

Emma Lantschner (University of Graz)

# **The Use of Indicators in Pre- and Post-Accession Monitoring of Equality and Non-Discrimination**

Paper prepared for the European Union Studies Association (EUSA)

Fifteenth Biennial Conference, May 4-6, 2017, Miami Florida

[Work in progress. Comments to [emma.lantschner@uni-graz.at](mailto:emma.lantschner@uni-graz.at) are very welcome!]

<i>I.</i>	<i>Introduction</i> .....	1
<i>II.</i>	<i>Definition, Purposes and Limitations of Indicators</i> .....	2
<i>III.</i>	<i>The Current Use of Indicators in the Pre- and Post-Enlargement Context</i> .....	12
1)	Indicators in the IPA II Regulation .....	12
2)	Indicators in National Action Plans.....	15
3)	Indicators in the Cooperation and Verification Mechanism for Romania and Bulgaria .....	20
4)	Conclusions .....	24
<i>IV.</i>	<i>Tentative Set of Indicators to Monitor Equality and Non-Discrimination</i> .....	25
<i>V.</i>	<i>Final Remarks</i> .....	29

## *I. Introduction*

In recent years, the European Commission, the Council of the European Union and the European Parliament took different initiatives to react to one element of the current “polycrisis” of the European Union: the increasing disregard within some of its member states for the core values of the Union enshrined in Art. 2 TEU: democracy, rule of law and fundamental rights. The European Commission introduced in March 2014 a new Framework to strengthen the Rule of Law, which consists of a three-step process aiming to prevent the escalation of a crisis in a specific member state into a situation that would require the activation of the sanctioning mechanisms of Art. 7 TEU. In December 2014, the Council of the European Union established a Rule of Law dialogue among all member states and a large majority of the European Parliament accepted in October 2016 a legislative own-initiative report on an EU mechanism on democracy, the rule of law and fundamental rights (DRF-Pact).

These developments hint in two directions: Although upholding the core values contained in Art. 2 TEU might be reasonably questioned also with regard to some old member states, the first ones that have come under scrutiny are new member states. The Commission's Rule of Law Framework was activated with regard to Poland in January 2016; the European Parliament called on the Commission to activate it also with respect to Hungary. This raises the question whether new tools are needed in the pre-accession monitoring or existing ones need to be strengthened in order to make such backsliding after accession less likely. Second, on the long run it appears to be impossible for member states to resist some sort of regular and comprehensive monitoring of adherence to Art. 2 values which would eventually end the "double standard" of yearly monitoring in the pre-accession phase, followed by a relative neglect once a country has become a member of the EU.

A tool that is receiving increasing attention by various EU bodies (including the European Parliament, the Commission and the Fundamental Rights Agency) and that could become central to both, pre- and post-accession monitoring, are indicators. The paper will discuss why and for what purposes indicators are useful (II.) and which role they currently play in the pre- and post-enlargement context (III.). Special focus will be placed on the issue of non-discrimination as a cross-cutting issue of relevance for the rule of law and the whole spectrum of fundamental rights. Non-discrimination had, indeed, been mentioned as an indicator for rule of law and for fundamental rights within the draft DRF-Pact. As such, it will, however, be difficult to grasp or to measure. The paper will thus set out to develop a tentative set of indicators, covering the reactive and preventive perspective to non-discrimination (IV.).

## *II. Definition, Purposes and Limitations of Indicators*

For the definition and purpose we borrow from work done in the past fifteen years by various authors and institutions regarding human rights indicators. Maria Green defines a human rights indicator as "a piece of information used in measuring the extent to which a legal right is being fulfilled or enjoyed in a given situation."<sup>1</sup> Gauthier de Beco understands the term human rights indicators "as indicators that are linked to human rights treaty standards, and that measure the extent to which duty-bearers are fulfilling their obligations and rights-holders enjoying their rights."<sup>2</sup> Paul Hunt, who served as UN Special Rapporteur on the right to health, distinguished a health indicator from a *right to health* indicator by the fact that the

---

<sup>1</sup> Green 2001, 1065.

<sup>2</sup> de Beco 2008, 24.

latter “derives from, reflects and is designed to monitor the realisation, or otherwise, of specific right to health norms, usually with a view to holding a duty bearer to account”.<sup>3</sup> In this context Hunt points out that “[t]he relationship between indicator and norm has to be reasonably close and precise.”<sup>4</sup> The institution dealing most extensively with human rights indicators since more than a decade is the UN Office of the High Commissioner for Human Rights (OHCHR). In its documents it defines human rights indicators as “specific information on the state of an event, activity or an outcome that can be related to human rights norms and standards; that address and reflect the human rights concerns and principles; and that are used to assess and monitor promotion and protection of human rights.”<sup>5</sup> The EU Fundamental Rights Agency (FRA) in its work on indicators bases itself on this definition.<sup>6</sup>

What is common to these definitions is that they all understand indicators as being rights-based, in the sense of a “reasonably close and precise”<sup>7</sup> link with a specific norm. In this context, the area of non-discrimination is relevant in a double sense. First, non-discrimination is a cross-cutting human rights norm which “is at the heart of all work on human rights”.<sup>8</sup> As such, it has to be taken into consideration in the development of indicators for every single human right, typically by the disaggregation of data collected to populate an indicator, in relation to prohibited grounds of discrimination.<sup>9</sup> With Green, the right to non-discrimination understood as a cross-cutting norm can also be labelled a “procedural right”.<sup>10</sup> Secondly, non-discrimination has to be considered as a self-standing human right, for which specific indicators can be developed. In the EU-context, the question arises, to which legal norms such indicators have to be related. There is no doubt that the Directives adopted in this field are the main basis.<sup>11</sup> Of course also the Treaties (Art. 2 TEU and Art. 19 TFEU) as well as the Fundamental Rights Charter (Arts. 20-23 dealing with the issues of equality and non-discrimination) can serve as a legal basis for indicators. The Fundamental Rights Agency made it very clear, however, that indicators should also refer to international standards accepted by Member States or, as in the case of the UN Convention on the Rights of Persons

---

<sup>3</sup> Hunt 2003, para. 10.

<sup>4</sup> Hunt 2003, para. 11.

<sup>5</sup> OHCHR 2006, para. 7; OHCHR 2012, 16.

<sup>6</sup> FRA 2015, 14.

<sup>7</sup> Hunt 2003, para. 11.

<sup>8</sup> OHCHR 2012, 13, and also 38-41. See also OHCHR 2008, para. 5.

<sup>9</sup> OHCHR 2012, 38-41.

<sup>10</sup> Green 2001, 1071.

<sup>11</sup> In particular the two Directives adopted in 2000: Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Race Equality Directive); and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (Framework Employment Equality Directive).

with Disabilities, by the EU.<sup>12</sup> Both, non-discrimination as procedural right and as self-standing right, can be divided into a substantive part, dealing for instance with the question of whether a specific behaviour constitutes direct or indirect discrimination, and a procedural part. The latter refers to mechanisms by which to react to alleged violations (e.g. access to different complaints mechanisms) or to prevent violations (e.g. positive measures). The tentative indicators developed in the present paper focus exclusively on this latter part.

A further commonality of the above mentioned definitions is that indicators are supposed to measure not only the commitment of and efforts made by the duty-bearers to meet their legal obligations but also the extent to which the rights-holders enjoy their rights. From a methodological point of view this has been translated into a configuration of structural, process and outcome indicators.<sup>13</sup> Structural indicators measure the commitment of a state to implement the human rights standards accepted with the ratification of a human rights treaty, or in case of EU law, the commitment of Member States to transpose a directive. Structural indicators allow to evaluate the legal, policy and institutional framework. They inform about legislation in place, adopted action plans and guidelines and the existence of complaint and support mechanisms. Process indicators provide information about the efforts made by the duty bearer to transform their formal commitment into concrete results. They have a focus on policy implementation as well as the effectiveness of established complaints mechanisms and support systems. This involves budgetary allocations for the effective implementation of legislation and action plans. Outcome indicators capture the situation on the ground. They give information about the level of enjoyment of a right in practice and the impact of the efforts undertaken by the state. They capture for instance the actual awareness of rights or the actual occurrence of violations.<sup>14</sup>

Even if, in principle, non-discrimination should be a right that should not be subject to progressive realization, both its substantive part as well as procedural part are, in reality, realized over time and thus require monitoring tools which allow to measure progress over time. The structural-process-outcome model is well suited for this purpose and will thus serve at the basis for the development of tentative indicators for the procedural part of the right to non-discrimination.

---

<sup>12</sup> FRA 2015, 14.

<sup>13</sup> See already Hunt 2003, para. 15. This approach has been taken over by OHCHR 2006; OHCHR 2008; OHCHR 2011; OHCHR 2012.

<sup>14</sup> OHCHR 2012, 34-38; FRA 2015, 15.

When it comes to different purposes, for which indicators can be useful, the primary purpose according to the above mentioned definitions is monitoring, “usually with a view to holding a duty bearer to account.”<sup>15</sup> The OHCHR includes in its definition that indicators are “used to assess and monitor promotion and protection of human rights.”<sup>16</sup> In fact, the Office started its work on indicators in response to a request from the inter-committee meeting of the UN treaty monitoring bodies to prepare a background paper on the possible uses of indicators for the monitoring of UN human rights treaties. However, the OHCHR pointed out that “the demand for appropriate indicators is not only for monitoring the implementation of the human rights instruments by States parties, but indicators are also seen as useful tools in reinforcing accountability, in articulating and advancing claims on the duty-bearers and in formulating requisite public policies and programmes for facilitating the realization of human rights.”<sup>17</sup> The Fundamental Rights Agency takes this latter idea further and sees a role for indicators in supporting “relevant actors in policy evaluation and design.” To assess whether specific measures have reached their goal by the use of indicators could, in the view of the Fundamental Rights Agency, “facilitate a better understanding of drivers and barriers in policy implementation. From a fundamental rights perspective, this will allow for better law making and render policymaking more transparent while also holding policymakers accountable for their actions. In the long run, this will strengthen democratic legitimacy and entrench a fundamental rights culture in whatever the EU does.”<sup>18</sup> In the view of the Council of Europe’s Congress of Local and Regional Authorities’ Monitoring Committee “[h]uman rights indicators are useful tools for both analysing the situation of human rights in a given state and communicating best practices and institutional solutions that can be of interest to local and regional authorities within the state and between member states.”<sup>19</sup> A European Parliament commissioned study on Human Rights Benchmarks for EU’s External Policy recommends developing human rights benchmarks and indicators in-house to guarantee consistency. It stresses that it is “highly recommended that the EU applies the *same human rights indicators and benchmarks for its internal as well as external human rights policy* [to] increase the credibility of EU’s external policies in general and legitimate the EU institutions in asking for human rights compliance vis-à-vis third countries.”<sup>20</sup>

To sum up, indicators are a useful tool for:

---

<sup>15</sup> Hunt 2003, para. 10.

<sup>16</sup> OHCHR 2006, para. 7; OHCHR 2012, 16.

<sup>17</sup> OHCHR 2006, para. 3.

<sup>18</sup> FRA 2015, 11-12.

<sup>19</sup> Council of Europe, Congress of Local and Regional Authorities, Monitoring Committee 2011.

<sup>20</sup> Mihr 2011, 5.

- consistent monitoring, with a view to reinforcing the accountability of the duty bearer: Indicators can be seen as tool for advocacy and political dialogue<sup>21</sup> between international monitoring bodies and civil society sector on one hand and the states on the other;
- evidence-based law and policy making: Indicators can play an important role in supporting relevant actors in evaluating the status quo and based on these findings designing laws and policies;<sup>22</sup>
- analysing the human rights situation in a specific context and identifying good practices and institutional solutions others can learn from.

Notwithstanding this potential usefulness and benefit of indicators, it is also important to recall the limitations and points of critique, in particular related to the use of indicators for consistent monitoring, which is the most pertinent function in the context of this paper.

A first issue is related to the fact that countries and regions within countries have different social, economic and political points of departure and attainment levels with regard to the realization of human rights. As a result, it might be difficult to devise indicators that are applicable universally, or in our context, throughout the European Union and acceding countries. In the view of the OHCHR it would still be relevant to monitor the core content of rights universally, while depending on circumstances, contextually specific indicators might be needed in addition.<sup>23</sup>

To focus on core aspects of rights could lead to a second problem: the risk of defining indicators on the basis of a superficial consensus on a basic set of indicators, also for the sake of making monitoring a manageable task.<sup>24</sup> If this task should be cut down to become feasible, it risks reducing the substantive rights to something too superficial and too narrow. Monitoring states' performance in human right protection through a limited set of indicators could, thus, risk "oversimplifying the situation and could lead to a failure to capture future trends."<sup>25</sup> The challenge of developing indicators is thus to transform the standards into a

---

<sup>21</sup> Landman 2004, 909; Landman, Carvalho 2010, pp. 4–6 He identifies six different purposes for measuring human rights: 1. Contextual description and documentation, 2. Classification, 3. Monitoring, 4. Mapping and pattern recognition, 5. Secondary analysis and policy prescription, 6. Advocacy and political dialogue.

<sup>22</sup> See also Starl et al. 2014, 17.

<sup>23</sup> OHCHR 2012, 44.

<sup>24</sup> For an illustration of the potential problem it is useful to refer to the work on indicators carried out by the Fundamental Rights Agency in recent years. Since the EU has acceded to the Convention on the Rights of Persons with Disabilities (CRPD) in 2010, the FRA has developed indicators for the monitoring of Art. 29 of the CRPD, related to political participation of persons with disabilities. For this article alone, the FRA has developed a set of 29 structural-process-outcome indicators.

<sup>25</sup> van Ballegooij, Evas 2016, 13.

matrix of structural-process-outcome indicators without losing anything of the substance. In order to achieve this, it is necessary to find the right balance between quantitative and qualitative indicators.

The OHCHR's methodological framework expresses a clear preference of fact based statistical indicators.<sup>26</sup> Notwithstanding the merits of quantitative indicators, it is useful to consider the probably excessive expectations vis-à-vis this type of indicators and the methodological problems connected with it. Quantitative indicators are understood to have the following advantages: "they render complex data simple and easy to understand; they can be designed to demonstrate compliance with obligations, fulfilment of rights, and government efforts toward these goals; and they are capable of capturing progress over time and across countries."<sup>27</sup> Behind these expectations stands a trust in numbers, which are putatively objective and as such more reliable than the judgment of a human being. Neither is completely correct. According to Rosga, the "presentation of neatly tabulated numbers [just] erases the means and messiness of their own generation. It obscures evidence of the human judgment involved in statistical production."<sup>28</sup> Besides, objectivity is not necessarily obstructed by the involvement of the human mind and of human judgment. Quoting from Wendy Lesser, Rosga defines objectivity as the "sense that an objective report is disinterested, honest, reliable, impartial."<sup>29</sup>

Another challenge for the use of quantitative indicators is the availability of data and the above mentioned comparability over time and across countries. Both are key to the possibility of quantitative indicators to deploy their potential strength. The availability of appropriately disaggregated data is of particular concern when it comes to the right to equality and non-discrimination, as has been recognized by various monitoring bodies.<sup>30</sup> Lack of comparability of data is connected to diverging data collection methods across countries.<sup>31</sup> On a defensive note, the OHCHR pointed out, that the lack of available data (and the same goes for their comparability) does not discredit the use of indicators altogether; at best, it will simply delay

---

<sup>26</sup> OHCHR 2012, 16-19, in particular 19.

<sup>27</sup> Rosga, Satterthwaie 2009, 255. For a discussion of the benefits of quantitative indicators for treaty bodies, states, as well as individuals and advocacy organisations, see Welling 2008, 940-947.

<sup>28</sup> Rosga, Satterthwaie 2009, 283.

<sup>29</sup> Rosga, Satterthwaie 2009, 284.

<sup>30</sup> See, for instance, ACFC, Thematic Commentary No. 3: The Language Rights of Persons Belonging to National Minorities under the Framework Convention, 2012, para. 19 et seq.

<sup>31</sup> For instance, target groups might be differently defined. While in one case a survey on violence against women covers only women in child-bearing age, another survey might look only at domestic violence. FRA Factsheet, FRA research: Providing robust, comparable data and analysis, 2011, available at [http://fra.europa.eu/sites/default/files/fra\\_uploads/1717-FRA-Factsheet\\_Methodology\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1717-FRA-Factsheet_Methodology_EN.pdf)

their use until the required data become available.<sup>32</sup> Within the EU, it is part of the mandate of the Fundamental Rights Agency to collect objective, reliable and comparable information on the development of the situation of fundamental rights and to “develop methods and standards to improve the comparability, objectivity and reliability of data at European level”.<sup>33</sup> In order to enhance comparability, the FRA does not rely on secondary data collected by member states but collects its own primary data.<sup>34</sup> In the 2015 Annual Report, it still found that “[a]cross the EU, there is a lack of comparable and disaggregated data on manifestations of ethnic discrimination, racism and related intolerance.”<sup>35</sup> It has therefore launched a second wave of its European Union Minorities and Discrimination Survey (EU-MIDIS) with the aim to assess progress made since the first EU-MIDIS survey in 2008. This survey serves also to populate core indicators for measuring progress in the implementation of the EU Framework for National Roma Integration Strategies and selected indicators on immigrant integration.<sup>36</sup> To work with indicators is, thus, a further attempt of the Fundamental Rights Agency to live up to its mandate to “develop methods and standards to improve the comparability, objectivity and reliability of data at European level”.<sup>37</sup> Former FRA Director Morten Kjaerum expressed his hope that the existence of an indicator framework makes it also more likely that, in addition to the own primary data collection carried out by the FRA, the data collected by member states will also become more comparable over time.<sup>38</sup> The development of indicators should, thus, not be guided by the availability of comparable data. Conversely, the existence of indicators can support the generation of the required data.

Analysing the indicator documents developed so far by the FRA, it becomes clear that it relies on both, quantitative and qualitative indicators.<sup>39</sup> In its 2015 Annual Report, which dedicated its special focus to the subject of indicators, the Agency pointed out that indicators should be populated with qualitative evidence, such as the analysis of legislation, case law, strategies or

---

<sup>32</sup> OHCHR 2012, 21 and for details about data disaggregation 68-70..

<sup>33</sup> FRA Founding Regulation, Art. 4.

<sup>34</sup> FRA Factsheet, FRA research: Providing robust, comparable data and analysis, 2011, available at [http://fra.europa.eu/sites/default/files/fra\\_uploads/1717-FRA-Factsheet\\_Methodology\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/1717-FRA-Factsheet_Methodology_EN.pdf). See for instance the EU-Midis studies carried out in 2008 and currently going on.

<sup>35</sup> FRA 2015, 50.

<sup>36</sup> Information taken from the EU-MIDIS Project website at <http://fra.europa.eu/en/project/2015/eu-midis-ii-european-union-minorities-and-discrimination-survey>.

<sup>37</sup> FRA Founding Regulation, Art. 4.

<sup>38</sup> FRA 2009, 5.

<sup>39</sup> The aim of the child rights indicators, for instance, is to move beyond a purely quantitative approach towards a qualitative assessment of the “effects of legal, policy and institutional measures on children’s lived experiences.” See, for instance, FRA 2010, 14, but also 20, 21, 93, 134.



action plans, and quantitative data.<sup>40</sup> Outside the frame of the Fundamental Rights Agency's work with indicators, the first EU Anti-Corruption Report issued by the European Commission in 2014 is mainly built on qualitative assessment.<sup>41</sup> The authors of the Report acknowledged that it might be difficult to get "to the core of corruption problems" by the relying primarily on quantitative indicators.<sup>42</sup>

The approach of these examples will be followed by the present research. Quantitative indicators are useful to express the magnitude of a phenomenon, but for their appropriate interpretation they require in addition qualitative indicators, which allow for contextual analysis and accurate interpretation of numbers and statistics found.<sup>43</sup> This is also necessary in order to reduce the risk that states aim to demonstrate success in the form of improving numbers related to a given indicator rather than improving the enjoyment of the human right itself.<sup>44</sup>

Another point to be made regards a potential strength but also potential limitation of indicators and is related to the significant importance of participation in the development and use of indicators.<sup>45</sup> Earlier work of the OHCHR seemed to start from the assumption that universally applicable indicators could be developed by experts at international level. The OHCHR report on indicators published in 2008 had already a much more participatory approach, both in terms of selection of indicators and their use.<sup>46</sup> After a number of years of working on the development of indicators in various settings, the Fundamental Rights Agency has spelled out among its lessons learned that "indicators have to be agreed through a deliberative process with the actors who will be assessed through their application. These would be primarily 'duty bearers', namely EU institutions and Member States, but also other

---

<sup>40</sup> FRA 2015, 14. This has also been the approach followed by the Agency when it developed and populated indicators on the right to political participation of persons with disabilities. Even if many of the chosen indicators could be expressed quantitatively (eg number of cases considered by non-judicial complaints bodies), the analysis provided did not only include a short analysis of the cases found but highlights also promising practice. See, eg. FRA 2014, 62-64. The population of indicators thus fulfilled the double function of assessing the state of affairs in EU member states as well as identifying good practice other states can learn from.

<sup>41</sup> Bárd et al. 2016, 10.

<sup>42</sup> European Commission 2014a, 39-40.

<sup>43</sup> Starl et al. 2014, 18.

<sup>44</sup> Rosga, Satterthwaie 2009, 286.

<sup>45</sup> Rosga, Satterthwaie 2009, 313-314.

<sup>46</sup> See Rosga, Satterthwaie 2009, 297, referring to OHCHR 2008, para. 11. See also OHCHR 2012, 40.

stakeholders representing the ‘rights holders’, such as social partners and civil society, to ensure a wide consensus through informed participatory processes.”<sup>47</sup>

Participation understood as a cross-cutting human right could also be narrowed down as an unintended consequence of the use of indicators, if specific policy choices themselves are turned into indicators. The challenge in the enlargement context but also within the EU is therefore to give acceding and member states detailed enough guidance as to what is expected from them in their effort to bring legislation and practice in line with EU standards without limiting the possibility to choose the policy option which is best tailored to their needs and circumstances.

In the course of drafting its legislative own-initiative report on a Pact on Democracy, Rule of Law and Fundamental Rights the European Parliament commissioned two papers<sup>48</sup> which, amongst other things, assessed the need and possibilities for the establishment of a DRF scoreboard, tackling in this context also the question of practicability and usefulness of indicators. The authors took quite a critical stance towards the use of indicators. In their view, the assessment through numerical indicators should not constitute the core but should rather be one element. With regard to the concepts of democracy and (even more so) the rule of law they found that they are fluid and have “to contain a share of vagueness in order to accommodate [their] very nature.”<sup>49</sup> To turn the rule of law “into a shopping list of elements ... [e]liminating vagueness entirely” for them would profoundly undermine the usefulness of the concept itself. Therefore they recommended using benchmarking and indicators only sparingly.<sup>50</sup> They even called the use of indicators in this context “a rather dubious exercise that can easily be attacked as politically or ideologically biased.”<sup>51</sup>

Their judgment seems to be based on the assumption that the indicators would mainly be “numerical”. While scepticism towards overreliance on numbers without taking the specific context into account is shared, and one can agree with the allegation that the selection of indicators (just as any qualitative assessment) can be politically or ideologically biased, the

---

<sup>47</sup> FRA 2015, 14. Also Serban having analysed the Cooperation and Verification Mechanism vis-à-vis Romania comes to the conclusion that indicators are rejected “if there is no domestic ownership in either their construction or use.” Serban 2015, 217.

<sup>48</sup> Bárd et al. 2016; Pech et al. 2016

<sup>49</sup> Bárd et al. 2016, iii-iv.

<sup>50</sup> Bárd et al. 2016, iv.

<sup>51</sup> Bárd et al. 2016, iv. As a matter of fact, what in the draft DRF Pact had been called “indicator” and had been listed separately for each of the three sectors, democracy, rule of law, and fundamental rights, is now called “aspects” without further dividing between the three areas. The subsequent list, however, has remained the same, with some additions. As a result, the “aspect” of equality before the law and non-discrimination would still be part of the DRF Report (that has replaced the Scoreboard) accompanied by country-specific recommendations.

present paper starts from the assumption that both, quantitative *and* qualitative indicators are needed, and that in order to be able to interpret what the indicators actually indicate a contextual assessment is needed. Along the lines of Rosga's findings after critically discussing the inappropriateness of a blind trust in numbers, we believe that monitoring States' compliance with human rights obligations by using indicators means that "monitoring will always be context-dependent, that it will involve the function of judgment, and that it will never be a purely technical exercise."<sup>52</sup>

The allegation of Bárd et al. with regard to political or ideological bias is actually exactly what the European Parliament has tried to address with its DRF Pact by proposing a monitoring framework which would be "objective, impartial, evidence-based and applied equally and fairly to all Member States as well as to the institutions of the Union"<sup>53</sup> One tool to reach this goal could be the use of common and objective indicators. In his follow-up study to the EP's Resolution of 2015 on the situation of fundamental rights in the EU, de Schutter supports this view. He writes: "Indicators allowing to examine the situation of democracy, the rule of law and fundamental rights should ensure that the principles of objectivity, non discrimination and equal treatment are complied with, and that the monitoring is performed in a non-partisan way and is based on sound evidence."<sup>54</sup> Accepting all the limitations and challenges inherent to the use of indicators discussed above, they still display one clear advantage, especially in the context of EU internal and external monitoring: they contribute to transparency and foreseeability of the monitoring and by the fact that they are applied equally to all states they lose at least part of a potential touch of being politically or ideologically driven.

On the basis of the above described purposes and limitations, the following criteria for the development of indicators in the area of equality and non-discrimination have been developed:

- The indicators developed by this research should mainly allow to pursue the function of monitoring pre- and post-accession compliance with the non-discrimination acquis.
- This research couples the development of indicators with a comparative review of what works and what not in which circumstances, in other words it sets out to pool the results of experiences in the implementation of the EU non-discrimination acquis in the past two decades. On the basis of this analysis indicators are devised without

---

<sup>52</sup> Rosga, Satterthwaite 2009, 311.

<sup>53</sup> European Parliament 2016, 15.

<sup>54</sup> de Schutter 2016, 35.

however falling into the trap of “turning specific policy choices themselves into indicators.”<sup>55</sup>

- Quantitative *and* qualitative indicators will be identified. The explanatory power of numerical indicators derives from them being put in relation to each other and contextualized.
- The availability of data to populate the indicators will not be taken as a limiting criterion for the selection of indicators as it is expected that the existence of indicators will contribute on the long run to the improvement of data collection.<sup>56</sup>
- The issue of participation in the development of indicators is addressed by the present research only in a very limited way. The tentative indicators will be discussed in a working group composed of members of equality bodies, local non-discrimination offices and NGOs as well as academic experts. If the proposed indicators were to be used in a specific context, they are thought to serve as a point of departure and to be adapted to the specific context in order to become meaningful.

### ***III. The Current Use of Indicators in the Pre- and Post-Enlargement Context***

This chapter will provide an insight to the extent to which EU institutions and states currently make resort to the concept of indicators in the pre- and post-enlargement context, focussing again on the issue of equality and non-discrimination. It aims at identifying the weaknesses which affect the current use of indicators.

#### 1) Indicators in the IPA II Regulation

The new IPA regulation of 2014 for the period 2014-20<sup>57</sup> is very explicit in establishing how the progress towards achieving the specific objectives of (a) political reform, (b) economic, social and territorial development, (c) strengthening of the ability of the beneficiaries to fulfil the obligations stemming from Union membership, and (d) strengthening regional integration and territorial cooperation, are to be monitored: this shall be done “on the basis of pre-defined, clear, transparent and, where appropriate, country-specific and measurable indicators. For specific objectives under (a), these indicators cover inter alia: “progress in the areas of

---

<sup>55</sup> Rosga, Satterthwaie 2009, 308.

<sup>56</sup> See also Hodasz et al. 2009, 94.

<sup>57</sup> Regulation (EU) No 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession Assistance (IPA II) (11 March 2014).

strengthening democracy, the rule of law and an independent and efficient justice system, respect for human rights, including the rights of persons belonging to minorities and vulnerable groups, fundamental freedoms, gender equality and women's rights, ... refugee return, and in particular, the establishment of track records in those areas”,<sup>58</sup> thus covering all aspects of the political Copenhagen criterion. “The relevant performance indicators shall be defined and included in the [country] strategy papers ... and shall be established in such a way as to enable progress to be assessed objectively over time”.<sup>59</sup> The new IPA regulation introduces the possibility of granting performance rewards, which shall be allocated on the basis of an assessment of performance and progress no later than in 2017 and 2020. Also for that purpose, the performance indicators as specified in the strategy papers shall be taken into account.<sup>60</sup>

In essence, from this wording a monitoring of political accession criteria on the basis of indicators may be expected. However, expectations as to the level of sophistication regarding these indicators have to be curbed. The Indicative Strategy Paper for Serbia shall serve as an example. The Strategy Paper “sets meaningful and realistic objectives, identifies the key actions and actors, describes the expected results, indicates how progress will be measured and monitored, and sets out indicative financial allocations.”<sup>61</sup>

The Indicative Strategy Paper for Serbia has identified the field of rule of law and fundamental rights as a key priority for Serbia in the enlargement process and thus as one of the areas for which EU assistance will be granted under IPA II. The expected results in the area of fundamental rights have been describes as follows: “Fundamental rights, including the protection of minorities in particular Roma [and] LGBTI persons [...], are efficiently ensured, especially through improved access to justice [and] consistent implementation of anti-discrimination policies and measures”.<sup>62</sup>

In order to reach these results the Commission supports, amongst others,<sup>63</sup> “training, monitoring and evaluation systems for fundamental rights”, as well as “improved and consistent implementation of related policies throughout the entire territory”. It further supports the improvement of “legal aid, access to justice and anti-discrimination measures for national minorities, including Roma and other vulnerable groups such as LGBTI”. Financial

---

<sup>58</sup> Ibid., Art. 2(2).

<sup>59</sup> Ibid., Art. 2(3).

<sup>60</sup> Ibid., Art. 14.

<sup>61</sup> European Commission 2014b, 3.

<sup>62</sup> European Commission 2014b, 20.

<sup>63</sup> Actions related to national preventive mechanisms as well as freedom of expression and the media are omitted.

support is further provided to the “incorporation of non-discrimination, gender equality, diversity, non-violent communication into education curricula, employment environments, health centres/institutions”. The “implementation of the Serbian anti-discrimination strategy and Roma action plans and eventually the future action plan to be devised under Chapter 23” are also to be supported under the Indicative Strategy Paper for Serbia. Last but not least, the “role of civil society organisations will be enhanced in monitoring of ... respect for fundamental rights.”<sup>64</sup>

Overall, in the seven years from 2014 to 2020 the amount of 265 million EUR are indicatively budgeted for the sector of rule of law and fundamental rights, including, however, also measures targeting the reform of the judiciary, the fight against corruption and organized crime, migration, asylum and visa policy.<sup>65</sup> It is noteworthy that the amount spent through IPA funds in the period from 2007 to 2013 was of 130 million<sup>66</sup> and is thus planned to be more than doubled.

When it comes to the way how progress will be measured and monitored, the table of “sectoral indicators” for the sector rule of law and fundamental rights is further subdivided in sub-sectors, one of which is fundamental rights. The indicator supposed to measure progress in this sub-sector is “Progress made towards meeting accession criteria” and the source mentioned to populate this indicator is the yearly Progress Report published by the Commission.<sup>67</sup> From the point of view of the candidate countries it appears somewhat euphemistic to proclaim that the progress towards achieving the objectives set under IPA II is measured on the basis of “clear and transparent” indicators. Methodologically, the strategy paper is inconsistent as in this case it mentions the Progress Reports as the source to be used to populate an indicator while in another case they are listed as an indicator. Clearness and transparency would require the Commission to make it explicit, as some point, which indicators it uses in order to come to its assessment in the yearly Progress Reports. While the Commission, thus, seems determined to improve transparency in monitoring progress, it appears that the methodology still needs to be improved.

---

<sup>64</sup> European Commission 2014b, 21.

<sup>65</sup> European Commission 2014b, 40.

<sup>66</sup> European Commission 2014b, 20.

<sup>67</sup> European Commission 2014b, 41-43.

## 2) Indicators in National Action Plans

Over the past couple of years, the Commission has gradually improved its monitoring strategy regarding the fields of rule of law and fundamental rights, first with the introduction of a new Chapter 23 dealing with the judiciary and fundamental rights in 2005 in the negotiating frameworks for Croatia (and Turkey) and of benchmarks for the opening and closing of each negotiation chapter. The 2006 Enlargement Strategy describes benchmarks as follows: “Benchmarks are a new tool introduced as a result of lessons learnt from the fifth enlargement. Their purpose is to improve the quality of the negotiations, by providing incentives for the candidate countries to undertake necessary reforms at an early stage. Benchmarks are measurable and linked to key elements of the *acquis* chapter. In general, opening benchmarks concern key preparatory steps for future alignment (such as strategies or action plans), and the fulfilment of contractual obligations that mirror *acquis* requirements. Closing benchmarks primarily concern legislative measures, administrative or judicial bodies, and a track record of implementation of the *acquis*.”<sup>68</sup> Interestingly however, Chapter 23 has been among the last ones to be opened with regard to Croatia, so that again the timeframe within which focus was placed on these issues was relatively short.

It was only with the 2011 Enlargement Strategy that it fixed its “fundamentals first” approach: “issues related to the judiciary and fundamental rights [Chapter 23] and to justice and home affairs [Chapter 24] ... should be tackled early in the accession process and the corresponding chapters opened accordingly on the basis of action plans, as they require the establishment of convincing track records. ... IPA funds will be targeted to support this process.”<sup>69</sup> The adoption of an Action Plan is currently the only opening benchmark for Chapter 23.

Action Plans are drafted by the candidate country so that it has full ownership of the document. The content is, however, based on guidance and substantial input given by the Commission through the screening report on the Chapter. Interim benchmarks, which are foreseen only for Chapters 23 and 24, are then subsequently included in the EU Common Position opening the Chapter. Closing benchmarks are designed to demonstrate a “solid track

---

<sup>68</sup> Commission of the European Communities, Enlargement Strategy and Main Challenges 2006-2007, Brussels, 8 November 2006, COM(2006) 649, 6.

<sup>69</sup> European Commission, Enlargement Strategy and Main Challenges 2011-2012, Brussels, 12 October 2011, COM(2011) 666 final, 5.

records of reform implementation across the board, based on clear actions and measures to be taken over time.<sup>70</sup>

The Commission does not link the benchmarks with indicators which would help measuring, whether the targets have been achieved. Indicators are, however, widely used by the candidate countries themselves in their various action plans. Serbia has, for instance, adopted a general Action Plan for Chapter 23<sup>71</sup> and in addition, in the areas relevant for this research, an Action Plan for the Implementation of the Strategy for Prevention and Protection against Discrimination for the Period 2014-2018<sup>72</sup> and an Action Plan on the Realisation of the Rights of National Minorities.<sup>73</sup> The screening report of May 2014 on Chapter 23 had indeed asked Serbia to “adopt one or more action plan(s), addressing in particular the issue listed below.”<sup>74</sup> Among these issues it specifically listed the need to “[c]omplement the anti-discrimination strategy with a credible action plan” as well as to “[a]dopt through an inclusive process a dedicated action plan focused on the effective implementation of existing provisions regarding the protection of minorities and taking into account the recommendations issued in the third Opinion of the Advisory Committee [on the Framework Convention for the Protection of National Minorities] on Serbia”.<sup>75</sup>

All these Action Plans contain indicators. The Action Plan for Chapter 23 closely follows the recommendations contained in the screening report on Chapter 23 and spells out overall results and impact indicators for each of the recommendations. The recommendation dealing with the area of non-discrimination, apart from requiring the complementation of the anti-discrimination strategy with a “credible” action plan (see below), demands Serbia to strengthen the “institutional capacity of the bodies active in this area, ... ensure more effective follow-up from law enforcement bodies to possible violations, enhance awareness and support measures” and particularly focus on “ending discrimination of the LGBTI community” and “protecting persons with mental disabilities in institutions of social welfare.”<sup>76</sup> As impact indicators to measure progress with regard to this recommendation or its fulfilment, the

---

<sup>70</sup> Wolfgang Nozar, “The 100% Union: The rise of Chapters 23 and 24”, August 2012, available at <https://www.clingendael.nl/sites/default/files/The%20100%25%20Union.%20The%20rise%20of%20Chapters%2023%20and%2024.pdf>

<sup>71</sup> Republic of Serbia, Negotiation Group for Chapter 23 2016.

<sup>72</sup> Republic of Serbia.

<sup>73</sup> Republic of Serbia 2016.

<sup>74</sup> European Commission, Screening Report Serbia. Chapter 23 – Judiciary and Fundamental Rights, 15 May 2014, 38-39.

<sup>75</sup> European Commission, Screening Report Serbia. Chapter 23 – Judiciary and Fundamental Rights, 15 May 2014, 38-39. In addition to these two plans, the Commission recommended Serbia in its screening report on Chapter 23 to “start preparations for adopting at the end of 2014 a new multi-annual strategy and action plan to improve living conditions of Roma”.

<sup>76</sup> Republic of Serbia, Negotiation Group for Chapter 23 2016, 256.



Action Plan only mentions positive reports written by external (Commission, peer review, CEDAW, GREVIO) or internal (Ombudsman, Government to committees of the National Assembly, Commissioner for the Protection of Equality) actors. While it might be the ultimate goal to receive positive comments relating to the protection from and prevention of discrimination from these various bodies, their reports cannot be considered as indicators in the technical sense.

The “results” listed in the following tables, setting out the activities planned to fulfil the recommendation, can much more be understood as indicators. A detailed analysis of these indicators shows, that structural and process indicators share roughly half each of the indicators (12/13) with only one outcome indicator appearing in the overall list. The structural indicators deal with the drafting and adoption of new or amended legislation, strategies and action plans. The process indicators are designed to measure efforts in the areas of strengthening the capacities of institutions involved in the non-discrimination field by trainings and recruitments as well as awareness raising. They could be made more concrete by providing the number of trainings provided each year to how many participants as well as information as to the staff turnover in the respective institutions.

Remarkable is the quantitatively specified target of recruiting 36 new employees to the office of the Commissioner for the Protection of Equality, in addition to the existing 24 staff.<sup>77</sup> It is further interesting to note that trainings are planned to be provided to staff of the Unit for Gender Equality in the Ministry competent for social protection, of the Office for Human and Minority Rights and of the Commissioner for the Protection of Equality. However, no regular or even compulsory trainings are foreseen for judges and prosecutors, the police and civil servants at state or local level. For them, a “manual on identification and effective suppression of discrimination cases”<sup>78</sup> shall be developed and distributed, and promoted by a media campaign and roundtables. While other measures with applicable indicators are to be set with regard to the police, it needs to be stressed that judges and prosecutors are among the most relevant actors in the enforcement of the reactive side of the right to non-discrimination and previous research has shown that there is a strong training need among judges to get familiar with the specificities of discrimination cases.

---

<sup>77</sup> The third opinion of the ACFC pointed to the problem of understaffing of the office of the Commissioner for the Protection of Equality. See ACFC, third opinion on Serbia, adopted on 28 November 2013, ACFC/OP/III(2013)006, paras. 19 and 223.

<sup>78</sup> Republic of Serbia, Negotiation Group for Chapter 23 2016, 264.

The Anti-discrimination Action Plan includes indicators to measure the achievement of objectives in eight different areas<sup>79</sup> as well as indicators to measure the fulfilment of the activities planned under each of these areas. The majority of indicators to measure the fulfilment of activities would qualify, according to the categorisation used by the OHCHR, as structural indicators. They deal with the assessment of existing legislation and the preparation and adoption of revised laws, the preparation and adoption of action plans and the establishment of bodies for monitoring and other purposes. The Action Plan also includes process indicators. Among them appear the organization of public awareness and media campaigns, the number of media reports on gender-based violence, migrants or persons with disabilities, or trainings provided to 80 journalists per year on the prohibition of discrimination in the media and the role of media in preventing it. Other process indicators give information on the adoption of training plans for civil servants, members of the police directorate and judges and prosecutors, which each year include the topic of protection from discrimination, thereby filling the gap left open by the Action Plan on Chapter 23. Outcome indicators, such as the increased level of tolerance towards LGBTI confirmed by relevant research and surveys, and the completed removal of discriminatory contents from school curricula and textbooks, are rather scarce. The time frames indicated for the achieving results on certain indicators appear sometimes to be overly optimistic. For instance, for the activity to introduce into the formal education system “topics which develop the culture of peace, tolerance, understanding and respect for diversity, intercultural dialogue, gender equality and non-discrimination towards different vulnerable groups” the outcome indicator of those topics and modalities of work being introduced in the formal education system at different levels is expected to be show positive results within 12 months.

The Action Plan for the Realization of Rights of National Minorities is based on the recommendations made in the third opinion of the Advisory Committee of the Framework Convention for the Protection of National Minorities.<sup>80</sup> In the field of equality and non-discrimination the Action Plan sets the very broad strategic objective of ensuring “the exercise of the rights and freedoms of national minorities under equal conditions, on the entire territory of the Republic of Serbia, the development of tolerance, and prevention of discrimination”.<sup>81</sup>

---

<sup>79</sup> These areas are subdivided in two integrated-general areas of the strategy, namely 1) public administration and prohibition of discrimination, and 2) security, home affairs and judiciary, and six specific areas of the strategy, namely 1) education and professional education and training, 2) labour and employment, 3) marriage, family relations and inheritance, 4) health care, health protection, social welfare and housing, 5) youth, sports, culture and media, and 6) regional development and local self-government.

<sup>80</sup> ACFC, third opinion on Serbia, adopted on 28 November 2013, ACFC/OP/III(2013)006.

<sup>81</sup> Republic of Serbia 2016, 12.

Whereas the “impact indicators” developed to measure the achievement of this objective seem to be chosen rather randomly,<sup>82</sup> the “result indicators” designed to measure progress in fulfilling a range of activities are much more pertinent.

Concerning the activity to provide fast and detailed response to the recommendations of the Ombudsman, the Provincial Ombudsman and the Commissioner for the Protection of Equality, the Action Plan includes the (process) indicator of the number of recommendations of these bodies in relation to the number of recommendations fully implemented by the respective public authority. Many of the activities are related to the suppression of hate speech and hate crimes and their successful implementation is planned to be measured by (process) indicators such as the number of trainings to stakeholder of criminal justice on the importance of prosecuting hate crimes and the number of participants of such trainings, time dedicated in public media of raising awareness on causes and consequences of hate crimes. Outcome indicators are, for instance, reduced number of hate speech in the media and social networks confirmed by independent analyses and studies. Only one but very important structural indicator, dealing with amending the Constitution in order to eliminate apparent ambiguities related to affirmative action for national minorities, is included in this part of the Action Plan.

In general, it has to be welcomed that Serbia has developed indicators to measure progress in achieving the objectives and fulfilling the activities contained in its Action Plans. Domestic ownership as an important element for these indicators to be accepted is thus fulfilled.<sup>83</sup> The above overview has shown that structural and especially process indicators figure more prominently among the indicators as compared to outcome indicators. In terms of being able to also assess whether the legislative measures and efforts to implement them effectively have an effect on the ground, on the rights of persons at risk of being or being discriminated, it is, however, essential to include outcome indicators more consistently.<sup>84</sup>

---

<sup>82</sup> The Action Plan lists the following “impact indicators”: “- Number of minutes at public broadcasters/number of printed brochures and other printed materials dedicated to raising awareness of the rights of national minorities; - Number of trainings held for civil servants at all levels; - Number of trainings aimed at strengthening the awareness of all stakeholders of the criminal justice system about the importance of prosecuting hate crimes” Republic of Serbia 2016, 12.

<sup>83</sup> Although one has to acknowledge that the Action Plans themselves have been drafted mainly because they were a requirement for the opening of negotiation chapters and that the indicators might have been perceived as necessary part of these plans, without investing too much effort in developing them.

<sup>84</sup> Looking at the Montenegrin Action Plan on Chapter 23, one of the differences is that this latter plan uses two kinds of indicators to measure progress in fulfilling the planned activities: indicators of result (which resemble mainly to process indicators) and indicators of impact (which resemble in most cases to outcome indicators). In the methods to determine these indicators the Action Plans says that the latter are supposed to give “measurable data pointing to changes made in society.” See Government of Montenegro 2013, 10.

### 3) Indicators in the Cooperation and Verification Mechanism for Romania and Bulgaria

The Cooperation and Verification Mechanism (CVM) for Romania and Bulgaria could serve as an example of continued monitoring after accession and give an idea about how successful such an approach would be. This is the reason why it is dealt with here in a nutshell, even if it does not deal with non-discrimination as an area that continues to be monitored and even if indicators are not systematically used either by the Commission or the countries concerned. If the mechanism was to be copied as applied to Romania and Bulgaria in the fields of judicial reform and corruption and simply broadened to the whole range of values enshrined in Art. 2 TEU, including human rights and equality, the results would probably not be very promising. In the following, it will be tried to assess what the reasons for its very limited success are and what can be learned from this experience for the use of indicators.

When Bulgaria and Romania became members of the EU in 2007, the Council recognized that certain weaknesses persist in the areas of judicial reform and the fight against corruption, and in the case of Bulgaria also in the area of combatting organized crime. The Commission thus set four benchmarks for Romania<sup>85</sup> and six benchmarks for Bulgaria<sup>86</sup> which were to be followed-up upon on a regular basis by the establishment of the CVM. The use of indicators to measure progress towards achieving the benchmarks was not explicitly introduced within the CVM, nor have the states concerned been asked to make use of them. Implicitly, however, to facilitate the EU's monitoring activities, indicators do play a role.<sup>87</sup>

As the Commission points out, for instance, in its July 2012 Report on Romania, “[t]he CVM does not ask Romania to achieve higher standards than exist in other Member States. Its target is to help Romania achieve standards comparable to other Member States”.<sup>88</sup> The situation in other member states is thus an important factor and the Commission uses various indexes developed by the CoE, OECD and UN agencies<sup>89</sup> as well as by organizations such as Transparency International (eg the Corruption Perception Index<sup>90</sup>), Freedom House (Nations

---

<sup>85</sup> Annex of Commission of the European Communities 2006b.

<sup>86</sup> Annex of Commission of the European Communities 2006a.

<sup>87</sup> Serban 2015, 202.

<sup>88</sup> European Commission 2012, 3.

<sup>89</sup> European Commission 2012, footnote 6.

<sup>90</sup> Referred to in, eg European Commission 2012, footnote 34. See also the Report on Romania, January 2013, footnote 20, and January 2014, footnote 39; and the Report on Bulgaria, January 2014, footnote 23.

in Transit rankings<sup>91</sup>) and the World Bank (the Worldwide Governance Indicators<sup>92</sup>) to assess the situation in the two countries.<sup>93</sup>

Reference to such general indices can be considered useful as it helps situating the situation in the two monitored countries as compared to the other member states. The Commission, however, refers to them only very rarely and inconsistently. Also, it might be questioned whether reference to them is useful in terms of the Commission guiding Bulgaria and Romania towards achieving the set benchmarks or in terms of these states planning their activities as they are indices and thus themselves composed of a weighted aggregation of indicators. What exactly is thus measured by the Commission remains unclear for the states.

Other than referring occasionally to these indices, the Commission's monitoring within the CVM does not rely on indicators that could have been, in the best of cases, agreed upon preliminarily. This has been identified as one of the factors that reduced the reform potential of the CVM.<sup>94</sup> The combined reading of pre-accession Commission reports and reports under the CVM allows for an extrapolation of fields that have constantly been discussed by the Commission and from these one could derive the indicators which implicitly are at the basis of the Commission's monitoring.<sup>95</sup> The potential of indicators to function as tool to support reform is, however, greatly curtailed by such ambiguity.

Although there is a general lack of explicit indicators, one quantitative indicator is mentioned quite explicitly in the first report on Bulgaria. Under the benchmark dealing with the fight against organized crime, the Commission states that “[t]he real tangible measure of success remains the number of successful prosecutions and convictions.”<sup>96</sup> To act on this indicator, Bulgaria strengthened law enforcement institutions by granting them specialized powers to fight against corruption and organized crime. However, rather than strengthening their powers the real challenge regarding these bodies is “to put them under parliamentary scrutiny and independent judicial review.”<sup>97</sup> The number of convictions as measure of success has been criticized because the Bulgarian criminal justice has a very high conviction rate anyway and some of the measures that have been introduced to act on this indicator (such as the establishment of a specialized criminal court for organized crime or the adoption of a law on

---

<sup>91</sup> Referred to in, eg European Commission 2012, footnote 34.

<sup>92</sup> Referred to in, eg European Commission 2012, footnote 21.

<sup>93</sup> Reference to these indices appears more often in the documents related to Romania than in the documents related to Bulgaria.

<sup>94</sup> Carrera et al. 2013, 105.

<sup>95</sup> For an attempt towards extrapolating rule of law indicators in this way, see Starl et al. 2014, 142-170.

<sup>96</sup> Report Bulgaria 2007, 21.

<sup>97</sup> Carrera et al. 2013, 104.

confiscation of illegal assets) were seen by civil society organization as attempt by the state to play “tough on crime” to the detriment of fundamental rights.<sup>98</sup>

This case serves as a good example for one of the downsides of the use of indicators: that there is the inherent risk of the measure becoming the target, losing out of sight the bigger picture. Whereas a high number of prosecutions and convictions for corruption or organized crimes can be seen as an indicator for a functioning judicial system, it must not become the aim of the government to increase these numbers at any cost. As such, indicators would become an additional element of a logic of consequences driven politics, known from the pre-accession period, or even exacerbate this logic of action in the sense that good performance on individual indicators is sought not to improve the situation with regard to the fight against organized crime but to please the Commission. Overall, the CVM has not managed to break out from this logic of action,<sup>99</sup> with two major weaknesses of the CVM, which were not present in the pre-accession process.

The first one is related to the importance of not losing out of sight the interrelatedness of the various aspects of rule of law with democracy and fundamental rights. The CVM is, however, selective in terms of topics. Not only has it sidelined democracy and fundamental rights as values, it even tapered down the rule of law issue to fight against corruption and organized crime, and judicial reform, so that attention is focusing on these issues instead of on the more wide-ranging pre-accession efforts to promote democracy, rule of law and fundamental rights.<sup>100</sup> To counteract this clearly undesirable tendency, an instrument as the one proposed by the European Parliament, focusing on evidence-based monitoring concerning all these values should be seriously considered. Apart from this selectivity in terms of topics, the approach of the EP would have the clear advantage of not singling out individual countries, which clearly do have problems in the fields which continue to be monitored but where there are old member states which according to international indexes used also in the Commission’s reports fare equally bad or even worse than – at least – Romania.<sup>101</sup>

The second limitation of the CVM as compared to the pre-accession process is the fact that it is a rather toothless instrument. Whereas in the pre-accession phase the possibility of eventually not being granted membership (although fading towards the end of negotiations)

---

<sup>98</sup> Carrera et al. 2013, 104.

<sup>99</sup> Serban quotes one of her interview partners as saying “that the CVM resembles old social slogan – we pretend to reform, they pretend to care.” Serban 2015, 204.

<sup>100</sup> Carrera et al. 2013, 105; Serban 2015, 205.

<sup>101</sup> See for instance the Corruption Perception Index of 2016, where Italy ranks on place 61 whereas Romania ranks on place 58, the same as Greece.

would have been a severe consequence for not managing to fulfil the accession criteria, the CVM does not dispose of a sanctioning possibility. In the case of Bulgaria, however, due to the lack of sufficient progress under the CVM, in spring of 2008 the Commission froze the payments under various financial instruments, which led to increased reform efforts thereafter.<sup>102</sup>

The CVM has been in place for about a decade. Despite the various political crisis Romania and Bulgaria went through in these years since their accession to the EU, the specific recommendations spelled out in the Commission's reports led to positive developments in the fields of fight against corruption and organized crime and reform of the judiciary. However, the mechanism has not managed to be enough of a driver of reform so that it could be lifted. In the words of the Commission, "[t]he sustainability of progress is one of the conditions to show that a mechanism like the CVM would no longer be required."<sup>103</sup> The conclusions that can be drawn for the use of indicators from the Bulgarian and Romanian experience under the CVM are the following:

As the Commission is particularly interested in sustainable and irreversible reforms, explicit indicators would have made it easier for the Commission to observe the progress (or lack thereof) over the past decade. The tripartite structure proposed by the OHCHR measuring progress of structural, process and outcome indicators would be particularly helpful, as it offers valuable information about sustainability and irreversibility of reforms in terms of legislation, institutions, implementation efforts and effectiveness of reforms on the ground.

Although the Commission is spelling out detailed and most helpful recommendations to the countries, explicit indicators would be helpful also for the states in planning their policies towards reaching the set benchmarks and providing the Commission with the relevant information about the achieved results. Good performance on individual indicators must, however, never be seen as the aim in itself, as has been shown by the example of the number of prosecutions and convictions as indicator for achieving the benchmark of fighting against organized crime. Neither they must be seen in isolation from the overall goal the achievement of which they are supposed to measure, nor in isolation from other values deserving protection.

---

<sup>102</sup> Carrera et al. 2013, 104-105.

<sup>103</sup> Romania 2016 report, 2.

In order for indicators to be perceived as technology of reform rather than as technology of control<sup>104</sup> domestic ownership in construction and use should be secured. This would make it more likely that indicators are really used for practical, policy-making and auto-evaluation purposes.<sup>105</sup>

And finally, as disappointing as it may be, it appears that monitoring on such fundamental issues such as the core values, must be linked with consequences in case of disrespect. They should be preceded by the use of all kinds of supportive, persuasive, diplomatic tools. But where all these tools should not be able to achieve results, a state must be ready to accept the consequences, such as the triggering of the mechanisms and potential sanctions foreseen under Art. 7 TEU. The claim, that this would be to the detriment of the population at large, rather than to the political elites who are the main responsible for the failed reforms could be countered by the argument, that this would definitely add to the credibility of the EU and its institutions when it comes to the protection of Art. 2 values which are there to protect the population and by the hope, that a population aware of the consequences would be more willing or feel the need to exert pressure on their government.

#### 4) Conclusions

While the Commission has clearly committed itself to monitor progress toward achieving the objectives under its financial and technical assistance instrument (IPA II) through clear, transparent and measurable indicators, it has so far not developed such indicators but is referring to its own Progress Reports which are themselves not drafted on the basis of indicators. To end this self-referential approach, the Commission would need, at some point, to develop such indicators. While states do use indicators extensively in the framework of Action Plans, they rather seem to be considered as necessary part of such plans, without however investing a lot of effort in their development and placing too strong a focus on structural and process indicators to the detriment of outcome indicators. In the CVM the limited reform potential is amongst others seen to be connected to a lack of previously and commonly identified indicators, to selectivity in terms of topics and countries, and the lack of sanctions. These conclusions indicate the need for a mechanism of the kind proposed by the European Parliament. Even if in its final version the term “indicator” is omitted, the expert

---

<sup>104</sup> On this distinction see Serban 2015.

<sup>105</sup> Serban 2015, 214 and 217. Serban also points out to the importance of the producers being credible in order for the indicators they (co-)develop to be credible. On a specific Romanian negative example on this point see Serban 2015, 215.



panel supposed to draft a yearly report would need to operationalize the different aspects of rule of law, democracy and fundamental rights. The result of this operationalization, whether or not it is called indicator, will have to pay attention to structure, processes and, in particular, outcomes in the realization of the values enshrined in Art. 2 TEU. And ultimately, in case the panel of experts would come to the conclusion that there is a clear risk of a serious breach of the values or even a serious and persistent breach, the European Parliament, the Council and the Commission, would at least need to “each discuss the matter without delay and take a reasoned decision, which shall be made public.”<sup>106</sup> Although this is still not an automatic triggering of Art. 7 it would already come close to it.

#### ***IV. Tentative Set of Indicators to Monitor Equality and Non-Discrimination***

This chapter sets out to propose a tentative set of quantitative and qualitative indicators, covering the reactive and preventive perspective to non-discrimination. As mentioned earlier, these indicators do not cover the substantive side but only the procedural side of non-discrimination.

To start with, the date of entry into force and coverage of relevant domestic legislation as well as of national action plans to combat discrimination can be seen as *structural indicators* cutting across the *reactive* and *preventive realm*. The periodicity and coverage of the collection and dissemination of data relevant to assessing the implementation of the right to non-discrimination can also be considered a cross-cutting structural indicator, just as the number of registered or active NGOs and full-time equivalent employment involved in the protection and promotion of the right to non-discrimination.

The dissemination of information on non-discrimination provisions is a state duty foreseen by Art. 10 of the Race Directive. Increasing rights awareness through public information campaigns on rights, available complaints mechanisms and sanctions, as well as trainings to judges, civil servants, law enforcement bodies, employers and service providers (duty bearers) can thus be considered a *process indicator* covering both, the *reactive* as well as the *preventive side*.

The *reactive branch* is concerned with the access to complaints mechanisms once a person feels that he or she has been discriminated against. According to the Race Directive, both judicial and non-judicial mechanisms have to be available. *Structural indicators for judicial*

---

<sup>106</sup> European Parliament 2016, Art. 10(2) and (3).

*mechanisms* would look into details about the transposition of Art. 7 Race Directive (defence of rights), and in particular of its para. 2, which deals with the possibility of associations to engage on behalf or in support of complainants. States have regulated this possibility in different ways, some being more restrictive than others. The amount of limitations imposed on associations to engage in discrimination complaints provides information as to the level of potential support victims can get. Other structural indicators would provide details about the transposition of Art. 15 Race Directive, providing that sanctions in cases of violation must be effective, proportionate and dissuasive, and of Art. 9 Race Directive, obliging states to introduce measures to protect individuals from victimization. *Process indicators* in this field could include in general the number of complaints (as compared to the number of complaints with non-judicial mechanisms) and of convictions and rejections. The reasoning of judgments would be an important process indicator concerning the (development of) understanding of equality and non-discrimination related concepts within the judiciary. Indicators could further look into state measures to facilitate the role of non-state actors to engage (such as financial support to organisations bringing joint legal actions or information campaigns on the possibility to approach non-state actors), the extent at which the range of punishment is used and the number and outcome of victimization cases. In terms of *outcome indicators*, it would be important to find out through surveys the level of awareness among the target population about available complaints mechanisms (thus going also for non-judicial mechanisms), their level of trust in institutions (NGOs being able to support their case, the judiciary to resolve their case in a timely and unbiased way, to be appropriately protected from victimization) which would contribute to increased willingness to report about discrimination, as well as whether sanctions are considered dissuasive.

*Structural indicators for non-judicial mechanisms* would look into how states have transposed Art. 13 of the Race Directive (bodies for the promotion of equal treatment) and in particular how the mandate of the Equality Body has been shaped. Efforts to ensure independence and efficiency of the Equality Body would rather qualify as *process indicator*. Here one would collect information as to the position of the Equality Body in the overall institutional framework, to whom it is accountable, if financing and staffing is such to ensure efficient functioning and whether geographic outreach is such to reach also vulnerable groups living in the periphery or in areas where there is a particularly high risk of discrimination on specific grounds (eg. where a specific minority resides). In addition to awareness of the existence of and trust in the non-judicial complaint mechanism among potential victims, the follow-up given to recommendations from the Equality Body could be taken as *outcome indicators*.

When it comes to indicators measuring the effectiveness of mechanisms in place for the *prevention of discrimination*, a distinction can be made between indicators related to positive action and indicators dealing with the role of non-state actors. *Structural indicators concerning positive action* would look into the way states have transposed Art. 5 of the Race Directive, which foresees that, “[w]ith a view to ensuring full equality in practice”, which would amount to an outcome indicator, “the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.” This provision, thus, allows Members States to take positive action but does not oblige them to do so. Domestic (constitutional) law(s) would shed light on the approach taken by a state on the issue. In terms of *process indicators* the proposal would be to look at whether promotional measures targeting vulnerable groups (such as quota, etc.) are set, whether they have become the object of judicial dispute and if so, how the courts decided on the issue. Another indicator could look into whether systematic anti-discrimination mainstreaming and impact assessment is carried out. As mentioned above, it is Art. 5 Race Directive itself that spells out the *outcome indicator*: “full equality in practice”. A trend towards such equality could be measured by the proportion of vulnerable groups in elected bodies and in relevant positions (e.g., managerial) in the public and private sectors.

When evaluating the *role of non-state actors* in the prevention of discrimination, the *structural indicators* would need to analyse the transposition of Art. 11 and 12 RED on social dialogue and dialogue with NGOs as well as of Art. 13 RED on Equality Bodies when it comes to their promotion-related part of the mandate. Concerning the latter, the *process indicators* would again have to look at measures to ensure the independence and efficiency of the Equality Body and the *outcome indicator* would provide information as to whether the recommendations of the Equality Body have been followed up. Regarding the dialogue with NGOs, *process indicators* would give information as to whether the state supports the capacity building of NGOs in order for them to be able to participate in the dialogue, whether the dialogue is institutionalized and takes place on a regular basis. In terms of *outcome indicators* it is proposed to analyse whether the dialogue is meaningful, which is the case if the NGO’s input is seriously taken into consideration.

## Tentative set of indicators measuring the effectiveness of mechanisms in place for the reaction to and prevention of discrimination

	Reaction: Access to complaints mechanisms		Prevention	
	Judicial	Non-judicial (Equality Bodies)	Positive action	Role of non-state actors
Structural	<ul style="list-style-type: none"> <li>• Date of entry into force and coverage of <b>domestic laws</b> for implementing the right to non-discrimination* according to Equality Directives, Art. 20-23 FRC, Art. 19 TFEU</li> <li>• Date of entry into force and coverage of <b>national plan</b> to combat discrimination</li> <li>• Periodicity and coverage of the collection and dissemination of <b>data</b> relevant to assessing the implementation of the right to non-discrimination* as well as level of disaggregation</li> <li>• Number of registered or active <b>NGOs</b> and full-time equivalent employment (per 100.000 persons) involved in the promotion and protection of the right to non-discrimination*</li> </ul>			
	<ul style="list-style-type: none"> <li>• Details about the transposition of                             <ul style="list-style-type: none"> <li>○ Art. 7(2) RED: Criteria established by law for non-state actors to be allowed to act in support or on behalf of a victim of discrimination (legal standing, collective redress)</li> <li>○ Art. 9 RED: victimization</li> <li>○ Art. 15 RED: effective, proportionate and dissuasive sanctions</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Details about the transposition of Art. 13 RED on Equality Bodies (EB) and their mandate (tribunal-type EB to be considered)</li> </ul>	<ul style="list-style-type: none"> <li>• Details about the transposition of Art. 5 RED: Domestic (constitutional) law(s) regulating positive action</li> </ul>	<ul style="list-style-type: none"> <li>• Details about the transposition of Art. 11 and 12 RED on social dialogue and dialogue with NGOs</li> <li>• Details about the transposition of Art. 13 RED on Equality Bodies (EB) and their mandate (promotion-type EB to be considered)</li> </ul>
Process	<ul style="list-style-type: none"> <li>• Increasing rights awareness through                             <ul style="list-style-type: none"> <li>○ public information campaigns on rights and available complaints mechanisms, especially addressing target population (right holders) by national and local authorities, equality bodies, NGOs, trade unions</li> <li>○ permanent integration of AD issues into basic and continuing education programmes of judges and prosecutors, staff of equality bodies, civil servants and police, as well as trainings to employers, service providers (duty bearers)</li> </ul> </li> </ul>			
	<ul style="list-style-type: none"> <li>• No. of cases (individual/collective) considered/convictions in relation to no of complaints with EB – reasoning of judgments</li> <li>• Measures to facilitate role of non-state actors (eg financial support to organisations bringing joint legal actions, sensitize them for their possibilities, their potential role, build their capacities)</li> <li>• Measures to protect from victimization, number/outcome of victimization cases</li> <li>• Level of sanctions inflicted</li> </ul>	<ul style="list-style-type: none"> <li>• No. of cases considered</li> <li>• Measures to ensure independence and efficiency of EB (where is it established, accountable to whom, financing and staffing, geographic outreach)</li> </ul>	<ul style="list-style-type: none"> <li>• Promotional measures targeting vulnerable groups (quotas, etc.)</li> <li>• No. of judgments dealing with positive action and their outcome</li> <li>• AD impact assessment</li> <li>• AD mainstreaming</li> </ul>	<ul style="list-style-type: none"> <li>• Involvement of social partners, NGOs and EB in drafting of AD related laws and policies</li> <li>• State measures to foster dialogue with NGOs (is dialogue institutionalized, regular, is capacity building supported)</li> <li>• Measures to ensure independence and efficiency of EB (where is it established, accountable to whom, financing and staffing, geographic outreach)</li> </ul>
Outcome	<ul style="list-style-type: none"> <li>• Level of awareness among right holders, duty bearers and general public about rights and available complaints mechanisms</li> </ul>			
	<ul style="list-style-type: none"> <li>• Level of trust in institutions (contributing to increased willingness to report about discrimination)                             <ul style="list-style-type: none"> <li>○ NGOs being able to support cases,</li> <li>○ the judiciary to resolve their case in a timely and unbiased way,</li> <li>○ to be appropriately protected from victimization</li> </ul> </li> <li>• Sanctions considered dissuasive</li> </ul>	<ul style="list-style-type: none"> <li>• Follow-up given to EB recommendations</li> <li>• Level of trust in EB among potential victims</li> </ul>	<ul style="list-style-type: none"> <li>• Trend towards effective equality: proportion of vulnerable groups in elected bodies and in relevant positions (e.g., managerial) in the public and private sectors</li> </ul>	<ul style="list-style-type: none"> <li>• Follow-up given to EB recommendations</li> <li>• Follow-up given to NGO recommendations based on their monitoring and evaluation of policies, action plans, etc. (meaningful dialogue)</li> </ul>

## V. *Final Remarks*

The above tentative set of indicators represents only an initial attempt of finding a structure appropriately covering what has been called here the procedural side of non-discrimination which could also be described as “operationalizing the law and implementing anti-discrimination policies”.<sup>107</sup> Reaction to violations is definitely not enough, the preventive side has thus to be included as well. The proposed indicators are all based in the rights contained in the Race Equality Directive and cover those fields in which states have some discretion in adapting the Directive to their respective local circumstances. The indicators do not intend to limit policy options but should help to understand, in the occasion of monitoring, whether the state has done enough to transpose *and* effectively implement the Directive. In addition, the selection of indicators has been guided, at least partly, by the factors, identified by academic research<sup>108</sup> as well as by the Fundamental Rights Agency in its opinion on the situation of equality ten years from the initial implementation of the equality directives,<sup>109</sup> that prevent more effective implementation: these factors concern rights awareness, access to justice (and in this context lack of litigation from below, lack of support from civil society, shortcomings related to the judiciary, weak Equality Bodies), data collection and positive action. By focusing monitoring on the aspects that appear to hamper effective implementation it is hoped to concentrate attention on these problematic areas and improve performance progressively.

As already mentioned, it is planned to undertake a comparative review of the implementation of the EU non-discrimination acquis in the past two decades related to the fields covered by the structure developed for the tentative set of indicators, looking into structures, processes and outcomes. This will help determining whether the tentative set of indicators holds or needs revision, it will help with the interpretation of results in case these indicators are used for future monitoring and it will provide a pool the experiences and practices in the implementation of the EU non-discrimination acquis others can potentially learn from. And with “others” we have in mind both, acceding countries which are about to define their anti-discrimination legislation and strategy, as well as member states which might be in need of re-considering legislative choices and implementation practices that might not stand up to scrutiny if there was a regular monitoring of fundamental rights, including the right to equality and non-discrimination within the European Union.

---

<sup>107</sup> European Commission 2008, 49 et seq.

<sup>108</sup> See eg. Falkner, Treib 2008, 304 et seq.

<sup>109</sup> FRA 2013.

## Bibliography

Bárd, Petra; Carrera, Sergio; Guild, Elspeth; Kochenov, Dimintry (2016): An EU mechanism on Democracy, the Rule of Law and Fundamental Rights (CEPS Paper in Liberty and Security in Europe, 91).

Carrera, Sergio; Guild, Elspeth; Hernanz, Nicholas (2013): The Triangular relationship between Fundamental Rights, Democracy and Rule of Law in the EU - Towards an EU Copenhagen Mechanism. Study prepared for the European Parliament.

Commission of the European Communities (2006a): Commission Decision establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption (C (2006) 6570 final).

Commission of the European Communities (2006b): Commission Decision establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (C (2006) 6569 final).

Council of Europe, Congress of Local and Regional Authorities, Monitoring Committee (2011), Developing indicators to raise awareness of human rights at local and regional level, CG(21)10.

de Beco, Gauthier (2008): Human Rights Indicators for Assessing State Compliance with International Human Rights. In *Nordic Journal of International Law* 77 (1-2), pp. 23–49.

de Schutter, Olivier (2016): Follow-up to the European Parliament's Resolution of 8 September 2015 on 'The situation of fundamental rights in the European Union (2013-2014)'. European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs. Brussels.

European Commission (2008): The fight against discrimination and the promotion of equality: How to measure progress done. Publications Office of the European Union. Luxembourg.

European Commission (2012): Report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism (COM(2012) 410 final).

European Commission (2014a): EU Anti-Corruption Report (COM(2014) 38 final).

European Commission (2014b): Indicative Strategy Paper for Serbia.

European Parliament (2016): Report with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (2015/2254(INL)) (A8-0283/2016).

Falkner, Gerda; Treib, Oliver (2008): Three Worlds of Compliance or Four? The EU-15 Compared to New Member States. In *Journal of Common Market Studies* 46 (2), pp. 293–313.

FRA (2009): Developing indicators for the protection, respect and promotion of the rights of the child in the European Union. Summary Report.

FRA (2010): Developing indicators for the protection, respect and promotion of the rights of the child in the European Union. FRA.

FRA (2013): Opinion of the European Union Agency for Fundamental Rights on the situation of equality in the European Union 10 years on from initial implementation of the equality directives (1/2013).

FRA (2014): The right to political participation for persons with disabilities: human rights indicators.

FRA (2015): Annual Report 2014. Fundamental rights: challenges and achievements in 2014.

Government of Montenegro (2013): Action Plan for Chapter 23: Judiciary and Fundamental Rights.

Green, Maria (2001): What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement. In *Human Rights Quarterly* 23 (4), pp. 1062–1097.

Hodasz, Marta; Köhler, Katharina; Liegl, Barbara (2009): Indicators and Monitoring Systems as Preventive Tools in the Area of Ethnic and Religious Discrimination. In Julia Kozma, Manfred Nowak, Roland Schmidt (Eds.): Indicators and monitoring systems as preventive tools for ensuring peace and security and respect for human rights in external policy-making of the EU. Proceedings of the COST workshop "Human Rights, Peace and Security in EU Foreign Policy". Vienna: NWV, Neuer Wissenschaftlicher Verlag, pp. 83–98.

Hunt, Paul (2003): Interim report of the Special Rapporteur of the Commission on Human Rights on the right of everyone to enjoy the highest attainable standard of physical and mental health, Mr. Paul Hunt. UN General Assembly (A/58/427).

Landman, Todd (2004): Measuring Human Rights: Principle, Practice, and Policy. In *Human Rights Quarterly* 26 (4), pp. 906–931.

Landman, Todd; Carvalho, Edzia (2010): Measuring Human Rights: Routledge.

Mihr, Anja (2011), *Human Rights Benchmarks for EU's External Policy*, European Parliament, Directorate-General for External Policies, Policy Department, PE 457.059.

OHCHR (2006): Report on Indicators for Monitoring Compliance with International Human Rights Instruments (HRI/MC/2006/7).

OHCHR (2008): Report on Indicators for Promoting and Monitoring the Implementation of Human Rights (HRI/MC/2008/3).

OHCHR (2011): Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council (E/2011/90).

OHCHR (2012): Human Rights Indicators. A Guide to Measurement and Implementation (HR/PUB/12/5).

Pech, Laurent; Wennerström, Erik; Leight, Vanessa; Markowska, Agnieszka; De Keyser, Linda; Gómez, Ana; Spanikova, Hana (2016): An EU mechanism on democracy, the rule of law and fundamental rights. Study written for the European Added Value Unit, European Parliament.

Regulation (EU) No 231/2014 of the European Parliament and of the Council establishing an Instrument for Pre-accession Assistance (IPA II).

Republic of Serbia: Action Plan for the Implementation of the Strategy for Prevention and Protection against Discrimination for the Period 2014-2018.

Republic of Serbia (2016): Action Plan for the Realisation of the Rights of National Minorities.

Republic of Serbia, Negotiation Group for Chapter 23 (2016): Action Plan for Chapter 23.

Rosga, AnnJanette; Satterthwaite, Margaret L. (2009): The Trust in Indicators: Measuring Human Rights. In *Berkeley Journal of International Law* 27 (2), pp. 253–315.

Serban, Mihaela (2015): Rule of Law Indicators as a Technology of Power in Romania. In Sally Engle Merry, Kevin Davis, Benedict Kingsbury (Eds.): *The Quiet Power of Indicators: Measuring Governance, Corruption, and Rule of Law*. Cambridge: Cambridge University Press.

Starl, Klaus; Apostolovski, Veronika; Meier, Isabella; Möstl, Markus; Vivona, Maddalena; Kulmer, Alexandra (2014): Human Rights Indicators in the Context of the European Union. Deliverable within the FP7 Project "Fostering Human Rights among European Policies". ETC Graz.

van Ballegooij, Wouter; Evas, Tatjana (2016): An EU mechanism on democracy, the rule of law and fundamental rights. Interim European Added Value Assessment accompanying the Legislative initiative Report (Rapporteur Sophie in 't Veld). European Parliamentary Research Service, European Added Value Unit.

Welling, Judith V. (2008): International Indicators and Economic, Social, and Cultural Rights. In *Human Rights Quarterly* 30 (4), 933-958.