

# FUNDAMENTAL RIGHTS REPORT — 2023

REPORT





— 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 <https://fra.europa.eu/>

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## Country abbreviations

<b>AT</b>	Austria	<b>ES</b>	Spain	<b>LT</b>	Lithuania	<b>PT</b>	Portugal
<b>BE</b>	Belgium	<b>EE</b>	Estonia	<b>LU</b>	Luxembourg	<b>RO</b>	Romania
<b>BG</b>	Bulgaria	<b>FI</b>	Finland	<b>LV</b>	Latvia	<b>RS</b>	Serbia
<b>CY</b>	Cyprus	<b>FR</b>	France	<b>MK</b>	North Macedonia	<b>SE</b>	Sweden
<b>CZ</b>	Czechia	<b>HR</b>	Croatia	<b>MT</b>	Malta	<b>SK</b>	Slovakia
<b>DE</b>	Germany	<b>HU</b>	Hungary	<b>NL</b>	Netherlands	<b>SI</b>	Slovenia
<b>DK</b>	Denmark	<b>IE</b>	Ireland	<b>NO</b>	Norway	<b>UK</b>	United Kingdom
<b>EL</b>	Greece	<b>IT</b>	Italy	<b>PL</b>	Poland		

# Foreword

Once again, Europe faced another year of tremendous turmoil and upheaval. In 2022, Russia invaded Ukraine triggering events and suffering Europe had long hoped not to relive.

It led to the forced movement of people at a scale not seen since the Second World War. Governments, local authorities and society across Europe rose up in support. They ferried people from the borders and provided them safe haven from this unprovoked war of aggression.

The EU's rapid activation of the Temporary Protection Directive allowed people fleeing the conflict to quickly settle and to work, travel and access services across the EU. But as the war continues, countries need to move from short-term fixes to more durable solutions.

The vast majority of people who fled Ukraine are women and girls. Many women look after their children or elderly relatives. This poses further challenges, for example, when it comes to finding work to provide for the family or to learning the language to settle and integrate into host societies. All these points need gender-specific responses.

Then there are reports of unequal treatment or abuse directed towards minorities or marginalised groups, such as Roma and non-Ukrainian third-country nationals who also fled the invasion. Again, special attention is needed to ensure they are also treated fairly and respectfully.

That is why this year's focus chapter, 'Fundamental rights implications for the EU of the war in Ukraine', looks at how the EU and its Member States dealt with the sudden and mass influx of people fleeing the war. The solidarity and rapid support were overwhelming, but challenges remain, particularly because many people want to remain in the EU or are undecided. This underscores the need for effective long-term measures that allow host societies and all displaced people to adapt to the upheaval resulting from this war.

The report's remaining chapters review the main fundamental rights developments. They identify achievements and areas of concern regarding: the EU Charter of Fundamental Rights; equality and non-discrimination; racism and related intolerance; Roma equality and inclusion; asylum, borders and migration; information society, privacy and data protection; child rights; access to justice, victims' rights and independent justice; and the implementation of the United Nations Convention on the Rights of Persons with Disabilities. The report covers all 27 EU Member States as well as the Republic of Albania, the Republic of North Macedonia (hereafter North Macedonia) and the Republic of Serbia.

The Fundamental Rights Report 2023 also presents FRA's opinions on the outlined developments. These opinions recommend a range of evidence-based, timely and practical actions for consideration by EU bodies and national governments. They are also available separately in all EU languages.

We extend our thanks to FRA's Management Board for overseeing this report throughout from drafting to publication, as well as the Scientific Committee for its advice and expert support. Such guidance helps ensure that the report is scientifically sound, robust and well founded.

Special thanks go to the National Liaison Officers, whose input underpins the accuracy of EU Member State information. We are also grateful to the various institutions and mechanisms – such as those in the Council of Europe – that each year are invaluable sources of information for this report.

**Jim Clarken**  
*Chairperson of the FRA Management Board*

**Michael O'Flaherty**  
*Director*

# FUNDAMENTAL RIGHTS IMPLICATIONS FOR THE EU OF THE WAR IN UKRAINE

# 1

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**Russia's unprovoked war of aggression against Ukraine has resulted in massive internal and external population displacement. Nearly 8 million people fleeing Ukraine have arrived in Europe. Of these, nearly 4 million have received temporary protection in the EU. This displacement triggered a tremendous wave of support and solidarity from governments, local authorities and society as a whole.**

**The EU activated the Temporary Protection Directive for the first time since its adoption in 2001. In the event of mass influx and unavailability of return, it entitles those displaced because of the war to legal residence and access to work, housing, social assistance, education and healthcare.**

**As the overwhelming majority of those fleeing Ukraine are women – many with responsibilities for caring for children and/or older people – the provision of access to specific services needs to be gender sensitive and targeted. Services also need to include support for those who have experienced sexual violence and exploitation.**

**The EU Agency for Fundamental Rights (FRA) launched a series of activities to identify challenges and propose solutions for all aspects covered by the Temporary Protection Directive and by EU laws on human trafficking, on hate crime and on the rights of crime victims, all of which apply to beneficiaries of temporary protection.**

Within one week of the Russian invasion, FRA visited EU-Ukraine border areas. It collected data and evidence on the evolving situation, which it published in March 2022. Subsequently, FRA established a dedicated task force and launched a series of projects, including a survey of displaced people from Ukraine.

All these activities are important because disturbing phenomena, such as sexual and gender-based violence, trafficking, discrimination, xenophobic disinformation and hate speech, have been recorded since the start of the war. Those belonging to minorities or marginalised groups, such as Roma, are particularly vulnerable to unequal treatment or abuse. Further challenges affect non-Ukrainian third-country nationals, including stateless people, who also fled from Russia's war of aggression against Ukraine to the EU. Such people do not always receive the same rights and benefits as Ukrainian nationals.

## 1.1 LEGAL AND POLICY DEVELOPMENTS

### Legal corner

The EU activated **Council Directive 2001/55/EC** (the Temporary Protection Directive)\* on 4 March 2022 by adopting **Council Implementing Decision (EU) 2022/382**.\*\* The directive is part of the EU asylum *acquis* under Article 78 (1) of the Treaty on the Functioning of the European Union (TFEU), and must therefore be in line with the 1951 Refugee Convention and other relevant treaties, including the European Convention on Human Rights.

\* Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ 2001 L 212

\*\* Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection, OJ 2022 L 71

#### 1.1.1. Activating the European Union's temporary protection mechanism

From the start of Russia's war of aggression against Ukraine on 24 February 2022 until year-end, approximately 17 million border crossings from Ukraine to EU Member States, the majority of which were by women and girls, were registered.<sup>1</sup> In total, nearly 4 million people fleeing Ukraine had enjoyed temporary protection in the EU by year-end – mostly women and children.<sup>2</sup> This number may, however, include multiple registrations of the same person in several Member States and registrations of people who moved onwards, including beyond Europe.<sup>3</sup> In addition, only about half of the people fleeing Ukraine had applied for temporary protection in the EU.<sup>4</sup>

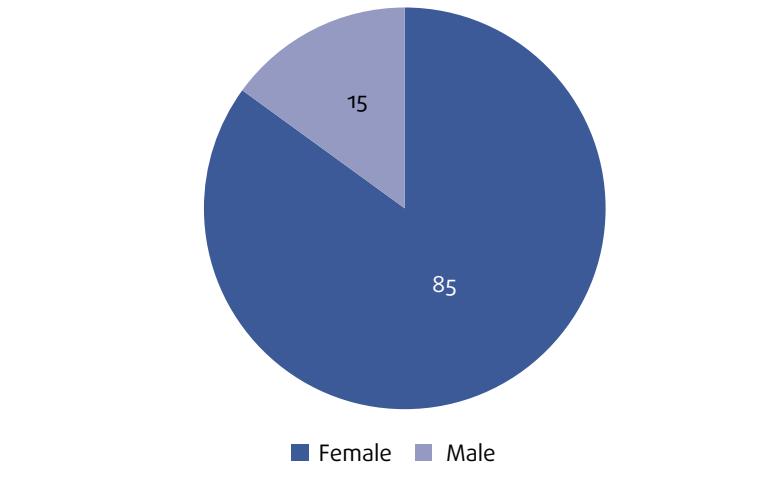
In some countries, such as Lithuania, students in tertiary education are not allowed to register for temporary protection even if they left Ukraine after 24 February 2022. Instead, they must formalise their student visas and residence permits. That requirement deprives them of all benefits applicable to temporary protection beneficiaries.<sup>5</sup>



**FIGURE 1.1: GENDER DEMOGRAPHICS OF THE DISPLACED PEOPLE FLEEING RUSSIA'S WAR OF AGGRESSION AGAINST UKRAINE (%)**

► Note:

43,571 interviews were conducted between May and November 2022.



The Temporary Protection Directive provides minimum standards for granting immediate and temporary protection in the event of a mass influx of displaced people. It applies to all Member States except **Denmark**.<sup>6</sup> Denmark has an opt-out from the EU asylum *acquis* in accordance with Protocol No. 22 to the Treaty on European Union. However, its national rules offer protection to those displaced by Russia's war of aggression against Ukraine along the lines of the Temporary Protection Directive.<sup>7</sup>

Council Implementing Decision (EU) 2022/382 established the existence of a mass influx of displaced people from Ukraine within the meaning of the Temporary Protection Directive. It activated the EU temporary protection mechanism. In October 2022, in the light of the ongoing conflict, the EU decided to extend the application of the implementing decision until March 2024.<sup>8</sup> Looking beyond this, Member States' measures to address longer-term protection needs of the displaced people through asylum procedures or other protection avenues, in the spirit of Articles 3 (5) and 17 of the Temporary Protection Directive, remain to be seen.<sup>9</sup>

Temporary protection applies to Ukrainian nationals and beneficiaries of international protection, including stateless people, residing in Ukraine before 24 February 2022. It also applies to their family members. For non-Ukrainian third-country nationals permanently residing in Ukraine at that time, Member States must either apply the EU temporary protection scheme or provide adequate protection under their national law (Article 2 (2) of the implementing decision). Pursuant to Article 2 (3) of the implementing decision, Member States have the discretion to extend the EU temporary protection scheme to other legally residing non-Ukrainian third-country nationals who entered the EU after 24 February 2022 and are unable to return safely to their country of origin.

In March 2022, the European Commission published operational guidelines<sup>10</sup> that aim to better explain and clarify the provisions of the Temporary Protection Directive and its implementing decision. EU institutions adopted a series of other guidelines and recommendations on facilitating border crossings;<sup>11</sup> recognition of professional qualifications;<sup>12</sup> accessing the labour market, vocational education and training;<sup>13</sup> and the conversion of the Ukrainian currency – the hryvnia – into the currencies of the Member States.<sup>14</sup> At the same time, the EU Migration Preparedness and Crisis Management Network ('the Blueprint Network')<sup>15</sup> has ensured that all actors have up-to-date

situational awareness to enable an effective and coordinated EU response.<sup>16</sup> FRA has participated in and regularly contributed to this network.

All Member States had implemented the Temporary Protection Directive by the end of 2022, but there are national differences in its implementation. FRA publishes an online table<sup>17</sup> on the implementation of the EU temporary protection scheme at national level. The full implementation of minimum rights, such as access to accommodation, employment, education and social welfare, as provided for in the Temporary Protection Directive, remains a challenge in some respects across all Member States.

### **1.1.2. Implementation challenges**

#### *Non-Ukrainian third-country nationals*

As regards the personal scope of temporary protection, **Hungary** does not grant temporary protection by law to non-Ukrainian third-country nationals permanently residing in Ukraine, despite this being mandatory under Article 2 (2) of the implementing decision. In Hungary, third-country nationals who were permanently resident in Ukraine before the war receive a 'certificate for temporary stay'. This certificate is valid for 30 days and subject to an extension of up to six months.<sup>18</sup>

The European Commission operational guidelines encourage Member States to consider extending temporary protection to those who fled Ukraine or otherwise found themselves in the EU or a third country shortly before 24 February 2022 and who, as a result of the war, cannot return to Ukraine.<sup>19</sup>

There are promising practices in **Germany, Greece, Latvia, Lithuania, Portugal, Romania and Sweden**, according to FRA's findings. They have extended temporary protection to these categories of displaced people. **Poland** grants temporary protection to those who arrived from Ukraine before 24 February 2022 under a national protection scheme.<sup>20</sup> Other countries, such as **Bulgaria, Croatia, France, Hungary, Italy and Spain**, currently apply strict temporal criteria, irrespective of the Commission's operational guidelines.<sup>21</sup>

The Commission also emphasised that stateless people and non-Ukrainian third-country nationals who can prove that they were legally residing in Ukraine before 24 February 2022 might have closer ties to Ukraine than with their country of origin.<sup>22</sup>



## PROMISING PRACTICE

# Extending temporary protection to non-Ukrainian third-country nationals

Portugal and Spain apply a broad personal scope. They extend temporary protection to all people fleeing Ukraine who resided there legally on either a permanent basis or a temporary basis and cannot return to their country of origin.

Bulgaria extends temporary protection to third-country nationals or stateless people who left Ukraine as a result of the war, and entered and remained in Bulgaria. Potential beneficiaries had to state explicitly by 31 March 2022 that they wanted to enjoy this protection.

\* FRA (2022), '*National legislation implementing the EU Temporary Protection Directive in selected EU Member States'*

\*\* Decision No. 144 R. E. of 10 March 2022 of the Council of Ministers, which gives effect to Council Implementing Decision (EU) 2022/382; and Bulgaria for Ukraine, 'Temporary protection – Who can apply for temporary protection'

## Stateless people

The protection of stateless people and those at risk of statelessness who cannot prove prior legal residence in Ukraine remains a challenge. They have no country of origin to return to and not all are eligible for temporary protection. Most Member States have not extended temporary protection to stateless people without legal residence in Ukraine.

It is difficult for such people to prove their residence status in Ukraine due to lack of documentation, and they might face additional obstacles in seeking safety. According to the European Network on Statelessness, tens of thousands of people affected by statelessness residing in Ukraine either were born there or are long-term residents and have no ties with another country.<sup>23</sup> Moreover, stateless people face limited options when applying for asylum, humanitarian protection or statelessness status, if available. They involve lengthy application procedures and strict eligibility criteria that are often difficult to meet.<sup>24</sup>

## Migrants from other parts of the world

The Temporary Protection Directive applies only to people displaced due to Russia's war of aggression against Ukraine; it does not cover other people seeking to enter the EU. This leads to different sets of responses. For example, at the Polish-Belarussian border, displaced people, including vulnerable people, are still allegedly violently pushed back<sup>25</sup> or detained in closed facilities.<sup>26</sup> Pushbacks were also reported on the Latvian and Lithuanian borders with Belarus.<sup>27</sup> Requests for international protection from displaced people fleeing conflict should always be examined irrespective of nationality, ethnicity or country of origin, as FRA noted in its first Ukraine bulletin.<sup>28</sup>

## FRA ACTIVITY

# Bulletins on the fundamental rights implications within the EU of Russia's invasion of Ukraine



FRA published its first bulletin on the fundamental rights implications of Russia's war of aggression against Ukraine in May 2022, covering 1 March to 27 April 2022. It describes the situation in the four EU Member States neighbouring Ukraine, namely Hungary, Poland, Romania and Slovakia. It looks at their initial reactions and the activation of the Temporary Protection Directive. It also draws on observations from FRA missions to several land border crossing points in the EU Member States concerned.

Bulletin 2 documents the situation in all Member States, from mid-April to the end of July 2022. It focuses on further developments as Member States strive to put in place longer-term solutions. It covers 10 thematic areas. Some mirror rights that the directive guarantees, and others are selected for their particular relevance to fundamental rights.

Sources: FRA (2022), *The war in Ukraine – Fundamental rights implications within the EU – Bulletin 1*; and FRA (2022), *The Russian war of aggression against Ukraine – The broad fundamental rights impact in the EU – Bulletin 2*

## 1.2. FUNDAMENTAL RIGHTS SITUATION AND RISKS UPON ARRIVAL

### 1.2.1. First arrival

Member States have a duty to admit displaced people seeking protection from war. This duty includes compliance with the *non-refoulement* principle according to Article 18 (right to asylum) and Article 19 (protection in the event of removal, expulsion or extradition) of the Charter of Fundamental Rights of the European Union ('the Charter'), read in the light of Article 78 (1) of the TFEU.

### Legal corner

The principle of *non-refoulement* prohibits returning someone to a country where they are likely to experience persecution or serious harm. It is the core element of refugee protection and is enshrined in international and EU law. Article 33 (1) of the 1951 Refugee Convention and the authoritative interpretation of Article 3 of the European Convention on Human Rights prohibit returning an individual to a country where they will be at risk of persecution, torture, or inhuman or other degrading treatment or punishment. EU primary law reflects the prohibition of *refoulement* in Article 78 (1) of the TFEU and in Articles 18 and 19 of the Charter.

All Member States bordering Ukraine facilitated access to their territory from the onset of the war. Ukrainian biometric passport holders were already entitled to enter the EU visa free for 90 days. All others, including third-country nationals and stateless people, were allowed to enter based on the humanitarian exception clause of the Schengen Borders Code (Article 6 (5)).<sup>29</sup> The European Commission published operational guidelines for external border management to facilitate crossing the EU–Ukraine border.<sup>30</sup>

Member States bordering Ukraine (**Hungary, Poland, Romania and Slovakia**) lifted their standard COVID-19 restrictions for people fleeing Ukraine. The European Centre for Disease Prevention and Control issued guidance for preventing and controlling COVID-19 in temporary reception facilities.<sup>31</sup>

National human rights institutions, civil society and international organisations voiced concerns about alleged discriminatory treatment of certain groups on arrival, at initial reception facilities or during onward transportation. These groups include non-Ukrainian third-country nationals;<sup>32</sup> lesbian, gay, bisexual, transgender and intersex people;<sup>33</sup> Roma;<sup>34</sup> stateless people;<sup>35</sup> and people with disabilities.<sup>36</sup>

In **Slovakia**, the Office of the Plenipotentiary of the Slovak Government for Roma Communities<sup>37</sup> set up monitoring teams at borders to prevent any unequal treatment of Ukrainian displaced people of Roma origin.

More than half of the respondents to FRA's 2022 Fleeing Ukraine survey<sup>38</sup> did not experience any problems when crossing the EU–Ukraine border. However, respondents who perceive themselves as a minority in terms of skin colour, ethnic origin or religion were almost four times as likely not to be treated well by border officers as respondents who do not identify as such.

### FRA ACTIVITY

#### FRA's 2022 Fleeing Ukraine survey

In August–September 2022, FRA conducted an online survey with 14,685 respondents in **Bulgaria, Czechia, Estonia, Germany, Hungary, Italy, Poland, Romania, Slovakia and Spain**. It captures the views and experiences of people displaced by the war (both adults and children from the age of 12 years) on issues related to work, education, housing and healthcare. It also captures information about humanitarian aid and the provision of information upon arrival in the EU. This chapter includes selected survey findings.

Source: FRA (2023), **Fleeing Ukraine: Displaced people's experiences in the EU**, Luxembourg, Publications Office of the European Union

## FRA ACTIVITY

### FRA mission to land border crossing points and initial reception points

In order to identify fundamental rights risks and provide relevant advice, FRA organised a mission by expert staff to land border crossing points and initial reception points in **Hungary, Poland, Romania and Slovakia** in early March 2022. Ten days later, FRA published a report based on observations gathered and meetings held during this mission.

Source: FRA (2022), '**EU-Ukrainian border check points: First field observations'**

The United Nations High Commissioner for Refugees (UNHCR) had recorded almost 9 million border crossings back to Ukraine by the end of 2022.<sup>39</sup> This figure reflects cross-border movements and not the number of distinct individuals crossing the borders.

The proximity of Ukraine to the EU and the relative safety in the western parts of Ukraine led to high numbers of 'pendulum movements' across borders. Reasons why people return from the EU to Ukraine include making sure that their families are safe or obtaining official documents necessary for accessing work or education in the EU. Such movements should not be taken as a sign that safe, permanent return is possible, as the situation remains highly volatile.

One in three respondents to FRA's 2022 Fleeing Ukraine survey<sup>40</sup> would like to return to Ukraine in the long term. A similar share would like to stay in their host country, and one in four respondents had not yet decided.

#### 1.2.2. Pre-registration and registration for temporary protection

Not all those fleeing Ukraine wish to apply for temporary protection in their countries of first arrival. The Temporary Protection Directive gives displaced people free choice over their destination in the EU, before the issuance of a residence permit. After a residence permit is issued, they are entitled to free movement within the EU for 90 days in any 180-day period.

According to Article 10 of the Temporary Protection Directive, Member States are obliged to record certain personal data of people fleeing Ukraine.<sup>41</sup> Since data cannot be entered into the European Asylum Dactyloscopy Database (Eurodac) in the context of temporary protection,<sup>42</sup> the Commission advises national authorities to register the people concerned in their national databases. The pre-registration and hence early identification of those at risk can be challenging in Member States not situated at the EU's external land borders, because there are no internal border controls.

The Commission set up an EU platform to register people enjoying temporary protection,<sup>43</sup> to ensure that those who enjoy such protection under national law can effectively benefit from the associated rights across the EU. This platform also aims to address cases of multiple registrations and thus to limit possible abuse.

The vast majority (96 %) of those who applied for temporary protection in the EU, Norway and Switzerland in 2022 are Ukrainian nationals.<sup>44</sup>

Member States put in place various systems for the efficient management of registration for temporary protection. In some Member States, such as **Bulgaria**<sup>45</sup> and **Czechia**,<sup>46</sup> the process is very quick, and temporary protection is granted almost immediately. In **Greece**, people can apply online and receive by email an appointment for registration. Temporary protection is granted with the completion of the registration.<sup>47</sup> **Poland** operates two forms of registration for displaced people fleeing Ukraine: one for Ukrainian nationals and the other for non-Ukrainian nationals.<sup>48</sup> The United Nations Special Rapporteur on the human rights of migrants criticised this distinction between displaced people fleeing the same war.<sup>49</sup>

### **1.2.3. Protection of unaccompanied children**

According to Article 2 of the Qualification Directive, the term ‘unaccompanied child’ is used to describe a person under the age of 18 years who enters the EU’s territory without an adult responsible for them in the receiving state.<sup>50</sup> Any decision concerning a child must be based on respect for the rights of the child as set out in the UN Convention on the Rights of the Child. In EU law, Article 24 of the Charter guarantees the rights of the child. The asylum instruments<sup>51</sup> and the Return Directive<sup>52</sup> contain specific provisions for unaccompanied children.

At the onset of the war, the Commission identified challenges and gaps in the registration, reception and care of unaccompanied children from Ukraine, including those from institutions.<sup>53</sup> Unaccompanied children were not always referred to the national child protection authorities for follow-up and protection. In some cases, children were not registered as present on the territory of a Member State in any system until they applied for temporary protection.



As of the end of 2022, 17 Member States had registered 8,195 unaccompanied children for temporary protection in their national systems.<sup>54</sup> Even as late as October 2022, unaccompanied children fleeing Ukraine were not being systematically recorded, the European Union Agency for Asylum (EUAA) noted.<sup>55</sup>

The profile of unaccompanied children fleeing Ukraine is more diverse than that of other unaccompanied children who arrived in the EU in recent years. Most of them were in institutional care before fleeing. In addition, the ratio of unaccompanied girls is much higher, the children are on average younger and there is a higher prevalence of children with disabilities and special needs.<sup>56</sup>

The United Nations Children’s Fund estimated that before the war approximately 90,000 children lived in institutions in Ukraine, nearly half of them with disabilities.<sup>57</sup> Transfers of children from such institutions to the EU have been either bilaterally agreed between Ukraine and the receiving Member States or organised through private initiatives. Ukrainian authorities asked Member States to keep groups of children from Ukrainian institutions together.<sup>58</sup> For more information, see [Chapter 10](#).

The operational guidelines<sup>59</sup> on the application of the Temporary Protection Directive recommend that border control authorities register, at first entry, the identities of unaccompanied children and of any accompanying adults, and their declared destination. This is an important safeguard to prevent children from going missing or becoming victims of trafficking.

For example, **Romania** issued a ministerial order to improve cooperation between public authorities regarding the entry, registration, transit and stay of unaccompanied children, and the protection of their rights.<sup>60</sup> It requires adults accompanying children without their parents to provide their identity details, destination and travel plans. **Poland** amended its special act on assistance to Ukrainian citizens on 25 March 2022. This created a register and requires the authorities to record unaccompanied children entering Poland.<sup>61</sup>

In **Greece**, the National Emergency Response Mechanism for Unaccompanied Minors in Precarious Living Conditions created a ‘notification form for unaccompanied or separated children from Ukraine’. The Hellenic Police distributes the form, including at the main entry point, Promachonas.<sup>62</sup> In cooperation with the Ukrainian Notariat, the Council of the Notariats of the European Union developed a form<sup>63</sup> enabling Ukrainian parents or legal representatives of a child travelling to the European Union to declare who is responsible for travelling with the child and/or who can exercise parental responsibility for the child.<sup>64</sup>

According to Article 16 of the Temporary Protection Directive, unaccompanied children must be represented by legal guardians. In addition, Member States should initiate procedures for recognising or appointing guardians as soon as possible. There have been challenges relating to the recognition of guardians, appointed by Ukrainian authorities, accompanying children without parental care who reside in institutions. These guardians needed additional assistance, and some Member States appointed additional guardians or support people to facilitate access to national procedures.<sup>65</sup>

The 2022 explanatory memorandum to the Council of Europe Recommendation on effective guardianship for unaccompanied and separated children in the context of migration<sup>66</sup> provides further guidance, good practices, checklists and key information to provide to unaccompanied children concerning guardianship.

The new Council of Europe Recommendation on human rights principles and guidelines on age assessment in the context of migration and its explanatory memorandum contain guidance on upholding the rights of the child throughout age assessment procedures.<sup>67</sup>

Responses to separated children who arrived accompanied by friends, neighbours or other family members varied among Member States. There were cases in which no guardian was appointed because the parents were considered to exercise sufficient parental authority from Ukraine. Child protection services followed up and assisted in such cases.<sup>68</sup>

#### 1.2.4. Information provision

Article 9 of the Temporary Protection Directive requires Member States to provide information, including in writing, on provisions relating to temporary protection. The Commission established a website<sup>69</sup> to help Member States fulfil this obligation. It also encouraged them to create similar national websites.

Many Member States scaled up their efforts to inform and support potential beneficiaries of temporary protection. These include **Austria**,<sup>70</sup> **Greece**,<sup>71</sup> **Portugal**,<sup>72</sup> **Romania**<sup>73</sup> and **Slovenia**.<sup>74</sup> Austria also provides information to Ukrainians who are staying in Moldova and Poland and who are potentially to be transferred to Austria for temporary protection.<sup>75</sup>

In addition to these national initiatives, UNHCR provides multilingual information online on provisions relating to temporary protection. This is relevant to people in, for example, **Hungary**,<sup>76</sup> **Poland**,<sup>77</sup> **Romania**<sup>78</sup> and **Slovakia**.<sup>79</sup> The EUAA also operates a web page providing up-to-date information.<sup>80</sup>

Despite these developments, gaps in information provision remain.

In **Hungary**, the non-governmental organisation (NGO) Hungarian Helsinki Committee voiced concerns about the lack of information provided by

## FRA ACTIVITY

### Practical tool for guardians on temporary protection

To enable the guardian to better inform and assist children in the process of temporary protection, **FRA** and the **EUAA** jointly published a **practical tool for guardians on temporary protection**.

Source: EUAA and FRA (2022), **Practical tool for guardians – Temporary protection for unaccompanied children fleeing Ukraine**



November 2022

authorities, which was leaving many people unaware that they must apply to benefit from temporary protection.<sup>81</sup>

According to the findings of FRA's 2022 Fleeing Ukraine survey,<sup>82</sup> one in four respondents (25%) mentioned that they did not receive enough information. This proportion was higher among respondents who identified as a racial, ethnic or religious minority.

#### **1.2.5. Risk of trafficking and exploitation**

The Anti-Trafficking Directive<sup>83</sup> sets out measures to prevent and address exploitation related to human trafficking. Article 5 of the Charter, which prohibits slavery and forced labour, also prohibits human trafficking.

At the onset of the war, several actors warned of the risks of exploitation and trafficking for people fleeing the war in Ukraine, including children. These included FRA,<sup>84</sup> the Council of Europe Special Representative on Migration and Refugees, who visited **Czechia**,<sup>85</sup> Moldova,<sup>86</sup> **Poland**<sup>87</sup> and **Slovakia**;<sup>88</sup> the Group of Experts on Action against Trafficking in Human Beings;<sup>89</sup> and the Lanzarote Committee.<sup>90</sup> National authorities and stakeholders in several Member States (e.g. in **Luxembourg**<sup>91</sup> and **Sweden**<sup>92</sup>) also raised such concerns.

Primary risk factors were private transport and free housing offered by private actors without any oversight. To address such risks, some Member States, including **Hungary**,<sup>93</sup> introduced mandatory registration and/or vetting of people offering transport and private accommodation. In **Poland**, the Ministry of the Interior and Administration, in cooperation with police headquarters, developed a procedure to verify that foreign entities are working legally, and security checks on people offering to help refugees from Ukraine.<sup>94</sup> In addition, UNHCR provides guidance to host countries on vetting volunteers.<sup>95</sup>

Europol deployed operational teams in **Hungary**, **Poland**, **Romania** and **Slovakia** to support national authorities in the early detection of trafficking in human beings.<sup>96</sup>

A common anti-trafficking plan to protect people fleeing the war in Ukraine<sup>97</sup> has been developed and implemented. The EU Anti-Trafficking Coordinator led on it, in close cooperation with Member States, the EU agencies, civil society organisations, Ukraine and Moldova.

The plan sets out prevention and awareness-raising measures. For example, the Commission launched a dedicated website for people fleeing Ukraine, with a section containing practical advice to refugees on how to avoid falling into the hands of traffickers. In addition, a list of dedicated emergency anti-trafficking hotlines in all Member States was published online.

In April 2022 the Council of Europe published a factsheet on the Lanzarote Committee special report on protecting children affected by the refugee crisis from sexual exploitation and sexual abuse;<sup>98</sup> a checklist with guidance to Parties on the prevention and protection of children from sexual exploitation and sexual abuse in the context of migration and asylum;<sup>99</sup> and a handbook on the protection of children against sexual exploitation and sexual abuse in crisis and emergency situations.<sup>100</sup>

Some Member States set up web pages and awareness-raising campaigns (e.g. **Bulgaria**,<sup>101</sup> **Czechia**,<sup>102</sup> **Poland**,<sup>103</sup> **Romania**,<sup>104</sup> **Slovakia**<sup>105</sup> and **Spain**<sup>106</sup>), some developed leaflets (e.g. **Luxembourg**<sup>107</sup>) and some strengthened anti-trafficking hotlines with Ukrainian speakers (e.g. **Greece**,<sup>108</sup> **Slovakia**<sup>109</sup> and **Spain**<sup>110</sup>). Certain Member States, including **Germany**,<sup>111</sup> **Greece**,<sup>112</sup> **Poland**,<sup>113</sup>

#### **PROMISING PRACTICE**

### **Frontex VEGA operations**

In April 2022, Frontex activated 'VEGA' operations in countries bordering Ukraine. The aim was to facilitate identification of vulnerable people and victims of trafficking. The operations lasted until December 2022. They covered four activities in airports and 17 at the land borders with Ukraine, including the Moldovan border.

*Source: Frontex Assisting in the Ukrainian Displacement / Asile*

**Slovakia**<sup>114</sup> and **Slovenia**,<sup>115</sup> provided training and information sessions for key professionals, such as asylum officers, the police and NGOs.

Other national measures include stepping up police patrols and undercover operations in high-risk areas, such as train stations and reception centres (e.g. in **Austria**<sup>116</sup>); joint police operations; increased cooperation with victim support services or other organisations (e.g. in **Italy**<sup>117</sup>); and the targeted monitoring of websites and online portals where jobs and services are advertised (e.g. in **Slovenia**<sup>118</sup>).

Some Member States amended their legislation. These include **Poland** (to increase penalties for traffickers)<sup>119</sup> and **Spain** (to facilitate the provision of minimum income to displaced people who are victims of trafficking).<sup>120</sup>

### 1.3. PROVIDING SUPPORT WITH HOUSING, ACCESS TO THE LABOUR MARKET, HEALTHCARE AND EDUCATION

#### FRA ACTIVITY

## Eye on the contribution of local authorities

To better understand what local authorities are doing, FRA approached selected cities in the EU that actively promote fundamental rights in the context of FRA's work with **Human Rights Cities**, namely Barcelona, Budapest, Cologne, Gdańsk, Ghent, Lund, Nuremberg, Salzburg, Utrecht and Vienna.

Source: FRA (2023), **How did cities welcome displaced people from Ukraine?**

#### 1.3.1. Access to accommodation or housing

In accordance with Article 13 of the Temporary Protection Directive, beneficiaries of temporary protection must have access to suitable accommodation or, if necessary, be provided with the means to obtain housing. The directive highlights in this context the need to provide assistance to people with special needs, such as unaccompanied children and people who have experienced torture, rape or other serious forms of psychological, physical or sexual abuse. The Charter protects the right to housing assistance to ensure a decent existence for all those who lack sufficient resources (Article 34).

Member States rely both on privately organised housing, provided by volunteers, NGOs or landlords, and on public facilities, including state-contracted hotels and municipal facilities.<sup>121</sup> The European Commission's communication of March 2022<sup>122</sup> underlines the need for Member States to include more permanent solutions in their broader housing policies. The communication highlighted the availability of the European Regional Development Fund and the European Social Fund to support community-based housing and services. The EUAA published practical recommendations on providing emergency placement in private accommodation for displaced people from Ukraine.<sup>123</sup> The 'Safe Homes' initiative of the European Commission<sup>124</sup> provides practical guidance to national, regional and local authorities, and to civil society, on how to organise safe private housing.



Many Member States adopted specific legislation or administrative instructions to coordinate and/or financially compensate the accommodation of people fleeing Ukraine (e.g. **France**,<sup>125</sup> **Italy**,<sup>126</sup> **Latvia**,<sup>127</sup> **Lithuania**<sup>128</sup> and **Slovakia**<sup>129</sup>).

A number of countries, such as **Austria**,<sup>130</sup> **Belgium**,<sup>131</sup> **Lithuania**<sup>132</sup> and **Poland**,<sup>133</sup> relied mainly on private accommodation, whereas others provided accommodation in state-contracted tourist or municipal facilities (e.g. in **Bulgaria**, which has exclusively used municipal facilities since mid-November 2022,<sup>134</sup> **Cyprus**, **Estonia**, **Ireland**, the **Netherlands** and **Slovakia**).<sup>135</sup>

Six out of 10 respondents (60 %) to FRA's 2022 Fleeing Ukraine survey were, at the time of the survey, staying in a private apartment or house. Of those, more than half were paying for their accommodation in full or in part. The most common problems with accommodation are lack of privacy and sharing a kitchen or toilet with strangers.<sup>136</sup>

**TABLE 1.1: RESPONDENTS' PROBLEMS WITH THEIR CURRENT ACCOMMODATION, BY EU COUNTRY (%)**

Problem	EU10	BG	CZ	EE	DE	HU	IT	PL	RO	SK	ES
Lack of privacy	36	36	38	33	34	24	39	38	26	31	39
I need to share a kitchen with strangers	28	17	33	18	26	24	32	29	12	27	27
I need to share a bathroom/toilet with strangers	24	12	27	17	22	22	22	26	9	19	23
No quiet/separate room for children to study	23	27	25	11	20	15	18	25	20	19	23
Too much noise	22	24	23	13	20	15	28	23	18	17	29
I don't get along with the people I share accommodation with	11	4	10	9	16	3	12	9	6	11	14
Too cold, leaking roof, mould or damp	7	12	7	5	7	7	13	7	4	3	7
I don't feel safe in my accommodation	5	4	5	3	6	3	8	4	3	4	5
I don't feel safe in my neighbourhood	3	4	4	4	4	3	2	3	3	3	5

Source: FRA (2023), **Fleeing Ukraine: Displaced people's experiences in the EU**, Luxembourg, Publications Office of the European Union

In some Member States, concerns were reported about the impact of the arrival of displaced people on the availability of accommodation or on housing prices for locals. These include **Hungary**<sup>137</sup> and **Poland**,<sup>138</sup> even though the Ukrainian arrivals rarely rented accommodation privately.<sup>139</sup>

▲ Note:

EU10 = the 10 Member States in which the survey was carried out.

Several Member States assigned housing support specifically to beneficiaries of temporary protection (including **Bulgaria**, **Croatia**, **Cyprus**, **France**, **Hungary**, **Italy**, **Latvia**, **Poland**, **Slovakia** and **Sweden**).<sup>140</sup> This could, in some countries, exclude non-Ukrainian third-country nationals, who may only be able to use support available for asylum seekers.

Most Member States coordinate state-funded housing centrally. Some have mechanisms to allocate displaced people to housing in a territorially balanced way. These include **Austria**,<sup>141</sup> **France**,<sup>142</sup> **Germany**,<sup>143</sup> **Latvia**,<sup>144</sup> the **Netherlands**<sup>145</sup> and **Sweden**.<sup>146</sup> Still, the capacity and suitability of public accommodation is limited by insufficient funding and lack of long-term solutions. At local level, authorities in some Member States are overburdened, particularly in large cities and in Member States with large numbers of arrivals (e.g. in **Belgium**).<sup>147</sup>

Many hosting countries relied significantly on individuals volunteering to provide housing for free or at a reduced cost. For instance, in **Austria**<sup>148</sup> and **Finland**,<sup>149</sup> 65–70 % of beneficiaries of temporary protection were staying in private accommodation as of July/August 2022.

## PROMISING PRACTICE

### Vetting systems

Private accommodation is not always vetted systematically, which can lead to safety risks, especially for women. However, several good examples of vetting systems were identified across the EU.

In **Belgium**, local authorities are responsible for checking the criminal records of all adult members of the host family as well as the quality, safety and hygiene of the housing.\*

In **Croatia**, state-subsidised private housing is subject to detailed state inspection.\*\*

In **Ireland**, authorities reported inspecting vacant private homes offered as accommodation for displaced people.\*\*\*

\* Federal Public Service for Internal Affairs and Federal Public Service for Justice (2022), *Circular on the verification of prospective householders of persons fleeing the armed conflict in Ukraine*

\*\* Croatia, information provided to FRA by the Office of the Ombudsperson in an interview on 22 July 2022

\*\*\* Ireland, Department of Children, Equality, Disability, Integration and Youth (2022), *DCEDIY's response to the situation in Ukraine*

However, in some countries, such as **Belgium**,<sup>150</sup> **Hungary**<sup>151</sup> and the **Netherlands**,<sup>152</sup> private hosts generally receive no financial compensation.

In **Poland**, compensation for private hosts is limited to 120 days (extendable in special cases, for example owing to disability, pregnancy or old age). Private hosts in Poland do not qualify for compensation if they provide housing to beneficiaries of temporary protection who are third-country nationals not covered by the Act on Assistance to Ukrainian Citizens or if the residents are not eligible for temporary protection.<sup>153</sup>

#### *Impact on particular groups*

In **Czechia**, displaced Roma reportedly faced discrimination when looking for housing, according to the ombudsperson and NGOs.<sup>154</sup> In June, the ombudsperson issued a recommendation to municipalities, based on verified information, stating that some municipalities and regions denied accommodation to displaced Roma from Ukraine.<sup>155</sup>

Similarly, in **Germany**, the media reported that discrimination and prejudices make it difficult for displaced Roma, particularly large families, to find housing.<sup>156</sup>

In **Poland**, hosts were reluctant to house Ukrainian Roma families, according to NGOs.<sup>157</sup> Researchers and activists also reported that Roma faced discrimination at reception centres by staff or non-Roma fellow Ukrainian displaced people.<sup>158</sup> For more information, see **Chapter 5**.

#### **1.3.2. Access to employment**

In accordance with Article 12 of the Temporary Protection Directive, beneficiaries of temporary protection must be given the opportunity to engage in employed or self-employed work, subject to rules applicable to the particular profession, or vocational training. Article 15 of the Charter stipulates that third-country nationals authorised to work in the Member States are entitled to the same working conditions as EU citizens.

The Commission's communication of March 2022<sup>159</sup> underlines the benefits of early employment both for new arrivals and for the hosting communities.

In June, the Commission provided detailed guidance on accessing the labour market, vocational education and training, and adult learning.<sup>160</sup>

In July, the European Labour Authority (ELA) published the results of a mapping exercise on access to employment and social security for displaced people from Ukraine.<sup>161</sup> The mapping exercise provides an overview of the legal framework and other public support instruments adopted at national level in connection with the implementation of the Temporary Protection Directive in the field of employment and social security. It also provides an overview of other national measures affecting the employment and/or social security of displaced people from Ukraine.

## FRA ACTIVITY

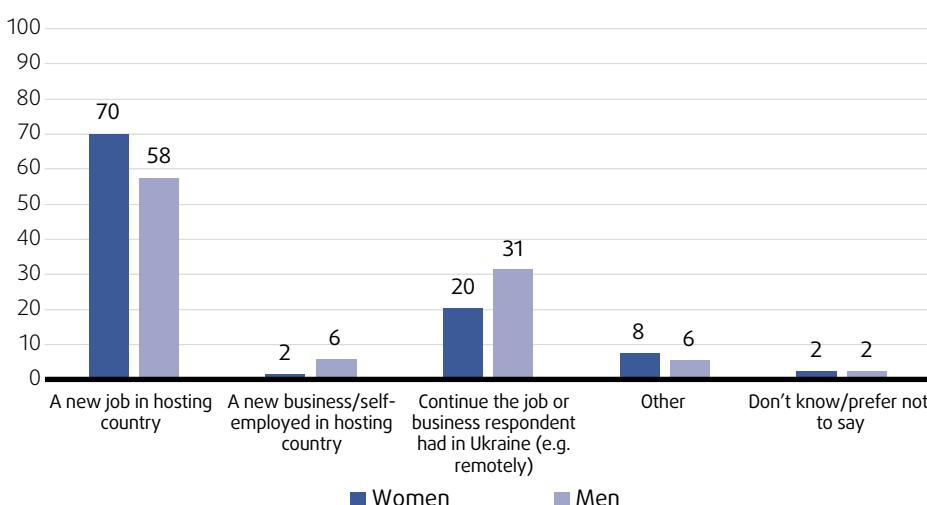
# Working together with Eurofound and the European Labour Authority: enhancing synergies

FRA has been working together with the European Foundation for the Improvement of Living and Working Conditions (Eurofound) to produce a joint paper on promoting the social inclusion and employment of people fleeing Russia's war of aggression against Ukraine. Similarly, FRA regularly contributes to the subgroup on tackling undeclared work among displaced people from Ukraine, which the ELA Platform Tackling Undeclared Work runs.

Sources: FRA (2022), 'European platform on undeclared work'; ELA (2022), 'European platform tackling undeclared work'

Beneficiaries of temporary protection generally enjoy access to the labour market and employment-related rights similar or equal to those of other third-country nationals in Member States, without needing to obtain a work permit. Among respondents to FRA's 2022 Fleeing Ukraine survey who were in paid work at the time of the survey, about two thirds had found a new job in the host Member State, and one in four continued working remotely in the job or business they had in Ukraine.<sup>162</sup>

**FIGURE 1.2: CHARACTERISTICS OF RESPONDENTS' PAID WORK (%)**



Source: FRA (2023), *Fleeing Ukraine: Displaced people's experiences in the EU*, Luxembourg, Publications Office of the European Union

However, obstacles limiting access to employment remain. These include matching skills with jobs, overcoming language barriers, providing adequate information, recognising professional qualifications and improving the availability of childcare. Given that the majority of beneficiaries of temporary protection are women, many with responsibilities for caring for children and/or older people, access to childcare is a prerequisite to be able to work. Furthermore, there is concern that beneficiaries of temporary protection are more likely to be recruited for informal employment, which increases the risk of labour exploitation.

### *Provision of language training, information and tailored support*

Displaced people typically find employment well below their level of education and qualifications, often in low-skilled jobs. For example, in **Czechia**, the results of a survey published in June 2022 show that, while some 45 % of adult beneficiaries of temporary protection have a university degree, about 80 % of those who are employed work in low-skilled occupations.<sup>163</sup> One reason for this could be language barriers. Another possible reason is the stereotypes about the nature of work women can easily do (e.g. cleaning).



Employment services and other authorities in some Member States are helping people overcome language barriers by offering language courses or referring people to other organisations providing such services. FRA's 2022 Fleeing Ukraine survey found that every fourth respondent was attending a language course.<sup>164</sup>

Sometimes private actors step in where the public ones are not active enough. As an illustration, in **Hungary**, IKEA offers an internship programme to people arriving from Ukraine, starting with an intensive Hungarian language course. Those who successfully complete the programme are offered employment.<sup>165</sup>

Effectively providing information to displaced people about their right to work and available jobs also poses challenges. Central employment authorities, local authorities and other bodies inform people using various tools. Some Member States established dedicated portals to match beneficiaries of temporary protection looking for jobs with prospective employers. This was the case in, for example, **Czechia**,<sup>166</sup> **France**<sup>167</sup> and **Poland**.<sup>168</sup>

In **Bulgaria**, the Ministry of Labour and Social Policy operates a hotline to help with employment opportunities.<sup>169</sup>

### *Recognition of professional qualifications and requirements*

The Commission encourages Member States to swiftly issue decisions on the recognition of professional qualifications.<sup>170</sup> Many Member States have simplified procedures for the recognition of professional qualifications, often in sectors with a particular need for workers (e.g. in healthcare and education). For example, in **Romania**, Ukrainian nationals, but not other beneficiaries of

temporary protection, could use an affidavit as a substitute for documents proving their professional qualifications or work experience.<sup>171</sup>

Legislation in **Hungary**<sup>172</sup> and **Italy**<sup>173</sup> simplified the recruitment of beneficiaries of temporary protection in the healthcare sector. In Italy, this applied to Ukrainian nationals only.

#### *Availability of childcare*

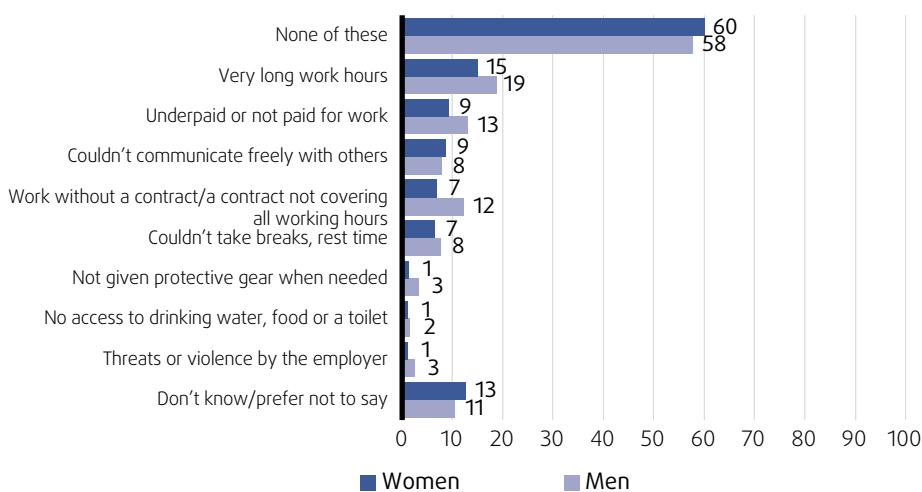
For many adult beneficiaries of temporary protection arriving alone with young children – the overwhelming majority of whom are women – access to the labour market depends on access to childcare. Providing better access to childcare would allow women to enter the labour market, FRA's 2022 Fleeing Ukraine survey confirmed. While this issue is closely linked to the availability of education for children (see [Section 1.3.3](#)), this section describes key challenges.

Although several EU Member States have increased their childcare capacity since the beginning of the war, this remains an issue, in particular in Member States with a systemic shortage of such facilities (e.g. **Ireland**<sup>174</sup> and **Slovakia**<sup>175</sup>). Initiatives to expand childcare capacities exist in a number of Member States, for example in **Poland**, which hosts the largest number of displaced children.<sup>176</sup>

#### *Risks of exploitation*

Risks of sexual and labour exploitation were identified across the EU, and some cases of such exploitation were reported (e.g. in **Spain** and **Sweden**).<sup>177</sup> Cases of exploitative labour conditions (with no trafficking component) were also identified in several Member States. FRA's 2022 Fleeing Ukraine survey also confirmed this: three in 10 respondents who were employed at the time of the survey experienced some form of exploitation at work.<sup>178</sup>

**FIGURE 1.3: SHARE OF RESPONDENTS WHO EXPERIENCED EXPLOITATION AT WORK (%)**



Source: FRA (2023), **Fleeing Ukraine: Displaced people's experiences in the EU**, Luxembourg, Publications Office of the European Union

For instance, in **Czechia**, the NGO La Strada International registered 123 cases of labour exploitation involving beneficiaries of temporary protection from Ukraine.<sup>179</sup>

The **Netherlands** Labour Authority received 80 reports from Ukrainians of underpayment, too long working hours or unsafe working situations, according to the media.<sup>180</sup> However, no cases of labour exploitation led to criminal charges.

ELA supported national efforts by providing targeted information campaigns for displaced people from Ukraine, by facilitating exchanges of good practices related to undeclared work and labour exploitation, and by conducting joint inspections of high-risk sectors for labour exploitation.<sup>181</sup> ELA argues that, even though labour exploitation is not a criminal offence in all Member States, it must be adequately punished across the EU.<sup>182</sup>

## PROMISING PRACTICE

### Joint actions of Member States to tackle sexual and labour exploitation

On 23 May 2022, 14 national law enforcement authorities took part in an online joint action day under the European Multidisciplinary Platform against Criminal Threats. The aim was to target criminal networks grooming Ukrainian refugees for sexual and labour exploitation through websites and social media platforms. It was coordinated by the **Netherlands** and supported by the European Union Agency for Law Enforcement Training, Frontex and ELA. The online investigation focused on monitoring posts offering to help refugees with transport, accommodation and work. It also monitored dating sites, recruitment websites and platforms offering sexual services. As a result, nine suspected human traffickers and nine suspected victims of trafficking were identified.

*Source: Europol (2022), 'Human traffickers luring Ukrainian refugees on the web targeted in EU-wide hackathon'*

#### 1.3.3. Access to education

Article 14 of the Temporary Protection Directive obliges Member States to grant children enjoying temporary protection access to the education system under the same conditions as their own nationals. Article 14 of the Charter guarantees the right to education.

The Commission's March 2022 communication acknowledged that children need to keep in touch with their home language and culture. It called on Member States to ensure that children from Ukraine have a place in a school in their host country and that younger children can attend early childhood education from the 2022/2023 academic year, regardless of how long they intend to stay in the host country.<sup>183</sup>

The EU has provided funding from Cohesion Policy funds and has established tools, such as the School Education Gateway, to help Member States ensure adequate access to education.<sup>184</sup>

All Member States acted in line with their capacities to grant displaced children access to education, data collected by FRA indicate. They used varying approaches to integrate children into their national education systems (i.e. directly into mainstream education or through preparatory classes).<sup>185</sup>



#### *Enrolment and school capacity*

Many Member States reported relatively low rates of enrolment of child beneficiaries of temporary protection in schools (e.g. **Romania**<sup>186</sup> and **Slovakia**; in the latter, beneficiaries of temporary protection are not subject to compulsory education<sup>187</sup>). Many displaced children still used only remote education services provided from Ukraine. FRA's 2022 Fleeing Ukraine survey confirmed this.<sup>188</sup> This raises concerns because physical school attendance is an essential aspect of a child's socialisation.

Some Member States achieved high levels of enrolment. In the **Netherlands**, for example, almost all of the 19,500 Ukrainian children of school age registered in the Personal Records Database had been enrolled in the Dutch educational system by July 2022, according to official statistics.<sup>189</sup>

Schools, especially in cities and areas hosting a large number of displaced families, often lack capacity to enrol additional students. This was the case over the summer in **Czechia**, where more than a quarter of parents whose children were not enrolled in school quoted a lack of capacity or the school's refusal as a reason for non-enrolment.<sup>190</sup>

In **Ireland**, the Minister for Children, Equality, Disability, Integration and Youth stressed that there may not always be school places available in the areas where displaced people live.<sup>191</sup>

In **Croatia**, the Ministry of Science and Education and the Education and Teacher Training Agency issued guidelines for teachers and other educational staff in primary and secondary schools on inclusion of refugee students. They aim to raise awareness about their vulnerability and to build socio-emotional skills to enable a peaceful environment where children and young people learn to respect diversity.<sup>192</sup>

#### *Use of preparatory classes and availability of staff*

Particularly in Member States with large numbers of displaced children (e.g. **Denmark**<sup>193</sup> and **Germany**<sup>194</sup>), various forms of 'preparatory' or 'welcome' classes were used to prepare children to join mainstream classes. Several Member States quickly recognised the availability of teachers as a challenge. To overcome staff shortages, some Member States relaxed legal requirements

for the recruitment of teachers and support staff (see also ‘Recognition of professional qualifications and requirements’ in [Chapter 3.2](#)). This happened, for instance, in **Czechia**,<sup>195</sup> **Luxembourg**,<sup>196</sup> the **Netherlands**,<sup>197</sup> **Poland**<sup>198</sup> and **Slovakia**.<sup>199</sup>

#### *Access to language classes*

Language barriers are often the key obstacle in integrating child beneficiaries into national education systems. In **Slovakia**, 85 % of teachers who had contact with Ukrainian children perceive language as the biggest obstacle to their integration, according to a survey conducted by the Comenius Institute.<sup>200</sup> Four in 10 respondents to FRA’s 2022 Fleeing Ukraine survey who needed to learn the host country language to continue their education have not attended a language course since their arrival.<sup>201</sup>

Several Member States (e.g. **Croatia**,<sup>202</sup> **Portugal**<sup>203</sup> and **Slovenia**<sup>204</sup>) tackled this by providing intensive language courses.

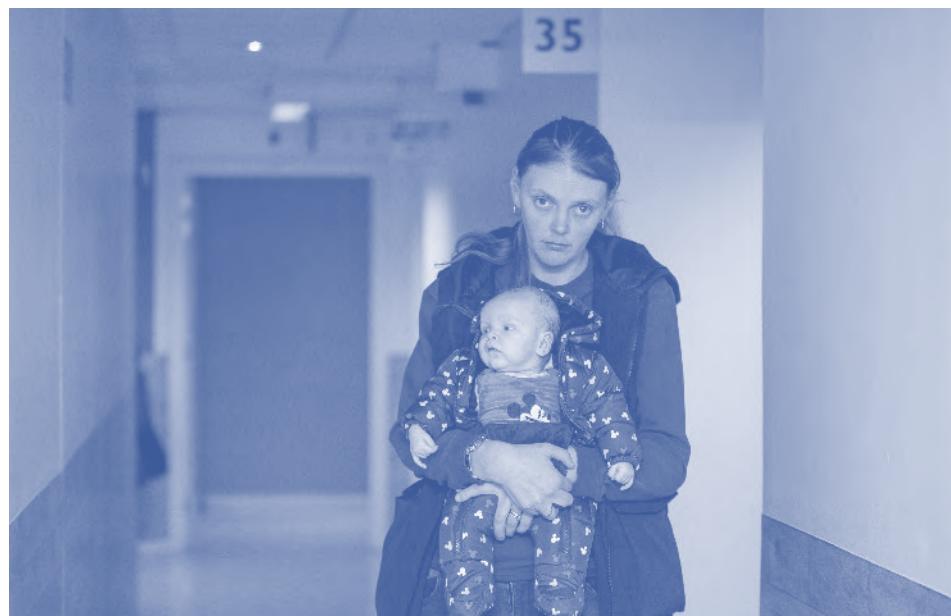
However, in **Slovenia**, the Centre for Educational Analysis criticised these courses as being too short, being only for children aged 6–16 years and taking place only outside school hours.<sup>205</sup>

#### *Impact on particular groups*

Roma beneficiaries of temporary protection reportedly face obstacles in accessing education in some Member States. Research findings in **Poland** show that, while many Roma children – especially in smaller towns – could enter education, most did not, because of lack of sufficient information about access to schooling, insecure housing situations, the schools’ lack of preparedness to deal with foreign children, language barriers and the unwillingness of Roma parents to send their children to different schools.<sup>206</sup>

#### **1.3.4. Access to healthcare**

In accordance with Article 13 of the Temporary Protection Directive, Member States must ensure that beneficiaries of temporary protection receive the necessary assistance to access healthcare, at least including emergency care and essential treatment. Necessary medical assistance and other assistance (e.g. gynaecological healthcare, reproductive healthcare and paediatric healthcare, where relevant) need to be provided to beneficiaries, including those with special needs. Article 35 of the Charter provides for the right to access preventive healthcare and the right to benefit from medical treatment under conditions established by national laws and practices.



The Commission's communication of March 2022 recommends that Member States provide beneficiaries of temporary protection with broad access to sickness benefits and that they affiliate them with their public healthcare systems. It also stressed that the standard child vaccinations should be prioritised, and highlighted the importance of free access to COVID-19 vaccinations. Providing mental health and trauma support is also of particular importance. In May 2022, the European Parliament issued a resolution on the impact on women of Russia's war of aggression against Ukraine, emphasising, among other things, that women and girls need undisrupted access to sexual and reproductive health services, including access to safe delivery when giving birth, legal and safe abortion, and clinical management of rape.<sup>207</sup>

National legislation implementing the Temporary Protection Directive grants beneficiaries of temporary protection varying levels of access to healthcare, including mental health services.

#### *Access to public healthcare systems*

The scope of access to public healthcare systems depends on decisions of national authorities. It therefore varies among Member States. Some, for example **Bulgaria**,<sup>208</sup> **Czechia**,<sup>209</sup> **Estonia**,<sup>210</sup> **Germany**,<sup>211</sup> **Italy**,<sup>212</sup> **Latvia**<sup>213</sup> and the **Netherlands**,<sup>214</sup> entitle beneficiaries of temporary protection to the same public health services as citizens. Others, such as **Slovakia**<sup>215</sup> and **Slovenia**,<sup>216</sup> entitle beneficiaries of temporary protection to only emergency healthcare (although in Slovenia a medical committee may approve broader healthcare access).

Cases of doctors refusing services to beneficiaries of temporary protection were reported in various Member States. Refusals were mainly due to lack of capacity (e.g. in **Slovakia**<sup>217</sup>) and discrimination (e.g. in **Romania**<sup>218</sup>). Other practical barriers to accessing medical services often relate to administrative issues and lack of interpretation services. In **Poland**,<sup>219</sup> to address the issue of interpretation, an application was recently developed to facilitate communication between doctors and Ukrainian-speaking patients.<sup>220</sup>

Access to children's vaccines was also made available for beneficiaries of temporary protection in some countries, including **Hungary**, the **Netherlands**, **Poland** and **Slovakia**.<sup>221</sup>

#### *Mental health support*

Many people fleeing the war had traumatic experiences and may need psychosocial care. In most cases, mental health support is provided to beneficiaries of temporary protection as part of their access to public healthcare.

Support is also provided by specialised staff in accommodation facilities, through helplines or online (e.g. in **Italy** – through the Italian Red Cross<sup>222</sup> – and in **Slovakia**<sup>223</sup>).

Psychological support requires sufficient knowledge of the language of displaced people. In some Member States, such as **Estonia**<sup>224</sup> and **Greece**,<sup>225</sup> national authorities or NGOs employed Ukrainian professionals to assist in the provision of this support.

An increasing need for mental health support was noted in some Member States, including **Czechia**<sup>226</sup> and **Hungary**.<sup>227</sup> Barriers to accessing mental health support were also reported (e.g. in **Hungary**<sup>228</sup> and **Poland**<sup>229</sup>).

### *Impact on particular groups*

In **Slovakia**, mental health services for women who experienced sexual violence were practically unavailable owing to a lack of specialists, as a coalition of NGOs reported.<sup>230</sup> The NGO Tenenet reported that care for people with disabilities was not systematically provided and largely depended on assistance from NGOs.<sup>231</sup>

In **Czechia**, healthcare providers allegedly denied some Roma access to healthcare, according to NGOs.<sup>232</sup>

Researchers in **Poland** reported that displaced Roma might hesitate to access healthcare, owing to prior experiences of discrimination and lack of trust in authorities.<sup>233</sup>

### **1.3.5. Access to social welfare services**

In accordance with Article 13 of the Temporary Protection Directive, Member States must ensure that beneficiaries of temporary protection receive the necessary assistance in terms of social welfare if they do not have sufficient resources. Article 34 of the Charter recognises the right to social and housing assistance, which ensures a decent existence for all those who lack sufficient resources.

Access to social welfare services for beneficiaries of temporary protection varies across Member States. Many Member States link the provision of allowances to temporary protection status and provide support through either general social welfare schemes or specifically established support schemes, including regular, limited or one-off payments. Still, particular challenges remain, notably the scope of assistance provided; delays in processing payments; and factors that disqualify certain groups or limit such groups' access to social allowances in practice, affecting Roma in particular.

#### *Scope of social assistance*

Several Member States determine the scope of social assistance based on the temporary protection status, nationality or type of residence permit of displaced people from Ukraine (e.g. **Cyprus**,<sup>234</sup> **Poland**<sup>235</sup> and **Romania**<sup>236</sup>). This limits the assistance provided to the displaced people in comparison with that provided to their own nationals.

Some Member States provide access to general assistance schemes that are available to their nationals (e.g. **Belgium**,<sup>237</sup> **Germany**,<sup>238</sup> and **Poland**<sup>239</sup>). In **Poland**, temporary protection beneficiaries can also receive a one-off payment of PLN 300 (€ 64) per person.<sup>240</sup>

Some Member States established specific social assistance schemes for people displaced from Ukraine (e.g. **Cyprus**<sup>241</sup>). Others align social assistance with the benefits available to third-country nationals and asylum applicants (e.g. **Austria**,<sup>242</sup> **Finland**<sup>243</sup> and the **Netherlands**<sup>244</sup>).

Limited amounts paid and local variance in payments are the most widely reported challenges for beneficiaries of temporary protection in many Member States. For example, in **Sweden**, NGOs claimed that the level of financial support for beneficiaries of temporary protection was insufficient to ensure an adequate standard of living.<sup>245</sup>

### *Processing of requests*

The administrative burden involved in processing requests for social assistance allowances, combined with language barriers and a lack of documentation, led to delays in payments. This is the case in **Belgium**, where considerable work pressure was reported;<sup>246</sup> **Finland**;<sup>247</sup> and **Slovenia**, where delays were mainly due to staff shortages.<sup>248</sup>

### *Impact on particular groups*

In **Romania**, some beneficiaries of temporary protection could not access social benefits because they could not meet the requirements, such as the need for both parents to be in Romania to receive child allowances.<sup>249</sup>

In **Cyprus**, many Ukrainians with disabilities who had applied for social assistance in spring 2022 had not received the second instalment of their payment by July 2022.<sup>250</sup> This has been resolved since then and the lump amount is now provided to the Ukrainians in one instalment.

According to NGOs, social welfare services in **Czechia** are not prepared for vulnerable groups with multiple needs.<sup>251</sup>

## **1.4. ADDRESSING FURTHER CHALLENGES RELATED TO THE ARRIVAL OF DISPLACED PEOPLE**

This section focuses on two fundamental rights challenges that are directly related to the arrival of large numbers of people displaced by Russia's aggression against Ukraine. They concern (i) victims of violence, including sexual violence, and (ii) xenophobic disinformation and hate crime. These forms of abuse may also affect others than people displaced from Ukraine, including Russians, Russian speakers or visible minorities.

### **1.4.1. Provision of information and support to victims of violence**

The Victims' Rights Directive<sup>252</sup> grants all victims of crime the right to information and the right to support services, including trauma support and counselling for women who are victims of gender-based violence. Rights under the directive apply to victims in a non-discriminatory manner, irrespective of their residence status. These rights therefore extend to beneficiaries of temporary protection and any third-country nationals.

In addition, offering support to victims of physical and sexual violence committed during armed conflict can be a first step towards granting them redress and, ultimately, access to judicial proceedings if cases are prosecuted and come to court – in accordance with Article 47 of the Charter.

In November 2022, judicial practitioners from **Estonia, Latvia, Lithuania, Poland, Romania, Slovakia** and Ukraine took part in a workshop on investigating and prosecuting crimes related to sexual violence. The event was organised by the Genocide Network Secretariat, hosted by Eurojust; the European Judicial Training Network; and the European Commission.<sup>253</sup>

### *Provision of information for victims*

To allow victims to assess the offers of assistance available to them, it is crucial to provide them with comprehensive and tailored information about their rights and practical options. This provides victims with some control over their situation. The European Network on Victims' Rights expanded the

'Find my victim support service' online tool to include support services available to victims of war crimes.<sup>254</sup>

A number of Member States introduced initiatives to inform women from Ukraine who are victims of gender-based violence about their rights in the EU, in particular to overcome language barriers. These include **Austria**,<sup>255</sup> **Belgium**,<sup>256</sup> **Germany**,<sup>257</sup> **Greece**,<sup>258</sup> **Poland**<sup>259</sup> and **Slovakia**.<sup>260</sup>

#### *Provision of victim support*

Article 9 (3) of the Victims' Rights Directive provides that targeted and integrated support services, including trauma support and counselling, must be available to victims of violence.

Civil society organisations in many EU Member States play an active role in providing such services. This is the case in **Belgium**,<sup>261</sup> **Germany**,<sup>262</sup> **Poland**<sup>263</sup> and **Slovakia**.<sup>264</sup>

For women who are victims of rape and fall pregnant as a result, smooth access to abortion services can help them cope with their victimisation. However, in some Member States, support for victims of sexual violence does not include fast and unhindered access to abortion beyond 12 weeks from the beginning of pregnancy (e.g. in **Poland**<sup>265</sup> and **Slovakia**<sup>266</sup>).

In **Belgium**, the government of the Brussels Region approved the funding of two organisations supporting the reception of women from Ukraine who are victims of sexual violence. That is part of an approach to create a low-threshold procedure that encourages victims to talk in their own language about the violence they have encountered.<sup>267</sup>

#### FRA ACTIVITY

## Survey on violence and related human rights abuses against women fleeing Russia's war of aggression against Ukraine

As part of its response to Russia's war of aggression against Ukraine, in 2023 FRA will carry out a survey collecting data on the extent and forms of violence experienced by women from Ukraine who have arrived in the EU.

This survey will examine the types of support and assistance that should be provided to women victims of violence and the adequacy of existing support measures. The survey interviews will take place in **Czechia**, **Germany** and **Poland** – three EU Member States that are among the countries with the highest numbers of arrivals from Ukraine.

It will ask questions related to violence and other human rights abuses the women have experienced, whether in Ukraine as a result of the conflict, during their journey to the EU or in their current country of residence in the EU. The abuses considered include attempted or actual sexual or other exploitation.

As far as possible, the survey questions will be aligned with FRA and EIGE's Violence against Women Survey II, which will also be collecting data in 2023.

#### **1.4.2. Xenophobic disinformation and hate crime**

The fight against hate crime is intimately linked to several Charter rights, including the rights to life, human dignity, equal treatment and freedom of expression. Article 1 of Council Framework Decision 2008/913/JHA obliges Member States to punish public incitement "to violence or hatred directed against a group of people or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin by public dissemination or distribution of tracts, pictures or other material".<sup>268</sup>

Europeans largely feel sympathy for people displaced from Ukraine, opinion polls and surveys show. Nevertheless, hate speech (particularly online), harassment and even violence were reported in some countries. Xenophobic disinformation and hate speech are particularly widespread on social media, with Roma from Ukraine specifically targeted. The majority of xenophobic hate speech cases FRA identified are related to Ukrainian speakers, but Russian speakers or persons perceived as Russians also experienced increased hate speech.<sup>269</sup>

There is a lack of comprehensive figures on the number of incidents of xenophobic disinformation and hate speech. This is partially because these crimes are often underreported and partially because authorities do not systematically record information on nationality.

Member States have various measures in place to combat disinformation online and offline. Only a few authorities or NGOs (e.g. the NGO *In Iustitia* in **Czechia**<sup>270</sup>) initiated targeted action or launched specific measures countering xenophobic disinformation. However, fact-checking and content removal initiatives in some Member States (e.g. **Poland**<sup>271</sup> and **Slovakia**<sup>272</sup>) specifically target this type of content.



## FRA opinions

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Beneficiaries of temporary protection – the majority of whom are women and children – must have access to suitable accommodation or, if necessary, be provided with the means to obtain housing, as Article 13 of the Temporary Protection Directive stipulates. In addition, the EU Charter of Fundamental Rights (Charter) protects the right to housing assistance, to ensure a decent existence for all those who lack sufficient resources (Article 34).

In several Member States, however, obstacles remain to providing suitable and safe accommodation. These are notably difficulties in making long-term arrangements, ensuring access to housing assistance and systematically vetting private accommodation providers. The findings of FRA's 2022 *Fleeing Ukraine* survey confirm this: six out of 10 respondents were, at the time of the survey, staying in a private apartment or house. Lack of privacy (noted by 36 % of respondents) and lack of a quiet/separate room for children to study (noted by 23 % of respondents) were stated as problems. In addition, more than half of the respondents had to pay for their accommodation in full or in part.



### FRA OPINION 1.1

Given the particular needs of displaced people fleeing the Russian invasion of Ukraine, EU Member States should, where possible, prioritise finding suitable accommodation fit for long-term purposes. EU Member States should verify that private housing is affordable, safe and suitable, particularly for women and children. Those offering housing should receive some form of financial or other compensation.

Successful housing solutions for displaced people from Ukraine should also inform long-term strategies to address housing shortages more generally for asylum applicants in many Member States. Guidance and support provided by relevant EU agencies, such as FRA and the European Union Agency for Asylum (EUAA), can help implement such measures in a way that respects fundamental rights.



## FRA OPINION 1.2

Member States should assist beneficiaries of temporary protection in finding employment, with registered employers, suited to their qualifications and skills. This could be carried out by further promoting the EU Talent Pool Pilot, established by the European Cooperation Network of Employment Services (EURES) under the European Labour Authority (ELA). This pilot facilitates matching the skills of beneficiaries of temporary protection with registered employers. To protect displaced people from the risk of exploitation at work, ELA and Member States' labour inspectorates should step up and intensify their cooperation, including through joint inspections in high-risk sectors. Labour inspections should be implemented to improve information provision and as awareness-raising opportunities, alongside monitoring and enforcement actions concerning employment conditions.

According to Article 12 of the Temporary Protection Directive, the general national legislation in Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment must also apply to beneficiaries of temporary protection. Articles 1 and 31 of the Charter guarantee the fundamental rights to human dignity and to fair and just working conditions.

Overall, however, two thirds of respondents to FRA's 2022 *Fleeing Ukraine* survey aged 16+ were not in paid work at the time of the survey. Among those who were in paid work, three out of 10 respondents experienced some form of exploitation at work. FRA's past research has found that these infringements are not always adequately punished, and that the Employers Sanctions Directive protects only migrants in an irregular situation against severe exploitation in employment relationships.



## FRA OPINION 1.3

EU Member States should strengthen efforts to ensure displaced children from Ukraine are integrated in ordinary schools and childcare facilities as early as possible with due consideration for their language and culture. Particular attention should be paid to children with disabilities, notably those who were living in institutional facilities, to ensure that their specific needs for accessibility and additional support are duly addressed. This integration would facilitate their socialisation and add normality to their daily life. National and EU funding should be used to provide language classes, to increase numbers of staff and to increase childcare and school capacities.

Under Article 14 of the Temporary Protection Directive, EU Member States are obliged to grant children enjoying temporary protection access to education under the same conditions as their own nationals. However, the school enrolment of children displaced from Ukraine continues to be low owing to lack of school space, insufficient numbers of staff or language barriers.

Almost two thirds of children displaced from Ukraine attend online education provided by Ukrainian authorities, as shown by the findings of FRA's 2022 *Fleeing Ukraine* survey. More than one quarter of those aged 12–15 noted not having a stable place to live as the main reason for not attending school, and one fifth indicated not being accepted to a school as the main reason.

A lack of childcare facilities is also an important obstacle to accessing employment, notably for women, who represent the majority of adults displaced from Ukraine, FRA's 2022 *Fleeing Ukraine* survey confirmed.

The great majority of the 4 million people having fled the Russian war of aggression against Ukraine who registered for temporary protection or similar national protection schemes in the EU by year-end are women – many with responsibilities for caring for children and/or older people. One of the main barriers to accessing employment – alongside insufficient knowledge of the language of the host country – is caring responsibilities, according to the findings of FRA's 2022 *Fleeing Ukraine* survey. Yet, measures by EU Member States have unevenly taken into account this gender perspective and the special needs of displaced women.

Risks of sexual exploitation were also identified across the EU, with a number of cases reported and investigated. Article 20 (equality before the law) and Article 21 (non-discrimination) of the EU Charter of Fundamental Rights require extra efforts and positive targeted action from national authorities to ensure widespread equal access to all rights and services offered by the Temporary Protection Directive for all displaced people fleeing the war.



## FRA OPINION 1.4

As the majority of those fleeing the Russian invasion of Ukraine are women – many with responsibilities for caring for children and/or older people – the provision of access to specific services needs to be gender sensitive and targeted. Services also need to include support for those who have experienced sexual violence and exploitation. Although the Temporary Protection Directive was drafted in a gender-neutral way, the application by EU Member States of its provisions concerning access to accommodation, employment, education, healthcare and social welfare services should not be 'gender blind'. In their efforts in this regard, Member States should consider seeking the support of relevant EU agencies such as the European Institute for Gender Equality (EIGE) and FRA.

Pursuant to Article 17 of the Temporary Protection Directive, the activation of the temporary protection scheme for displaced people fleeing the war against Ukraine does not prevent those people from exercising their right to apply for asylum. About one third of respondents to FRA's 2022 *Fleeing Ukraine* survey lodged an asylum application. However, the proportion of people applying for asylum varies among EU Member States.

People leaving conflict and violence may be fleeing such situations in circumstances and with certain characteristics that qualify them as refugees or other beneficiaries of international protection under the EU asylum *acquis*. Recital 12 and Article 3 (5) of the directive both confirm that granting temporary protection does not affect the prerogative of the Member States to provide more favourable protection statuses.

The protracted war and the subsequent impossibility of safe return even when the war ends require that Member States implement durable solutions protecting the displaced people once the extended temporary protection expires. If such solutions are not implemented, the displaced people risk ending up in a state of uncertainty and without self-sustaining integration prospects in their host Member States.



## FRA OPINION 1.5

Member States should ensure that meaningful legal avenues are mobilised to offer a smooth transition from temporary protection status to other protection statuses under either EU or national law, in a sustainable manner, once the EU temporary protection scheme ends. The use of these durable protection statuses, including group-based status determination and channels leading to long-term residence, should also be backed by EU financial support schemes to alleviate the long-term costs of integrating displaced people from Ukraine into host societies.

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# IMPLEMENTATION AND USE OF THE CHARTER AT NATIONAL LEVEL

# 2

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The 2020–2030 EU Charter strategy and the related 2021 Council conclusions remain the key documents guiding relevant action at both EU and national levels. At national level, court proceedings continued to refer to the Charter and, sometimes, so did legislative procedures. Otherwise, however, the use of the Charter remains limited.

Examples of Charter-focused policies in national, regional and local administrations remain hard to find. The use of EU funds is an exception. The Common Provisions Regulation makes the obligation to observe the Charter very explicit. Another prominent Charter element at national level relates to the newly appointed Charter focal points in national administrations.

National human rights institutions in selected Member States provided expert input on the Charter in legislative, administrative or judicial proceedings. However, national human rights institutions and civil society still lack capacity or awareness to use the Charter more actively in their work. The need for continued judicial training on the Charter appears to be increasingly recognised, and the European Commission funds it.

## 2.1. INTRODUCTION: THE CHARTER AT EU LEVEL

The EU strategy to strengthen the application of the Charter 2020–2030<sup>1</sup> sets the direction of the Charter’s application for the next 10 years, so it was still a key reference in 2022. The strategy and the Council conclusions on strengthening the application of the Charter<sup>2</sup> call for further training, awareness raising, mainstreaming of the Charter into law making and the work of national administrations, the exchange of experiences and practices in applying the Charter, strict Charter conditions for the use of EU funds, more coordination on Charter-related matters, strengthened national human rights institutions (NHRIs) and greater cooperation with civil society.

In its 2022 report on the application of the Charter, the European Commission focused on civic space and its role in protecting and promoting fundamental rights under the Charter.<sup>3</sup> It referred to FRA data and findings on this theme, among other sources.

The European Parliament dealt in various resolutions with breaches of fundamental rights<sup>4</sup> and argued for a wide interpretation of the Charter’s field of application.<sup>5</sup> The European Economic and Social Committee repeated its call to significantly support civil society to act in all the substantial areas of rights that the Charter mentions.<sup>6</sup> The European Committee of the Regions called for the continuous involvement of local and regional authorities in promoting the Charter’s values and monitoring compliance with the principles associated with it.<sup>7</sup>

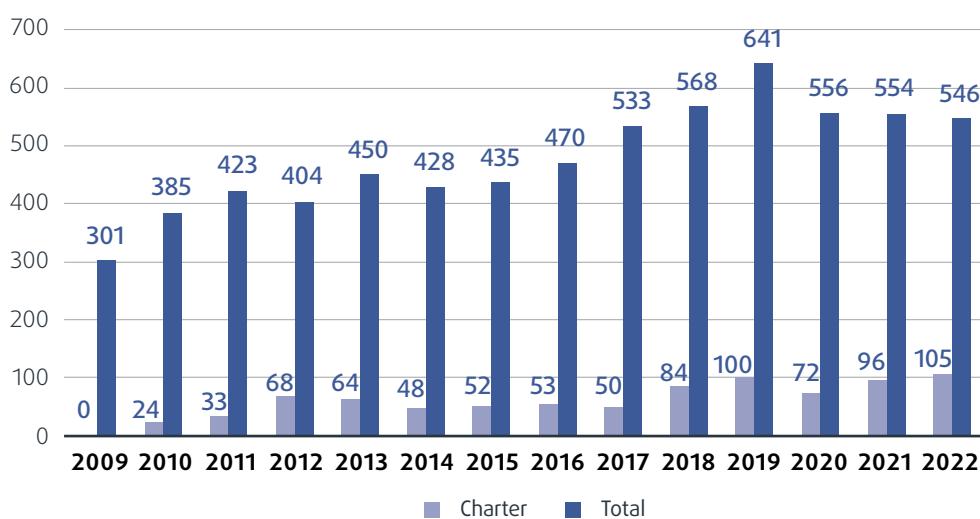


The preliminary reference procedure remains an important tool for dialogue between European courts, so judges can clarify and develop the interpretation of the Charter.

In **Ireland**, a case concerned a group of residents in a particular area of Dublin who lacked legal standing to challenge a planning decision under domestic law. The High Court referred questions on, among other things, the interpretation of Article 47 of the Charter (right to an effective remedy and to a fair trial) to the Court of Justice of the European Union (CJEU).<sup>8</sup> In **Spain**, the Supreme Court referred a question to the CJEU concerning the interpretation of Articles 17 (right to property), 21 (non-discrimination) (consumer protection) and 47 of the Charter, and Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions.<sup>9</sup> Both cases are still pending before the CJEU.

In other cases, rulings of the CJEU already had effects in the national legal system. For example, in **Italy**, a case concerned excluding non-EU nationals without an EU long-term residence permit from receiving maternity and birth vouchers. Following a CJEU preliminary ruling, the Constitutional Court held that the contested national provisions introduced an unjustified discrimination, contrary to Article 34 (social security and social assistance) of the Charter among other provisions. Consequently, the benefit became available to all non-EU nationals holding a regular residence permit.<sup>10</sup>

**FIGURE 2.1: REQUESTS FOR PRELIMINARY RULINGS, 2010–2022, AND NUMBER THAT REFER TO THE CHARTER**



Source: Calculation based on data received from the CJEU

► Notes:  
Overall, in 2022, 546 preliminary requests were submitted to the CJEU, of which 105 also referred to the Charter.

## 2.2. APPLICATION OF THE CHARTER BY THE MEMBER STATES

### 2.2.1. Impact assessments and legal scrutiny of upcoming legislative proposals

FRA asked its research network, Franet, to report on one or more examples per country of the Charter playing a significant role in impact assessments and/or legal scrutiny. In most Member States (apart from Belgium), Franet identified examples of impact assessments or legal scrutiny discussing how bills relate to the Charter. It found over 40 examples.

Most concerned employment, as examples from **France**<sup>11</sup> (Article 34, social security and social assistance), **Hungary**<sup>12</sup> (Article 11, freedom of expression and information, and Article 12, freedom of assembly and of association) and **Slovakia**<sup>13</sup> (Article 31, fair and just working conditions, and Article 32, prohibition of child labour and protection of young people at work) illustrate. Article 47 of the Charter (right to an effective remedy and to a fair trial) was particularly relevant to assessing amendments to legislation concerning competition law in **Greece**<sup>14</sup> and **Slovenia**.<sup>15</sup> In **Lithuania**, a draft law sought to establish a preferential rate of value added tax for household gas users and independent electricity suppliers. The Ministry of Justice submitted that the drafters had failed to justify the difference in treatment between independent and public sector electricity suppliers in line with the CJEU case law on Articles 20 (equality before the law) and 21 (non-discrimination) of the Charter. The draft law was withdrawn.<sup>16</sup>

In the **Netherlands**, the Council of State scrutinised a bill requiring the providers of cinema and certain media services to invest a percentage of their turnover in a Dutch cultural audiovisual product of their own choice. The Council of State held that the measure might interfere with Article 17 of the Charter (right to property). It advised giving reasons for legitimate interference with the right to property.<sup>17</sup>

**Italy**, for instance, made legislative proposals or amendments to current legislation concerning the rights of the child. The Senate's dossier on a draft law regulating children's surnames makes further references to non-discrimination (Article 21 of the Charter) and equality between men and women (Article 23) to justify the need to allow children to be registered at the civil registry with the surnames of both parents. The legislative reform is meant to contribute to implementing the principle of non-discrimination on grounds of gender.<sup>18</sup>

In **Sweden**, stay bans prevent children from accessing certain geographical areas that potentially have negative effects on the child's health or development. An inquiry within the Ministry of Health and Social Affairs



examined a proposal for a regulation establishing a register concerning such bans. It considered the right to integrity of the person (Article 3 of the Charter), respect for private and family life (Article 7) and data protection (Article 8).<sup>19</sup>

The **Danish** parliament passed an act introducing a travel ban for persons convicted of child sexual abuse, under Article 24 of the Charter (the rights of the child), on 10 February 2022.<sup>20</sup>

Another area where the Charter was an important element in incorporating EU law into national legislation was the Electronic Communications Code Directive.<sup>21</sup> In **Croatia**, the legislature decided not to include the text of Article 100 (2) of the directive, which simply replicates Article 52 (1) of the Charter (on the limitation of rights). Provisions in the Charter should not be prescribed by special laws, given that the Charter forms part of national law and its provisions are directly applicable, the legislator argued.<sup>22</sup>

### **2.2.2. Charter focal points**

In its Strategy to Strengthen the Application of the Charter of Fundamental Rights in the EU,<sup>23</sup> the European Commission invited Member States to nominate a Charter focal point to facilitate coordination and information sharing. By the end of 2022, 24 focal points had been established in Member States.<sup>24</sup> In most Member States the focal point lies within the Ministry of Justice (see the recent appointments in Cyprus, Finland and France). In a few others it either holds a horizontal position (see the recent appointments in Austria, Luxembourg and Poland) or lies within a different ministry (Table 2.1).

The Charter focal points had their first meeting in June 2022. Under the coordination of the European Commission, further meetings will follow, to allow for exchange of experience and overall coordination.

Some Member States are still defining the mandates and key functions of the focal points. Others have already decided on them.

For instance, in **Denmark**, the focal point is tasked to ease the flow of information and to share best practice on the Charter. It coordinates the Commission's annual report on the application of the Charter and collects contributions to it. Furthermore, the focal point participates in meetings regarding the annual report and the strategy to strengthen the application of the Charter in the EU.<sup>25</sup>

In **Croatia**, the focal point will coordinate and facilitate the exchange of information about promoting and applying the Charter, and good practices in that regard, among state administration bodies, ombuds institutions and non-governmental organisations.<sup>26</sup> In **Germany**, the focal point compiles examples of and information on the use of the Charter in Germany, and transfers them to the European e-Justice Portal.<sup>27</sup> **Greece**<sup>28</sup> and **Slovakia**<sup>29</sup> are examples of focal points being part of fundamental rights monitoring mechanisms.

In **Estonia**, discussions are taking place about putting the focal point within the Ministry of Justice.<sup>30</sup> In **Hungary**, a department within the Ministry of Justice carries out the tasks of the focal point. It is responsible for issues related to fundamental rights in various settings in the EU.<sup>31</sup>

**TABLE 2.1: 24 MEMBER STATES HAD APPOINTED THEIR CHARTER FOCAL POINTS BY THE END OF 2022**

Horizontal position	Ministry of Justice	Ministry of the Interior	Ministry of Foreign Affairs	Ministry of Employment	Judiciary
Austria	Belgium	Netherlands	Germany	Sweden	Bulgaria
Croatia	Cyprus		Luxembourg		
Czechia	Denmark				
Luxembourg	Finland				
Poland	France				
	Greece				
	Hungary				
	Italy				
	Latvia				
	Lithuania				
	Portugal				
	Romania				
	Slovakia				
	Spain				

*Blue: newly appointed in 2022.*

### **2.2.3. Other examples of how administrative, local or law enforcement authorities use the Charter**

FRA also asked Franet to provide information on promising examples of how administrations at national, regional or local level, including law enforcement authorities, used the Charter. It appears that the use of the Charter at those levels continues to be limited. National, regional and local administrations do not seem to be making structural and cross-cutting efforts to promote the application of the Charter's provisions. Only isolated examples could be identified.

For instance, the **Swedish** Authority for Privacy Protection adopted a legal position on the right to be forgotten. It invokes the Charter in relation to the balancing the right to private life and to protection of personal data, on the one side, and the right to freedom of information, on the other. This legal position follows the guidance from the European Data Protection Board on how to conduct this assessment.<sup>32</sup>

In **Lithuania**, a draft amendment to the Law on Notaries required candidates for public notaries to be less than 60 years old. The Ministry of Justice proposed to remove this discriminatory requirement and relied on Articles 20 (equality before the law) and 21 (non-discrimination) of the Charter together with the relevant CJEU case law.<sup>33</sup>

Among regional and local levels of administration, in **Austria**, the City of Vienna released a **new guide** that presents how human and fundamental rights relate to the Vienna city administration. This guide includes several references to the Charter, especially to Article 1 on the inviolability of human dignity.<sup>34</sup> FRA co-hosted an online Charter training session for Committee of the Regions staff where the speakers from the committee also presented hands-on examples of how human resources, data protection and privacy, and ethical rules use the Charter at regional and local levels.<sup>35</sup>



#### 2.2.4. The Charter and the use of EU funds

National administrations have engaged with the Charter when administering EU funds. This engagement follows from the Common Provisions Regulation,<sup>36</sup> which came into force on 1 July 2021.

The regulation is intended to ensure that Member States and their competent authorities at all levels respect fundamental rights listed in the Charter (and the UN Convention on the Rights of Persons with Disabilities), as a matter of practice, and not just in theory, when administering eight Union funds. It provides that the implementation of Union funds covered by the regulation must ensure respect of fundamental rights and compliance with the Charter. To this end, effective mechanisms must be in place to ensure compliance with the Charter during the implementation of programmes. Member States must establish monitoring committees, including civil society and bodies responsible for the promotion of fundamental rights, with the task of examining the fulfilment of enabling conditions and the application of them throughout the programming period.<sup>37</sup>

Member States started implementing the regulation in 2022 and have put in place effective mechanisms to ensure compliance with the Charter. Some issued guidelines explaining the Charter obligations in Union funds' activities, for example Bulgaria,<sup>38</sup> Estonia,<sup>39</sup> Romania<sup>40</sup> and Slovenia.<sup>41</sup>

Member States have started establishing monitoring committees and complaint mechanisms in accordance with their obligations under Articles 38 (1) and 69 (7) of the regulation, respectively. The roles of NHRIs, other specialised bodies and civil society on such committees differ across the EU.

**Czechia** verifies compliance with the Charter by checking all programmes in advance. Human rights experts from the Office of the Government work with members of civil society organisations that are included on the monitoring committees.<sup>42</sup> In **Greece**, the National Human Rights Commission acquired a specific role in ensuring compliance with the Charter when EU funds are involved. That includes helping to manage cases of non-compliance and complaints relating to the Charter.<sup>43</sup>

#### FRA ACTIVITY

FRA prepared guidance on *Human rights cities in the European Union* to support local authorities in their commitment to respect, protect and fulfil the rights and freedoms in the Charter. Produced together with a group of human rights cities and various practitioners in the EU, this guide can help cities that wish to improve their efforts to respect human rights. It draws on the promising practices and experiences of cities, regions, experts, international organisations and networks that the FRA report *Human rights cities in the EU: A framework for reinforcing rights locally* presents.

In **Lithuania**, the government established a monitoring committee, including representatives from the ministries, the private sector, academia, ombudspersons, the Council for the Affairs of People with Disabilities, social partners, and various non-governmental organisations and associations. When approving project proposals, the committee considers compliance with the Charter and the Convention on the Rights of Persons with Disabilities. Once a year it assesses information on the complaints received, with regard to non-compliance with these two instruments.<sup>44</sup>

In **Luxembourg**, a monitoring committee analyses instances of non-compliance with the Charter during its annual meeting, and refers complaints to the competent entities. The University of Luxembourg features among its members.<sup>45</sup> Moreover, in **Finland**, for instance, bodies with a human rights remit sitting on a monitoring committee have only consultative and advisory status.<sup>46</sup>

### **2.2.5. National human rights institutions and other bodies**

As mentioned in the previous section, NHRIs, equality bodies and ombudspersons are becoming part of the national monitoring mechanism for the implementation of EU funds. They also play an increasing role in promoting compliance with the Charter nationally.

In 2021, FRA encouraged the European Commission to propose new legislation by 2022 to strengthen equality bodies.<sup>47</sup> In 2022, the Council of the European Union invited the European Commission to propose more funding opportunities, within the limits of the multiannual financial framework, to help NHRIs, equality bodies, and other public bodies and institutions develop expertise on applying the Charter.<sup>48</sup>

The European Commission prepared a new legislative initiative. It aims to strengthen equality bodies and improve their independence and effectiveness, in particular as regards their capacity to secure support for rights holders.<sup>49</sup> This is likely to contribute to an institutional environment that is better equipped to protect and promote the rights and principles in the Charter.

Three examples show how NHRIs and equality bodies can actively promote respect for the Charter in the Member States.

In **Belgium**, the Federal Institute for the Promotion and Protection of Human Rights advised the government on a proposal to revise the Constitution to adopt a transversal clause providing that rights and freedoms guaranteed in international treaties ratified by the State form an integral part of the Constitution. The institute also considered that inspiration can be drawn from Article 52 (3) of the Charter with a view to regulating the relationship between fundamental rights and freedoms at the domestic and international level. According to the institute, inspiration can also be drawn from Article 52 (1) of the Charter to establish a unified general system of exceptions to the rights recognised by Title II of the Constitution, specifying that such a limitation must never undermine the essence of the rights in question.<sup>50</sup>

The proceedings before the **Danish** Supreme Court concerned withdrawing Danish citizenship from a woman with dual citizenship who is currently in Syria with her two children. The Danish Institute for Human Rights argued that the withdrawal must be assessed in line with Article 7 and Article 24 (2) of the Charter, and the CJEU case law.<sup>51</sup> The Institute also represented several doctors in proceedings before the Danish Board of Equal Treatment in a case concerning gender discrimination in the payment of pension

## **FRA ACTIVITY**

Since July 2022, FRA has implemented a project funded under the **EEA and Norway Grants**, in partnership with seven NHRIs and the European Network of National Human Rights Institutions. The project aims to empower NHRIs from Bulgaria, Croatia, Cyprus, Latvia, Poland, Slovakia and Slovenia to develop activities in three main areas: promoting the application of the Charter by NHRIs and enhancing their role in its enforcement at national level; NHRIs' promotion and advancement of the rule of law at national level; and building the capacity of NHRIs to check that spending EU funds complies with fundamental rights.

contributions. It submitted that the right to equal treatment of men and women is a fundamental right recognised in Articles 21 (non-discrimination) and 23 (equality between women and men) of the Charter and in the CJEU case law.<sup>52</sup>

#### **2.2.6. The Charter and national courts**

National courts continued to refer to the Charter in their case law. However, Franet did not provide the data for all Member States.<sup>53</sup> The number of decisions referring to the Charter was 143 for **Bulgaria**, 142 for **Portugal** and 53 for **Austria**.<sup>54</sup>

Relevant references to the Charter are most frequent before supreme administrative courts. For instance, in **Romania**, the High Court of Cassation and Justice referred to the Charter in 74 cases, in contrast to the Constitutional Court, which made only 25 references.<sup>55</sup> In **Sweden**, the Court of Appeal made the great majority of references to the Charter.<sup>56</sup>

The thematic areas where national courts referred to the Charter included value added tax in **Austria**,<sup>57</sup> confiscation of property in criminal proceedings in **Denmark**,<sup>58</sup> disability discrimination in employment in **Estonia**,<sup>59</sup> the energy sector in **Greece**,<sup>60</sup> competition in **Romania**,<sup>61</sup> legal costs in administrative proceedings in **Sweden**,<sup>62</sup> access to public information in **Poland**,<sup>63</sup> equal pay for equal work in **Germany**,<sup>64</sup> the European arrest warrant in **Cyprus**<sup>65</sup> and **Malta**,<sup>66</sup> mutual recognition and enforcement of custodial sentences in **Sweden**,<sup>67</sup> asylum in **Finland**,<sup>68</sup> **Lithuania**<sup>69</sup> and **Slovenia**,<sup>70</sup> and data retention in **Portugal**.<sup>71</sup>

In **Poland**, some municipalities objected to the promotion and affirmation of the “so-called lesbian, gay, bisexual and trans ideology”. The Supreme Administrative Court found their resolutions inconsistent with the prohibition of discrimination enshrined in the Constitution, the Charter and the European Convention on Human Rights. The Polish Ombudsman brought the case before the court.<sup>72</sup>



In **Estonia**, a case concerned excluding a prison guard from service on account of a hearing impairment. The Supreme Court checked the legality of national law and the permissibility of constitutional review against Article 21 (1) (non-discrimination) and Article 51 in conjunction with the preamble of the Charter. If a national court is asked to check the compatibility with fundamental rights of a national provision or measure implementing EU law within the meaning of Article 51 (1) of the Charter, the court noted, national authorities and courts have the right to apply national standards of fundamental rights protection, provided that this does not undermine the level of protection provided for in the Charter, as interpreted by the CJEU, or the primacy, unity and effectiveness of EU law. The court further held that the disputed national provisions had been disproportionate and unconstitutional, on the grounds that they completely excluded any discretion for the prison authority to implement reasonable measures to continue the applicant's service.<sup>73</sup>

In **Hungary**, a company alleged a violation of its right to property under Article 17 of the Charter. The case concerned a national law that conferred a monopoly on operating the mobile payment system in the whole country on a single, State-controlled undertaking. The Metropolitan Regional Court of Appeal dismissed the appeal. It acknowledged the possible direct effect of the above Charter provision, but held that the applicant had failed to prove, in accordance with the CJEU *Brasserie* test, a direct link between the damage it had suffered and the State's breach of law.<sup>74</sup>

In **Italy**, the Criminal Procedure Code envisaged applying the *ne bis in idem* principle only in criminal proceedings, and not in administrative proceedings that are substantially criminal in nature. The Constitutional Court declared that provision unconstitutional. It relied on Article 50 of the Charter (right not to be tried or punished twice in criminal proceedings for the same criminal offence) to reach its conclusion.<sup>75</sup>

As in past years, whether the Charter applies to the case is often not explicitly addressed. This was the case in **Malta**, for instance, where a court of appeal converted a fine for an offence against public order into community service. It found that the sanction that the first-instance court had imposed was disproportionate to the offence in the light of the right to proportionate punishment under Article 49 (3) and Article 52 of the Charter.<sup>76</sup>

Other cases explicitly found the Charter inapplicable. For instance, a case in **Luxembourg** concerned the refusal to recognise statelessness. The applicant alleged a violation of Article 41 of the Charter (the right to good administration). The Administrative Court held that the applicant could not rely on that article, as the contested decision refusing the recognition of statelessness status did not implement EU law and was not governed by it. The court further held that the applicant did not have and had never had the nationality of an EU Member State and, consequently, the status of a Union citizen. As a result, he did not fall within the ambit of EU law, in line with the CJEU judgement in the *Rottmann* case (C-135/08).<sup>77</sup>

In **Portugal**, a judge challenged a decision concerning the evaluation of his performance under Articles 3 (dignity), 31 (fair and just working conditions) and 47 (judicial independence) of the Charter. The Supreme Court of Justice dismissed the case. It held that no EU law issue was in question under Article 51 of the Charter (field of application). The court noted that judicial decisions handed down with total disregard for indisputable procedural rules were contrary to the judge's functional duties, and were as such able to be subject to inspection by the Supreme Council of the Magistracy.<sup>78</sup>

Also in **Portugal**, the Constitutional Court dealt with a case concerning data retention. It analysed a national provision incorporating the Data Retention Directive under Articles 7 (respect for private and family life) and 8 (data protection). The court found the national provision unconstitutional, as it did not provide for notifying the person concerned that the criminal investigation authorities accessed the data stored. Exceptions to this rule are possible only if such notification is likely to jeopardise investigations or the life or physical integrity of third parties.<sup>79</sup>

## 2.3. THE ROLE OF CIVIL SOCIETY ORGANISATIONS, RIGHTS DEFENDERS AND JUSTICE PRACTITIONERS

In its 2022 annual report on the application of the Charter, the European Commission focused on civic space. It acknowledged that civil society plays a key role in promoting and protecting the Charter rights and ensuring that the Charter is properly applied.<sup>80</sup> To be able to promote and protect the Charter, civil society and rights defenders need an environment that supports their own fundamental rights, provides budget and human resources, and addresses legal considerations, according to the report.<sup>81</sup>

The European Parliament recalled the crucial role that civil society organisations play in promoting and protecting the EU values enshrined in Article 2 TEU and in the Charter.<sup>82</sup> It emphasised that civic space must be free from undue interference, intimidation, harassment and chilling effects from State and non-State actors. It reminded Member States of their obligation to ensure an enabling environment.<sup>83</sup>

The European Economic and Social Committee stressed the need to support civil society to act in all the substantial areas of rights that the Charter mentions, through training, organisational and financial support, and protection from attacks and negative campaigns.<sup>84</sup> The Citizens, Equality, Rights and Values programme called for proposals focusing on raising people's awareness on the Charter.<sup>85</sup> By the deadline on 24 February 2022, it had received and accepted many applications from civil society organisations, NHRIs, equality bodies and ombuds institutions.

FRA consulted civil society organisations for the Commission's 2022 annual report on the Charter. Fewer than half of the responding organisations use the Charter rarely or never, or do not know of its existence.<sup>86</sup> The major obstacles to their work are verbal harassment (44 %), intimidation or disinformation campaigns (43 %) and digital attacks (19 %).<sup>87</sup> Just over half (51 %) face obstacles to their freedom of expression and information, their participation and cooperation with authorities, and accessing justice.<sup>88</sup>

## 2.4. STRENGTHENING AWARENESS OF CHARTER RIGHTS

The Charter strategy invites Member States to develop initiatives to promote people's awareness of their Charter rights and where to turn when their rights are breached. In particular, they should empower local players.

The European Commission launched an awareness campaign for people to learn more about the Charter and claim their rights or seek guidance.<sup>89</sup> It also continued to provide funds under the Citizens, Equality, Rights and Values programme to promote the Charter.<sup>90</sup>

### FRA ACTIVITY

FRA has been collecting evidence and publishing reports on civic space issues in the EU since 2017, raising awareness of the challenges and risks for civil society organisations across the EU, and highlighting promising practices. FRA's report *Europe's civil society: Still under pressure – 2022 update* presents good practices, challenges for civil society in the EU, and national, international and EU tools and guidelines supporting civil society organisations. FRA contributed to the European Commission's *2022 annual report on the application of the Charter of Fundamental Rights* by analysing targeted consultations on this topic that the European Commission undertook during April 2022.

Check relevant FRA work online at '[Civic space](#)'.



## FRA ACTIVITY

FRA contributed to the implementation of the Charter strategy with its growing stock of **material and tools for judicial training on the Charter**. It published *Charter case studies - Trainer's manual* with practical case studies and a methodology for training workshops on the Charter in 10 EU languages (Czech, Dutch, English, French, German, Hungarian, Italian, Polish, Romanian and Spanish). The remaining languages are to follow in 2023.

Charterpedia has been continuously updated as a one-stop shop for legislative, case law and other developments on EU fundamental rights. The European Commission included relevant FRA Charter material and tools in the **e-Justice portal**.

Academia continued to raise awareness of the Charter by examining, for example, freedom of expression,<sup>91</sup> the principle of legality,<sup>92</sup> the right to good administration,<sup>93</sup> the right to an effective remedy and to a fair trial,<sup>94</sup> protection in the event of unjustified dismissal<sup>95</sup> and the Charter in employment.<sup>96</sup>

The European judicial training strategy for 2021–2024<sup>97</sup> continued to be the reference point for training justice professionals on the Charter. To support this strategy and contribute to its priorities, the French Presidency of the Council of the EU, the National School of Magistracy and the European Commission jointly hosted a large conference. During the conference, it was stressed that Charter training should be self-standing and practice-oriented, harmonised across legal professions, focusing on the preliminary reference procedure in initial training and adapted to the national context.<sup>98</sup>

Along the same lines, the Justice Programme has been funding several cross-border judicial training projects for lawyers and judges that cover fundamental rights.<sup>99</sup>

Member States increasingly provide training on the Charter for justice professionals. For example, judges and law clerks received training on the Charter in **Austria**,<sup>100</sup> **Belgium**,<sup>101</sup> **Bulgaria**,<sup>102</sup> **France**,<sup>103</sup> **Germany**,<sup>104</sup> **Greece**,<sup>105</sup> **Hungary**,<sup>106</sup> **Italy**,<sup>107</sup> **Latvia**,<sup>108</sup> **Luxembourg**<sup>109</sup> and the **Netherlands**.<sup>110</sup> Lay judges were trained on the Charter in **Germany**.<sup>111</sup> Specific training on the Charter for lawyers took place in **Bulgaria**<sup>112</sup> and **Poland**.<sup>113</sup>

In contrast to relatively widespread judicial training, initiatives to train staff in national administrations, parliaments and law enforcement agencies on the Charter seem far more limited, according to the information received. However, some good examples of capacity building were found.

In **Denmark**, the Ministry of Justice arranges internal two-day courses on human rights for its employees.<sup>114</sup> In **Portugal**, the National Institute of Administration, in partnership with several national bodies with a human rights remit, organised training on human rights, including the Charter, for civil servants in public administration.<sup>115</sup>

In **Greece**, a training programme for civil servants entitled 'The EU Charter of Fundamental Rights – Its modern applications in public administration and local government' was offered twice in 2022. This training programme for civil servants is the outcome of a memorandum of cooperation between

the Ministry of Justice, as the Charter focal point, and the National Centre for Public Administration and Local Government, signed in December 2021. It was designed in collaboration with the abovementioned authorities and it will take place on a regular basis from now on.<sup>116</sup>

In **Finland**, the Prime Minister's Office, in collaboration with the Ministry of Justice, offered a two-day training course on fundamental and human rights in law drafting to some 60 civil servants from various ministries engaged in law drafting.<sup>117</sup> It also included the Charter.

## FRA opinions

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The Charter applies at federal, regional and municipal levels. The EU Charter Strategy 2020–2030 emphasises promoting the application of the Charter at all levels. Against this background, however, Member States appear to lack a structured engagement with the implementation of the Charter strategy, such as definitions of clear targets, milestones and timelines.

Good examples of regular use of the Charter at national, regional and local levels are limited. They relate mostly to the monitoring of the use of EU funds. There appears to be a lack of mainstreamed action in all levels of the executive, as called for by the 2021 Council Conclusions on strengthening the application of the Charter.

The Charter focal points could be used to promote and coordinate capacity building, the exchange of information and awareness raising on the Charter, the same conclusions note. At the end of 2022, 24 Member States had already nominated Charter focal points. Only Ireland, Malta and Slovenia were still in the process. However, their potential for knowledge sharing and their coordination role remain to be developed further.

The situation is more positive in the area of training, where Charter-specific training is increasingly provided for justice professionals, evidence shows. However, similar training for civil servants seems to be available in very few Member States.

The situation is worse at regional and local levels. The Charter is equally applicable there but Charter-specific training seems absent. Only few municipalities appear to have a specific focus on fundamental rights, as stated for instance by FRA in the report *Human rights cities in the EU: A framework for reinforcing rights locally*.



### FRA OPINION 2.1

Member States should enhance the promotion and knowledge of the Charter among all levels of national administration, within the judiciary and in law enforcement. This could include sharing knowledge via the Charter focal point, and training activities for legal practitioners applying EU law at national, regional and local levels. Member States that have not yet appointed Charter focal points should do so and proactively encourage the use of available resources, training tools and material on the Charter for capacity-building and knowledge-sharing purposes.

Municipalities are called on to become ‘human rights cities’ and mainstream the Charter in all their activities. They are invited to use FRA’s framework for reinforcing rights locally, which includes tools for integrating human rights standards – including the Charter – into their work.

EU institutions should make an additional effort to promote the Charter at national and subnational levels, through targeted funding to Member States, local and regional authorities, and to knowledge multipliers, and by collecting and sharing best practices on capacity building.



## FRA OPINION 2.2

To ensure full respect of the Charter in Union funds implementation, Member States should establish monitoring committees that are sufficiently inclusive. Public bodies with a fundamental rights remit, such as national human rights institutions (NHRIs), and civil society organisations should be included in such committees and have at least a formal advisory role. Member States' competent authorities should report on giving due consideration to their opinions.

To enable NHRIs and civil society to participate effectively in the monitoring process, Member States should provide them sufficient funding and relevant training.

In line with the Common Provisions Regulation, Member States should ensure that their monitoring committees consider, alongside compliance with the Charter of Fundamental Rights, compliance with the UN Convention on the Rights of Persons with Disabilities, as envisaged by the Common Provisions Regulation.

The Common Provisions Regulation includes both horizontal enabling conditions (Article 9 (1)) and thematic enabling conditions (Article 15 (1)), such as on disability and Roma inclusion. According to that regulation (Article 8), Member States must organise and implement a comprehensive partnership for implementing relevant EU funds, building on the multilevel governance approach and ensuring the involvement of "non-governmental organisations, and bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination". Member States should take measures to ensure that the design, implementation, monitoring and review of EU funds are conducted in close cooperation with civil society and all other relevant stakeholders, including at regional and local levels.

Only a few Member States started taking measures to enforce the Common Provisions Regulation in line with the Charter in 2022. These measures range from adopting guidelines explaining the Charter obligations when implementing EU funds to more concrete actions, such as establishing monitoring committees and complaint mechanisms. The role of NHRIs and civil society on such committees differs across the Member States, from an active role in *ex ante* Charter checks of all projects and processing complaints, through an advisory function, to no role at all.

Regrettably, so far only one Member State has explicitly considered the UN Convention on the Rights of Persons with Disabilities in the compliance-monitoring process, although the convention is binding upon all EU Member States, and the EU itself. This also appears not to respect the principle of integration of persons with disabilities, in Article 26 of the Charter.

The European Parliament and the European Commission recognised the crucial role of civil society in promoting and protecting the rights enshrined in the Charter. To ensure that civil society can effectively perform this task, an enabling environment must be put in place.

Civil society organisations across the EU face challenges in access to funding, protection from harassment, threats and attacks, access to justice, participation in political decision-making and communication with public authorities, FRA's evidence shows. Several examples of promising practices are available in Member States and relate mostly to funding opportunities and improved participation.

Alongside a thriving civic space, the Charter strategy also refers to the key role of NHRIs. It underlines that NHRIs "monitor the application, implementation and promotion of the Charter on the ground, provide information and support to victims of fundamental rights violations and cooperate with the national institutions to improve their use and awareness of the Charter." At the end of the reporting period, 19 Member States had NHRIs with A status accreditation, four had NHRIs with B status, Romania had one with C status, and only Czechia, Italy and Malta did not have an accredited NHRI.



## FRA OPINION 2.3

As part of their action to strengthen the application of the EU Charter of Fundamental Rights and the rule of law, EU institutions and Member States should strengthen all relevant actors in the national human rights systems. This includes regular monitoring of the civic space, closely involving civil society actors and other human rights defenders, drawing on data collected by FRA.

Member States should take measures to ensure proper investigations and sanctions on those who attack, harass or threaten human rights defenders.

Member States and the EU should continue funding operational capacity for civil society that includes specific training on the Charter. Member States are also invited to use the Citizens, Equality, Rights and Values programme to fund Charter-related training and make use of available tools developed by FRA and other institutions.

Member States should ensure that different levels of government communicate and cooperate with rights defenders and civil society organisations.

Member States should ensure that NHRIs and civil society actors work in an enabling environment where their functioning is ensured with adequate operational resources. Where fully independent NHRIs do not yet exist, Member States should establish them.

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# EQUALITY AND NON-DISCRIMINATION

# 3

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	25	January
		Parliamentary Assembly of the Council of Europe (CoE) adopts resolution (2417) and recommendation (2220) on 'Combating rising hate against LGBTI [lesbian, gay, bi, transgender and intersex] people in Europe'.
17		February
		In <i>Y v. Poland</i> (No. 74131/14), European Court of Human Rights (ECtHR) rules that there was no violation of Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the European Convention on Human Rights (ECHR), for failing to demonstrate "sufficiently serious negative consequences", when a trans man was unable to obtain a birth certificate that did not refer to his gender assigned at birth.
23	24	March
		The European Committee of Social Rights publishes its conclusions in respect of 33 States Parties to the European Social Charter on "health, social security and social protection". Access to healthcare, including sexual and reproductive healthcare, must be provided to everyone without discrimination, including in times of pandemic. Legislation prohibiting discrimination on grounds of age outside employment is still lacking in some countries. The level of awareness and education about sexual orientation and gender identity and about gender-based violence is not sufficient in several countries.
7	26	April
		In <i>Callamand v. France</i> (No. 2338/20), ECtHR finds that French authorities violated Article 8 (right to respect for private and family life) of the ECHR by denying the applicant's right to contact with her former wife's biological child.
17		May
		Parliamentary Assembly of the CoE adopts resolution (2432) calling on Member States to expressly prohibit discrimination based on social origin and socio-economic status and to ensure that national equality bodies are competent to address complaints.
19	31	
		In <i>T.C. v. Italy</i> (No. 54032/18), ECtHR finds that domestic courts did not violate Articles 8 (right to respect for private and family life) and 14 (prohibition of discrimination) of the ECHR by ordering the applicant, a Jehovah's Witness, to refrain from involving his daughter in his religious activities.
14	22	June
		Parliamentary Assembly of the CoE adopts resolution (2440) stressing the intersectional discrimination that migrants experience and the vulnerability of lesbian, gay, bisexual, transgender, intersex and queer+ (LGBTIQ+) migrants. It calls on Member States to develop measures that consider the needs of different groups, including LGBTIQ+ people.
		In <i>Stoyanova v. Bulgaria</i> (No. 56070/18), ECtHR finds a violation of Article 2 (right to life) in conjunction with Article 14 (prohibition of discrimination) of the ECHR, when Bulgarian authorities failed to consider the homophobic motivations of murderers as an aggravating factor in their sentencing.

# UN & CoE

August

7

CoE publishes its first thematic review focused on legal gender recognition. It recognises that progress in legal gender recognition is slow, and highlights the importance of depathologising trans people, and ensuring access to legal gender recognition without compulsory medical or divorce requirements.

September

27

In *P.H. v. Bulgaria* (No. 46509/20), ECtHR finds a violation of Article 8 (right to respect for private and family life) of the ECHR, when the national court had refused to accept the request of the applicant, a trans woman, to change her name and ID number to reflect her gender.

October

13

Parliamentary Assembly of the CoE adopts resolution (2465) about ending discrimination against women in sports. It calls on CoE member and observer States to allow lesbian, bi, transgender and intersex athletes to “train and compete in sports competitions consistent with their gender identity”.

28

United Nations Special Rapporteur publishes a thematic report on extreme poverty and human rights. He argues that negative attitudes and behaviour towards people living in poverty should be treated as discrimination, and calls on governments to urgently review their anti-discrimination laws.

November

8

In *Moraru v. Romania* (No. 64480/19), ECtHR finds a violation of Article 14 (prohibition of discrimination) in conjunction with Article 2 of Protocol No. 1 (general prohibition of discrimination) of the ECHR, when the applicant was not allowed to sit an entrance exam to study military medicine on account of her height and weight. It concluded that she was discriminated against based on a genetic feature, which is a ‘personal characteristic’ or ‘status’, capable of falling within the non-exhaustive list of prohibited grounds set out in Article 14.

22

In *D.B. and Others v. Switzerland* (Nos. 58817/15 and 58252/15), ECtHR finds a violation of Article 8 (right to respect for private and family life) of the ECHR, when authorities did not recognise the intended second parent of a child born abroad to a same-sex couple through surrogacy.

December

1

In *A.D. and Others v. Georgia* (Nos. 57864/17, 79087/17 and 55353/19), ECtHR finds a violation of Article 8 (right to respect for private and family life) of the ECHR, when the lack of clarity of the legal framework on legal gender recognition in practice undermines its availability.

In *Barmaxizoglou and Others v. Greece* (App. No. 53326/14), ECtHR finds a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the ECHR, when a law on civil unions had excluded same-sex couples.

15

In *Sutyagin and Gavrikov v. Russia* (Nos. 13518/10 and 32190/20), ECtHR finds a breach of Articles 11 (freedom of assembly and association) and 14 (prohibition of discrimination) in conjunction with Article 11, and a violation of Article 13 (right to effective remedy) of the ECHR, regarding a ban on holding lesbian, gay, bi and transgender public assemblies.

	12	May	European Commission lesbian, gay, bi, transgender, intersex and queer (LGBTIQ) Equality Subgroup publishes <i>Guidelines for strategies and action plans to enhance LGBTIQ equality</i> .	
	24	June	In <i>Rzecznik Praw Obywatelskich v. K.S. and Others</i> (Case Cz/21), Court of Justice of the European Union (CJEU) rules that the Member State is obliged to issue an identity card or passport to a child of same-sex parents without requiring prior transcription of the child's birth certificate into the national register of civil status. It also rules that authorities must recognise a document from another Member State that asserts the child's right to move and reside freely within the Union territory with each of the parents.	
6	15	July	European Parliament adopts a resolution on intersectional discrimination focusing on the socio-economic situation of women of African, Middle Eastern, Latin American and Asian descent, which references an LGBTIQ-inclusive approach to gender-based violence.	European Commission refers Hungary to the CJEU for discriminatory amendments to the ban on "portraying and promoting gender identity different from sex and birth, the change of sex and homosexuality".
20	26	October	After the homophobic murders in Bratislava, European Parliament adopts a resolution condemning hate and violence on the grounds of gender, sexual orientation, gender identity or expression, and sex characteristics in the EU. It also urges Member States to fight hate speech, and to investigate and prosecute hate crimes.	European Economic and Social Committee drafts an opinion urging the Council, the Parliament and the Commission to further develop protection against discrimination in access to goods and services by adopting the proposal for a 'horizontal directive'.
	7	December	With the intention of setting binding minimum standards for equality bodies, Commission adopts two legislative proposals to ensure better application and enforcement of EU anti-discrimination rules.	

The adoption of the Equal Treatment Directive remains stalled since 2008. The legal framework on hate crime and hate speech still does not provide sufficient protection for lesbian, gay, bisexual, transgender and intersex (LGBTI) people. In 2022 the European Commission proposed legislation aimed at strengthening the mandate and independence of equality bodies.

Efforts to promote the rights of lesbian, gay, bisexual, trans, non-binary, intersex and queer (LGBTIQ) people were made at EU and national levels, in particular regarding family status and parenthood. There have been some developments across the EU to cover additional grounds of discrimination, such as socio-economic status, health status and physical appearance.



### **3.1. EU CONTINUES TO PROMOTE EQUALITY AND NON-DISCRIMINATION**

By the end of 2022, the European Commission released proposals for new directives on standards for equality bodies, aiming to strengthen their mandate.<sup>1</sup> In the context of the Commission's first LGBTIQ equality strategy, for 2020–2025,<sup>2</sup> the LGBTIQ Equality Subgroup under the High-Level Group on Non-Discrimination, Equality and Diversity prepared guidelines to support concrete action across EU Member States.<sup>3</sup> The Commission's Directorate-General for Justice and Consumers also commissioned a study on intersex people.

The European Economic and Social Committee adopted an opinion strongly urging the EU institutions "to further develop protection against discrimination in access to goods and services, notably by adopting the proposal for a directive, COM(2008) 426 of 2 July 2008 on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation".<sup>4</sup>

In its resolution<sup>5</sup> on the general situation of fundamental rights in the EU in 2020 and 2021, the European Parliament considered FRA's previous fundamental rights reports. It again emphasised the urgency of extending protection from discrimination through a horizontal and intersectional approach. The resolution called for cooperation between EU and national equality bodies.

The Parliament adopted a resolution on intersectional discrimination in the European Union: the socio-economic situation of women of African, Middle-Eastern, Latin-American and Asian descent.<sup>6</sup> "Intersectional discrimination" describes a situation where several grounds operate and interact with each other at the same time in such a way that they are inseparable and produce specific types of discrimination.<sup>7</sup> The resolution stressed the importance of developing EU policies to combat and eliminate intersectional discrimination, including through EU anti-discrimination and gender equality legislation and policies. It called for the promotion of an EU framework on intersectional discrimination with cross-cutting objectives and measures.

#### **3.1.1. EU acts to strengthen equality bodies**

In December 2022, the European Commission adopted two proposals for directives<sup>8</sup> laying down binding standards on the independence, tasks, mandate, resources and powers of equality bodies, as the existing EU equality directives did not include provisions on the actual structure and functioning of equality bodies.

- One proposed directive is in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, including self-employment.<sup>9</sup>
- The other is in the area of equal treatment between people irrespective of their racial and ethnic origin, equal treatment in the area of employment and occupation between people irrespective of their religion or belief, disability, age or sexual orientation, and equal treatment between women and men in matters of social security and in access to and supply of goods and services.<sup>10</sup>

The reason for having two proposals is that the six directives that the initiative concerns have two distinct legal bases requiring different adoption procedures.

They both address enhanced powers in discrimination cases, independence, sufficient resources, accessibility for all victims, consultation on law- and policy-making processes, and awareness raising. The proposals also envisage monitoring based on a list of common indicators to assess the resources, independent functioning, activities and effectiveness of equality bodies, and changes in their mandates, powers or structures. This should ensure that the data collected at national level are comparable, objective and reliable.

This new legislation builds on the existing 2018 Commission recommendation on standards for equality bodies.<sup>11</sup> The recommendation has had limited impact because it is non-binding, the 2021 assessment of its implementation<sup>12</sup> found. For that reason, most Member States did not undertake any changes or only adopted minor reforms. The European Parliament<sup>13</sup> and the Council of the EU<sup>14</sup> had both previously expressed their support for new rules strengthening equality bodies.<sup>15</sup>

Existing EU directives require Member States to set up equality bodies.<sup>16</sup> However, they leave a wide margin of discretion to Member States about their set-up and operation. This has resulted in considerable differences among equality bodies across the EU in relation to their powers, independence, resources, accessibility and effectiveness. While some equality bodies go beyond the grounds and fields covered in EU law, others do not.

The European Network of Equality Bodies (Equinet) has also highlighted gaps in protection at EU level.<sup>17</sup> For example, the Employment Equality Directive<sup>18</sup> and the Gender Equality Directive in the field of social security<sup>19</sup> do not require equality bodies, and the EU does not monitor the work of equality bodies.

This legislative initiative therefore intends to replace existing provisions with a strengthened framework for equality bodies across the EU. The overall purpose is to ensure better application and enforcement of EU anti-discrimination law, by establishing that equality bodies are to engage in the prevention of discrimination and in awareness-raising activities, deal with cases of discrimination and aid the victims.

To assess how this initiative will achieve its objectives, the proposals set out a monitoring mechanism, with Member States reporting on its implementation every five years. The Commission will adopt an implementation report based on the information that Member States provide and data that FRA and EIGE collect, selected from a list of indicators the Commission will develop jointly with these agencies and Equinet. The Commission also plans to set up an expert group to consult Member States on these indicators.

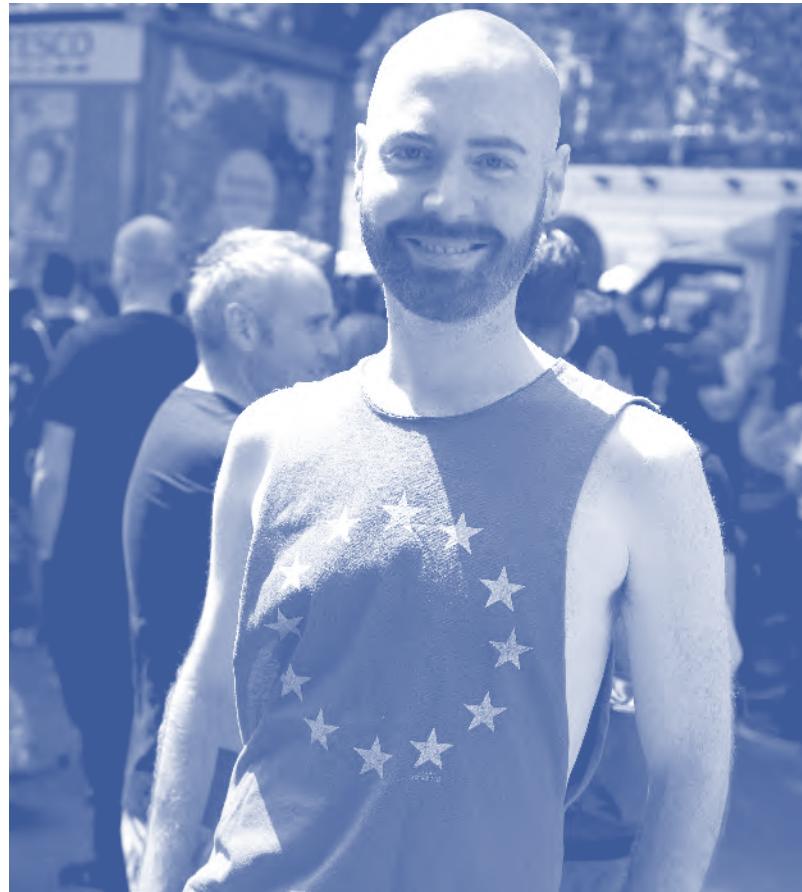
Meanwhile, several equality bodies underwent changes. **Belgium** approved the Flemish Institute as a regional equality body separate from Unia, Belgium's federal equality body.<sup>20</sup> The Flemish institute will help citizens discriminated against on the basis of Flemish regional powers, such as housing and education, while Unia will continue to tackle discrimination cases based on federal powers (hate messages, discrimination at work, etc.).

**Lithuania** approved amendments to the Law on Equal Treatment.<sup>21</sup> They allow the Office of the Equal Opportunities Ombudsperson to investigate a wider range of complaints within an expanded list of areas, such as education, consumer protection, organisations and associations.<sup>22</sup>

**FRA ACTIVITY**  
In December FRA published [a report on National Human Rights Institutions status and mandates](#), covering 27 EU Member States, Albania, North Macedonia and Serbia. The report is the third update of FRA's 2020 report on [Strong and effective national human rights institutions – Challenges, promising practices and opportunities](#).

## 3.2. RIGHTS OF LGBTIQ PEOPLE

### 3.2.1. Legal and policy developments



At EU level, the High-Level Group on Non-Discrimination, Equality and Diversity has an LGBTIQ Equality Subgroup. The subgroup is composed of government experts, nominated by Member States' governments to support and monitor progress of the protection of LGBTIQ people's rights in the Member States. FRA contributes to its work. The subgroup cooperates on a regular basis with civil society and international organisations, such as the Organisation for Economic Cooperation and Development and the Council of Europe.

In May, the subgroup published non-binding guidelines<sup>23</sup> to support the implementation of concrete action to protect the rights of LGBTIQ people across EU Member States. These guidelines identify what LGBTIQ policies, strategies and action plans should cover in order to be useful and effective.

At national level, several Member States continued to improve their legal frameworks in 2022 to improve the protection of LGBTIQ people against discrimination in general. Some Member States have introduced measures in particular areas of life.

In June 2022, the **Spanish** parliament approved Law 15/2022 on equal treatment and non-discrimination<sup>24</sup> to guarantee and promote the right to equal treatment and non-discrimination regardless of nationality, age or residence status. Non-discrimination grounds under this law include birth; racial or ethnic origin; sex; religion, conviction or opinion; age; disability; sexual orientation or identity; gender expression; disease or health condition; serological status and/or genetic predisposition to suffer

pathologies and disorders; language; socio-economic status; and any other personal or social condition or circumstance.

In January, the mandate of the **Swedish** Gender Equality Agency was amended<sup>25</sup> to instruct it, among other activities, to promote equal rights and opportunities regardless of sexual orientation, gender identity or gender expression. In **Denmark**, new legislation prohibiting unequal treatment, hate crime and hate speech based on sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) entered into force in January.<sup>26</sup> **Greece** introduced Law 4958/2022<sup>27</sup> relating to the rights of intersex children and the conditions for undergoing medical procedures and therapy for the partial or complete alteration of gender characteristics.

Several Member States have adopted new national action plans (NAPs), measures under existing NAPs for LGBTIQ equality, or general non-discrimination action plans also referring to LGBTIQ, including **Belgium**,<sup>28</sup> **Croatia**,<sup>29</sup> **Germany**,<sup>30</sup> **Denmark**,<sup>31</sup> **Italy**<sup>32</sup> and **Luxembourg**.<sup>33</sup> So has the candidate country of **Albania**.<sup>34</sup> The action plan in the **Netherlands**<sup>35</sup> focuses on labour market discrimination on all legally recognised discrimination grounds.

The Federal Plan for an LGBTQI+-Friendly **Belgium** includes 133 key measures, such as a ban on conversion practices and support for legislative initiatives to close the gaps in European anti-discrimination legislation. The plan is divided into four strategic axes: knowledge and information; inclusion policy, well-being and health; security; and anti-discrimination.

**Germany's** national action plan focuses on legal gender recognition, reforming family law to enable recognition of parental relationships, security, healthcare, and strengthening support resources and community structures. A Federal Government Commissioner for the Acceptance of Sexual and Gender Diversity (Queer Commissioner) has been appointed, responsible for the implementation of the plan.

In **Denmark**, the 2022 outline and strategy for equality aims to create more safety, welfare and opportunities for LGBT+ persons. With 14 initiatives, the government is focusing on areas such as hate crime, family rights, transgender rights, health and sports. The national LGBT+ strategy for 2022–2025, ‘Room for diversity in the community’, focuses on recognition of LGBT+ families, welfare of LGBT+ children and youth, health, and combating violence and hate.

**France**<sup>36</sup> and **Greece**<sup>37</sup> banned conversion practices against LGBTIQ people. **Belgium** introduced a bill punishing such practices with imprisonment ranging from a month to two years and/or a fine between € 100 and € 300.<sup>38</sup> Similar proposals have been discussed in **Cyprus**, the **Netherlands** and **Sweden**. **Sweden's** government tasked a national commission to review if the protection under criminal law against conversion practices needs to be enhanced.

In 2021, **Hungary** banned “portrayal and the promotion of gender identity different from sex at birth, the change of sex and homosexuality”.<sup>39</sup> In April 2022, on the day of the general election, it held a referendum to validate this anti-LGBT legislation. In January, the Council of Europe (CoE) Commissioner for Human Rights, Dunja Mijatović, expressed concern that the referendum would “entrench stereotypes, prejudice and hate against LGBTI people and therefore have a strong negative impact on their rights, safety and well-being, by putting questions to popular vote that are ambiguous and misleading”.<sup>40</sup>

Moreover, the non-governmental organisation (NGO) Háttér Society claimed that there was an increase of reports of anti-LGBTIQ violence.<sup>41</sup> Perpetrators cited the family protection law, which prohibits the display and promotion of LGBTIQ themes, to support their views. The Háttér Society also noted increased concern among rainbow families that their children would be taken from them, and teachers worrying about violating the law if any LGBTIQ-related topics were to be discussed in class or if rainbow symbols were allowed.

#### *Hate crime*

Regarding hate crime on grounds of sexual orientation and gender identity, the European Court of Human Rights (ECtHR) confirmed in *Stoyanova v. Bulgaria* (No. 56070/18)<sup>42</sup> that a state must ensure that criminal law treats violent attacks as aggravated if they are motivated by hostility towards the victim's actual or presumed sexual orientation.



In January, the Parliamentary Assembly of the CoE adopted a resolution (2417)<sup>43</sup> and recommendation (2220)<sup>44</sup> on combating rising hate against LGBTI people in Europe. In March, the first meeting of the Working Group on SOGIESC of the Steering Committee on Anti-Discrimination, Diversity and Inclusion took place. It focused on the theme 'Right to life, security and protection from violence'.<sup>45</sup>

In 2022, some Member States strengthened their legal frameworks or policies to address hate crime.

In **Denmark**, the political agreement on the 2021–2023 budget for the police and the prosecution includes an emphasis on improving the identification and recording of hate crime as well as strengthening support for hate crime victims. This includes ensuring that prosecutors dealing with hate crimes get more knowledge about the subject.<sup>46</sup>

The **Luxembourg** government introduced a bill<sup>47</sup> to transpose Council Framework Decision 2008/913/JHA<sup>48</sup> correctly into national law. The bill includes aggravating circumstance for crimes committed with a motive based on one or more of the characteristics referred to in the Criminal Code.<sup>49</sup> In December, the **German** Federal Cabinet adopted a draft law submitted by the Federal Minister for Justice, which adds "gender-specific" and "against sexual orientation" motivations as aggravating circumstances in the Criminal Code.<sup>50</sup>

As regards national case-law in this area, in **Belgium** the Brussels Criminal Court<sup>51</sup> punished the perpetrators of a hate motivated attack against a transgender person with imprisonment and fines. In addition, it awarded the victim € 11,000 in compensation for his material and moral damages.

In **Hungary**, a court sentenced the perpetrator of a violent attack against a lesbian couple to 20 months in prison, suspended for two years, an NGO reported. The court qualified the act as violence against a member of a community.<sup>52</sup>

#### *Hate speech*

In **Bulgaria**, a member of an NGO called a photo campaign of same-sex couples “a violation of the Criminal Code” and “incitement to fornication”. The Commission for Protection against Discrimination considered the statement to fall within the scope of freedom of expression. However, the Sofia City Administrative Court found serious procedural violations, repealed the commission’s decision and returned the case to it with instructions to consider any conflict between freedom of speech and the prohibition of discrimination. Subsequently, the Supreme Administrative Court upheld the commission’s decision.<sup>53</sup>

In **Poland**, the Warsaw District Court ruled that, by broadcasting a documentary entitled ‘Invasion’ defaming the LGBT community in Poland, Polish Television (TVP) had violated the personal rights of several plaintiffs, in breach of the principles of journalistic diligence and integrity. A group of seven individuals who were depicted in the documentary initiated the first proceedings, suing TVP for defamation. The court issued a judgment on 21 June 2022.<sup>54</sup>

The Campaign against Homophobia (Kampania Przeciwko Homofobii, a Polish NGO) also filed proceedings against TVP. The Polish Commissioner for Human Rights joined the proceedings. The court awarded PLN 10,000 for a community purpose indicated by the plaintiff, prohibited any further broadcast of the documentary and ordered that an apology be published during prime time on TVP.<sup>55</sup>

In this context, an interesting project was developed in **Portugal**. The organisation Ação pela identidade launched a handbook to guide journalists and media professionals in the correct use of LGBTQ+ terminology. It aims to help professionals understand discrimination and deconstruct internalised stereotypes and prejudices.<sup>56</sup>

In **Greece**, in November the Athens Court of Misdemeanours issued the first ever decision on transphobic hate speech, according to the NGO Greek Transgender Support Association.<sup>57</sup> One defendant was convicted of incitement to transphobic hate, and another of transphobic hate crime (verbal abuse). They received suspended prison sentences of 10 months and 7 months, respectively.

#### *Legal gender recognition*

In March 2022, the Council of Europe’s Steering Committee on Anti-discrimination, Diversity and Inclusion (CDADI) adopted a report on legal gender recognition in Europe. It shows substantial progress. Thirty-eight Council of Europe Member States have legal or administrative measures to ensure legal gender recognition. Nine of them are based on self-determination.

However, the report points out that pathologisation persists. Twenty-seven CoE Member States require a medical diagnosis, and 13 member States, contrary to ECHR case law, require sterilisation. In 19 Member States, divorce is required (or de facto) for legal gender recognition.<sup>58</sup>

In *P.H. v. Bulgaria*<sup>59</sup> the ECtHR concluded that, by refusing to legally recognise the applicant's self-identified gender without giving sufficient and relevant reasons, the national court unjustifiably interfered with their right to have their private life respected. In particular, the national court had not identified or balanced the general interest against the applicant's right to recognition of their gender identity. Referring to the judgment in *Y.T. v. Bulgaria*,<sup>60</sup> the Court reiterated that rigid reasoning about recognition of the applicant's gender identity had placed the applicant, for an unreasonable and continuous period, in a troubling position, in which they were liable to experience feelings of vulnerability, humiliation and anxiety.

ECtHR instigated certain legislative developments in **Romania**, where in April the parliament amended the law on civil status documents.<sup>61</sup> The amendment removed the requirement of gender reassignment surgery to access the procedure to change a first name, in line with the ECtHR's judgments against Romania.<sup>62</sup> However, Romania still lacks a specific legal framework for legal gender recognition.

The Supreme Administrative Court of **Slovakia** also referred to ECHR case-law when it overturned a regional court decision that had upheld the registry office's denial of gender recognition to a trans woman, on the basis that she had not undergone surgery to complete her transition.<sup>63</sup>

In contrast, the **Czech** Constitutional Court ruled in March that the requirement for a trans person to undergo sterilisation surgery as a precondition for gender recognition is not unconstitutional.<sup>64</sup>

#### *Marriage and adoption for same-sex couples*

In June, the **Slovenian** Constitutional Court delivered two landmark decisions ruling that statutory provisions preventing same-sex couples' marriage<sup>65</sup> and joint adoption<sup>66</sup> are unconstitutional. It asked the parliament to amend the legislation accordingly.

The court reasoned that discriminating against same-sex couples by not allowing them to marry cannot be justified by the traditional meaning of marriage as a union of husband and wife, or by the special protection of the family.<sup>67</sup> It found that equal treatment also applies to adoption. Same-sex partners living in a formal civil union may now jointly adopt a child under the same conditions as different-sex spouses.<sup>68</sup>

On 4 October, the National Assembly adopted the Family Code, duly amended in accordance with the decisions of the Constitutional Court.<sup>69</sup>

Similarly, in **Croatia**, the High Administrative Court<sup>70</sup> decided, based on ECtHR case law, that same-sex couples should have access to the assessment procedure for adoptive parents.

The **Austrian** Constitutional Court<sup>71</sup> confirmed in June that adoption can be granted regardless of the sexual orientation of the adopting persons. Normally, the rules of private international law would require that Austrian courts apply Czech and Slovak law – according to the nationality of the applicants – which do not allow for adoption by registered partners. However, the Austrian Act on Private International Law allows courts to

disregard the applicable foreign law if – as in the present case – the result would contradict the fundamental values of the Austrian legal system.

The **Italian** Constitutional Court<sup>72</sup> decided the case of the adoption of a same-sex partner's biological child born abroad through an assisted reproduction agreement. It found that failing to recognise civil and family relationships with the adoptee's relatives discriminates against children adopted 'in special cases' compared with other children. It deprives them of legal relations that form and consolidate their identity. That violates the right to respect of private and family life, which the Constitution and the ECHR guarantee.

#### *Parenthood and cross-border recognition of parenthood*

The recognition of parenthood across the EU is an important aspect of the right to free movement.<sup>73</sup> In December the Commission adopted a proposal for a Council regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood.<sup>74</sup> It aims to strengthen the protection of the fundamental rights and other rights of children in cross-border situations, including their rights to an identity, to non-discrimination, to private and family life, and to succession and maintenance in another Member State, taking the best interests of the child as a primary consideration.<sup>75</sup> It provides that parenthood established through a court decision or authentic instrument in one Member State should be recognised in all other Member States without any special procedure.<sup>76</sup> The legal basis for the proposal is Article 81 (3) TFEU, which requires unanimous Council approval.



**Finland** adopted the Act on Parenthood in June, and it entered into force on 1 January 2023.<sup>77</sup> It provides that a child can have a maximum of two legal parents. They can also be two mothers or two fathers.

The Act on Assisted Fertility Treatment was amended so that a female couple can also select sperm from a donor who has agreed to be confirmed as a father of the child.<sup>78</sup> The other female partner can be confirmed as the child's mother if the donor has not consented to the establishment of paternity. It depends on the choice of sperm whether the donor or a second mother is determined as the second parent of a child born to a female couple.<sup>79</sup>

Changes to ensure gender neutral and equal parenthood legislation entered into force in **Sweden** in January. The parenthood will be more often presumed at the birth of a child. For example, the married or registered same-sex partner of the mother will automatically be considered the child's parent. The same will apply where one or both spouses have changed their gender. It also simplifies the confirmation of parenthood.<sup>80</sup>

**Denmark** adopted new legislation allowing women, as well as transgender parents, to be registered as parents in accordance with their legal gender at the time of the birth of their child. These changes have not yet entered into force because of questions regarding the compliance with legislation on human tissue and cells. It is now also possible to change one's name without having to legally change one's gender.<sup>81</sup>

#### Civil register

In **Bulgaria**, following the Court of Justice of the European Union (CJEU) judgment in *V.M.A. v. Stolichna obshтина*,<sup>82</sup> (concerning the refusal to recognise a birth certificate issued in another Member State indicating two parents of the same sex as the legal parents of a child), the Sofia City Administrative Court ordered Sofia Municipality to issue a birth certificate to the child indicating both women as parents.<sup>83</sup> In June, the parents applied to the Bulgarian consular office in Barcelona for the child's passport, but their application was rejected. Meanwhile, Sofia Municipality challenged the latest court decision, and the case is pending before the Supreme Administrative Court.<sup>84</sup>

In a similar case against **Poland**, *Rzecznik Praw Obywatelskich v. K.S. and Others*,<sup>85</sup> the CJEU decided that the Member State is obliged to issue an identity card or passport to a child of same-sex parents without requiring prior transcription of the child's birth certificate into the national register of civil status. The court also decided that authorities must recognise a document from another Member State that permits the child's right to move and reside freely within the Union territory with each of the parents.

Meanwhile, the **Polish** Supreme Administrative Court ruled in February that a child born abroad to same-sex parents, one of whom is a Polish citizen, has the right to obtain documents confirming Polish citizenship.<sup>86</sup>

#### 3.2.2. Discrimination against LGBTIQ people

Reliable, valid and comparable data on SOGIESC are a prerequisite for evidence-based policies to foster equality and non-discrimination.

In 2022 several equality bodies, governments and NGOs released data on incidents of discrimination and violence facing LGBTIQ+ people. They covered Belgium,<sup>87</sup> Croatia,<sup>88</sup> Finland,<sup>89</sup> Germany,<sup>90</sup> Greece,<sup>91</sup> Italy,<sup>92</sup> Latvia,<sup>93</sup> Romania,<sup>94</sup> Slovenia,<sup>95</sup> Sweden<sup>96</sup> and Serbia,<sup>97</sup> among other countries.

## PROMISING PRACTICE

### Supporting LGBTI Children and Young People

In **Portugal**, Casa Qui launched 'Know to Protect: Good Practices in Supporting LGBTI Children and Young People', in partnership with the National Commission for the Promotion of Rights in the Protection of Children and Young People. A project to support LGBTI children and youth, it aims to create an online platform for sharing resources, provide support and offer consultancy in the field of educating children and young people.

Source: Casa Qui (n.d.), 'Project "Know to Protect: Good Practices in Supporting LGBTI Children and Young People"' ('Projeto "Conhecer para Proteger: Boas Práticas de Apoio a Crianças e Jovens LGBTI"')

Moreover, in 2022 a number of Member States published results of large-scale, representative surveys on LGBTIQ people's living conditions and their experiences of discrimination.

The results of a nationally representative survey in **Denmark** showed that LGBT+ people, especially trans people, face discrimination, and more severe living conditions than the general population.<sup>98</sup>

In **Ireland**, an analysis of the representative CSO General Household Survey<sup>99</sup> found that 33 % of adults identifying as LGBTI+ reported having experienced discrimination in the two years preceding the survey, compared with 17 % among non-LGBTI+ people.<sup>100</sup> Prevalence of discrimination in the workplace is highest for people with a non-white ethnicity (17 %), LGBTI+ adults (11 %) and people without Irish nationality (9 %).<sup>101</sup>

The **Netherlands** Safety Monitor Study<sup>102</sup> found that 17 % of gay male respondents, 7 % of bisexual male respondents, 12 % of lesbian respondents and 6 % of bisexual female respondents had felt discriminated against because of their sexual orientation in the previous 12 months.<sup>103</sup>

In **Sweden**, the Agency for Youth and Civil Society published a report on the living conditions of young LGBTIQ people (aged 16–25), drawing on national surveys and FRA data, as well as interviews conducted with young LGBTIQ people.<sup>104</sup> They highlight the need for more research and knowledge, including on aspects of intersectional discrimination.

A general population survey covered Flemish respondents in **Belgium**.<sup>105</sup> It found that 89 % of respondents believe that everyone should be able to freely express their sexual orientation, 29 % think a child should be raised by a man and a woman, and 23 % say that same-sex parents should not be able to adopt. According to the same survey, 73 % believe that people should be able to live according to the gender they identify with, while 34 % think gender is determined at birth and cannot be changed.

In **Lithuania**, a nationally representative survey showed a slight decrease in negative attitudes towards homosexual people compared with previous survey waves.<sup>106</sup> In **North Macedonia**, a nationally representative survey found that 53.5 % of respondents expressed negative feelings towards LGB people, and 46.3 % towards trans people.<sup>107</sup>

### 3.2.3. Multiple discrimination and intersectionality

Evidence on the extent of multiple and intersectional discrimination came from various studies.



Research evidence on the extent of multiple and intersectional discrimination against LGBT+ minorities is limited.

In **Denmark**, the Ministry of Immigration and Integration commissioned a report, completed in 2022. It specifically examines the living conditions and support needs of non-western LGBT+ minorities.<sup>108</sup> The report was based on survey results with 147 non-western LGBT+ respondents: 37 % of the respondents had experienced discrimination within the past year. This is a significantly higher rate when compared to wider groups of LGBT+ persons in Denmark.

An analysis of the rights of gender minorities in **Danish** prisons applied an intersectional approach. It concluded that trans, non-binary and intersex people are at higher risk of assault, discrimination and generally poor well-being.<sup>109</sup>

A qualitative study investigated the experiences of sexual and gender minorities among the population with foreign origins in **Finland**. It highlighted that those belonging to several marginalised identities (e.g. queer asylum seekers or refugees, racialised individuals) are particularly vulnerable.<sup>110</sup>

The **Finnish** Ministry of Justice conducted a mixed-methods study on hate speech, harassment and their impact on people belonging to different minority groups, including ethnic, racialised and religious minorities, people with disabilities, and people belonging to sexual and gender minorities.<sup>111</sup> It found that almost half of the respondents belonging to sexual or gender minorities had been subjected to hate speech or harassment the previous year, most commonly online and in outdoor public places. Most respondents who had encountered hate speech or harassment said that the incident(s) had affected their mental health and general sense of safety (77%), but four-fifths did not report it.

A **Swedish** study examined health and health-related behaviours in migrants and refugees identifying as belonging to sexual and gender minorities. It found that they have worse mental and general health than heterosexual respondents regardless of their ethnic minority status. Trans people experience significantly higher levels of physical violence than others.<sup>112</sup>

**LGBT Ireland** and the Irish Refugee Council published the results of qualitative research. The internalised homophobia and/or transphobia of many LGBTI+ asylum seekers may negatively affect their ability to talk openly about injustices they have experienced. Respondents feel that interviewers in the national protection system often fail to fully comprehend the levels of homophobia and transphobia in specific cultural and religious contexts.<sup>113</sup>

### 3.3. DISCRIMINATION ON THE GROUNDS OF SOCIO-ECONOMIC STATUS, HEALTH STATUS AND PHYSICAL APPEARANCE

Although the current EU legislation covers only six grounds of discrimination, the scope of protection is often wider at domestic level, as a recent Equinet report highlighted.<sup>114</sup>

Very few developments regarding discrimination on 'other grounds' were identified in 2022.

**Spanish** Law 15/2022<sup>115</sup> includes several discrimination grounds, including the following.

#### PROMISING PRACTICE

## Anti-discrimination clauses in city contracts in Warsaw, Poland

In 2019, the Mayor of Warsaw signed an LGBT+ declaration. In 2020, he issued Ordinance No. 136/2020 of 5 February 2020 on the principles of leasing commercial premises. It includes a provision prohibiting both direct and indirect discrimination based on protected characteristics, including gender, gender identity and sexual orientation, subject to termination of the lease.

In 2022, the city introduced anti-discrimination clauses into contracts with social organisations for the performance of public service tasks, and into contracts for lease of city premises.

Source: Dobranowska-Wittels, M. (2022), 'Anti-discrimination clauses in municipal contracts with community organisations' ('Klauzule antydyskryminacyjne w miejskich umowach z organizacjami społecznymi'), ngo.pl

- Disease: this may not protect differences in treatment other than those derived from the process of medical care, objective limitations imposed on the exercise of certain activities or those required for reasons of public health. This also prohibits discrimination based on pre-existing or recurrent diseases.
- Health condition: the employer will not be able to inquire about the health conditions of an applicant for a job.
- Serological status: this is of particular interest owing to the COVID-19 pandemic. Genetic predisposition to suffer pathologies and disorders, and, in general terms, any circumstance related to health can be included in this category.
- Socio-economic situation: this relates to education, homelessness when receiving health treatment, and situations of poverty or aporophobia.

Similarly in **Greece**, the new Equal Treatment Law<sup>116</sup> introduced new protected grounds such as chronic illness, descent, family or social status, and gender identity or characteristics.<sup>117</sup> It does not include physical appearance as a ground of discrimination.

The term ‘chronic illness’ includes illnesses that have developed either through a medical condition or as a result of an accident and present at least one of the following elements, according to the explanatory report to the law: indefinite duration and no known treatment; rebound effect or possibility of recurrence; permanency; long-term supervision; medical visits and diagnostic examinations; a need for rehabilitation or special education in order to recover. This framework also protects people with HIV/AIDS under the ground of disability or chronic illness. That conforms fully with International Labour Organization Recommendation 200 (2010), which prohibits discrimination with regard to HIV and AIDS, or stigmatisation thereof, in employment and occupation. In other words, ‘chronic illness’ refers to a health status.

Discrimination based on social status refers to any social stigmatisation of a person due to their distinctiveness as a member of a particular social subcategory of society, for example former drug users or ex-prisoners. At this point, it is worth clarifying that a particular social subcategory of society constitutes a group of people who are linked by a common characteristic, which is often innate, immutable or fundamental to the identity, consciousness or exercise of the human rights of its members.

**Serbia’s** new Anti-Discrimination Strategy highlights hate speech, violence and legal loopholes faced by LGBT people, and discrimination on the grounds of mental health, HIV/AIDS and socio-economic status, especially concerning the rights to housing, education and healthcare.<sup>118</sup> In **Ireland**, the ‘Add the 10th’ campaign aims to have socio-economic status recognised as a ground of discrimination in the Equal Status Act and the Employment Equality Act.<sup>119</sup> According to ‘Add the 10th’ activists, exclusion of socio-economic status represents a significant gap, and those with an experience of poverty “constantly fall through the cracks” of equality legislation.<sup>120</sup>

The **ECtHR** decided a case of discrimination on the ground of physical appearance. In *Moraru v. Romania*<sup>121</sup> it found a violation of Article 14 in conjunction with Article 2 of Protocol No. 1 to the ECHR (the right to education).

In this case, the State did not provide any objective and reasonable justification for refusing to allow a woman, whose height and weight were below the required limits for female candidates, to sit the entry exam to study military medicine. The court found that the applicant’s size is “a genetic feature which represents a personal characteristic or ‘status’ that is capable of falling within

the non-exhaustive list of prohibited grounds for discrimination set out in Article 14" (paragraph 42). It also noted that the domestic courts "took for granted the [Ministry of National Defence]'s assertions concerning the duties of a military physician", did not identify which of the duties would require physical strength and did not rely on any studies to justify the assumption that the candidate's size equates to strength.

Overall, very few relevant examples of national case law were identified in 2022. The **Slovenian** Advocate of the Principle of Equality found that the criteria for awarding bonuses, incentives and allowances to employees by a trading company were discriminatory, based on attendance at work, which could be due to their personal circumstances (such as their health status, disability, pregnancy or parenthood).<sup>122</sup>

### **3.3.1. Increasing efforts to collect data on other grounds**

Member States are increasingly collecting equality data on socio-economic status. Sweden and Greece published findings in 2022.

A **Swedish** field experiment involved contacting 3,430 randomly selected Swedish elementary school principals using fictional parents with low- or high-socio-economic status professions and with Arabic- or Swedish-sounding names. The results indicated discrimination, which appeared more prevalent when applying ethnic minority aliases.<sup>123</sup>

The **Greek** Ombudsman reported that 3 % of the complaints received in 2021 were on the ground of social status, defined as single-parent status.<sup>124</sup>

There are relatively limited available data on discrimination in Member States based on health status and physical appearance. Health status was the most common ground of discrimination reported to the occupational safety and health authorities in recent years, followed by other personal characteristics (35 %) and origin, nationality and language (27 %), the Finnish Occupational Safety and Health Administration reported. Most cases related to suspecting employers of terminating employment because of the employee's sick leave.<sup>125</sup>

In Croatia, the Ombudsperson for Gender Equality publicly criticised a discriminatory social media post by a beauty salon. It had encouraged followers to take pictures of women in public spaces who they believed 'should' go to a beauty salon. The ombudsperson stated that the practice of advertising services and products by shaming others is deeply worrying and cannot be considered freedom of expression or entrepreneurial freedom.<sup>126</sup>

FRA's past surveys also include data on other grounds of discrimination. For example, in the five years before the 2019 Fundamental Rights Survey,<sup>127</sup> 3 % of respondents felt discriminated against in employment or 'in a shop, café, restaurant or when using leisure or sports facilities, or in other similar situations' because of 'being overweight/obese'. Furthermore, across different FRA surveys, including the Roma and Travellers Survey,<sup>128</sup> the Second European Union Minorities and Discrimination Survey,<sup>129</sup> the Roma Survey<sup>130</sup> and the Fundamental Rights Survey,<sup>131</sup> up to 4 % of respondents selected 'other' as a ground for discrimination when being asked about their experiences in the past five years in different areas of life. Social or economic status (such as "because of my working class", "not enough financial means", "low income", "unemployment", "because I couldn't read and write" or "because of lack of schooling") was consistently the most common ground cited, followed by physical appearance (such as "tattoos", "piercing", "long nails", "due to being overweight" or "beard"), family status (such as "single parent", "pregnant" or "too many children") and health status (such as "mental health issues" or "illness prevents search of a job").



## FRA opinions

### FRA OPINION 3.1

The EU and its Member States should continue exploring all possible avenues to provide comprehensive and consistent protection against discrimination on the grounds of religion or belief, disability, age or sexual orientation in all key areas of life.

Discrimination on a range of grounds persists across the EU. 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. However, under EU secondary law, some of the protected characteristics set out in Article 19 of the TFEU – sex and racial or ethnic origin – enjoy wider protection than others – such as religion or belief, age, disability and sexual orientation. This leads to an artificial hierarchy of grounds, which limits the breadth and scope of EU-level protection against discrimination. The proposed Equal Treatment Directive would close this gap, but the unanimity in the Council required to adopt the Commission's proposal of 2008 has still not been achieved.

This year saw renewed attempts to break the stalemate on this crucial instrument, in particular calls for its speedy adoption by the European Economic and Social Committee and in European Parliament resolutions.

### FRA OPINION 3.2

The EU and EU Member States should ensure that equality bodies can achieve their full potential and contribute effectively to the enforcement of all equality directives. This entails ensuring that equality bodies are given sufficiently broad mandates and allocated adequate human, financial and technical resources to perform all their statutory tasks effectively and independently.

The EU should ensure prompt adoption of the two Commission legislative proposals to establish binding standards for equality bodies in the Union in order to promote equal treatment and combat discrimination on all grounds in the fields set out by the Equality Directives.

Equality bodies promote equal treatment by enforcing the application of EU anti-discrimination law. FRA's evidence consistently shows that discrimination incidents are rarely brought to the attention of the competent authorities set up to help secure access to justice for all victims of discrimination on an equal basis.

Core tasks of equality bodies include providing assistance to victims of discrimination in pursuing their complaints, monitoring of and reporting on discrimination, and raising awareness of people's rights. Despite their essential work, equality bodies continue to face various challenges related to their independence, mandates and powers, as well as to lack of adequate human, financial and technical resources, and limited ability to contribute to policy development. Effective implementation of existing equality legislation requires strong and independent structures and mechanisms to enhance respect of the law, and also to increase public's trust in bodies with the job of ensuring and promoting the value of equality.

In this regard, the role of effective equality bodies is crucial. That is highlighted in the Commission's legislative proposals to strengthen equality bodies, which aim to ensure their independence, resources and powers, so they can protect victims and prevent discrimination more effectively.

In 2022, a number of Member States took steps to promote the fundamental rights of lesbian, gay, bisexual, transgender, intersex and queer+ (LGBTIQ+) people by introducing legal changes and policy measures in areas such as the status of same-sex families, adoption and parenthood; simplified procedures for gender recognition on the basis of self-determination; and preventing and punishing hate speech and hate crimes. In several Member States, where the legislative framework was inadequate, courts paved the way for legislative developments or ensured their proper enforcement.

Some Member States have introduced legal and policy measures that jeopardise the fundamental right to equal treatment of LGBTIQ+ persons. That has a tangible impact on the increase in hostility and violence against the LGBTI community, and in fear among them, their families and other citizens who face repression for supporting equality. Hate speech is a particularly worrying phenomenon, as it further incites discrimination. At the same time, regular collection of sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) equality data remains rare in most Member States.



### FRA OPINION 3.3

EU Member States are encouraged to continue adopting and implementing specific measures (including national action plans on LGBTIQ+ equality) to ensure that lesbian, gay, bisexual, trans, non-binary, intersex and queer people can fully enjoy their fundamental rights. When doing so, Member States should give due consideration to the Guidelines for Strategies and Action Plans to Enhance LGBTIQ Equality, prepared by the LGBTIQ Equality Subgroup and endorsed by the High-Level Group on non-discrimination, equality and diversity.

EU Member States are encouraged to regularly collect and use SOGIESC equality data to develop evidence-based policy and legal responses.

Member States should take all appropriate measures to effectively combat hate speech and address the harmful impact of homophobic and transphobic statements made in public debates, political campaigns and the media, and on the internet.

'Intersectional discrimination' describes a situation in which several grounds operate and interact with each other at the same time in such a way that they are inseparable and produce specific types of discrimination. Practitioners in the field recognise that addressing discrimination from the perspective of a single ground fails to capture the diversity of how people experience discrimination in their daily lives. However, EU law does not yet fully protect people from intersectional discrimination.

Equinet has indicated the need to expand the list of grounds of discrimination to include social origin and/or socio-economic status, family status, genetic heritage, health status, physical appearance, etc.



### FRA OPINION 3.4

The EU and Member States should consider including intersectional discrimination in applicable legislation.

## Endnotes

- 1 European Commission (2022), **Proposal for a Directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU**, COM(2022) 688 final, Brussels, 7 December 2022; European Commission (2022), **Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC**, COM(2022) 689 final, Brussels, 7 December 2022.
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- 5 European Parliament (2022), **Resolution of 15 September 2022 on the situation of fundamental rights in the EU in 2020 and 2021** (2021/2186(INI)), 15 September 2022.
- 6 European Parliament (2022), **Resolution of 6 July 2022 on intersectional discrimination in the European Union: the socio-economic situation of women of African, Middle-Eastern, Latin-American and Asian descent (2021/2243(INI))**, 6 July 2022 (**summary**).
- 7 FRA and European Court of Human Rights (2018), **Handbook on European non-discrimination law – 2018 edition**, Luxembourg, Publications Office, p. 59.
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- 9 European Commission (2022), **Proposal for a Directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation**, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU, COM(2022) 688 final, Brussels, 7 December 2022.
- 10 European Commission (2022), **Analytical document accompanying the Proposals for a Council Directive on standards for equality bodies in the field of equal treatment**, SWD(2022) 386 final, 7 December 2022.
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# RACISM, XENOPHOBIA AND RELATED INTOLERANCE

# 4

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# UN & CoE

	20	January
		United Nations General Assembly adopts a resolution condemning Holocaust denial and distortion, including online.
	23	February
		Council of Europe (CoE) Committee of Ministers adopts a resolution on Croatia's implementation of the Framework Convention for the Protection of National Minorities.
1		March
	3	
		European Commission against Racism and Intolerance (ECRI) publishes General Policy Recommendation No. 5 (revised) on preventing and combating anti-Muslim racism and discrimination.
	17	
		CoE Committee of Ministers adopts Recommendation CM/Rec(2022)5 on remembrance of the Holocaust and preventing crimes against humanity.
6	20	April
		Committee on the Elimination of Racial Discrimination concludes its consideration of the combined 18th to 20th periodic reports of Luxembourg. Committee experts commend the introduction of universal healthcare and raise questions about the lack of data on ethnicity and measures to prevent online hate speech.
	20	May
		CoE Committee of Ministers adopts Recommendation CM/Rec(2022)16 to Member States on combating hate speech.
9	20	June
		Parliamentary Assembly of the CoE adopts resolution on 'The role of political parties in fostering diversity and inclusion: a new Charter for a non-racist society'.
	22	
		Parliamentary Assembly of the CoE adopts resolution on 'Preventing and combating antisemitism in Europe'.
	17	August
		Committee on the Elimination of Racial Discrimination concludes its consideration of the 13th periodic report of Slovakia.
20		September
	21	
		ECRI publishes its report on France.
	22	
		ECRI publishes its report on Greece.
4		October
	11	
		ECRI publishes its report on Bulgaria.
		Parliamentary Assembly of the CoE adopts resolution (2457) on raising awareness of and countering Islamophobia.
	16	December
		CoE publishes thematic factsheet on hate crime and hate speech with examples of state measures in the context of the execution of ECtHR judgments.

March

4

Council of the EU adopts conclusions on combating racism and antisemitism.

8

European Parliament adopts resolution (2021/2057(INI)) on the role of culture, education, media and sport in the fight against racism.

21

Marking the International Day for the Elimination of Racial Discrimination on 21 March 2022, the European Commission, with the support of the Anti-Racism and Diversity Intergroup of the European Parliament and ECRI, holds the second European Anti-Racism Summit.

May

24

Study on *Protection against racism, xenophobia and racial discrimination, and the EU Anti-racism Action Plan* published, commissioned by the European Parliament at the request of the Committee on Civil Liberties, Justice and Home Affairs.

July

6

European Parliament adopts Resolution 2021/2243(INI) on intersectional discrimination in the European Union: the socio-economic situation of women of African, Middle-Eastern, Latin-American and Asian descent.

September

15

European Parliament adopts Resolution (2021/2186(INI)) on the situation of fundamental rights in the European Union in 2020 and 2021.

November

10

European Parliament adopts Resolution (2022/2005(INI)) on racial justice, non-discrimination and anti-racism in the EU.

December

7

European Commission adopts two legislative proposals to strengthen equality bodies, including binding rules for ensuring their independence, resources and powers.

Discrimination based on racial or ethnic origin, bias-motivated crimes and racist speech remained widespread in 2022. Evidence shows indications of systemic racism, including within law enforcement. Russia's aggression against Ukraine led to emerging instances of hate speech and violent attacks in some EU Member States.

The European Commission continued infringement procedures against 12 Member States for not fully or accurately incorporating the Framework Decision on Racism and Xenophobia into national law. At the same time, several Member States amended their legislation to criminalise hate crime and hate speech. The European Parliament also urged Member States to ensure the full implementation and effective monitoring of the Racial Equality Directive.

The European Commission called on Member States to adopt national anti-racism action plans by the end of 2022, as the EU Anti-racism Action Plan and the EU Strategy on Combating Antisemitism and Fostering Jewish Life envisage. Only about half of them did so. Some Member States made targeted efforts to facilitate the reporting of racist incidents; they strengthened victims' access to support, protection and justice.

#### **4.1. RACIST CRIMES AND HATE SPEECH WIDESPREAD – RACISM AT INDIVIDUAL AND SYSTEMIC LEVELS**

This chapter analyses the most recent official and unofficial data that were published or made publicly available in 2022, and provides further insights into developments in 2021. The most recent official hate crime figures, complaints data and research evidence attest substantial levels of racial and ethnic discrimination in key areas of life. They show systemic issues, such as structural inequality; and racism at the hands of public authorities, such as discriminatory racial profiling by law enforcement.



#### **4.1.1. Hate crimes**

Violent hate crimes persisted in 2022. At the very end of 2022, a shooting at a Kurdish cultural centre in Paris, **France**, resulted in three deaths. The suspect expressed “hatred for foreigners”. That led the prosecutor to investigate a racist motive. The same attacker was awaiting trial for a sabre attack on a migrant camp in Paris a year before.<sup>1</sup>

In **Italy**, in July, a Nigerian street vendor was beaten to death in the central region of Marche.<sup>2</sup> Investigators ruled out a racist motive, citing the suspect’s psychiatric problems. However, campaigners continue to contest this decision and argue that prejudice was at play.<sup>3</sup>

Overall, there were four violent attacks in **Cyprus**. Two were video-taped by bystanders, who circulated the videos on social media.<sup>4</sup> The other two incidents were reported to the police by the victims.<sup>5</sup> As a response to two of the attacks, the Cypriot Ombudsman issued a report stressing that the assaults had a possible racist motive and recommended that the police investigate the incidents.<sup>6</sup>

In **Austria**, the police presented their data on hate crimes for the first time in 2022. Of the 6,619 recorded crimes with bias motives, 1,874 were motivated by bias against nationality/ethnicity, 750 by religious bias and 408 by bias based on skin colour.<sup>7</sup>

**Germany** recorded a 23 % increase in hate crime, an all-time high since data collection commenced in 2001.<sup>8</sup> The 29 % increase in antisemitic crimes is alarming. That amounts to a peak of 3,027 incidents recorded in 2021.

According to the **Swedish** National Council for Crime Prevention, Afrophobia is the most common bias motive other than “general xenophobic and racist motives”. Incidents are more violent than other hate crimes.<sup>9</sup>

#### **4.1.2. Hate speech**

Hate speech continued to rise in 2022. It mainly happened online, but also in print media and in political discourse across the EU.

In **Belgium**, incidents of antisemitism submitted to the national equality body concerned the depiction of stars of David and Nazi symbols during demonstrations against the Covid Safe Ticket, and accusations that the Jewish population spread the coronavirus.<sup>10</sup>

In **Austria**, 36.1 % (97 out of 269) of the antisemitic incidents that the police recorded in 2021 were online. Similarly, a third of all incidents in relation to ‘skin colour’ (33.1 % or 135 out of 408) concerned dissemination of racist memes online.<sup>11</sup> Anti-Muslim hatred mostly manifested online, accounting for 65.4 % of all cases that the Austrian Documentation and Consultation Centre for Islamophobic and Anti-Muslim Racism identified.<sup>12</sup>

In 2022, as in previous years, some national politicians used their platforms to fuel intolerance. In **Bulgaria**, politicians increased hate speech against ethnic and religious minority groups, migrants and asylum seekers, according to a non-governmental organisation (NGO).<sup>13</sup> An NGO report on anti-Muslim statements and publications by **Austrian** politicians identified 69 anti-Muslim incidents in 2021. It concluded that political agitation against Muslims in Austria has increased significantly in recent years.<sup>14</sup>

In **Czechia**, a court sentenced a former member of parliament who in 2017 had described the Second World War-era concentration camp for Roma as a “non-existent pseudo-concentration camp”, according to a media report.<sup>15</sup>

The French national courts had convicted a politician of incitement to discrimination and religious hatred towards the French Muslim community during a television programme in 2016. On 20 December 2022, the European Court of Human Rights upheld the criminal conviction.<sup>16</sup>

#### **4.1.3. Hate incidents linked to Russia’s aggression against Ukraine**

Since the start of Russia’s aggression against Ukraine, some related hate instances have emerged across the EU. In **Hungary**, a Ukrainian was seriously assaulted in the city of Tatabánya, due to his nationality, as an NGO reported.<sup>17</sup>

In **Latvia**, after a march calling for the removal of Soviet monuments, a man carrying a Ukrainian flag was attacked, causing him bodily harm.<sup>18</sup> Initially, the perpetrator was sentenced to 200 hours of community service. The Office of the Prosecutor General later reopened the case,<sup>19</sup> highlighting that “it has been established that the content of the statements of the accused must be analysed in the context of alleged incitement to ethnic, national hatred and hostility”.<sup>20</sup>

In **Poland**, an NGO recorded 82 anti-Ukrainian incidents, ranging from hate speech to racially motivated violence, between February and April 2022.<sup>21</sup> In **Czechia**, between February and August the police investigated 69 cases of hate speech against Ukrainians. They resulted in 33 convictions.<sup>22</sup>

The **German** Federal Criminal Police Office registered 4,000 crimes relating to the war in Ukraine.<sup>23</sup> They ranged from insults and threats to physical attacks and damage to property against persons of Ukrainian and Russian origin.<sup>24</sup> In **Estonia**, the police monitored online platforms regarding the spread of Russian aggression online. They imposed fines for incitement to hatred, as they reported to FRA.<sup>25</sup>

#### **4.1.4. Complaints data and national surveys – high levels of racial discrimination**

Equality bodies’ data published in 2022 in **Belgium**,<sup>26</sup> **Croatia**,<sup>27</sup> **Germany**, **Italy** and **Luxembourg**<sup>28</sup> showed high numbers of discrimination complaints on the grounds of race and ethnicity. High numbers of complaints of ethnic discrimination were also reported by antidiscrimination bureaus and other organisations in the **Netherlands**.<sup>29</sup>

In **Germany**, out of a total of 5,617 complaints filed with the Federal Anti-Discrimination Agency, 2,080 cases (37 %) were related to racial discrimination.<sup>30</sup> In **Italy**, out of the 1,379 cases of discrimination reported to the national equality body in 2021, 709 (51 %) were on grounds of racial and ethnic discrimination.<sup>31</sup> In **Belgium**, the number of complaints about racial discrimination filed to the national equality body by people of African descent has increased by 20.8 % in the last five years.<sup>32</sup> The complaints mainly concerned access to employment, and to goods and services.

Representative victimisation and integration surveys published in 2022 also provide evidence of lived experiences of discrimination among people with different ethnic or immigrant backgrounds in the EU.

In a representative survey by the Department of Seine-Saint-Denis, **France**, 37 % of respondents said they experienced discrimination on the grounds of ethnic origin or skin colour.<sup>33</sup>



**Luxembourg** carried out its first ever nationally representative survey on racism.<sup>34</sup> Of the respondents, 15 % felt discriminated against because of their ethnic background. Most of the incidents (66.6 %) remained unreported, mainly owing to lack of information or procedural difficulties.

In the **Netherlands**, a nationally representative survey covered residents aged 15 years or older. Of the 11 % of the respondents who had felt discriminated against in the 12 months preceding the survey, 36 % said that this was because of their race or skin colour. Over a quarter of the respondents with Dutch Caribbean origin (27 %) and Surinamese origin (26.2 %) felt discriminated against on the grounds of their race or skin colour in 2021.<sup>35</sup>

Another survey in the **Netherlands** focused specifically on people with a migration background, defined as first- or second-generation migrants. The highest prevalence of discrimination was among people with Surinamese (17 %) and Dutch Caribbean (16 %) backgrounds. Among all groups surveyed, second-generation migrants reported higher levels of discrimination. The figures were almost twice as high as for first-generation migrants among those with Turkish and Moroccan origin.<sup>36</sup>

In **Austria**, the 2022 integration monitor conducted by the statistical office found that two out of five migrants from Afghanistan, Russia, Syria or Turkey experienced discrimination at least occasionally.<sup>37</sup> Discrimination was more widespread in the areas of employment (at the workplace or when looking for work) and education; 33 % of the respondents from Serbia and 48 % of the respondents from Syria said they experienced discrimination in those contexts.

In **France**, a survey covered students and academic staff in two universities. ‘Racialised minorities’ were at greater risk of harassment other sexual harassment. Incidents included microaggressions, moral harassment and insults.<sup>38</sup>

The **Danish** Institute for Human Rights reported on data from the national monitoring of the work environment among wage earners. Twice as many wage earners with an ethnic minority background (20 %) as ethnic Danish wage earners (10 %) experienced discrimination in the labour market.<sup>39</sup>

*"The European Parliament emphasises the urgent need for the Union to develop and employ a robust, inclusive, comprehensive and multifaceted approach for effectively combating all forms of racism and discrimination, including structural and institutional racism, on all grounds and in all areas in the EU."*

Source: European Parliament (2022), **Resolution of 10 November 2022 on racial justice, non-discrimination and anti-racism in the EU**, paragraph 1

## PROMISING PRACTICE

### Gathering evidence of the systemic nature of racism and its root causes

In **Germany**, the Federal Ministry of the Interior and Community commissioned a study of racism in public authorities at federal, state and local levels. Divided into 23 projects, it will address different areas of life (housing and employment) and the work of different public authorities, immigration services and sports associations. In addition to individual attitudes, it aims to assess work routines and institutional settings that might (re)produce unequal treatment.

Source: Germany, Research Institute for Social Cohesion (*Forschungsinstitut Gesellschaftlicher Zusammenhalt*) (2022), '**Racism as a threat to social cohesion in the context of selected social-institutional areas'** ('*Rassismus als Gefährdung des gesellschaftlichen Zusammenhalts im Kontext ausgewählter gesellschaftlich-institutioneller Bereiche*'), 19 October 2022

## 4.2. SYSTEMIC RACISM

The International Convention on the Elimination of All Forms of Racial Discrimination binds the parties to the Convention "not to permit public authorities or public institutions, national or local, to promote or incite racial discrimination".<sup>40</sup>

The EU's anti-racism action plan set out the fight against structural racism as one of its priority areas. The plan described it as the underlying problem that is reflected in the way society functions, how power is distributed and how citizens interact with the State and public services.<sup>41</sup>

In 2022, the European Commission hosted a dedicated workshop on structural racism. The intention was to provide Member States, civil society organisations (CSOs) and other relevant stakeholders with the opportunity to present and discuss the topic and share information on relevant promising/good practices related to structural racism and discrimination at national level. The background paper emphasises that acknowledging structural racism means moving beyond the individual level of racism to focusing on the structures in place that drive and sustain inequalities.<sup>42</sup>

Comparable equality data based on racial or ethnic origin continues to be scarce across the EU, and evidencing systemic inequalities may be complex. However, studies across the EU showcase disproportionate differences in outcomes between such minority groups and the general population in access to employment, education and housing, and the persistence of ethnic profiling and racist practices during encounters with law enforcement. Systemic racism against Roma was also evident in some Member States. For more information, see **Chapter 5** on Roma equality and inclusion.

In a **German** representative survey, disadvantages that promote structural inequalities were often classified as racist. More than 80 % of the respondents named racist exclusion mechanisms in the areas of school, work and housing.<sup>43</sup> A representative survey in **Luxembourg** showed that institutionalised discrimination is particularly pronounced in education, with evidence of disparity between classical and vocational education for Portuguese-speaking communities.<sup>44</sup>

National reports and studies also addressed barriers in specific areas of life. For example, in **Belgium** the employment opportunities of those with sub-Saharan origin who have higher education are similar to those in the general population who have a high school diploma, and they earn less, according to a Unia report.<sup>45</sup> In **Cyprus**, a survey questioned 248 beneficiaries of international protection who have tertiary education, and 75 % were employed in jobs that require lower qualifications.<sup>46</sup>

A discrimination-testing study in **Sweden** showed racial and intersectional bias in the labour market. Male applicants with foreign-sounding names are significantly more disadvantaged than female applicants with foreign-sounding names.<sup>47</sup> A representative sample of the workforce in **Sweden** found that the risk of being bullied for foreign-born workers is almost four times higher than for natives.<sup>48</sup>

In 2022, evidence was provided on racism in the housing market. Discrimination tests in several cities in **Belgium** revealed that people with Congolese surnames are invited less frequently to view properties than people with Flemish- or French-sounding surnames. The discrimination rate is slightly higher for women than for men (18 % compared with 14 %).<sup>49</sup> Another discrimination-testing study in Bruges revealed that, for 15 % of housing advertisements, prospective tenants with Polish and Syrian names

were less likely to be invited to visits than prospective tenants with Belgian surnames.<sup>50</sup>

Similarly, in the **Netherlands**, research in the Dutch housing market showed that profiles with a Moroccan-sounding male name have a 23 % lower chance of being invited for a viewing than profiles with a Dutch-sounding male name. Profiles with a Moroccan-sounding female name have a 22 % lower chance of being invited for a viewing than profiles with a Dutch-sounding female name.<sup>51</sup> In **France**, the results of a discrimination test showed that approximately half of the 136 real estate agencies surveyed would agree to discriminate against applicants of African and Arab origin if an owner asked them to select a tenant with a "European-sounding name".<sup>52</sup> A quantitative study in **Romania** on access to social housing showed that the selection criteria sometimes lead to discrimination on multiple grounds or fail to consider the risk of indirect discrimination against Roma applicants.<sup>53</sup>



The **Netherlands** Institute for Human Rights looked at data on applications for childcare allowance in 2014 and 2018. It concluded that the Tax and Customs Administration applied an approach to childcare benefits by structuring processes in a way that discriminated against parents with foreign backgrounds in comparison with parents of Dutch origin. On average, parents of foreign origin were selected for closer supervision up to twice as often. The institute at least suspects indirect discrimination in all individual cases.<sup>54</sup>

## Acknowledging the legacies of enslavement

To mark the International Day for the Elimination of Racial Discrimination on 21 March, the **Spanish** Ministry of Equality celebrated its second Anti-Racism Week. It held a minute's silence remembering the victims of the trans-Atlantic slave trade.

See Spain, Ministry of Equality (*Ministerio de Igualdad*) (n.d.), **Semana Antirracista programme**, and the **YouTube channel** for the various activities that took place.

In December 2022, the **Dutch** Prime Minister apologised for the past actions of the Dutch State. He announced a € 200 million fund for measures aimed at raising awareness and addressing the present-day effects of slavery.

In contrast, one of the 128 recommendations in the final report by **Belgium's** Special Parliamentary Commission for the Colonial Past was to issue official apologies to the governments of Burundi, Congo and Rwanda. It sparked debate in the federal parliament and divided the ruling majority. As a consequence, the House of Representatives did not adopt the report and its recommendations, including the above-mentioned apologies.

**Sources:** Government of the Netherlands (2022), '**Government apologises for the Netherlands' role in the history of slavery**', press release, 19 December 2022; Belgium (2022), 'Recommendations of the Special Parliamentary Commission for the Colonial Past' ('**Aanbevelingen Bijzondere Commissie "Koloniaal Verleden"**'), 22 November 2022. See also Belgium, Socialist Party (*Parti Socialiste*) (2022), '**Après le choc engendré par l'échec de la fin de notre Commission spéciale sur le passé colonial, rallumons la dignité!**'

#### **4.2.1. Discriminatory ethnic profiling by police**

Discriminatory profiling practices persist. FRA published its Roma survey in 2022. In the EU countries it covered (except Bulgaria and Slovakia), 40 % of those whom the police stopped in the previous 12 months claim that the most recent stop was due to their Roma background.<sup>55</sup>

In **Denmark**, the likelihood of being charged for an offence without the charges resulting in a conviction is 45 % higher for immigrants and 64 % higher for descendants of immigrants than for individuals of Danish descent, the Danish Institute for Human Rights found from analysing official data on preliminary charges and arrests between 2009 and 2019.<sup>56</sup>

In the **Netherlands**, one of the reports of the Senate's parliamentary committee of inquiry into the effectiveness of anti-discrimination legislation focused on police. The report concludes that ethnic profiling (physical and algorithmic) by the police and discrimination within the police work environment are the two most pressing discrimination problems within the police. Major reasons cited include lack of clear standards, discriminatory police culture and inadequate complaints procedures.<sup>57</sup>

In **Belgium**, civil society continued to receive allegations of racial profiling by the police despite the low number of complaints that the Belgian equality body received, Amnesty International reported.<sup>58</sup>

Finally, in **Germany**, efforts to limit the reproduction of racism in the police remain at individual level, while structural changes are predominantly absent, a study on institutional racism in the police argues.<sup>59</sup>

Few administrative courts ruled on discriminatory profiling cases in 2022. In **Finland**, the Helsinki Police Department stopped and searched two women of African descent on suspicion of engaging in prostitution. The Supreme Administrative Court found that this action was based on discriminatory ethnic profiling.<sup>60</sup> In **Germany**, the Administrative Court of Dresden ruled that a stop and search of a Guinean man was unlawful and that the colour of the plaintiff's skin was at least partly the cause of the police decision to search him.<sup>61</sup>

#### **4.2.2. Racism in law enforcement**

A 2022 thematic report by the UN High Commissioner for Human Rights noted progress towards ensuring accountability for human rights violations committed by police, but it also raised concern that redress is rarely achieved.<sup>62</sup>

Developments in some EU Member States in 2022 show a mixed picture.

In **Portugal**, some cases of police violence may have involved racial and xenophobic discrimination. For example, seven police officers are set to go on trial accused of beating migrants from Bangladesh, Nepal and Pakistan.<sup>63</sup> In another case, three police officers are set for trial in a case of a racially motivated assault against a woman in 2020.<sup>64</sup> In August 2022, the Public Security Police launched an investigation following a video of two police officers assaulting a black man.<sup>65</sup>

Excessive use of police force towards Roma also remained widespread in 2022. Investigations of police brutality are not always effective. For more information, see **Chapter 5**.

Human rights bodies and CSOs also reported on persisting experiences of victimisation. In **Malta**, the equality body expressed concern after police

officers were arrested for abducting and assaulting foreign nationals because of their skin colour. It called on “all public institutions to audit their structures [...] to identify systemic racism”.<sup>66</sup> On 7 October 2022, the Malta Police Force launched an investigation into the alleged assault of the victims by three police constables. An NGO in **Cyprus** criticised police practices that discouraged victims from reporting racist violence or made it difficult to do so, for example by requiring a medical report as a prerequisite for filing a complaint.<sup>67</sup>

Treaty and expert bodies called for stronger independent monitoring mechanisms for investigating racism in the police. For example, the Committee on the Elimination of Racial Discrimination (CERD) addressed the excessive use of force in its 2022 recommendations to **Slovakia**.<sup>68</sup>

In its report on **France**, the European Commission against Racism and Intolerance (ECRI) specifically addressed the limited progress in combating racist abuse by law enforcement officers, and systemic discriminatory profiling. It called for the introduction of a system of recording identity checks, and for strengthening the guarantees of independence and the impartiality of the specialised inspection and investigation bodies.<sup>69</sup> Similarly, ECRI in its report on Greece considered allegations of racist police abuse and the way they are dealt with.<sup>70</sup> Following its first country visit since it was established in 2021, the UN mechanism to advance racial justice called on **Sweden** to fight systemic racism and focus on strategies to restore trust between police and minority groups.<sup>71</sup>

### **4.3. IMPLEMENTING THE EU LEGAL FRAMEWORK AGAINST RACISM, XENOPHOBIA, ANTISEMITISM AND RELATED INTOLERANCE**

People of different racial, ethnic and religious backgrounds continue to experience racism in its different manifestations across the EU, as equality data explored in the previous section indicate. The focus is moving from individual acts of racism to acknowledging that existing structures and policies can drive and sustain inequalities.<sup>72</sup> That shift gained further momentum in 2022. The European Parliament underlined the need for a monitoring and accountability mechanism to ensure the effective application and enforcement of EU anti-racism and anti-discrimination legislation and policy.<sup>73</sup>

#### **4.3.1. Racial Equality Directive**

Twenty-two years after the adoption of the Racial Equality Directive, Member States still need to step up their efforts to enforce its provisions properly. The European Parliament urged Member States to ensure the full implementation of the directive.<sup>74</sup> It pointed to the European Commission’s findings showing little progress in the fight against discrimination in its 2021 evaluation.<sup>75</sup>

Infringement proceedings concerning discrimination against Roma children in education in **Czechia**,<sup>76</sup> **Hungary**<sup>77</sup> and **Slovakia**<sup>78</sup> are still ongoing. ECRI also addressed segregation in schools in its report on **Bulgaria**.<sup>79</sup> For more information, see **Chapter 5**.

Furthermore, ECRI stressed the need for initial and ongoing training of teachers in anti-discrimination and anti-racism, in its recommendations to **Denmark**,<sup>80</sup> **France**<sup>81</sup> and **Estonia**.<sup>82</sup>



There were notable developments in a few Member States, which introduced or proposed strengthened legal protection against discrimination.

In **Spain**, a new comprehensive law on equal treatment and non-discrimination entered into force.<sup>83</sup> It established an independent authority for equal treatment and non-discrimination, and introduced fines for discrimination, ranging from € 300 to € 500,000. Still in **Spain**, before developing a new law against racism, racial discrimination and related intolerance, the Ministry of Equality carried out broad public consultation and targeted engagement with affected communities.<sup>84</sup>

In **Belgium**, the Brussels Region adopted legislation to promote diversity and combat discrimination on ethnic and racial grounds, among others, in access to and supply of goods and services, family allowances, social assistance and healthcare provided by public hospitals.<sup>85</sup>

In **Finland**, the Non-Discrimination Act has been reviewed;<sup>86</sup> changes to legislation include strengthening access to justice for victims of discrimination. Among other measures, the Non-Discrimination Ombudsman will have a mandate in working life; previously its mandate extended only to other areas of life. The Non-Discrimination Ombudsman is allowed to take cases to the National Non-Discrimination and Equality Tribunal when there is no identified victim. The concept of harassment is clarified when it is directed at a group of people, for example Jewish people or Roma.<sup>87</sup>

In some Member States, specialised bodies assessed the effectiveness of anti-discrimination legislation. They identified weaknesses in victims' access to justice.

In **Belgium**, a commission set up to evaluate the federal anti-discrimination legislation called for revisions, including the introduction of 'collective action' and increasing the civil fines for acts of discrimination.<sup>88</sup> In the **Netherlands**, a special committee of enquiry established to assess the effectiveness of the anti-discrimination legislation concluded that it is inadequate and complicated.<sup>89</sup>

#### **4.3.2. Framework Decision on Racism and Xenophobia**

The Framework Decision on Racism and Xenophobia defines a common criminal law approach to racist and xenophobic hate speech and hate crimes.<sup>90</sup> However, 14 years after its adoption, 12 EU Member States have not yet fully and correctly incorporated its provisions into national law. The European Commission had initiated infringement procedures against **Belgium, Bulgaria, Estonia, Finland, Germany, Greece, Hungary, Luxembourg, Malta, Poland, Portugal, Slovakia**.

the **Netherlands**, **Poland**, **Romania** and **Sweden** in previous years. They remained open in 2022.<sup>91</sup>

Several Member States introduced amendments in compliance with the provisions of the framework decision.

**Lithuania** amended its Criminal Code to criminalise hate crime and hate speech on the grounds of skin colour or ethnic origin and to criminalise the public approval, denial or gross mitigation of international crimes against the Republic of Lithuania or its residents.<sup>92</sup> **Estonia** added to its Penal Code the offence of public exhibition of a symbol relating to an act of aggression, genocide, crime against humanity or commission of a war crime in a manner that supports or justifies such acts.<sup>93</sup> **Germany** also amended its legislation to criminalise the public approval, denial and gross trivialisation of genocide, crimes against humanity and war crimes.<sup>94</sup> **Czechia** amended its Criminal Code by introducing a new offence of disseminating work promoting a movement aimed at suppressing human rights and freedoms.<sup>95</sup>

Amendments in **Bulgaria** criminalised acts of publicly condoning, denying or grossly trivialising crimes against peace and humanity. It introduced heavier penalties for certain offences when committed with racist or xenophobic motives.<sup>96</sup> For example, in cases of coercion, the heavier penalty for racist or xenophobic motives is 3 to 10 years' imprisonment.

**Spain** also amended its legislation by introducing penalties ranging from one to four years in prison, for those who directly or indirectly encourage, promote or incite hatred, hostility, discrimination or violence against a group, a part of it or a specific person, with a racist, antisemitic or anti-Roma motivation.<sup>97</sup> Amendments were also introduced concerning the circumstances that aggravate criminal responsibility for committing a crime with discriminatory motivation. In **Poland**, legislative amendments oblige judges to consider a bias motive based on national, ethnic, racial, political or religious hatred as an aggravating circumstance with an impact on the sentence.<sup>98</sup> Similarly, **Romania** amended its Criminal Code provisions<sup>99</sup> on incitement to hatred, violence and discrimination after two constitutional court reviews.<sup>100</sup>

In several Member States, amendments were undergoing legislative scrutiny in 2022. In **Belgium**, the Council of Ministers approved a proposal for amendments so that any form of discrimination, including on ethnic and racial grounds, is considered an aggravating factor. That applies to all crimes.<sup>101</sup>

In the **Netherlands**, a bill on hate crimes was resubmitted to the House of Representatives. It introduces a discriminatory motive on the ground of race as one aggravating factor in the Criminal Code.<sup>102</sup>

## CoE recommendation to member states on combating hate speech

In May 2022, the Council of Europe's Committee of Ministers adopted a new comprehensive recommendation to member States on combating hate speech. It calls on the member States to ensure that a comprehensive and effective legal framework is in place, consisting of appropriately calibrated provisions of civil, administrative and criminal law.

Source: Council of Europe, Committee of Ministers, **Recommendation CM/Rec(2022)16 to member States on combating hate speech**, 20 May 2022

## 4.4. NATIONAL POLICIES AND TARGETED MEASURES TO TACKLE RACISM, ANTISEMITISM AND XENOPHOBIA, EXTREMISM AND HATE CRIME

### 4.4.1. National anti-racism action plans and strategies

The EU Anti-racism Action Plan<sup>103</sup> and the EU Strategy on Combating Antisemitism and Fostering Jewish Life<sup>104</sup> call upon Member States to adopt national action plans against racism (NAPARs) by the end of 2022. In 2022, the Council of the European Union<sup>105</sup> and the European Parliament<sup>106</sup> reiterated that call. Expert and treaty bodies also continued to call on states to adopt national policies in line with existing commitments.

CERD issued concluding observations to **Denmark**,<sup>107</sup> **Estonia**,<sup>108</sup> **Luxembourg**<sup>109</sup> and **Slovakia**.<sup>110</sup> In all of them it also recalled commitments made in 2021 as part of the Durban Declaration. It specifically recommended that states address racial discrimination against people of African descent.

ECRI also addressed setting up NAPARs. It called for particular attention to anti-Muslim racism in its recommendations to **Denmark**.<sup>111</sup> It encouraged **France** to extend the scope of the national plan on racism beyond the field of education, and combat hate crimes aimed specifically at Travellers and Roma, as well as Muslims.<sup>112</sup>

Amid these repeated calls for developing policy frameworks to deliver on existing commitments to fight racism, the state of implementation in the EU falls short. By the end of 2022, only about half of the Member States had a dedicated anti-racism action plan or integrated measures in place.<sup>113</sup> Pan-European anti-racism organisations criticised the slow implementation of NAPARs, noting a lack of consultation of, participation of and engagement with local and regional administrations.<sup>114</sup>

In the reporting period, **Belgium** adopted federal measures in support of its NAPAR.<sup>115</sup> While that is a promising step, the national equality body criticised the Belgian government for failing to adopt an interfederal plan and a coordinated approach engaging all federal levels and entities.<sup>116</sup>

NAPARs are in development in seven countries: **Denmark**,<sup>117</sup> **France**,<sup>118</sup> **Germany**,<sup>119</sup> **Ireland**,<sup>120</sup> **Italy**,<sup>121</sup> **Latvia**<sup>122</sup> and **Spain**.<sup>123</sup>

**Germany** appointed its first federal commissioner for anti-racism.<sup>124</sup> In the **Netherlands**, the National Coordinator against Discrimination and Racism presented the first national programme against discrimination and racism.<sup>125</sup>

## FRA ACTIVITY

# National strategies on antisemitism



FRA's annual overview of antisemitic incidents recorded in the EU provides an overview of national strategies on antisemitism. By the end of 2022, 15 Member States either had a standalone antisemitism strategy or subsumed combating antisemitism under broader strategies. **Denmark, Germany and Italy** adopted standalone antisemitism strategies in 2022. Another seven EU Member States are in the process of developing such strategies or action plans.

In addition, the report provides an update on the most recent figures on antisemitic incidents. It also shows how national, regional or local authorities use the non-legally binding working definition of antisemitism adopted by the International Holocaust Remembrance Alliance.

For more information, see FRA (2022), *Antisemitism – Overview of antisemitic incidents recorded in the European Union 2011–2021*, Luxembourg, Publications Office.

Awareness is growing that anti-racism action is required at all levels of government. Anti-racism measures at local and regional levels were also developed in 2022.

In **Spain**, the city of Barcelona adopted an anti-racist measure<sup>126</sup> and the Basque government presented a *Guide to local action against incidents of racist, xenophobic, anti-Roma and LGTBIphobic hatred*.<sup>127</sup> In **Italy**, the cities of Bologna, Reggio Emilia and Turin are finalising local action plans against racism, racial, ethnic and religious discrimination, crimes and hate speech.<sup>128</sup> In **Finland**, regional implementation plans of the national anti-racism framework were drafted in a collaborative process engaging public authorities, CSOs and educational institutes.<sup>129</sup>

The reporting period also saw developments of national strategies and action plans addressing specific manifestations of racism, xenophobia and intolerance or targeted at particular areas of life.

In **Germany**, the Federal Ministry of the Interior and Community announced a 10-point action plan against right-wing extremism.<sup>130</sup> **Spain** adopted a second action plan to combat hate crimes.<sup>131</sup> Similarly, the **Polish** police developed a plan of police activities for 2022–2025 aimed at preventing hate speech and hate crimes.<sup>132</sup> **Austria**<sup>133</sup> and the **Netherlands**<sup>134</sup> developed specific anti-racism policies in the area of education.

## PROMISING PRACTICE

### Increasing diversity of public administrations

Member States took steps to increase diversity in their public administrations. For example, the German Federal Ministry of the Interior and Community and the Federal Commissioner for Migration, Refugees and Integration are developing a diversity strategy for the federal administration. In **Belgium**, the federal measures on anti-racism include targets to increase diversity in federal government entities and statutory positions.

A government-funded report in **Finland** explored the underrepresentation of migrants and multilingual Finns in representative democracy. In **Portugal**, the public security police published inclusive calls for recruitment targeting “less represented groups”.

Sources: Germany, *Federal Government Commissioner for Migration, Refugees and Integration and Federal Government Commissioner for Anti-Racism in personal union (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration, Beauftragte der Bundesregierung für Antirassismus in Personalunion)* (2022), „**Wir alle müssen Antirassisten sein.**“; Belgium, Kamer (2019), *Proposal of Resolution regarding the execution of an interfederal plan of action against racism, racial discrimination, xenophobia and other related intolerance, as established in the Declaration and Action Programme of Durban, ratified in 2001* (*Proposition de résolution visant à la mise en place d'un plan d'action interfédéral contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée, tel que prévu par la Déclaration et le Programme d'Action de Durban adoptés en 2001/Voorstel van resolutie betreffende de uitwerking van een interfederaal actieplan tegen racisme, rassendiscriminatie, vreemdelingenhaat en aanverwante onverdraagzaamheid, zoals vastgelegd in de Verklaring en in het Actieprogramma van Durban, die in 2001 werden aangenomen*); Finland, Seikkula, M. and Maury, O. (eds) (2022) *Addressing the democratic deficit among immigrants and multilingual Finns: Working group report and recommendations* (*Korjataan maahanmuuttaneiden ja monikielisten suomalaisten demokratiavaje: Työryhmän raportti ja suosituksset*), Helsinki, Ministry of Justice; Portugal, see *Public Security Police (Polícia Segurança Pública)* (2022), ‘**Agentes da PSP**’

#### 4.4.2. Strengthening victims’ access to justice and reporting of hate crime

Recommendations that CERD issued in 2022 stressed the need to intensify states’ efforts to enhance information on complaint mechanisms, protect victims from reprisals and strengthen the legal assistance system. A particular barrier it noted, for example in **Luxembourg**, was the lack of coordination between various complaint-handling bodies. It called for clear communication to victims on the appropriate institution for them to contact.<sup>135</sup> In its recommendations to **Slovakia**, the committee called for dedicated awareness-raising campaigns targeted at groups at risk of racial discrimination.<sup>136</sup>

Several Member States took measures to facilitate reporting of racist incidents. **Spain** established a new direct helpline (021) for racist hate crimes and racial or ethnic discrimination.<sup>137</sup> **Albania** launched a dedicated national platform for reporting hate speech and hate crimes.<sup>138</sup> Priorities of a dedicated call for projects to support initiatives against racism in **France** are strengthening support for victims and establishing tools for reporting online hate speech.<sup>139</sup>

Other Member States plan to strengthen access to support for victims. **Germany** took steps to promote community based anti-racism counselling across the country.<sup>140</sup> In the **Netherlands**, the national programme against racism sets out, among other proposals, one to strengthen the national antidiscrimination services.<sup>141</sup>

In **Portugal**, a cooperation protocol on combating racism and discrimination was signed. It calls for the strengthening of legal literacy of people at risk

of racial discrimination through launching pilot legal aid projects in collaboration with CSOs.<sup>142</sup>

In **Denmark**, the police implemented measures targeted specifically at victims of hate crime. Training modules now include a panel discussion with representatives of groups at risk, including, among others, the Muslim Council and the Jewish community. The police also disseminated new information material aimed at increasing awareness among groups and tackling underreporting.<sup>143</sup>

Several Member States launched targeted measures to fight online hate speech. For example, in Baden-Württemberg, **Germany**, the State Criminal Police Office established a dedicated task force that coordinates existing services and hosts a one-stop-shop web page collating and curating helpful addresses for groups at risk of hate crimes.<sup>144</sup>

The equality body in **Italy**, together with partner organisations, established a national observatory for identifying and analysing online hate speech. It serves as a depository of all available data on hate speech.<sup>145</sup> In **Bulgaria**, CSOs and communities affected by hate speech developed an online reporting platform available in six languages. It streamlines victim support and the systems that CSOs apply for collecting data on hate crime, hate speech and discrimination.<sup>146</sup>

#### 4.4.3. Addressing racism in policing

Several countries took steps to address racism in policing. Notably, the **Dutch** police appointed a national coordinator for the combat against discrimination and racism.<sup>147</sup> In October 2022, the coordinator submitted a first action plan. It sets out measures for the effective investigation, assessment and handling (including punishment) of reports of transgressive behaviour as well as measures for preventing the dropout of students and young graduates from police training.<sup>148</sup>

In **Spain**, the Ministry of the Interior created the National Office for Human Rights Guarantees. Among its missions is that of "Verifying and evaluating compliance with the obligations contained in instructions or other provisions on police actions that may affect the exercise of fundamental rights."<sup>149</sup>

Some Member States also took action to address ethnic profiling. In **Sweden**, the police commissioned the Swedish National Council for Crime Prevention to evaluate the use of ethnic profiling by the police.<sup>150</sup> The equality bodies in **Denmark**<sup>151</sup> and in **Ireland**<sup>152</sup> called for revisions in national legislation to prohibit and tackle discriminatory ethnic profiling by law enforcement.

Training on anti-racism took place in **Denmark**,<sup>153</sup> **Finland**,<sup>154</sup> **Malta**<sup>155</sup> and **Portugal**.<sup>156</sup>

## PROMISING PRACTICE

### Strengthening prosecutorial intervention against hate crime

**Spain** has amended the Organic Statute of the Public Prosecutor's Office. It is now mandatory for provincial prosecutors' offices to have a hate crimes section to coordinate the prosecutor's intervention in these proceedings.

*Source: Spain, Ministry of the Presidency, Law 50/1981, Article 18 (3)*

## FRA ACTIVITY

### Racism in policing – new research evidence from FRA

FRA's report on bias in algorithms shows how bias can amplify over time, potentially leading to discriminatory policing. The findings call for comprehensive testing for bias before and during the use of automated decision making, and for the provision of guidance on the legitimate use of sensitive data and necessary safeguards for collecting them.

*FRA (2022), Bias in algorithms – Artificial intelligence and discrimination, Luxembourg, Publications Office.*

## FRA opinions

The Framework Decision on Racism and Xenophobia (2008/913/JHA) sets out a common criminal law approach for forms of racism and xenophobia that amount to hate speech and hate crime. The European Commission continued infringement procedures against 12 Member States that had not fully and correctly incorporated the framework decision into national law. At the same time several Member States amended their criminal codes to criminalise hate crime and hate speech and they took measures to facilitate reporting of racist incidents.

Racism continued to pose serious challenges across the EU in 2022. Racist hate crime and hate speech incidents persisted, as official and unofficial data show. Moreover, international and national human rights bodies raised concerns about the growing rate of hate speech online, and often by the media or politicians, targeting Jews, Muslims, migrants and ethnic minorities.

Article 21 of the EU Charter of Fundamental Rights prohibits any discrimination on the grounds of ethnic origin or race. Similarly, the Racial Equality Directive (2000/43/EC) prohibits any discrimination on grounds of ethnic or racial origin in access to education; employment; and services, including housing and healthcare. A number of Member States still do not implement the directive's provisions fully, as reports of national human rights monitoring bodies show.

The Commission continued infringement procedures against three Member States that discriminated against Roma children in education. In 2022, ethnic minorities, including migrants, continued to experience discrimination across different areas of life, as survey and discrimination testing findings reveal.

In view of persistent evidence of systemic racism, European and international bodies called for targeted efforts to address the racism evidenced in wider political and social disadvantages for those with racial and ethnic minority origin.



### FRA OPINION 4.1

EU Member States should fully and correctly transpose and apply the provisions of the Council Framework Decision on Combating Racism and Xenophobia. This includes Member States taking measures to ensure that a racist or xenophobic motive is considered an aggravating circumstance, or, alternatively, the courts taking such a motive into consideration in determining the penalties.



### FRA OPINION 4.2

EU Member States should significantly improve the effectiveness of their measures and institutional arrangements for applying fully the provisions of the Racial Equality Directive, in particular as regards the effective, proportionate and dissuasive sanctions in case of breaches of the obligations as required by the Racial Equality Directive. Member States are encouraged to intensify efforts for fighting racism in all its manifestations, including systemic racism.



## FRA OPINION 4.3

EU Member States are encouraged to develop as soon as possible dedicated national action plans or strategies to fight racism, racial discrimination, antisemitism, xenophobia and related intolerance. To support and reflect national efforts on the ground, national policies should be translated into concrete measures and action at regional and local levels. Member States should ensure that, when developing, implementing and monitoring national action plans against racism, all actions are guided by a participatory approach and informed by and based on reliable equality data.

At the UN World Conference against Racism, Member States made commitments to strengthened efforts to combat racism. Twenty-one years later, the state of implementation in the EU falls short.

The call to adopt national action plans against racism by the end of 2022, as the EU Anti-racism Action Plan and the EU Strategy on Combating Antisemitism and Fostering Jewish Life envisage, was met only halfway. By the end of 2022, about half of the Member States had dedicated anti-racism action plans or integrated measures in place, and 15 either had a standalone antisemitism strategy or subsumed combating antisemitism under broader strategies. In some countries, targeted efforts took place at local and regional levels, reflecting an increased understanding that racism should be tackled across all levels and through a coordinated and participatory approach.



## FRA OPINION 4.4

EU Member States are encouraged to increase training of law enforcement officials. They should also increase assessment of existing safeguards against racism, including by introducing robust systems of performance review. Member States should ensure that cases of police violence against migrants and ethnic minorities are swiftly and independently investigated and that victims are assisted in reporting police misconduct.

Specific, practical and ready-to-use guidance against discriminatory ethnic profiling by police officers exercising their duties should be issued by law enforcement authorities. Such guidance should be included in standard operating procedures and codes of conduct, and systematically communicated to frontline officers.

European and international bodies have called for action to address racism in law enforcement conduct and discriminatory profiling. Such attitudes contradict the principles of the International Convention on the Elimination of All Forms of Racial Discrimination and other international standards, including those embodied in the European Convention of Human Rights and related jurisprudence of the European Court of Human Rights, as well as the EU Charter of Fundamental Rights. Recommendations of the European Commission against Racism and Intolerance also stress the positive obligation on the police to combat racism and racial discrimination.

In 2022, cases of police violence may have involved racial and xenophobic discrimination. The year also saw evidence of unlawful ethnic profiling. Racist incidents and unlawful ethnic profiling damage trust in the authorities, and can lead to under-reporting of crimes and resistance to public authority. Member States continued to invest in training for law enforcement officials on human rights and anti-racism.

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# ROMA EQUALITY AND INCLUSION

# 5

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# UN & CoE

		2	February	Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities adopts its fifth opinion on Slovakia.
		3	March	European Commission against Racism and Intolerance (ECRI) publishes its conclusions on the implementation of its priority recommendations addressed to Finland, Ireland, the Netherlands, Romania and Slovenia.
		8	April	On the occasion of International Roma Day, United Nations Special Rapporteur on minority issues, Fernand de Varennes, calls on all states and institutions to fully include Roma people in their efforts to protect civilians during conflicts.
3	10-11	19	May	<p>In <i>A.Ö. and H.Ö. v. Romania</i>, European Court of Human Rights (ECtHR) finds a violation of Article 3 (effective investigation) of the Convention in the case of sexual abuse of a young Romani girl placed in a children's home. Romanian authorities failed to investigate the case with due diligence.</p> <p>Council of Europe Dialogue with Roma and Traveller civil society takes stock of the current state of protection of Roma and Traveller children's rights in Council of Europe member States and in Roma and Traveller communities, and discussed the new Strategy for the Rights of the Child (2022-2027).</p> <p>Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM) publishes its fifth opinion on Norway, asking it to tackle online and other forms of hate speech and intolerance.</p> <p>In <i>L.F. v. Hungary</i>, ECtHR finds a violation of Article 8 (right for private and family life) of the Convention in the case of unlawful inspection carried out by the representatives of the local government of Gyöngyöspata in the applicant's home. The applicant was of Roma origin.</p>
		31	May	<p>Standing Committee of the Parliamentary Assembly of the Council of Europe (PACE) adopts a resolution on eradicating extreme child poverty in Europe.</p> <p>In <i>X and Others v. Albania</i>, ECtHR finds a violation of Article 1 of Protocol No. 12 (general prohibition of discrimination) in the case of a Romani and Balkan Egyptian family's racial segregation in the Naim Frasher School in Korça.</p>
	2	14	June	<p>ECRI publishes its 2021 Annual Report.</p> <p>FCNM Advisory Committee publishes its fifth opinion on Germany, asking it to improve education for Roma and Sinti.</p> <p>In <i>Balkasi and Others v. Albania</i>, ECtHR finds a violation of Article 3 (effective investigation) of the Convention due to failure to investigate the Roma applicants' allegations of ill-treatment by state agents.</p>

# UN & CoE

July

7

In *Mata v. Hungary*, ECtHR finds a violation of Article 3 of the Convention (torture or inhuman or degrading treatment) in the case of ill-treatment of a Roma man by the police.

October

4

In *Paketova and Others v. Bulgaria*, (the ECtHR finds a violation of Article 8 (right to respect for private and family life and the home) in conjunction with Article 14 (prohibition of discrimination), in view of the authorities' omissions resulting in ethnic Roma being driven away from their homes after anti-Roma protests and not being able to return.

December

8

In *Caldaras and Lupu v. France, Ciurar and Others v. France, Stefan and Others v. France, Stan v. France, Sisu and Others v. France and Margoi and Others v. France*, ECtHR confirms that orders to vacate unauthorised camps did not interfere disproportionately with the right to respect for private and family life of the Romani families living in them. The French authorities' interference had pursued the legitimate aims of protecting health and public safety and protecting the rights and freedoms of others, in this instance the property rights of the landowners concerned.

13

In *Elmazova and Others v. North Macedonia*, the ECtHR finds a violation of Article 14 (prohibition of discrimination) of the Convention in conjunction with Article 2 of Protocol No. 1 (right to education), concerning discrimination against Roma pupils on account of their segregation in two state-run primary schools, one attended predominantly by Roma children and the other with Roma-only classes.

26	January	European Commission launches a new initiative on binding standards for equality bodies.
8	March	European Parliament adopts a resolution on the role of culture, education, media and sport in the fight against racism (2021/2057(INI)).
21	March	European Commission, together with the French Presidency of the Council of the European Union, holds the second European Anti-Racism Summit to mark the International Day for the Elimination of Racial Discrimination on 21 March 2022.
16-19	May	European Parliament dedicated a series of events to EU Romani Week 2022 to debate the post-2020 policies for the equality and inclusion of Romani people.
5	July	European Parliament adopts a resolution (2021/2170(INI)) on women's poverty in Europe report and calls on the Commission to develop an ambitious 2030 European anti-poverty strategy. It emphasises that all Member States should accelerated national efforts to ensure Roma inclusion and calls on the Commission to promote the inclusion, and thereby ensure the participation, of Roma girls and women at all levels.
7	September	European Commission presents the European Care Strategy (COM(2022) 440 final) to ensure inclusive and high-quality early childhood education and care services including marginalised groups such as Roma children. The strategy is accompanied by a proposal for a Council recommendation (COM/2022/442 final) on the revision of the Barcelona targets on early childhood education and care, which emphasises the need to achieve educational equity for children in disadvantaged situations, such as Roma children.
5	October	European Parliament adopts a resolution (2022/2662(RSP)) on the situation of Roma people living in settlements in the EU.
25-26	October	Fifteenth European Platform for Roma Inclusion meeting, in Prague, brings together EU institutions, Member States and civil society organisations to discuss the progress of the EU Roma strategic framework. FRA together with the Czech Presidency launches the results of the 2021 Roma survey.
7	December	European Commission adopts two legislative proposals to strengthen equality bodies, including binding rules for ensuring their independence, resources and powers. They are expected to empower equality bodies to support the implementation of the EU Roma strategic framework in cases of non-discrimination.

**By 2022, most EU Member States developed action plans and started implementing their national strategic frameworks to meet the 2030 targets of the EU Roma strategic framework for equality, inclusion and participation. In the course of the year, most Member States also drafted the national action plans for the effective implementation of the child guarantee, in which several Member States focus on strengthening education and inclusion of Roma children.**

**FRA presented the results of the Roma survey conducted in 2021. Its findings show very little or no progress since the last survey in 2016 in fighting antigypsyism, and in equal access to education, employment, housing and health.**

**The fundamental rights of Roma and Travellers were still not fully respected in 2022. Antigypsyism, discrimination, poverty and social exclusion, as well as hate crime and hate speech, continue to affect a disproportionate number of Roma and Travellers across the EU. Fatal incidents of police violence with Roma victims in 2022 indicate that institutional racism in law enforcement needs to be tackled.**

## **5.1. MONITORING PROGRESS ON ROMA EQUALITY, INCLUSION AND PARTICIPATION**

The 2021 EU Council recommendation on Roma equality, inclusion and participation asks Member States to monitor and evaluate the implementation of the national strategic frameworks, to set targets until 2030 and to make use of FRA's portfolio of indicators. The first reporting cycle is planned by June 2023.<sup>1</sup>

### **5.1.1. Setting targets**

The EU Roma strategic framework for equality, inclusion and participation requires Member States to reflect in their national Roma strategic frameworks the objectives and headline targets that the framework sets out until 2030,<sup>2</sup> and to include national quantitative and/or qualitative targets. By the end of 2022, most Member States had adopted new national strategic frameworks or amended their existing strategies.<sup>3</sup> None of the national frameworks reflects the full set of EU indicators. However, 20 Member States did adopt quantitative or at least qualitative targets, in one or more key areas.

Figure 5.1 provides an overview of how far national strategic frameworks have adopted the EU's quantitative targets. For example, in regard to objective 1A, to cut the proportion of Roma who have experienced discrimination by at least half, **Bulgaria** set a quantitative target to "halve the share of Roma who have been discriminated against" by 2030, and explained the indicator and data source to measure the target.<sup>4</sup> In **Belgium**, the national framework does not set quantitative targets, but provides numbers about the current situation and outlines several measures to address discrimination and antigypsyism.

Twenty Member States have defined targets for reaching objective 5, to effectively increase equal access to quality inclusive mainstream education. Nineteen of them set explicit targets in the area of employment, while 18 set targets to fight and prevent antigypsyism and discrimination. However, when it comes to objective 2, to reduce the poverty gap between Roma and the majority population, only nine Member States have committed themselves to a quantitative or qualitative target.



**FIGURE 5.1: TARGETS OF THE EU ROMA STRATEGIC FRAMEWORK FOR EQUALITY, INCLUSION AND PARTICIPATION REFLECTED IN THE NATIONAL STRATEGIC FRAMEWORKS**

**Objective 1: Fight and prevent antigypsyism and discrimination**

Target 1-A <sup>1</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK
Target 1-B <sup>2</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK

**Objective 2: Reduce poverty and social exclusion**

Target 2-A <sup>3</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK
Target 2-B <sup>4</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK

**Objective 3: Promote participation through empowerment, cooperation and trust**

Target 3-A <sup>5</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK
Target 3-B <sup>6</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK
Target 3-C <sup>7</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK
Target 3-D <sup>8</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK

**Objective 4: Increase effective equal access to quality inclusive mainstream education**

Target 4-A <sup>9</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK
Target 4-B <sup>10</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK
Target 4-C <sup>11</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK

**Objective 5: Increase effective equal access to quality and sustainable employment**

Target 5-A <sup>12</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK
Target 5-B <sup>13</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK
Target 5-C <sup>14</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK

**Objective 6: Improve Roma health and effective equal access to quality healthcare and social services**

Target 6-A <sup>15</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK
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**Objective 7: Increase effective equal access to adequate desegregated housing and essential services**

Target 7-A <sup>16</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK
Target 7-B <sup>17</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK
Target 7-C <sup>18</sup>	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IT	LT	LU	LV	NL	PL	PT	RO	SE	SI	SK

- Set national targets that cover issues addressed by the EU-level targets as included in the EU framework
- Set national targets that cover issues other than those addressed by the EU-level targets in a given objective of the EU framework
- Do not set national targets – qualitative or quantitative

Source: European Commission (n.d.), ‘Roma equality, inclusion, and participation by EU country’

▲ Notes: Malta has no Roma population

- <sup>1</sup> Cut the proportion of Roma with discrimination experience by at least half
- <sup>2</sup> Decrease the proportion of general population who feel uncomfortable having Roma neighbours by at least a third
- <sup>3</sup> Cut poverty gap between Roma and general population by at least half
- <sup>4</sup> Cut poverty gap between Roma children and other children by at least half
- <sup>5</sup> Capacitate and engage at least 90 NGOs in EU wide coordinated Roma civil society monitoring
- <sup>6</sup> Ensure participation of Roma NGOs as full members in national monitoring committees for all programmes addressing needs of Roma communities
- <sup>7</sup> Double proportion of Roma who file a report when they experience discrimination
- <sup>8</sup> Encourage participation of Roma in political life at local, regional, national and EU levels (in Member States with significant Roma population)
- <sup>9</sup> Cut gap in participation in early childhood education and care by at least half
- <sup>10</sup> Reduce gap in upper secondary completion by at least one third
- <sup>11</sup> Work towards eliminating segregation by cutting at least in half the proportion of Roma children attending segregated primary schools (in Member States with significant Roma population)
- <sup>12</sup> Cut employment gap by at least half
- <sup>13</sup> Cut gap in NEET rate by at least half
- <sup>14</sup> Cut gender employment gap for Roma by at least half
- <sup>15</sup> Cut life expectancy gap by at least half
- <sup>16</sup> Reduce gap in housing deprivation by at least one third
- <sup>17</sup> Cut gap in overcrowding by at least half
- <sup>18</sup> Ensure that at least 95 % of Roma have access to tap water

### **5.1.2. Member States collecting equality data based on ‘racial or ethnic origin’**

National efforts to collect equality data are increasing. The EU guiding principles for the collection and use of equality data based on ‘racial or ethnic origin’ suggest using a variety of data sources. Those can include sources that are not specifically designed for this purpose but cover variables that can be used to analyse existing structural inequalities (Figure 5.2).<sup>5</sup>

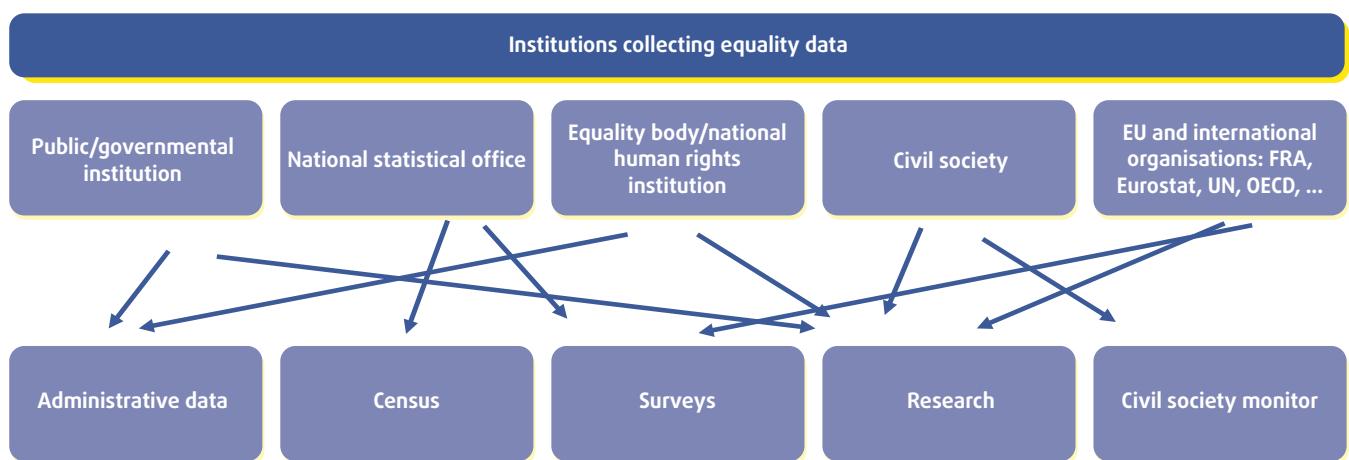
Member States can also get support from FRA, equality bodies or other national human rights institutions, as well as from the national statistical institutes, to ensure and improve regular national data collection capacities.<sup>6</sup> In 2022, FRA updated its compendium of promising practices for equality data collection.<sup>7</sup>

FRA supports the EU and the Member States in equality data collection by carrying out regular surveys on groups at risk of discrimination, hate-motivated harassment and violence. National data collection still rarely includes such groups. In 2022, FRA released its most recent data on Roma in the eight EU Member States with larger Roma populations (Croatia, Czechia, Greece, Hungary, Italy, Portugal, Romania and Spain) and in North Macedonia and Serbia.<sup>8</sup>

For the first time, Bulgaria and Slovakia collected the full set of indicators using the questionnaire for FRA’s Roma Survey 2021. That provided additional comparable data.

In its data collection, FRA followed the human rights-based principle of active participation of Roma in the design of the survey. A consultation with stakeholders took place before the development of methodology and questionnaire; the data collection was conducted with the help of Roma interviewers and Roma mediators; and Roma civil society was consulted on the preliminary results before the dissemination of results. The survey questionnaire and the derived indicators are based on previous Roma surveys and have been partly tested and discussed with Roma civil society. But it also seeks comparability with the general population and includes standard EU indicators such as the Social Scoreboard. Further country details are included in the technical report.<sup>9</sup>

**FIGURE 5.2: DATA SOURCES AND INSTITUTIONS COLLECTING EQUALITY DATA**



Source: FRA (2023)

National censuses are an important source of data on self-identification based on ethnicity (Figure 5.2). Bulgaria, Croatia, Czechia, Romania and Slovakia published results from their 2021 censuses in 2022.

For the first time, **Slovakia** allowed the selection of up to two multiple ethnic identities in the census questionnaire. In total, 94.5 % of the total population in Slovakia answered the voluntary question on self-identification in relation to ethnicity. The added optional question about a second ethnicity doubled the number describing themselves as Roma. This marked the highest number of self-identified Roma in the Slovak census since 1989. Out of a total of 5,449,270 people, 67,179 (1.23 %) selected Roma ethnicity and another 88,985 gave it as their second ethnicity. A total of 100,526 people marked Romanes as their mother tongue.<sup>10</sup>

**Czechia's** census also provided an option for self-identification with up to two ethnicities. Almost four times as many mentioned Roma in combination with another ethnicity as those who mentioned only Roma ethnicity.<sup>11</sup> However, the number of Roma in the Czech census is still much lower than the Council of Europe estimates.<sup>12</sup>

The **Bulgarian** National Statistical Institute (BNSI) published the first results of its latest census desegregated by ethnicity in 2022<sup>13</sup>. So did the **Croatian**<sup>14</sup> and **Romanian**<sup>15</sup> national institutes of statistics. None of these countries allowed the selection of more than one ethnicity in its census. Roma had to choose between two ethnic identities, although principle No. 5 of the EU Guidance note on the collection and use of equality data based on racial or ethnic origin recommends that data collectors give respondents the possibility to indicate multiple ethnic group affiliations or a combination of ethnic/group affiliations.<sup>16</sup> It may also be one of the reasons why the numbers of people who self-identified as Roma in the latest censuses in Bulgaria and Romania are considerably lower than in 2011.<sup>17</sup>

## FRA ACTIVITY

### Using EEA/Norway Grants funding for explicitly but not exclusively targeting Roma inclusion

FRA is a partner in two projects that the EEA/Norway Grants financial mechanism funds.

The first was implemented with the Bulgarian National Statistical Institute (BNSI) and completed in 2022. It tested novel approaches to collecting data and monitoring the situation of vulnerable groups at high risk of poverty, social exclusion and violation of their rights. In 2022, the BNSI published a report on Roma based on the EU portfolio of Roma inclusion indicators.

The second project, implemented with the Romanian Prosecutor's Office, started in 2022. It will examine victims of hate crime, and children as victims of crime, in Romania. Both strands will investigate the situation of Roma as a cross-cutting priority in line with principle 2, 'Explicit but not exclusive targeting', of the 10 Common Basic Principles of Roma Inclusion.

*Sources: Bulgaria, BNSI (n.d.), 'Project: Novel approaches to generating data on hard-to-reach populations at risk of violation of their rights' ('Проект: Нови подходи за генериране на данни за трудно достъпимите групи от населението, изложени на рисък от нарушаване на техните права'); Romania, Office of the Prosecutor General (n.d.), 'Protecting victims of crime' ('Protecția victimelor infracțiunilor'); European Commission, Directorate-General for Employment, Social Affairs and Inclusion (2009), **The 10 common basic principles on Roma inclusion – Vademeicum, Luxembourg, Publications Office**.*

In 2022, the **Greek** Ministry of Labour and Social Affairs published a report on Roma settlements and their populations. It was based on a questionnaire that municipalities completed with the assistance of Roma mediators but without the involvement of Roma representative organisations or communities.<sup>18</sup> The results show that 117,495 Roma were living in Greece in 2022 in more or less segregated settings. They ranged from encampments with living conditions

## PROMISING PRACTICE

### Evaluation study of the Austrian national strategy for Roma inclusion

The Austrian National Roma Contact Point contracted the University of Vienna to evaluate the national Roma inclusion strategy up to 2020, in close cooperation with Roma civil society.

Drawing on FRA's methodologies, the project developed a fully participatory approach and collected quantitative and qualitative data on Roma in Austria for the first time. The study comprised 287 expert interview questionnaires sent to municipalities, ministries, schools and non-governmental organisations, and 400 face-to-face interviews with Roma by Roma interviewers. The authors emphasised that successful participation must start at the conceptual stage and has to be designed as an open process and not steered from the top down.

The study identified structural racism as one of the main barriers to implementing the national Roma inclusion strategy.

*Source: Reinprecht, C., Walch, N. and Nardai, T. (2022), Study on the Evaluation of the National Strategy for the Inclusion of Rom:nja in Austria: Final report (Studie zur Evaluierung der nationalen Strategie zur Inklusion der Rom:nja in Österreich. Endbericht), Vienna, University of Vienna, Federal Chancellery*

**"This report lays bare the shocking hardship too many Roma and Travellers endure in the Europe of today. Already labouring under inequalities pre-COVID-19, the findings serve as an urgent reminder of the need for governments and society to break the vicious cycle of poverty and social exclusion."**

*Michael O'Flaherty, Director of FRA, press release of FRA 2021 Roma survey results*

characterised by severe deprivation (77 such encampments were recorded) to mixed neighbourhoods with predominantly Roma populations.

Despite its methodological weaknesses and the lack of involvement of Roma themselves, the report provides a variety of useful information, especially in regard to housing needs that should guide relevant future policy initiatives, as the national Roma inclusion strategy sets out.

Equality bodies and civil society can play an important role in monitoring the investment of EU funds<sup>19</sup> and collecting or using equality data to monitor progress of the national Roma strategic frameworks and the national anti-racism action plans. The European Network of Equality Bodies, in cooperation with FRA, provided relevant training to national equality bodies in 2022 on how to engage with 'hard-to-reach groups' when collecting equality data.<sup>20</sup>

The European Commission has provided funding since 2017 for Roma civil society to regularly monitor national Roma strategies across the EU. The project Roma Civil Monitor 2021–2025 published its first assessment of the national strategies in 2022. This shadow report is a valuable source of data and an important tool to support monitoring in Member States. Furthermore, the project helps build the capacity of Roma and pro-Roma civil society to provide independent monitoring, assessment and reporting on national strategies for Roma equality, participation and inclusion.<sup>21</sup>

#### 5.1.3. Progress towards the 2030 targets

FRA published its most recent data in 2022. They show that, since 2016, progress on Roma inclusion and respect for their fundamental rights has been slow and limited.

FRA conducted its representative survey in 2021 in 10 EU countries. It covers 87 % of the EU's estimated 6 million Roma, the largest ethnic minority.<sup>22</sup>

Some 80 % of the Roma interviewed for the FRA survey remain below the national at-risk-of-poverty thresholds, compared with an EU average of 17 %. Moreover, every fourth Roma (22 %) still lives in a household with no access to tap water. Some minor improvements include the fact that the share of Roma living in substandard housing fell from 61 % in 2016 to 52 % in 2021.

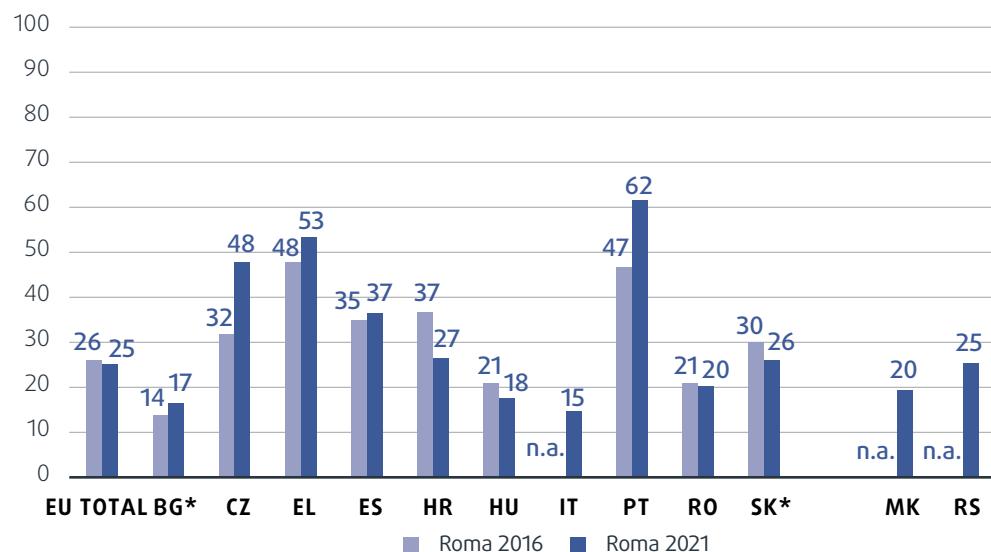


The key findings from the Roma Survey 2021 provide a snapshot of the persisting impact of antigypsyism and the problems many Roma and Travellers face in enjoying their fundamental rights. Every fourth Roma surveyed (25 %) felt discriminated against in the 12 months before the survey in one or more core areas of life (Figure 5.3). This number remains practically unchanged since 2016, reaching almost 50 % of Roma in Czechia and more than 50 % in Greece and Portugal. Only Croatia shows some improvement, with the prevalence of discrimination falling to 27 % in 2021.<sup>23</sup>

**FIGURE 5.3: EXPERIENCES OF DISCRIMINATION IN THE PAST 12 MONTHS IN CORE AREAS OF LIFE BECAUSE OF BEING ROMA, BY SURVEY COUNTRY AND YEAR (%)**

► Notes:

*Out of all respondents at risk of discrimination because of being Roma in at least one of the areas of daily life that the survey asked about (looking for work; at work; education; health; housing; administrative offices or public services; or other public or private services such as restaurant, bar, night club, hotel, shop or public transport), regarding experiences in the 12 months before the survey (Roma Survey 2021, n = 7,322; Bulgaria, n = 1,912; Slovakia, n = 669), weighted results.*  
n.a., not available.



Sources: FRA (2022), *Roma in 10 European countries – Main results*; EU-MIDIS II 2016;  
\*Bulgaria, BNSI/FRA 2020; \*Slovakia, EU-SILC marginalised Roma communities 2020.

## 5.2. IMPLEMENTING THE EU ROMA STRATEGIC FRAMEWORK

### 5.2.1. Finalising national strategic frameworks and developing national action plans

EU Member States should have adopted national strategic frameworks by September 2021.<sup>24</sup> Fourteen Member States submitted their new or revised national strategies by the end of 2021. Nine Member States, and the candidate countries North Macedonia and Serbia, submitted strategies in 2022.<sup>25</sup> Countries used different approaches, either developing a self-standing strategy and/or action plan or integrating their efforts into wider policy measures (Table 5.1).

**TABLE 5.1: STATUS OF EU ROMA STRATEGIC FRAMEWORK  
IMPLEMENTATION IN EU MEMBER STATES**

National strategy	AT, BE, CY, CZ, DE, DK, ES, FI, FR, IT, PL, PT
National action plan	LT, LV
National strategy and action plan	BG, EL, HR, HU, SI, SK, RO
National strategy adopted before 2021	SE
Integrated policy/global measures	EE, LU, NL
Strategy run out in 2021	IE

Source: FRA comparison based on information available from Franet

**Sweden** had already adopted its long-term national strategy in 2012. It considers that the strategy is largely in line with the 2020–2030 EU strategic framework and no changes are needed.<sup>26</sup> In **Ireland**, the previous national strategic framework (National Traveller Roma Inclusion Strategy 2017–2021) has ended and the adoption of a new framework is pending.

**Malta** has no Roma population. **Luxembourg** has an estimated population of 300. Both countries therefore do not submit strategies.<sup>27</sup>

Nine Member States presented action plans in 2022 for the implementation of their national strategic frameworks. **Slovakia** adopted four action plans for 2022–2024: they focus on education; housing and health; the fight against Roma racism; and enhancing participation.<sup>28</sup> In **Croatia**, the Office for Human Rights and Rights of National Minorities began to draft the new Action Plan 2023–2025.<sup>29</sup>

In 2022, **Czechia** appointed its first Commissioner for Roma Minority Affairs, as the new Strategy for Roma Equality, Inclusion and Participation 2021–2030 sets out. That ends the previous fragmentation of Roma issues among various state administrations.<sup>30</sup>

In 2022, the European Commission assessed the national strategies against the EU Roma strategic framework. Its overall assessment is expected in early 2023.<sup>31</sup>

In 2022, the Roma Civil Monitor 2021–2025 issued its first assessment of the national strategies, and more detailed country reports.<sup>32</sup> It acknowledged improvements to the overall approaches of countries in recognising structural racism (antigypsyism) and the lack of equality and inclusiveness in society, institutions and public services. This shift is discernible in countries such as France, Italy and the Netherlands.

Many new strategies recognise the most serious problems Roma face, such as antigypsyism, segregation and forced evictions. Nonetheless, the Roma Civil Monitor expresses concern about the effectiveness of the specific measures designed to tackle these problems. It claims that many grave problems remain unaddressed, and that central and eastern European countries where Roma face the most profound poverty levels have not addressed social protection and poverty reduction.<sup>33</sup>

### **5.2.2. Participation of civil society organisations**

The 2021 Council recommendation on Roma equality, inclusion and participation emphasises the need for Member States to step up meaningful participation by and consultation with Roma people, including women,

children and young people.<sup>34</sup> It particularly asks Member States to involve equality bodies, civil society, and local and regional stakeholders in the design, implementation, monitoring and review of national strategic frameworks.

The Roma Civil Monitor 2021–2025 acknowledged that the intensity and quality of Roma and non-governmental organisation (NGO) participation in the preparation of the new national Roma strategic frameworks has improved.<sup>35</sup>

Information about civil society organisations' engagement in preparing national action plans is scarce. So far, only nine Member States have adopted specific action plans to implement their national strategies: Bulgaria, Croatia, Greece, Hungary, Latvia, Lithuania, Romania, Slovakia and Slovenia.<sup>36</sup> In **Bulgaria**, the involvement of civil society organisations in the drafting and consultation process has been criticised as unbalanced and lacking the Ombudsman's engagement.<sup>37</sup>

In **Slovenia**, the dialogue with the Roma community involves the police, local communities, representatives of institutions dealing with Roma issues, and representatives of governmental and non-governmental organisations and civil society initiatives. This pursues the objectives set out in the National Programme of Measures for Roma and the Action Plan for 2021–2030.<sup>38</sup>

Only a few Member States have established sustainable dialogue with Roma civil society to date.

**Italy's** National Office against Racial Discrimination (Ufficio Nazionale Antidiscriminazioni Razziali, UNAR), representing Roma and Sinti communities, took an active part in the consultation on implementing the strategy in 2022.<sup>39</sup> The Equal Opportunities Department of the Italian government set the platform up in 2017 and describes its composition in a decree.<sup>40</sup> In **Ireland**, progress in implementing the national strategies for Travellers and Roma is monitored by a steering committee, chaired at ministerial level, which includes Traveller and Roma representatives and civil society organisations.<sup>41</sup>

Other Member States, such as **Austria**, **Croatia**, **Estonia** and **Latvia**, also established permanent dialogue platforms.<sup>42</sup> **Serbia** established the Civil Society Platform for Roma Social Inclusion to maintain dialogue with national decision-makers on Roma rights and social inclusion.<sup>43</sup>

According to the Roma Civil Monitor, only a few countries, such as **Czechia**, **Germany** or **Greece**, have set up systemic reforms aimed at strengthening the participation of Roma and pro-Roma civil society in structures of policy making and implementation.<sup>44</sup>

### 5.3. CHALLENGES AND WAYS FORWARD IN THE MEMBER STATES

In 2022, the coronavirus disease 2019 (COVID-19) pandemic posed fewer challenges, including to Roma, than in 2021 and 2020. At the same time the Russian war of aggression against Ukraine contributed to rising living costs, in particular energy prices, which affected many Roma. Antigypsyism and discrimination remained the main barriers to progress in Roma equality, inclusion and participation in 2022.

### **5.3.1. Antigypsyism and discrimination**

The principle of equal treatment means that there must be no direct or indirect discrimination based on racial or ethnic origin, as it violates the general principle of equality as set out in the treaties of the EU and the Member States.<sup>45</sup> According to Article 2 of the Racial Equality Directive, harassment shall be deemed to be discrimination when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.<sup>46</sup> Some 17 % of Roma experienced bias-motivated harassment in the 12 months preceding the FRA Roma survey 2021.<sup>47</sup>

The EU Roma strategic framework for equality, inclusion and participation urges Member States to adequately address antigypsyism, including experiences of discrimination, hate-motivated harassment and violence. The EU Anti-Racism Action Plan encourages all Member States to develop and adopt national action plans against racism and racial discrimination by the end of 2022.<sup>48</sup>

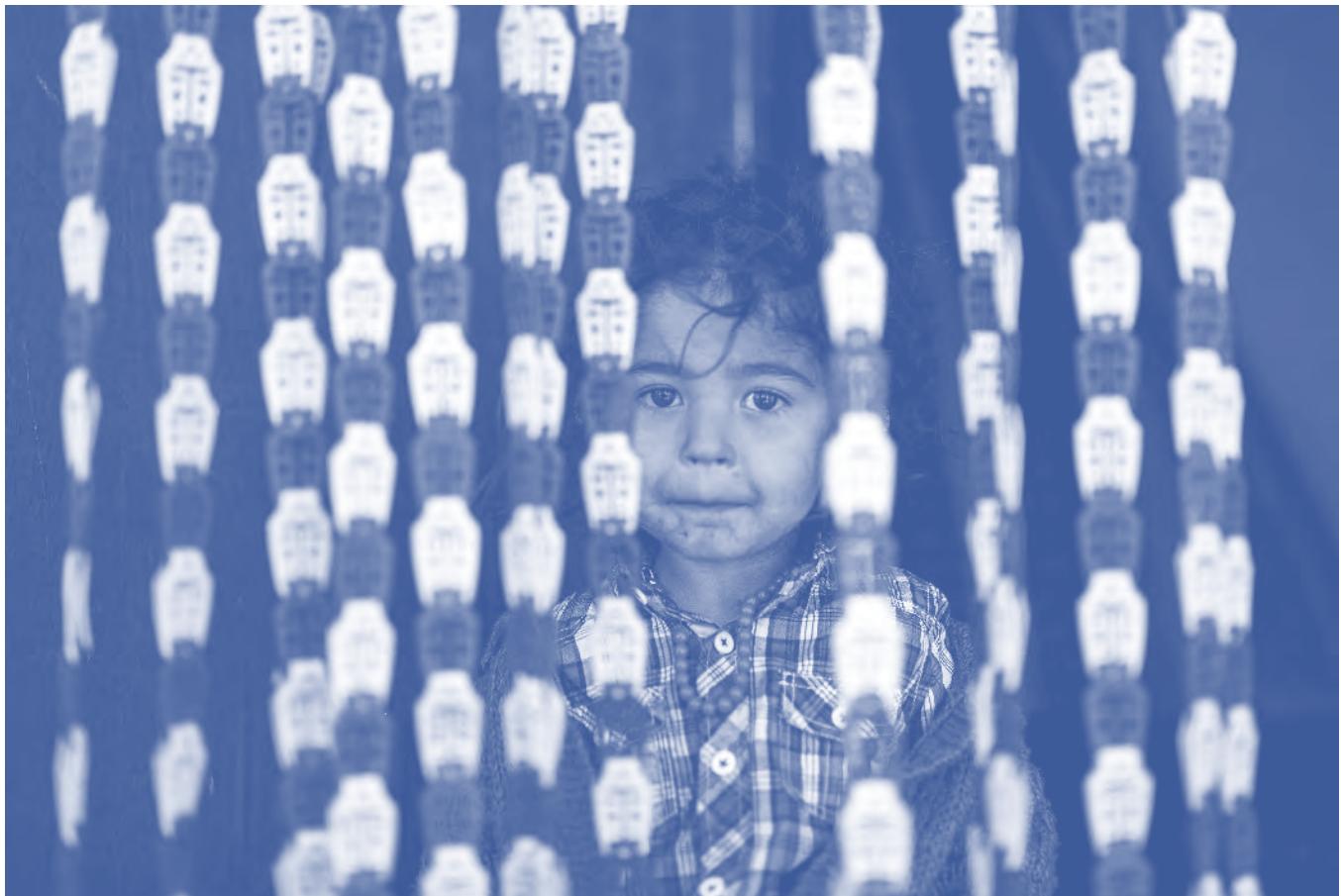
During Romani Week 2022, the European Parliament discussed the post-2020 policies and called on European institutions and Member States to put the fight against antigypsyism at the forefront of social and economic efforts to include Romani people and ensure their participation in all domains of public life.<sup>49</sup>

The reporting year saw some positive developments in countering antigypsyism through legislation and policy.

**North Macedonia<sup>50</sup>** and **Slovakia<sup>51</sup>** adopted working definitions of antigypsyism.

**"Antigypsyism is an unusually prevalent form of racism, which has its origins in how mainstream society views and treats those considered as 'gypsies' in a process of historical 'othering', which builds on stereotypes and negative attitudes that may sometimes be unintentional or unconscious."**

*Source: Council of the European Union, Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation, OJ 2021 C 93*



The **Spanish** parliament amended the antidiscrimination law to explicitly include antigypsyism as a possible ground for discrimination.<sup>52</sup> The Commission on Antigypsyism also started work.<sup>53</sup> A State Council of Roma People was officially constituted for 2022–2026.<sup>54</sup>

The **German** Federal Government launched a Federal Reporting and Information Centre on Antigypsyism<sup>55</sup> and appointed its first commissioner responsible for coordinating measures against antigypsyism.<sup>56</sup> In **France**<sup>57</sup> and **Spain**,<sup>58</sup> official bodies published reports documenting antigypsy incidents.

Bringing discrimination cases to court is an important aspect of the fight against antigypsyism. A new proposal for a Council directive on standards for equality bodies recommends that equality bodies should be able to investigate cases of discrimination, issue opinions or binding decisions (depending on the choice of Member States), and act in court in discrimination cases.<sup>59</sup>

In **Czechia**, a former member of parliament was given a six-month suspended sentence in a hate speech case for a statement denying Nazi crimes against Roma (see also [Chapter 4](#)).<sup>60</sup>

In **Spain**, three women were sentenced to three months in prison for continuously and systematically harassing a Romani family in their neighbourhood.<sup>61</sup>

The European Court of Human Rights (ECtHR) found a violation of Article 3 (effective investigation) in a case of sexual abuse of a minor in institutional childcare in **Romania**. It ordered the Romanian State to pay financial compensation of € 12,500 to the victim.<sup>62</sup> The Prosecutor's Office immediately applied for a review. The District Court of Braşov admitted it, and the criminal proceedings reopened.<sup>63</sup>

The **Romanian** equality body ruled that the operator of a public swimming pool had discriminated against a group of Romani children by denying them entry. It ordered the operator to pay a fine.<sup>64</sup> It also fined a former Romanian member of the European Parliament for hate speech against Roma.<sup>65</sup>

**5.3.2. Police violence and racism in law enforcement against Roma**  
Racism in law enforcement remains widespread, the 2022 annual ECRI report notes.<sup>66</sup> It manifests in racial profiling, stop and search, the use of racist language and excessive use of force. The European Roma Rights Centre issued a report on policing Roma in the EU, claiming that anti-Roma racism is "endemic and systemic" in law enforcement.<sup>67</sup>

Police violence undermines citizens' trust in institutions, as FRA data show. A lack of trust jeopardises efforts to support victims and increase rates of reporting ill-treatment, racism and hate crime.

The FRA Roma Survey 2021 took place shortly after the death of Stanislav Tomáš, a 46-year-old Roma who died on 19 June 2021 in Teplice, **Czechia**, during a police operation. Trust in the police in Czechia among Roma dropped from 33 % in 2016 to 19 % in 2021, the lowest value among the survey countries, compared with 75 % for the general population.<sup>68</sup> The General Inspectorate of Police Services closed its investigation concluding that the conduct of the officers during the arrest was lawful and the coercive measures used did not have a proven causal link to the subsequent death. Various Roma NGOs raised concern that the investigation was not independent.<sup>69</sup>



In **Greece**, a number of violent incidents involving police officers were reported in 2022. In January, media reported that police officers chasing a car containing five Romani children, the oldest 15, fired shots at the vehicle.<sup>70</sup> In February, two men, one of whom was an off-duty police officer, reportedly chased a 44-year-old Romani man in Menidi and beat him to death.<sup>71</sup>

In December, a 16-year-old was fatally shot during a police chase.<sup>72</sup> The incident led to riots and unrest among Roma communities across Greece. This case resembles the death of another Romani youngster in 2021, which still remains under criminal investigation.<sup>73</sup>

In June 2022 the Greek Ombudsman issued its report as national mechanism for the investigation of arbitrary incidents in law enforcement. It includes several references to police violence involving Roma. Complaints of police mistreatment on grounds of (Roma) ethnicity are often associated with the use of weapons, the report states.

The report notes that the internal investigation of relevant cases is inadequate. They fail to result in administrative disciplinary procedures for the illegal use of weapons, or for serious complaints concerning beatings that are supported by medical certificates from public hospitals to which the alleged victims were transferred.

Moreover, the report refers to the death of a young Roma man in October 2021 due to a police chase. The number of the deadly wounds of the victim, the total number of bullet shells used and the violation of a direct order from the police operations centre to stop the chase caused widespread social outcry concerning the way the police handled this incident.<sup>74</sup> The 2021 annual report of the Racist Violence Recording Network of the Greek National Commission on Human Rights confirms particularly serious incident of police violence against Roma Greek citizens, during which one of the victims was murdered. It sees a growing trend in recent years of racially motivated police violence, especially during the pandemic.<sup>75</sup>

In **Romania**, the prosecutor's office dropped a case<sup>76</sup> of alleged racially motivated police brutality against two Romani men.<sup>77</sup> The victims appealed against the decision, according to their legal representative.<sup>78</sup> Another case, of a 37-year-old Romani man who accused police officers of beating him at a police station, is under investigation.<sup>79</sup>

## PROMISING PRACTICE

### Anti-discrimination training for police forces in Poland

In 2022, representatives of the Roma community in **Poland** developed a series of lectures and sensitivity training for police officers about the Roma community and antigypsyism. It was part of a joint project by the national police headquarters, the Museum of the History of Polish Jews and Roma civil society.

The project receives funding from the EEA/Norway Grants and the Ministry of Culture and National Heritage. It plans to train 400 police officers by 2024.

*Source: Opolskie Police (2022), 'Anti-discrimination education' ('Edukacja antydyskryminacyjna')*

In July 2022, the ECtHR found that the ill-treatment of a Romani man by **Hungarian** police amounted to a breach of Article 3 (torture or inhuman or degrading treatment) and ordered the payment of € 19,500 in non-pecuniary damages.<sup>80</sup> The Commissioner for Fundamental Rights reported on the restriction of liberty of a Romani man who had been unlawfully arrested. The commissioner also criticised the delay in legal proceedings and the limitations of the ombuds system.<sup>81</sup>

In **Italy**, a 36-year-old Roma with disabilities fell out of the window of his apartment on the second floor during a house search by the police, an NGO reported. He suffered life-threatening injuries and was in a coma. Four police officers are being investigated on charges of attempted murder, abuse of power and perjury. In December, one of the officers was put under house arrest on charges of false testimony, deception and torture.<sup>82</sup>

In **Germany**, two officers were reportedly sentenced and ordered to pay € 3,600 each for coercion and deprivation of liberty for handcuffing and detaining an 11-year-old Sinti child for no apparent reason. The prosecutor could not detect antigypsyism, even though the officers had uttered insults and threats with reference to the child's ethnicity.<sup>83</sup>

The government of **Slovakia** reached a friendly settlement with two Romani men whom police officers abused in 2013 during a raid on a Romani community in Moldava nad Bodvou. The government will pay € 110,000 in non-pecuniary damages jointly to the victims.<sup>84</sup> In another case a Romani man was awarded € 4,000 in compensation for four weeks of unlawful detention and ill-treatment.<sup>85</sup>

The ECtHR ordered the **Albanian** State to pay € 13,500 jointly plus taxes in non-pecuniary damages to three Romani applicants in a case of police misconduct and ill-treatment.<sup>86</sup>



### 5.3.3. Segregation and unequal opportunities in education

Access to education and inclusion in the mainstream education system form one of the four sectoral objectives of the EU Roma strategic framework.<sup>87</sup> The Commission has put further emphasis on the need to provide equal opportunities for Roma children, in the European Care Strategy<sup>88</sup> and in the Council recommendation establishing a European Child Guarantee.<sup>89</sup>

In all 10 EU countries that the FRA Roma Survey 2021 covers, there is a significant gap between the proportion of Roma children attending early childhood education and care (ECEC) and that of the general population.<sup>90</sup> Fewer than half of Romani boys and girls attend ECEC (44 %). In the general population of the EU almost every child does (93 %). The Roma strategic framework sets a target for the Member States to cut this gap by at least half by 2030.<sup>91</sup>

In November, the Council of the European Union called upon Member States to develop strategies to prevent early school leaving, and to pay specific attention to Roma as a group at risk of disadvantage and discrimination.<sup>92</sup> Among Roma aged between 18 and 24, 71 % leave the education system early, do not complete upper secondary level and are not in further education or training, according to FRA's Roma Survey 2021. In the general population it is only one in 10 in the same age group.<sup>93</sup>

Reference data from the previous survey in 2016 show similar rates. That indicates there has been no progress in this regard. The target in the framework is to cut the proportion of early school leavers by one third, so that at least one in two young Roma reaches upper secondary level.<sup>94</sup>

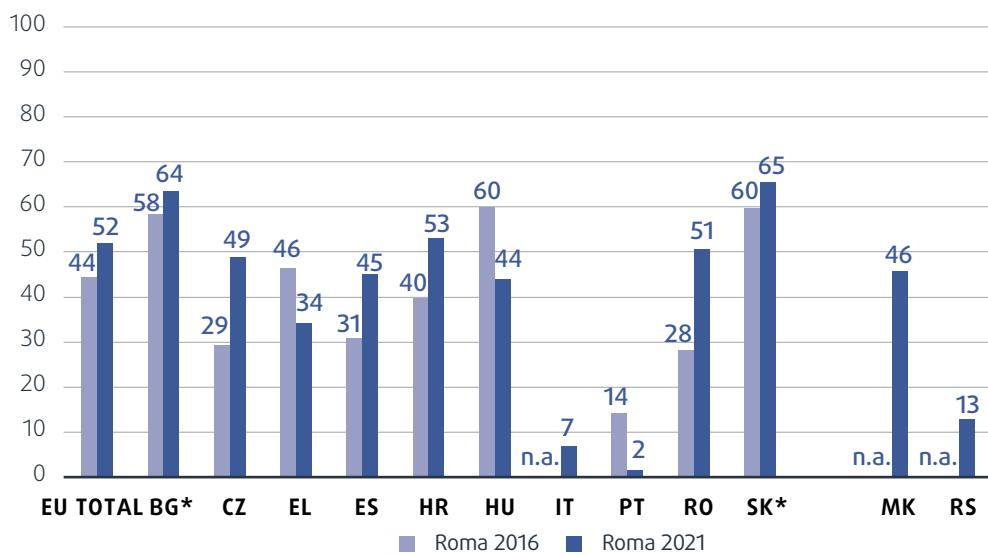
School segregation violates children's right to education and negatively affects children's educational opportunities.<sup>95</sup> The right to education is embedded in international human rights law and laid out in Article 14 of the EU Charter of Fundamental Rights.<sup>96</sup> In line with the Racial Equality Directive, children from all racial or ethnic backgrounds must have equal access to education.<sup>97</sup>

School segregation, measured by asking if Roma children attend schools where all or most pupils are Roma, has increased since 2016, FRA's Roma Survey 2021 shows. In the 10 EU countries surveyed in 2021, 52 % of Roma children attend schools where all or most pupils are Roma, compared with 44 % in 2016. Educational segregation is particularly worrying in Bulgaria and Slovakia, where almost two thirds of Roma children (64 % and 65 %, respectively) attend segregated schools. Educational segregation affects roughly one in two Roma children in Croatia (53 %), Czechia (49%), Hungary (44%), Romania (51%) and Spain (45%).<sup>98</sup> Member States are urged to cut at least in half the proportion of Roma children attending segregated primary schools by 2030 (Figure 5.4).<sup>99</sup>

**FIGURE 5.4: CHILDREN AGED 6–15 WHO ATTEND SCHOOLS WHERE ALL OR MOST PUPILS ARE ROMA, ACCORDING TO RESPONDENTS (%)**

► **Notes:**

Out of all children aged 6–15 (Bulgaria, 6–14) in Roma households who are in education (Roma Survey 2021, n = 4,384; Bulgaria, n = 372; Slovakia, n = 1,388), weighted results. n.a., not available.



Sources: FRA (2022), *Roma in 10 European countries – Main results*; EU-MIDIS II 2016; \*Bulgaria, BNSI/FRA 2020; \*Slovakia, EU-SILC marginalised Roma communities 2020.

The European Commission initiated infringement proceedings against **Czechia**,<sup>100</sup> **Hungary**<sup>101</sup> and **Slovakia**<sup>102</sup> in 2021 concerning segregation of Roma children in education. They were still pending in 2022.<sup>103</sup>

ECRI recommended in its report on **Bulgaria** that the authorities ensure that no de facto segregation of Roma children takes place in kindergartens or schools.<sup>104</sup> In June, the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities urged **Slovakia** to improve the education of Roma children and to resolutely address segregation and the over-representation of Roma children in special classes and schools for pupils with mild mental disabilities and low-standard programmes.<sup>105</sup>

In **Hungary**, the European Commission continues to monitor the segregation of Roma children in education, as part of an infringement procedure. A total of 44 % of Roma children in Hungary aged 6–15 attend schools where ‘all or most of schoolmates are Roma’, according to FRA’s Roma Survey 2021. That is a notable improvement from 60 % in 2016.<sup>106</sup>

However, segregation increased between 2016 and 2020 for all disadvantaged and cumulatively disadvantaged pupils (not considering ethnicity), a report commissioned by the Prime Minister’s office indicated.<sup>107</sup> It cited an earlier report on educational indicators.<sup>108</sup>

In a case on educational segregation, the ECtHR found that **Albania** had violated the general prohibition of discrimination. It ordered the State to pay € 4,500 to each applicant’s household in non-pecuniary damages, and to introduce measures for desegregation. The school in question was almost exclusively attended by students of Roma or Balkan Egyptian ethnicity. In December, the Council of Ministers ordered the execution of the judgement.<sup>109</sup>

In **North Macedonia**, the ECtHR found a violation of Article 14 (prohibition of discrimination) in the case of two state-run primary schools, one attended predominantly by Roma children and the other with Roma-only classes.<sup>110</sup>

In a landmark decision, the **Czech** Supreme Court ruled that the segregation of Roma students represents discrimination.<sup>111</sup> It noted that it is not necessary that the segregated group experiences different material or substantive conditions of education. Segregation is *per se* illegal and a violation of the principle of equal treatment.<sup>112</sup>

In **Slovakia**, an appeal court confirmed that state authorities had no obligation to eliminate the segregation of Roma children in a primary school in the village of Muránska Dlhá Lúka.<sup>113</sup> The domestic courts, unlike ECtHR and the United Nations (UN) Committee on the Elimination of Racial Discrimination,<sup>114</sup> did not interpret segregation as a form of discrimination *per se*.

There were several initiatives in 2022 to work towards desegregated schooling. **Bulgaria** supports municipalities in their efforts to desegregate schools. It co-funds activities including free transport to/from school, the provision of school supplies and materials, and outreach to parents.<sup>115</sup>

In **Czechia**, a large number of Romani pupils continue to be segregated in special programmes with lower learning outcomes. The Expert Forum for implementing the 2007 ECtHR judgment on segregation<sup>116</sup> was set up to identify the causes. The aim is to draft recommendations and inform policymakers.<sup>117</sup>

Member States submitted their national action plans on the Child Guarantee in 2022. Several introduce explicit measures aimed at improving Roma inclusion in mainstream educational systems.<sup>118</sup>

The European Social Fund Plus earmarks 5 % for actions to tackle child poverty in Member States where the child poverty rate is above the EU average (Bulgaria, Croatia, Cyprus, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Romania and Spain).<sup>119</sup> **Bulgaria**,<sup>120</sup> **Croatia**,<sup>121</sup> **Greece**,<sup>122</sup> **Italy**<sup>123</sup> and **Spain**<sup>124</sup> published Child Guarantee national action plans indicating measures specifically addressing Romani children that the fund will finance. These include measures to increase ECEC participation, extracurricular activities and activities fostering inclusive education such as the work of school mediators.<sup>125</sup>

#### 5.3.4. Roma women

The European Parliament's resolution in July 2022 on women's poverty recognises Roma women as a particularly vulnerable group. It calls on the



Commission to ensure the participation of Roma girls and women at all levels, and on the Member States to supplement the EU's financial aid with study programmes and projects that give talented Roma girls and women the opportunity to use continuing education.<sup>126</sup> In the EU countries surveyed, most Roma women aged 16–24 (69%) are not in education, employment or training, FRA's Roma Survey 2021 shows. This is a notably higher percentage than for Roma men in this age group (44%) and much higher than the general population (11%).<sup>127</sup>

Projects that offer employment opportunities, specifically for Roma women, remain scarce. **Hungary** set up a project in 2021 that delivers training and offers subsequent employment to people from Roma communities – particularly women – who face social prejudice and labour market discrimination. Over 80 % of participants achieved sustainable, meaningful employment in social welfare or other sectors.<sup>128</sup>

The UN Committee on the Rights of the Child concluded its consideration of the combined fifth and sixth periodic report of **Croatia**. It raised concerns about early marriage in Roma communities and about children whose parents were incarcerated.<sup>129</sup> The **Slovenian** Office for National Minorities organised consultations and training courses in 2022 specifically dealing with harmful practices of early and forced marriages.<sup>130</sup>

Structural racism in the public health systems of certain Member States has caused severe violations of the fundamental rights of Roma women.

In **Czechia**, a law came into force on 1 January 2022, providing financial compensation to women sterilised against their will or without proper consent. By December 2022, 499 applications for compensation had been submitted; 201 applicants were compensated, 147 applications were rejected and 31 are pending.<sup>131</sup> Civil society organisations criticised Czechia's Ministry of Health for a burdensome application process, leading to significant delays in awarding compensations.<sup>132</sup>

A legislative proposal to compensate illegally sterilised women in **Slovakia**, tabled in 2022, is still pending.<sup>133</sup>

### 5.3.5. Poverty and housing

On average, across the 10 countries that the FRA Roma survey covered, four in five (80 %) Roma, including children, still live in households at risk of poverty, compared with 17 % in the general population. Severe material deprivation, for example not being able to afford basic items such as regular meals or to keep the home warm, affects about half of Roma (48 %) in these countries, but only 6 % of the general population.

Despite some improvement since 2016, in 2021 more than half (52 %) of Roma still lived in deprived housing conditions. Examples include the presence of mould, a leaking roof or the lack of a bath. That is three times the proportion among the general population (17 %) in the same period. Access to tap water has improved since 2016, but still every fifth Roma (22 %) in the countries surveyed had no running water in their household in 2021.<sup>134</sup>

In October 2022, the European Parliament adopted a resolution on the situation of Roma people living in settlements across the EU. It stresses that access to decent desegregated housing is key to breaking the vicious circle of intergenerational poverty and social exclusion, especially for children in Roma settlements. It calls on Member States to address the problem, including by providing sufficient EU and national funding.<sup>135</sup>

According to media, an NGO complained to the European Commission about the misuse of EU funds in a Hungarian urban rehabilitation project, because it contributed to the continuing urban and educational segregation of a Romani community in Nyiregyhaza, Hungary.<sup>136</sup>

The Supreme Court in **Ireland** decided in favour of a family living on an unauthorised site and facing eviction by a city council, which had not offered it alternative accommodation. This will set a precedent for future actions, as authorities will have to undertake a proportionality assessment and consider Travellers' vulnerability and social marginalisation.<sup>137</sup>

In a case of forced eviction, the first instance district court in Košice, **Slovakia**, ruled that the City of Košice had unjustifiably interfered with the Romani applicants' human dignity and their right to privacy, and had discriminated illegally on the basis of their ethnicity.<sup>138</sup>

### 5.3.6. The Russian war of aggression against Ukraine

On International Roma Day, 8 April 2022, the UN Special Rapporteur on minority issues called on all States and institutions to fully include Roma people in their efforts to protect civilians during conflicts. The lack of data on the situation of Roma fleeing the Russian war of aggression against Ukraine complicates efforts to provide them with effective assistance.<sup>139</sup> Currently, most information comes from media reports or civil society organisations.

In **Germany**, the media repeatedly stigmatised Roma fleeing from Ukraine and they were treated differently from other Ukrainian refugees, according to reports.<sup>140</sup>

In **Hungary**, several media reports criticised the treatment of Roma. Prominent among them was a claim in the *New York Times* that Roma refugees got less food and drink than non-Roma refugees.<sup>141</sup>

The Hungarian Roma NGO Romaversitas issued its assessment report documenting the experience of widespread discrimination of Transcarpathian Roma from Ukraine displaced in Hungary. Those among them who are stateless or at risk of statelessness are more vulnerable. Complaints to the Ombudsman about discrimination cases did not lead to investigations.<sup>142</sup>

In **Poland**, Roma NGOs and activists provide Ukrainian Roma refugees with aid. There is no centralised strategy, German and Polish NGOs report.<sup>143</sup>

In **Slovakia**, the Office of the Government Plenipotentiary for Roma Communities set up monitoring teams at external borders to identify and prevent any unequal treatment of Ukrainian displaced persons of ethnic minority origin. They also raised awareness among Roma displaced persons about the risks of human trafficking.<sup>144</sup>

**Czechia** responded efficiently to an unprecedented situation, the Council of Europe Special Representative on Migration and Refugees emphasised in her report. It swiftly set up well-run registration centres where national, local and non-governmental actors work together closely to provide people fleeing Ukraine with temporary protection.<sup>145</sup>



## FRA opinions

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FRA Roma survey data published in 2022 show that a large proportion of Roma live in unacceptable housing, segregated and lacking the most basic amenities, often without even access to clean tap water.

In October 2022, the European Parliament resolution on the situation of Roma people living in settlements across the EU called on the Commission and the Member States to urgently address the situation of Roma people living in settlements in a comprehensive and effective manner, with appropriate short- and long-term policies supported by sufficient EU and national funding. The European Parliament also highlights in this resolution that such catastrophic conditions, as well as the negative psychological and sociological impact of segregation, not only affect people living within the settlements, but also have an impact on the wider community.



### FRA OPINION 5.1

Member States should take urgent measures to provide all Roma living in segregated settlements in conditions of severe housing deprivation with access to decent housing that is accessible, affordable, environmentally safe, healthy and desegregated.

In order to achieve this they should make use of available EU funds, as foreseen under Article 3 of Regulation (EU) 2021/1058 on the European Regional Development Fund and on the Cohesion Fund, specific objective (iii) promoting the socioeconomic inclusion of marginalised communities, low income households and disadvantaged groups, including people with special needs, through integrated actions, including housing and social services.

The 2021 EU Council recommendation on Roma equality, inclusion and participation (2021/C 93/01) emphasises the need for Member States to step up meaningful participation by and consultation of Roma people. The 2022 Roma Civil Monitor acknowledged that the intensity and quality of Roma and NGO participation in the preparation of the national Roma strategic frameworks and national action plans has improved compared with the past. Still, the active engagement of civil society participation is entirely missing in several Member States, and only few Member States have started on sustainable and broadly representative Roma platforms and to build capacity among Roma civil society to ensure full participation at all levels.



### FRA OPINION 5.2

Member States are encouraged to establish platforms and build capacities among Roma civil society including women, children and young people. Member States should consider promising practices in other EU countries and make full use of EU funds to establish platforms for cooperation with civil society organisations and local and regional stakeholders in the implementation, monitoring and review of the national action plans and strategies.

## FRA OPINION 5.3

EU Member States should continue to make all efforts to ensure efficient monitoring through the regular collection and use of equality data. Such efforts should monitor the use of funds, as well as measures and programmes to reach the 2030 targets for Roma equality, inclusion and participation.

Member States are encouraged to ensure that their data collection, including national censuses, comply with the human rights-based approach to data. They should take due consideration of the EU guidance on the collection and use of equality data based on racial or ethnic origin.

Member States should encourage and actively foster cooperation between civil society, academia, equality bodies and statistical offices to facilitate reporting and regular monitoring of discrimination, antigypsyism and hate crime.

The 2021 EU Council recommendation on Roma equality, inclusion and participation (2021/C 93/01) asks EU Member States to monitor and evaluate the implementation of the national strategic frameworks. The EU Anti Racism Action Plan calls on Member States, in full respect of their national contexts, to move towards the collection and use of equality data based on racial or ethnic origin, in order to capture both subjective experiences of discrimination and victimisation and systemic aspects of racism and discrimination.

Still, available equality data are fractional and not harmonised across countries, data sources and data collectors. This can also be seen in the lack of data on Roma fleeing Russia's war of aggression against Ukraine. In 2022, several Member States stepped up in developing new data collections or improving the data collected through the national censuses to include equality characteristics.

Some Member States mandated new or existing human rights bodies to collect data and document antigypsyist incidences. However, not all data collection efforts complied yet with the UN OHCHR human rights principles for data collection and the recommendations of the EU High Level Group on Non-discrimination, Equality and Diversity outlined in the EU Guidance note on the collection and use of equality data based on racial or ethnic origin.

## FRA OPINION 5.4

EU Member States should end any segregation of Roma in education and collect evidence of it to fully implement the Racial Equality Directive.

Member States should prioritise and make use of national and EU funds to provide quality education and more training opportunities for Roma children, engaging Roma civil society in the design, implementation and monitoring of their national measures.

Article 14 of the EU Charter of Fundamental Rights (the Charter) enshrines the right to education. One of the four sectoral objectives of the EU Roma strategic framework is that children from all racial or ethnic backgrounds must have equal access to education. That is also in line with the Racial Equality Directive.

In the European Care Strategy, the Commission called on Member States to provide equal opportunities for Roma children. So did the Council in its recommendation establishing a European Child Guarantee.

The education gap between Roma children and children from the general population remains significant, with high dropout rates after lower secondary school, FRA's Roma Survey 2021 shows. Segregation in education has even increased since 2016.

Reducing poverty and social exclusion and closing the socio-economic gap form one of the three horizontal objectives of the EU Roma strategic framework. The European Child Guarantee is the EU's flagship initiative to ensure that every child in Europe at risk of poverty or social exclusion has access to the most basic of rights, such as healthcare and education. It identifies Roma children as specifically disadvantaged and calls on Member States to address their needs.

The European Parliament's resolution in July 2022 calls for an end to women's poverty, and names Roma women as a particularly vulnerable group. The EU's headline target in the European Pillar of Social Rights action plan is to reduce by at least 15 million the number of people at risk of poverty or social exclusion. That must be ensured for everyone through living wages and adequate minimum income benefits for those lacking sufficient resources.

In 2021, four in five (80 %) Roma, including their children, still live in households at risk of poverty and in severe material deprivation (48%), FRA's most recent data from 10 EU Member States show. National Roma strategies and action plans largely do not address poverty and social protection, the Roma Civil Monitor 2022 concludes.



## FRA OPINION 5.5

EU Member States should strengthen their efforts to tackle poverty and social exclusion among Roma. This will require targeted measures combining gainful employment and allocation of social transfers to achieve the 2030 target to close the poverty gap between Roma and the general population, as required by the EU Roma strategic framework.

Member States should specifically address Roma children in their national action plans until 2030 for the EU Child Guarantee. In doing so, they should take into account the findings and recommendations of the specific country studies developed by the United Nations Children's Fund and the European Commission.

Member States, in close cooperation with Roma civil society organisations and communities, should identify, plan and implement effective measures to attract Roma women to the labour market in order to enhance their economic independence and protect them from poverty.

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# ASYLUM, BORDERS, VISAS, MIGRATION AND INTEGRATION

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# UN & CoE

1	10	January
	United Nations (UN) High Commissioner for Refugees issues recommendations to the French and Czech Presidencies of the Council of the EU, calling on them to prioritise the better protection of refugees in Europe.	
2	3	February
	CoE Committee of Ministers adopts Recommendation on the importance of plurilingual and intercultural education for democratic culture.	<i>Komissarov v. the Czech Republic</i> (No. 20611/17) concerns the detention of an asylum applicant pending extradition. European Court of Human Rights (ECtHR) rules that the delays in the asylum proceedings and the detention for 18 months violated Article 5 (right to liberty) of the European Convention on Human Rights (ECHR).
		UN High Commissioner for Refugees warns of increasing reports of violence, ill-treatment and pushbacks at Europe's land and sea borders. Since the beginning of 2020, UNHCR had recorded 540 informal returns at Greece's borders with Turkey.
		In <i>M.B.K and Others v. Hungary</i> (No. 73860/17), ECtHR rules that the detention of a family in the Röszke transit zone for seven months violated Article 5 (right to liberty) of the ECHR. Detention conditions amounted to a breach of Article 3 (prohibition of ill-treatment) of the ECHR as regards the children, but they did not reach this threshold of severity with regard to the adults.
3	21	March
		In <i>Nikoghosyan and Others v. Poland</i> (No. 14743/17), ECtHR concludes that the detention of a family for six months violated Article 5 (right to liberty) of the ECHR because it was not a measure of last resort for which no alternative was available. It emphasises that the authorities require greater speed and diligence regarding the detention of children.
	CoE Parliamentary Assembly Migration Committee urges member States to evacuate persons fleeing Ukraine from neighbouring countries by resettlement and relocation, without discrimination on any basis.	<i>In T.K. and Others v. Lithuania</i> (No. 55978/20), ECtHR rules that there would be a breach of Article 3 (prohibition of torture) of the ECHR if Tajik nationals were removed to their country of origin without a fresh assessment of their claims that their return would expose them to a risk of ill-treatment.
6	12	April
	CoE Committee of Ministers adopts Recommendation on multilevel policies and governance for intercultural integration.	UN Committee on Enforced Disappearances raised the issue of enforced disappearances in Greece in connection with summary expulsions of migrants and refugees.
		CoE Committee of Ministers recommends that Greece increase the accommodation capacity for migrant children, reform and fully implement the law on guardianship of unaccompanied children, and enforce the regulatory framework for the education of migrant children.
		UN Special Rapporteur on the human rights of migrants publishes thematic report on human rights violations at international borders, focusing on trends, prevention and accountability.
4	16	May
	CoE Group of Experts on Action against Trafficking in Human Beings publishes a guidance note on addressing the risks of trafficking in human beings related to the war in Ukraine and the ensuing humanitarian crisis.	A group of UN entities issue a statement on the concept of place of safety under international law and the respect of the rights of migrants and refugees rescued at sea by all states.
		CoE Committee of Ministers adopts a new recommendation to protect the rights of migrant, refugee and asylum-seeker women and girls.

# UN & CoE

June

10

CoE Committee of Ministers, in its decision on the supervision of *M.K. and Others v. Poland* (Nos. 40503/17, 42902/17 and 43643/17), invites the Polish authorities to eliminate de facto restrictions to the right to apply for asylum, and raises concerns as regards legislative amendments limiting the possibility for those who crossed the border irregularly to lodge asylum applications.

July

7

*Safi and Others v. Greece* (No. 5418/15) concerns a search and rescue operation of a sinking boat by Greek authorities. ECtHR rules that the authorities did not take every reasonable measure to comply with their positive obligations under Article 2 (right to life) of the ECHR. They also violated the procedural facet of the right to life owing to the absence of an effective investigation.

August

17

UN human rights experts express concern about the situation of persons with disabilities, especially children, in Ukraine and in receiving states.

September

22

In *H.K. v. Hungary* (No. 18531/17), ECtHR rules that the applicant's subsequent entry to the transit zone does not make his earlier summary removal upon an irregular entry compliant with Article 4 of Protocol No. 4 to the ECHR.

October

6

In *B.Ü. v. the Czech Republic* (No. 9264/15), ECtHR finds a violation of the procedural aspect of Article 3 (prohibition of ill-treatment) of the ECHR due to the ineffective investigation into an asylum seeker's allegations of ill-treatment by the authorities during pre-removal detention.

November

16

ECtHR grants interim measures in *Msallem and 147 Others v. Belgium* (No. 48987/22 and 147 others) obliging Belgium to provide asylum applicants with accommodation and material assistance to meet their basic needs.

December

1

UNHCR publishes a note summarising key legal principles and states' obligations under international refugee, human rights and maritime law relevant to rescue at sea and disembarkation affecting people who are in need of international protection.

14

*L.B. v. Lithuania* (No. 38121/20) concerns refusing to issue an alien's passport to a permanent resident who previously enjoyed subsidiary protection on the grounds that the applicant could obtain a travel document from the authorities of his country of origin. The justification and proportionality of the measure had not been assessed. ECtHR rules that it violated Article 2 of Protocol No. 4 (freedom of movement) to the ECHR.

30

*A.B. and Others v. Poland* (No. 42907/17) and *A.I. and Others v. Poland* (No. 39028/17) concern pushbacks of Chechen families at the Polish-Belarusian border. ECtHR finds that the lack of review of the applications for international protection violated Article 3 (prohibition of ill-treatment) of the ECHR and that the families were subject to collective expulsion in breach of Article 4 of Protocol No. 4 to the ECHR.

18

UN Special Rapporteur on the situation of human rights defenders publishes a report on the vulnerable situation of defenders helping migrants, refugees and asylum seekers, and the administrative, legal, practical and societal barriers they face.

30

*In R v. France* (No. 49857/20), ECtHR concludes that the applicant's removal to Russia violated Article 3 (prohibition of ill-treatment) of the ECHR on the grounds that an in-depth assessment of the applicant's situation carried out after the deportation to the country of origin failed to remedy the inadequate evaluation of risks before the expulsion.

27

CoE Committee of Ministers urges Hungary to reassess the legal presumption of safe third country in respect of Serbia and to terminate the practice of collective expulsions.

12

CoE Parliamentary Assembly adopts a report and resolution on pushbacks on land and sea: illegal measures of migration management.

20

*In M.T. and Others v. Sweden* (No. 22105/18), ECtHR finds that suspending the right to family reunification for three years for beneficiaries of subsidiary protection did not breach Article 8 (right to private and family life) or Article 14 (prohibition of discrimination) of the ECHR.

8

In *M.K. and Others v. France* (Nos. 34349/18, 34638/18 and 35047/18), ECtHR finds that the refusal of the authorities to comply with domestic courts' interim relief measures, ordering the authorities to shelter asylum seekers in emergency accommodation, violated Article 6 (1) (right to fair trial) of the ECHR.

15

*In W.A. and Others v. Hungary* (Nos. 64050/16, 64558/16 and 66064/16), ECtHR rules that Hungary breached the implicit non-refoulement obligation in Article 3 (prohibition of ill-treatment) of the ECHR by removing a group of Syrian nationals to Serbia – based on the safe third country notion – before assessing their individual situation.

20

*In S.H. v. Malta* (No. 37241/21), ECtHR rules that a Bangladeshi journalist did not have access to an effective remedy under Article 13 of the ECHR, in conjunction with Article 3 (prohibition of ill-treatment), and that removal without a reassessment of his claims would violate Article 3 of the ECHR.

# EU

18

20

January

JY v. Wiener Landesregierung (C-118/20) concerns a national of a Member State who renounced that nationality to obtain the nationality of another Member State. The latter state had assured her that nationality would be granted. As a result, she lost her Union citizenship. Court of Justice of the European Union (CJEU) rules that such a case falls within the scope of EU law if, as a result of the revocation of the assurance, the person cannot recover Union citizenship.

In ZK (C-432/20), CJEU interprets the Long-Term Residence Directive (2003/109/EC) as meaning that any physical presence of a long-term resident in the EU within a period of 12 consecutive months, even if the presence does not exceed a few days, is sufficient to prevent the loss of long-term resident status.

22

February

Commissaire général aux réfugiés et aux apatrides (C-483/20) concerns a father with refugee status in Austria who applied for asylum in Belgium, where his underage daughter had been granted subsidiary protection. CJEU rules that the Belgian authorities can consider his asylum application inadmissible but must provide the father with the rights of a family member of an international protection beneficiary, including a residence permit.

3

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March

In NB and AB v. Secretary of State for Home Department (C-349/20), CJEU clarifies how to assess whether protection and assistance to a Palestinian refugee by the United Nations Relief and Works Agency for Palestine Refugees in the Near East has ceased, resulting in the *ipso facto* recognition of refugee status under EU law.

EU activates the Temporary Protection Directive (Directive 2001/55/EC) with respect to people fleeing the Russian war of aggression against Ukraine, by adopting Council Implementing Decision (EU) 2022/382.

EU and the Republic of Moldova sign an agreement on operational cooperation in border management with the European Border and Coast Guard Agency (Frontex).

In IA v. Bundesamt für Fremdenwesen und Asyl (C-231/21), CJEU maintains that the authorised non-voluntary placement of an asylum applicant in a hospital psychiatric department cannot be considered imprisonment within the meaning of Article 29 (2) of the Dublin Regulation.

7

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April

In T-282/21, SS and ST v. European Border and Coast Guard Agency (Frontex), General Court declares the action inadmissible. It finds that Frontex had explained in clear terms why it did not intend to suspend or terminate its activities in the Aegean Sea, and thus defined its position, within the meaning of Article 265 TFEU (action for failure to act), on the invitation to suspend or terminate its activities.

In NW v. Landespolizeidirektion Steiermark and Bezirkshauptmannschaft Leibnitz (C-368/20 and C-369/20), CJEU interprets the Schengen Borders Code (Regulation (EU) 2016/399) as precluding the temporary reintroduction of border controls at internal borders beyond the six-month limit on account of the same threat.

European Commission tables a proposal amending the Single Permit Directive (Directive 2011/98/EU) and a proposal amending the Long-Term Residence Directive (Directive 2003/109/EC).

European Commission tables a proposal to digitalise visa procedures.

24

24

May

European Commission adopts policy document on developing a multiannual strategy policy for European integrated border management in accordance with the European Border and Coast Guard Regulation (Regulation (EU) 2019/1896).

European Commission presents first State of Schengen Report.

22

30

June

Frontex Fundamental Rights Officer publishes their annual report for 2021.

M.A. (C-72/22 PPU) concerns banning asylum applications by people who entered Lithuania in an unauthorised manner. The measures were adopted following the declaration of a state of emergency due to a mass influx of migrants. CJEU finds the measures contrary to the Asylum Procedures Directive (2013/32/EU) and that their placement in detention for the sole reason that the person is staying irregularly on the territory of the Member State is contrary to the Reception Conditions Directive (2013/33/EU).

July

6

EU adopts Regulation (EU) 2022/1190, which extends the type of alerts to include in the Schengen Information System.

August

1

In *Ministero dell'Interno v. TO* (C-422/21), CJEU rules that the Reception Conditions Directive (2013/33/EU) precludes punishing applicants for international protection by withdrawing of material reception conditions if it deprives the applicants of their basic needs.

1

In *I and S v. Staatssecretaris van Justitie en Veiligheid* (C-19/21), CJEU clarifies that an unaccompanied asylum-seeking child – but not his/her relative – has a right to a judicial remedy against the refusal of a take charge request under the Dublin Regulation.

1

In *Bundesrepublik Deutschland v. SW, BL and BC* (C-273/20 and C-355/20), CJEU rules that the relevant date to determine whether an unaccompanied refugee is a child for the purposes of family reunification is the date of submission of the application by the sponsor's family members, and not the date of the decision on the application.

September

22

In *Germany v. MA, PB and LE* (C-245/21 and C-248/21), CJEU holds that the time limit for the transfer of an applicant under Dublin is not interrupted when the authorities decide to suspend the implementation of the transfer decision on the grounds that implementation is materially impossible as a result of the COVID-19 pandemic.

22

In *GM v. Országos Idegenrendészeti Főigazgatóság and Others* (C-159/21), CJEU finds that national authorities must guarantee due process even when an asylum decision is based on information the disclosure of which would jeopardise national security. Requiring the asylum authority to withdraw or refuse to grant international protection on national security grounds based on a non-reasoned opinion of national security bodies is contrary to the Asylum Procedures Directive (2013/32/EU).

29

October

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In *UP v. Centre public d'action sociale de Liège* (C-825/21), CJEU rules that the Return Directive (2008/115/EC) does not preclude national legislation under which the granting of a right to stay to an irregularly staying third-country national entails the implicit withdrawal of a return decision adopted after a rejected international protection claim.

20

In *O. T. E. v. Staatssecretaris van Justitie en Veiligheid* (C-66/21), CJEU clarifies that the reflection period for victims of human trafficking can also apply to asylum applicants and that the prohibition of expulsion during the reflection period also includes intra-EU transfers under the Dublin Regulation.

26

EU and North Macedonia sign an agreement on operational cooperation in border management with the support of Frontex.

November

8

In *Staatssecretaris van Justitie en Veiligheid v. C, B and X v. Staatssecretaris van Justitie en Veiligheid* (C-704/20 and C-39/21), CJEU rules that courts must raise *ex officio* any failure to comply with a condition governing the lawfulness of the detention of a third-country national under EU law that the person concerned has not mentioned.

22

In *X v. Staatssecretaris van Justitie en Veiligheid* (C-69/21), CJEU rules that, when considering whether a person suffering from a serious illness would experience a significant, permanent and rapid increase in pain that would preclude their return, Member States cannot lay down a strict period within which such an increase must materialise.

December

13

European Commission submits a proposal for a regulation on the collection and transfer of advance passenger information (generally referred to as API) for enhancing and facilitating border controls.

19

European Commission proposes amendments to directive on preventing and combating trafficking in human beings and protecting its victims (Directive 2011/36/EU).

The onset of the Russian war of aggression against Ukraine resulted in the registration of nearly 4 million displaced people across the EU, as the focus chapter of this report describes. At the same time, increased global mobility after the COVID-19 pandemic led to an increase in irregular border crossings into the EU.

Serious and persistent rights violations have been reported at several points along the EU's external border. Combined with the lack of prompt and effective investigations, they pose serious challenges to the rule of law. Fundamental rights violations at borders worsened and impunity for unlawful action continues as violations are unaddressed.

Pressure on civil society organisations from state authorities and other actors defending migrants' and refugees' rights at borders is increasing. EU rules to reform asylum policies remain pending with the EU co-legislator. The mechanism to oversee the application of Schengen rules is being revised, with more attention given to fundamental rights. The legal instruments establishing information technology systems in the area of freedom, security and justice contain several fundamental rights safeguards; now the main challenge is to apply them in practice.



## 6.1. FUNDAMENTAL RIGHTS AT BORDERS

At year-end, almost 4 million refugees from Ukraine held temporary protection status in the EU.<sup>1</sup> In addition to refugees from Ukraine, with over 962,000 asylum applications in the EU, 2022 recorded the highest number since 2016. Most applicants were Syrians, followed by Afghans and Turks.<sup>2</sup>

The increasing number of asylum seekers and refugees coming to the EU reflects a global trend of growing forced displacement combined with increased mobility after the COVID-19 pandemic.

In 2022, the global numbers of forcibly displaced people reached more than 100 million. One in every 78 people on earth has been forced to flee on account of persecution, conflict, violence, human rights violations and events seriously disturbing public order, the United Nations (UN) refugee agency, the United Nations High Commissioner for Refugees (UNHCR), announced in May 2022.<sup>3</sup>

Although rising prices, inflation and the cost of living, energy supply, the international situation and the economic situation are the main concerns of Europeans, immigration

still features as one of their top 10 concerns. Older people are more worried about it than younger generations. Immigration is the top concern in Cyprus and increasingly worries Austrians.<sup>4</sup>

More fences are being erected at borders. A European Parliament report counted 19 border fences stretching for more than 2,000 kilometres along the external border of the EU or the Schengen area.<sup>5</sup>

Because they have no effective legal avenues to seek protection, many migrants and asylum seekers not coming from Ukraine entered the EU in an unauthorised manner. In 2022, the European Border and Coast Guard Agency (Frontex) recorded some 330,000 irregular border crossings by land and sea. That is 64 % more than in 2021.<sup>6</sup>

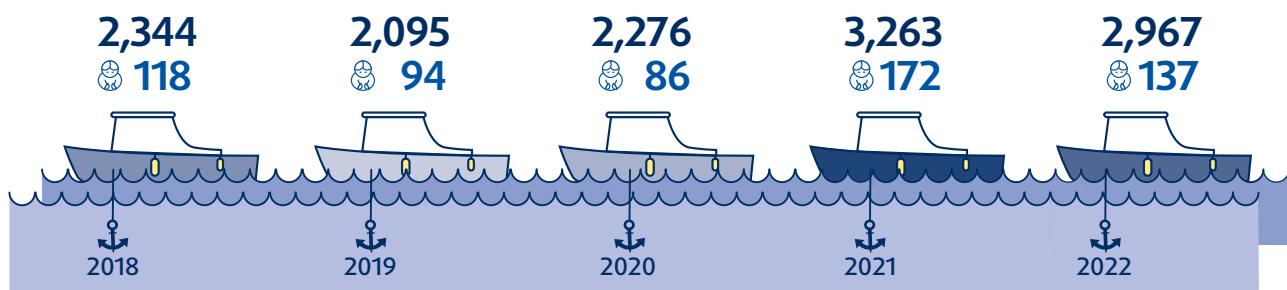
The involvement of third countries in facilitating irregular migration to the EU was less evident than in March 2020 in Evros and in 2021 at the Belarus border. However, the danger that other states would instrumentalise irregular migration to destabilise the EU continued to affect policy making.<sup>7</sup> The International Centre for Migration Policy Developments (ICMPD) predicts further ‘weaponisation’ of migration in 2023.<sup>8</sup> The EU has not yet found a way to address these challenges in a satisfactory way that would adequately respect fundamental rights.

#### 6.1.1. Deaths at borders continue

The International Organization for Migration (IOM) documented 2,967 deaths and disappearances at Europe’s sea borders in 2022. See Figure 6.1 for a comparison over the last five years.<sup>9</sup> Most deaths occurred in the central Mediterranean, off North African coasts.<sup>10</sup> The single deadliest incident in 2022 happened in September near the island of Arwad off the coast of Tartus, Syria, where 122 migrants drowned.<sup>11</sup>

Perilous boat trips from Lebanon to **Cyprus** and **Italy** more than doubled.<sup>12</sup> With almost 600 arrivals between August 2021 and July 2022, Lebanon is the country of departure with the fourth largest number of arrivals in Italy.<sup>13</sup> Thirteen people died while crossing into the United Kingdom. Five of them drowned at sea.<sup>14</sup>

**FIGURE 6.1: ESTIMATED FATALITIES AT SEA, MEDITERRANEAN AND ATLANTIC ROUTES, 2018–2022**



Source: FRA (2023), based on information from IOM (January 2023)

There are also fatalities at land borders. Most occurred at the Turkish–Greek land border and in the western Balkans.<sup>15</sup> The IOM also documented 10 deaths relating to the Belarus border (nine in Poland and one in Latvia<sup>16</sup>), where people are exposed to harsh winter conditions.

In **Lithuania** in late 2022, three migrants lost legs following amputations due to frostbite.<sup>17</sup>

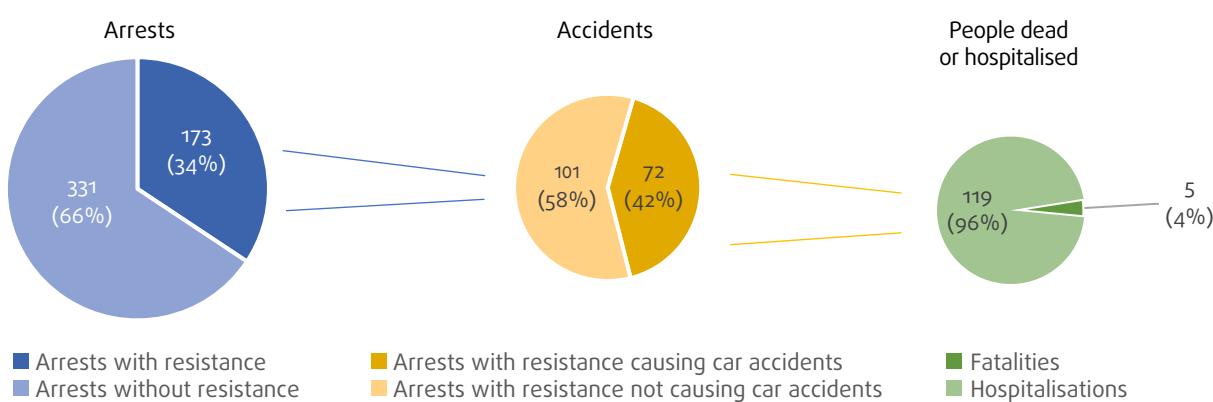
#### Notes:

Children; fatalities in the English Channel not included. Data for 2021 included in last year’s report have been updated following verification.

An emblematic incident happened in Melilla in June 2022. Some 2,000 people stormed the fence to enter **Spain**. The Spanish authorities used force to stop them. It resulted in the summary return of 470 people to Morocco and in the death of 23 people. The State Attorney General's Office investigated the incident and closed it, as it found no criminal breach.<sup>18</sup>

At least 228 people have died during alleged forced expulsions, also known as pushbacks, since 2021, according to reports from survivors relayed to the IOM.<sup>19</sup> Alongside violence, drowning and exposure to harsh weather conditions, there are also car accidents. Figure 6.2 illustrates the risks resulting from car pursuits of suspected smugglers in northeast **Greece**. This issue also emerged from chases of smugglers on roads in **Bulgaria** and **Hungary**.<sup>20</sup>

**FIGURE 6.2: ARRESTS OF SMUGGLERS IN EAST MACEDONIA AND THRACE (GREECE) FOLLOWING CAR PURSUITS: NUMBERS OF ARRESTS, CAR ACCIDENTS, PEOPLE HOSPITALISED AND PEOPLE DEAD IN 2022**



Source: *Hellenic Police, Eastern Macedonia and Thrace (2022), 'Announcements relating to incidents in 2022'* ('Ανακοινώσεις Γραφείου Ενημέρωσης Δημοσιογράφων Ανατολικής Μακεδονίας-Θράκης – 2022')

## Protecting the right to life at borders through case law

*Safi and Others v. Greece* involved the sinking of a boat next to the island of Farmakonisi in the eastern Aegean Sea in 2014. Eleven people drowned.

The European Court of Human Rights (ECtHR) concluded that the national authorities had not done all that could reasonably be expected of them to prevent the loss of lives. This is the first time that the ECtHR applied this positive obligation, flowing from Article 2 of the ECHR (see *Osman v. the United Kingdom*, 28 October 1998), to a maritime search and rescue operation concerning asylum seekers. The ECtHR also noted shortcomings in national investigation proceedings. It reiterated important safeguards for a thorough and effective investigation.

This judgment is another important step towards paying more attention to the right to life at the borders. The ECtHR previously recognised in *M.H. and Others v. Croatia* that a young girl killed by a train and her family were victims of illegal deportations in 2017.

In December 2022, the Rome Tribunal found that inaction concerning a shipwreck in 2013, which resulted in the death of over 200 people, constituted manslaughter. The court imposed no sanction on the two Italian officers because the crime had been extinguished given the time that had passed since then.

Sources: ECtHR, *Safi and Others v. Greece*, No. 5418/15, 7 July 2022, and *M.H. and Others v. Croatia*, Nos. 15670/18 and 43115/18, 18 November 2021; Rome Tribunal (*Tribunale di Roma*), decision No. 14998, 16 December 2022

### **6.1.2. Rule of law at heightened risk at borders**

Serious fundamental rights violations against migrants and refugees at the EU's external land and sea borders persisted. Incidents reported from the EU's external borders involved verbal and physical violence, ill-treatment, failure to rescue, stripping people naked, stealing property, forced family separations and summary expulsions of those seeking asylum.<sup>21</sup> Many incidents go unreported. UN experts on People of African Descent noted that the "tragic images of Africans killed on the edge of the European Union, stood in sharp contrast to the support rightly provided to Ukrainians and laid bare the deep racial biases that sit at the heart of many contemporary border control policies and practices".<sup>22</sup>

At the same time, smugglers became more aggressive and violent.<sup>23</sup>

UN treaty bodies expressed great concern. Two key bodies, the Committee on Enforced Disappearances and the Committee on the Rights of the Child, reviewed two EU Member States at the external land and sea borders – **Cyprus** and **Greece** – in 2022.<sup>24</sup> The Human Rights Committee did not review any Member State at the EU's external land or sea border in 2022.

The Committee against Torture prepared its 2023 review exercise for **Cyprus**, **Greece**, **Latvia** and **Poland**. For all four, it requested clarifications on respect for human rights at borders.<sup>25</sup> It did not examine any EU Member State at the external border in 2022.

In all these reviews, the concluding observations and the list of issues presented to the authorities prominently cover human rights issues at borders.

In February, UNHCR announced that:<sup>26</sup>

*"UNHCR has interviewed thousands of people across Europe who were pushed back and reported a disturbing pattern of threats, intimidation, violence and humiliation. At sea, people report being left adrift in life rafts or sometimes even forced directly into the water, showing a callous lack of regard for human life. At least three people are reported to have died in such incidents since September 2021 in the Aegean Sea, including one in January. Equally horrific practices are frequently reported at land borders, with consistent testimonies of people being stripped and brutally pushed back in harsh weather conditions." Reported incidents also raise criminal law issues. However, FRA is aware of only a few national court cases, mainly from Poland, upholding migrants' rights at borders in 2022.<sup>27</sup> Only one of them led to the conclusion that the conduct was criminal: the Rome Tribunal case in Italy quoted in Section 6.1.1. In the absence of redress, a climate of impunity seems to prevail.*

Legislation in at least four EU Member States – **Latvia**, **Lithuania**, **Poland** and **Spain** (for the cities of Ceuta and Melilla) – allows the authorities, in certain circumstances, to redirect third-country nationals who entered the state territory in an unauthorised manner to the neighbouring country they came from, without individually assessing whether there are bars to removal flowing from the principle of non-refoulement.<sup>28</sup>

**Estonia** may activate similar rules in times of "emergency caused by mass migration".<sup>29</sup> New legislation enables **Finland** to limit asylum applications to one or more border crossing points if this is necessary to prevent a serious threat to public order, national security or public health, and if certain other conditions are met.<sup>30</sup>

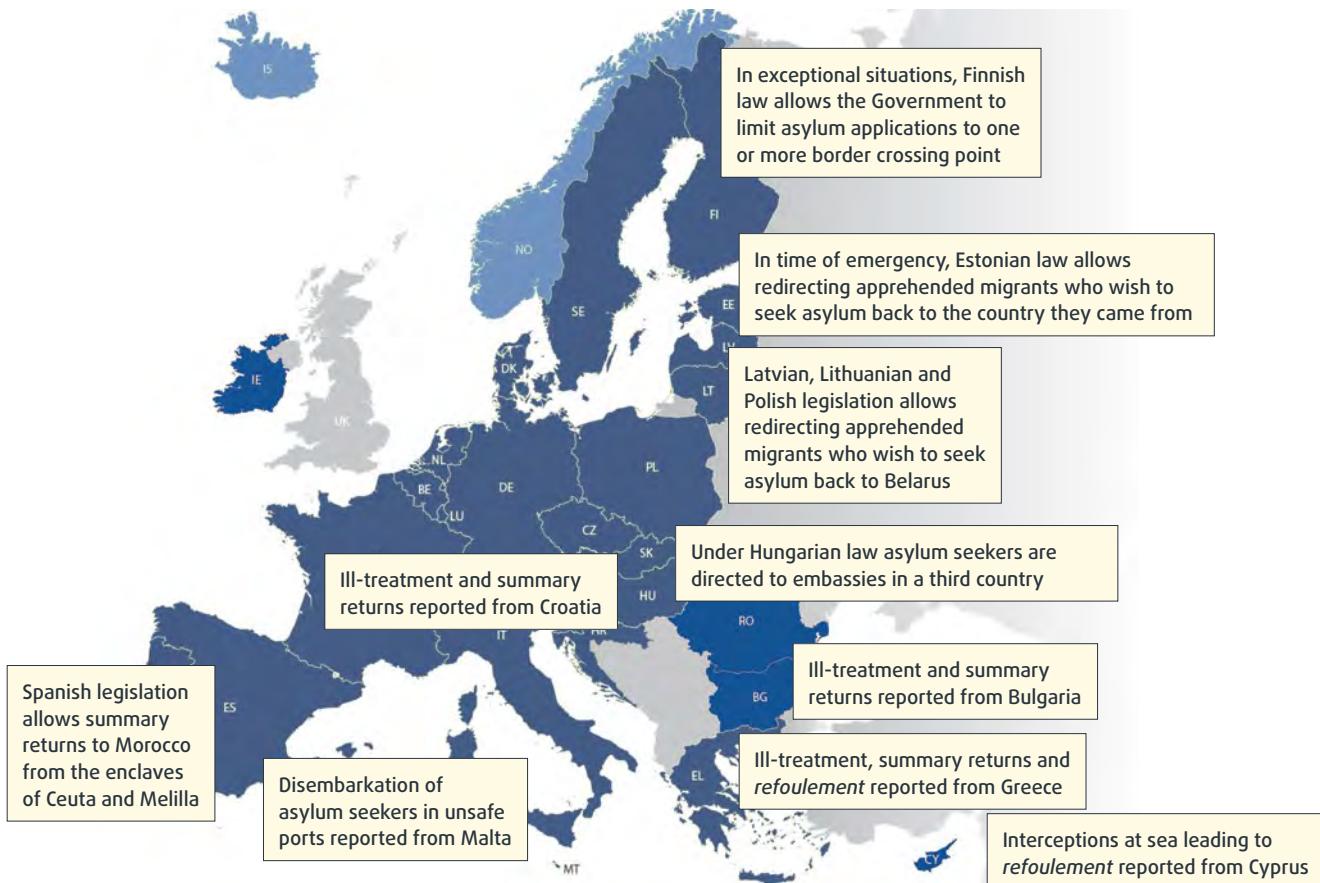
**Hungary** has extended the "state of danger due to mass migration" until 7 March 2023.<sup>31</sup> It continues to expel all asylum applicants who are at the

border or inside the country and redirect them to its embassies in Belgrade and Kyiv to state their intention to apply for international protection.<sup>32</sup>

**Hungary** has reinforced its ‘border hunters’, a newly set-up special unit within the police.<sup>33</sup> They are charged with patrolling the border, apprehending people and escorting them back to the fence at the Serbian border. Border hunters do not have to undergo the same training and obtain the same qualifications as ordinary police personnel: they only have to undergo 160 hours of training, pass an exam and be mentally and physically fit for duty.<sup>34</sup> Based on a memorandum of understanding concluded at the end of 2021, some 50 Turkish border guards support the Hungarian authorities at three border-crossing points with Serbia. As of December 2022, they had apprehended 3,776 migrants who had attempted to cross, or crossed, the fenced Hungarian-Serbian border in an irregular manner.<sup>35</sup> Should those guards interact with Turkish nationals in need of international protection, this would raise serious issues under EU asylum law.

Figure 6.3 provides an overview of the most critical fundamental rights issues at the EU’s external border.

**FIGURE 6.3: OVERVIEW OF SERIOUS FUNDAMENTAL RIGHTS ISSUES AT THE EU’S LAND AND SEA BORDERS**



Source: FRA (2023), based on references listed in this section

▲ Notes:

middle blue = EU Member States that are part of the Schengen area; light blue = other states in the Schengen area; dark blue = EU Member States not part of the Schengen area on 1 January 2023

The execution of some key ECtHR judgments relating to human rights at external borders remains pending.<sup>36</sup> Judgments of the Court of Justice of the EU (CJEU) in 2020 against **Hungary** and in 2022 relating to **Lithuania** reaffirmed the rights to seek asylum and to dignified treatment for asylum applicants, including individuals who crossed the border in an irregular manner.<sup>37</sup> Nevertheless the situation remained largely unchanged. National legislation in these two Member States allowing summary expulsions, regardless of an intention to apply for asylum, remained in force.

Safeguards present in some national legislation<sup>38</sup> mitigated the risk of violations of Article 18 (right to asylum) and of Article 19 (protection in the event of removal, expulsion or extradition) of the Charter to a limited extent. For example, in **Lithuania**, asylum applicants from Belarus who crossed irregularly were generally not turned back at the border, but accepted for special humanitarian reasons.<sup>39</sup>

In other Member States, human rights organisations and other bodies continued to report allegations of systemic patterns of violence, ill-treatment and summary returns. In **Bulgaria**, the national border-monitoring body registered 5,268 alleged pushback incidents for 2022, which affected 87,647 individuals.<sup>40</sup> Following allegations of shooting and of migrants being held in a cage-like facility,<sup>41</sup> the Council of Europe Commissioner for Human Rights expressed concern and asked the Bulgarian authorities for clarification about reports of unlawful detention, ill-treatment and bodily injuries.<sup>42</sup> The authorities denied the allegations.<sup>43</sup>

In **Croatia**, violations continued but became less violent, according to the Border Violence Monitoring Network.<sup>44</sup>

In **Cyprus**, boats were again intercepted at sea. That had not occurred since 2020. Between July and October 2022, four boats carrying 354 persons were returned to Lebanon. That resulted in three more cases of ‘chain refoulement’ to Syria of people in need of international protection, including one unaccompanied child, the UN reported.<sup>45</sup>

In **Greece**, the National Commission for Human Rights set up a mechanism to record incidents of summary returns. It recorded 50 incidents of people who wished to seek asylum in Greece being apprehended or intercepted and then summarily returned Turkey. They occurred between April 2020 and October 2022 and affected at least 2,157 people.

Such incidents were often accompanied by ill-treatment, deprivation or destruction of identity documents and other fundamental rights violations. Alleged victims included six recognised refugees and five officially registered asylum seekers.<sup>46</sup> The Greek authorities informed FRA that the Hellenic Coast Guard implements its mission in full compliance with international obligations.

For the first time when reviewing an EU Member State, the UN Committee on Enforced Disappearances raised the issue of enforced disappearances in Greece in connection with the summary expulsion of apprehended individuals.<sup>47</sup>

**Malta’s** restrictive approach to search and rescue at sea led to disembarkation in a third country without assessing whether it would be safe for the persons concerned.<sup>48</sup> That remained a concern.<sup>49</sup> On 26 September, for example, Malta coordinated a rescue operation and instructed a commercial vessel to disembark the 23 people rescued in Egypt,<sup>50</sup> a country that the authorities deemed to be safe.

Frontex came under pressure for not paying sufficient attention to human rights when operating in locations with persistent reports of serious rights violations.<sup>51</sup>

In 2022, the agency's Fundamental Rights Officer further consolidated its internal mechanisms to protect fundamental rights. That included recruiting and training fundamental rights monitors, who numbered 44 at year-end.<sup>52</sup>

The Council of Europe Commissioner for Human Rights identified four areas for urgent action. One of them concerns more transparency in border control practices.<sup>53</sup> Independent monitoring is one way to achieve this.

First experiences in establishing a border monitoring mechanism emerged from **Croatia**. During the first year of activity, monitors focused on border police stations, border-crossing points and reception facilities, where they did not detect irregularities as regards the right to asylum and access to the procedure.<sup>54</sup>

The new agreement governing the work of the mechanism builds on lessons learned from the first year of operation. In 2023, it also allows monitors to make semi-unannounced visits to the green border and have selective access to the Croatian Ministry of the Interior's information systems.<sup>55</sup> However, by the end of March 2023, no monitoring visits under the new agreement had occurred.

Other bodies also investigate the protection of fundamental rights at borders.

In Greece, the National Transparency Authority published its findings from a first investigation into summary returns from Greece to Turkey. It concluded that the evidence available did not allow it to verify the alleged *refoulement* incidents. However, the methodology used to arrive at this conclusion did not include evidence from victims and direct witnesses of the examined incidents, or from key organisations working in Greece on asylum and migration, such as UNHCR or the IOM.<sup>56</sup> Greece also recruited a Fundamental Rights Officer at the Ministry of Migration and Asylum, responsible for reviewing complaints on fundamental rights violations relating to asylum.<sup>57</sup>

National human rights institutions and ombuds institutions continued to fulfil their mandates by investigating rights violations at borders. For example, in May the **Greek** Ombudsman investigated over 50 incidents concerning more than 10,000 people.<sup>58</sup> The **Spanish** Ombudsman issued 11 recommendations relating to the situation at the border.<sup>59</sup> The **Polish** Commissioner for Human

FRA ACTIVITY

## Promoting the monitoring of fundamental rights at borders

In October 2022, following a request by the European Commission, FRA published guidance to help EU Member States set up national independent mechanisms to monitor fundamental rights compliance at EU external borders, following the proposed Screening Regulation tabled by the European Commission. FRA is translating the guidance into several EU languages. When discussing putting the guidance into practice, experts stressed the need for consistency with other national bodies entrusted with the protection of fundamental rights, underlined the important role of national human rights institutions, and flagged the need to develop protocols to access information and data from surveillance assets relevant to fundamental rights.

Sources: FRA (2022), 'Establishing national independent mechanisms to monitor fundamental rights compliance at EU external borders', 14 October 2022; FRA (2022), 'Establishing independent and effective national border monitoring mechanisms: Expert meeting', news item, 22 November 2022

**Establishing national independent mechanisms to monitor fundamental rights compliance at EU external borders**

Fundamental rights monitoring at EU external borders should be comprehensive and regular, and not a one-off or ad-hoc management exercise. Hence public bodies, universities, research centres and other organisations should establish independent mechanisms, including by the means of these mechanisms, to monitor the way in which the rights of third countries' citizens are treated as they cross out of the Union, and to evaluate:

- people's access to basic fundamental rights;
- the protection of fundamental rights in specific circumstances, such as when crossing external borders;
- people's access to effective judicial remedies;
- a should also take all the measures necessary to ensure that the fundamental rights of the group of third-country citizens of the border.

In addition, the Commission should propose a **comprehensive regulation on fundamental rights**. This proposal includes an obligation for Member States to designate a national independent mechanism to monitor fundamental rights at EU external borders. The Commission could set up a European Agency for Fundamental Rights to support the work of these national mechanisms. The Agency would be responsible for the preparation of the proposed regulation, and for the respect of the national monitoring exercises (see the following box).

Rights regularly visited the land border with Belarus to monitor the situation, intervened with the authorities, and submitted complaints and an amicus curiae brief to the Strasbourg court.<sup>60</sup>

The ECtHR has increasingly had to deal with urgent cases concerning human rights at borders. For example, in connection with the situation in the three Member States bordering Belarus, between 20 August 2021 and 18 February 2022, the Court had to deal with requests for interim measures in 69 applications brought by a total of 270 applicants. It granted them in 65 cases. Most requests came from **Poland**, followed by **Lithuania** and one from **Latvia**.<sup>61</sup>

Several cases are still pending before the ECtHR, including cases against **Lithuania**,<sup>62</sup> **Greece**<sup>63</sup> and **Hungary**.<sup>64</sup>

In one case, civil society organisations filed a communication to the International Criminal Court. It alleges crimes against humanity against migrants and refugees intercepted at sea, systematically returned to Libya and detained there.<sup>65</sup>

The fundamental rights violations reported from the EU's external borders are serious, recurrent and widespread. Few cases are reported, recorded and investigated by the national justice systems. One reason is the scarcity of solid evidence about the facts, as incidents occur in remote forested areas or at sea, often in the dark.

As the next section describes, human rights actors and journalists often face difficulties when investigating violations at borders. The treatment of refugees and migrants at borders not only raises issues of EU fundamental rights law but constitutes a threat to the rule of law.

#### **6.1.3. Making it difficult to help migrants and refugees**

Civil society plays a key role in mitigating the hardships that asylum applicants and irregular migrants experienced, and in defending their rights under international and EU law. However, there are hindrances to their work, particularly if they operate at borders.

The European Commission's rule of law country reports on **Greece**, **Hungary** and **Italy** mentioned restrictions on the work of non-governmental organisations (NGOs).<sup>66</sup> **Lithuania** softened its initial constraints on civil society organisations accessing and supporting migrants and refugees in border zones.<sup>67</sup> Access restrictions in **Latvia** were a subject of an exchange of letters between the authorities and the Council of Europe Commissioner for Human Rights.<sup>68</sup>

**Poland** lifted the temporary restrictions on civil society and journalists accessing the areas bordering Belarus.<sup>69</sup> The Supreme Court considered access restrictions to be unconstitutional.<sup>70</sup> In November 2022, the District Court of Warsaw awarded compensation to a journalist convicted of having accessed the border area without permission.<sup>71</sup>

Judicial authorities investigated the activities of civil society actors concerning their role in facilitating irregular migration and their involvement in migrant smuggling.

In **Greece**, volunteers from the NGO Emergency Response Centre International (ERCI) who were involved in rescuing and assisting a large number of migrants and refugees in Lesvos between 2016 and 2018 faced criminal charges.<sup>72</sup> In late 2022, the Kos Court of First Instance started investigations against the Greek Helsinki Monitor – an organisation that had submitted some 200 complaints of summary expulsions of refugees and migrants.<sup>73</sup>

## FRA ACTIVITY

### Making the role of civil society visible



Civil society is a key component of Europe's fundamental rights architecture. It plays a crucial role in upholding people's rights. In so doing, it contributes to a healthy rule of law culture.

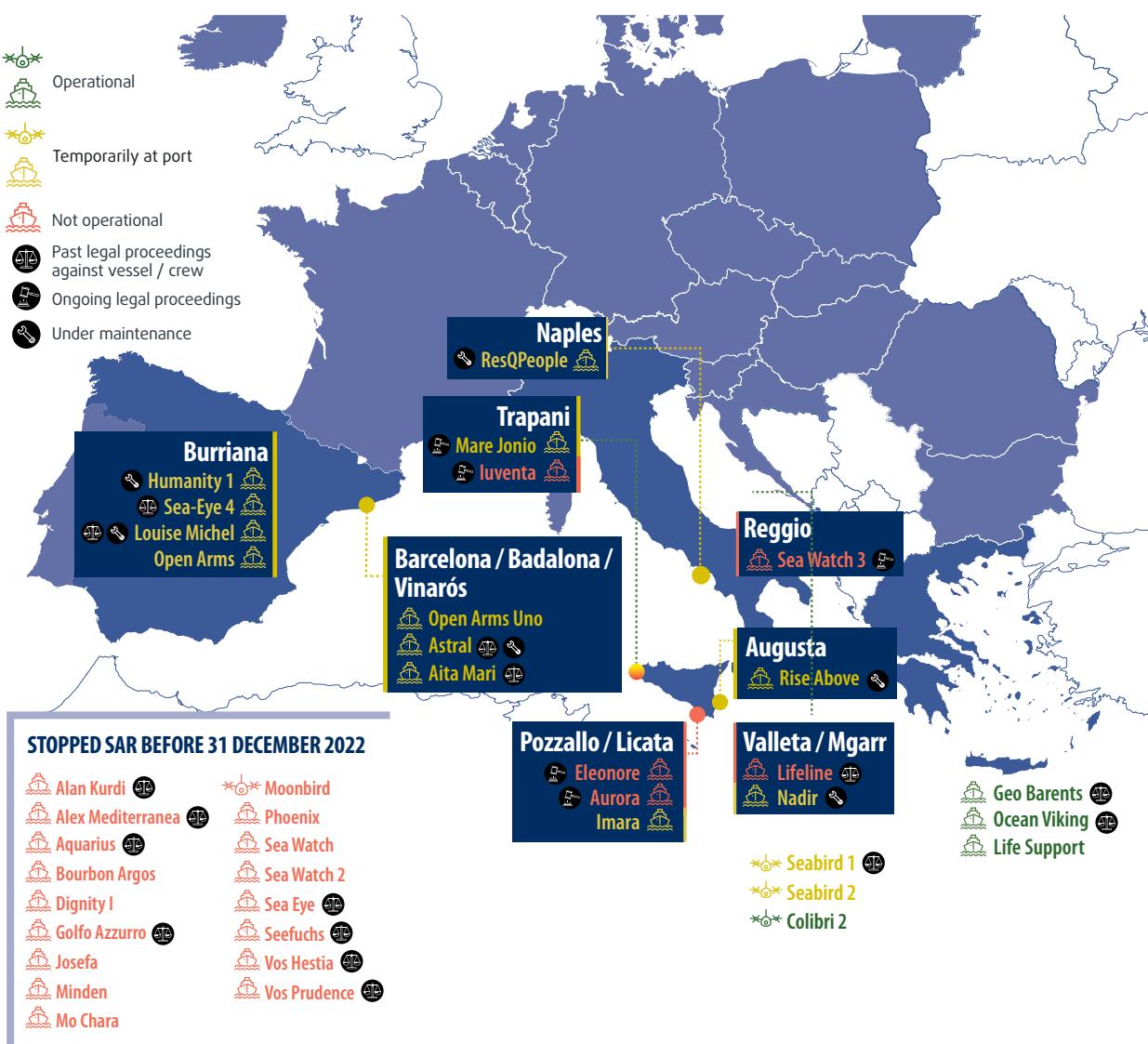
Pressure on civil society organisations from state authorities and non-state actors is increasing. Negative narratives, threats and attacks persist. They particularly affect civil society actors working on sensitive issues, such as migration.

Source: FRA (2022), *Europe's civil society: Still under pressure – 2022 update*, Luxembourg, Publications Office of the European Union (Publications Office)

Human rights defenders in Greece, in particular those supporting migrants, refugees and asylum seekers, are targets of hostile comments, including by key stakeholders in the government, the UN Special Representative for the Rights of Human Rights Defenders noted. According to her, legislation is overly broad and vague and gives the opportunity for its misuse in criminal proceedings.<sup>74</sup>

In Italy, measures continued to target civil society organisations engaged in search and rescue, although they brought only some 16 % of new arrivals to Italian ports.<sup>75</sup> Civil society organisations deploying ships for search and rescue activities continued to face legal proceedings and other measures against themselves or the rescue vessels.<sup>76</sup> In August, the CJEU clarified that the port state may inspect search and rescue ships of humanitarian organisations, but may seize such vessels only in the event of a clear risk to safety, health or the environment.<sup>77</sup> At year-end, three NGO vessels and one NGO aircraft were performing search and rescue operations, five vessels were blocked pending legal proceedings and several others were temporarily in port, for example for maintenance (see Figure 6.4).

**FIGURE 6.4: NGO ASSETS INVOLVED IN SEARCH AND RESCUE OPERATIONS IN THE MEDITERRANEAN SEA BETWEEN 2016 AND 31 DECEMBER 2022**



FRA continued to report on delays in disembarkation.<sup>78</sup>

In October 2022, the situation deteriorated. Authorities in **Italy** refused two NGO rescue vessels – *Ocean Viking* and *Humanity 1* – access to its ports. That resulted in the rescued people remaining at sea for a long time: 21 days for *Ocean Viking*.<sup>79</sup> *Ocean Viking* ultimately disembarked the rescued people in Toulon, **France**.<sup>80</sup> *Humanity 1* was allowed to dock in Catania, after almost two weeks.<sup>81</sup>

At the end of December, the Italian authorities assigned safe ports located further away from the rescue area: Ravenna (for *Ocean Viking*) and Livorno (for *Sea Eye 4* and *Life Support*). That entailed several days of travel.<sup>82</sup> As of January 2023, a new law decree introduced new restrictive provisions relating to rescue at sea.<sup>83</sup>

Measures concerning civil society rescue vessels in the Mediterranean are closely linked to discussions on EU solidarity. Over 100,000 migrants and refugees arrived in the EU by sea in 2022, significantly more than in 2021, when over 67,000 people arrived.<sup>84</sup> In June, the French Presidency of the Council of the EU agreed on a one-year voluntary mechanism to share responsibility with Mediterranean states of first entry. It entails relocation, primarily for people rescued at sea, as well as financial contributions and projects in third countries.<sup>85</sup>

In November, the European Commission presented an action plan with 20 actions to address the challenges in the Mediterranean. Some of them have strong links with fundamental rights, such as exploring the need for enhanced cooperation on search and rescue.<sup>86</sup>

#### **6.1.4. Mobilising safeguards in Schengen rules to protect fundamental rights**

The system of EU rules on border controls and related matters is generally referred to as the Schengen border *acquis*. It contains several safeguards to protect fundamental rights. Practitioners still do not know and mobilise them enough. This increases the risk of actions and decisions not respecting EU fundamental rights law.

In the past year, there has been increased focus on operationalising the fundamental rights safeguards embedded in EU asylum and migration legislation.



## FRA ACTIVITY

# Helping practitioners in Member States to apply European law relating to asylum, borders and immigration

A joint ECtHR and FRA handbook presents fundamental rights safeguards in EU and Council of Europe law in the field of asylum, borders and immigration. By the end of 2022, FRA had translated the handbook into 15 EU languages and organised events to promote its use at national level.

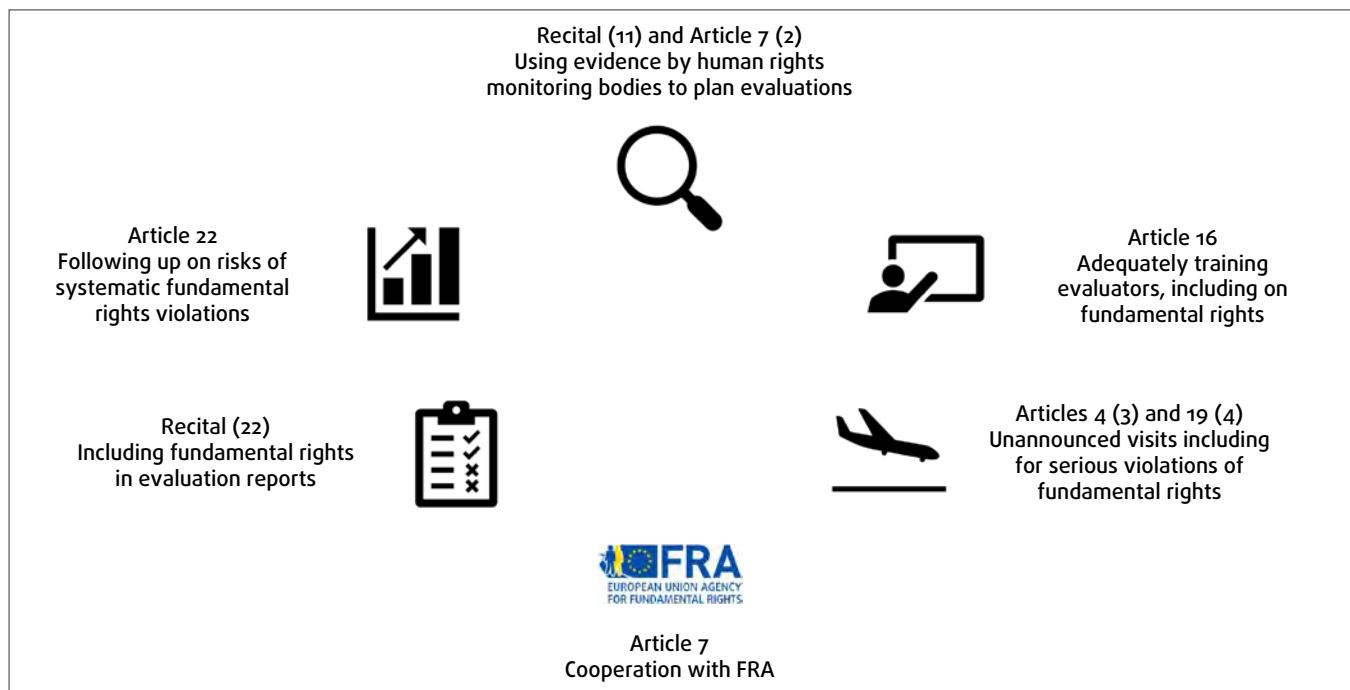
Source: FRA and ECtHR (2020), *Handbook on European law relating to asylum, borders and immigration. Edition 2020*, Luxembourg, Publications Office, available in the following EU languages: Bulgarian, Croatian, English, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Romanian, Slovenian and Spanish



The most important legal change in 2022 concerning asylum and migration was the revision of the Schengen evaluation and monitoring mechanism. Schengen evaluations serve to oversee the implementation of all pillars of the Schengen *acquis* across the EU.<sup>88</sup> The new rules augment the coverage of fundamental rights in the evaluations. They also strengthen the role that FRA plays in supporting the evaluations.

Figure 6.5 illustrates how the mechanism incorporates fundamental rights.

**FIGURE 6.5: KEY MEASURES TO FURTHER EMBED FUNDAMENTAL RIGHTS IN FUTURE SCHENGEN EVALUATIONS**



Source: FRA (2023), based on the Schengen Evaluation Regulation ((EU) 2022/922)

### Notes:

Article numbers refer to the regulation

Previously, FRA had analysed how Schengen evaluations deal with fundamental rights. In 2020 it suggested strengthening the oversight of the fundamental rights safeguards included in, in particular, the Schengen Borders Code.<sup>89</sup>

The Council of the EU recommended that **Greece** strengthen the fundamental rights component of its national border management governance structure and carry out thorough and prompt investigations of reported serious allegations of ill-treatment. Although issued before the legislative reform of 2022, the recommendation shows the Council making efforts in this regard.<sup>90</sup> So does the recommendation that **Italy** enhance the reception capacity and conditions in the initial reception centre in Lampedusa.<sup>91</sup>

The European Commission established the EU Migration Preparedness and Crisis Management Network ('Blueprint Network') in September 2020.<sup>92</sup> FRA regularly provides it with input on compliance with fundamental rights. The network involves EU institutions, the EU's relevant justice and home affairs agencies, and Member States. It collects timely and adequate information to ensure situational awareness and better preparedness.

In 2022, the European Commission asked FRA to contribute to Blueprint Network meetings and reports on developments related to the Russian invasion of Ukraine and the situations at the border with Belarus, in Afghanistan, and along the eastern Mediterranean and western Balkan routes. FRA raised fundamental rights concerns in this context about, for example, rights violations at borders, access to asylum, the situation of children, and reception capacity and conditions.

The European Ombudsman has also increasingly scrutinised how EU entities comply with fundamental rights in border management. In 2022, it opened two new cases: one concerning EU funding of reception facilities for new arrivals on the Greek islands and another on access to documents from Frontex.<sup>93</sup> In another procedure, the European Ombudsman recommended that Frontex increase its transparency to enhance accountability and that the European Commission take specific actions on fundamental rights monitoring in Croatia.<sup>94</sup>

## 6.2. ASYLUM AND IMMIGRATION POLICIES IN TRANSITION

Efforts to reform EU migration and asylum law continued, but remained inconclusive. The legislative changes that the European Commission proposed in 2020 with the Pact on Migration and Asylum remained pending with the EU legislator. The two main legal developments were the activation of the Temporary Protection Directive (2001/55/EC) with respect to displaced people from Ukraine (see **focus chapter**) and the revision of the Schengen Evaluation and Monitoring Mechanism described in Section 6.1.4. More legislative proposals were tabled, particularly concerning legal migration.

### 6.2.1. Promoting migrant integration through stronger EU law on long-term residence

Several EU law instruments regulate the rights and obligations of different categories of legal migrants.<sup>95</sup> In 2022, the European Commission proposed to reform two of them: the Single Permit Directive (on rights and obligations of migrant workers) and the Long-Term Residence Directive.<sup>96</sup> In October, the European Commission presented various measures to attract skills and talents to the EU.<sup>97</sup>

The integration and social inclusion of third-country nationals is closely linked to the type of residence permit they hold and the rights that derive from it.

The Long-Term Residence Directive (2003/109/EC) is the main EU legislative instrument to support the integration of third-country nationals residing in the EU. It provides long-term immigrants with secure residence and grants them rights similar to those of EU citizens. The directive also provides enhanced protection against return, and offers intra-EU mobility.

However, uptake of EU long-term residence is low compared with national long-term or permanent residence permits. There are gaps in accessing rights, and intra-EU mobility is underused.<sup>98</sup> The changes to the directive that the European Commission proposed aim to improve this.

### **6.2.2. Applying fundamental rights safeguards when using EU funds**

Implementation of EU asylum and migration policies, and of the new EU funding instruments in the field of asylum, borders and immigration, advanced.<sup>99</sup> For 2021–2027, the Asylum, Migration and Integration Fund has a total budget of € 9.9 billion, and the Border Management and Visa Instrument under the Integrated Border Management Fund has € 7.37 billion. These two EU funds are important tools for putting EU policies into practice, but also for making sure that they respect fundamental rights. Figure 6.6 shows their main mechanisms to ensure that EU funding is used in a fundamental rights-compliant manner.

#### **FRA ACTIVITY**

## **Analysing the situation of long-term residents in the EU**

In 2022, FRA concluded its research on long-term residents (LTRs) in the EU.

Migrants often face difficulties in proving the requirements to obtain long-term residence, the findings show. In particular, income requirements can arguably be quite onerous, particularly for large families. Breaks in the continuity of stay, for example due to past delays in renewing a residence permit, often make it difficult for migrants to document the five years of legal and continuous stay needed to apply for EU LTR status.

As a result, many migrants who have a national long-term permit would not have met the requirements for EU LTR status. This results in many obtaining EU LTR status only after seven or 10 years of stay in the EU, instead of the five mentioned in the Long-Term Residence Directive.

In several areas, equal treatment with nationals is not a reality in practice, especially in employment, education, and access to loans and bank credit. FRA also found serious gaps affecting family members of long-term residents. In the light of Article 24 of the Charter (rights of the child), children of EU long-term residence status holders should receive such status automatically, FRA suggests.

Finally, to move within the EU, LTRs must trade secure status for a temporary permit in the second Member State. That issue needs to be addressed to promote intra-EU mobility.

*Source: FRA (2023), Promoting migrant integration through stronger EU law on long-term residence*

**FIGURE 6.6: EU MIGRATION FUNDS – SELECTED SAFEGUARDS FOR FUNDAMENTAL RIGHTS COMPLIANCE**

	<p><b>Article 8 – partnership</b></p> <p>Member States must involve fundamental rights actors from civil society</p>		<p><b>Article 15 and Annex III – enabling conditions</b></p> <p>Member States must show that funded programmes comply with the Charter and with policies to implement the CRPD</p>		<p><b>Articles 38-40 – monitoring committees</b></p> <p>Member States must ensure balanced representation of partners listed in Article 8</p>		<p><b>Article 41 – annual performance report</b></p> <p>Member States must report on the fulfilment of the enabling conditions (AMIF Regulation, Article 35, and BMVI Regulation, Article 29)</p>
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◀ Notes:

AMIF, Asylum, Migration and Integration Fund; BMVI, Border Management and Visa Instrument under the Integrated Border Management Fund; CRPD, Convention on the Rights of Persons with Disabilities

Source: FRA (2023), based on [Regulation \(EU\) 2021/1060](#), to which the article and annex numbers in the headings refer

## FRA ACTIVITY

### Reviewing national funding programmes from a fundamental rights angle

Pursuant to Article 16 (4) of the Asylum, Migration and Integration Fund Regulation ((EU) 2021/1147) and Article 13 (4) of the Border Management and Visa Instrument Regulation ((EU) 2021/1148), the European Commission asked FRA to review all national programmes that EU Member States prepare for the Asylum, Migration and Integration Fund and the Integrated Border Management Fund. FRA's comments highlighted fundamental rights concerns and the need to comply with relevant case law and the recommendations of national human rights institutions, ombuds institutions or civil society organisations. Recurring issues in the programmes relate to the need to improve fundamental rights-compliant return, detention, asylum and border procedures, for example by ensuring access to legal aid or using alternatives to detention. FRA also pointed out the need to include fundamental rights training when setting up new information technology systems in the area of freedom, security and justice.

Source: FRA (2023)

## 6.3. EU INFORMATION TECHNOLOGY SYSTEMS

In 2022, the EU made progress on establishing its new information technology (IT) systems in the area of freedom, security and justice. It presented new legislative measures in this field.

### 6.3.1. Paying attention to fundamental rights when rolling out new IT systems

Preparations to roll out the three new IT systems continued. The European Commission worked on drafting the necessary implementing and delegated acts. The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) together with Member States and Frontex made progress towards the entry into operation of the new systems.

The Entry/Exit System (EES)<sup>100</sup> is an automated IT system that will register the entry and exit of all third-country nationals crossing the Schengen borders for a short stay (90 days within a 180-day period), and refusals of entry. It will store biographic data and the fingerprints of third-country nationals who are at least 12 years old, and facial images of all third-country nationals regardless of age. The EES will simplify the calculation of days spent in the Schengen area and help identify if third-country nationals overstay. By the end of 2022, the European Commission had adopted all implementing acts, except for the list of national authorities with access to the EES.

The European Travel Information and Authorisation System (ETIAS)<sup>101</sup> will be a largely automated system for visa-exempt third-country nationals who want to visit the EU. They must use an online form to apply for authorisation to enter the Schengen area.



ETIAS will screen the applications against relevant EU, Europol and Interpol databases. It will also help competent authorities predict if an applicant may pose a security, irregular migration or high epidemic risk. It will use screening rules, in other words algorithms, to make such predictions.<sup>102</sup> Legislative work is still pending on some implementing and delegated acts.

The third system will be the European Criminal Records Information System for Third-Country Nationals (ECRIS-TCN).<sup>103</sup> It establishes a centralised database with information on convictions of third-country nationals. By year-end, the European Commission had finalised its work on most implementing acts.

The legal instruments establishing these three new systems contain significant fundamental rights safeguards, including in relation to data protection and non-discrimination.<sup>104</sup> The implementation phase is crucial to ensure that these safeguards are not purely on paper.

An example is the Fundamental Rights Guidance Board under Article 10 of the ETIAS Regulation. It has an advisory role, and FRA is a member. It held its first meeting in November 2022.<sup>105</sup> FRA expects that the advice of the board will play a key role in mitigating the risk that algorithms developed for ETIAS may have discriminatory effects.

Work has also advanced on the interoperability of EU IT systems, in line with Regulations (EU) 2019/817 and (EU) 2019/818.<sup>106</sup> For law enforcement data exchange under the Prüm framework, see [Chapter 7](#) on information society and data protection.

One example is detecting multiple identities with the help of biometric data for which eu-LISA is preparing. During a transitional period, Frontex and Member States will be in charge of confirming multiple identities detected among data already stored in the EU IT systems. After that, the Member States will take over this task.

The multiple identity detection will entail automated matching of stored fingerprints. In case of doubts, a manual review will use available biographic information, identity documents and photos. There have been problems with the quality of past data entries, so a scrupulous manual review process is necessary, to avoid the risk of people facing negative consequences as a result of an erroneous link between different identities.

The data protection authorities in several Member States have issued complaints, opinions or investigations. For example, in **Belgium**, the authority recommended that the processing of sensitive personal data by the immigration authority should be more precisely regulated.<sup>107</sup> In **Denmark**, the authority issued opinions on limitations to the data subject's right of accessing information in the Schengen Information System II.<sup>108</sup>

The **Czech** Governmental Committee on Human Rights and Advanced Technologies<sup>109</sup> expressed concerns about risks to fundamental rights in the context of facial recognition.<sup>110</sup> So did NGOs, such as Remedium Iuridicum. An **Italian** study analysed the risks of processing biometric data for the identification procedures of newly arrived migrants and refugees.<sup>111</sup>

### 6.3.2. Assessing fundamental rights impacts of new measures

In 2022, the European Commission presented further policy measures, including a legislative proposal to digitalise visa procedures.<sup>112</sup> Once adopted, the new rules will make it possible to submit visa applications online, thus reducing time and costs for applicants. Visa applicants will need to appear in person at the consulate, or its contracted external service provider, only

## FRA ACTIVITY

### Creating awareness of IT systems and fundamental rights in the field of migration and border management



FRA is developing an online awareness-raising tool. It will provide information on the IT systems set up at EU level in the area of freedom, security and justice, and the risks and opportunities they create for fundamental rights. The aim is to raise civil society's awareness of the impact of large EU IT systems on fundamental rights. The tool is expected to be available in early 2024.

(i) for the collection of biometrics for their first visa application, (ii) if the biometric data stored are older than 59 months or (iii) if they have a new travel document. During the consultations before the publication of the proposal, FRA flagged some fundamental rights issues that informed the proposal.

The European Commission also proposed changes to Directive 2004/82/EC<sup>113</sup> on the obligation of air carriers to communicate passenger data in advance to facilitate border checks (Advance Passenger Information Directive).<sup>114</sup> The directive obliges airlines to send personal data to the authorities of the country of arrival about passengers boarding a flight to the EU. The proposed revisions aim to make more effective use of information on travellers, in order to improve border controls, reduce irregular migration and identify people who pose security risks.

The directive entails processing personal data about a very large number of people – in essence all air passengers boarding a plane from a third country to the EU. The changes also seek to allow Member States to process, selectively, personal data from passengers moving inside the EU.<sup>115</sup>

The use of such data for law enforcement purposes raises similar challenges to the processing of passengers' name records (PNR). In June 2022, the CJEU concluded that the PNR Directive<sup>116</sup> is compatible with the fundamental rights of privacy and data protection. Yet the CJEU used strong fundamental rights language, significantly limiting Member States' margin of manoeuvre when implementing the PNR system domestically.

The PNR Directive entails serious interferences with the rights to privacy and data protection, as it seeks to introduce a surveillance regime that is continuous, untargeted and systematic, including the automated assessment of all air passengers' personal data. Given that, EU fundamental rights law requires that authorities' powers provided for by the directive be limited to what is strictly necessary.<sup>117</sup>

In the light of this judgment, the EU co-legislators need to limit the processing of personal data to what is necessary and proportionate to achieve the objectives of the Advance Passenger Information Directive. That requires a cautious approach. Evaluating the impact on fundamental rights will be critical, as the European Commission envisages.<sup>118</sup>



## FRA opinions

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### FRA OPINION 6.1

The Schengen Council and the Commission's annual 'State of Schengen' reports should devote one agenda item or heading to the fundamental rights situation at borders.

EU Member States should set up or strengthen national mechanisms to monitor fundamental rights compliance at their borders, building on FRA's expertise.

For refugees other than those fleeing the Russian invasion of Ukraine, legal avenues to reach safety in the EU remain limited. Against the background of increasing global forced displacement, some try to reach safety by coming in an irregular manner. When they unlawfully cross, or try to cross, the EU's external borders, they experience rights violations in several EU Member States.

Such fundamental rights violations are serious, recurrent and widespread. Many reports involve conduct by officials that may constitute serious crimes under national law. Nevertheless, the national justice systems take up few cases. That can lead to a sense of impunity.

Civil society is a key component of Europe's fundamental rights architecture and plays a crucial role in upholding people's rights. Conflict between civil society organisations defending migrants' and refugees' rights, on the one hand, and state authorities and non-state actors, on the other, is increasing.

### FRA OPINION 6.2

The European Commission should continue efforts to mainstream fundamental rights compliance through Schengen evaluations. When reviewing EU Member States' national programmes, the European Commission should apply all fundamental rights safeguards embedded in the EU legal instruments setting up the Asylum, Migration and Integration Fund and the Border Management and Visa Instrument under the Integrated Border Management Fund.

Secondary EU law in the field of asylum, borders and immigration contains important fundamental rights safeguards. In 2022, there was increased focus on operationalising these. The revision of the Schengen evaluation and monitoring mechanism illustrates this. So do the procedures to receive EU funds. Practitioners still do not sufficiently know, mainstream and act on these safeguards.

Work on EU-level large-scale information technology (IT) systems continued, to facilitate border management, support asylum procedures and mitigate internal security risks. Personal data, including biometric data, about almost all third-country nationals staying in or travelling to the EU will be processed through six large-scale EU IT systems.

Numerous safeguards embedded in EU law are intended to mitigate the risks of fundamental rights violations, provided they are adequately implemented. However, the EU IT systems are just coming into operation, and we are still discovering how several aspects work together. Their potentially vast impact on fundamental rights therefore remains partly unknown.



## FRA OPINION 6.3

The EU should consider establishing a mechanism for independent review of its large-scale IT systems. Such a mechanism would ensure a continuous, independent and expert review of the impact of EU large-scale IT systems in the area of freedom, security and justice on the fundamental rights and the dignity of people. The experience of the Independent Reviewer of Terrorism Legislation in the United Kingdom could serve as an inspiration for a robust and sustainable mechanism that is independent from the European Commission and from the EU agencies involved in managing or supporting the operation of these IT systems.

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- 113 **Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data**, OJ 2004 L 261.
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- 115 Ibid., Art. 5.
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# INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION

# 7

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# UN & CoE

11

January

In *Ekimdzhiev and Others v. Bulgaria* (No. 70078/12), European Court of Human Rights (ECtHR) rules that Bulgaria's legislation on secret surveillance is in breach of Article 8 of the European Convention on Human Rights. The court holds that the Bulgarian legislation governing secret surveillance did not meet the quality-of-law requirement, as the law did not limit surveillance to only what is necessary in a democratic society.

17

March

Committee of Ministers of the Council of Europe (CoE) adopts the recommendation on promoting a favourable environment for quality journalism in the digital age.

11

April

Committee of Ministers of CoE adopts recommendation CM/Rec(2022)13 on the impacts of digital technologies on freedom of expression. It recommends human rights-compliant ways to address the adverse impacts and enhance the positive impacts of widespread digital technology use on freedom of expression.

20

May

Committee of Ministers of CoE adopts a recommendation on combating hate speech. It calls on governments to implement comprehensive strategies to combat hate speech, including online.

14

June

In *Butkevičius v. Lithuania* (No. 70489/17), ECtHR rules that the Lithuanian authorities had not breached Article 8 of the Convention by disclosing a telephone conversation between the applicant and a mayor to the media. Even if his reputation had been affected by the disclosure of conversation, there was no evidence that it had been affected to such an extent that it would be a disproportionate interference with his right to respect for private and family life.

20

Council of Europe publishes a report on 'Pegasus Spyware and its impact on human rights'. It analyses the impact the spyware could have on human rights and fundamental freedoms, in particular the right to privacy and freedom of expression.

# UN & CoE

August

4

Office of the United Nations High Commissioner for Human Rights publishes *Report on the right to privacy in the digital age*. The report highlights the impact on rights-respecting societies of creating systems of pervasive surveillance and control.

19

Office of the United Nations High Commissioner for Human Rights publishes a report on internet shutdowns. It stresses the dramatic impact shutdowns have on people's lives and human rights.

30

In *Y.G. v. Russia* (No. 8647/12), ECtHR rules that Russian authorities failed to adequately protect the confidentiality of the applicant's health data. Nor did they investigate the data's disclosure through a database being sold on the open market. Thus, the authorities breached Article 8 of the European Convention on Human Rights.

September

7

United Nations Educational, Scientific and Cultural Organization (Unesco) publishes its first graphic novel on artificial intelligence (AI): *Inside AI: An algorithmic adventure*. Through it, Unesco aims to educate people about the impact of AI on humankind.

8

In *Drelon v. France* (Nos. 3153/16 and 27758/18), ECtHR rules that there has been a violation of Article 8 of the European Convention on Human Rights. The French Blood Donation Service had collected personal data about the presumed sexual orientation of the applicant, a potential blood donor, and kept them for an excessive length of time.

November

18

Committee of CoE Convention 108 adopts guidelines on digital identity systems. The guidelines seek to apply the principles and provisions of Convention 108+ to the development and implementation of national digital identity schemes and systems. They promote an assessment of all interests at stake, including the benefits of such systems against their potential interference with human rights and fundamental freedoms in supporting legitimate policy objectives while minimising risks to individuals, groups and communities of individuals. They also provide recommendations for each type of actor in developing and implementing such systems.

18

January

European Data Protection Board adopts version for public consultation of guidelines on data subjects' right of access. The guidelines clarify the scope of the right of access and how to comply with it in different situations.

23

February

European Commission publishes a proposal for a regulation on harmonised rules on fair access to and use of data (Data Act). The act provides rules on access to and reuse of data generated by Internet of Things devices, contractual fairness in the data economy, cloud switching and access to data by public bodies.

14

March

European Data Protection Board adopts version for public consultation of guidelines on dark patterns in social media platform interfaces. The guidelines provide recommendations to designers and users of social media platforms on how to assess so-called dark patterns in social media interfaces. Dark patterns are user experiences that lead users into making unintentional and potentially harmful decisions. These patterns infringe the requirements of the General Data Protection Regulation (GDPR).

25

March

European Commission and United States adopt a joint statement on a new Trans-Atlantic Data Privacy Framework. The framework fosters trans-Atlantic data flows and addresses the concerns that the Court of Justice of the European Union (CJEU) raised in the *Schrems II* judgment of July 2020.

6

April

European Data Protection Board adopts the statement on the announcement of an agreement in principle on a new Trans-Atlantic Data Privacy Framework. In the statement, the board welcomes the agreement between the European Commission and the United States.

26

April

CJEU delivers its judgment in *Poland v. European Parliament and Council* (C-401/19). The court holds that Article 17 of the Directive on Copyright in the Digital Single Market (Directive (EU) 2019/790) establishing the liability rule for online content-sharing service providers is compatible with freedom of expression and information under Article 11 of the EU Charter of Fundamental Rights.

3

May

European Commission publishes a proposal for a regulation on the European Health Data Space (EHDS). The EHDS aims to strengthen the links between national healthcare systems throughout the EU using secure, efficient access to and exchange of health data.

12

May

European Data Protection Board adopts guidelines on using facial recognition technology in law enforcement.

July

25

European Commission presents the first report on the application and functioning of the Data Protection Law Enforcement Directive (LED) (Directive (EU) 2016/680) to the European Parliament and the Council. The report gives an overview of the Member States' transposition of the LED and the first lessons from its application and functioning.

August

1

CJEU issues a decision in Case C-184/20 that clarifies how publication of personal data liable to indirectly disclose sexual orientation constitutes processing of special categories of personal data under Article 9 of the GDPR.

September

15

28

European Commission presents a proposal for a regulation on horizontal cybersecurity requirements for products with digital elements (Cyber Resilience Act). The proposal aims to protect consumers and businesses from products with inadequate security features, and thereby improve cybersecurity.

— European Commission proposes a revision of the Product Liability Directive (PLD) (Council Directive 85/374/EEC). The revision aims to modernise the rules on manufacturers' strict liability for defective products. This will ensure fair compensation when defective products, including digital and refurbished products, cause harm.

— European Commission presents a proposal for a directive on adapting non-contractual civil liability rules to AI as a potential solution to the problem of civil liability for AI systems in the EU.

October

14

European Commission presents its first report on the application of data protection rules for EU institutions, bodies, offices and agencies. It gives an overview of how EU institutions apply the GDPR, and of the European Data Protection Supervisor's activities. It analyses the application of the rules applicable to EU bodies and agencies carrying out activities within the scope of police cooperation and judicial cooperation in criminal matters.

November

1

16

Digital Markets Act (Regulation (EU) 2022/1925) enters into force. It establishes rules for platforms that act as 'gatekeepers' in the digital sector. It aims to prevent gatekeepers from imposing unfair conditions on businesses and end users, and to ensure the openness of digital services.

Digital Services Act (Regulation (EU) 2022/2065) enters into force. It applies to hosting services, marketplaces and online platforms offering services in the EU. It aims to protect consumers and their fundamental rights online.

December

15

European Council, Parliament and Commission sign a European declaration on digital rights and principles for the digital decade. It presents the EU's commitment to a secure, safe and sustainable digital transformation that puts people at the centre, in line with core EU values and fundamental rights.

**From the use of artificial intelligence (AI) to online content moderation, retention of data, facial recognition technologies, and access to/use of electronic evidence in criminal investigations, 2022 continued to pose a recurring question. How can we best use all the available data to their fullest potential while complying with data protection and other fundamental rights safeguards?**

Discussions on the appropriate safeguards for the many uses of AI intensified at EU level. Increasing attention was paid to fundamental rights.

Both international institutions and national governments debated how much police and judicial authorities may access personal data. Initiatives authorising the use of modern surveillance technologies and access to data for security purposes intensified. In parallel, so did related concerns of courts, civil society organisations and public authorities.

## **7.1. REGULATING AI AND DIGITAL SERVICES FROM A FUNDAMENTAL RIGHTS PERSPECTIVE**



Efforts to regulate the use of AI intensified in 2022. The European Commission introduced a groundbreaking proposal for an Artificial Intelligence Act (AIA) in 2021.<sup>1</sup> However, fundamental rights protection became more central to the negotiation process in 2022, with civil society organisations (CSOs) providing input and discussions being held in the European Parliament.

Furthermore, the Council of Europe (CoE) launched negotiations on an internationally binding legal instrument in the field of AI, which is to be firmly based on human rights.

The EU adopted its landmark Digital Services Act (DSA) in 2022.<sup>2</sup> This marked an important step towards a safer online environment in which the fundamental rights of users are better protected.

### **7.1.1. Efforts to regulate AI continue, with increasing attention to fundamental rights**

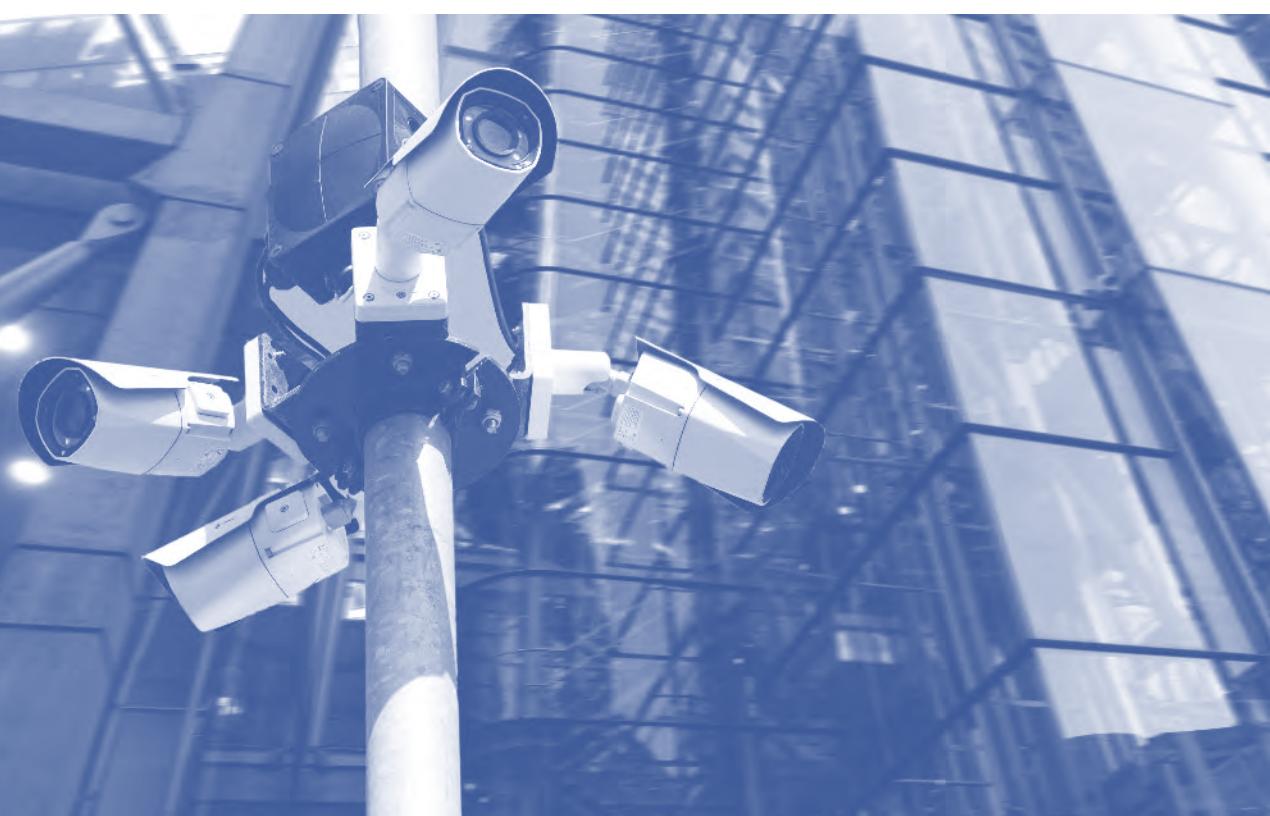
The European Commission published the proposal for an AIA in April 2021. It represented the first attempt to horizontally regulate AI at supranational level. Negotiations continued in 2022. The proposal faced a lot of suggested amendments from Members of the European Parliament (3,312), surpassing even the General Data Protection Regulation (GDPR) (3,133) at the time of its negotiation.<sup>3</sup>

The Council of the European Union adopted its common position on the AIA on 6 December 2022.<sup>4</sup> The European Parliament is expected to adopt its opinion in the first half of 2023. Trialogues will commence soon after.

Both the Council and the Parliament have introduced a stronger focus on fundamental rights in the draft text, for example in the context of risk management obligations regarding high-risk AI systems (proposed Article 9). Meanwhile, the definition of AI itself is still heavily debated. A narrow definition risks unduly narrowing the AIA's scope of protection.

National parliaments discussed the AIA, often informed by government positions (e.g. in **Austria**,<sup>5</sup> **Denmark**,<sup>6</sup> **Finland**<sup>7</sup> and **Germany**<sup>8</sup>). Other national public institutions, such as national human rights institutions (NHRIs) and data protection authorities (DPAs) also published their positions on the AIA (e.g. in **France**,<sup>9</sup> **Italy**<sup>10</sup> and the **Netherlands**<sup>11</sup>). These discussions and positions often called for more ambition, including in the area of fundamental rights.

For example, during a parliamentary hearing on AI in **Italy**, the DPA stressed the close connection between the AIA, data protection and other fundamental rights, and the importance of ensuring independent monitoring.<sup>12</sup> In **France**, the NHRIs opinion on the AIA called for an ambitious framework, including a ban on social scoring and remote biometric identification in publicly accessible spaces.<sup>13</sup>



Other bodies, including the police, issued positions criticising the restrictions that the proposal might impose on their ability to do their jobs. In **Sweden**, the national police force expressed concern that the draft AIA may too heavily restrict the use of AI for legitimate purposes, such as ensuring security.<sup>14</sup> In **Poland**, the Union of Entrepreneurs and Employers issued a statement calling the obligations in the AIA impracticable and disproportionate.<sup>15</sup>

In September 2022, the European Commission presented two proposals on adapting EU liability rules to the digital age. These will complement the AIA.

First, a revision of the Product Liability Directive aims to modernise the rules on the strict liability of manufacturers for defective products.<sup>16</sup> This will ensure fair compensation when defective products, including digital and refurbished products, cause harm. Second, a proposal for a directive on adapting non-contractual civil liability rules to AI establishes a targeted framework for harmonising national rules. This will make it easier to seek and receive compensation for AI-related damage.<sup>17</sup>

CoE regulatory efforts have also stepped up. The CoE member States and other states commenced negotiations on an internationally binding convention on AI, human rights, democracy and the rule of law. The new CoE Committee on Artificial Intelligence (CAI) held its first plenary meeting in April 2022, launching the negotiation process. During the second plenary meeting in September, the committee discussed a zero draft of the convention for the first time.

The European Commission obtained a mandate to negotiate the instrument on behalf of the EU Member States, given the overlap with the proposed AIA, at the end of November. The negotiations will continue in 2023. An important focus will probably be the zero draft's compatibility with the proposed AIA.

The 19th European Conference of Electoral Management Bodies provided conclusions on the impact of AI on electoral processes in November 2022.<sup>18</sup>

At global level, in September, the United Nations (UN) endorsed principles for the ethical use of AI. These principles provide an ethical framework for UN organisations' use of AI to ensure that they use it for the greater interest of humanity and the planet. Principles include necessity and proportionality, fairness and non-discrimination, human autonomy and oversight, and transparency and explainability.

### **7.1.2. National AI initiatives: strategies and safeguards for uptake**

EU Member States continued to strengthen and adopt new AI-related initiatives in 2022. While the AIA negotiations are ongoing, specific legislative efforts to regulate AI were also introduced at national level (**Finland**,<sup>19</sup> **Greece**<sup>20</sup> and **Spain**<sup>21</sup>).

For example, **Greece** introduced a new law with provisions intended to guarantee the rights of natural and legal persons and enhance accountability and transparency when using AI.<sup>22</sup> It introduces a registry for AI systems, establishes monitoring mechanisms for the development of AI technology and establishes a complaint mechanism under the Greek National Transparency Authority. **Spain** also introduced a new law to regulate public bodies and companies' use of AI, specifically focusing on non-discrimination.<sup>23</sup>

At policy level, Member States took steps to introduce strategies and safeguards for AI. Many Member States, and candidate countries, developed or discussed developing AI or digital strategies with a focus on AI at both national and regional/local levels.<sup>24</sup> Most of these strategies do not pay explicit attention to fundamental rights in the context of AI's development and use.

**Estonia's** national AI strategy for 2022–2023 is a positive exception. It explicitly states that "promoting fundamental rights-compliant AI development and deployment is one of the key aims of the strategy".<sup>25</sup> One of its action points outlines a model for assessing a specific technology's impact on fundamental rights and mitigating the risks.

Beyond strategies, various Member States took practical steps to enhance safeguards for and oversight of use of AI. The **Netherlands**<sup>26</sup> and **Spain**<sup>27</sup> started to establish designated AI supervisors.

Spain started consultations on creating an agency for supervising AI. These consultations took place in the context of a pilot AI sandbox project, aiming to prepare the ground for implementation of the AIA.<sup>28</sup>

The Netherlands announced the creation of an AI supervisor in 2022. The supervisor started work in January 2023, analysing cross-sectoral risks and stimulating harmonised interpretation of norms for overseeing AI.

Furthermore, several Member States, such as the **Netherlands**<sup>29</sup> and **Portugal**,<sup>30</sup> developed impact or risk assessment tools for AI. These may serve as examples or set precedents for future risk assessments based on the AIA. See the promising practice box for more examples and information.

## PROMISING PRACTICE

### Initiatives to promote the assessment of AI in France, Germany, the Netherlands and Portugal

#### 'Self-assessment guide for artificial intelligence (AI) systems'

On 21 September 2022, the French National Commission for Computing and Liberties (*Commission Nationale Informatique et Libertés (CNIL)*) published a self-assessment guide for organisations to use for AI systems. The CNIL guide provides organisations using or planning to use AI with an analysis grid to assess their AI systems' maturity in relation to the GDPR. It also describes best practices to follow. The guide includes information on various aspects such as "developing and training an algorithm" and "ensuring individuals can fully exercise their rights".

For further information, see the CNIL web page '**Self-assessment guide for artificial intelligence (AI) systems**'.

#### AutoCheck: mapping risks of discrimination in automated decision-making systems

In June 2022, the CSO AlgorithmWatch published a guide about automated decision-making systems and discrimination, for employees at anti-discrimination offices in Germany. It includes instructions, tools and training courses. These resources primarily aim to improve the ability to understand and deal with the risks of algorithmic bias.



The work was based on case study research and interviews with anti-discrimination experts. It answers questions such as the following: What are automated decision-making systems? How does discrimination occur? How can one recognise this form of discrimination and what can be done about it?

For further information, see the AlgorithmWatch guidebook '[AutoCheck-Guidebook\\_Automated Decision Making and Discrimination](#)'.

#### **Fundamental Rights and Algorithm Impact Assessment (FRAIA) tool**

The Dutch Ministry of the Interior and Kingdom Relations published an English version of its Fundamental Rights and Algorithm Impact Assessment (FRAIA) tool in March 2022. FRAIA enables both public and private organisations to facilitate an interdisciplinary dialogue among those responsible for the development and/or use of algorithmic systems. It helps organisations to identify risks to human rights in using algorithms, and to take measures to address these. Thus, it can prevent organisations from using algorithms that could have unclear or detrimental consequences for fundamental rights.

For further information, see the FRAIA tool [\*\*Impact assessment: Fundamental rights and algorithms\*\*](#).

#### **Risk assessment tool for application in all AI projects in public administration**

In 2022, the Portuguese Administrative Modernisation Agency developed guidelines and an online risk assessment tool for application in all public administration AI projects. The tool enables the analysis of AI systems in line with the guide's five dimensions underlying responsible AI (accountability, transparency, explainability, fairness and ethics). It then provides recommendations depending on the outcome. The tool explicitly mentions a series of fundamental rights.

For further information, see the [\*\*Guide to ethical, responsible and transparent artificial intelligence in public administration\*\*](#) (*Guia para uma inteligência artificial ética, transparente e responsável na administração pública*) and see the [Autenticação.gov](#) web page to access the [\*\*risk assessment tool\*\*](#).

Public and private bodies at national level continued to promote, test and take up AI applications in practice. These covered, for example, combating tax fraud (**Austria<sup>31</sup>**), detection of child sexual abuse material (**Denmark<sup>32</sup>**), virtual assistance for interacting with public institutions' web pages (**Estonia<sup>33</sup>**), health (**Latvia<sup>34</sup>**), anti-money laundering (**Slovenia<sup>35</sup>**) and gender equality (**Sweden<sup>36</sup>**).

One Danish initiative includes a pilot in which the police will use facial recognition to identify child victims of repeated sexual abuse. Slovenia has the Platform for Anti Money Laundering Supervision tool. It is an analytical tool enabling analysis of large volumes of data to identify risks of money laundering and terrorism financing.

Sweden's project tested AI solutions at the Swedish Tax Agency (*Skatteverket*) and the Swedish Social Insurance Agency (*Försäkringskassan*). It explored how introducing AI in public administration can contribute to meeting gender-equality policy goals. In **Malta**, organisations teamed up to run a project to develop and promote the use of AI in education.<sup>37</sup>

#### **7.1.3. Adoption of the Digital Services Act: a welcome first step**

A highly anticipated moment in 2022 was the adoption of the landmark DSA. One of the objectives of the DSA – summed up as “What is illegal offline should be illegal online”<sup>38</sup> – is to create a safer digital space in which all users’ fundamental rights are protected. To achieve this, its provisions include legally binding obligations in relation to the fundamental rights-compliant application and enforcement of terms and conditions (Article 14), transparency in reporting (Articles 15, 24 and 42), notice and action mechanisms for illegal content (Article 16), complaint handling (Articles 20 and 21), transparency of recommender systems (Article 27), protection of minors online (Article 28), and risk assessment and mitigation efforts for very large online platforms and search engines regarding fundamental rights (Articles 34 and 35).

Once implemented, the DSA should contribute to safeguarding the right to privacy (Article 7 of the Charter), data protection (Article 8), freedom of expression and information (Article 11) and other relevant fundamental rights online. It will limit illegal online content such as incitement to hatred or violence. To ensure effective implementation, companies will need guidance to interpret and implement the obligations in a fundamental rights-compliant manner.

However, several civil society organisations (CSOs) highlighted the shortcomings of the DSA in relation to fundamental rights. Notably, it missed the opportunity to phase out all invasive surveillance-based advertising practices, Amnesty International<sup>39</sup> and European Digital Rights<sup>40</sup> pointed out. Furthermore, “new due diligence obligations could incentivise platforms in certain situations to over-remove content to avoid being held liable for it”, according to the Electronic Frontier Foundation.<sup>41</sup> Finally, the room left to service providers to enable “far-reaching restrictions of freedom of expression and of the free access to and dissemination of information in the Union” is a concern, several CSOs noted in a letter on the last-minute changes to the act.<sup>42</sup>

Ahead of the DSA’s full entry into force, several Member States (including **Czechia**,<sup>43</sup> **France**,<sup>44</sup> **Germany**,<sup>45</sup> **Poland**<sup>46</sup> and **Sweden**<sup>47</sup>) have taken steps to introduce relevant requirements at national level. These include legislation to combat the dissemination of terrorist content online.

## **7.2. JUDICIAL AND LAW ENFORCEMENT AUTHORITIES’ ACCESS TO DATA: A CHALLENGE FOR DATA PROTECTION SAFEGUARDS**

Accessing, storing, processing and exchanging data are key for the work of security actors, such as law enforcement and judicial authorities. Yet accessing data for security purposes can raise serious fundamental rights concerns, as FRA highlights in previous thematic and fundamental rights reports.<sup>48</sup>

In 2022, law enforcement, and related justice sector services (at both national and international levels), sought to increase and support access to data to enable them to do their work. The net widening of the (un)targeted nature of some legal proposals strengthens the need to introduce and effectively implement appropriate data protection safeguards. The need to ensure secrecy for legitimate purposes reinforces this.

The Pegasus case concerned governments allegedly using spyware. It involved intrusive, and potentially illegal, use of surveillance measures. The European Parliament set up a committee in 2022 to investigate Member States’ alleged violations of fundamental rights through use of the spyware.

Against this background, the following section covers the situation in Europe regarding using technologies for surveillance purposes. Both the EU and Member States adopted and discussed several legal provisions in 2022.

### **7.2.1. Increased access to data to combat crime needs to be rights compliant**

International and European institutions stepped up efforts and increased means to fight cyber-enabled and cyber-dependent crimes in 2022. In March 2022, the United Nations Office on Drugs and Crimes (UNODC)

launched the preparatory work for a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes.<sup>49</sup> The proposed convention aims to facilitate and secure data exchanges between law enforcement authorities at global level.



The Second Additional Protocol to the Budapest Cybercrime Convention of the Council of Europe opened for signature in May 2022.<sup>50</sup> It provides for effective tools for enhanced cooperation and disclosure of e-evidence, with a strong system of rule of law and data protection safeguards. By the end of 2022, 11 EU Member States, North Macedonia and Serbia had signed the second additional protocol.<sup>51</sup>

EU institutions have also developed instruments aiming to facilitate access to data for authorities involved in the fight against cybercrime. The instruments compose the e-evidence package.<sup>52</sup> Divergences – notably regarding data protection rules – were solved, and the Council and the Parliament reached an agreement in November 2022.<sup>53</sup>

At EU level, the new Europol Regulation<sup>54</sup> entered into force in June 2022. It reinforces the capacity of the European Union Agency for Law Enforcement Cooperation (Europol) to access, collect and process data for law enforcement purposes. This includes the use of emerging technologies and direct cooperation with private parties.

In June, the Council also adopted its general approach to reinforcing police exchange of data. Notably, the approach includes the proposed regulation aiming to reform the current Prüm legal framework in Council Decisions 2008/615/JHA and 2008/616/JHA (Prüm II). This revision will provide for facilitated and automated exchange of new types of data between national law enforcement authorities. This includes data such as facial images of suspects and convicted criminals, and police records, in addition to the DNA, fingerprints and vehicle registration data covered in

the Prüm Regulation.<sup>55</sup> For further information on the information technology systems in the area of freedom, security and justice, see **Chapter 6** on asylum, borders, visas, migration and integration.

In November, the Council Presidency and the Parliament reached a provisional agreement on the proposal for a directive on information exchange between law enforcement authorities of Member States, known as 'Swedish II'. The proposed directive aims to improve the functioning of single points of contact for the exchange of information between national law enforcement authorities.

At the same time, the Council adopted a negotiating mandate on a proposal on digital information exchange in terrorism cases. The proposal aims to modernise and harmonise the information exchange between Eurojust and national judicial authorities in terrorism cases.<sup>56</sup>

Fighting crime that depends on or is enabled by digitalisation and the internet is a legitimate aim. This can help reinforce the protection of individuals' fundamental rights. Yet the means used need to be necessary and proportionate to that aim.

In this regard, the European Data Protection Supervisor (EDPS) provided opinions on the negotiations of the UNODC Convention against Cybercrime and on the Prüm II proposal in 2022. These recalled the importance of effectively protecting the data protection legal requirements of the GDPR and the Law Enforcement Directive (LED).<sup>57</sup>

With regard to the UNODC Convention, the EDPS stressed that "the EU should not seek to be party to such a Convention, should the level of data protection of natural persons guaranteed by EU law be undermined". The EDPS recalled that "the EU data protection law regime provides, in principle, that data transfers to a third country can take place without additional requirements only when that third country ensures an adequate level of protection".<sup>58</sup>

With regard to the proposed Prüm II Regulation, a number of data protection minimum requirements should be clarified, the EDPS specified. These requirements relate to the exact definitions of the types of data that may be exchanged, of the individuals (victims, witnesses or perpetrators) whose data may be processed, and of the types of crime that the proposed regulation will cover.<sup>59</sup> It is crucial to demonstrate that processing, and in particular the proposed automated searching and exchange of police records, is necessary and proportional, the EDPS insisted – echoing the EDPS and European Data Protection Board (EDPB) 2021 joint opinion on the AIA.<sup>60</sup>

Concerning Europol's exchange and processing of data, in January 2022, the EDPS notified the agency of an order to delete data concerning individuals without established links to criminal activity.<sup>61</sup> The EDPS asked the Court of Justice of the European Union (CJEU) to annul two provisions of the new Europol Regulation in September 2022. This followed the publication of the EDPS's concerns that the new regulation would weaken data protection supervision.<sup>62</sup> The EDPS argued that the provisions would "have the effect of legalising retroactively Europol's practice of processing large volumes of individuals' personal data with no established link to criminal activity" – the type of data processing the EDPS found to be in violation of EU data protection law.<sup>63</sup>

The first report on the LED's application and functioning also came out in 2022. The directive contributes to an effective EU security policy and

guarantees that law enforcement respects the fundamental right to protection of personal data.

The directive “has significantly contributed to a more harmonised and higher level of protection of individuals’ rights and a more coherent legal framework for competent authorities”, the report notes.<sup>64</sup> However, several shortcomings remain.<sup>65</sup> The report includes steps for Member States and the national DPAs to maximise the directive’s potential and address these shortcomings.

The Commission underlined the need to provide DPAs with the necessary and appropriate resources, and the need to issue further guidance by the EDPB on the interpretation of the directive. Although several GDPR-related guidelines are also relevant to the LED,<sup>66</sup> by the end of 2022 the EDPB had published two sets of guidelines specifically related to the LED.<sup>67</sup>

Guidelines are essential to support both DPAs and data controllers, as the Commission pointed out. The means of data collection and processing available to law enforcement and judicial authorities are constantly increasing. Therefore, detailed guidance is even more necessary to ensure that law enforcement activities effectively implement data protection.

#### **7.2.2. Member States seek to find a balance between more permissive data access laws and data protection legal requirements**

In 2022, several Member States reinforced the legal frameworks and measures facilitating the police and judicial authorities’ access to and processing of data in two areas: data retention and e-evidence. E-evidence is the use of electronic data for criminal investigations. This reinforcement was a concern for CSOs and public authorities, as FRA highlighted in its fundamental rights reports for 2019, 2020 and 2021.<sup>68</sup> In some cases, the reinforcement resulted in case law.



In 2022, both the European Court of Human Rights and the CJEU recalled the unlawfulness of general and indiscriminate data retention. They highlighted the importance that retention be proportional, and of appropriate and effective oversight safeguards.

In the case *Ekimdzhiev and Others v. Bulgaria*,<sup>69</sup> the European Court of Human Rights concluded that the **Bulgarian** legislation regulating data retention did not meet the ‘quality of law’ requirements in several respects. The legislation included an inappropriate authorisation procedure, no clear time limits for retention periods, lack of publicity about data retention conditions, an ineffective oversight system, overly strict notification conditions and no effective remedy.

In September 2022, the CJEU confirmed its previous case law concerning data retention. It found that **German** legislation violates EU law by providing for general and indiscriminate retention of telecommunication traffic and location data to prevent serious crime and threats to public security.<sup>70</sup> Negotiations for a reform of the law have been ongoing since 2019. However, by the end of 2022, no new law on data retention had been adopted.

In autumn 2022 the Federal Minister for Justice announced plans to refrain from general data retention and to follow instead a so-called quick-freeze approach. It related to orders issued to telecommunication service providers to ‘freeze’ IP addresses, location data and communication metadata for one month after serious crimes, and orders to release ‘frozen’ data related to specific suspects to law enforcement authorities.<sup>71</sup> Both would require judicial approval. The German Federal Data Protection Commissioner welcomed the ruling, stating that the ‘quick freeze’ could be a legitimate alternative to general data retention.<sup>72</sup>

Similarly to the German situation, several EU Member States have been discussing how to adapt data retention to the CJEU requirements. **Belgium**,<sup>73</sup> **Denmark**,<sup>74</sup> **Ireland**<sup>75</sup> and **Romania**<sup>76</sup> adopted revised legislation in 2022.

However, in **Denmark**, the Ministry of Justice declared in May 2022 that the newly passed act was not fully compliant with the CJEU decision.<sup>77</sup> A new amendment act will be proposed, according to the ministry.

**Ireland** adopted its act through a rushed parliament procedure in July 2022 as an emergency measure with only four days of debate. The act did not undergo public consultation, and it was not submitted to the Irish Data Protection Commission. CSOs criticised the law for non-compliance with the CJEU ruling. Notably, the act would provide for general and indiscriminate data retention, establishing neither sufficient safeguards nor effective remedies, they stated.<sup>78</sup>

**Romania** introduced data retention obligations by incorporating the European Electronic Communications Code.<sup>79</sup> A group of Members of Parliament challenged these new provisions before the Constitutional Court.<sup>80</sup> Separately, so did the People’s Advocate.<sup>81</sup> The Constitutional Court, referring to the CJEU decisions, ruled that the data retention articles were unconstitutional.<sup>82</sup> The articles were deleted and the law entered into force in July 2022.<sup>83</sup>

The current data retention legislation was the object of national rulings in **Cyprus**, **France**<sup>84</sup> and **Portugal**. In **Portugal**, the Constitutional Court ruled that the data retention-related articles of the law incorporating the annulled Data Retention Directive (Directive 2006/24/EC)<sup>85</sup> were unconstitutional.<sup>86</sup>

In **Cyprus**, following a similar Supreme Court decision in 2021, several court decisions were delivered in 2022. In **Latvia**<sup>87</sup> and the **Netherlands**,<sup>88</sup> debates on reforms of the data retention regimes continued in 2022, without reaching any agreement.

The conditions under which data retention may be permitted also raise several questions about how judicial authorities may access, and process, electronic evidence. Electronic evidence (e-evidence) is often crucial for criminal investigations, and public prosecutions increasingly rely on it. While EU institutions only reached an agreement on the e-evidence package at the end of 2022, some Member States were working on developing legal initiatives to facilitate access to data during criminal investigations.

In July 2022, the **Polish** Minister of Justice adopted a regulation establishing a special unit in the National Prosecutor's Office, the Department for Cybercrime and Information Technology.<sup>89</sup> The unit supervises and coordinates pre-trial proceedings in subordinated prosecutor offices in cases of serious crimes committed using the internet, advanced technologies and computer systems. It also collects and analyses materials related to cybercrimes.

Similarly, in **Sweden**, new regulations to facilitate access to, and broaden the scope of, electronic evidence entered into force in June 2022.<sup>90</sup> These acts introduced new means of accessing electronic documents in external servers or cloud services through 'remote scanning'. The new legislation abolished the ban on seizing messages between suspects and their relatives, introduced the possibility of delaying notification that a coercive measure has been used, and introduced an obligation for individuals to participate in biometric authentication, such as unlocking a mobile phone, in certain cases.

Yet, in some Member States (**Bulgaria**,<sup>91</sup> **Cyprus**,<sup>92</sup> **Finland**,<sup>93</sup> **Germany**,<sup>94</sup> the **Netherlands** and **Spain**<sup>95</sup>), the validity of e-evidence produced during court cases was challenged. In the **Netherlands**,<sup>96</sup> more than 100 criminal lawyers brought a complaint concerning public prosecution services' broad access (through seizing, tapping and hacking) to encrypted data. This data collection, conducted without any transparency, would put at stake both the right to a fair trial and the right to private life, the lawyers said.

## PROMISING PRACTICE

### **The Danish Independent Inspectorate of Evidence (*Det Uafhængige Tilsyn med Bevismidler*)**

On 1 January 2022, Denmark established an Independent Inspectorate of Evidence under the same leadership as the Independent Police Complaints Authority. The inspectorate aims to ensure that any technical evidence processing that the police and the prosecution perform undergoes appropriate prior assessment and oversight.

First, authorities must establish relevant and sufficient guidelines for the processing of technical evidence (including biometric data). Second, reservations and uncertainties linked to the technical evidence's nature must be sufficiently described and visible in cases. Third, the police and prosecution's detection of possible errors in the technical evidence, of a general or systematic nature and with significance for citizens' due process, must be sufficiently investigated and followed up.

For further information, see the website of Denmark's **Independent Inspectorate of Evidence**.

## FRA ACTIVITY

# FRA–CoE handbook on European law relating to cybercrime and fundamental rights

In 2022, FRA and the CoE Cybercrime Programme Office continued preparatory work on a handbook on European law relating to cybercrime and fundamental rights. The handbook will be part of their wider series of joint handbooks on European law and fundamental rights.

As with previous FRA–CoE handbooks, the handbook on cybercrime and fundamental rights will be a practical tool dedicated primarily to legal practitioners. It will highlight the key fundamental rights challenges of investigating cybercrime and securing electronic evidence following the standards provided by EU and CoE rules and case law. The handbook will map Member States' obligations to protect individuals against crime and safeguard cybercrime victims' fundamental rights. It will also identify promising practices of effective investigative techniques on cybercrime and electronic evidence in line with fundamental rights and rule of law requirements.

The handbook is expected to publish at the end of 2023.

*Further information can be found on FRA's [web page](#) for the project.*

### 7.2.3. Increased legitimisation of surveillance technologies for security purposes raises fundamental rights concerns

Law enforcement authorities increasingly rely on various technologies to conduct surveillance. These range from biometric data (notably DNA and facial recognition technologies) to software allowing the interception of communications. The complexity of these surveillance tools and the secrecy attached to them increase the risks to fundamental rights, as previous FRA reports highlight.<sup>97</sup>



In 2022, the Pegasus revelations highlighted the need to properly regulate and oversee surveillance activities. Spyware had allegedly been used on behalf of a dozen states around the world. The EU<sup>98</sup> and Member States set up committees of inquiry to conduct investigations and assess the scope of Pegasus spyware use. The Council of Europe published a report analysing the impact of such software on human rights and fundamental freedoms.<sup>99</sup>

In 2022, the use of spyware was publicly discussed in **Belgium**,<sup>100</sup> **Bulgaria**,<sup>101</sup> **Cyprus**,<sup>102</sup> **Finland**,<sup>103</sup> **Greece**,<sup>104</sup> **Hungary**,<sup>105</sup> **Poland**<sup>106</sup> and the **Netherlands**.<sup>107</sup> In April 2022, the European Commission announced that it would not investigate Member States that have used Pegasus, as this concerns national competence.<sup>108</sup> However, the European Parliament decided to investigate the use of Pegasus and equivalent surveillance spyware. In March 2022 it established a committee of inquiry, which is expected to publish a recommendation in 2023.

Security-oriented technologies, and notably technologies relying on biometric data, carry additional risks. **Bulgaria**,<sup>109</sup> **Denmark**,<sup>110</sup> **Finland**,<sup>111</sup> **Ireland**,<sup>112</sup> **Spain**<sup>113</sup> and **Sweden**<sup>114</sup> either legalised using biometric data for law enforcement purposes or presented legal initiatives aiming to regulate its use. In June, the **Swedish** Police Authority published an opinion on EDPB Guidelines 05/2022<sup>115</sup> on the use of facial recognition technology in law enforcement. It claimed that the guidelines are unbalanced, and seriously hamper development of effective and legally secure methods of law enforcement.<sup>116</sup>

CSOs, public authorities and courts highlighted the fundamental rights risks associated with the use of advanced surveillance technologies in **Bulgaria**,<sup>117</sup> **Finland**,<sup>118</sup> **Greece**, **Italy**,<sup>119</sup> **Malta**<sup>120</sup> and **Sweden**.<sup>121</sup>

In **Greece**, four CSOs (Homo Digitalis, the Hellenic League for Human Rights, HIAS Greece and Privacy International) and an academic researcher submitted a request to the DPA on 14 February. They asked the DPA to exercise its investigative powers regarding a call for tender that the Hellenic Coast Guard had published to acquire social media data collection software.<sup>122</sup>

In **Spain** and **Sweden**, national courts clarified the proportionality requirement in two cases related to video surveillance. In **Sweden**, the case concerned approval of a surveillance camera in a public facility (a swimming pool). The court clarified that “the interest in conducting camera surveillance – in the way that the company has requested – outweighs the individual’s interest in not being monitored”.<sup>123</sup>

In **Spain**, the case related to the admissibility of video surveillance images as evidence during a court case. There, the Supreme Court clarified that “the proof of reproduction of what was recorded by the video surveillance cameras was a justified, appropriate, necessary and proportionate measure to the aim pursued, and therefore satisfied the requirements of proportionality”.<sup>124</sup>

# FRA opinions



## FRA OPINION 7.1

The EU co-legislators should ensure appropriate reference to fundamental rights safeguards in the proposal for the AI Act. The generic definition of AI should avoid narrowing down its scope, as this may unduly narrow the Act's scope of protection. Existing laws, such as data protection and non-discrimination laws, should also be used to address fundamental rights challenges posed by the use of AI, as these laws apply both online and offline.

Negotiations on the Artificial Intelligence Act (AIA) progressed steadily in 2022. A high number of suggested amendments were tabled in the European Parliament, and the Council adopted its common approach in December. Both co-legislators have shown an inclination to introduce stronger fundamental rights safeguards in the proposed text. However, fundamental rights safeguards could still be strengthened further, for example in the conformity assessment procedure (proposed Article 43 and Annex VII).

Discussions on the definition of AI are ongoing, with some tendencies to substantially limit its scope. This would leave a number of AI applications and uses that may negatively affect fundamental rights outside the proposed law's framework.

In parallel to these legislative efforts at EU level, some Member States have taken specific steps in 2022 to ensure safe and fundamental rights-compliant use of AI at national level, such as introducing a dedicated AI supervisor or a fundamental rights impact assessment for AI.



## FRA OPINION 7.2

The European Commission should ensure in its implementing guidance that providers of online services interpret and implement the obligations laid down in the DSA in a fundamental rights-compliant manner, for example in relation to the risk of over-removal and the freedom of expression.

The landmark Digital Services Act (DSA) was adopted in 2022. This marked an important step towards a safer online environment in which users' fundamental rights are better protected. At the same time, some civil society organisations (CSOs) have expressed concerns about the room it leaves providers of online services to implement it in ways that may be detrimental to fundamental rights, mostly the freedom of expression, by erring on the side of caution and over-removing content to avoid negative sanctions.

The DSA includes several provisions that aim to increase the protection of fundamental rights. It requires that very large online platforms regularly assess fundamental rights risks and come up with mitigating measures. It also provides for better access to data that online platforms hold or generate. This will allow oversight bodies and independent, vetted researchers to assess risks to fundamental rights.

In 2022, national governments worked on legal initiatives aiming to reinforce law enforcement authorities' access to data for the detection and investigation of criminal activities. The Data Retention Directive was annulled in 2014, and the Court of Justice of the EU (CJEU) has since reaffirmed in several judgments the unlawfulness of general and indiscriminate data retention. Nonetheless, several EU Member States are still proposing reforms of their legislation to allow for data retention in compliance with the CJEU ruling. Provisions of draft or adopted laws that would not comply with the CJEU requirements led to complaints from some CSOs and public authorities in several Member States.



### FRA OPINION 7.3

EU Member States should align their legislation on data retention with the CJEU jurisprudence to avoid general and indiscriminate retention of data by telecommunication providers. Moreover, Member States should ensure that national law includes strict proportionality checks, as well as appropriate procedural safeguards to effectively guarantee the fundamental rights to privacy and the protection of personal data.

In 2022, governments and law enforcement authorities remained interested in using technologies for surveillance purposes and accessing data that can identify criminal activity and security threats. Although different in context and nature, such technologies could seriously affect individuals' fundamental rights.

On the one hand, the Pegasus revelations highlighted that some public authorities and governments may use untargeted, widely used spyware. On the other hand, the steady interest from governments and law enforcement authorities in broadening and legalising surveillance technologies that rely on widespread collection of sensitive personal data (such as facial recognition) is a concern for public bodies and CSOs with regard to the legality, necessity and proportionality of these technologies. In several Member States, CSOs, public authorities and courts drew attention to the fundamental rights risks associated with advanced surveillance technologies, and notably the use of surveillance cameras in public spaces.



### FRA OPINION 7.4

EU institutions and Member States should ensure that any new legal initiatives proposed to foster individuals' security through surveillance technologies respect fundamental rights. Notably, laws adopted to use biometric data or facial recognition technologies should ensure that appropriate safeguards are implemented to protect the rights to data protection and privacy.

These safeguarding measures should be prescribed by law, necessary and proportionate. Independent oversight mechanisms should ensure that the application of these measures is regularly scrutinised. Individuals should be able to complain about such measures when they are not compliant with fundamental rights, and they should have access to effective remedies.

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# RIGHTS OF THE CHILD

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23

February

Committee on the Rights of the Child (CRC Committee) issues findings stating that France violated Convention on the Rights of the Child (CRC) Articles 3 (best interests of the child), 6 (1) (right to life) and 37 (a) (prohibition of cruel, inhuman or degrading treatment) by failing to repatriate French children detained in Syria (Case Nos. 77/2019, 79/2019 and 109/2019).

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31

March

In two cases (Nos. 73/2019 and 55/2018), CRC Committee condemns Belgium's detention of migrant children from Armenia and Serbia. The committee says that this violated CRC Article 37 (b) (deprivation of liberty), alone or in conjunction with Article 3 (best interests of the child).

CRC Committee publishes its concluding observations on the combined fifth and sixth periodic reports of the Netherlands.

In *N.B. and Others v. France*, European Court of Human Rights (ECtHR) holds that the 14 days' administrative detention pending removal of an eight-year-old foreign national, accompanied by his parents, in an unsuitable centre, violated European Convention on Human Rights (ECHR) Articles 3 (prohibition of torture) and 34 (individual applications)

7

April

Council of Europe launches its new strategy on the rights of the child for 2022–2027. The strategy identifies six objectives, including social inclusion and child-friendly justice.

27

31

May

CRC Committee adopts views on Communication No. 96/2019, which is about the deportation of a girl at risk of being subjected to female genital mutilation. Denmark failed to consider CRC Article 3 (best interests of the child) when assessing the alleged risk of deportation, the Committee says.

Parliamentary Assembly of the Council of Europe adopts Resolution 2442 (Eradicating extreme child poverty in Europe: An international obligation and a moral duty). The assembly asks Member States to "adopt a holistic approach in defining and implementing public policies to combat extreme child poverty".

2

7

15

22–28

June

In *H.M. and Others v. Hungary* (No. 38967/17), ECtHR holds that the conditions the mother and children faced during their stay in the transit zone violated Article 3 (prohibition of torture) of the ECHR. In addition, the court held that there were violations of ECHR Article 5 (1) (right to liberty and security) and 5 (4) (the right to have the lawfulness of one's detention decided speedily by a court).

*I.G.D. v. Bulgaria* (No. 70139/14) concerns a child who was placed in specialised institutions for several years. ECtHR holds that Bulgaria violated ECHR Article 5 (4) (the right to have the lawfulness of one's detention decided speedily by a court) and Article 8 (right to respect for private and family life), taken alone and in conjunction with Article 13 (right to an effective remedy).

Council of Europe's Committee of Ministers takes note of the explanatory memorandum to Recommendation CM/Rec(2019)11 on effective guardianship for unaccompanied and separated children in the context of migration.

CRC Committee publishes concluding observations on the periodic reports of Croatia, Cyprus and Greece.

# UN & CoE

July

21

In *Darboe and Camara v. Italy* (No. 5797/17), the ECtHR holds that placing a child in an adult reception facility before performing an age assessment violated ECHR Article 13 (right to an effective remedy) in conjunction with Articles 3 (prohibition of torture) and 8 (right to respect for private and family life).

September

22

CRC Committee adopts four communications (114, 116, 117 and 118) on Spain, which relate to the right to education of Moroccan children born in Spain.

October

3

Lithuania ratifies Optional Protocol III to the CRC on a communications procedure, making this the 17th EU Member State that has ratified the protocol.

20

CRC Committee adopts views concerning Communication No. 100/2019, *S.N. et al. v. Finland*. It finds that Finland violated CRC Articles 6 (1) (right to life) and 37 (a) (prohibition of cruel, inhuman or degrading treatment) by failing to repatriate, from refugee camps in Syria, children whose parents were linked to terrorist activities.

28

CRC Committee adopts views on *S.K. v. Denmark* (No. 99/2019). It asserts that, in the assessment of S.K. and her mother's asylum request, Denmark violated CRC Articles 3 (best interests of the child), 6 (right to life), 22 (protection of refugee children) and 37 (a) (prohibition of cruel, inhuman or degrading treatment).

December

8

In *M.K. and Others v. France* (Nos. 34349/18, 34638/18 and 35047/18), ECtHR sanctions the French authorities for their failure to execute court decisions ordering the provision of emergency accommodation to families of asylum seekers who had several vulnerabilities and were homeless.

14

Council of Europe's Committee of Ministers adopts a recommendation (CM/Rec(2022)22) to the member States on human rights principles and guidelines on age assessment in the context of migration.

16

ECtHR grants interim measures in *Al Shujaa and Others v. Belgium* (No. 52208/22 and 142 others) regarding the lack of accommodation in Belgium, including for asylum-seeking unaccompanied children.

8

European Commission proposes a directive on combating violence against women and domestic violence.

31

March

European Commission launches the EU Network for Children's Rights. Its aims are to enhance the exchange of information and good practices and to improve mutual learning among EU Member States, the Commission and any stakeholders working on the rights of the child.

5

April

European Parliament adopts a resolution on the protection of the rights of the child in civil, administrative and family law proceedings. It calls for child-friendly justice, an EU framework for protecting the rights of the child in cross-border disputes and a new proposal for a cross-border mediation regulation.

11

May

European Commission proposes a regulation laying down rules to prevent and combat child sexual abuse.

9

Against the background of the war in Ukraine, European Council adopts conclusions on the rights of the child. They focus particularly on protecting children's rights in emergency situations.

16

June

EU employment and social affairs ministers present their national targets to deliver on the European Pillar of Social Rights action plan. The action plan states that the number of people at risk of poverty or social exclusion should be reduced by a minimum of 15 million by 2030, including at least 5 million children, in comparison with 2019.

27-29

September

Commission holds the 14th European Forum on the Rights of the Child. It also launches a consultation to prepare for an initiative for integrated child protection systems.

17

November

In Case C-230/21, Court of Justice of the European Union holds that Article 10 (3) (a) of Council Directive 2003/86/EC must be interpreted as meaning that an unaccompanied refugee child residing in a Member State does not have to be unmarried to acquire sponsor status for the purpose of reunification with their first-degree relatives in the direct ascending line.

December

7

European Commission adopts a proposal for a Council regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood. Its aim is to strengthen the protection of children's rights in cross-border situations.

19

Commission proposes new rules on preventing and combating trafficking in human beings and protecting its victims. This amends Directive 2011/36/EU.



The number of children at risk of poverty and social exclusion continued to increase in 2022. High energy costs and rising inflation placed additional burdens on the households in which families with children are struggling to cover basic needs. EU Member States are trying to address the needs of children and families who are struggling, including through the European Child Guarantee.

Alongside the arrival of children fleeing Ukraine, the arrival of other non-EU asylum-seeking children continued to increase. As a result, several Member States struggled to provide basic reception conditions, and some continued to detain children in the migration context. The European Commission issued several legislative proposals on victims' rights. Member States have thus taken numerous legislative steps in the protection of children involved in justice systems as victims, as witnesses or when in conflict with the law.

## 8.1. CHILD POVERTY: COVID-19-INDUCED INCREASE CONTINUES DESPITE ATTENTION IN EUROPEAN UNION POLICIES

Children living in poverty start their lives at a disadvantage. This can have serious long-term implications regarding their development, health and prospects. According to Article 3 of the Treaty on European Union, one of the objectives of the Union is combating social exclusion while promoting social justice and protecting the rights of the child.



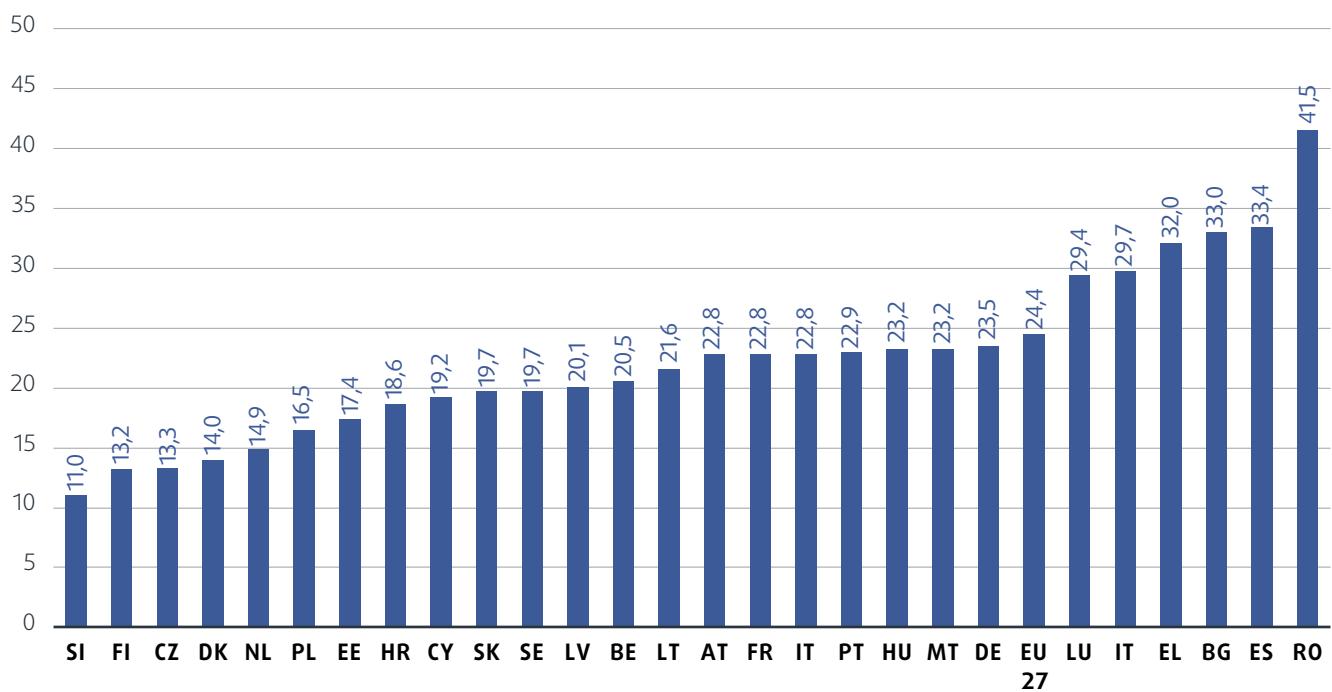
In recent years, the EU has taken several important steps to tackle child poverty, most notably through the European Child Guarantee.<sup>1</sup> The European Child Guarantee aims “to prevent and combat social exclusion by guaranteeing effective access of children in need to a set of key services”. These services include free early childhood education and care, free high-quality education, healthy nutrition, free healthcare and adequate housing.<sup>2</sup>

Although child poverty had been declining for several years prior to 2020, the coronavirus disease 2019 (COVID-19) pandemic disrupted this downward trend. In 2020, the proportion of children (persons under 18 years) at risk of poverty or social exclusion<sup>3</sup> rose from 22.8 % in 2019 to 24 %. By 2021, it had risen again to 24.4 %, a significantly higher proportion than that of adults at risk of poverty or social exclusion, which was 21.1 %.<sup>4</sup> Moreover, significant differences between Member States are visible, as Figure 8.1 shows: proportions ranged from 11.0 % in **Slovenia** to 41.5 % in **Romania**. After Romania, the Member States with the highest proportions of children at risk of poverty or social exclusion are **Spain** (33.4 %), **Bulgaria** (33.0 %) and **Greece** (32.0 %). On the other hand, after Slovenia, **Finland** (13.2 %), **Czechia** (13.3 %) and **Denmark** (14.0 %) have the lowest rates.<sup>5</sup>

**“The at-risk-of-poverty or social exclusion rate for children remains higher than the rate for the general population. This is a real challenge, as children growing up in poverty or social exclusion are less likely to do well in school, enjoy good health and realise their full potential later in life. This is something we just cannot accept.”**

Commissioner Schmit’s opening statement on the International Day for the Eradication of Poverty, 17 October 2022

**FIGURE 8.1: PERCENTAGE OF CHILDREN (PERSONS UNDER 18 YEARS) AT RISK OF POVERTY OR SOCIAL EXCLUSION, BY MEMBER STATE IN 2021**



Source: FRA (2023), based on Eurostat (2022), ‘Data browser – People at risk of poverty and social exclusion by age and sex’ (online data code: ILC\_PEPS01N), 21 December 2022

Although the at-risk-of-poverty or social exclusion rate has generally gone up in recent years, the proportion of children living in severe material and social deprivation<sup>6</sup> reduced from 8.3 % in 2020 to 7.5 % in 2021.<sup>7</sup> That is a significant improvement.

However, the proportions are different in certain vulnerable groups. FRA’s Roma Survey 2021 covered 10 Member States. It found that about 83 % of Roma children live in households at risk of poverty.<sup>8</sup>

Similarly, every second Roma child (54 %) lives in a household experiencing severe material deprivation. At the previous survey, in 2016, 66 % did.<sup>9</sup> While this proportion has gone down, it is still significantly higher than among the general population.

See [Chapter 5](#) for more information about Roma equality and inclusion.

### **8.1.1. Implementation of the European Child Guarantee**

Implementing the European Child Guarantee has made significant progress. The Council adopted the recommendation establishing it in June 2021.<sup>10</sup> The Council asked Member States to fulfil two main tasks in the subsequent nine months: to appoint a national coordinator and to submit a national action plan for the implementation of the European Child Guarantee.

By November 2022, all Member States had appointed national coordinators responsible for coordination and monitoring the national action plans. The Council recommendation<sup>11</sup> stated that the national coordinator should be “equipped with adequate resources and mandate enabling the effective coordination and monitoring of the implementation” of the recommendation. However, the backgrounds and levels of seniority of these coordinators differ immensely among Member States, and it is unclear whether they will have sufficient authority to fulfil their role effectively.<sup>12</sup>

The second task was submitting a national action plan. The Member States have not implemented that so well. The Commission had received only one completed national action plan and three drafts by the deadline of 15 March 2022.<sup>13</sup> By the end of 2022, 18 Member States had adopted national action plans.

The nine-month time frame was insufficient for many Member States. The response to the influx of refugees from Ukraine caused delays in some countries. So did national elections.<sup>14</sup>

Each Member State had to tailor the implementation of the European Child Guarantee to its own specific needs and circumstances.<sup>15</sup> The amount of detail in the plans differs vastly across countries, yet certain elements are present in all of them. Examples are measures relating to early childhood education and care.

Member States with a higher percentage of people at risk of poverty or social exclusion than the EU average (24.4 %)<sup>16</sup> are obliged to allocate at least 5 % of their European Social Fund Plus (ESF+) funding to issues related to the European Child Guarantee.<sup>17</sup> Some of the 18 countries that have submitted their action plans have reached the 5 % target, including some that did not have to. Several even exceeded the target. **Greece**<sup>18</sup> allocated 5 % and **Slovakia**<sup>19</sup> allocated 14 % of their ESF+ funding to actions under the European Child Guarantee.

Several downsides of the national action plans have been identified.

First, the short deadline made it difficult for Member States to organise stakeholder participation. Child participation is a vital element, but is missing in many countries.<sup>20</sup> Additionally, many of the policies included in the action plans already existed. This might mean that existing practices continue without policy improvements.<sup>21</sup>

The 2022 European Semester<sup>22</sup> exercise took the European Child Guarantee into account. In the spring package,<sup>23</sup> the Commission touched upon the importance of improving access to affordable, high-quality early childhood

education and care to increase women's participation in the labour market.<sup>24</sup> Eight country-specific recommendations (regarding **Austria, Germany, Hungary, Italy, Lithuania, Poland, Romania** and **Slovakia**) refer to children. Their focus is mainly on early childhood education and care.<sup>25</sup>

In September 2022, the European Commission adopted the European care strategy.<sup>26</sup> It sets out that, by 2030, childcare should be provided for 50 % of children below the age of 3 and for 96 % of children between the age of 3 and the starting age for compulsory primary education.<sup>27</sup>

The European Council agreed to a gradual increase in care for children below the age of 3, depending on Member States' current situations. The increase must be at least 90 % for Member States with participation rates lower than 20 %. It must be at least 45 %, or until a minimum participation rate of 45 %, for Member States with participation rates between 20 % and 33 %.<sup>28</sup>

### **8.1.2. Inflation and the energy crisis: a new risk factor for children at risk of poverty**

Internationally, energy prices have reached new highs as a result of Russia's war of aggression in Ukraine.<sup>29</sup> This especially affects households' spending on heating and transport. Families living in or at risk of poverty are particularly vulnerable to energy poverty. Energy poverty arises when energy costs make up a substantial portion of a consumer's income, or when someone is forced to cut back on energy use so much that it severely affects their health and well-being.

At the same time as the energy crisis, the eurozone has been struggling with high inflation (9.2 % annual inflation in December 2022).<sup>30</sup> Rising inflation affects vulnerable families and children the most. Millions of vulnerable children are at risk of sinking deeper into poverty, and additional groups of financially stable families are at risk of descending into poverty.<sup>31</sup>

To mitigate the negative impacts of inflation and the energy crisis, Member States have taken a variety of measures. They often target families with children. Some Member States have provided support universally. Others have based support on household income.

In **Austria**, the government provided an anti-inflation package with a focus on relief measures. This included a tax deduction and a one-off payment of € 500 per adult and € 250 per child. It was provided to all residents.<sup>32</sup>

Several Member States increased the child benefit amount or amended how heating benefits are allocated. In **Finland**,<sup>33</sup> the universal child benefit increased from € 70 to € 80.50, and the number of beneficiaries of heating subsidies increased by 45.7 %. In **Lithuania**,<sup>34</sup> the Ministry of Social Security and Labour took measures to amend how heating benefits are allocated. This was expected to expand the number of recipients of heating benefits by one fifth.<sup>35</sup>

**France** adopted a law that provided for a 4 % revaluation, with retroactive effect, for several allowances, including family allowance.<sup>36</sup>

Private households in **Germany** received a one-off down payment for gas and heating in December 2022.<sup>37</sup>

**Poland** has put several governmental support programmes in place. They include freezing national gas prices, introducing a one-off carbon allowance<sup>38</sup> and reducing taxes on electricity and food costs.<sup>39</sup>

## PROMISING PRACTICE

### **Local family coaches**

The Flemish Department of Welfare, Public Health and Family in **Belgium** is piloting a 'local family coaches' project. It targets the most vulnerable families living in poverty.

Usually, a family living in poverty can seek help from several different bodies (i.e. services are fragmented). Local family coaches will address this issue by providing tailored, intensive assistance and by bringing together all the support the family receives. Coaches cooperate with all relevant bodies, including youth assistance services, social housing, education and welfare support.

For more information, see the **projects web page** of the Flemish Department of Welfare, Public Health and Family.

## 8.2. PROTECTION OF MIGRANT AND ASYLUM-SEEKING CHILDREN: A PERSISTENT CHALLENGE

While the focus during 2022 was on families and children fleeing Ukraine, arrivals of children from other third countries continued to increase. Asylum-seeking and migrant children, regardless of nationality or legal status, are all entitled to protection under both EU law and the CRC.<sup>40</sup> See **Chapter 1** for more information on the protection of children fleeing Ukraine.



In total, 222,100 children applied for asylum in the EU<sup>27</sup> in 2022, whereas 167,495 applied in 2021. In 2022, the highest numbers of applications were submitted in Germany (81,210), France (34,070), Austria (22,190) and Spain (20,580).<sup>41</sup>

There was also a substantial increase in asylum requests from unaccompanied children with 39,520 applications in 2022. In 2021 there were 25,130 such applications. The Member States with the largest numbers of applications were Austria (13,275), Germany (7,275) and Netherlands (4,205).<sup>42</sup>

In **Austria**, the number of unaccompanied children applying for asylum was more than double the number in 2021 (5,605). It was also higher than the level in 2015, when there were 8,275 applications.<sup>43</sup>

The number of people, including children, making irregular external border crossings by sea and land continued to increase in 2022.<sup>44</sup> The situation at the borders often remained dangerous, with children continuing to face severe hardship, violence or even death when trying to reach Europe.<sup>45</sup> In 2022, the CRC Committee criticised the forced return ('pushbacks') of children in its concluding observations on **Croatia**,<sup>46</sup> **Cyprus**<sup>47</sup> and **Greece**.<sup>48</sup> It demanded an immediate end to such practices.



See [Chapter 6](#) for an overview of the situation at the borders.

#### **8.2.1. Reception capacities strained**

With the arrival of very large numbers of families and children fleeing the conflict in Ukraine, and the arrival of increased numbers of other child non-EU nationals, many Member States have struggled to comply with the reception conditions established in the Reception Conditions Directive.<sup>49</sup>

Difficulties were reported in the appointment of guardians, in ensuring access to education and in the provision of appropriate accommodation. More Member States requested the support of the European Union Agency for Asylum (EUAA) to provide basic reception conditions, including by providing containers. At the end of 2022, the EUAA had operational plans for 13 Member States.<sup>50</sup>

The increased number of asylum applications, particularly during the second half of 2022, put the reception capacities of several Member States under strain. **Austria** had a shortage of approximately 5,000 accommodation places. UNHCR criticised its use of tents to accommodate asylum seekers in very cold conditions.<sup>51</sup>

**Belgium** received requests for interim measures related to 832 applicants between September and December 2022. The ECtHR indicated several measures regarding the lack of accommodation, including for asylum-seeking unaccompanied children.<sup>52</sup>

In addition, the Commissioner for Human Rights of the Council of Europe raised concerns about the reception conditions and accommodation in **Belgium**<sup>53</sup> and the **Netherlands**.<sup>54</sup>

In **Cyprus**, the situation of unaccompanied children in the Pournara camp was heavily criticised by the Commissioner for Administration and the Protection of Human Rights (Ombudsman)<sup>55</sup> and the Commissioner for Children's Rights. Too little food and water was supplied; rooms were overcrowded and children were sharing beds or sleeping on the floor; there were two toilets and one shower for 300 children; and no activities or

education were provided.<sup>56</sup> The Cypriot authorities announced plans to transfer some children out of the centre.<sup>57</sup> Despite these efforts, the conditions in Pournara remained inadequate.<sup>58</sup>

In its observations on **France**, the Committee on the Elimination of Racial Discrimination stated that it was still concerned about the inadequacies of the reception system for asylum seekers, particularly regarding difficulties in accessing accommodation and poor conditions.<sup>59</sup>

Eighteen EU Member States and three Schengen area countries signed a voluntary solidarity declaration in June 2022.<sup>60</sup> The aim was to ease the migration pressure on some Member States. The signatory countries have committed to offering relocations and financial contributions to support the EU Member States most affected by migratory challenges in the Mediterranean and along the western Atlantic route. The declaration does not explicitly mention children, but refers to vulnerable people as a priority for relocations.

By December 2022, 5,040 people had been voluntarily relocated from **Greece**.<sup>61</sup> These voluntary relocations began in 2020, with a focus on unaccompanied children.<sup>62</sup> Among those relocated, 1,021 children with their families and 1,313 unaccompanied children have been welcomed by **Germany, France, Portugal, Italy, Finland, the Netherlands, Ireland, Belgium, Bulgaria, Luxembourg and Lithuania** (in order of highest to lowest number of children received), and by **Iceland, Norway and Switzerland**.

Guardianship is a key element of protecting unaccompanied children envisaged in the Reception Conditions Directive (Article 24) and the Asylum Procedures Directive (Article 25).<sup>63</sup>

In 2022, FRA published an update report on guardianship.<sup>64</sup> It examines legal and policy changes since the previous report in 2014.<sup>65</sup> The update shows that, although there have been legislative changes in many Member States, national guardianship systems continue to face challenges. The mandate of the guardian is often limited to legal representation; the appointment of a guardian can take more than a month; some guardians might be assigned a large number of children; and training for newly appointed guardians is insufficient.

International and European bodies continued to underline the importance of guardianship. The CRC Committee recommended appointing guardians or strengthening their role in its concluding observations for **Croatia**,<sup>66</sup> **Germany**<sup>67</sup> and the **Netherlands** (referring to its constituent countries).<sup>68</sup> The CRC Committee expressed serious concerns about the lack of legal representation in **Cyprus**.<sup>69</sup> It also expressed serious concerns about delays in the implementation of the new guardianship system in **Greece**.<sup>70</sup>

The Commissioner for Human Rights of the Council of Europe identified shortcomings in the system of guardianship for unaccompanied children following her visit to **Austria**.<sup>71</sup> According to her report, a legal representative is assigned to unaccompanied children as soon as they lodge their asylum application, but fully fledged guardians are appointed only once children aged 14–18 are admitted to the asylum procedure and placed in a provincial reception facility. This could take weeks or months where an age assessment is needed. A working group has been set up to prepare a proposal for legislative reform of the guardianship system according to Federal Ministry of Justice information.

## FRA ACTIVITY

### Guardianship systems for unaccompanied children in the EU

FRA's research assesses the challenges faced during a period of increased arrivals, the responses of Member States and promising practices. It provides an overview of legal and policy developments in relation to the organisation, employment, independence, accountability, tasks and skills of guardians. The research covers the EU27, North Macedonia and Serbia.

For more information, see FRA (2022), *Guardianship systems for unaccompanied children in the European Union: Developments since 2014*, Luxembourg, Publications Office of the European Union.

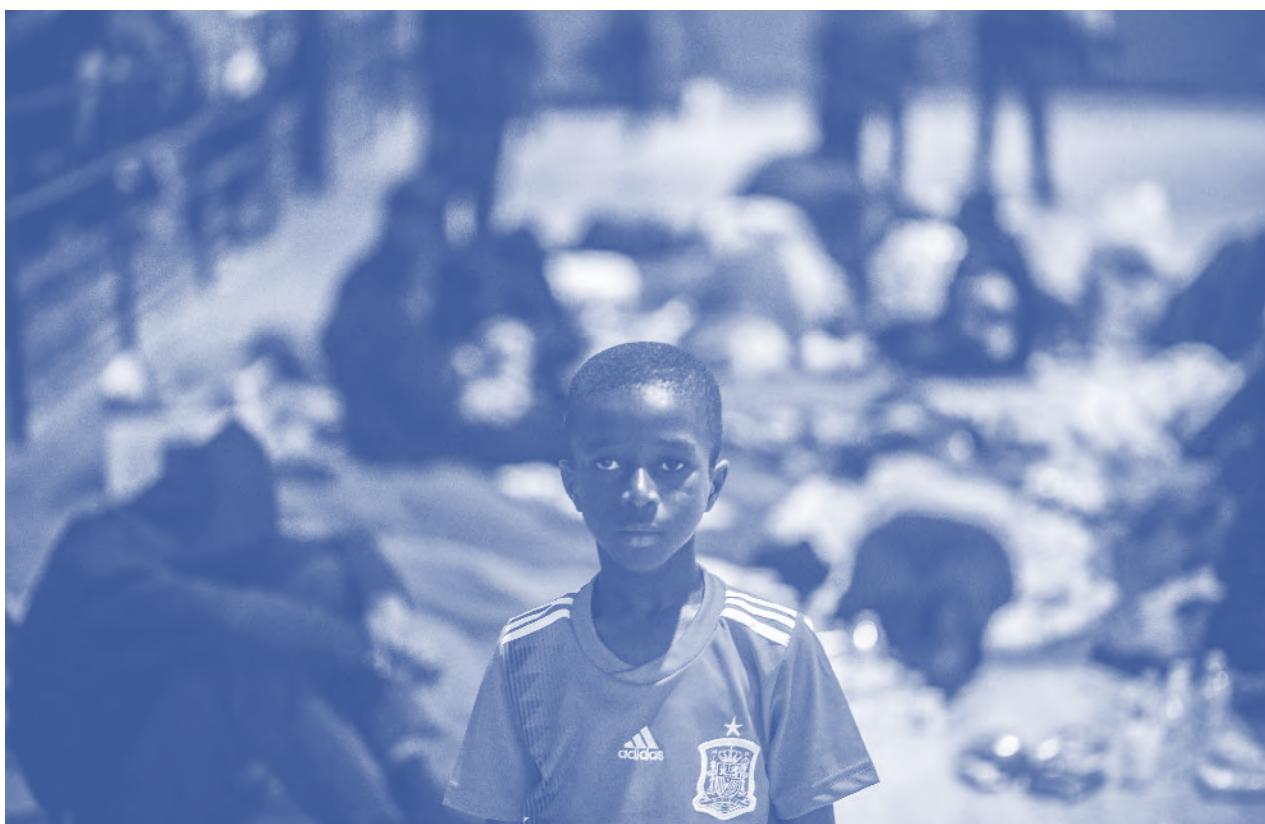
When no birth certificate or equivalent document is available, determining that an applicant is a child is important to trigger the child-specific safeguards provided by EU law. Article 25 of the Asylum Procedures Directive allows for the use of a medical examination when there is doubt about an applicant's age, provided it is the least invasive examination, is carried out by qualified medical professionals, the child is adequately informed and the child and/or their guardian consent to it.

If the applicant's age is still in doubt after age assessment, the authorities must assume that the applicant is a child. In 2022, Member States continued to experience challenges in this area. These particularly concerned the use of unreliable and intrusive methods of examination,<sup>72</sup> or long procedures sometimes carried out while in detention.<sup>73</sup>

In December 2022, the Committee of Ministers of the Council of Europe adopted a new recommendation on age assessment.<sup>74</sup> It includes, among a set of nine principles, the principle of presumption of minority for people undergoing age assessment. It requires states to implement multidisciplinary and evidence-based age assessment procedures.

In 2022 the ECtHR ruled on age assessment for the first time, in *Darboe and Camara v. Italy*.<sup>75</sup> The case related to a Gambian national and a Guinean national who were placed in an adult migrant centre and underwent age assessment. They had arrived in Italy on makeshift vessels, and claimed asylum as unaccompanied children.

The court, referring to EU directives, recognised the primary importance of the best interests of the child and of the principle of presumption of minority in respect of unaccompanied migrant children. Such children require special protection and should be assigned a guardian and be assisted during asylum proceedings. The court found a violation of Articles 3 (prohibition of torture), 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the European Convention on Human Rights (ECHR).



### 8.2.2. Use of migrant detention: a continuous concern

Immigration detention of children remained a fundamental rights challenge in the EU in 2022. A person's right to liberty and security is a fundamental right enshrined in Article 6 of the Charter of Fundamental Rights of the European Union,<sup>76</sup> in Article 5 of the ECHR<sup>77</sup> and in several UN treaty instruments. Any restriction of this right must respect the requirements established by international, European and domestic law. They are particularly strict for children.

EU law does not per se prohibit the immigration detention of children, but the strict requirements flowing from the Charter of Fundamental Rights of the European Union and the ECHR mean that any deprivation of liberty must be in line with EU law.<sup>78</sup>

The CRC Committee raised concerns about the detention of children in several of its concluding observations in 2022, as Table 8.1 shows.

**TABLE 8.1: CRC COMMITTEE'S 2022 CONCLUDING OBSERVATIONS IN RELATION TO THE DETENTION OF CHILDREN IN SITUATIONS OF MIGRATION IN CROATIA, GERMANY, GREECE AND THE NETHERLANDS**

Member State	Committee recommendations
Croatia	<i>Ensure that asylum-seeking children, refugee and migrant children and families with children are not placed in guarded detention centres, such as residential institutions for children labelled as having behavioural problems</i>
Germany	<i>Prohibit the arrest and detention of asylum-seeking and migrant children on the basis of their or parents' migration status</i>  <i>Completely ban the placing of children in immigration detention, ensure that protective custody is no longer applied and prioritise the immediate transfer of asylum-seeking children and their families out of detention centres, while ensuring timely identification procedures</i>
Greece	<i>Provide all refugee, asylum-seeking and unaccompanied children with sustainable, open and quality accommodation and shelter outside detention, including by increasing reception capacity and quality, implementing the EU relocation initiative, promptly closing 'safe zones' and developing a protection database</i>
Netherlands	<i>Prohibit and prevent the separation of asylum-seeking and migrant children from their parents and the detention and/or deportation of children across all constituent countries, including Aruba and Curaçao, on the basis of their or their parents' migration status</i>

Source: FRA (2022), based on [CRC Committee concluding observations](#)

The CRC Committee found that **Belgium** had violated the CRC through the pre-removal detention of migrant children, in two individual complaints examined in 2022. The cases related to Belgian-born children who were detained with their families for four weeks prior to their return to Armenia<sup>79</sup> and Serbia.<sup>80</sup> In both cases, the committee considered that the deprivation of liberty of children for reasons related to their migratory status – or that of their parents – is generally disproportionate and therefore arbitrary within the meaning of Article 37 (b) of the CRC.

*N.B. and Others v. France* concerned an eight-year-old, accompanied by his parents, held in an unsuitable centre for 14 days' administrative detention pending removal to Georgia. The ECtHR held that it violated Articles 3 (prohibition of torture) and 34 (individual applications) of the ECHR.<sup>81</sup> According to Unicef, more than 33,000 children were placed in detention in France between 2012 and 2022. The vast majority of such detentions were in Mayotte.<sup>82</sup>

Following a visit to **Bulgaria**, the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment criticised the detention of migrants, including children with their families, for identification or deportation purposes, including in poor conditions. The subcommittee also referred to the practice of ‘attaching’ unaccompanied migrant children to unrelated adults in order to facilitate detention. It reminded the state party that the detention of migrant children is prohibited under any circumstances.<sup>83</sup>

The Commissioner for Human Rights of the Council of Europe reported on the detention of children awaiting age assessment in **Malta**. She asked authorities to take measures with immediate effect to avoid arbitrary detention of asylum seekers and migrants, invest in alternatives to immigration detention, improve safeguards against the detention of vulnerable people and ensure that any detention of children is immediately ended.<sup>84</sup>

The Office of the Commissioner for Human Rights in **Poland** highlighted that children with their families were being detained for more than four months.<sup>85</sup>

### 8.3. NEW LEGISLATIVE INITIATIVES TO ENSURE THE PROTECTION OF CHILDREN DURING JUDICIAL PROCEEDINGS

In 2022, the European Commission initiated several new legislative proposals that could have a direct impact on children involved in judicial proceedings. It also proposed a new directive to combat violence against women and domestic violence. The directive also covers girls who are victims of gender-based violence, and boys and girls who are victims of domestic violence or witnesses of acts of violence covered under the directive (Article 4).<sup>86</sup>

In December 2022, the Commission proposed a revision of the Human Trafficking Directive.<sup>87</sup> The proposal aims to reduce the number of trafficking offences committed or facilitated through information and communication technologies. It also aims to expand the non-exhaustive list of forms of exploitation explicitly mentioned in the directive, with the addition of forced marriage and illegal adoption, among others.<sup>88</sup> The Commission is also planning to recast the Victims’ Rights Directive.<sup>89</sup>

As part of the implementation of the EU strategy for a more effective fight against child sexual abuse,<sup>90</sup> the Commission proposed new rules to prevent and combat child sexual abuse online in May 2022.<sup>91</sup> The proposal seeks to provide legal certainty to providers of web hosting or interpersonal communication services as to their responsibilities for assessing and mitigating risks and, where necessary, detecting, reporting and removing such abuse. The European Data Protection Supervisor and the European Data Protection Board have noted a number of concerns in relation to the impact of this proposal on individuals’ privacy and personal data. They have suggested further clarification and increased precision of the proposed measures.<sup>92</sup>

A monitoring report of the Council of Europe’s Committee of the Parties to the Convention on the protection of children against sexual exploitation and sexual abuse (the Lanzarote Committee) focused on sexual exploitation and sexual abuse that use sexual images and/or videos that children generate of themselves.<sup>93</sup>

### PROMISING PRACTICE **Child-friendly Justice European Network**

A group of civil society organisations, supported by funding from the European Commission, have created the Child-friendly Justice European Network. The network’s 2023–2025 strategy has four strategic priorities: strengthening children’s agency, promoting quality of practice, ensuring accountability and network strengthening.

For more information, see the **Child-friendly Justice European Network website**.

## FRA ACTIVITY

In 2022, the Council of Europe and FRA published a new edition of the *Handbook on European law relating to the rights of the child*. The handbook was first published in 2015. The handbook, which targets legal professionals, provides an overview of children's rights under both EU and Council of Europe law and case law of the Court of Justice of the European Union and the ECtHR.

See *FRA and Council of Europe (2022), Handbook on European law relating to the rights of the child, 2022 edition, Luxembourg, Publications Office of the European Union*.

### 8.3.1. Children as victims or witnesses of crimes

Several EU directives, primarily the Child Sexual Abuse Directive<sup>94</sup> and the Victims' Rights Directive, establish particular child protection guarantees to ensure that child victims of crime are supported and procedures are adapted to the needs, circumstances and age of the child. See **Chapter 9** for more information on victims' rights.

National legislative developments in 2022 also focused on protecting children from sexual crimes. In **Belgium**, amendments to the penal code redefined a number of sexual acts involving children.<sup>95</sup>

A law on sexual freedom that **Spain** adopted in September 2022 has substantially changed the focus of sexual crimes. Victims are no longer required to prove that violence or intimidation took place in a sexual assault. The focus is instead on the actual existence or absence of consent.<sup>96</sup>

This law has also further defined the grooming of a child through any technology, the sharing of videos or photos in social networks, and what advertisements for pornography are prohibited. The law requires that only specialised police officers and forensic doctors deal with child victims of sexual offences.

**Sweden** amended the law to strengthen protection against serious sexual violations committed from a distance, for example over the internet. The provisions on rape and on rape of a child were also amended in order to be more neutral as regards gender and sexual orientation. Several penalties were increased. For example, the minimum sentence for the rape of a child was increased from two to three years' imprisonment.<sup>97</sup>

Likewise, penalties for online sexual crimes against children up to the age of 14 years were increased through amendments to the criminal code in **Bulgaria**.<sup>98</sup>

In **Denmark**, a new act amended the criminal provision on rape so that any sexual intercourse between a child under the age of 15 years and a perpetrator of at least 22 years of age is by definition considered rape. The act also increases the penalty for child sexual abuse by 50 % and introduces a ban on sex dolls.<sup>99</sup>

Member States have also made legal amendments aiming to improve procedural safeguards for children. The Victims' Rights Directive and the



Child Sexual Abuse Directive establish specific safeguards for children. These include the possibility of audiovisual recording of interviews and the appointment of a special representative for child victims if there is a conflict of interest with their parents (both Article 24 of the Victims' Rights Directive).

In July 2022, the **Croatian** Parliament adopted amendments to improve procedural rights, guaranteeing victims the right to easy, confidential and free access to support services and the right to request to be questioned using an audiovisual device.<sup>100</sup> A revised ordinance ensures proper calculation of the fees of attorneys providing defence *ex officio* to children as victims of crime.<sup>101</sup>

Amendments to the criminal code in **Denmark**, in force since January 2022, allow for interviews of child victims under the age of 15 or more to be videotaped in specific circumstances.<sup>102</sup> New legislation allows for victims of sexual assault to receive free legal guidance from a lawyer before they potentially file a police report, and following a possible sentence.<sup>103</sup>

### 8.3.2. Children in conflict with the law

The Procedural Safeguards Directive<sup>104</sup> was adopted in 2016, with a transposition date of June 2019. It provides procedural safeguards for children who are suspects or accused people in criminal proceedings. FRA research published in 2022<sup>105</sup> points to a number of challenges in the implementation of the directive:

- there is a lack of child-appropriate information on procedural rights and steps;
- there is a lack of systematic, timely individual assessments and support appropriate to children's needs (e.g. interpretation services);
- hearings are not necessarily held in private, and sometimes details of proceedings appear in the media;
- the involvement of parents seems insufficient;
- the police frequently question children without a lawyer being present;
- there have been reports of mistreatment or violent behaviour by the police;
- although training on criminal cases involving children is available, it is voluntary.

FRA's research showed that deprivation of liberty seems to be applied only for more serious crimes and after careful consideration of alternative measures. However, not all Member States ensure the separation of children from adults in police custody and pre-trial detention. Interviewed children who had been deprived of their liberty experienced serious stress when placed in police custody and detention.

In 2022, several Member States adopted amendments to their criminal legislation related to children in conflict with the law.

## FRA ACTIVITY

FRA carried out desk research and over 220 interviews with professionals and children on the practical implementation of the Procedural Safeguards Directive. The research covers nine Member States. It concerns some of the rights and safeguards included in the directive, such as the right to information, the right to access to a lawyer, participatory procedural rights, the right to individual assessment and the right to limitation of deprivation of liberty.

See FRA (2022), *Children as suspects or accused persons in criminal proceedings – Procedural safeguards*, Luxembourg, Publications Office of the European Union.

In **Bulgaria**, draft amendments to the criminal procedure code,<sup>106</sup> aiming to implement the Procedural Safeguards Directive, were still under discussion at the end of 2022. The UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, following a visit to Bulgaria, stated that legal frameworks for detained children in conflict with the law are not focused on providing alternatives to deprivation of liberty and on the effective reintegration of children.<sup>107</sup> It recommended that authorities reform their juvenile justice systems in accordance with applicable international standards. It also recommended replacing the Juvenile Delinquency Act, which dates back to 1958.

The ECtHR found that authorities were in violation of the ECHR in *I.G.D. v. Bulgaria*.<sup>108</sup> The case concerned a child deprived of liberty for having committed offences. The court pointed out that the placement of children must be reviewed periodically by a court, taking into account the best interests of the child.

In **Czechia**, a new act extended the remit of the Probation and Mediation Service to include proceedings in cases involving children under 15 years of age who have committed an "otherwise criminal offence" (an unlawful act committed by a child under the age of criminal responsibility). It also introduced an obligation for the court to hear such children if they want to be heard.<sup>109</sup>

The parliament in **Latvia** amended legislation<sup>110</sup> to temporarily suspend custodial measures, in order to reform the only existing institution, after the children's rights inspectorate identified human rights violations in 2021. In addition, probation monitoring has been added as an additional correctional measure that can be imposed for one to three years.

In the **Netherlands**, a regulation on free legal aid stipulates that a child summoned, but not arrested, by the police is entitled to free legal aid<sup>111</sup> after an Amsterdam District Court ruling in November 2021.<sup>112</sup> The regulation is temporary because the government has lodged an appeal against the ruling.

The Act on the support and resocialisation of juveniles entered into force in **Poland** in September 2022, despite heavy criticism.<sup>113</sup> The act defines the age of criminal responsibility as 10 years. CRC Committee recommendations suggest that the age of criminal responsibility should be at least 14 years.<sup>114</sup> The act also introduces new powers for school principals to deal with minor offences committed by pupils. The authorities did not consider the ombudsman's opinion on the draft legislation or concerns from international human rights bodies that considered the act inconsistent with constitutional and international standards for the protection of the rights and freedoms of juveniles.<sup>115</sup>

## FRA opinions

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### FRA OPINION 8.1

The European Commission should guide and support EU Member States in implementing their national plans for the European Child Guarantee. This should include EU funding, such as the ESF+, technical assistance and sharing of good practice. The implementation of the national plans should be scrutinised through the European Semester and relevant monitoring outcomes should be included in country-specific recommendations.

EU Member States should continue and scale up, whenever necessary, the ongoing initiatives to address the impact of the energy crisis and high inflation on poor households, with a particular focus on more vulnerable people, such as those in single-parent, Roma and migrant families. Temporary measures, if successful, could be mainstreamed into social policies, including when implementing the European Child Guarantee national plans.

Almost one in four children live at risk of poverty or social exclusion in the EU (24.4%). There had previously been a downward trend, with 22.2 % of children at risk of poverty or social exclusion in 2019, but the COVID-19 pandemic disrupted this. The persistently high rates of child poverty are relevant to the obligations of EU Member States to ensure the rights and well-being of children (Article 24 of the Charter of Fundamental Rights of the European Union and Article 3 of the Treaty on European Union) and the social policy objectives of the EU (Article 151 of the Treaty on the Functioning of the European Union).

The implementation of the European Child Guarantee started in 2022. All Member States appointed national coordinators, and 18 Member States developed national action plans. The national coordinators have various levels of authority within national administrations. In addition, the action plans differ in nature and content, but many Member States have allocated at least 5 % of their European Social Fund Plus (ESF+) funding to implement actions under the European Child Guarantee.

Under the 2022 European Semester, eight Member States received country-specific recommendations related to early childhood education and care.

The energy crisis and the high inflation rates in 2022 increased the number of children living in poor households. Several Member States have taken social policy measures to address the situation, such as increasing child benefits, providing one-off payments or helping with heating bills.

Migrant and asylum-seeking children continued to arrive in Europe, often in dangerous circumstances. The number of children who applied for asylum increased substantially in 2022, with a total of 222,100, of whom 39,520 arrived unaccompanied. Migrant children are entitled to protection under the UN Convention on the Rights of the Child, the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union and other EU legislation, such as the Reception Conditions Directive.

Several EU Member States have had difficulties in providing adequate reception conditions, including accommodation, as required by the Reception Conditions Directive. Some countries detained children with their families or unaccompanied children, mainly in the context of return or for identification and age assessment purposes. European and international bodies raised serious concerns about the poor reception conditions in the EU. The European Union Agency for Asylum increased its operational support for Member States.

In 2022, 18 Member States agreed on a voluntary solidarity mechanism to support the relocation of asylum seekers in the Mediterranean and along the western Atlantic route. Between the start of the relocations in 2020 and December 2022, some 5,040 people, including 1,021 children with their families and 1,313 unaccompanied children, were relocated from Greece.

Guardianship of unaccompanied children, a key safeguard in the Reception Conditions Directive (Article 24) and the Asylum Procedures Directive (Article 25), has evolved in recent years through national legislative developments, according to FRA research. However, some challenges remain: the mandate of the guardian is often limited to legal representation, the appointment of a guardian can take more than a month, guardians might be assigned a large number of children and there is insufficient training for newly appointed guardians.



## FRA OPINION 8.2

EU Member States should dedicate sufficient EU and national resources to ensure the protection of asylum-seeking and migrant children, whether with their families or unaccompanied. Allocating sufficient resources should ensure that the reception conditions respect the minimum standards set out in the Reception Conditions Directive, especially for providing adequate accommodation, and avoiding detention through the implementation of alternatives to detention. In particular, Member States should strengthen their efforts to swiftly appoint trained and resourced guardians for every child who arrives unaccompanied in the EU and ensure that they attend school.



## FRA OPINION 8.3

EU co-legislators should ensure that existing rights and procedural guarantees for children who are victims of crime already covered by the Victims' Rights Directive, the Human Trafficking Directive and the Child Sexual Abuse Directive are strengthened through the European Commission's proposals and beyond.

EU Member States should strengthen their efforts to ensure that children in conflict with the law have access to a fair trial with all the guarantees provided for in the Procedural Safeguards Directive. This includes providing mandatory multidisciplinary training to all involved legal and social professionals.

The European Commission has introduced several legislative initiatives that will have a great impact on the rights of children involved in justice systems as victims or witnesses of crime: new rules to prevent and combat child sexual abuse online, a new directive on domestic violence and a revised Human Trafficking Directive. Several EU Member States adopted new legislation in the area of child victims, focusing on responding to sexual offences, including online; improving procedural safeguards; and removing limitation dates.

Article 48 of the Charter of Fundamental Rights of the European Union provides important safeguards for the presumption of innocence and the right of defence. Article 24 requires that primary consideration be given to the best interests of the child.

The Procedural Safeguards Directive establishes a number of safeguards for children in conflict with the law. FRA research into its practical implementation points out a number of challenges, such as lack of child-appropriate information, weaknesses in the implementation of individual assessments, leaks to the media of private information, and reports of police mistreatment or violent behaviour. The research also shows that training is available to a certain extent, but only on a voluntary basis.

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# ACCESS TO JUSTICE – VICTIMS’ RIGHTS AND JUDICIAL INDEPENDENCE

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# UN & CoE

3

In *Advance Pharma sp. z o.o v. Poland* (No. 1469/20), European Court of Human Rights (ECtHR) concludes that the formation of the Civil Chamber of the Supreme Court, which examined the applicant company's case, is not an "independent and impartial tribunal established by law". The legislative and executive powers unduly influenced the procedure for appointing judges to this chamber. This therefore violates Article 6 (1) of the European Convention on Human Rights (ECHR).

18

Council of Europe (CoE) Group of Experts on Action against Trafficking in Human Beings (GRETA) publishes its third report on France. It focuses on human trafficking victims' access to justice and effective remedies.

21

February

GRETA publishes its third evaluation of Latvia. It focuses on human trafficking victims' access to justice and effective remedies.

15

In *Grzeda v. Poland* (No. 43572/18), Grand Chamber of the ECtHR finds that the lack of judicial review of the applicant's removal from the National Council of the Judiciary before his term had ended, as a result of judicial reform, impaired his right to access to a court. This violates Article 6 of the ECHR.

22

March

In *Y and Others v. Bulgaria* (No. 9077/19), ECtHR holds that authorities' failure to protect the life of a woman murdered by her husband, despite her reporting domestic violence several times over a 9-month period, violates Article 2 of the European Convention on Human Rights.

1

United Nations (UN) Human Rights Council adopts a resolution on the contribution of human rights defenders, including women's human rights defenders, in conflict and post-conflict situations to the enjoyment and realisation of human rights.

7

April

In *Landi v. Italy* (No. 10929/19), ECtHR holds that the failure to effectively investigate alleged death threats against a vulnerable rape victim made by her abuser and father, in breach of domestic law, violates Article 2 of the European Convention on Human Rights.

13

GRETA publishes its third evaluation report of Portugal. Its thematic focus is access to justice and effective remedies for victims of trafficking.

16

June

CoE Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) publishes its first (baseline) report on Romania.

30

August

In *C v. Romania* (No. 47358/20), ECtHR finds that significant flaws in the criminal investigation concerning alleged sexual harassment in the work place amount to a breach of the state's duty under Article 8 of the ECHR.

# UN & CoE

September

8

In *J.I. v. Croatia* (No. 35898/16), ECtHR holds that the lack of judicial review of the premature termination, as a result of legislative reform, of a serving judge's mandate as a member of the National Council of the Judiciary violates Article 6 of the ECHR.

28

GRETA publishes its third evaluation report on Ireland. Its thematic focus is access to justice and effective remedies for victims of trafficking.

30

38 Member States of the CoE adopt the Dublin Declaration on the Prevention of Domestic, Sexual and Gender-Based Violence, inspired by the Istanbul Convention. In doing so, they restate their commitment to promoting gender equality to prevent domestic, sexual and gender-based violence.

October

4

GRETA publishes its third evaluation report on Luxembourg. Its thematic focus is access to justice and effective remedies for victims of trafficking.

5

CoE's European Commission for the Efficiency of Justice publishes its evaluation report assessing the efficiency and quality of European justice systems.

7

— GREVIO publishes its first (baseline) report on Germany.  
— UN Human Rights Council appoints Professor Margaret Satterthwaite as the UN Special Rapporteur on the independence of judges and lawyers.

November

17

— GREVIO publishes its first (baseline) report on Estonia.  
— CoE launches the report *Impact of COVID-19 on women's access to justice*.

23

— GREVIO publishes its first (baseline) report on Cyprus.  
— CoE Committee of Ministers takes note of the European Committee on Legal Cooperation's report on the implementation of the CoE Plan of Action on Strengthening Judicial Independence and Impartiality.

30

38 CoE member States commit to the Dublin declaration on the prevention of domestic, sexual and gender-based violence. It outlines a series of steps to promote gender equality in order to help prevent domestic, sexual and gender-based violence. The declaration is inspired by the CoE's Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), and experts' findings on how countries have implemented the convention so far.

December

6

Committee of the Parties to the Istanbul Convention adopts key recommendations on implementing the treaty in nine States Parties, including the EU Member States Cyprus, Estonia, Germany and Romania.

15

CoE's Consultative Council of European Judges issues a new opinion including recommendations on judges' exercise of their right to freedom of expression inside and outside court.

16

February

Court of Justice of the European Union confirms the conformity of the Rule of Law Conditionality Regulation with the EU treaties in Cases C-156/21 and C-157/21.

8

March

European Commission adopts a proposal for a directive on combating violence against women and domestic violence.

27

April

European Commission adopts a package of measures to protect journalists and civil society organisations against abusive litigation (strategic lawsuits against public participation).

5

May

European Parliament adopts a resolution calling on the EU to protect women fleeing Ukraine from violence and trafficking, and to grant them access to essential health services. The resolution also strongly condemns the use of sexual and gender-based violence as a weapon of war.

28

June

European Commission publishes its evaluation of the Victims' Rights Directive, assessing to what extent it has achieved its objectives in terms of its implementation and practical application in EU Member States.

13

July

European Commission publishes the *2022 rule of law report*, which monitors significant developments relating to the rule of law in all Member States. For the first time, it includes recommendations for all Member States.

24

November

European Commission announces the EU-wide common number for helplines for victims of violence against women: 116 016.

15

December

Council of the European Union adopts measures against Hungary under the rule of law conditionality mechanism due to insufficient remedial action on rule of law having been taken in the country, suspending € 6.3 billion in budgetary commitments.



**In 2022, there was some improvement in the area of victims' rights, particularly concerning the protection of victims with specific needs. Significant legislative and policy developments took place in the area of women as victims of gender-based violence, at both EU and national levels in some EU Member States. This included the publication of an EU proposal for a new directive on combating violence against women and domestic violence.**

**Serious concerns remained as to the rule of law and the independence of the judiciary in certain EU Member States. The Court of Justice of the European Union delivered its first judgment concerning the general conditionality mechanism. This mechanism is a general regime of conditionality that protects the EU budget in the event of breaches, by Member States, of the rule of law principles relating to implementing the EU budget. The judgment confirmed the mechanism's conformity with primary EU law.**

## **9.1. PROGRESS IN THE AREA OF VICTIMS' RIGHTS**

### **9.1.1. Policy and legal developments at European Union level**

The European Commission continues to implement the EU Strategy on Victims' Rights (2020–2025).<sup>1</sup> The main objective of this strategy is to ensure that all victims of crime, within the EU, can fully rely on their rights. The strategy outlines actions that the European Commission, Member States and civil society must conduct, for example assessing the EU instruments concerning victims' rights and their possible shortcomings. To this end, the Commission evaluated the Victims' Rights Directive<sup>2</sup> with a view to revising it. The public consultation among stakeholders (Member States and other national authorities, non-governmental organisations, victims' associations, victim support organisations and academia) and individuals took place from 8 March to 31 May 2022.<sup>3</sup>

In June 2022, the European Commission published its evaluation of the Victims' Rights Directive.<sup>4</sup> The directive has had a generally positive impact on the enjoyment of the right to information, access to victim support services, access to justice, protection measures and the provision of professional training, the findings show. However, several shortcomings were also identified, particularly in relation to victims' access to information and the protection of victims' individual needs. The shortcomings concerning the individual assessment of specific victims' needs included a lack of specific guidelines for conducting assessments, lack of awareness or lack of training for practitioners. Some remaining problems were identified in relation to victim support services. These included, for example, the uneven distribution of information at national level and a lack of certain services.

Also in 2022, the Commission worked on revising the Anti-Trafficking Directive,<sup>5</sup> to strengthen victims' rights and investigation rules. The public consultation for amending the directive lasted until March 2022 and a proposal was adopted on 19 December 2022.<sup>6</sup>



### **9.1.2. Steps towards better protection of victims with specific needs**

In 2022, several Member States and candidate countries made progress in strengthening victims' rights enshrined in Articles 22, 23 and 24 of the Victims' Rights Directive, for example by improving the individual assessment of victims' needs (**Austria, Estonia, Finland and Serbia**), treatment for victims with specific protection needs (**Bulgaria, Czechia, Estonia and Spain**) and the protection of child victims during criminal proceedings (**Luxembourg, North Macedonia, Romania and Slovakia**).

Various measures should be taken for victims with specific protection needs, including child victims. They should be interviewed in premises adapted for that purpose by professionals trained for that purpose. In addition, the same people should conduct all the interviews. In this regard, **Czechia** adopted amendments<sup>7</sup> to the Act on Victims of Crime,<sup>8</sup> introducing special protection measures to prevent the secondary victimisation of victims of rape and victims of domestic violence. The newly accessible measures include conducting interviews in premises that trained specialists have designed for that purpose and the same person carrying out questioning if repeat questioning is necessary.

**Bulgaria** and **Estonia** adopted legislative changes to ensure better protection for victims of domestic and sexual violence. In **Bulgaria**, such victims can request that a person of the same sex conducts the questioning.<sup>9</sup> In **Estonia**, the new Victim Support Act,<sup>10</sup> which will enter into force on 1 April 2023, will strengthen the rights of victims of domestic and sexual violence by ensuring their access to mental healthcare to support their recovery.<sup>11</sup>

In addition, the **Spanish** Ministry of Equality adopted a new roadmap (*Plan Camino*) to provide economic, labour and social opportunities for victims of trafficking and sexual exploitation.<sup>12</sup> The plan seeks to consolidate comprehensive care measures for these victims through programmes promoting access to social and economic rights in areas such as housing, healthcare and employment.

**Austria** and **Estonia**, and the candidate state **Serbia**, adopted practical measures to facilitate the identification of victims with special needs. The **Estonian** Ministry

of Justice issued a booklet on the sensitive treatment of victims.<sup>13</sup> The booklet provides guidance on the needs and treatment of different groups of victims, such as traumatised victims, victims of domestic violence, victims of sexual violence and other victims with special needs. Similarly, the Ministry of Justice in **Serbia** developed guidance for the police on improving the rights and status of victims.<sup>14</sup> This guidance encompasses the obligation to advise victims of their rights and assess their vulnerability risks and needs for protection.

**Austria** launched an information campaign focusing on victims of different forms of violence (including sexual abuse, robbery and assaults) and victims of hatred online to raise their awareness of the possibility of accessing free psychosocial and legal support. The central elements of the campaign are a victim support hotline and a new informational website.<sup>15</sup>

In addition, in **Finland** the Supreme Court referred specifically to Article 22 of the Victims' Rights Directive in its decision<sup>16</sup> concerning the obligation to carry out an assessment of the specific protection needs of victims during court proceedings. The decision confirms that the national legislation should provide for an assessment of the specific protection needs of victims at all stages of criminal proceedings, including proceedings before courts.

When it comes to the rights of child victims in criminal proceedings, including their protection during hearings or the individual assessment of their specific needs, important progress has been made in **Luxembourg, North Macedonia** and **Romania**.

In **Luxembourg**, a new law focusing on child victims and child witnesses<sup>17</sup> includes the right of the child victim to be accompanied by their parents during hearings, the limitation of the number of hearings by the police and before the court, the requirement for separate waiting rooms for victims and perpetrators in courts and the mandatory individual assessment of protection needs.<sup>18</sup>

Similarly, the Draft Law on Justice for Children<sup>19</sup> in **North Macedonia** introduces the individual assessment of child victims and their rights to protection measures throughout criminal proceedings.

In addition, a draft law in **Romania** provides for the requirement to question child victims of sexual crimes in rooms specially adapted for children by specialists and for a psychologist to assist in the questioning. The court proceedings concerning sexual offences against children should be held without the presence of the public.<sup>20</sup>

To implement the legislative changes and effectively prevent the secondary victimisation of child victims and vulnerable people in practice, **Slovakia** created special rooms for questioning children and vulnerable victims in eight courts and developed a uniform methodology for judges for questioning these victims.<sup>21</sup> See **Chapter 8** for more information on the rights of the child.

### 9.1.3. Developments in victims' compensation

The Compensation Directive<sup>22</sup> and the Commission's EU Strategy on Victims' Rights (2020–2025)<sup>23</sup> require Member States to facilitate access to compensation for victims of intentional violent crimes. In 2022, several Member States (**Belgium, Lithuania, Poland, Romania** and **Sweden**) and **North Macedonia** took steps to improve victims' rights in relation to claiming compensation.

**Belgium** and **Lithuania** focused their legislative activities on the compensation of victims of specific types of crime. The **Belgian** Council of Ministers approved a law concerning compensation for victims of terrorism and insurance against

## PROMISING PRACTICE

### Silent emergency call

**Austria** introduced a facility for making silent emergency calls using the DEC112 app, supplementing the DEC112 emergency call facility. With this app, an emergency call to the police can be made silently. By pressing a button, the police are notified and police patrol officers are sent to the person making the call. The location of the person making the call is transmitted automatically. The app also has a chat function, enabling people to communicate with the control centre without being noticed. The silent emergency call facility is particularly useful in situations involving acute threats or violence.

Source: DEC112 (n.d.), '*Stiller Notruf in der DEC112 App*'

damage caused by terrorism.<sup>24</sup> The **Lithuanian** parliament adopted amendments to the Law on Compensation for Damage Inflicted by Violent Crimes<sup>25</sup> to implement a ruling of the Court of Justice of the European Union<sup>26</sup> in relation to the Compensation Directive.<sup>27</sup> The amendments widen the application of the compensation rules to all intentional violent crimes. This includes less serious crimes, such as causing physical pain or minor injuries.<sup>28</sup>

Progress was also made in **Poland** and **Sweden** in the field of support funds for victims. **Poland** amended its Criminal Code,<sup>29</sup> extending the catalogue of crimes for which the minimum payment to the Justice Fund is PLN 5,000 (approximately € 1,050). It now applies to convictions for more than 10 types of crime.<sup>30</sup>

Similarly, the **Swedish** government presented a proposal to strengthen the Fund for Victims of Crime. Among other things, it seeks to oblige anyone convicted of a crime for which imprisonment is possible to pay to that fund SEK 1,000 (approximately € 90) instead of the currently applicable SEK 800 (approximately € 75).<sup>31</sup> The assets of the fund may then be used for measures that benefit crime victims in general. Moreover, Sweden has increased the funding of the Swedish Crime Victim Compensation and Support Authority by SEK 9 million (approximately € 807,000) yearly from 2023 onwards.

**Romania** established a new national mechanism for supporting crime prevention. It will, among other things, facilitate access to funds for victims of crimes, including for their compensation.<sup>32</sup> The mechanism will distribute money confiscated during criminal proceedings or from confiscated assets. Some 15 % of these financial resources will be distributed to victim support services.<sup>33</sup> The mechanism will also enable victims to seek compensation for damages.<sup>34</sup>

In addition, **North Macedonia** adopted a new law<sup>35</sup> that includes provisions on informing victims about their right to compensation, types of compensation and the procedure for cross-border cases. It also increased the Compensation Fund for Child Victims to MKD 3 million (approximately € 49,000) from MKD 1.5 million (approximately € 24,500).

## 9.2. WOMEN AS VICTIMS OF GENDER-BASED VIOLENCE

### 9.2.1. Implementation of the Istanbul Convention

The Council of Europe Convention on preventing and combating violence against women (the Istanbul Convention) serves as the most important benchmark at international level in combating gender-based violence and domestic violence. It is the only international instrument that sets legally binding standards through a holistic and gender-sensitive approach.<sup>36</sup> By the end of 2022, all EU Member States had signed the convention, although six have not ratified it (**Bulgaria, Czechia, Hungary, Latvia, Lithuania and Slovakia**).<sup>37</sup> However, some notable progress has been observed. **Czechia** has, for instance, initiated expert discussions on potential ratification.<sup>38</sup>

The effective implementation of the provisions of the Istanbul Convention



remained an important topic of discussion among the EU Member States that have ratified it. Many of the provisions revolved around the recommendations of the monitoring mechanism of the convention – the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO).

In accordance with its agenda for 2022, GREVIO completed evaluation visits to **Estonia**, **Croatia**, **Cyprus** and **Luxembourg**. The report concerning **Romania** was published in June 2022. The report concerning **Germany** was published in October 2022. Moreover, the reports concerning **Cyprus** and **Estonia** were published in November 2022.<sup>39</sup>

**Croatia**, **Greece** and **North Macedonia** submitted their first reports to the Committee of the Parties to the Istanbul Convention, in accordance with Article 68 of the convention.

**Germany** discussed its previously made reservations to the convention, and announced that it will not renew its reservations in February 2023. This means that the convention will apply in full force.

**Greece** made notable steps towards the effective implementation of the Istanbul Convention. As the convention has a supra-legislative force, the Athens Misdemeanours Council referred to it to clarify that all non-consensual acts of a sexual nature, not only penetration, constitute sexual abuse (in accordance with Article 36 of the convention).<sup>40</sup> Although this development is encouraging, a non-governmental organisation shadow report submitted in accordance with Article 9 of the Istanbul Convention in connection with Rule 35 of the GREVIO Rules of Procedure pointed out that there is still room for further improvement. This is the case in particular with regard to the binary social perceptions of sex and gender, which prevail in Greek society.<sup>41</sup>

The understanding of gender appears to be a salient point in discussing the Istanbul Convention. For instance, **Hungary** and **Lithuania** do not wish to incorporate the convention's concept of gender into their legal systems.<sup>42</sup> The convention refers to gender as the socially constructed roles, behaviours, activities and attributes that society considers appropriate for women and men,<sup>43</sup> as opposed to biological sex. It obliges the States Parties to include a gender perspective in the implementation and evaluation of the impact of the convention<sup>44</sup> and to take practical measures to protect all victims from further violence based, among other things, on a gendered understanding of violence against women.<sup>45</sup>

The European Court of Human Rights (ECtHR) invoked the Istanbul Convention when it dealt with a number of cases concerning gender-based violence, including cases of women being killed by their current or former intimate partners. The ECtHR reiterated that states have positive obligations to prevent gender-based violence and protect the lives of victims, especially when they seek protection and lodge numerous complaints. Failure to offer adequate protection and prevention may violate Article 2 of the ECHR.<sup>46</sup> Similarly, in a case concerning threats against a rape victim by her convicted and subsequently released rapist, the state has obligations under Article 3 of the ECHR to take the complaints seriously and adequately investigate these threats.<sup>47</sup>

The EU itself has signed the Istanbul Convention but has not yet ratified it, although this has been repeatedly discussed at length. The European Parliament has repeatedly called for EU accession since 2014, stressing that this would send a robust message about the EU's commitment to eradicating violence against women.<sup>48</sup> The decision is now in the hands of the Council

of the European Union.<sup>49</sup> In July 2022, Members of the European Parliament asked what further steps would be taken to move forward on this matter.<sup>50</sup>

### **9.2.2. European Union policies countering gender-based violence**

In 2022, the EU reached the midpoint of the implementation of its Gender Equality Strategy 2020–2025. The strategy reiterates that gender equality is a core value of the EU and notes with alarm that gender-based violence remains pervasive.<sup>51</sup>



In March 2022, the strategy was supplemented with the Commission's proposal for a directive on combating violence against women and domestic violence. The proposal aims to address gaps in protection, access to justice and support for victims. The proposal is the first piece of EU legislation to specifically address violence against women and domestic violence. It sets out to align EU law with the Istanbul Convention,<sup>52</sup> seeking to harmonise legal frameworks across the EU by closing the gap between States Parties and non-States Parties to the Istanbul Convention. Specifically, the proposal aims to:

- define rape, based on the absence of consent (as some Member States require force, coercion, threats, surprise and/or abuse of power<sup>53</sup>); female genital mutilation; and specific forms of cyberviolence;
- strengthen victims' access to justice and right to appropriate protection, through, for example, gender-sensitive measures and individual needs assessments;
- require Member States to provide dedicated victim support and preventive measures, including by raising awareness and training professionals;
- improve coordination and cooperation between the Member States to ensure the exchange of best practices, aiming to implement the directive as effectively as possible.

In particular, the proposal addresses the digital dimension of gender-based violence. For instance, it proposes the criminalisation of cyberviolence, which the Istanbul Convention does not explicitly cover, including the non-consensual sharing or manipulation of intimate material, cyberstalking and cyberharassment.<sup>54</sup> It thereby responds to a 2021 European Parliament resolution identifying the criminalisation of gender-based cyberviolence as disproportionately affecting women and girls.<sup>55</sup>

According to the European Parliament, a weakness of the proposal is that it does not add gender-based violence to the list of serious 'EU crimes', as listed in Article 83 (1) of the Treaty on the Functioning of the European Union.<sup>56</sup> A European Parliament study found that listing gender-based violence as an EU crime would enable better harmonisation across the EU and provide the EU with a stronger legal basis to combat gender-based violence.

Member States' levels of criminalisation vary considerably. In 2022, only six Member States (**Cyprus, Greece, Malta, Romania, Spain and Sweden**) legally recognised and defined gender-based violence. Moreover, only 15 Member States criminalised domestic violence in all its forms – that is, all acts of physical, sexual, psychological and economic violence – in line with Article 3 of the Istanbul Convention.<sup>57</sup>

Such differences in levels of criminalisation can have significant ramifications for victims' access to justice. Going forward, extending the list of EU crimes would require a unanimous decision from the Council of the European Union and the consent of the European Parliament.<sup>58</sup>

However, some actors would like to see a more comprehensive definition of gender-based violence. For instance, the European Economic and Social Committee recommended extending the concept to all forms of violence against women. These include institutional violence, sexual and reproductive exploitation, harassment at work, gender-based violence occurring in the family and street harassment. It also expressed regret that the proposal did not accompany a financial memorandum that would guarantee sufficient funding to properly implement the measures.<sup>59</sup> The European Institute for Gender Equality has also highlighted the urgent need to develop and adopt harmonised and mutually exclusive definitions of cyberviolence against women and girls and its forms.<sup>60</sup>

The adoption of the proposal is mentioned among the priorities of the Commission's work programme for 2023 in the context of the Commission's broader equality agenda, the so-called **Union of Equality**.<sup>61</sup>

### **9.2.3. National developments in gender-based violence prevention**

Developments have also been made at national level in many EU Member States. These developments seek to strengthen legislation, policy and practice to prevent and respond to violence against women, and to strengthen victim support services.

In 2022, several Member States adopted or proposed new legislation or amended existing legislation on violence against women. These changes entail, for instance, deciding on new criminalisation rules, which involves widening the scope of certain existing offences and expanding the penalty scales of several relevant crimes. Legislative amendments and proposals have been adopted and presented in several areas, such as sexual harassment (in **Finland**,<sup>62</sup> **Ireland**,<sup>63</sup> **the Netherlands**<sup>64</sup> and **Portugal**<sup>65</sup>), stalking (**Denmark**<sup>66</sup>) and cyberviolence, including so-called revenge porn (in **Belgium**,<sup>67</sup> **Finland**<sup>68</sup> and **Portugal**<sup>69</sup>).



In addition, Member States have taken legislative action on, among other things, femicide (in **Belgium**<sup>70</sup> and **Malta**<sup>71</sup>), honour-based oppression (in **Sweden**<sup>72</sup>), gender-based motives for crime (in **Finland**,<sup>73</sup> **Germany**,<sup>74</sup> **Luxembourg**<sup>75</sup> and **Slovenia**<sup>76</sup>) and domestic violence. Action on domestic violence includes bringing national definitions of the phenomenon in line with international standards set in the Istanbul Convention to criminalise all instances of violence and not only 'systematic' violence (in **Bulgaria**<sup>77</sup>). **Croatia**,<sup>78</sup> **Czechia**<sup>79</sup> and **North Macedonia**<sup>80</sup> plan to redraft their existing national laws on domestic violence.

#### *9.2.3.1. Consent-based definitions of sexual violence*

An important development is the increasing recognition of the need to criminalise sexual violence based on the absence of consent, rather than based on other qualifiers such as force and coercion. Under Article 36 of the Istanbul Convention, States Parties are required to criminalise any non-consensual acts of a sexual nature. Consent must hereby be given voluntarily and be assessed in the context of the surrounding circumstances. The criminalisation of non-consensual sexual acts is also required under Articles 3 and 8 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights.<sup>81</sup>

In 2022, consent-based definitions of rape and other sexual violence were adopted in **Belgium**<sup>82</sup> and **Finland**.<sup>83</sup> Similar legislation was proposed in **Lithuania**<sup>84</sup> and **the Netherlands**.<sup>85</sup> In **Czechia**<sup>86</sup> and **Poland**,<sup>87</sup> the Committee for Prevention of Domestic Violence and Violence against Women, and the Ombudsman and Members of Parliament, respectively, recommended the adoption of a consent-based definition of sexual violence. GREVIO criticised the failure of some states to adopt consent-based definitions.<sup>88</sup>

To clarify the concept of consent, the **Belgian** legislative amendment provides that the victim must give consent freely and consciously, and that consent cannot be presumed from the absence of resistance by the victim. Rather, consent must be determined based on the factual circumstances of the case.<sup>89</sup>

To strengthen the protection of children, the **Finnish** reform separates provisions on sexual offences against adults from those against children

under the age of 16. Offences against children are defined based not on a lack of consent but only on the act itself.<sup>90</sup>

In Ireland, where a consent-based definition of rape is already in place, a legislative proposal was presented to ensure that the perpetrator's belief that consent was given must be objectively 'reasonable' and not based on the perpetrator's subjective perception. This sends a message that perpetrators should not base their belief that consent was given based on a completely subjective understanding but rather should rely on what is commonly and objectively understood as consent. This promotes prosecutions in rape cases.<sup>91</sup>

## PROMISING PRACTICE

### Enhancing first response to victims of sexual violence

The French Gendarmerie is testing a newly developed first response project for cases of sexual violence.

The sexual assault victim support and examination kit (*Mallette d'aide à l'accompagnement et à l'examen des victimes d'agressions sexuelles*) contains six pre-packaged sample kits (related to DNA, toxicology, transfer marks, etc.) and manuals for taking samples. This enables any medical doctor to perform the first response examination and gather evidence when no specialists are available.

The kit enables each of those involved in the case to fill out relevant parts of the legal file and prevents the victim(s) from having to undergo unnecessary additional examinations, thereby avoiding risking retraumatisation.

The aim of the project is to facilitate the gathering of samples and evidence in sexual violence cases.

*Source: GENDinfo (2022), 'Expérimentation MAEVAS: pour accompagner les victimes d'agressions sexuelles partout sur le territoire', 26 April 2022*

#### 9.2.3.2. Emergency barring orders

Article 50 of the Istanbul Convention requires States Parties to ensure an immediate response to violence, alongside the prevention of violence and the protection of victims of violence. They should do so by ensuring that relevant authorities have, in accordance with Article 52, the power to issue emergency barring orders. This requires the authorities to be able to, in situations of immediate danger, order a perpetrator of domestic violence to leave the residence of the victim and prohibit them from returning or contacting the victim.

Emergency barring orders are intended to physically separate the perpetrator from the victim, while allowing the victim to remain in their home, and are separate from restraining or protection orders covered by Article 53 of the convention.<sup>92</sup> This demonstrates that restraining or protection orders, which may be issued, for instance, the day after a domestic violence incident, alone are not enough to protect victims. Instead, states must provide for emergency barring orders that can be issued immediately and without an application from the victim.

In 2022, new legislation providing for emergency barring orders was passed in Lithuania,<sup>93</sup> where the police can now issue an immediate protection order

for 15 days where there is a risk of violence but not enough evidence to launch a criminal investigation.

In **Finland**,<sup>94</sup> new legislation obliges the police to impose temporary barring orders on their own initiative, when this is required to protect the victim. The Finnish amendment also improves victims' access to counselling and support services, makes applying for a restraining order free of charge, allows the use of electronic surveillance and makes cases concerning violations of restraining orders a matter of urgency.

Legislative proposals for introducing new emergency barring measures were presented in **Poland** and **Romania**.

The **Polish** draft amendment<sup>95</sup> aims to implement the recommendations of GREVIO,<sup>96</sup> and introduces three new measures aiming to isolate perpetrators of "violence within the family" from their victims: a restraining order, a non-contact order and an order prohibiting the perpetrator from entering and staying in the victim's residence.<sup>97</sup> The police should impose the measures with immediate effect, and would bear criminal responsibility for failing to comply with the imposed duties.<sup>98</sup>

The **Romanian** draft amendment extends the use of protection orders, including emergency barring orders, beyond domestic violence cases to cover other types of violence, sexual violence and harassment.<sup>99</sup>

Several Member States have adopted legislative amendments to enhance the effectiveness of barring and protection orders. These include increasing the penalty for breaching protection orders and expanding the ways for the use of protection (non-contact) orders also in combination with electronic monitoring. (**Sweden**<sup>100</sup>), providing for the electronic monitoring of protection orders (**Romania**<sup>101</sup> and **Sweden**<sup>102</sup>) and limiting access to weapons for people subject to protective orders (**Luxembourg**<sup>103</sup>).

There is a need for barring and other protective orders, but violations of such orders are prevalent, statistics published by Member States show.

In **Austria**, 13,690 bans on entering and approaching were issued in 2021, whereas, in 2022, 9,500 of these bans had been issued by the end of July.<sup>104</sup>

In **Italy**, violations of orders for the perpetrator's removal from the family home and orders prohibiting perpetrators from approaching places the victim frequents – corresponding to emergency barring orders under the Istanbul Convention – were, in the past three years, the most common offences related to gender-based violence.<sup>105</sup>

In **Romania**, a 19.7 % (356 cases) rise in violations of such orders was reported during the first eight months of 2022, compared with the first eight months of 2021.<sup>106</sup>

Examples of recent case law from EU Member States also show that significant work remains to be done to protect victims of domestic violence. For instance, in **Bulgaria**, the aggravating factor of the crime being "committed in the context of domestic violence" requires that the crime in question be preceded by the systematic exercise of domestic violence. This led a second instance court to acquit the accused in a case for the aggravated offence of committing a crime in the context of domestic violence. Instead, it found him guilty of the general crime of making a death threat, despite the situation having resulted from an escalation of aggressive behaviour towards the victim.<sup>107</sup>

## PROMISING PRACTICE

### Recognising the role of local authorities in ending violence against women

The Swedish Association of Local Authorities and Regions is implementing an initiative to strengthen the work of local and regional authorities in addressing violence against women. The purpose of the initiative, which is running from 2021 to 2023, is to support municipalities and regions to prevent and detect violence at an early stage, support victims of violence and their children, and work towards bringing about behavioural change among perpetrators of violence against women. Among other things, this includes capacity building and promoting knowledge sharing among authorities, and developing support materials for their daily work.

The initiative also includes funding the appointment of development leaders for violence against women in each county, and supporting municipalities by providing expertise and by coordinating their work on violence against women. Municipalities also receive help to follow up on individual support that social services provide to victims of violence.

*Source: Association of Local Authorities and Regions (Sveriges Kommuner och Regioner), 'SALAR's women's peace initiative' ('SKR: Kvinnofridssatsning'), 9 September 2022*

## 9.3. JUDICIAL INDEPENDENCE: CONCERN REMAIN

A Eurobarometer survey conducted among the general public in 2022 pointed to decreases in the level of perception of judicial independence in around half of the Member States. More specifically, comparing it with 2020 to allow for observation of trends, this level has decreased in 12 Member States, increased in 10 Member States and remained stable in five Member States. The level of perceived judicial independence among the general public remains particularly high (above 75 %) in **Austria, Denmark, Finland, Germany, Luxembourg** and the **Netherlands** and particularly low (below 30 %) in **Croatia, Poland and Slovakia**.

Respondents who gave a poor rating of the level of independence of their national justice system most commonly referred to pressure from governments or politicians as a reason for their rating (about eight in 10 (77 %) of these respondents).

*Source: European Commission (2022), **Flash Eurobarometer 503 – Perceived independence of the national justice systems in the EU among the general public***

**"Rule of law remains a bedrock of democracy. Russia's war in Ukraine is another reminder of the importance of our work to uphold and promote rule of law in the EU and beyond [...] The debate about rule of law in Europe is making progress as Member States make improvements and address rule of law matters. Unfortunately, concerns still remain in some Member States, especially when it comes to the independence of judiciary."**

Jourová, V. (2022), *'Rule of law report 2022: Commission issues specific recommendations to Member States'*, press release, 13 July 2022

**"One worrying trend I have observed during my mandate as Commissioner is the erosion of the rule of law in a growing number of our member states. I think we all agree that without full respect of the rule of law, it is not possible to protect human rights. The erosion of the rule of law manifests itself when governments refuse to abide by court decisions, undermine public confidence in the judiciary, violate judicial independence, weaken judicial bodies, pressure individual judges [...]"**

Mijatović, D. (2022), *At the crossroads – Democracy, human rights and the rule of law*, speech at the Solemn Hearing for the Opening of the Judicial Year, Strasbourg, 24 June 2022

On 19 May 2022, the Commission published the 10th edition of the EU Justice Scoreboard.<sup>108</sup> It monitors justice systems in the Member States and provides comparative data on their efficiency, quality and independence.

The 2022 scoreboard presents a diverse picture of the effectiveness of justice systems in the Member States, including as regards digitalisation. While the high level of digitalisation in some Member States allowed for the almost unobstructed functioning of the courts and prosecution services during the coronavirus disease 2019 pandemic, in others the temporary closures of courts led to a decrease in efficiency. This was particularly true for first instance courts. Furthermore, challenges remain in ensuring the complete trust of citizens in the legal systems of all Member States, as highlighted by results of Eurobarometer surveys referred to by the 2022 scoreboard.<sup>109</sup>

The findings of the scoreboard fed into the Commission's third annual rule of law report, which was published in July 2022 and for the first time included recommendations for all Member States.<sup>110</sup> The report shows that rule of law reforms have continued to take place in the justice systems of many Member States to address challenges identified in the previous two editions.

At the same time, structural concerns remain in some Member States, including concerns regarding appointments in higher courts and for court president positions; the independence/autonomy of prosecution services; and disciplinary proceedings used to curtail judicial independence. To address these issues, the report recommends, for example, greater involvement of the judiciary in appointment procedures and greater autonomy of prosecution services. It also recommends that Member States provide adequate resources for justice systems. Furthermore, it provides recommendations to continue safeguarding judicial independence and/or further strengthen it in relation to several EU Member States, namely **Croatia, Hungary, Poland, Romania, Slovakia, Slovenia and Sweden**.<sup>111</sup>

In 2022, the procedure for upholding the common values of the EU – set out in Article 7 of the Treaty on European Union – continued in the Council as regards **Hungary**<sup>112</sup> and **Poland**.<sup>113</sup> This procedure allows the Council to determine the existence of a clear risk of a serious breach of the EU's values and to follow up on such risks. The Commission brought proceedings against Poland in 2017 and the European Parliament brought proceedings against Hungary in 2018 under Article 7 of the Treaty on European Union. The Council held a hearing for Poland in February 2022,<sup>114</sup> and hearings for Hungary in May<sup>115</sup> and November 2022.<sup>116</sup>

On 16 February 2022, the Court of Justice of the European Union confirmed the conformity of the General Conditionality Regulation.<sup>117</sup> The regulation is intended to protect the sound financial management of the Union budget, and the Union's financial interests, from breaches of the principles of the rule of law.<sup>118</sup>

The mechanism set out in the regulation establishes a general regime of conditionality to protect the EU budget in the event of breaches of the principles of the rule of law in the Member States relating to implementing the EU budget. It provides, among other things, that, at the request of the Commission, the Council of the European Union may adopt measures such as suspending payments from the EU budget or suspending the approval of one or more programmes that the budget funds. The regulation states that the identification of breaches of the principles of the rule of law requires the Commission to undertake a thorough qualitative assessment. It stipulates that the Commission may consult the European Union Agency for



Fundamental Rights, and the European Commission for Democracy through Law, if necessary for the purpose of preparing this assessment.<sup>119</sup>

The Court pointed out that Member States' compliance with the common values – including the rule of law – on which the EU is founded and that define the very identity of the EU as a legal order is a precondition for mutual trust between Member States. It is therefore also a precondition for the enjoyment of all the rights deriving from the treaties. Therefore, the EU must be able to defend those values, within the limits of its powers.<sup>120</sup>

Subsequently, on 18 September 2022, the Commission adopted a proposal under the General Conditionality Regulation on measures to protect the EU budget against breaches of the principles of the rule of law in **Hungary**.<sup>121</sup> The proposal refers to several persistent rule of law issues, including a lack of effective judicial remedies by an independent court against decisions of the prosecution service not to investigate or prosecute alleged corruption, fraud and other criminal offences affecting the EU's financial interests; lack of a requirement to give reasons when such cases are assigned or reassigned; and an absence of rules to prevent arbitrary decisions in these cases.

On 15 December 2022, following an assessment of the Commission's proposal and concerns it expressed, the Council decided to adopt, through written procedure, an implementing decision under the General Conditionality Regulation as regards **Hungary**.<sup>122</sup> EU Member States acknowledged that "the fact that Hungary has satisfactorily fulfilled a number of commitments in relation to other punctual remedial measures is not sufficient to address the identified breaches of the principles of the rule of law and the impact they have or risk having on the Union budget".<sup>123</sup> The Council decided, among other things, to reduce the suspension of budgetary commitments under three operational programmes in Cohesion Policy from 65 %, which the Commission originally proposed, to 55 %, which is approximately € 6.3 billion. The measures defined in the implementing decision are temporary. They can be lifted by the Council, acting on a proposal from the Commission, without the loss of EU funding, if the situation is fully remedied within two years.

Hungary is now obliged to inform the Commission by 16 March 2023, and every three months thereafter, of the implementation of the 17 remedial measures to which Hungary committed, including establishing an Integrity Authority and an Anti-Corruption Task Force.<sup>124</sup>

The ECtHR also examined the judicial independence and appointment of judges in three cases against Poland in 2022. The Court found that Poland's failure to ensure that an applicant's case was examined by the "tribunal established by law" violated Article 6 of the ECHR.<sup>125</sup> It found that Poland violated two other applicants' right to access to justice when it deprived them of judicial reviews of their cases.<sup>126</sup>

In 2022, the Secretary General of the Council of Europe initiated the procedure envisaged under Article 52 of the ECHR. She requested explanations from Poland of how Polish law respects the right to a fair trial (Article 6) and the jurisdiction of the court (Article 32). Two judgments of the Polish Constitutional Court triggered this procedure, stating that Article 6, paragraph 1, of the ECHR, as interpreted by the ECtHR, is not compliant with the Polish Constitution in certain circumstances.<sup>127</sup> The Committee of Ministers of the Council of Europe will continue to address this issue when supervising Poland's execution of the ECtHR judgments.

## FRA opinions

### FRA OPINION 9.1

EU Member States should ensure that victims receive an individual assessment to identify specific protection needs. This assessment should determine their needs for special protection measures during criminal proceedings, due to their particular vulnerability. In addition, Member States are encouraged to provide specific guidelines and training for professionals in order to underpin a victim's right to an individual assessment.

Article 22 of the EU Victims' Rights Directive and related recitals provide for a victim's right to an individual needs assessment. Accordingly, Member States are obliged to individually assess victims' specific protection needs and to determine whether and to what extent they would benefit from special measures during criminal proceedings.

In 2022, a few Member States adopted practical measures to facilitate the identification of victims with special needs. These measures included guidance on the treatment of different groups of vulnerable victims and an information campaign focused on specific groups of victims.

However, challenges remain. The European Commission's evaluation of the Victims' Rights Directive identified several shortcomings in relation to the protection of victims' individual needs. These shortcomings affected the quality of treatment the victims received after a crime and during criminal proceedings. The Commission's evaluation links these shortcomings to lack of knowledge of specific needs among professionals, which in turn may result in insufficient consideration given to victims. The evaluation pointed out the lack of specific guidelines for conducting individual assessments, lack of awareness among practitioners of the importance of the assessments and lack of training for practitioners.

### FRA OPINION 9.2

All EU Member States that have ratified the Istanbul Convention should criminalise sexual violence using consent-based definitions of rape and other forms of sexual violence. Member States should also ensure that any intentional sexual acts committed without the consent of the victim are effectively investigated, prosecuted and penalised.

By the end of 2022, all EU Member States had signed the Council of Europe Convention on preventing and combating violence against women (Istanbul Convention), although six have yet to ratify it. Under Article 36 of the convention, States Parties are required to criminalise any acts of a sexual nature that take place without the consent of one of the people involved. The criminalisation of sexual acts based on such consent-based definitions is also required by Articles 3 and 8 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights. This is in line with contemporary understandings of sexual violence, which do not rely on force or similar features.

The adoption of consent-based definitions of sexual violence in EU Member States is progressing. In 2022, new legislation and legislative proposals in this respect were adopted in a few Member States.

An independent judiciary is the cornerstone of the rule of law and of access to justice (Article 19 of the Treaty on European Union, Article 67 (4) of the Treaty on the Functioning of the European Union and Article 47 of the EU Charter of Fundamental Rights).

Challenges in the area of justice persisted in several EU Member States, for example regarding perception of judicial independence in the EU Member States, as shown by the 2022 EU Justice Scoreboard.

The European Commission issued its third annual Rule of Law Report in 2022. The issue of justice systems and their independence was one of the four focus areas covered by the report. While welcoming important reforms to strengthen judicial independence, the report refers to structural concerns persisting in a few Member States as regards judicial independence.

The year also saw the adoption of the first-ever implementing decision under the General Conditionality Regulation. This decision imposes measures for the protection of the budget against the consequences of breaches of the principles of the rule of law. It also concerns public procurement, the effectiveness of prosecutorial action and the fight against corruption in Hungary.



### FRA OPINION 9.3

The EU and its Member States are encouraged to further strengthen their efforts and collaboration to maintain and reinforce the independence of the judiciary as an essential component of the rule of law and mutual trust. In this context, the Member States are encouraged to swiftly follow up on recommendations and measures. These include those adopted in the context of the European rule of law mechanism and under the new EU conditionality mechanism.

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# DEVELOPMENTS IN THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

# 10

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# UN & CoE

24

ECtHR issues its judgment in *Sy v. Italy*. It finds that failure to move the applicant, who suffered from a personality disorder and bipolar disorder, to a residential facility rather than a prison violated Articles 3 and 5 of the ECHR.

25

January

In *Negovanović and Others v. Serbia*, European Court of Human Rights (ECtHR) finds that denying blind chess players benefits and awards for their performance constituted discrimination on the grounds of disability under Article 1 of Protocol No. 12 of the European Convention on Human Rights (ECHR), general prohibition of discrimination.

15

ECtHR issues its judgment in *Anatoliy Marinov v. Bulgaria*, finding that the removal of Mr Marinov's electoral rights when he was placed under partial guardianship was disproportionate under Article 3 of Protocol No. 1 of the ECHR, right to free elections.

16–17

February

Government of Norway, Government of Ghana and International Disability Alliance host the Global Disability Summit. Participants make some 1,300 commitments in areas such as health, employment, education, climate change and humanitarian action.

3

Romania submits its report to the Committee on the Rights of Persons with Disabilities (CRPD Committee) on the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) in its territory.

29

ECtHR issues its judgment in *Laniauskas v. Lithuania*, finding that, considering prison conditions, the continued detention of a visually impaired person did not violate Article 3 of the ECHR, on the prohibition of torture, inhuman and degrading treatment.

21–31

March

Special Rapporteur on the Rights of Persons with Disabilities conducts an official visit to the EU. He focuses particularly on how the EU addresses the rights of people with disabilities, both in its own internal laws and in EU foreign policy. He also observes the measures taken to implement these laws, and steps taken at EU level to help Member States fulfil their obligations.

20

CPRD Committee issues a list of issues prior to the submission of the second and third periodic reports of the EU, based on input from civil society and the EU CRPD monitoring framework.

21

Council of Europe Commissioner for Human Rights issues a human rights comment on addressing the invisibility of women and girls with disabilities, discussing the widespread violence against them, restrictions on sexual and reproductive health, emergencies and conflicts, and participation and inclusion. It notes that these issues are frequently linked to their deprivation of legal capacity. The commissioner also highlights the increased risk of sexual violence and the numerous barriers that these women and girls face in emergencies and conflict situation. She stresses the need to ensure the full participation and involvement of women and girls with disabilities.

31

May

The applicant in *Arnar Helgi Lárusson v. Iceland* is a wheelchair user. ECtHR finds that, given the considerable efforts to improve accessibility in his municipality, Article 8 of the ECHR had not been violated by the inaccessibility of two buildings housing arts and cultural centres run by his municipality.

21

June

ECtHR finds in the case of *P.W. v. Austria* that the applicant's confinement in an institution was not in violation of Article 5 (1) (e) of the ECHR, on the right to liberty and security, as three psychiatric experts had diagnosed her with a schizophrenic disorder.

# UN & CoE

July

20

Special Rapporteur on the Rights of Persons with Disabilities reports to the United Nations (UN) General Assembly on protecting the rights of people with disabilities in the context of military operations.

August

11

Special Rapporteur on the Rights of Persons with Disabilities and four other UN experts issue a joint statement about the situation of children with disabilities in Ukraine placed in institutions and displaced to other institutional settings either within Ukraine or further afield.

September

9

CRPD Committee issues General Comment No. 8 on the interpretation of the right to work and employment (Article 27 of the CRPD). Notably, it states that segregated employment settings are inconsistent with Article 27.

The committee also holds a session on the situation of people with disabilities in Ukraine and in countries where they have fled, including EU Member States. In addition, it makes recommendations to all concerned states aimed at ensuring their international protection and full involvement.

October

10

CRPD Committee issues guidelines on deinstitutionalisation, including in emergencies.

November

22

ECtHR issues a judgment in favour of the applicants on the matter of forced abortions and birth control measures carried out on residents of a Moldovan neuropsychiatric asylum. It finds violations of Article 3 of the CRPD.

December

6

UN Office for Disaster Risk Reduction issues a report on people with disabilities in situations of risk. It focuses on Article 11 of the CRPD, on situations of risk and humanitarian emergencies.

10

February

Court of Justice of the European Union rules in case C-485/20 regarding a Belgian railway worker who argued that his employer had not given him reasonable accommodation. It finds that Article 5 of Council Directive 2000/78/EC must be interpreted as meaning that the concept of 'reasonable accommodation' for people with disabilities requires that a worker who, owing to his or her disability, has been declared incapable of performing the essential functions of the post that they occupy must be assigned to another position for which they have the necessary competence, capability and availability, unless that measure imposes a disproportionate burden on the employer.

9

March

Council of the European Union holds a ministerial conference bringing together the ministers for people with disabilities from the 27 Member States, European Commissioners and Directors-General, and representatives of civil society to discuss the new Strategy for the Rights of Persons with Disabilities 2021–2030.

4

27

April

Committee on Constitutional Affairs of the European Parliament reports on a proposal for a Council Regulation on the election of Members of the European Parliament by direct universal suffrage. The proposal includes the right to vote of all EU citizens, regardless of their legal capacity, and sets out obligations for Member States to improve the accessibility of the European elections. The plenary of the Parliament adopts it in May and the committee sends it to the Council for its consideration.

Ombudsman writes a letter containing six questions for the Commission, related to means of monitoring, the promotion of deinstitutionalisation, lessons learnt from the pandemic, the status of infringement complaints and the lack of absolute prohibition of the use of EU funds for long-stay residential institutions. She also enquires about the monitoring of Member States' use of EU funds to promote deinstitutionalisation, and about whether the Commission applies sanctions if they do not use funds appropriately. She adopts a decision on this case in May, with recommendations to the Commission and Member States.

18

May

European Parliament's Committee on Employment and Social Affairs drafts an opinion on the necessary unbundling of income and disability-related assistance, on the positive and negative aspects of teleworking, and on the need for Member States to support entrepreneurship and self-employment for people with disabilities.

31-1

June

European Disability Forum holds the European Accessibility Summit.

July

5

European Parliament adopts a resolution entitled 'Towards a common European action on care', calling for a common definition of disability, the recognition of European disability status and the implementation of the EU Disability Card.

19

European Parliament's Committee on the Internal Market and Consumer Protection drafts a report on establishing the AccessibleEU centre in support of accessibility policies in the EU's internal market.

September

7

European Commission presents the European Care Strategy. It includes recommendations on high-quality long-term care. The Commission notes that actions that the European disability strategy envisages will contribute to the care strategy.

8

Court of Justice of the European Union concludes in case C-614/20 that Article 2 (e) of Regulation (EC) No. 1370/2007 must be interpreted as meaning that the concept of 'public service obligation' covers an obligation for undertakings to carry certain categories of passenger free of charge and without receiving compensation from the state. These include, in particular, children of pre-school age and certain categories of people with disabilities.

20

European Public Employment Services launches a new practitioner tool-kit providing guidance for how public employment services can combat discrimination in the labour market against people with disabilities and ensure their effective participation in the labour market.

27

European Ombudsman rules on a plaintiff's submission that the European Commission should have taken action against Spain for taxing his incapacity pension. She finds no maladministration by the Commission, noting that it has wide discretion in relation to infringement procedures.

October

4

Plenary of the European Parliament adopts a resolution on the AccessibleEU centre, calling for it to function as a hub that provides relevant EU institutions and bodies, and Member States when implementing Union law, with regular assistance and expertise relating to accessibility policies and technical requirements. It urges them to consider, after an evaluation, whether an agency should be established.

26

European Economic and Social Committee issues an opinion on European solidarity for patients with rare diseases.

The committee also issues an opinion on family caring for people with disabilities and older people.

November

24-25

2022 edition of the European Day of Persons with Disabilities conference takes place at the initiative of the European Commission. The Commission organises the conference to hear the concerns and aspirations of, and establish a dialogue with, public authorities and other stakeholders.

December

8

Council of the European Union (through its Employment, Social Policy, Health and Consumer Affairs Council formation) approves Council Conclusions on the inclusion of people with disabilities in the labour market.

13

European Parliament passes Resolution 2022/2026 (INI) 'towards equal rights for persons with disabilities', calling for a series of actions to improve the implementation of the CRPD in the EU.

The EU legislator took action to provide fair minimum wages, including for people with disabilities. The European Parliament made several new proposals to facilitate the EU's implementation of the Convention on the Rights of Persons with Disabilities (CRPD), including in EU electoral law, ahead of the 2024 European elections. However, the use of EU funds for institutionalisation remains of concern.

At national level, significant gaps persist between the level of participation of people with disabilities in the labour market and that of others in the labour market and in the education system. EU Member States have made limited progress in providing relevant assistance and in ending segregated approaches.

The implementation of EU accessibility directives, and national accessibility programmes, has advanced. But Member States have missed transposition deadlines, and progress remains uneven. States have made significant efforts to welcome people fleeing Ukraine, including those with disabilities. The Committee on the Rights of Persons with Disabilities (CRPD Committee) requested answers to a wide range of questions to the EU in a list it sent to the European Commission.

The Swedish national monitoring framework started work, so all Member States and the EU now have the framework that Article 33 (2) of the CRPD requires.

## **10.1. EU DEVELOPMENTS: INITIAL RESULTS OF THE IMPLEMENTATION OF THE EU DISABILITY STRATEGY – PARLIAMENT TAKES STOCK AHEAD OF A REVIEW BY THE CRPD COMMITTEE**

New EU legislation was passed to guarantee minimum wages, including for people with disabilities. The European Parliament called for profound changes in the implementation of the CRPD and EU electoral law. Calls to stop using EU funds for institutionalisation grew louder both from the United Nations (UN) and from within the EU.

### **10.1.1. New EU legislation aims to improve wages**

On 24 October, the Council of the European Union passed Directive (EU) 2022/2041 on adequate minimum wages in the European Union.<sup>1</sup> It notes that people with disabilities are among those with a higher probability of being minimum wage or low wage earners and are more likely to be paid less than the legally required minimum wage.<sup>2</sup> It also emphasises the importance of easily accessible information on wages, particularly for people with disabilities.<sup>3</sup> Therefore, it provides for a requirement for Member States to make those data available in an easily accessible format, including to



people with disabilities,<sup>4</sup> and to collect data on minimum wages disaggregated by, among other things, disability.<sup>5</sup>

One month earlier, the CRPD Committee had issued key guidance – in the form of a general comment – on the interpretation of Article 27 of the CRPD, concerning the right to work and employment. In it, the committee addresses sheltered employment, which it considers to have the following characteristics.<sup>6</sup>

- It segregates people with disabilities from open, inclusive and accessible employment.
- It is organised around certain specific activities that people with disabilities are deemed to be able to carry out.
- It focuses on and emphasises medical and rehabilitation approaches to disability.
- It does not effectively promote employees' transition to the open labour market.
- People with disabilities do not receive equal pay for work of equal value.
- People with disabilities are not paid for their work on an equal basis with others.
- People with disabilities do not usually have regular employment contracts and are therefore not covered by social security schemes.

The committee finds that sheltered employment “is not to be considered as a measure of progressive realisation of the right to work, which is evidenced only by freely chosen or accepted employment in an open and inclusive labour market”.<sup>7</sup> It makes an exception for “[e]mployment ventures that are managed and led by persons with disabilities, including those that are jointly owned and democratically controlled[, which] may not be considered segregated employment if they provide just and favourable conditions of work on an equal basis with others”.<sup>8</sup>

Recital 15 of the Minimum Wage Directive addresses one aspect of the previously mentioned criteria, namely equal pay for those in sheltered employment (see also **Section 10.2.1**). It requires that “workers with

disabilities, including those in sheltered employment, receive equal remuneration for work of equal value” and notes that the principle of equal pay for work of equal value is “relevant with regard to minimum wage protection”.<sup>9</sup> The European Disability Forum (EDF) criticised this language, saying that it was too ambiguous and a missed opportunity.<sup>10</sup>

The December Council Conclusions on the inclusion of people with disabilities in the labour market stated that “[i]nclusive education and adequate social services [...] and sheltered employment are all important factors that play a role in ensuring that persons with disabilities can access and participate in the open labour market”. The EDF criticised this statement because it appears to portray sheltered employment as a good practice, whereas the position under the CRPD is the opposite.<sup>11</sup>

The Commission, as part of its new disability strategy, launched a practical guide and webinar on how public employment services can promote the participation of people with disabilities in the labour market. These are part of the Commission’s new Disability Employment Package.<sup>12</sup>

#### **10.1.2. Parliament calls for a paradigm shift on disability rights, and more inclusive EU electoral law**

As last year’s fundamental rights report noted, non-governmental organisations (NGOs) have called for a more ambitious approach to implementing the CRPD in the EU. The European Parliament added its voice to these calls in its 13 December 2022 resolution ‘towards equal rights for persons with disabilities’.<sup>13</sup> It demanded, among other things, full deinstitutionalisation, the abolition of restrictions on legal capacity, and the promotion of inclusive health, education and employment systems.

In May, the Parliament proposed a new EU electoral law, which provides explicitly that everyone over the age of 16 should be able to vote in European elections, regardless of their legal capacity.<sup>14</sup> The law also includes a requirement to make elections accessible to people with disabilities.<sup>15</sup> It is, however, silent on the question of whether people deprived of their legal capacity can also stand for election.<sup>16</sup> The EDF criticised that position as not in line with Article 29 of the CRPD.<sup>17</sup>

The Council must now take a position on the Parliament’s proposal.

#### **10.1.3. Calls grow louder to cease EU funding of institutions for people with disabilities**

The UN Special Rapporteur on the Rights of Persons with Disabilities visited the EU. That once again highlighted the UN’s concerns over continued EU funding of institutions for people with disabilities in the light of Article 19 of the CRPD, on living independently and being included in the community.

The Special Rapporteur expressed his appreciation for the EU’s commitment to disability rights. However, he also pointed out that the issue of using EU funds to construct and/or refurbish institutions for person with disabilities “has to be addressed”. He noted that the “[s]egregation of people with disabilities in the form of institutionalisation is a form of direct discrimination”.<sup>18</sup>

In April 2022, the European Ombudsman closed her inquiry into how the European Commission monitors the use of funds for independent living. She made a series of suggestions to the Commission and Member States to ensure that EU funds are used to promote living in the community rather than for institutionalisation. She advises that the Commission and Member States provide clear guidance to officials involved in the process, that only narrow exceptions for the use of funds for continuing institutionalisation be

allowed, and that national human rights institutions and civil society be consulted on these issues.<sup>19</sup>

## 10.2. CRPD IMPLEMENTATION IN EU MEMBER STATES

The CRPD Committee issued guidance on the CRPD and employment amid a still profoundly challenging labour market for people with disabilities in the EU. Serious challenges for people with disabilities also remain at all levels of education. The initial implementation of key EU accessibility directives leaves room for improvement. A wide range of support measures were put in place for displaced people with disabilities from Ukraine.

### 10.2.1. Employment: measuring Member States' performance against CRPD Committee guidance

In its guidance on the right to work and employment, the CRPD Committee points out that “[p]ersons with disabilities face high unemployment rates, lower wages, instability, lower standards in hiring conditions, [and a] lack of accessibility of the work environment, and are also less likely than other persons to be appointed to managerial positions when they are formally employed, all of which are exacerbated for women with disabilities”. While this statement applies to the whole world, in the EU the employment situation of people with disabilities remains extremely challenging.

The European Commission's social scoreboard now tracks the disability employment gap. That is the difference in levels of employment between people with and without disabilities. This scoreboard is a tool to help monitor the implementation of the EU's social rights commitments.<sup>20</sup>



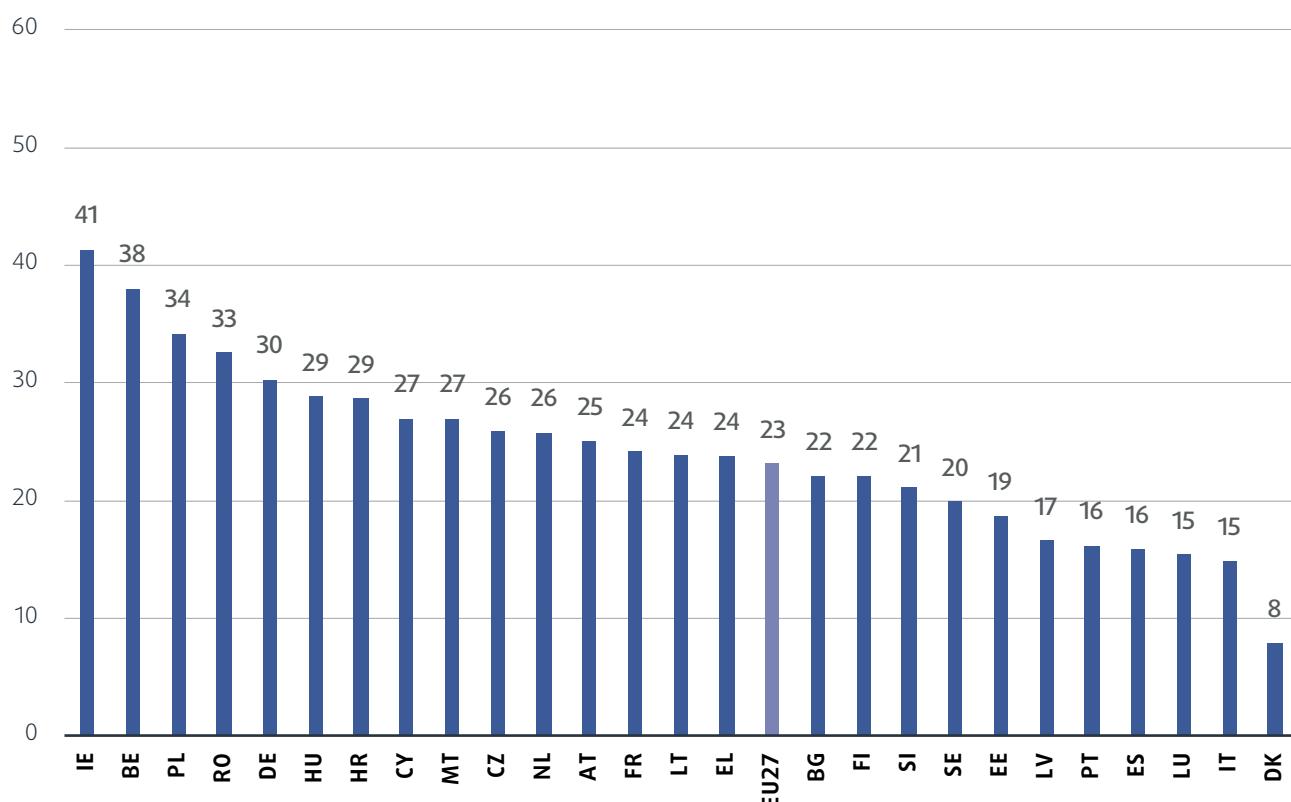
In 2021, the disability employment gap was 23.1 percentage points. The gap for women was 20.4 percentage points, and for men it was 25.1 percentage points. For people with severe limitations, the gap was 42.8 percentage points. For people with some limitations, it was 16.2 percentage points.<sup>21</sup>

However, there are vast differences between the different areas of the job market, and between types and degrees of disability. In **Spain**, two out of three people with disabilities were unemployed (65.7 %), the Ministry of Labour and Social Economy reported. This increased significantly with age and with the degree of disability.<sup>22</sup>

The **Netherlands** Institute for Human Rights described the situation of people with disabilities in the labour market as "vulnerable".<sup>23</sup> It noted lower employment rates and a lack of support for people with more severe forms of physical disability and people with an intellectual disability. On this point, a study by the **Latvian** parliament found that individuals with mental impairments have a lower overall employment rate than people with other types of disability. Only 14.5 % of them are in work.<sup>24</sup>

In 2021, the disability employment gap was introduced to the social scoreboard of indicators related to the European Pillar of Social Rights.<sup>25</sup> In 2021, on average in the EU27 (without Slovakia) the difference in the employment rates of people without disabilities and people with disabilities, including severe disabilities, was 23 percentage points. However, a wide variety of situations hide behind this average. The differences range from 41 percentage points in Ireland to 8 percentage points in Denmark.

**FIGURE 10.1: DISABILITY EMPLOYMENT GAP (BETWEEN THOSE WITH SOME OR SEVERE ACTIVITY LIMITATIONS AND THOSE WITH NONE), 2021 (PERCENTAGE POINTS)**



Source: Eurostat (2021), 'Disability employment gap by level of activity limitation and sex', 20 December 2022

At the end of 2022, the European Social Policy Network, a network of independent experts on social protection advising the European Commission, issued a synthesis report recommending a range of measures. These include ensuring that sufficient incentives are provided to work, promoting work retention, improving the assessment of barriers, learning from good practices and focusing on the capacity of the person to work.<sup>26</sup>

The CRPD Committee issued guidance separately on this in its general comment on the right to work and employment.<sup>27</sup> It noted in particular the importance of ensuring "that persons with disabilities are paid no less than the minimum wage and do not lose the benefit of disability allowances when they start work".<sup>28</sup> The December Council Conclusions on the inclusion of people with disabilities in the labour market recognised this point, noting that "the transition from economic inactivity into employment should be supported by inclusive social security systems and should not lead to a reduction in disability benefits compensating for the extra costs of living related to disability".<sup>29</sup> The Council therefore invited Member States to "strive to ensure that social protection policies effectively contribute to facilitating the employment of persons with disabilities, including where appropriate through compensation for the extra cost associated with disability even for those who are employed".<sup>30</sup>

As noted above, the CRPD Committee is against sheltered employment schemes, as they are not in line with the CRPD. **Lithuania** abolished its sheltered employment scheme in 2022<sup>31</sup> after criticism from human rights NGOs<sup>32</sup> but notably also after it concluded that the system was not working in bringing people into the labour market and cost more than other, more effective measures.<sup>33</sup> It now operates an alternative scheme, providing subsidies for the salaries of employees with disabilities and the hiring of workplace assistants, among other measures.

A more CRPD-compliant approach to sheltered employment is still not visible everywhere. For instance, in **Belgium** the Flemish Advisory Council on Disability criticised a decree concerning individualised work and care plans<sup>34</sup> focusing on sheltered employment and similar arrangements, rather than on employment in regular companies.<sup>35</sup>

For the public sector, some EU Member States have introduced quotas. In **Ireland**, legislation increasing the target for the number people with disabilities employed in the public service was enacted in December 2022, with implementation set to commence in 2023. Interim target provisions will require a 3% target up to 31 December 2023, moving to a 4.5% target from 1 January 2024 and a 6% target by 1 January 2025.<sup>36</sup> A similar goal in **France** has increased the employment of people with disabilities in the public sector to 5.4 % of all employees in the past 10 years, still somewhat short of the government's goal of 6 %.<sup>37</sup>

In **Croatia**, at a joint media conference with the Ombudsperson for Persons with Disabilities, the Minister for the Interior explicitly encouraged people with disabilities to apply for jobs in the ministry. The minister noted that the goal was to achieve equality in the selection process.<sup>38</sup>

Governments are addressing the employment situation in various ways, including by using EU funds and simplifying administrative arrangements. The **Czech** government announced that up to € 1.459 billion would be made available between 2021 and 2027 to improve the labour market opportunities of people who are disadvantaged, including people with disabilities.<sup>39</sup> It has already launched a number of calls targeting people with disabilities.<sup>40</sup> In **Croatia**, employment centres became a single point for providing professional

## PROMISING PRACTICE

# Training and job placements for people with disabilities promote inclusion

The INK project provides paid training enabling people with disabilities to gain valuable work experience. The 32-week part-time programme consists of theoretical classes, practical lessons and transport training, followed by a job placement with an additional allowance. It includes free training for employers and frontline professionals in the field, and two discussion-based sessions, lasting three hours each, for parents and guardians of people with disabilities. INK trainers host these sessions, which allow parents and guardians to share their concerns, and receive information on existing support services.

*Source: Support Agency, 'INK project'*

support to job seekers and for procedures recognising the right to compensation until employment.<sup>41</sup>

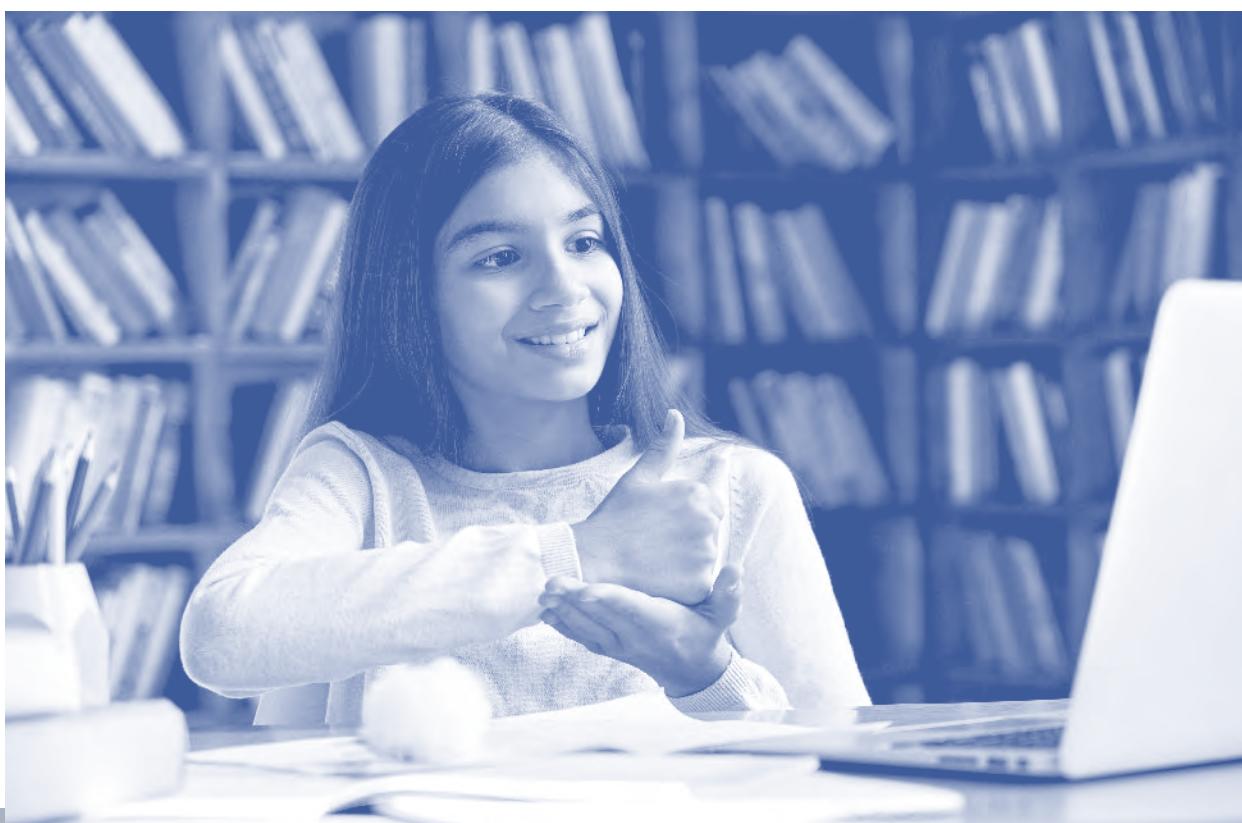
In addition, national courts delivered several judgments that related to the need to support the active participation in the labour market of those with disabilities. In one such case, a man with a physical disability working for the prison service had asked to work in a facility closer to his home because he could not travel long distances. The **Czech** Supreme Court judged in his favour. It found that the principle of equal treatment should be applied when taking such decisions.<sup>42</sup>

In the case of a self-employed, blind lawyer who had reached retirement age, the Federal Administrative Court of **Germany** decided that his right to a personal assistant did not simply end when he reached retirement age. It noted the importance of work to a person's life and development, and the requirement to tailor support to the needs of each individual person.<sup>43</sup>

### **10.2.2. Inclusive education: progress has been made, but criticism persists**

One of the key barriers to accessing the labour market is the continued segregation in the education system in parts of the EU. That goes against Article 24 of the CRPD. "Quality inclusive education will prepare persons with disabilities for work and employment through the acquisition of the knowledge, skills and confidence necessary for participation in the open labour market", the CRPD Committee states in its 2022 general comment on employment.<sup>44</sup> However, the committee points out that a third of out-of-school children worldwide have disabilities.<sup>45</sup>

In a list of questions for the EU that is part of an ongoing round of review of the EU's compliance with the CRPD, the committee also highlights the importance of EU funds in this area. It requests information on "[a]ny diversion of funds earmarked for the inclusion of students with disabilities of all ages in mainstream education towards measures for the economic recovery from the COVID-19 pandemic".<sup>46</sup>



Problems with full and equal access to education at all levels persist across Member States. In a report published in July, the **Spanish** Ministry of Labour and Social Economy found that the level of education that people with disabilities most often achieve is that of secondary school.<sup>47</sup>

The **Dutch** Senate's parliamentary committee of inquiry on the effectiveness of anti-discrimination legislation focused on discrimination against pupils with a disability in accessing primary education.<sup>48</sup> It found that the problem may have to do with how disabilities are viewed and dealt with in education. Problems arise because (i) children with disabilities are not admitted to a regular school and end up in special needs education and (ii) children are granted dispensation from compulsory education and end up sitting at home or being accommodated in a day-care centre or other care setting. Thus, exclusion from mainstream education at an early age can lead to exclusion from mainstream society later in life.

In **France**, the Defender of Rights issued a report on access to education for children with disabilities. Although there have been some improvements, 20 % of the referrals it received in 2022 concerning children's rights related to difficulties in accessing education for children with disabilities. It recommended better training and skills development for all those involved, better assessments of children's needs and the allocation of additional resources.<sup>49</sup>

Similarly, the **Swedish** Agency for Participation's annual report found that people with disabilities have a lower level of education than the rest of the population. It attributes this to the fact that support mechanisms are introduced too late. The agency noted that students who have attended a special upper secondary school face particular challenges after completing their studies, as the upper secondary school diploma does not enable them to undertake university studies or higher vocational studies.<sup>50</sup>

Another persistent challenge in the national implementation of Article 24 of the CRPD is a lack of support for pupils with disabilities. In **Slovakia**, the Commissioner for Persons with Disabilities reported that the right of children with disabilities to education in the regular school system is not adequately fulfilled owing to a lack of assistance and care.<sup>51</sup> In **Czechia**, the Advisory Body of the Public Defender of Rights published a statement in which it criticised decrees of the Ministry of Education, Youth and Sports<sup>52</sup> for failing to provide intensive support to children in special schools for children with combined disabilities (whose intellectual or physical disabilities are associated with other disadvantages, whether visual, hearing or speech). The budget available to schools to provide such support is often insufficient.<sup>53</sup>

In **Cyprus**, the Commissioner for Human Rights submitted a Report to the Ministry of Education for its refusal to provide reasonable accommodation to a student with a disability and, in particular, the failure to provide a differentiated test for the university entrance examinations.<sup>54</sup> The report noted, amongst others, that requiring children with disabilities to pass a common/standardised test as a condition for ensuring their admission to school constitutes discrimination against them as it leads to their exclusion and does not ensure the rights of persons with disabilities to equality, non-discrimination and education. Following the submission of a binding recommendation by the Commissioner, the Ministry complied and the student attended the examinations with a differentiated test based on his assessed and individualised educational needs and succeeded in gaining admission to the University of Cyprus.

As in the labour market, the tendency for segregation in education persists despite improvements and reforms. As the 2021 fundamental rights report

noted, the European Committee of Social Rights issued an important decision on **Belgian** educational policy. The committee stated that policy is required to fully integrate the educational system to include all people with disabilities.<sup>55</sup> However, in 2022, the Coalition on Children's Rights pointed out that the latest reform of the system<sup>56</sup> only covers support for children with physical disabilities, and not children with other (mental) disabilities.<sup>57</sup>

The Validity Foundation and the Hungarian Civil Liberties Union called on **Hungary** to “[a]bolish the special education system for children with disabilities including ‘developmental education’ and provide them with inclusive education, including the provision of state-funded shadow teachers in mainstream schools”.<sup>58</sup> The CRPD Committee’s September 2020 inquiry report found that “[c]hildren requiring high levels of support receive special education, called ‘developmental education’. They are taught at home or in institutions, as provided for in Act CXC of 2011 on national public education (National Public Education Act). In practice, they are excluded from mainstream schools: one-third are enrolled in special schools and receive a maximum 20 hours of education per week, while those who are institutionalised receive up to six hours on average per week.”<sup>59</sup>

The committee called on the Hungarian government to “[e]nd the segregation of persons with disabilities in education, particularly children requiring high levels of support, and adopt a strategy to implement inclusive education at all levels of education, in line with general comment No. 4 (2016) on the right to inclusive education”. It is important to note in this context that the Hungarian Supreme Court found that, when deciding if allowing a child to participate in mainstream education violated their right to an inclusive education according to their ability, did not meet their best interests and discriminated against them on the basis of their disability, the court has to take into account the best interest of the child as stipulated in the UN Convention on the Rights of the Child, the provisions of the UN CRPD and various provisions of the national equal treatment act.<sup>60</sup>

In relation to universities and higher education more generally, the CRPD Committee pointed out that “[t]he transition from secondary or tertiary education to employment needs particular attention to realize the right to work”.<sup>61</sup> In this regard, some positive changes were reported in 2022. The **Portuguese** Disability and Human Rights Observatory noted increases in the number of university students with disabilities and the number of students with disabilities who graduated.<sup>62</sup> The University of **Malta** set up an internal framework to monitor the implementation of the CRPD.<sup>63</sup>

However, a study that NGOs and the Autonomous University of Madrid conducted in **Spain**<sup>64</sup> illustrates the CRPD Committee’s point. It concluded that, although Spain has extensive legislation aimed at promoting inclusion in the labour market without discriminating against people with disabilities, the university system keeps its doors closed to teaching and research professionals with disabilities. It described the situation as ‘critical’, mainly because of all the barriers to accessing employment in universities. The study highlighted the repeated and unpenalised failure of public universities to ensure that at least 7 % of their employees are people with disabilities.<sup>65</sup> It also referred to the lack of data universities collect on the needs of staff with disabilities and their types of disabilities.

#### **10.2.3. Accessibility: transposition and implementation deficits while work on accessibility in other areas continues**

In 2022, Member States were expected to adopt laws, regulations and administrative provisions necessary to comply with the European Accessibility Act.<sup>66</sup> These laws will have to be applied, with some exceptions, by 2025.<sup>67</sup>

The act requires that a range of banking services, ticketing machines, computers, tablets, TVs, e-books, smartphones and online shopping services are fully accessible.<sup>68</sup> However, the Commission reported that by the deadline only three Member States had notified it that they had passed the relevant legislation.<sup>69</sup>



Member States are at different stages of incorporating the laws. Some have completed the process as expected. Others are still in the formative stages of developing the relevant legislation.

In **Belgium**, the Superior National Council for People with Disabilities expressed its regret that the implementation of the European Accessibility Act has only been minimal and that people with disabilities are not being involved in its implementation.<sup>70</sup> In its comments on wireless communication legislation, the council observed that the starting point in implementing the legislation appeared to be the exclusion of people with disabilities from digital goods and services, while it was the directive's aim to make these more accessible for people with disabilities. The council criticised the legislation, noting that digital products and services would probably become more and more inaccessible for people with disabilities and that the proposed law was not in accordance with the CRPD.<sup>71</sup> The minister responsible is discussing improvements.

With regard to another key area of accessibility, in December the European Commission published an evaluation of the first three years of the application of the Web Accessibility Directive.<sup>72</sup> The directive requires public authority-run websites and applications to be fully accessible.<sup>73</sup> The Commission found that, despite some progress, challenges remain, in particular a lack of accessibility statements on websites and in apps, little use of feedback mechanisms (partially due to their inaccessibility), gaps in enforcement of accessibility requirements, confusion about accessibility standards and a lack of available expertise. The Commission's evaluation report noted that participants in the review supported extending the scope of the directive to other entities, such as schools, universities, NGOs, online mapping services, live videos, extranets/intranets and third-party content.<sup>74</sup>

A number of national analyses confirmed existing challenges in achieving progress. For example, in a only 1.25 % of all the Dutch government's apps are accessible to people with disabilities despite the legal requirement for such apps to be accessible, the **Dutch** Foundation Appt concluded.<sup>75</sup> The **Czech** Public Defender of Rights found particular problems for people with visual impairments in accessing public websites, exacerbating the challenges they faced during the pandemic.<sup>76</sup>

Work continued to enhance accessibility in other areas of life. However, challenges persist, including in areas where the EU has issued legislation, such as transport.<sup>77</sup> In **Romania**, the recently adopted national strategy on the rights of persons with disabilities notes the lack of a comprehensive accessibility strategy at national level or at the level of public institutions, a lack of continuously accessible routes, a lack of respect for rules on adapting buildings and public spaces, and a lack of effective sanctions for non-compliance.

In **Slovakia**, many public buildings are not accessible for people with disabilities, and railway transport is inaccessible for people with mobility problems, the Commissioner for Persons with Disabilities noted.<sup>78</sup> Similarly, in **Sweden** people with disabilities refrained from travelling by public transport during the pandemic because they did not have enough traffic information or they might not be able to cope with travelling on their own.<sup>79</sup> The Ombudsperson's office of **Portugal** criticised the lack of accessibility and/or safety in some parts of public infrastructure.<sup>80</sup>

Some Member States made progress. **Portugal** approved a strategy for the promotion of accessibility and inclusion in museums, monuments and palaces;<sup>81</sup> adopted a regulation to enhance the accessibility of festivals;<sup>82</sup> and started implementing a programme to improve the accessibility of homes in mainland Portugal under the Recovery and Resilience Facility.<sup>83</sup> In **Romania**, the National Council for Combating Discrimination imposed a fine on a homeowners' association for refusing to allow the construction of an access ramp to a building where a complainant with a disability lived.<sup>84</sup> In Bulgaria, the rules governing the requirements for accessibility and universal design of the elements of accessible environments were clarified and refined.<sup>85</sup>

## PROMISING PRACTICE

### Minibuses help guarantee mobility in public transport

The state of Berlin initiated the Alternative Barrier-Free Transport project, which aims to make public transport accessible for people with disabilities whose mobility is limited. It involves running a minibus service to transport people from a non-accessible station to the nearest accessible station (or vice versa). The purpose of the project is to promote a barrier-free city for people with reduced mobility. It represents an interim solution for use until all public transport is accessible for everyone.

*Source: Berlin Transport Authority (n.d.), 'Alternative Barrier-Free Transport' ('Alternative Barrierefreie Beförderung (ABB)')*

### Handbook on tourism services helps improve accessibility for people with mental disabilities

Universities in Belgium, Estonia and Latvia have put together a handbook on accessibility in tourism. It mainly focuses on adapting these services to people with mental impairments and/or disabilities. The handbook is available in English. It aims to educate and advise the tourism sector on how to make services suitable for tourists with different levels of impairment.

*Source: University of Tartu (2022), Guidelines for making tourism services more accessible for people with mental impairment (Suunised turismiteenuste ligipääsetavuse parandamiseks psüühilise erivajadusega inimestele), Pärnu, University of Tartu*

#### **10.2.4. People with disabilities displaced in the EU following the Russian war of aggression against Ukraine**

Russia's war of aggression against Ukraine elicited a range of responses from both national protection systems and international protection systems, as this year's focus chapter discusses.

In August, UN experts expressed their concern at the risk that children with disabilities would be institutionalised rather than hosted in the community. That would not be in line with Article 19 of the CRPD. "Third countries have a heavy responsibility to assist Ukraine imagine a better future for its citizens with disabilities which include its children", they said.<sup>86</sup>

In September, the CRPD Committee issued a statement on the situation of people with disabilities based on information it had requested from the parties to the CRPD most affected by the war and refugee flows, including the EU.<sup>87</sup> The committee recalled all parties' obligation to take all necessary measures to ensure the protection and safety of people with disabilities, as Article 11 of the CRPD provides, and praised the EU's efforts to help evacuate people with disabilities and mainstream disability in its asylum directives. It reiterated the UN experts' concern about the risk of the reinstitutionalisation of children in countries hosting refugees<sup>88</sup> and about the exposure of women and children with disabilities to neglect, domestic violence, conflict-related sexual violence, trafficking and sexual exploitation.<sup>89</sup> The committee emphasised the importance of continued deinstitutionalisation, even in emergency situations, in its *Guidelines on deinstitutionalization, including in emergencies*, published in October.<sup>90</sup>

At national level, governments and civil society organisations throughout the EU implemented initiatives to receive people with disabilities fleeing the war. This involved developing information products about the range of services available to people with disabilities and their hosts. In France, the Ministry of the Interior issued an arrival booklet indicating which authority people with disabilities can turn to for assistance.<sup>91</sup>



In **Belgium**, the Flemish Agency for Persons with Disabilities created an information sheet for everyone receiving Ukrainian refugees with disabilities. It details all the help and support that is available for them in Flanders and Brussels.<sup>92</sup>

A Belgian action group produced bilingual flashcards for Ukrainian children with autism or communication difficulties (in Ukrainian with German, French and Dutch translations) to facilitate communication.<sup>93</sup> It also created a book with pictures and text in French and Ukrainian to facilitate communication between Ukrainian refugees and their host families.<sup>94</sup> The Advisory Committee on Flemish Sign Language drafted policy advice concerning help for deaf refugees on 29 March 2022.<sup>95</sup>

Since May 2022, the **German** Red Cross has provided support for people with disabilities from Ukraine in the form of a contact point set up on behalf of the Federal Ministry of Labour and Social Affairs and the Federal Ministry of Health, and with the support of the Federal Ministry of the Interior and Community.<sup>96</sup>

On 29 June 2022, **Romania** adopted a set of measures promoting the protection and inclusion of refugees by guaranteeing access to day-care and residential services.<sup>97</sup> In June, the **Serbian** Commissariat for Refugees and Migration organised the allocation of financial aid for the purchase of medications for chronically ill Ukrainian nationals.<sup>98</sup> In **Malta**, children with disabilities could attend a weekly multisensory room session, along with hydrotherapy and swimming lessons, as part of a scheme that the Inspire Foundation set up.<sup>99</sup>

National monitoring bodies were also active in ensuring the proper reception of displaced people from Ukraine. The **Czech** Deputy Public Defender of Rights issued a special bulletin on supporting people with disabilities fleeing the war in Ukraine. It included a translation of a set of recommendations that the EDF originally formulated in cooperation with its member organisations and experts. The **German** Institute for Human Rights published a paper on refugees with disabilities listing the key human rights requirements for identifying, accommodating and caring for refugees with disabilities in Germany.<sup>100</sup>

There was some criticism of the way some Member States received Ukrainians with disabilities. A media report criticised the treatment of Ukrainian refugees with disabilities in **Denmark**.<sup>101</sup> The Immigration and Integration Committee raised the matter with the Minister for Immigration and Integration.<sup>102</sup>

In March 2022, a large number of **Swedish** disability rights organisations submitted an official letter to the Minister for Health and Social Affairs (*Socialministern*) regarding people with disabilities fleeing Ukraine. These included Funktionsrätt Sverige; Delaktighet, Handlingskraft, Rörelsefrihet; Diabetesorganisationen i Sverige; FQ, Forum – Kvinnor och Funktionshinder; Hörselskadades Riksförbund; Rörelsehindrade barn och ungdomar; Sveriges Arbetsterapeuter; Fysioterapeuterna; Logopedförbundet; and Föreningen Funkibato. They urged the government to urgently provide equipment and medicines, and rehabilitate and habilitate displaced people with disabilities fleeing Ukraine, as the CRPD requires.<sup>103</sup> The minister responded by referring to the rights that the legislation in place provides.<sup>104</sup>

The European Union Agency for Fundamental Rights (FRA) conducted an online survey on people displaced from Ukraine in August and September 2022. The results showed that adult respondents with activity limitations,

which is often used as a proxy for disability,<sup>105</sup> were more likely to mention that they felt **unhappy** with their current education situation (26 %) than people without such limitations (17 %).<sup>106</sup> In the area of employment, those with activity limitations considered themselves to be victims of discrimination more frequently (13 %) than those without activity limitations (9 %).<sup>107</sup> In terms of people's overall satisfaction with their lives, a higher share of people with activity limitations felt **dissatisfied** (21 %) than people without activity limitations (13 %).<sup>108</sup>

### 10.3. CRPD MONITORING FRAMEWORKS AND FOCAL POINTS

The CRPD Committee drew up a list of issues regarding the EU, and its Article 33 (2) CRPD monitoring framework provided input to it. At national level, the last outstanding framework was established and two other monitoring frameworks faced different challenges in implementing their mandates.

In April, the CRPD Committee published the list of issues prior to reporting on the EU. The list included questions for the EU on the implementation of the CRPD, to which the EU is a party.<sup>109</sup> In formulating this list, the committee received input from a range of civil society organisations, as well as the EU CRPD Monitoring Framework. The framework's report consisted of contributions from all four members: the European Parliament, the European Ombudsman, FRA and the EDF.<sup>110</sup>

The European Commission is the focal point of the EU for the CRPD. It will have 12 months to answer the questions from the committee, which deal with all articles of the convention and include issues such as freedom of movement of people with disabilities, access to health, employment, data collection, climate actions and artificial intelligence. An interactive dialogue will then take place, after which the committee will issue concluding observations. The EU CRPD Monitoring Framework will provide additional input ahead of the interactive dialogue.

The framework also held its regular meetings, besides a meeting with the Commission and a meeting with the European Network of National Human Rights Institutions Working Group on the CRPD. At this last, it agreed to cooperate on monitoring the European Disability Strategy.

#### FRA ACTIVITY

### FRA submits its input on the CRPD Committee's review of the EU, and coordinates the input of the EU CRPD Monitoring Framework

In February, FRA provided the CRPD Committee with its input on the list of issues. The agency's contribution highlights the lived experience of people with disabilities in the EU compared with that of the general population; legislative gaps; discrimination in the areas of education, health, employment, housing, access to services and transport; violence, harassment and crime; deinstitutionalisation; participation; the situation of particularly vulnerable people; monitoring and data collection; and the impact of the COVID-19 pandemic. In its role as secretariat of the EU CRPD Monitoring Framework, FRA also coordinated and sent the contributions of other framework members. They include the positions of the EDF and relevant material from the European Parliament and the European Ombudsman.

*Source: EU CRPD Monitoring Framework (2022), Submission ahead of the preparation of a list of issues for the European Union's 2nd periodic review by the CRPD Committee*

At national level, the **Swedish** Institute for Human Rights was the final national CRPD monitoring framework to be designated in the EU. It started work by holding a dialogue with Swedish disability organisations and defining its monitoring work regarding disability rights.

The **Maltese** government established a civil society participation mechanism for its focal point under the CRPD, the Directorate for Disability Issues. The chair of the mechanism, called Engage, "shall be a person with disability with a proven record of activism".<sup>111</sup> Four out of 12 members should be people with disabilities representing themselves, or a voluntary organisation working in the sector, and one of the members must be a parent of a child with a disability.<sup>112</sup>

In **Slovakia**, a group of members of parliament proposed extending the mandate of the Commissioner for Persons with Disabilities to older people to increase the protection of and support for older people as a vulnerable group.<sup>113</sup>

In **Belgium**, the Flemish government formally confirmed that it would end its cooperation with the Belgian Article 33 (2) monitoring framework, the Interfederal Centre for Equal Opportunities.<sup>114</sup> Its powers will be transferred to the newly created Flemish Institute of Human Rights, which will monitor the implementation of the CRPD in respect of Flanders and the Flemish community.<sup>115</sup> Various players expressed concerns about this decision, stating that there would be no national overview of CRPD issues if Flanders were no longer under the scrutiny of the Interfederal Centre for Equal Opportunities. They also cited the unnecessary complexity of the protection system, loss of expertise and fewer competences of the new body in litigation on behalf of alleged victims of CRPD violations.<sup>116</sup>

In **Lithuania**, the Commission for the Monitoring of the Rights of Persons with Disabilities received funding to compensate a fifth member, the representative of the Office of the Equal Opportunities Ombudsperson,<sup>117</sup> who joined in May.<sup>118</sup> The commission noted, however, that it still lacked sufficient funding and human resources and did not have any lawyers to identify legislative gaps.<sup>119</sup>

## FRA opinions

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### FRA OPINION 10.1

EU Member States should take effective action to address the employment gap for people with disabilities through comprehensive and targeted measures in all sectors of the economy to achieve full employment inclusion. The European Commission should monitor the implementation of the new Minimum Wage Directive including as it relates to people with disabilities. Member States should in this regard pay particular attention to people with disabilities following the guidance by the CRPD Committee.

Member States should phase out sheltered employment in line with the CRPD. They should put in place effective measures to integrate individuals working there in the open labour market. In doing so, they should pay particular attention to promoting work opportunities for women and older people with disabilities.

Article 27 of the CRPD requires that people with disabilities should be able to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to people with disabilities. The CRPD Committee clarified this obligation in General Comment No. 8 (2022), including by noting that sheltered employment is, with one limited exception, not acceptable as a measure to promote the employment of people with disabilities under the CRPD.

EU-level and national-level statistics show that the employment gap for people with disabilities persists, and now stands at 23.1 percentage points. In addition, despite reforms aimed at improving participation in the open labour market, segregated employment is still promoted and insufficient support is provided to people with disabilities to ensure that they have access to the labour market. This is particularly the case for women and older people. The Minimum Wage Directive will help improve the situation of people with disabilities but will not by itself shift national employment practices.

Article 24 of the CRPD recognises the right of people with disabilities to education and requires the realisation of this right without discrimination and on the basis of equal opportunity. States Parties are required to ensure an inclusive education system at all levels and lifelong learning.

However, people with disabilities continue to face significant burdens in accessing education systems. They are less likely to complete their secondary education and get diplomas that are useful for full participation in the job market, and also less likely to enrol in or complete higher education. There are also challenges in the transition between education and the labour market.

Buildings and other aspects of the learning environment are insufficiently accessible for people with disabilities. Member States continue to use segregated learning environments instead of investing in a full and inclusive regular education system.

Article 9 of the CRPD requires that people with disabilities have full access to society, including the physical environment, transportation, information and communications, including information and communications technologies and systems, and other facilities and services open or provided to the public, both in urban areas and in rural areas. The EU has adopted relevant directives in this area, such as the European Accessibility Act and the Web Accessibility Directive, and progress has been made in incorporating them into national law and implementing them. However, a significant number of Member States have missed the deadline for incorporating the European Accessibility Act into national law, and progress still needs to be made in coming years to ensure full implementation.

A European Commission evaluation also found significant remaining challenges in incorporating the Web Accessibility Directive into national law. They are also visible in national reports. Despite some progress, challenges persist in other areas of accessibility too, such as the broader accessibility of infrastructure and the area of public transport. The EU has issued legislation in some areas.



## FRA OPINION 10.2

To facilitate the transition from education to the labour market, EU Member States should provide sufficient assistance to students with disabilities at all levels of education. They should ensure that all learning environments in primary, secondary and tertiary education are inclusive and fully accessible.



## FRA OPINION 10.3

EU Member States should fully implement existing EU legislation in the area of disability, including the European Accessibility Act and the Web Accessibility Directive. In areas such as public transport and infrastructure, they should fully implement their obligations under Article 9 of the CRPD. The European Commission could consider proposals for the extension of the accessibility directives to other areas.

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