at both levels. The list of 20 tools proposed is neither exhaustive nor definitive; other tools could be added, discussed and used.

In any event, making use of such a toolbox could help shape an EU internal framework for fundamental rights that mirrors the existing external fundamental rights framework. This would send a strong signal to the outside world, showing that the EU and its Member States are prepared to 'walk their talk' and thus increase the consistency between the Union's internal and external behaviour. The challenge now is to get all the actors concerned to make use of these tools to achieve the expected result: promoting fundamental rights to safeguard the rule of law.



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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

The EU and its Member States took a variety of important steps in 2013 to protect and promote fundamental rights by assuming new international commitments, revamping legislation and pursuing innovative policies on the ground. 2013 was also characterised by an intense debate on how best to protect and promote the rule of law within the European Union (EU). This Focus looks at how to improve the protection of fundamental rights within EU Member States and the Union they are collectively building. It examines how the EU and its Member States, as part of their efforts to assume a pole position in the international human rights apparatus, could embed fundamental rights considerations more firmly in their policy making processes. By way of illustration, the Focus outlines for consideration 20 tools that could form part of a future EU strategic framework on fundamental rights.



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