



Brussels, 26.7.2019
SWD(2019) 313 final

COMMISSION STAFF WORKING DOCUMENT

**ANALYSIS OF THE RECOMMENDATIONS TO THE COMMISSION FOLLOWING
THE SECOND EXTERNAL EVALUATION OF THE EU AGENCY FOR
FUNDAMENTAL RIGHTS**

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1. EXECUTIVE SUMMARY

The second external evaluation (2017) of the EU Agency for Fundamental Rights concluded that the Agency should continue to do what it does and that there is no need to modify or extend its mandate. It however made recommendations that would require technical amendments of the Regulation establishing the Agency (the founding Regulation). It recommended clarifying in the founding Regulation that the Agency's scope is EU law and therefore covers the areas of police cooperation and judicial cooperation in criminal matters. It also suggested aligning the founding Regulation with the Common Approach for EU Agencies to enhance the efficiency, relevance and governance of the Agency. These recommendations were largely echoed by the Agency's Management Board in its recommendations to the Commission of December 2017, as a follow-up to the external evaluation.

The Commission services have analysed the recommendations made to the Commission by the external evaluation and by the Agency's Management Board. This staff working document presents this analysis. It aims to inform the work of the Commission, without prejudice to the Commission's assessment on the relevant course of action.

2. INTRODUCTION AND BACKGROUND TO THE INTERVENTION

The EU Agency for Fundamental Rights was established under Council Regulation (EC) No 168/2007 (the founding Regulation)¹. The Agency's objective is to provide EU institutions, bodies, offices, agencies and Member States, when implementing EU law, with assistance and expertise relating to fundamental rights to support them when developing evidence based initiatives (Article 2 of the Agency's founding Regulation). It does this mainly by collecting, recording, analysing and disseminating relevant, objective, reliable and comparable information and data on fundamental rights issues in the Member States.

The founding Regulation establishes a specific procedure to evaluate the Agency's achievements in Article 30(3) and (4). Every five years the Agency commissions an independent external evaluation. The first external evaluation took place in 2012² and the second, to which this staff working document refers, was carried out in 2017³.

The Agency's independent external evaluations are specific to the Agency and steered by the Agency. The Commission is consulted on the terms of reference and Commission officials are interviewed to inform the external evaluation. Under Article 31(1) of the founding Regulation the Management Board examines the conclusions of the external evaluation and formulates recommendations. The Management Board issued recommendations in its meeting of 14 December 2017⁴. It addressed recommendations to the Agency, for elements the Agency can address, and to the Commission, for elements that would require a Commission legislative initiative to amend the Agency's founding Regulation.

In line with Article 31(1) of the founding Regulation, the Commission transmitted the 2017 evaluation report and the recommendations to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions and made them public⁵. The Agency's Director presented them to the Council

¹ OJ L 53, 22.07.2007, p.1, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32007R0168>.

² Tendering documents available at <https://fra.europa.eu/en/call-for-tender/2011/call-tender-external-evaluation-european-union-agency-fundamental-rights-fra>. Final evaluation and Management Board recommendations available at <https://fra.europa.eu/en/press-release/2013/fra-good-track-finds-external-evaluation>.

³ Available at <https://fra.europa.eu/en/news/2018/fra-delivers-high-quality-fundamental-rights-support-find-external-evaluators>.

⁴ <https://fra.europa.eu/en/news/2018/fra-delivers-high-quality-fundamental-rights-support-find-external-evaluators>.

⁵ Available at http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=612263.

working party in charge of fundamental rights (FREMP)⁶ and to the European Parliament's Committee for Civil Liberties, Justice and Home Affairs (LIBE)⁷.

The last step of this specific process is for the Commission services to analyse the recommendations addressed to the Commission, both in the external evaluation report and by the Agency's Management Board. This will inform the Commission's assessment on whether to submit a proposal for amendments to the founding Regulation [Article 31(2)]. The staff working document presents the Commission services' analysis before consideration by the College. The analysis also draws on the Commission's experience in participating in the governance of the EU Agency for Fundamental Rights, in particular as a member of the Executive Board and the Management Board, and of other EU agencies. It takes into account exchanges with key Agency stakeholders such as the Council of Europe and civil society organisations. It considers discussions in other EU institutions, in particular the Council and the European Parliament in the context of the adoption of the Agency's 2018-2022 Multiannual Framework⁸.

3. SCOPE AND METHODOLOGY OF THE SECOND EXTERNAL EVALUATION OF THE AGENCY

The purpose of the external evaluation, as set out in Article 30(3) of the Agency's founding Regulation, is to provide an external and independent review of its achievements. It covers the Agency's activity from 2013 to 2017. It follows the standard evaluation criteria of relevance, effectiveness, EU added-value, coherence and efficiency⁹. As stated in the Agency's founding Regulation, the evaluation:

- takes into account the tasks of the Agency, the working practices and impact of the Agency on the protection and promotion of fundamental rights;
- assesses the possible need to modify the Agency's tasks, scope, areas of activity or structure;
- includes, if relevant, an analysis of the synergy effects and the financial implications of any modification of the tasks; and
- takes into account the views of the stakeholders at both European and national levels.

⁶ Available at <https://fra.europa.eu/en/news/2018/building-fras-positive-external-evaluation>.

⁷ Available at http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=612263.

⁸ The Multiannual Framework (MAF) establishes the Agency's thematic focus for a five year period. See details under point 6.1.

⁹ SWD(2017) 350, available at <https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines.pdf>.

The external evaluation also assesses, for the first time, the Agency's alignment with the 2012 Joint Statement and Common Approach on decentralised EU agencies¹⁰ ('the Common Approach'). With these guiding principles, the European Parliament, the Council and the Commission pursued a triple aim: bringing greater coherence, effectiveness and accountability in the framework governing decentralised EU agencies' work and set-up.

The external evaluator presented recommendations to the Agency, which are for the Agency and its Management Board to consider. It presented recommendations to the Commission, which are the focus of this analysis.

The external evaluation's findings are based on:

- **Desk research:**
 - Relevant policy and programmatic documents;
 - Additional documents provided by the Agency's Steering Group set up to oversee the external evaluation¹¹ and interviewees.
- **Online surveys:**
 - Internal survey targeted at the Agency's staff;
 - Two external surveys targeted at:
 - external stakeholders from the EU institutions and bodies;
 - other external stakeholders including national stakeholders and representatives of international organisations.
- **In-depth interview programme:** Conducted over 100 interviews with key stakeholders at the international, EU and national level¹².
- **Impact case studies and sentiment analysis**¹³: the examples chosen for this were the "Violence Against Women survey" and the Agency's activities on the

¹⁰ https://europa.eu/european-union/sites/europaen/files/docs/body/joint_statement_and_common_approach_2012_en.pdf. See sections 3.3.1 and 4.4.4 of the external evaluation.

¹¹ The evaluation steering group was composed of the project coordinator within the Agency, the Director and the Heads of Departments of the Agency.

¹² Based on the information shared by the evaluator, the interviews involved the following stakeholders: Council of Europe bodies, Council of the EU, European Parliament members, European Commission officials, Civil Society Organisations, National Parliamentary Focal Points, National governments representatives, National Liaison Officers, National Human Rights Institutions, the European Network of Human Rights Institutions (ENNHRI), the European Network of Equality Bodies (Equinet), national equality bodies, the European Data Protection Supervisor, International organisations, Hate crime and Roma working party & national contact points, EU Agencies, European Court of Human Rights, the Agency's Management Board, the Agency's Scientific Committee, the Agency's Advisors Panel / Fundamental Rights Platform Members, the Agency's Executive Board, the Agency's staff.

¹³ This is the process of computationally identifying and categorising opinions expressed in a piece of text, especially in order to determine whether the writer's attitude towards a particular topic, product,

ground at hotspot locations in Greece. Furthermore, the evaluator carried out a sentiment analysis of the tweets surrounding the Agency's Fundamental Rights report's release in 2017 and in response to the Fundamental Rights Forum in 2016. The evaluator also carried out an analysis of the Agency's social media plan for the release of the publication of the 'Second European Union Minorities and Discrimination Survey (EU-MIDIS II): Muslims - Selected findings' report'.

The overview of the evaluation questions can be found in annex II.

Limitations and robustness of the external evaluation

The contractor used a mix of document analysis, interviews and impact case studies that in combination provided a sound basis for the evaluation. The consultation of stakeholders (three online surveys and a programme of in-depth interviews) provided a substantial source of evidence to reply to the different evaluation questions. The planning of the in-depth interviews ensured that the evaluation was fed with a balanced variety of voices covering different views and interests in the Agency's work (national authorities, EU institutions, academia, civil society organisations and international organisations). The two case studies provided evidence to assess the more long-term effects of the Agency's work.

4. STATE OF PLAY: WORK AND ACHIEVEMENTS OF THE AGENCY

The Agency's EU added value resides in the fact that it is the only body collecting and analysing data on the fundamental rights' situation in the EU Member States in a comparative and independent way¹⁴. EU-wide coverage and comparability distinguishes the Agency from international organisations, such as the Office for security and Cooperation in Europe (OSCE) or the Council of Europe, and from civil society organisations (external evaluation, sections 4.3.1 and 5.1).

The Agency's thematic areas of focus are determined every five years by the Council in the Agency's Multiannual Framework (MAF), following a proposal by the Commission (Article 5 of the founding Regulation). The current MAF runs until end 2022¹⁵. It does not include police cooperation and judicial cooperation in criminal matters. This means that the Agency cannot work in these areas on its own initiative or plan work in this area

etc. is positive, negative, or neutral. Also called opinion mining, this approach examines social media users' responses to tweets, Facebook postings and YouTube comments and seeks to categorise these (positive/negative/neutral) in order to provide an indication of users' attitudes to the Agency's outputs and activities posted on social media. A sentiment analysis of stakeholder responses can be undertaken in relation to particular items (i.e. an announcement of a published research report) or to provide an assessment about how users generally feel about a topic. Using this type of analysis helps to understand not only how users engage with the Agency's activities and outputs using social media, but also how these activities are viewed overall (i.e. positively or negatively).

¹⁴ External evaluation section 5.1, page140.

¹⁵ Available at <https://fra.europa.eu/en/about-fra/what-we-do/areas-of-work/multi-annual-framework-2018>.

in its multiannual programming document. It can only do so if there is an ad hoc request by an EU institution¹⁶.

The Agency produces studies, reports and handbooks that cover the different MAF areas¹⁷. The Agency also runs large-scale recurring surveys such as the EU Minorities Survey (EU-MIDIS – collects experiences of discrimination in particular of Roma, migrants, Muslims and people of African descent), the LGBTI survey, the survey on Antisemitism and the fundamental rights survey. These recurring surveys enable to identify trends. The Agency's findings help policy makers develop evidence-based initiatives in the area of fundamental rights.

The Agency is instrumental in supporting Member States in developing sound methodologies for recording and collecting comparable data in the areas of non-discrimination, racism, xenophobia and other forms of intolerance¹⁸. To share the expertise developed through its findings, the Agency also engages with its stakeholders in awareness raising, training, capacity building and technical assistance activities (e.g. training modules on the Charter, support at hotspots such as training of border guards on rights of the child, participation in Schengen evaluations, etc.).

The Agency delivers opinions under Article 4(1)d of its founding Regulation on thematic topics based on its findings (for example the opinions on the situation at the hotspots). It has since 2008 developed the practice of delivering legal opinions on Commission legislative proposals, mainly at the request of the European Parliament¹⁹.

With the possibility for candidate and potential candidate countries to participate in the Agency's work as observers, the Agency also plays a role in the gradual alignment of these countries with EU law in the area of fundamental rights (Article 28 of the founding Regulation).

¹⁶ See below point 6.1 on the need to clarify that the Agency's remit is EU law and thus covers police cooperation and judicial cooperation in criminal matters. See also point 6.5.A on the relevance of the MAF.

¹⁷ For the current 2007-2022 period, the themes are: victims of crime and access to justice; equality and discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation, or on the grounds of nationality; information society and, in particular, respect for private life and protection of personal data; judicial cooperation, except in criminal matters; migration, borders, asylum and integration of refugees and migrants; racism, xenophobia and related intolerance; rights of the child; integration and social inclusion of Roma.

¹⁸ Subgroup to EU High Level Group on Combating Racism, Xenophobia and other forms of intolerance, on methodologies for recording and collecting data on hate crime, facilitated by the Agency. Expert group on Equality data. Expert Group on Roma indicators.

¹⁹ The Agency delivered 18 legal opinions on Commission legislative proposals between 2008 and March 2019. Two were at the request of the Council and the others at the request of the European Parliament. See point 6.3 below on legal opinions under Article 4(2) of the Agency's founding Regulation.

Since 2017, the Agency plans its work over three years in a Single Programming Document (containing both an annual and multiannual work programme). This new multiannual planning instrument was introduced by the EU's Framework Financial Regulation²⁰. The single programming document is the Agency's main planning instrument. To ensure relevance of outputs and timing of delivery in line with users' needs, the Agency extensively consults its stakeholders when developing its multiannual programming document. It in particular consults civil society organisations through its platform of civil society organisations, its national liaison officers (contact points in the governments) and its Management Board. It also takes due account of the Opinion the Commission annually delivers on the Agency's programming document. The programming document is adopted by the Agency's Management Board in December every year.

This planning instrument is flexible and allows the Agency to deal with emergencies as shown in the external evaluation. The Agency was for example able to respond to the migration situation in the EU, by carrying out activities in the hotspots to support other EU Agencies (e.g. training, capacity building) and by reporting regularly on the situation on the ground.

The Agency provides a forum for discussion on fundamental rights involving relevant stakeholders from across EU Member States. It runs a platform of civil society organisations²¹ active in the area of fundamental rights and cooperates with national rights defenders, such as Equality bodies and National Human Rights Institutions²². It is also developing its national networks to increase impact and outreach at national level (network of national liaison officers, network of national parliament focal points, FRANET²³).

The Agency is cooperating with other EU Agencies²⁴ especially within the Network of JHA Agencies (European Border and Coast Guard Agency, European Institute for Gender Equality, European Asylum Support Office, European Union Agency for Law Enforcement cooperation, European Union Agency for Law enforcement Training, European Union's Judicial Cooperation Unit, European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice). It also cooperates with international organisations working on fundamental rights issues,

²⁰ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council, OJ L 328, 7.12.2013, p. 42–68.

²¹ <https://fra.europa.eu/en/cooperation/civil-society/about-frp>.

²² <https://fra.europa.eu/en/cooperation/national-human-rights-bodies>.

²³ FRANET is the Agency's research network, which consists of contracted organisations in all Member States providing data and information on fundamental rights issues upon request <http://fra.europa.eu/en/research/franet>.

²⁴ <https://fra.europa.eu/en/cooperation/eu-partners/eu-agencies>.

such as the Council of Europe, the Organisation for Security and Cooperation in Europe (OSCE) and in particular the Office for Democratic Institutions and Human Rights (ODHIR), and the United Nations, to foster synergies and avoid duplication. A member of the Council of Europe sits on the Agency's Management Board.

Governance

The Agency's bodies are the Management Board, the Executive Board, the Scientific Committee and the Director (Article 11 of the founding Regulation).

The Agency's Director plays a central role in the governance of the Agency. He is responsible inter alia for the performance of the Agency's tasks according to its mandate, the preparation and implementation of the Agency's annual work programme, staff matters, the day to day administration of the Agency, the implementation of the Agency's budget, the implementation of the effective monitoring and evaluation procedures relating to the Agency's performance, the cooperation with the National Liaison Officers and with civil society organisations [Article 15(4) of the founding Regulation]. The Director is appointed for five years following a selective procedure evaluating personal merits, experience in the field of fundamental rights and administrative and management skills [Article 15(2) of the founding Regulation]. The founding Regulation does not foresee a deputy Director for the Agency.

The Director reports to the Management Board, which ensures that the Agency performs the tasks entrusted to it. The Management Board is the Agency's planning and monitoring body [Article 12(6) of the founding Regulation]. It is assisted by an Executive Board (Article 13). The Commission has two members in the Management Board (Director and Head of Unit level) and one member in the Executive Board. The Scientific Committee is the guarantor of the scientific quality of the Agency's work [Article 14(5) of the founding Regulation].

The Director is supported by a management team (heads of the Agency's departments). At the time of the external evaluation, the Agency had just been reorganised (in 2016). The promotion departments and corporate services departments were expanded. Senior policy managers were appointed for the promotion department and for the two operational departments (research). It is to be noted that since then, a new reorganisation took place (2018)²⁵.

²⁵ See page 16 of the external evaluation report. The two research departments were merged and two new departments were created: a technical assistance and capacity-building department and an institutional cooperation and networks department. During the written procedure seeking the Agency MB's consent on the new structure, the Commission insisted on the importance of preserving the core function of the Agency, i.e. research, and strongly recommended to match resources and the new size of the units to reflect this core priority.

5. EXTERNAL EVALUATION AND MANAGEMENT BOARD RECOMMENDATIONS

The recommendations of the external evaluation report and of the Management Board can be divided into two categories: (i) recommendations to the Agency, which do not require amending the Agency's founding Regulation; (ii) recommendations to the Commission, which would require amendments to the Agency's founding Regulation. In line with the objective and scope of Article 31(2) of the Agency's founding Regulation, this staff working document focuses only on recommendations to the Commission that would require an amendment to the founding Regulation. Table I below provides a summary of those recommendations.

The overall recommendation of the external evaluation is that the Agency "should continue to do what it does" (section 5.2) and that its current mandate is relevant and corresponds to stakeholders' needs (section 4.1). It does not suggest any broadening of the Agency's mandate. The Management Board suggests two additions to the Agency's mandate: (i) allowing the Agency to produce legal opinions on legislative proposals on its own initiative; (ii) increasing its geographical remit to EEA countries.

Equality, non-discrimination, racism, xenophobia and other forms of intolerance are the main areas of interest underlined by the stakeholders interviewed²⁶. Asylum and migration were highly rated also (section 5.1). The fact that the Agency cannot work on its own initiative in the areas of police cooperation and judicial cooperation in criminal matters was seen as a limitation impacting the Agency's relevance (external evaluation sections 4.1 and section 5.1) and effectiveness (external evaluation section 4.2). The external evaluator and the Management Board both recommend to clarify that the Agency's remit is EU law and hence covers these areas.

The Agency's EU added value is acclaimed by a large majority of stakeholders (72,73% of respondents – see external evaluation section 4.3) in particular on its ability to carry out independent and comparative research on the fundamental rights situation in the Member States. The quality of the Agency's research outputs is undisputed by stakeholders consulted (section 4.2). The findings of the external evaluation on the legal opinions produced at the request of EU institutions (mainly the European Parliament) are less conclusive (section 4.2)²⁷. The Agency's effectiveness and impact at EU level are visible. The external evaluation points to the number of references to the Agency's findings in EU initiatives and to the impact of its different handbooks, trainings and studies, in particular the study on violence against women²⁸. Impact at national level could however be improved²⁹. Interviewed stakeholders³⁰ perceptions of the

²⁶ External evaluation, section 4.1, page 60.

²⁷ See also external evaluation section 4.5.1, page 128 on the cost of the legal opinions for the Agency.

²⁸ External evaluation report, pages 4 and 76.

²⁹ External evaluation report page 7 and page 79.

effectiveness and impact of the Agency depend on how well they know the work of the Agency and understand its role. The external evaluation underlined that there was not always a common understanding of what the objectives of the Agency are, which can lead to situations where some stakeholders have a more negative view of the Agency's impact and relevance given that they expect more than what the Agency is able to do³¹. This calls for enhanced communication by the Agency on its mandate. The Management Board also recommends that the Agency's founding Regulation be amended to expressly list certain activities carried out by the Agency i.e. training, capacity building and technical assistance.

The external evaluation indicates that the Agency works efficiently (section 4.5, pages 126 to 137). The Agency's governance is aligned to a large extent with the Common Approach on decentralised EU Agencies³². Further alignment is suggested for improved governance and efficiency gains, in particular when it comes to the role and functioning of the Management Board. Such alignment would require technical amendments to the founding Regulation³³. The external evaluation underlines the cumbersome Multiannual Framework (MAF) adoption procedure and questions the relevance of the MAF given the obligation for the Agency under the Common Approach to present multiannual programming documents, based on extensive consultations with national actors and EU institutions. The evaluator's conclusions are to a large extent echoed by the Management Board in its recommendations. The Management Board however goes further, especially on the alignment with the Common Approach and efficiency gains, based on its in-depth knowledge of the Agency's governance.

The external evaluator recommends the creation of the post of deputy Director responsible for the day-to-day management of the Agency to allow the Agency's Director's to concentrate on leadership, outreach and cooperation. This recommendation was not followed by the Management Board.

Recommendations to the Commission are listed in the table below and are analysed in section 6 of the Staff Working Document:

³⁰ Agency's staff, national actors such as National Liaison Officers and civil society organisations, EU bodies and institutions, International organisations, members of the Agency's Fundamental Rights Platform (network of civil society organisations), the Agency's Executive Board, Management Board and Scientific Committee.

³¹ External evaluation section 4.2, page 72. See also external evaluation page 60 on the comparison of the Agency with NHRIs.

³² For example on the use of key performance indicators, the development of ex-post and ex-ante evaluations, etc. See details in sections 3.3.1. (pages 48 to 51) and 4.4.4. (pages 121 to 125) of the external evaluation report. It is to be noted that action 17 was completed as arrangements on international cooperation were signed in March 2016 between the Agency and DG Justice. They also cover arrangements for mutual information on international activities (action 18).

³³ The Agency's founding Regulation was not yet amended to align it with the Common Approach.

	Table I	External evaluator's recommendations	MB recommendations
1	Clarify that the Agency's scope is EU law and therefore covers police cooperation and judicial cooperation in criminal matters. Reference should be made to the EU Charter of fundamental rights	Strong recommendation	Strong recommendation
2	Clarify that the Agency's mandate includes operational tasks such as providing technical assistance, training and capacity building on fundamental rights issues		Recommendation by MB only
3	Allow the Agency to deliver legal opinions on draft EU legislation on its own initiative		Recommendation by MB only
4	Allow, next to candidate and potential candidate countries, also countries such as EEA countries to take part in the Agency's work as observers		Recommendation by MB only
5	Align the founding Regulation with Common Approach	<p>Look at relevance of MAF</p> <p>Clarify Management Board members' term of office</p> <p>Shorten the appointment procedure of the Director or start the procedure earlier and look into possibility to extend the Director's term of office for more than three years</p>	<p>Drop MAF</p> <p>Clarify Management Board members' term of office</p> <p>Simplify appointment procedure of the Director and allow to extend the Director's term of office for up to 5 years</p>

		<p>Clarify the importance of Management Board Members' managerial, administrative and budgetary skills</p> <p>Adapt the wording of the Regulation to new multi-annual programming requirements (rather than annual as in current wording)</p>	<p>Introduce a provision on the handling of EU classified information and fraud prevention</p> <p>Simplify voting procedures within the Management Board</p>
6	Create the post of a deputy Director with the task of day-to-day management of the Agency to prioritise Director's activities towards leadership, outreach and cooperation ³⁴	Recommendation by the external evaluator only	

³⁴ This recommendation was made to the Agency, as not requiring a modification of the founding Regulation. It would however require an amendment of the founding Regulation.

6. COMMISSION SERVICES' ANALYSIS OF THE RECOMMENDATIONS MADE TO THE COMMISSION

1 – Clarify that the scope of the Agency is EU law

This is the first recommendation of both the external evaluator and the Agency's Management Board.

Article 3 of the Agency's founding Regulation states that the Agency carries out its tasks within the competencies of the Community. Following the entry into force of the Lisbon Treaty the "Community" was replaced by the "Union" as explicitly stated in Article 1(3) of the Treaty on European Union (TEU). In the Commission's dynamic reading of the founding Regulation post Lisbon, the scope of the Agency's work is Union law and therefore covers police cooperation and judicial cooperation in criminal matters. This area can therefore feature in the Agency's MAF.

Police cooperation and judicial cooperation in criminal matters are particularly important from a fundamental rights perspective. In its Communication on an EU Justice Agenda for 2020³⁵ the Commission underlined the importance of enhancing mutual trust by building bridges between the different justice and administrative systems of the Member States. This applies to civil, commercial, administrative and criminal matters and implies fostering cooperation between judicial, administrative and law enforcement authorities and developing minimum standards across the EU. Important EU initiatives were taken in this area such as for example the creation of a European Prosecutors Office³⁶ and common standards for the protection of the rights of suspects and accused persons in criminal procedures³⁷. The European Council in its Conclusions of 27 June 2014 defining strategic guidelines for the area of freedom, security and justice underlined amongst other things the need to continue efforts to strengthen the rights of suspects and accused persons in criminal proceedings. A call was made to mobilise the expertise of the Agency in this context. Furthermore, end 2014 the transitional phase set out in the Lisbon Treaty for the area of justice came to an end. This lifted limitations to the judicial control by the

³⁵ COM(2014) 144.

³⁶ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31.10.2017, p.1.

³⁷ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280, 26.10.2010, p. 1; Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294, 6.11.2013, p. 1; Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, OJ L 65, 11.3.2016, p. 1; Directive/2016/800/EU of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children involved in criminal proceedings, OJ L 132, 21.5.2016, p.1; Directive of the European Parliament and of the Council on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ L 297, 4.11.2016, p.1.

Court of Justice of the European Union and to the Commission's role as Guardian of the Treaty over the area of police and judicial cooperation in criminal matters. Data and information on the situation on the ground is thus important for the Commission to carry out its monitoring role. The Agency's work in the area of criminal justice already proved useful. The Agency was requested by the Commission to conduct ad hoc studies in areas such as children in criminal proceedings³⁸, criminal detention and alternatives³⁹, and the right to interpretation, translation and information in criminal proceedings⁴⁰.

This also applies to police cooperation. The importance of strengthening police cooperation was underlined by the European Council in its conclusions of 27 June 2014 and was reinforced following the terrorist attacks and security threats. The fundamental rights dimension is crucial in this respect. The Commission highlighted this in its communication on a European Agenda on Security⁴¹. Also in this domain, the Agency provided valuable support on the basis of ad hoc requests from Commission services. For example, it developed "Twelve operational fundamental rights considerations for law enforcement when processing Passenger Name Record (PNR) data" in the context of assisting Member States in developing the appropriate fundamental rights standards when processing PNR data. It also published reports on fundamental rights aspects of surveillance by intelligence services⁴². Strengthened police cooperation is also needed in the context of the refugee crisis, which increases the risk of smuggling of migrants. The Agency could bring added value, where there are information gaps, through reliable and comparable data and the collection of best practices, initiatives in areas such as for example fight against smuggling of migrants, organised crimes and terrorism.

The Commission had included the areas of police cooperation and judicial cooperation in criminal matters in its proposals for the Agency's 2013-2017 and 2018-2022 MAFs. The Council on both occasions adopted the MAFs excluding these areas based inter alia on the fact that the founding Regulation refers to Community law and therefore excludes ex-third Pillar issues⁴³.

³⁸ <http://fra.europa.eu/en/publication/2015/child-friendly-justice-perspectives-and-experiences-professionals-childrens>.

³⁹ <https://fra.europa.eu/en/publication/2016/criminal-detention-and-alternatives-fundamental-rights-aspects-eu-cross-border>.

⁴⁰ <https://fra.europa.eu/en/publication/2016/rights-suspected-and-accused-persons-across-eu-translation-interpretation-and>.

⁴¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Agenda on Security, COM(2015) 185 final.

⁴² <https://fra.europa.eu/en/publication/2018/surveillance-intelligence-services-fundamental-rights-safeguards-and-remedies>.

⁴³ See external evaluation pages 69 and 70.

In the discussions on the 2018-2022 MAF, the European Parliament supported the Commission's proposal. It eventually gave its consent despite the exclusion of the areas of police cooperation and judicial cooperation in criminal matters by the Council, as a non-adoption of the MAF would have caused prejudice to the Agency. It however adopted a Resolution in which it invited the Commission, following the external evaluation of the Agency in 2017, "to present a proposal for amendments to Regulation (EC) No 168/2007 which it considers necessary to improve the procedures for the governance and the functioning of the Agency and to align the Regulation with the Lisbon Treaty, as provided for in Article 31(2) of that Regulation."⁴⁴ The European Parliament had also deeply regretted the lack of agreement in the Council to include these areas in the 2013-2017 MAF⁴⁵.

A majority of Member States called for a "Lisbonisation" of the founding Regulation in the discussions on the Agency's MAF for 2018-2022. The Council made a Declaration. The Commission also made a Declaration in this context regretting the exclusion of police and criminal matters and indicating inter alia that after having assessed the external evaluation report and the recommendations of the Agency's Management Board, it may submit any proposals for amendments to the founding Regulation, which it considers necessary (see texts of the declarations in Annex IV).

The external evaluator and the Agency's Management Board both underlined that for increased efficiency, effectiveness and relevance it should be clarified that the scope of the Agency is EU law. This would enable the Agency to work in the areas of police cooperation and judicial cooperation in criminal matters on its own initiative, and not only at the request of EU institutions. It would give the Agency more independence to plan its work in these areas in line with its resources and the EU Agenda, thereby gaining in efficiency (external evaluation, section 4.1.1, pages 59-60). The external evaluation also underlines that allowing the Agency to work in these area on its own initiative would increase its relevance, in particular given the importance of these areas from a fundamental rights perspective and the call made by a majority of stakeholders interviewed for the Agency to be able to cover these areas independently (external evaluation section 4.1.1, page 60 and 62). It would also avoid repeating the discussions that took place for the two past MAFs when the Commission will present the proposal for the next MAF (2023-2027) in 2021. Given the outcomes of these discussions and the declarations put forward, and given the importance of these areas from a fundamental rights perspective, there would be a benefit in clarifying that the scope of the Agency is EU law.

⁴⁴ European Parliament Resolution of 1 June 2017 available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0239+0+DOC+XML+V0//EN&language=EN>.

⁴⁵ Resolution P7_TA(2012)0500 of 12 December 2012 on the situation of Fundamental Rights in the EU (2010-2011), paragraph 45; Report of the Rapporteur on the current Multiannual Framework: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2012-0361&language=EN>.

2 – Clarify that the Agency’s mandate includes operational tasks such as providing technical assistance, training and capacity building on fundamental rights issues

This is a recommendation of the Management Board only. The Agency’s objective is to provide assistance and expertise relating to fundamental rights to support EU institutions, bodies, offices, agencies and Member States (Article 2 of its founding Regulation). It does this in particular by collecting, recording, analysing and disseminating information and data (Article 4 of its founding regulation). Providing training, technical assistance and capacity building is part of the Agency’s general objective to provide assistance and expertise and of its specific task to disseminate its findings to its stakeholders. For several years the Agency has been assisting other EU Agencies and national stakeholders on fundamental rights issues, in particular at the hotspots, and has developed training modules that are now being used by multipliers such as civil society organisations and National Human Rights Institutions. The Agency also assists in the Schengen evaluations and provides support to Member States on the implementation of the European Structural and Investment funds (ESI) at national level. This ongoing work is welcome and covered by the founding Regulation. The benefits of an amendment of the founding Regulation to expressly list this work does therefore not seem clear. For its training, capacity building and technical assistance work to be relevant, it needs to be rooted in the Agency’s research, which is the source of its expertise and the core of its mandate.

3 - Allow the Agency to deliver legal opinions on draft EU legislation on its own initiative

Article 4(1) (d) of the founding Regulation allows the Agency to publish conclusions and opinions on specific thematic topics on its own initiative. Such opinions and conclusions are factual and flow from the Agency’s findings (e.g. opinions in the Agency’s annual Fundamental Rights Report, opinions on the hotspots).

The Agency cannot deliver legal opinions on its own initiative. Article 4(2) of the founding Regulation only allows the Agency to produce opinions on Commission legislative proposals at the request of the Commission. It can produce opinions on positions taken by the Council at the request of the Council and on positions taken by the European Parliament at the demand of the European Parliament. As mentioned in the Management Board’s decision⁴⁶, these demands need to be formalised by a letter of the President of the European Parliament⁴⁷. Article 4(2) also precludes the Agency from delivering conclusions, opinions or reports that deal with the compatibility of binding legal acts of the Union with the Charter of Fundamental Rights or with the question of whether a Member State has failed to fulfil an obligation under the Treaty to respect the Charter of Fundamental Rights.

⁴⁶ P.16.

⁴⁷ Rule 139 of the Rules of procedures of the European Parliament. Available at: <http://www.europarl.europa.eu/sides/getLastRules.do?language=EN&reference=RULE-139>. Since 2008 the Agency produces 18 legal opinions, 16 of which at the request of the European Parliament. There were 4 requests by the European Parliament in 2018.

The external evaluator looked at the added value of legal opinions and did not recommend that the Agency be able to deliver them without a request by institutions. The external evaluation does not put forward any compelling argument showing their relevance and added value. Other actors are equally able to deliver legal opinions (external evaluation page 78). The external evaluation underlines the resources for the Agency of responding to European Parliament requests for such opinions. It is important that the Agency concentrates on activities where it has the greatest added value and that it is not ‘instrumentalised’ in the interinstitutional process. The Agency must be able to serenely play its key role in providing the data and information needed for evidence based policy making in the EU. The Agency plays an invaluable role in the legislative process through the data and evidence it provides about issues on the ground. This evidence guides policy makers in their legislative and policy making work. The benefit of extending the Agency’s mandate to allow it to deliver legal opinions on Commission legislative proposals on its own initiative does therefore not seem clear.

4 - Allow, next to candidate and potential candidate countries, also countries such as EEA countries to take part in FRA work as observers

This recommendation was made by the Agency’s Management Board only. This question was not examined by the external evaluator given that the Agency’s objective is to support the EU institutions, bodies and Agencies and the Member States when applying EU law with information and expertise on the situation of fundamental rights on the ground. The geographical scope of the Agency is the EU, where the Charter applies and where the Agency can inform the development of EU law and policy initiatives.

The founding Regulation provides that candidate and potential candidate countries can participate as observers in the Agency’s work, which is justified by the fact that these countries aspire to be members of the Union. Their observer status will facilitate their gradual alignment with EU law pertaining to fundamental rights. Article 28 (2) specifies that the Agency’s work in these countries shall be “to the extent necessary for the gradual alignment to Union law of the country concerned”. This is also confirmed in Recital 28, which expressly mentions the Western Balkans and underlines that the purpose of the observer status is to support these countries’ efforts towards European integration by facilitating their gradual alignment with EU law. This was also clearly underlined in the Decisions on the participation of North Macedonia and of Serbia in the Agency’s work as observers⁴⁸. It was also made clear in the Commission’s proposal on Albania’s observer status⁴⁹ and in the Council’s decision on the position to be adopted by the EU within the EU-Albania Stabilisation Council⁵⁰. The benefit of extending the Agency’s geographical scope beyond candidate and potential candidate countries does therefore not seem clear.

⁴⁸ Decision of the EU-Former Yugoslav Republic of Macedonia Stabilisation and Association Council pertaining to the Former Yugoslav Republic of Macedonia’s observer status available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2016:300:0019:0025:EN:PDF>; Decision of the EU-Serbia Stabilisation and Association Council pertaining to Serbia’s observer status available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2018:229:0009:0011:EN:PDF>.

⁴⁹ COM(2016) 118.

⁵⁰ OJ L 4, 18.12.2017, p. 9.

It is to be noted that within its mandate, the Agency closely cooperates with international organisations such as the Council of Europe, the Organisation for Security and Cooperation in Europe (OSCE) and especially the Office for Democratic Institutions and Human Rights (ODHIR), and the United Nations⁵¹. This fosters synergies and gives the Agency the opportunity to share findings with a number of non-EU states when participating in meetings or conferences held by these organisations. Given the Agency's mandate and resources, the best use should be made of these multilateral frameworks as they enable the Agency to share the fruit of its work with a number of non-EU states in one meeting. In addition, the Agency concluded an administrative arrangement with FMO Norway Grants under the overall EU-EEA umbrella agreement for specific tasks regarding EU Member States⁵².

5 – Align the founding Regulation with the Common Approach for EU Agencies and new programming and financial rules for EU agencies

Both the external evaluator and the Management Board conclude to the relevance of improving the governance of the Agency and streamline its functioning with the principles laid out in the Common Approach on decentralised EU Agencies. This alignment has not been carried out yet and should be done to strengthen the Agencies' governance and allow for efficiency gains through simplifying certain procedure. There is also a benefit in aligning the founding Regulation with the Commission guidelines for programming documents for decentralised EU agencies⁵³ and the Framework Financial Regulation⁵⁴.

Alignment with the Common Approach⁵⁵: simplification, better governance and efficiency gains

A - Amongst the technical amendments for simplification, better governance and efficiency gains, the **deletion of Article 5 of the founding Regulation on the Multiannual Framework (MAF)** would seem the most important.

⁵¹ Article 8(2)b and Article 9 of the founding Regulation.

⁵² The EU Agency for Fundamental Rights and the Financial Mechanism Office of the EEA and Norway Grants concluded administrative arrangements for cooperation under Article 8(3) of the founding Regulation, after the Commission delivered its Opinion on 30.9.2016, C(2016)6226. Administrative arrangements available at: <https://eeagrants.org/Results-data/Documents/Legal-documents/Cooperation-agreements-with-international-organisations/European-Union-Agency-for-Fundamental-Rights-FRA>.

⁵³ Communication from the Commission on the guidelines for programming document for decentralised agencies and the template for the Consolidated Annual Activity Report for decentralised agencies, C(2014) 9641.

⁵⁴ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council, OJ L 328, 7.12.2013, p. 42.

⁵⁵ https://europa.eu/european-union/sites/europa.eu/files/docs/body/joint_statement_and_common_approach_2012_en.pdf. See also Commission roadmap for its implementation: https://europa.eu/european-union/sites/europa.eu/files/docs/body/2012-12-18_roadmap_on_the_follow_up_to_the_common_approach_on_eu_decentralised_agencies_en.pdf.

As explained in section 4 above, the MAF is a one page Council Decision, listing in very broad terms the thematic areas of focus of the Agency for a five-year period⁵⁶. The EU institutions can request the Agency to work outside the MAF areas.

As underlined by the external evaluation and the Agency's Management Board, the relevance of the MAF can be questioned, in particular as since 2017 the Agency's Management Board annually adopts a multiannual programming document to conform with the Common Approach and Articles 32(1) and 33(5) of the Framework Financial Regulation⁵⁷. The multiannual programming document clearly sets out the specific projects the Agency will work on for a three-year period, based on stakeholders' needs and the EU policy Agenda. It is a flexible instrument as it enables the Agency to plan its work and thematic focus over time and to annually adapt it to emerging priorities (see examples given on page 65 of the external evaluation).

The multiannual programming consultation process gives the Agency's stakeholders the possibility to ensure that the Agency's outputs meet their needs. National Liaison Officers⁵⁸ may submit an opinion on the draft, which is an efficient and relevant way for Member States to feed the Agency's programming and priorities every year. The draft is also sent to the Council and European Parliament on 31 January every year. The Commission delivers an Opinion on the Agency's multiannual programming document before adoption by the Agency's Management Board, every year. This enables the Agency's work to be aligned to the EU policy Agenda.

The external evaluator does not identify any benefits of the MAF and highlights the negative impact of the MAF on the Agency's relevance as it constrains the Agency to work in all the areas listed over a five-year period. This limits the Agency's flexibility to align its work with the EU policy Agenda and to adapt its programming to emerging fundamental rights issues. This is particularly true for the area of police cooperation and judicial cooperation in criminal matters, which is excluded from the MAF (external evaluation page 65).

The adoption procedure for the Multiannual Framework is long and resource consuming. It requires unanimity in Council following a Commission proposal and consent of the European Parliament (Article 352 of the Treaty on the Functioning of the EU). For certain Member States this procedure requires scrutiny by their national parliaments. This

⁵⁶ For the current 2007-2022 period, the themes are: victims of crime and access to justice; equality and discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation, or on the grounds of nationality; information society and, in particular, respect for private life and protection of personal data; judicial cooperation, except in criminal matters; migration, borders, asylum and integration of refugees and migrants; racism, xenophobia and related intolerance; rights of the child; integration and social inclusion of Roma.

⁵⁷ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council, OJ L 328, 7.12.2013, p. 42; Communication from the Commission on the guidelines for programming document for decentralised agencies and the template for the Consolidated Annual Activity Report for decentralised agencies, C(2014) 9641.

⁵⁸ Article 8 (1) of the founding Regulation.

has led to delays of adoption of the Multiannual Framework in the past, with disruptions to the normal functioning of the Agency. Indeed under the current wording of Article 5, a non-adoption of the MAF means that the Agency is not able to implement its work programme. This also affects the ability of the Agency to spend its annual budget, since the latter is linked to the projects foreseen in the work programme.

Furthermore, the three year multiannual programming does not coincide with the five year validity of the MAF. This means that in the year in which the Multiannual Framework comes to an end – as was the case end 2017 and as will be the case end 2022 if this process is not removed – the Agency has to draw up its three year multiannual programme without confirmation of the themes to be adopted in the new Multiannual Framework. The benefit of maintaining the Multiannual Framework does not therefore seem clear in terms of efficiency, relevance and better regulation and it does not appear consistent with the Common Approach.

B - Another set of alignments to the Common Approach concern better governance and the **functioning of the Management Board**. The external evaluator and especially the Management Board itself, which has a more in depth insight on how it could function more effectively, made a number of recommendations such as:

- **Clarify the importance of Management Board members having appropriate budgetary, administrative and managerial skills:** the monitoring role of the Management Board is central. It is therefore important that Management Board members feel confident when assessing documents pertaining to the budget or human resources. There would be a benefit in specifying in the founding Regulation the need for Management Board members to have appropriate budgetary and managerial skills.
- **Simplifying the voting rules at the Management Board:** the voting rules for the Management Board when electing Executive Board members are currently a majority of two thirds. This has in the past resulted in lengthy voting sessions and even stalemates. There would be a benefit in amending the founding Regulation so that Executive Board members can be elected at a simple majority. It would simplify the voting proceedings and make them more efficient.
In the same way, there would be a benefit to apply the majority rule also for the Director's dismissal. Currently Article 15(7) of the founding Regulation provides that the Director can be dismissed on the basis of a proposal of a third of the members of the Management Board. For a better protection of the Director, there would be a benefit in amending the founding Regulation to provide that the Director can be dismissed on the basis of a proposal of a majority of the members of the Management Board, rather than of one third. It is to be noted that his recommendation was not made by the external evaluator or by the Management Board.
- **Clarify Management Board members' "remaining term of office" outside normal replacement and clarify if a former member can be appointed again after one or several terms:** Article 12(4) of the founding Regulation provides that if a member must be replaced before the normal replacement at the end of the term of office, the new member's term of office will be for the remaining term (i.e. the time remaining as of the moment of the former member's death or

resignation). This point seems unambiguous and the benefit of modifying the founding Regulation does therefore not seem clear.

Article 12(3) is less straightforward. It provides that Management Board members and alternate members shall not be renewable after their five-year term. The question arose if this limitation only applies for the consecutive term or if it means that a former Management Board member can never be appointed again. For the sake of clarification and efficiency, there would be a benefit in amending the founding Regulation to specify that a former member could be appointed for one more non-consecutive term. The non-consecutive renewal is justified to ensure the member's independence. However not allowing former members to be reappointed in the future or alternate members to be appointed as members would make it difficult for countries to find every five years different high-level fundamental rights experts having also the managerial, administrative and budget skills required.

- **Allow prolongation of the Director's term of office for up to 5 years:** currently the term of office of the Director is five years. It can be extended for up to three years. It would make sense to allow the extension of the Director's mandate for up to five years given the very selective appointment procedure and the fact that the number of high-level candidates potentially meeting the selection criteria is often very low. This is also in line with the practice in other EU Agencies. There would therefore be a benefit in amending the founding Regulation to allow for the Director's term of office to be extended for up to 5 years.
- **Director's appointment procedure:** given the importance of the position (see section 4 above "state of play"), the thorough selection procedure with the involvement of the Commission, the Council and the European Parliament seems justified. However, as suggested by the external evaluator, the selection procedure could start earlier i.e. twelve months preceding the end of term, rather than the current nine months. There would therefore be a benefit in amending the founding Regulation to that effect. This would reduce risks of a possible lengthy interim.

C - To further align with the Common Approach and underline the monitoring role of the Management Board, **there would be a benefit in adding in Article 12 of the founding Regulation (on the Management Board) a reference: to the need to adopt an anti-fraud strategy; to the importance of follow-up to internal and external audit findings and European Anti Fraud Office (OLAF) investigations; to the importance of the management and prevention of conflicts of interest; and to the need to adopt a security strategy and a communication strategy. There would also be a benefit in including a provision on the handling of EU restricted information.**

D – **There would also be a benefit in a technical amendment of Article 14 of the founding Regulation pertaining to the Scientific Committee, in order to enable the Management Board to pick from the reserve list in case a member needs to be replaced before the end of the Scientific Committee's mandate.** Currently, for each replacement the lengthy appointment procedure has to be followed (including consultation of the European Parliament's Committee for Civil Liberties, Justice and Home Affairs - LIBE). Even though this recommendation was not made by the evaluator and the Management Board, it would simplify the existing procedure and enable savings in human resources.

E - A further alignment with the Common Approach would be to set out in Article 30(3) of the funding Regulation **that it is the Commission that will evaluate the Agency every five years**. There would also be a benefit in adding a reference to the discontinuation of the Agency in case its work is no longer needed, as provided in the Common Approach.

F - Next to the above alignment with the Common Approach, there would also be a benefit in aligning the wording of the founding Regulation with the **new multiannual programming reality**. The founding Regulation currently refers to annual programming, which no longer corresponds to the facts. According to the Financial Framework Regulation, the Agency draws up a single programming document containing annual and multiannual programming⁵⁹.

6 - Create the post of a deputy Director with the task of day-to-day management of the Agency in order to prioritise the director's activities towards leadership, outreach and cooperation

This recommendation was made by the external evaluator to the Agency and not to the Commission. However, the post of deputy Director must be foreseen in EU Agencies' founding Regulations together with the appointment procedure and description of tasks. The creation of such a post would therefore require an amendment of the founding Regulation. The recommendation by the external evaluator to provide for the creation of a post of deputy Director with the tasks of day-to-day management was not taken over by the Management Board. Indeed the Agency's Director is responsible for the Agency's performance of tasks, preparation and implementation of the work programme, staff and budgetary matters and the Agency's day-to-day administration [Article 4(a) to (f) of the founding Regulation]. This is at the core of the Director's work and are key elements in the evaluation of the Director's performance. The Director's administrative and management skills are also important criteria in the Director's selection procedure. The Director can rely on a strong Management Board⁶⁰, itself assisted by an Executive Board.

Furthermore in the 2018 reorganisation of the Agency's internal structure, the Director is now supported by a Director's office, two advisors and a management team composed of five heads of department to assist him in his tasks (research & data, technical assistance & capacity building, institutional cooperation & networks, corporate services, and communications & events). At the end of the day, it is however the Director who is accountable to the Management Board. The benefit of creating a post of deputy Director does therefore not seem clear.

⁵⁹ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council, OJ L 328, 7.12.2013, p. 32.

⁶⁰ See also above amendment suggestions under the Common Approach to underline the Management Board's monitoring role.

7. CONCLUSIONS

The findings of the external evaluation are positive for the Agency. They confirm its added value, in particular when it comes to its core task of producing comparative data and information on fundamental rights issues in the Member States. The overall conclusion of the external evaluation is that **the Agency should continue to do what it does**. A review of the mandate and of the tasks of the Agency does therefore not seem justified.

The external evaluation and the Management Board nonetheless recommend some **targeted technical amendments of the founding Regulation to improve clarity, efficiency, governance and accountability**. They recommend clarifying that after the entry into force of the Lisbon Treaty, the Agency is governed by "Union" law, also in light of the two last negotiations of the Agency's MAFs in 2013 and 2017. They also suggest alignments with the Common Approach on decentralised EU Agencies. Such an alignment of the founding Regulation has not been carried out to date. Removing the MAF procedure would be the most significant change proposed.

The external evaluation points to other possible changes, which go beyond technical updates - i.e. creation of a post of deputy Director - but the benefits and impact are not clearly demonstrated. In the same way, the Management Board made recommendations that go beyond technical amendments i.e. enlarge the geographical scope of the Agency to certain third countries and enable the Agency to deliver legal opinions on draft EU legislation without a prior formal request from the respective EU institution. Here also the benefits and impacts are not clearly explained. The merits of these possible changes would require further justification.

Any proposal for amending the Agency's founding Regulation requires unanimity in Council, following the European Parliament's consent (Article 352 of the Treaty on the Functioning of the European Union). The Presidency Conclusions of 12 October 2018 on the application of the Charter of fundamental rights in 2018 indicated that the external evaluation will be taken into account when considering any proposal for a revision of the funding Regulation of the Agency the Commission may decide to submit⁶¹.

⁶¹ Presidency Conclusions of 12 October 2018 on the application of the Charter of Fundamental, rights in 2017 (see in particular paragraph 7).

ANNEX I – EXTERNAL EVALUATION REPORT

Available at: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=612263

ANNEX II - OVERVIEW OF EVALUATION QUESTIONS

Overarching evaluation question		
Relevance	EQ1	To what extent is the Agency's original objective still relevant to addressing the needs, problems and fundamental rights issues within the EU of the FRA target groups?
	EQ2	To what extent are the needs of the relevant stakeholder groups met by the Agency's mandate and actual performance?
	EQ3	Have the recommendations on the relevance from the previous evaluation been implemented by the Agency?
Effectiveness and Utility	EQ4	How successful has FRA been in achieving the expected effects (outputs, results, impacts), in light of its objectives, mandate and tasks, as defined in its Founding Regulation?
	EQ5	To what extent do internal processes and ways of working impact on the Agency's ability to perform its essential tasks?
	EQ6	To what extent are the Agency's activities effectively resourced?
	EQ7	To what extent are the Agency's outputs and activities useful to its various stakeholders?
	EQ8	To what extent did FRA activities have an impact on EU policy and practices in MS/third countries/NHRBs/fundamental rights field?
	EQ9	To what extent have the objectives set out in the multi-annual and annual work programmes for the years 2013 to 2017 been accomplished?
	EQ10	To what extent does the impact achieved by the FRA's activities correspond to and meet existing stakeholders' needs?

Overarching evaluation question

	EQ11	Are there any additional outputs/results that were not foreseen initially in the multiannual and annual work programmes?
	EQ12	How should FRA activities be adapted in order to more effectively respond to its multi-annual and annual priorities and the potential requests for services and activities from EU Institutions/MS/other stakeholders and international bodies?
	EQ13	To what extent are FRA's outputs fully accessible and made use of by relevant stakeholders? To what extent does the Agency effectively communicate on its activities?
	EQ14	To what extent have the recommendations from the 2012 evaluation related to the effectiveness and impacts been implemented?
Added value	EQ15	What is the overall added value of the FRA?
	EQ16	To what extent has the scientific quality of the Agency's outputs and activities been ensured?
	EQ17	What has been the unique contribution of the Agency to the promotion and protection of fundamental rights in the EU?
	EQ18	To what extent have the effects of the Agency's activities been achieved at lower costs because of the Agency's intervention?
Coordination and Coherence	EQ19	To what extent is the Agency acting in close cooperation with the CoE and UN to avoid duplication and in order to ensure complementarity?
	EQ20	To what extent is the Agency ensuring appropriate coordination with relevant stakeholders to foster synergies and avoid duplication?
	EQ21	To what extent are the procedures to ensure this coordination and cooperation effective to ensure the Agency's activities are coherent with the policies and activities of its stakeholders?
	EQ22	To what extent are the FRA's objectives and activities coherent with 1) the Common Approach of the European Parliament, the Council and the European Commission and 2) the European Commission's Roadmap for raising the effectiveness and improving governance of the decentralised agencies
Efficiency	EQ23	Does the Agency's organisational and budgetary structure contribute to effectiveness and efficiency of its operations?
	EQ24	Is the size of the budget and human resources appropriate and proportional to what FRA is expected to achieve? Is it sufficient for reaching a critical mass of impact?
	EQ25	Is there a good balance between administrative and operational budget?
	EQ26	To what extent has the Agency been successful in creating synergies and an optimal use of combined resources allocated for the implementation of its mandate and tasks to manage the operation?
	EQ27	Is the Agency reporting in accordance with Commission guidance and templates?

Available at: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=612263

ANNEX IV: DECLARATIONS ANNEXED TO THE MINUTES OF THE COUNCIL MEETING OF 7 DECEMBER 2017, AT WHICH THE 2018-2022 MULTIANNUAL FRAMEWORK FOR THE AGENCY WAS ADOPTED

Declaration by Austria, Belgium, Finland, Germany, Portugal, Slovenia, Sweden, Lithuania, Czech Republic, Italy, Luxembourg and Ireland

Austria, Belgium, Finland, Germany, Portugal, Slovenia, Sweden, Lithuania, Czech Republic, Italy, Luxembourg and Ireland regret that the areas of police cooperation and judicial cooperation in criminal matters could not be included in the Multiannual Framework of the Fundamental Rights Agency, despite the fact that these areas are particularly fundamental rights-sensitive and should, therefore, be part of the regular activities of the Agency. Furthermore, it should be recalled that the Agency is already active in these areas upon request in accordance with Article 5 (3) of Council Regulation (EC) No 168/2007.

Austria, Belgium, Finland, Germany, Portugal, Slovenia, Sweden, Lithuania, Czech Republic, Italy, Luxembourg and Ireland reiterate their support for the inclusion of police cooperation and judicial cooperation in criminal matters in the Agency's areas of activities and will revert to this issue in the context of proposals for amendment of Council Regulation (EC) No 168/2007. We invite the Commission to submit a proposal to this effect following the independent external evaluation to be carried out in 2017.

Declaration of the Council concerning the review of the Multiannual Framework

Under Article 30 (3) and (4) of Council Regulation (EC) N° 168/2007 ('the Regulation') an independent, external evaluation of the EU Agency for Fundamental Rights ('FRA') will be carried out in 2017. As stipulated in Article 31 (2) of the Regulation, the Commission, after having assessed the evaluation report and recommendations made on that basis by the FRA's Management Board, may consider submitting any proposals for amendments to the Regulation which it considers necessary.

In this context, the Council agrees that it will consider carefully any proposals for amendments to the Regulation that the Commission may decide to submit, including those pertaining to the remit of the Agency to cover the areas of police cooperation and judicial cooperation in criminal matters. The Council further agrees that it will consider carefully any proposals to improve procedures for the governance and functioning of the Agency.

Commission Declaration

The Commission regrets the lack of agreement on the inclusion of the proposed new thematic areas of police cooperation and judicial cooperation in criminal matters in the EU Agency for Fundamental Rights' Multiannual Framework for 2018-2022.

The Commission recalls that following the entry into force of the Treaty of Lisbon, police cooperation and judicial cooperation in criminal matters have become part of Union law and are therefore covered by the scope of the tasks of the Agency, as all areas falling within the competences of the Union, under Article 3(1) of Council Regulation (EC) n°168/2007.

If these thematic areas are not included in the Council Decision establishing a Multiannual Framework for the Agency for 2018-2022, the Agency will continue to carry out its tasks in these areas upon request from the European Parliament, the Council or the Commission, under Article 5(3) of Council Regulation (EC) n°168/2007.

Following the external evaluation of the Agency in 2017, the Commission shall transmit the evaluation reports and recommendations to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions and make them public.

After having assessed the evaluation report and recommendations, the Commission may submit any proposals for amendments to Regulation (EC) n°168/2007 which it considers necessary, as provided in Article 31(2) thereof.