

FRA Comments on the Presidency Draft Stockholm Programme

The EU Agency for Fundamental Rights (FRA) welcomes the opportunity to comment on the Presidency Draft Stockholm Programme. Based on studies and findings by the Agency¹

the Agency notes that the Presidency Draft:

1. has committed itself to a wider fundamental rights oriented language;
2. calls on the EU to continue *“promot[ing] international standards and the ratification of international conventions”* (6.7), identifies as an issue of *“key importance”* a *“rapid accession of the EU”* to the ECHR (2.1) and calls for the accession of the EU to the 1951 Geneva Convention (5.2.1);
3. emphasises the fundamental rights implications of the Stockholm Programme by introducing eight subchapters 2.3.1, 2.3.2, 2.3.3, 2.3.4, 2.4, 4.4.2, 4.4.3, 5.1.6 on specific issues and groups of particular importance for human rights;
4. emphasises that the rights of the child *“concern all EU policies”* (2.3.2) and that unaccompanied minors *“represent a particularly vulnerable group which requires special attention and dedicated responses”* including an overall EU *“action plan”* (5.1.6);
5. acknowledges that the rights of individuals in criminal proceedings are *“a fundamental value of the Union”* that will inform the upcoming Council Roadmap (2.4);
6. highlights that *“respect for fundamental rights and freedoms is one of the bases for the Union’s overall counter-terrorism work”* (4.5);
7. calls, in the field of asylum, for exploring further possibilities for responsibility-sharing and solidarity between Member States (5.2.2) and for *“an evaluation mechanism [...] to facilitate the alignment of asylum systems in the Member States”* – an approach that can contribute to enhance fundamental rights when implementing refugee law in Europe (5.2.1);
8. proposes a *“mechanism for reporting and recording incidents”* in the framework of Frontex operations (6.4.1) that could also lead to a strengthening of the protection of fundamental rights at borders.

¹ See also the FRA, “The Stockholm Programme: A chance to put fundamental rights protection right in the centre of the European Agenda”, 14 July 2009, online at <http://fra.europa.eu/fraWebsite/attachments/FRA-comments-on-Stockholm-Programme.pdf>
For concrete text proposals see the FRA, “Stockholm revised: 33 proposed amendments for a more fundamental rights oriented Stockholm Programme”, 14 July 2009.

However, the FRA would suggest that, for reasons of:

1. a better protection of fundamental rights, the title “promoting citizen’s rights” should be altered to “promoting individual rights/rights of people living in Europe”
2. a balanced approach, the creation of a “*genuine European law enforcement culture*” (4.2.1) be complemented with an equally prominent reference to fundamental rights training, the risks of discriminatory ethnic profiling, as well as the challenges of policing in multi-cultural societies;
3. coherence, in the chapter on trafficking (4.2.2), substantial cross-references be made to the new sub-chapter 2.3.4 on “*Victims of crime*” and the possibility of immunity from criminal prosecution and regularization of stay be mentioned;
4. privacy, a clear cut data protection clause be part and parcel of proposed registers such as that of convicted third country nationals (4.2.3), the Observatory for the Prevention of Crime (4.3.2) and in SIS II and VIS databases (6.4.2);
5. clarity, the ambivalent wording „*measures taken in the fight against terrorism cannot be challenged on grounds of a lack of legitimacy or for infringement of human rights*” (4.5) be amended;
6. ending situations of legal limbo, policy-responses be identified to the situation of irregular immigrants for whom return has not after a considerable period of time been practically possible (5.1.5);
7. facilitating access to fundamental rights, the practical obstacles irregular migrants face, for instance accessing basic health care services, be addressed (5.1.5);
8. the rights of the child, reference be made to the need for concrete and expert-driven mechanisms to determine the “*best interests of the child*”, particularly when deciding on the return of unaccompanied and separated children (5.1.6);
9. human dignity, in relation to external border management (6.4.1) reference be made to the specific needs of vulnerable people, including more effective identification and protection of victims of trafficking.

The FRA wishes to express its commitment to support the further process of the Stockholm Programme as well as its implementation by offering its advice.

Vienna, 30 October 2009