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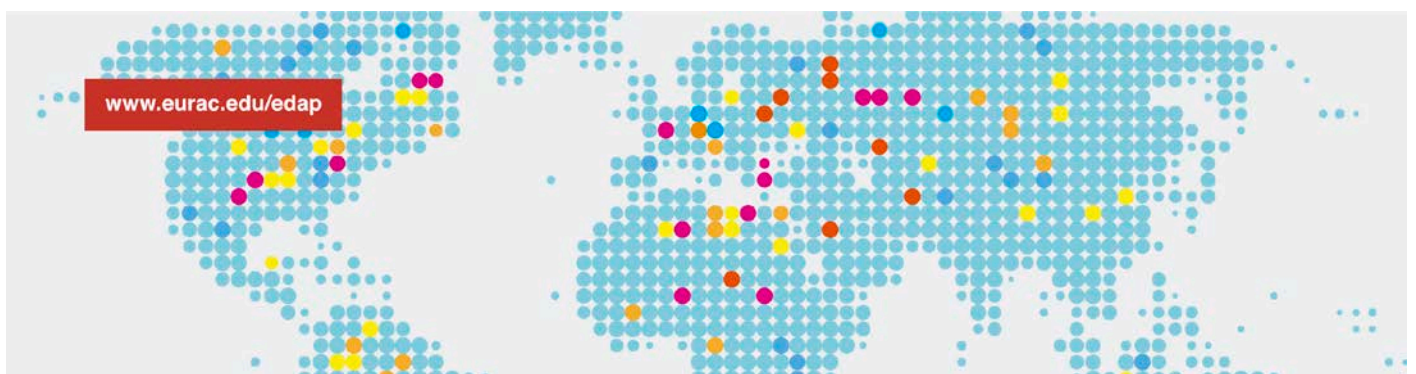
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# The Fundamental Rights Agency and Civil Society: Reminding the Gardeners of their Plants' Roots

Morten Kjaerum, Gabriel N. Toggenburg



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Verena Wisthaler

Europäische Akademie Bozen

Drususallee, 1

39100 Bozen - Italien

Tel. +39 0471 055200

Fax +39 0471 055299

[edap@eurac.edu](mailto:edap@eurac.edu)

[www.eurac.edu/edap](http://www.eurac.edu/edap)

Accademia Europea Bolzano

Viale Druso, 1

39100 Bolzano - Italia

Tel. +39 0471 055200

Fax +39 0471 055299

[edap@eurac.edu](mailto:edap@eurac.edu)

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## Abstract

The European Union Agency for Fundamental Rights (FRA), the EU body responsible for advising EU institutions on fundamental rights, is equipped with a Fundamental Rights Platform (FRP) to ensure an on-going and structured exchange of information and feedback between the FRA and Civil Society. When the FRA was founded in 2007, there was little pre-existing knowledge on how to design such a Platform; hence, the development of the relationship between the FRA and Civil Society over the first five years proved an interesting experiment. Although the Platform was never intended as a mechanism of democratic co-decision making, it is far more than a loose marketplace where Civil Society actors across the spectrum of fundamental rights themes gather. The Platform offers channels of consultation and exchange not only among the participants but also with the FRA. It allows for cross-pollination, ensuring informed grassroots input into FRA work and FRA expertise flow to Civil Society actors. This synergetic relationship builds upon both the self-organising forces of Civil Society and the terms of references of the FRP as defined by the FRA. The Platform allows to find a certain unity in the remarkable diversity of fundamental rights voices. To what degree, however, the Platform's dynamics allow the transformation of sometimes 'compartmentalised' single human rights discussions into wider trans-sectoral and transnational debates within the Human Rights Community depends on the motivation and the interest(s) of the different Civil Society players.

## Authors

Morten Kjaerum is the first Director of the European Union Agency for Fundamental Rights (FRA). Before that he hold different positions, including founding Director of the Danish Institute for Human Rights, member of the UN Committee on the Elimination of Racial Discrimination and President of the International Coordination Committee for National Human Rights Institutions (a network coordinating the relation between the UN and national institutions).

Gabriel N. Toggenburg is Project Manager (Legal Research) at the FRA and is amongst others responsible for the coordination of the Agency's annual report as well as the Agency's Scientific Committee. Before joining the Agency in 2009 he was Senior Researcher at the European Academy Bolzano and teaching as well as writing about human and minority rights topics.

The authors can be reached at: [morten.kjaerum@fra.europa.eu](mailto:morten.kjaerum@fra.europa.eu); [gabriel.toggenburg@fra.europa.eu](mailto:gabriel.toggenburg@fra.europa.eu).

## Key words

Civil Society - Participation - European Union - Fundamental Rights - Fundamental Rights Platform - Good Administration - Dialogue - Citizens.

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# The Fundamental Rights Agency and Civil Society: Reminding the Gardeners of their Plants' Roots

Morten Kjaerum, Gabriel N. Toggenburg\*

## 1. Introduction

The European Union Agency for Fundamental Rights (FRA) was established in 2007 as the EU's first body specifically tasked with providing evidence and expertise in the area of fundamental rights. Vibrant debate and competing views about the mandate of the FRA characterised the agency's genesis, discussions that also took place at the level of Civil Society.<sup>1</sup> Half a decade later this new institution is no longer the "new kid on the block" and is well on track. The FRA has aroused interest (and recognition) for a variety of reasons, including its reports on fundamental rights themes, with nearly 90 substantial reports published to date; its mandate, which is up for review;<sup>2</sup> its cooperation with the Council of Europe, which has proved synergetic and fruitful; and, last but not least, because of its innovative relationship with Civil Society.

The FRA has been described in some corners as the National Human Rights Institution (NHRI) of the European Union, even though an EU body can hardly be "national" in nature. The comparison, however, is meant to underline that the FRA fulfils functions that at national level are often carried out by independent institutions founded in accordance with the United Nations (UN) Paris Principles concerning the establishment of NHRIs. And like NHRIs, the FRA provides data and evidence-based advice (to EU institutions and the EU

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\* Morten Kjaerum is Director of the European Union Agency for Fundamental Rights (FRA) and Gabriel N. Toggenburg is Programme Manager Legal Research at that Agency. This article is part of a book by Johannes Pichler and Alexander Balthasar (eds.), *Open Dialogue between Institutions and citizens - chances and challenges, proceedings of a series of workshops on Article 11(2) TEU in Brussels 2011/2012*, (forthcoming 2012). The information given is that of mid July 2012, later developments were not taken into account. Special thanks go to Massimo Toschi (Team Leader "National Human Rights Structures and Civil Society") and Ines Albergaria (Communication Assistant) for their valuable input.

<sup>1</sup> Before presenting a proposal for the Agency's Founding Regulation, the European Commission launched a written consultation and received a total of 102 written contributions out of which 57 came from civil society organisations. See on this process Emanuela Bozzini, "The role of Civil Society organisations in written consultation processes: from the European Monitoring Centre to the European Fundamental Rights Agency", in Vincent Della Sala and Carlo Ruzza (eds.), *Governance and Civil Society in the European Union. Vol. 2 Exploring Policy Issues* (Manchester University Press, Manchester, 2007), 93-109. For the genesis of the Agency, its mandate and further references to relevant literature see Gabriel N. Toggenburg, "The role of the new EU Fundamental Rights Agency: Debating the "sex of angels" or improving Europe's human rights performance?" in *European Law Review* 2008, 385-398.

<sup>2</sup> See e.g. the proposal for a new Multi-annual Framework as proposed by the European Commission, COM(2011) 880 final.

Member States when implementing EU law), raises awareness about fundamental rights and, upon request, scrutinises upcoming legislation.

The structured engagement of NHRIs with Civil Society varies across the globe but on average remains rather modest.<sup>3</sup> Formal platforms dedicated to interaction with Civil Society allow engagement between NHRIs and Civil Society to be more than merely at hoc. It is argued that there was “a strong need to establish formal platforms for engagement with civil society to ensure that it is regular and meaningful. This may mean a clearly defined framework with mutually agreeable parameters for both actors.”<sup>4</sup> However, it appears that NHRIs hardly ever run Civil Society platforms. Here the situation at EU level is different, as the FRA convenes an annual Fundamental Rights Platform (FRP).<sup>5</sup> This is a unique and interesting feature of the EU fundamental rights landscape. Whereas a variety of consultation mechanisms exist, especially with the European Commission, the Platform is innovative in that it provides for the structured and long-term engagement of an EU body with hundreds of NGO participants who regularly meet both electronically as well as physically.

In the following section, the Platform is set within the context of the EU Treaties and the recent amendments introduced by the Lisbon Treaty (part 2). It then looks at the Founding Regulation<sup>6</sup> of the FRA and how it conceptualises the Platform (part 3), followed by a description of how the rough parameters of the regulation are given more concrete life in the institutional practice of the Agency (part 4) before, finally, a concluding section (part 5).

## 2. Civil Society Participation and EU Agencies in the Lisbon Treaty

The Lisbon Treaty puts more emphasis on fundamental rights by making the European Union Charter of Fundamental Rights legally binding and obliging the EU to accede to the fundamental rights’ bill of the Council of Europe, the European Convention on Human Rights.<sup>7</sup> The Lisbon Treaty, however, offers much more than that. Two dimensions are important for the relationship between the FRA and Civil Society. Firstly, the Treaty thrusts participation,

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<sup>3</sup> Commonwealth Human Rights Initiative, “Civil Society and National Human Rights Institutions”, 4 *The International Journal of Not-for-Profit Law* 2011, 5-52, at <http://www.icnl.org/research/journal/vol13iss4/ijnl13-4.pdf>.

<sup>4</sup> *Ibid*, 36.

<sup>5</sup> Even if the FRP is not the only channel through which Civil Society players can interact with the FRA, it is the most prominent one. Therefore this article focuses on the FRP. However, it should be held in mind that the FRA cooperates with many Civil Society organisations in a variety of ways at the level of its different projects. These different ways of interaction range from telephone conferences, expert meetings, regional round tables to training sessions, the use of online questionnaires, reviews of publications, the testing of toolkits or different dissemination activities.

<sup>6</sup> Council regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, in OJ 2007 L 53 as of 22 February 2007, 1-14 (hereinafter referred to as Founding Regulation).

<sup>7</sup> Art. 6 Paras 1 and 2 TEU.

as well as democracy, into the EU spotlight<sup>8</sup> and, secondly, it makes clear that EU Agencies, in the first explicit mention in EU primary law to date, are not satellites of the system but form instead an integral part of EU institutional structure.<sup>9</sup>

The EU Treaty prominently states that “the functioning of the Union shall be founded on representative democracy” and that every citizen “shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen”.<sup>10</sup> In its Article 11, the Treaty then provides for a mix of obligations, some of which merely reflect EU administrative practices of participation developed especially over the last decade,<sup>11</sup> whereas others clearly reach beyond to link participation to the principle of democracy.

The first three paragraphs of this new Lisbon provision appear to stand for the first trend: they add a legal dimension to existing practice by explicitly obliging EU institutions to, “by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action”; to “maintain an open, transparent and regular dialogue with representative associations and civil society” and to “carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent”. The fourth paragraph of Article 11 goes further and introduces a new prominent instrument: the European Citizens’ Initiative, which makes it possible for citizens to spark issue-driven legislation.

Interestingly, Article 11 of the EU Treaty addresses only the EU institutions<sup>12</sup> and not the bodies, offices and agencies of the EU. In fact, two paragraphs of this Article refer to the European Commission alone. Excluding agencies from these obligations reflects participation as seen from the vantage point of democratic participation and not from that of good and efficient administration.<sup>13</sup> EU agencies are not political institutions; they are thus not involved in the EU legislative process and, many of them, including the FRA, have neither the means nor the mandate to take binding decisions which intrude upon the legal sphere of individuals. It is logical, therefore, that their obligations on Civil Society participation differ from those of EU political institutions, such as the European Commission, Council and the European Parliament.

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<sup>8</sup> Arts. 9, 10, 11, 12 TEU.

<sup>9</sup> Arts. 15, 16, 24, 124, 125, 228, 263, 265, 267, 287, 298, 325 TFEU.

<sup>10</sup> Art. 10 Paras. 1 and 3 TEU.

<sup>11</sup> See in this regard e.g. Israel de Jesus Butler, „Non-governmental Organisation Participation in the EU Law-making Process: The Example of Social Non-governmental Organisation at the Commission, Parliament and Council“, 14 *European Law Journal* 2008, 558-582.

<sup>12</sup> See the list of seven institutions given in Art. 13 Para. 1 TEU.

<sup>13</sup> Indeed, it was argued that Art. 11 TEU cannot be merely viewed as a continuity of previous participatory practices in EU administration. See Joana Medes, „Participation and the role of EU law after Lisbon: a legal view on Article 11 TEU“, 48 *Common Market Law Review* 2011, 1849-1878, at 1857.



Nevertheless, these agencies do have a role when it comes to assuring good governance within the EU. Article 15 of the Treaty on the Functioning of the European Union (TFEU) makes clear that in order “to promote good governance and ensure the participation of civil society, the Union’s institutions, bodies, offices and agencies shall conduct their work as openly as possible”. In addition to this, in carrying out their missions, the “institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration”.<sup>14</sup> This openness requires clear avenues for Civil Society actors to address agencies and other EU bodies. Such openness also profits from transparent justifications both as to whom the agencies opt to listen to from Civil Society and for what reasons they take on board or disregard this input. All this is further strengthened by the EU Treaty where it is stated under the title “provisions on democratic principles” that the EU in “all its activities ... shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies”.<sup>15</sup> The FRA’s Fundamental Rights Platform should be positioned against the background of an open and transparent administration.

### **3. Civil Society and the Fundamental Rights Platform as referred to in the Agency’s Founding Regulation**

#### **3.1 The composition of the Fundamental Rights Platform**

With regard to the composition of the Fundamental Rights Platform, the Founding Regulation says that it should be composed of “non-governmental organisations dealing with human rights, trade unions and employers’ organisations, relevant social and professional organisations, churches, religious, philosophical and non-confessional organisations, universities and other qualified experts of European and international bodies and organisations”.<sup>16</sup> The Platform should be inclusive, open to all these types of organisations that are “interested and qualified”.<sup>17</sup> The regulation does not specify the selection process for participants nor the duration of their terms of participation; it leaves these decisions to FRA institutional practice (see part 4 below).<sup>18</sup>

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<sup>14</sup> Art. 298 Para. 1 TFEU.

<sup>15</sup> Art. 9 TEU.

<sup>16</sup> Art. 10 Para. 1 of the Founding Regulation.

<sup>17</sup> Art. 10 Para. 3 of the Founding Regulation.

<sup>18</sup> Note, however, that the initial Commission proposal for the Founding Regulation had conceptualised the Platform as a body of the Agency composed of up to 100 members who were to be selected by the Agency’s Management Board. Their term of office was laid down to be for five years and could only be renewed once. See Art. 14 Para. 2 in COM(2005) 280 final.

The Founding Regulation puts the overall conceptualisation and management of the Platform “under the authority” of the Director of the Agency.<sup>19</sup> The regulation does not construe the Platform as an agency body,<sup>20</sup> dealing with it instead under the rubric of “working methods and cooperation”. Hence Platform participants are not integral components of the FRA but partners with a privileged channel of communication. Definitively there was neither intention nor any decision on the side of the Agency to relegate the “sovereign independence of NGOs under the aegis of a bureaucracy”.<sup>21</sup> Rather, by conceiving of the Platform as a mechanism of external cooperation, the Founding Regulation makes sure that the Agency not only can maintain its independence “from both Community institutions and Member State governments”<sup>22</sup> but can fulfil its tasks in “complete independence”,<sup>23</sup> including from particular interests within Civil Society.

### 3.2 The function of the Fundamental Rights Platform

The Agency’s Founding Regulation recognises the “important role of civil society in the protection of fundamental rights” and tasks the Agency with “promot[ing] dialogue with civil society and work[ing] closely with non-governmental organisations and with institutions of civil society active in the field of fundamental rights”.<sup>24</sup> The preamble of the Regulation makes clear that the Platform is “a cooperation network” meant to create “a structured and fruitful dialogue” as well as “close cooperation with all relevant stakeholders”.<sup>25</sup> Article four of the Founding Regulation explicitly tasks the FRA with promoting a “dialogue with civil society”.<sup>26</sup> The FRA is to develop a communication strategy and promote dialogue with Civil Society in order to “raise public awareness of fundamental rights” and to “actively disseminate information about [the Agency’s] ... work”.<sup>27</sup>

Article ten of the Founding Regulation deals specifically with the Platform, describing it as “a mechanism for the exchange of information and pooling of knowledge” that “shall ensure close cooperation between the Agency and relevant stakeholders”.<sup>28</sup> The Founding Regulation thus establishes the Platform as a working method that fosters a privileged partnership with Civil Society. This partnership also helps the FRA to better fulfil its tasks. The regulation specifies a functional dimension for the Platform, by making clear

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<sup>19</sup> Art. 10 Para. 5 of the Founding Regulation.

<sup>20</sup> For an exhaustive list of the Agency’s bodies see Art. 11 of the Founding Regulation. Compare the different approach in the first proposal for Founding Regulation (Article 10 in COM(2005) 280 final).

<sup>21</sup> See Markus Thiel, “The role of NGOs in the work of the EU Fundamental Rights Agency: advocacy, participation or cooptation?”, conference paper prepared for the ECPR Conference, Reykjavik, August 2011, 17, at <http://www.ecprnet.eu/MyECPR/proposals/reykjavik/uploads/papers/1111.pdf>

<sup>22</sup> Consideration number 20 of the Founding Regulation.

<sup>23</sup> Art. 16 Para. 1 of the Founding Regulation.

<sup>24</sup> Consideration no. 19.

<sup>25</sup> *Ibid.*

<sup>26</sup> Art. 4 Para. 1 lit. (h) of the Founding Regulation.

<sup>27</sup> *Ibid.*

<sup>28</sup> Art. 10 Para. 2 Founding Regulation.

that “the Agency may address the members of the Fundamental Rights Platform in accordance with specific needs related to areas identified as a priority for the Agency's work”.<sup>29</sup>

The Platform opens a permanent communication channel that enables the FRA to base its work on relevant and targeted input from Civil Society. The Founding Regulation largely leaves to the FRA the concretisation of this prominent channel of communication, but it explicitly obliges it to call upon the Platform in three particular cases, namely to:

- make suggestions to the Agency's Management Board on the Annual Work Programme of the Agency;
- give feedback and suggest follow-up to the Management Board on the FRA annual report on the situation of fundamental rights in the EU;
- communicate relevant outcomes and recommendations of conferences, seminars and meetings to the Director and the Agency's Scientific Committee.

This list of input explicitly described in the regulation appears to reflect (at least) three types of Civil Society input: first, planning input required to draft the Annual Work Programme; second, evaluation input required to gain feedback and thereby enable the director and the Management Board to ensure that the Agency performs the tasks entrusted to it; and third, information input which allows the Agency to track developments on the ground, such as developments in Court rooms, the field of employment, the social sector, academia, etc. This list is not exhaustive (arg. “in particular”) and the Agency may address the Platform for a broad range of Civil Society input. Although the wording of the Founding Regulation underscores the functional character of the Platform, its input need not be limited to a unilateral provision of input but could encompass a much broader and multilateral dialogue between the Agency and Civil Society (see below 4.4).

## **4. Civil Society and the Fundamental Rights Platform as dealt with in the Agency's institutional practice**

### **4.1 Current composition of the Fundamental Rights Platform**

At the time of writing, 315 Civil Society organisations participate in the Platform. The participating organisations represent various types of organisations. The majority identify themselves as non-governmental organisations (NGOs) “dealing with human rights” (81%). Others self-identify as “university or other academic institution” (8%), “professional organisation” (4%), “social organisation” (3%), “church, religious, philosophical or non-confessional organisation” (2%) or trade union (2%). Given this current

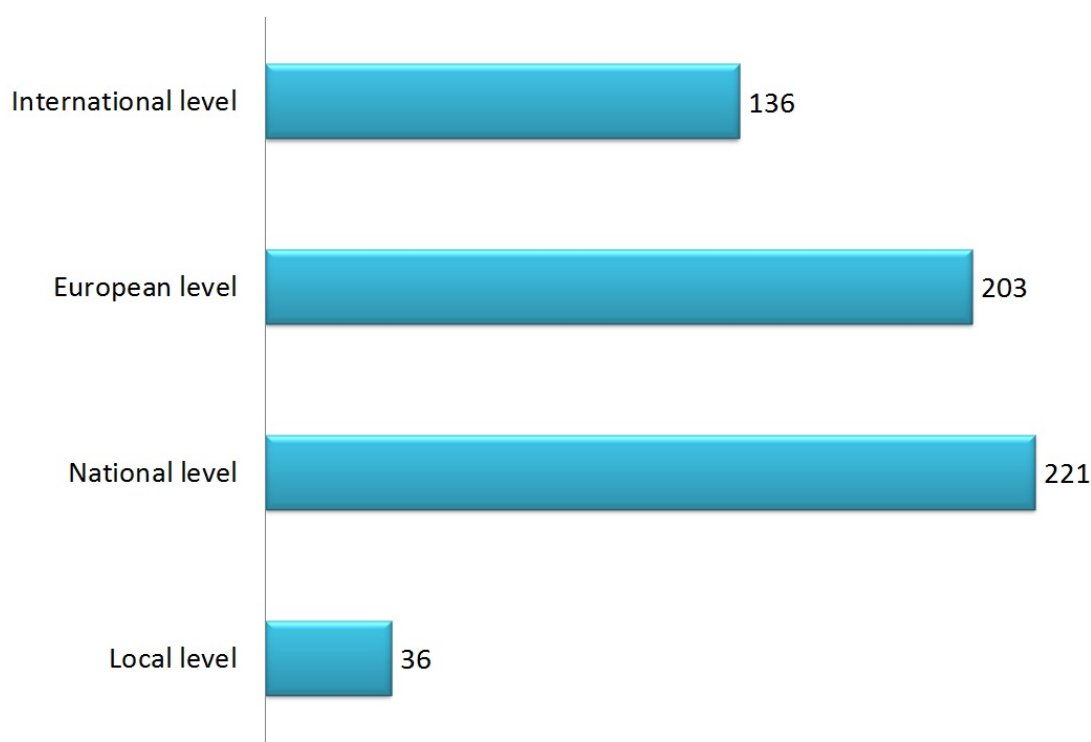
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<sup>29</sup> Art. 10 Para. 3 Founding Regulation.

composition, the Agency is especially encouraging applications for participation by professional and social organisations, trade unions, employers' organisations and academia.

Most of the currently participating organisations indicate that they are active at national and/or European level (multiple indications possible). Only 36 organisations indicate that they are active at local level (see figure 1 below). For this reason, the Agency particularly welcomes applications from organisations active at the grassroots level.

*Figure 1: FRP organisations by geographic scope and activity*

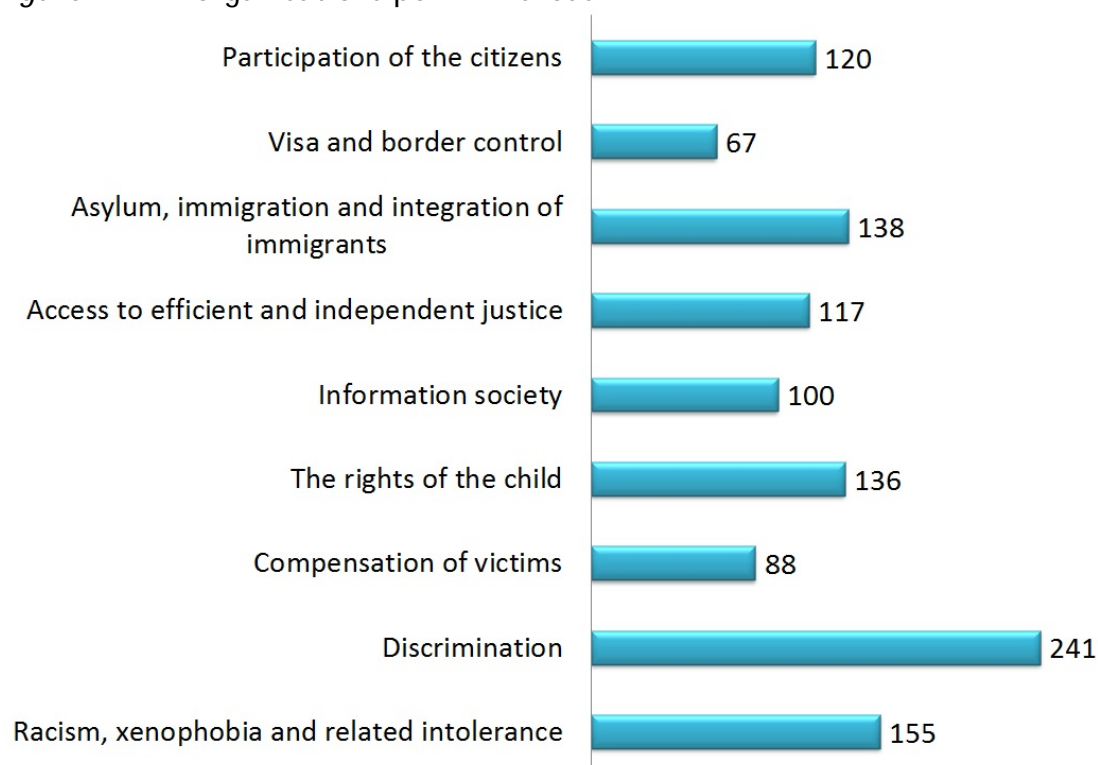


*Source: Own elaboration of data*

Platform participants most often indicate the area of “discrimination” as the thematic area in which they are active. Figure 2 below shows the nine areas of the Agency’s current five-year Multi-annual Framework (MAF) – a Council decision identifying FRA priorities over the period.<sup>30</sup> To address Framework areas with low Civil Society representation in the current Platform, the Agency is encouraging applications for participation especially from organisations dealing with visa and border control, compensation of victims, information society and data protection issues.

<sup>30</sup> Council Decision of 28 February 2008 (2008/203/EC) implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007-2012, in OJ L63 as of 7 March 2008, 14 and 15.

Figure 2: FRP organisations per MAF areas



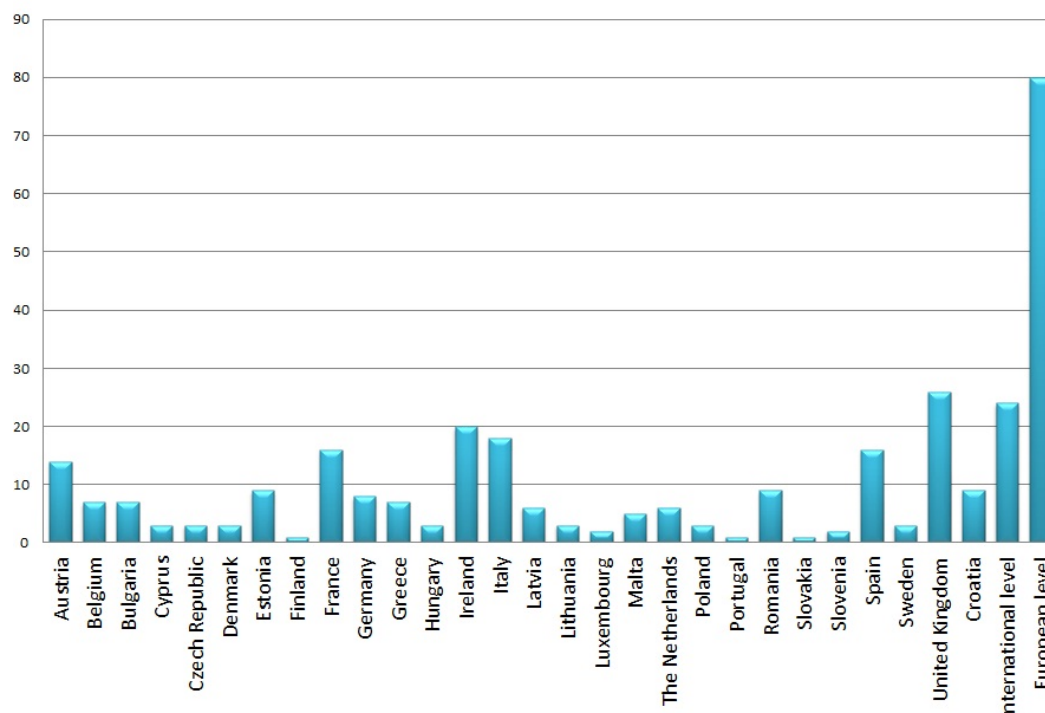
Source: Own elaboration of data

The Platform is open to Civil Society organisations based in the 27 EU Member States and Croatia. Candidate countries and countries with which a Stabilisation and Association Agreement has been concluded can participate in the work of the FRA once the respective Association Council takes a decision in this regard.<sup>31</sup> So far only Croatia has this observer status; currently, nine FRP participants are organisations based in Croatia.

80 out of the 315 currently participating organisations are umbrella organisations exclusively active at European level and 24 are exclusively active at the international level (these organisations are often but not necessarily based in Belgium). As figure 3 shows, out of those organisations that are not exclusively active at the European or international levels, the FRP reveals the following composition: United Kingdom (26), Ireland (20), Italy (18), France (16), Spain (16) or Austria (14). Other countries have few organisations which have expressed an interest in applying for Platform participation. The Agency is therefore especially interested in receiving applications from Finland, Hungary, Luxemburg, Portugal, Slovenia and Slovakia.

<sup>31</sup> Art. 28 of the Founding Regulation.

Figure 3: FRP organizations by country



Source: Own elaboration of data

## 4.2 The Fundamental Rights Platform selection process

The Director of the Agency lays down the selection procedure for Platform participation. To date, the FRA has issued three calls to Civil Society for Platform applications. Whereas the first two were open for a limited period only, the current call remains on-going, although it closes two months each year before the FRA Annual Meeting for organisational reasons and reopens immediately thereafter.<sup>32</sup> The FRA might, however, temporarily close off applications when it achieves an adequate balance in the Platform's composition. The call, which is published on the FRA website, spells out the criteria for applications. It is based on the Code of Conduct<sup>33</sup> and the Internal procedures for the selection of participants in the Fundamental Rights Platform.<sup>34</sup>

The Code of Conduct underscores that participation in the Platform is open to all Civil Society organisations that:

1. are based in one of the EU Member States;<sup>35</sup>

<sup>32</sup> The Fundamental Rights Platform team at the FRA can be reached at the following email address: [frp@fra.europa.eu](mailto:frp@fra.europa.eu).

<sup>33</sup> See decision of the Director, CAR/002/2012, available at <http://fra.europa.eu/en/cooperation/civil-society>.

<sup>34</sup> See decision of the Director, CAR/001/2012, available at <http://fra.europa.eu/en/cooperation/civil-society>.

<sup>35</sup> Or a participating State in the sense of Art. 30 of the Founding Regulation (see above).

2. are unreservedly committed to respecting fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union and the European Convention of Human Rights, and to working for their advancement, protection and promotion;
3. have specific expertise, proven experience and capacity with regard to the protection and promotion of these rights;
4. are committed to engage in a respectful and fruitful dialogue with the other participants in the Platform and to contribute to an overall efficient functioning of the Fundamental Rights Platform;
5. can demonstrate that their programme of work is of direct relevance to the work of FRA;
6. are representative in the field of their competence at the national, regional, European or international level;
7. have the ability and capacity to act as a link between their own constituencies, national and European networks and the Platform;
8. are able and willing to raise awareness of the fundamental rights issues addressed by the FRA;
9. are able, for the sake of transparency, to provide the FRA on request with detailed information regarding their organisational structure and financial sources.

The internal procedures for the selection of participants specify the different steps for selecting Platform participants. Although the procedure runs through various layers of the FRA administration, the Director takes the final decision. Importantly, the procedure guarantees that no negative decision can be taken without: the applicant having a chance to clarify open questions concerning the application; the FRA legal service giving an opinion; and, finally, prior consultation with the Advisory Panel of the Platform (see last paragraph in section 4.3).

The approach to the Platform is an open and inclusive one, as the selection criteria but also the institutional practice show. Some winnowing of applications is, however, necessary in order to guarantee:

- a) a balanced composition of the Platform with regard to thematic areas which participants focus on, the strands of Civil Society they represent and the Member States they are based in;
- b) that the Platform as a whole delivers on its tasks as prescribed in the Agency's Founding Regulation;
- c) that the Platform works efficiently and allows for a structured and fruitful fundamental rights dialogue.

The FRA has to date accepted 90 % of the total number of applicants as Platform participants. Of the 10 % of applicants that did not become Platform participants, half failed because they did not reply to the Agency's written request for clarification concerning their applications. The FRA rejected most of the remaining 5 % of applications for formal reasons, such as the nature of the organisation or its geographic scope. In a few cases, the FRA determined that the applying organisations would lead to an overrepresentation of a



specific sector/thematic area. In one case the applicant was considered insufficiently committed to engaging in a fruitful dialogue based on respect for the fundamental rights of all persons.<sup>36</sup>

### 4.3 Participation in the Fundamental Rights Platform

The “Code of Conduct”, which was adopted by the Director on the basis of a consultation with all Platform participants, specifies that Platform participation is for three years. Participation is, however, renewable; once their term ends, participants are free to resubmit an immediate application for the following term. This helps assure that the Platform’s composition represents different thematic areas, strands of civil society and Member States.

For Platform participation, the Code of Conduct says:

- all participants of the Platform commit themselves to respecting all fundamental rights as they are reflected in the Charter.
- all participants of the Platform refrain from any conduct which opposes the fundamental rights of any person or group of persons, as are recognised by the Charter and the subsequent interpretations by the authoritative bodies.
- all participants of the Platform refrain from any kind of conduct endangering the ‘structured and fruitful dialogue’ within the Platform, the respect for the dignity and the rights of other participants and the overall efficient functioning of the Platform.
- all participants of the Platform refrain from any kind of illegal activity.

On such grounds, the Code of Conduct allows for the termination of participation in exceptional cases before the three-year term expires. The Director can, however, only terminate such participation after a discussion with the participant concerned and consultation with the Platform’s Advisory Panel.<sup>37</sup>

The Director established an “Advisory Panel”. This panel consists of nine members: The Platform participants elect six and the Director appoints three. Their term of office is two years which can be renewed once.<sup>38</sup> The Advisory Panel is a tool in aiding the good functioning of the Platform, suggesting, where necessary, adjustments and improvements to processes and procedures, thus facilitating the organisation and coordination of the Platform. The nature of the Advisory Panel is consultative. It deals with procedural issues, not with questions of content. The Advisory Panel has no representative role on behalf of either the Platform or the FRA. The current Advisory Panel took office on 20 April 2012 and is composed, as the previous

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<sup>36</sup> The refusal of this applicant led to a complaint at the European Ombudsman (currently pending Case 0565/2012/ER).

<sup>37</sup> In practice such a termination has never been necessary.

<sup>38</sup> For the details see the “terms of reference” for the Advisory Panel as published on the Agency’s website <http://fra.europa.eu/en>.



Advisory Panels, of representatives of a very diverse range of organisations underscoring the Platform's inclusive character.<sup>39</sup>

#### 4.4 Different forms of interaction

Participation in the Platform takes place both electronically, via email as well as via the 'e-FRP' (an interactive online platform that is still in a testing phase), and at the annual Platform meetings in Vienna. Whereas access to the e-FRP is reserved for Platform participants, other Platform activities are reported and can be accessed from the FRA website.<sup>40</sup>

The annual meetings are normally dedicated to specific topics but also allow for a broader exchange of views among Platform participants as well as between the Platform and the FRA. Different formats, including "thematic workshops" or "the floor is yours", ensure a participatory approach. More information on the meetings is available in the meeting reports which are online at the FRA website.

The most recent 5th Platform meeting took place on 19 and 20 April 2012 and focused on the cooperation between National Human Rights Institutions (NHRIs), equality bodies and Civil Society in the area of victims' rights. It explored how to best address multiple discrimination. A panel debate on victims' rights stressed the importance of mutual understanding and respect for the different roles each actor plays and called for more collaboration. Discussions on multiple discrimination highlighted promising practices but also recognised the legal as well as practical challenges that still exist. In addition to the two plenary themes, over 40 interactive workshops, hosted by Platform participants and FRA project managers discussed a wide range of fundamental rights issues and provided the opportunity for more than 180 Civil Society organisations from across the EU to exchange experiences and learn from one another. Representatives from NHRIs, equality bodies, ombudspersons as well as other EU agencies, such as the European Institute for Gender Equality, and international organisations, such as the Council of Europe, took part in the meeting.

As mentioned above, in line with the Founding Regulation, the FRA regularly consults the Platform on the Agency's Work Programme and the FRA Annual Report. Just like the meeting reports, the results of the different written consultations during the year are available online. However, as mentioned previously, the interaction between FRA and the Platform is not

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<sup>39</sup> The current members are: Ms Jamie Bolling - Executive director of the European Network on Independent Living (ENIL); Ms Dominika Bychawska-Siniarska - Project Coordinator at the Helsinki Foundation for Human Rights; Mr Roger Kiska - Senior Legal Counsel at Alliance Defence Fund; Mr Allan Leas - Secretary General of the European Council on Refugees and Exiles (ECRE); Ms Evelyne Paradis - Executive Director of the International Lesbian, Gay, Bisexual, Trans & Intersex Association - European Region (ILGA-Europe); Ms Catherine Lynch - National Coordinator of the Irish Network Against Racism (ENAR Ireland); Ms Elisabeta Kitanovic - Executive Secretary for Human Rights, Conference of European Churches (CEC); Mr Klaus Lörcher - Adviser, European Trade Union Confederation (ETUC); Ms Sara Giménez - lawyer and responsible for the Equal Treatment department of the Fundación Secretariado Gitano.

<sup>40</sup> See [http://fra.europa.eu/fraWebsite/networks/frp/frp\\_en.htm](http://fra.europa.eu/fraWebsite/networks/frp/frp_en.htm).

unidirectional. In fact, institutional practice shows three different modes of interaction:

- Platform→FRA: FRP participants provide frontline knowledge of Civil Society to the FRA allowing thereby the latter to address the right issues and to display relevant advice, corresponding to the expectations of the agency's stakeholders;
- FRA→Platform: the FRA opens channels allowing Platform participants to provide input on Agency activities and, indirectly, on policy developments at EU level in a wider sense;
- Platform↔Platform: annual meetings, conferences and thematic seminars allow Platform participants to network amongst the relevant Civil Society organisations, to hold discussions and exchange promising practices.

## 5. Conclusion

Fundamental rights, which are deeply rooted in our essential humanity, provide each and every individual with core legal entitlements. No bureaucracy dealing with fundamental rights should ever forget this fact. The Fundamental Rights Agency, the EU body responsible for advising EU institutions on fundamental rights, was equipped with a Fundamental Rights Platform to ensure an on-going and structured exchange of information and feedback between the FRA and Civil Society.

At the time, there was little pre-existing knowledge on how to design such a Platform; hence, the development of the relationship between the FRA and Civil Society over the first five years proved an interesting experiment. Although the Platform was never intended as a mechanism of democratic co-decision making, it is far more than a loose marketplace where Civil Society actors across the spectrum of fundamental rights themes gather. The Platform offers channels of consultation and exchange not only among the participants but also with the FRA. Though it is not a body of the FRA and thus not part of the FRA's institutional structure, it has become a well established FRA working tool. It allows for cross-pollination, ensuring informed grassroots input into FRA work and FRA expertise flow to Civil Society actors. This synergetic relationship builds upon both the self-organising forces of Civil Society and the terms of references of the FRP as defined by the FRA. To what degree, however, the Platform's dynamics allow the transformation of sometimes 'compartmentalised' single human rights discussions into wider trans-sectoral and transnational debates within the Human Rights Community depends on the motivation and the interest(s) of the different Civil Society players.

In any event, the FRA's first five years show that the Platform enables an interesting multi-logue across a variety of different lines, including layers of governance (local, national, European level), policy areas (e.g. asylum, children rights, data protection, etc.) and political orientation (e.g.

protection of children against pornography versus protection of free access to information; protection of LGBT persons versus protection of traditional family values). Such a multi-logue is not necessarily easy but it can be fruitful. It appears as if the Platform had set a precedent. Interestingly, the revised Founding Regulation of FRONTEX establishes a "Consultative Forum"<sup>41</sup> that was opened to Civil Society Organizations "promoting the respect of fundamental rights in the fields of border and migration management".<sup>42</sup> The European Asylum Support Office (EASO) also recently established a Consultative Forum aimed at maintaining "a close dialogue with relevant civil society organisations and relevant competent bodies operating in the field of asylum policy at local, regional, national, European or international level".<sup>43</sup> These developments might indicate that there is a new trend on the rise in the 'fundamental rights bureaucracy': to ensure that those charged with fostering human rights are in direct contact with the concrete needs of persons at the grassroots level. This is to be welcome since, indeed, it is important to remind the gardeners to tend to the roots of fundamental rights - the people.

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<sup>41</sup> See Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operation Cooperation at the External Borders of the Member States of the European Union OJ L 349, 25.11.2004, p. 1, as last amended.

<sup>42</sup> See FRONTEX Management Board decision No 12/2012 of 23 May 2012.

<sup>43</sup> Art. 51 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, in OJ 2010 L 132 as of 29 May 2010.

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