

THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS: ITS PLACE AND ROLE IN BRINGING RIGHTS TO LIFE IN THE EUROPEAN HUMAN RIGHTS PROTECTION ARCHITECTURE

TAMÁS MOLNÁR¹

tamas.molnar@uni-corvinus.hu

Cómo citar/Citation

Molnár, Tamás (2026).

The European Union Agency for Fundamental Rights: its place and role in bringing rights to life in the European human rights protection architecture.

Revista de Derecho Comunitario Europeo, 84, 71-101.

doi: <https://doi.org/10.18042/cepc/rdce.84.03>

Abstract

This article locates the European Union (EU) Agency for Fundamental Rights (FRA) within Europe's densely populated human-rights protection landscape, where it coexists with the United Nations (UN), the Council of Europe (CoE) and OSCE/ODIHR mechanisms. Measured against the UN Paris Principles' typology of national human rights institutions, FRA emerges as a hybrid of the advisory-committee and institute models — neither a monitoring nor a complaints/adjudicative body, but an independent expert agency centred on data collection, socio-legal analysis and technical advice. The analysis traces FRA's diverse activities from evidence-based advice toward more operational engagement, which include(d) field presence in migration hotspots, Schengen evaluations, field visits as well as producing legal opinions and “legal position papers”. All this blends advisory and normative monitoring through the Agency's distinctive socio-statistical methodology. Its impact, however, remains constrained by a territorial mandate excluding third countries and CFSP matters, dependence on EU institutions' requests for input to legislative files, absence of enforcement powers, and persistently limited budget and staffing relative to other EU

¹ PhD, dr.habil., senior legal researcher, European Union Agency for Fundamental Rights (Vienna, Austria); visiting lecturer, Corvinus University of Budapest, Department of International Relations (Budapest, Hungary). The views expressed in this article are solely those of the author and its content does not necessarily represent the views or position of the European Union Agency for Fundamental Rights.

justice and home affairs agencies. The piece concludes that FRA, being a unique European human rights actor, has become a trusted “centre of excellence” complementing the CoE and other institutional human rights actors, and recaps three roadmap-like scenarios for its future — “status quo plus,” “FRA plus,” and transformation into a full-fledged EU Fundamental Rights Authority.

Keywords

European Union; fundamental rights; regional international organizations; EU Agency for Fundamental Rights; international legal personality; Council of Europe; Charter of Fundamental Rights of the EU.

LA AGENCIA DE LA UNIÓN EUROPEA PARA LOS DERECHOS FUNDAMENTALES: SU LUGAR Y SU FUNCIÓN EN LA APLICACIÓN DE LOS DERECHOS EN EL MARCO DE LA ARQUITECTURA EUROPEA DE PROTECCIÓN DE LOS DERECHOS HUMANOS

Resumen

Este artículo sitúa a la Agencia de la Unión Europea para los Derechos Fundamentales (FRA) en el abarrotado panorama europeo de la protección de los derechos humanos, donde coexiste con las Naciones Unidas (ONU), el Consejo de Europa y los mecanismos de la OSCE/OIDDH. A la luz de la tipología de instituciones nacionales de derechos humanos de los Principios de París de la ONU, la FRA se perfila como un híbrido entre los modelos de comité consultivo e instituto: no es un órgano de supervisión ni de tramitación de denuncias o resolución de litigios, sino una agencia de expertos independiente centrada en la recopilación de datos, el análisis socio-jurídico y el asesoramiento técnico. El análisis traza las diversas actividades de la FRA, desde el asesoramiento basado en datos hasta una participación más operativa, que incluyen la presencia sobre el terreno en puntos críticos de migración, evaluaciones de Schengen, visitas sobre el terreno, así como la elaboración de dictámenes jurídicos y «documentos de posición jurídica». Todo ello combina el asesoramiento y la supervisión normativa a través de la metodología socioestadística distintiva de la Agencia. Sin embargo, su impacto sigue estando limitado por un mandato territorial que excluye a los terceros países y las cuestiones de la PESC, la dependencia de las solicitudes de las instituciones de la UE para aportar información a los expedientes legislativos, la ausencia de poderes de ejecución y un presupuesto y una dotación de personal persistentemente limitados en comparación con otras agencias de justicia y asuntos de interior. El artículo concluye que la FRA, al ser un actor europeo único en materia de derechos humanos, se ha convertido en un «centro de excelencia» de confianza que complementa al Consejo de Europa y a otros actores institucionales de los derechos humanos, y resume tres escenarios a modo de hoja de ruta para su futuro: «statu quo

plus», «FRA plus» y la transformación en una autoridad de derechos fundamentales de la UE en toda regla.

Palabras clave

Unión Europea; derechos fundamentales; organizaciones internacionales regionales; Agencia de los Derechos Fundamentales de la UE; personalidad jurídica internacional; Consejo de Europa; Carta de los Derechos Fundamentales de la UE.

L'AGENCE DES DROITS FONDAMENTAUX DE L'UNION EUROPÉENNE: SA PLACE ET SON RÔLE DANS LA MISE EN ŒUVRE DES DROITS AU SEIN DE L'ARCHITECTURE EUROPÉENNE DE LA PROTECTION DES DROITS DE L'HOMME

Résumé

Cet article situe l'Agence des droits fondamentaux de l'Union européenne (FRA) dans le paysage européen très dense relatif à la protection des droits de l'homme, où elle coexiste avec les mécanismes des Nations unies (ONU), du Conseil de l'Europe et de l'OSCE/BIDDH. À l'aune de la typologie des institutions nationales des droits de l'homme définie par les Principes de Paris de l'ONU, la FRA apparaît comme un hybride entre les modèles de comité consultatif et d'institut — ni organe de surveillance, ni organe de traitement des plaintes ou de jugement, mais une agence d'experts indépendante axée sur la collecte de données, l'analyse socio-juridique et le conseil technique. L'analyse retrace les diverses activités de la FRA, allant de conseils fondés sur des données factuelles à un engagement plus opérationnel, qui comprennent(aient) une présence sur le terrain dans les points d'accès de la migration (« hotspots »), des évaluations « Schengen », des visites sur le terrain ainsi que la production d'avis juridiques et de « notes de position juridique ». Tout cela combine conseil et suivi normatif grâce à la méthodologie socio-statistique distinctive de l'Agence. Son impact reste toutefois limité par un mandat territorial excluant les pays tiers et les questions relevant de la PESC, par sa dépendance vis-à-vis des demandes des institutions de l'UE pour contribuer aux dossiers législatifs, par l'absence de pouvoirs d'exécution, ainsi que par un budget et des effectifs toujours limités par rapport à d'autres agences européennes spécialisées dans le domaine de la justice et des affaires intérieures. L'article conclut que la FRA, en tant qu'acteur européen unique en matière de la protection des droits de l'homme, est devenue un « centre d'excellence » de confiance complétant le Conseil de l'Europe et d'autres acteurs institutionnels en matière de la protection des droits de l'homme, et présente trois scénarios de type comme feuille de route pour son avenir : « statu quo plus », « FRA plus » et la transformation en une Autorité européenne des droits fondamentaux à part entière.

Mots clés

Union européenne; droits fondamentaux; organisations internationales régionales; Agence des droits fondamentaux de l'Union européenne; personnalité juridique internationale; Conseil de l'Europe; Charte des droits fondamentaux de l'Union européenne.

CONTENTS

I. INTRODUCTION: ORIGINS AND HISTORY OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA). II. FRA'S MANDATE AND POWERS. III. THE AGENCY'S LEGAL PERSONALITY. IV. THE AGENCY'S GOVERNING BODIES, STRUCTURE AND FUNCTIONING: 1. Management Board. 2. Executive Board. 3. Scientific Committee. 4. Director. 5. FRA working methods. 6. Other horizontal questions of its functioning. V. FITTING INTO THE HUMAN RIGHTS PROTECTION INSTITUTIONAL LANDSCAPE IN EUROPE: AN APPRAISAL. VI. IMPACT: ACHIEVEMENTS AND CHALLENGES. VII. CONCLUSIONS. *BIBLIOGRAPHY.*

I. INTRODUCTION: ORIGINS AND HISTORY OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA)

For long decades after its creation, mainly due to the originally economic nature of the European integration project, the European Union (EU) — and its predecessors — did not possess a self-standing, independent entity dealing with fundamental rights. Academic voices encouraged first, in the 1990s, the establishment of EU's own human rights (monitoring) body with a view to adopting a more preventive approach to human rights protection (see, e.g., Alston and Weiler, 1999: 55-59). This suggestion was made to the “Comité des Sages” responsible for drafting a human rights agenda for the EU at the new millennium (Cassese *et al.*, 1998: paras. 185-199), following the consolidation of the fundamental rights-related case law of the Court of Justice of the EU (CJEU)² and the explicit recognition, for the first time, of the protection of such rights by the Treaty of Maastricht³.

² For landmark and leading rulings, see e.g. Judgment of the Court of 12 November 1969, *Stauder v City of Ulm*, 29/69, EU:C:1969:57; Judgment of the Court of 17 December 1970, *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, 11/70, EU:C:1970:114; Judgment of the Court of 14 May 1974, *J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities*, EU:C:1974:51; and Judgment of the Court of 13 December 1979, *Liselotte Hauer v Land Rheinland-Pfalz*, 44/79, EU:C:1979:290.

³ Treaty on European Union (Maastricht Treaty) [1992] OJ C191/1. Art. F(2) stipulated: “The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law”.

Setting up the European Union Agency for Fundamental Rights (hereinafter: “FRA” or “Agency”) did not occur in a complete legal-institutional vacuum though: FRA succeeded the European Monitoring Centre on Racism and Xenophobia (“EUMC”) which had been operating in Vienna since 1997⁴. Notwithstanding the existence of its forerunner, FRA’s creation was not the “outcome of any concerted political long-term strategy” (Toggenburg, 2018: 445). A telling example for that is that when discussing the reform of the EUMC, the European Commission was not favourable of transforming it into an across-the-board EU human rights agency — even if the September 2000 report of the “Three Wise Men” analysing “the commitment of the Austrian Government to the common European values, in particular relating to the rights of minorities, refugees and immigrants” recommended the creation of an EU Agency on Human Rights to contribute to the establishment “of a mechanism within the EU to monitor and evaluate the commitment and performance of individual Member States with respect to common European values” (Ahtisaari *et al.*, 2001: para. 117).

Against this background, it was rather surprising when Member States later announced their intent, at the European Council meeting of December 2003, to establish a stand-alone EU Human Rights Agency⁵. The idea of a “Human Rights Agency” was then also included in The Hague Programme adopted in November 2004. This EU-level strategic planning document aimed at strengthening the Union’s “area of freedom, security and justice” for 2005-2009⁶.

Given that the establishment of FRA has not been initially envisaged in the EU founding Treaties and in the absence of a general fundamental rights competence of the EU, the so-called “flexibility clause”, set out in Art. 352 of the Treaty on the Functioning of the European Union (TFEU)⁷, served as its legal basis under EU primary law. This clause allows the EU to unanimously legislate in areas not expressly covered by the founding Treaties, if necessary to attain its objectives.

⁴ See its founding Regulation (EC) No. 1035/97 — now repealed: Council Regulation (EC) No. 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia [1997] OJ L 151/1; as amended by Council Regulation (EC) No. 1652/2003 of 18 June 2003 [2003] OJ L 245/33.

⁵ Conclusions of the Representatives of the Member States meeting at Head of State or Government level in Brussels on 13 December 2003 (Council of the EU Document No. 5381/04, Annex).

⁶ The Hague Programme: strengthening freedom, security and justice in the European Union [2005] OJ C 53/1, section II.2.

⁷ At the time of FRA’s creation, that was Art. 308 of the Treaty establishing the European Community (Consolidated version 2006 — [2006] OJ C 321E/37).

Yet not all actors involved in the negotiations were interested in creating a strong EU body dealing with human rights. The Council of Europe (“CoE”) — which is the European continent’s leading human rights intergovernmental organization⁸ — had the most concerns over eventual duplications of mandate and unwanted competition between the two organisations (Steiner, 2006: 130-133; De Schutter, 2008: 509-512; De Schutter, 2009: 112-116; Pérez Bernárdez, 2015: 594-603; Kjaerum, 2020: 29). These dynamics and diverging interests led to significant changes to the Commission’s original proposal⁹, which drew on the results of a prior large public consultation launched in October 2004 on the remit, rights and thematic areas, tasks and structure of the planned EU agency¹⁰.

After more than two years of negotiations, in February 2007, the Council of the EU — acting unanimously under ex-Art. 308 of the Treaty establishing the European Community (TEC) (currently Art. 352 TFEU) and after having consulted the European Parliament — adopted FRA’s founding regulation. This is *Council Regulation (EC) No. 168/2007* — hereinafter referred to as “FRA Regulation” or “founding regulation”¹¹. The FRA Regulation — which is legally binding and directly applicable in all EU Member States pursuant to Art. 288 TFEU — entered into force on 1 March 2007. This is also the date when the Agency officially started functioning, replacing the EUMC¹² with a wider mandate covering all human rights (called “fundamental rights” in the

⁸ The Council of Europe’s primary mission is to uphold and promote human rights, democracy, and the rule of law across its 46 member states. Founded in 1949 and based in Strasbourg, the CoE sets legal standards, monitors compliance with those, and fosters cooperation within a Pan-European space to addressing human rights challenges. See at <https://is.gd/FwIjB0>.

⁹ Commission of the European Communities, Proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights and Proposal for a Council Decision empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI of the Treaty on European Union [SEC(2005)849], COM(2005)280 final, 30-06-2005.

¹⁰ Commission of the European Communities, Communication from the Commission — The Fundamental Rights Agency: Public consultation document [SEC(2004)1281], COM(2004) 693 final, 25-10-2004. For more details on the Agency’s legislative history, see Von Bogdandy and Von Bernstorff (2009: 1044-1047); and De Schutter (2009: 100-111, 133-135).

¹¹ Council Regulation (EC) No. 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights [2007] OJ L53/1.

¹² The EUMC’s last activity report was published already under the auspices of the new Agency, see FRA, *Activities of the European Monitoring Centre on Racism and Xenophobia in 2006* (Publications Office of the EU 2007).

EU's parlance, as per Art. 6[3] of the Treaty on European Union [TEU] and as contained in the Charter of Fundamental Rights of the EU [hereinafter: "the Charter"]). Still, the years 2007-2008 were rather transitional, with its first director only taking his office from June 2008 (European Union Agency for Fundamental Rights, 2012: 1).

After more than one decade of its existence, in view of increasing the Agency's impact, technical amendments to the founding regulation were tabled in June 2020¹³ and then adopted by the Council of the EU, also by unanimity as per Art. 352 TFEU, in April 2022. These amendments are contained in Regulation (EU) 2022/555¹⁴. After 15 years of the Agency's existence, the main reasons for such "facelifting" changes included aligning FRA's founding regulation with the requirements of the EU's 2012 Common Approach to decentralised agencies¹⁵, improving governance, efficiency and performance of the Agency. Revamped rules also clarified that, since the entry into force of the Lisbon Treaty (1 December 2009)¹⁶, FRA's remit is EU law *en bloc*, including police cooperation and judicial cooperation in criminal matters. This corresponds to the prevailing scholarly views post-Lisbon, pursuant to which the structural changes brought by the Lisbon amendments (namely the abolition of the Union's pillar structure) implicitly and automatically extended FRA's purview to all areas of EU law, encompassing the ex-third pillar -former Title VI TEU- as well (Toggenburg, 2018: 450; Nowak and Müller-Funk, 2020: 215; De Schutter, 2020a: 7, 22).

II. FRA'S MANDATE AND POWERS

Regulation (EC) No. 168/2007 established FRA as a European Union agency. There is no single, dedicated provision in the founding EU Treaties for creating Union agencies. Instead, EU agencies are established using specific sectoral policy provisions or the "flexibility clause" in Art. 352 TFEU.

¹³ European Commission, Proposal for a Council Regulation amending Regulation (EC) No. 168/2007 establishing a European Union Agency for Fundamental Rights, COM(2020) 225 final, 5-6-2020.

¹⁴ Council Regulation (EU) 2022/555 of 5 April 2022 amending Regulation (EC) No. 168/2007 establishing a European Union Agency for Fundamental Rights [2022] OJ L 108/1.

¹⁵ Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies, Annex — Common Approach (signed 19 July 2012).

¹⁶ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007 [2022] OJ C 306/1.

Setting up FRA was a significant step for the furtherance of the international protection of human rights and its institutionalisation at regional (European) level. Due to FRA's legal basis (i.e. a piece of secondary EU law, and not directly based on the EU founding Treaties, nor deriving its existence from an explicit authorisation therein), the Agency can be conceived as belonging to the “*tertiary organisational structure*” of the EU edifice (Schusterschitz, 2004: 165).

The Agency's *main objective* is to provide fundamental rights expertise and assistance to EU institutions, bodies and agencies as well as EU Member States when implementing EU law¹⁷. FRA uses the (empirical) evidence drawn from its research, paired with sound legal analysis, to formulate *socio-legal advice* for both the EU institutions and Member States in areas covered by EU law. The “evidence-based advice” can take a variety of forms and outputs, including reports (with recommendations), surveys, legal opinions, legal position papers, workshops or informal input to the EU institutions and agencies, etc. FRA is the only EU body that is solely and specifically tasked to deal with the protection of fundamental rights within the Union's institutional architecture, covering the full spectrum of fundamental rights guaranteed under EU law. This EU centre of excellence or “beacon on fundamental rights” (Equal Voices, 2008: 4) has to “fulfil its tasks in complete independence”¹⁸.

To meet the above general objective, FRA pursues *three major functions*. These are the following: 1) based on its own research, *collection of data* and provision of *solid evidence*, coupled with methodological advice to improve data comparability and quality; 2) *policy advice* at EU and national level, including expert (legal) opinions, technical assistance and capacity building; and 3) *communication* of rights and raising public awareness, also creating and engaging with various networks — with a view to promoting fundamental rights across the Union; a dimension which directly flows from Art. 51(1), second sentence, of the Charter.

It is to underline at this point that the Agency's “beautiful” mandate (see similarly Morijn and Toggenburg, 2024: 4) is *limited* in several ways. First, it is entitled to deal with the situation of “fundamental rights” — as such rights are referred to in Art. 6(3) TEU and defined in the Charter — within the EU territory as a matter of principle¹⁹ —, acting in matters falling under EU competences. Not covering third states was also designed to avoid too much territorial overlap with scope of the Council of Europe and also due to the

¹⁷ The latter limitation flows from Art. 51(1) of the Charter.

¹⁸ Art. 16(1) of FRA Regulation.

¹⁹ See exceptions under section V.

opposition of some Member States (Steiner, 2006: 138). The *territorial* limitation also means that the Agency's scope of action cannot extend to activities falling under the common foreign and security policy (CFSP) — the former “second pillar” of the EU (Title V TEU).

Second, FRA's founding regulation also makes it explicit that the Agency's mandate is not to interfere with the powers of the European Commission: the Agency must not deal with the legality of acts of EU institutions within the meaning of Art. 263 TFEU [action for annulment]; or with the question of whether a Member State has failed to fulfil an obligation under EU law within the meaning of Art. 258 TFEU [infringement procedure]. At the same time, although the Agency has been precluded from reviewing the legality of pieces of secondary EU law — which is the CJEU's prerogative —, it can be requested to take a position, i.e. to publish a legal opinion on the compatibility of tabled EU legislative proposals with fundamental rights law (see also under section VI below).

Until the 2022 reform, the Agency's areas of activity were defined in a five-year *Multiannual Framework*, adopted by the Council of the EU. This is no longer the case: Council Decision (EU) 2017/2269 established the last one for the period of 2018-2022²⁰. This Multiannual Framework has become obsolete with the expansion of the Agency's mandate and has thus been replaced by a *single programming document* following the 2022 amendments to the FRA Regulation. The single programming document is to be adopted every year in a procedure involving FRA's Scientific Committee, the Management Board (see section IV) and the European Commission, which contains in particular the annual and multiannual work programme²¹. The single programming document provides a comprehensive framework for planning and programming, connecting the Agency's long-term strategic priorities and objectives with its annual operational work. This document seeks to ensure coherence between strategic objectives, work areas and outputs necessary to achieve them, offering a structured approach for various stakeholders.

Thematically speaking, FRA has engaged in its work with the following *domains* (in line with EU competences and relevant Charter rights):

— racism, xenophobia and related intolerance (representing continuity with its predecessor, the EUMC);

²⁰ Council Decision (EU) 2017/2269 of 7 December 2017 establishing a Multiannual Framework for the European Union Agency for Fundamental Rights for 2018—2022 [2017] OJ L 326/1.

²¹ For the current single programming document (2026-2028) and the annual work programme for 2026, see at <https://is.gd/ZokCc7>.

- non-discrimination and equality, including Roma inclusion;
- asylum, borders, visas, immigration and integration of migrants and refugees;
- children’s rights;
- EU citizenship and freedom of movement;
- data protection and information society;
- new challenges posed by artificial intelligence;
- access to justice, including victims’ rights, judicial cooperation and judicial independence;
- countering terrorism and other areas of internal security;
- rights of persons with disabilities; as well as
- support for human rights systems and defenders²².

As a result of the 2022 amendments to its founding regulation, the Agency’s expanded areas of activity now explicitly include *police cooperation* and *judicial cooperation in criminal matters* (ex-third pillar matters)²³. These are domains where FRA had in the past only timidly acted, exercising self-restraint due to ambiguities concerning the limits of its (originally first pillar-related) mandate post-Lisbon. This “grey zone” situation has thus resulted in FRA carrying out related work only upon the express, targeted request from EU institutions, most commonly from the European Parliament²⁴.

As regards the *outputs*, the Agency has a diverse and colourful publication portfolio. It publishes comparative reports, survey findings, legal opinions (on pending EU legislative proposals), legal position papers (on topical fundamental rights challenges not yet subjected to a legislative proposal by the European Commission) and other materials on the above issue areas. Next to these, FRA also organizes training or other capacity building activities for EU and Member State officials²⁵, as well as campaigns and communi-

²² For a succinct but informative overview of the thematic areas of work, see most recently FRA, *Consolidated Annual Activity Report of the European Union Agency for Fundamental Rights 2024* [In pursuance of FR 2018/1046, FFR No 2019/715] (Publications Office of the EU 2025) 15-42.

²³ Preamble (3) and Art. 1(2)-(3) of Regulation (EU) 2022/555.

²⁴ See e.g. FRA, *Proposal for a Regulation on preventing the dissemination of terrorist content online and its fundamental rights implications — Opinion of the European Union Agency for Fundamental Rights*, FRA Opinion — 2/2019 [Online terrorist content] (Vienna, 12 February 2019).

²⁵ For concrete examples, visit <https://is.gd/rBlmpt> and apply the filters “training” and/or “capacity building”.

cation activities. Illustrative recent examples are the e-media toolkit on migration²⁶; or the “10 keys to effectively communicating human rights”²⁷.

In terms of the multiple ways FRA works and the various activities it is tasked to carry out, its mandate is quite broad, empowering the Agency to undertake its own research and data collection; provide methodological advice to EU institutions, agencies and Member States to improve data comparability and quality; formulate opinions (recommendations) on thematic topics on its own initiative or upon request; promote dialogue with civil society; and communicate fundamental rights to the general public and thus raise public awareness.

III. THE AGENCY’S LEGAL PERSONALITY

Another cross-cutting salient feature related to the Agency’s powers is its *legal personality* and its nature. Situating this phenomenon within the larger body of international law, the creation of so-called “agencies” endowed with legal personality by international organizations is a quite recent phenomenon (Walter, 2008: paras. 13-14). Over the past few decades, the EU has been fairly active in establishing Union agencies by an act of secondary legislation²⁸ — a phenomenon which is also coined as “agencification” of the EU administrative system²⁹.

FRA as an EU agency enjoys legal personality, but its founding regulation only refers expressly to its legal capacity under the *domestic* legal systems of Member States. This legal capacity is distinct from the EU’s legal personality under Art. 47 TEU, but FRA as an EU body remains within the EU legal and institutional system.

An organization’s *international* legal personality needs to be separated from the domestic legal personality. The former represents the ability to be a subject of international law, which includes the capacity of possessing rights and duties on an international plane³⁰, whereas the latter denotes the capacity to perform legal acts in domestic law, it may even be implied when necessary to allow an international organization to function effectively (Schermers and Blokkers, 2018: paras.

²⁶ Available at <https://is.gd/JTQ2nJ> (and for its trainer’s manual, see at <https://is.gd/JjM2ql>).

²⁷ Available at <https://is.gd/rUplwr> [2022 edition].

²⁸ For a list of all EU agencies (which number over 50), see at <https://is.gd/RBetPY>.

²⁹ From the rich literature, see e.g. Chiti (2021).

³⁰ International Court of Justice, *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion*, ICJ. Reports 1949, 179.

1561, 1591-1598). Yet, the Agency's international legal personality — and if accepted, its scope — remains unclear and ambiguous (see, e.g., Schusterschitz, 2004; Ott, 2008: 526; Ott *et al.*, 2013: 10, 14). Other commentators deny EU agencies' legal personality under international law, as they do not see the functional need for such a stand-alone personality (e.g. Orator, 2017); or stress that an explicit decision by the EU itself about the creation of a new international legal person is lacking (Zieliński, 2017: 34, similarly Drosse, 2020: 259-261). This also seems to be the position of the European Commission³¹.

As per *state practice* concerning the recognition of FRA's international legal personality, Austria concluded a seat agreement with FRA in 2010³², complementing thus with more specific rules the Protocol (No. 7) on Privileges and Immunities of the EU and the country-specific Modalities of Application concluded between Austria and the European Commission (2000)³³. The Agency's seat (headquarters) agreement resembles to classic headquarters agreements of intergovernmental organizations; and Austria considers it as a "treaty" pursuant to the 1986 Vienna Convention on the Law of the Treaties between States and International Organizations or between International Organizations. However, in FRA's external relations with international organisations, it was the EU — and not the Agency itself — that concluded an agreement governed by international law, in application of Art. 218 TFEU [ex-Art. 300 TEC], with the CoE establishing a cooperation framework with FRA³⁴. This EU-CoE agreement sets up the framework and methods of co-operation between FRA and the CoE entities, with the aim to avoid duplication and ensure complementarity and added value (Di Marco, 2026: 8).

In addition to legally binding international instruments, the Agency may conclude "*administrative arrangements*" in its own right to cooperate with other international organisations. Such arrangements must comply with EU law and be adopted by the FRA Management Board after consulting the European

³¹ European Commission, Directorate-General Employment, Social Affairs and Inclusion, Letter to the Permanent Representative of Spain to the European Union, 5 (quoted by Zieliński, 2017: 34 and footnote 174).

³² Headquarters Agreement between the Republic of Austria and the European Union Agency for Fundamental Rights (signed 16 June 2010, entered into force 1 February 2011) *Bundesgesetzblatt für die Republik Österreich*, Teil III, 10/2011.

³³ Modalities of Application of the Protocol on the Privileges and Immunities of the European Communities between the Austrian Federal Government and the Commission of the European Communities (signed 20 January 2000).

³⁴ Agreement between the European Community and the Council of Europe on cooperation between the European Union Agency for Fundamental Rights and the Council of Europe [2008] OJ L186/7.

Commission. So far, only one such working arrangement has been drawn up — with the United Nations (UN) Development Programme (UNDP)³⁵. Similar non-legally binding working arrangements (e.g. Memoranda of Understanding) have been equally concluded with *other EU agencies and bodies*, such as the European Border and Coast Guard Agency (Frontex), the European Asylum Support Office (EASO — which is now the EU Agency for Asylum [EUAA]), the EU Agency for Law Enforcement Cooperation (Europol), the EU Agency for Criminal Justice Cooperation (Eurojust), the EU Agency for Law Enforcement Training (CEPOL), the EU Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), the European Data Protection Supervisor (EDPS) and the European University Institute³⁶. Most recently, FRA signed a Memorandum of Understanding with the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC), to cooperate on European standardisation related to artificial intelligence³⁷. Time will tell whether this trend will continue.

IV. THE AGENCY'S GOVERNING BODIES, STRUCTURE AND FUNCTIONING

In terms of the institutional structure, the FRA Regulation determines the *bodies* of the Agency (Art. 11): these are the Management Board (Art. 12); the Executive Board (Art. 13); the Scientific Committee (Art. 14); and the Director (Art. 15).

The Rules of Procedure³⁸ adopted by the Management Board lay down the more detailed modalities concerning the functioning of the Management Board, the Executive Board, and the Scientific Committee; whereas the Director's decisions (who holds the powers of the “appointing authority” upon the Management Board's delegation) and other internal documents govern the day-to-day operation of the Agency³⁹. When it comes to the institutional design, the Agency differs from many other international institutions and bodies

³⁵ Protocol for Cooperation between the United Nations Development Programme and the European Union Agency for Fundamental Rights, available at <https://is.gd/GCCdkz>.

³⁶ They are available at FRA's public register of documents under <https://is.gd/XHBsmY>.

³⁷ See at <https://is.gd/69F9K0>.

³⁸ The latest Rules of Procedure were adopted in December 2022 — this FRA by-law can be accessed at <https://is.gd/Uoj4zD>.

³⁹ For these internal rules, consult FRA's public register of documents under <https://is.gd/XHBsmY>.

mandated to protect and advance human rights (Moriijn and Toggenburg, 2024: 3). The below sub-sections espouse these specificities in more detail.

As regards operational issues, the Agency must fulfil its tasks in complete *independence*, while ensuring the highest possible level of *transparency* in its activities. Its governing bodies need to act in the *public interest*, and FRA's operations are subject to the review by the European Ombudsman in accordance with Art. 228 TFEU.

1. MANAGEMENT BOARD

The Management Board is responsible for the definition of the Agency's priorities, the overall strategic planning and monitoring, as well as the adoption of FRA's budget [Art. 12(6)]. As new tasks were attributed to it by the 2022 amendments to the FRA Regulation, the Management Board is also responsible for adopting a security strategy, a communication strategy, as well as the rules for the prevention and management of conflicts of interest in respect of its members and those of the Scientific Committee.

The Management Board is composed of 30 highly qualified experts in fundamental rights (who should also have administrative and budgetary skills). Each Member State and each of the States holding observer status⁴⁰ appoints one independent expert (not representing thus the government), whereas the European Commission delegates two representatives and the CoE appoints one independent person⁴¹. Each member may be assisted by an alternate member who is selected according to the same procedure. Appointing entities endeavour to achieve an equal representation of women and men. The composition of the Management Board aims to ensure, in view of the UN General Assembly Resolution 48/134 (1993) on national institutions for the promotion and protection of human rights ("Paris Principles"), the Agency's independence both from EU institutions and national governments. The Management Board elects its chair and vice-chair as well as two members of the Executive Board (see below in sub-section 2) for a two-and-a-half year term (their term may be renewed once).

2. EXECUTIVE BOARD

The Executive Board — consisting of the chair and the vice-chair and three other members of the Management Board including a European

⁴⁰ At the time of writing, these are Albania, North Macedonia and Serbia.

⁴¹ For the current composition of the Management Board, see at <https://is.gd/yBaqzX>.

Commission representative⁴² — assists the Management Board in all matters such as preparing decisions and scrutinising budgetary and human resources matters [Art. 13(1)-(2)]. It also assists and advises the Director. The Management Board can also delegate some of its responsibilities to the Executive Board.

3. SCIENTIFIC COMMITTEE

The Scientific Committee as a consultative organ guarantees the scientific quality of the Agency's work and its outputs, which comprises 11 independent experts "highly qualified in fundamental rights, with adequate competences in scientific quality and research methodologies" [Art. 14(1)]. The Management Board, when appointing the members of the Committee for a five-years term, has to ensure even geographical representation and endeavours to achieve an equal representation of women and men⁴³.

The Scientific Committee needs to be involved "as early as possible in the preparation of all documents drawn up" in the Agency's work; and in particular advises FRA on the scientific research methodology applied in the Agency's work [Art. 14(5)].

4. DIRECTOR

FRA's Director is appointed for a five-years term — which is renewable — on the basis of his/her personal merit, experience in the field of fundamental rights and administrative and management skills. The Director performs his/her tasks, as set out in Art. 15(4), independently and is also responsible for the day-to-day management of the work. The Director also represents the Agency in its relations with third parties.

5. FRA WORKING METHODS

As per FRA's cooperation with various stakeholders, including with the civil society, creating *networks* is one of the Agency's working methods. A prime example for that is its multidisciplinary research network called "FRANET" with a contractor in each Member State and the FRA observer

⁴² For the current composition of the Executive Board, see at <https://is.gd/sXBxcb>. The Management Board member appointed by the Council of Europe may participate in Executive Board meetings [Art. 13(4) of FRA Regulation].

⁴³ For the current composition of the Scientific Committee, see at <https://is.gd/lx4e1t>.

countries. FRANET contractors provide, upon request, data and information from their respective jurisdiction to the Agency on a wide range of fundamental rights issues to facilitate FRA's comparative analyses⁴⁴. Another noteworthy "networking" working method centres on ensuring complementarity and added value to the activities of other EU entities, the CoE, the Organisation for Security and Cooperation in Europe (OSCE) and the UN.

FRA is also mandated to *engage and cooperate* with numerous and diverse *stakeholders* at national, EU and international levels. These include Member States' governments — typically via National Liaison Officers (NLOs) who guarantee close working relationship with FRA⁴⁵; national human rights institutions and similar statutory public human rights bodies; EU institutions, agencies and bodies; as well as international organisations, most importantly the CoE, the OSCE (notably its Office for Democratic Institutions and Human Rights), and various entities of the UN-family.

Last but not at least, permanent and structured dialogue with civil society organizations is secured via the *Fundamental Rights Platform*. The Platform pulls together a large variety of organisations involved in fundamental rights, such as non-governmental organisations, trade unions, employers' organisations, churches, religious, philosophical and non-confessional organisations, as well as universities⁴⁶. The Platform's Terms of Reference⁴⁷ explain how this structured cooperation with the civil society works. The Platform serves to exchange information on each other's work; provide the Agency with thematic input and strategic advice from the organisations in the Platform; and connect civil society organisations with FRA and among each other.

Working closely with these partners at all levels is key to ensure that FRA's activities are relevant to current fundamental rights issues and future trends.

6. OTHER HORIZONTAL QUESTIONS OF ITS FUNCTIONING

FRA has its *seat* in Vienna, Austria, where the Agency, its premises and its staff enjoy functional *privileges and immunities* pursuant to the Protocol

⁴⁴ For the list of FRANET contractors, see at <https://is.gd/bMr5lk>.

⁴⁵ FRA regularly informs NLOs about research findings, upcoming reports and activities, while NLOs provide feedback on the expediency and relevance of the Agency's work. NLOs also help communicate FRA's research outputs and activities to the relevant national authorities. The list of NLOs can be consulted at <https://is.gd/6x6NpI>.

⁴⁶ The list of the organisations participating in the Fundamental Rights Platform can be found at <https://is.gd/3XI4RR>.

⁴⁷ It is available at <https://is.gd/7jwymb>.

(No. 7) on the Privileges and Immunities of the EU annexed to the TEU and the TFEU, as confirmed by Art. 26 of FRA Regulation; and as further specified in the headquarters agreement concluded with Austria.

The CJEU exercises *jurisdiction* over certain acts of the Agency⁴⁸. The EU Court acts as the ultimate arbitrator in staff matters, in case of FRA's contractual liability based on arbitration clauses, in disputes relating to compensation arising out of the Agency's non-contractual liability, and in actions brought against the Agency under Art. 263 TFEU [actions for annulment] and Art. 265 TFEU [actions for failure to act]. Interestingly enough — and unlike other EU agencies —, no CJEU case law has thus far elucidated various aspects of the mandate of and other legal issues concerning the powers or the functioning of the Agency. Only staff matters have been adjudicated by the CJEU⁴⁹.

FRA is subject to regular *ex ante* and *ex post evaluations* of its activities. By virtue of the 2022 amendments, the European Commission must undertake an evaluation by the end of April 2027 and every five years thereafter to assess in particular the Agency's impact, effectiveness and efficiency and its working practice. Art. 30 of the FRA Regulation governs the procedure to follow when carrying out these evaluations and possibly *reviewing* the founding regulation, including the scope of the Agency's mission, which was put in action prior to the 2022 amendments.

V. FITTING INTO THE HUMAN RIGHTS PROTECTION INSTITUTIONAL LANDSCAPE IN EUROPE: AN APPRAISAL

The FRA Regulation recalls at the very outset that “developing effective institutions for the protection and promotion of human rights is a common value of the international and European societies” (recital 4). This echoes CoE Recommendation R (97) 14 of the Committee of Ministers on the establishment of independent national institutions for the promotion and protection of human rights.

In Europe, one finds the most sophisticated of all the international human rights legal and institutional frameworks, comprising a rich interplay of EU law with CoE and UN instruments and standards (see generally Wouters and Ovádek, 2021; and European Union Agency for Fundamental Rights, 2012). FRA as a decentralized EU agency in charge of protecting and promoting fundamental rights has been created in a “populated” (European)

⁴⁸ Art. 27 of FRA Regulation.

⁴⁹ To find these cases, consult the InfoCuria Search Engine at <https://is.gd/Z8WSkx>.

human rights oversight landscape where not only UN human rights monitoring bodies⁵⁰ and CoE mechanisms, but also OSCE structures cover multiple human rights issues (Kjaerum, 2020: 30).

In the quest of grasping how the Agency fits in the above “populated” landscape of human rights bodies and institutional architecture, an illustrative way of capturing FRA’s institutional nature is applying the established typology of “national human rights institutions” (NHRI) pursuant to the 1993 UN Paris Principles — i.e. the advisory committee model, the institute model, the ombudsman model, and the commission model — to the Agency as NHRIs’ “supranational counterpart”. In this analytical frame, it is a mixture of the advisory committee and the institute model (Toggenburg, 2018: 446).

Viewed from another vantage point, FRA is neither a monitoring body (evaluating compliance with international/European standards) like the UN or CoE treaty bodies, nor a dispute settlement body like the European Court of Human Rights, given its lack of power to deal with individual complaints of rights violations (Toggenburg, 2008: 449; Toggenburg, 2014, 1614). It is not a human rights standard-setting body either. In addition, FRA’s mandate excludes, in principle, issuing reports or recommendations targeting specific Member States⁵¹. Still, “naming and shaming” individual EU countries is not precluded when FRA describes fundamental rights situations or identifies deficiencies or highlights trend in its comparative reports (see also Di Marco, 2026: 9). What is most common is that the Agency rather focuses on *information* and *data collection* and *analysis*, as well as provision of *socio-legal expertise* and *technical advice* to EU and national decision-makers and other stakeholders.

As some commentators have noted, FRA can be conceived as a *supranational human rights “think-tank”* (De Schutter, 2020b: 13, 22) — one that uses “governance language” as a new way of speaking about fundamental rights in the EU (Sokhi-Bulley, 2011: 683). It has also been argued that the Agency’s

⁵⁰ In the UN system, there are two types of human rights monitoring mechanisms. The *treaty-based bodies* are the ten human rights treaty-monitoring bodies (<https://is.gd/FJZu4E>), which are composed of independent experts and monitor the implementation of the core UN human rights treaties. The *charter-based bodies*, established under the UN Charter, include the Human Rights Council, the Special Procedures, the Universal Periodic Review and Independent Investigations (for more, see Bossuyt, 2018: Chapter V). As part of the UN Secretariat, the Office of the UN High Commissioner for Human Rights (OHCHR) is responsible for coordinating efforts to promote and protect human rights within the UN system.

⁵¹ Art. 4(2) of FRA Regulation. For a notable exception, see e.g. European Union Agency for Fundamental Rights (2011).

observation functions imply a sort of a disciplinary power too — as evidenced by the typically critical Fundamental Rights Report⁵², which is an annual flagship publication on the situation of fundamental rights across the EU (Sokhi-Bulley, 2011: 696-700). Critical voices pointed out, however, that owing to the numerous limits circumscribing FRA's mandate, its institutional setup is “more consistent with the model of an EU technocratic agency than the Paris Principles” (Wouters and Ovádek, 2021: 48).

Be it as it may, FRA — as mandated by its founding regulation — is the *EU's independent expert body* providing comparable data and sound socio-legal analysis on fundamental rights issues within the EU to help EU institutions and Member States in designing and implementing fundamental rights compliant laws and policies. This new type of institutional actor in the scene of the regional protection of human rights, due to its particular mandate, has developed over almost 20 years of existence into a “centre of excellence” that complements the institutional human rights landscape in Europe, notably CoE, UN and OSCE/ODIHR structures. Although the Agency was created to primarily provide evidence-based policy and legal advice, it has gradually got more operational. The latter include, for example, consultative tasks in the migration hotspots in Greece and Italy⁵³ and the EU Task Force Migration Management in Greece⁵⁴, as well as an observer and training role in the Schengen evaluations as per the Schengen Evaluation and Monitoring Mechanism Regulation (EU) 2022/922⁵⁵.

As briefly referred to in section II above, the territorial scope of FRA's mandate is limited to look into the fundamental rights situation *within the territory* of EU Member States — which is slightly incoherent with the wider

⁵² For the latest FRA Fundamental Rights Report, covering the year 2025, see at: <https://is.gd/TKF9f9>.

⁵³ The findings based on observations on the ground were published — see *Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the “hotspots” set up in Greece and Italy*, FRA Opinion 5/2016 [Hotspots] (Vienna, 29 November 2016); *Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the “hotspots” set up in Greece and Italy*, FRA Opinion — 3/2019 [Hotspots Update] (Vienna, 4 March 2019); and FRA, *Operationalising the Pact on Migration and Asylum: Experiences from the hotspot approach* (Publications Office of the EU 2026).

⁵⁴ See at <https://is.gd/Q4sR9d>.

⁵⁵ Arts. 7, 10, 16 of Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No. 1053/2013 [2022] OJ L 160/1.

scope of application of the Charter. As a result of this limitation, the Agency's substantive purview does not, in principle, extend to human rights issues in the EU external relations, excluding thus from its scrutiny activities falling under the former second pillar — common foreign and security policy (CFSP) [Title V TEU]. This has been confirmed by the 2022 amendments to the FRA Regulation, which clearly state that the CFSP area is out of the Agency's scope of activities. Looking at the external dimension of EU action, issues of human rights performance outside the Union and human rights dialogues conducted with third countries belong to the European Union's Special Representative for Human Rights, who works closely with the European External Action Service⁵⁶.

Certain factors nuance the above strictly delineated territorial scope though. Such is the stipulation of FRA's founding regulation on the participation of *EU candidate countries* and countries which have concluded a *Stabilization and Association Agreement* with the EU as observers in the work of the Agency⁵⁷. Their participation and the modalities are to be determined by a decision of the relevant EU-third country Association Council, taking into account the specific status of each country. This has so far become a reality for Albania, North Macedonia, and Serbia. Their observer status enables FRA to carry out its activities in these "third countries" as well⁵⁸. In addition, even if CFSP activities remain excluded from FRA's remit of scrutiny, this should be without prejudice to the Agency's provision of assistance and expertise to EU institutions and entities working in the area of CFSP (e.g. delivering training on fundamental rights for the staff of the European External Action Service).

VI. IMPACT: ACHIEVEMENTS AND CHALLENGES

The Agency's establishment was a response to the call for the EU to enhance the visibility of fundamental rights in its legal and institutional landscape (De Schutter, 2020b: 14), in a time when the relationship of the EU and the traditional, pan-European human rights actor (the CoE) was not at its peak point, to put it mildly. For instance, the CoE Parliamentary

⁵⁶ Council Decision (CFSP) 2026/345 of 11 February 2026 appointing the European Union Special Representative for Human Rights [2026] OJ L, 2026/345.

⁵⁷ Art. 28 of FRA Regulation.

⁵⁸ See Art. 2 in the relevant Stabilization and Association Council Decisions for the respective countries.

Assembly stressed, back in 2005, that “there is no point in reinventing the wheel by giving the agency a role which is already performed by existing human rights institutions and mechanisms in Europe”⁵⁹. The FRA-CoE relationship, however, nicely evolved over time, ensuring complementarity and a delicate balance in their cooperation. The Agency’s action complements the activities of the CoE, which, for instance, does not have the competence to advise EU institutions (Di Marco, 2026: 9).

Over time, FRA has developed into a trusted partner and a reliable source of information, data and rigorous analysis at the Union level (Morijn and Toggenburg, 2024: 5). The Agency could also act as a multiplier of the work and concerns of NHRIs and similar statutory public human rights bodies at Member State level, transforming such input into a new quality of evidence. As explained above, it is currently mandated to look into the fundamental rights performance of 30 European States, including three (candidate) countries of the Western Balkans next to all EU Member States. This territorial reach can further grow in future with other third countries aspiring EU membership — and more observers are already likely to join in the near future⁶⁰.

Despite limitations in its mandate, FRA was flexible enough to adapt its activities to changing realities and new challenges in the Union. Occasionally, it has been closely involved in the EU legislative process in case of proposals upon which the Agency was requested, by an EU institution⁶¹, to provide a (legal) opinion from the perspective of such proposals’ compatibility with fundamental rights. That was the case on a number of migration and asylum files (notably between 2015 and 2019); on the implementation of the Charter; or more recently on the proposed simplified European Sustainability Reporting Standards⁶². Still, FRA’s participation in the EU legislative process remains dependent on the requests by EU institutions even after the 2022 amendments to its founding regulation [Art. 4(2)].

⁵⁹ Parliamentary Assembly of the Council of Europe, *Resolution 1247 (2025) — Plans to set up a Fundamental Rights Agency of the European Union*, adopted on 18 March 2005, para. 10.

⁶⁰ EU candidate countries and countries with a Stabilization and Association Agreement with the EU can become observers to FRA. For instance, negotiations are quite advanced with Ukraine to participate in FRA’s work as an observer; and Montenegro sent a letter of intent to obtain observer status at the Agency in January 2025.

⁶¹ Most commonly the European Parliament and seldom by the European Commission — but never by the Council of the EU at the time of writing.

⁶² All these legal opinions are available at FRA’s website (<https://is.gd/ynu80P>) under “Publications and data”, filtering the search to “Opinion/position paper”.

In addition to this “downstream” involvement in the EU law-making process triggered by a request from EU institutions, FRA has lately started exploring other, own initiative “upstream” avenues to provide legal input on topical, emerging issues carrying considerable fundamental rights implications and risks. This new “product” is called “*legal position paper*”, touching upon hotly debated (planned) legal and policy measures on which the European Commission has not yet tabled a legislative proposal under Arts. 289 or 294 TFEU. Thus far, FRA produced two such legal position papers: one on the planned “return hubs” in third countries⁶³; and another one on how to counter the instrumentalisation of migrants and refugees while respecting fundamental rights⁶⁴.

At the same time, the Agency’s *field presence* in the migration “hotspots” on the Greek islands in the Aegean (between 2016 and 2025), and its other on-site activities such as Schengen evaluation country missions and regular field visits to those Member States where serious and persistent rights violations have been reported (e.g. at the UE external borders; migration/asylum-related reception/detention facilities), putting thus its boots in the mud, contributed to its more operational engagement at the national level. Simply put, FRA’s “*advisory monitoring*” role has been, in practice, coupled with “*normative monitoring*” on an *ad-hoc* basis (De Schutter, 2020b: 21) — which consists of an evaluation of compliance on the basis of a “pre-existing normative grid” (Di Marco, 2026: 9)⁶⁵. When the Agency critiques individual Member States in its annual and comparative reports by describing fundamental rights situations, identifying deficiencies or highlighting trends, this “indirect evaluation effectively blends advisory and normative dimensions”, challenging thus the feasibility of their separation (Di Marco, 2026: 9).

Overall, the innovative nature of FRA’s work can be captured in the novelty of bringing in the *sociological-statistical* method when assessing the situation of fundamental rights across the Union, and not exclusively pursuing the — traditionally predominant — legalistic approach, mainly based on desk research. Illustrative examples of this blended socio-legal approach are the EU-wide survey on violence against women⁶⁶; the Fundamental Rights Survey focusing on the experience of the general population in the EU⁶⁷; and the

⁶³ See at <https://is.gd/meiVXX>.

⁶⁴ See at <https://is.gd/IKHXIf>.

⁶⁵ On the general distinction between advisory and normative monitoring, see Scheinin (2005: 73-90).

⁶⁶ FRA, *Violence against women: an EU-wide survey. Main results report* (Publications Office of the EU 2014).

⁶⁷ FRA, *What do fundamental rights mean for people in the EU? — Fundamental Rights Survey* (Publications Office of the EU 2020).

report on bias in algorithms and the risk of discrimination in AI-driven systems⁶⁸.

Put differently, FRA's work "fuses legal and social science methods," reflecting thus a shift from the primarily legal analysis-driven human rights protection landscape (Byrne and Entzinger, 2020: 1). As an indicator of its success and the added value of its work, FRA continues to be the EU agency with the most orders from the Publications Office of the EU — and some of its online publications were downloaded over 10 000 times.

Still, FRA's *mandate limits* its activities in certain areas. Notable examples are the lack of own initiative intervention in the EU legislative process and the incomplete mimicry of the NHRI model. Commentators have also observed that the Agency is not alone in upholding fundamental rights in the EU context: it "does not for the most part possess the type of exclusive expertise gained by other EU agencies in more narrow and technical fields" (Wouters and Ovádek, 2020: 101).

Another source of constraint on its work is that FRA functions with *limited resources*, counting on some 110 staff (cohort of trainees excluded — 20-25 young professionals per year⁶⁹) and an annual budget of roughly 26.6 million for the 2025 financial year, which has only very moderately increased — if at all — over time⁷⁰. Compared to other EU agencies and bodies in the "area of freedom, security and justice" (AFSJ) (see e.g. Frontex, the EU Asylum Agency, and Europol), FRA belongs to the less-resourced justice and home affairs agencies in terms of budget and staff, although fundamental rights implications of the ever-expanding EU policies in the AFSJ (Title V TFEU) are significant (see also Wouters and Ovádek, 2020: 94). As leading commentators aptly phrased, "[k]eeping the Agency's budget out of sync with the growth of its tasks is not only in contradiction with relevant international standards but also a risk to the FRA's appropriate delivery on core commitments" (Moriijn and Toggenburg, 2024:7). Such limited resources raise a question about the priorities of the EU — and its Member States — when it comes to the institutionalised monitoring and promotion of fundamental rights at the Union level. FRA's financial resources do not seem to significantly grow under the next Multiannual Financial Framework (2028-2034) either⁷¹.

⁶⁸ FRA, *Bias in algorithms — Artificial intelligence and discrimination* (Publications Office of the EU 2022).

⁶⁹ On FRA's traineeship programme, see <https://is.gd/BniiZG>.

⁷⁰ Statement of Revenue and Expenditure, 2025.

⁷¹ For the relevant legal and policy documents pertaining to the new Multiannual Financial Framework 2028-2034, see at <https://is.gd/lBxczu>.

Measuring its *impact intra-EU*, as a new phenomenon, references to the Agency have been included in multiple pieces of secondary EU legislation relating to justice and home affairs and large-scale EU information systems. Some entrust it with new tasks, such as membership in the *Fundamental Rights Guidance Board* of the European Travel Information and Authorisation System (ETIAS) and that of the revamped Visa Information System (VIS) respectively⁷². Likewise, FRA is tasked by EU law to be a member of the Consultative Forum on Fundamental Rights of Frontex⁷³ and that of the EU Asylum Agency⁷⁴. Various instruments adopted under the EU Pact on Migration and Asylum likewise mandated the Agency with new tasks, such as producing general guidance⁷⁵ on how to set up independent national monitoring mechanisms during screening of new arrivals and under the asylum border procedure and to support Member States, for example, with methodological guidance and training, if requested⁷⁶. As another example, the Europol Regulation stipulates that training for Europol officers is to be developed in cooperation with FRA⁷⁷.

Externally, over the years, FRA — which takes active part in the EU Agencies Network⁷⁸ and is a member of the nine EU agencies forming part of the Justice and Home Affairs Agencies Network⁷⁹ — has concluded cooperation arrangements with a number of justice and home affairs agencies. These include, as presented above, Frontex, EUAA, CEPOL, Eurojust, Europol, and eu-LISA. Added to this, FRA has entered into bilateral co-operation schemes

⁷² See Regulation (EU) 2018/1240, Art. 10; and Regulation (EU) 2021/1134, Art. 91. For more on the ETIAS Fundamental Rights Guidance Board, see <https://is.gd/6Yt5tZ>.

⁷³ See <https://is.gd/HjkgDt>.

⁷⁴ See <https://is.gd/2ug39z>.

⁷⁵ See FRA, *Monitoring fundamental rights during screening and the asylum border procedure — A guide on national independent mechanisms. Practical guidance — 2024 edition* (Publications Office of the EU 2024), available at <https://is.gd/xLYcwr>.

⁷⁶ See Regulation (EU) 2024/1356, Art. 10; and Regulation (EU) 2024/1348, Art. 43(4).

⁷⁷ Regulation (EU) 2022/991 of the European Parliament and of the Council of 8 June 2022 amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role in research and innovation [2022] OJ L 169/1, Art. 41(d).

⁷⁸ This Network supports the work of over 50 decentralised EU agencies, for more, see <https://is.gd/RBetPY>.

⁷⁹ For the latest annual report of the JHA Agencies Network, chaired by FRA in 2025, see <https://is.gd/3e7gYn>.

with other stakeholders such as the EDPS, the European University Institute, the Greek Ministry of the Interior, and most recently the CEN-CENELEC.

The latest external evaluation of the Agency, conducted in 2017 under Art. 30 of its founding regulation, found that its original mandate was relevant and corresponded to stakeholders' needs, which overall acclaimed FRA's added value as well as its visible effectiveness and impact at EU level. Nonetheless, some shortcomings have also been identified, calling for improving clarity of the scope of activities and enhancing the governance of the Agency's operation (Optimity, 2017: 141-146). Most of the necessary changes have been brought about by the amending Regulation (EU) 2022/555 as of April 2022 (for more, see in section II and Gamarra, 2022).

VII. CONCLUSIONS

EU law and policy in the field of fundamental rights protection have tremendously developed over the past 25 years (Moriijn and Toggenburg, 2024: 2). The establishment of the EU Agency for Fundamental Rights in 2007 was an institutional manifestation of this trend, equally demonstrating that the Union has evolved into a community of values, continually striving to strengthen its human rights profile (Steiner, 2006: 140).

As the foregoing demonstrated, the framework set out by its founding regulation enabled FRA to develop an *original* role in the European institutional landscape on protecting human rights, while securing a mutually *reinforcing* and not competing or duplicating work with other actors, especially the Council of Europe. In recent years, FRA has also increased its profile by becoming more *policy relevant*, aligning its activities closer to the political priorities of EU institutions (see also Saastamoinen, 2020: 65). This is now also echoed in FRA's 2026 Annual Work Programme: the Agency "will prioritise activities most directly relevant to the implementation of EU law [and] will emphasise [...] timeliness and policy impact".

Substance-wise, the Agency's empirical surveys and comparative reports have improved the availability of EU-wide cross-national data on discrimination, gender-based violence, migration, children's rights, access to justice, and so on — thereby usefully informing debates within the EU. Likewise, FRA achieved enhanced visibility via public hearings of the European Parliament, participating in Justice and Home Affairs Council meetings and various preparatory bodies of the Council of the EU, and the Director's visits to Member States (see also Wouters and Ovádek, 2021: 44). Despite these achievements, FRA's institutional impact remains constrained. It lacks enforcement powers and the impact of its work also

depends on the willingness of political actors to translate its findings into concrete policy and legal change. Some critics also note that its rather advisory mandate can lead to technocratic framing of fundamental rights issues, potentially depoliticizing structural conflicts over fundamental rights (e.g. De Schutter, 2020a).

Looking inside out, coupled with its potential impact on shaping other (regional) international organisations operating on other continents, the picture seems to be more straightforward. As a former FRA Director framed it, the EU, “in establishing the Fundamental Rights Agency, [...] delivered a good practice of global significance” (O’Flaherty, 2020: xi). The Agency thus embodies a model of a human rights structure to be possibly replicated in other regional intergovernmental organizations such as the Organization of American States, the African Union, or the Association of Southeast Asian Nations.

Turning to the possible avenues for FRA’s future evolution, Morijn and Toggenburg (2024: 7-10) map three roadmap-style scenarios: 1) “status quo plus” (with sharper prioritisation and proper funding within the current mandate), 2) “FRA plus” (with a bolder mandate, including own-initiative legal opinions on draft EU legislation, a role in Art. 7 TEU proceedings, and wider geographic reach), and a 3) its transformation into an “EU Fundamental Rights Authority” (a full-fledged, independent, ideally entrenched by changes to the founding EU Treaties). Under the most ambitious last option, the Agency would gain powers to bring Charter-based actions under Art. 263 TFEU, to handle complaints, and to be consulted on rights-relevant legislative proposals, making the EU the first international organisation with its own NHRI-style body. For sure, no one holds the crystal ball to look into which one of the three options will prevail. Yet, FRA’s upcoming evaluation in 2027 presents a welcome occasion to revisit the above-outlined scenarios. Its mission remains unchanged: make fundamental rights a reality to all in the EU, by doing its share — mobilising its diverse toolbox — in bringing such rights to life.

Bibliography

Ahtisaari, Martti; Frowein, Jochen and Oreja, Marcelino (2001). Report on the Austrian Government’s Commitment to the Common European Values, in Particular Concerning the Rights of Minorities, Refugees and Immigrants, and the Evolution of the Political Nature of the FPÖ (the Wise Men Report). *International Legal Materials*, 40 (1), 101-123. Available at: <https://doi.org/10.1017/S0020782900011049>.

- Alston, Philip and Weiler, Joseph H. H. (1999). An “Ever Closer Union” in Need of a Human Rights Policy: the European Union and Human Rights. In Philip Alston, Mara Bustelo and James Heenan (eds.). *The EU and Human Rights* (pp. 3-66). Oxford: Oxford University Press. Available at: <https://doi.org/10.1093/oso/9780198298069.003.0001>.
- Bossuyt, Marc (2018). *International Human Rights Protection. Balanced, Critical, Realistic*. Antwerp: Intersentia.
- Byrne, Rosemary and Entzinger, Han (2020). Introduction. In Rosemary Byrne and Han Entzinger (eds.). *Human Rights Law and Evidence-Based Policy. The Impact of the EU Fundamental Rights Agency* (pp. 1-10). London: Routledge. Available at: <https://doi.org/10.4324/9780429197727-1>.
- Cassese, Antonio; Lalumière, Catherine; Leuprecht, Peter and Robinson, Mary (1998). *Leading by Example: A Human Rights Agenda for the European Union for the Year 2000. Agenda of the Comité des Sages and Final Project Report*. Florence: European University Institute Academy of European Law.
- Chiti, Edoardo (2021). The Agencification Process and the Evolution of the EU Administrative System. In Paul Craig and Gráinne de Búrca (eds.). *The Evolution of EU Law* (pp. 123-155). Oxford: Oxford University Press. Available at: <https://doi.org/10.1093/oso/9780192846556.003.0005>.
- De Schutter, Olivier (2008). The Two Europes of Human Rights: The Emerging Division of Tasks between the Council of Europe and the European Union in Promoting Human Rights in Europe. *The Columbia Journal of European Law*, 14 (3), 509-561.
- De Schutter, Olivier (2009). The EU Fundamental Rights Agency: Genesis and Potential’. In Kevin Boyle (ed.), *New Institutions for Human Rights Protection* (pp. 93-135). Oxford: Oxford University Press. Available at: <https://doi.org/10.1093/acprof:oso/9780199570546.003.0005>.
- De Schutter, Olivier (2020a). *Strengthening the Fundamental Rights Agency. The Revision of the Fundamental Rights Agency Regulation*. Brussels: European Parliament Policy Department for Citizens’ Rights and Constitutional Affairs.
- De Schutter, Olivier (2020b). The Genesis of the EU Fundamental Rights Agency: Why A Think Tank Rather Than a Monitoring Body. In Rosemary Byrne and Han Entzinger (eds.). *Human Rights Law and Evidence-Based Policy. The Impact of the EU Fundamental Rights Agency* (pp. 13-27). London: Routledge. Available at: <https://doi.org/10.4324/9780429197727-2>.
- Di Marco, Antonio (2026). The Ambiguous Complementarity of Twins: Co-Operation Between the European Union and the Council of Europe. *Human Rights Law Review*, 26, 1-21. Available at: <https://doi.org/10.1093/hrlr/ngaf046>.
- Droesse, Gerd (2020). *Membership in International Organizations. Paradigms of Membership Structures, Legal Implications of Membership and the Concept of International Organization*. The Hague: TMC Asser Press. Available at: <https://doi.org/10.1007/978-94-6265-327-6>.
- European Union Agency for Fundamental Rights (2011). *Coping with a Fundamental Rights Emergency. The Situation of Persons Crossing the Greek Land*

- Border in an Irregular Manner*. Luxembourg: Publications Office of the European Union.
- European Union Agency for Fundamental Rights (2012). *Bringing Rights to Life: The Fundamental Rights Landscape of the European Union*. Luxembourg: Publications Office of the European Union.
- Equal Voices (2008). FRA Should Become a European Beacon on Fundamental Rights: interview with Morten Kjaerum, FRA's New Director. *Equal Voices*, 23, 4. Available at: <https://is.gd/dUIO6p>.
- Gamarra, Yolanda (2022). Innovaciones del mandato de la agencia de los derechos fundamentales de la Unión Europea. *Revista de Derecho Comunitario Europeo*, 73, 749-791. Available at: <https://doi.org/10.18042/cepc/rdce.73.02>.
- Kjaerum, Morten (2020). A New Agency, and So What: Giving Flesh and Blood to FRA's Founding Regulation. In Rosemary Byrne and Han Entzinger (eds.). *Human Rights Law and Evidence-Based Policy. The Impact of the EU Fundamental Rights Agency* (pp. 28-42). London: Routledge. Available at: <https://doi.org/10.4324/9780429197727-3>.
- Morijn, John and Toggenburg, Gabriel N. (2024). The EU's Agency for Fundamental Rights — The Past, The Present and The Future of an Atypical "Agency". *EU Law Live Weekend Edition* [blog], 20-01-2024. Available at: <https://is.gd/dCfILr>.
- Nowak, Manfred and Müller-Funk, Anna (2020). FRA's Response to the Current Human Rights Challenges. In Rosemary Byrne and Han Entzinger (eds.). *Human Rights Law and Evidence-Based Policy. The Impact of the EU Fundamental Rights Agency* (pp. 209-218). London: Routledge. Available at: <https://doi.org/10.4324/9780429197727-16>.
- O'Flaherty, Michael (2020). Foreword. In Rosemary Byrne and Han Entzinger (eds.). *Human Rights Law and Evidence-Based Policy. The Impact of the EU Fundamental Rights Agency* (pp. x-xi). London: Routledge.
- Optimity (2017). *2nd Independent External Evaluation of the European Union Agency for Fundamental Rights — Final Report* (31 October 2017). Available at: <https://is.gd/I9grCR>.
- Orator, Andreas (2017). Völkerrechtspersönlichkeit von EU-Agenturen? *Zeitschrift für öffentliches Recht [ZöR]*, 72 (2), 271-292. Available at: <https://doi.org/10.33196/zoer201702027101>.
- Ott, Andrea; Vos, Ellen and Coman-Kund, Florin (2013). *EU Agencies and Their International Mandate: A New Category of Global Actors?* CLEER Working Papers, 2013/7.
- Pérez Bernárdez, Carmela (2015). La Agencia de los Derechos Fundamentales de la Unión Europea y sus sinergias con el Consejo de Europa. *Revista de Derecho Comunitario Europeo*, 51, 573-610. Available at: <https://doi.org/10.18042/cepc/rdce.51.04>.
- Saastamoinen, Salla (2020). FRA's Policy Impact and Future Posture: Lessons from the Perspective of the European Commission. In Rosemary Byrne and Han Entzinger (eds.). *Human Rights Law and Evidence-Based Policy. The Impact of the*

- EU Fundamental Rights Agency* (pp. 57-68). London: Routledge. Available at: <https://doi.org/10.4324/9780429197727-5>.
- Scheinin, Martin (2005). The Relationship between the Agency and the Network of Independent Expert. In Philip Alston and Olivier De Schutter (eds.). *Monitoring Fundamental Rights in the EU. The Contribution of the Fundamental Rights Agency* (pp. 73-90). Oxford: Hart Publishing.
- Schermers, Henry G. and Blokkers, Niels M. (2018). *International Institutional Law*. Leiden: Brill Nijhoff. Available at: <https://doi.org/10.1163/9789004381650>.
- Schusterschitz, Gregor (2004). European Agencies as Subjects of International Law. *International Organizations Law Review*, 1 (1), 163-188. Available at: <https://doi.org/10.1163/1572374043242367>.
- Sokhi-Bulley, Bal (2011). The Fundamental Rights Agency of the European Union: A New Panopticism. *Human Rights Law Review*, 11 (4), 683-706. Available at: <https://doi.org/10.1093/hrlr/ngr031>.
- Steiner, Silke (2006). The External Dimension of the European Fundamental Rights Agency. *Austrian Review of International and European Law*, 11 (1), 105-141. Available at: <https://doi.org/10.1163/15736512-900000006>.
- Toggenburg, Gabriel N. (2008). The Role of the New EU Fundamental Rights Agency: Debating the “Sex Of Angels” or Improving Europe’s Human Rights Performance? *European Law Review*, 33 (3), 385-398.
- Toggenburg, Gabriel N. (2014). The EU Fundamental Rights Agency and the Fundamental Rights Charter: How Fundamental is the Link Between them? In Steve Peers, Tamara Harvey, Jeff Kenner and Angela Ward (eds.). *The EU Charter of Fundamental Rights: A Commentary* (pp. 1613-1626). Oxford; Portland; München; Baden-Baden: C.H. Beck; Hart; Nomos. Available at: https://doi.org/10.5771/9783845259055_1656.
- Toggenburg, Gabriel N. (2018). The European Union Fundamental Rights Agency. In Gerd Oberleitner (ed.). *International Human Rights Institutions, Tribunals, and Courts* (pp. 443-460). Chan: Springer. Available at: https://doi.org/10.1007/978-981-10-5206-4_23.
- Von Bogdandy, Armin and Von Bernstorff, Jochen (2009). The EU Fundamental Rights Agency within the European and International Human Rights Architecture: The Legal Framework and Some Unsettled Issues in a New Field of Administrative Law. *Common Market Law Review*, 46 (4), 1035-1068. Available at: <https://doi.org/10.54648/COLA2009044>.
- Walter, Christian (2008). Subjects of International Law. In Anne Peters and Rüdiger Wolfrum (eds.). *Max Planck Encyclopedia of Public International Law*. Oxford: Oxford University Press. Available at: <https://doi.org/10.1093/law:epil/9780199231690/e1476>.
- Wouters, Jan and Ovádek, Michal (2020). Exploring the Political Role of FRA: Mandate, Resources and Opportunities. In Rosemary Byrne and Han Entzinger (eds.). *Human Rights Law and Evidence-Based Policy. The Impact of the EU Fundamental Rights Agency* (pp. 82-102). London: Routledge. Available at: <https://doi.org/10.4324/9780429197727-7>.

- Wouters, Jan and Ovádek, Michal (2021). *The European Union and Human Rights: Analysis, Cases, and Materials*. Oxford: Oxford University Press. Available at: <https://doi.org/10.1093/oso/9780198814177.001.0001>.
- Zieliński, Marek (2017). European Agencies' Headquarters Agreements. *Polish Review of International and European Law*, 6 (1), 9-45. Available at: <https://doi.org/10.21697/priel.2017.6.1.01>.