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Exploring the Political Role of FRA:

Mandate, Resources and Opportunities

Jan Wouters and Michal Ovádek

In Human Rights Law and Evidence-based Policy, Rosemary Byrne and Han Entzinger (eds), Routledge

Abstract

The Fundamental Rights Agency occupies a specific place in the network of decentralized European Union agencies. Unlike most, it is not concerned with technical regulation of economic activity. The politically sensitive nature of fundamental rights and the existence of a greater range of, also non-EU, actors able to supply expertise in this field condition the political role FRA plays in the EU system. In this chapter we explore this role through the prism of three crucial factors: the mandate of the Agency; its budgetary and staff resources; and opportunities for policy relevance at the EU level. Our analysis points to a grounded view of the political role of FRA which is arguably in keeping with the intentions surrounding the Agency's creation.

A. Introduction

Although mirroring a broader trend¹ which formed largely part of the regulatory state paradigm,² the genesis of 'agencification' – the proliferation of European Union ('EU') agencies in the 1990s and 2000s, which also led to the creation of the EU Fundamental Rights Agency ('FRA' or 'the Agency') and its predecessor, the European Monitoring Centre on Racism and Xenophobia ('EUMC') – was linked to the Member States' desire to avoid further integration leading to centralization of power in the hands of the European Commission.³ Situated in dozens of different locations across the EU territory (such as Vienna) and often containing internal governance levers for supervision by Member State representatives, agencies have been seemingly placed outside Brussels' reach both figuratively and physically. Agencies were still to be connected with the EU's institutions (especially the Commission) but not exclusively and in a networked way rather than hierarchically.⁴

¹ Mark Thatcher, 'Delegation to Independent Regulatory Agencies: Pressures, Functions and Contextual Mediation' (2002) 25 *West European Politics* 125-147.

² Giandomenico Majone, 'The rise of the regulatory state in Europe' (1994) 17 *West European Politics* 77-101.

³ Bickerton, Hodson and Puetter see agencies as part of 'de novo bodies' to whom powers were delegated in lieu of the Commission in the post-Maastricht period. See Christopher J. Bickerton, Dermot Hodson and Uwe Puetter, 'The New Intergovernmentalism: European Integration in the Post-Maastricht Era' (2015) 53 *Journal of Common Market Studies* 703-722 at 705.

⁴ Renaud Dehousse, 'Regulation by networks in the European Community: the role of European agencies' (1997) 4 *Journal of European Public Policy* 246-261.

It is a paradox of EU governance that the operational reality of the relationship between EU agencies and the Commission instead points to the *de facto* strengthening of the EU's executive.⁵ This might be all the more surprising in the case of FRA, as the notion, put forward by Kelemen,⁶ that the creation of EU agencies was part of a strategy of 'bureaucratic self-aggrandizement' by the Commission does not conform to the latter's original negative position towards the establishment of the Agency.⁷ The specificity of FRA among EU agencies is, however, not confined to this point: the standard propositions about agencies in the literature are associated primarily with technical regulation of economic activity. An information agency concerned with fundamental rights represents a somewhat awkward object of study in agency research.⁸ Even when it comes to 'social' regulation, the omnipresence and general importance of fundamental rights in domestic and international legal orders and discourse sets the case of FRA apart. The idiosyncrasy is further compounded by a set of specific expectations concerning, in particular, institutional independence stemming from FRA's incomplete mimicry of the model of National Human Rights Institutions (NHRIs).⁹ In this chapter, we focus on FRA in all its specificity insofar as such features are also politically relevant factors.

Discussing the 'political' role of EU agencies might, however, appear oxymoronic to some: independent agencies can be understood as instruments of technocratic governance which depoliticize issues and thus replace 'politics' with 'expertise'.¹⁰ The rich literature on principal-agent relationships and bureaucratic politics documents that agencies are, nevertheless, not entirely removed from the political process, both as subjects of political influence and as political agents. As argued by Martin Shapiro, this applies also in the case of 'regulation by information',¹¹ the model of agency role popularized in the EU context by Giandomenico Majone:

"[introducing] transparency and participation into the internal processes of the new agencies [...] will actually be hampered to the extent that we try to build the legitimacy of the agencies by insisting that 'information' and 'technical decisions' somehow lie in a cradle of scientific

⁵ Morten Egeberg, Jarle Trondal and Nina M. Vestlund, 'The quest for order: unravelling the relationship between the European Commission and European Union agencies' (2015) 22 *Journal of European Public Policy* 609-629.

⁶ Daniel Keleman, 'The politics of "Eurocratic" structure and the New European agencies' (2002) 25 *West European Politics* 93-118 at 95, 98.

⁷ Olivier De Schutter, 'The EU Fundamental Rights Agency: Genesis and Potential', in Kevin Boyle (ed.), *New Institutions for Human Rights Protection* (Oxford: Oxford University Press, 2009), p. 95. See also Chapter 1 of this volume.

⁸ Despite the fact that it has not been identified as an outlier in research looking at all agencies. See, for example, Egeberg, Trondal and Vestlund, 'The quest for order', 629.

⁹ Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993.

¹⁰ Kathleen Bawn, 'Political control versus expertise: congressional choices about administrative procedures' (1995) 89 *American Political Science Review* 62-73.

¹¹ Giandomenico Majone, 'The new European agencies: regulation by information' (1997) 4 *Journal of European Public Policy* 262-275.

harmony above and beyond the clash of interests and the exercises of discretion in the face of uncertainty that we call politics.”¹²

Regardless of whether the creation of an agency on human rights represents the height of technocratic folly,¹³ the role of FRA should be seen as also having a political dimension, perhaps even more so than other EU agencies, given that it operates in a more sensitive and cross-cutting issue area, and despite the tasks of FRA being of an informational rather than regulatory nature.¹⁴ More specifically, two kinds of politics can be seen at play in the case of FRA: constitutive politics, as politics setting the institutional parameters which both enable and constrain the Agency, and operational (or bureaucratic) politics, as the ‘daily’ politics concerning information, management of relations with other actors and the identification of opportunities for engagement and impact.¹⁵ The two types of politics are not inevitably isolated from each other, as, for example, operational politics can produce constitutive effects when particular interpretations of the formalized mandate are put forward.¹⁶

Observing both constitutive and operational politics, we posit that the political role of FRA is chiefly determined by three partially interrelated factors: the Agency’s mandate, its resources and available opportunities for impact. These three variables not only embody the distillation of political influence on FRA by various political actors at different stages (establishment, resourcing, opportunity-creation) but their combined effect also captures the potential of FRA’s political influence. Although the mandate of FRA could be *prima facie* viewed as constant, it is in fact subject to the dynamics of interpretation and ongoing constitutive politics which play out both within FRA and in other institutions, notably the Council. In addition, the mandate and resources condition the scope of opportunities. We explore the three variables over the course of FRA’s existence and chart an overview of the main constraints they place on FRA’s political influence, while acknowledging that their relative importance may vary per event or issue.

B. Mandate

The creation of FRA and its mandate was a complicated and multifaceted process, lasting broadly from 1999 when first proposals were floated to 2007, when FRA’s ‘Founding Regulation’ was adopted.¹⁷ As

¹² Martin Shapiro, ‘The problems of independent agencies in the United States and the European Union’ (1997) 4 *Journal of European Public Policy* 276-291 at 291.

¹³ Neil Walker, ‘Plato vindicated? Europe as epistocracy’, Francqui Chair lecture, 28 February 2017, Leuven.

¹⁴ Following the distinction in Daniel Kelemen, ‘The Politics of Eurocracy: Building a New European State?’, in N. Jabko and C. Prasons (eds.), *With US or Against US? European Trends in American Perspective* (Oxford: Oxford University Press, 2005), pp. 173-189.

¹⁵ Drawing on the operationalization of the two concepts in Tannelie Blom and Valentina Carraro, ‘An information processing approach to public organizations: The case of the European Union Fundamental Rights Agency’ (2014) 18 *European Integration online Papers (EIoP)* 1-36 at 9-12.

¹⁶ *Ibid.*, 12.

¹⁷ Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ 2007 No. L53/1, hereinafter the ‘Founding Regulation’.

the process is also well documented in the literature,¹⁸ we only point to the most politically significant aspects of the Agency's general¹⁹ mandate, understood here as consisting of the Founding Regulation and the Multiannual Frameworks ('MAFs') adopted on a five-year basis.²⁰ Moreover, we do not duplicate in-depth the ground work provided by other chapters of this volume.²¹

FRA has not been vested with any regulatory decision-making powers. Its main tasks are data collection, research, analysis, providing advice to policy makers and cooperation with stakeholders, including through networks and outreach activities. In principle, all of FRA's tasks are liable to have at least a limited degree of political impact. For example, some research questions are generally more sensitive (e.g. discrimination of minorities) than others (e.g. access to justice), and in particular more for some Member States than for others (e.g. research on discrimination of language minorities resonates differently in Estonia than some other Member States). FRA is generally conscious of Member States' political sensibilities and while it safeguards the integrity of its research, it may take the sensitivity of certain topics in a particular Member State into account in its, especially more targeted, communication activities. The members of the Management Body (MB) – coming from the Member States, albeit according to the law in 'individual capacity' – can also raise such points.²²

As mentioned previously, unlike most EU agencies, FRA was not designed subject to solely one (EU) agency model: a concurrent influence stemmed from the environment of national human rights institutions ('NHRIs') which were based on an existing UN-approved template.²³ NHRIs were also an obvious candidate for the establishment of a transnational regulatory (in the informational sense) network with FRA. The final design of the mandate of the Agency, however, was clearly influenced more by EU-specific considerations, including continuity with the EUMC, than the Paris Principles, which are referenced only in the Preamble of the Founding Regulation.²⁴ As a result, FRA's mandate does arguably not fully satisfy the requirements of the Paris Principles, in particular on account of two issues. First of all, the FRA lacks the power to autonomously comment on EU legislative proposals. Secondly, it lacks autonomy when it comes to defining areas of activity; in practice, this has led to the exclusion of certain

¹⁸ See, for example, De Schutter, 'Genesis and Potential', pp. 93-135; Waldemar Hummer, 'The European Fundamental Rights Agency', in A. Reinisch and U. Kriebaum (eds.), *The law of International relations: Liber Amicorum Hanspeter Neuhold* (Utrecht: Eleven International Publishing, 2007), pp. 117-144.

¹⁹ We do not analyse FRA's role under the EU Framework for the UN Convention on the Rights of Persons with Disabilities, not least because it does not confer on the Agency competences which would significantly go beyond its general mandate. Nevertheless, the Framework does institutionalize FRA's role in EU disability governance on the basis of EU implementation of an international treaty and similar arrangements linking other treaties to the EU might potentially represent a format for the strengthening of FRA's mandate in the future, including possibly with impact on its 'political' role.

²⁰ Council Decision No 252/2013/EU of 11 March 2013 establishing a Multiannual Framework for 2013-2017 for the European Union Agency for Fundamental Rights, OJ 2013 No. L79/1.

²¹ See, in particular, Chapter 1.

²² Interview with a senior FRA official, Vienna, 17 March 2017.

²³ Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993. See on NHRIs in a European, comparative and international context: J. Wouters and K. Meuwissen (eds.), *National Human Rights Institutions in Europe: Comparative, European and International Perspectives* (Antwerp – Oxford: Intersentia, 2013).

²⁴ De Schutter, 'Genesis and Potential', pp. 111-112.

areas – notably police and judicial cooperation in criminal matters – from the MAFs thematically delineating the work of the Agency.²⁵ However frustrating purely from a human rights perspective, it should be remembered that these constraints emanate from years of discussions and are conscious political choices: they are design features rather than ‘bugs’.

It must be acknowledged that both institutional constraints are also politically significant. The ability to issue opinions on legislative proposals is the only formal route for FRA to directly assess the fundamental rights aspects of future EU legislation. That FRA realizes the importance of this (constrained) competence is corroborated by the attention and resources it devotes to its opinions (see ‘Opportunities’ below). Making this crucial competence conditional upon requests from the European Parliament (EP), the Council or the Commission has two consequences. First, FRA is limited in its capacity to set its own agenda – the selection of legislative proposals on which it is allowed to comment is subject to complete (but individual) discretion of the three political institutions.²⁶ This also means that opinions are not necessarily delivered on the files most in need of an independent fundamental rights perspective.²⁷ Second, the recourse to FRA and a more impartial fundamental rights scrutiny of EU legislation is rendered optional, which undercuts the relevance of the Agency. FRA is clearly not indispensable in this regard, as the three institutions have their own capacities – however limited and wedded to political objectives – to determine the impact of legislative proposals on and their compliance with fundamental rights. FRA does benefit, however, from the fact that the institutions compete with each other to an extent. In particular, the European Parliament may be keen on challenging the Commission’s proposals through FRA’s opinions.

FRA’s positioning as an independent actor is even more obviously impeded by the adoption of MAFs in the Council. The MAF, required by Article 5 of the Founding Regulation, is adopted every five years in accordance with the special legislative procedure and, since 2013,²⁸ on the basis of the ‘flexibility clause’

²⁵ Armin von Bogdandy and Jochen von Bernstorff, ‘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’ (2009) 46 *Common Market Law Review* 1035-1068 at 1058-59.

²⁶ The scope of the EU institutions’ competence to request opinions on legislative proposals from FRA has been disputed. Article 4(2) of the Founding Regulation stipulates that the opinions may relate to ‘proposals from the Commission under Article [293 TFEU] or positions taken by the institutions in the course of legislative procedures only where a request by the respective institution has been made’. This provision could be interpreted restrictively as meaning that requests for opinions by the Council and the European Parliament can only concern the positions taken by them with respect to legislative proposals of the Commission, not including the Commission proposal itself. In practice, requests by any of the three institutions have been treated as requests for opinions on the entire legislative proposal.

²⁷ FRA enjoys discretion as to whether to accept a request for an opinion. However, it has so far almost never rejected such a request. This is logical, as the opinion requests offer FRA the only opportunity for expression in the legislative process.

²⁸ The first MAF was based on the secondary legal basis provided for by Article 5(1) of the Founding Regulation which requires, as opposed to Article 352 TFEU, only the consultation of the European Parliament (rather than its consent). See Council Decision 2008/203/EC of 28 February 2008 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, OJ 2008 No. L63/14. On the basis of CJEU case law, in particular Case C-133/06, *Parliament v Council* [2008] ECLI:EU:C:2008:257, paras 55-61, both the Commission and Council Legal Service are of the opinion that the

(Article 352 TFEU) which requires the consent of the European Parliament and a unanimous decision of the Council. The MAF lays down a list of thematic areas within which ‘the Agency shall carry out its tasks’.²⁹ By way of derogation, when responding to a request of one of the three main EU institutions, the thematic limitation of the MAF does not apply.³⁰ Despite the list of thematic areas being relatively extensive,³¹ it is not exhaustive. It is therefore obvious that the MAF constrains FRA’s own agenda-setting capacity by narrowing the scope of the Agency’s activity to politically pre-approved areas. Even if it were right to say that FRA is in its work free to look at the whole gamut of rights covered by the EU Charter of Fundamental Rights regardless of whether they correspond to an area stipulated by the MAF,³² not only does the political direction given by the MAF carry some weight even in this regard, but it also constrains the Agency’s choice of issue areas (as expected of the MAF).³³ Together with the reliance on requests for opinions on legislative files, the adoption of the MAF thus represents a two-fold restraint of FRA’s independence with regards to agenda-setting. In addition, the fact that the MAF must be adopted following a special legislative procedure implies a degree of political control over FRA which is inimical to the Agency’s independent image, regardless of the actual extent of direct political interference, in particular from the Council, being virtually non-existent.

A long-running saga of constitutive politics helps illustrate the importance of the MAF to FRA but also the Agency’s relative weakness to provoke desired changes to its mandate.³⁴ From the outset, the Council did not include in the MAF thematic areas previously belonging to the third pillar of the EU (police and judicial cooperation in criminal matters). Not long after the adoption of the first MAF in 2008, and in particular following the entry into force of the Treaty of Lisbon in December 2009, a discussion emerged regarding the desirability and possibility of subsuming the former third pillar issues within FRA’s mandate. On the one hand, as traditional and sensitive state prerogatives, some Member States were wary of having FRA analyse the fundamental rights aspects of European criminal cooperation. On the other hand, the rationale according to which these areas should be excluded from the ambit of FRA’s activity was becoming considerably eroded as a consequence of proliferating EU legislation on the topic – with much of it focused on fundamental rights – and the abolition of the distinctive character of criminal cooperation and the entire pillar structure with the Treaty of Lisbon.

Fortunately for the Member States wishing to keep criminal cooperation matters away from FRA, the Council Legal Service formulated a legal argument against the very possibility of including such matters on the list of thematic areas in the MAF within the existing framework of the Founding Regulation and

use of the secondary legal basis in Article 5(1) of the Founding Regulation is incompatible with the Treaties. Article 352 TFEU has been henceforth used as the legal basis for the Council Decision on the MAF.

²⁹ Article 5(3) of the Founding Regulation.

³⁰ Second sentence of Article 5(3) of the Founding Regulation.

³¹ See Article 2 of the 2013-2017 MAF, OJ 2013 No. L79/1.

³² Gabriel N. Toggenburg, ‘Fundamental Rights and the European Union: how does and how should the EU Agency for Fundamental Rights relate to the EU Charter of Fundamental Rights?’, EUI Working Paper Law 2013/13, pp 6-7.

³³ Alicia Hinajeros, ‘A Missed Opportunity: The Fundamental Rights Agency and the Euro Area Crisis’ (2016) 22 *European Law Journal* 61-73 at 68.

³⁴ We classify the MAF saga as an instance of constitutive rather than operational politics, as it concerns the renegotiation of a part of its mandate rather than testing its flexibility through daily bureaucratic politics.

EU law generally. In two opinions adopted in 2011 and 2012,³⁵ the Council Legal Service took the view that former third pillar matters cannot be incorporated into the MAF without first amending the Founding Regulation, as the provisions of the latter refer in several places to the 'Community' rather than the EU, and 'Community law' instead of EU law. From that the Council Legal Service deduced that the original intention of the legislators in drawing up the Founding Regulation was to exclude issues not falling within the first pillar from FRA's scope of activity and this was not, according to the Service, altered by the entry into force of the Lisbon Treaty. As a result, the MAF, a subsidiary instrument, could not be used to expand the alleged first-pillar scope of the Founding Regulation.

It is a thinly disguised secret in the EU fundamental rights community that the opinion of the Council Legal Service has been instrumentalized for political ends by a handful of Member States in order to resist the expansion of the MAF to include police and judicial cooperation in criminal matters.³⁶ Nevertheless, as the required threshold for passing the MAF in the Council is unanimity, the former third pillar areas have been kept off the thematic lists in already three successive MAFs. If business continues as usual until the end of the current MAF, the opposition to the mandate alteration will have successfully persisted for more than 10 years.³⁷ This is striking and points to the continued inability of the other actors involved in this saga, FRA chiefly among them, to achieve a relatively trivial modification of the mandate.

Further illustrative of the Council's intransigence is the fact that both the Commission and FRA have persuasively disputed the Council Legal Service's argument. In the opinion of the Commission, which is shared by FRA, the Treaty of Lisbon explicitly provided for all pre-Lisbon legal instruments to be converted according to the provisions of the newly enacted TEU and TFEU.³⁸ This would mean that all references to the 'Community' should be read as references to the 'Union' and the same with respect to Community/Union law. As a result, the Founding Regulation would allow for the MAF to include thematic areas from the former third pillar. This interpretation was rejected by the Council Legal Service without addressing the relevant 'conversion' provisions of the Lisbon Treaty or demonstrating that its restrictive view of the transition from the Community to the Union was legally followed in any other legislative file.

It has so far not mattered for the blocking Member States that making the MAF inclusive of judicial and police cooperation in criminal matters was recommended by an external review of FRA in 2012,³⁹ the

³⁵ Council of the European Union, Opinion of the Legal Service, doc. 6138/11, 4 February 2011; and Opinion of the Legal Service, doc. 6318/12, 9 February 2012.

³⁶ Interview with a Member State official, Brussels, 11 July 2017.

³⁷ The most recently adopted MAF will run until 2022. See Council Decision (EU) 2017/xx establishing a Multiannual Framework for the European Union Agency for Fundamental Rights for 2018-2022, OJ 2017 No. Lxx/xx. Discussions regarding the enlargement of the scope emerged during the period of the first MAF.

³⁸ Article 5(3) of Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, OJ 2007 No. C306/1.

³⁹ Ramboll, 'External evaluation of the European Union Agency for Fundamental Rights', Final Report, 19 November 2012.

European Parliament,⁴⁰ civil society,⁴¹ the Commission,⁴² and the FRA Management Board.⁴³ Nor has the Council position been altered in light of FRA working on the disputed areas on the basis of Commission requests.⁴⁴ FRA itself has expended over the years resources to harness support, build coalitions and lobby for the enlargement of the mandate, all to no avail (so far). The Member States relied on the opinion of the Council Legal Service, which required an amendment to the Founding Regulation as a shield legally blocking the inclusion of criminal matters in the MAF. Such a legislative change has simply not been a priority in view of more pressing concerns (e.g. financial, migration crises, Brexit).⁴⁵ This situation is likely not going to be maintained forever – the blocking Member States, especially following the UK’s impending departure, may give in regarding the extent of FRA’s mandate once a proposal for the necessary amendment of the Founding Regulation is tabled.⁴⁶ However, while the special legislative procedure required presently for the adoption of the MAF is seen as too onerous and might be replaced by comitology or handed over to the FRA MB,⁴⁷ the difficulties in the Council of changing the MAF should act as a cautionary tale for anyone expecting the review of the Founding Regulation to lead to a substantial enlargement of FRA’s competences.⁴⁸

In any case, the MAF saga shows quite clearly the limited role of FRA in constitutive politics concerning its own mandate. Despite working behind the scenes and having seemingly the more persuasive legal argument and support of multiple stakeholders, FRA was not able to achieve a fairly trivial adjustment of the mandate. This suggests that unlike FRA’s relative success at disrupting the constraints of its mandate through operational politics documented by Blom and Carraro,⁴⁹ its ability to fruitfully engage in constitutive politics is more circumscribed. FRA might therefore wish to focus its efforts, as it already does, on making use of opportunities presented by the existing mandate. One hitherto underexploited aspect of the mandate, as highlighted by a senior FRA official,⁵⁰ is the utilization of the MB as an additional network platform for FRA’s engagement with NHRIs and other national bodies. In accordance

⁴⁰ European Parliament, ‘Resolution of 12 December 2012 on the situation of fundamental rights in the European Union (2010 - 2011)’, Procedure 2011/2069(INI), P7_TA(2012)0500, 12 December 2012, para 45.

⁴¹ Statement by the Human Rights and Democracy Network, ‘Strengthening the European Union’s response to human rights abuses inside its own borders’, 5 August 2013.

⁴² See most recently European Commission, Proposal for a Council Decision establishing a Multiannual Framework for the European Union Agency for Fundamental Rights for 2018-2022, COM(2016) 442 final, Brussels, 5 July 2016.

⁴³ Letter from Chairperson of the Management Board Maija Sakslin to European Commission Vice-President Viviane Reding, 4 June 2013.

⁴⁴ EU Agency for Fundamental Rights, ‘Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfers’, Report, November 2016; and ‘Rights of suspected and accused persons across the EU: translation, interpretation and information’, Report, November 2016.

⁴⁵ Thus a Member State official with knowledge of the file: interview, Brussels, 11 July 2017.

⁴⁶ Ibid.

⁴⁷ Ibid; and Council of the EU, Opinion of the Legal Service, doc. 6138/11, 4 February 2011, para 28.

⁴⁸ See, for example, European Parliament, ‘Resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights’, Procedure 2015/2254(INL), P8_TA(2016)0409, 25 October 2016, Articles 2, 6 and 10 of the Draft Interinstitutional Agreement ‘European Union Pact on Democracy, the Rule of Law and Fundamental Rights’.

⁴⁹ Tannelie Blom and Valentina Carraro, ‘An information processing approach to public organizations: The case of the European Union Fundamental Rights Agency’ (2014) 18 *European Integration online Papers (EIoP)* 1-36 at 26.

⁵⁰ Interview with a senior FRA official, Vienna, 17 March 2017.

with Article 12(1)(a) of the Founding Regulation, Member States have to appoint to the MB ‘an independent person [...] having high level responsibilities in an independent national human rights institution or other public or private sector organisation’. If all MB members were also senior NHRI representatives,⁵¹ the degree of coordination and cooperation among NHRIs and FRA could be considerably strengthened. However, some Member States may consider, contrary to the requirement of independence, appointing persons with the aim of ‘reining in’ the Agency by primarily safeguarding national interests and sensitivities.⁵²

C. Resources

When it comes to resources, the most relevant and readily comparable indicators are the size of the budget and the number of staff available to EU agencies. The latter figure can, as Wonka and Rittberger pointed out,⁵³ serve also as a proxy measure for the political principals’ understanding of policy complexity. More generally, budget and staff allocations shed light on the politically determined priorities that principals ascribe to a given agency and the issue area. This follows from both the procedures determining the budget and staffing of EU agencies, as well as from the fact that most agencies (including FRA) have virtually no independent revenue and are thus wholly reliant on allocations from the EU budget. Each year, the FRA Director drafts an estimate of revenue, expenditure and the establishment plan for the subsequent financial year. Subject to modifications, this estimate is transmitted through the MB to the Commission and eventually to the budgetary authority (the European Parliament and the Council) together with a draft made by the Commission of the general EU budget and FRA’s resources’ expected impact on it, in accordance with Article 314 TFEU.⁵⁴ The final decision-making power lies with the budgetary authority, which authorizes the appropriations for the subsidy to the Agency and adopts its establishment plan. The budget is subsequently adopted by the MB and becomes final, subject to future adjustments, upon adoption of the general EU budget.⁵⁵ Allocation of resources therefore represents another incentive for FRA to be on good terms with the three political EU institutions.

Moreover, it should go without saying that the amount of resources allocated to a large extent defines the limits of what is possible for FRA to achieve in terms of research projects, visibility, stakeholder cooperation, and other tasks. The mandate is therefore not the only politically contingent factor which delineates FRA’s horizon of opportunities. While we do not analyse the value for money of FRA’s expenditures, we place its overall yearly resource allocations in a comparative context in order to obtain an indication of the development of the Agency’s resourcefulness since its creation. This overview can also serve as a crude and imperfect proxy for understanding the political institutions’ perception of

⁵¹ One potential drawback of stepping up cooperation with NHRIs is that not all Member States have NHRIs with the highest accreditation. There are 16 Member States with A-status NHRIs and 6 with B-status institutions.

⁵² Interview with a Member State official, Brussels, 11 July 2017

⁵³ Arndt Wonka and Berthold Rittberger, ‘Credibility, Complexity and Uncertainty: Explaining the Institutional Independence of 29 EU Agencies’ (2010) 33 *West European Politics* 730-752 at 742.

⁵⁴ The procedure for the adoption of FRA’s budget and establishment plan is set out in Article 20 of the Founding Regulation.

⁵⁵ Article 20(8) and (9) of the Founding Regulation.

FRA's importance. For reasons of brevity, the comparison of FRA's resources in Tables 1 and 2 is limited only to the thematically most proximate EU agencies, namely those belonging to the Justice and Home Affairs ('JHA') network of agencies.

Table 1: Yearly revenue of JHA agencies in millions EUR since 2007⁵⁶

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Frontex	41.8	42.7	88.3	92.8	118.2	76.3	92.0	86.7	146.6	232.8	302.0
eu-LISA	-	-	-	-	-	-	22.6	48.9	71.2	82.3	153.3
Europol	65.0	65.0	68.1	92.4	84.8	83.1	82.1	84.3	95.4	104.3	114.6
EASO	-	-	-	5.25	8.0	10.0	10.5	15.7	15.9	53.1	69.2
Eurojust	18.0	24.1	28.2	32.3	31.4	32.6	32.2	33.6	33.9	43.5	47.9
FRA	14.4	15.0	17.0	20.1	20.2	20.4	21.3	21.2	21.2	21.4	22.7
EMCDDA	14.4	15.0	14.0	15.2	16.2	16.3	16.3	15.7	16.0	15.4	15.8
CEPOL	6.5	8.7	8.8	6.3	7.3	7.8	7.9	8.9	8.8	9.9	10.5
EIGE	4.5	6.4	6.9	6.5	6.4	7.7	7.5	7.4	7.8	7.8	7.7
TOTAL	164.6	177.0	231.2	270.9	292.4	254.3	292.6	322.4	416.9	570.4	743.8
FRA %	8.8%	8.5%	7.4%	7.4%	6.9%	8.0%	7.3%	6.6%	5.0%	3.7%	3.0%

Although FRA's budget in 2017 was not the smallest among the nine JHA agencies, it was dwarfed by the budgets of Frontex, eu-LISA and Europol, and more than two times smaller than those of EASO and Eurojust respectively. The significance of FRA's revenue in the overall constellation is perhaps best summed up by its declining share of total revenue of all JHA agencies: in the ten year period since FRA's creation, the share of the revenue it receives declined from 8.8% of total in 2007 to merely 3.0% in 2017, the lowest share in spite of FRA collecting the highest nominal revenue (22.7 mil EUR). On average, the budgets of JHA agencies more than quadrupled between 2007 (or year of establishment) and 2017, while FRA's revenue grew by 57%. The difference is even starker when 2010, following the initial budgetary increases, is used as the baseline year – since then, FRA's revenue has increased by a mere 13%.

Table 2: Total number of staff members in JHA agencies since 2007⁵⁷

⁵⁶ Data from yearly statements of revenue and expenditure. Where available, the data shows final revenue after any budgetary amendments. In some cases, the revenue of agencies consists not only of an EU subsidy but also to a lesser extent of Member State and third country contributions and/or other sources of revenue. The total revenue remains, nonetheless, relevant, as all sources of revenue are taken into account by the EU budgetary authority when drafting the budgets of the agencies and in principle contributions from outside the EU budget can be allocated at a country's discretion to any agency, thus serving as further indication of preference.

⁵⁷ The total number is a sum of permanent civil servants, temporary agents, contract agents and seconded national experts, as allocated in the establishment plans of the agencies, except where only actual figures (positions as

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Europol	406	433	444	548	555	595	595	601	668	705	786
Frontex	133	198	255	294	311	312	318	317	404	467	655
Eurojust	179	200	257	257	247	260	280	259	255	261	253
EASO	-	-	-	24	61	61	77	86	126	149	227
eu-LISA	-	-	-	-	-	-	128	138	152	150	168
FRA	57	70	94	106	106	112	116	113	111	116	119
EMCDDA	107	104	105	110	110	112	112	107	106	107	111
CEPOL	31.5	33.5	41	40	41	41	41	42.5	44.5	48	50
EIGE	-	-	20	29	34	44	46	41	42	42	42
TOTAL	914	1039	1216	1408	1465	1537	1585	1567	1757	1895	2243
FRA %	6.2%	6.7%	7.7%	7.5%	7.2%	7.3%	7.3%	7.2%	6.3%	6.1%	5.3%

Compared to the development in revenue, the decline of FRA's share of total staff has been less pronounced (albeit still present). Nevertheless, and despite doubling the number of staff members in 2016 and 2017 compared to its inception, FRA still falls below the average 'growth rate' of JHA agencies in this period; the comparison is again even less positive when looking at the period since 2010 during which FRA's staff has increased by merely 13%, in contrast to an average of 59%. Moreover, FRA employs a relatively large number (37 in 2017) of contract agents ('CAs') who are less permanent than the standard temporary agents ('TAs') making up the vast majority of total staff of EU agencies. According to Commission plans, the number of FRA's TAs should fall to 70 by 2020 (currently 72).⁵⁸ Not included in Table 2 is the fact that FRA also employs the highest number of trainees among the JHA agencies (35 in 2016) and it does so for longer periods (generally a year) than other EU institutions and bodies.

On the whole, the comparison of FRA to other agencies in the JHA network reveals that it belongs to a group of less resourceful agencies, both in terms of budget and staff, and that the relative tendency in resource allocation does not favour the Agency. While to some extent the differences are understandable and explainable in light of the costs involved in some issue areas (naval missions, large scale IT systems), there is a trend since the entry into force of the Lisbon Treaty to which FRA has been an onlooker as other agencies' resources soared, in some cases very considerably. This shows that adding to FRA's resources has, in particular in recent years, not been a priority of EU institutions and the Member States. It is not an unreasonable assumption to make that FRA's ability to exert political influence would have benefited from a more substantial increase in resources. Furthermore, it is notable that whereas the refugee and migration crisis and increased salience of security discourse following

filled) were available. Note that only the EMCDDA is entitled to employ a small (and falling) number of permanent civil servants and that the vast majority of all employees across all JHA agencies are temporary agents.

⁵⁸ European Commission, 'Programming of human and financial resources for decentralised agencies 2014-2020', Communication, COM(2013) 519 final, Brussels, 10 July 2013, p. 26 (Annex II).

terrorist scares in the EU led to an extensive surge in the capacities of Frontex (including a strengthened mandate), EASO, EU-LISA and Europol, the resources and mandate of FRA have been left comparatively stagnant, despite the obvious fundamental rights dimensions entailed in greater EU involvement in issues pertaining to the Area of Freedom, Security and Justice ('AFSJ').

D. Opportunities

The preceding examination pointed to the various brakes put on the Agency's mandate and resources. This in turn has a bearing on the opportunities for political impact available to FRA and its ability to generate them. With a modest mandate and resources, the Agency must work extra hard to create and pursue opportunities when they arise: its political influence and policy relevance depend on it.

As a result of the formal and material constraints, FRA must rely on stakeholder cooperation for opportunities, which in turn further limits its autonomy. The most important relationships are those cultivated with the EU institutions, more specifically with the European Parliament, the Commission and the Council, as these can request opinions on issues that can be of immediate relevance to the legislative process insofar as fundamental rights issues are concerned. As explained above, opinions are therefore the most important institutionalized vehicle for political influence of FRA, despite the Agency's circumscribed ex officio capacity to issue them.⁵⁹

Table 3: FRA Opinions delivered by end of 2018 pursuant to Article 4(1)(d) of the Founding Regulation

FRA Opinion		Request	Delivered
5/2018	European Border and Coast Guard Regulation and its fundamental rights implications	EP	27 November 2018
4/2018	Challenges and opportunities for the implementation of the Charter of Fundamental Rights	EP	24 September 2018
3/2018	Fundamental rights implications of storing biometric data in identity documents and residence cards	EP	5 September 2018
2/2018	The revised Visa Information System and its fundamental rights implications	EP	30 August 2018
1/2018	Interoperability and fundamental rights implications	EP	11 April 2018
2/2017	The impact on fundamental rights of the proposed Regulation on the European Travel Information and Authorisation System (ETIAS)	EP	30 June 2017
1/2017	Improving access to remedy in the area of business and human rights at the EU level	Council	10 April 2017
6/2016	The impact of the proposal for a revised Eurodac Regulation on	EP	22 December 2016

⁵⁹ According to the Founding Regulation, FRA can draw up opinions and reports on 'specific thematic topics' on its own initiative or at the request of one of the three main institutions (Article 4(1)(d)) but any opinions on legislative proposals must first be requested by one of the institutions (Article 4(2)).

	fundamental rights		
5/2016	Fundamental rights in the ‘hotspots’ set up in Greece and Italy	EP	29 November 2016
4/2016	The impact on children of the proposal for a revised Dublin Regulation	EP	23 November 2016
3/2016	Requirements under Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities within the EU context	EP	3 May 2016
2/2016	The development of an integrated tool of objective fundamental rights indicators able to measure compliance with the shared values listed in Article 2 TEU based on existing sources of information	EP	8 April 2016
1/2016	EU common list of safe countries of origin	EP	23 March 2016
1/2015	Exchange of information on third-country nationals under a possible system to complement the European Criminal Records Information System	COM	11 December 2015
1/2014	Proposal to establish a European Public Prosecutor’s Office	EP	6 February 2014
2/2013	Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime	Council	15 October 2013
1/2013	The situation of equality in the European Union 10 years on from initial implementation of the equality directives	Self-initiated ⁶⁰	1 October 2013
3/2012	Confiscation of proceeds of crime	EP	4 December 2012
2/2012	Proposed EU data protection reform package	EP	9 October 2012
1/2012	Proposed EU regulation on property consequences of registered partnerships	EP	11 June 2012
1/2011	Proposal for a Passenger Name Record (PNR) Directive	EP	15 June 2011
	Draft directive regarding the European Investigation Order (EIO)	EP	23 February 2011
	Proposal for a Council Framework decision on the use of Passenger Name Record (PNR) data for law enforcement purposes	Council	28 October 2008

It is clear from a glance at the list of opinions delivered by FRA that the vast majority (18 out of 23) of them have been requested by the European Parliament. For years, FRA has been honing its relationship with the Parliament and in particular the Committee on Civil Liberties, Justice and Home Affairs (‘LIBE’). This should not come as a surprise – ‘the European Parliament was the sole authentic institutional

⁶⁰ FRA’s website lists six other earlier documents as self-initiated opinions but these vary widely in form, while the 2013 opinion on the situation of equality in the EU already follows the more standardized and legal layout of recent FRA opinions which signals the Agency’s intent in this regard.

supporter of the Agency' in the process of its formation.⁶¹ The fruits of the FRA-EP relationship can be most visibly seen in 2016 when six opinions were delivered, all of them having been requested by the European Parliament. On the contrary, the list of delivered opinions indicates a complex relationship with the Commission, which has requested only one opinion (but several research activities, including on criminal matters, which are outside the scope of the MAF). Although political science literature has observed increasingly tighter relationships between the Commission and EU agencies,⁶² the case of FRA shows that this need not necessarily imply that the Commission increases the agencies' opportunities for policy relevance.

A number of interconnected factors are likely to play a role in the specific circumstances of FRA-Commission relations. First, the Commission's originally sceptical attitude towards the idea of establishing a fundamental rights agency does not cast it as a natural champion of FRA in EU policy-making circles. Second, the Commission has ample fundamental rights expertise of its own and conducts checks and analyses of the legislation it proposes itself. In other words, it is not reliant on FRA to provide opinions, as is the case in other, more narrowly technical areas, such as medicines approval, where the Commission might defer considerably to the relevant agency on account of lack of expertise.⁶³ Third and related, the Commission might wish to limit 'competing' expertise in EU governance, especially as FRA's opinions might act as constraints on the Commission's legislative proposals. Fourth, the horizontal character and political sensitivity of fundamental rights is more liable to spark political disagreements among EU institutions and the Commission might be reluctant to invest its political capital to promote potentially costly FRA opinions.

The Commission has a role to play with respect to not only requests for opinions but also the drafting of the budget and the annual work programme, the MAF, the appointment of the Director and others. The Commission is furthermore the most active member in the MB, capable of steering the management direction of the Agency despite having only two representatives in the body.⁶⁴ In addition to these institutionalized functions, the Commission can exercise soft power with respect to FRA by, for example, controlling the flow of information and facilitating/preventing access to Brussels stakeholders. Concretely, the Commission decides on whether to request input or participation of FRA in High Level Expert Groups ('HLEGs') which gather relevant stakeholders around a particular subject.⁶⁵ All in all, FRA's opportunities for political relevance are in many respects at the mercy of the Commission which, as opinions requests indicate, is neither an enthusiastic supporter nor exclusively dependent on FRA's

⁶¹ Blom and Carraro, 'Information processing approach', 18.

⁶² Egeberg, Trondal and Vestlund, 'The quest for order', 609-629.

⁶³ See, for example, Madalina Busuioc, 'Blurred Areas of Responsibility: European Agencies' Scientific Opinions Under Scrutiny', in M. Ambrus K. Arts (eds.) *The Role of 'Experts' in International and European Decision-Making* (Cambridge: Cambridge University Press, 2014).

⁶⁴ Interview with a senior FRA official, Vienna, 17 March 2017. This is consistent with existing findings in the literature despite running contrary to the intended intergovernmental-constraints model of MBs. See Morten Egeberg and Jarle Trondal, 'Researching European Union Agencies: What Have We Learnt (and Where Do We Go from Here)?' (2017) 55 *Journal of Common Market Studies* 675-690 at 680, 682.

⁶⁵ FRA is and has been involved in some way in a number of HLEGs and other expert groups, among others: on information systems and interoperability, on radicalization, on combatting racism, xenophobia and other forms of intolerance (with FRA coordinating a subgroup on methodologies for collecting data) and on disability.

expertise, at least not to the same extent as with other agencies and regulatory networks where considerable information asymmetry to the detriment of the Commission can arise.⁶⁶

‘Softer’ – less institutionalized and formal than opinions – opportunities for FRA policy relevance can take different forms. For example, FRA regularly presents its views and research findings in the various preparatory bodies of the Council. These are short presentations (often under ten minutes) for Member State representatives on topics of interest to the work of the preparatory body; after the presentation, FRA officials must generally leave the meeting. Presentations can be facilitated through contacts with the staff of the General Secretariat of the Council or officials of the Member State currently holding the rotating presidency of the Council, who chair most (but not all) working parties. Ultimately, however, whether FRA is invited to present is at the full discretion of the chair of the Council working party who is responsible for the agenda of the meeting. In 2016 and 2017,⁶⁷ FRA officials have presented more than 20 times in 15 different preparatory bodies of the Council, with most interventions (4) taking place in the Working Party on Fundamental Rights, Citizens and Free Movement of Persons (‘FREMP’).⁶⁸ FRA furthermore cooperates with Member States holding the Council presidency by co-organizing and participating in events.⁶⁹ Many factors affect the extent to which Council presidencies involve FRA in their programme – not least the Member State political agenda – but generally there might be more room for FRA in the presidencies of smaller and less resourceful countries. Another activity aimed at developing relations between FRA and the Member States in the hope of creating opportunities are country visits conducted by the FRA Director. These visits, of which there are multiple every year, usually take place at the higher political levels, but it is difficult to determine their effectiveness in landing new opportunities for FRA.

Consistent with the historical role as supporter of FRA and the predominant source of requests for opinions, the European Parliament indulges most often in the various facets of FRA attention. There is oral and written input on legislative files requested by the LIBE Secretariat, policy departments, individual MEPs and their assistants, and policy advisors of political groups.⁷⁰ Moreover, FRA is also invited to speak in the meetings and hearings of European Parliament committees (20 times in 2016-17), notably LIBE, and it participates in events organized by MEPs and political groups. FRA officials, chiefly the Director, also meet regularly with individual MEPs – 33 such meetings were organized in 2016-17.

Signs of the difference in degree of support to FRA among EU institutions can also be witnessed in discussions concerning its possible future roles. The debate about monitoring the rule of law in the face of ‘backsliding’ in some Member States is an example of such a discussion. On the one hand, the European Parliament has put forward a tangible proposal regarding the potential expansion of FRA’s

⁶⁶ See, for example, Busuioc, ‘Blurred Areas of Responsibility’.

⁶⁷ The authors thank Tara Ohl for collecting the data on FRA activity in institutional relations.

⁶⁸ This is natural, as activities relating to FRA, including the negotiation of the MAF, fall under the responsibility of FREMP.

⁶⁹ There have been 19 joint and presidency events in which FRA participated in 2016 and 2017 (until 31/07). Promotional activities could represent more generally a way of raising the public profile of FRA, as the relevant provision of the mandate is relatively open-ended. See Article 4(1)(h) of the Founding Regulation.

⁷⁰ Such input was given by FRA on 21 occasions in 2016 and 2017 (until 31/07).

opportunities based on involvement in a new mechanism for the monitoring of democracy, the rule of law and fundamental rights in the Member States.⁷¹ The proposal suggests an institutionalized role for FRA, in particular when it comes to drawing up an annual report on the state of democracy, the rule of law and fundamental rights which would form the basis of a subsequent political process. This would undoubtedly give greater political visibility and importance to FRA's work, including its annual Fundamental Rights Report, whose impact in the congested area of EU fundamental rights reporting can presently be questioned.⁷² On the other hand, the European Parliament's invitation to draft a legislative proposal has been all but rejected by the Commission, which found most of the ideas proposed by the European Parliament needless or unfeasible.⁷³ With respect to FRA specifically, the Commission acknowledged that the Agency 'has a role to play by making easily accessible a clear overview of existing information and reports relating to Member States or particular themes', but this was already reflected in FRA's programming for 2017-2019, and in any case FRA was just one of 'numerous other actors' with data and reports to contribute.⁷⁴ As the Commission's reply is essentially a blanket disagreement with the European Parliament's Resolution, this is not hard evidence of lack of support for FRA. But in the absence of other suggestions, it does not contradict the view that the Commission is not pushing for an expanded role of FRA either. The level of involvement of FRA in highly salient matters such as the rule of law is thus presently largely contingent – as are most of FRA policy relevant opportunities – upon political demand, which inevitably varies. FRA has been, for example, invited in 2017 and 2018 to contribute to an expert meeting preparing the Annual Rule of Law Dialogue in the (General Affairs) Council.

The preceding overview of institutional relations and the opportunities for FRA input and visibility among the Brussels-based EU decision-makers hopefully indicates at least partially the breadth of FRA's cooperative engagement, which echoes the consensual spirit underlying FRA's *modus vivendi* identified by senior officials and academics alike.⁷⁵ Nevertheless, FRA is also capable of independently creating and seizing opportunities arising from contextual changes in its area of work. Following the eruption of the refugee crisis in 2015, the leadership of the Agency made the decision to become for the first time active on the ground in order to be able to assess the real human rights situation in the 'hotspots' created in Greece. Despite representing a very minor operation (maximum two persons at a time were present in the field between April and September 2016), this was a bold and unprecedented move by FRA that pushed against the boundaries of its mandate, which contains no reference to field activity.

⁷¹ See European Parliament, 'Resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights', supra n 49.

⁷² This is not a problem confined to FRA reports. The issue in EU fundamental rights protection is increasingly seen as not the reporting per se but the follow-up or more precisely the lack thereof. See John Morijn, 'Post-Lisbon civil rights protection by the three political EU institutions', in S. De Vries, H. De Waele and M. Granger (eds.), *Civil Rights and EU Citizenship* (Edward Elgar, forthcoming 2018). The current practice of, among others, 'welcoming' the reports (not only of FRA) in Council conclusions, but usually without little other action, appears rather unsatisfactory.

⁷³ European Commission, 'Follow up to the European Parliament resolution on with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights', 17 January 2017.

⁷⁴ Ibid.

⁷⁵ See Blom and Carraro, 'Information processing approach', 23.

The fact that the mission was not shut down by the institutions represents arguably a success of FRA's operational politics of the sort identified by Blom and Carraro.⁷⁶ However, the reaction of the institutions was neither particularly supportive: instead of adjusting FRA's mandate and resources in order to allow it to conduct the field activities properly – as they have done in the case of Frontex and EASO – FRA has been left to continue them on a makeshift basis. This episode therefore further illustrates the entrenched character of the constraints placed on FRA's (political) role by the means of its mandate and resources.

E. Concluding remarks

The foregoing analysis of the Agency's mandate, resources and opportunities was inherently biased towards the traditional characteristics associated with organizational power in bureaucratic environments. We have not examined, for example, the diffuse impact of FRA's research – the Agency's forte by most accounts –⁷⁷ on policy outcomes. FRA's policy relevance should certainly be seen in broader terms and more positively than the various constraints on its mandate and resources would indicate, especially as there is likely more independence and recognition of FRA's ability in its long-term research projects focusing on large-scale data collection (such as on minorities and discrimination), even if that comes at the expense of immediate policy input.

The observations that we have put forward, however, should instil a dose of realism into discussions about FRA's 'political role'. The contestation that surrounded the process of formation of the Agency and the limits resulting therefrom have not been surmounted significantly during FRA's ten years of existence. FRA has not been able to elicit sufficient support to overcome the well-known deficits of its mandate. Neither has it been substantially strengthened on other fronts where its resources have been increased by less than the average of JHA agencies. Its opportunities for policy relevance remain crucially dependent on stakeholder cooperation. In other words, FRA's political role continues to be limited – and that is in keeping with its design. At a deeper level, the limitations are linked to profound questions, far beyond the scope of this chapter, about European integration, national sovereignty and the centrality and implementation of European fundamental rights commitments. These are deeply political issues which are also implicitly present in debates about FRA.

The European Parliament remains the main supporter of FRA and this relationship has tangible positive consequences for the Agency among others in the form of opinion requests. On the contrary, there have so far been few signs of the Commission and Council envisioning a shift towards a more permanently strengthened role for FRA. On a politically contingent basis, the institutions will continue engaging FRA in some of their initiatives. But in such circumstances FRA's political role is bound to remain minor. A genuine strengthening of the Agency would require removing not only the *de jure* constraints on its independence – own-initiative opinions on legislative proposals, the MAF – but also the *de facto* constraints, which stem from limits in terms of resources, access to stakeholders and opportunities for visible interventions regardless of the principals' political preferences. The requirements of the Paris

⁷⁶ Ibid., 26.

⁷⁷ Ramboll, 'External evaluation of the European Union Agency for Fundamental Rights', Final Report, 19 November 2012, p. 24.

Principles on NHRIs should act as a relevant source of inspiration and as a constant reminder of the shortcomings in this regard.

We are not suggesting that FRA needs to be vested with decision-making powers. Rather, we submit that the potential of FRA's 'regulation by information' character is left unexhausted without a strengthening of its independence (understood broadly). This is particularly so, as FRA does not for the most part possess the type of exclusive expertise gained by other EU agencies in more narrow and technical fields which would 'bestow some autonomy upon [it] vis-à-vis [its] political principals'.⁷⁸ The specificity of fundamental rights might also have other effects which diverge from an established understanding of the operation of the 'Eurocracy', such as the credibility of the Commission's enforcement role.⁷⁹ Although FRA might conform to mainstream political science precepts on EU agencies in some respects – such as attachment to the Commission – our findings suggest that FRA may well be the 'odd one out' for the purposes of agency research. Further studies could examine in more detail the impact of the horizontal and politically salient character of the issue area (fundamental rights) on FRA's performance in comparison to other EU agencies.

⁷⁸ Nina Boeger and Joseph Corkin, 'Institutional Path-Dependencies in Europe's Networked Modes of Governance' (2017) 55 *Journal of Common Market Studies* 974-992 at 978.

⁷⁹ Daniel Keleman, 'The politics of "Eurocratic" structure', 112.