# Fundamental Rights Report 2019

FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

A great deal of information on the European Union Agency for Fundamental Rights is available on the Internet.
It can be accessed through the FRA website at fra.europa.eu.

The *Fundamental Rights Report 2019* is published in English. Its print version does not contain references.
A fully annotated version, including the references in endnotes, is available for download at:
http://fra.europa.eu/en/publication/2019/fundamental-rights-report-2019.

FRA's annual Fundamental Rights Report is based on the results of its own primary quantitative and qualitative research and on secondary desk research at national level conducted by FRA's multidisciplinary research network, FRANET.

Relevant data concerning international obligations in the area of human rights are offered online in a regularly updatedformat under fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations.



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FOR FUNDAMENTAL RIGHTS

# Fundamental Rights Report 2019

# Foreword

It is not often that humanity comes together to outline a blueprint for a better world. The Agenda 2030 and its 17 Sustainable Development Goals, embraced by leaders around the globe, do just that. But the whole project will only succeed if we deliver the SDGs with human rights embedded within them.

Underscoring this point, this year's focus chapter explores the interrelationship between human rights and the SDGs in the EU context. It takes a particularly close look at the goals related to reducing inequality and to promoting peace, justice and strong institutions. The chapter also explains how bodies like ours can help empower everyone, especially those most at risk of being left behind, by providing data needed to develop – and evaluate progress on – relevant and evidence-based policy efforts.

The remaining chapters review the main developments of 2018 regarding: the use of the EU Charter of Fundamental Rights; equality and non-discrimination; racism, xenophobia and related intolerance; Roma integration; asylum, borders and migration; information society, privacy and data protection; rights of the child; access to justice, including rights of crime victims; and implementation of the Convention on the Rights of Persons with Disabilities.

The *Fundamental Rights Report 2019* also presents FRA's opinions on these developments. Available in all EU languages, they provide evidence-based, timely and practical advice on possible policy responses for consideration by the main actors within the EU.

As always, we thank FRA's Management Board for overseeing this report from draft stage through publication, as well as the Scientific Committee for its advice and expert support. Such guidance helps guarantee that the report is scientifically sound, robust, and well-founded. Special thanks go to the National Liaison Officers, whose input bolsters the accuracy of EU Member State information. The European Network of National Human Rights Institutions (ENNHRI) and the European network of equality bodies (Equinet) provided helpful input on the focus chapter. We are also grateful to the various institutions and mechanisms – such as those established by the Council of Europe – that consistently serve as valuable sources of information for this report.

**Sirpa Rautio**
*Chairperson of the FRA Management Board*

**Michael O'Flaherty**
*Director*

A fully annotated version of this report, including the references in endnotes, is available for download at: http://fra.europa.eu/en/publication/2019/fundamental-rights-report-2019.

**The FRA Fundamental Rights Report covers several titles of the Charter of Fundamental Rights of the European Union, colour coded as follows:**

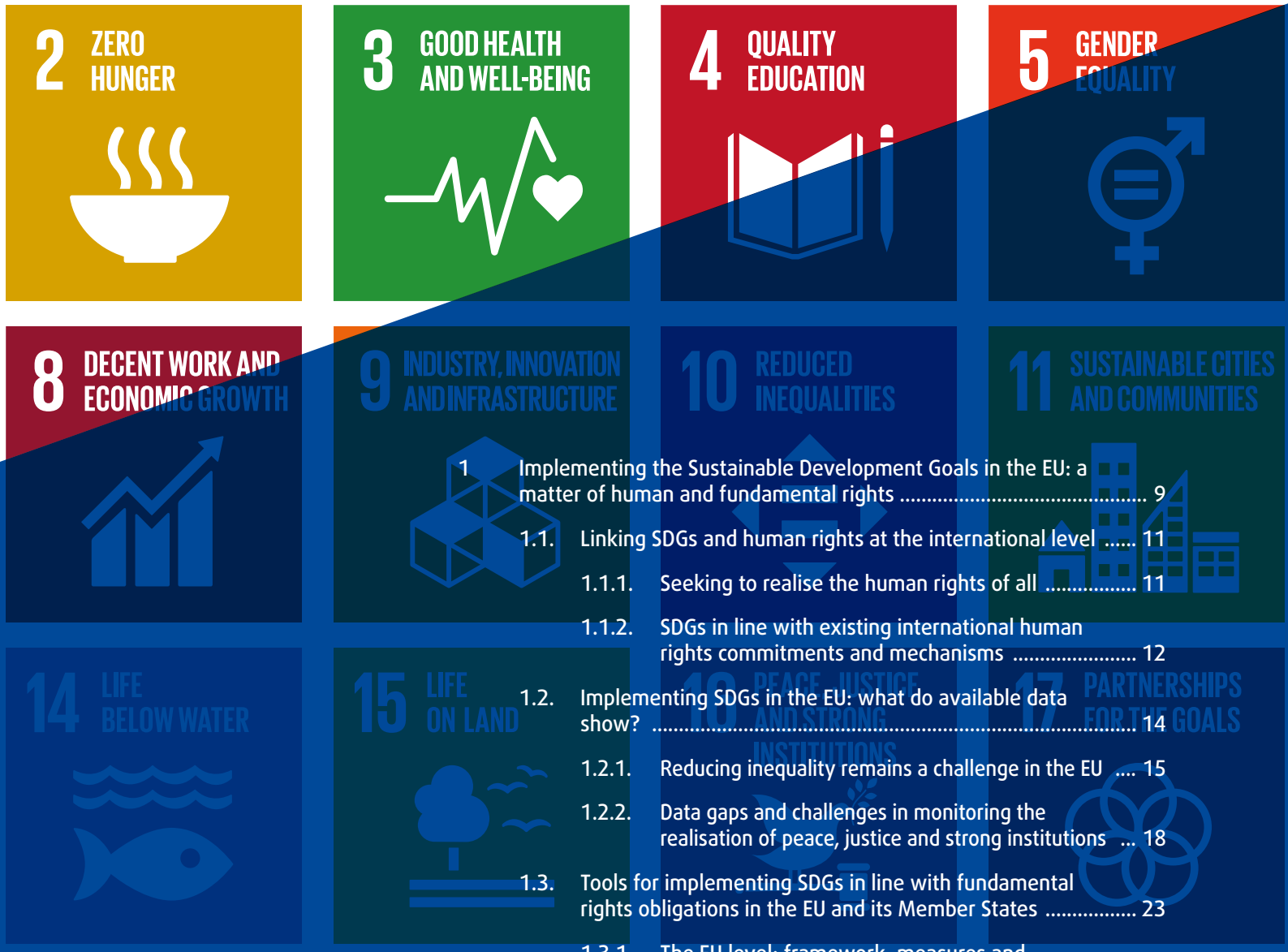
EQUALITY
- Equality and non-discrimination
- Racism, xenophobia and related intolerance
- Roma integration
- Rights of the child

FREEDOMS
- Asylum, visas, migration, borders and integration
- Information society, privacy and data protection

JUSTICE
- Access to justice including rights of crime victims

# Contents

# SUSTAINABLE DEVELOPMENT GOALS



# 1 Implementing the Sustainable Development Goals in the EU: a matter of human and fundamental rights


*This chapter explores the interrelationship between the human and fundamental rights framework and the Sustainable Development Goals (SDGs) of the global Agenda 2030 in the context of Member States' and the EU's internal policies. It focuses on the SDGs related to reducing inequality (SDG 10) and promoting peace, justice and strong institutions (SDG 16). The chapter highlights the importance of collecting disaggregated data on hard-to-reach population groups to develop evidence-based, targeted and rights-compliant policies that help empower everyone, particularly those most at risk of being left behind. The chapter also examines how the EU and its Member States are following up on their commitment to embed a rights-based approach to sustainable development; looks at policy coordination tools and financial instruments that can help to promote SDG implementation in full respect of fundamental rights; and emphasises the importance of national human rights institutions, equality bodies and Ombuds institutions, as well as local authorities, business communities and civil society, in mainstreaming the human rights dimension of SDGs.*

Amid all of humanity's progress, major challenges remain, and the European Union (EU) is not immune from them. Global challenges to ensuring a sustainable future not only call into question our ways of producing and consuming products and services and our financial system, but also raise concerns regarding respect for human and fundamental rights.[1] In this regard 2018 and 2019 are two crucial years for the EU. Proposals have been submitted and discussions are on-going concerning future EU strategy and policies on sustainability.[2] At the same time, EU institutions and Member States are continuing their negotiations on proposals for future EU funding instruments that can contribute to achieving sustainable development, which also link access to EU funding to the application and implementation of the EU Charter of Fundamental Rights.[3]

In response to global challenges, heads of state and government of the United Nations' members adopted in 2015 the declaration on 'Transforming our world: the 2030 Agenda for Sustainable Development' and its 17 Sustainable Development Goals (SDGs). It is "a global plan for action for people, planet and prosperity", under the pledge to "leave no one behind", which is at the core of the 2030 Agenda,[4] and to "endeavour to reach the furthest behind first".[5] It is also a plan "grounded" in international human rights commitments.[6] Its review process lies with the High Level Political Forum (HLPF), which is the main UN platform on sustainable development and in 2019 will address the theme 'Empowering people and ensuring inclusiveness and equality'.[7]

The SDGs are a roadmap towards a more equitable, just, inclusive and sustainable model of development, applicable universally to developing and developed countries alike. This roadmap can only be achieved if it realises human and fundamental rights for all without discrimination, particularly for those more left behind than others, such as marginalised communities. The human and fundamental rights dimension of SDGs, and their universal applicability, are two major differences between the new sustainable development framework and the previous one; the latter was structured around the millennium development goals (MDGs), which were designed to apply to developing countries.[8]

This chapter explores the human and fundamental rights dimensions of two of the 2030 Agenda's 17 SDGs in Member States' and the EU's internal policies.[9] The objective is to connect the dots of the human rights landscape and to highlight strong trends in two important fields: the reduction of inequalities

(targeted by SDG 10) and the promotion of peace, justice and strong institutions (targeted by SDG 16). Identifying the gaps in data and policies will help identify possible avenues for progress with respect to fundamental rights. SDG 10 and SDG 16 will receive special attention during the 2019 High Level Political Forum. Data collected and analysed by FRA are appropriate to complement existing data from other sources and could be taken into consideration in populating SDG-relevant indicators.

**FRA ACTIVITY**

## Providing data relevant to a broad range of SDGs

The data presented in this chapter focus on FRA's work relating to SDGs 10 and 16, but FRA research covers aspects of many other SDGs – such as SDG 1 on poverty, SDG 4 on quality education, and SDG 5 on gender equality. For examples of FRA projects and deliverables linked to different SDGs, see FRA's webpage on cooperating with international organisations.

In relation to SDG 5, FRA published in 2014 the first – and to date only – EU-wide survey on violence against women. It is based on interviews with 42,000 women across the EU, who were asked about their experiences of physical, sexual and psychological violence, including intimate partner violence ('domestic violence'), in the 12 months before the survey, and since the age of 15. The data collected and analysed by FRA are used by Eurostat in its 2018 report on monitoring the SDGs, populating the EU SDG indicators on violence against women in respect to the SDG on gender equality (SDG 5) and the SDG on peace, justice, strong institutions (SDG 16). FRA's violence against women data remain the only comparative data source in the EU on violence against women. FRA is also a member of the task force established by Eurostat to develop a survey on gender-based violence in different EU Member States.

*For more information, see FRA (2014), Violence against women: an EU-wide survey. Main results report, Luxembourg, Publications Office; Eurostat (2018), Sustainable development in the European Union – Monitoring report on progress towards the SDGs in an EU context – 2018 edition, Luxembourg, Publications Office, pp.107 and 300; Commission webpage on Eurostat's task force on the development of a survey on gender-based violence.*

The EU has been instrumental in shaping and adopting a universally applicable 2030 Agenda and a list of SDGs reflecting human rights commitments.[10] It pledges to be the frontrunner in their implementation in the context of both its external action and its internal policies. In addition to data collection and monitoring of the SDGs, the EU is taking positive action to assist EU Member States to attain SDGs. The EU Charter of Fundamental Rights (Charter), which is part of EU primary law,[11] and concrete EU legislation – such as, for example, the anti-discrimination directives – provide a strong normative framework for the implementation of SDGs in a human and fundamental rights compliant way. A whole range of policies and tools, including the EU's strategy for sustainable growth, the proposals on the new EU budget for the period 2021-2027, the European Semester policy coordination mechanism, and the European Pillar of Social Rights, offer multiple opportunities in this respect.[12]

The primary responsibility for the implementation of Agenda 2030 and its sustainable development goals lies, however, with national governments. In his closing speech at the Intersessional meeting of the Human Rights Council on SDGs and human rights in January 2019, FRA's director highlighted that within "all the planning at the national level we need to engage all of the actors in a respectful and participatory manner".[13] This requires forging strong partnerships with key actors and stakeholders, ranging from local authorities to national human rights institutions, equality bodies and Ombuds institutions, business communities and, especially, civil society.

The EU Charter of Fundamental Rights requires both the EU and its Member States, when they act within the scope of EU law, to embed a rights-based approach to sustainable development. Table 1.1 shows how specific fundamental rights commitments are linked to SDGs on reducing inequality (SDG 10) and on promoting peace, justice and strong institutions (SDG 16). The examples used correspond to concrete SDG targets particularly relevant in the context of internal EU policies.

**Table 1.1: Examples of SDG 10 and SDG 16 targets corresponding to EU Fundamental Rights Charter provisions**

| Sustainable Development Goals (SDGs) | Examples of SDG targets related to internal policies | Examples of relevant provisions of the EU Charter of Fundamental Rights |
|---|---|---|
| **SDG 10**<br>**Reduce inequality within and among countries** | • Target 10.2 calls for empowering and promoting the social, economic and political inclusion of all irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status<br>• Target 10.3 calls for ensuring equal opportunity and reducing inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard<br>• Target 10.4 calls for adopting policies, especially fiscal, wage and social protection policies, and progressively achieving greater equality | • Right to human dignity (Article 1)<br>• Right to education (Article 14)<br>• Equality before the law (Article 20)<br>• Non-discrimination (Article 21)<br>• Equality between women and men (Article 23)<br>• Rights of the child (Article 24)<br>• Rights of the elderly (Article 25)<br>• Integration of persons with disabilities (Article 26)<br>• Fair and just working conditions (Article 31)<br>• Social security and social assistance (Article 34)<br>• Right to health care (Article 35) |
| **SDG 16**<br>**Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels** | • Target 16.1 calls for significantly reducing all forms of violence and related death rates everywhere<br>• Target 16.3 calls for promoting the rule of law at the national and international levels and ensuring equal access to justice for all<br>• Target 16.b calls for promoting and enforcing non-discriminatory laws and policies for sustainable development | • Right to human dignity (Article 1)<br>• Right to life (Article 2)<br>• Right to integrity of the person (Article 3)<br>• Prohibition of torture and inhuman or degrading treatment or punishment (Article 4)<br>• Right to liberty and security (Article 6)<br>• Right to an effective remedy and to a fair trial (Article 47)<br>• Presumption of innocence and right of defence (Article 48)<br>• Principles of legality and proportionality of criminal offences and penalties (Article 49)<br>• Right not to be tried or punished twice in criminal proceedings for the same criminal offence (Article 50)<br>• Equality before the law (Article 20)<br>• Non-discrimination (Article 21)<br>• Equality between women and men (Article 23) |

*Source: FRA, 2019*

## 1.1. Linking SDGs and human rights at the international level

### 1.1.1. Seeking to realise the human rights of all

In the context of the 2030 Agenda, sustainable development is conceptualised under three equal and interconnected dimensions: economic, environmental, and social. Based on the fundamental pledge to "leave no one behind", the 2030 Agenda explicitly underlines that it is "grounded" in the Universal Declaration of Human Rights, which continues to serve as the necessary human rights compass 70 years after its adoption, and international human rights treaties.[14] In this respect, the 2030 Agenda makes clear that the SDGs "seek to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls".[15]

Promising practice

### Highlighting the links between the SDGs and human rights

The **Danish** Institute for Human Rights (DIHR), a national human rights institution, has developed the *Human Rights Guide to the SDGs*, which clearly demonstrates the significant extent to which SDGs are linked with international and regional human rights standards. According to this project, all SDGs and more than 90 % of the 169 SDG targets are relevant to international human rights instruments and correspond to international legally binding human rights provisions. The DIHR has also developed a *UPR Data Explorer*, which allows users to explore how recommendations of the Universal Periodic Review (UPR) are linked to the 169 SDG targets.

*For more information, see the website of the Danish Institute for Human Rights.*

The EU has highlighted the interconnectedness of all three dimensions of sustainable development and the universal applicability of SDGs, stressing that eradicating poverty and reducing inequality should be a major focus.[16] During the consultations for the adoption of the SDGs, the EU pointed out that reducing inequality is essential for more peaceful societies, whereas more equal societies are more likely to generate sustainable development.[17] In this light, the EU has strongly supported that the 2030 Agenda and the SDGs should embed a rights-based approach to sustainable development,[18] which also respects the inter-related principles of the rule of law and good governance.[19] The EU Council confirmed this approach once again in April 2019, adopting its Conclusions "Towards an Ever More Sustainable Union".[20]

The Office of the UN High Commissioner for Human Rights (OHCHR) has pointed out that human rights considerations and international human rights law commitments are reflected in all 17 SDGs.[21] In its words, the SDGs "mirror the human rights framework" and "are closely aligned with human rights standards", encompassing not only development-related economic and social rights, but also civil and political rights.[22]

> *"[The 2030 Agenda] opens a tremendous opportunity for greater integration of human rights goals, including the recommendations of the human rights mechanisms, into national policies and the work of the UN. The Sustainable Development Goals will not progress without discussion of and progress on the so-called 'sensitive' issues of human rights [...] development must focus, above all, on the well-being and rights of the people."*
>
> *Michelle Bachelet, UN High Commissioner for Human Rights, Opening Statement, 39th session of the UN Human Rights Council, 10 September 2018*

## 1.1.2. SDGs in line with existing international human rights commitments and mechanisms

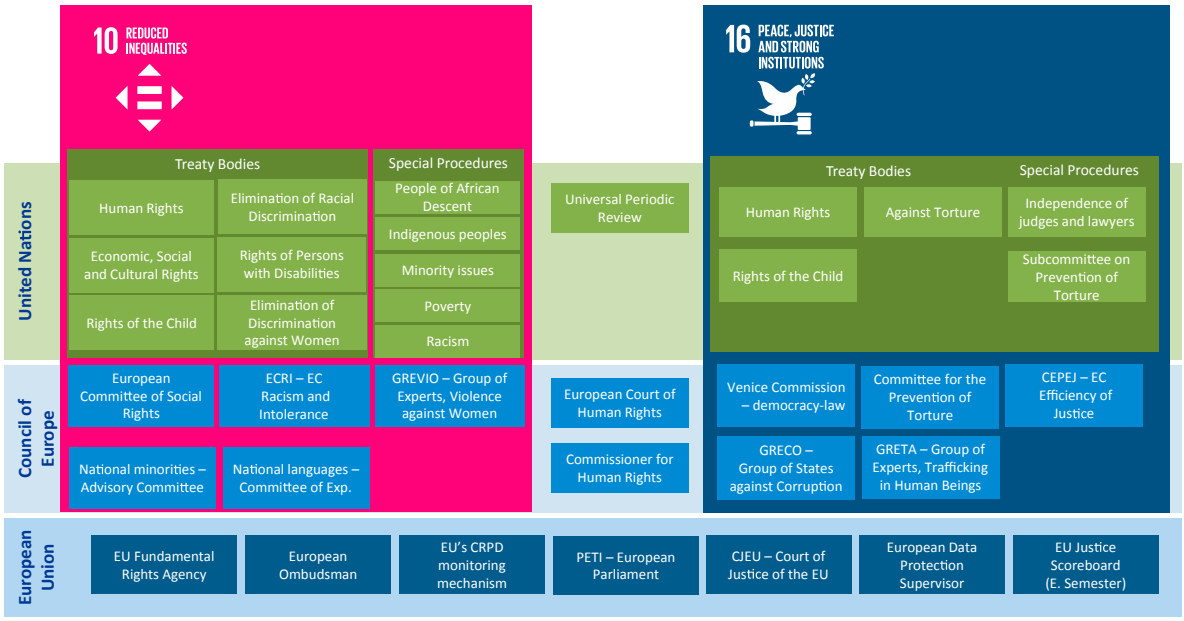
The existing international and European human rights framework provides useful opportunities for monitoring progress in the realisation of SDGs from a human-rights perspective (see Figure 1.1).

At global level, data and evidence on major human rights developments are collected by treaty bodies that monitor compliance with obligations deriving from international human rights instruments. UN human rights mechanisms, such as the Universal Periodic Review (UPR) and the Special Procedures of the Human Rights Council (HRC), also provide evidence and recommendations that can help monitor progress in SDG implementation. The UPR, for instance, as an inter-governmental and state-driven review process, examines the fulfilment by each State of its human rights obligations and commitments.[23] It is based on information provided by the State under review in the form of a national report and by treaty bodies and special procedures, as well as by other actors, such as national human rights institutions and civil society. Currently, the HRC is implementing the third cycle of the UPR.

In parallel, the HRC also implements Special Procedures, as part of the UN human rights protection system.[24] These are implemented by independent experts mandated to collect evidence and report to the HRC, and often to the UN General Assembly, on specific countries or specific thematic issues, ranging from extreme poverty and human rights, the human rights of migrants, older persons or persons with disabilities, to the issue of arbitrary detention, the independence of judges and lawyers, etc.[25]

The evidence collected by these mechanisms is compiled by the UN High Commissioner for Human Rights (OHCHR) in the Universal Human Rights Index (UHRI) linking them to SDGs. The UHRI includes recommendations from all these mechanisms, in searchable form, which can be used by governments to improve SDG implementation. In addition, UHRI identifies systemic, recurring and unresolved human rights issues that may impede the realisation of SDGs.[26]

**Figure 1.1: Overview of key international and European mechanisms of a human rights remit relevant to SDGs 10 and 16**




*Note:* *CRPD = Convention on the Rights of Persons with Disabilities; EC = European Commission; E. Semester = European Semester; PETI = Committee on Petitions.*

*Source:* *FRA, 2019*

## SDG global indicator on independent national human rights institutions (indicator 16.a.1)

The global SDG 16.a.1 indicator refers to the "Existence of independent national human rights institutions in compliance with the Paris Principles". OHCHR supports the Global Alliance of National Human Rights Institutions (GANHRI), which assesses the national human rights institutions' (NHRIs) compliance with the United Nations Paris Principles.* The EU does not include this indicator in the EU SDG-indicator-set used to monitor progress towards SDG 16 in an EU context. According to GANHRI accreditation, 16 EU Member States have national human rights institutions compliant with the Paris principles.

In view of reinvigorating the legitimacy of human rights and of promoting monitoring mechanisms, FRA builds on and supports the work of NHRIs and other national human rights bodies, such as Equality Bodies and Ombuds institutions.

*These principles set out standards for NHRIs to meet as regards their mandate and competence; autonomy from government; independence; pluralism; adequate resources; and adequate powers of investigation.

*For more information, see OHCHR's webpage on the Global Alliance of National Human Rights Institutions; FRA's webpage on its work with national human rights bodies; and FRA (2017), Between promise and delivery: 10 years of fundamental rights in the EU, Publications Office, Luxembourg.*

At the broader European level, the European Convention on Human Rights (ECHR) and the European Social Charter (ESC) of the Council of Europe (CoE), the natural complement of the convention in the area of social and economic rights, are the two major regional treaties underpinning a human rights-based approach towards the implementation of Agenda 2030 and the SDGs. The bodies overseeing their respect and implementation can be useful in this regard. The European Court of Human Rights ensures the observance of the ECHR, and its case law should be taken into account when designing measures implementing SDGs, especially as regards issues related to peace, justice and strong institutions (SDG 16). On the other hand, the European Committee of Social Rights (ECSR) monitors compliance with the Charter, and its conclusions and decisions can also provide valuable input as regards particularly reducing inequality (SDG 10). Its decisions in the context of the collective complaints system[27] of the ESC have a special added value since they do not determine individual violations of rights but system-level problems in law or in practice.

The Council of Europe also contributes to implementing SDGs across Europe in multiple other ways.[28] For example, it collects Annual Penal Statistics concerning the composition of prison populations,[29] contributing data for the global SDG indicator on "unsentenced detainees as proportion of the overall prison population" (indicator 16.3.2).[30] In 2016, it shows that, on average across 24 EU Member States,[31] around 20 % of the prison population were detainees who had not yet received a final sentence.[32] Another example is the work of the Council of Europe's Group of States against Corruption (GRECO), which monitors compliance with anti-corruption standards and carries out evaluation procedures.[33] GRECO provides recommendations and assesses their implementation. According to its 2019 programme of activities, "GRECO's evaluation reports and recommendations also serve as a yardstick for member states when implementing Target 5 of Sustainable Goal 16 ('Substantially reduce corruption and bribery in all their forms')".[34]

## 1.2. Implementing SDGs in the EU: what do available data show?

The close links between sustainable development goals and human and fundamental rights are established at both the EU and the international level. At the same time, no country is exempt from poverty, inequality and discrimination, no country is free from threats to peaceful and inclusive societies and to fundamental rights and the rule of law. This is what data provided by Eurostat and FRA suggest with regard to the EU and its Member States. Some selected examples are presented below, focusing on data relevant to the SDGs on reducing inequality (SDG 10) and on promoting peace, justice and strong institutions (SDG 16).

### Indicators to measure SDG implementation

In 2017, the UN General Assembly adopted a global indicator framework to measure progress in achieving all 17 SDGs. It consists of 232 indicators, covering all 169 specific SDGs' targets.* Eleven of these refer to reducing inequality (SDG 10) within and between countries; and 22 refer to peace, justice and strong institutions (SDG 16).

** UN, General Assembly (2017), Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development, A/RES/71/313, 6 July 2017 and annual refinements. The total number of indicators listed is 244; however, nine of them are repeated under two or three different targets.*

Reflecting on EU-specific characteristics and focusing mainly on internal policies, Eurostat has adopted its own set of EU-relevant 100 SDG indicators; 41 of these are multi-purpose, serving to measure aspects related to more than one goal.* Eurostat is called on to monitor general progress towards the SDGs in an EU context, and does not focus on specific SDGs targets. To measure progress on the SDG on reducing inequality, Eurostat uses six individual indicators as well as three others that are used to measure progress in multiple areas. To measure progress on the SDG on peace, justice and strong institutions, it again uses six individual indicators, as well as one used in other areas, too. The Member States, however, are mainly responsible for populating these indicators with transparent, comparable, accessible and valid data.

**Eurostat (2019), EU SDG indicator list; see also UN, Economic Commission for Europe (UNECE) (2017), Conference of European Statisticians: Road Map on statistics for SDGs, New York and Geneva, November 2017.*

**FRA ACTIVITY**

### Measuring SDG implementation: FRA's contribution

Over the years, FRA has developed significant expertise in collecting and analysing data on multiple areas, including in particular equality and discrimination, but also on experiences of bias-motivated violence or harassment and on violence against women. In parallel, FRA pioneered in specific areas of its work the application of the model of human rights indicators developed by OHCHR with the contribution of FRA. The model consists of three parallel categories of indicators, each measuring different aspects of the fulfilment of human rights commitments: structural indicators identify the legal commitments and institutional framework in place; process indicators identify the concrete actions taken and resources invested to achieve targeted goals; and outcome indicators identify the outcome of specific policies.

FRA has delivered related indicators in the area of the rights of the child, Roma inclusion and, in particular, the rights of persons with disabilities. In this regard, for example, FRA developed a full set of S-P-O indicators on their right to political participation grouped into four key themes: lifting legal and administrative barriers; increasing rights awareness; making political participation more accessible; and expanding opportunities for participation.

The agency plays an important role in complementing existing data relevant for SDGs with data on the experiences of harder-to-reach groups of the population and more at risk of being left behind or of women facing violence. Eurostat used FRA data on violence against women to populate EU indicator 05.10 relevant for SDG 5 on gender equality, as well as the SDG on peace, justice and strong institutions (SDG 16). These data can also be used to assess progress in relation to SDG global indicators 5.2.1 and 5.2.2, measuring violence inflicted to women by intimate partners or other persons; as well as indicators relevant for measuring the proportion of the population subjected to violence, including sexual violence (indicator 16.1.3); the proportion of young persons who experienced sexual violence by the age of 18 years (indicator 16.2.3); or the proportion of victims of violence who reported their victimisation to the competent authorities (indicator 16.3.1). National data collections on violence against women are still rare in many EU Member states. An online database on FRA's webpage provides detailed data for each country, which Member States can potentially use for their voluntary national reports.

In 2018, the Organisation for Security and Cooperation in Europe (OSCE) conducted for the first time a gender-based violence survey, based on FRA's questionnaire and methodology, in South East Europe and in Eastern European OSCE countries that are not EU Member States.* First results will be available in March 2019. These data could also be used to populate SDG-relevant indicators.

In addition, FRA assists EU institutions and Member States in shaping the collection of data that are also relevant for SDGs, and supports a rights-based analysis of these data. In 2018, the EU High Level Group on Non-Discrimination, Equality and Diversity set up a Subgroup on Equality Data facilitated by FRA and composed of interested Member States, the European Commission and Eurostat. The subgroup has developed a set of 11 guidelines on improving the collection and use of equality data, a compendium of Member States' practices related to the guidelines, and a diagnostic mapping tool that Member States can use to assess their situation concerning equality data and identify possible gaps. Further information is provided in Chapter 3 on equality and discrimination.

**See the OSCE's webpage on its Survey on the Well-being and Safety of Women.*

## 1.2.1. Reducing inequality remains a challenge in the EU

### 1.2.1.1. Inequality among the population

The 2018 Eurostat SDG report on the SDG on reducing inequality (SDG 10) uses available data and focuses on income inequality within European societies and on economic development between countries.[35] Whereas differences in GDP-per-capita between EU Member States have been converging over the long term, trend data show an increase of inequality within countries, both in the long and short term. According to Eurostat, the rate of people living in income poverty in the EU increased by 8.3 % between 2005 and 2016, with the largest increases occurring in recent years.[36] In most EU Member States, and on average across the EU, Eurostat concludes that "the gap between the rich and the poor [has been] widening slightly" over the past years, while "the poor become poorer in the EU and the number of poor is increasing".[37]

However, more recent data, reflecting developments in 2017, suggest that this trend has recently drawn to a halt, and that the situation in the EU is currently improving. Indicators such as on inequality of income distribution, income share of the bottom 40 % of the population, the relative median at-risk-of-poverty gap or the share of people at-risk-of poverty after social transfers, paint a more positive picture.[38]

Analysing income inequality is possibly one of the most appropriate ways to reflect on inequality and discrimination in exercising rights within a society. Income inequality is not per se a rights violation. However, as an inequality of outcome, it can reflect inequality of opportunities, and lead to discrimination and inequality in the enjoyment of a whole range of fundamental and human rights, such as the right to education, health – linked also to unequal exposure to environmental degradation and climate change[39] – or social and housing assistance, the rights of children, older people and people with disabilities, or the right to access justice, all protected under the EU Charter of Fundamental Rights (see Table 1.1). At the same time, inequality of opportunities, discrimination and inequality in the enjoyment of rights can also result in inequality of outcomes in a vicious cycle of persisting and even deepening inequality that is transmitted from one generation to another. Eurostat also suggest that "[A]nother way to measure inequality of outcomes within countries is by looking at income poverty as inequality and poverty are closely interrelated".[40] People living in poverty may more often face the spectre of social exclusion compromising all their rights and leading to a higher risk of having to cope with discrimination in their everyday life. The risk further increases when poverty intersects with other grounds of discrimination – such as, for example, disability, age, and immigrant or minority background. In extreme cases, living in severe poverty and inequality conditions may violate the right to human dignity.

The Eurostat monitoring report highlights rising levels of inequality and an increase in the at-risk-of-poverty

rate over the past five and past 15 years, which constitute a movement away from sustainable development objectives. Its peak was in 2015 and 2016 (see Table 1.2).[41] Looking at the actual level of income among those below the at-risk-of-poverty threshold (relative median at-risk-of-poverty gap) shows a significant decrease in the median income of the poor in comparison with the rest of the population. However, looking into the most recent income data on 2017 published by Eurostat, a slight improvement can be observed across all income inequality indicators, showing first signs of a reverting trend and progress towards the EU targets.[42]

**Table 1.2: Trends in inequality and poverty within EU Member States: indicators measuring progress towards SDG 10, EU-28**

| Indicator | Long-term trend (past 15 years) | Short-term trend (past 5 years) |
|---|---|---|
| Inequalities within countries | | |
| Inequality of income distribution | ↘ (!) | ↘ |
| Income share of the bottom 40% of the population | ↘ (!) | ↘ |
| Relative median at-risk-of-poverty gap | ↘ (!) | ↓ |
| People at risk of income poverty after social transfers | ↘ (!) | ↘ |

↘ Moderate movement away from SD objectives

↓ Significant movement away from SD objectives

*Note:* *Eurostat's upcoming 2019 SDG monitoring report shows a reverse in trend regarding the income share of the bottom 40 % of the population.*

*Source:* *Eurostat, 2018* [Sustainable development in the European Union – Monitoring report on progress towards the SDGs in an EU context – 2018 edition, *p. 184*]

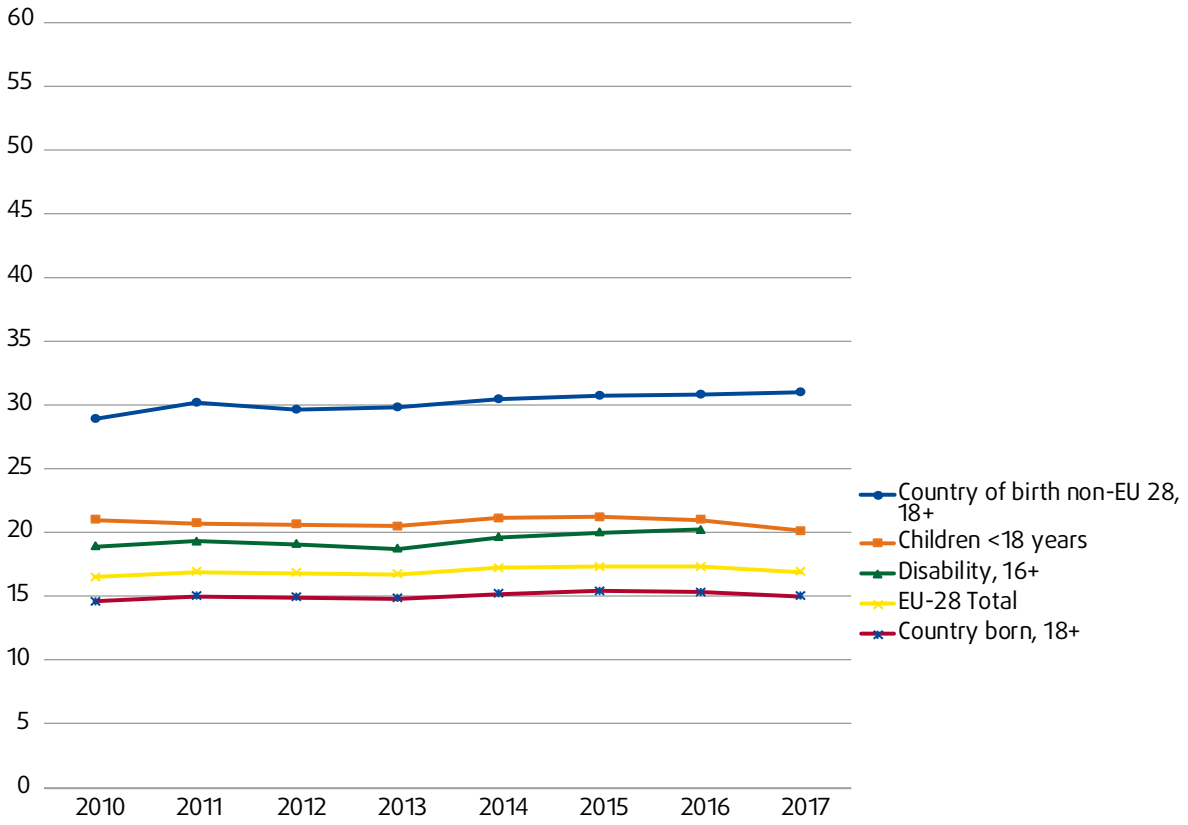
## Inequality affecting specific population groups

Designing and implementing policies to reduce inequality and interrelated poverty requires far more detailed information than an overall national or EU average estimate can provide. This is important to understand how different population groups and areas are affected and what the results are of relevant existing policy measures. The pledge of the 2030 Agenda for Sustainable Development is to leave no one behind and to endeavour to reach those furthest behind first. Therefore it needs to take into account disaggregated data to monitor the commitments and design policies for the most vulnerable and marginalised population groups.

Certain population groups, such as children, people with disabilities, immigrants and Roma, are at greater risk of poverty. Eurostat data and FRA's findings indicate that these groups are more frequently affected by income inequality and poverty (see Figure 1.2 and Figure 1.3). Thus, they often face greater challenges in the enjoyment of their fundamental rights on equal footing as compared with the rest of the population. It can be further challenging when being Roma or having an immigrant background is combined with other grounds that may have an impact, regardless of ethnic or immigrant identity or background – such as, for example, being a child.

Figure 1.2 shows trends for the at-risk-of-poverty rate (i.e. income poverty) for different subgroups. Whereas the overall trend (EU-28 total) indicates a slight but steady decrease in the past two years, disaggregation shows that this trend is only true for children and country-born adults, while for third-country-born persons there is a slight increase in the at-risk-of-poverty rate in 2017. Persons with a disability face an above-average risk of poverty, with a steady increase since 2013.[43]

**Figure 1.2: At-risk-of poverty rate (below 60 % of median equivalised income after social transfers) in EU-28, by different groups (%)**




*Note:* *2017 figure for disability was not available at the time of extraction.*

*Source:* *Eurostat, 2019 [EU-SILC, At-risk-of-poverty rate-EU-SILC survey [ilc_li02], [hlth_dpe020], [ilc_li32] extracted 22.03.2019]*

## Global Compact for Migration

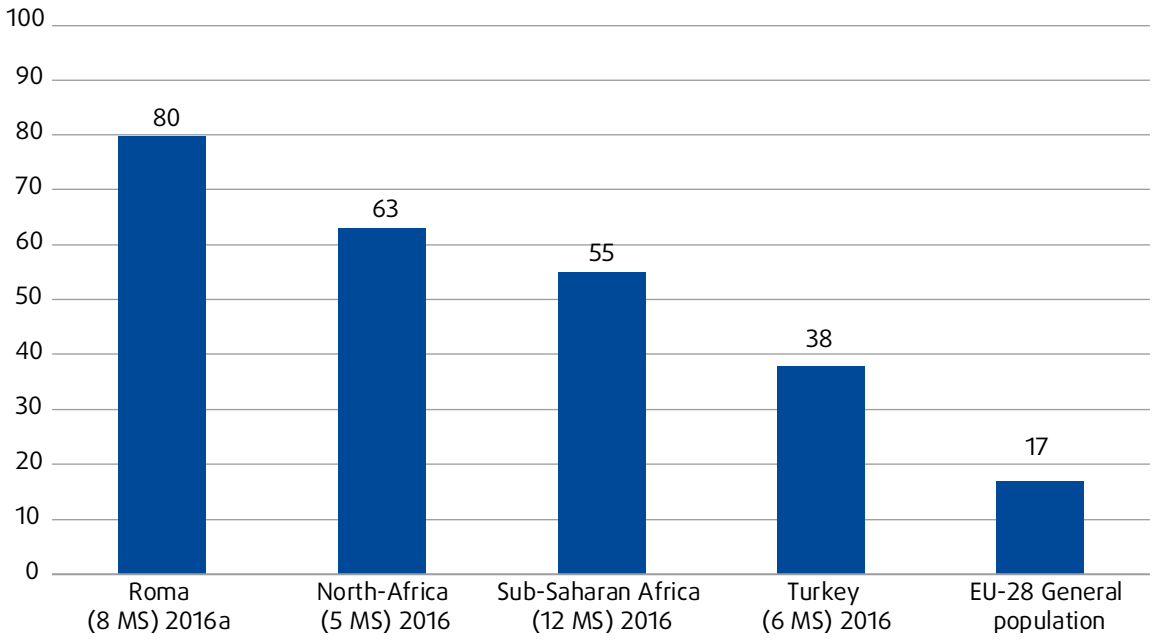
An interesting development in the field of migration in 2018 was the adoption of the Global Compact for Migration – a legally non-binding agreement "rooted in the 2030 Agenda", which sets out a policy framework for safe, orderly and regular migration that could contribute to reducing inequality globally.

Among the 23 objectives introduced by the compact is the objective to "[c]ollect and utilize accurate and disaggregated data as a basis for evidence-based policies". However, not all EU Member States have endorsed the compact.

*For more information, see Chapter 6.*

Figure 1.3 shows the striking differences between the at-risk-of-poverty rate among the EU-28 general population and among various minority groups, including Roma, as estimated according to FRA's survey on minorities and discrimination conducted in 2015-2016 (EU-MIDIS II). It shows that, in comparison with an overall at-risk-of-poverty rate of around 17 % for the general population, 80 % of Roma, 63 % of persons of North African descent, and 55 % of persons of Sub-Saharan African descent, on average in the surveyed countries, had an income below the at-risk-of-poverty threshold. This underlines the need to disaggregate data to monitor policy targets and to reach out to vulnerable and often invisible groups.

**Figure 1.3: Estimated at-risk-of-poverty rate[a] for the EU-28 general population and for immigrants and descendants of immigrants, as well as Roma,[b] in selected Member States in 2016 (%)**




*Notes:* [a] *At-risk-of-poverty based on the EU-MIDIS II survey are all persons with an equivalised current monthly disposable household income below the twelfth of the national at-risk-of-poverty threshold 2014 (published by Eurostat). The equivalised disposable income is the total income of a household, after tax and other deductions, divided by the number of household members converted into equalised adults; using the so-called modified OECD equivalence scale (1-0.5-0.3).*

[b] *EU MIDIS II (2016) covered target groups in the following Member States: Roma (nine Member States): BG, CZ, EL, ES, HR, HU, PT, RO, SK. Average of 8 countries, value for Portugal cannot be published for quality reasons. Immigrants and their descendants from Turkey (six Member States): AT, BE, DE, DK, NL, SE. Immigrants and their descendants from Sub-Saharan Africa (12 Member States): AT, DE, DK, FI, FR, IE, IT, LU, MT, PT, SE, UK. Immigrants and their descendants from North Africa (five Member States): BE, ES, FR, IT, NL.*

*Sources:* *FRA, EU-MIDIS II 2016; Eurostat [EU-SILC, [ilc_li02], extracted 22.03.2019]*

One of the targets of the SDG on reducing inequality is to "ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard" (SDG target 10.3). A corresponding target of the SDG on peace, justice and strong institutions is to "promote and enforce non-discriminatory laws and policies for sustainable development" (SDG target 16.b). The same indicator is applied for both of these targets, namely the indicator on the "proportion of population reporting having personally felt discriminated against or harassed in the previous 12 months on the basis of a ground of discrimination prohibited under international human rights law" (indicator 10.3.1 for SDG 10 and indicator 16.b.1 for SDG 16). In its surveys, FRA reaches out to vulnerable and marginalised populations and asks about discrimination and harassment, as this constitutes a violation of their rights guaranteed by the EU Charter of Fundamental Rights, particularly their right to non-discrimination as enshrined in Article 21. Such data collected by FRA are presented in Section 1.2.2 on the SDG on peace, justice and strong institutions.

### 1.2.2. Data gaps and challenges in monitoring the realisation of peace, justice and strong institutions

Eurostat points out that "a comprehensive assessment of the EU progress towards SDG 16 is not possible due to several gaps in the data".[44] The 2018 SDG Eurostat report measures progress made in implementing peace, justice and strong institutions (SDG 16) by applying indicators on homicide rates, perceptions of crime, public expenditure on justice, perceptions about the independence of justice, perceptions regarding corruption, as well as the confidence of the population towards EU institutions.[45] In this respect, the report also reproduces FRA data on violence against women to populate its relevant multi-purpose indicator on "Physical and sexual violence to women experienced within 12 months prior to the interview".

Important challenges, however, remain, as regards, for example, violence against women, discrimination

and harassment, as well as experiences of bias-motivated violence against different population groups such as LGBTI persons, ethnic or religious minorities, and immigrants and their descendants. These challenges raise concerns about respect for human and fundamental rights, as guaranteed under the Charter (see Table 1.1). FRA has over the past years collected relevant data, as briefly outlined below. EU institutions and Member States could use such data to fill in existing gaps in the data and to assess relevant indicators suggested under the UN global indicator framework for SDGs.[46] They could thus help address persisting challenges in implementing the SDG on peace, justice and strong institutions.

## The EU: a safer place to live?

Reflecting on data relating to peaceful societies, Eurostat suggests that "the EU has become a safer place to live"[47]: the proportion of deaths due to homicide dropped by 46.9 % between 2002 and 2015; the proportion of the population who reported feeling that crime, violence or vandalism in their area is a problem for them also fell from almost 16 % in 2007 to 12 %[48] in 2017. Average numbers on perceptions of crime, violence and vandalism hide strong differences across EU Member States, as well as across socio-economic sub-groups in the EU.[49]

Perceptions of crime and perceptions of the justice system are often interrelated. The Eurostat report highlights the importance of the Justice Scoreboard, through which the EU monitors the efficiency, quality and independence of national justice systems.[50] In respect to the independence of courts and judges, it points out that 56 % of Europeans responding to a Eurobarometer survey in 2018 considered it to be 'very good' or 'fairly good', an increase of four percentage points compared to 2016, albeit with persisting differences between Member States.[51]

However, the Eurostat report does not reflect developments regarding the rule of law in Hungary and Poland, in relation particularly to national legislation and measures affecting the independence of the judiciary, which triggered the European Parliament's and the European Commission's use of the procedures provided in Article 7 of the Treaty of the European Union (TEU)[52]. Relevant proceedings are still in progress. Article 7 sets out a mechanism for EU institutions to hold Member States accountable for actions that breach EU founding values, including human rights and the rule of law. For more on this, see the section on "Opportunities to reinforce coordination and implementation of SDGs at EU level" and Chapter 9 on Access to justice.

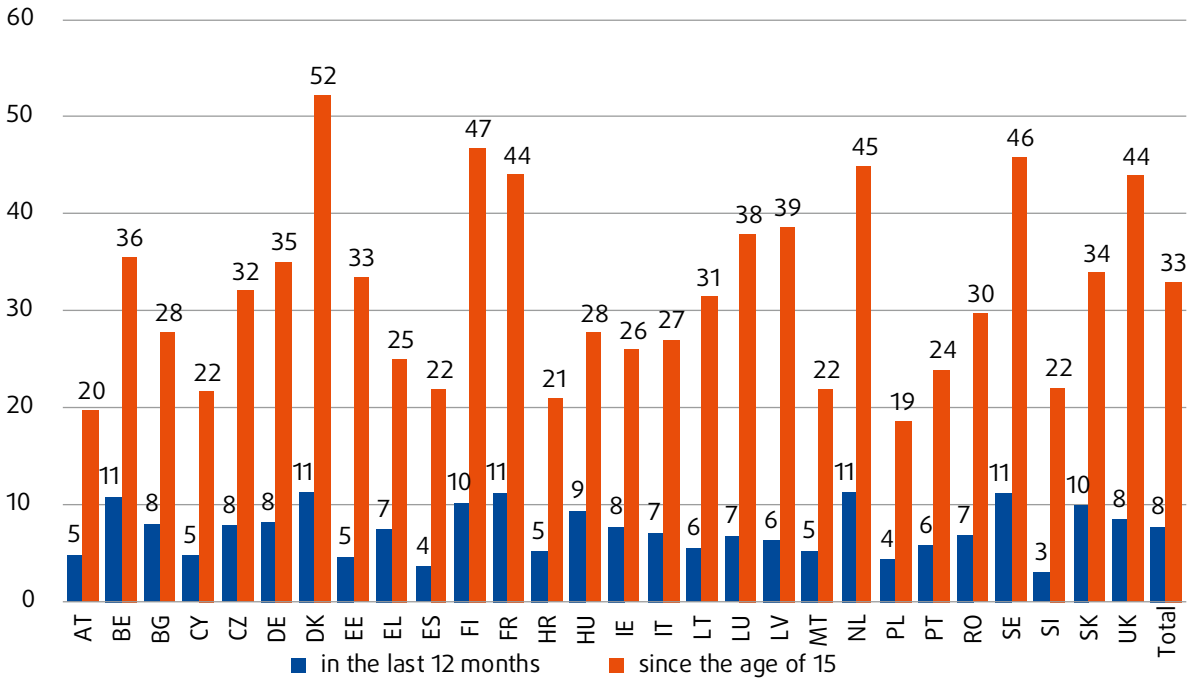
## Women in Europe remain exposed to high levels of violence

FRA's 2012 survey on violence against women[53] remains the only source for EU-comparable data; its results are included in Eurostat's 2018 SDG report.[54] These data show that one in three women in the EU reported having experienced physical and/or sexual violence since the age of 15, and that 8 % of women surveyed said they had experienced such violence in the 12 months before the survey (see Figure 1.4). For more on violence against women and on the Council of Europe's Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), see Chapter 9.

FRA's data point out striking violations of the right to human dignity and the integrity of the person, and raise questions regarding respect for, and fulfilment of, the principle of non-discrimination, the right to equality between women and men, and the right to an effective remedy and to a fair trial, as enshrined in the Charter. Moreover, as mentioned above, they are relevant for several global SDG indicators – such as, for example, the proportion of the population subjected to (a) physical violence, (b) psychological violence and (c) sexual violence in the previous 12 months, an indicator used under SDG 16.1.3 global indicator framework (see also Section 1.2).

Eurostat has set up a task force bringing together different Member States, relevant Commission services, FRA, the European Institute for Gender Equality, as well as independent experts, to develop a survey on gender-based violence.[55] The collection of data is planned to take place between 2020 and 2022, depending on the availability of national statistical institutes.

**Figure 1.4: Women, aged 18-74 years, who have experienced physical and/or sexual violence by their current or previous partner, or by any other person, since the age of 15 and in the 12 months before the survey, by EU Member State (%)**




*Notes:* *SDG indicator 16.1.3 consists of the proportion of population subjected to (a) physical violence, (b) psychological violence and (c) sexual violence in the previous 12 months. FRA's data covers only women aged 18-74 years. It can also be used to assess SDG indicators 5.2.1, 5.2.2, and 11.7.2.*

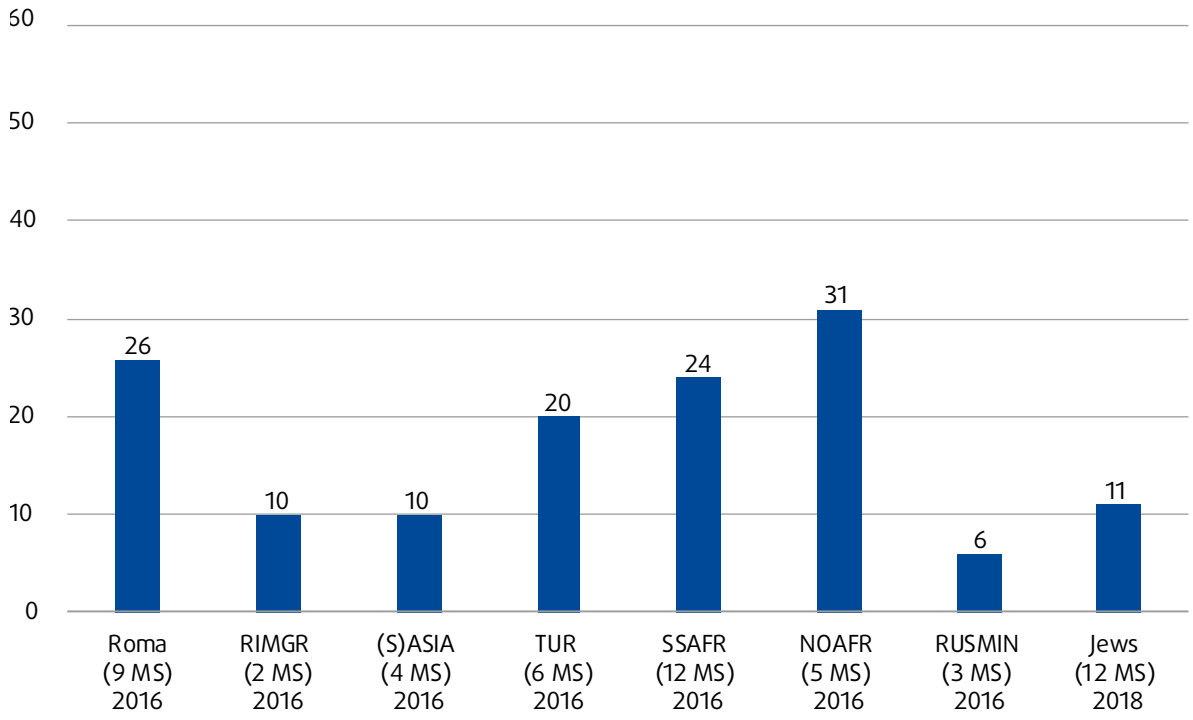
*Source:* *FRA, Violence against women survey, 2012*

## Immigrants, minorities and LGBTI persons in the EU are exposed to a higher rate of discrimination

Eurostat's 2018 SDG report does not include data on discrimination experiences of immigrants, minorities and LGBTI persons in the EU. FRA collects such data through large-scale surveys on experiences of discrimination based on sexual orientation or gender identity, ethnic origin, skin colour, religion or immigrant background, including their reporting to competent authorities. These data highlight persisting challenges regarding non-discrimination, prohibited by Article 21 of the Charter, and could be used in monitoring progress in the implementation of SDGs at both EU and national levels.

The data show alarming rates of experiences with discrimination among several surveyed population groups. For example, the EU-MIDIS II survey on immigrants and minorities[56] illustrates that a large proportion of Roma (26 %), as well as immigrants and descendants of immigrants with North African origin (31 %) or Sub-Saharan (24 %) origin, felt discriminated against in the 12 months before the survey due to their ethnic or immigrant background – especially in employment, both when looking for work and at work, and when accessing public or private services (see Figure 1.5).

**Figure 1.5: Rate of discrimination experienced due to ethnic or immigrant background in the 12 months before the survey, in selected EU-MS (%)[a,b,c]**




*Notes:* [a] *Corresponds to SDG indicator 16.b.1 and 10.3.1 Proportion of population reporting having personally felt discriminated against or harassed in the previous 12 months on the basis of a ground of discrimination prohibited under international human rights law.*

[b] *Domains of daily life asked about in the survey: looking for work, at work, education (self or as parent), health, housing and other public or private services (public administration, restaurant or bar, public transport, shop).*

[c] *Acronyms for target groups refer to immigrants from [country/region] and their descendants: TUR = Turkey, SSAFR = Sub-Saharan Africa, NOAFR = North Africa, (S)ASIA = South Asia and Asia, RIMGR = recent immigrants from non-EU countries, RUSMIN = Russian minority, ROMA = self-identified Roma (umbrella term for different groups), Jews = self-identified Jews*

*Sources:* *FRA, EU-MIDIS II 2016; FRA, Second Survey on discrimination and hate crime against Jews in the EU 2018*

With respect to discrimination on the grounds of religion or belief, 17 % of Muslim respondents in EU-MIDIS II said they felt discriminated against in the five years before the survey.[57] FRA's second survey on discrimination and hate crime against Jews also found that 21 % of Jewish respondents felt discriminated against because of their religion in the 12 months before the survey.[58]

Furthermore, in FRA's 2012 online survey of LGBT persons, almost one out of two respondents (47 %) indicated that they felt discriminated against or harassed on the grounds of sexual orientation in the 12 months prior to the survey;[59] 13 % felt discriminated against when looking for work, and 19 % did so when at work.[60]

## Bias-motivated violence and harassment in the EU remain blind spots

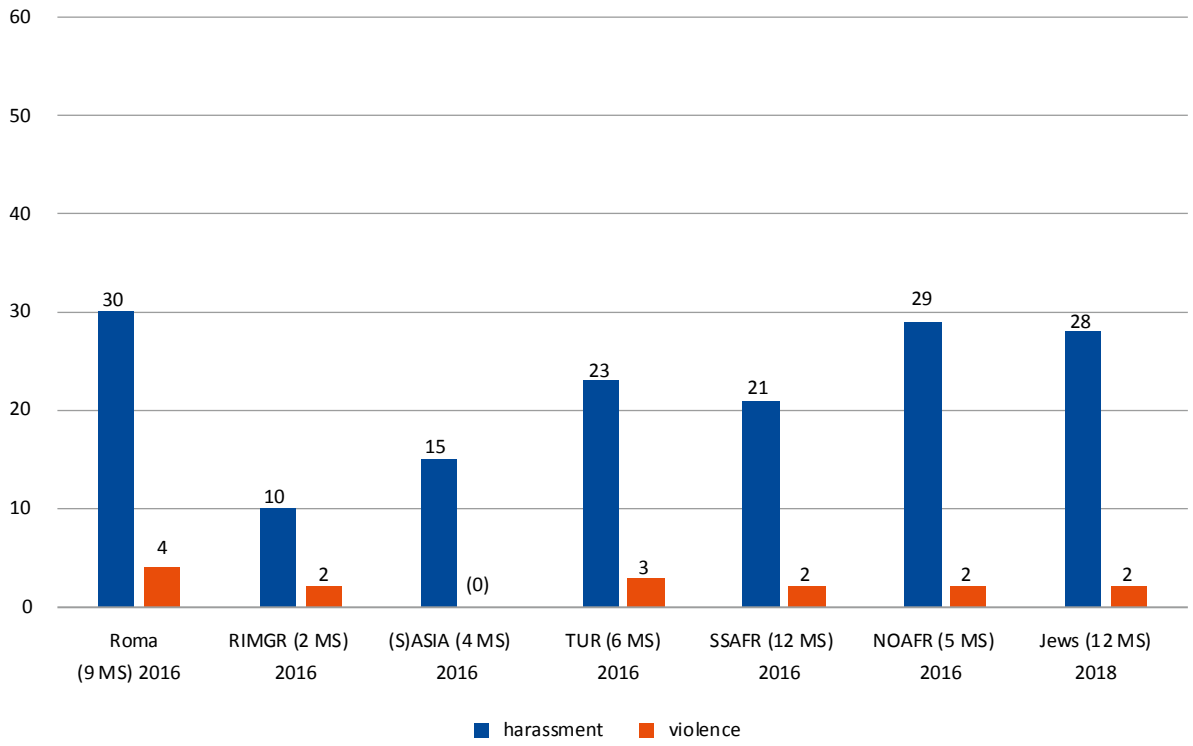
There is a lack of relevant official comparable data related to bias-motivated (hate-motivated) violence and harassment. Hence, Eurostat's 2018 SDG report does not include any data on this phenomenon. FRA has repeatedly pointed out this important data gap. The only available comparable data have been collected by FRA itself through its major surveys: EU-MIDIS II, the survey on LGBT persons, or the survey on discrimination and hate crime against Jews. These data include information on experiences of violence and harassment, as well as on the extent to which these are reported to competent authorities, and could support measuring the implementation of the SDG on peace, justice and strong institutions (SDG 16). Such data would at the same time help assess respect for relevant rights provided for in the Charter – such as, for example, the right to the integrity of the person,

the right to non-discrimination and rights related to access to justice.

Overall, the proportion of respondents who say they experienced bias-motivated physical violence due to their ethnic origin, immigrant background, religion, gender identity or sexual orientation in the year before various FRA surveys is small. Specifically, 3 % of immigrants and their descendants[61] and 4 % of Roma[62] in EU-MIDIS II; 3 % of all respondents in the 2012 online LGBT survey;[63] and 2 % of Jewish respondents in the relevant survey of 2018.[64]

A much higher proportion of the population surveyed by FRA experienced harassment – such as insults and threats, offensive gestures or cyber-harassment. For example, in the year preceding each respective survey, 24 % of Roma and immigrants and descendants of immigrants said that they experienced bias-motivated harassment;[65] 19 % of all LGBT respondents indicated this;[66] as did 28 % of Jewish respondents (see Figure 1.6).[67]

**Figure 1.6: Experiences of hate-motivated violence[a] and harassment[b] due to ethnic or immigrant background for different minority groups, 12 months before the survey, in selected EU Member States (%)[c,d,e]**




*Notes:* [a] *Experiences of physical attacks due to ethnic or immigrant background in the past five years.*

[b] *Harassment was asked about in terms of five acts including: offensive or threatening comments; being threatened with violence; offensive gestures or inappropriate staring; receiving offensive emails or text messages; and finding offensive, personal comments on the internet.*

[c] *Comparison between surveys is limited. EU-MIDIS is a random probability survey with personal interviews, whereas the Jewish survey was conducted as an online opt-in survey. Interpret with caution as only four acts were asked about in the survey of Jewish persons, excluding 'being threatened with violence'.*

[d] *Acronyms for target groups refer to immigrants from [country/region] and their descendants: TUR = Turkey, SSAFR = Sub-Saharan Africa, NOAFR = North Africa, (S)ASIA = South Asia and Asia, RIMGR = recent immigrants from non-EU countries, ROMA = self-identified Roma (umbrella term for different groups), Jews = self-identified Jews.*

[e] *EU-MIDIS II (2016) covered target groups in the following Member States: Roma: BG, CZ, EL, ES, HR, HU, PT, RO, SK; RIMGR: PL, SI; ASIA/SASIA: CY, EL, IT, UK; TUR: AT, BE, DE, DK, NL, SE; SSAFR: AT, DE, DK, FI, FR, IE, IT, LU, MT, PT, SE, UK; NOAFR: BE, ES, FR, IT, NL. The 2nd Survey on discrimination and hate crime against Jews in the EU (2018) covered Jews in DE, BE, NL, PL, ES, SE, DK, AT, FR, IT, UK, HU.*

*Sources:* *FRA (2018), EU-MIDIS II 2016; FRA, Second Survey on discrimination and hate crime against Jews in the EU*

## 1.3. Tools for implementing SDGs in line with fundamental rights obligations in the EU and its Member States

Data are necessary to inform policy and monitor the effectiveness of its implementation. This section examines a range of policy tools at EU and national levels that can achieve human rights-compliant implementation of sustainable development goals provided that they are systematically informed by robust and relevant data.

### 1.3.1. The EU level: framework, measures and opportunities to achieve SDGs

Sustainable development has long been a core ambition of the EU integration process.[68] The first EU sustainable development strategy dates to 2001. It was revised in 2006 to become more comprehensive and rights-based and was reviewed again in 2009,[69] reflecting the EU's fundamental commitment to the principles of democracy, rule of law, respect for human rights, equality and non-discrimination.[70] Sustainability and values, including human rights, taken together shape a coherent framework where all three dimensions of sustainability – economic, environmental and social – are met under the common denominator of the well-being of the European peoples. This is reflected in EU primary law, which lays down economic, environmental and social objectives,[71] while urging the EU to ensure "consistency between its policies and activities, taking all of its objectives into account".[72] Furthermore, as previously shown, the EU has constantly called for a universally applicable rights-based approach towards the SDGs, not only in regard to its external action, but also in terms of internal policies.[73] This approach was once again explicitly reaffirmed by the Council of the EU in June 2017.[74]

#### EU tools and actions towards a more sustainable future

The EU disposes of a range of tools, measures and policies that help to steer states' action towards achieving all SDGs.[75] The EU Charter of Fundamental Rights can be instrumental in promoting equality and non-discrimination, as well as peaceful and inclusive societies that are respectful of fundamental rights and the rule of law (see Table 1.1). It contains numerous provisions on rights and principles that are legally binding not only for EU institutions – for example, when they develop EU law and policy – but also for EU Member States when acting within the scope of EU law.

In relation to the SDG on reducing inequality (SDG 10), the EU has in place since 2000 legal measures to fight discrimination and promote equal opportunities. The main EU directives in this context prohibit discrimination on the basis of race or ethnic origin in all spheres of social life, and discrimination in the area of employment on the basis of religion or belief, disability, age or sexual orientation.[76] In regard to gender equality, the EU adopted in 2004 the directive on equal treatment for men and women in the access to and supply of goods and services, and in 2006 the directive on equal treatment for men and women in matters of employment and occupation.[77]

However, important areas such as education, health care, social protection, social advantages, housing, or goods and services available to the public are not covered in relation to grounds of discrimination other than race or ethnic origin and partially gender. The European Commission proposal of 2008 for a "horizontal" Equal Treatment Directive that would prohibit discrimination based on religion or belief, disability, age or sexual orientation, still lacks the necessary consensus at the Council of the EU.[78] This persisting stagnation creates an artificial 'hierarchy' of protected grounds of discrimination, which is not in line with Article 21 of the EU Charter of Fundamental Rights on non-discrimination. In 2018, the Commission's monitoring report on the European Pillar of Social Rights reaffirms its willingness to continue promoting the adoption of this proposal.[79] See also Chapter 3.

The EU's anti-discrimination legislation is also relevant for the implementation of the SDG on peace, justice and strong institutions (SDG 16), as this goal includes a target to "Promote and enforce non-discriminatory laws and policies for sustainable development" (SDG target 16.b). Furthermore, the EU contributes to SDG 16 targets by taking concrete action to guarantee justice throughout the EU in criminal, civil or contract law and by promoting judicial co-operation between Member States. For example, regarding the promotion of the rule of law, access to justice for all and the protection of fundamental rights, the EU has adopted criminal law provisions to fight racism and xenophobia in the form of a Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law.[80] The EU has also taken significant measures to protect victims of crime through the Victims' Rights Directive[81] and the rights of those suspected or accused of crime through the directives on procedural safeguards and rights of persons who are suspects or accused in criminal proceedings.[82] For more on access to justice, see Chapter 9.

An issue of particular relevance for sustainable development and the implementation of SDG 16 is access to justice in environmental matters. In addition to Article 47 of the Charter on the right to an effective remedy and to a fair trial, which is applicable in environmental matters, the EU is since 2005 a party to, and thus bound by, the Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention).[83]

**FRA ACTIVITY**

### Facilitating access to justice

To facilitate access to justice, in 2018, FRA, in close cooperation with the European Commission, updated the fundamental rights section of the European e-Justice Portal. The portal includes two interactive tools: the CharterClick tool, which helps to determine whether the EU Charter of Fundamental Rights is applicable in specific cases, and the Fundamental Rights Interactive Tool (FRIT), originally developed by FRA, which helps individuals determine which is the competent national non-judicial body in case of fundamental rights violations. In addition, the portal includes extensive information on different topics – such as, for example, relevant national case law concerning the freedom of movement – a collection also based on FRA research.

*See the online European e-Justice Portal: Fundamental Rights in the European Union and its webpage on Freedom of movement and other Union citizens' rights.*

Implementing SDGs in a way that is respectful of human and fundamental rights also requires the active involvement of businesses and appropriate private investment. In this respect, the Commission in March 2018 adopted the Action Plan on Financing Sustainable Growth.[84] The action plan is meant to be "instrumental to help deliver" on SDGs. One of its objectives is to promote corporate governance and investment decision-making that takes "into due account" environmental and social considerations. The action plan underlines that "[s]ocial considerations may refer to issues of inequality, inclusiveness, labour relations, investment in human capital and communities" and acknowledges that "[e]nvironmental and social considerations are often intertwined, as especially climate change can exacerbate existing systems of inequality". In this action plan, the Commission announced that in 2019 it will carry out analytical and consultative work with relevant stakeholders to assess "the possible need to require corporate boards to develop and disclose a sustainability strategy, including appropriate due diligence throughout the supply chain, and measurable sustainability targets". Such due diligence is also applicable with respect to human and fundamental rights. Other relevant initiatives by the European Commission consider the promotion of human and fundamental rights through corporate social responsibility and responsible business contact that also involves action to respect and protect human and fundamental rights while conducting business, and to provide adequate access to remedy in case of rights violations.[85]

## Opportunities to reinforce coordination and implementation of SDGs at EU level

### Need for a comprehensive implementation strategy

Both the European Parliament[86] and the EU Council have invited the European Commission to develop a comprehensive strategy to implement the 2030 Agenda and the SDGs.[87] In January 2019, the Commission published its reflection paper "Towards a sustainable Europe by 2030".[88] It underlines that the rule of law, democracy and fundamental rights are "non-negotiable principles and values" forming the foundation upon which the EU is built and recalls that "[t]hey are also established as an integral part of the United Nations 2030 Agenda and the SDGs".[89] Moreover, it points out that addressing inequality is important for "bolstering social cohesion" and "securing social and political stability" in the EU.[90] The reflection paper also highlights that "businesses have a vital role to play in the sustainability transition" and that there is space to "identify appropriate measures and tangible ways in which more sustainable business conduct can be promoted".

The objective of the reflection paper is to "pave the way for a comprehensive implementation strategy in 2019" in the EU and inform the relevant debate.[91] In this regard, it tables three different scenarios for the structures, tools and policies to be adopted by EU institutions for achieving the SDGs, outlining what they would mean in practice, as well as their respective advantages and disadvantages.[92] The first scenario calls for endorsing the SDGs at the highest EU political level as "the overarching strategic policy objectives for the EU and its Member States". In this way, the SDGs will "determine the strategic framework of the EU and its Member States", requiring strategic, coordinated action by the EU and its Member States, including regional and local authorities. The second scenario calls for "mainstreaming" SDGs in all relevant EU policies in line with the EU strategy for growth in the post-2020 period "while not binding EU Member States to achieving collectively the SDG commitments in the EU". In order to reinforce EU policy coherence and ensure that the EU moves closer to the SDGs, this scenario calls for stronger mainstreaming of SDGs in the European Semester to coordinate and monitor national policies implementing the SDGs in line with the post-EU2020 growth strategy. The third scenario

prioritises external EU action "helping the rest of the world catch up, while pursuing improvements at EU level", since "the EU is already a frontrunner in many aspects related to the SDGs".

Among the three scenarios, the first is in line with the recommendation of the High Level Multi-stakeholder Platform on SDGs.[93] This platform was established by the Commission in 2017.[94] It brought together a range of key stakeholders, including social partners, civil society and experts to discuss and advise the Commission on aspects of SDG implementation. The platform recommended that the implementation of Agenda 2030 and the SDGs should be at the core of the post-Europe 2020 strategy, and supports the adoption by the EU of a 'Sustainable Europe 2030 strategy' that includes the respect for human rights and the rule of law among its fundamental principles.

**European Semester**

The European Semester is the core cycle of economic and fiscal policy coordination within the EU. The fiscal and macroeconomic policies that are the main concern of the European Semester play a key role in decisions about social policy. Therefore, the different documents produced in the context of the European Semester also contain social policy considerations. This is reflected clearly in the joint employment reports accompanying the European Commission's annual growth surveys, drawing on data of the EU Social Scoreboard.[95] Such considerations are also included in the country-specific recommendations (CSRs) adopted by the EU Council for each Member State. In 2018, for example, a number of CSRs reflect on inequality, in particular in accessing the labour market, education, health services, or on income inequality related to poverty within Member States.[96]

Moreover, the European Semester, drawing on data provided in the EU Justice Scoreboard,[97] also considers aspects of the functioning of the judicial systems of Member States and the rule of law, in light of their decisive role in fostering economic performance.[98]

However, the implementation of the SDGs and relevant fundamental rights requirements so far are not part of the considerations of country-specific recommendations adopted in the context of the European Semester.

**European Pillar of Social Rights**

A tool with an important, but untapped, potential is the European Pillar of Social Rights (EPSR). This is a proclamation of rights and principles in the area of social rights adopted in November 2017 by the European Parliament, the Council of the EU and the European Commission.[99] The EPSR includes a list of rights and principles that correspond directly or indirectly to specific SDGs.[100] In its Preamble, the EPSR designates "significant inequality" among the challenges facing all EU Member States. Principle 3 includes a general clause on equal opportunities.[101]

The EPSR is not legally binding.[102] Nevertheless, several of its provisions correspond to rights and principles that are already enshrined in the EU acquis, in particular in the Charter. This is the case, for example, with the provisions regarding equal opportunities, non-discrimination and gender equality. The EPSR provisions also reflect legal obligations that are included in the European Social Charter of the Council of Europe, which are to a large extent binding for EU Member States.[103]

In order to monitor the gradual implementation of the EPSR, the European Commission developed an EU Social Scoreboard, feeding also into the European Semester.[104]

**EU's new Multiannual Financial Framework**

Sustainability is a core guiding principle in the proposal for the new Multiannual Financial Framework (MFF), the EU's budget for 2021-2027,[105] since EU investments are "key to Europe's future prosperity and its leadership on the global Sustainable Development Goals".[106] The European Social Fund+ (ESF+), the European Regional Development Fund (ERDF), the Asylum and Migration Fund, as well as the Justice, Rights and Values Fund could meaningfully contribute to the implementation of SDGs 10 and 16.

**FRA ACTIVITY**

### Bolstering budgetary efforts to protect children

In its recent report on child poverty in the EU, which includes considerations on the proposals regarding the new EU MFF, FRA supports the European Commission's proposal to identify children living at risk of poverty or social exclusion as a priority for the programming period 2021–2027 under the EU´s budget. FRA has also spoken out in favour of the establishment of a European Child Guarantee Scheme, noting that such a scheme should receive adequate funding from both national and EU resources.

*See FRA (2018), Combating child poverty: an issue of fundamental rights, Publications Office, Luxembourg.*

The proposal for a new Common Provisions Regulation (CPR), which lays down the common rules for the functioning of all the Funds mentioned above, underlines that "the objectives of the Funds should be pursued in the framework of sustainable development".[107] Its Article 67 (1) provides that,

when selecting operations to be funded by the EU Funds, national managing authorities should establish and apply "criteria and procedures which are non-discriminatory, transparent, ensure gender equality and take account of the Charter of Fundamental Rights of the European Union and the principle of sustainable development and of the Union policy on the environment in accordance with Articles 11 and 191 (1) of the TFEU".

In addition, the proposal reinforces the conditionality mechanism of the current CPR that Member States have to comply with to have access to EU funds.[108] The new mechanism could contribute to the fundamental rights-compliant implementation of SDGs since it establishes among the "horizontal enabling conditions" the "effective application and implementation of the EU Charter of Fundamental Rights" and the "implementation and application of the United Nations Convention on the rights of persons with disabilities (UNCRPD) in accordance with Council Decision 2010/48/EC".

**FRA ACTIVITY**

### Supporting funding conditions that promote application of the Charter

In its opinion to the European Parliament on the challenges and opportunities for the implementation of the Charter of Fundamental Rights, FRA supports the adoption of the new enabling condition for accessing EU funding, which requires the effective application and implementation of the EU Charter of Fundamental Rights.

*See FRA, Opinion 4/2018, Challenges and opportunities for the implementation of the Charter of Fundamental Rights.*

Monitoring compliance of the operations supported by EU Funds with the foreseen conditionalities will be a challenging issue in the context of the new MFF. Such effective monitoring is not just a formal matter, but corresponds to the need to ensure that EU funding is spent in accordance with both the EU legal framework and the EU policy priorities and objectives. According to the new CPR proposal, the European Commission will have the right, throughout the whole programming period, to freeze relevant payments, if a breach of a certain enabling condition is identified.[109]

In this context, the monitoring committees of EU-funded programmes have a decisive role. The new CPR will therefore urge Member States to include in these committees with a right to vote not only representatives of national authorities, but also economic and social partners, bodies representing civil society and environmental partners, as well as bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination (relevant also for SDG targets 16.6 and 16.7 on institutions and decision making).[110]

**EU mechanisms aiming to maintain and promote the rule of law**

Many EU policies and prominent pieces of EU legislation can be seen as promoting peace, justice and strong institutions (SDG 16). However, a few of them explicitly and specifically address the rule of law (SDG target 16.3) – one of the Union's core values (Article 2 of the TEU) that any State that wants to apply for EU membership has to respect (Article 49 of the TEU), and every EU Member State is expected to uphold (Article 7 of the TEU). The rule of law is one of the principles that "inspired its own creation, development and enlargement" (Article 21 of the TEU) and guides EU "action on the international scene".

Article 7 of the TEU allows the Council of the European Union to determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. For more on this, see Chapter 9. Triggering Article 7 can ultimately even lead to the suspension of the concerned Member States' voting rights within the Council. Such a decision requires a unanimous finding by the Council of the EU that there has been a breach of the EU's founding values. Such a procedure is currently pending vis-à-vis Hungary and Poland.[111]

Another avenue to protect the rule of law is the regular infringement procedure, based on Article 258 of the Treaty on the Functioning of the European Union (TFEU).[112] Developments that can amount to backsliding in terms of the rule of law in various EU Member States in recent years prompted proposals for additional complementary mechanisms.[113] In March 2013, the European Commission initiated the EU Justice Scoreboard – an annual, non-binding tool presenting trends in the area of justice.[114] In 2014, the Commission launched a new "Framework to strengthen the Rule of Law", which aims to prevent emerging threats to the rule of law from escalating to the point where the Commission has to trigger the Article 7 procedure.[115] At the end of that year, the Council adopted conclusions establishing an "annual rule of law dialogue within the Council" (General Affairs).[116] The fourth dialogue took place in November 2018, dedicated to the topic of trust in public institutions. As in earlier years, FRA's Director gave the introductory remarks.[117]

### Proposed regulation links rule of law and EU funding

In addition to the proposal for the Common Provisions Regulation, the European Commission, in the context of the new MFF package, has proposed the adoption of a horizontal regulation "on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States".

As an example of "generalised deficiency", the proposal refers to situations where the independence of the judiciary is endangered, or there is a failure to prevent, correct and sanction arbitrary or unlawful decisions by public authorities. In case of a "generalised deficiency", the European Commission and the Council of the EU would be able to take appropriate measures against a Member State – for example, to suspend the approval of programmes, commitments or payments.

Linking EU funding to a monitoring and sanctioning procedure regarding the respect of the rule of law by Member States could be a useful institutional mechanism to help protect this principle, which is vital for ensuring well-functioning state institutions. In this sense, it could also contribute to the fulfilment of SDG 16 on peace, justice and strong institutions (SDG target 16.3).

*See European Commission (2018), Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, COM/2018/324 final, Brussels, 2 May 2018.*

In October 2016, the European Parliament, considering among other issues that "some Member State governments deny that upholding Union principles and values is a Treaty obligation, or that the Union has the authority to ensure compliance", adopted a resolution calling for the establishment of an "EU mechanism on democracy, the rule of law and fundamental rights".[118] The resolution comes with detailed recommendations for a draft "Inter-institutional Agreement on arrangements concerning monitoring and follow up procedures on the situation of Democracy, the Rule of Law and Fundamental Rights in the Member States and EU institutions". Discussions on how the EU could best protect and promote the rule of law also continued amongst Member States – such as among the 'friends of the rule of law', a group of Member States that informally discusses how to best proceed on the topic. In 2018, the Member States' representatives discussed a concrete proposal, tabled by Belgium, to establish a Periodic Peer Review of the Rule of Law within the EU.

The ongoing development by FRA of a European Union Fundamental Rights Information System (EFRIS)[119] would improve the accessibility of data and information available under the United Nations, Council of Europe and EU mechanisms and instruments. It could be drawn on in various contexts, including in any rule of law evaluation, and thereby strengthen the evidence base of such procedures. Moreover, such an interactive tool can also assist measurement of progress in achieving SDGs, in particular the SDG on peace, justice and strong institutions (SDG 16).

## 1.3.2. National level: leverage to steer SDG implementation in full compliance with human rights

### National and local government actions to implement SDGs

The Agenda 2030 and the SDGs are global, and the EU's contributions to their achievement through its policies and tools is crucial – but their effective realisation is a matter of policies and actions carried out at the national, regional and local levels.[120] This is particularly the case regarding SDGs that are more related to the social area, and that have an impact on the enjoyment of fundamental rights, including SDGs 10 and 16. The importance of national responsibility in social policy is also reflected in the EU legal framework on the division of competences between the EU and Member States.[121]

EU Member States have overall demonstrated ownership of Agenda 2030 and the SDGs.[122] By the end of 2018, all but four had submitted voluntary national review (VNR) reports to the UN's High Level Political Forum. **Croatia** and the **United Kingdom** will present their reports in 2019, while **Austria** and **Bulgaria** are expected to submit their first VNR reports in 2020.[123]

▶ On EU Member States' VNRs, see also Chapter 8.

Moreover, according to the global SDG Index ranking, all EU Member States are in the top 50 of 156 countries under evaluation, while seven are among the top ten.[124] This good performance is reflected in all SDGs. Six EU Member States are among the top ten in regard to the SDG on reducing inequality (SDG 10) and four in regard to the SDG on peace, justice and strong institutions (SDG 16).[125]

One challenge for EU Member States is to identify gaps and better align their existing national frameworks for sustainable development with their SDG commitments. In this respect, some Member States revise their national frameworks, while others adopt new strategies and action plans targeting SDGs explicitly, which appears to be a more promising practice.

Member States' approaches to assigning coordination and monitoring responsibilities regarding SDGs to institutional structures vary. In some Member States,

this role is assigned to structures that directly report to the head of government. In others, high-level collective bodies, such as inter-ministerial committees, assume the responsibility to coordinate and monitor. Yet in others, this responsibility is allocated to specific ministries, usually foreign affairs or environment ministries, or the ministries responsible for financial and economic affairs.

Promising practice

### Taking action to implement SDGs at national level

**Finland** in 2017 presented a National Implementation Plan that includes a focus on non-discrimination and equality policies. The national 2030 Agenda Coordination Secretariat is located within the Prime Minister's Office. The coordination task is supported by an Inter-Ministerial Network Secretariat, consisting of sustainable development focal points from all ministries.

The engagement of civil society and other stakeholders is an important element of Finland's sustainable development policies. The multi-stakeholder National Commission for Sustainable Development has served as the key mechanism. The most recent tool to boost concrete action and innovations for sustainable development is called "*Society's Commitment to Sustainable Development*". By 2018, there were over 600 commitments from all spheres of society.

*For more information, see Finland, Government Report on the implementation of the 2030 Agenda for Sustainable Development, 11/2017.*

The need to have SDG focal points appointed in each ministry to follow up on and inform policies at the ministerial level with a SDG-perspective is also broadly recognised. Establishing ways to regularly involve important actors in the implementation of the SDGs – such as regional and local authorities, who depending on their competences may be responsible for developing and/or carrying out key activities related to SDG targets – is another challenge.

### Localising SDGs

Localising SDGs and ensuring policy consistency between all levels of governments requires the active engagement of cities and municipalities in planning, implementing and monitoring SDGs. The contribution of the European Committee of Regions, cities' networks (e.g. EUROCITIES), and national associations of local authorities could be valuable in this respect. 'Human rights cities' can also help operationalise SDGs at the local level through a human rights angle. The intercultural cities network of the Council of Europe could contribute in similar ways.

At the global level, Local2030 is a multi-stakeholder initiative to support the local-level implementation of the SDGs. In 2018, a local and regional governments forum was organised as a special event around the UN's HLPF.

*For more information, see the Raoul Wallenberg Institute of Human Rights and Humanitarian Law's webpage on human rights cities and the SDGs; the Council of Europe's webpage on its Intercultural cities programme; the UN's webpage on Local2030; and the webpage on the Local and Regional Governments' Forum.*

## Engagement of civil society

The engagement of civil society is not simply important, it is crucial. Civil society in all its manifestations and all its levels should be involved as a partner in the delivery of SDGs. Establishing partnerships between public authorities and civil society is essential for the implementation of all SDGs, and a concrete target of SDG 17 on strengthening the means of SDG implementation. At the EU level, the EU SDG multi-stakeholder platform serves as an inspiring example for Member States by bringing together the European Commission, representatives of regional and local authorities, businesses, trade unions, civil society organisations and experts.

FRA conducted a written consultation with civil society organisations (CSOs) that are members of the Fundamental Rights Platform (FRP) operated by FRA.[126] The agency's questions focused on the relevance of the scope of different CSOs' work to SDGs 5, 10 and 16, as well as on whether, and how, they participate in the implementation and monitoring of these SDGs, particularly at national level (see Table 1.3). The results show that there is room for improvement in terms of civil society organisations in the field of fundamental rights playing a more active role in the implementation and monitoring of the SDGs. The findings outlined below, however, cannot be considered as representative for all the FRP members since participation in the consultation was rather limited. On the other hand, this limited participation in itself reveals a limited awareness of the importance of SDGs among civil society – which needs to be addressed.

**Table 1.3: Civil society organisations' assessments of their work's relevance to select SDGs[a,b,c]**

| SDG | High | Medium | Low |
|---|---|---|---|
| SDG 5 on gender equality | 26 FRP Members, 18 of which are national CSOs | 12 FRP Members, seven of which are national CSOs | 11 FRP Members, nine of which are national CSOs |
| SDG 10 on reduced inequalities | 25 FRP Members, 17 of which are national CSOs | 14 FRP Members, nine of which are national CSOs | 10 FRP Members, eight of which are national CSOs |
| SDG 16 on promoting peace, justice and strong institutions | 30 FRP Members, 19 of which are national CSOs | 8 FRP Members, six of which are national CSOs | 11 FRP Members, nine of which are national CSOs |

*Notes:* [a] *Question: "How would you assess the relevance of the scope of your organisation regarding SDGs 5, 10 and 16?"*
[b] *All respondents are members of FRA's Fundamental Rights Platform.*
[c] *Total number of responses=49.*

*Source:* *FRA, 2019*

In their responses, 19 of 34 (55 %) national-level CSOs and 12 out of 15 (80 %) CSOs with a European or international scope stated that they participate in the implementation and monitoring of SDGs in various ways. There is evidently scope for national-level CSOs to become more active. Governments could facilitate this by raising awareness among civil society and by inviting relevant organisations to participate in the development, implementation and monitoring of SDG-related activities.

Promising practice

**Active engagement of civil society**

The **Italian** Alliance for Sustainable Development (ASviS) was established in 2016 to raise awareness among Italian society, economic stakeholders and institutions about the importance of the 2030 Agenda for the future of Italy, and to spread a culture of sustainability in the country, including social sustainability as addressed under the SDG on reduced inequalities (SDG 10) and the SDG on peace, justice and strong institutions (SDG 16). The alliance currently brings together over 200 member organisations. Over 300 experts contribute to the activities of ASviS through working groups active on specific SDGs and on cross-cutting issues. ASviS activities include the drafting of a yearly report, the development of a database on SDG indicators, the promotion of institutional dialogue, the dissemination of information, as well as the organisation of a Sustainable Development Festival every year, with more than 700 events across Italy.

*For more information, see the ASviS website.*

### 3.2.3 Engaging institutional national human rights actors in SDG implementation

National human rights institutions (NHRIs), equality bodies and Ombuds institutions have the mandate and experience to make a valuable contribution to the implementation of SDGs by introducing a more systematic fundamental rights perspective to existing SDG coordination and monitoring procedures. In this respect, the European Commission's recommendation on standards for equality bodies recognises that "[e]quality bodies are also valuable institutions for the sustained development of equal and inclusive democratic societies".[127]

Drawing on consultations conducted through ENNHRI and Equinet, FRA found that their members see their mandate as being closely linked and relevant to the content of SDGs.[128] Table 1.4 presents to what extent these institutions, particularly equality bodies, see their mandate as being relevant to the content of the SDG on reducing inequality (SDG 10). As in the case of civil society organisations, the findings cannot be considered representative for all relevant institutions, since participation in the consultation was rather limited. On the other hand, this limited participation in itself reveals limited awareness of the importance of SDGs within NHRIs, equality bodies and Ombuds institutions – which needs to be addressed.

The respondents also mentioned their work's links with SDG 16 on peace, justice and strong institutions, as well as with other SDGs, such as SDG 4 on education, SDG 5 on gender equality or SDG 8 on decent work and employment. A number of the respondents pointed out that they contribute to the implementation of SDGs by receiving and examining complaints related to discrimination or violations of human rights, or by addressing human rights-related recommendations to governments – for example, the Ombudsman for Croatia and for Cyprus, the French and Greek human rights commissions, and the Swedish Equality Ombudsman.

In addition, some institutions contribute in a more targeted way to the monitoring of the implementation of SDGs at national level. The Institute for Human Rights in the Netherlands, for instance, is expected to report on the implementation of the SDGs in 2019. The Belgian Institute for Equality of Women and Men, the

**Table 1.4: Assessments by national human rights institutions, equality bodies and Ombuds-institutions of their mandate's relevance to SDG 10 on reducing inequality[a,b]**

| High | Medium |
|---|---|
| **10** | **3** |
| • Unia (**Belgium**)<br>• Commission for Protection Against Discrimination (**Bulgaria**)<br>• Croatian Ombudsman (**Croatia**)<br>• Défenseur des Droits (**France**)<br>• Greek Ombudsman (**Greece**)<br>• Equal Treatment Authority (**Hungary**)<br>• Irish Human Rights and equality Commission (**Ireland**)<br>• Office of equal opportunity Ombudsman (**Lithuania**)<br>• NCPE (**Malta**)<br>• Equality Commission for Northern Ireland (**Northern Ireland**)<br>• Slovak Center for Human Rights (**Slovakia**) | • Belgian Institute for Equality of Women and Men (**Belgium**)<br>• Non-Discrimination Ombudsman **(Finland)**<br>• CRPD (**Malta**) |

*Notes:* [a] *Question: "How would you assess the relevance of the mandate of your institution with the content of SDG 10 on reducing inequality?"*

[b] *Total number of responses=14.*

*Source:* *FRA, 2019*

Romanian Institute for Human Rights, and the Slovak Centre for Human Rights have participated actively in consultations or are members of specially created national bodies observing the implementation of SDGs. However, this type of involvement is not widespread.

Very few such institutions collect data relevant to SDGs or engage with statistical offices. The Scottish Human Rights Commission and the Danish Institute for Human Rights are examples of institutions that do so. However, all possess valuable data, collected through their daily work, that could contribute to measuring SDG implementation. Some – such as Unia or the Commission for Protection against Discrimination in Bulgaria – publish such data, but without linking them to SDGs. The Institute for the equality of women and men in Belgium is actively involved in exercises on the use of indicators for the monitoring of SDG implementation and is emphasising the importance of disaggregating those indicators by sex in interactions with the Federal Planning Bureau and the statistical office.

The Institute of Human Rights in Germany provides another interesting example; it has published an analysis comparing SDGs with recommendations received by Germany from UN human rights treaty bodies over the past few years.[129]

**FRA ACTIVITY**

### Establishing platforms for SDG-related information exchanges

The Council of Europe, together with FRA, ENNHRI and EQUINET, have formed a collaborative platform and meet regularly to discuss issues of social and economic rights, the implementation of the European Social Charter, as well as its links and synergies with the European Pillar of Social Rights of the EU, in order to identify and address potential gaps in the enjoyment of social and economic rights at the national level.

The same partners have also established a more targeted initiative: the operational platform on Roma equality ('OPRE'). Both platforms contribute to the exchange of information and views on issues that relate to the SDG on reducing inequality (SDG 10), as well as to the SDG on poverty (SDG 1).

*For more information, see the Council of Europe's webpage on the collaborative platform and its webpage on the OPRE platform.*

Despite their interest and efforts, most NHRIs, equality bodies and Ombuds institutions are not yet very actively involved in the implementation of SDGs – for instance, through participation in relevant monitoring mechanisms. Increasing their engagement would ensure that the links between human and fundamental rights and policies to implement SDGs are better articulated. It would also contribute to developing effective, accountable and transparent institutions at all levels; and would promote responsive, inclusive, participatory and representative decision-making, as required under SDG 16 on peace, justice and strong institutions.[130]

# FRA opinions

The Sustainable Development Goals (SDGs) and human and fundamental rights are complementary in their common core objective to promote the well-being of all people. While the SDGs constitute a concrete and targeted global policy agenda to guide the actions of states and other actors, including the EU, human and fundamental rights constitute a comprehensive normative framework that creates legal obligations and accountability. The SDGs are grounded in human and fundamental rights and seek to realise them. At the same time, a rights-based approach to the SDGs is best placed to promote the implementation of the development goals.

All SDGs have a direct or indirect fundamental rights dimension and all of them are inter-connected. The rights dimension, however, is more prominent in some of them – such as SDG 10 on reducing inequality and SDG 16 on promoting peace, justice and strong institutions. In this respect, implementing and measuring SDGs 10 and 16 is also about implementing and measuring human and fundamental rights enshrined in international human rights instruments and the EU Charter of Fundamental Rights, such as the right to human dignity, non-discrimination and equality before the law and between women and men, the right to life and the integrity of the person, the right to social security and social assistance, or rights related to access to justice.

Data provided by Eurostat, which include FRA's data on violence against women, complemented by additional data collected and analysed by FRA on hard-to-reach population groups, such as ethnic or religious minorities, immigrants, or LGTBI persons, highlight the need to enhance efforts to fully implement the SDGs. Inequality, in particular income inequality, has increased in the past years. Although that increase recently appears to have stopped, the overall rise in income inequality has led to compound challenges in enjoying fundamental rights on equal footing, especially for disadvantaged population groups. At the same time, discrimination and harassment, but also violence against people on discriminatory grounds, as well as violence against women, are a reality for a significant part of the population of the EU. In addition, new challenges to respect for the rule of law have emerged.

To address this reality and achieve SDGs in line with fundamental rights obligations, the EU and the Member States have at their disposal certain tools, such as robust anti-discrimination legislation and a range of sectoral policies. However, an overall EU strategy for comprehensive rights-based sustainable development, such as the one proposed by the EU's multi-stakeholder platform on SDGs for the period beyond 2020, has not yet been formally tabled. In this respect, the European Commission published in early 2019 a reflection paper, introducing three possible scenarios for such a strategy in order to initiate the debate. Following this reflection paper, the EU Council adopted in April 2019 its Conclusions 'Towards an ever more sustainable Union'.

Effective policy monitoring and coordination mechanisms, such as the European Semester, can also play a major role in implementing the SDGs, drawing on data from the EU Justice and Social Scoreboards. So far, however, country-specific recommendations adopted in the context of the European Semester do not explicitly take into consideration either the SDG agenda or relevant fundamental rights requirements.

Another important tool is the use of EU Funds. Recent proposals by the European Commission link future EU funding in the context of the new Multiannual Financial Framework (EU budget) for the period 2021-2027 to rights-related conditionalities ('enabling conditions'), such as the respect and implementation of the EU Charter of Fundamental Rights. Moreover, the Commission has proposed avenues to protect the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States.

Respecting and promoting fundamental rights, while promoting the SDGs and the overarching commitment to leave no one behind, requires expertise, as well as adequate and disaggregated data. Such data are not always available. Moreover, even when available, they are not always taken into consideration.

At the national level, a rights-based implementation of the SDGs would benefit from a more structured and systematic engagement of national human rights institutions, equality bodies and Ombuds institutions, local government, social partners, businesses and civil society in SDG-coordination and monitoring mechanisms, as well as in monitoring committees of EU Funds. Such an engagement would also contribute to strengthening institutions and hence to promoting the implementation of the SDG on peace, justice and strong institutions (SDG 16).

In addition, the potential contribution of national human rights institutions, equality bodies and Ombuds institutions in collecting and analysing SDG- and fundamental rights-related data for hard-to-reach population groups is still largely untapped. In cooperation with national statistical authorities and drawing on their daily work, as well as on the expertise and technical assistance of FRA in this field, they could contribute substantially in this regard.

### FRA opinion 1.1

*The EU institutions should ensure that any future EU strategy for sustainable growth reflects, as appropriate, all SDGs and targets set by the global Agenda 2030, including the SDG on reducing inequality (SDG 10) and the SDG on promoting peace, justice and strong institutions (SDG 16). Such a strategy should promote the mainstreaming and the implementation of SDGs, acknowledging the close links between all 17 SDGs and fundamental rights, as enshrined in the EU Charter of Fundamental Rights. EU Member States should adopt a similar approach when designing or revising their sustainable development strategies or action plans.*

### FRA opinion 1.2

*The EU's European Semester policy cycle, in particular the European Commission's assessment and the resulting country-specific recommendations, should take into account the global Agenda 2030 and its sustainable development goals, as well as the relevant human and fundamental rights obligations enshrined in the EU Charter of Fundamental Rights and international human rights law. In this respect, for example, country-specific recommendations could include in their considerations the links between them and the implementation of specific SDGs and the respect of EU Charter provisions.*

### FRA opinion 1.3

*EU Member States should involve civil society in all its manifestations and all its levels in the delivery of the SDGs. In this regard, they could consider the model of the European Commission's high-level multi-stakeholder platform on the implementation of the sustainable development goals as an inspirational example. In addition, they could consider inviting civil society organisations to be actively involved in SDG-implementation and monitoring activities, as well as to take measures to empower them through training and funding based on a concrete roadmap for their implementation.*

### FRA opinion 1.4

*The EU legislator should adopt the new enabling condition covering the effective application and implementation of the EU Charter of Fundamental Rights, as laid down in the Common Provisions Regulation proposed by the European Commission for the next Multiannual Financial Framework 2021-2027. Such a strengthened form of conditionality would provide an additional means for promoting a rights-based implementation of SDGs. As a means to promote further achievement of the SDG on peace, justice and strong institutions (SDG 16), the EU institutions should continue the discussion and pursue the objective of protecting the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States.*

### FRA opinion 1.5

*EU Member States should ensure the active and meaningful participation of national human rights institutions, equality bodies or Ombuds institutions in monitoring committees of EU-funded programmes, and monitoring and coordination mechanisms of the implementation of the SDGs. As FRA has repeatedly underlined, in this respect Member States should provide them with adequate resources and assistance to develop their capacity to carry out these tasks.*

### FRA opinion 1.6

*The EU institutions and Member States should consider using all available statistical data and other available evidence on discrimination and bias-motivated violence or harassment, as well as data on violence against women, to complement their reporting on relevant SDG indicators, including data and evidence provided by FRA. Member States should collect and disaggregate data relevant for the implementation of SDGs, particularly as regards vulnerable and hard-to-reach groups of the population, to ensure that no one is left behind. In this respect, they should consult FRA data to identify if these data can add and provide disaggregation to their national reporting and monitoring. Furthermore, Member States should promote the cooperation of national statistical authorities with national human rights institutions, equality bodies or Ombuds institutions. Member States should consider using the expert technical assistance and guidance of FRA in this field.*

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43 When drafting this chapter, 2017 data on persons with a disability were not published yet. The last data were extracted on 19 March 2019.

44 *Ibid.*, p. 299.

45 Eurostat (2018), *Sustainable development in the European Union – Monitoring report on progress towards the SDGs in an EU context – 2018 edition*, Luxembourg, Publications Office, pp. 297-311.

46 *UN, General Assembly (2017), Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development*, *A/RES/71/313, 6 July 2017*, Indicators 16.1.3, 16.2.3, 16.3.1 or 16.b.1.

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48 For more recent data, see Eurostat, Population reporting occurrence of crime, violence or vandalism in their area by poverty status [sdg_16_20], accessed on 19 of March 2019.

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57 FRA (2017), *Second European Union Minorities and Discrimination Survey (EU-MIDIS II): Muslims – Selected findings*, Luxembourg, Publications Office, pp. 25–26.

58 FRA (2018), *Experiences and perceptions of antisemitism - Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office, p. 60.

59 FRA (2014) *EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey - Main results*, Luxembourg, Publications Office, p. 26. Note: Discrimination and harassment were asked about in one question, meaning the answers are not directly comparable with those given in the other surveys, which asked about discrimination and harassment separately.

60 *Ibid*, pp. 29–30 and 34.

61 FRA (2017), *Second European Union Minorities and Discrimination Survey - Main results report*, Luxembourg, Publications Office, p.63.

62 FRA (2018), *A persisting concern: anti-Gypsyism as a barrier to Roma inclusion*, Luxembourg, Publications Office, p.23.

63 FRA (2014), *EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey - Main results*, Luxembourg, Publications Office, p. 57.

64 FRA (2018), *Experiences and perceptions of antisemitism - Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office, p. 51.

65 FRA (2017), *Second European Union Minorities and Discrimination Survey - Main results report*, Luxembourg, Publications Office, p. 59.

66 FRA (2014), *EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey - Main results*, Luxembourg, Publications Office, p. 71.

67 FRA (2018), *Experiences and perceptions of antisemitism - Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office, p. 47. Note that there is limited comparability as harassment includes four acts, excluding being threatened with violence.

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70 Article 2, Treaty on European Union.

71 Preamble and Articles 3, 6, 7 and 21 of the Treaty on European Union; Articles 7-11 and 19 of the Treaty of the Functioning of the European Union.

72 Article 7 of the Treaty of the Functioning of the European Union.

73 European Commission (2016), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – next steps for a sustainable European future; European action for sustainability*, COM(2016) 739 final, Strasbourg, 22 November 2016.

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76 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ 2000 L 180; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303.

77 Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 2004 373; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ 2006 L 204.

78 European Commission (2008), *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation {SEC(2008) 2180} {SEC(2008) 2181}*, COM/2008/0426 final, Brussels, 2 July 2008.

79 European Commission (2018), *Monitoring the implementation of the European Pillar of Social Rights*, Staff Working Document, SWD(2018) 67 final, Strasbourg, 13 March 2018, p.19.

80 Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, 2008 (*Framework Decision on Racism*).

81 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ 2012 L 315.

82 Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ 2016 L 132; Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ 2016 L 297.

83 2005/370/EC: Council Decision of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, OJ L 124; European Commission (2017), Notice on Access to Justice in Environmental Matters. The notice is based on case law of the Court of Justice of the EU and provides guidance on how individuals and their associations can challenge decisions, acts and omissions by public authorities related to EU environmental law before national courts.

84 European Commission (2018), Action Plan: Financing Sustainable Growth, COM/2018/097 final.

85 European Commission (2019), Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress, SWD(2019) 143 final; European Commission, Corporate Social Responsibility

86 European Parliament (2017), Resolution of 6 July 2017 on EU action for sustainability (2017/2009(INI)), (2017/2009(INI)), P8_TA(2017)0315, Strasbourg, 6 July 2017.

87 Council of the European Union (2017), *Council Conclusions on A sustainable European future: The EU response to the 2030 Agenda for Sustainable Development*, 10370/17, Brussels, 20 June 2017; Council of the European Union (2019), *Council Conclusions "Towards an ever more sustainable Union by 2030"*, 8286/19, Luxembourg, 9 April 2019.

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90 *Ibid.*, p. 7.

91 *Ibid.*, p. 33.

92 *Ibid.*, pp. 33-39.

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98 *Ibid.*; see, for example, **Cyprus**, **Italy**, **Poland** and **Portugal**.

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100 Eurodiaconia (2018), *Integrating and Implementing the European Pillar of Social Rights and the Sustainable Development Goals*, Brussels, Eurodiaconia.

101 European Commission (2017), *The European Pillar of Social Rights – booklet*, Publications Office, Principle 3.

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106 *Ibid.*, p. 3.

107 European Commission (2018) *Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument*, COM/2018/375 final, recital 5. Strasbourg, 29 May 2018.

108 *Ibid.*, Article 11 and Annexes III and IV.

109 *Ibid.*, Article 11 (6).

110 *Ibid.*, Article 34 (1) in conjunction with Article 6 (1).

111 European Parliament (2017), *European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL),* P8_TA(2018)0340, Strasbourg, 12 September 2018; European Commission (2017), *Proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law*, COM/2017/0835 final, Brussels, 20 December 2017.

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# 2

# EU Charter of Fundamental Rights and its use by Member States


*In 2018, the Charter of Fundamental Rights of the European Union was in force as the EU's legally binding bill of rights for the ninth year. It complements national constitutions and international human rights instruments, in particular the European Convention on Human Rights (ECHR). As in previous years, the Charter's role and usage at national level remained ambivalent. National courts did use the Charter. Although many references to the Charter were superficial, various court decisions show that the Charter can add value and make a difference. Impact assessments and legislative scrutiny procedures in a number of Member States also used the Charter. This was, however, far from systematic and appeared to be the exception rather than the rule. Moreover, governmental policies aimed at promoting application of the Charter appeared to remain very rare exceptions, even though Article 51 of the Charter obliges states to proactively "promote" the application of its provisions. The Charter's tenth anniversary in 2019 provides an opportunity to inject more political momentum into unfolding the Charter's potential.*

At the end of 2019, it will be 10 years since the EU was first equipped with a legally binding catalogue of fundamental rights. The prospect of the tenth anniversary of the Charter led to a flurry of reflections in academia, as publications in 2018 on various aspects of the Charter show. Academic articles dealt with the Charter in general[1] or focused on the Charter's field of application, including its impact at national level;[2] the Charter's effect in specific policy areas, such as data protection,[3] criminal law,[4] foreign policy,[5] customs,[6] the environment[7], employment,[8] migration and asylum;[9] or other specific aspects, such as its relationship with the judiciary,[10] the ECHR,[11] Brexit[12] or its role in harmonisation.[13]

As in previous years, the Charter's scope of application remained the issue that raised most questions and hence attracted most interest. Whereas the Charter's Article 51 (field of application) is very clear in binding all the institutions, bodies, offices and agencies of the Union, the Charter legally binds Member States "only when they are implementing Union law".

More importantly, also at the level of EU politics, the Charter received marked interest, as developments in the European Parliament (EP) showed. The Committee on Constitutional Affairs of the EP drafted a report on the 'Implementation of the Charter of Fundamental Rights of the European Union in the EU institutional framework' assessing the use of the Charter and formulating a set of recommendations, including the call to strengthen the integration of the Charter into the legislative and decision-making processes.[14]

FRA ACTIVITY

## FRA Opinion looks at challenges and opportunities for implementation of the Charter

At the request of the EP, the agency delivered an Opinion on 'Challenges and opportunities for the implementation of the Charter of Fundamental Rights' in September 2018 (Opinion 4/2018). The first part of the Opinion addresses the use of the Charter at the level of the EU, by focusing on EU agencies. FRA sent a questionnaire to all EU agencies. It received replies from 42 agencies, which the Opinion uses to analyse the actual and potential use of the Charter. In addition, FRA carried out telephone interviews with agencies active in the field of justice and home affairs.

The second part of the Opinion deals with the use of the Charter at national level. For this purpose, the agency consulted its National Liaison Officers (NLOs) in the Member States and sent a questionnaire to the participants in the agency's Fundamental Rights Platform (FRP), which brings together over 700 civil society organisations. The third part of the opinion deals with cooperation between the EU and the national levels. It points to areas where the EU level can better assist national actors in implementing the Charter. The Opinion concludes with eight recommendations.

*Opinion 4/2018 is available on FRA's website.*

The approach of the Charter's tenth anniversary prompted first assessments of the Charter's role in its first decade as a legally binding instrument. The President of the Court of Justice of the European Union (CJEU) underlined in a speech at the European Court of Human Rights that the "EU's 'Bill of Rights' [...] has made a significant contribution to improving the EU system of fundamental rights protection, by giving more visibility to those rights".[15] At the same time, others stressed that, especially at national level and outside courtrooms, the Charter remains underused. An EP report on the situation of fundamental rights in the European Union in 2017 underlined that the Charter, being applicable in the Member States only when they implement EU law (Article 51 of the Charter), "is perceived as insufficient and unsatisfactory for many citizens".[16] Another EP report that is being drafted at the moment of writing states, "Despite clarifications made by the CJEU, national practices show that it is still difficult to assess whether and how the Charter applies in concrete" at the national level.[17]

> *"Since the Charter has a big Achilles heel in its article 51 (Field of application), practitioners have to face a legal instrument with vague borders."*
>
> *Respondent to anonymous survey on use of Charter carried out among participants in FRA's Fundamental Rights Platform in 2018*

Against this background, FRA published a handbook providing guidance – based on the case law of the CJEU – on when the Charter is (or is not) applicable in the context of national law- and policymaking.[18]

FRA ACTIVITY

## New handbook on Charter's field of application

FRA's handbook aims to foster better understanding of the Charter among law- and policymakers, especially the limits of its field of application. The handbook argues that carrying out a detailed check of the Charter's applicability will always pay off. Even when the conclusion is that it does not apply, performing a 'Charter check' emphasises the relevance of human rights to law- and policymaking. That in itself helps strengthen awareness.

To provide hands-on guidance, the handbook also contains practical tools:

- A checklist to assess the applicability of the Charter to national law- and policymaking. It primarily focuses on national legislative and policy processes, and approaches the applicability of the Charter through a series of situations where the Charter typically applies, to provide practical guidance.
- A checklist to gain an initial understanding of whether or not a (draft) national act is in line with the Charter. It provides users with a pre-established list of questions, thereby guiding them through key elements established in the case law of the CJEU.

As the handbook is strictly based on case law, it also offers an index with all the cited judgments. Finally, an annex sets the Charter provisions in the context of provisions of the ECHR and equivalent provisions in other human rights instruments, thereby complementing the Explanations to the Charter which were adopted back in 2000 by the Presidium of the European Convention that drafted the Charter.

*For more information, see FRA's website.*

Given that EU law is predominantly implemented at national level, and not directly by the EU institutions themselves, national judges, parliamentarians and government officials are prime movers of the Charter. The EU system relies on them. This chapter draws on information provided by FRANET,[19] FRA's multidisciplinary research network. The experts selected up to three examples for each of the following categories: parliamentary debates, national legislation and case law. Experience shows that sometimes it is difficult in a given Member State to identify three examples of relevant Charter use under these categories. Where more examples could be found, the examples were limited to the three most relevant ones. Given the limited sample size, the analysis is qualitative. It focuses on judicial and administrative decisions that the national experts assessed as most relevant to the use of the Charter in the given Member State.

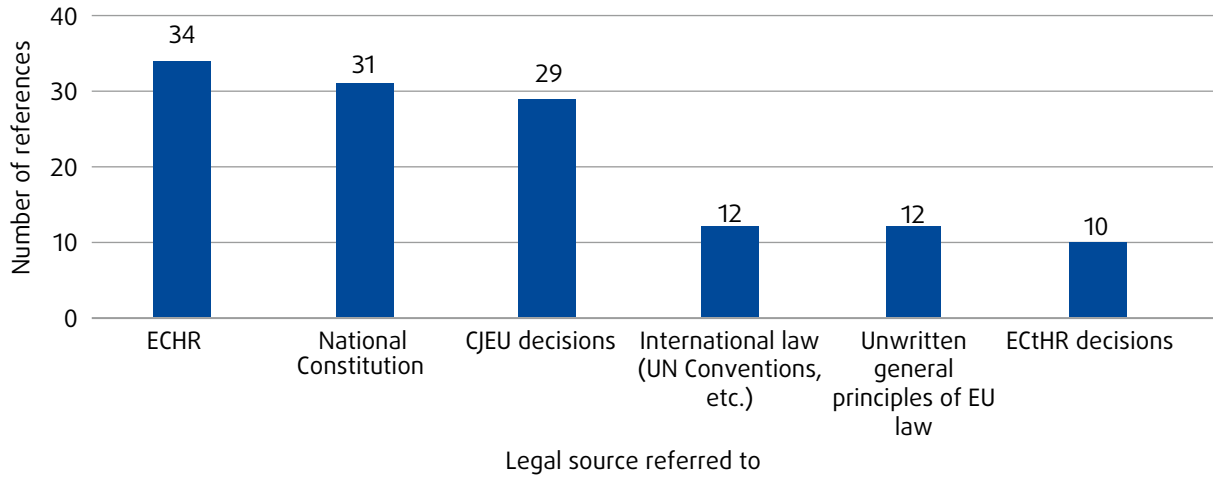
## 2.1. National courts' use of the Charter: a mixed picture

The following analysis largely confirms patterns identified in earlier reports. It is based on 72 court decisions (mainly from high courts) from 27 EU Member States. We considered only decisions where the judges used the Charter in their reasoning and did not merely report that the parties had referred to the Charter. A continuing pattern is, for instance, that national judges refer to the Charter alongside other legal sources. The ECHR is an especially prominent 'twin source' (see Figure 2.1). As in the previous five years, in 2018 the ECHR, national constitutional provisions and relevant CJEU case law were the sources national judges used most frequently in conjunction with the Charter in the court decisions that FRA analysed.

Of the Charter-relevant court decisions reported to FRA in 2018, 22 (around a third of all cases analysed) dealt with border checks, asylum and migration (Figure 2.2). This is in line with the previous four years, when the area of freedom, security and justice (of which these policy areas are part) had always been among the areas to which most of the reported Charter cases related.

The right to an effective remedy and to a fair trial (Article 47) remained the Charter provision most often referred to in the sample of national court decisions that FRA analysed (Figure 2.3). Indeed, in the last six years (2013–2018), this provision was the most frequently used Charter provision among the cases reported to the agency. This reflects the fact that the provision is cross-cutting and relevant in all policy contexts. The right to respect for private and family life (Article 7) and the right to the protection of personal data (Article 8) were also often referred to in recent years. The right to good administration (Article 41) – which actually addresses only institutions, bodies, offices and agencies of the EU – also featured prominently throughout the last six years in the national court decisions reported to the agency.

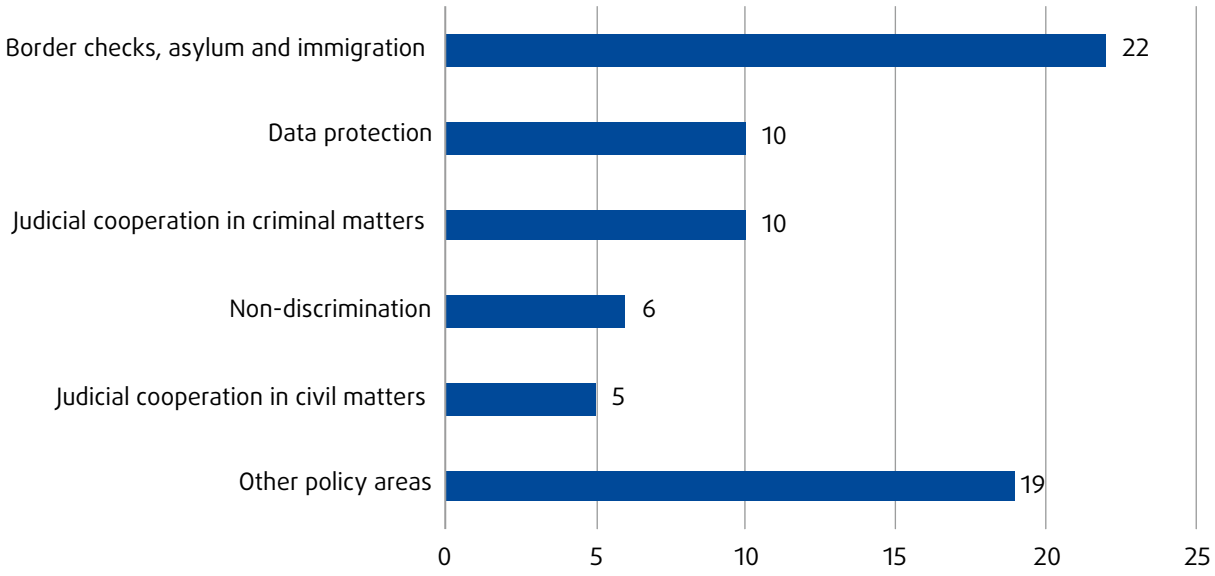
**Figure 2.1: Number of references to other legal sources alongside the Charter in analysed court decisions, by legal source referred to**




*Notes:* *Based on 72 court decisions that FRA analysed. These were issued in 27 Member States in 2018. Up to three decisions were reported per Member State. No court decisions were reported for Malta. One court decision can refer to more than one legal source.*

*Source:* *FRA, 2018*

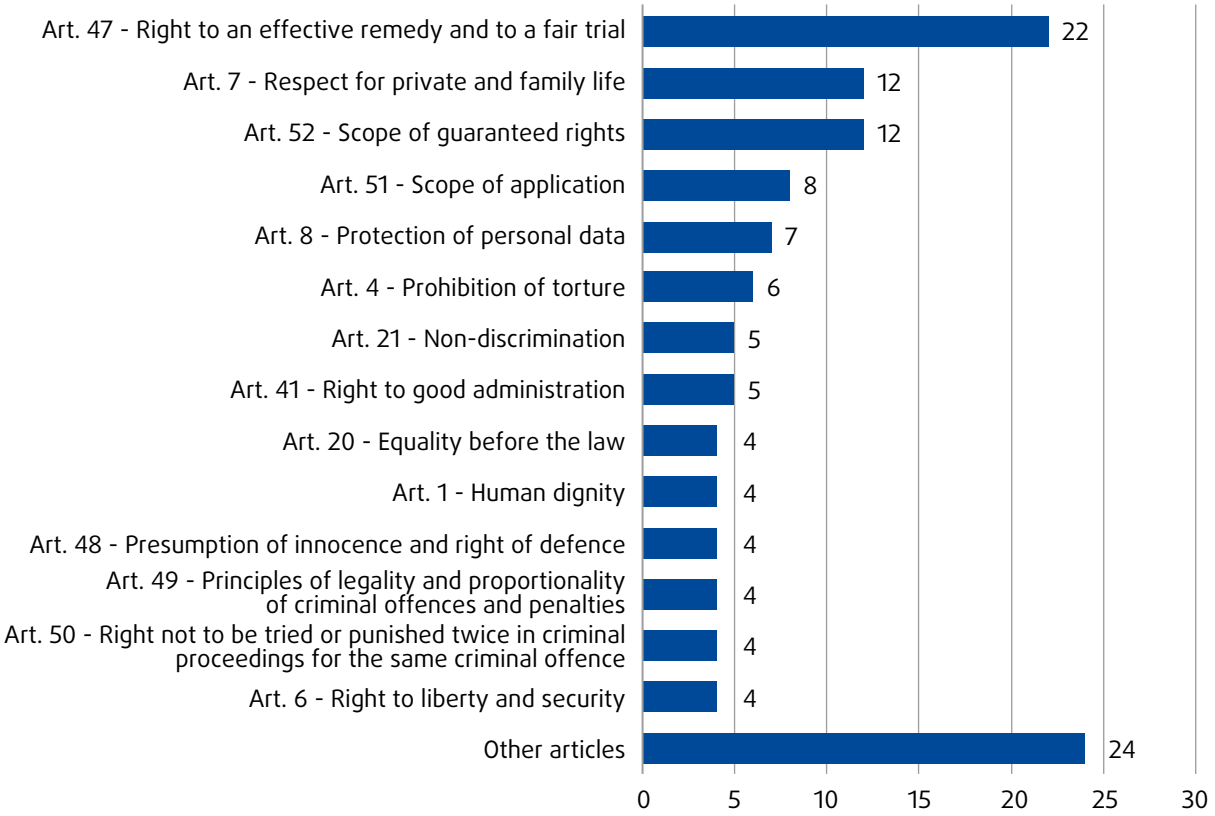
**Figure 2.2: Main policy areas addressed in court decisions analysed**




*Notes:* *Based on 72 court decisions that FRA analysed. These were issued in 27 Member States in 2018. Up to three decisions were reported per Member State. No court decisions were reported for Malta. For every case, only the predominant policy area was taken into account. The category 'Other policy areas' includes policy areas that fewer than three court decisions referred to. The categories used in the graph are based on the subject-matter categories used by EUR-Lex.*

*Source:* *FRA, 2018*

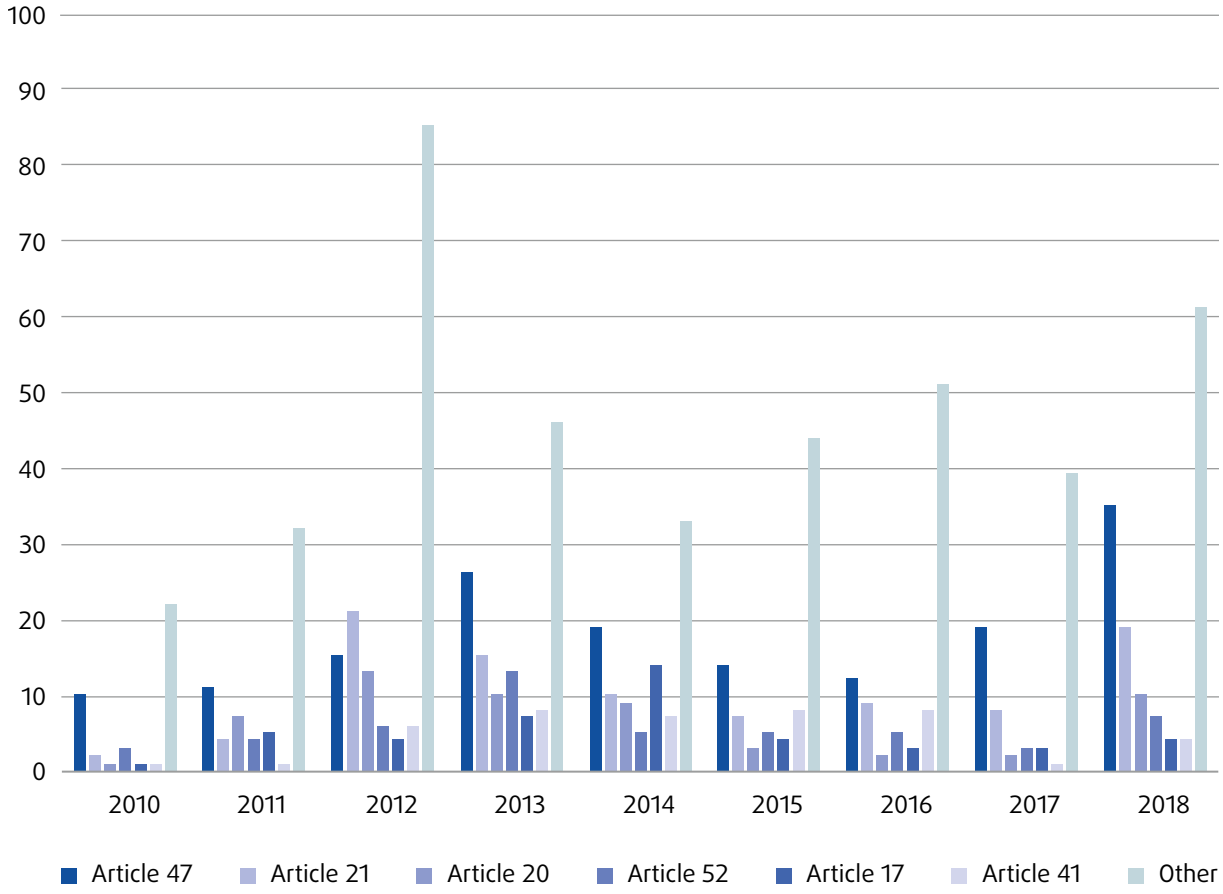
**Figure 2.3: Number of references to Charter articles in the 2018 court decisions analysed, by article**




*Notes:* *Based on 72 court decisions that FRA analysed. These were issued in 27 Member States in 2018. Up to three decisions were reported per Member State. No court decisions were reported for Malta. The category 'Other articles' includes articles that fewer than four court decisions analysed referred to. One court decision can refer to more than one article.*

*Source:* *FRA, 2018*

**Figure 2.4: Most prominent articles mentioned in preliminary ruling requests analysed, 2010-2018**




*Source: FRA, 2019 [based on CJEU data on all preliminary ruling requests mentioning the Charter between 2010-2018; statistical analysis prepared by FRA]*

These findings can be compared with a more extensive sample, namely all requests for preliminary rulings that refer to the Charter – in this context, all relevant national judicial decisions can be identified. In 2018, a total of 568 requests for preliminary rulings were registered at the CJEU. Out of these, 15 per cent – 84 – referred to the Charter. Therefore, compared to 2017 when 50 requests (a relative share of around 9 per cent) mentioned the Charter, a clear increase in requests for preliminary ruling mentioning the Charter can be observed. The increase was especially noticeable in **Spain** (14 requests), **Poland** (8 requests), and **Hungary** (7 requests). As in past years, the Charter articles most often referred to in these requests are Article 47 and Article 21 (non-discrimination). References to both increased considerably in 2018.

### 2.1.1. Scope of the Charter: a question that often remains unaddressed

Sometimes, the court decisions deal with the applicability of the Charter in some detail (as was the case with the decision by the Supreme Court in **Denmark** described in Section 2.1.2). However, just as in previous years, the question of whether or not and why the Charter applied to the specific case in question remained unaddressed in the majority of the 2018 court decisions analysed.

By way of illustration, in **Greece**,[20] the Athens Pharmaceutical Association lodged a petition with the Council of State to annul ministerial decrees enabling military pharmacies to sell medicines at a reduced price and exempting them from the minimum standards applying to private pharmacies. The Pharmaceutical Association considered this special treatment to be discriminatory and to violate the freedom of private pharmacies to provide services. The petitioners also claimed a violation of Article 35 (health care) of the Charter, especially as non-pharmacists are not forbidden to work in military pharmacies. The Council of State referred to Article 35 of the Charter as a ground to contest the regulatory framework applying to military pharmacies, but did not elaborate on its applicability and rejected the complaint.

In **Slovakia**, the Supreme Court referred in detail to Article 41 (right to good administration) of the Charter,

in a case concerning the removal of a car from the official registry of vehicles. Without analysing the applicability of the Charter, the judges referred to the Council of Europe's recommendations and resolutions of the Committee of Ministers as well as Article 41 of the Charter, which form the basis of a "spirit of European standards on general requirements of the quality of procedures and actions of the public administration called principles of 'good administration'".[21]

There were also examples that did clearly address the applicability of the Charter. In **Cyprus**,[22] an appellant had been convicted under the Law on the actions of persons in possession of confidential information and on actions of market manipulation, which incorporated Directive 2003/6/EC (the Market Abuse Directive) into national law. This legislation provided stricter criminal provisions than those introduced by Directive 2014/57/EU (Market Abuse Directive II), so the appellant claimed the application of the lighter penalty. The Supreme Court explicitly stated that the Charter was applicable, since the legal act was incorporating EU legislation into national law. The judges referred to Article 49 (principles of legality and proportionality of criminal offences and penalties) of the Charter and held that the "legislation aimed at fulfilling obligations arising from EU law and, consequently, [...] Article 49 of the Charter is applicable".

### 2.1.2. The Charter as a relevant legal standard when applying national law

As in previous years, FRA identified relevant cases in which national courts check the compatibility of national legislation against Charter provisions. However, it has not noted a significant upward trend. In **Czechia**,[23] the Supreme Administrative Court ruled that paragraph 171 (a) of the Act on the Residence of Foreign Nationals, according to which the refusal to grant a visa cannot be challenged before a court, violates Article 47 (right to an effective remedy and to a fair trial) of the Charter. In a case dealing with the application of Directive 2013/33/EU (the Reception Directive), the Supreme Court of the Republic of **Slovenia**[24] ruled that Article 78 of the International Protection Act violated Article 1 (human dignity) of the Charter, insofar as it prescribes that the rights to which a person seeking international protection is entitled cease when the transfer decision becomes enforceable and not with the actual transfer to another Member State.

The Supreme Court of **Denmark**[25] dealt with a case concerning a religious organisation that appealed against the prohibition to import ayahuasca wine. Whereas the organisation wanted to import the wine for consumption as part of a religious rite, the wine contains a psychedelic drug. The claimant considered the prohibition to be a violation of Article 10 (freedom of thought, conscience and religion) of the Charter. However, according to the court, the Charter did not apply in the case at hand and the import restriction was justified by reasons of general interest and did not as such constitute a violation of the freedom of religion.

When constitutional courts analyse the compatibility of national legislation with the constitution, references to the Charter sometimes emerge. In **Portugal**,[26] the Constitutional Court reviewed Article 7 (3) of Law 34/2004 governing the access to courts, which establishes a blank prohibition on granting legal aid to entities operating for profit. The Constitutional Court declared the rule unconstitutional insofar as it refuses the granting of legal aid to legal persons operating for profit with no regard for the particular economic situation of the applicant entity. The court stressed that the right to effective judicial protection that Article 47 of the Charter guarantees may require the granting of legal aid for profit-making legal persons.

> *"Although the Constitution constitutes the decision parameter for the Constitutional Court [...], the Court should consider, in light of a systemic view of the legal system applicable in Portugal and its importance for the interpretation of precepts relating to fundamental rights, the case-law of the European Court of Human Rights in relation to Article 6(1) of the European Convention on Human Rights, as well the interpretation of the Court of Justice in the DEB case, concerning Article 47 of the Charter [...]. The right to effective judicial protection guaranteed by Article 47 of the Charter may require, depending on the circumstances of the specific case, the granting of legal aid to legal persons operating for profit, without this being considered a dysfunctional competition rule in an efficient market".*
>
> *Portugal, Constitutional Court, Case 242/2018, 8 May 2018, paras. 12 and 16*

A case from **Poland**[27] asked if the Law on the Supreme Court lowering the retirement age of judges was compatible with Article 47 (right to an effective remedy and to a fair trial) of the Charter. The case concerned a self-employed Polish citizen who runs a wedding fashion salon in Slovakia and questioned if he has to pay social insurance in Poland while he works in Slovakia. In 2018, the case reached the Supreme Court, which decided that a bench of seven judges should hear the case. Against the background of the judicial reforms in Poland, the Supreme Court raised questions concerning judicial independence and the impartiality of judges and decided to suspend the proceedings to ask the CJEU for a preliminary ruling concerning the compatibility of the new Law on the Supreme Court with EU law. The case was pending before the CJEU at the end of 2018.[28]

*"According to the Supreme Court, due to the fundamental nature of the values referred to in Article 2 TEU and the rules for their implementation under Article 19.1 TEU and Article 47 CFR, Article 4.3 TEU should be interpreted in such a way that the national court should be able to take safeguard measures consisting in the suspension of the application of national provisions undermining the independence of national courts and the impartiality of judges, in particular the irremovability of judges [...]. According to the position confirmed in C-64/16 [...] the principle of effective judicial protection of the rights of individuals [...] is a general principle of EU law resulting from the constitutional traditions common to the Member States, now confirmed in Article 47 CFR. [...]When the national court considers that national provisions violate the principle of effective judicial protection by violating the principle of irremovability of judges [...], the protection of individual rights stemming directly or indirectly from EU law requires national courts to take provisional measures [...]."*

*Poland, Supreme Court, Case III UZP 4/18, 2 August 2018*

National Courts often refer to the Charter as a basis for interpreting national law. In **Denmark**,[29] a citizen's driving licence was suspended after he drove a car while over the alcohol limit in Germany. Germany had already suspended his licence for that offence. The claimant argued that the suspension of his licence by the Danish authorities violated Article 50 (right not to be tried or punished twice in criminal proceedings for the same criminal offence) of the Charter. The Supreme Court thus interpreted Article 11 of the Danish Criminal Code in light of Article 52 (scope and interpretation of rights and principles) of the Charter. The court decided that it was not contrary to Article 50 to file a case on the suspension of his driving licence in Denmark. It underlined that the judgment of the Danish court "only concerns a geographic extension of the German suspension, and the Danish judgment on suspension takes into consideration the protection of Danish road users, and thus has a different protection interest from the German suspension. It can therefore not be considered a new criminal case within the meaning of Article 50".

In **Finland**,[30] the immigration service rejected an asylum application based on persecution on grounds of sexual orientation. It held that the applicant's testimony, supported by the recording of sexual acts, was not credible. The Supreme Administrative Court noted that the applicant's own testimony is the primary source of evidence when assessing the credibility of a claim related to sexual orientation. It cannot require applicants to provide photographs or video recordings of intimate acts in support of their claim, as such evidence would infringe the right to human dignity (Article 1 of the Charter) and the right to private life (Article 7 of the Charter). However, the Supreme Administrative Court refused to prohibit the evaluation of such evidence, as the principle of free evaluation governs Finnish administrative law.

*"The CJEU (Grand Chamber) found, in the joined cases A et al. (C-148/13, C-149/13 and C-150/13) [...], that Article 4 of the former Qualification Directive 2004/83/EC read in light of Article 1 of the Charter, must be interpreted as precluding [...] the acceptance by the authorities of evidence such as the performance [...] of homosexual acts [...]. The Supreme Administrative Court notes that, in the national administrative procedure, free evaluation of evidence is the general rule. The way evidence is presented has not been restricted and there are no detailed rules concerning the analysis of the probative value of evidence. However, [...] showing intimate details of the private life of persons and submitting such material as evidence could be problematic with regard to the fundamental rights of human dignity and the right to private life [...]. The Supreme Administrative Court finds that, because of the principle of free evaluation of evidence and the protection of the procedural rights of the applicant, it cannot be concluded that the Supreme Administrative Court could completely refuse to accept such evidence, when submitted on the applicant's own initiative and in order to support his claim for international protection."*

*Finland, Supreme Administrative Court, Case 3891/4/17, 13 April 2018*

## 2.2. National legislative processes and parliamentary debates: rare use of the Charter

Governments, Members of Parliament, parliamentary committees or independent institutions may refer to the Charter at different stages of the legislative process. References to the Charter may happen in impact assessments or the process of scrutinising legislative drafts. In some rare cases, the text of national laws incorporates references to the Charter.[31] And, though perhaps of less importance, the Charter is also referred to in parliamentary debates.

### 2.2.1. The Charter in the context of the national legislative process

Fundamental rights come up in different ways in the context of the legislative process. An impact assessment typically happens when a bill has not yet been fully defined, so that various legislative options can be compared. Most Member States have procedures on impact assessments. These predominantly focus on economic, environmental and social impacts of bills. As the exercise focuses on potential impacts rather than on compatibility with legal standards, it is not so much legal in nature but employs social science, natural science, statistical and other methods.

Another avenue is legal scrutiny. Legislating bodies – units in government or parliament – or independent expert bodies can scrutinise draft legislation. Unlike

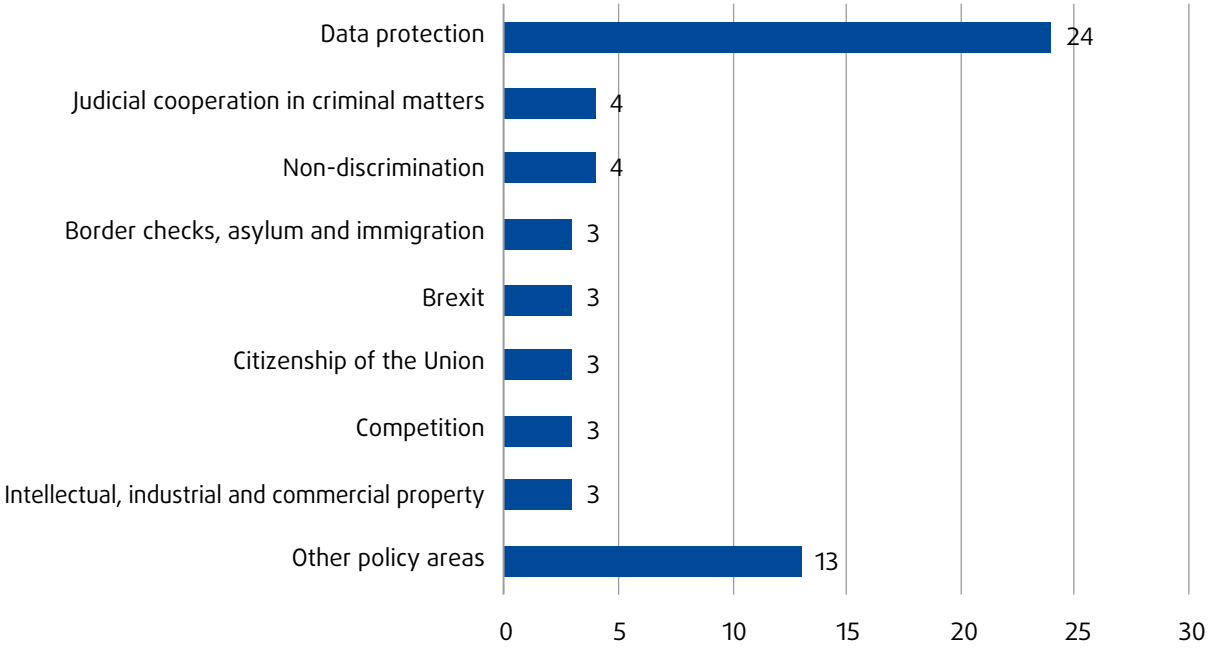
impact assessments, legal scrutiny of a bill is a legal assessment based on the specific wording of a final bill, examining its compatibility with constitutional, supranational and international law. Since some national systems do not neatly differentiate between impact assessment and legal scrutiny, this section covers both procedures.

FRANET reported 60 examples of impact assessments and legal scrutiny to FRA in 2018. These examples are not representative of the overall situation in the Member States, but they suggest – as in earlier years – that the areas of data protection and judicial cooperation in criminal matters appear most likely to raise Charter-relevant concerns. Examples include bills from **Austria**,[32] **Belgium**,[33] **Bulgaria**,[34] **Czechia**[35] and **Slovenia**[36] (Figure 2.6). In **Belgium**, for instance, Article 29 of the draft Act concerning the processing of personal data establishes an exception to data protection when journalistic, academic, artistic or literary forms of expression are at stake. In an opinion on the draft Act, the Council of State underlined that the exceptions in its Article 29 lead to a more restrictive definition of the freedom of expression than Article 11 (freedom of expression and information) of the Charter would allow. The law was ultimately adopted without taking the Council of State's opinion into account.

Many of the references were general and only briefly mentioned the Charter without going into further detail, such as examples from **Slovenia**,[37] **Poland**[38] and **Portugal**.[39] Others, however, were more explicit. For instance, in **Cyprus**,[40] legal scrutiny of the draft law concerning the free circulation of personal data led to the suppression of a provision allowing the processing of personal data by insurance companies prior to the conclusion of an insurance agreement. The final version of the law omitted this provision, as it was deemed to violate Article 7 (respect for private and family life) and Article 8 (protection of personal data) of the Charter.

Of course, concerns raised in legal scrutiny do not necessarily lead to the modification of a bill. By way of illustration, Article 31 of Directive 2013/32/EU on common procedures for granting and withdrawing international protection allows a maximum period of 21 months for the review of asylum applications. In **Slovakia**,[41] a draft act amending the legislation incorporating the directive introduced an additional exception to the time limit. The United Nations High Commissioner for Refugees challenged this exception on the basis of Article 18 of the Charter (right to asylum), maintaining that "introducing another additional derogation which allows Member States to postpone [...] the examination procedure [...] due to an uncertain

**Figure 2.5: Number of impact assessments and instances of legal scrutiny analysed referring to the Charter in 2018, by policy area**




*Notes:* *Based on 60 impact assessments and legal scrutiny that FRA analysed. These were carried out in 24 EU Member States in 2018 (FRANET was asked to identify three relevant examples per Member State; in four Member States, no such examples were reported). The category 'Other policy areas' includes policy areas that fewer than three assessments analysed referred to. The categories used in the graph are based on the subject-matter categories used by EUR-Lex.*

*Source:* *FRA, 2018*

situation in the country of origin which is expected to be temporary [...] may be problematic in terms both of international refugee law and EU fundamental rights. Indeed, uncertainty is an inherent feature of most or all modern conflicts [...]. The Charter enshrines a positive obligation for Member States to provide international protection. Hence such postponement of the enjoyment of the right to asylum would potentially be at variance with the Charter".[42] Nevertheless, the law was adopted without changes in that respect on 20 July 2018.

Like other procedures, impact assessments and legal scrutiny also often refer to the Charter alongside other international legal instruments. In **Belgium**, for instance, the Council of State issued an opinion on the draft law establishing the Information Security Committee and amending legislation concerning the implementation of Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons related to the processing of personal data and on the free movement of such data. According to the opinion, some provisions related to the processing of personal data by the federal finance service did not meet the foreseeability requirements mandated by Article 7 (respect for private and family life) of the Charter, Article 8 (protection of personal data) of the Charter, Article 22 of the Constitution, Article 8 of the ECHR and Article 17 of the International Covenant on Civil and Political Rights.[43]

The Charter is not necessarily used only when contesting new legislation. Explanatory memoranda also use it to make a human rights link. For instance, in **Czechia**[44] the legislative proposal introducing same-sex marriage referred to Article 9 (right to marry and right to found a family) of the Charter providing that "[t]he right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights". Whereas Article 12 of the ECHR specifies that marriage is the union of a woman and a man, the wording of the Charter is gender neutral. This highlights the fact that the Charter is a new instrument taking into account more recent societal developments and challenges, as well.

The legislative process at national level may on occasion also bring to the fore the remaining debate about the added value and the nature of the Charter as a unique source of fundamental rights. This happened prominently in the **United Kingdom** in context of Brexit. Whereas the House of Lords introduced an amendment to the European Union Withdrawal Act in order to keep the Charter as part of British law after Brexit, the House of Commons overturned the amendment. It did not acknowledge that the Charter added any value alongside other legal documents as its purpose was to reaffirm rights which already exist in EU law.[45] The Parliament's Human Rights Committee said that excluding the Charter "would appear to be contrary to the Government's intent",[46] namely "to maximise certainty and minimise complexity and not remove any substantive rights that UK citizens currently enjoy".[47] According to the Human Rights Committee, "the exclusion of the Charter from domestic law results in a complex human rights landscape which is uncertain. Legal uncertainty is likely to undermine the protection of rights." The committee identified "various reasons why rights may be diminished owing to the exclusion of the Charter".[48] Moreover, the Scottish Parliament enacted the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, according to which "the general principles of EU law and the Charter of Fundamental Rights are part of Scots law on or after exit day".[49] On 17 April 2018, the bill was referred to the Supreme Court to determine whether or not it fell within devolved legislative powers. The court considered that "the Scottish Bill as a whole would not be outside the legislative competence of the Scottish Parliament because it does not relate to reserved matters"; however, as a result of the enactment of the UK Withdrawal Act, the provision dealing with the Charter "would at least in part be outside the legislative competence of the Scottish Parliament".[50]

### 2.2.2. The Charter and national legislation

As previous FRA fundamental rights reports have shown, adopted national legislation sometimes explicitly refers to the Charter. In 2018, FRANET reported 20 examples of such references in the legislation of 16 EU Member States. While these examples are not representative of the overall situation in the Member States, they suggest that such Charter references in national legislation cover a wide range of thematic areas. Judicial cooperation in criminal matters has the most references. The types of references range from general to specific provisions.[51]

In **Bulgaria**,[52] Article 16 (1) of the European Investigation Order Act provides the legal basis for the refusal of the recognition or execution of a European Investigation Order if "there are substantial reasons to think that the execution of the investigative action or other procedural actions would not be compliant with observing the rights and freedoms, guaranteed by the ECHR and the Charter of Fundamental Rights of the European Union". Legislation in **Czechia**[53] and in **Slovenia**[54] also made general references to the Charter related to the execution of a European Investigation Order.

In **France**,[55] Article L. 151-8 of the law on the protection of business confidentiality made specific reference to Article 11 (freedom of expression and information) of the Charter, providing certain limitations to the protection of business data. Similar references to Article 11 of the Charter were made in **Lithuania**[56] and in the **Netherlands**.[57]

In **Denmark**,[58] the Act on supplementing provisions for a regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data states in section 3 that the Act is not applicable if its application would imply a violation of Article 10 (freedom of thought, conscience and religion) or Article 11 (freedom of expression and information). This reference might well be an incentive for national courts to review the application of the Act in contexts where fundamental rights are put at risk. More generally, references to the Charter might favour a Charter-compatible interpretation of national legislation.

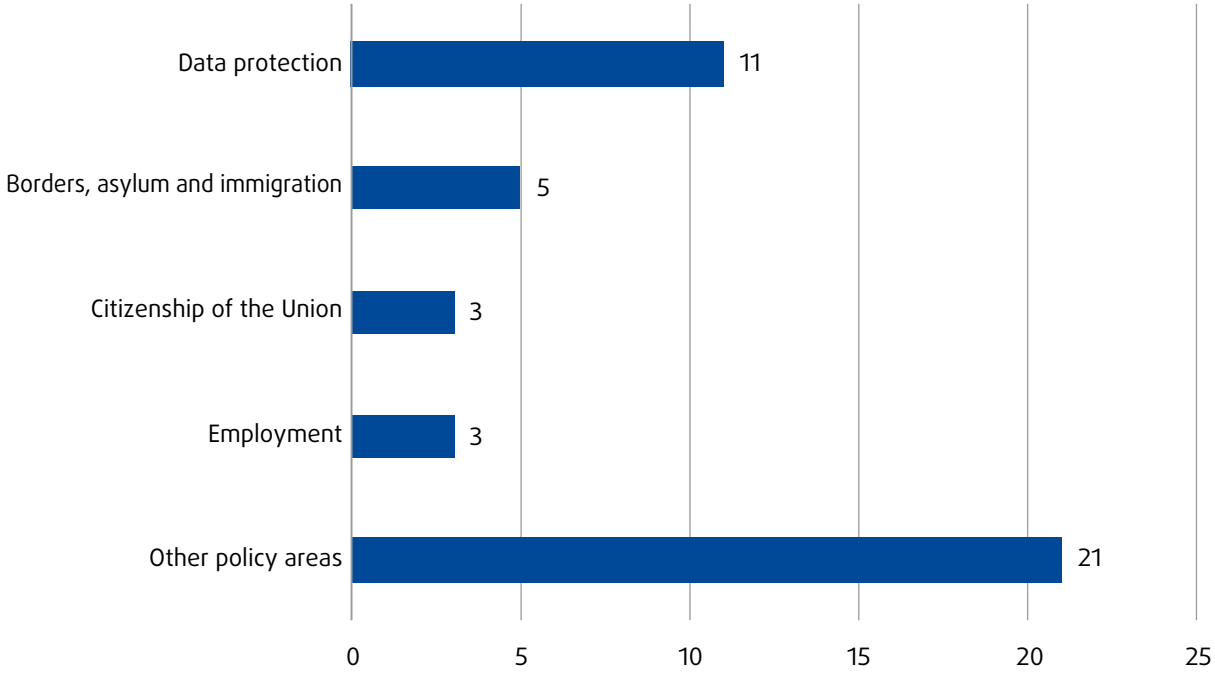
### 2.2.3. The Charter in parliamentary debates

In 2018, FRANET reported 43 parliamentary debates in 20 Member States that referred to the Charter. While these examples are not representative of the overall situation in the Member States, they suggest that such Charter references cover a broad spectrum of thematic areas. Just as in recent years, data protection was the most prominent policy area, followed by borders, asylum and immigration. In all these areas, the EU has in recent years adopted numerous instruments that had to be incorporated into national law (Figure 2.6).

Data protection was, for instance, a central topic in a parliamentary debate in **France**,[59] on a legislative proposal implementing Directive 2016/680/EU on the protection of natural persons with regard to the processing of personal data. A Member of Parliament raised the challenge of data protection in relation to the increasing use of data by companies.

> *"The protection of personal data is a fundamental right enshrined in Article 8 of the EU Charter of Fundamental Rights. The issue is of growing concern to citizens, particularly in terms of the right to privacy. On the other hand, personal data are now essential parts of companies' business models, even more so with the rise of IT and big data."*
>
> *France, Philippe Latombe, Member of Parliament, Proceedings, 23 January 2018*

**Figure 2.6: Most prominent policy areas identified in analysed parliamentary debates referring to the Charter in 2018**




*Notes:* *Based on 43 parliamentary debates that FRA analysed. These took place in 20 EU Member States in 2018. Up to three debates were reported per Member State; no parliamentary debates were reported for Belgium, Cyprus, Latvia, Lithuania, Luxembourg, Malta, Portugal and Sweden. The category 'Other policy areas' includes policy areas that fewer than three parliamentary debates analysed referred to. Only one policy area per parliamentary debate has been selected. The categories used in the graph are based on the subject-matter categories used by EUR-Lex.*

*Source:* *FRA, 2018*

During a parliamentary debate in **Italy** on the possibility of establishing a parliamentary commission for the protection and promotion of human rights, a Member of Parliament underlined the necessity to create a commission to monitor the compliance of national legislation with fundamental rights.[60]

## 2.3. National policies promoting the Charter's application: lack of engagement

In 2018, FRA sent a questionnaire on the Charter to the organisations registered in its Fundamental Rights Platform, composed of civil society organisations active in the field of fundamental rights across the EU. A total of 114 organisations completed the whole questionnaire. Of them, 91 said that human rights civil society bodies in their country were not sufficiently aware of the Charter and its added value. In the view of the respondents, these bodies do not sufficiently use the Charter in their activities. They also said that national courts, educational institutions, and local and national governments use the Charter even less. Three quarters of the respondents were not aware of any government policies promoting the Charter.

> *"[Policies to assist better implementation of the Charter should include] training and awareness raising campaigns regarding the importance of the Charter, its added value and relationship to other legal instruments of human rights protection."*
>
> *Respondent to anonymous survey on use of Charter carried out among participants in FRA's Fundamental Rights Platform in 2018*

In 2018, FRA contacted the national liaison officers in the 28 EU Member State governments to identify policies aimed at promoting the application of the Charter. More than a third of them replied that either such policies did not exist or they were not aware of them. The others referred to minor activities, mainly in the area of professional training, or did not provide information at all. This confirms findings in previous reports that Member State policies promoting the Charter are rare.

However, there are notable exceptions. For instance, in **Sweden**, the government's human rights strategy also involved a review of the Charter's application. At the request of the government, the University of Uppsala studied how the courts applied the Charter, and potential reasons for when the Charter is used to a greater or lesser extent, or not at all. It also identified good examples of how other Member States and EU institutions, organs and agencies secure the Charter's application. The study acknowledges that one reason why the use of the Charter is still rather limited is that it is still a young instrument. It also took a while until the ECHR was known and used in legal practice.

# FRA opinions

The EU Charter of Fundamental Rights entered into force only nine years ago. EU Member States are obliged to both respect the Charter's rights and "promote the application thereof in accordance with their respective powers" (Article 51 of the Charter). However, available evidence and FRA's consultations suggest that there is a lack of national policies that promote awareness and implementation of the Charter. Legal practitioners – including those in national administrations, the judiciary and national parliaments – have a central role to play in implementing the Charter. Although the judiciary uses the Charter, it appears less well known in the other branches of government. Based on the evidence collected in this report and in line with its Opinion 4/2018 on 'Challenges and opportunities for the implementation of the Charter of Fundamental Rights', FRA formulates the opinions that follow.

### FRA opinion 2.1

*EU Member States should launch initiatives and policies aimed at promoting awareness and implementation of the Charter at national level, so that the Charter can play a significant role wherever it applies. Such initiatives and policies should be evidence based, ideally by building on regular assessments of the use and awareness of the Charter in the national landscape.*

*More specifically, Member States should ensure that targeted and needs-based training modules on the Charter and its application are offered regularly to national judges and other legal practitioners in a manner that meets demand and guarantees 'buy-in'.*

### FRA opinion 2.2

*EU Member States should aim to track the Charter's actual use in national case law and legislative and regulatory procedures, with a view to identifying shortcomings and concrete needs for better implementation of the Charter at national level. For instance, EU Member States should review their national procedural rules on legal scrutiny and impact assessments of bills from the perspective of the Charter. Such procedures should explicitly refer to the Charter, just as they do to national human rights instruments, to minimise the risk that the Charter is overlooked.*

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16 See the explanatory statement attached to the report on the situation of fundamental rights in the European Union in 2017 as adopted end of 2018. The statement even goes so far to argue that this situation "can only create more alienation from the EU, which is why the different European institutions should consider an enhancement of the scope of application of the Charter". See Report on the situation of fundamental rights in the European Union in 2017 (2018/2103(INI)), adopted on 13.12.2018.

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18 European Union Agency for Fundamental Rights (2018), "Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level". 6 October 2018. See for a call for such tools: Council of the European Union (2016), Council conclusions on the application of the Charter of Fundamental Rights in 2015, annex to Council document 10005/16 of 9 June 2016, paragraph 6.

19 See FRA's webpage on FRANET.

20 Greece, Council of State, Case 311/2018, 8 February 2018.

21 Slovakia, Supreme Court, Case 10Asan/3/2017, 27 April 2018.

22 Cyprus, Supreme Court, Cases 2/2018 and 3/2018, 12 September 2018.

23 Czechia, Supreme Administrative Court, Case 6 Azs 253/2016 – 49, 4 January 2018.

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28 CJEU, C-522/18, *Zakład Ubezpieczeń Społecznych*.

29 Denmark, Supreme Court, Case 108/2017, 17 August 2018.

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41 Slovakia, Comments from the United Nations High Commissioner for Refugees on the Act LP/2018/3 Amending Act No. 480/2002 Coll. on asylum (*Zákon, ktorým sa mení a dopĺňa zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*), 23 January 2018.

42 *Ibid.*

43 Belgium, Council of State (*Conseil d'État*), Opinion No. 63.646/2 on draft law establishing the Information Security Committee, 6 June 2018.

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46 United Kingdom, Human Rights Committee, *Commentary on the Right by Right Analysis*, 25 January 2018.

47 United Kingdom, *Charter of Fundamental Rights of the EU Right by Right Analysis*, 5 December 2017, p 5.

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53 Czechia, Act. No. 178/2018 Coll. amending Act No. 104/2013 Coll. on International Judicial Cooperation in Criminal Matters (*zákon o mezinárodní justiční spolupráci ve věcech trestních*), 19 July 2018.

54 Slovenia, Cooperation in Criminal Matters with the Member States of the European Union Act – 1B (*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije – 1B*), 22 March 2018.

55 France, Law on the Protection of Business Confidentiality *(Loi relative à la protection du secret des affaires)*, 30 July 2018.

56 Lithuania, Law on the Legal Protection of Commercial Secrets (*komercinių paslapčių teisinės apsaugos įstatymas*), 26 April 2018.

57 Netherlands, Act on the protection of trade secrets *(Wet bescherming bedrijfsgeheimen)*, 17 October 2018.

58 Denmark, Act on Supplementing Provisions for a Regulation on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of such data (*Lov om supplerende bestemmelser til forordning om beskyttelse af fysiske personer i forbindelse med behandling af personoplysninger og om fri udveksling af sådanne oplysninger*), 23 May 2018.

59 France, National Assembly, Proceedings (*Assemblée Nationale, Compte rendu*), 23 January 2018.

60 Italy, Member of Parliament, debate on the establishment of a parliamentary commission for the protection and promotion of human rights, 19th public session, stenographic report *(Senato, resoconto stenografico)*, 10 July 2018.

# UN & CoE

## January

**12 January –** Committee for the Elimination of Racial Discrimination (CERD) publishes concluding observations on the combined 11th and 12th periodic reports of Slovakia

**30 January** – In *Enver Sahin v. Turkey* (No. 23065/12), the European Court of Human Rights (ECtHR) rules that Turkish courts failed to adequately assess the suitability of a reasonable accommodation offered by a university to a student with a disability, in violation of his right to education (Article 2 Protocol 1 of the ECHR) and the prohibition of discrimination on the grounds of disability (Article 14 of the ECHR)

## February

**27 February** – European Commission against Racism and Intolerance (ECRI) publishes revised General Policy Recommendations No. 2 on Equality bodies to combat racism and intolerance at national level and No. 7 on National legislation to combat racism and racial discrimination

ECRI publishes its fifth monitoring report on Spain and Sweden and conclusions on the implementation of priority recommendations in respect of Greece

## March

**22 March –** UN Human Rights Council (HRC) adopts a resolution on freedom of religion or belief and a resolution on rights of persons belonging to national or ethnic, religious and linguistic minorities

**23 March** – UN HRC adopts a resolution on Equality and non-discrimination of persons with disabilities and the right of persons with disabilities to access to justice. UN HRC also adopts a resolution on Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence against, persons based on religion or belief

## April

## May

**11 May** – UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity issues his first report

**15 May –** In *Transgender Europe and ILGA-Europe v. the Czech Republic* (No. 117/2015), the European Committee on Social Rights finds that the requirement for transgender persons to undergo medical sterilisation before legal gender recognition violates their right to protection of health (Article 11 of the European Social Charter)

**15 May** – ECRI publishes its fifth monitoring report on Croatia and Malta; and conclusions on the implementation of priority recommendations in respect of Austria, the Czech Republic, Estonia, Hungary and Poland

## June

**1 June –** Parliamentary Assembly of the Council of Europe (PACE) adopts Resolution 2222 on promoting diversity and equality in politics

**6 June –** CERD publishes concluding observations on the combined 22nd and 23rd periodic reports of Sweden

**18 June** – World Health Organization (WHO) removes all trans-related categories from the chapter of International Classification of Diseases on mental and behavioural disorders

## July

**16–17 July** – UN Human Rights Committee adopts views in three cases against France concerning religious clothing, finding a violation of the right to freedom of religion enshrined in Article 18 of the International Covenant Civil and Political Rights (ICCPR) and intersectional discrimination on the grounds of gender and religion (Article 26 of the ICCPR)

## September

**18 September** – In *Lachiri v. Belgium* (No. 3413/09), ECtHR rules that banning headscarves in the courtroom amounts to unjustified restriction on the exercise of the right to manifest one's religion enshrined in Article 9 of the ECHR

**25 September –** CERD publishes concluding observations on the combined 6th to 12th periodic reports of Latvia

## October

**10 October** – PACE adopts Resolution 2239 (2018) on achieving equality regardless of sexual orientation in the area of private and family life

## November

## December

**19 December –** In *Molla Sali v. Greece* (GC) (No. 20452/14), ECtHR rules that the application of Islamic law (sharia) in litigation concerning succession to estate of Greek Muslim against the wishes of the parties concerned constitutes discriminatory treatment and a breach of the right to free self-identification, in violation of Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1 protection of property) of the ECHR

# EU

## January

**18 January** – In *Carlos Enrique Ruiz Conejero v. Ferroser Servicios Auxiliares SA, Ministerio Fiscal* (C-270/16), the Court of Justice of the European Union (CJEU) holds that a law allowing an employer to dismiss an employee from work for absences related to disability may result in indirect discrimination based on disability

## February

**7 February** – European Parliament (EP) adopts a resolution on protection and non-discrimination with regard to minorities in the EU Member States

**28 February** – In *John v. Freie Hansestadt Bremen* (C-46/17) the CJEU holds that prolonging an employment contract beyond the retirement age does not violate the prohibition of age discrimination

## March

**1 March** – European Commission publishes second annual report on the implementation of the 'List of actions to advance LGBTI equality'

**14 March** – In *Stollwitzer v. ÖBB Personenverkehr* (C-482/16), the CJEU rules that a domestic law, which retroactively allows periods of activity before the age of 18 to be included for the purpose of categorising employees within pay scales, in order to combat age discrimination in employment, conforms with EU law

## April

**17 April** – In *Vera Egenberger v. Evangelisches Werk für Diakonie und Entwicklung e.V.* (C-414/16), the CJEU rules that genuine and determining occupational requirements, provided for by the Employment Equality Directive (2000/78/EC) with regard to ethos of religious organisations, must comply with the principle of proportionality, and must be subject to effective judicial review

## May

**29 May** – European Commission tables a Proposal for a Regulation laying down common provisions on the European Structural and Investment Funds

**30 May** – European Commission tables a Proposal for a Regulation on the European Social Fund Plus

## June

**5 June** – In *Relu Adrian Coman and Others v. Inspectoratul General pentru Imigrări and Others* (C-673/16), CJEU clarifies that the word 'spouse' used in the Free Movement Directive (2004/38/EC) is gender neutral and EU Member States must recognise the right of same-sex spouses to move and reside freely under the EU law on free movement, regardless of whether or not provisions of national law allow marriage between persons of the same sex

**7 June** – European Commission tables a Proposal for a Regulation establishing the Rights and Values programme

**22 June** – European Commission adopts a Recommendation on standards for equality bodies

**26 June** – In *MB v. Secretary of State for Work and Pensions* (C-451/16), CJEU rules that requiring annulment of any marriage preceding the change of gender in order to obtain a retirement pension constitutes direct discrimination on the grounds of sex

## July

## September

**11 September** – In *IR v. JQ* (Case C-68/17), CJEU holds that dismissing a Catholic doctor from a Catholic hospital because of his divorce and remarriage amounts to discrimination on the grounds of religion

## October

## November

**December**

**4 December** – In *Minister for Justice, Equality, and The Commissioner of the Garda Síochána v. Workplace Relations Commission* (C-378/17), CJEU holds, in the context of several age discrimination complaints brought before the Workplace Relations Commission of Ireland, that national authorities must disapply national rules that are contrary to EU law

# 3 Equality and non-discrimination

*The year 2018 saw mixed progress regarding EU legal and policy instruments to promote equality and non-discrimination. While the Council of the EU had still not adopted the proposed Equal Treatment Directive after 10 years of negotiations, the European Commission proposed EU financial instruments in the context of the EU's new multi-annual financial framework that support anti-discrimination policies at EU and national level. The Commission also issued a Recommendation on standards for equality bodies, providing useful guidance on strengthening protection against discrimination. The EU continued to engage with Member States to support their efforts to advance lesbian, gay, bisexual, transgender and intersex (LGBTI) equality, and several Member States introduced legal and policy measures to that effect. Bans on religious clothing and symbols continued to trigger controversies. Meanwhile, the EU and Member States took diverse steps to strengthen the collection and use of equality data, and a range of studies and surveys published in 2018 provided evidence on the extent and forms of discrimination that people experience in the EU.*

## 3.1. Commission proposes financial instruments to support non-discrimination while Equal Treatment Directive remains in deadlock

The year 2018 saw mixed progress in EU legal and policy instruments to promote equality and non-discrimination. It marked the 10th anniversary of discussions in the Council of the EU on the proposed Equal Treatment Directive[1] without attaining the political consensus needed for its adoption. Meanwhile, the European Commission proposed new EU financial instruments to support antidiscrimination policies at EU and national level.

FRA has often recommended the adoption of the Equal Treatment Directive, which would close the current protection gap in the EU legal framework concerning non-discrimination on grounds of age, disability, religion or belief, or sexual orientation in key areas of life, such as social protection, education and access to goods and services, and ensure that the EU does not operate an artificial hierarchy of grounds. It would also advance the implementation of the European Pillar of Social Rights,[2] in particular its third principle on equal opportunities, as emphasised by the European Commission in its Communication on monitoring the implementation of the European Pillar of Social Rights, published in March 2018.[3]

In an attempt to overcome the persisting deadlock in the Council discussions, during the first half of 2018, the Bulgarian Presidency convened a general debate on the aim, scope and economic impact of the proposed directive.[4] Poland recalled its general reservation related to the principles of subsidiarity and proportionality. All other Member States that took the floor supported the objectives of the proposal. Austria, Germany and Luxembourg did not take the floor.

On the expected economic impact and budgetary implications of the directive, delegations concurred that inclusion and non-discrimination undoubtedly have far-reaching positive consequences for society as a whole, including in economic terms. This conclusion was also supported by a study of the

European Parliament on 'The cost of non-Europe in the area of equality and the fight against racism and xenophobia',[5] which quantified the damage caused by gaps and shortcomings in non-discrimination law and policies. Still, more discussions at political level will be needed to attain the unanimity required to adopt the directive.[6]

Meanwhile, in May 2018, the European Commission tabled proposals for new EU financial instruments under the 2021–2027 Multiannual Financial Framework (MFF) to support equality and non-discrimination policies, such as the new Rights and Values Programme[7] and the European Social Fund Plus.[8] The Rights and Values programme will finance actions to prevent and combat inequalities and discrimination, while the European Social Fund Plus will support, complement and add value to the policies of the Member States to ensure equal opportunities, in line with the principles set out in the European Pillar of Social Rights.

The most significant development in 2018, however, was the Commission's proposal for a new Common Provisions Regulation (CPR) for the European Structural and Investment Funds (ESIF).[9] Instead of *ex ante* conditionalities, it now sets out four horizontal 'enabling conditions' to be monitored and applied throughout the entire new programming period. Two of them are directly relevant to the area of non-discrimination: the "effective application and implementation of the EU Charter of Fundamental Rights", which includes the right to non-discrimination in Article 21; and the "implementation of the United Nations Convention on the Rights of Persons with Disabilities".[10] To receive payments for operations supported by EU funds, Member States will have to show their compliance with these enabling conditions throughout the programming period.[11]

## 3.2. Recommendation on equality bodies highlights need to strengthen effectiveness and functional independence

The EU directives on racial equality and on gender equality[12] include the duty for Member States to establish or designate an equality body, tasked with providing independent assistance to victims of discrimination in pursuing their complaints, conducting independent surveys concerning discrimination, publishing independent reports and making recommendations on any issue relating to such discrimination.

All Member States have established or designated equality bodies. Most of them go beyond the minimum standards set out in these directives and also include discrimination based on age, sexual orientation, disability, religion and belief, or other grounds. However, there are significant differences across the EU in the mandates, competences and resources of these equality bodies.[13]

The surveys conducted by FRA have consistently shown high levels of underreporting of discrimination incidents and low levels of trust in the effective response of existing redress mechanisms, particularly among those most at risk of experiencing discrimination, such as migrants and minorities.[14] This suggests that there are barriers and challenges that hamper the effectiveness of equality bodies. For example, the findings of FRA's 'Being black in the EU' report[15] reveal that only one in six respondents who felt racially discriminated against reported or made a complaint about this to any organisation or body, mostly because they did not believe that anything would change as a result. For more information on how rights awareness and knowledge of equality bodies can affect reporting, see Chapter 4 on Racism and xenophobia.

To improve the equality bodies' independence and effectiveness, the European Commission adopted on 22 June 2018 a Recommendation on standards for equality bodies.[16] This recommendation follows earlier work of the European Network of Equality Bodies, Equinet, on standards for equality bodies,[17] as well as ECRI's revised General Policy Recommendation No. 2 on equality bodies to combat racism and intolerance at national level, issued in February 2018.[18] The standards set out in the recommendation refer to the mandates of equality bodies; their independence and effectiveness; and their coordination and cooperation. The Commission recommendation stresses that Member States should ensure that each equality body has the human, technical and financial resources, premises and infrastructure necessary to perform its tasks and exercise its powers effectively.[19]

Against this backdrop, country reports published in 2018 by the Council of Europe´s European Commission against Racism and Intolerance (ECRI) for **Austria**,[20] **Croatia**,[21] **Malta**,[22] **Portugal**,[23] **Spain**[24] and **Sweden**[25] point to a number of areas for improvement. Main concerns stated by ECRI include lack of effective activity of the equality body (**Spain**) lack of full independence of equality bodies (**Croatia**, **Malta**, **Portugal**), the equality body not having authority over actions by public authorities, in particular law enforcement (**Sweden**), the restriction that it can bring

civil cases concerning only collective interests and not individuals (**Croatia**), and the overall complexity of the institutional system of equality bodies (**Austria**).

The UN Committee on the Elimination of Racial Discrimination (CERD) made similar recommendations in 2018 in its concluding observations on **Latvia**,[26] **Slovakia**[27] and **Sweden**.[28] It called on States to provide equality bodies with adequate human, financial and technical resources and to broaden their mandates.

In **Germany**, the equality body pointed to the lack of effective instruments to tackle structural discrimination and the lack of powers to take cases to court, make binding decisions and impose sanctions in discrimination cases.[29]

*"Independent equality bodies play an essential role in implementing Union legislation effectively and enforcing it comprehensively and consistently. Equality Bodies are also valuable institutions for the sustained development of equal and inclusive democratic societies."*

*European Commission, Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, Recital 30*

## 3.3. Diverse efforts promote LGBTI equality

In March, the European Commission presented its second annual report on the list of actions to advance LGBTI equality[30] and confirmed its commitment to the implementation of this list.

National actions plans to improve the security, welfare and equal opportunities for LGBTI persons were adopted in **Belgium**,[31] **Denmark**,[32] **Luxembourg**,[33] **Portugal**,[34] **Italy**,[35] **Malta**,[36] the **Netherlands**[37] and the **United Kingdom**.[38]

Promising practice

### Raising awareness on intersexuality

In **Luxembourg**, the Ministry for Family Affairs, Integration and the Greater Region launched an awareness-raising campaign on intersexuality. It is called 'Female? Male? Intersex? Let's keep an open mind'. The aim of this campaign is to inform people about variations of sex characteristics and fight against discrimination that intersex people can experience. The campaign includes websites in French and in German.

*For more information, see www.intersexe.lu and www.intersex.lu.*

A number of Member States introduced relevant legal changes and policy measures throughout the year. These involved the status of same-sex families; simplified procedures for gender reassignment on the basis of self-determination; and stopping unnecessary surgical interventions on intersex children. **Luxembourg** included gender identity among the prohibited grounds of discrimination in its Criminal Code.[39]

In several Member States, lack of legislative developments or proper implementation of existing laws resulted in courts having to enforce the protection against discrimination of LGBTI persons. In **Greece**, the constitutionality of Law 4356/2015, which allows homosexual couples to enter a civil union, was challenged before the highest administrative court, the Council of State. It was argued that it offended morals and the institutions of marriage and family. The court held[40] that a civil union does not compete with the institution of marriage, and does not in any way affect the constitutionally protected family. The court pointed out that the concept of 'family' changes as society evolves and the concept of 'morals' protected by the Constitution does not coincide with the teachings of the Church.

In **Estonia**, the Supreme Court confirmed[41] the validity and binding force of the Registered Partnership Act (which provides rules governing cohabitation, regardless of the sex of partners) despite the lack of implementing legislation.

In **Poland**, the courts confirmed the prohibition of discrimination in access to services for LGBTI persons. In 2018, the **Polish** Supreme Court dismissed the Prosecutor General's cassation appeal[42] against the judgment of the Regional Court in Łódź that upheld the conviction of a printer who refused to produce promotional materials for an LGBT organisation.[43] The court decided that the justification for refusing to perform services cannot be based on an individual's beliefs. Another **Polish** case concerned a coach who refused to organise training in krav-maga, a form of self-defence and physical training, for homosexual persons. In October, the Regional Court in Poznań upheld the judgment of the District Court, which found the coach guilty of denying services without a justified reason.[44]

In **Hungary**, an LGBTI group was barred from organising events at a public space run by a state-owned non-profit firm.[45] Similarly, an LGBTQ umbrella organisation was refused permission by a prestigious university and its non-profit partner to hold an event on the university premises.[46] In all cases the Equal Treatment Authority (ETA) found direct discrimination on the grounds of sexual orientation and sexual identity. The ETA's decisions have been upheld in court.

### *Equality of same-sex families advances*

The European Parliament adopted a resolution on the protection of and non-discrimination against minorities in the EU Member States.[47] The resolution deals with autochthonous, national and linguistic minorities in particular, but also calls on the Commission to take action to ensure that LGBTI individuals and their families can exercise their right to free movement and are provided with clear and accessible information on the recognition of cross-border rights for LGBTI persons and their families in the EU.

Member States introduced legislation that increased the equality of same-sex couples, in particular with regard to parental rights and free movement. **Germany** enacted a law to allow same sex couples who had entered into registered partnership to change their status to that of a married couple.[48] Several Member States strengthened parental rights of same-sex couples. In **Greece**, Law 4538/2018[49] introduced a provision that allows same-sex couples in a civil partnership to become foster parents. In **Finland**, the new Maternity Act[50] was adopted to ensure that both women in a same-sex couple are legally recognised as mothers from the moment of a child's birth. **Malta** amended the Embryo Protection Act[51] by changing the definition of who is eligible for state-provided *in vitro* fertilisation services, expanding the scope of "prospective parent" to "any person regardless of gender or sexual orientation". **Ireland** enacted legislation enabling same-sex couples to register both of their names on their child's identification documents, including birth certificate and passport.[52] The amending legislation recognises the legal parenthood of both parents.

Furthermore, **Greece** amended the law[53] on domestic violence because it had implemented the Istanbul Convention.[54] The amendment extends the prohibition of domestic abuse beyond married couples to cover civil partnerships and couples living in a long-term relationship, including same-sex couples.[55]

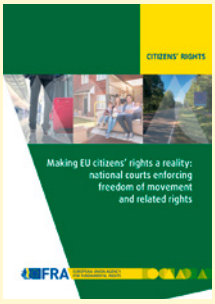
With regard to the free movement of same-sex couples, the CJEU clarified in *Coman*[56] that the term 'spouse' used in the Free Movement Directive[57] is gender neutral, and may therefore cover the same-sex spouse of an EU citizen. Therefore, if a same-sex marriage has been lawfully concluded in another Member State, and a Member State refuses to recognise it for the sole purpose of granting a right of residence to a third-country family member of a Union citizen, that refusal may interfere with the exercise of the right to free movement. The effects of freedom of movement cannot vary between Member States depending on whether or not provisions of national law allow same-sex marriage.

Nevertheless, the court also observed that the EU respects the national identity of Member States, inherent in their fundamental structures, both political and constitutional. Therefore, a person's status, which is relevant to the rules on marriage, is a matter that falls within the competence of the Member States. EU law does not detract from that competence, the Member States being free to decide whether or not to allow homosexual marriage. Lastly, the CJEU observed that a national measure that is liable to obstruct the exercise of freedom of movement for persons may be justified only where such a measure is consistent with the fundamental rights guaranteed by the EU Charter of Fundamental Rights. The fundamental right to respect for family and private life is guaranteed by Article 7 of the Charter and has the same meaning and the same scope as those guaranteed by Article 8 of the ECHR. It is apparent from the case law of the ECtHR that the relationship of a homosexual couple may fall within the notion of 'private life' and that of 'family life' in the same way as a relationship of a heterosexual couple in the same situation.[58]

Consequently, the Constitutional Court of **Romania**,[59] which requested the preliminary ruling in *Coman*, found that same-sex couples and different-sex couples are in comparable situations when it comes to legal protection of private and family life guaranteed by the Romanian Constitution. The court also found that same-sex couples in stable relationships should benefit from legal recognition.

**FRA ACTIVITY**

#### Highlighting the impact of the Free Movement Directive




FRA has published a report on 'Making EU citizens' rights a reality'. It presents an EU-wide, comparative overview of the application of the Free Movement Directive (2004/38/EC) across the 28 Member States, based on a review of select case law at national level. The report particularly covers the entry and residence requirements that may be imposed on nationals of another Member State, and their family members. Several cases concern discrimination on the ground of nationality, and voting rights.

Providing insight into how national courts approach the provisions relating to Union citizenship and freedom of movement, it highlights the importance of their proper interpretation and their impact on vital areas of life for EU citizens and their families, including same-sex partners.

*For more information, see FRA (2018), Making EU citizens' rights a reality: National courts enforcing freedom of movement and related rights, Luxembourg, Publications Office.*

In **Hungary**, the Regional Court of Appeal affirmed[60] that an American-Hungarian same-sex couple have the right to have their marriage, which was contracted abroad, recognised as a registered partnership in Hungary. The Hungarian court referred to the ECtHR judgment in *Orlandi*.[61]

Another case also has implications for the right to free movement. It concerns children born abroad from a surrogate mother and raised by a couple in a same-sex marriage, one of the spouses being a Polish citizen. The **Polish** Supreme Administrative Court held[62] that the children have the right to have their Polish citizenship confirmed, in accordance with the Polish Constitution and the Convention on the Rights of the Child (CRC), which prohibits discriminating against children on the grounds of the way they were born or the status of the parents.

Furthermore, the **Polish** Supreme Administrative Court shifted from previous jurisprudence in this matter and ruled that the transcription of a UK birth certificate of a child who has two mothers is compatible with the Polish legal order and that the refusal to acknowledge the transcript would violate EU law.[63] Although the Polish Family Code does not recognise parental rights of same-sex couples, the court noted that the case concerns the rights of a child and not recognition of same-sex partnerships by Polish law.

### *Right to gender self-determination increasingly acknowledged*

The World Health Organization (WHO) released its new International Classification of Diseases (ICD-11) in 2018. It has removed all trans-related categories from the chapter on mental and behavioural disorders, depathologising them. The new classification also introduces concepts of gender incongruence to the chapter on sexual health.[64]

Following recommendations from the EU and many international organisations, some EU Member States simplified their laws relating to legal gender reassignment, based on self-determination (**Portugal**, **Belgium**, **Luxembourg**). Some Member States introduced non-binary gender markers into their laws (**Austria**, **Germany**, the **Netherlands**). New case law at national and European levels also helped strengthen the right to self-determination.

**Portugal** adopted a law guaranteeing the right to gender identity and gender expression and self-determination and to the protection of sex characteristics of each person.[65] This law prohibits all kinds of discrimination based on these grounds and entitles the victim to compensation. It also establishes a simplified procedure based on self-determination for official recognition of gender identity. Young people aged between 16 and 18 will be able to access this procedure via a legal representative, but their ability to provide free and informed consent must be confirmed by a medical certificate. The law also makes it illegal to perform unnecessary surgery on intersex children.

In January, **Belgium** modified the requirements for transgender persons to adjust how the civil registry records their gender.[66] The law abolished the strict medical conditions for legal gender reassignment, which required sterilisation or sex reassignment surgery. The procedure is now solely administrative. A transgender minor, from the age of 12, may request a change of their first name with the assistance of a parent or legal representative.

A law simplifying the procedure to modify the reference to sex and first names in documents for trans and intersex people was adopted in **Luxembourg**.[67] The old procedure was complex and required a medical, including psychological, assessment. The new law provides for an administrative procedure based on self-determination. The procedure involves submitting an application to the Ministry of Justice and can be also accessed by minors with the support of guardians/parents.

In December, the **German** parliament adopted the Law for amending the information to be entered in the birth register, which came into force on 22 December.[68] The law introduces 'diverse' as a gender marker in addition to 'male' and 'female'. However, persons concerned need to prove their intersexuality with a medical certificate, which can be waived only in exceptional cases.[69]

**Croatia** has no standardised procedure for adjusting the certificate or diploma after gender reassignment or after choosing to live in another gender identity. That remains an unsolved problem for trans persons. Following the intervention of the Ombudsperson for Gender Equality, the Ministry of Science and Education in cooperation with the Ministry of Public Administration prepared official instructions and sent them to all educational institutions in May.[70]

In March, the **Swedish** parliament decided that trans people who were forcibly sterilised between 1972 and 2013, as a requirement for legal gender recognition, should receive compensation.[71] It became the first country to pay damages to victims of such forced sterilisation.

Meanwhile, the courts also paved the way for legal and social developments.

The CJEU found in *MB v. Secretary of State for Work and Pensions* that the requirement of annulment of any marriage preceding the change of gender in

order to obtain a retirement pension constitutes direct discrimination on the grounds of sex.[72]

The European Committee on Social Rights decided in *Transgender Europe and ILGA-Europe v. the Czech Republic*[73] that the requirement for transgender persons to undergo medical sterilisation before legal gender recognition violates their right to protection of health (Article 11 of the ESC).

On 15 June, **Austria**'s Constitutional Court ruled[74] that sex entries in civil registries and in identity documents have to reflect individual self-determined gender identity. People who do not want to be identified as either male or female should have the right to refrain from an entry, or use other terms, such as 'diverse', 'inter' or 'open'. Ultimately, the court left it to public authorities to decide how to implement the judgment appropriately. The court stated that forcing intersex persons to register a male or female gender but not offering an additional option violated their right to respect for private life as protected by Article 8 of the ECHR. It held that the interpretation of the term 'gender' in the Austrian Personal Status Act must not be restricted to binary gender and the provision in question may therefore remain in force. The court also emphasised the obligation of the legislature to leave open the sex-assignment in particular in respect of children until these persons are in a position to decide themselves on their gender identity. As a result of this judgment, on 20 December, the Federal Ministry of the Interior issued a decree on the official implementation of the third gender option.[75] Persons with a 'variant of sexual development' (*Variante der Geschlechtsentwicklung*) can request that their registered sex be changed to 'diverse'. As in **Germany**, a medical certificate is required to declare that the person is intersex. However, in Germany, the certificate can be issued by a trusted doctor. This can provide at least some protection from discrimination and repeated trauma for intersex people. In Austria, the certificate must come from a sex development variance board: a group of medical experts on variants of gender development, established by the Ministry of Health.

In the **Netherlands**, the District Court of Limburg[76] ruled on the inability of a non-binary person to change the sex on their birth certificate to 'gender cannot be determined'. The court held that it constitutes an infringement of the rights to private life, self-determination and personal autonomy, as guaranteed in Article 2 of the Universal Declaration of Human Rights, Article 8 of the ECHR and the Yogyakarta Principles. In this case, the plaintiff's sex could not be determined at birth, but the parents decided to register the person as male. As an adult, the plaintiff had the sex maker in the birth certificate changed to female. Subsequently, the plaintiff wished to change it into 'undetermined', which was not possible anymore. Following the court order, the sex marker in the birth certificate was changed to 'gender cannot be determined'. In October, the municipality of Breda issued the plaintiff with a gender-neutral passport, with an 'X' sex marker.[77]

**FRA ACTIVITY**

### Updating FRA's EU-wide LGBTI survey

The agency is undertaking an EU-wide LGBTI survey in 2019, seven years after the first one. The survey will collect information on the experiences of discrimination and hate crime as well as the views of lesbian, gay, bisexual, trans and, for the first time, intersex people across the EU and North Macedonia.

*For more information, see FRA's webpage on the survey.*

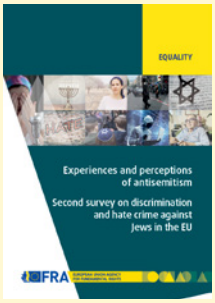
## 3.4. Debate around religious symbols and practices persists

Controversies around laws banning religious clothing or symbols at work or in public spaces, reported on in previous fundamental rights reports, continued in 2018. Although such laws are intended to signal that the expression of religious beliefs should remain in the private domain, striking a balance between this and freedom of religion or belief remains a challenge. Such bans risk disproportionally affecting Muslim women who wear religious clothing that covers their hair, face or body. Enforcing such laws proves particularly challenging in areas where there is no clearly defined line between the public and private spheres. Courts deal with discrimination claims in varying ways across the EU.

However, even where such laws do not exist, hate-motivated discrimination, harassment or violence against members of a certain religion who wear religious clothing can have an impact on the right to freedom of religion or belief. This can affect, in particular, Muslim women, Sikhs and Jewish men. In 2018, 70 % of the respondents in FRA's second survey on discrimination and hate crime against Jews in the EU said that they avoided wearing in public clothing or symbols that could identify them as Jewish because they feared the consequences.[78]

**FRA ACTIVITY**

## Collecting data on discrimination and hate crime against Jews




In 2018, FRA conducted the second survey on discrimination and hate crime against Jews. It collected comparable data on the experiences, perceptions and views of discrimination and hate crime victimisation of persons who self-identify as Jewish on the basis of their religion, ethnicity or any other reason. The results cover 12 Member States, where over 96 % of the EU's estimated Jewish population live, with over 16,000 respondents aged 16 and over. The findings point to rising levels of antisemitism. About 90 % of respondents feel that antisemitism is growing in their country, while about 70 % cite public spaces, the media and politics as common sources of antisemitism.

*FRA (2018), Experiences and perceptions of antisemitism: Second survey on discrimination and hate crime against Jews in the EU, Luxembourg, Publications Office.*

In 2018, the UN Human Rights Committee adopted views in three cases against **France** concerning religious clothing: two cases concerning the prohibition on wearing a niqab in public[79] and one regarding refusal to allow a worker in a childcare centre to wear an Islamic headscarf.[80] In all three cases, the committee found a violation of the right to religion (Article 18 of the ICCPR) and intersectional discrimination on the grounds of gender and religion (Article 26).

In *Lachiri v. Belgium*,[81] the applicant had been excluded from a courtroom on account of her refusal to remove her headscarf. The ECtHR found that the exclusion of an ordinary citizen, not representing the State, from the courtroom had amounted to a restriction on the exercise of her right to manifest her religion, and the need for the restriction had not been justified, in violation of Article 9 of the ECHR.

**Denmark** amended its Criminal Code[82] to ban wearing in public clothing that conceals the face. This would make it illegal for Muslim women to wear burkas and niqabs in public. In **Luxembourg**, the Criminal Code was amended[83] to specify public places where fully concealing clothing (burka, niqab) is not allowed, such as public transport, places for meeting/picking up minors, schools, hospitals, retirement houses, and judicial and administrative buildings.[84] In June, the **Dutch** Senate passed a law imposing a limited ban on face-covering clothing.[85] The ban includes burqas and niqabs worn by some Muslim women, but also ski masks and full-face helmets in some public settings such as schools, hospitals and public transport. The law took effect on 1 January 2019.

In **Belgium**, the Tribunal of Ghent ruled[86] in two cases that a burkini ban in swimming pools amounts to indirect discrimination on the ground of religious beliefs. Although it stems from a neutral general requirement to wear a swimming suit to access the pool, it affects Muslim women who want to wear a burkini for religious reasons.

Other religious symbols have also been subjects of discussion.

The **French** Administrative Court of Appeal[87] held that it was justified under the principle of neutrality to end the contract of an Egyptian trainee at a public hospital because he wore a long beard. The court held that a beard, even long, does not in itself constitute a religious sign, but, in the absence of other factors, the applicant had failed in his duty to respect the principle of neutrality. Even though his beard was not combined with any religious proselytising behaviour, and was not the subject of remarks on the part of patients, the applicant did not establish that his beard was not a religious sign.

A case from **Sweden** also centred on the interpretation of the burden of proof rules.[88] It concerned a female Muslim dentist who for religious reasons refused to uncover her arms, which was against health safety protocols. It was not disputed that the requirement was more burdensome for some Muslim women than for other groups, and the focus was on the proportionality test. It had to be demonstrated whether or not special disposable forearm protection instead of having bare forearms could cause genuine hygiene concerns. The Labour Court found that, when the employer had presented 'genuinely objective theoretical hygienic reasons', the burden of proof had shifted back to the claimant. Since the Equality Ombudsman failed to confute the employer's expert, the claimant lost the case.

Another case from **Sweden** involved a female Muslim internship applicant, who was rejected during an interview at an interpretation company after refusing to shake hands with a male manager. The Labour Court[89] held that she was discriminated against on grounds of religion, and that the termination of the job interview was neither appropriate nor necessary to uphold the legitimate interest of respecting gender equality in the workplace.

**FRA ACTIVITY**

### Updated handbook on non-discrimination law


In March 2018, FRA, together with the ECtHR, published an update of the Handbook on European non-discrimination law. The handbook is designed to assist legal practitioners – such as judges, prosecutors and lawyers, as well as law enforcement officers – and improve knowledge of relevant EU and Council of Europe standards and the differences in the application of non-discrimination law, particularly through case law of the CJEU, the ECtHR and other relevant bodies, including the European Committee of Social Rights.

*For more information, see FRA (2018), Handbook on European non-discrimination law, Luxembourg, Publications Office.*

## 3.5. EU and Member States bolster collection and use of equality data

Equality data, understood as any piece of information that is useful for the purpose of describing and analysing the state of equality,[90] are indispensable to inform evidence-based non-discrimination policies, monitor trends, and assess the implementation of EU equality directives and international human rights standards, such as the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Elimination of All Forms of Racial Discrimination. Yet equality data collection in Member States continues to have major gaps and challenges that need to be tackled, as recent studies published by the European Commission show.[91] Several initiatives at both EU and national level addressed these in 2018.

To support Member States in their efforts to improve the collection and use of equality data, in February 2018 the EU High Level Group on Non-discrimination, Diversity and Equality (HLG) set up a Subgroup on Equality Data. FRA coordinates this subgroup, which comprises representatives of Member States, the European Commission and Eurostat. Member States appointed representatives coming from government departments, national statistical institutes and equality bodies.[92]

The subgroup started its work by identifying a number of common gaps and challenges in EU Member States, including the lack of a coordinated approach for equality data collection and use; insufficient resources and awareness of the importance of collecting equality data; incomplete identification of population groups at risk of discrimination due to overreliance on proxies; and insufficient consultation with relevant stakeholders in the design and implementation of equality data collection.

In response to the challenges identified, the subgroup prepared a set of 11 guidelines on improving the collection and use of equality data, which the HLG endorsed at its October 2018 meeting. The text features a number of concrete institutional and operational steps that Member States can undertake to enhance the availability and quality of equality data and to promote their effective use in developing evidence-based equality and non-discrimination policies.

### Guidelines on improving the collection and use of equality data

A. **Institutional and structural guidelines**

1. Map existing sources of equality data and identify data gaps
2. Foster inter-institutional cooperation in the collection and use of equality data
3. Set up a data hub on equality and non-discrimination
4. Build institutional capacity to collect robust and reliable equality data
5. Facilitate effective use of equality data

B. **Operational guidelines**

6. Ensure comprehensiveness of equality data
7. Mainstream equality data into EU and national surveys
8. Ensure regular and timely equality data collection
9. Enhance validity and reliability of equality data
10. Ensure representativeness of equality data
11. Improve comparability of equality data

*See European Commission, EU High Level Group on Non-Discrimination, Equality and Diversity (2018), Guidelines on improving the collection and use of equality data.*

As a complement to these guidelines, the subgroup prepared a diagnostic mapping tool that EU Member States can use to assess the availability of equality data collected at national level and a compendium of practices that can provide inspiration when they implement the guidelines.[93]

In line with the recommendations in the guidelines, several EU Member States took action in 2018 to

improve the availability of equality data. The **Finnish** Ministry of Justice,[94] the **United Kingdom**'s Office for National Statistics [95] and the **German** equality body[96] mapped equality data sources to identify gaps and areas for improvement, while the **Irish** Department of Justice and Equality adopted a comprehensive Data and Research Strategy.[97]

In **Italy**[98] and **Spain**,[99] inter-institutional agreements to strengthen equality data collection in specific areas, such as on LGBTI people and hate crime, were signed. The **Irish** National Disability Authority introduced a set of 58 indicators in eight areas of life to measure progress against the national Disability Inclusion Strategy.[100] On Roma issues, the **Croatian** Office for Human Rights and Rights of National Minorities published a study that combined external and self-identification methods to produce the first precise indication of the size of the Roma population in Croatia.[101] Likewise, the **Italian** Statistical Office (ISTAT) set up a working group composed of representatives of relevant ministries, local administrations and civil society organisations to foster inter-institutional cooperation in the collection and use of data on Roma, Sinti and Caminanti minorities.[102]

## 3.6. Discrimination based on age, disability, sexual orientation and gender identity remains an everyday reality

The year 2018 saw the publication of research findings drawing on equality data, shining light on some of the manifold ways in which discrimination and unequal treatment continue to affect European societies in key areas of life. Employment and education featured prominently among the various areas in which discrimination is experienced and received particular attention in the research.

### *Discrimination in employment*

Research carried out by equality bodies revealed the persistence of large employment gaps between different groups (**United Kingdom**), and a high incidence of discrimination in the area of employment with little use of redress mechanisms to protect rights, mainly because people perceive them as ineffective (**Slovenia**). There is also limited knowledge on the extent to which equality legislation forbids asking questions about protected characteristics in job interviews (**Germany)**. Furthermore, discrimination tends to increase when grounds such as gender, age, skin colour and religion intersect (**France**).

The Equality Commission for Northern Ireland (**United Kingdom**) published a Statement on key inequalities in employment,[103] showing 14 persistent employment gaps affecting different groups, including people with disabilities, people aged 18–24 and aged 50–64, and Irish Travellers, in particular Traveller women.

The Advocate of the Principle of Equality in **Slovenia** conducted a survey of 1,011 respondents on their perception of discrimination, their experiences of discrimination, and their awareness of rights.[104] Approximately one fifth of respondents had experienced discrimination in the previous 12 months. In almost half of the cases, the discrimination occurred at the workplace. The grounds of discrimination most frequently cited were age, social status and health status. Three out of four respondents who had experienced discrimination did not report it. More than half of them stated that their main reason for not reporting the discrimination was that it would not change anything.

The **German** equality body commissioned a survey through phone interviews to shed light on the awareness of prohibitions to ask questions related to protected characteristics at job interviews. Out of the sample of 1000 respondents aged 15 years and over who had had at least one interview for a job or a training place in the previous five years, 86 % considered questions related to their age in principle admissible, 72 % considered questions on nationality and on disability admissible, and 39 % considered asking a female candidate whether she is pregnant to be admissible. Very few (6 %) had had personal experiences with anonymised job application procedures. One in two (49 %) stated the use of such an application procedure would be an additional reason for them to apply for a specific job.[105]

The Public Defender of Rights conducted a survey on working conditions and experiences of discrimination in the legal profession in **France**.[106] Out of the sample of 7,138 respondents, 38.6 % (53.3 % of women and 21.4 % of men) had personally experienced discrimination in the last five years regarding issues such as job status, salary or task assignment. The prevalence of discrimination was particularly high among respondents whom others perceive[107] as black (56.8 %) or Arab (49.6 %), Muslim (28.9 %) and homosexual or bisexual (18.5 %). Looking at the intersections of different grounds, findings show that while 38.6 % of all respondents had experienced discrimination during the last five years, the proportion is higher in a number of groups, from women aged 40–49 who are perceived as white (47.8 %), through men aged 30–49 perceived as black or Arab (65.7 %) and women aged 30–39 who have at least one child (69.1 %), to Muslim women aged 30–49 (74.2 %).

Looking into online job advertisements, studies conducted by equality bodies and human rights institutions in the **Netherlands**[108] and **Germany**[109] revealed a low prevalence of openly discriminatory job requirements, in most cases regarding age and gender, but a high impact of these job requirements on older workers when considering applying for a job.

Two studies looked in particular at inequalities and discrimination on the ground of disability. The Disability and Human Rights Observatory of **Portugal**[110] drew on data from 2011–2017. Its report confirmed that the economic activity rate of persons with a disability is significantly lower than that of persons without disabilities, and that it is harder for them to gain employment and easier for them to lose their jobs. The study by the **Swedish** Employment Agency[111] revealed that one out of three respondents with impaired ability to work had experienced at least one discriminatory situation, ranging from negative attitudes on the part of employers to bullying.

However, there is also a strong positive correlation between collecting data on the workforce and taking action to reduce discriminatory situations, research reveals. The Equality and Human Rights Commission (**United Kingdom**) published a report on disability and ethnicity pay gaps.[112] It found that all employers that had collected and analysed data on disability and ethnicity pay gaps had also taken action to address inequalities. However, although over three in four (77 %) employers state that achieving workforce diversity is a priority, only 44 % collect data on differences in pay and career prospects between employees with and without disabilities, and 36 % do so on such differences between employees of different ethnic groups.

Research carried out in **Austria**,[113] **Denmark**,[114] **Slovakia**,[115] and the **United Kingdom**[116] consistently shows that a significant number of LGBT people are still reluctant to be open at work regarding their sexual orientation and/or gender identity; frequently experience discriminatory situations ranging from jokes and insults to harassment, non-promotion or being fired; and tend not to report these situations. Moreover, trans persons indicate that they experience discrimination at comparably higher rates and are less likely to report such incidents.

Promising practice

## Taking action to counter discrimination in the labour market

In **Belgium**, the Flemish government's Department of Work and Social Economy, as part of its broader anti-discrimination policy, has created incentives for economic sectors to develop binding sectoral codes of conduct against all forms of discrimination. The government will financially support actions leading to their adoption. As a further incentive, the government will provide results-based compensation to the sectors if the reports sent in by the sectors receive positive evaluations.

*For more information, see Belgium, Flemish Government: Department of Work and Social Economy (2018), Sector Agreements 2018–2019 (Sectorconvenants 2018–2019).*

The **Swedish** Public Employment Agency launched an information campaign on television and in cinemas, print media and social media, promoting access to jobs for people with disabilities. The website of the campaign provides information to counteract prevailing prejudices and offers employers an online form to show their interest in hiring people with disabilities. Likewise, people with disabilities looking for a job can create a profile to be matched with an employer.

*For more information, see Sweden, Swedish Public Employment Agency (2018), Make room! (Gör plats!).*

The Ministry for Labour, Family, Social Affairs and Equal Opportunities of **Slovenia** has created a certificate for 'older worker-friendly' companies. The certificate will be awarded to companies that have at least 15 % of employees aged over 45 years, carry out special measures addressed at older workers, reach a certain score in a survey conducted among their older workers regarding their professional development, and are commercially successful.

*For more information, see Slovenia, Ministry for Labour, Family, Social Affairs and Equal Opportunities (2018), Older worker-friendly companies (Starejšim prijazno podjetje).*

The **Irish** Equality and Human Rights Commission has issued retirement and fixed-term contract guidelines to ensure that older workers who wish to continue in employment are not discriminated against. They provide guidance to legal and human resources professionals, trade unions, employers and others on interpreting and applying sections of employment law relating to older workers.

*For more information, see Ireland, Equality and Human Rights Commission (2018), Retirement and fixed-term contracts: Guidelines.*

### *Inequalities in education*

Education also featured prominently in studies on discrimination. It drew attention from equality bodies and public authorities in **Belgium**, **Cyprus**, **Denmark**, the **Netherlands** and **Portugal**.

A large-scale study on inequalities and discrimination in education systems looked at ethnic origin, socio-economic origin, sexual orientation and disability, at the request of the **Belgian** Equality Body (Unia).[117] It showed how certain minority groups are redirected towards a less favourable curriculum in higher education. The report made several recommendations to remedy the systemic deficiencies found, including the adoption of registration procedures that contribute better to social diversity; introducing measures to combat harassment of LGBTI pupils; and enhancing reasonable accommodation for pupils with disabilities.

Similarly, a study on the situation of children with disabilities in private schools carried out by the **Danish** Institute for Human Rights found, among other things, that children with disabilities at private schools are 31 % more likely to move to a public school than classmates without a disability. The study recommends that the Ministry of Education ensure inspections of how private schools comply with the prohibition of discrimination, including in cases of exclusion, and that the Danish Parliament introduce a legal obligation to provide reasonable accommodation to children with disabilities in the educational system.[118]

On discrimination and sexual orientation, universities and non-governmental organisations in **Cyprus**,[119] the **Netherlands**[120] and **Portugal**[121] carried out research based on online surveys. The results stressed the need to ensure that schools become safe environments in view of the high prevalence of homophobic and transphobic verbal and physical harassment.

## FRA opinions

The current EU legal framework provides comprehensive protection against discrimination on grounds of gender and racial or ethnic origin in key areas of life. However, it currently offers protection against discrimination on grounds of religion or belief, disability, age and sexual orientation only in the area of employment and occupation. By the end of 2018, after 10 years of negotiations, the Council of the EU had still not adopted the Equal Treatment Directive, which would extend this protection to the areas of education, social protection, and access to and supply of goods and services, including housing. This means that EU law protects an individual facing discrimination in, for example, the area of housing if the discrimination is on grounds of racial or ethnic discrimination, but not if it is on grounds of sexual orientation or other grounds. This results in an artificial hierarchy of grounds within the EU, with some of them more protected than others.

Article 21 of the EU Charter of Fundamental Rights prohibits discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. Article 19 of the Treaty of the Functioning of the European Union holds that the Council, acting unanimously, in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

### FRA opinion 3.1

*In view of the overwhelming evidence of discrimination on different grounds in areas such as education, social protection and access to goods and services, including housing, the EU legislator should step up efforts to adopt the Equal Treatment Directive. This would ensure that EU legislation offers comprehensive protection against discrimination in key areas of life, including on grounds of religion or belief, disability, age and sexual orientation.*

Discrimination and inequalities on different grounds remain realities in everyday life throughout the EU, the findings of FRA surveys and various national studies published in 2018 confirm. These findings also consistently show that people who experience discrimination seldom report it. The most common reason cited for not reporting is the belief that nothing would change as a result.

In light of this evidence, it can be noted that both the Racial Equality Directive and the Employment Equality Directive stipulate under their provisions on positive action that, to ensure full equality in practice, 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 any of the protected grounds.

The Racial Equality Directive and the directives in the area of gender equality also establish bodies for the promotion of equal treatment. They are tasked with providing assistance to victims of discrimination, conducting research on discrimination and making recommendations on how to address discrimination. All EU Member States have established such equality bodies. However, several European Commission against Racism and Intolerance (ECRI) and Committee for the Elimination of Racial Discrimination (CERD) country reports published in 2018 expressed concerns regarding the effectiveness, independence and adequacy of human, financial and technical resources of the equality bodies monitored.

The European Commission's Recommendation on standards for equality bodies and ECRI's revised General Policy Recommendation No. 2 provide comprehensive guidance on how equality bodies' mandates, structures and means can be strengthened to increase their effectiveness.

### FRA opinion 3.2

*EU Member States should ensure that equality bodies can fulfil effectively and independently the tasks assigned to them in the EU's non-discrimination legislation. This entails ensuring that equality bodies are allocated sufficient human, financial and technical resources. When doing so, Member States should give due consideration to the European Commission's Recommendation on standards for equality bodies as well as ECRI's revised General Policy Recommendation no. 2.*

### FRA opinion 3.3

*In line with the principle of equal treatment and the EU equality directives, EU Member States should consider introducing measures to prevent or compensate for disadvantages linked to any of the protected grounds. Such disadvantages could be identified through the analysis of data on discrimination experiences in key areas of life, which should be collected systematically in the EU.*

The European Commission presented its second annual report on the list of actions to advance LGBTI equality and confirmed its dedication to the list's successful implementation. Through a number

of high-level groups and working groups, the Commission supports the Member States in their efforts to advance LGBTI equality.

The European Parliament called on the Commission to take action to ensure that LGBTI individuals and their families can exercise their right to free movement and are provided with clear and accessible information on the recognition of cross-border rights for LGBTI persons and their families in the EU.

A number of Member States also took action to advance LGBTI equality and introduced relevant legal changes and policy measures throughout the year. These involved the status of same-sex families; simplified procedures for gender reassignment on the basis of self-determination; and stopping unnecessary surgical interventions on intersex children. In several Member States, courts paved the way for legislative developments or ensured their proper enforcement.

### FRA opinion 3.4

*EU Member States are encouraged to continue adopting and implementing specific measures to ensure that lesbian, gay, bisexual, trans and intersex (LGBTI) persons can fully avail themselves of all their fundamental rights available under EU and national law. In doing so, Member States are encouraged to use the list of actions to advance LGBTI equality published by the European Commission to guide their efforts.*

As in previous years, restrictions on religious clothing and symbols at work or in public spaces continued to shape debates in the EU in 2018. Although most EU Member States justify such laws with the intention of preserving neutrality, or as a way to ease social interaction and coexistence, it remains difficult to strike the balance between freedom of religion or belief and other legitimate aims pursued in a democratic society. These restrictions particularly affect Muslim women. Enforcing such laws proves particularly challenging in areas where there is no clearly defined line between the public and the private sphere, and the way courts deal with discrimination claims in this context varies across the EU.

Article 10 of the EU Charter of Fundamental Rights guarantees everyone's right to freedom of thought, conscience and religion. This right includes the freedom to change one's religion or belief and the freedom to manifest religion or belief in worship, teaching, practice and observance, either alone or in community with others. Article 21 of the EU Charter of Fundamental Rights prohibits any discrimination on the ground of religion or belief.

### FRA opinion 3.5

*EU Member States should ensure that any legal restrictions on symbols or garments associated with religion comply fully with international human rights law, including relevant case law of the European Court of Human Rights. Any legislative or administrative proposal that risks limiting the freedom to express one's religion or belief should embed fundamental rights considerations and fully respect the principles of legality, necessity and proportionality.*

Equality data, understood as any pieces of information that are useful for describing and analysing the state of equality, are indispensable to inform evidence-based non-discrimination policies, monitor trends, and assess the implementation of anti-discrimination legislation. Furthermore, under the Racial Equality Directive and the Employment Equality Directive, every five years EU Member States have to communicate all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of these directives. The next obligation to communicate is due in 2020.

The Subgroup on Equality Data set up under the EU High Level Group on Non-Discrimination, Equality and Diversity identified a number of common challenges that affect the availability and quality of equality data in Member States. These challenges include the lack of a coordinated approach to equality data collection and use, incomplete identification of population groups at risk of discrimination due to overreliance on proxies, and insufficient consultation with relevant stakeholders in the design and implementation of data collection. The 11 guidelines on improving the collection and use of equality data prepared by the subgroup offer concrete guidance on addressing these challenges at national level. Although the guidelines are for Member States, by analogy they could also be applied within EU institutions and bodies to strengthen diversity monitoring.

### FRA opinion 3.6

*EU Member States should adopt a coordinated approach to equality data collection and ensure reliable, valid and comparable equality data disaggregated by protected characteristics, based on self-identification and in compliance with the principles and safeguards set out under the General Data Protection Regulation. When doing so, Member States should give due consideration to the guidelines on improving the collection and use of equality data adopted by the EU High Level Group on Non-Discrimination, Equality and Diversity. As a future step, EU institutions and bodies should consider applying these guidelines within their own structures.*

# Index of Member State references

# Endnotes

1 European Commission (2008), *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*, COM(2008) 426 final, Brussels, 2 July 2008.

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# UN & CoE

## January

**12 January –** United Nations Committee on Convention on the Elimination of All Forms of Racial Discrimination (CERD) publishes concluding observations on the combined 11th and 12th periodic reports of Slovakia

## February

**27 February –** European Commission against Racism and Intolerance (ECRI) publishes its fifth monitoring reports on Spain and Sweden; conclusions on the implementation of priority recommendations in respect of Greece released in 2014; and a revised version of General Policy Recommendation No. 2 on Equality bodies to combat racism and intolerance at national level

## March

## April

## May

**15 May –** ECRI publishes its fifth monitoring reports on Croatia and Malta; and conclusions on the implementation of priority recommendations in respect of Austria, the Czechia, Estonia, Hungary and Poland

## June

**6 June –** CERD publishes concluding observations on the combined 22nd and 23rd periodic reports of Sweden

**22 June –** ECRI publishes its 2017 annual report

## July

**9 July –** Cybercrime Convention Committee (T-CY) adopts recommendations to address cyber violence

## August

## September

**25 September –** CERD publishes concluding observations on the combined sixth to 12th periodic reports of Latvia

## October

**2 October –** ECRI publishes its fifth monitoring report on Portugal

**25 October –** In *E.S. v. Austria* (No. 38450/12), ECtHR upholds the Austrian Supreme Court's decision that the applicant's criminal conviction for accusing the Prophet Muhammad of paedophilia did not violate the applicant's right to freedom of expression (Article 10 of the ECHR)

## November

## December

**11 December –** In *Lakatošová and Lakatoš v. Slovakia* (No. 655/15), the ECtHR holds that the Slovakian authorities failed to investigate a possible racist motive in a shooting spree by an off-duty police officer at a Roma family's home, breaching the State's procedural obligation to carry out an effective investigation under Article 2 in conjunction with Article 14 of the ECHR

# EU

## January

**19 January –** European Commission releases the results of the third round of monitoring of the Code of Conduct on countering illegal hate speech online

## February

**7 February –** European Parliament (EP) adopts a Resolution on protection and non-discrimination with regard to minorities in the EU Member States (2017/2937(RSP))

## March

**1 March –** European Commission adopts a Recommendation on measures to effectively tackle illegal content online to be taken by companies and Member States and to apply to all forms of illegal content, including racist and xenophobic incitement to hatred and violence

## April

## May

## June

**22 June** – European Commission adopts Recommendation on standards for equality bodies

## July

## August

## September

## October

**25 October** – EP adopts Joint Motion for a Resolution on the rise in neo-fascist violence in Europe (2018/2869 (RSP))

## November

**13 November** – EP adopts a Resolution on minimum standards for minorities in the EU

**14 November** – EP and Council of the EU adopt Directive (EU) 2018/1808 (revised Audiovisual Media Services Directive) amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities. The revised directive reflects new challenges connected to video-sharing platforms, in particular with regard to harmful content and hate speech on them

**28 November –** EU High Level Group on combating racism, xenophobia and other forms of intolerance adopts a guidance note on the practical application of Council Framework Decision on Racism (2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law)

**29 November** – European Commission becomes a permanent international partner to the International Holocaust Remembrance Alliance (IHRA)

## December

**3 December –** European Commission hosts a high level conference on "Tackling intolerance and discrimination against Muslims in the EU"

**6 December –** Council of the EU approves a declaration on the fight against antisemitism and the development of a common security approach to better protect Jewish communities and institutions in Europe

**13–14 December –** European Council adopts conclusions condemning all forms of antisemitism, racism and xenophobia, and underlining the importance of combating intolerance

# 4 Racism, xenophobia and related intolerance

*Eighteen years after the adoption of the Racial Equality Directive and 10 years after the adoption of the Framework Decision on Racism and Xenophobia, people with minority backgrounds and migrants continue to face widespread harassment, structural discrimination, entrenched prejudice and discriminatory ethnic profiling across the EU, as the findings of FRA's 2018 surveys and reports of human rights bodies show. Several Member States have still not correctly and fully incorporated the Framework Decision on Racism and Xenophobia into national law. In 2018, only 15 Member States had in place action plans and strategies aimed at combating racism and ethnic discrimination.*

## 4.1. Rise in fear and resentment of ethnic minorities

Racism, hate crime and ethnic discrimination are rooted deeply in society. Persons from across the social and political spectrum perpetrate them and they manifest themselves in all areas of life. Still, victims and witnesses rarely report such experiences to authorities. One of the common reasons they give is that nothing would change as a result of reporting. These are some of the findings from FRA's Second European Union Minorities and Discrimination Survey (EU-MIDIS II) and its second survey on discrimination and hate crime against Jews.

### 4.1.1. People of African descent experience everyday racism in the EU

Across the EU, racist harassment, violence and discrimination are an everyday reality for persons of African descent. In December 2018, FRA published the findings of EU-MIDIS II, which, among others, surveyed 5,803 people with African descent in 12 EU Member States.[1] Across these 12 EU Member States (**Austria**, **Denmark**, **Finland**, **France**, **Germany**, **Ireland**, **Italy**, **Luxembourg**, **Malta**, **Portugal**, **Sweden** and the **United Kingdom**), nearly one in three people of African descent (30 %) said they had experienced racist harassment in the five years before the survey, the findings show. Experiences of racist violence vary greatly across EU countries. The highest proportion was in **Finland**, where 14 % said they had experienced racist violence in the five years before the survey. On average, 64 % of victims did not report the most recent incident of racist violence anywhere, and 41 % of victims said that nothing would have changed or happened if they had reported it.

In **Italy**, for example, a far-right sympathiser shot at and injured six African migrants. He was sentenced to 12 years in jail for attempted murder and racial hatred.[2] As this chapter highlights, in 2018, Afrophobia and racism against Afro-Europeans was acknowledged at the EU level in a resolution, but not systematically tackled at the national level. Various research results published during the year underlined how pervasive this issue is.

Simply having dark skin means being regularly discriminated against in all areas of life, these findings highlight. This includes experiencing discrimination in access to housing and facing precarious living conditions such as living in overcrowded housing (45 %, compared with 17 % of the general population in the EU-28) and living in conditions of severe housing deprivation (12 %, compared with 5 % of the general population). Further, only 15 % of people

of African descent own their home, compared with 70 % of the general population in the EU-28.[3]

In the **United Kingdom**, one in four employees with a black, Asian or minority ethnic background had witnessed or experienced racist harassment or bullying from managers in the last two years, the governmental review 'Race in the workplace' found.[4] In **Ireland**, Black Irish people are twice as likely as White Irish people to experience discrimination when seeking work and three times as likely to experience discrimination in the workplace, the Irish Human Rights and Equality Commission and the Economic and Social Research Institute found.[5] In **Sweden**, Afro-Swedes tend to hold low-status and low-paying jobs compared with the rest of the population, despite their educational attainment, and it is more difficult for Afro-Swedes than for the rest of the population to advance to higher job positions, a study by Uppsala University showed.[6]

Racist attitudes and prejudice are also widespread. In March 2018, the Economic and Social Research Institute and the Irish Human Rights and Equality Commission published a study on attitudes to diversity and race. The study used data from the European Social Survey and found that, across 10 EU Member States, 14 % of the population believe that 'some races/ethnic groups are born less intelligent', ranging from fewer than 2 % in **Sweden** to 41 % in **Portugal**. Some 45 % of the respondents believe that 'some cultures are superior to others' and 40 % believe some races are 'born harder working'.[7]

Promising practice

**Tackling everyday racism in access to services**

The municipality of Copenhagen in cooperation with the associations Horesta and Denmark's Restaurants and Cafés (*Danmarks Restauranter og Caféer*), representing Danish restaurants, cafés and nightclubs, among others, has developed a training course for bouncers, security guards and other staff at nightclubs, bars and restaurants. The course provides tools to help the participants deal with situations in which guests may experience discrimination, avoid these situations completely, and de-escalate any potential conflicts.

*For more information, see the website associated with the project.*

Recognising ubiquitous racism against people of African descent, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) adopted a motion for a resolution calling on the EU and the national authorities to develop anti-racism policies and measures to tackle prevalent discrimination against Afro-Europeans, racial profiling and to take steps to make reparations for European colonialism.[8] Still, only 15 Member States had action plans against racism in place in 2018 (see Section 4.2).

The EU High Level Group on combating racism, xenophobia and other forms of intolerance also emphasised the importance of preventing and countering discrimination and racism against persons of African descent. It highlighted the issue of structural racism that needs to be addressed by raising awareness of the history of slavery and colonialism among the general population, among other steps.[9] For more information on reducing inequalities under the 2030 UN Agenda for Sustainable Development under the sustainable development goals 'Reduce inequality within and among countries' (10) and 'Peace, justice and strong institutions' (16), see Chapter 1.

### 4.1.2. Antisemitism in the EU is widespread and normalised

More than 70 years after the Holocaust, widespread antisemitism affects Jewish people in all areas of life in the EU, as evidenced by FRA's second survey on discrimination and hate crime against Jews in the EU, which was published in 2018. The survey interviewed almost 16,400 Jewish respondents in 12 EU Member States (**Austria**, **Belgium**, **Denmark**, **France**, **Germany**, **Hungary**, **Italy**, the **Netherlands**, **Poland**, **Spain**, **Sweden** and the **United Kingdom**). These states are home to over 96 % of the EU's estimated Jewish population. The survey findings vary between the Member States; the survey provides both information about countries individually as well as on the EU average. On average, more than one quarter (28 %) of Jewish respondents said they had been harassed at least once in the year preceding the survey because of being Jewish; 34 % said they avoid visiting Jewish events or sites because they do not feel safe; and 38 % say they have considered emigrating because they do not feel safe as Jews.[10] Overall, 70 % of Jewish respondents consider that Member States' efforts to combat antisemitism are not effective. A 2018 CNN poll among more than 7,000 respondents from the general population in **Austria**, **France**, **Germany**, **Hungary**, **Poland**, **Sweden** and the **United Kingdom** found that one in three adults (28 %) say Jewish people have too much influence in finance and business across the world, compared with other people.[11] The Brussels Institute of the Action and Protection Foundation, a Hungarian Jewish cultural organisation, criticised the findings on **Hungary** and the poll's research method.[12]

*"I am really scared about the safety of my child who goes to a Jewish school. Every day I ask myself if I should send him to school somewhere else."*

*Woman, 30–34 years old, from Belgium, cited in FRA (2018), Experiences and perceptions of antisemitism – second survey on discrimination and hate crime against Jews in the EU, Luxembourg, Publications Office*

Perpetrators of antisemitism have diverse social statuses and political ideologies, available evidence suggests. When asked to describe the perpetrator of antisemitic harassment, the FRA survey respondents describe someone they do not know (31 %); someone with an extremist Muslim view (30 %); someone with a left-wing political view (21 %); a colleague from work or school/college (16 %); an acquaintance or friend (15 %); and someone with a right-wing political view (13 %). Respondents could select one or more terms to describe the perpetrator, as relevant to the incident they experienced. The findings also show considerable differences in perceptions of the perpetrators between the 12 survey countries.

The Pears Institute for the Study of Antisemitism conducted a research project in 2016–2017 in **Belgium**, **France**, **Germany**, the **Netherlands** and the **United Kingdom**.[13] It looked at whether or not immigration from the Middle East and North Africa since 2011 has had an impact on antisemitic attitudes and behaviour in Western Europe.[14] While stating that antisemitic attitudes and/or behaviour are disproportionately present among Muslim minorities as well as among people with sympathy for extreme right-wing groups, the project concludes that there is no evidence in any of the countries covered that there is a connection between migrants and the extent and character of antisemitism in Western Europe. Representatives of some Jewish organisations raised concerns about the methodology and the findings of the research.[15]

Against this background, the Justice and Home Affairs Council adopted in December 2018 a Declaration against Antisemitism, marking the European Council Conclusions[16] on how to address the growing problem of antisemitism in Europe. On 29 November 2018, the EU acquired Permanent International Partnership with the International Holocaust Remembrance Alliance (IHRA),[17] allowing for closer cooperation on combating Holocaust denial and preventing racism and antisemitism.

In January 2018, the **German** Parliament passed a motion on combatting antisemitism. With this motion the German Parliament condemns all forms of antisemitism and asks the German government to take concrete actions to tackle antisemitism, including by creating a post of an antisemitism commissioner.[18] The first antisemitism commissioner was appointed in April 2018. In June 2018, the **Romanian** parliament unanimously adopted the IHRA working definition of antisemitism, and a bill introducing criminal sanctions for antisemitic acts.[19] A number of Member States also appointed national envoys on antisemitism.[20]

### 4.1.3. Political hate speech fuels violent right-wing extremism

Political hate speech and right-wing extremism targeting Muslims and refugees have become mainstream across the EU. The **Italian** MEP Cecile Kyenge was subjected to racist insults in 2013 by the Northern League party and is currently facing a defamation case against her by the party and its leader, the Deputy Prime Minister, for accusing the party of racism.[21] Also in **Italy**, on 2 June 2018, a 29-year-old Malian man, a trade union activist supporting migrant farm workers, was shot to death, just hours after the Deputy Prime Minister, who is also Minister for the Interior, declared: "The party's over for illegals".[22] The perpetrator was arrested. Furthermore, the Deputy Prime Minister declared his intention to impose a curfew at 21.00 for all "ethnic shops and activities", suggesting that these kinds of businesses attract drug dealers.[23] The hate crime monitoring organisation Chronicles of Ordinary Racism registered 628 racist incidents in **Italy** in 2018 and 564 in 2017.[24] In **Greece**, Racist Crimes Watch recorded 315 incidents in 2017, using open sources, and reported them to the Prosecutor for Racist Crimes in Athens.[25] For more information on police and border-control violence against asylum seekers and refugees, see Chapter 6.

Certain political rhetoric and impunity for such speech can fuel neo-Nazism and extremism, according to the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.[26] For the first time since 1999, and ahead of the parliamentary election in May 2019, the European Parliament adopted a resolution on neo-fascist violence in Europe.[27] The European Parliament expressed concerns about the increasing normalisation of fascism and racism, and highlighted an increase in far-right organised violent actions and sense of impunity. It called on the Member States to condemn hate crime "by politicians and public officials as they directly normalise and reinforce hatred and violence in society".[28]

According to Europol, an increasing number of small right-wing extremist groups operate across the EU, with a variety of ideologies, ranging from criticism of the political establishment and international organisations to the rejection of asylum policies, migrants, Muslims and members of ethnic minorities or persons with particular political backgrounds.[29]

In March 2018, a **German** court sentenced seven men and one woman to four to 10 years in jail for founding a far-right terrorist group responsible for attempted murder and bomb attacks on refugee shelters and

politicians.[30] In **France**, 10 members of an armed militia, which was preparing to carry out attacks against mosques and random Muslims, were arrested by the General Directorate of Internal Security in June 2018.[31]

In the **United Kingdom**, one person died and 10 were injured after a man who had expressed hatred of Muslims drove a van into a crowd of Muslim worshippers in London on 19 June.[32] Against this background, the number of people referred to the 'Prevent' anti-radicalisation programme over suspected far-right extremism increased by 36 % in 2017/2018 from 2016/2017, and referrals over Islamist extremism decreased by 14 % in the same period, according to the Home Office.[33]

**Germany** recorded 286 offences motivated by right-wing extremism related to asylum seekers' accommodation centres in 2017, compared with 907 in 2016, including 42 violent crimes (153 in 2016). One presumed reason for the 2017 decrease is long prison sentences for the perpetrators, according to the Federal Ministry of the Interior report.[34] The report also includes crimes committed by the extremist groups *Reichsbürger* ('citizens of the Reich')[35] and *Selbstverwalter* ('sovereigns') for the first time in 2017. A total of 911 politically motivated crimes were recorded, of which 783 were categorised as extremist.

In **Poland**, following a TV documentary about Polish neo-Nazis, the prime minister appointed an 'Interministerial team for preventing the propagation of fascism and other totalitarian regimes and crimes of inciting hatred based on national, ethnic, racial or religious differences, or non-belief'.[36] The team focuses on problems hindering effective prosecution of such crimes, including existing legislation.

Muslims and especially Muslim women continue to be targeted in Islamophobic attacks, available evidence suggests. In **France**, 69 % of Islamophobic acts concern women as victims, a report by the *Collectif Contre l'Islamophobie en France* revealed.[37] In the **United Kingdom**, the 'Tell MAMA' organisation recorded 1,201 verified anti-Muslim incidents in 2017.[38] Data collected by the Ministry of Interior show an 18 % decrease in the number of recorded anti-Muslim acts (100 in 2018 compared with 121 in 2017).[39] More than two thirds occurred offline (839), which represents a 30 % rise in offline reports compared with 2016 (642). Nearly six in 10 victims were women, and 72 % of the identified perpetrators were white and male. In **Finland**, 1,165 reports classified as suspected hate crimes were recorded in 2017. Out of all crime reports related to religion or belief (235), 153 (63 %) were against Islam or Muslims.[40]

**FRA ACTIVITY**

### Expanding knowledge on anti-Muslim hatred to foster effective responses

In December 2018, the European Commission organised a high level conference to identify effective responses to persistent intolerance and discrimination against Muslim communities. During the event, FRA's Database 2012–2017 on anti-Muslim hatred was launched. The database provides an easy-to-use overview of information on hate crime, hate speech and discrimination against Muslims across the EU. It brings together research and survey findings and information on significant international, European and national case law.

*For more information, see FRA's webpage on the database.*

## 4.2. Lack of policy responses to racism, ethnic discrimination and hate crime

The UN Durban Declaration and Programme of Action, signed in September 2001, emphasises states' responsibility to combat racism, racial discrimination, xenophobia and related intolerance.[41] Examining national strategies for combating racism, xenophobia and other forms of intolerance is one of the aims of the EU's High Level Group on combating racism, xenophobia and other forms of intolerance.

A national action plan against racism, ethnic and racial discrimination and related intolerance can provide the basis for the development of a comprehensive public policy against racial discrimination.[42] By developing such a plan, Member States demonstrate that they take action to counter the challenges they face in eradicating racism and racial discrimination.

Yet, as last year's Fundamental Rights Report reported, only 15 EU Member States had dedicated action plans against racism, racial/ethnic discrimination and related intolerance in place in 2018 (see Table 4.1).

**Table 4.1: EU Member States with dedicated action plans and strategies against racism, xenophobia and ethnic discrimination in place in 2018**

| Country code | Name of strategy or action plan in English | Period covered |
|---|---|---|
| **BE** | French-speaking community – Transversal Action Plan to Counter Xenophobia and Discrimination | 2014–2019 |
| **CZ** | Concept on the Fight against Extremism for 2017 | 2017 |
| **DE** | National Action Plan to Fight Racism | 2017 onwards |
| | Federal Government Strategy to Prevent Extremism and Promote Democracy | 2016 onwards |
| **ES** | Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance | 2011 onwards |
| **FI** | Action Plan against Hate Speech and Hate Crimes | 2017 onwards |
| | National Action Plan on Fundamental and Human Rights | 2017–2019 |
| **FR** | National Plan against Racism and Anti-Semitism, 2018–2020 | 2018–2020 |
| **HR** | National Plan for Combating Discrimination | 2017–2022 |
| | Action Plan for Implementation of the National Plan for Combating Discrimination | 2017–2019 |
| **IT** | The National Plan of Action against Racism, Xenophobia and Intolerance | 2015–2018 |
| **LT** | The Action Plan for Promotion of Non-discrimination | 2017–2019 |
| **LV** | Guidelines on National Identity, Civil Society and Integration Policy (2012–2018) | 2012–2018 |
| **NL** | National Antidiscrimination Action Programme | 2016 onwards |
| **PT** | Strategic Plan for Migration | 2015–2020 |
| **SE** | A comprehensive approach to combat racism and hate crime – National plan to combat racism, similar forms of hostility and hate crime | November 2016 onwards |
| **SK** | Action Plan for Preventing and Elimination of Racism, Xenophobia, Antisemitism and Other Forms of Intolerance for the Years 2016–2018 | 2016–2018 |
| **UK – Scotland** | Race Equality Framework for Scotland 2016–2030 | 2016–2030 |
| | Race Equality Action Plan | 2017–2021 |
| **UK – Northern Ireland** | Racial Equality Strategy 2015–2025 | 2015–2025 |
| **UK – Wales** | Equality Objectives 2016–2020: Working towards a Fairer Wales | 2016–2020 |

*Source:* *FRA, 2018*

Besides action plans, in 2018 only a few Member States developed policies to counter hate crime more effectively. They include **Greece**, where the Ministry of Justice signed an inter-agency agreement in June 2018 among the relevant ministries (Citizens' Protection, Immigration Policy and Health) and the NGO Racist Violence Recording Network for a coordinated and holistic approach to combat racist crime.[43] In **Spain**, the State Secretariat for Security of the Ministry of the Interior set up the National Office for Combating Hate Crimes. The office is a coordinating body that provides strategic and technical information for the adoption of public policies in relation to hate crimes.[44] In **Slovakia**, the National Criminal Agency updated its manual on extremist crime, which provides information on crime and police procedures in investigating it, and issued detailed instructions for other police units on how to deal with these incidents.[45]

**FRA ACTIVITY**

### Assisting national authorities with hate-crime recording

The full implementation of EU law entails ensuring that the police properly identify hate crime victims and record racist motivation at the time of reporting. Doing so will support the investigation and prosecution of hate crime and will provide the basis for victim support. Proper recording of hate crime is still not a reality in many EU Member States, FRA's evidence shows.

Upon request from the Member States, FRA, together with the Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR), offers technical assistance to national authorities to improve their ability to record and collect hate crime data and thus provide better support to victims, through national workshops. Between December 2017 and the end of 2018, such workshops took place in **Estonia**, **Hungary**, **Lithuania**, **Poland**, **Portugal** and **Slovakia**, and more are already scheduled for 2019.

*For more information, see FRA's webpage on the workshops. For more information on the Victims' Rights Directive, see Chapter 9.*

Promising practice

### Understanding the hate-crime reporting gap: presenting police-recorded crime alongside victimisation survey data

In the **United Kingdom**, since 2012, the Home Office hate-crime report has presented the number of hate crimes recorded by the police and the number of hate crimes reported in a representative national victimisation survey. The police recorded a total of 94,098 hate crime offences in 2017/2018 – an increase of 123 % compared with 2012/2013. This increase results from improvements in recording, a larger number of people reporting these crimes to the authorities, as well as spikes following certain events. Still, the Crime Survey for England and Wales (CSEW) of the Office for National Statistics estimates that there are about 184,000 hate incidents a year. Comparing the two numbers allows law enforcement and policymakers to understand the reporting gap – the dark figure of unreported hate crime – and develop measures to address it.

*For more information, see United Kingdom, Home Office (2018), Hate Crime, England and Wales, 2017/18.*

## 4.3. Gaps in national legislation on combating hate crime and hate speech

The Framework Decision on Racism and Xenophobia establishes legally binding minimum standards in the EU for criminal law definitions and deterrent criminal sanctions to counteract severe forms of racism and xenophobia. Yet, 10 years after its adoption, a number of Member States have not fully and correctly incorporated into national law its provisions on the offences of denying, condoning and grossly trivialising certain crimes, reports by the European Commission[46] and international monitoring bodies show.

The European Commission in 2018 continued discussions with Member States authorities in view of ensuring the correct transposition and implementation of the Framework Decision on Racism and Xenophobia. In the same spirit, the EU High Level Group on combating racism, xenophobia and other forms of intolerance has adopted a guidance note to help national authorities address common issues of practical application of the framework decision and ensure effective investigation, prosecution and sentencing of hate crime and hate speech on the ground.[47]

International human rights monitoring bodies reiterated their concerns about existing gaps in national criminal codes in addressing hate crime and hate speech. ECRI expressed its concerns that criminal codes in **Sweden**[48] and **Malta**[49] do not contain provisions that criminalise "the creation or leadership of a group which promotes racism or support for such a group"[50] and "participation in its activities". ECRI also called on **Portugal**[51] to establish racist, homophobic or transphobic motives as aggravating circumstances for any offences. Similarly, it called on the **Maltese**[52] authorities to add to their criminal codes the following offences: "incitement to discrimination; defamation; public dissemination, public distribution, production or storage, with a racist aim, of written, pictorial or other material".[53] In addition, ECRI recommended that the **Croatian**[54] authorities "criminalise the production and storage of written, pictorial or other material containing racist manifestations".[55]

At the European level, two important court decisions in 2018 reinforced the duty of the national authorities to investigate bias motivation behind a crime and clarified what kind of statements constitute incitement to hatred and insult.

In *Lakatošová and Lakatoš v. Slovakia*,[56] the ECtHR found a violation of Article 14 (prohibition of discrimination) read in conjunction with Article 2 (right to life) of the ECHR. The case concerned a shooting spree by an off-duty police officer at a Roma family's home, in which the applicants were seriously injured and three members of their family were killed. Despite indications of a possible racist motive for the crime, the offender was prosecuted for premeditated murder and ultimately given a reduced sentence of nine years' imprisonment owing to "diminished soundness of mind". The ECtHR found that the authorities breached the State's procedural obligation to carry out an effective investigation by failing to examine a possible racist motive for the assault despite "powerful racist" indicators. The court also found that the national courts failed to remedy in any way the limited scope of both the investigation and prosecution.

In *E.S. v. Austria*,[57] the ECtHR ruled in favour of the **Austrian** Supreme Court, which found that the interference with the applicant's right to freedom of expression was justified and in balance with the principles developed under Article 9 (freedom of religion) and Article 10 (freedom of expression) of the ECHR. The case concerned several seminars entitled 'Basic information on Islam' held at the Freedom Party Institute. During two of these seminars, the applicant had linked Muhammad's marriage to Aisha, a six-year-old girl, to paedophilia. As a result of these statements, the applicant was convicted of disparaging religion pursuant to the Austrian Criminal Code and ordered to pay a moderate fine. The ECtHR upheld the domestic courts' assessment of the case and held that the applicant's comments had not been phrased in a neutral manner, nor had they been objective and based on facts, and they had had no intention of promoting a public debate on child marriages. It found no violation of Article 10.

**FRA ACTIVITY**

### Outlining recent ECtHR case law relating to hate crime

In 2018, FRA published a paper aiming to assist national authorities when dealing with hate crime. The paper discusses the evolution of ECtHR case law relating to hate crime, providing an update on the most recent rulings. Approaching hate crime from a fundamental rights perspective, it shows how state authorities' duty to effectively investigate the bias motivation of crimes flows from key human rights instruments, such as the ECHR.

*For more information, see FRA (2018), Unmasking bias motives in crimes: selected cases of the European Court of Human Rights.*

## 4.4. Curbing hate speech online

On the internet, fundamental rights can be violated and crimes can be committed with real consequences for victims. For example, the vast majority (85 %) of Jews in the EU perceive antisemitism as a very big or fairly big problem, FRA's survey on experiences of Jewish people in the EU reveals. Of the many ways in which it can manifest itself, 89 % of respondents stressed antisemitism on the internet and on social media as a very big or fairly big problem.[58] Respondents most commonly come across statements they consider antisemitic online (80 %), followed by media other than the internet (56 %) and at political events or in social situations (48 % and 47 %, respectively).

> *"The survey asks if I have personally been a victim of antisemitism, which I have not, but I feel it's important to add that I have a strong feeling of unease at the moment regarding the level of antisemitism in the media and online which makes me feel unsafe."*
>
> *Woman, 40–44 years old, United Kingdom, cited in FRA (2018), Experiences and perceptions of antisemitism – second survey on discrimination and hate crime against Jews in the EU, Luxembourg, Publications Office*

Online hate speech can correlate with occurrences of actual racist crimes and harassment. For example, there is a strong association between right-wing, anti-refugee sentiment on **German** social media sites and violent crimes against refugees, research by the University of Warwick found. Using data from the Facebook page of the Alternative for Germany (AfD) party and statistics on anti-refugee incidents collected by civil society organisations, the study shows that for every four additional Facebook posts critical of refugees there was one additional anti-refugee incident.[59]

In January, the European Commission disclosed the results of the third monitoring exercise on the implementation of the Code of Conduct against online hate speech.[60] For example, on average, IT companies removed 70 % of the illegal hate speech of which they were notified, compared with removal rates of 59 % in the second monitoring exercise (May 2017) and 28 % in the first (2016).

Following the 2017 Communication on tackling illegal content online, in March 2018 the Commission issued a Recommendation on measures to effectively tackle illegal content online.[61] The recommendation asks the online platforms to take greater responsibility for the control of online content and outlines a concrete set of operational measures to enhance detection and removal of illegal content.

In November 2018, the Council of the EU adopted a directive modifying the Audiovisual Media Services Directive from 2010.[62] The revised directive reflects new challenges connected to video-sharing platforms, in particular, with harmful content and hate speech on them. These platforms, and social media used for sharing videos, will for the first time be subject to rules protecting minors from harmful content. The directive also requires video-sharing platforms to take appropriate measures to protect their users from incitement to violence and hatred.

In **Germany**, Facebook deleted hundreds of offensive posts after a law banning online hate speech,[63] and laying down fines of up to € 50 million for failure to comply, came into force in 2017.[64] Blocked posts covered a range of alleged offences under Germany's criminal code, including insult, defamation, incitement to hatred and incitement to crime. In **Austria**, the Federal Minister for Constitutional Affairs, Reforms, Deregulation and Justice concluded an agreement pursuant to which Facebook will check notifications of illegal content regarding hate speech within 24 hours and will remove or lock down such content.[65]

Promising practice

### Fostering training and networks to address hate crime and hate speech

The **Finnish** Ministry of Justice has implemented an EU-funded project called 'Against hate'. Other participants are Victim Support Finland and three Croatian civil society organisations: Human Rights House Zagreb, the Centre for Peace Studies, and the civil society organisation GONG. The project focuses on development of hate crime reporting, enhancement of the capacity of police, prosecutors and judges to act against hate crime and hate speech, and development of support services for victims of hate crime. This includes training judges, prosecutors and police; establishing networks to enhance cooperation between public authorities and civil society organisations in two cities; and collecting information based on hate crime victims' experiences.

*For more information, see Finland, Ministry of Justice, Against hate - projekti.*

The Council of Europe's Counter-Terrorism Strategy,[66] published in June 2018, stresses that any measure taken to remove or restrict illegal content must be done with full respect for human rights and fundamental freedoms, including freedom of expression. The civil society organisations European Network Against Racism and European Digital Rights suggested four "principles for efficient and restorative solutions" for taking a human rights perspective to dealing with illegal content online.[67] These include predictability and accountability; assessment; and review processes for any measure applied.

## 4.5. Rights awareness crucial for implementation of Racial Equality Directive

The Racial Equality Directive contains key legal provisions to ensure that the persons concerned know about their rights to equal treatment.[68] It also includes a duty for Member States to establish or designate an equality body.[69] Yet, 18 years after its adoption, ethnic minority groups tend to have limited awareness of equality bodies, and incidents of discrimination remain largely unreported, FRA survey data show. The European Commission continued to closely monitor the implementation of the directive in 2018. Meanwhile, infringement proceedings concerning discrimination against Roma children in education have been ongoing in **Czechia**, **Hungary** and **Slovakia**. For more information, see Chapter 5 on Roma integration.

The European Commission also adopted a Recommendation on Standards for Equality Bodies. The instrument aims to improve the equality bodies' independence and effectiveness, and encourages Member States to enable equality bodies to raise awareness both of the bodies' existence and of the content of anti-discrimination rules and of how to seek redress.[70]

Equality bodies are crucial in helping ethnic minorities to access justice and seek redress. Yet, overall, only 46 % of the 5,803 respondents of African descent involved in FRA's EU-MIDIS II survey said they knew of at least one equality body in the country they live in, with notable differences between countries, as reported in the FRA publication *Being black in the EU*. The highest levels of awareness of such bodies are in Ireland (67 %), the United Kingdom (65 %) and Denmark (62 %), and the lowest in Malta (9 %), Luxembourg (12 %), Italy (19 %) and Austria (20 %).[71] For more information on equality bodies, see Chapter 3 on Equality and non-discrimination.

Awareness of equality bodies and antidiscrimination legislation can affect the reporting of discrimination. So can the level of education.[72] Overall, only 16 % of respondents of African descent who felt racially or ethnically discriminated against reported or made a complaint about the most recent incident they experienced, *Being black in the EU* reveals. The reporting rate is 8 % among those who completed no more than lower secondary education, 17 % for those with upper secondary education and 21 % for those

who completed tertiary education.[73] On average, 79 % of respondents of African descent are aware of anti-discrimination legislation in their countries of residence prohibiting discrimination based on skin colour, ethnic origin or religion. The highest awareness rate is in the United Kingdom (87 %) and the lowest in Malta (18 %). Incidents of discrimination remain largely unreported and therefore invisible to institutions that have a legal obligation to respond to discrimination complaints, these findings show.

## 4.6. Stepping up efforts to counter discriminatory profiling

Discriminatory ethnic or racial profiling was identified as an issue in previous FRA fundamental rights reports. It remained a serious concern across the EU in 2018. Such profiling can undermine trust in law enforcement among persons with ethnic minority backgrounds, who may frequently find themselves stopped and searched for no reason other than their appearance.

In **Belgium**, Amnesty International interviewed over 48 police officers and officials applying qualitative research methodology in nine local police zones about discriminatory practices during policing and identity checks. Half of the police officers believe that ethnic profiling happens and they often lack the tools to avoid it or prevent it, the research findings reveal. There is no clear and coherent policy on identity checks, according to the interviewees, as there are no guidelines, instructions, training or monitoring on identity checks.[74] In **Finland**, a study examined the prevalence, interpretations and forms of ethnic profiling in the cities of Turku and Helsinki between 2015 and 2017.[75] It combined several kinds of quantitative and qualitative methods. Out of the 185 interviewees, 145 had ethnic minority backgrounds and were interviewed about their experiences of ethnic profiling. The other interviewees were 26 police officers and 14 other officials. Most of the interviewees with ethnic minority backgrounds reported that the stops and searches were unpleasant, annoying or humiliating experiences. Ethnic profiling is especially detrimental to trust in authorities and to the sense of belonging to Finland, the research findings reveal.

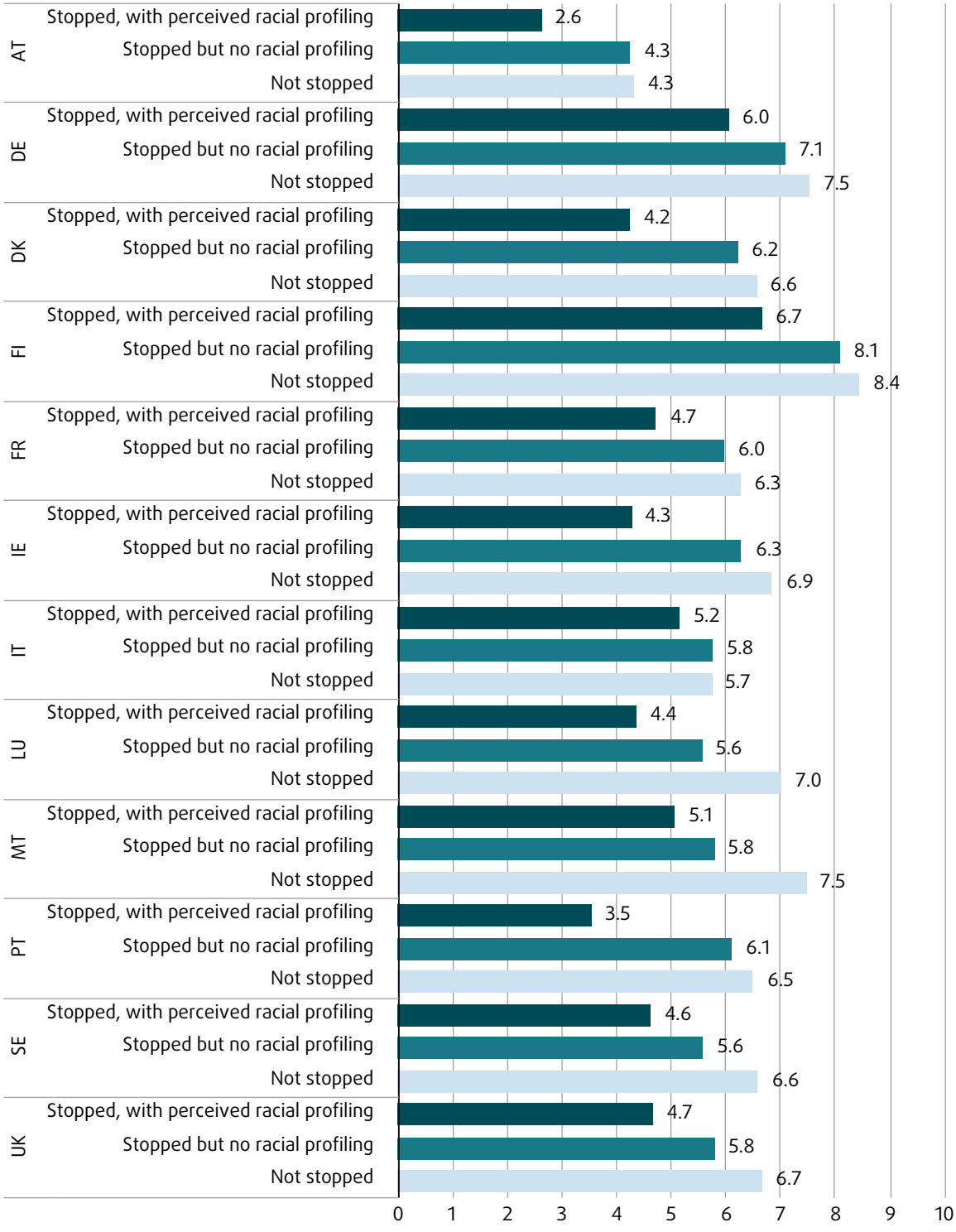
Still in **Finland**, young Roma have little trust in the police and they experience frequent discrimination, the findings of an online survey revealed.[76] "To be stopped frequently by the police produces a feeling of being treated as a potential perpetrator for no reason", according to the results of a qualitative study in **Sweden** based on interviews with police officers and with individuals who have been subjected to ethnic profiling.[77]

Likewise, people of African descent have less trust in law enforcement when they are stopped by the police and experience racial profiling, the FRA report *Being black in the EU* shows.[78] A quarter (24 %) of all persons of African descent surveyed were stopped by the police in the five years before the survey. Among these, four in 10 characterised the most recent stop as racial profiling (41 %). Men of African descent are three times more likely to be stopped (22 %) than women (7 %), and they are more likely to consider the most recent stop racial profiling (44 %) than women are (34 %). Overall, respondents of African descent rate their trust in the police at 6.3 on a scale from 0 to 10, where 0 means 'no trust at all' and 10 indicates 'complete trust'. The lowest average level of trust in the police is found in Austria (3.6), where the majority of the respondents also consider that the most recent police stop they experienced was racial profiling (see Figure 4.1).

The **German** government analysed 28 official complaints in relation to ethnic profiling from 1 January 2017 to 30 April 2018. Nineteen complaints were dismissed as unfounded, seven cases are still being investigated, and two were found to be justified.[79] The **Dutch** police registered 46 complaints about ethnic profiling in 2017.[80] The police handled 38 in line with the formal complaints procedure, which aims to conclude a complaint to the satisfaction of the citizen. During this procedure, the police officer and the person who filed the complaint talk to each other. When the conversation between the two parties is satisfactory, the procedure is completed. In 2017, 31 complaints were dealt with following this procedure. If people are not satisfied with this solution, an independent complaints committee hears the complainant and the relevant police officer. The committee then advises the police chief about the settlement of the complaint. In 2017, one complaint was dealt with satisfactorily in phase two. Five complaints are still pending and one has been suspended because additional research was needed.

In the **United Kingdom**, individuals from black and minority ethnic groups are four times more likely to be stopped than those who are white, the Home Office's latest statistics show. In particular, black individuals are over nine times more likely to be stopped than those who are white.[81] Similarly, black people were stopped and searched for drugs at almost nine times the rate of white people, research findings show, while Asian people and those in the 'mixed' group were stopped and searched for drugs at almost three times the rate of white people. The 'find' rate for drugs is also lower for black than white people, suggesting that such searches are carried out on black people on the basis of weaker grounds.[82]

**Figure 4.1: Levels of trust in the police, and experiences with police stops among persons of African descent, by country** [a,b,c,d]




*Notes:* [a] *Average values on a scale ranging from 0 to 10.*

[b] *Out of all respondents of African descent (n = 5,539); weighted results.*

[c] *Results based on a small number of responses are statistically less reliable. Thus, results based on 20 to 49 unweighted observations in a group total or based on cells with fewer than 20 unweighted observations are noted in parentheses. Results based on fewer than 20 unweighted observations in a group total are not published.*

[d] *Question: "Please tell me on a scale of 0–10 how much you personally trust each of the [COUNTRY] institutions I read out. 0 means you do not trust an institution at all, and 10 means you have complete trust."*

*Source:* *FRA, EU-MIDIS II (2016)*

Promising practice

### 'Stop Stopping Me' campaign

SOS Racisme Catalunya runs the 'Stop Stopping Me' campaign to bring to light ethnic profiling during police identity checks. SOS Racisme Catalunya created a database of potential cases of ethnic profiling by inviting people to fill in an anonymous questionnaire on the campaign website. The organisation also published a practical guide about what to do when one is profiled, and provides legal counselling for victims of ethnic profiling.

*For more information, see the Parad de Pararme website.*

In **Germany**, a plaintiff claimed that the police checked his identity due to his skin colour. The Higher Administrative Court of North Rhine-Westphalia found that the police officers acted unlawfully when checking the plaintiff's identification documents for a second time in the police station. The court stressed that skin colour cannot be a basis for treating a suspect differently from others. It ruled that the accused policemen had to pay all the costs incurred by both parties.[83]

**FRA ACTIVITY**

### Producing guidance on how to prevent unlawful profiling

In December 2018, FRA published its updated guide on profiling. This practical guide explains what profiling is, the legal frameworks that regulate it, and why conducting profiling lawfully – which means not stopping someone solely on the grounds of their race, for example – is not only necessary to comply with fundamental rights, but also crucial for effective policing and border management. The guide also provides practical guidance on how to avoid unlawful profiling in police and border management operations. It is primarily designed for those responsible for training law enforcement and border management officials.

*For more information, see FRA (2018), Preventing unlawful profiling – today and in the future: a guide, Luxembourg, Publications Office.*

Training for police officers is an important tool in minimising the risk of unlawful profiling. Several countries – including **Finland**,[84] **Hungary**,[85] **Italy**,[86] **Portugal**,[87] **Slovakia**[88] and **Slovenia**[89] – have implemented educational measures and training aimed at raising human rights awareness among law enforcement officials. These include initiatives to counter racism and ethnic discrimination and on policing diverse societies.

## FRA opinions

Article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) obliges States Parties to declare that incitement to racial discrimination and acts of violence against any race or group of persons are offences punishable by law. Article 1 of the Framework Decision on Racism and Xenophobia outlines measures that Member States are to take to punish intentional racist and xenophobic conduct. Article 4 further requires bias motivation to be considered an aggravating circumstance or taken into consideration by the courts in determining the penalties imposed on offenders. The Victims' Rights Directive requires that victims of hate crime receive an individual assessment to identify their specific support and protection needs (Article 22). The implementation of EU law entails ensuring that the police identify hate crime victims and record the racist motivation at the time of reporting.

In 2018, FRA survey data remained the main source for understanding the prevalence and forms of hate victimisation in many EU Member States and across the EU. Racist harassment and violence are common occurrences in the EU that remain invisible in official statistics, and Member States lack the tools and skills to record hate crime properly and systematically, FRA's 2018 surveys on the victimisation of people of African descent and of Jewish persons both found.

### FRA opinion 4.1

*EU Member States should ensure that any alleged hate crime, including illegal forms of hate speech, is effectively recorded, investigated, prosecuted and tried. This needs to be done in accordance with applicable national, EU, European and international human rights law.*

*EU Member States should make further efforts to systematically record, collect and publish annually data on hate crime to enable them to develop effective, evidence-based legal and policy responses to this phenomenon. Any data should be collected in accordance with national legal frameworks and EU data protection legislation.*

Article 10 of the Racial Equality Directive stresses the importance of dissemination of information to ensure that the persons concerned know of their right to equal treatment. In addition, Article 13 of the directive establishes the obligation to designate national bodies for the promotion of equal treatment; these have the tasks of providing assistance to victims of discrimination, conducting research on discrimination, and making recommendations on how to address discrimination. However, members of ethnic minority groups tend to have very limited awareness of equality bodies, and incidents of discrimination remain largely unreported, evidence collected by FRA indicates.

### FRA opinion 4.2

*EU Member States should ensure that equality bodies can fulfil their tasks, as assigned by the Racial Equality Directive, by supporting them in raising public awareness of their existence, of the anti-discrimination rules in force, and of ways to seek redress. This can help strengthen the role of equality bodies in facilitating the reporting of ethnic and racial discrimination by victims.*

In 2018, only 15 EU Member States had dedicated national action plans in place to fight racial discrimination, racism and xenophobia. The UN Durban Declaration and Programme of Action resulting from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance underlines State Parties' primary responsibility to combat racism, racial discrimination, xenophobia and related intolerance. The EU High Level Group on combating racism, xenophobia and other forms of intolerance provides Member States with a forum for exchanging practices to secure the successful implementation of such action plans.

### FRA opinion 4.3

*EU Member States should develop dedicated national action plans to fight racism, racial discrimination, xenophobia and related intolerance. In this regard, EU Member States could draw on the practical guidance offered by the Office of the United Nations High Commissioner for Human Rights on how to develop such plans. In line with this guidance, such action plans would set goals and actions, assign responsible state bodies, set target dates, include performance indicators, and provide for monitoring and evaluation mechanisms. Implementing such plans would provide EU Member States with an effective means of ensuring that they meet their obligations under the Racial Equality Directive and the Framework Decision on Combating Racism and Xenophobia.*

Members of ethnic minority groups continue to face discriminatory ethnic profiling by the police, evidence from EU-MIDIS II and findings of research in a number of Member States show. Such profiling can undermine their trust in law enforcement. This practice contradicts the principles of ICERD and other international standards, including those embodied in the ECHR and related jurisprudence of the ECtHR, as well as the EU Charter of Fundamental Rights and the Racial Equality Directive.

### FRA opinion 4.4

*EU Member States should develop specific, practical and ready-to-use guidance to ensure that police officers do not conduct discriminatory ethnic profiling in the exercise of their duties. As noted in FRA's guide on preventing unlawful profiling, such guidance should be issued by law enforcement authorities, or included in standard operating procedures of the police or in codes of conduct for police officers. Member States should systematically communicate such guidance to frontline law enforcement officers.*

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# UN & CoE

## January

12 January – UN Committee on the Elimination of Racial Discrimination (CERD) publishes concluding observations on combined 11th and 12th periodic reports of Slovakia

## February

27/28 February – European Commission against Racism and Intolerance (ECRI) publishes fifth monitoring reports on Spain and Sweden

## March

## April

## May

15 May – ECRI publishes fifth monitoring report on Croatia and conclusions on the implementation of recommendations in respect of Czechia and Hungary

15-16 May – 5th meeting of the Operational Platform on Roma Equality (OPRE), Belfast, Northern Ireland, UK

22-25 May – 15th meeting of the CoE's Ad hoc Committee of Experts on Roma and Traveller Issues (CAHROM), Athens, Greece

## June

6 June – CERD publishes concluding observations on combined 22nd and 23rd periodic reports of Sweden

7 June – CAHROM releases final abridged report for its 15th Plenary Meeting

20-21 June – 5th meeting of the CoE Dialogue with Roma and Traveller civil society: "Participation in political life", Strasbourg

## July

4 July – CoE Committee of Ministers launches 2nd Report on the implementation of the Thematic Action Plan on the Inclusion of Roma and Travellers (2016-2019)

## August

## September

25 September – CERD publishes concluding observations on combined sixth to 12th periodic reports of Latvia

25-26 September – International Seminar on the "Transition from education to employment for Roma Youth", Brijuni Islands, Croatia, organised under the aegis of the Croatian Chairmanship of the Committee of Ministers of the CoE

## October

2 October – ECRI issues its fifth monitoring report on Portugal

15-16 October – 6th meeting of the Council of Europe Dialogue with Roma and Traveller civil society, Strasbourg, on "Civil Society Assessment of the Implementation of the CoE Thematic Action Plan on the Inclusion of Roma and Travellers (2016-2019)"

16-19 October – 16th meeting of CAHROM, Strasbourg

## November

6 November – CoE Commissioner for Human Rights issues her report following a visit to Greece in June 2018

6 November – CAHROM releases its final abridged report for 16th Plenary Meeting

## December

# EU

## January

## February

7 February – European Parliament (EP) adopts a resolution on protection and non-discrimination with regard to minorities in the EU Member States (2017/2937 (RSP))

## March

## April

## May

## June

## July

13 July – Council of the EU endorses country-specific recommendations for Bulgaria, Czechia, Hungary, Romania and Slovakia in the context of the European Semester

## August

## September

## October

8–9 October – 2018 Meeting of the European Platform for Roma Inclusion takes place in Brussels

## November

13 November – EP adopts a resolution on minimum standards for minorities in the EU (2018/2036 (INI))

## December

4 December – European Commission issues a communication on the evaluation of the EU Framework for National Roma Integration Strategies up to 2020 (COM2018/785 final)

# 5 Roma integration

*Roma continue to face discrimination because of their ethnicity in access to education, employment, healthcare and housing. Reports of discrimination and hate crime continued in 2018, confirming that anti-Gypsyism remains an important barrier to Roma inclusion. There has been little change in the social and economic situation of Roma across the EU, FRA data show. This undermines EU and national efforts to reach the Sustainable Development Goals (SDGs), in particular Goal 10 in regard to reducing inequality within countries, and more specifically its Target 10.3 to ensure equal opportunity and reduce inequalities of outcome. The 2018 edition of Eurostat's monitoring report on progress towards the SDGs in the EU contains no reference to Roma inclusion outcomes or to the relevant data that FRA produced, despite the high relevance of monitoring a number of goals specifically for Roma (in particular Goals 1, 4, 6 and 8). Such monitoring would have explicit policy relevance, given the existence, since 2011, of an EU Framework for National Roma Integration Strategies and the related Council Recommendation of 2013.*

## 5.1. EU action against anti-Gypsyism

In 2018, the European Commission evaluated the EU Framework for National Roma Integration Strategies.[1] The evaluation assesses the policy, legal and funding instruments that have been aligned and mobilised since 2011 and explores ways to develop the EU framework and feed into the targeted and mainstream EU policy, legal and funding instruments after 2020 in the light of the Council Recommendation of December 2013,[2] focusing on the fundamental right to equal treatment and non-discrimination, in particular in relation to access to employment, education, housing and health.

Fighting anti-Gypsyism should be a separate priority area for Roma integration strategies at both EU and national levels, in addition to the four key Roma integration goals for education, employment, health and housing, according to the Commission's 2018 mid-term report. A subsection of the evaluation highlights the need for an increased focus on fighting discrimination and anti-Gypsyism. It suggests measures, such as updating educational curricula, inter-ethnic community building, and training to sensitise employers, educational, health and housing authorities, police, prosecutors and judges.

### On terminology

**Who are the Roma?**

The Council of Europe uses 'Roma and Travellers' as umbrella terms to refer to Roma, Sinti, Kale, Romanichals, Boyash/Rudari, Balkan Egyptians, Eastern groups (Dom, Lom and Abdal) and groups such as Travellers, Yenish and the populations designated under the administrative term *Gens du voyage*, as well as persons who identify themselves as Gypsies.

*See the Council of Europe's web page dedicated to Roma and Travellers.*

**Anti-Gypsyism**

The European Commission against Racism and Intolerance (ECRI) of the Council of Europe defines anti-Gypsyism as a "specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination".

*See Council of Europe, ECRI (2011), ECRI General Policy Recommendation no.13 on Combating Anti-Gypsyism and Discrimination Against Roma, Strasbourg, September 2011, p.3.*

In 2018, the EU paid growing attention to persisting anti-Gypsyism. Focusing attention on this phenomenon is a positive policy trend that FRA already noted in 2017.[3] It was evident in high-level events, such as the European Platform for Roma Inclusion on 8–9 October, which the European Commission organised. It acknowledged anti-Gypsyism as an obstacle preventing the fair and equitable access of Roma to health and housing services, and highlighted that anti-Gypsyism requires further attention from Member States.[4] Under the Austrian Presidency of the Council of the European Union, an expert conference on anti-Gypsyism held on 27 November discussed how anti-Gypsyism can be addressed in a post-2020 EU Roma Framework.[5] Roma civil society also organised a range of events on anti-Gypsyism.[6]

The European Semester provides a policy framework for monitoring and guiding economic and social reforms by EU Member States to reach the Europe 2020 strategy targets for smart, sustainable and inclusive growth in the EU.[7] Country-specific recommendations, which the Council of the EU adopts on a yearly basis, reflect challenges and propose solutions specific to each EU Member State. Regarding Roma inclusion, since 2012 the European Commission has issued country-specific recommendations for **Bulgaria**, **Czechia**, **Hungary**, **Romania** and **Slovakia**, which the Council of the EU has endorsed. In 2018, these recommendations focused on the need to promote Roma participation in inclusive, mainstream education in all five countries. The recommendation for **Slovakia** also suggests reinforcing activation and upskilling measures, including quality, targeted training and individualised services for disadvantaged groups, such as Roma, in particular by delivering on the action plan for the long-term unemployed.[8] Such measures would contribute to the social inclusion of Roma, but would benefit from reference to anti-Gypsyism as a barrier to their implementation, and to measures tackling it that target the majority population.

The European Structural and Investment Funds are the financial instrument supporting the Europe 2020 strategy. They are of critical importance for Roma inclusion and for tackling anti-Gypsyism. In May 2018, the European Commission published its proposals for the EU budget period 2021–2027. Roma integration remains a priority; see Article 4 of the proposal for a Regulation on the European Social Fund Plus and point 4 of Annex IV of the Proposal on the new Common Provisions Regulation. When the EU and Member States make future partnership agreements for the new generation of EU funds, it will be important for them to refer explicitly to the participation of Roma in the design, implementation and monitoring of relevant investments in Roma inclusion at local level.[9]

**FRA ACTIVITY**

### Analysing data on Roma

In 2018, FRA published its report on anti-Gypsyism. It analysed trends between 2011 and 2016 in access to education, employment, healthcare and housing, and in manifestations of anti-Gypsyism such as discrimination, harassment and hate crime. On average, one out of three Roma surveyed had experienced some form of harassment in 2016, such as offensive or threatening personal comments, personal threats of violence, offensive gestures or inappropriate staring, the results show. There has also been little improvement in the overall social and economic situation of Roma across many Member States, it finds.

*See FRA (2018), A persisting concern: Anti-Gypsyism as a barrier to Roma inclusion, Luxembourg, Publications Office.*

## 5.2. Structural and institutional discrimination, and anti-Gypsyism

Anti-Gypsyism shows itself in structural and institutional discrimination, as discriminatory treatment becomes embedded in structures, organisations and institutions. This may manifest as educational and residential segregation, mass evictions, racial profiling or discriminatory treatment by police, and difficulties for Roma to register their residence or obtain administrative documents that can affect their opportunity to be connected to electricity, clean water and sanitation. Institutional discrimination can have an impact on everyday activities in many areas of life, FRA data show. For example, the highest prevalence of discrimination reported by Roma respondents in the past 12 months is when they use public or private services, such as administrative offices, public transport, shops, restaurants or bars (19 %), and when they look for work (16 %), analysis of FRA's data from EU-MIDIS II reveals.[10]

In 2018, a pilot project initiated by the European Parliament on 'Capacity building for Roma civil society and strengthening its involvement in the monitoring of national Roma integration strategies' published its first reports. This project is often referred to as the 'Roma Civil Monitor'. The European Commission Directorate-General for Justice and Consumers manages it, and around 90 NGOs from 27 Member States actively participate in implementing it. The EU's Racial Equality Directive has not yet translated into effective action against discrimination against Roma, and has not addressed structural and institutional racism, the

synthesis report argues.[11] It finds low levels of rights awareness among marginalised Roma communities and lack of trust in institutions, arguing that the lack of free legal aid prevents many Roma from bringing claims forward. The report refers to underreporting, confirming related FRA findings that only 27 % of Roma who experienced hate-motivated violence reported this to any organisation, including the police.[12]

Anti-Gypsyism affects structural discrimination in education. This results in the persistent segregation of Roma children in separate schools or classes, despite rulings from national courts and the ECtHR. At EU level, infringement procedures concerning discrimination against Roma children in education have been ongoing in **Czechia**, **Hungary** and **Slovakia**. The proportion of Roma children (aged 6–15 years) attending classes where 'all classmates are Roma' actually increased, on average, from 10 % in 2011 to 15 % in 2016, according to FRA data, underlining the need for more decisive action in this area.[13]

Anti-Gypsyism also manifested itself in housing in 2018, as demolitions and evictions decided by the authorities continued to affect Roma disproportionally. Local administrations in 61 % of all municipalities in **Bulgaria** issued 444 orders for the demolition of residential buildings, of which 399 (89 %) concerned Roma homes, according to the Roma Civil Monitor synthesis report.[14] It also pointed to some alleged practices in **Czechia**,[15] where property speculators buy up fully occupied buildings in segregated areas and evict the residents. This disproportionately affects Roma families, who end up living in crowded, poorly maintained residential hotels. In **Romania**,[16] there were reports of forced evictions of Roma, and civil society organisations accused the authorities of not giving reasonable notice, not offering access to legal aid and not providing adequate alternative accommodation. In **Hungary**, according to the Roma Civil Monitor, the local government in Miskolc continued the forced eviction of Roma[17]. In 2018, the EU pilot case on the forced eviction of Roma in Miskolc was closed by a decision of the European Commission on 10 December 2018, based on the Commission's finding that the information given by the Hungarian authorities showed that the situation had been resolved satisfactorily.[18]

There is a shocking lack of action on anti-Gypsyism, FRA data reveal. There was little improvement between 2011 and 2016 in the severely deprived housing conditions affecting many Roma households. A third of the Roma surveyed continue to live in housing that has no tap water inside the house, and 38 % do not have a toilet, shower or bathroom inside their home, in stark contrast to the average in the general population.[19]

**FRA ACTIVITY**

### Transitioning from education to employment

In July 2018, following the publication in the same year of its report on anti-Gypsyism, FRA published a report that examined how young Roma manage in their transition from school to work, based on data from its EU-MIDIS II survey. The report reveals the dire consequences of the poor educational outcomes influenced by anti-Gypsyism. They particularly affect young women, who are more often than men not in work, education or training.

*For more information, see FRA (2018), Transition from education to employment of young Roma in nine EU Member States, Luxembourg, Publications Office.*

In 2018, there were some positive developments in data disaggregated by ethnicity. The Financial Mechanism Committee established by Iceland, Liechtenstein and Norway had a new Programme Agreement with the government of **Bulgaria**. It envisaged a predefined project, 'Novel approaches to generating data on hard-to-reach populations at risk of violation of their rights', with the National Statistical Institute of Bulgaria as a project promoter. The project aims to develop innovative methods for generating data that policymakers and donors need to formulate practical ways to address vulnerability challenges at regional and local levels. The experience from the project will be relevant to other EU Member States and candidate countries facing similar challenges of Roma integration. FRA will support the project, bringing in its experience in monitoring poverty and inequality among hard-to-reach groups.[20] In **Croatia**, the Government Office for Human Rights and Rights of National Minorities, with the technical support of FRA and full involvement of Romani communities, finalised research collecting baseline data on the socio-economic position of the Roma communities. It included a mapping of the Roma population, combining external and self-identification methods, and qualitative and quantitative research, enabling proper monitoring of impact of the National Roma Inclusion Strategy.[21]

## 5.3. Legal developments

### 5.3.1. EU anti-discrimination law as tool against anti-Gypsyism

FRA has repeatedly highlighted the need to implement the Racial Equality Directive and the Framework Decision on Combating Racism and Xenophobia more effectively. It made this point in the EU-MIDIS II report on *Roma–Selected findings*,[22] the fundamental rights reports 2017 and 2018,[23] and the report on anti-Gypsyism published in 2018.[24] However, in 2018,

there were few national measures to enforce EU anti-discrimination legislation with respect to Roma.

At the EU level, the Commission's 2018 mid-term report on the EU Framework for National Roma Integration Strategies noted that "antigypsyism is monitored under the Racial Equality Directive and the Council Framework Decision on combating racism and xenophobia". At the same time, the EU's High Level Group on combating racism and xenophobia prioritised the fight against discrimination and anti-Gypsyism. The European Commission continues to monitor the outcome of infringement proceedings against certain Member States for their failure to correctly implement the Racial Equality Directive, particularly in the area of education and where Roma children are overrepresented in special schools for children with disabilities. FRA supported the Commission's monitoring through fact-finding missions and data.

In April 2018, the Council of Europe's European Committee of Social Rights (ECSR) published a decision of 5 December 2017 on the case *European Roma and Travellers Forum (ERTF) v. France* (complaint No. 119/2015) concerning eviction orders against Roma families. The ECSR found that in this specific case, French authorities had violated Part V, Article E, of the European Social Charter (ESC) on the enjoyment of the rights enshrined in the ESC without discrimination, in relation to the right of Roma children to education (Article 17 (2)), the right of Roma children and their families to protection against poverty (Article 30) and their right to housing (Article 31).[25] In July, a resolution by the Committee of Ministers of the Council of Europe took note of the French government's commitment to conform with the ESC.

### 5.3.2. National courts on Roma discrimination

In 2018, there were a few relevant court decisions, mostly on discriminatory treatment of Roma in employment, education and housing. For example, in **Slovakia**, the Košice Regional Court ruled that the case of a Roma woman who was not hired as a social worker despite her experience and qualifications amounted to discriminatory treatment on grounds of ethnic origin.[26] In **France**, the Court of Cassation found one mayor responsible for discriminatory practices for having refused to enrol in primary school five Roma children who lived in a camp that was under an evacuation order.[27]

Most court rulings on Roma discrimination concerned housing. In **Czechia**, a real estate agency was found guilty of discrimination for asking potential tenants about their ethnic background.[28] In the **United Kingdom**, a municipality's housing policy was ruled unlawful under the Equality Act 2010 for establishing criteria such as continued residence over a period of 10 years in the area, which could have a negative impact on access to housing for Irish Travellers.[29] A court in **Slovakia** found that a decision to move Roma to different municipal housing, with lower standards and located in a segregated area, amounted to discriminatory treatment.[30]

Lack of data remains one of the major challenges in improving and enforcing antidiscrimination law prohibiting discrimination against Roma. In 2018, a few examples of incident reporting and collection of data on anti-Gypsyism could be identified. For example, Amaro Foro e.V. in **Germany** continues to record incidents of anti-Gypsyism in Berlin, and the Roma organisation Romano Centro does similar work in **Austria**, although no relevant reports were published in 2018.[31] Therefore, FRA's regular survey data collection on the Roma remains a key source of data at the Member State and EU levels, which the European Commission uses to assess progress in key priority areas of Roma integration.

## 5.4. National developments

### 5.4.1. National action plans

Few national strategies address anti-Gypsyism explicitly. Some national Roma integration strategies do mention discrimination, sometimes even as distinct priority areas of the strategy, but they do not uniformly address anti-Gypsyism explicitly as a separate concept. Many Member States' national Roma integration strategies do not explicitly refer to anti-Gypsyism at all; they deal with racism in general, through cross-cutting, mainstream measures. However, a number of developments at national level in 2018 show an encouraging trend in acknowledging anti-Gypsyism as a specific form of racism.

For example, **Portugal** included in its revised Roma integration strategy specific goals on anti-Gypsyism and concrete actions, such as fighting negative Roma stereotypes, persuading municipalities to sign a declaration against anti-Gypsyism, and strengthening training on Roma history and culture, as well as rights awareness.[32] In **Austria**, the updated national Roma integration strategy now includes specific measures, such as publishing a report on anti-Gypsyism, organising a conference and awareness-raising workshops on anti-Gypsyism, and working with Roma youth on a national No Hate Speech committee.

A small number of Member States included references to Roma or anti-Gypsyism in their national action plans against racism, xenophobia and ethnic discrimination in 2018 – for example, **Croatia**, **Germany** and **Sweden**. For more information on national action plans against racism, see Chapter 4.

Some of these national action plans against racism and ethnic discrimination mention Roma in specific areas of action. For example, in **Italy**, the national plan of action against racism, xenophobia and intolerance refers to Roma in relation to accommodation, education, integration, awareness-raising activities and good practices. In **Slovakia**, the national action plan focuses specifically on combating prejudice and intolerance towards marginalised Roma communities. The **French** national plan against racism and antisemitism includes Roma in reference to measures tackling prejudice-related crime against minorities and to actions to fight negative stereotypes. In **Greece**, the Special Secretariat on Roma Inclusion reported to the national Council against Racism and Intolerance, and it is expected that Roma will be included in the forthcoming action plan. In the **United Kingdom**, the Government has made specific commitments to tackle discrimination against Gypsy, Roma and Traveller communities in the national Hate Crime Action Plan.[33]

The European Commission suggested in 2018 that national authorities responsible for Roma inclusion "should involve equality bodies when drawing up action plans on fighting antigypsyism, racism and discrimination under NRIS".[34] In this light, there is scope for more reference to equality bodies in national action plans in order to engage them more effectively in combating anti-Gypsyism. More information on equality bodies is available in Chapter 3.

## 5.4.2. Positive initiatives

In 2018, a wide range of positive initiatives were implemented throughout the EU promoting Roma inclusion and empowering Roma, in particular young people and women. A number of these initiatives promoted Roma culture and history, helping to tackle anti-Gypsy stereotypes. For example, arts exhibitions about the Sinti and Roma culture and their persecution throughout history took place in **Austria**,[35] the **Netherlands**[36] and **Slovakia**.[37] In **Croatia**, NGO Kali Sara continued to mark the World Day of Romani Language,[38] Days of Romani culture,[39] as well as other important days. In **Romania**, the National Roma Culture Centre – Romano Kher organised several events, such as film screenings, music concerts and literature evenings featuring Romani-language poetry and prose.[40]

In **Germany**, the federal programme "Live Democracy!"[41] funds different projects that explicitly address anti-Gypsyism. These projects focus on counselling, historical-political education, prevention of anti-Gypsyism, participation and empowerment. Twelve model projects by different institutions throughout Germany are being funded to develop and test innovative approaches to the prevention of anti-Gypsyism.

In **Italy**, within the framework of the Council of Europe's Roma Youth Action Plan and the Roma, Sinti and Travellers' National Platform, UNAR has promoted in collaboration with the Council of Europe's Department for Youth Policies two workshops on anti-Gypsyism involving 40 young activists, educators, and representatives of Roma, Sinti and Travellers Communities, to develop their knowledge and to provide proposals for countering discrimination, anti-Gypsyism and online hate speech. The European Roma Institute for Arts and Culture (ERIAC)[42] continued to hold exhibitions, conferences, seminars and other innovative public events relating to arts and culture of Roma communities. It promotes arts and culture and education as a means to promote human rights and intercultural understanding and thereby tackle anti-Gypsyism and discrimination against Roma in Europe, as well as to increase their self-esteem.

Promising practice

### Raising awareness on anti-Gypsyism through film

The **Swedish** civil society organisation Re:orient organised a Roma film festival in Stockholm, which showed films about Roma life and about the Roma genocide. The festival included music events and discussions about vulnerable EU Roma in Sweden, the structural discrimination facing Roma, and the strategies of Swedish political parties to secure the rights of Roma and to close the socio-economic gap between the national minorities and the majority population. The festival also took place later in Gothenburg.

*For more information, see Sweden, Re:orient, The films of the Roma Festival; Sweden, Stockholm House of Culture & City Theatre (Kulturhuset Stadsteatern), Roma Festival 2018.*

Promoting Romani history and culture in schools was also a common theme among Member States in 2018. In **Bulgaria**, schools offered an elective class on Romani folklore.[43] In the **Netherlands**, through projects funded by the Ministry of Health, Welfare and Sport, teaching materials about the history of Roma were provided for primary and secondary education levels.[44] In the **United Kingdom**, schools nationwide celebrate Gypsy, Roma and Traveller (GRT) history month in June each year, "promoting GRT culture among children from different backgrounds as an alternative to biased opinions expressed in the media".[45] Similarly, **Ireland** has started consultations on the possibility of including Traveller culture and history in schools' curricula.[46] In **Croatia**, the Ministry of Science and Education initiated a public consultation process for the establishment of the Romani Language and Culture Curriculum.[47]

Promising practice

## Remembering the Roma holocaust

Recognising and commemorating the Roma genocide can help fight anti-Gypsyism. In **Austria**, the NGO Romano Centro organised a commemoration for Roma victims of Nazism.* In **Poland**, the NGO Fundacja Dialog-Pheniben organised a project called 'Trace of Roma – history remembrance and present of European Roma', which includes school visits to the concentration camp Auschwitz-Birkenau and reflections on the current situation of Roma in Europe.** In **Lithuania**, youth leaders were trained in organising Roma holocaust educational activities using the handbook *Right to remember*, which was published in November 2018.*** In **Greece**, the General Secretariat for Religious Affairs began implementing actions to develop educational material on the holocaust and teacher training in primary and secondary schools.

In **Croatia**, the Education and Teacher Training Agency organises and delivers annual teacher professional development courses, which, among others, include topics such as the Holocaust and crimes against humanity. The teacher manual on Roma in the Second World War in the Independent State of Croatia 1941-1945 was published, and the NGO Kali Sara continued to commemorate the Roma victims of World War II (Samudaripen).**** **Italy**, which has been an International Holocaust Remembrance Alliance (IHRA) member since 1999, had the chairmanship of the Presidency of IHRA in 2018 and involved RSC members and NGOs. In 2018, a twinning between Municipalities of Laterza and Lanciano was ratified to improve cooperation in fighting anti-Gypsyism and for initiatives on Porrajmos Remembrance.*****

**See Austria, APA press release, 'Gedenktag an den Völkermord an Roma und Sinti: Gedenkveranstaltung auf dem Wiener Ceija-Stojka-Platz'.*

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***** Croatia, Education and Teacher Training Agency; Vojak. D. et al., Priručnik za učitelje i nastavnike Romi u Drugom svjetskom ratu u Nezavisnoj Državi Hrvatskoj, 1941.-1945. (Teacher Manual: Roma in the Second World War in the Independent State of Croatia 1941-1945), Institut društvenih znanosti Ivo Pilar, Zagreb, 2018; Roma NGO Kali Sara, Holokaust – samudaripen.*

****** Italy, Twinning between Municipalities of Laterza and Lanciano, Istituto Comprensivo Statale Diaz Laterza, 2018.*

In 2018, some Member States organised workshops for professionals in multicultural environments. For example, in **Bulgaria**, the Ministry of the Interior trained law enforcement officers on various issues that come up when working with Roma communities.[48] The EU-funded JUSTROM programme of the Council of Europe also provided **Bulgarian** law enforcement and judicial officers with training sessions on combating discrimination and the effective application of relevant legislation.[49] Similarly, the 'United against anti-Gypsyism' campaign in **Bulgaria** aims to enhance teachers' capacity to address anti-Gypsyism in the classroom.[50] In **Portugal**, the training programme 'Know me before you hate me' targets school teachers and their knowledge about Romani culture.[51]

In **Slovenia**, the Interior Ministry trained civil servants interacting with Roma communities to raise their awareness of prejudice against Roma.[52] In **Sweden**, healthcare workers were provided with information on national minorities.[53] In Wales, **United Kingdom**, the Centre for Equality and Human Rights offered e-courses for health practitioners, explaining the challenges Gypsies, Roma and Travellers face in healthcare.[54]

In some Member States, there were initiatives in 2018 to empower Roma young people. For example, the **Estonian** Council of Roma Integration working at the Estonian Ministry of Culture trained young Roma to increase their knowledge on civil society as well as on project management, teamwork and communication skills.[55] In **Slovakia**, Roma young people discussed fundamental rights issues and integration policies in a Congress of Roma Youth.[56] In **Sweden**, Roma youth associations developed an app that provides information on the national strategy for Roma inclusion.[57] It connects relevant authorities and the Roma minority and provides information translated into five Roma dialects.

Other initiatives dealt with monitoring discrimination and assisting in accessing legal remedies. In **Bulgaria**, for instance, the JUSTROM programme offered legal advice and consultation on relevant legislation and discrimination cases.[58] The NGO Fundación del Secretariado Gitano provided similar services in **Spain**.[59] In **Poland**, OSCE/ODIHR developed an online platform for reporting hate crimes against Roma in cooperation with the NGO Fundacja Dialog-Pheniben.[60] In **Finland**, hate crimes targeting Roma have been added as a distinct category to the hate-crime specification in the annual monitoring of hate crime.[61] For more information on hate crime and hate speech, see Chapter 4.

Promising practice

### Facilitating the reporting of hate crimes

The Ministry of Housing, Communities and Local Government of the **United Kingdom**, in cooperation with the police, created an online reporting page where hate crimes against Gypsy, Roma and Travellers can be reported. This practice aims to tackle the continuing underreporting of hate crime against Roma.

Complementary to this, the Ministry of Housing, Communities and Local Government funds the civil society organisation GATE Herts, which has created the website 'Report racism, Gypsy, Roma, Traveller' to encourage the reporting of hate incidents among Roma, who are reluctant to report directly to the police for many reasons. The portal is run by and for members of the Roma community and collects data on the location, point of time and type of hate crime, but does not allow the identification of the person affected by the incident. The project aims to increase police and government awareness of the extent of hate incidents against the Roma communities, to counter this issue.

*For more information, see United Kingdom, Ministry of Housing, Communities and Local Government (2018), Written submission, April; True vision for Gypsies, Roma and Travellers; GATE Herts, Report racism, Gypsy, Roma, Traveller.*

The EU and Roma civil society continued their efforts to draw national policymakers' attention to the local level, where inclusion policies are implemented. The European Commission's 2018 evaluation of the EU framework highlighted the importance of community engagement, stating that "effective community engagement can help to identify funding priorities, empower local communities, provide critical feedback and increase accountability for Roma inclusion policies".[62] It also notes that efforts to sustainably support the capacity of Roma grassroots organisations have not been strong enough.

FRA ACTIVITY

### Working with local Roma communities

Over several years, FRA conducted a project on Local Engagement for Roma Inclusion (LERI). Its outcomes show how local communities can become empowered to participate in projects and strategy development, and in particular to improve community relations between Roma and non-Roma. The final report of this project was published in November 2018.

The development of the project's activities in a number of localities helped draw attention to the challenges Roma, Sinti and other Roma and Traveller groups face daily, thus raising awareness of discrimination and anti-Gypsyism. In several Member States, there was a strong feeling that activities that focus on improving inter-community relations and relations with the wider neighbourhood would also help to overcome tensions and combat discrimination against Roma. In several localities where the project focused on community development activities as a way to improve inter-community relations, these in effect also worked to counter anti-Gypsyism and discrimination. This was the case, for example, in Aghia Varvara in **Greece**, Mátraverebély in **Hungary**, and Rakytník and Hrabušice in **Slovakia**.

The results of the project point to the critical role of community-level engagement in bringing the European Structural and Investment Funds closer to local communities' priorities, giving the people an active role in formulating the projects, implementing the activities, and monitoring the results.

*For more information, see FRA (2018), Working with Roma: Participation and empowerment of local communities, Luxembourg, Publications Office.*

In some Member States, national action plans are beginning to focus more on participation and empowerment measures. For example, in **Finland**, a new national Roma policy (ROMPO 2018–2022) refers to the participation of both Roma and non-Roma, particularly at local level.[63] In **Portugal**, the project 'Local plans for the integration of Roma communities'[64] aims to develop local interventions to support the participation of Roma communities in the democratic process and create local partnerships.

## FRA opinions

Concrete measures to address anti-Gypsyism and widespread discrimination against Roma are not yet systematically in place across the EU, nor are they a key priority in the national Roma integration strategies and related policies at European, national, regional and local levels. Few national Roma integration strategies address discrimination as a distinct priority. Many Member States' national Roma integration strategies do not explicitly refer to anti-Gypsyism at all. Enhanced efforts to address discrimination and anti-Gypsyism more concretely and systematically are necessary to strengthen the processes of social inclusion and improve integration outcomes.

FRA opinion 5.1

*EU Member States should review their national Roma integration strategies and acknowledge anti-Gypsyism as a form of racism, which can lead to forms of structural discrimination. National Roma integration strategies should specify which of their general anti-discrimination measures address anti-Gypsyism explicitly and how. Specific measures should address both Roma – for example, through rights awareness campaigns or facilitating access to legal remedy – and the general public – for example, through raising awareness about historical discrimination, segregation and persecution of Roma.*

Very few Roma who experience harassment and hate-motivated violence report these incidents to any organisation, including the police, FRA data show. Measures to enforce EU anti-discrimination legislation with respect to Roma remained weak in 2018. There are major challenges in improving and enforcing laws that prohibit discrimination against Roma. At the top of the list are a lack of trust in institutions on the part of Roma, and poor understanding of the challenges Roma are facing on the part of institutions. The lack of regular monitoring of discrimination and of reporting of hate crimes at national level also remains a problem, since the extent of anti-Gypsyism and discrimination is difficult to capture without data or evidence. Only a few examples of incident reporting and collection of data on anti-Gypsyism could be identified across the EU Member States.

FRA opinion 5.2

*To tackle limited reporting of discrimination and anti-Gypsyism to the authorities, EU Member States should ensure that law enforcement agencies cooperate with equality bodies, as well as Ombuds and national human rights institutions. This would help to develop actions that foster an environment where Roma, like everyone else, feel confident about reporting incidents of discriminatory treatment, including discriminatory ethnic profiling, in the knowledge that the competent authorities will take their complaints seriously and follow up on them. Such actions could include, for example, third-party reporting referral procedures, which engage civil society organisations with law enforcement to facilitate reporting of hate crime and discrimination.*

In 2018, EU institutions and Roma civil society continued to highlight the importance of the meaningful participation of Roma, especially at local level, for more effective implementation of inclusion policies and for achieving sustainable outcomes as required by the global Agenda 2030. The European Commission highlighted in its 'Evaluation of the EU Framework for National Roma Integration Strategies up to 2020' the importance of community engagement, stressing also that participation of Roma can help to identify funding priorities. Importantly, the findings of the evaluation resonate with FRA's local-level research, which highlights how interactions and community-level engagement can be an important tool to facilitate more positive community relations, ease possible tensions between Roma and non-Roma, and ultimately combat anti-Gypsyism by contributing to breaking down stereotypes and eliminating discriminatory behaviours. Such community-level engagement has the potential to boost the effectiveness of European Structural and Investment Funds by reflecting local communities' priorities and making genuinely inclusive the process of their implementation.

FRA opinion 5.3

*EU Member States should review their national Roma integration strategies or integrated sets of policy measures to promote a participatory approach to designing, implementing and monitoring Roma inclusion actions, especially at local level, and to support community-led efforts. European Structural and Investment Funds and other funding sources should be used to promote and facilitate the participation of Roma and community-led integration projects. Future partnership agreements for the new generation of EU funds should explicitly include the participation of Roma in the design, implementation and monitoring of relevant investment on Roma inclusion at local level.*

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# UN & CoE

## January

**25 January** – In *J.R. and Others v. Greece* (No. 22696/16), the ECtHR holds that Greece violated the right to be informed promptly of the reasons for arrest (Article 5 (2) of the ECHR) when detaining three migrants on the island of Chios

**26 January** – CoE Steering Committee for Human Rights (CDDH) publishes analysis on alternatives to immigration detention

## February

**1 February** – In *M.A. v. France* (No. 9373/15), the ECtHR finds that France failed to comply with an interim measure indicated by the court under Rule 39 of its rules when expelling a migrant in an irregular situation to Algeria

**7 February** – UN Working Group on Arbitrary Detention adopts its Revised Deliberation No. 5 on deprivation of liberty of migrants

**26 February** – CoE Special Representative on Migration and Refugees publishes first activity report

## March

**1 March** – UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment publishes report on migration-related torture and ill-treatment. The report finds that increasingly obstructive laws, policies and practices have pushed migrants towards irregular pathways and methods marked by an escalating prevalence of torture and ill-treatment

**7 March** – CoE's Committee of Ministers adopts the Gender Equality Strategy for the years 2018-2023, which includes a specific objective to protect the rights of refugee and asylum-seeking women and girls

**23 March** – Global Migration Group and UN Office of the High Commissioner for Human Rights publish the UN Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations, endorsed by the UN Human Rights Council

**28 March** – CoE's Congress of Regional and Local Authorities adopts a recommendation on the role and responsibilities of local and regional authorities regarding unaccompanied refugee children

## April

**10 April** – In *Bistieva and Others v. Poland* (No. 75157/14), the ECtHR holds that Poland violated the right to respect for private and family life (Article 8 of the ECHR) by detaining a Russian national and her three underage children for almost six months in a secure centre and failing to justify the reasons for doing so

**26 April** – In *Hoti v. Croatia* (No. 63311/14), the ECtHR finds that not providing for an effective and accessible procedure to enable a stateless migrant to resolve his residence status constitutes a violation of the right to respect for private and family life (Article 8 of the ECHR)

## May

**4 May** – UN Special Rapporteur on the human rights of migrants publishes report on return and reintegration of migrants

## June

**7 June** – UN Security Council imposes sanctions (travel ban and asset freeze) on certain human traffickers and smugglers operating in Libya

**27 June** – CoE's Parliamentary Assembly adopts a resolution and a recommendation on the international obligations of CoE member States to protect life at sea

## July

## August

## September

**6 September** – CoE Special Representative of the Secretary General on Migration and Refugees publishes a report on the fact-finding mission to Spain

**18 September** – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) publishes its report on the situation in the two transit zones in Hungary

**26 September** – CoE Special Representative of the Secretary General on Migration and Refugees publishes a progress report on the implementation of the Action Plan for 2017-2019 concerning refugee and migrant children in Europe

## October

**11 October** – CoE's Parliamentary Assembly adopts a resolution and a recommendation on family reunification of refugees and migrants in the CoE member States

## November

## December

**11 December** – In *M.A. and Others v. Lithuania* (No. 59793/17), the ECtHR finds that border guards' failure to accept asylum applications by a Chechen family of seven at the Lithuanian border violated the prohibition of torture and inhuman or degrading treatment (Article 3 of the ECHR) and the right to an effective remedy (Article 13 of the ECHR)

**11 December** – Intergovernmental Conference adopts the UN Global Compact for Safe, Orderly and Regular Migration, which is then endorsed by the UN General Assembly on 19 December

**17 December** – UN General Assembly endorses the Global Compact on Refugees, prepared by the UN Refugee Agency (UNHCR)

**20 December** – UN High Commissioner for Human Rights and the UN Support Mission in Libya publishes report on the human rights situation in Libya, finding that "[m]igrants and refugees suffer unimaginable horrors during their transit through and stay in Libya"

# EU

## January

**16 January** – In *E* (C-240/17), the CJEU clarifies how the consultation procedure in cases where a return decision with an entry ban is issued to a third-country national, who holds a valid residence permit issued by another Member State, should be initiated and under which conditions the return decision and entry ban can be enforced

**25 January** – In *F v. Bevándorlási és Állampolgársági Hivatal* (C-473/16), the CJEU holds that the Qualification Directive (2011/95/EU), read in the light of the right to respect for private and family life (Article 7 of the Charter), does not allow national authorities to use psychological tests to assess an asylum seeker's claim of homosexuality

## February

## March

**14 March** – European Commission puts forward proposals to reform the EU Visa Code

**14 March** – European Commission sets out the main elements for developing the European Integrated Border Management Strategy

## April

**17 April** – European Commission presents proposal on strengthening the security features of ID cards and other documents

**18 April** – European Commission and OECD publish a checklist to support local, regional and national authorities in migrant integration

## May

**16 May** – European Commission presents its proposals on the reformed Visa Information System (VIS) and the recast regulation on the creation of a European network of immigration liaison officers (ILOs)

## June

**12 June** – European Commission publishes an interim evaluation of the EU Asylum, Migration and Integration Fund and the Internal Security Fund

**19 June** – In *Gnandi v. État belge* (C-181/16), the CJEU rules that a return decision can be adopted before the deadline for appealing asylum decisions expires or pending judicial review but only if that Member State suspends the return decision's legal effects until the outcome of the appeal, and if the person can rely on any change of circumstances after the adoption of the return decision

**28 June** – Conclusions of the European Council set out actions to reduce irregular migration and improve orderly processing of migrants rescued at sea

## July

**5 July** – In *C and Others* (C-269/18 PPU), the CJEU explains that asylum seekers whose application was rejected at the first instance as manifestly unfounded must not be detained for the purpose of return as long as it is not established whether they can stay in the Member State while their appeal against the first instance negative asylum decision is pending

## August

## September

**12 September** – European Commission presents its proposals on the reformed European Border and Coast Guard and the recast Return Directive (2008/115/EC)

**12 September** – European Commission presents its amended proposal on the EU Agency for Asylum (focusing on the agency's operational and technical assistance and its role in the Migration Management Support Teams)

**12 September** – European Commission publishes first evaluation of the European Border Surveillance System (EUROSUR)

**12 September** – EU adopts Regulation (EU) 2018/1240 establishing a European Travel Information and Authorisation System (ETIAS)

**26 September** – In *X v. Belastingdienst/Toeslagen* (C-175/17) and *X and Y v. Staatssecretaris van Veiligheid en Justitie* (C-180/17), the CJEU finds that Member States are required to set up at least one level of judicial review against a negative asylum decision with automatic suspensive effect but are not required to provide for a second level of appeal

## October

**4 October** – In *Bahtiyar Fathi v. Predsedatel na Darzhavna agentsia za bezhantsite* (C-56/17), the CJEU holds that an applicant who sought asylum on religious grounds does not have to provide evidence to support all elements included in the concept of "religion" to substantiate his beliefs. It is sufficient if the asylum seeker supports the claim in a credible manner

## November

**14 November** – EU adopts Regulation (EU) 2018/1806 on the lists of the third countries whose nationals must have visas to come to the EU

**14 November** – EU adopts Regulation (EU) 2018/1726 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)

**28 November** – EU adopts three new Regulations amending the Schengen Information System (SIS)

## December

**6 December** – JHA Council adopts conclusions to step up the fight against migrant smuggling networks

**13 December** – In *Bundesrepublik Deutschland v. Touring Tours und Travel GmbH & Sociedad de Transportes SA* (joined cases C-412/17 and C-474/17), the CJEU finds that the Schengen Borders Code precludes Member States from requiring coach transport operators to check passengers' passports at the start of intra-Schengen cross-border journeys and to impose on them sanctions for infringement of that obligation

**21 December** – Council decision (CFSP) 2018/2055 extends the mandate of the European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA) until 31 March 2019

# 6

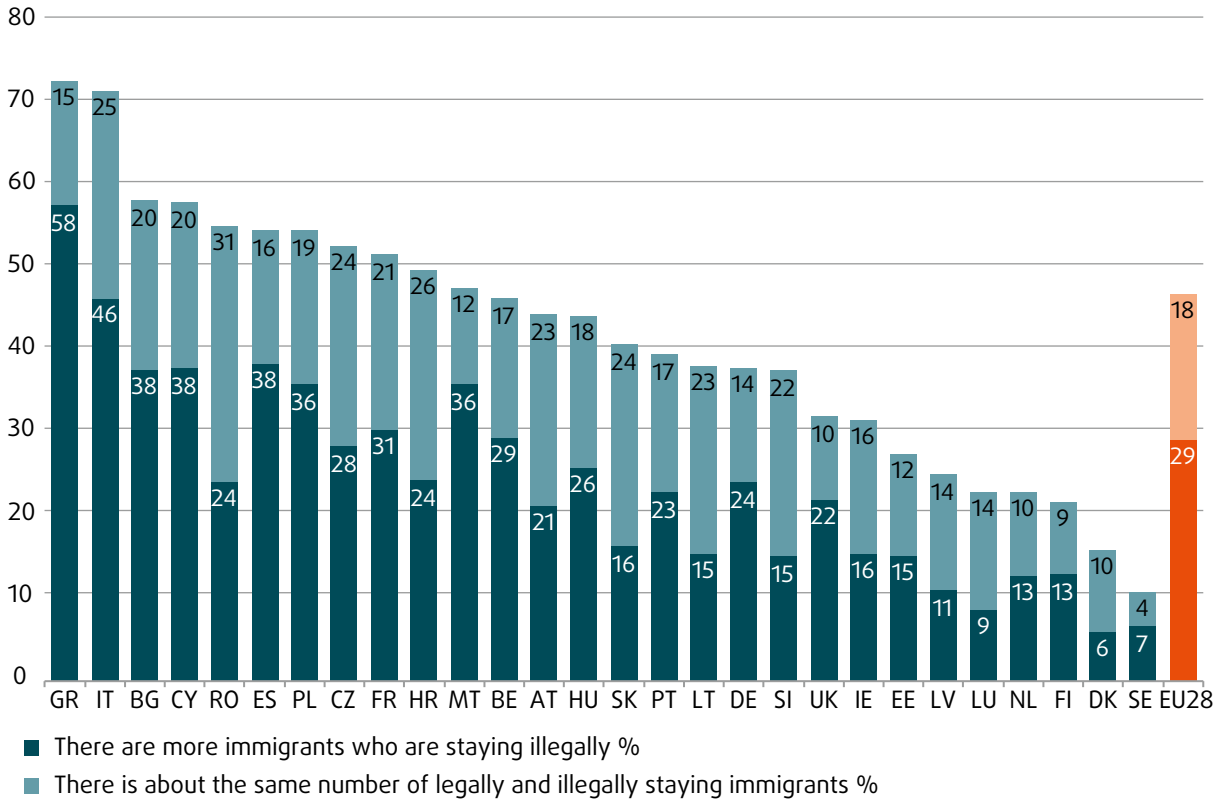
# Asylum, visas, migration, borders and integration

*As global displacement numbers remained high, arrivals to the European Union (EU) continued to drop. Attempting to cross the Mediterranean Sea remained deadly, with an estimate of 2,299 fatalities in 2018. Allegations of refoulement and of police mistreating migrants and refugees persisted. In June, European leaders called for a comprehensive approach to migration, with a strong focus on stemming irregular migration, including unauthorised movements within the EU. Diverse large-scale IT systems – most of which involve processing biometric data – were both introduced and further developed. Meanwhile, the integration of refugees who arrived in 2015-2016 made progress despite diverse hurdles.*

Although various civil society initiatives throughout the European Union aim to support and welcome migrants, Europe's population overall is concerned about migration, even more so when it is irregular. Results of a Eurobarometer survey published in April 2018 show that nearly four in ten Europeans (38 %) think that immigration from outside the EU is more of a problem than an opportunity, although this varies significantly by country.[1] At the same time, Europe's population is misinformed. Many largely overestimate the scale of irregular migration: almost half of Europe's population (47 %, as shown in Figure 6.1) believes that there are more or at least as many migrants in an irregular situation in their Member State as there are migrants who are there lawfully.[2] However, Eurostat reports that 37 million people in the EU were born in a third country;[3] migrants in an irregular situation are estimated to total between 1.8 – 3.9 million.[4] The misperception tends to be higher in Central and Southern Europe (see Figure 6.1).

Concerns related to migration affected different policies and practices in 2018. This year's chapter covers the situation at the border, large-scale EU information technology systems, and refugee integration, given that return policies were covered in the last years' reports.[5]

**Figure 6.1: Europe's population's perception of extent of irregular migration, EU-28**




*Notes:* *Question: 'Generally speaking, would you say that there are more immigrants who are staying legally or staying illegally in [YOUR COUNTRY]?'*

*The figure starts with EU Member States with the most respondents who believe that the number of migrants in an irregular situation is higher or equal to that of regular migrants.*

*Source:* *FRA, 2019 [based on European Commission, Special Eurobarometer 469, published in April 2018]*

# 6.1. Fundamental rights under threat at borders

As arrivals to the EU continued to drop, globally, the number of displaced persons remained at a record. According to the European Border and Coast Guard Agency, some 150,000 people entered EU territory irregularly in 2018 (compared to some 200,000 in 2017). In 2018, the agency for the first time began to collect detailed data on gender and age: Women accounted for 18 % of all irregular entries across the external EU border. Nearly one in five of the detected migrants were registered as children, with some 3,750 as unaccompanied children. Some 57,000 people crossed into Spain (twice as many as 2017) – it replaced Italy and Greece as the main country of arrival on the EU's external borders last year; and some 56,500 people entered through the Eastern Mediterranean route, mainly to Greece (a third more than last year). The number of departures from Libya dropped by 87 % compared to 2017.[6] In spite of lower numbers, fundamental rights challenges persisted.

## 6.1.1. Situation in the Mediterranean remains unresolved

As shown in Figure 6.2, some 2,299 people are estimated to have died or gone missing at sea in 2018 while crossing the sea to reach Europe to escape war or persecution or to pursue a better life.[7] This is on average more than six people per day.

**Figure 6.2: Estimated fatalities at sea in West, Central and East Mediterranean regions, 2018**


*Note:* *Total number of estimated fatalities in 2018: 2,299 persons.*
*Source:* *International Organization for Migration, 2019*

*Huc pauci vestris adnavimus oris.*

*Quod genus hoc hominum? Quaeve hunc tam barbara morem*

*permittit patria? Hospitio prohibemur harenae;*

*bella cient primaque vetant consistere terra.*

*Si genus humanum et mortalia temnitis arma,*

*at sperate deos memores fandi atque nefandi*

Virgil: Aeneid I, 538-543

'Those few you see escap'd the storm, and fear,

Unless you interpose, a shipwreck here. What men, what monsters, what inhuman race,

What laws, what barb'rous customs of the place, Shut up a desert shore to drowning men,

And drive us to the cruel seas again? If our hard fortune no compassion draws, Nor hospitable rights, nor human laws, The gods are just, and will revenge our cause.'

*[Translation made available by The Project Gutenberg.]*

With international support, the Libyan authorities increased their capacity to coordinate and carry out rescue operations. In 2018, the Libyan Coast Guard rescued or intercepted almost 15,000 refugees and migrants at sea, according to UNHCR,[8] which is more than the approximately 13,000 persons who left Libya and reached **Italy**.[9] The change of disembarkation policies also affected commercial vessels: for the first time in the recent past, in July 2018, an Italian commercial vessel ('*Asso 28*') brought some 108 migrants rescued at sea back to Libya following instructions given by the Libyan Coast Guard who coordinated the operation after having been informed by the Italian authorities.[10] Rescued migrants and refugees who are brought back to Libya face indefinite detention, frequent torture, and other forms of ill-treatment in centres unfit for humans.[11] In spite of this, the European Council underlined that all vessels operating in the Mediterranean must not obstruct operations of the Libyan Coast Guard.[12] **Italy** offered vessels, funds and expertise to enhance Libya's rescue capacity.[13]

Before mid-2017, most rescued migrants disembarked in **Italy**, many after having been rescued by civil society vessels deployed with a humanitarian mandate to reduce fatalities and bring rescued migrants to safety.[14] In 2018, some authorities viewed civil society-deployed rescue vessels with hostility. They seized rescue vessels – for example, the '*Iuventa*' and '*Open Arms*' in Italy – arrested crew members, and initiated legal procedures against them. In some cases, rescue vessels were blocked in harbours due to flag issues (e.g. the '*Lifeline*', '*The Sea Eye*' and '*Sea Watch*' in **Malta**).[15]

**FRA ACTIVITY**

## Eye on civil society contribution to search-and-rescue operations

In October 2018, FRA published a note entitled "Fundamental rights considerations: NGO ships involved in search and rescue in the Mediterranean and criminal investigations". The note draws attention to the recent trend of initiating criminal proceedings against non-governmental organisations (NGOs) or other private entities deploying rescue vessels. This includes seizing rescue vessels; denying them permission to leave the ports due to purported registration issues in the flag State; as well as arresting crew members, in some EU Member States. These actions resulted in most NGOs stopping their operations by the end of the year. Most court cases initiated, however, ended in acquittals or were discontinued due to a lack of evidence.

*The note is available on FRA's website.*

Delays in disembarkation put at risk the safety and physical integrity of rescued migrants and refugees. As showed in Table 6.1, FRA identified at least 16 cases where migrants and refugees had to remain at sea – in nine cases for a week or more – until the national authorities allowed the rescue ship to dock. In most cases, migrants were only allowed to disembark after some EU Member States agreed among themselves to accept shares of the arriving migrants. These incidents do show that solidarity between EU Member States is in principle possible – but its implementation outside a legal framework also creates challenges. For example, a few of the migrants who disembarked in Pozzallo in July 2018 were still waiting for their transfer to Germany in mid-March 2019.

**Table 6.1: Vessels that were not immediately allowed to disembark migrants in 2018**

| Ship | No. of migrants | | Days spent at sea | Date and place of disembarkation | EU Member State that pledged to relocate some of the migrants |
|---|---|---|---|---|---|
| | Total | Children | | | |
| 'Diciotti' (state vessel)* | 520 | 14 AC<br>103 UAC | Up to 8 days | 20 June 2018 Pozzallo (Italy) | No |
| 'Aquarius' (NGO vessel) | 629 | 130 UAC | 10 days | 17 June 2018 Valencia (Spain) | France |
| 'Alexander Maersk' (cargo vessel) | 113 | 3 AC<br>13 UAC | 4 days | 26 June 2018 Pozzallo (Italy) | No |
| 'Lifeline' (NGO vessel) | 234 | 8 UAC | 6 days | 27 June 2018<br>Malta | Belgium, France, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Norway. |
| 'Open Arms' (NGO vessel) | 60 | 2 AC,<br>3 UAC | 4 days | 4 July 2018 Barcelona (Spain) | No |
| 'Vos Thalassa' | 67 | 4 AC<br>3 UAC | 6 days | 12 July 2018<br>Trapani (Italy) | No |
| 'Protector' and 'Monte Sperone' (state vessels) | 378 (out of a total of 447 rescued) | 18 AC,<br>113 UAC | 4 days | 16 July 2018, Pozzallo (Italy); rest were medically evacuated | Germany, France, Ireland, Malta, Portugal Spain |
| 'Open Arms' (NGO vessel) | 87 | 2 AC,<br>9 UAC | 7 days | 9 August 2018<br>Algeciras (Spain) | France |
| Armed Forces of Malta OPV P61 | 114 | 1 AC | 1 day | 13 August 2018 Malta | Germany, France, Spain, Portugal |
| 'Aquarius' (NGO vessel) | 141 | 4 AC<br>19 UAC | 4 days | 15 August 2018 Malta | Frannce, Germany, Portugal, Spain and Luxembourg |

| Ship | No. of migrants | | Days spent at sea | Date and place of disembarkation | EU Member State that pledged to relocate some of the migrants |
|---|---|---|---|---|---|
| | Total | Children | | | |
| 'Diciotti' (state vessel) | 150 | 29 UAC | 10 | 26 August 2018 Catania (Italy)<br>13 persons evacuated to Lampedusa | Ireland and Albania |
| 'Aquarius' (NGO vessel) | 58 | 1 UAC | 7 - 10 days (two rescue operations) | 30 September 2018 Malta | France, Germany, Portugal, Spain |
| 'Nuestra Madre de Loreto' (fishing vessel) | 9 | 2 | 10 days | 2 December 2018<br>Malta | Spain |
| 'Open Arms' (NGO vessel) | 311 | 15 AC<br>123 UAC | 7 days | 28 December 2018 Algeciras (Spain) | No |
| 'Sea Watch 3' (NGO vessel) | 32 | 3 AC<br>1 UAC | 18 days | 9 January 2019 Malta | France, Portugal, Netherland, Italy, Romania, Luxembourg, Germany, Ireland and Slovenia |
| MV 'Professor Albrecht Penck' (NGO vessel) | 17 | | 12 days | | |

*Notes:* *AC = accompanied children; UAC = unaccompanied children; number of children is approximate. Date of disembarkation corresponds to day of completion of the operation, when available.*

** One search-and-rescue operation conducted by 'Diciotti' and three transhipments (two cargo ships, and the US Navy vessel Trenton). People departed from Libya on 11-12 and 13-14 June.*

*Source:* *FRA,2019 [based on various sources, including NGOs, state authorities and international organisations]*

In June, the European Council[16] suggested exploring the establishment of "regional disembarkation platforms" outside EU territory in close cooperation with third countries as well as UNHCR and IOM. These two organisations proposed a mechanism for predictable disembarkation of persons rescued in international waters which, however, also envisaged disembarkations in EU Member States' territory.[17] Practical obstacles – no agreement on what to do with the rescued persons and the absence of any volunteering third countries – as well as legal questions on how to ensure fair individual processing and respect for the principle of *non-refoulement*, have so far hindered implementation of the European Council proposal.

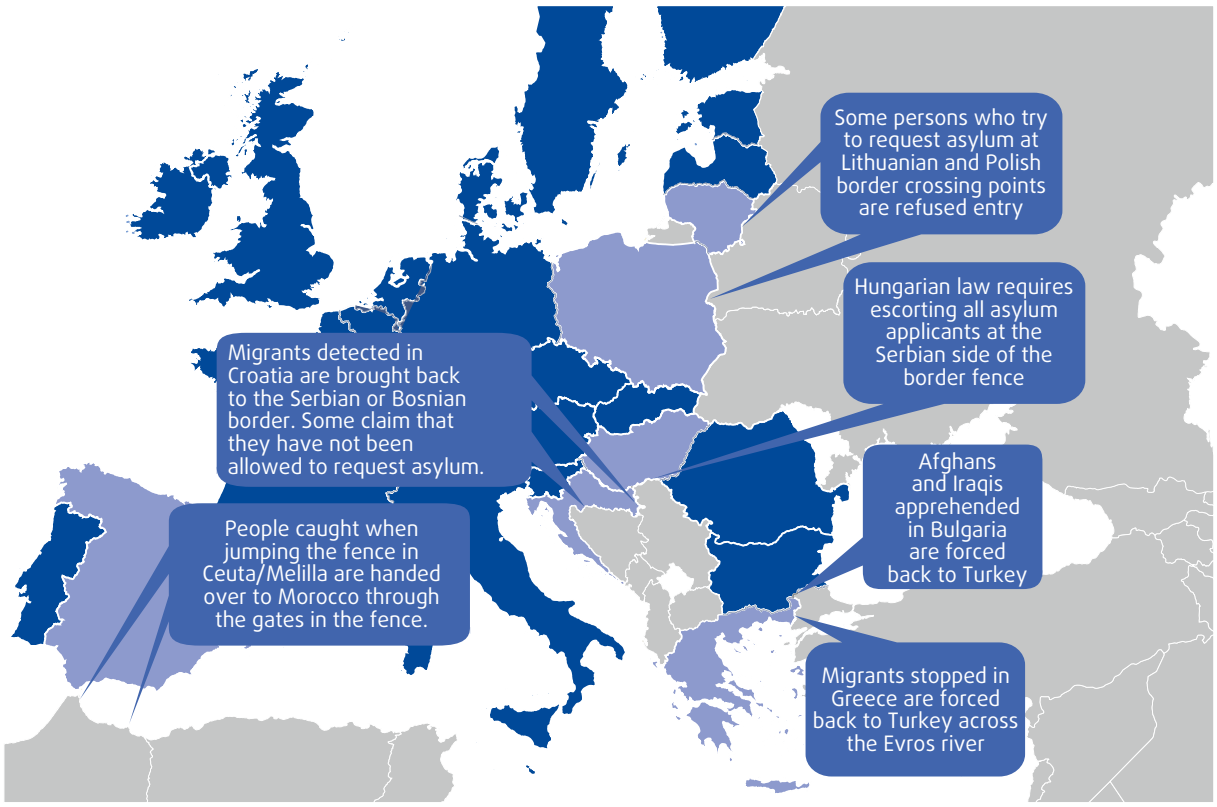
Migrants and refugees who die when crossing the sea in unseaworthy boats to reach Europe and those who are left at sea while Member States disagree on a safe port highlight an alarming and unresolved gap in the EU's protection of fundamental rights.

### 6.1.2. Allegations of *refoulement* at EU's external borders increase

International refugee and human rights law prohibit the return to a risk of persecution and the return to a risk of torture, inhuman or other degrading treatment or punishment. EU primary law reflects such prohibition of *refoulement* in Article 78 (1) of the Treaty on the Functioning of the EU (TFEU) and in Articles 18 and 19 of the EU Charter of Fundamental Rights. The principle of *non-refoulement* also applies when authorities turn back people who have reached the EU's external borders or at high seas.[18]

In 2018, international organisations, national human rights institutions and civil society organisations reported allegations of violations of the principle of *non-refoulement* from different sections of the EU's external land and sea border. Figure 6.3 lists the Member States' borders where the alleged incidents happened. In **Bulgaria**, **Croatia** and **Greece**, cases relate to migrants and refugees apprehended after having crossed the border outside official border crossing points.[19] **Hungarian** law entitles the authorities to escort all migrants in an irregular situation apprehended in Hungary to the outer side of the border fence, whereas they are obliged to do so with those who express the intention to apply for asylum.[20] In **Poland** and **Lithuania**, court cases concerned individuals who tried unsuccessfully to seek international protection at land border crossing points.[21] In **Spain**, applicable law allows the "rejection at the border" of any third-country national detected when entering the enclaves of Ceuta and Melilla in an irregular manner;[22] in practice, this means that these persons are apprehended and handed over by

**Figure 6.3: Allegations of *refoulement* at the EU's external land and sea borders**




*Note:* *Allegations of refoulement at airports and at the EU's internal borders are not included.*
*Source:* *FRA, 2019*

the Civil Guard to the Moroccan authorities through the gates that separate the enclaves from Morocco. There are asylum offices at the border-crossing points with Morocco, but these are only accessible for nationals from North Africa and the Middle East, as other nationalities are intercepted by Moroccan authorities before they reach the border.[23]

The principle of *non-refoulement* is the core element of refugee protection. Not admitting or returning persons who express a wish to request asylum without first examining if they are in need of international protection is a serious violation of EU law.

### 6.1.3. Keeping asylum applicants at borders raises serious issues

In the last few years, the EU and some Member States explored ways to rationalise the processing of asylum applications by persons who were stopped at the border, intercepted or rescued at sea. FRA observes an emerging trend of processing applications for international protection while applicants are kept at the external land or sea border.

Greece, Hungary, and recently Italy enacted legislation to enable the authorities to examine asylum applications at the border while asylum applicants are obliged to remain there (either restricted to a geographical area as in Greece or confined to the transit zone, as in Hungary). In the past, similar border procedures existed only in some Member States to process abusive or manifestly unfounded applications for international protection submitted at airports.

Such approach could under certain conditions be an effective way to deal with abusive, manifestly unfounded or manifestly well-founded applications. However, the practices in Greece and Hungary show that it is very challenging to set up processing centres at land or sea borders that respect the rights protected by the EU Charter of Fundamental Rights.

In 2018, **Hungary** continued to implement its policy of processing asylum applications in the two transit zones at the border fence with Serbia.[24] Individuals in an irregular situation who are apprehended anywhere inside the country and wish to request international protection are escorted to the outer

side of the border fence. From there, they need to seek admission into the transit zone to lodge an application for international protection. The infringement procedure initiated by the European Commission against Hungary asserts that several aspects of this approach no not comply with the EU asylum and return *acquis*. These include the failure to provide effective access to asylum procedures and the indefinite detention of asylum applicants in transit zones without respecting the applicable procedural guarantees under EU asylum law.[25] In December 2018, the European Commission referred the case of Hungary to the CJEU.[26]

Assisted by the European Asylum Support Office, the **Greek** Asylum Services continued to process certain categories of asylum applications in the "hotspots" established on the Eastern Aegean islands. This practice started in 2016, after the EU-Turkey statement.[27] In 2018, four of the five Greek hotspots were overcrowded, particularly in the second half of the year.[28] The reception conditions in the severely overcrowded hotspots on the islands of Samos and Lesvos were well below the minimum standards required by the Reception Conditions Directive (2013/33/EU).[29] This made a fundamental rights-compliant treatment of asylum applicants very challenging.[30] One of the reasons for the overcrowding is asylum applicants' extended stay on the islands while they wait for their cases to be reviewed.

In contrast to Greece, hotspots established in **Italy** are used for fingerprinting, first registration, and security-screening purposes as well as for medical checks and identification of vulnerabilities.[31] People usually stay in the Italian hotspots for one or two days before they are transferred, though longer stays of weeks sometimes occur. Legislative reforms adopted in 2018 will make it possible to confine migrants for up to 30 days in special facilities within the hotspots to establish the person's identity or nationality as the authorities carry out accelerated asylum procedures.[32]

In June 2018, the European Council suggested the creation of "controlled centres" for persons intercepted or rescued at sea.[33] The centres should enable the implementation of security checks and of rapid procedures for asylum and return, and be run by Member States on a voluntary basis. The European Border and Coast Guard Agency, the European Asylum Support Office and Europol as well as other relevant EU agencies – although FRA is not explicitly mentioned – would provide operational support and expertise.[34] The term "controlled" suggests some forms of deprivation or restriction of liberty which remain undefined.[35]

### 6.1.4. Allegations of mistreatment at borders continue

Last year, FRA reported an increase in alleged mistreatment of migrants and refugees who crossed borders by circumventing border controls. This trend continued in 2018. Allegations of abusive behaviour by police or border guards concerned, in particular, Belgium, Croatia, France, Greece, and Italy.

In Croatia and Greece, allegations involved persons who crossed the EU's external border, and were mistreated and pushed back across the border. Concerning **Croatia**, Save the Children reported that more than 1,350 children were pushed back across the EU's borders between January and November 2018, involving violence in almost one third of cases.[36] When the Croatian Ombudswoman investigated the allegations, she was refused access to records on the treatment of migrants at a police station,[37] even though Article 5 of the Law on National Preventive Mechanisms grants the office access to all information about the manner in which persons deprived of liberty are treated.[38] In September, the Council of Europe's Commissioner for Human Rights addressed a letter to the Croatian authorities, requesting them to investigate, among other things, alleged incidents of violence and theft by law enforcement authorities.[39] In **Greece**, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reported credible allegations of summary returns to Turkey via the Evros river, sometimes involving violence.[40] Civil society organisations published testimonies of people who entered Greece by land from Turkey in the Evros Region, several of whom said they were beaten and forced back to Turkey across the river in underwear after being stripped of their clothes.[41]

In **Belgium** and **France**, the alleged mistreatment involved people who intended to travel to the United Kingdom without authorisation. In Belgium, *Médecins du Monde* surveyed 440 persons; 51 of them presented credible allegations of police violence – inflicted, for example, when they refused to give their fingerprints.[42] In Calais, civil society organisations reported police violence and the excessive use of tear gas or other sprays to avoid the establishment of informal camps.[43] According to the French authorities, investigations by the police and the public prosecutors were still ongoing based on a number of complaints. The French *Défenseur des Droits* criticised the police measures taken to disperse people to avoid the creation of "*points de fixation*", noting, for example, that the police in Ouistreham regularly throw migrants' firewood in the nearby canal.[44] At the French-Italian border in Ventimiglia,

*Médecins sans Frontières Italy* spoke to migrants whom France returned to Italy: 14 migrants said that they had suffered violence from the **Italian** police and nine from the **French** gendarmerie.[45] However, neither the French nor the Italian authorities received formal complaints on these allegations.

### 6.1.5. People helping migrants face intimidation

In its 2018 Fundamental Rights Report, FRA expressed serious concern about the intimidation of humanitarian workers and volunteers who support migrants in an irregular situation.[46] Authorities continued to use intimidation techniques targeting not only civil society rescue vessels deployed in the Mediterranean (see Section 6.1.1), but also volunteers and NGOs active in the EU.

For example, in **Belgium**, two journalists, a social worker, and a fourth person faced trial because they had given shelter or otherwise supported migrants. The fourth person spent eight months in pre-trial detention; the social worker spent two months there, having to stop breastfeeding her new-born son.[47] In **Italy**, a man was given a suspended nine-month imprisonment sentence and a suspended fine for unknowingly driving migrants in an irregular situation from France to Italy through a car-sharing service.[48] **French** human rights institutions noted increasing penalisation of humanitarian activities that support migrants, particularly those operating near Calais or in proximity of the Italian border.[49] The case of a French farmer who helped migrants and asylum seekers who had crossed into France from Italy prompted the Constitutional Council to rule that the freedom to help others out of humanitarian considerations can be inferred from the constitutional "principle of fraternity".[50]

In addition to pursuing criminal proceedings for migrant smuggling (see Section 6.1.1), authorities increasingly utilised other means to discourage humanitarian action. This follows a trend that already started in 2016, when, for example, the mayor of Ventimiglia, the Italian border town to France, used food-hygiene concerns to prohibit food distribution to migrants.[51] **Italian** authorities ordered the *in absentia* seizure of the rescue vessels *'Aquarius'* and '*Vos Prudence* for illegally disposing infectious waste because they discarded clothing, food leftovers and medical waste in a number of ports in Italy.[52] In April 2018, the **Croatian** police brought a misdemeanour charge for facilitating irregular entry against a volunteer of the civil society organisation 'Are you Syrious?' as he accompanied a group of persons who had crossed the border to the police to request asylum.[53] The person was convicted in first instance; the appeal was pending as of March 2019.

In **France**, humanitarian workers were accused of infringing urban planning rules for helping to build a makeshift shelter.[54] In **Hungary**, a legislative package called "Stop Soros",[55] amending the Aliens, Asylum and Police Acts as well as the Criminal Code, introduced various measures mostly affecting NGOs. These include 'border security restraining orders' (*határbiztosítási távoltartás*), a new measure entailing prohibition of entry and stay of individuals subject to certain criminal proceedings in a designated area of the country (in the 8-km-wide zone from the border), which also affects civil society representatives; and the criminalisation of "aiding and supporting illegal migration" with custodial arrest or, in aggravated circumstances, imprisonment up to one year for certain conduct, such as providing material support to migrants in an irregular situation; organisations or individuals operating within the 8-km zone near the border; or providing assistance on a regular basis. The European Commission initiated infringement procedures against certain provisions of the "Stop Soros" legislation.[56] Hungary also enacted a "special tax related to migration", primarily affecting NGOs, which amounts to 25 % of the donations and financial support they receive for their activities, irrespective of the origin of the funds.[57]

### 6.1.6. Preventing unauthorised onward movements within the EU: its effects

The unauthorised onward movement of asylum applicants and migrants in an irregular situation from one EU Member State to another remains an issue of major concern for EU Member States. Noting that it risks jeopardising the integrity of the Common European Asylum System and the

Schengen *acquis*, the European Council called upon Member States to take all necessary measures to counter such movements.[58] Measures to counter such "secondary movements" affect fundamental rights in different ways.

Five EU Member States (**Austria**, **Denmark**, **France**, **Germany** and **Sweden**) as well as Norway continue to check people crossing internal borders within the Schengen area, as exceptionally allowed by the Schengen Borders Code (Regulation (EU) No. 2016/399).[59] Such controls may negatively affect the exercise of different Charter rights, such as the freedom to conduct a business (Article 16), the right to respect for private and family life (Article 7), or citizens' right to free movement under Article 45 of the Charter.[60]

Increasingly, Member States return asylum applicants apprehended in connection with their unauthorised border crossing to the Member State they came from on the basis of bilateral readmission agreements. Under EU law, every request for international protection must be examined individually and an eventual transfer to another EU Member State must respect the procedures and safeguards of the Dublin Regulation, Regulation (EU) No. 604/2013. National human rights institutions as well as civil society organisations raised concern over denied access to asylum in **France** and documented child rights violations during returns of migrants who were apprehended after having crossed the border near Menton or in the French Alps.[61] Reports of similar practices of not allowing apprehended migrants to request international protection also emerged from other locations – for example, at the **Italian-Slovenian** border and at the **Slovenian-Croatian** border, although in both cases the authorities stated that asylum applicants are referred to the relevant procedures,[62] and there is no conclusive evidence showing the contrary.[63] Meanwhile, **Germany** agreed with Greece and Spain on a simplified procedure for the return of persons who seek international protection after being apprehended during temporary border controls when trying to enter Germany at the German-Austrian border, and who have previously requested asylum in Greece or Spain. Germany had returned eight people to Greece on this basis as of 31 January 2019.[64]

## 6.2. EU IT systems further expand

Information technology systems (IT systems) support border control. In 2018, the EU continued to develop its large-scale IT systems. Four new regulations were adopted, three to strengthen the operational effectiveness of the Schengen Information System and one to establish the European Travel Information and Authorisation System (ETIAS).[65] The European Commission tabled three new proposals, two adjusting past proposals on interoperability[66] and a proposal significantly expanding the scope of the Visa Information System.[67] In addition, the EU revised the founding regulation of eu-LISA, the EU Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice.[68] Table 6.2 provides an overview of legislative developments, indicating also where EU institutions have requested FRA to submit an opinion.

In recent years, the EU extended the original purposes of processing personal data in IT systems, so that national authorities and relevant EU agencies could also use the data stored to combat irregular migration as well as to fight serious crime and terrorism. To pursue this new purpose effectively, the European Commission proposed to make existing IT systems interoperable. Interoperability would allow searching data concerning an individual across the different systems. Using fingerprints and/or facial images for the search would make it possible to discover persons with different identities. Presented as an important tool to enhance internal security,[69] the proposed Interoperability Regulations also affect fundamental rights.[70] It can enhance protection – for example, by supporting the detection of missing children – but also creates many challenges that result from the weak position of the individuals whose data are stored in IT systems and who often lack knowledge of their rights and do not speak the language of the Member State.

**Table 6.2: Large-scale EU IT systems in the field of migration and security**

| IT system | IT system – full name | Main purpose/subject matter | State of play end 2018 | FRA Opinion |
|---|---|---|---|---|
| **Eurodac** | European dactylography | Determine the Member State responsible to examine an application for international protection<br>New purpose: assist with the control of irregular immigration and secondary movements | Negotiations on proposal for revision of COM(2016) 270 final continued; text almost agreed | ✓ |
| **VIS** | Visa Information System | Facilitate the exchange of data between Schengen Member States on visa applications | Proposal for revision COM(2018) 302 final, 16 May 2018 | ✓ |
| **SIS II – police** | Schengen Information System – police | Enter and process alerts for arrest, missing persons, discreet and specific checks, objects, etc., to safeguard security in the EU and Schengen Member States | Adopted by Regulation (EU) 2018/1862, 28 November 2018 | |
| **SIS II – borders** | Schengen Information System – borders | Enter and process alerts for the purpose of refusing entry into or stay in the Schengen Member States to support implementation of policies on border checks and immigration | Adopted by Regulation (EU) 2018/1861, 28 November 2018 | |
| **SIS II – return** | Schengen Information System – return | Enter and process alerts for third-country nationals subject to a return decision to support implementation of policies on border checks and immigration | Adopted by Regulation (EU) 2018/1860, 28 November 2018 | |
| **EES** | Entry-Exit System | Calculating and monitoring the duration of authorised stay of third-country nationals admitted and identify over-stayers | Adopted by Regulation (EU) 2017/2226, 30 November 2017 | * |
| **ETIAS** | European Travel Information and Authorisation System | Assess if a third-country national who does not need a visa poses a security, irregular migration or public health risk | Adopted by Regulation (EU) 2018/1240, 12 September 2018 | ✓ |
| **ECRIS-TCN** | European Criminal Records Information System for Third-Country Nationals | Share information on previous convictions of third-country nationals | Negotiation on proposal COM/2017/0344 final advanced | ✓ |
| **Interoperability** | | Establish a framework for interoperability between EES, VIS, ETIAS, Eurodac, SIS II and ECRIS-TCN | Negotiation on COM proposals (amended proposal COM/2018/478 final 13 June 2018 (border and visa) and COM/2018/ 480 final (police and judicial cooperation, asylum and migration) advanced | ✓ |

*Note:* ** FRA surveyed over 1,200 passengers at border crossing points (see FRA, Do travellers to the EU trust fingerprinting?, 14 December 2015).*

*Source:* *FRA, 2019*

### 6.2.1. Processing of biometric data increases

The current trend in IT systems is to process more biometric data. All European-wide IT systems except for ETIAS will process a person's fingerprints and facial image. In addition, in April 2018, the European Commission proposed to include fingerprints and facial images in identity cards Member States issue to their own nationals and in residence cards they deliver to third-country national family members of EU citizens who have exercised free movement rights.[71]

Under the EU data protection *acquis*, biometrics are sensitive personal data and their processing, when exceptionally allowed, requires special protection.

**FRA ACTIVITY**

#### Analysing the fundamental rights implications of processing biometric data in EU IT systems in the field of visas, borders and asylum


The use of IT systems entails both risks and opportunities for fundamental rights. IT systems can offer more robust and timely protection – for example, for missing children and victims and witnesses of crime – and can help prevent identity fraud and identity theft. At the same time, the weak position of the individuals whose data are stored in large-scale IT systems creates many fundamental rights challenges. They range from respect of human dignity when taking fingerprints and challenges in correcting or deleting inaccurate or unlawfully stored data to the risk of unlawful use and sharing of personal data with third parties. Based on socio-legal research carried out in 2015-2016, the report presents suggestions – aimed at the EU and its Member States – on how to reduce the risk of IT systems undermining fundamental rights.

*See FRA (2018) Under watchful eyes – biometrics, EU IT systems and fundamental rights, Luxembourg, Publications Office.*

Biometric data help to establish a person's identity, particularly when an individual uses different names. Using biometrics is generally the most reliable way to identify a person. However, biometric matching is not immune to mistakes. The reliability of fingerprint matches decreases over time, in particular for children below the age of 13. For persons older than 70 years, dry skin also affects the reliability of a match.[72] There are no studies on the minimum age at which face recognition of children reaches the same reliability as face recognition of adults.[73] False matches can have serious consequences for the individual. For example, the police may arrest a person or border guards may not let a person cross the border. The high degree of credibility attached to biometric matches makes it difficult for persons concerned to rebut errors – for example, in case the wrong biometric data have been attached to a person in the IT system – and prove, for example, that a biometric match was incorrectly generated.

### 6.2.2. Data of every foreigner in the Schengen area soon to be stored in an EU-wide system

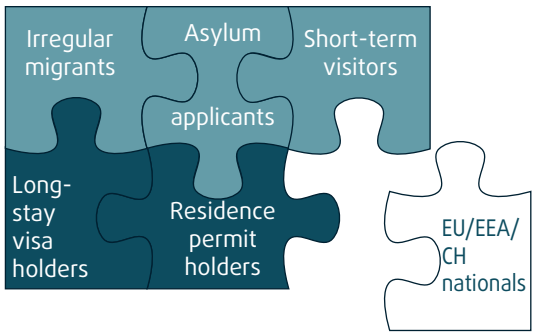
EU-wide systems currently store information on only a portion of third-country nationals who come to or are staying in the EU. In particular, data on holders of long-stay visas and national residence permits are not stored EU-wide. The ancillary purpose of combatting irregular migration as well as fighting serious crime and terrorism, which is being included in all legal instruments establishing EU-wide IT systems, called for covering all third-country nationals coming to or staying in the EU in an EU-wide system.

As illustrated in Figure 6.4, if the changes proposed in 2018 to the Visa Information System are adopted, this will lead to the EU-wide storage of personal data, including biometrics, of virtually all non-nationals staying in the EU Member States, except for mobile EU citizens and nationals of the European Economic Area and Switzerland. Pursuant to Recital (5) of the proposal, the expansion of the personal scope of VIS to include holders of long-stay visas and residence permits responds to the need to "fill the current information gaps for border management and law enforcement".[74] Once this is filled, the "information gap" that remains will concern EU nationals, and nationals of the European Economic Area (Iceland, Norway, Liechtenstein) as well as Switzerland.

The inclusion of long-stay visa holders and residence permit holders in VIS would significantly expand the number of persons whose data are processed in an EU-wide system. Overall, in 2017, there were more than 20 million third-country nationals in the EU-28, representing some 4 % of the total EU population.[75] Some 12.6 million held long-term residence permits,[76] thus having strong links with their EU Member State of residence. Many holders of residence permits were born in the EU.

The situation of long-term residents is, generally speaking, closer to that of EU citizens than that of short-term visitors, such as tourists, students,

**Figure 6.4: People in the EU regarding whom data are stored in an EU-wide information system**




*Notes:* ■ = *EU-wide storage*
■ = *planned EU-wide storage*
□ = *no EU-wide storage planned*
*EEA: European Economic Area; CH: Switzerland*

*Source:* *FRA, 2019*

researchers or business travellers. They should, therefore, be treated accordingly.

## 6.3. Working out refugee integration

About seven in ten Europeans recognise the integration of migrants as a necessary long-run investment for both the individuals concerned and receiving countries, according to a Eurostat survey.[77] The Gender Equality Strategy, which the Council of Europe endorsed in April 2018, supports the systematic implementation of integration policies and measures with a gender-equality dimension as a means to protect the human rights and fundamental freedoms of all migrants, refugees and asylum seekers.[78] Given that over 2.5 million persons applied for asylum in the 28 EU Member States in 2015 and 2016, discussions on integration focused primarily on the integration of Syrians and other refugee groups who arrived during this time.

Over 1.9 million persons applied for asylum in 2015 and 2016 in just six EU Member States: **Austria**, **France**, **Germany**, **Greece**, **Italy** and **Sweden**. Applicants included a large number of children and young people.[79] Between 2015 and 2017, more than 1.4 million persons received international protection, almost 90 % of them (1.2 million) in the above-mentioned six EU Member States.[80]

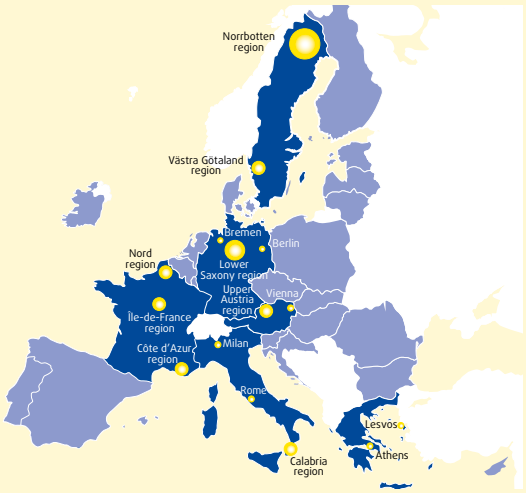
The following sections draw on FRA's research on responses to the arrival of a large number of asylum applicants in six Member States, focussing on asylum and residence procedures and housing.

**FRA ACTIVITY**

### Examining the long-term impact of policy responses to 2015-2016 arrivals: a focus on young people

FRA examined the long-term impact of policy responses on the integration of 16 to 24-year-old persons in need of international protection in six EU Member States, interviewing nearly 200 refugees and other persons in need of international protection and more than 400 experts, including authorities and other professionals in 15 geographical locations (see Figure 6.5). FRA assessed the impact of policies in the following fields: asylum and residence permit procedures, family reunification, education, housing and social assistance.

**Figure 6.5: EU Member States and locations of FRA's research on refugee integration**




*Notes:* *Small dots show cities the research covered, whereas larger dots show regions covered.*

*Source:* *FRA, 2019*

### 6.3.1. Long procedures hinder integration

As long as people do not know whether or not they will be allowed to stay, it is difficult for them to integrate into the host society. Many of the rights that promote integration are granted once applicants receive international protection, and examining the large number of applications takes time.

As illustrated in Table 6.3, according to experts, in 2016, reaching a first-instance decision on asylum took between six months and two years in the six most affected EU Member States covered by FRA's research. That time period becomes significantly longer when protection is granted only at the appeal stage, when courts overturn the decision by the administration. In

**Table 6.3: Duration of asylum and residence permit procedures in the researched locations**

| | | AT* | DE | EL | FR | IT | SE* |
|---|---|---|---|---|---|---|---|
| **2016** | Asylum (first decision) | 1,5 - 2 years | 1-2 years | 6-8 months | >6 months | >1 year | 1,5-2 years |
| | Residence permit | | 6-9 months | 1-1,5 months | >1 year | 4-5 months | |
| **2018** | Asylum (first decision) | 16 months | >7 months | 6 months | 4 months | >10 months | 1,5 years |
| | Residence permit | | not available | 6-8 months | 5-6 months | Several months | |

*Notes:* *The lengths of procedures refer to the geographical locations FRA researched.*

** Residence permits are issued automatically with a positive asylum decision.*

*The information on first-instance asylum decisions in 2018 is based on the following sources: Minister of Interior in response to a parliamentary request,* Anfragenbeantwortung 3183/AB-BR/2018*, 5 April 2018; Germany: Federal government response to a parliamentary request,* Bundesdrucksache 19/3861*, 17 August 2018; Greece: AIDA, country report Greece,* Information provided by the Greek Asylum Service*, 15 February 2018; France: OFPRA (Office français de protection des réfugiés et apatrides),* Données de l'asile 2018*, 15 January 2019; Italy: Doctors without Borders,* Insediamenti Informali marginalità sociale, ostacoli all'accesso alle cure e ai beni essenziali per migranti e rifugiati – Secondo Rapporto*, 1 February 2018; Sweden: Swedish Migration Agency (Migrationsverket),* Asylum decisions 2018*, 1 January 2019.*

*Source:* *FRA, 2019 [based on expert interviews and sources noted above]*

**France**, **Germany**, **Greece** and **Italy**, once persons are granted international protection, they also need to obtain a residence permit to enjoy some of their rights. Delays in processing asylum applications mainly resulted from the increased number of applications, complicated or lengthy procedures, and the lack of trained staff.

Lengthy asylum procedures affect refugees' daily life in different ways. Effects for young people include limited possibilities to work and enrol in education beyond compulsory schooling. Examples of other consequences include difficulties for unaccompanied children to reunite with their family (raised in particular in **Austria** and **Germany**);[81] difficulties for people who turn 18 during the procedure to keep their apprenticeship contract (according to teachers in **France**); and difficulties to open a bank account (**Germany, Greece**). Extended waiting times in **France** have resulted in delayed language acquisition.

> *"It is a system that is extremely perverse: meaning that people are asked to integrate, but they are not given the opportunity to do so. […] There is this compartmentalisation: there is the phase before where everything is blocked when they have requested asylum, as if it was an illness, and the phase after when anything is possible but you have got too far behind. When you have waited two years and done nothing during these two years, you have not given the person the ability to be able to do something."*
>
> *Reception centre manager, France*

Experts in all geographical locations mention a significant negative impact of lengthy procedures on mental health, including anxiety, sleeping disorders, and the deterioration of existing psychological and psychiatric problems. For example, the majority of experts in **Sweden** described how the mental health status of young refugees deteriorated during the asylum procedure, making it difficult for them to learn or even attend school.

Experts in most locations further concur that the risks of exploitation or becoming involved in criminal activities are higher in case of long asylum procedures in combination with restricted possibilities to work or pursue education. A clear majority of all experts in the six Member States who had had experience with individuals of the target group who became offenders (62 experts out of 81) agreed that the uncertainty about the length of stay had increased the risk of individuals perpetrating crime.

Despite the general emphasis on negative effects of lengthy asylum procedures on integration, experts in several EU Member States also highlighted potential downsides of inadequately short procedures. Fast procedures may, for example, entail risks of not assessing individual cases in as much detail as required and compromise adequate preparation by the applicant for the asylum interview.

The effects of lengthy waiting times for obtaining or renewing residence permits are similar, delaying access to a range of rights and integration aspects. In **France**, for example, receipts provided to beneficiaries of international protection upon applying for a residence permit are not always recognised as leading to a residence permit. As they need to be renewed monthly, potential employers hesitate to offer a job, training centres refuse to accept students, and access to housing is difficult.

### 6.3.2. Bringing family members to the EU remains difficult

Family reunification is one of the key mechanisms for better integration of migrants, including beneficiaries of international protection. States reaffirmed the principle of family unity and committed themselves to facilitating family reunification in the UN Global Compact for Safe, Regular and Orderly Migration adopted in December.[82]

Since 2015, some EU Member States have restricted the possibilities for family reunification to the extent possible pursuant to the Family Reunification Directive (2003/86/EC). **Germany**[83] and **Sweden**[84]suspended family reunification for beneficiaries of subsidiary protection. **Germany** made it subject to quotas as of 1 August 2018.[85] **Austria** introduced a waiting period of three years for beneficiaries of subsidiary protection,[86] and **Sweden** toughened maintenance requirements for refugees.

In the experience of experts as well as beneficiaries of international protection FRA interviewed, family reunification procedures are lengthy and cumbersome. Only few of the persons who arrived in 2015-2016 managed to bring their families to **France**, **Germany**, **Greece**, and **Italy**. They attribute this mainly to legal and practical obstacles. Refugees interviewed in **France**, **Italy** and **Sweden** also referred to a lack of information on this possibility. The length of family reunification procedures is also linked to problems accessing a diplomatic mission, waiting times for appointments, missing documents, application deadlines and costs. In **Germany**, the monthly quota of granting visas to 1,000 family members of beneficiaries of subsidiary protection introduced in August 2018 had not been filled by the of the year. Instead of 5,000 visas, only 2,612 visa were granted between August and December 2018.[87]

In **Greece**, lawyers FRA interviewed said that few refugee families were reunified on the basis of the Family Reunification Directive between January 2017 and mid-2018. In **Sweden**, tougher maintenance requirements, introduced by the law on temporary restrictions of residence permits, have made investigations on family reunification more complicated since case workers have to spend time verifying the evidence of sufficient funds or the prospects of a future permanent residence permit.

The difficulty of reunifying with family members has severely affected the emotional and mental constitution of young refugees due to concerns for their family's well-being and the lack of family life. Several interviews had to be aborted as the interviewees were unable to speak about the topic.

> *"I feel like I can watch them becoming old and grey and skinny. […] And we know of […] clients who went back [to Syria] because they said: 'I can no longer bear the separation.'"*
>
> *Lawyer, Germany*

### 6.3.3. Finding adequate accommodation poses challenges

Housing is a key dimension of integration. The location, conditions, size and stability of accommodation affect people's possibilities to attend and perform at schools, to follow vocational training or further education, to access social support and establish personal contact with the receiving society. However, for asylum seekers and international protection beneficiaries, having to change housing frequently is common. Each relocation may end up uprooting the person concerned, undermining the integration so far achieved.

Experts and refugees alike considered the transition to individual housing – as opposed to shared accommodation – an important step towards integration. They pointed out two main transitions as having affected their housing situation in ways that undermined their path to integration: the transition from child to adult, and from asylum applicant to beneficiary of international protection.

The transition from child to adult is a specific challenge as it ends the support from child protection services and usually entails a change in accommodation. In **France**, however, accommodation may be extended beyond the age of 18 if the child welfare services provide a Young Adult Contract (*Contrat Jeune Majeur*)[88] – although this has become increasingly difficult in the Bouches-du-Rhône and Nord regions, leading to increased homelessness of young people, for example in Lille. In **Sweden**, municipalities may agree to extend the provision of housing to children when they turn 18 so that they can finish school.

The transition from asylum applicant to beneficiary of international protection usually also entails a change of housing. As shown in Table 6.4, soon after receiving international protection, persons are asked to leave the facility in which they had stayed as asylum applicants. Although extensions are possible in most cases where timeframes apply, experts generally considered the time available unrealistic for arranging private housing.

Difficulties arise when asylum applicants, upon receiving a positive decision, have to leave the reception facility and lose the social support offered to them there. Experts in all geographical locations

**Table 6.4: Legal timeframe for asylum seekers to leave their reception facility when they receive asylum**

| | AT | DE | EL | FR | IT | SE |
|---|---|---|---|---|---|---|
| **Time-frame** | 4 months | No specific time limit | Issue not regulated; hence no specific time limit | 3 months (possible extension to 6 months) | 6 months | No specific time limit |

*Note:* *Extensions of stay are possible in individual cases, depending on the circumstances.*
*Source:* *FRA, 2019*

referred to increased cases of homelessness among young refugees, including children, as a result of this transition. This also affects people's health as they find themselves in makeshift camps or living in very poor, abusive or exploitative conditions. Almost all experts who had experience with refugee victims of crime agreed that insecure or unsafe housing conditions increased their risk of victimisation.

Persons granted international protection encounter various challenges when trying to find (or keep) an apartment. Difficulties mentioned during FRA's research include limited assistance offered, the short duration of residence permits, prejudice against refugees, and insufficient language skills – in addition to obstacles that affect everyone, such as costs or the availability of housing in specific locations. In addition, finding individual housing requires time and may conflict with other priorities, such as language acquisition, education, or employment.

*"Finding an apartment in Vienna without an employment contract is almost impossible. And then it often ends in a way that they are somehow illegally: without rental contract, in rooms where they pay several hundred Euros for a mattress in a mouldy room, where they share a room with other refugees, which is obviously not legal. But there is some black market in the area of housing."*

*Expert on unaccompanied children, Austria*

At the same time, authorities do offer some support. For example, in Göttingen (**Germany**), the local housing authority grants building permission for large-scale construction projects only if 30 % of the space is dedicated to social housing. NGOs and volunteers have also offered search and counselling services to find private housing. In **Sweden**, the municipality receiving a protection-status holder acts as the main tenant and sublets the apartment to the protection-status holder for at least two years.[89]

Promising practice

### "BENN" – neighbourhood integration project in Berlin

The regional administration of Berlin, in close cooperation with the respective administrative district, has set up "BENN" ("*Berlin entwickelt neue Nachbarschaften*", German for "Berlin creates new neighbourhoods"), an integration management effort at 20 locations with bigger refugee accommodation facilities in Berlin. The project runs between 2017 and 2021 and is financed by federal, regional and communal funds (within the framework of the investment pact "*Soziale Integration im Quartier*" and the urban development programme "*Soziale Stadt*"). The project aims at community building by promoting exchanges and dialogue between long-established and new residents; fosters active citizenship by empowering new residents to realise their ideas on shaping the neighbourhood; and connects individual volunteers with associations, institutions and public authorities. A local BENN-team organises participation processes and supports community work.

*For more information, see the city of Berlin's webpage on the BENN programme.*

## FRA opinions

Articles 18 and 19 of the EU Charter of Fundamental Rights guarantee the right to asylum and prohibit *refoulement*. Article 6 enshrines the right to liberty and security. Under international law of the sea, people rescued at sea must be brought to a place of safety. 'Safety' also means protection from persecution or other serious harm. In 2018, disagreements between EU Member States on where rescue boats should dock resulted in migrants being left waiting at sea for days, sometimes weeks. Some Member States continued to maintain facilities at their borders, at which asylum applicants are held while authorities review their asylum claims. Meanwhile, reports of violations of the principle of non-*refoulement* increased, as did accounts of police violence at borders.

### FRA opinion 6.1

*The EU and its Member States should cooperate with relevant international organisations and third countries to ensure safe, swift and predictable disembarkation for migrants and refugees rescued at sea, in compliance with the principle of non-*refoulement*. Any processing centres established within the EU must fully comply with the right to liberty and security set out in Article 6 of the Charter and entail adequate safeguards to ensure that asylum and return procedures are fair. EU Member States should reinforce preventive measures against abusive behaviour by law enforcement and effectively investigate all credible allegations of refoulement and violence by law enforcement authorities at the borders.*

In its previous Fundamental Rights Report, FRA expressed serious concern about the intimidation of humanitarian workers and volunteers who support migrants in an irregular situation. In addition to other actors, a number of National Human Rights Institutions spoke out against such practices, noting that they have a chilling effect on NGOs' work. This trend continued in 2018, targeting both rescue vessels deployed by civil society in the Mediterranean, as well as volunteers and non-governmental organisations active in the EU.

### FRA opinion 6.2

*EU Member States should avoid actions that directly or indirectly discourage humanitarian support that helps migrants and refugees in need, and should follow up on relevant recommendations issued by National Human Rights Institutions. Furthermore, EU Member States should remove restrictions imposed on civil society organisations that deploy rescue vessels in the Mediterranean Sea.*

The EU plans the EU-wide storage of personal data – including biometric data – of all foreigners in the Visa Information System. This includes data of holders of long-term resident permits. Their data are currently only stored nationally by the Member States in which they are living. Storing in an EU-wide system the personal data of third-country nationals who have strong links to the EU amounts to treating them like third-country nationals who only come to the EU temporarily – for example, for tourism, studies, or business. This goes against the idea of an inclusive society conducive to genuinely integrating third-country nationals living in the EU. Many residence-permit holders have their centre of life in the EU, where they are residing on a permanent basis.

### FRA opinion 6.3

*The EU should avoid EU-wide processing in the Visa Information System of personal data of residence-permit holders who have their centre of life in the EU. Their data should be processed in national systems, in a manner similar to EU nationals.*

About seven in ten Europeans consider the integration of migrants – including beneficiaries of international protection – as a necessary investment in the long-run for both the individuals concerned and the receiving country. Between 2015 and 2017, more than 1.4 million persons received international protection in the 28 EU Member States. Persons granted international protection are entitled to a set of rights laid down in the 1951 Convention Relating to the Status of Refugees (1951 Convention), which is enshrined both in EU primary and secondary law. According to FRA research, in six Member States, lengthy procedures for obtaining residence permits have made it difficult for refugees to access education and employment, negatively affected their mental health, and may increase their vulnerability to exploitation and crime. FRA's evidence also shows that refugees face risks of homelessness upon receiving international protection.

### FRA opinion 6.4

*EU Member States should reinforce their efforts to ensure that people granted international protection fully enjoy the rights to which they are entitled under the 1951 Convention, international human rights law, and relevant EU law, so as to foster their successful integration into the host society.*

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# UN & CoE

## January

## February

**8 February** – In *Ben Faiza v. France* (No. 31446/12), ECtHR holds that real-time geolocation surveillance measures taken against an individual involved in drug trafficking fail to satisfy the "in accordance with the law" requirements, when the law does not indicate with sufficient clarity to what extent and how the authorities are entitled to use their discretionary power. On the other hand, the law enforcement authority's access to the applicant's telephone records is held to be compatible with Article 8 of the ECHR

**13 February** – In *Ivashschenko v. Russia* (No. 61064/10), ECtHR holds that the relevant customs legislation and practice on inspecting goods did not afford adequate and effective safeguards against abuse in applying the sampling procedure in respect of electronic data contained in an electronic device and was not, therefore, "in accordance with the law" under Article 8 of the ECHR

**15 February** – Consultative Committee of the Convention for the protection of individuals with regard to automatic processing of personal data (Convention 108) (CoE) adopts 'Practical guide on the use of personal data in the police sector'

**28 February –** UN Special Rapporteur on the right to privacy presents his Annual Report

## March

**7 March** – CoE Committee of Ministers adopts Recommendation CM/Rec(2018)2 to member States on the roles and responsibilities of internet intermediaries

## April

**24 April** – In *Benedik v. Slovenia* (No. 62357/14), ECtHR holds that the Slovenian police's failure to obtain a court order to access subscriber information associated with a dynamic Internet Protocol (IP) address did not meet the convention standard of being "in accordance with the law", and therefore finds a violation of Article 8 of the ECHR

## May

**18 May** – CoE Committee of Ministers adopts the Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data (Amending Protocol CETS N. 223 – "Convention 108+")

## June

**19 June –** In *Centrum för rättvisa v. Sweden* (No. 35252/08 (not final)), ECtHR holds that bulk interception of communications in Sweden meets convention standards and that therefore there was no violation of right to respect for private life (Article 8 of the ECHR)

**28 June –** In *M.L. and W.W. v. Germany* (No. 60798/10 and No. 65599/10), ECtHR holds that the public's right to access archived material online takes precedence over the right of convicted persons to be forgotten

## July

## August

## September

## October

**10 October –** Convention 108+ is open for signature and immediately signed by 21 countries

## November

## December

**4 December** – European Commission for the Efficiency of Justice (CEPEJ) of the CoE adopts the European Ethical Charter on use of artificial intelligence in judicial systems and their environment

# EU

## January

**25 January** – CJEU holds in *F v. Bevándorlási és Állampolgársági Hivatal* (C-473/16) that subjecting asylum seekers to psychological tests to determine their sexual orientation amounts to a particularly serious and disproportionate interference with their private life

## February

## March

**19 March** – European Data Protection Supervisor (EDPS) adopts Opinion 3/2018 on online manipulation and personal data

## April

**16 April** – EDPS adopts Opinion 4/2018 on the Interoperability Regulation proposal

**25 April** – European Commission adopts a Communication on Artificial Intelligence for Europe

## May

**6 May –** Deadline for the transposition of the Data Protection Law Enforcement Directive (2016/680/EU)

**25 May –** Entry into application of the General Data Protection Regulation (EU) (2016/679)

## June

**5 June** – CJEU holds in *Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein v. Wirtschaftsakademie Schleswig-Holstein GmbH* (C-210/16) that the concept of 'controller' within the meaning of Article 2 (d) of Directive 95/46 (data controller definition) encompasses the administrator of a fan page hosted on a social network

## July

**10 July** – CJEU holds in *Tietosuojavaltuutettu v. Jehovan todistajat – uskonnollinen yhdyskunta* (C-25/17) that the concept of a 'filing system' covers a set of personal data collected in the course of door-to-door preaching. Thus, a religious community, such as Jehovah's Witnesses, is a controller, jointly with its members who engage in preaching, for the processing of personal data carried out by the latter in the context of door-to-door preaching

## August

## September

## October

**2 October –** CJEU holds in *Ministerio Fiscal* (C-207/16) that the list of objectives for the purpose of Article 15 of the ePrivacy Directive is exhaustive and that the authorities' need for access must genuinely correspond to one of those objectives

**23 October** – 40th International Conference of Data Protection and Privacy Commissioners adopts the Declaration on Ethics and Data Protection in Artificial Intelligence

## November

## December

**7 December** – European Commission and the Member States publish a Coordinated action plan on the development of AI in the EU to promote the development of AI in Europe

**11 December** – Entry into application of the Data Protection Regulation for Union institutions, bodies, offices and agencies (EU) 2018/1725

**19 December** – In *Fashion-ID & Co. KG.* (C-40/17), the Advocate General's opinion concludes that the operator of a website embedding a third party plugin such as the Facebook Like button, which causes the collection and transmission of the users' personal data, is jointly responsible for that stage of the data processing

# 7 Information society, privacy and data protection

*In 2018, news of large-scale abuses of personal data sparked concern and raised awareness of the need for strong privacy and data protection safeguards. This underlined the importance of legislators' efforts in this area – such as the General Data Protection Regulation (GDPR), which became applicable in May – as well as the key role of whistleblowers and civil society. Meanwhile, the Council of Europe opened for signature the Amending Protocol for modernised Convention 108, and the global expansion of Convention 108 continued, reaching a total of 53 States Parties by the end of 2018. Both texts provide individuals with a reinforced legal framework to protect their rights to privacy and protection of personal data. Such legal frameworks are especially vital when fast-evolving technologies bring both economic opportunities and legal challenges. Across the EU, Member States entered an artificial intelligence race to ensure that industry and labour markets are well placed for tomorrow's competitiveness – sometimes leaving fundamental rights on the margin of the debates. Finally, and as in previous years, data protection in the context of law enforcement also remained high on the agenda, with the European Commission proposing new rules for the cross-border acquisition of e-evidence. There were, however, no EU-level developments on data retention: no EU initiatives to comply with the relevant 2014 and 2016 CJEU judgments were proposed.*

## 7.1. 2018: the year of data protection awareness

### 7.1.1. EU pushes ahead with data protection efforts amid growing awareness of risks

The Council of Europe finalised the modernisation of its legal framework on data protection by adopting the modernised Convention for the protection of individuals with regard to the processing of personal data (Convention 108+)[1] on 18 May 2018; Convention 108+ was opened for signature on 10 October; at the end of the year, it counted 22 signatories. The work was carried out in parallel with other reforms to international data protection instruments, and alongside the reform of EU data protection rules. Regulators at the Council of Europe and EU levels have ensured consistency and compatibility between the two legal frameworks.

In May 2018, the General Data Protection Regulation (GDPR)[2] became applicable. In addition, the transition period for transposing the Data Protection Law Enforcement Directive[3] (2016/680/EU) ended. The GDPR lays down rules on the protection of personal data and rules relating to the free movement of personal data that are directly applicable in all Member States.[4]

Amongst others, the new regulation develops and strengthens the rights of data subjects. One of the key aspects of this enhanced protection of individuals is the reinforcement of consent requirements: from 25 May 2018 onwards, companies and public authorities are obliged, when processing personal data on the basis of consent, to demonstrate that consent has been given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication by which the data subject signifies agreement to the processing of his/her personal data. The GDPR also introduces the concept of transparency, including the obligation that the data subject needs to be provided with relevant information in a concise, transparent, intelligible and easily accessible form, using clear and plain language.

Informational self-determination of the data subject has been reinforced through the introduction of the right to data portability and the strengthening of the right to be forgotten. Data portability enables individuals to obtain and reuse their own personal data across different services and service providers. The right to be forgotten, even though it is not absolute, provides that every data subject can demand the erasure of their personal data if certain conditions are met. The GDPR codified this right following the CJEU landmark decision in *Google v. Spain*, which interpreted the right to erasure in relation to the responsibilities of a search engine as data controller.[5]

**FRA ACTIVITY**

### FRA's updated Handbook on European law relating to data protection

FRA, the Council of Europe and the European Data Protection Supervisor (EDPS) jointly published the 2018 Handbook on European law relating to data protection. This publication is part of the wider series of joint handbooks on European law and fundamental rights from FRA and the Council of Europe, providing an overview of the EU's and the Council of Europe's applicable legal frameworks. The handbook also contains explanations of key data protection case law, summarising major rulings of both the Court of Justice of the European Union and the European Court of Human Rights. In addition, it presents hypothetical scenarios that serve as practical illustrations of the diverse issues encountered in this ever-evolving field.

*See FRA-Council of Europe (2018), Handbook on European data protection law – 2018 edition, Luxembourg, Publications Office.*

Regarding the implementation of the GDPR at national level, a number of Member States, such as Germany and Austria, adopted implementing legislation before 25 May 2018. Other Member States continued their activities related to the alignment of their national laws to the GDPR throughout 2018.[6]

The new data protection rules also include the Data Protection Law Enforcement Directive (2016/680/EU)[7]. This legislation establishes a comprehensive system of protection of personal data in the context of law enforcement, while also acknowledging the particularities of criminal justice authorities. It closely follows the principles and structure of the GDPR, while ensuring the high level of protection of personal data and enhancing data exchanges and better cooperation between Member States' competent authorities.

Just two days before the GDPR became applicable, the Council of the European Union and the European Parliament agreed on a new set of rules for the processing of personal data by EU institutions and bodies. Regulation (EU) 2018/1725,[8] also referred to as the EUI-GDPR,[9] brings the data protection rules that bind EU institutions and bodies in line with standards laid down in the GDPR and the Law Enforcement Directive. Furthermore, it establishes formal duties of the EDPS. Under the new regulation, the EDPS remains responsible for ensuring the effective protection of individuals' fundamental rights and freedoms whenever their personal data are processed by or on behalf of EU institutions and bodies.

The GDPR protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data as laid down in Article 8 of the Charter. In addition, aspects of Article 7 on the right to private life are regulated by the ePrivacy Directive.[10] However, current rules on electronic privacy refer only to traditional communication providers (e.g. providers of fixed and mobile telephony). During the last decade, a whole new ecosystem of communications service providers, such as messaging platforms, social networks and Voice-over-Internet-Protocol services, has grown rapidly, collecting vast amounts of private and personal data. Consequently, the European Commission proposed an updated ePrivacy Regulation[11] to complete the modernisation of EU data protection legislation and align electronic communications' privacy with the standards established by the GDPR. Once adopted, the updated ePrivacy Regulation should better protect individuals' privacy by ensuring the confidentiality of communications. However, after two years, the negotiations on this legislation are still ongoing. Both the European Data Protection Board (EDPB)[12] and the EDPS[13] invited the EU legislators to conclude an agreement on the proposal rapidly.

Despite the fact that the GDPR is based on the proven principles of the repealed Data Protection Directive (95/46/EC), the new rights and legal requirements established by the GDPR sparked a number of questions regarding the extent to which businesses that process personal data comply with the regulation. The national data protection authorities (DPAs) observed a significant increase in the numbers of complaints submitted and in the notifications of personal data breaches. For example, in **France**, between May and October 2018, the national supervisory authority, CNIL, received 742 notifications of personal data breaches, an increase of almost 50 % since before the GDPR came into application.[14] In the **United Kingdom**, the number of cases received by the Information Commissioner's Office has doubled, to 14,996 complaints and 5,992 breach notifications, which is the highest increase in the EU so far.[15] This demonstrates that the GDPR, in the first months since its entry into application, has proven to be a practical tool for reinforcing the protection of people's privacy.

Civil society plays a key role in the defence of fundamental rights, as FRA's report *Challenges facing civil society organisations working on human rights in the EU* explains.[16] In the GDPR, Article 80 (1) enables qualified entities, such as not-for-profit bodies, organisations or associations that have been properly constituted in accordance with the law of a Member State, have statutory objectives which are in the public interest, and are active in the field of the protection of data subjects' rights and freedoms with regard to the protection of their personal data, to lodge complaints on behalf of individuals. For example, the **Austrian** not-for-profit organisation NOYB filed four complaints over "forced consent" against Google (in France), Instagram (in Belgium), WhatsApp (in Germany) and Facebook (in Austria) with these Member States' data protection authorities.[17]

Promising practice

### Helping people exercise their GDPR-based rights

In the **Netherlands**, the privacy-focused civil society organisation Bits of Freedom set up a website that helps individuals exercise their GDPR rights as data subjects. Through this tool, individuals can generate, send and keep track of their requests made to data controllers to access, remove, correct or move personal data.

*For more information, see the 'My data done right' website set up by Bits of Freedom.*

But the GDPR goes further, as Article 80 (2) allows Member States to provide in their national legislation that not-for-profit organisations may also lodge complaints independently of a data subject's mandate. This is one of the "specification clauses" of the GDPR, meaning that Member States may choose to implement this article or not. A few countries, including **Belgium**,[18] **Germany**,[19] **Hungary**[20] and **Slovakia**,[21] include that possibility in their national legal frameworks incorporating the GDPR, according to FRA's data collection. However, how the actions of consumers' representatives interact with the defence of privacy and data protection by qualified entities is currently under discussion in the EU. The proposal for a directive on representative actions for the protection of the collective interests of consumers now includes references to data protection.[22] A preliminary ruling on the interplay between consumers' collective redress and data protection is currently pending before the CJEU. Advocate General Bobek concluded that the Data Protection Directive (95/46/EC) does not preclude national legislation that grants public-service associations standing to commence legal proceedings against the alleged infringer of data protection legislation in order to safeguard the interests of consumers.[23] The expansion of consumers' collective redress could give another legal basis for civil society organisations to lodge data protection complaints independently of any mandate from individuals.

Large-scale attacks on privacy and data protection often result from the lack of appropriate legal, technical and organisational safeguards within international corporations and governments. As in the context of the Snowden revelations in 2013,[24] whistleblowing has proven to be a necessary tool to fight serious breaches of the rights to privacy and data protection that would otherwise remain undisclosed within an organisation. FRA's report on surveillance by intelligence services[25] highlighted the need to protect whistleblowers. On 23 April 2018, the European Commission presented a proposal for a Directive on the protection of persons reporting on breaches of Union law.[26] At that stage, only 10 EU countries (**France**, **Hungary**, **Ireland**, **Italy**, **Lithuania**, **Malta**, the **Netherlands**, **Slovakia**, **Sweden** and the **United Kingdom**) had comprehensive laws protecting whistleblowers.[27]

## 7.1.2. Data protection and democracy

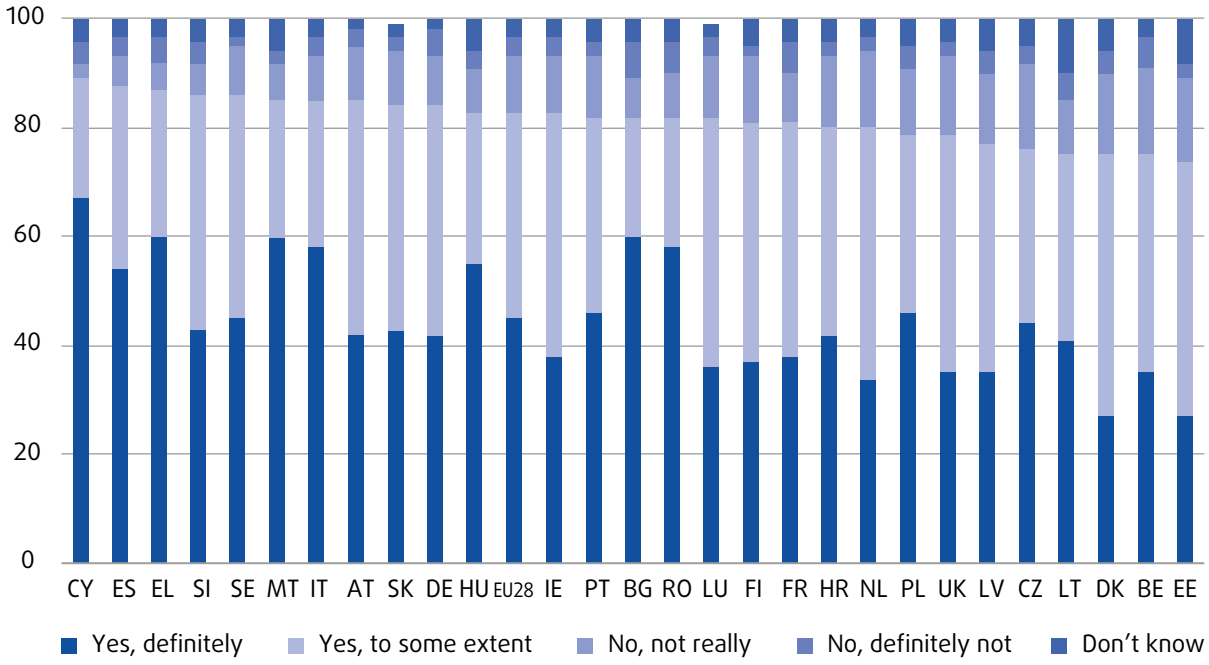
Data protection became a worldwide trending topic in 2018. In March, the Facebook/Cambridge Analytica scandal emerged after revelations by the company's former director of research, Christopher Wylie,[28] revealing an unprecedented abuse of consent of up to 87 million users. Micro-targeting had used their personal information for political campaigning. This abuse resulted in a £ 500,000 fine for Facebook for failing to protect users' personal information.[29] These revelations, which followed the on-going investigation into the cyberattacks during the 2016 US presidential election, fuelled worldwide concerns about the manipulation of democratic processes.[30]

As Figure 7.1 shows, there is a general perception among EU citizens that online disinformation is a problem for democracy.

Data protection has direct implications for other fundamental rights, such as freedom of expression and information, and for the conditions required to implement democratic processes through the right to participate and be elected in a free and secret ballot. Online manipulation of elections is a major threat to the democratic principle, and can also fuel radicalisation and political positions hostile to fundamental rights.

> *"We must protect our free and fair elections. This is why the Commission is today proposing new rules to better protect our democratic processes from manipulation by third countries or private interests."*
>
> *Jean-Claude Juncker, President of the European Commission (2018), 'State of the Union address 2018', 12 September*

**Figure 7.1: Perception of the impact of fake news on democracy in the EU-28 (%)[a,b]**




*Notes:* [a] *Question 4.2: 'In your opinion, is the existence of news or information that misrepresent reality or is even false a problem...For democracy in general (%)'.*

[b] *N=26,576.*

*Source:* *European Commission, 2018 [Flash Eurobarometer 464 on Fake News and Disinformation Online, p. 21]*

Both the EU[31] and the Council of Europe[32] worked in 2018 to provide rules and guidelines to protect personal data, freedom of expression, and the fairness and freedom of European democratic processes with a view to the 2019 European Parliament elections. However, national legal developments on this issue are discrete: On 22 December 2018, the **French** parliament passed a law on the fight against the manipulation of information. It took a comprehensive approach, including provisions on the electoral code, but also on freedom of information, the responsibilities of services providers and measures to reinforce education on fact checking.[33] On the other hand, the **Spanish** parliament passed on 21 November 2018 a data protection law adapting Spanish legislation to the GDPR. It contains a provision allowing political parties to use citizens' personal data that have been obtained from web pages and other publicly accessible sources when conducting political activities during election campaigns.[34] This provision, introduced via amendments to the bill, was the subject of an ad hoc report by the Spanish data protection authority. It highlighted the need to introduce additional safeguards to avoid the use of big data and micro-targeting for campaigning purposes.[35]

Micro-targeting for political campaigning and the distribution of fake news through bots are examples of how disruptive technologies such as big data and artificial intelligence can interfere with fundamental rights.

## 7.2. Artificial intelligence and big data: debates focus on ethics, sidelining fundamental rights

The European Commission defines artificial intelligence (AI) as "systems that display intelligent behaviour by analysing their environment and taking actions – with some degree of autonomy – to achieve specific goals".[36] The terms 'artificial intelligence' and 'big data' are currently often used very broadly, and are not clearly defined. However, these terms commonly relate to the relatively recent increased opportunities to process and analyse large quantities of data to automate tasks, deliver analysis or support

decisions. Some pieces of EU legislation address these developments. The GDPR, for example, regulates automated individual decision-making, including decision-making based on profiling, in its Article 22, which inevitably extends to artificial intelligence and big data analytics.[37]

Artificial intelligence, big data and, more generally, new technologies are in constant evolution. Foreseeing the tangible effects that these technologies will have on the economy, societies or people is a difficult exercise; in-depth assessments require time. In this context, 2018 was the year when many initiatives were taken to tackle the potential impact of artificial intelligence, in terms of both opportunities and challenges. As a result, many relevant bodies at international, European and national levels published reports, including societal analysis, legal proposals, policy initiatives and forecasting strategies.

Three main tendencies can be identified:

1. National initiatives on AI aim to make the most of artificial intelligence and big data to boost economic and industrial competitiveness.

2. Most Member States consider it crucial to increase financial support for education and research.

3. Several Member States believe that specific AI challenges will need to be tackled through the adoption of dedicated legislation.

These emerging technologies have varying potential impacts depending on the fields where they are applied, such as insurance, health, transport or education, to name only a few. Consequently, some fields will require the adoption of specific, tailored legislation. The European Commission made several proposals to address different issues, notably in relation to public sector information,[38] the sharing of private sector data in the European economy,[39] access to and preservation of scientific information,[40] and the digital transformation of health and care in the Digital Single Market.[41] Similarly, the Council of Europe has launched research and initiatives to assess artificial intelligence's impact on specific topics.[42] With respect to justice, the Council of Europe has been actively examining the challenges and opportunities related to the use of artificial intelligence and algorithms in judicial systems, including the so-called "predictive" justice tools. The Council of Europe's work culminated in the adoption of the 'European Ethical Charter on the use of artificial intelligence in judicial systems and their environment', on 3 December 2018.[43]

Some Member States also decided to focus studies or initiatives on specific topics. In 2018, the specific national legal initiatives concentrated on four areas: health (in **Finland**,[44] **Latvia**[45] and **Portugal**[46]), the regulation of relationships between financial and other institutions (in the **Netherlands**[47]), the modernisation of the public sector (in **Latvia**,[48] **Portugal**,[49] **Poland**,[50] **Slovakia**[51] and **Sweden**[52]), and transport (**Austria**,[53] **Estonia**[54] and **Spain**[55]).

### 7.2.1. A debate dominated by ethics, with fundamental rights in the shadows

By the end of 2018, Member States had understood the significant impact that artificial intelligence can have on industry and the labour market. The solutions to ease this technological transition – focusing on increased research and resources – are well under way within most Member States. Foreseeing the economic and labour impacts that AI may have on individuals is necessary to ensure the cohesion of society. However, Member States should also pay close attention to the impact that AI will have on fundamental rights, and should prepare adequate strategies to ensure that such rights, and not only ethical considerations, will be duly respected.

**FRA ACTIVITY**

#### Assessing the impact of artificial intelligence and big data on fundamental rights

In 2018, FRA launched a research project on artificial intelligence, big data and fundamental rights. This project aims to assess the positive and negative fundamental rights implications of new technologies, including AI and big data. It analyses concrete uses of AI by carrying out interviews with public administrations and businesses in selected Member States, which feed into case studies in selected areas of application. The project also collects information on awareness of fundamental rights issues among public administrations and businesses that apply AI-related technologies. Finally, the project will explore the feasibility of using either online experiments or simulations to study concrete examples of fundamental rights challenges that people face when they use algorithms for decision making.

*For more information on the project, see FRA's webpage on 'Artificial Intelligence, big data and fundamental rights'.*

Two EU expert advisory groups have the objective of defining the ethical boundaries of the use of artificial intelligence. In 2018, they published recommendations. The EDPS Ethics Advisory Group published its final report in January 2018,[56] and the European Commission's High Level Expert Group on Artificial Intelligence published a first draft of its

AI ethics guidelines on 18 December 2018.[57] FRA is a member of the High Level Expert Group on AI.

The Council of Europe established a committee of experts on human rights dimensions of automated data processing and different forms of artificial intelligence. It published key documents assessing the impacts of AI on fundamental rights, including a draft recommendation on human rights impacts of algorithmic systems, and a draft declaration on the manipulative capabilities of algorithmic processes.[58] The Committee of Convention 108 worked on a report on AI and data protection and the preparation of guidelines providing baseline orientations with regard to data protection.[59] Finally, the OECD announced the creation of an AI policy observatory to be launched in 2019, with the aim of providing insights on public policies and ensuring beneficial uses of AI.[60]

At national level, most research and analysis launched in 2018 focused on the economic opportunities for each country: seven Member States (**Austria**,[61] **Belgium**,[62] **Bulgaria**,[63] **Lithuania**,[64] **Estonia**,[65] **Finland**[66] and **Sweden**[67]) dedicated their initiatives to the evaluation of the impacts on the industry or the labour market; six Member States (**Austria**,[68] **Denmark**,[69] **Finland**,[70] **France**,[71] **Sweden**[72] and the **United Kingdom**[73]) on the need to reinforce research and education; and 13 Member States focused on the impact of AI on dedicated sectors (health in **Finland**,[74] **Latvia**[75] and **Portugal**,[76] banks in the **Netherlands**,[77] the modernisation and digitalisation of public services in **Latvia**,[78] **Portugal**,[79] **Poland**,[80] **Slovakia**,[81] and **Sweden**,[82] or transportation in **Austria**,[83] **Estonia**,[84] **Poland**,[85] and **Spain**).[86]

In several Member States, the ethical and fundamental rights implications were not subject to detailed assessments, but only cursorily mentioned, FRA findings show. In **Sweden**, for instance, the Innovation Agency concluded in its report on artificial intelligence in Swedish business and society that the discussion on ethics and security is far too limited.[87] In **Finland**, the Parliamentary Committee for Future report 'Hundred new opportunities of Finland 2018–2037: Radical technologies reform societal models', identifies the 100 most promising new technologies and 100 new legislative aims. It includes only sporadic references to fundamental rights-related concerns.[88]

Some Member States, however, were notable exceptions, and conducted in-depth analyses of the potential ethical impacts of artificial intelligence. These included **Denmark**,[89] **Finland**,[90] **France**,[91] **Germany**,[92] **Poland**[93] and the **United Kingdom**.[94] In the **United Kingdom**, a report[95] prepared by the Lords Select Committee on Artificial Intelligence considered the economic, ethical and social implications of advances in artificial intelligence. In relation to ethics, the committee recommended that the Law Commission "consider the adequacy of existing legislation to address the legal liability issues of AI and, where appropriate, recommend to Government appropriate remedies to ensure that the law is clear in this area". While recognising the major boost AI could provide to the UK economy in the coming years, the report stresses the need to "put ethics at the centre of AI's development and use".

In **Denmark**,[96] the Danish Expert Group on Data Ethics (SIRI Commission) delivered nine recommendations to the Danish government on how to empower consumers and tech-workers as well as on how to make data ethics a competitive advantage for businesses. The Danish government is translating the recommendations into a range of concrete policy initiatives, e.g. 1) the establishment of a data ethics council with the task of advising the government on data ethical questions, 2) the cooperation with industry bodies to explore the possibility of creating a national seal for digital security and responsible data use that will increase transparency and make it easier for consumers to choose companies that live up to certain security and ethics standards, and 3) a new requirement that the largest Danish companies disclose their data ethics policies as part of their annual management reports. Furthermore, the SIRI Commission's fourth thematic report on AI, media and democracy dealt with the ethical implications and dilemmas of AI. The report recommended, among others, that privacy by design should be applied in AI innovation, that companies, organisations and authorities should develop ethical principles for dealing with data with more safeguards than the legislative requirements, that targeted work should be initiated to reduce problematic bias in data, and that equality issues should be considered in the development and design of AI services and systems.

In **Finland**,[97] the Ministry of Finance has set up a project group to prepare a report on ethical information policy in an age of artificial intelligence. The report addressed the legal and ethical questions linked to the collection, aggregation, opening and preservation of information, including the security and protection of personal data. The report describes the ethical and regulatory issues at stake. To ensure public participation, the report was publicly accessible and open to comments until October 2018.

Promising practice

### Taking a strategic approach to AI

In **Germany**, the Federal Government adopted an Artificial Intelligence Strategy on 16 November. It includes the objective of organising a broad dialogue to ensure artificial intelligence is embedded in society in ethical, legal, cultural and institutional terms. Notably, the strategy highlights the principle of "ethics by, in and for design" for the development and application of AI, which is to become a core element of the brand 'AI made in Europe'. Another keyword is "trusted AI", which means that ways to increase transparency of algorithmic decision making and accountable AI shall be promoted by relevant actors when implementing the strategy.

*For more information, see Germany, Federal Government (Die Bundesregierung) (2018), Strategie Künstliche Intelligenz der Bundesregierung, 16 November 2018.*

In **Austria**, **Denmark**, **Finland**, **Germany** and the **United Kingdom**, new research centres will expressly include legal issues and/or ethics in their mandate. The **United Kingdom**'s Centre for Data Ethics and Innovation was established to look into the safe and ethical use of data and artificial intelligence.[98] The **Austrian** Government Programme 2017–2022[99] calls for the establishment of an "ethics council on digitisation" for social issues related to digitisation. The Council for Robotics and AI could be extended to fulfil the function of this ethics council. Similarly, in **Germany**, the Artificial Intelligence Strategy also envisages the establishment of an "observatory for artificial intelligence" for technology assessment.[100] At EU level, the AI4EU project is an AI-on-demand platform that will provide access to AI resources in the EU for all users. It also plans to establish an AI4EU Ethics Observatory to ensure respect for human-centred AI values.[101] In **Denmark**, CREDI (Centre for Law and Digitisation)[102] was established in 2018 with the aim of assessing the legal aspects of the digital society and analysing the links between technology, digitalisation and law. In **Finland**, the Finnish Center for Artificial Intelligence (FCAI) was created with the aim of delivering "real AI for real people in the real world". The center established a forum, FCAI Society,[103] composed of humanists, legal experts and social scientists, to assess the ethical impacts of AI on society, promote public debates and advise technical experts. Finally, in **Italy**,[104] the *White Paper on artificial intelligence at the service of citizens* recommended establishing a Trans-disciplinary Centre on AI, to promote and support public debate on emerging ethical issues.

Promising practice

### Raising awareness on algorithms and AI

Data for Good is a community of data scientists in **France** acting on a voluntary basis to propose solutions to societal challenges raised by the use of AI. It has developed a project, Algo Transparency, aimed at raising awareness and informing citizens of the algorithms behind access to information. Its first test case focused on YouTube, analysing the functioning of the algorithm that selects the recommended videos, and highlighting the impact on freedom of expression and freedom of information.

*For more information, see the websites of the Data for Good community and the Algo Transparency project.*

The initiatives listed above show that discussions around the principles to be established for guaranteeing safe and legal use of artificial intelligence focused almost exclusively on *ethics*, and not on fundamental human rights. The only exception was found in a report by the University of Utrecht on 'Algorithms and fundamental rights', which the **Dutch** government requested.[105] By the end of 2018, the government had not commented on the report. Furthermore, the Dutch Council of State published an opinion in which it highlighted the potential negative impacts of the Dutch Digital Agenda on individuals' rights and freedoms.[106]

The extent to which most debates have been concentrating on ethics – rather than "fundamental rights" – should therefore be questioned. Ethical standards may guide Member States and private actors, but they should not be seen as a substitute for rights. Fundamental rights are enshrined by law, so they provide individuals with a strong, harmonised and legally binding framework. In contrast, the meaning and exact limitations of ethics may differ from one national or cultural context to another, and from one field of AI application to another. Although ethical dimensions may complement fundamental rights, such inconsistency could jeopardise a harmonised and coherent approach to the rules governing AI implementation across the EU.

## 7.2.2. Legal challenges set boundaries of use of AI and big data

Complaints related to misuse of data, algorithms and related technologies have emerged in several Member

States. That makes it all the more important to use commonly agreed, and legally binding, fundamental rights as a basis for assessing AI's potential impacts on individuals.

In **Finland**,[107] the Data Protection Ombudsman received complaints about scoring methods used by credit companies. The ombudsman transferred the complaints to the National Non-Discrimination and Equality Tribunal, which held that the applicant had been subjected to multiple discrimination. In this case, the company denied credit using a scoring system that calculated the applicant's rating on the basis of, among other things, the applicant's language, gender, age and place of residence. The applicant had no payment defaults, but no individual assessment of payment ability was made and the denial was made on statistical data alone.

Promising practice

### Scrutinising data for potential bias

In **Germany**, Open Knowledge Foundation and AlgorithmWatch, two civil society organisations, collected anonymised financial and credit-scoring data that individuals voluntarily donated. They analysed the data to show if the credit scoring led to bias and/or mistakes. In some cases, individuals were rated negatively even though their profile did not include negative features, the findings showed. They also showed that the algorithm used to assess the creditworthiness of individuals relies on a database that includes inaccurate or incomplete data for some individuals. Finally, the use of personal data such as age or gender creates a risk of biased or discriminatory scoring, they showed. Such research is very important to raise awareness of the potential impact on fundamental rights of using automated systems to establish scores.

*For more information, see the project website.*

In **France**,[108] the Public Defender of Rights launched an investigation into the operation of the new admissions system for higher education (*Parcoursup*), following complaints from individuals and elected officials. These complaints cited the "opacity" of the "local algorithms" set up in the institutions to file 812,000 university applications. Following the adoption of a new law on student orientation and academic success, universities for the first time ranked candidates' applications through the use of an algorithm. However, as academic institutions did not make the details of the processes public, the lack of transparency served to feed suspicion of discrimination and led the Public Defender of Rights to open an investigation into the subject.

FRA ACTIVITY

### Focus on discrimination in data-supported decision making

In June 2018, FRA published a focus paper dealing specifically with discrimination when using algorithms for decision making. It points out the potential for built-in bias that leads to discrimination in applications and services. To help improve fundamental rights compliance, the paper gives examples of what could be done:

1. being transparent about how algorithms were built so others can detect and rectify discriminatory applications;
2. assessing the impact of potential biases and abuses resulting from algorithms;
3. assessing the quality of all data collected and used for building algorithms;
4. ensuring that how algorithms are built and operate can be meaningfully explained so people can challenge data-supported decisions.

*For more information, see FRA (2018), #BigData: Discrimination in data-supported decision making, Luxembourg, Publications Office. See also FRA (2018), Big data, algorithms and discrimination – in brief, Luxembourg, Publications Office.*

In **France**, similarly to the complaints brought by NOYB in Austria (see Section 7.1.1), the internet advocacy group La Quadrature du Net filed five collective complaints against Google, Apple, Facebook, Amazon and LinkedIn (Microsoft), accusing them of illegally using the personal data of their users.[109] The complaints bring together the names of nearly 12,000 people and were filed with the French data protection authority (CNIL). The complainants believe that the way Google, Facebook and others obtain the consent of internet users does not comply with the rules of the GDPR. In particular, they criticise pre-ticked boxes, or clauses stipulating that continuing to use a service constitutes acceptance. Although CNIL considers itself the relevant authority to investigate the complaint against Google directly, it intends to handle this case in cooperation with the other data protection authorities.

In the **Netherlands**,[110] a coalition of several civil society organisations, including the Dutch section of the International Commission of Jurists, Privacy First Foundation, KDVP Foundation and the Dutch Platform for the Protection of Civil Rights, filed a lawsuit against the Dutch government on the use of the System Risk Indication (SyRI) to assess potential violations of the law. SyRI links together databases of participating partners, such as the tax authority, a municipality and the social security agency (UWV). The databases relate to the inhabitants of a particular postal code

within the involved municipality. The algorithm checks whether there are discrepancies between the databases, which could indicate that one of the laws covered by the SyRI system is being violated.[111] An example is that a person is registered in the municipal database as a home owner, while the same persons collects rent benefits from the tax authority. Identified individuals are included in a Risk Reports Register. The signals are sent to the participating partners for further investigation. According to the coalition, SyRI could violate several fundamental rights while simultaneously undermining the relationship of trust between citizens and those in power.

In **Poland**,[112] the Polish Commissioner for Human Rights asked the Constitutional Tribunal to assess the legality of an automated decision-making system that the Ministry of Labour and Social Policy used to profile unemployed individuals. The decision by the tribunal clarified that such profiling should be regulated in a legal act, and not only based on a minister's ordinance.

Finally, in **France**,[113] more than 60 senators asked the Constitutional Court to give its opinion on, among other matters, the use of algorithms by public authorities for decision-making purposes. The Constitutional Court clarified that, to be lawful, such a decision must meet three conditions under French law: first, the decision should clearly state that it was adopted on the basis of an algorithm, and the main criteria fed into the algorithm should be communicated to the individual; second, individuals should be able to challenge the decision and have access to effective remedies; third, the use of algorithms is prohibited if sensitive personal data are involved. Finally, the court clarified that public authorities should have sufficient control of the algorithms to clearly explain to individuals how any decision was made.

## 7.3. Data protection and measures to ensure security: striking the right balance

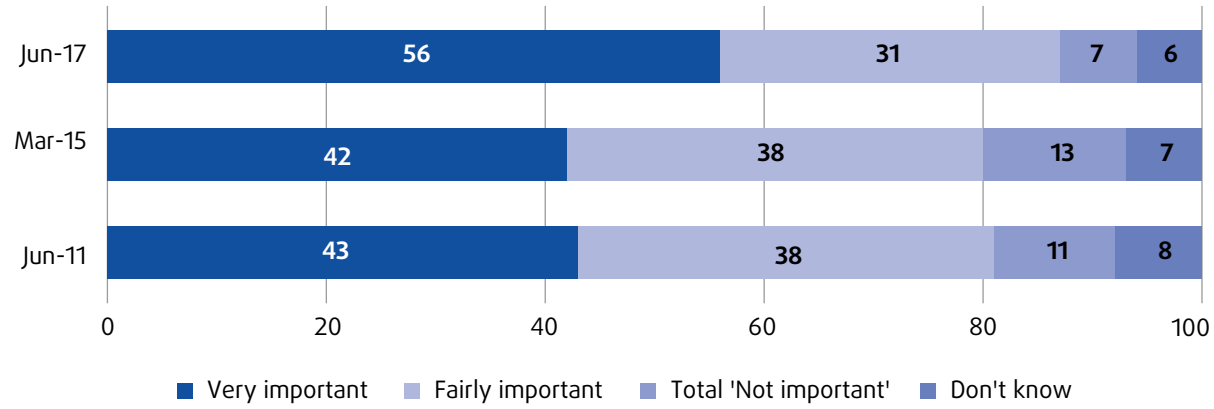
Data protection and democratic processes are threatened not only by illegal commercial practices but also by cybercrime. In September 2018, Facebook reported a significant attack affecting nearly 50 million users,[114] and in December 2018 the personal data of hundreds of politicians in **Germany** were leaked on Twitter.[115]

Surveys on Europeans' perception towards security show that nearly nine in 10 respondents (87 %) see cybercrime as an important problem. This figure has risen since the previous survey, when eight in 10 (80 %) respondents expressed this opinion. Over half (56 %) see cybercrime as a very important problem, while just under a third (31 %) view it as a fairly important problem (Figure 7.2).

In 2018, European users generally perceived the internet as unsafe (see Figure 7.3).

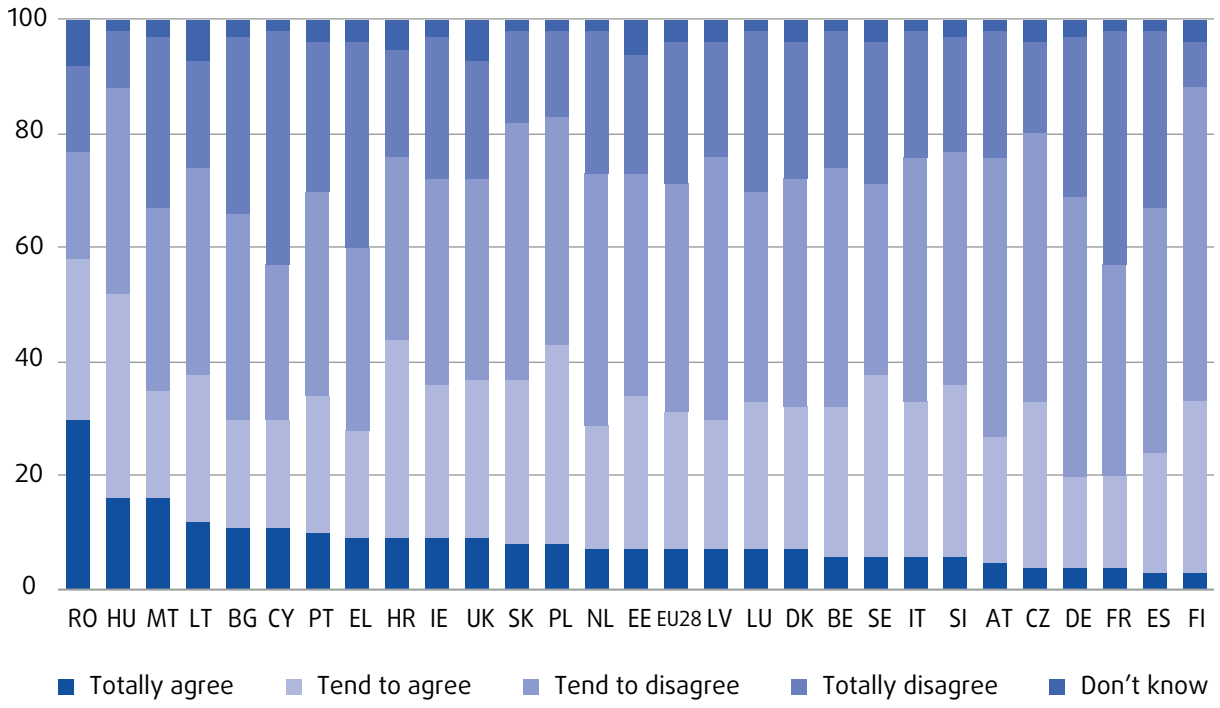
In 2018, both the EU and the Council of Europe worked to introduce new instruments to provide effective tools for investigating cybercrime and to facilitate cross-border access to electronic evidence. However, the Charter and the ECHR also require them to strike a fair balance between the applicable fundamental rights and the need to ensure the security of citizens. The CJEU demonstrated that by invalidating the Data Retention Directive in 2014.

**Figure 7.2: Perception of the importance of the challenges to the internal security of the EU (%)**




*Source:* *European Commission, 2017 [Special Eurobarometer 464b, p. 16, QB2]*

**Figure 7.3: Perception in the EU of the internet's safety for users (%)[a,b]**




*Notes:* [a] *Question 1.1: 'Do you agree or disagree with each of the following? The Internet is safe for its users.'*
[b] *N=33,244.*

*Source:* *European Commission, 2018 [Flash Eurobarometer 469, p. 19]*

**FRA ACTIVITY**

### Handbook on European law relating to cybercrime and fundamental rights

In 2018, following a request from the European Parliament, FRA and the Council of Europe started a new joint project to produce a Handbook on European law relating to cybercrime and fundamental rights. This new manual will provide guidelines on supervisory and scrutiny controls for Member States to ensure compliance with fundamental rights safeguards while countering cybercrime. It will compile and explain key aspects of the European legal framework at the Council of Europe and EU levels together with selected extracts from relevant European and national case law, such as key judgments and decisions delivered by the European Court of Human Rights, the Court of Justice of the EU and higher national courts.

*For more information, see FRA's webpage on the project.*

## 7.3.1. Data retention: EU and national legal frameworks in the making

As past FRA fundamental rights reports pointed out,[116] following the CJEU's annulment of the Data Retention Directive[117] in 2014,[118] the EU has still not legislated on the matter. Member States remain responsible for regulating data retention on the basis of Article 15 (1) of the ePrivacy Directive,[119] and in line with the fundamental rights standards in *Tele2 Sverige* and *Watson*.[120]

### *Developments at ECtHR and CJEU*

During 2018, both the CJEU and the ECtHR delivered some important judgments on data retention. The CJEU delivered its judgment in *Ministerio Fiscal* in October.[121] It held that national authorities can access subscriber information regarding users of stolen mobile phones.[122] Access to mere subscriber information that is not "cross-referenced" to other communication and location data does not allow precise conclusions to be drawn about the private lives of individuals.[123] Therefore, the court held that such access was a proportionate interference with the rights to privacy and personal data protection.[124] The judgment did not,

however, examine the lawfulness of the preceding data retention scheme.[125]

In September, the ECtHR issued its long-awaited judgment in *Big Brother Watch and Others v. the United Kingdom*.[126] The judgment is not yet final; at the beginning of 2019, the case was referred to the Grand Chamber. It ruled that the interception regime operated by UK authorities violated the right to private life and freedom of expression, in particular with regard to journalistic freedom (Articles 8 and 10 of the ECHR). This regime enabled the general ("bulk") interception of communications, which were then filtered to spot any suspicious communications. It also provided for targeted interception of communications belonging to specified persons or phone numbers, etc. In particular, the court found that there was inadequate independent oversight – both of the selection that allows transmission of information signals between network interfaces (internet bearers) for interception; and of the filtering, searching and selection of intercepted communications for examination.[127] Targeted acquisition of data did not require a prior review by a court or another independent body and was not restricted to "serious crimes".[128]

In *Benedik v. Slovenia*, the ECtHR dealt with the police's failure to obtain a court order to access subscriber information associated with a dynamic Internet Protocol (IP) address.[129] The court held that the law allowing the police to obtain such information lacked clarity and did not provide for the necessary independent supervision.[130] The court emphasised that anonymity online is part of the right to private life (Article 8 of the ECHR) and should attract appropriate protection.[131]

### *National developments*

Both legislation and case law in Member States regarding data retention and access still remain very diverse. Some Member States made efforts during 2018 to align their law with the judgments of the CJEU. For example, **Austria** passed legislation allowing targeted retention of data following 'quick freeze orders' issued on the basis of suspicion, on special occasions and in special conditions.[132] In the **Netherlands**[133] and **Denmark**,[134] legislative initiatives were pending at the end of 2018 to address the issues raised by the CJEU. However, in **Sweden**, courts and the DPA criticised the amendments that the government proposed to comply with the CJEU judgments.[135] **Italy**[136] allowed longer data retention periods than those Directive 2006/24/EC originally provided for, and the Italian DPA has raised its concerns about these developments.[137]

In 2018, courts in the Member States delivered several judgments related to this topic. Overall, national courts tend to follow the case law of the CJEU with regard to legislation incorporating Directive 2006/24/EC or legislation passed on the basis of Article 15 (1) of Directive 2002/58/EC. For example, on 20 April 2018, the Administrative Court in Cologne, **Germany**, held in two decisions that the newest national legislation also violates EU law, as it still allows general and indiscriminate retention, albeit for shorter periods.[138] Similarly, the Court of Appeal and the High Court in the **United Kingdom** held that national legislation was inconsistent with EU fundamental rights standards, lacking the requirement of prior judicial control.[139] In **Ireland**, the High Court also ruled that national legislation on data retention violates EU law and the ECHR, as it established a general and indiscriminate data retention regime.[140] In **Cyprus**, there is conflicting jurisprudence among courts. Some courts that follow the CJEU judgments declare evidence inadmissible if it is acquired on the basis of a general and indiscriminate retention regime, while others admit such evidence.[141]

However, important case law developments are still pending. In the **Czech Republic**, the lawfulness of general and indiscriminate storage of traffic and location data is a matter currently pending before the Constitutional Court.[142] The Constitutional Court of **Belgium**[143] and the **French**[144] *Conseil d'Etat* asked the CJEU to issue a preliminary ruling on whether or not blanket retention is compatible with fundamental rights. In particular, they wanted to know if a general retention scheme is justified in view of positive obligations of states to ensure effective criminal investigation, and the right to security enshrined in Article 6 of the Charter. The Supreme Court of **Estonia** asked the CJEU[145] to clarify whether or not access to traffic and location data pertaining to a short time period is a serious interference with fundamental rights. It also asked whether public prosecutors amount to an independent administrative authority that can lawfully authorise access to data retained.

## 7.3.2. European challenges on cross-border access to data for law enforcement purposes

The legal challenges in achieving a balance between data protection and security require effective safeguards governing law enforcement agencies' access to personal data as well as data retention. Electronic data are increasingly used as evidence in criminal investigations. Digital forensics are regularly used not only in the investigation of cybercrimes, but to establish the identity of the suspect, the victim and many other circumstances in ordinary (non-IT) crimes. The use of cloud computing is currently prevalent. Cloud computing is a "paradigm for enabling network access to a scalable and elastic pool of shareable physical or virtual resources with self-service provisioning and administration on-demand", according to the WP29 code of conduct for cloud service providers.[146] This

type of evidence is rarely located on a single server, and it can be moved within seconds to another jurisdiction. Traditional cross-border access mediated through mutual legal assistance is considered too time-consuming to tackle the volatility of electronic evidence, and direct cross-border access to data by law enforcement agencies is considered too risky under the current jurisdictional rules and the different human rights standards. The current policy debate is trying to find a middle way between them. The proposed solution to the problem of the loss of location of electronic data is the "business link": in most cases, e-evidence can be traced and retrieved through providers of electronic communications, information society services, internet domain services and IP numbering services (service providers).[147] However, many of the major service providers are US-based companies, and therefore not under the EU's jurisdiction.

In April 2018, the European Commission published two proposals aimed at facilitating law enforcement agencies' and judicial authorities' cross-border access to electronic evidence.[148] The proposed instruments are a directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings[149] and a regulation on European production and preservation orders for electronic evidence in criminal matters.[150] On 26 September, the EDPB adopted Opinion 23/2018, which expresses concern about a number of provisions of the proposed regulation on e-evidence because of the negative impact on the safeguards to the right of privacy and data protection. Academia[151] and lawyers[152] have highlighted the limitation on the fundamental rights safeguards as a result of the proposed changes in the application of the principle of mutual recognition recognised in Article 82 (1) of the TFEU, which is the legal basis of the proposed regulation on e-evidence. According to this new shift, the authorities of the Member State where the requested service provider is established or represented will be able to play a role only if the service provider does not comply with the order.[153]

Non-personal data can be also used as evidence in a criminal investigation. However, the Regulation on a framework for the free flow of non-personal data in the EU provides a procedure for cooperation between the competent authorities. It gives a more important role to the authorities of the Member State from which data are requested. They must assess a duly justified request with a written explanation of the reasons and the legal bases for seeking access to the data.[154]

The US and the vast majority of the EU Member States – the only exceptions being Ireland and Sweden – are parties to the Budapest Convention on cybercrime,[155] which is the only binding international instrument on this issue. In 2018, the Council of Europe's Cybercrime Convention Committee worked on drafting a second additional Protocol to the Budapest Convention. The aim of this new protocol is to provide for enhanced international cooperation, including provisions on direct cooperation of law enforcement authorities with service providers in other jurisdictions.

# FRA opinions

In 2018, the Council of Europe updated its legal framework on data protection with the adoption of modernised Convention 108. Meanwhile, the global expansion of the original Convention 108 continued, with 53 countries bound by that convention by the end of the year. In the EU, the GDPR became applicable, Member States were to transpose the Law Enforcement Directive, and revised data protection rules for EU institutions and bodies were adopted. However, the adoption of the e-Privacy Regulation was still pending. The proposed regulation concerns the right to privacy in electronic communications; it is critical for ensuring that the EU legal framework is updated to align it with the GDPR, especially in view of new technological developments.

Even with several existing and new instruments in place, implementation and enforcement of data protection rules remained a challenge, as did the fight against abuses of these rules by public and private institutions. Qualified civil society bodies are often in a better position than ordinary citizens are to initiate proceedings that trigger data protection authorities' enhanced powers. However, only a few Member States have empowered qualified bodies to lodge complaints without an explicit mandate from a data subject.

### FRA opinion 7.1

***EU Member States should encourage the effective involvement of qualified civil society organisations in the enforcement of data protection rules, by providing the necessary legal basis for such organisations to lodge complaints regarding data protection violations independently of a data subject's mandate.***

Whistleblowers are crucial for helping to ensure that data protection and privacy violations result in effective remedies, both by warning of potential breaches or by bringing important evidence during investigations. They contribute to public awareness and deterrence of serious and large breaches of rights to privacy and data protection that otherwise would remain undisclosed within organisations. FRA recommended enhanced protection for whistleblowers in its report on surveillance by intelligence services. However, few Member States have specific rules in place to provide effective protection against retaliation. In April 2018, the Commission proposed a directive on the protection of persons reporting on breaches of Union law.

### FRA opinion 7.2

***EU Member States should consider providing for effective protection of whistleblowers, thereby contributing to the effective compliance of business and governments with the fundamental rights to privacy and data protection.***

Despite the CJEU's annulment of the Data Retention Directive (Directive 2006/24/EC) back in 2014 and relevant judgments in the field, the EU has still not adopted legislation on data retention. Consequently, the situation in Member States remains diverse, in particular when it comes to legislation. Some Member States have made efforts to align their legislation with the CJEU's judgments. Other Member States have not made any noteworthy changes in their legislation. The CJEU's ruling in the *Tele 2 and Watson* case confirms that national legislation regulating data retention and access for criminal and public security purposes falls within the scope of EU law and, in particular, under Article 15 (1) of the previous e-Privacy Directive (2002/58/EC). Such national legislation must not impose a general and indiscriminate data retention scheme, and must include procedural and substantial safeguards with regard to access to data retained. If Member States retain national legislation adopted to incorporate the former Data Retention Directive (Directive 2006/24/EC), or legislation that does not comply with the requirements laid down in the case law of the CJEU, they risk undermining respect for the fundamental rights of EU citizens and legal certainty across the Union.

### FRA opinion 7.3

***EU Member States should align their legislation on data retention with the CJEU rulings, and avoid general and indiscriminate retention of data by telecommunication providers. National law should include strict proportionality checks as well as appropriate procedural safeguards so that it effectively guarantees rights to privacy and the protection of personal data.***

Recent developments in the areas of artificial intelligence and big data have led to many policy initiatives with a focus on maximising the economic benefits of new technologies. At the same time, many initiatives by various national and international bodies discuss ethical implications, and less often fundamental and human rights implications with a view to putting forward guidelines and soft law. Many Member States and EU institutions have started preparing national strategies on artificial intelligence.

FRA opinion 7.4

*Given that only a rights-based approach guarantees a high level of protection against possible misuse of new technologies and wrongdoings using them, Member States should put fundamental rights at the heart of national strategies on AI and big data. Such strategies should incorporate know-how from experts in various disciplines such as lawyers, social scientists, statisticians, computer scientists and subject-level experts. Ethics can complement a rights-based approach but should not replace it.*

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121 CJEU, C-207/16, *Ministerio Fiscal*, 3 October 2018.

122 *Ibid.*, para. 49.

123 CJEU, C-207/16, *Ministerio Fiscal*, 3 October 2018, paras. 59-60.

124 *Ibid.*, paras. 55-56, 62-63.

125 *Ibid.*, paras. 26, 50, 63 and operative part.

126 ECtHR, Nos. 58170/13, 62322/14 and 24960/15, *Big Brother Watch and Others v. the United Kingdom*, 13 September 2018 (pending before the Grand Chamber).

127 *Ibid.*, paras. 387-388.

128 *Ibid.*, paras. 466-468, 496-499.

129 ECtHR, *Benedik v. Slovenia*, No. 62357/14, 24 April 2018.

130 *Ibid.*, 129-134.

131 *Ibid.*, paras. 105, 117.

132 Austria, Amendment in § 135 (2b) of the Criminal Procedure Code 2018 *(Strafprozessrechtsänderungsgesetz 2018)*.

133 The Netherlands, Ministry of Justice and Security ( *Ministerie van Justitie en Veiligheid*) (2018), Data retention ['*Dataretentie*'], Letters Sent to House of Representatives, 26 March 2018 and 25 September 2018.

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136 *Legge 20 novembre 2017, n. 167, "Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea - Legge europea 2017"*, confirmed by Article 11 of Legislative Decree No. 101 of 10 August 2018.

137 The Italian DPA's opinion is available on the DPA's website.

138 Germany, Administrative Court Cologne (*Verwaltungsgericht Köln*), 9 K 3859/16 and 9 K 7417/17, 20 April 2018.

139 UK, Court of Appeal (Civil Division), *Secretary of State for the Home Department v Tom Watson & Others*, 30 January 2018; High Court of Justice, Queen's Bench Division, Divisional Court, *The National Council for Civil Liberties (Liberty) v. Secretary of State for the Home Department and Secretary of State for Foreign and Commonwealth Affairs*, 27 April 2018.

140 Ireland, The High Court, *Graham Dwyer v. Commissioner of An Garda Síochána, Minister For Communications, Energy And Natural Resources, Ireland and Attorney General,* 6 December 2018.

141 Cyprus, Supreme Court, Primary Jurisdiction, *Re. the application of Ioannis Hadjioannou and George Longkritis* for permit to file an application for a certiorari order, Civil application No. 33/2018, 2 May 2018. Cyprus, Supreme Court, Appeal Jurisdiction, *Re. the Application of Artemis Kkolos* for the issue of a certiorari order, 26 April 2017.

142 Czechia, Constitutional Court of the Czech Republic, pending plenary cases, Case No. 45/17.

143 CJEU, C-520/18, request for a preliminary ruling from the Cour constitutionnelle (Belgium) lodged on 2 August 2018 — *Ordre des barreaux francophones et germanophone, Académie Fiscale ASBL, UA, Liga voor Mensenrechten ASBL, Ligue des Droits de l'Homme ASBL, VZ, WY, XX v. Conseil des ministers*.

144 CJEU, C-511/18, request for a preliminary ruling from the Conseil d'État (France) lodged on 3 August 2018 — *La Quadrature du Net, French Data Network, Fédération des fournisseurs d'accès à Internet associatifs, Igwan. net v. Premier ministre, Garde des Sceaux, Ministre de la Justice, Ministre de l'Intérieur, Ministre des Armées.*

145 CJEU, C-746/18, request for a preliminary ruling from the Supreme Court (Estonia) lodged on 29 November 2018 – *H.K. v. Openbaar Ministerie*.

146 See the WP29 code of conduct for cloud service providers.

147 As defined in Art. 2 (3) of the Proposal for a regulation of the European Parliament and of the council on European production and preservation orders for electronic evidence in criminal matters, COM/2018/ 225 final – 2018/0108 (COD).

148 See European Commission, "Security Union: Commission facilitates access to electronic evidence", Press release, 17 April 2018.

149 See Proposal for a Directive of the European Parliament and of the Council laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings, COM/2018/226 final – 2018/0107 (COD).

150 See Proposal for a regulation of the European Parliament and of the Council on European production and preservation orders for electronic evidence in criminal matters, COM/2018/ 225 final – 2018/0108 (COD).

151 Böse, M., Rheinische Friedrich-Wilhelms-Universität Bonn, *An assessment of the Commission's proposals on electronic evidence*, (2018); study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee.

152 Council of Bars and Law Societies of Europe (CCBE) position on the Commission proposal for a Regulation on European Production and Preservation CCBE position on the Commission proposal for electronic evidence in criminal matters, 19 October 2018.

153 Proposal for a regulation of the European Parliament and of the council on European production and preservation orders for electronic evidence in criminal matters, COM/2018/ 225 final – 2018/0108 (COD), Art. 14.

154 Regulation (EU) 2018/1807 of the European Parliament and of the Council of 14 November 2018 on a framework for the free flow of non-personal data in the European Union, recital (32), and Art. 5 and Art. 7.

155 Convention on cybercrime (CETS No. 185), Budapest, 23 November 2001.

# UN & CoE

## January

**25 January** – In *IAM (on behalf of KYM) v. Denmark*, UN Committee on the Rights of the Child adopts its first decision under the Third Optional Protocol to the Convention on the Rights of the Child (CRC), in a case concerning the decision to deport a girl to her country of origin, where she could face female genital mutilation. The committee holds that the State had violated the child's rights to protection from all forms of violence (Article 19 of the CRC) and to have her best interests (Article 3 of the CRC) be a primary consideration

**31 January** – The Council of Europe Lanzarote Committee adopts its second implementation report on "protection of Children against sexual abuse in the circle of trust: The Strategies"

## February

## March

**5 March** – UN Committee on the Rights of the Child issues its concluding observations on the combined fifth and sixth periodic reports of Spain

**28 March** – Congress of Local and Regional Authorities of the Council of Europe adopts a resolution on 'Unaccompanied refugee children: a matter of urgency for local and regional authorities'

## April

**4 April** – **Committee of Ministers adopts** Council of Europe Recommendation on policy guidelines to protect children of imprisoned parents

**16 April** – In *European Roma and Travellers Forum (ERTF) v. France* (119/2015), European Committee on Social Rights holds that the State fails to effectively protect the rights of Roma children, in particular as regards their access to education and vocational training

## May

**25 May** – Slovenia ratifies Third Optional Protocol to the UN Convention on the Rights of the Child (CRC) on a communications procedure

## June

**10 June** – In *Bistieva and Others v. Poland* (No. 75157/14), a case concerning a family's detention in a centre for aliens in Poland, ECtHR finds a violation of the right to respect for private and family life (Article 8 of the ECHR) because of the unjustified and disproportionate length of the stay in the detention centre of a mother and her three children

**13 June** – Norway ratifies the Council of Europe (CoE) Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)

**15 June** – In *European Committee for Home-Base Priority Action for the Child and the Family (EUROCEF) v. France* (114/2015), European Committee of Social Rights holds that France violates Article 17 (1) and (2) of the European Social Charter on several grounds such as the assessment and allocation system for unaccompanied foreign minors, delays in appointing an ad hoc guardian for unaccompanied foreign minors, and the detention of unaccompanied foreign minors in waiting areas and in hotels

20 June – United Kingdom ratifies CoE Lanzarote Convention

28 June – Adoption by the Lanzarote Committee of a Declaration on protecting refugee and migrant children against sexual exploitation and sexual abuse

## July

4 July – Committee of Ministers adopts Recommendation CM/REC(2018)7 to member States on Guidelines to respect, protect, fulfil the rights of the child in the digital environment

## August

## September

27 September – In *Y.B. and N.S. v. Belgium*, UN Committee on the Rights of the Child adopts a decision under the Third Optional Protocol to the Convention on the Rights of the Child (CRC), declaring a violation of Articles 3, 10 and 12 of the convention in a case concerning the refusal to provide a visa for a child in kafala care (fostering arrangement)

27 September – In *N.B.F. v. Spain*, UN Committee on the Rights of the Child establishes the State had violated the best interests of a child (Article 3 of the CRC) and the right to be heard (Article 12 of the CRC) in the procedure to establish the age of a person claiming to be a child

## October

## November

## December

10–11 December – UN General Assembly adopts the Global Compact for Safe, Orderly and Regular Migration at the Intergovernmental Conference in Marrakech, Morocco, upholding the principle of the best interests of the child

11 December – In *M.A. and Others v. Lithuania* (No. 59793/17), a case concerning the right to make an asylum application at the border, the ECtHR finds a violation of the prohibition of torture (Article 3) and of the right to an effective remedy (Article 13) because a Russian family of seven members, leaving Chechnya, tried on three separate occasions to seek asylum in Lithuania, but each time was refused the right to make an application at the border and was sent back to Belarus

# EU

## January

**23 January** – In *Sąd Okręgowy w Białymstoku (Regional Court, Bialystok, Poland) v. Mr Dawid Piotrowski* (C-367/16), CJEU holds that, when interpreting the European arrest warrant and the surrender procedures between Member States, the judicial authority of the executing Member State must refuse to surrender only those minors who are the subject of a European arrest warrant and, under the law of the executing Member State, have not yet reached the age at which they are regarded as criminally responsible for the acts on which the warrant issued against them is based

## February

**7 February** – European Parliament (EP) adopts resolution on zero tolerance for female genital mutilation (FGM), which urges the Commission and Member States to include FGM prevention measures in all policy areas and ratify the Istanbul Convention

## March

## April

**12 April** – In *A. and S. v. Staatssecretaris van Veiligheid en Justitie* (C-550/16), CJEU makes a preliminary ruling that an unaccompanied child must be interpreted as a third-country national or stateless person who is below the age of 18 at the time of his or her entry into the territory of a Member State and of the introduction of his or her asylum application in that State, regardless of whether or not he or she attains the age of majority in the course of the asylum procedure

## May

**3 May** – EP adopts a resolution on the protection of children in migration.

**8 May** – In *K.A., M.Z., M.J., N.N.N., O.I.O., R.I. and B.A v. Belgium* (C-82/16), CJEU holds that national authorities cannot refuse to examine an application for a right of residence for the purposes of family reunification solely on the ground that the third-country national is the subject of a ban on entering that Member State

## June

## July

## August

## September

## October

## November

## December

11 December – EP President appoints a new coordinator on children's rights

# 8 Rights of the child

*One in four children in the European Union live at risk of poverty or social exclusion, despite the slowly improving trend towards reducing child poverty. Not all children, however, benefit from the change in trend. Children with parents born outside the EU or with foreign nationality are more likely to be poor. The number of migrant and asylum-seeking children coming to the EU decreased again in 2018. Nevertheless, in certain Member States, the reception conditions – including the use of immigration detention – remained a serious problem. In 2018, the UN Committee on the Rights of the Child adopted its first decisions on individual complaints against Member States, mostly in relation to the situation and treatment of children in the context of migration. Member States have been slow to incorporate into national law Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, which enters into force in June 2019. Few have aligned their legislation to match the requirements of this directive.*

## 8.1. Child poverty

Although the overall trend is improving, child poverty in the EU persists. One in four children (persons below the age of 18 years) live at risk of poverty or social exclusion.[1] This raises concerns about the effective fulfilment of Article 24 of the EU Charter of Fundamental Rights, which provides that "[c]hildren shall have the right to such protection and care as is necessary for their well-being". As FRA pointed out in its 2018 report on the subject, fighting child poverty is also an issue of fundamental rights and legally binding obligations on the EU and its Member States, particularly with a view to promoting equal access to rights and equal opportunities.[2]

Having an ethnic or migrant background, having poorly educated parents, and living in single-parent households are major factors affecting child poverty. Efforts to fight child poverty seem to be gaining momentum at both the EU and national levels. The proposals related to child poverty in the EU's new budget are encouraging. Meanwhile, the need to implement the global Sustainable Development Goals (SDGs), including those on poverty, offers an incentive for more effective policies.

### 8.1.1. Child poverty rate slightly improves, but not for all children

The percentage of children at risk of poverty or social exclusion (AROPE) has decreased in the EU-28 since 2012. The AROPE indicator, which Eurostat provides, combines three different sub-indicators: 'at risk of poverty', 'severe material deprivation' and 'very low household work intensity'.[3] The AROPE rate for children in 2017 was 3.2 percentage points lower than during the peak of the economic crisis in 2012, Eurostat data published in 2018 show.[4] In 2012, 28.1 % of children in the EU-28 were at risk of poverty or social exclusion; the rate dropped to 24.9 % by 2017. There are substantial differences between Member States. The AROPE rate in 2017 ranges from around 15 % for children in **Czechia**, **Denmark**, **Finland** and **Slovenia** to more than 30 % in **Spain**, **Lithuania**, **Hungary** and **Italy**, 36 % in **Greece**, and almost 42 % in **Bulgaria** and **Romania**.

In 2017, 32.5 % of children in the EU-28 with parents born in a foreign country were at risk of poverty. This proportion, in contrast to the general trend, had

increased by 1 percentage point since 2016, according to the latest Eurostat data.[5] As Figure 8.1 shows, the situation is even worse for children whose parents have a foreign citizenship: in 2017, 40.7 % of these children were at risk of poverty compared with 35.8 % in 2016, which represents an increase of nearly 5 percentage points.[6] In comparison, the proportion at risk of poverty in 2017 was 17.1 % for children with parents born in the country of residence and 17.4 % for children with parents who have the citizenship of the reporting country. However, the risk of poverty for children as a function of their parents' background varies considerably by country of residence.

The education level of parents and the household type are the most important factors influencing child poverty. The lower the parents' education level, the higher the likelihood that the children live at risk of poverty, Eurostat data reveal. In 2017, 52.9 % of children whose parents had not completed lower secondary education (ISCED 0–2) were at risk of poverty, compared with 23.0 % of children whose parents completed upper secondary education but did not go to university (ISCED 3–4), and 7.7 % of those whose parents had tertiary education (ISECD 5–8).[7] Furthermore, children in single-parent households are in a much more vulnerable situation than children in households with at least two adults; 35.3 % of single-parent households are at risk of poverty compared with 16.8 % of households with dependent children and at least two adults.[8]

## 8.1.2. EU and national policy developments in 2018

### Main EU policy developments

**FRA ACTIVITY**

#### Tackling child poverty: a matter of fundamental rights

A year after the proclamation of the European Pillar of Social Rights, FRA published its report *Combating child poverty: An issue of fundamental rights* in October 2018. The report aims to raise awareness of the fact that tackling child poverty is not only a matter of policy priorities, but an issue of fundamental rights and legally binding obligations, both for EU Member States and for EU institutions.

*See FRA (2018), Combating child poverty: An issue of fundamental rights, Luxembourg, Publications Office.*

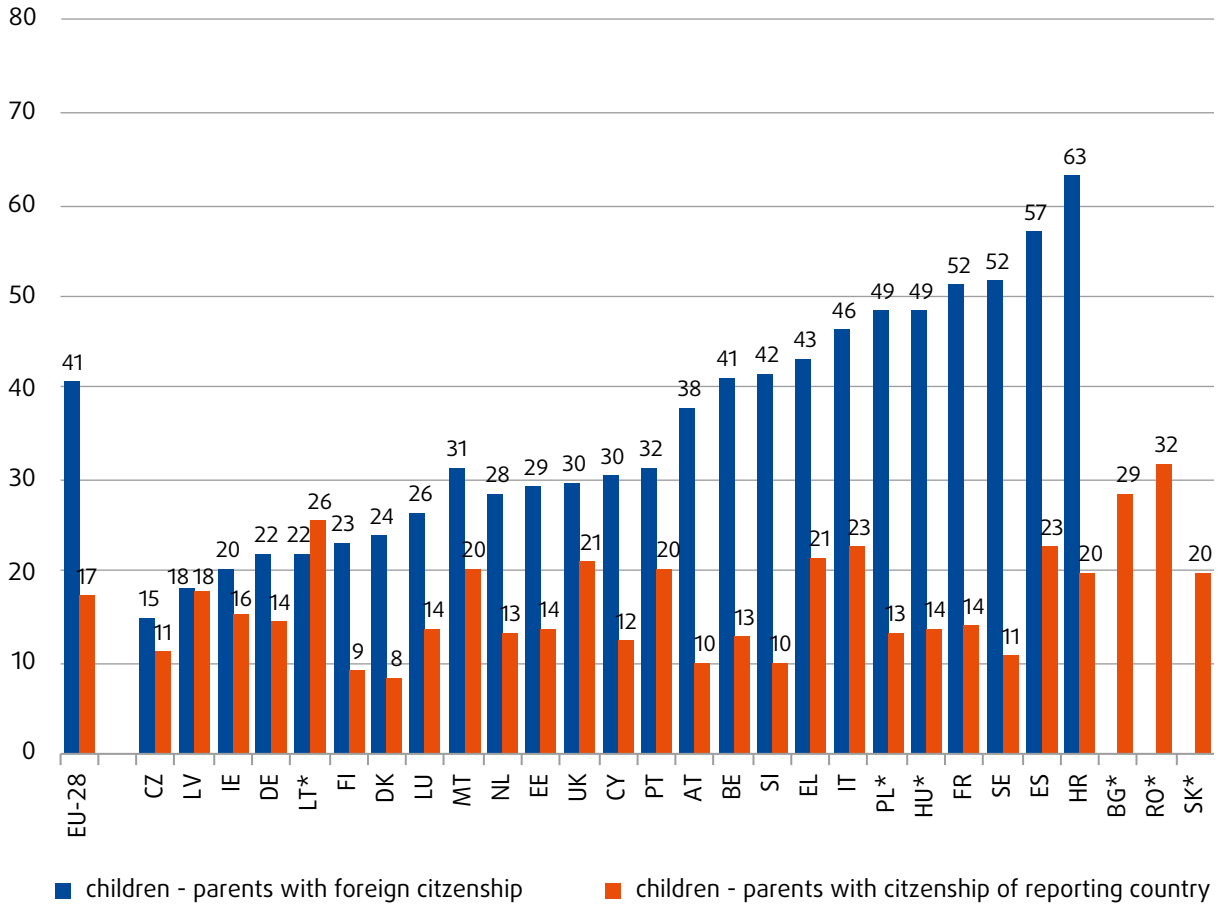
A positive development in 2018 was that the European Commission's proposal for the EU budget for 2021–2027 includes "a more social Europe implementing the European Pillar of Social Rights" among its general policy objectives.[9] In relation to child poverty in particular, the specific objectives of the European Social Fund+ (ESF+) refer explicitly to children as potential beneficiaries of actions that aim to promote the social integration of people at risk of poverty or social exclusion.[10] In addition, the draft new Common Provisions Regulation suggests including child poverty considerations in the new conditionality system proposed for Member States to access EU funding. Concretely, this new conditionality system requires that EU Member States design and apply a national strategic policy framework for social inclusion and poverty reduction that includes "[e]vidence-based diagnosis of poverty and social exclusion including child poverty".[11] In this context, the European Parliament asked the Commission to conduct a study to assess the feasibility of a child guarantee scheme.[12] The study focuses on children in vulnerable situation and is expected to deliver relevant recommendations at the beginning of 2020.

In December 2018, the Committee on Employment and Social Affairs of the European Parliament adopted its report on the new ESF+ Regulation. It suggested including a provision obliging Member States to allocate at least 5 % of their ESF+ resources (i.e. € 5.9 billion across the EU) to targeted actions aimed at implementing a potential future European child guarantee scheme.[13] The European Parliament upheld this suggestion and included it among its proposed amendments to the ESF+ Regulation on 16 January 2019. The future of this proposal is still to be decided after negotiations between Member States and EU institutions in the coming months. Furthermore, following a request by the European Parliament, the European Commission in 2018 undertook a study on the feasibility of such a guarantee scheme.[14] The study focuses on children in vulnerable situations and is expected to deliver relevant recommendations at the beginning of 2020.

The European Semester continues to give little consideration to child poverty, as past FRA fundamental rights reports pointed out. The only country-specific recommendation in 2018 directly related to child poverty addressed **Spain**; it underlined the need to improve family support and coverage gaps in income-guarantee schemes. Another, addressed to **Lithuania**, was limited to a recital referring to child poverty, although the actual recommendation addressed poverty in only general terms.[15]

The need to include child poverty among the challenges identified by country-specific recommendations will become more compelling in the context of the new EU Funds. According to relevant proposals, these new EU Funds will call on Member States to allocate EU resources to addressing the country-specific recommendations they receive.[16] If these recommendations do not include the fight against

**Figure 8.1: Children at risk of poverty, by citizenship of parents and EU Member State, 2017 (%)**




*Note:* ** Data for children with parents with foreign citizenship are unreliable (Eurostat).*

*Source:* *FRA, 2019 [based on Eurostat (2018), At-risk-of poverty rate for children by citizenship of their parents (population aged 0 to 17 years) [ilc_li33], last update 18 March 2019]*

child poverty, the Member States might not provide sufficient amounts of resources. It will therefore be important to recognize the importance of, and to highlight, the fight against child poverty among all the other challenges.

## Promising policy developments at national level

The fight against child poverty seemed to gain some momentum in certain Member States in 2018. In **France**, the plan to combat poverty places particular emphasis on child poverty and the protection of the rights of children.[17] In **Spain**, the authorities have committed to adopting a new national strategic framework to combat poverty indicating the fight against child poverty as one of its main targets.[18] In **Ireland**, the national implementation plan for SDGs adopted in 2018 embraces the target to reduce at least by half the proportion of children living in poverty by 2030.[19]

In **Finland**, the Ombudsman for Children has chosen to focus its annual report on child poverty,[20] while also submitting to parliament his first report on the state of children's rights and well-being.[21] Following these interventions, the Finnish Government launched the preparation of a national strategy for children.[22]

In **Belgium**, the Flemish government adopted a new child benefits system, called '*Groeipakket*' (Growth Package). It consists of three fixed benefits, which apply to every child residing in the Flemish region: a one-off amount for each birth or adoption; a fixed monthly amount, which is the same for each child; and an additional 'school bonus' for each child, delivered in August.[23] **Lithuania** introduced universal child allowances for every child.[24] In **Estonia**, the amounts of such allowances increased.[25] In **Croatia**, new legislation that came into force in 2018 provides that all pupils of primary schools will receive free textbooks for the school year 2019/2020.[26]

Promising practice

### Establishing a High Commissioner against Child Poverty

**Spain** created the Office of the High Commissioner against Child Poverty in June 2018, after the UN Committee on the Rights of the Child addressed recommendations on child poverty to Spain in March 2018. As part of its mandate to enhance public policy analysis and ensure best practices in fighting against child poverty, the office is developing a map of child poverty that provides a detailed description of the spatial distribution of child poverty in Spain at the census tract level. The map database will merge income-related data with additional indicators, such as material deprivation and behavioural patterns, to improve understanding of the multidimensional nature of child poverty. The map will help to increase the efficacy of public policies by improving the targeting of measures to combat child poverty. It will also inform a set of policy interventions by the National Alliance to Fight Child Poverty, which the High Commissioner leads. The alliance promotes partnerships between the private sector and civil society.

*For more information, see the High Commissioner's website and 2018 UN Committee on the Rights of the Child concluding observations on the combined fifth and sixth periodic reports of Spain (paras 9(c), 26(b) and 35(c)).*

### 8.1.3. Member State efforts to reach SDGs in relation to rights of child

The global 2030 Agenda and its 17 SDGs provide a comprehensive global policy framework for sustainable development (for more information on SDGs, see Chapter 1).[27] Several SDGs, and their specific targets, reflect children's rights, such as SDG 4 on inclusive and equitable quality education, SDG 5 on eliminating all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation (SDG Target 5.2), SDG 8 on fighting child labour in all its forms (SDG Target 8.7), and SDG 16 on ending abuse, exploitation, trafficking and all forms of violence against and torture of children (SDG Target 16.2). These SDGs correspond to concrete legally binding obligations enshrined in the EU Charter of Fundamental Rights, such as Article 24 on the rights of the child, Article 14 on the right to education, Article 32 on the prohibition of child labour and Article 33 on the legal, economic and social protection of the family. The whole range of the provisions of the Convention on the Rights of the Child (CRC) is also relevant, and binding on all EU Member States.

SDG 1 is about ending poverty in all its forms everywhere. More concretely, Target 1.2 requires States to reduce at least by half the proportion of all persons living in poverty by 2030.[28] The target groups explicitly include children living in poverty. At the EU level, this would mean reducing the number of children living in poverty from 27.1 % (25.5 million) in 2015,[29] when the SDGs were adopted, to 13.5 % (12.7 million) by 2030.

By the end of 2018, all but four EU Member States (**Austria**, **Bulgaria**, **Croatia** and the **United Kingdom**) had presented their voluntary national review (VNR) reports at the High Level Political Forum, the central UN platform for monitoring the implementation of SDGs at the global level.[30] **Croatia** and the **United Kingdom** will present their reports in 2019. The VNR reports provide an overview of national structures, policies and concrete measures to implement the SDGs. References to children highlight relevant national actions in relation to several SDGs. A common child-related characteristic of VNR reports that EU Member States have submitted is their focus on education (SDG 4).

The SDG framework calls on governments to design and implement national policies that link social sustainability with the fight against poverty, including child poverty. The majority of the VNR reports that EU Member States have submitted since 2016 include such references. For example, the reports by **Belgium**, **Cyprus**, **Hungary**, **Latvia**, **Lithuania**, **Malta**, **Poland**, **Portugal** and **Spain** contain comprehensive overviews and detailed information on their actions in fighting child poverty.[31] In many cases, however, VNR reports lack explicit reference to child poverty, although they describe measures to fight poverty targeting the general population, such as minimum income schemes or housing assistance, that may also have a positive impact on the situation of children living in poverty. This is a missed opportunity for governments to present their efforts comprehensively and to reflect on their outcomes on specific SDG targets. For example, with respect to national reviews on Target 10.7, on children in migration, UNICEF urges governments to "report on all children in national reviews, including non-national children".[32]

## 8.2. Children in migration

The numbers of migrant and asylum-seeking children arriving in the EU decreased once again in 2018, although not as significantly as during 2017. While the reduced number of children has slowly improved the reception conditions of certain Member States, challenges remain in certain areas of reception or in certain Member States. The Committee on the Rights of the Child and the European courts took important decisions that will guide Member States' authorities in ensuring the protection of the rights of migrant and asylum-seeking children.

### 8.2.1. Numbers continue to decrease

The number of children applying for asylum in the EU continued to decrease during 2018.[33] The total number of children applying for asylum went from 398,255 in 2016 to 213,970 in 2017 and 189,990 in 2018.[34] **Germany** received the highest number of applications from children in 2018: 80,550, representing almost one half of the total applications filed by children in the EU. These were followed by **Greece**, **France**, and **Spain**.

The number of applications from children considered unaccompanied decreased significantly over the past three years. They decreased from 63,245 in 2016 to 31,395 in 2017, and to 19,740 in 2018.[35]

Arrivals through the Mediterranean routes – **Greece**, **Italy** and **Spain** – also decreased. Spain became the main route in 2018, with 58,569 sea arrivals.[36] Almost 12 % of them were children. Greece[37] registered 32,497 sea arrivals (almost 37 % of them children) and Italy[38] 23,370 (18 % of them children).

More than 3,500 unaccompanied and separated children arrived in Europe via the Mediterranean routes in the first seven months of 2018, compared with over 13,300 in the same period in 2017, according to the United Nations High Commissioner for Refugees (UNHCR). UNHCR has reported on the children's difficult and dangerous journeys, which include similar abuses to those experienced by adults, including their transferral to detention facilities upon interception off the Libyan coast and disembarkation in Libya. As of the end of July 2018, nearly 1,200 children had been transferred to detention in Libya.[39]

According to **Italy**'s Ministry of Labour and Social Policies, 10,787 unaccompanied children were registered as being present in Italy as of 31 December 2018. The majority were boys. More than 14 % of the unaccompanied children were of Albanian nationality, and 38 % of the unaccompanied children were in Sicily.[40] This represents a decrease of about 7,000 from the number of unaccompanied children registered in Italy at the end of 2017.[41]

In **Greece**, the National Center for Social Solidarity estimates that, by 31 December 2018, there were 3,741 unaccompanied children, 94 % boys and 6 % girls. Of them, 30 % came from Pakistan, 32 % from Afghanistan and 11 % from Syria.[42]

### 8.2.2. Protecting children in migration: policy developments and case law

At the EU level, the reform of the Common European Asylum System is still under discussion. The European Commission, EU agencies and Member States continued various initiatives,[43] implementing policy actions for the protection of children in migration established in 2017.[44]

The European Commission followed up on the implementation of actions indicated in the 2017 Communication on the protection of children in migration. Two meetings were organised in 2018 with experts from national child protection and asylum/migration services and relevant civil society organisations. The EU funds available under the Asylum, Migration and Integration Fund have been used to implement various initiatives, which benefit unaccompanied children or children with families, among others.[45] Under the Rights, Equality and Citizenship (REC) Annual Work Programme for 2018, a direct grant was awarded to the Dutch guardianship authority NIDOS for a two-year period (2018-2019) to coordinate the European network on guardianship.[46]

Both the Court of Justice of the EU (CJEU) and the European Court of Human Rights examined important aspects of the protection of children in migration (see timeline). The CJEU made an important ruling on family reunification of an unaccompanied child in *A. and S. v. Staatssecretaris van Veiligheid en Justitie* (C-550/16).[47] The case concerned an Eritrean girl who applied for asylum as a child in the **Netherlands**, but who attained the age of majority during the procedure. When she was granted asylum and applied for family reunification, the request was denied on the basis that she was no longer a child. The CJEU held that the girl should have been regarded as a 'minor' for the purposes of the family reunification application. This would ensure that the success of the application for family reunification depended principally upon facts about the applicant and not on the time that the authorities take to process it. For more information on family reunification, see Chapter 6.

At the international level, 2018 was the first year the Committee on the Rights of the Child took decisions based on the individual complaints framework established in the Third Optional Protocol to the CRC.[48] Fifteen EU Member States have now ratified the protocol (**Belgium**, **Croatia**, **Cyprus**, **Czechia**, **Denmark**, **Finland**, **France**, **Germany**, **Ireland**, **Italy**, **Luxembourg**, **Portugal**, **Slovakia**, **Slovenia** and **Spain**).[49]

Two of the three decisions that the committee took during 2018 concerned children in migration. In the case of *I.A.M. (on behalf of K.Y.M.) v. Denmark*, the committee held that the State had violated the girl's rights to protection from all forms of violence (Article 19 of the CRC) and to have her best interests (Article 3 of the CRC) be a primary consideration. The case concerned the decision to deport a girl to her country of origin, where she could face the risk of female genital mutilation.[50]

In *N.B.F. v. Spain*, the committee found that the State had violated the best interests of a child (Article 3 of the CRC) and the right to be heard (Article 12 of the CRC) in a procedure to establish the age of a person claiming to be a child. The committee raised concerns about the medical method used (X-ray) and the lack of a legal representative accompanying the child during the procedure.[51]

The right to be heard was also an important element in national legal cases related to children in migration in EU Member States. In **Poland**, the Supreme Administrative Court annulled the judgment of the Voivodship Administrative Court and migration authorities regarding an order to return two Chechen children to **Russia**. The court found that they had issued their decisions on the basis of incomplete evidence, and without hearing the children.[52]

The Constitutional Court of the Republic of **Slovenia** repealed a Supreme Court decision in a case in which a child was not heard during his asylum application procedure. According to the court:

"*The principle of the child's best interests requires special procedural guarantees in the international protection procedure involving an unaccompanied minor. The procedural guarantees, including a personal interview, are necessary for a complete and correct assessment of all relevant facts of the case. With the decision in question, the Supreme Court of the Republic of Slovenia violated the principle of the best interest of a child and therefore violated Article 56 of the Constitution of the Republic of Slovenia.*"[53]

## 8.2.3. Reception conditions

The Reception Conditions Directive requires Member States to ensure that material reception conditions provide an adequate standard of living for asylum seekers, which guarantees their subsistence and protects their physical and mental health. Many EU Member States had sufficient reception capacity during 2018, as the agency repeatedly reported in its regular migration updates published during 2018.[54] Moreover, the European Asylum and Support Office (EASO) produced new guidance on reception to support Member States in improving reception conditions.[55] The guidance follows the aim and structure of the existing reception guidance,[56] but adds specific aspects related to unaccompanied children – such as information, participation and representation, identification, assessments, response to special needs and safety risks.

Nevertheless, reception conditions for children, coming with their families or unaccompanied, remain a serious problem in certain Member States, which do not provide adequate long-term accommodation, allow only limited access to education, or use immigration detention for children.

The situation varies between Member States, raising different areas of concern. Reception conditions in **Greece**, especially in the 'hotspots', continued to be very poor. Some of the children lived in tents or in overcrowded containers, taking turns to sleep. As well as access to decent accommodation, they lack water, sanitation facilities or heating. The lack of long-term accommodation for unaccompanied children continues unresolved. More than half of the 3,741 unaccompanied children in **Greece** (1,983 children) do not have appropriate long-term accommodation.[57] In July, after years of discussions, **Greek** authorities adopted a new guardianship law,[58] which aims to improve the existing system through professional guardians for unaccompanied children. Implementing acts are still to be adopted.

The Council of Europe's Special Representative on Migration and Refugees conducted a fact-finding mission to **Spain** in March 2018. A report praised the fact that unaccompanied immigrant children and Spanish children without parental care are accommodated together. However, it criticised the reception facilities for unaccompanied children in Ceuta and Melilla.[59]

In **Hungary**, the authorities continued to assign child protection guardians only to unaccompanied asylum seeking children under the age of 14,[60] who are placed in a children's home in Fót, near Budapest. Unaccompanied children seeking asylum over 14 years of age were still placed in the Röszke transit zone under guardianship by an 'ad-hoc guardian' until their asylum claims are decided upon. Such children do not need the guardians' consent if they decide to leave the transit zone through the one-way exit to **Serbia**.[61]

In August 2018, the **Croatian** Government adopted the Protocol on the Treatment of Unaccompanied Children. It covers police treatment, accommodation, international protection, integration, family reunification and integration into Croatian society.[62] However, during a parliamentary debate, the **Croatian** Ombudsperson for Children warned that, despite existing efforts for improvements, the reception and protection system for migrant children in Croatia is still inadequate.[63]

**Germany** established in the 'Masterplan Migration' in spring 2018 the AnkER (*Ankunft, Entscheidung, Rückführung* – reception, decision-making and return) facilities.[64] Since August 2018, three German states have started creating AnKER facilities.[65] In these facilities, all relevant authorities are present on the spot to accelerate the asylum procedures of incoming asylum seekers. Civil society has raised concerns about the use of these facilities to accommodate children.[66]

In **France**, 80 % of migrant children living in squats, in emergency housing or temporarily with relatives do not attend school, according to a joint statement published by the National Consultative Commission on Human Rights and a number of NGOs.[67] In the *EUROCEF v. France* decision, the European Committee of Social Rights considered that France had violated the right of unaccompanied foreign children to social, legal and economic protection on several grounds (violations of Article 17 (1) of the European Social Charter) due to shortcomings in the national shelter assessment and allocation system for unaccompanied foreign children; delays in appointing an ad hoc guardian; the detention of unaccompanied children in waiting areas and in hotels; the use of bone testing to determine age, which the committee considered inappropriate and unreliable; and a lack of clarity about how unaccompanied children could access an effective remedy.[68]

Promising practice

### Taking action to prevent children from going missing

The County Administrative Board of Stockholm (**Sweden**) was assigned to coordinate the development of procedures and guidelines for each of the county administrative boards in relation to children going missing. By the end of 2018, all 21 county administrative boards had developed standardised steps to take when a child disappears, as well as preventive measures, together with other relevant actors such as the Migration Agency, the Swedish Police, the local social services and civil society organisations.

For example, the county of Östergötland has produced guidelines for professionals that include a checklist of steps to take when a disappearance occurs, e.g. whom to contact at what stage, and a checklist of how to prevent disappearances, e.g. listing risk factors.

*For more information, see County Administrative Board of Stockholm, Information on coordination work on missing children; County Administrative Board of Östergötland, Plan for missing children.*

Several Member States have continued to offer foster care systems as possible accommodation for unaccompanied children, as provided for in Article 24 of the Reception Conditions Directive.[69] The **Netherlands** took a step forward on 1 July 2018, when it extended foster care for unaccompanied young adults up to the age of 21.[70]

## Immigration detention of children

Under EU law, children are to be detained only as a last resort and only if less coercive measures cannot be applied effectively. Such detention must be for the shortest time possible.[71] UN Member States endorsed the 'Global compact for safe, orderly and regular migration' in Marrakech in December. It states that immigration detention should be a measure of last resort and suggests that State Parties should work to end the practice of child detention in the context of international migration.[72]

### Providing alternatives to detention

*"Protect and respect the rights and best interests of the child at all times, regardless of migration status, by ensuring availability and accessibility of a viable range of alternatives to detention in non-custodial contexts, favouring community-based care arrangements, that ensure access to education and health care, and respect the right to family life and family unity, and by working to end the practice of child detention in the context of international migration".*

*See Global Compact for Safe, Orderly and Regular Migration, UN General Assembly resolution 73/195, paragraph 29(h).*

The United Nations Committee against Torture (CAT) has provided similar guidance. In its concluding observations on **Czechia** in June 2018, the committee asked the State party to end the practice of detaining persons in need of international protection, particularly children, and ensure the provision of alternative accommodation for families with children.[73] Similarly, in its concluding observations on the **Netherlands** (December 2018), CAT raised concern about the reports of the increased number of families with children awaiting return and of unaccompanied asylum-seeking children placed in detention; it asked the State party to take all measures to avoid detaining children and develop alternative measures.[74] However, according to the official statistics of the Dutch authorities, the number of families with children in detention appears to fluctuate or even decrease in certain years.[75] The CAT also positively noted the new detention regime for unaccompanied children. Detention of unaccompanied children may only be considered if less coercive measures cannot be applied effectively and there is a real risk of absconding or if the foreign national is interfering with his or her return.

At the European level, the European Parliament emphasised in its resolution on children in migration, in May 2018, that children must not be detained. It called on Member States to develop other forms of accommodation. It also called on the Commission to enact infringement procedures against Member States in case of protracted and systematic immigration detention of children and their families, to ensure compliance with children's fundamental rights.[76] The Reception Conditions Directive establishes that a child shall be detained only as a measure of last

resort and for the shortest possible period of time and if other alternatives cannot be applied effectively (Article 11 (2)).[77]

In *Bistieva and others v. Poland*, a mother had been detained with her three children for almost six months. The European Court of Human Rights found Poland in violation of Article 8 of the ECHR (right to respect for private and family life).[78] In its most recent report on the situation in transit zones in **Hungary**, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommended putting an end to the accommodation of unaccompanied children – including those aged 14 to 18 – and to transfer all unaccompanied children to an appropriate (semi-) open establishment. If exceptionally children are held with their parents in a transit zone, their stay should be for the shortest possible period of time, and every effort should also be made to avoid splitting up the family.[79]

Some Member States, however, created new detention centres or introduced legal changes that facilitate detention. In July 2018, **Belgium** inaugurated a new closed detention centre for families with children pending return.[80] The NGO Children on the Run has strongly criticised the facility.[81] The Flemish and French speaking offices of the Children's Rights Commissioner visited the facilities and presented an opinion in September 2018. He expressed concern about the extensions of the maximum period of stay, and noted stress within the families and fear among the children.[82] In **France**, the Immigration Law of September 2018 extended the maximum length of administrative detention from 45 days to 90 days, including for families with children.[83]

In the **Netherlands**, a new Bill for The Return and Aliens Detention was adopted in June 2018 by the House of Representatives and is pending approval in the Senate. It allows detention of families and unaccompanied children as a last resort and for as short a period as possible. For families with children the period of detention will only commence two weeks before their planned removal from the **Netherlands**, but can be prolonged if the delay is due to actions by the family members. Detention was already possible before, but the new law formalises the special location for children and their families, and certain child-specific guarantees, such as the duty of care by the director of the facility.[84]

In December, **Italy** adopted Decree Law No. 132/2018. It allows the extension of the maximum period of detention pending return, from 90 days to 180 days.[85] The Ombudsperson for Children[86] and UNHCR[87] have requested that the new rules expressly exclude detention of children, unaccompanied children who have recently become adults, and families with at least one child who is a minor.

### Education, training and employment

The Reception Conditions Directive regulates access to education, training and employment (Articles 14 to 16). Accessing them is critical for successful integration. However, many migrant children and young people still face difficulties accessing them. In **Greece**, a group of parents and guardians applied to the Council of State for the annulment of a decision of the Minister of Education, Research and Religious Affairs that allowed the registration of migrant children in public primary and secondary schools. The Council of State rejected the application of parents and guardians against the integration of children from refugee camps into public educational structures. It asserted that their attendance in no way affects the interests of the other pupils and their parents.[88]

The **Austrian** government introduced limitations on asylum seekers accessing apprenticeships. Initially, a decree of the Federal Ministry for Labour in 2012 allowed asylum seekers to take up apprenticeships in understaffed professions up until the age of 18. In 2015, it was extended to the age of 25.[89] On 12 September 2018, the government withdrew the decree that enabled asylum seekers to become apprentices.[90]

**Ireland** opted in to the Reception Conditions Directive in 2018.[91] This decision was partly a response to the judgment of the Irish Supreme Court in *NHV v. Minister for Justice and Equality & Others* in 2017. In this case, the court put an end to the absolute prohibition on asylum seekers' access to the Irish labour market, which would include children from the age of 16.[92] On 9 February 2018, the Supreme Court formally deemed unconstitutional the absolute ban that had been in place on asylum seekers entering employment.[93]

The Ombudsperson in **Spain**, in his annual report, criticised that unaccompanied migrant children do not have an automatic right to employment. According to the Ombudsperson, treatment is different for unaccompanied migrant children and other foreign children, who have automatic access to employment from the age of 16 years. According to the Ministry of Employment and Migration, unaccompanied children need to request permission to take up employment in each individual case.[94]

## 8.3. Children and juvenile justice

Most developments in the area of juvenile justice related to incorporating into national law Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (the Procedural Safeguards Directive).[95] National efforts focused on legislative

changes and on training of professionals and research, often funded by the European Commission.

On 25 and 26 June 2018, the European Commission organised a conference on child-friendly justice and integrated child protection systems – lessons learned from EU projects. The main goal of the meeting was to showcase good practices to inspire others and to take stock of what has been done since 2011/2012 with EU funds under the Rights, Equality and Citizenship Programme (REC); and to explore how EU funds can best support implementation and enforcement of the rights of the child, with a view also to informing future policy and funding priorities.

### 8.3.1. Procedural Safeguards Directive: a new instrument entering into force in 2019

The Procedural Safeguards Directive was adopted in 2016, and 2018 was a year for preparatory action for incorporating it into national law. Member States must do so by 11 June 2019.[96] The directive is legally binding on EU Member States, with the exceptions of **Denmark**, **Ireland** and the **United Kingdom**.

The directive aims to ensure the effective protection of the rights of children in the EU who are in conflict with the law. It lays down a series of procedural safeguards to ensure that children "are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration".[97]

**FRA ACTIVITY**

#### Mapping minimum ages across the EU

Throughout 2018, FRA published a series of online maps and tables showing the varying patterns concerning age requirements for children to acquire rights across the EU. They illustrate inconsistencies, protection gaps and restrictions deriving from different age thresholds. FRA published a report on minimum age requirements for children's participation in judicial proceedings, and one on fingerprinting and age assessments in an asylum context.

The findings relating to juvenile justice show that, in the majority of EU Member States, children in criminal proceedings are entitled to special support and procedural safeguards, such as audio-visual recording or interviewing by specialist personnel, until the age of 18 years, irrespective of whether they are victims, witnesses or suspects/offenders.

*See FRA (2018), Mapping minimum age requirements: Children's rights and justice and Children's rights and justice: Minimum age requirements in the EU, Luxembourg, Publications Office.*

Existing national procedural safeguards do not always cover all areas addressed by the directive. Amendments to national law are necessary in Member States such as **Cyprus**, **Estonia**, **Germany** and the **Netherlands**. Other Member States might need legislative changes if they have set a lower age than 18 years in their procedural safeguards. For example, in **Poland** the age limit for procedural safeguards is 15 years, and in Scotland (**United Kingdom**) it is 16 years.[98]

FRA's past research on child-friendly justice[99] has identified a number of challenges in areas that the directive covers. For example, Article 18 enshrines the child's right to legal aid. Even though all EU Member States provide for legal aid for child suspects/offenders without an explicit minimum age requirement, in the majority of Member States (17) legal aid is dependent on income requirements. **Belgium**, **Bulgaria**, **Denmark**, **Estonia**, **Hungary**, **Latvia**, **Lithuania**, the **Netherlands**, **Romania**, **Sweden** and the **United Kingdom** provide legal aid for children without any income requirements.[100]

Article 14, on the right to protection of privacy, postulates that, "to that end, Member States shall either provide that court hearings involving children are usually held in the absence of the public, or allow courts or judges to decide to hold such hearings in the absence of the public" (Article 14 (2)). The majority of EU Member States (16) do not set specific age limits regarding children's right to privacy in court hearings, so the application of the so-called closed-door rule (i.e. holding hearings without the public present) lies within courts' discretion, FRA's research on minimum age shows.[101] Children feel very unsafe and uncomfortable when too many persons are present during hearings, and even more so when those persons' roles are unclear, FRA's studies on child-friendly justice found.[102] In one Member State, the closed-door rule applies to hearings only if children are younger than 16 (**Malta**).

### 8.3.2. National efforts in the area of juvenile justice

By the end of 2018, only five Member States – **Finland**, **Hungary**, **Latvia**, **Luxembourg** and **Slovakia** – had taken action to incorporate the Procedural Safeguards Directive into their national legislation. In **Hungary**, a new criminal procedural act entered into force on 1 July 2018;[103] it implements most provisions, such as the right to information, the right of the child to have the holder of parental responsibility informed, assistance by a lawyer and rules on specific treatment. In **Latvia**, the legal reform[104] ensured that all alternative measures need to have been evaluated before detention is used, as a measure of last resort and for security purposes only. In **Luxembourg**, in April 2018,[105] Directive 2016/800 was incorporated into Bill No. 7276 on the protection of young people, which

aims to reform youth protection.[106] In **Finland**, the Act on fair trial in criminal proceedings was amended to ensure that an accused person below 18 years cannot be sentenced to imprisonment unless he or she has been personally heard in the main proceedings.[107] **Latvia**, **Slovakia** and **Spain** have notified the Commission of complete transposition.

Based on an inquiry by the government in **Sweden**, the Ministry of Justice concluded that Swedish law was already in line with the Procedural Safeguards Directive.[108] Other Member States are in the process of drafting legislative amendments, establishing working groups or approving draft new legislation. For example, the **Finnish** Ministry of Justice has submitted a legislative proposal[109] with further amendments to eight laws addressing issues such as the child's right to information and the necessity for a pre-sentence report. **Bulgaria** adopted a draft legislative package to amend the Criminal Code[110] and the Criminal Procedure Code[111] on 13 December 2018, but the president imposed a veto[112] so it had to return to the National Assembly for new deliberations.

The UN Committee against Torture (CAT) presented its concluding observations[113] on the **Netherlands**. It expressed concern that children from the age of 16 years may be tried as adults under the ordinary criminal law for serious offences, and that children may be interviewed without a lawyer or their parents present in cases of minor offences.

On 13 March 2018, the Age of Criminal Responsibility (Scotland) Bill[114] was introduced to the **Scottish** Parliament and completed the second stage (out of three) on 7 February 2019. If it is enacted, the new law will raise the age of criminal responsibility in Scotland from eight to 10 years old.

EU Member States also focused on the training of professionals, as Article 20 of the directive requires. They particularly provided guidance on the effective defence of child suspects, as in **Hungary**[115] and **Romania**.[116] The Ministry of Justice and the International Institute for the Rights of the Child in **Bulgaria**[117] organised training on the rights of children and child-friendly hearings, as part of the juvenile justice specialisation for professionals. In addition, ethics rules for working with children became an obligatory part of police work.[118]

The European Commission has funded several comparative studies that will be useful in the development of training and potentially for legislative developments. These include research by Terre des Hommes,[119] Defence for Children International[120] and the International Juvenile Justice Observatory.[121]

Promising practice

### Remaining in the community as alternative to detention

The Minister for Children and Youth Affairs in **Ireland** has introduced a Bail Support Scheme (BSS) for children suspected of committing a criminal offence.

This scheme is to help child suspects remain on bail in the community, rather than being imprisoned in child detention centres on remand awaiting the hearing of their trial. This pilot scheme was subcontracted to Extern, a social justice charity, and aims to offer an alternative to detention for young persons. It focuses on supporting young offenders to remain within their home and in education, training or employment, keeping them out of trouble with the law. Extern intervenes as needed using Multisystemic Therapy (MST). This type of therapy is in operation worldwide and is proven to help reduce reoffending rates, keep young people in education, and decrease adolescent drug and alcohol use.

*For more information, see the press release on the Department of Children and Youth Affairs' webpage.*

## FRA opinions

Despite a downward trend over the past five years, child poverty in the EU persists. One out of four children lives at risk of poverty or social exclusion. This raises concerns about the respect of Article 24 of the EU Charter of Fundamental Rights, which provides that "[c]hildren shall have the right to such protection and care as is necessary for their well-being". Since 2016, in contrast to the general trend, the situation for children with migrant backgrounds has worsened, increasing inequality between them and children of the general population, the latest Eurostat data show. Meanwhile, child poverty considerations are practically absent from the European Semester, in particular from country-specific recommendations. This risks not taking child poverty into account adequately when disbursing public funds, including EU funds. A positive development in 2018 was the European Commission's proposal to include children among the potential beneficiaries of actions aiming to promote social inclusion in the context of the European Social Fund+ in the new EU funding period 2021-2027. Adding to this positive momentum are efforts to promote and substantiate the European Parliament's long-standing proposal for a European Child Guarantee Scheme for children in vulnerable situations.

Discussions and actions to fight child poverty are also relevant to the implementation of the Sustainable Development Goals (SDGs). The SDGs are part of the global 2030 Agenda, which sets out the policy framework for global sustainable development, and are grounded on international human rights obligations. In this respect, SDG 1 calls for halving poverty by 2030, including child poverty. The vast majority of EU Member States have already submitted a first voluntary national report on the implementation of the SDGs, as part of the annual review process that takes place every year at the UN High Level Political Forum on sustainable development. However, many of these reports contain no references at all to child poverty, or very limited ones.

FRA opinion 8.1

*EU and Member States' funding priorities should reflect the need to reduce child poverty at the levels aspired to by the sustainable development goal on poverty (SDG 1), in view of meeting the best interest of the child as laid down in Article 24 of the EU Charter of Fundamental Rights. To achieve this, EU institutions and Member States should consider allocating sufficient resources for combating child poverty using all available tools, including the European Child Guarantee Scheme for children in vulnerable situation, if established. Moreover, EU institutions should continue to include child poverty considerations in all phases of the European Semester, in particular in country-specific recommendations, given their potential impact on the use of EU Funds.*

*EU Member States should consider, in the context of the SDG assessment, to include in their voluntary national review reports specific references to national policies and more comprehensive data about child poverty, as well as any results of impact assessments on relevant policies.*

The number of migrant children arriving in Europe continued to decrease. About 150,000 children applied for asylum in 2018, compared with about 200,000 in 2017 and almost 400,000 in 2016. The Reception Conditions Directive provides a number of guarantees for asylum-seeking children, such as the assessment of special needs of children (Article 22), the appointment of a representative if unaccompanied (Article 24), the establishment of certain conditions when using immigration detention (Article 11), and access to education (Article 14), vocational training (Article 16) and employment (Article 15).The reduced number of children helped certain Member States, but not all, provide adequate reception facilities for children. Sometimes they did not provide even for basic needs, such as water and sanitation. Member States continued to detain child immigrants, despite the international discussions regarding limiting child detention to the minimum.

### FRA opinion 8.2

*In the context of migration, EU Member States should, in line with the Reception Conditions Directive, provide children with basic adequate housing, legal representation, access to school and further education. Member States should increase efforts to develop non-custodial alternatives to detention.*

Many EU Member States are still in the process of drafting or approving new legislation or amendments to existing legislative frameworks to incorporate the Procedural Safeguards Directive. The directive guarantees procedural safeguards for children who are suspects or accused persons in criminal proceedings. Member States are due to incorporate the directive into national law by 11 June 2019. In the context of juvenile justice proceedings, children have a right to be informed and heard in a child-friendly way, with the provision of legal aid and privacy protective measures, as several articles of the Procedural Safeguards Directive require. The effective exercise of this right remains a major concern that FRA and the European Commission's funded research have identified. Practical challenges sometimes arise due to differing age limitations among Member States, the provision of legal aid depending on income-related requirements, or the discretionary powers of judicial actors.

### FRA opinion 8.3

*In the process of incorporating into national law the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings, EU Member States should review age limitations or other conditions that in practice might hinder the effective access of children to certain procedural guarantees. EU Member States should also consider providing legal aid unconditionally to all children, including free-of-charge legal representation throughout the proceedings, and making specialised lawyers available.*

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# UN & CoE

## January

## February

## March

7 March – the Council of Europe's (CoE) Committee of Ministers adopts the Gender Equality Strategy for the years 2018-2023, which includes a Strategic objective on ensuring equal access of women to justice

23 March – CoE's anti-corruption body, the Group of States against Corruption (GRECO), adopts its first ever ad hoc reports, triggered by exceptional circumstances in Poland and in Romania

## April

3 April – CoE's Group of Experts on Action against Trafficking in Human Beings publishes its annual report, identifying an increase in trafficking for labour exploitation, which has emerged as the main form of human trafficking in several European countries

## May

3 May – GRECO publishes its annual report, expressing concern about the pace of the practical implementation of the measures introduced to fight corruption of Members of Parliament, judges and prosecutors

## June

13 June – the Heads of the European Asylum Support Office (EASO), European Police Office (Europol), European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), EU Judicial Cooperation Unit (Eurojust), European Institute for Gender Equality (EIGE), European Border and Coast Guard Agency (Frontex), EU Agency for Fundamental Rights (FRA), EU Agency for Law Enforcement Training (CEPOL), and the European Foundation for the Improvement of Living and Working Conditions (Eurofound) sign a Joint Statement to strengthen their commitment to a coordinated, coherent and comprehensive response to trafficking in human beings, including victims' rights

18 June – CCJE issues a statement as regards the situation on the independence of the judiciary in Poland

## July

4 July 2018 – CoE adopts a new counter-terrorism strategy for 2018–2022 based on prevention, prosecution and protection of victims

## August

1 August – Protocol No. 16 to the ECHR enters into force, enabling the highest national courts and tribunals, as designated by the member States concerned, to ask the ECtHR to give non-binding advisory opinions (to be delivered by the Grand Chamber) on questions of principle relating to the interpretation or application of the convention or the protocols thereto

28 August – In *Somorjai v. Hungary* (No. 60934/13), ECtHR holds that the applicant's complaint regarding the alleged lack of adequate reasoning with respect to a potential reference to the CJEU for a preliminary ruling was inadmissible. The applicant had not actually asked for such a reference to the CJEU in the relevant stages of the proceedings, and the domestic courts expressed their view that the Hungarian provisions and the EU law did not conflict. It also holds there had been a violation of the right to a fair trial (Article 6 (1) of the ECHR) owing to the length of proceedings

## September

## October

4 October – European Commission for the Efficiency of Justice of the CoE publishes its seventh evaluation report, on the main trends in the judicial systems of 45 European countries

16 October – Inter-Parliamentary Union and Parliamentary Assembly of the CoE publish a study showing alarming levels of acts of sexism, abuse and violence against women in parliaments

## November

6 November – In *Ramos Nunes de Carvalho e Sá v. Portugal* (Nos. 55391/13, 57728/13 and 74041/13), Grand Chamber of ECtHR, in a case concerning the disciplinary penalties imposed on a judge, holds, among others, that the insufficiency of the judicial review and the lack of a hearing either at the stage of the disciplinary proceedings or at the judicial review stage meant that the applicant's case had not been heard in accordance with the requirements of the right to a fair trial (Article 6 (1) of the ECHR)

## December

3 December – European Commission publishes its second progress report on the situation in EU Member States on trafficking in human beings, including victims' rights

21 December – CCJE issues an opinion following a request by the Judges' Association of Serbia to assess the compatibility with European standards of the newly proposed amendments to the Constitution of the Republic of Serbia that will affect the organisation of judicial power

# EU

## January

## February

7 February – European Parliament (EP) adopts a resolution on zero tolerance for female genital mutilation

27 February – In *Associação Sindical dos Juízes Portugueses* (C-64/16), CJEU holds among others that Article 19 of the TEU, which gives concrete expression to the value of the rule of law stated in Article 2 of the TEU, entrusts the responsibility for ensuring judicial review in the EU legal order not only to the CJEU but also to national courts and tribunals; and that the guarantee of independence, which is inherent in the task of adjudication, is required not only at EU level as regards the Judges of the Union and the Advocates-General of the CJEU, as provided for in the third subparagraph of Article 19 (2) of the TEU, but also at the level of the Member States as regards national courts

## March

1 March – EP adopts a resolution on the Commission's decision to activate Article 7 (1) of the TEU regarding the situation in Poland

13 March – In a plenary debate, the Members of the EP call on the 11 Member States that have not ratified the Istanbul Convention to do so

## April

19 April – EP adopts a resolution on the implementation of Directive 2011/99/EU on the European Protection Order

## May

2 May – Commission puts forward a proposal for a regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States

30 May – Commission proposes regulations for a Justice fund and a Rights and Values fund to contribute further to the development of a European area of justice

30 May – EP adopts a resolution on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime

## June

5 June – Council adopts its Conclusions on Protection of Victims of Terrorism, calling for effective cooperation between the authorities and entities responsible for the protection of victims of terrorism to facilitate the rapid exchange of information and assistance in the event of a terrorist attack

## July

4 July – EP adopts a resolution towards an EU external strategy against early and forced marriages

11 July – In *Abdul Wahed Shannan Al Rabbat v. European Commission* (T-12818), CJEU dismisses as inadmissible the applicant's application for the court to declare that the Commission had failed to bring proceedings against the United Kingdom in relation to its alleged violation of the Victims' Rights Directive. It holds that individuals cannot bring proceedings against the Commission for refusing to bring proceedings against Member States that fail to fulfil their obligations, as such refusal cannot constitute direct concern to natural or legal persons

25 July – In *LM* (C-216/18), CJEU holds that a judicial authority called upon to execute a European arrest warrant must refrain from giving effect to it after determining that there are substantial grounds for believing that the person concerned runs a real risk of suffering a breach of his fundamental right to a fair trial, as guaranteed by Article 47 of the EU Charter of Fundamental Rights, on account of deficiencies liable to affect the independence of the judiciary in the issuing Member State. According to CJEU, the requirement of independence also means, among others, that the disciplinary regime governing their members must display the necessary guarantees to prevent any risk of that regime being used as a system of political control of the content of judicial decisions

## August

## September

11 September – EP adopts a resolution on measures to prevent and combat mobbing and sexual harassment at the workplace, in public spaces, and in political life in the EU

12 September – EP adopts a resolution on a proposal calling on the Council to determine, pursuant to Article 7 (1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded

## October

19 October – In *Commission v. Poland* (C-619/18 R), Vice President of CJEU provisionally orders that Poland must immediately suspend the application of the provisions of national legislation relating to the lowering for the retirement age for Supreme Court judges, pending the making of an order closing the interim proceedings

## November

14 November – EP adopts a resolution calling for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights

## December

6 December – Council adopts the strategy and action plan on the development of e-Justice for the period 2019–2023, seeking to simplify and improve access to justice while digitising cross-border legal procedures

17 December – In *Commission v. Poland* (C-619/118 R), Grand Chamber of CJEU grants Commission's request for interim measures, ordering Poland to immediately suspend the application of the provisions of national legislation relating to the lowering of the retirement age for Supreme Court judges

# 9 Access to justice

*Judicial independence is an essential building block of the rule of law. Challenges to such independence continued to grow, underlining the need for effective coordination of efforts in this area. This prompted the European Parliament to submit, for the first time, a call to the Council for adoption of a decision under Article 7 (1) of the TEU, and the European Commission to submit a proposal for a regulation addressing, from a budgetary perspective, deficiencies in the rule of law. About two thirds of EU Member States adopted legislation to strengthen the application of the Victims' Rights Directive, increasing safeguards relating to participation in criminal proceedings. Recognising that the Istanbul Convention defines European human rights protection standards in the area of violence against women and domestic violence, the EU continued the process of ratifying the instrument.*

## 9.1. Rule of law challenges and hurdles to justice continue to grow

In the EU, an independent judiciary is the *conditio sine qua non* for the effective functioning of the common, borderless area of justice based on mutual trust and mutual recognition. It is the cornerstone of the rule of law and of access to justice (Article 19 of the TEU and Article 47 of the EU Charter of Fundamental Rights). In addition, Target 16.3 of the 2030 Agenda for Sustainable Development expects UN Member States to promote the rule of law at the national and international levels and to ensure equal access to justice for all[1] (for more on the UN Sustainable Development Goals, see Chapter 1). In November 2018, the Commission published the first results of a Special Eurobarometer 'Future of Europe'. When respondents were asked to rank the 'main assets' of the EU, they most often mentioned 'The EU's respect for democracy, human rights and the rule of law', followed by 'The economic, industrial and trading power of the EU.'[2]

> *"If the EU judicial space needs to work, [...] then when you judge the extradition you have to be sure that the person facing justice in the other Member State has the right to a fair trial by an independent court. And if that is put into doubt because of the cumulative effect we see now in Poland of the executive and the legislative wanting to take control over the court, then of course other judges will wonder whether the verdict will be decided by an independent judge or by a phone call from a political party central. [...] And it is also a consequence of where we are now."*
>
> *Frans Timmermans, First Vice-President, European Commission, Remarks at public hearing on the rule of law in Poland, at the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 20 November 2018*

Developments in several EU Member States relating to independence of the judiciary, separation of powers, and corruption, and the triggering of Article 7(1) of the TEU (clear risk of a serious breach of EU values) have raised major concerns about the rule of law. On 20 December 2017, in the context of the rule of law situation in **Poland**, the General Affairs Council received a reasoned proposal from the Commission under Article 7 (1) of the TEU (see further in FRA's *Fundamental*

*Rights report 2018*). A first hearing under this procedure took place on 26 June 2018, during which the General Affairs Council heard the Polish authorities; the second and third hearings took place on 18 September 2018 and 11 December 2018, respectively.[3] In addition, in its plenary resolution passed on 1 March 2018, the European Parliament called on the EU Council of Ministers "to undertake swift action in accordance with the provisions set out" in Article 7(1) of the TEU and asked that Parliament be fully informed of progress made and action taken at every step of the procedure.[4] At the same time, the European Parliament's LIBE Committee visited Warsaw to further examine the rule of law situation in Poland.[5]

Meanwhile, the Commission continued its efforts to address the rule of law concerns in Poland by initiating another infringement proceeding before the CJEU. On 2 October 2018, the Commission referred Poland to the CJEU due to the violations of the principle of judicial independence created by the new Polish Law on the Supreme Court, and asked the CJEU to order interim measures until it has issued a judgment on the case. The main concern of the Commission was that the Law on the Supreme Court – reducing the retirement age of Supreme Court judges and prematurely terminating the current mandate of the First President of the Supreme Court – undermined the principle of judicial independence, including the irremovability of judges, contrary to the obligations under Article 19 (1) of the TEU read in conjunction with Article 47 of the EU Charter of Fundamental Rights.[6] On 17 December, the Grand Chamber of the CJEU granted the Commission's request for interim measures, ordering Poland to immediately suspend the application of the provisions of national legislation relating to the lowering of the retirement age for Supreme Court judges. The infringement procedure is the second one against Poland for potential violations of the EU value of the rule of law (see FRA's *Fundamental Rights Report 2018* for details of the previous infringement procedure).

In the meantime, in November 2018, the Polish Parliament adopted a law that eliminates the contested prolongation regime and sets the retirement age of Supreme Court judges at 70 (as was the case in the previous regime) for judges appointed to the Supreme Court before entry into force of the amending law. According to the law, judges who were retired pursuant to the contested provisions will return to their posts and their service will be considered as having been uninterrupted.[7]

The Polish Supreme Court itself also referred to the CJEU – in early August 2018, within the preliminary ruling mechanism under Article 267 of the TFEU. Since August 2018, the Supreme Court has referred six requests for preliminary rulings.[8] The requests relate mostly to the interpretation of the principle of judicial independence in the light of EU primary law (Article 2, Article 4 (3) and Article 19 (1) of the TEU, and Article 47 of the Charter of Fundamental Rights); and the interpretation of Directive 2000/78 as regards the abrupt lowering of the retirement age of judges and subjecting their remaining in office to arbitrary decision of the executive. In the context of the preliminary ruling questions that the Polish Supreme Court addressed to the CJEU, Poland's Prosecutor General, who is also Minister of Justice, submitted in October 2018 a request to the Polish Constitutional Tribunal to examine the compliance of Article 267 of the TFEU with the Polish Constitution, so far as it allows the referral of preliminary questions regarding the organisation of the national judiciary.[9]

The European Network of Councils for the Judiciary unites the national councils of judiciary in the Member States of the E that are responsible for supporting the judiciary in the independent delivery of justice. Against the background of all these developments, the network decided to suspend the membership of the Polish National Council for the Judiciary on 17 September 2018. The network based this decision on the fact that the Polish Council no longer meets the requirements of ENCJ to be independent of the executive and legislature so as to ensure the independence of the Polish judiciary.[10]

The rule of law situation in the area of justice and judicial independence raised or continued to cause concerns in several other EU Member States in 2018. In particular, the European Parliament took the unprecedented step of calling on the Council to adopt a decision under Article 7 (1) of the TEU against **Hungary** and determine the existence of a clear risk of a serious breach by Hungary of the EU's founding values. This was the first time that the European Parliament had taken the initiative of recommending that Article 7 be activated, in view of a serious threat to the rule of law, democracy and fundamental rights in a Member State.[11] The European Parliament's key concerns relate to several aspects of the rule of law, including the functioning of the constitutional system, the independence of the judiciary, and corruption. In response to the European Parliament's action, Hungary lodged an application to initiate proceedings before the CJEU on 17 October 2018, challenging the European Parliament's resolution to trigger the procedure against Hungary.[12] In particular, the Hungarian government is challenging the result's validity, claiming that abstentions should have been counted in the vote but were not. The case before the CJEU is still pending.[13]

Because of legislative reforms and their impact on judicial independence, the rule of law situation in **Romania** continued to pose growing concerns in 2018. In a resolution of 13 November 2018 on the situation of the rule of law in Romania, the European Parliament expressed deep concern about the reforms of the Romanian judicial and criminal laws, which risk undermining the separation of powers and the fight

against corruption.[14] On the same day, the Commission published its report on progress in Romania under the Cooperation and Verification Mechanism, confirming concerns about the rule of law situation in the country, and recommending that it suspend the implementation of the new criminal and judicial laws.[15]

The Council of Europe echoed these concerns. On 23 March 2018, its anti-corruption body, the Group of States against Corruption (GRECO) adopted an ad hoc report expressing serious concern about certain aspects of the laws on the status of judges and prosecutors, on the judicial organisation and on the Superior Council of Magistracy, and about draft amendments to the criminal legislation in Romania.[16] On 20 October 2018, the Council of Europe's Commission for Democracy through Law (the Venice Commission) published two opinions, expressing concern that the cumulative effect of the laws was likely to undermine the independence of Romanian judges and prosecutors.[17] The opinions came out just a few days after Romania's own Constitutional Court established that over 60 articles (out of 96) of the draft law amending the Criminal Law Procedure were unconstitutional.[18] On 25 October 2018, it also held that amendments to the Romanian Criminal Code were unconstitutional.[19] Dunja Mijatović, the Council of Europe Commissioner for Human Rights, also highlighted the importance of Romania maintaining the independence of the judiciary and giving effect to the recommendations of the Venice Commission and GRECO, in her conclusions after her visit to Romania on 16 November 2018.[20]

In June 2018, the LIBE Committee of the European Parliament decided to set up a working group with the general mandate to monitor the situation as regards rule of law and the fight against corruption within the EU, and to address specific situations, in particular **Malta** and **Slovakia**.[21] This followed the assassinations of the investigative journalists Daphne Caruana Galizia (Malta) in 2017, and Ján Kuciak (Slovakia) together with his fiancée Martina Kušnírová in 2018. Fact-finding missions concluded, among other things, that challenges to the rule of law and fundamental rights should be monitored regularly, so the Commission and the Council could support setting up an EU monitoring mechanism along the lines that the European Parliament proposed in its resolution of 25 October 2016.[22]

The European Parliament reiterated its call for an EU mechanism on democracy, rule of law and fundamental rights in a resolution adopted on 14 November. It asked the Commission to consider linking such a mechanism with a proposed regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States.[23] The Commission proposal published on 2 May addresses, from a budgetary perspective, generalised deficiencies as regards the rule of law, including threats to the independence of the judiciary, arbitrary or unlawful decisions by public authorities, limited availability and effectiveness of legal remedies, failure to implement judgments, or limitations on the effective investigation, prosecution or punishment of breaches of law.[24] The proposed new tools would allow the Union to suspend, reduce or restrict access to EU funding in a manner proportionate to the nature, gravity and scope of the rule of law deficiencies. The Commission would propose such a decision and the Council would adopt it through reverse qualified majority voting. For further information, see Chapter 1.

In 2018, the European Commission continued to support EU Member States' efforts to strengthen the efficiency, quality and independence of their national justice systems through its EU Justice Scoreboard, underlining the crucial role of the national justice systems in upholding the rule of law.[25] The EU Justice Scoreboard contributes to the European Semester process by bringing together data from various sources and helping to identify justice-related issues that deserve particular attention.[26] The 2018 Scoreboard further developed the different indicators, and strengthened in particular the section on judicial independence. It looks in greater detail at the councils for the judiciary, at the involvement of the executive and the parliament in appointments and dismissals of judges and court presidents, and at the organisation of prosecution services. It also presents, for the first time, data on the length of proceedings in all court instances. Its findings on judicial independence are based on the data from Eurobarometer surveys, among others.[27] The general perception of independence has improved or remained stable in about two thirds of Member States, compared with the previous year or since 2010, but it also has decreased in some countries. Both citizens and companies see interference or pressure from government and politicians as a main reason for the lack of independence of courts and judges.

## 9.2. Advancing victims' rights

### 9.2.1. Continuing efforts at EU, international and national levels

At the EU level, the European Parliament adopted a resolution of 30 May 2018 on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crimes.[28] The resolution reiterates the need for the Commission to submit a report on the application of the Victims' Rights Directive, pursuant to Article 29 of the directive.[29] The European Parliament identified significant progress in the implementation of certain provisions of the Victims' Rights Directive by some Member States, such as the right to interpretation and translation, the right to be heard, and the protection of child victims.[30]

The key shortcomings identified relate to the complexity of procedures for accessing support services; insufficient access to legal aid and compensation; lack of financial support and coordination between support services, and inconsistent referral mechanisms; and the absence of measures to ensure that the lack of, or uncertainty about, residence status poses no barrier to victims' ability to assert their rights under this directive in cross-border cases.[31]

At the international level, the Council of Europe's Gender Equality Strategy 2018-2023 was adopted in March 2018. Its key objectives include ensuring the equal access of women to justice, as a pre-condition for ensuring real equality between women and men.[32]

At the national level, during 2018, legislative measures were adopted or entered into force in almost two thirds of the Member States. They were largely to better implement and reflect the Victims' Rights Directive (2012/29/EU). These Member States are **Belgium**,[33] **Croatia**,[34] **Czechia**,[35] **Estonia**,[36] **Greece**,[37] **Hungary**,[38] **Ireland**,[39] **Italy**,[40] **Lithuania**,[41] **Malta**,[42] the **Netherlands**,[43] **Portugal**,[44] **Romania**,[45] **Slovakia**,[46] **Slovenia**,[47] **Spain**[48] and **Sweden**.[49] Advances and developments include, among others, improving the rights of crime victims to participate in proceedings (e.g. the victim's right to be heard); enhancing victims' rights to financial compensation (e.g. by enlarging the scope of crimes for which financial compensation is available); and facilitating victims' rights to information (e.g. through awareness-raising initiatives and training).

### 9.2.2. Increasing victim-friendly initiatives at national level

In a notable positive trend, a significant number of Member States focused on victim-friendly initiatives in 2018. Article 19 of the Victims' Rights Directive states that Member States shall ensure the avoidance of contact between victim and offender in criminal proceedings. In accordance with this, a number of Member States have started to establish victim-friendly waiting areas to enhance the rights of victims to participate in proceedings and to avoid secondary or further victimisation. For example, in September 2018, the **United Kingdom** published a Victims Strategy,[50] which includes a new court design guide introducing requirements that new courts, and other buildings where criminal and family cases will be heard, must have separate entrances and waiting areas for victims and witnesses. Five sites in England and Wales have already introduced model waiting rooms to ensure that victims who attend court will not have to encounter the defendant, or the defendant's associates, outside the courtroom.[51]

**Romania** also amended the Law on Victims' Rights in 2018, with new legislation envisaging the building of separate waiting rooms for victims and defendants in courts.[52] This obligation applies to all courthouses built after 1 June 2018, and from 1 January 2019 onwards, special waiting rooms will be established in existing courthouses.[53]

**Portugal** and **Slovakia** have also continued to introduce victim-friendly initiatives in law enforcement, particularly taking into consideration the vulnerability of some categories of victims. **Portugal** has begun building victim support rooms – specific rooms intended for welcoming victims, namely the most vulnerable ones, including victims of domestic violence – at certain police facilities. Between 2018 and 2021, Portugal expects to create 49 new victim support rooms as part of an investment of more than € 100 million in police infrastructure.[54] **Slovakia**, pursuant to the new legislation on victims of crime, also initiated a national project co-funded by the Internal Security Fund of the European Commission. It aims to build 15 special hearing rooms for child victims and other vulnerable victims at police facilities by the end of 2021 to avoid secondary or further victimisation.[55]

### 9.2.3. Improving rights of crime victims to financial compensation

In 2018, several Member States took particular steps to enhance victims' rights to financial compensation, including enlarging the scope of crimes for which, or the scope of persons to whom, compensation is available.

**Greece** also took measures to adapt its national legislation regarding compensation of victims of criminal acts. The legislative framework stipulating that victims of violent crimes committed with intent as well as victims of human trafficking and related crimes might be awarded compensation, if they submit an application to the Hellenic Compensation Authority, was amended. Most importantly, the amendment extends the expenses that compensation covers to include mental and psychological support of the victim if they reside in an area with no public access to such services, or expenses for relocation to a safe environment away from the perpetrator. Pursuant to the amendment, the Compensation Authority shall decide within six months from the submission of application whether or not to award compensation. The decision of the Compensation Authority is appealable.[56]

In April 2018, the **Netherlands** passed a bill amending its national legislation concerning victims' rights to compensation. It provides for compensation for emotional distress arising from serious accidents and crimes.[57] It compensates the next of kin of victims who have died, and the dependents of victims who have sustained severe and permanent injuries, if certain conditions are met.[58] The new amendment takes effect on 1 January 2019.[59]

On 1 January 2018, legislation on victims of crimes entered into force in **Slovakia**. The new legislation regulates financial compensation of victims of violent crimes. It lays out conditions under which the State may award compensation. According to the legislation, the Ministry of Justice decides whether or not to award compensation based on a written request by the victim. This request is not required in cases of a health injury caused by a crime of trafficking in human beings, rape, sexual violence or sexual abuse.[60]

Although **Denmark** is not bound by the Victims' Rights Directive,[61] on 1 April 2018 new legislation improving the rights of victims of sexual violence entered into force there.[62] The legislation removes the statutory limitation for criminal liability in cases of sexual abuse of children, and abolishes the time limit for claims for compensation based on breaches of statutory obligations by public authorities towards persons under the age of 18 in connection with a sexual offence. In addition, the legislation increases compensation of victims in cases of sexual crimes by a third, and two thirds in rape cases. It also introduced a requirement of a minimum of DKK 150,000 in compensation in cases of severe sexual abuse.[63]

After incorporating the Victims' Rights Directive into national law, the Ministry of Justice in **Bulgaria** reported on fulfilling the objectives of expanding the scope of crimes for which financial compensation is provided.[64] The Supreme Cassation Court of Bulgaria (SCC) addressed the question of which categories of victims may receive non-material damages as a result of wrongful death, in a landmark decision in June 2018. Previous decrees had found that only children, parents, children cared for but not adopted, carers or cohabitants were entitled to compensation. The SCC kept the restrictive approach of previous decrees, only adding the category of the deceased's siblings, and the deceased's relatives in the descending and ascending line in the second degree, to the categories of victims entitled to receive compensation.[65]

### 9.2.4. Positive steps to promote training of practitioners

The year 2018 brought advances in promoting practical measures to strengthen the rights of crime victims. In particular, various Member States adopted measures in line with Article 25 of the Victims' Rights Directive to ensure the provision of appropriate training for practitioners that focuses on developing individual approaches and increasing their awareness of the special needs of victims. The majority of the Member States that organised such training paid particular attention to vulnerable groups of victims, such as victims of domestic violence.

The Ministry of Justice of **Finland** funded an NGO initiative called 'Senja – Sensitiveness model for professionals of jurisprudence'. This project combines victim-sensitive training for legal professionals (judges, prosecutors, police, legal counsels and guardians) by Rape Crisis Centre Tukinainen with maintenance of a website that offers information and guidance on the consequences of suffering domestic and sexual violence. The aim is to make professionals aware of the needs of vulnerable victims.[66]

**Estonia** also focused on training practitioners to increase their ability to recognise the special needs of victims. The Ministry of Justice has financially supported a project to train multi-agency teams on how to help victims of sexual and partner violence, with the aim of improving cooperation and referral mechanisms between medical services and law enforcement.[67]

In 2018, **Italy** created a support service for crime victims at the local level. The Dafne Italian Network (*Rete Dafne Italia*)[68] aims to empower crime victims. Besides providing information for victims to know their rights and the services they are entitled to, it also offers training and awareness-raising activities designed for police officers, judicial authorities, and health and social care professionals. Although currently the support services are only provided in Turin and Florence, the network hopes to enlarge the geographical coverage.

In **Ireland**, as part of an EU-funded training programme for lawyers, the Irish Council on Civil Liberties published a *Guide for lawyers on the Victims' Directive and the Irish Criminal Justice (Victims of Crime) Act 2017*.[69] In addition, several non-governmental organisations made submissions to the Commission on the Future of Policing, including multiple recommendations on victims' rights and the directive.[70] All the NGOs stressed the need for officers to receive proper training in the complexities of victims' needs, and the manner in which victims respond to – and cope with – violent crime. Rape Crisis Network Ireland and Women's Aid pointed to the need for specialist training in developing and implementing risk-assessment matrices.

**Hungary** also organised special training courses throughout 2018. The Deputy State Secretariat for Judicial Methodology-based Governance published a handbook on Victim Support in Practice, which provided a separate chapter on victims of trafficking, as a special clientele, and a detailed guide on how to use the recently launched online-based Identification, Assistance and Support Service for Victims of Trafficking in Human Beings. Subsequently, various training sessions, such as the course on Victim Support in Human Trafficking organised by the Hungarian National Police, were held to promote the use of this online-based service. The Education and Training Centre for Police also provided practical training for

members of the police on the procedure to follow when investigating crimes related to partner violence.[71]

Promising practice

### Employing online tools to help victims of crime

MyTutela* has been developed and launched in **Italy** to help victims of crime, paying particular attention to victims of harassment, stalking, bullying and other crimes against the person. The app is designed to tackle the difficulties victims often face in providing evidence when filing a report.

Victims often have to remember all the details of their harassment and be physically present at a police station to report and describe the circumstances of the events and to report text messages or emails, for example. This often places the victim in a difficult situation. In addition, for any digital evidence such as voice messages, images, text messages and emails, etc., to be valid in judicial proceedings, the integrity of the data must be proven. Given that there is often a high risk of alteration of data stored or exchanged on devices, it can sometimes be very difficult to prove the chain of custody.

The application serves to avoid these issues by providing somewhere to store proof in a forensically sound manner, even when your phone is lost or damaged. The app then produces a report containing all of this evidence, which can be printed and attached to a police complaint.** Thus it encourages and supports victims to report crimes.

** See the MyTutela website.*

*** See the article available on the website of the UK Law Societies; Joint Brussels Office.*

FRA ACTIVITY

### Supporting the fight against severe forms of labour exploitation

In June 2018, FRA published a focus paper on migrant women exploited in domestic work, and in September a report on workplace inspections. The reports are based on interviews conducted with 237 exploited workers across eight Member States (Belgium, Germany, France, Italy, the Netherlands, Poland, Portugal and the United Kingdom) and focus on work situations that deviate so significantly from standard working conditions that the legislation of EU Member States considers them criminal.

The Victims' Rights Directive is applicable to situations of severe labour exploitation. It confers rights, such as the right to access support services under Article 8, on all workers regardless of their residence status or whether they are EU nationals or not. Both reports highlight the importance of strengthening access to such services for victims of severe labour exploitation and emphasise the important role such services can play in encouraging and supporting workers to report instances of severe labour exploitation.

In June 2019, FRA will publish its main comparative overview of severe labour exploitation as experienced by the 237 migrant workers.

*For more information, see FRA (2018), Out of sight: Migrant women exploited in domestic work, June 2018; FRA (2018), Protecting migrant workers from exploitation in the EU: Boosting workplace inspections; and FRA (2019), Protecting migrant workers from exploitation in the EU (to be published in June 2019).*

## 9.3. Violence against women and domestic violence

### 9.3.1. Developments at EU level

The EU signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) in 2017. On 25 April 2018, the European Parliament's Committee on Women's Rights and Gender Equality (FEMM) and the LIBE Committee held a joint meeting to discuss an opinion on the EU's accession to the Istanbul Convention that the European Parliament's legal service had issued.[72]

The EU's accession to the Istanbul Convention will ensure that the EU is accountable at the international level, as FRA's *Fundamental Rights Report 2018* mentioned, as it will have to report to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), the convention's monitoring body. This will reinforce the EU's commitment to combating violence against women and domestic violence.

In 2018, Eurostat invited EU Member States to pilot a survey on gender-based violence. The pilot survey will interview women and men concerning their experiences, including physical, sexual and psychological violence by an intimate partner. The Eurostat pilot survey is similar to and builds on a survey that FRA conducted, which collected, for the first time in the EU, comparable data on violence against women (2014).[73] The Eurostat pilot will inform the development of the full-scale surveys in Member States, which are planned to be carried out in 2020–2021.

## 9.3.2. Developments at Member State level

In its *Fundamental Rights Report 2018*, FRA called upon all EU Member States to ratify and effectively implement the Istanbul Convention. In 2018, **Croatia**, **Greece** and **Luxembourg** ratified the Istanbul Convention, bringing to 20 the number of EU Member States that had ratified it by the end of 2018. The convention entered into force in **Croatia**,[74] **Germany**,[75] **Greece**[76] and **Luxembourg**.[77] Nonetheless, in the European Parliament's plenary debate of 13 May 2018 on the state of play, the Commission's Vice President, Frans Timmermans, noted that there was strong opposition to the convention in some countries; stressed that the convention was about protecting women against violence, not about challenging traditional families or imposing "gender ideology"; and reported that the Commission was opening a dialogue to combat misconceptions about its scope. The European Parliament's rapporteurs (Anna-Maria Corazza Bildt and Christine Revault d'Allonnes Bonnefoy) stressed that the convention was about building a culture of respect for women and girls and that the European Parliament's legal opinion found that concerns about its scope were unfounded.[78]

**Table 9.1: Istanbul Convention: signature, ratification and entry into force in the EU Member States**

| EU Member State | Signature | Ratification | Entry into force |
|---|---|---|---|
| **Austria** | 11/05/2011 | 14/11/2013 | 01/08/2014 |
| **Belgium** | 11/09/2012 | 14/03/2016 | 01/07/2016 |
| **Bulgaria** | 21/04/2016 | | |
| **Croatia** | 22/01/2013 | 12/06/2018 | 01/10/2018 |
| **Cyprus** | 16/06/2015 | 10/11/2017 | 01/03/2018 |
| **Czechia** | 02/05/2016 | | |
| **Denmark** | 11/10/2013 | 23/04/2014 | 01/08/2014 |
| **Estonia** | 02/12/2014 | 26/10/2017 | 01/02/2018 |
| **Finland** | 11/05/2011 | 17/04/2015 | 01/08/2015 |
| **France** | 11/05/2011 | 04/07/2014 | 01/11/2014 |
| **Germany** | 11/05/2011 | 12/10/2017 | 01/02/2018 |
| **Greece** | 11/05/2011 | 18/06/2018 | 01/10/2018 |
| **Hungary** | 14/03/2014 | | |
| **Ireland** | 05/11/2015 | | |
| **Italy** | 27/09/2012 | 10/09/2013 | 01/08/2014 |
| **Latvia** | 18/05/2016 | | |
| **Lithuania** | 07/06/2013 | | |
| **Luxembourg** | 11/05/2011 | 07/08/2018 | 01/12/2018 |
| **Malta** | 21/05/2012 | 29/07/2014 | 01/11/2014 |
| **Netherlands** | 14/11/2012 | 18/11/2015 | 01/03/2016 |
| **Poland** | 18/12/2012 | 27/04/2015 | 01/08/2015 |
| **Portugal** | 11/05/2011 | 05/02/2013 | 01/08/2014 |
| **Romania** | 27/06/2014 | 23/05/2016 | 01/09/2016 |
| **Slovakia** | 11/05/2011 | | |
| **Slovenia** | 08/09/2011 | 05/02/2015 | 01/06/2015 |
| **Spain** | 11/05/2011 | 10/04/2014 | 01/08/2014 |
| **Sweden** | 11/05/2011 | 01/07/2014 | 01/11/2014 |
| **United Kingdom** | 08/06/2012 | | |

*Source:* *FRA, 2019 [based on Council of Europe's Chart of signatures and ratifications of Treaty 210]*

**Bulgaria**'s Constitutional Court stopped the process of ratification in July 2018, stating that ratification was unconstitutional.[79] While it admitted that the objectives of the convention are in harmony with Bulgaria's main constitutional principles, the court deemed the convention inherently contradictory because of, among other factors, the interplay between the concepts of sex and gender. The court proclaimed the gender dimension counterproductive to protecting women against violence, and found that the convention would oblige Bulgaria to create procedures to recognise 'genders' different from the biological sexes.[80]

### 9.3.3. Implementation of the Istanbul Convention in practice

As noted, States Parties to the Istanbul Convention submit themselves to the monitoring mechanism GREVIO. Together with the Committee of the Parties to the Convention, it is responsible for monitoring the convention's implementation. In 2018, monitoring proceedings for Finland, France, Italy, the Netherlands, Portugal and Sweden were pending. All those states submitted their reports during 2018 and the GREVIO experts visited some of them.[81]

Two main issues emerged from the first GREVIO reports, published in 2017, and the following recommendations, published in 2018. One is the scope of sexual violence; the other is aggravating circumstances, such as the perpetrator being an intimate partner. The first – crucially important – issue concerns comprehensive criminalisation of sexual violence, in line with the Istanbul Convention. Article 36 of the Istanbul Convention does not require the victim to express opposition for the act of sexual violence to be punishable; rather, it suffices that the act was committed without the consent of the victim.[82] In other words, what is decisive is not that the victim dissented, but that they did not consent. Thus the Istanbul Convention adopts an approach that highlights and reinforces a person's unconditional sexual autonomy. GREVIO points out that Member States need to ensure that their legislation reflects this approach.[83]

In 2018, several Member States took measures to align their legislation with the convention requirements. The following Member States have adopted wider definitions with a view to bringing their legislation in line with the convention: **Belgium**,[84] **Bulgaria**,[85] **Croatia**,[86] **Ireland**,[87] **Malta**,[88] **Sweden**[89] and the **United Kingdom**.[90] Relevant legislative initiatives are currently pending in **Denmark**[91] and **Finland**.[92]

Another crucial aspect concerns criminalisation of and increased punishment for acts of violence committed against a partner, in line with Article 46 (a) of the convention. The following Member States already specify that committing a violent act against a partner or ex-partner is an aggravating circumstance: **Austria**,[93] **Belgium**,[94] **Estonia**,[95] **France**,[96] in some cases – **Italy**,[97] **Latvia**,[98] **Malta**,[99] **Portugal**,[100] **Slovakia**[101] and the **United Kingdom**.[102]

#### Referring to the Istanbul Convention in judicial holdings

In Finland, A. was prosecuted for aggravated assault of B., his former partner. While assessing the aggravating circumstances, the Appeal Court noted that as of 1 August 2015 the Istanbul Convention was in force in Finland and, in light of obligations under Article 46 (a) thereof, the fact that A and B were former partners must be considered. In its judgment of 5 December 2017, the court made explicit reference to Article 46 and concluded that, as a whole, the aggravating factors clearly outweighed the extenuating circumstances. The accused was found guilty of aggravated assault, sentenced to one year and eight months of imprisonment, and ordered to pay € 2,700 in damages for mental suffering. The judgment became final on 5 February 2018.

*See Finland, Vaasa Court of Appeal (Vaasan hovioikeus/Vasa hovrätt), VaaHO 2017:10, 5 December 2017.*

In 2018, Member States took measures to implement other aspects of the Istanbul Convention, such as the prohibition of female genital mutilation. A new **Belgian** law coming into force on 1 September 2019[103] introduces an obligation for doctors to break confidentiality and report all cases of female genital mutilation, rather than solely those of minors or vulnerable persons, as was previously the case. The **Danish** legislature amended the Danish Criminal Code[104] to require courts to increase sanctions by a third in cases of female genital mutilation. This amendment came in the wake of a controversial case in which the High Court of Western Denmark imposed a sentence of nine months' imprisonment on parents who had arranged the circumcision of their daughters. On 2 May 2018, the Supreme Court increased the punishment to one-and-a-half years' imprisonment.[105]

Other Member States have also instigated legislative proceedings to implement the Istanbul Convention. For example, in **Cyprus**, two bills are currently pending, one on harassment and stalking and one on non-consensual sexual acts.[106] **Czechia**[107] is enlarging the scope of what constitutes the crime of abduction by also addressing the problem of luring a person to or from another country for the purpose of forced marriage. **Greece**[108] has begun a legislative initiative to incorporate the convention into national law by criminalizing forced marriages as an emerging type of human trafficking, and **Malta** has adopted the Gender-Based Violence and Domestic Violence

Act, harmonising definitions and including a new definition of rape.[109] In **Ireland**, the enactment of the Domestic Violence Act 2018 realised a major part of the government's implementation strategy.[110] The Minister for Justice and Equality has indicated that only one issue remains before Ireland can formally ratify the Istanbul Convention:[111] extra-territorial prosecution of offences. To that end, the government has approved the introduction of new legislation to deal with this issue, and in May the Department of Justice and Equality published a bill to that effect.[112]

In 2018, the parliament in **Romania** adopted three new laws modifying existing legislation on violence against women. One introduces a definition of gender-based violence to the Romanian legal order;[113] another criminalises any form of harassment, including sexual and psychological harassment in public or in private.[114] The third law expands the definition of domestic violence to also include psychological, physical, spiritual and social violence, and it explicitly states that religion, culture or custom cannot justify any form of domestic violence.[115] The most important measure that **Spain** took in 2018 to address violence against women within the scope of the Istanbul Convention was the adoption of Royal Decree 9/2018 on emergency measures for the development of the State Pact on Gender-Based Violence.[116] This standard includes several initiatives: it modifies the Basic Law of Local Government to devolve to the municipalities those powers necessary for promoting equality and discouraging gender violence; and it increases access for victims of gender violence to social security benefits without a court order or prosecutor's report.

In the **United Kingdom**, legislative initiatives are also ongoing. In Scotland, the Scottish Domestic Abuse Act 2018[117] came into force. With this new legislation, abusing a partner or an ex-partner becomes an offence. It also sets out rules of criminal procedure for that offence and for offences for which being a partner or ex-partner is a statutory aggravating circumstance. In England and Wales, the government is currently working on a Draft Domestic Abuse Bill, which aims to "enshrine a definition of domestic abuse in law, introduce a new protection order to better protect victims from their abusers, recognise the harm domestic abuse inflicts on a child and create a Domestic Abuse Commissioner in law".[118]

Member States also continued with a number of initiatives to implement the convention in practice. The **Austrian** National Council agreed on the need for the expansion of shelters and created an additional 100 places for women affected by violence.[119] **Germany** has continued the implementation process, developing a number of initiatives and an action plan.[120] The first round table of the federation, the states and the municipalities on violence against women took place on 18 September 2018. Among other announcements, it stated that the Federal Government aims to provide around € 35 million by 2020 to expand and support the 350 women's crisis centres, 100 shelter apartments and around 600 counselling and support services.[121]

**Slovakia** started to implement a national project called 'Prevention and elimination of gender discrimination'.[122] The European Social Fund funds the project within Slovakia's Human Resources operational programme. This project secures the continuation of two institutional measures: the Coordinating-Methodical Centre for gender-based and domestic violence[123] and a national hotline for women experiencing violence.[124] Under the ESF project, the operation of the hotline is guaranteed until February 2022.[125]

Promising practice

### Using an app to identify high-risk neighbourhoods

The Brussels Region of **Belgium** initiated an awareness and prevention campaign on sexual violence and intimidation. The region funded the development of an app, '*Touche pas à ma pote*', that allows women to report any instance of sexual violence or intimidation. The objective is to pinpoint high-risk neighbourhoods, thus helping the police to monitor such neighbourhoods or facilitate intervention. The campaign and accompanying app launched in March 2018.

*For more information, see the articles on rtbf.be's website (French) and radio1.be's website (Dutch).*

## 9.3.4. Incidents highlight remaining hurdles

There have also, however, been some setbacks. The Federal Ministry of the Interior in **Austria** stopped the project 'MARAC' on violence against women in Vienna. This project had held conferences on high-risk cases of violence against women that the police, the judiciary and intervention agencies had investigated.[126] An evaluation of the pilot project revealed that the hoped-for benefits had not been achieved, according to the ministry.[127] The Domestic Abuse Intervention Centre Vienna and opposition parties criticised the decision to end this project.[128]

Certain negative developments outraged the public in a number of Member States. In **Denmark**, on 14 September 2018, the district court in Herning acquitted four men of rape (appeal pending).[129] The woman who reported the rape claimed that she had been drugged and abused; however, the jury was unable to conclude that the men knew she did not consent. The Danish Criminal Code, section 216, currently criminalises intercourse forced by use of

violence, threats of violence or coercion, rather than on the basis of a lack of consent. Various actors have argued that the provision currently leads to too many acquittals, and should be reformed.[130]

In **Portugal**, a court case inspired a public debate on sexual violence. The case concerned the rape of a young woman by two staff members of a disco in 2016. They raped the woman inside the premises while she was drunk and unconscious. The inquiry confirmed the facts and the court acknowledged them. However, on 27 June 2018, the Court of Appeal in Oporto upheld the lower instance's suspended sentence.[131] The decision of the Court of Appeal was met with public disapproval and criticised for undermining the seriousness of the crime with its finding that "unlawfulness is not high" since "there is no physical damage (or it is minimal), nor is there violence".

In **Spain**, the 2018 'wolf pack' case, in which five men were cleared of gang rape charges, was widely reported.[132] Also of note, however, is the Juana Rivas case. A woman who was a victim of gender-based violence was sentenced to five years' imprisonment for child abduction, and six years' loss of parental rights for refusing to release her children to their father, claiming that the children suffered from violence in their father's home. The case is still pending. This case provoked a major backlash in the national and international media, and protests took place in the village of La Macarena (Granada), where Juana Rivas and her children resided. The Municipal Centre for Women in La Macarena plans to submit this judgment to the Monitoring Centre for Gender and Domestic Violence of the General Council of the Judiciary, for it to assess whether or not any structural violence (harm caused by institutions) has occurred as a result of her treatment.[133]

# FRA opinions

The EU and other international bodies continued to face growing challenges in the area of justice at the national level in 2018, in particular regarding judicial independence. An independent judiciary is the cornerstone of the rule of law and of access to justice (Article 19 of the TEU and Article 47 of the EU Charter of Fundamental Rights). Despite continued efforts of the EU and other international actors, the rule of law situation in some EU Member States – especially in terms of judicial independence – caused increasing concern. For instance, for the first time in the history of the EU, the European Parliament called on the Council to adopt a decision under Article 7 (1) of the TEU (determination of a clear risk of a serious breach by a Member State of the common values referred to in Article 2 of the TEU), and on the European Commission to submit a proposal for a regulation that addresses, from a budgetary perspective, generalised deficiencies as regards the rule of law. Such deficiencies include threats to the independence of the judiciary; arbitrary or unlawful decisions by public authorities; limited availability and effectiveness of legal remedies; failure to implement judgments; and limitations on the effective investigation or prosecution of, or sanctions for, breaches of law.

### FRA opinion 9.1

*The EU and its Member States are encouraged to further strengthen their efforts and collaboration to maintain and reinforce independent judiciaries, an essential component of the rule of law. The existing efforts should be stepped up to develop criteria and contextual assessments to guide EU Member States in a regular and comparative manner to recognise and tackle any possible rule of law issues. Such regular assessments would also be instrumental in the context of the proposed EU regulation aiming to address generalised deficiencies as regards the rule of law. In addition, the EU Member States concerned should act on recommendations such as those issued by the European Commission as part of its Rule of Law Framework procedure, as well as under the Cooperation and Verification Mechanism process, to ensure compliance with the rule of law.*

Positive developments in 2018 included more EU Member States adopting legislation to implement the Victims' Rights Directive (2012/29/EU). Evidence at the national level in some Member States shows that victims still encounter obstacles to reporting crime and that their rights are not effectively implemented at different levels, including procedural aspects. Positive developments aimed at preventing further or secondary victimisation took place in a number of Member States. The European Parliament on 30 May 2018 adopted a resolution on the implementation of the Victims' Rights Directive, in which it criticised the Commission for failing to deliver its report on the directive's implementation in line with Article 29 of the directive.

### FRA opinion 9.2

*EU Member States should continue their efforts to effectively implement victims' rights to ensure rights awareness, access to appropriate support services and effective remedies available to all victims of crime.*

In 2018, the European Union worked towards ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). Another three EU Member States ratified it, bringing to 20 the total number of EU Member States that had ratified the convention by the end of 2018. In determining European standards for the protection of women against violence, the Istanbul Convention is the most important point of reference. In particular, Article 36 obliges States Parties to criminalise all non-consensual sexual acts and adopt an approach that highlights and reinforces a person's unconditional sexual autonomy. In 2018, some Member States took measures to align their legislation with this convention requirement.

### FRA opinion 9.3

*All EU Member States that have not yet done so and the EU itself are encouraged to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). FRA encourages Member States to address protection gaps in national legislation and consider the criminalisation of all non-consensual sexual acts as laid down in Article 36 of the Istanbul Convention.*

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107 Czechia, Chamber of Deputies of the Parliament of the Czech Republic, Chamber Print No. 79.

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114 Romania, Law no. 232/2018 of 2 August 2018 modifying Law no. 202/2002 on equality between men and women (*Lege nr. 232 din 2 august 2018 pentru modificarea și completarea Legii nr. 202/2002 privind egalitatea de șanse și de tratament între femei și bărbați*), Art. 1.

115 Romania, Law no. 174/2018 of 13 July 2018 modifying Law no. 217/2003 on preventing and combatting domestic violence (*Lege nr. 174 din 13 iulie 2018 privind modificarea și completarea Legii nr. 217/2003 pentru prevenirea și combaterea violenței în familie*), Articles 5, 6.

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of the State Pact on Gender-Based Violence (*Real Decreto 9/2018, de 3 de agosto, de medidas urgentes para el desarrollo del Pacto de Estado contra la violencia de género*), Press release, 4 August 2018.

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126 DerStandard, „Innenministerium stoppt Projekt zu Gewalt gegen Frauen", 17 July 2018.

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130 Berlingske, *'Endnu en frifindelse for voldtægt peger på ofres manglende retssikkerhed'*, 23 September 2018.

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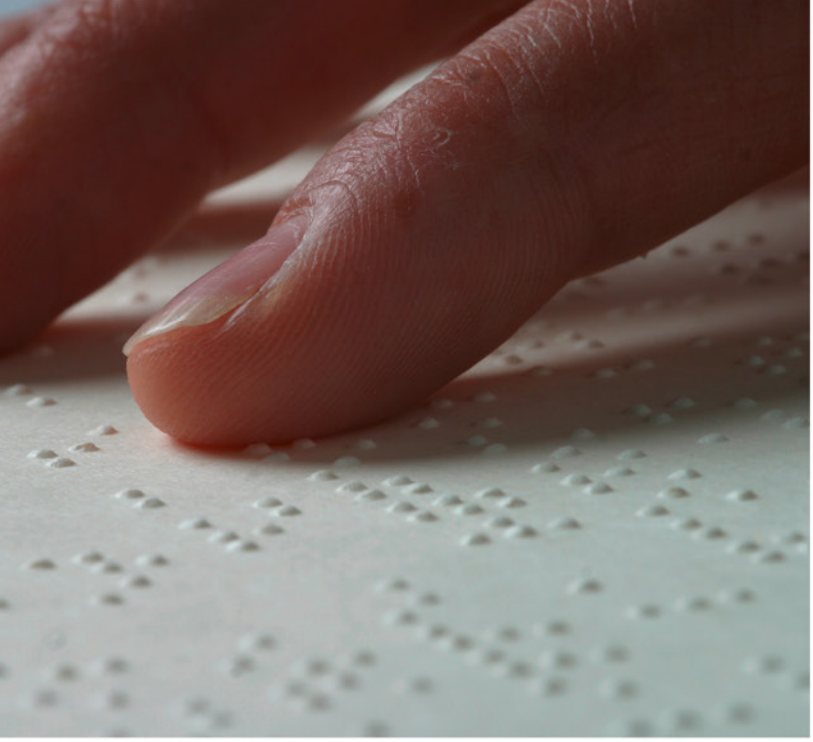

# UN & CoE

## January

30 January – In *Enver Sahin v. Turkey* (No. 23065/12) the European Court of Human Rights (ECtHR) rules that Turkish courts failed to adequately assess the suitability of reasonable accommodation offered by a university to a student with a disability, in violation of Article 2 Protocol 1 (right to education) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights (ECHR)

## February

## March

9 March – CRPD Committee adopts General Comment No. 6 on Article 5 (equality and non-discrimination) of the CRPD

23 March – Human Rights Council adopts a resolution on equality and non-discrimination of persons with disabilities and the right of persons with disabilities to access to justice

29 March – In *Mental Disability Advocacy Center (MDAC) v. Belgium* (No. 109/2014), the European Committee on Social Rights finds that Belgian education policy violates the right of children with intellectual disabilities to social integration (Article 15 (1) of the European Social Charter (ESC) and social protection (Article 17 (2) of the ESC))

## April

16 April – CRPD Committee publishes concluding observations on the initial report of Slovenia

## May

## June

1 June – Parliamentary Assembly of the Council of Europe adopts a resolution on detainees with disabilities in Europe

## July

16 July – UN Special rapporteur on the rights of persons with disabilities publishes a report on the right to health

## August

## September

21 September – CRPD Committee adopts General Comment No. 7 on Article 4.3 and 33.3 (participation with persons with disabilities in the implementation and monitoring) of the CRPD

## October

17 October – CRPD Committee publishes concluding observations on the initial report of Malta

19 October – CRPD Committee publishes concluding observations on the initial report of Bulgaria

25 October – In *Delecolle v. France* (No. 37646/13), the ECtHR finds no violation of Article 12 (right to marry) of the ECHR, stating that any limitations on the right to marry resulting from domestic legislation of Contracting States could not restrict this right in a manner which would impair its very essence and cannot be arbitrary or disproportionate

29 October – CRPD Committee publishes concluding observations on the initial report of Poland

30 October – In *S.S. v. Slovenia* (No. 40938/16), the ECtHR finds no violation of Article 8 (right to respect for family life) of the ECHR by the withdrawal of the parental rights of the applicant suffering from paranoid schizophrenia as the measure had been motivated by an overriding requirement pertaining to the child's best interests

## November

## December

# EU

## January

18 January – Court of Justice of the EU (CJEU) rules in case C-270/16 that Article 2 (2)(b)(i) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding national legislation under which an employer may dismiss a worker on the grounds of his intermittent absences from work, even if justified, in a situation where those absences are the consequence of sickness attributable to a disability suffered by that worker, unless that legislation, while pursuing the legitimate aim of combating absenteeism, does not go beyond what is necessary in order to achieve that aim, which is a matter for the referring court to assess

## February

## March

23 March – European Ombudsman finds that a complaint that the European Parliament's positive action scheme for persons with a disability is unfair did not reveal any maladministration

## April

## May

## June

## July

16 July – European Ombudsman issues recommendations stemming from her strategic inquiry OI/4/2016/EA against the European Commission on whether the treatment of persons with disabilities under the Joint Sickness Insurance Scheme complies with the CRPD

25 July – Following a request for a preliminary ruling from the Finnish Supreme Administrative Court, the CJEU rules in case C-679/16 that a benefit such as personal assistance does not fall within the concept of 'sickness benefit', and that the home municipality of a severely disabled resident of a Member State cannot refuse to grant that person personal assistance on the ground that he is staying in another Member State in order to pursue his higher education studies there

## August

## September

19 September – In *Bedi v. Bundesrepublik Deutschland and Bundesrepublik Deutschland in Prozessstandschaft für das Vereinigte Königreich von Großbritannien und Nordirland* (C-312/17), the CJEU rules that the prohibition of indirect discrimination precludes a provision in a collective agreement that requires the payment of bridging assistance to cease once a worker becomes entitled to early payment of a retirement pension for severely disabled persons, as this puts workers without disabilities in a position to earn more income than their counterparts with disabilities

## October

1 October – EU ratifies the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled

## November

9 November – European Parliament and Council come to a provisional agreement on the European Commission's proposal for a European Accessibility Act

29 November – European Parliament adopts a resolution on the situation of women with disabilities

## December

14 December – In its joint inquiry into complaints 1337/2017/EA and 1338/2017/EA on the accessibility for visually impaired candidates of selection procedures organised by the European Personnel Selection Office (EPSO), European Ombudsman finds that while EPSO has made efforts to improve accessibility of its selection procedures, the delay in fulfilling its commitment to deliver a new online application form meeting accessibility requirements constitutes maladministration

# 10 Developments in the implementation of the Convention on the Rights of Persons with Disabilities

*Ten years after the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) entered into force, the convention reached ratification by all EU Member States in 2018. At EU level, the provisional agreement by the European Parliament and the Council on the proposed European Accessibility Act marked a milestone in action to implement the CRPD. Alongside steps to guarantee the rights of persons with disabilities in the EU funding instruments for the Multiannual Financial Framework 2021-27, this illustrated how the CRPD is influencing EU law and policy in concrete ways. Nationally, gaps still remained in both CRPD implementation and monitoring. Nevertheless, initiatives in a number of Member States to involve persons with disabilities and their representative organisations in decision-making processes indicated gradual progress in attaining one of the CRPD's key goals.*

## 10.1. The CRPD and the EU: progress on key legislative files

Falling between the end of the reporting cycle for the EU's first review by the CRPD Committee and the start of preparations for the second review, 2018 was an opportunity to focus on key legislative initiatives to implement the CRPD. Significant progress was made in two long-standing areas of focus for EU action to implement the convention: accessibility and independent living.

### 10.1.1. Concrete steps forward in improving accessibility

Nearly three years after it was proposed by the European Commission, on 8 November the European Parliament and the Council came to a provisional agreement on the draft European Accessibility Act (EAA).[1] The provisional agreement reflects the intense negotiations between the EU institutions. Both the Council and the European Parliament made suggestions for elements to add and take out of the draft legislation, as FRA detailed in the 2018 Fundamental Rights Report.[2]

> *"The European Accessibility Act establishes the world's largest market for accessible products and services. This will have a positive impact on the lives of more than 80 million Europeans with disabilities. It will also make it easier and more attractive for businesses to sell accessible products and services in the European Union and abroad."*
>
> *Marianne Thyssen, Commissioner for Employment, Social Affairs, Skills and Labour Mobility, Making key products and services accessible across the EU: Statement following the provisional agreement between the EU institutions, 8 November 2018*

The agreed text sets common accessibility requirements for products and services including: computers, smartphones, banking services, payment and self-service terminals, e-books and e-readers, access to audiovisual media services, and the 112 emergency number. However, it retains some of the exclusions that emerged during the negotiations. It does not cover household appliances or the physical accessibility of transport services, for example, while the provisions concerning the built environment are not binding on Member States. Instead, to make the built environment progressively more accessible, Member States are encouraged to align their diverging requirements as much as possible. In addition, microenterprises providing services do not need to meet the Act's minimum requirements. This prompted criticism from civil society organisations that the EAA

"leaves out the real world environment where persons with disabilities live".[3] The agreed text now moves forward for final adoption by the European Parliament and Council. Section 10.2.4 looks at accessibility-related developments at the national level, many of which go beyond the scope of the proposed EAA.

Other actions also focused on the accessibility of information and communication. September marked the transposition deadline for the Web Accessibility Directive, which was adopted in 2016.[4] The directive outlines accessibility requirements to make the websites and mobile apps of public sector bodies more accessible. Importantly, it also requires regular monitoring and reporting on accessibility by Member States. This is reflected in the **Portuguese** law transposing the directive, for example, which provides for the creation of an Observatory of Websites and Mobile Applications' Accessibility to assess whether public bodies are complying with the new standards.[5] Persons with disabilities can file a complaint if they come across inaccessible websites or mobile apps. The law transposing the directive in **Greece** also provides for regular reporting.[6] It requires the Minister of Digital Policy, Telecommunications and Media to submit to parliament an annual report setting out the compliance of public sector bodies with the directive. Before its submission, the report must be open for public consultation for at least 15 days.

Several Member States took the opportunity to go beyond the minimum standards set out in the directive in their transposition legislation. The **Swedish** parliament approved a proposed law that will see digital services provided by the public sector through technical solutions offered by a third operator be subject, to the extent possible, to the same standards as those provided by public bodies.[7] It will also cover private actors engaged in professional activities with public funding, including: preschools, schools, and the healthcare and social care sectors.[8] Similar proposals to include private schools and day-care services were made during parliamentary discussions of the proposed transposition legislation in **Denmark**.[9] However, these suggestions were rejected[10] and do not feature in the bill adopted by the parliament unanimously in May.[11]

Another step to realise earlier commitments was the Council's decision in February approving the conclusion of the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled.[12] This followed on from the 2017 ruling by the Court of Justice of the EU that the EU has exclusive competence to conclude the treaty.[13] Subsequent to the Council's decision, the EU ratified the treaty on 1 October 2018; it will enter into force for the EU as of 1 January 2019.[14] A directive and regulation to implement the treaty's provisions by introducing a new mandatory exception to copyright rules are already in place: Member States had to transpose these instruments into national law by October 2018.[15]

**FRA ACTIVITY**

### Making FRA publications accessible for persons with intellectual disabilities

The CRPD requires that information is made accessible to persons with disabilities, irrespective of their type of impairment. As part of FRA's efforts to ensure that its work is accessible, the agency published a number of easy-read reports in 2018.

FRA released easy-read versions of its series of three reports on different aspects of deinstitutionalisation for persons with disabilities across the EU in March. They look at:

- what the EU and the 28 Member States have agreed to do to move people with disabilities from living in institutions to living in their local community with support;
- the money that is needed to make this move; and
- the lives of people with disabilities who are living independently in their local community.

In December, the agency published easy-read country reports presenting the results of FRA's fieldwork on drivers and barriers of deinstitutionalisation in **Bulgaria**, **Finland**, **Ireland**, **Italy** and **Slovakia**. Each report is available in English and the respective national language.

*All of FRA's easy-read publications are available on the agency's website.*

## 10.1.2. Negotiations to ensure EU funds support deinstitutionalisation continue

A second set of significant developments illustrate how the rights of persons with disabilities are integrated into non-disability specific legislation. The European Commission published its proposals for the regulations governing the European Structural and Investment Funds (ESIF) for the 2021-2027 period in May.[16] ESIF are the EU's main financial instruments for investing in job creation and a sustainable and healthy European economy and environment. They are also a crucial source of funding for efforts to promote independent

living for persons with disabilities, including through the transition from institutional to community-based support, as FRA research has consistently shown.[17] However, evidence indicates that in a number of cases EU funds have been used to construct new institutions or renovate existing ones.[18] This has prompted a strong focus in negotiations on the rules governing the next funding period on how to prevent a misuse of the funds.

The Commission proposals for the common provisions regulation and the specific regulations for the individual funds include several encouraging steps to ensure that the funds support deinstitutionalisation. Firstly, the draft common provisions regulation replaces the ex-ante conditionalities from the current programming period with so called 'enabling conditions'. While fewer in number, these conditions are more focused and aligned with EU priorities and policy objectives. In addition, rather than serving as a precondition at the onset of the funding period, as was the case with the ex-ante conditionalities, they should be fulfilled and applied throughout the implementation period and monitored regularly. Importantly, the proposed thematic enabling conditions applying to the European Social Fund Plus (ESF+) and the European Regional Development Fund (ERDF) retain the specific provision on the transition from institutional to community-based 'care' included as an ex-ante conditionality in the 2014-2020 period.

Secondly, the proposal for the common provisions regulation strengthens the role of monitoring committees.[19] Their functions explicitly include examining the fulfilment of enabling conditions throughout the programming period. Supplementing the existing requirement for monitoring committees to include a range of actors including civil society organisations and disabled persons' organisations, the new draft regulation includes a reference to fundamental rights bodies such as national human rights institutions, equality bodies and ombuds institutions. This, however, requires allocating to these different actors the necessary financial and human resources to ensure they have the institutional capacity to perform this role.[20] In this regard, Member States and relevant national authorities could find it useful that the European Commission, with the contribution of agencies such as FRA, provides technical assistance to build the capacities of monitoring committees.

At the level of individual funds, the ESF+ proposal contains a strengthened commitment to promoting deinstitutionalisation. Article 6 on equality between men and women and equal opportunities and non-discrimination states that ESF+ "shall support specific targeted actions [...] including the transition from residential/institutional care to family and community-based care".[21] By covering all EU Member States, this goes beyond the current regulation, which focused on countries with identified needs for deinstitutionalisation activities. However, the proposed ERDF regulation no longer includes transition from institutional to community-based support as an investment priority.[22] Civil society organisations have called for this to be reinstated, along with an explicit prohibition on investments in services and infrastructures that lead to segregation or social exclusion of persons with disabilities, including funding the renovation or construction of institutions.[23]

Following the publication of the Commission's proposals, the legislative procedure moves to the European Parliament and Council. A large number of European Parliament committees provided opinions on the draft proposals, many of which highlighted the need to add additional references to persons with disabilities and strengthen provisions on accessibility.[24] The co-legislators indicated that they would like to achieve adoption of the package in early 2019.[25]

## 10.2. The CRPD in EU Member States: bringing people with disabilities into decision-making processes

Ten years after the entry into force of the CRPD, 2018 saw the convention reach full ratification in the EU when, on 20 March, **Ireland** became the last Member State to ratify it.[26] Ireland, a further five Member States (**Bulgaria**, **Czechia**, the **Netherlands**, **Poland** and **Romania**), and the EU itself have not, however, ratified the Optional Protocol to the CRPD, which allows the CRPD Committee to handle complaints and set up inquiries relating to CRPD implementation.

While the ratification of the convention by all Member States and the EU itself represents a major milestone, gaps persist between the promise of the convention and reality on the ground.

The agency's past Fundamental Rights Reports have highlighted the role of two drivers of legal and policy changes in EU Member States to implement the CRPD: guidance from the CRPD Committee, and the growing body of national and European case law referring to the convention. These factors continued to spur reform processes in 2018.

**Table 10.1: CRPD Committee reviews in 2018 and 2019, by EU Member State**

| Member State | Date of submission date of State party's report (combined second and third periodic report, unless stated) | Date of publication of list of issues (prior to reporting on combined second and third periodic report, unless stated) | Date of publication of concluding observations |
|---|---|---|---|
| **AT** | 1 October 2019 | 12 October 2018 | |
| **BE** | 2 August 2019 | March 2019 | |
| **BG** | 23 July 2014 (initial report) | 21 September 2017 (initial report) | 22 October 2018 |
| **CZ** | 28 October 2019 | March 2019 | |
| **DE** | 24 March 2019 | 21 September 2018 | |
| **DK** | April 2020 | April 2019 | |
| **EE** | 4 December 2015 (initial report) | April 2019 (initial report) | |
| **EL** | 1 June 2015 (initial report) | April 2019 (initial report) | |
| **ES** | 3 May 2018 | 12 April 2017 | |
| **HU** | 30 April 2018 | 12 April 2017 | |
| **MT** | 10 November 2014 (initial report) | 24 April 2018 (initial report) | 17 October 2018 |
| **NL** | 12 July 2018 (initial report) | | |
| **PL** | 24 September 2014 (initial report) | 25 April 2018 (initial report) | 29 October 2018 |
| **SE** | 1 October 2019 | 12 October 2018 | |
| **SI** | 18 July 2014 (initial report) | 10 October 2017 | 16 April 2018 |

*Note:* *Shaded cells indicate review processes scheduled for 2019.*
*Source:* *FRA, 2019 [using data from OHCHR]*

Guidance from the CRPD Committee came particularly in the form of two general comments looking at: equality and non-discrimination (Article 5 of the convention); and participation of persons with disabilities in the implementation and monitoring of the convention (Articles 4 (3) and 33 (3) of the convention).[27] Both address core, cross-cutting principles that underpin all other convention rights. Protecting against discrimination on the grounds of equality has been a recurrent theme of Member State action on the rights of persons with disabilities (see ▶ Chapter 3). However, the requirement to ensure the full and active participation of persons with disabilities in decision-making processes represents one of the most important advances of the CRPD. The involvement of persons with disabilities in these processes at the national level in 2018 indicates gradual progress in realising this obligation. Nevertheless, as the concluding observations on the four Member States reviewed by the CRPD Committee in 2018 signal, more work is needed (see Table 10.1).

**FRA ACTIVITY**

## Identifying drivers and barriers of deinstitutionalisation for persons with disabilities

In December, FRA published the final reports stemming from its multiannual project on the right to independent living. This final set of publications focused on drivers and barriers of deinstitutionalisation processes, drawing on the findings of qualitative fieldwork in five EU Member States (**Bulgaria, Finland, Ireland, Italy** and **Slovakia**). FRA held interviews and focus groups with a wide range of actors involved in deinstitutionalisation processes at the national and local level, including: staff and managers of institutional and community-based services, staff of other services available to the public, national and local officials and policy-makers, disabled persons' organisations, persons with disabilities and their families, and members of the local community.

FRA published:

- the report From institutions to community living for persons with disabilities: perspectives from the ground;
- a summary of the report in English, Bulgarian, Finnish, Italian and Slovakian;
- national case study reports presenting the findings from the five countries where fieldwork took place in English and the respective national language;
- easy-read national case study reports in English and the respective national language;
- an infographic presenting the five essential features of successful deinstitutionalisation; and
- a video highlighting some of the main findings of the research.

*For more information, see the project webpage on FRA's website.*

In terms of policy areas, steps to achieve the right to live independently and be included in the community, as set out in Article 19 of the CRPD, remained a focus of national legal and policy reforms. In December, FRA published the results of its fieldwork on drivers and barriers of deinstitutionalisation for persons with disabilities (see FRA activity box). The five essential features of successful deinstitutionalisation processes identified in the research offer a framework to look at some key national developments (see Figure 10.1).

**Figure 10.1: Essential features of successful deinstitutionalisation processes**


*Source:* *FRA, 2018*

### 10.2.1. Setting a framework for action through disability strategies

Disability strategies can be a powerful statement of commitment, if supported by clear objectives, timelines, resources and monitoring provisions, as previous Fundamental Rights Reports attest. Four Member States adopted strategies or action plans linked to CRPD implementation in 2018 (see Table 10.2). Among these, the **Finnish** National Action Plan on the CRPD for 2018–2019 showcases some of the ways persons with disabilities can be involved in preparing and developing such policy documents (see promising practice).[28]

In cases where strategies are not in place, disabled persons' organisations (DPOs) and persons with disabilities took action to demand them. In September, 60 organisations, including the **Danish** Institute for Human Rights and Disabled People's Organisations Denmark, sent a letter to the Minister of Children and Social Affairs, encouraging the minister to produce a national disability action plan.[29] The letter calls for an action plan that would cover all types of disability, is based on the CRPD, contains measurable goals and produces a body of statistical data in the area of disability. In **Poland**, persons with disabilities staged a long-term protest in parliament over gaps in support for persons with disabilities and their families. In response, the Ministry of Family, Labour and Social Policy published a roadmap towards building a support system for persons with disabilities and announced that it will be discussed and consulted with persons with disabilities and DPOs.[30]

Promising practice

#### Involving persons with disabilities in policymaking

The **Finnish** National Action Plan on the CRPD for 2018–2019 was prepared in the framework of the Advisory Board for the Rights of Persons with Disabilities with participation of representatives from DPOs, labour market organisations and ministries. In addition, DPOs and persons with disabilities were consulted to identify the focus areas to be promoted during the implementation period. The plan emphasises four cross-cutting themes: participation, equality, awareness and knowledge, and accessibility.

*For more information, see: National Action Plan on the UN Convention on the Rights of Persons with Disabilities 2018-2019 (Oikeus osallisuuteen ja yhdenvertaisuuteen YK:n vammaisten henkilöiden oikeuksien yleissopimuksen kansallinen toimintaohjelma 2018–2019.*

On the initiative of the Civil Coalition in **Hungary**, the Thematic Working Group responsible for the Rights of Persons Living with Disabilities of the Human Rights Roundtable held six meetings in 2017 and 2018 on the better implementation of CRPD in five areas: education, social and supporting services, civil and political rights, employment, health care. Following these meetings, the Thematic Working Group adopted a package of proposals to promote the rights of persons with disabilities, which was forwarded to the National Disability Council and the Inter-ministerial Committee on Disability Issues. These consultations enabled the proposals of NGOs to be reflected in the new action plan to the National Disability Programme.

*For more information, see the website of the Human Rights Working Group.*

**Table 10.2: Strategies and action plans relevant to the CRPD adopted in 2018, by EU Member State**

| Member State | Strategy or action plan |
|---|---|
| **FI** | National Action Plan on the UN Convention on the Rights of Persons with Disabilities 2018-2019 (*Oikeus osallisuuteen ja yhdenvertaisuuteen – YK:n vammaisten henkilöiden oikeuksien yleissopimuksen kansallinen toimintaohjelma 2018–2019*/*Rätt till delaktighet och likabehandling – nationellt handlingsprogram för FN:s konvention om rättigheter för personer med funktionsnedsättning 2018–2019*) |
| **LT** | Action plan regarding social participation in society of people with hearing loss 2018-2020 (*Dėl Klausos negalią turinčių asmenų socialinio dalyvavimo visuomenėje 2018–2020 metų veiksmų plano patvirtinimo*) |
| **NL** | Programme Unlimited participation: Implementation of the UN Convention on the Rights of Persons with Disabilities (*Programma Onbeperkt meedoen - Implementatie VN Verdrag handicap*) |
| | Action plan for accessibility of construction (*Actieplan Toegankelijkheid voor de bouw*) |
| **UK – Scotland** | A Fairer Scotland for Disabled People: employment action plan |

*Source:* *FRA, 2019*

DPO-led advocacy also extended beyond disability-specific action plans. In February, the **Belgian** National High Council for people with disabilities, which works at the federal level on issues affecting the lives of persons with disabilities, issued an own-initiative opinion on the country's 2017 National Reform Plan.[31] The opinion set out the High Council's concerns about challenges faced by persons with disabilities in the areas of employment, education, pensions and poverty.[32]

### 10.2.2. Improving attitudes towards persons with disabilities

Changing long-standing beliefs that persons with disabilities should be 'looked after' and 'cared for' is a key component of achieving independent living. Several Member States took action to cement the rights-based approach to disability enshrined in the CRPD. This was often prompted by or in cooperation with civil society organisations.

Following a request from the European Centre for the Rights of Children, the **Romanian** Audiovisual Council agreed that all television and radio stations will carry a public interest message promoting inclusive education.[33] The segments highlight that children with disabilities have the same rights as other children to study in any school. A civil society project funded by the **Swedish** Public Inheritance Fund has a wider scope.[34] It aims to ensure that a disability perspective is incorporated in work to implement the 2030 Agenda for Sustainable Development (for more information on the 2030 Agenda, see Chapter 1). Through short films and manuals, it targets municipalities, county councils and businesses working with the 2030 Agenda, as well as helping to increase the capacity of persons with disabilities to bring their lived experience to these discussions.

In the most serious cases, negative attitudes towards persons with disabilities can be expressed as hate speech. In January, the **Lithuanian** parliament amended the Law on the Provision of Information to the Public to include disability as a ground.[35] The amendment prohibits publishing in the media information which instigates hatred, ridicule, humiliation, discrimination or violence towards a group of people or a person belonging thereto. For more information on hate crime and hate speech see Chapter 4.

Promising practice

**Counteracting negative stereotypes of persons with disabilities**

In **Italy**, the civil society organisation Disability Pride Italia has organised a street parade to raise awareness of the rights of persons with disabilities each year since 2016. The event is an opportunity to increase the visibility of persons with disabilities, as well as to counteract negative stereotypes and prejudices. Events are organised alongside the street parade to highlight different elements of the CRPD. Similar events take place in other Member States.

*For more information, see the website of Disability Pride Italia.*

### 10.2.3. Working towards CRPD implementation at the regional and municipal level

FRA's fieldwork in five Member States underlined that much of the work to achieve independent living is done at the local level. This requires cooperation between the various actors involved in planning and implementing the necessary steps at the local level, as well as between different levels of government. Under Article 4 (3) of the CRPD, this must include persons with disabilities and their representative organisations. The 2017 Fundamental Rights Report showcased several initiatives to strengthen the role of municipalities in CRPD implementation. This emerging trend of 'going local' continued in 2018.

To promote accessibility, the **German** Federal Ministry of Labour and Social Affairs launched the Inclusive Social Space Initiative in July.[36] It includes organising two regional conferences each year between 2019 and 2021 to discuss issues such as barrier-free mobility, accessible housing, care institutions and cultural services with stakeholders at the municipal level. A cross-cutting theme will be how persons with all types of impairment can participate in the planning and design of inclusive social space. On the same topic, a local example is the city of Konin in **Poland**, which appointed a universal design officer responsible for monitoring and issuing opinions on the accessibility of new building projects and public infrastructure for persons with disabilities.[37]

> *"I think [people with disabilities] should have opportunities to talk about [deinstitutionalisation] themselves, not only us officials or lobbying organisations, I think people with disabilities should be there, saying 'This is what I think'. Because they have the experience. […] They could say, 'Have you thought about the implications of this decision?'"*
>
> *Finland, local policymaker interviewed as part of FRA's fieldwork research*

At a more systematic level, **Finland** has had legislation requiring municipalities to establish a disability council since 2015.[38] Persons with disabilities, their families and representative organisations must be represented in the councils. In December, the Advisory board for the rights of persons with disabilities – the coordinating mechanism under Article 33 (1) of the CRPD – organised its annual conference for the municipal disability councils. It focused on participation and disability services, with representatives of the councils presenting good practices from their work.[39]

### 10.2.4. Ensuring the availability and accessibility of services for persons with disabilities

One of the biggest barriers to achieving independent living is the lack of appropriate services for persons with disabilities. In some cases, a range of individually tailored, freely-chosen specialist support is not available. In others, general services – including those available to the public – are not accessible for persons with disabilities. DPOs have a role to play in the design, delivery and monitoring of such services.

Several Member States took steps to address the lack of personalised support in 2018. In **Slovakia**, amendments to the Act no. 447/2008 Coll on financial benefits to compensate severe forms of disability were approved in June and entered into force on 1 July. The most important changes include the increase in benefits to pay for personal assistance, and that personal assistance cannot be linked to the type and degree of disability or the beneficiary's income.[40] Personal assistance is the only type of community support service specifically mentioned in Article 19 of the CRPD, and access to it is particularly important for achieving independent living. Activities in **Ireland** focused on a broader range of services as part of actions under the Service Reform Fund.[41] Using funding allocated in late 2017 to reform disability services, 2018 provided the opportunity for consortia including people with disabilities, family members, services providers and community groups, to apply for grants.[42] In addition, consultations with service users and providers aimed to develop reasonable and sustainable plans to reconfigure services.

Access to services is also an area where jurisprudence is helping to clarify how CRPD principles translate into service provision at the national level. In January, the **Czech** Constitutional Court ruled on a case concerning a person with a severe impairment whose family argued that regional and municipal authorities had failed to take targeted and concrete steps towards securing accessible social services for him.[43] The Constitutional Court rejected the conclusion of the Supreme Administrative Court that the Act on Social Services does not give rise to any right on the part of individual persons to provision of services. Instead, it concluded that the Act "imposes a duty on the regions to ensure that within their territory persons in difficult social circumstances have access to adequate social services and grants these persons, including people with disabilities, the corresponding right to have access to these social services. This right is reflective of more general fundamental rights, such as the right to an independent way of life and to participate in society (Article 19 of the CRPD)".

> *"You can move out into normal society but societies are not ready for people to live in. Basically from the transport service to accepting people into the workforce and suitable accommodation […], lots of things [are] not suitable to integrate people with disabilities as equal members of society."*
>
> *Ireland, person with a physical disability interviewed as part of FRA's fieldwork research*

Other Member States introduced measures to make services more accessible. They focused in particular on where these services are provided: namely public and private buildings. As the requirements on physical accessibility in the EAA are not obligatory, this also highlights how Member States can extend their domestic legislation beyond the minimum standards set out in EU law.

A few examples show the range of possible approaches to increasing the accessibility of buildings. They also indicate how accessibility measures often incorporate a number of exceptions. **Cyprus** and **Estonia**[44] took steps in the form of regulations. Amendments to the Cypriot Streets and Buildings Regulation introduced a requirement for designers to ensure that designs submitted for approval are accessible and safe for all, including persons with disabilities.[45] However, compliance with the regulations is optional for protected areas of historical buildings and monuments, residences and blocks of flats of up to four housing units. The **Netherlands** adopted an action plan on accessibility in housing and public buildings, aimed in particular at raising awareness within the building industry.[46] Its provisions apply first on a voluntary basis, but formal regulations may follow at a later stage should voluntary participation not result in sufficient progress. The **Latvian** approach consisted of developing guidelines on the accessibility of public buildings. The guidelines summarise legal provisions

on environmental accessibility for persons with disabilities and relevant expert recommendations.[47]

Here, too, jurisprudence is giving guidance on what implementing the CRPD means in practice. The **Latvian** Supreme Court assessed the case of a wheelchair user who could not enter three different medical facilities due to a lack of appropriate ramps.[48] In its ruling, the court stated that, according to Article 111 of the Constitution of Latvia and the CRPD, the state and its bodies must ensure access to medical care to persons with disabilities and that such access is in line with the principle of personal independence. It awarded compensation of EUR 427 for the claimant's suffering and humiliation, and upheld the ruling that the health inspectorate had to issue a decision to require the facilities to adjust the buildings.

Promising practice

### Identifying accessible services and facilities

The **French** civil society organisation Jaccede runs a website and app for collecting information on the accessibility of different establishments open to the public. Anyone can add information about how accessible shops, restaurants, hotels and other buildings are. In addition to France, it covers a number of cities in Europe and the rest of the world, and is available in five European languages. The organisation also organises events to enable members to meet, raise awareness among the general public and further develop the platform.

*For more information, see Jaccede's website.*

## 10.2.5. Providing tools to guide implementation of independent living

Translating the principles of autonomy, choice and control into practice is challenging. Guidance, whether in the form of training or other tools, helps practitioners to apply law and policy to the realities they experience in their daily work. The **Romanian** National Authority for Persons with Disabilities published a methodology for restructuring residential centres for adults with disabilities in November, following a public consultation.[49] It aims to instil a beneficiary-focused approach with individual development plans for every resident and a mapping of their specific needs. Specific annexes include questionnaires and templates for identifying individuals' needs that can be used in deinstitutionalisation processes. The **Croatian** Ministry for Demography, Family, Youth and Social Policy in cooperation with the Faculty of Education and Rehabilitation Sciences provided guidance in the form of training on the sexuality of persons with disabilities.[50] It organised trainings for employees of 24 social welfare institutions regarding improvement of rights of persons with disabilities, with an emphasis on the basic provisions of the CRPD and the measures set out in the national disability strategy.

Another source of guidance is the findings of monitoring activities. The **Italian** National Authority for the Protection of People who are Detained or Deprived of their Personal Freedom started in 2017 to monitor the respect of fundamental rights of people with disabilities living in hospital institutions. In

**Figure 10.2: What people with disabilities say about moving to live in the community**


*Note:* *All names are pseudonyms.*
*Source:* *FRA, 2018*

February 2018, it presented preliminary results of its monitoring work, which showed: a lack of consistent and structured statistical data concerning the people with disabilities accommodated in these facilities, their capacity and the types of assistance and services they provide; and very diverse regional regulations covering these facilities, including different definitions of disability.[51] Each monitoring visit is followed by a report including recommendations on how to improve living conditions in the facility.

## 10.3. More work needed to make CRPD monitoring participatory

For the Members of the EU Framework to promote, protect and monitor implementation of the CRPD (EU Framework), 2018 was an opportunity to take stock of its ways of working and focus on activities to implement the Framework's 2017-2018 work programme.[52] In October, the European Ombudsman took on the rotating role as chair of the Framework; FRA remains the Framework's secretariat.

In terms of activities, the Framework held its second meeting with the European Commission in its role as the EU's focal point for CRPD implementation in April.[53] The meeting was an opportunity to share updates on recent work as well as to ensure reciprocal participation in relevant events. One of these was the annual meeting between the EU Framework and the national monitoring mechanisms, held in May alongside the European Commission's Work Forum. This year's meeting focused on two important issues of mutual relevance: political participation in the context of the 2019 European Parliament elections and participation of persons with disabilities in the implementation and monitoring of the convention. The latter point allowed participants to discuss and share ideas for input to the finalisation of the CRPD Committee's general comment on Article 4 (3) and Article 33 (3) of the convention. Looking ahead, the Framework worked on preparing its 2019-2020 work programme.

At the national level, 2018 saw a number of changes to the bodies designated under Article 33 of the convention.[54] A bill in **Bulgaria** indicated for the first time which structures will fulfil functions under Article 33 (1) and 33 (2).[55] It appoints the Minister of Labour and Social Policy to act as coordination mechanism, and creates the Council for Oversight as the monitoring framework. Amendments adopted in **Lithuania** in December will see the establishment of a new Commission for the monitoring of the rights of persons with disabilities, which will take over monitoring duties from the Office of the Equal Opportunities Ombudsperson as of 1 July 2019.[56] In **Estonia**, the Chancellor of Justice will monitor CRPD implementation from 1 January 2019 onwards.[57] Its budget will be increased to perform this task.

Turning to the functioning of Article 33 (2) frameworks, recent Fundamental Rights Reports have indicated several recurring challenges, including: ensuring a clear legal basis, providing sufficient financial and human resources, establishing and maintaining independence, and adequately involving persons with disabilities and their representative organisations. These issues continued to dominate developments in 2018:

- Legal basis: After a multi-year discussion process between the **Austrian** Federal Ministry of Labour, Social Affairs, Health and Consumer Protection and the Independent Monitoring Committee, the federal monitoring committee has a new legal basis.[58] It now has an independent budget and independent personnel. In addition, the Association for the Support of the CRPD Monitoring Committee was founded to enhance the monitoring committee's independence, as well as undertake the administrative tasks previously carried out by the ministry.

- Resources: the **Slovenian** monitoring body reported that it is still yet to receive its own funding and staff. More positively, the **Croatian** Ombudsperson for persons with disabilities established its first regional office in November.[59]

- Independence: in April, the president of the **Romanian** Senate's Committee for equal opportunities criticised the politicisation of the Council for monitoring implementation of the CRPD.[60] He also expressed concern about the lack of work done by the council and insufficient cooperation with non-governmental organisations.

- Involvement of persons with disabilities: one of the first activities of the **Irish** monitoring body following the country's ratification of the CRPD in March was to take steps to bring persons with disabilities into its formal structure. It opened a recruitment process for its advisory committee, indicating that at least half of the members will be persons with disabilities.[61] The Scottish monitoring framework in the **United Kingdom** gives an example of how to involve DPOs in the CRPD Committee review process. It organised a conference with two DPOs.[62] Over 120 persons attended, including many persons with disabilities, and gave their view on the CRPD Committee's concluding observations and how they should be followed up. The report of the event was sent to the Scottish Minister for Older People and Equalities along with a letter expressing disappointment that no one from the Scottish government attended.[63]

## FRA opinions

EU Structural and Investment Funds (ESIF) play an important role in supporting national efforts to achieve independent living. The proposed regulations for the 2021-27 funding period include important fundamental rights guarantees, in particular the so-called enabling conditions and the stronger role for monitoring committees. Civil society, including disabled persons' organisations and national human rights bodies, can play an important role in the effective monitoring of the use of the funds.

### FRA opinion 10.1

*The EU and its Member States should ensure that the rights of persons with disabilities enshrined in the CRPD and the EU Charter of Fundamental Rights are fully respected to maximise the potential for EU Structural and Investment Funds (ESIF) to support independent living. In this regard, the EU legislator should adopt the new enabling conditions establishing the effective application and implementation of the EU Charter of Fundamental Rights and the CRPD, as laid down in the Common Provisions Regulation proposed by the European Commission for the Multiannual Financial Framework 2021-2027.*

*To enable effective monitoring of the funds and their outcomes, the EU and its Member States should take steps to include disabled persons' organisations and national human rights bodies in ESIF monitoring committees. Allocating human resources and adequate funding to these organisations and bodies, and earmarking EU resources for that purpose, will bolster the efficiency of the proposed enabling conditions.*

The EU and many Member States took steps to bring persons with disabilities into the law- and policy-making process, in line with their obligations under Article 4 (3) of the CRPD. However, persons with disabilities are still often not consulted or actively involved, as the convention requires. A lack of formal structures to ensure systematic participation, as well as a lack of human and financial capacity to participate in consultations, can contribute to persons with disabilities being excluded from the design, implementation and monitoring of efforts to implement the convention.

### FRA opinion 10.2

*EU institutions and EU Member States should closely engage persons with disabilities, including through their representative organisations, in decision-making processes. To this end, Member States and EU institutions should strengthen the involvement of disabled persons' organisations (DPOs), including by setting up advisory or consultation bodies. Representatives of persons with disabilities should be full members of such bodies, on an equal basis with others, and have access to the resources necessary to participate meaningfully.*

Six Member States and the EU have not ratified the Optional Protocol to the CRPD, which allows individuals to bring complaints to the CRPD Committee and for the committee to initiate confidential inquiries upon receipt of "reliable information indicating grave or systematic violations" of the convention (Article 6).

### FRA opinion 10.3

*EU Member States that have not yet become party to the Optional Protocol to the CRPD should consider completing the necessary steps to secure its ratification to achieve full and EU-wide ratification of its Optional Protocol. The EU should also consider taking rapid steps to accept the Optional Protocol.*

Only one Member State had not, by the end of 2018, established a framework to promote, protect and monitor the implementation of the convention, as required under Article 33 (2) of the CRPD. However, the effective functioning of some existing frameworks is undermined by insufficient resources, limited mandates, and a failure to ensure systematic participation of persons with disabilities, as well as a lack of independence in accordance with the Paris Principles on the functioning of national human rights institutions.

### FRA opinion 10.4

*The EU and its Member States should consider allocating the monitoring frameworks established under Article 33 (2) of the CRPD sufficient and stable financial and human resources. As set out in FRA's 2016 Opinion concerning the requirements under Article 33 (2) of the CRPD within an EU context, they should guarantee the sustainability and independence of monitoring frameworks by ensuring that they benefit from a solid legal basis for their work. The composition and operation of the monitoring frameworks should take into account the Paris Principles on the functioning of national human rights institutions.*

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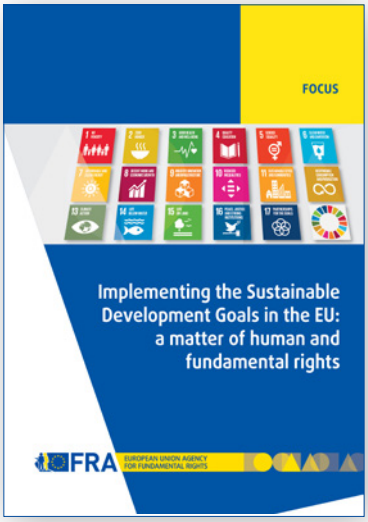


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The EU Open Data Portal (http://data.europa.eu/euodp/en) provides access to datasets from the EU. Data can be downloaded and reused for free, both for commercial and non-commercial purposes.

FRA
EUROPEAN UNION AGENCY
FOR FUNDAMENTAL RIGHTS

2009 - 2019
THE EU CHARTER
OF FUNDAMENTAL
RIGHTS

## HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

How much progress can we expect in a decade? Various rights-related instruments had been in place for 10 years in 2018, prompting both sobering and encouraging reflection on this question.

A renewed push to move forward on the Equal Treatment Directive, proposed in 2008, failed to produce the consensus necessary for its adoption. Meanwhile, 10 years after adoption of the Framework Decision on Racism and Xenophobia, FRA surveys underscored that people with minority backgrounds and migrants continue to face prejudice throughout the EU.

By contrast, progress on the Convention on the Rights of Persons with Disabilities, which entered into force a decade ago, offered reason for optimism: the convention reached ratification by all EU Member States in 2018. In addition, provisional agreement at EU level on the proposed European Accessibility Act marked an important milestone in its implementation.

A year shy of its first decade as the EU's binding bill of rights, the Charter of Fundamental Rights made appearances in case law and legislative impact assessments, but remained a long way from being systematically promoted and used.

EU-level policy initiatives to promote Roma inclusion, which have not been in place for quite as long, already risk producing disappointing reviews down the road – including in evaluations of the EU's efforts to reach certain Sustainable Development Goals, such as Goal 10 on reducing inequality within countries.

While true change comes about as a result of a variety of factors, awareness of the problem is surely vital. News of large-scale abuses of personal data in 2018 sparked such awareness regarding the need for strong privacy and data protection safeguards, highlighting the relevance of recent legislative measures. Yet discussions on artificial intelligence sometimes gave short thrift to fundamental rights.

Sometimes progress is selective. Child poverty in the EU is slowly decreasing, but children with parents born outside the EU or with foreign nationality are more likely to be left behind. This underlines the importance of ongoing efforts to integrate the large number of migrants who arrived in 2015 and 2016.

Protecting progress achieved is also crucial. With challenges to judicial independence mounting, the EU took diverse steps to counter backsliding regarding the rule of law within the bloc.

**FOCUS**

The Agenda 2030 and its 17 Sustainable Development Goals, embraced by leaders around the globe, outline a blueprint for a better world. But the whole project will only succeed if SDGs are delivered with human rights embedded within them.

Underscoring this point, this year's focus chapter explores the interrelationship between human rights and the SDGs in the EU context. It takes a particularly close look at the goals related to reducing inequality and to promoting peace, justice and strong institutions. It also explains how bodies like FRA can help empower people by providing data needed to develop evidence-based policies and to evaluate progress made.

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