



FRA

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Ms Viviane Reding
European Commission Vice-President
in charge of Justice, Fundamental Rights and Citizenship
1049 Brussels
Belgium

Vienna, 4 June 2013
Ref: 2013-outgoing-000840

Dear Vice-President,

As Chairperson of the Management Board of the European Union Agency for Fundamental Rights (FRA) I am writing to you in the matter of the independent external evaluation of the achievements of the FRA during its first five years, that was produced in accordance with article 30 para.3 of the Agency's founding regulation (Council Regulation (EC) No 168/2007 of 15 February 2007). As you know, the terms of reference for the evaluation were issued by the Management Board in agreement with the Commission.

It is with great satisfaction that we took note of the results of the evaluation, which are generally very positive and conclude inter alia that the FRA has clearly fulfilled its mandate in addressing the needs for full respect of fundamental rights in the framework of EU law, in relation to relevant EU institutions, bodies, offices and agencies.

The final evaluation report, a copy of which is attached to this letter, was examined by the Board at its meetings in December 2012 and May 2013. According to article 31 para. 1 of the founding regulation, "the Management Board shall examine the conclusions of the evaluations referred to in Article 30(3) and (4) and issue to the Commission such recommendations as may be necessary regarding changes in the Agency, its working practices and the scope of its mission."

The Management Board's discussion of the follow-up to the independent external evaluation report was structured around three thematic clusters. One of the clusters was based on the recommendation of the evaluators that invites the FRA to "[...] continue its on-going efforts to be relevant and useful for Member States, in order to create the necessary linkages to deliver pertinent evidence and advice", and thus focused on the Agency's engagement at the national level. A second cluster covered organisational questions like the consolidation and implementation of the different management tools the FRA developed as well as working procedures, in particular concerning requests from the EU institutions. The third cluster was reserved for discussing issues that require changes in the founding regulation of the Agency.



Maija Sakslin, Chairperson of the Management Board

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Since most of the recommendations resulting from the discussions under the first two clusters are dealt with by the Management Board within the scope of its statutory independence, they are only considered in this letter in as far as they would necessitate amendments to the regulation establishing the Agency. When elaborating its recommendations, the Management Board also incorporated the experiences of the first five years of practical application of the founding regulation. This led to the inclusion of rather practical recommendations, e.g. on the quora for decisions of the Management Board.

Before referring to the individual recommendations, I would like to point out that in the context of the external evaluation and the adoption of a new Multiannual Framework for the FRA in March this year, the Management Board started a discussion on the Agency's strategic priorities for the next years. It is envisaged that the Board will adopt a Strategy Plan at its meeting this December. This will implement another key recommendation of the evaluation, which suggests a thorough review of the Agency's priorities.

Conclusions of the Independent External Evaluation

Two of the conclusions of the independent external evaluation explicitly refer to the Agency's mandate:

- *"The limits of the mandate of the FRA should be examined and discussed, to ensure that the Agency's mandate is supporting of the objective of providing advice and assistance to support the full respect of fundamental rights."*
- *"In particular it should be clarified to what extent the FRA should be mandated to issue on its own initiative opinions in the legislative process and have a wider mandate to address particular pertinent issues occurring in Member States."*

Recommendations by the Management Board concerning suggested changes of the FRA's founding regulation

The Agency was established as a "first pillar Agency" by limiting its scope to the competences of the "Community". With the entry into force of the Lisbon Treaty the former EU pillar structure was abolished and replaced by a Union with a single legal personality exercising all its competences under one umbrella. However, the Agency cannot work in the area of police and judicial cooperation in criminal matters, the former third pillar, on its own initiative.

In a similar vein, when the Agency's founding regulation was adopted in 2007, the Charter of Fundamental Rights of the EU was legally not binding; since the entry into force of the Lisbon Treaty, the Charter has the same legal value as the Treaties. In the normative basis of the FRA, the Charter is, however, only mentioned in the non-material considerations.

The Management Board therefore recommends that the founding regulation should be "lisbonised" in order to allow the Agency to work in all areas of EU competence, including



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the area of police and judicial cooperation and cover all rights enshrined in the EU Charter of Fundamental Rights, which should be clearly established as the normative backbone of the Agency's work.

The evaluation report refers to the possibility of FRA issuing its own initiative opinions on legislative proposals, including in the above quoted recommendation. According to the report there were several opinions expressed at the level of the European Parliament, civil society organisations and to some extent at the Member States level, that the prohibition to produce own initiative opinions on draft EU legislation appears in contrast with FRA's independence. The Management Board therefore recommends amending the founding regulation in order to allow the Agency to deliver its own motion opinions on proposals for EU legislation that raise fundamental rights issues based on its expertise, data collection and analysis. This would be a decisive further step to utilise the FRA's full potential and allow the FRA to carefully choose the legislative proposals it is commenting upon.

According to the current founding regulation the Agency's activities are – as long as they are not carried out at the request of an EU institution but on the Agency's own motion – confined to the Multiannual Framework as adopted by the Council of the European Union. However, according to CJEU jurisprudence the MAF can no longer be directly based on the FREG (as envisaged by Art. 5 FREG). Therefore the new MAF was adopted on the basis of Art. 352 TFEU. In this sense the MAF becomes a 'founding regulation on the side'. The Management Board therefore recommends that a revision of the regulation should establish that the Multiannual Framework is to be adopted by the Management Board in close consultation with all the three EU institutions in order to ensure that it takes the respective priorities appropriately into account.

Currently, the founding regulation stipulates in its article 2 on the objective of the Agency that it shall provide assistance and expertise to the Member States when implementing Community [sic] law. This is however not mirrored in the description of tasks of the Agency in article 4. Another means to increase the Agency's usefulness and relevance for Member States could thus be to enlarge the tasks of the Agency in order to explicitly allow national authorities to avail themselves of the Agency's expertise and assistance when implementing EU law related to the Charter of Fundamental Rights. The realisation of such a request, coming from a (group of) Member State(s), should however be subject to available resources and its compatibility with the Agency's priorities and Annual Work Programme. The Management Board recommends enlarging the Agency's tasks enumerated in article 4 of the founding regulation so they include the possibility for a (group of) Member States to request assistance from the FRA within the scope of its mandate and under the conditions mentioned above.

When the Council adopted the regulation establishing the FRA, it made a declaration referring to a possible use of the Agency's assistance in the proceedings under Article 7 of the Treaty on European Union. In the light of recent developments in some Member States as regards the respect for the values mentioned in Art. 2 TEU and the subsequent discussions led in the EU institutions, the Management Board recommends that the Commission should consider amending the founding regulation in order to include a



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reference to a possible role for the Fundamental Rights Agency in the framework of art. 7 TEU.

Against the backdrop of the current discussion on a 'rule of law initiative' and the need to address the 'Copenhagen dilemma', it should also be considered that the Agency provides the EU institutions and the Member States with an up to date pool of evidence. The provision of independent, robust evidence by the Agency would facilitate mutual trust on which the principle of mutual recognition operates. Furthermore, the provision of information and analysis by the Agency could feed into a regular reporting exercise informing, for instance, peer review in the Council and preparatory bodies. The Management Board therefore recommends considering tasking the Agency with a continuous, comprehensive and comparative process of data collection and analysis with regard to the respect for article 2 TEU-values.

In discussions with the European External Action Service (EEAS) and Member States' representatives, the usefulness of a contribution by the FRA to human rights dialogues with third countries has been highlighted. The Council of the European Union has in 2012 adopted an "EU Strategic Framework and Action Plan on Human Rights and Democracy", which refer to issues of coherence and consistency between the EU's external and internal human rights policy. The FRA could provide valuable input on the EU internal situation of fundamental rights in this context. The Management Board therefore recommends that a reference to human rights dialogues with third countries and possibly other contributions to the work of EU institutions and the EEAS in external fundamental rights policy matters are inserted in the enumeration of the tasks of the Agency.

While conducting research for the Agency, FRA staff and people acting on behalf of FRA as contractors have encountered problems accessing certain facilities and when trying to obtain required evidence and data. The Management Board therefore recommends adding a provision to article 4 of the founding regulation stipulating that Member States shall cooperate with the Agency by facilitating its data collection tasks under this provision.

Currently, the founding regulation requests Member States to nominate a government official as National Liaison Officer (NLO). Practice has shown that in cases of a replacement of an NLO by an official from a different authority than the previous NLO there was a lack of continuity in the performance of the NLO role. Furthermore, experience with federal Member States with a high degree of autonomy of the sub-national entities has shown that it could be useful to have liaison officers on this level. The Management Board therefore recommends that a specific department within the state administration as such is nominated as National Liaison Authority (e.g. the Ministry of Justice) and out of its staff an NLO is chosen. This should also apply for the sub-national level. This would improve the interaction between FRA and the Member States and increase its coherence and sustainability.

The practice of organising the meetings of the Management Board has shown that it would increase the administrative practicability and facilitate the organisation of the work of the Management Board if the mandate of the Members due to be replaced after 2 ½ years end on the same day, regardless of the day they were nominated by their government. The



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Management Board therefore recommends that the term of office of the Management Board members to be replaced every two-and-a-half years should end at the same date.

The conduct of voting procedures in the Management Board for decisions requiring a two thirds majority of all Management Board Members has proven very difficult and lengthy at some of its meetings. The Management Board recommends amending the founding regulation so that the quorum for decisions requiring a two thirds majority of all members changes after three unsuccessful votes to a simple majority of the members present.

The Agency's founding regulation provides for an observer status in the Management Board of candidate countries and countries with which a Stabilisation and Association Agreement has been concluded. Likewise, the Chairperson or Vice-Chairperson of the Scientific Committee and the Director of the European Institute for Gender Equality may attend the Board's meetings as observers. The Directors of other relevant Community agencies and Union bodies as well as of other international bodies may attend as observers when invited by the Executive Board of the FRA. The rules in place do not, however, allow member states of the European Economic Area to participate, which has proven to be undesirable. The Management Board therefore recommends including the European Economic Area in the enumeration of organisations with which the Agency can cooperate under article 8 of the founding regulation.

In more general terms, the Management Board recommends that any potential review of the founding regulation should take due account of the tasks that were assigned to the Agency in recent years, including for instance its role under the UN CRPD monitoring framework, its participation in the Commission's Roma task force or other examples of standing institutional practice.

Finally, I would like to ask you if you could inform the Management Board of the Agency concerning the transmission of the evaluation reports and the Management Board's recommendations to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions in accordance with Art. 31 of the Agency's founding regulation. We will then make the external evaluation available on the Agency's webpage, which will serve to inform a wider audience about the work and progress of the Agency over the last years.

Yours sincerely,

Maija Sakslin
Chairperson of the FRA Management Board



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