

# Key migration issues: one year on from initial reporting

October 2016

*Over the past year, responses to the migration situation in the European Union (EU) have directly affected several fundamental rights referred to in the Charter of Fundamental Rights of the European Union, as reported in FRA's monthly reports. The focus of this October report on the migration situation outlines some of the persistent key issues in four areas of concern that have emerged since September 2015, namely: unaccompanied children; safety and protection at reception facilities; impact on local communities; and violence and hate speech against migrants. These key issues remain areas in need of priority action by the EU Member States.*

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## MAIN FINDINGS

One year on from the first report on the migration situation in the EU in September 2015, the following main findings highlight persistent problems in four areas of concern – unaccompanied children; safety and protection at reception facilities; impact on local communities; and violence and hate speech against migrants. Each of these continues to require priority action by the Member States.

### Unaccompanied children

- After one year, at registration and first reception, clear guidance and qualified staff to identify children at risk continue to be often missing (for example in Italy).
- Age assessment procedures have generally not been applied at first reception facilities (particularly in transit countries), nor have they been adequately explained to children.
- Delays persist in the appointment of guardians, in some cases for several months (Germany and Italy), thus delaying children's access to protection, adequate reception and family reunification.
- To resolve delays in appointing guardians, some EU Member States assign these functions to reception staff (such as in Bulgaria and Italy). This may, however, compromise the independence and impartiality required from guardians.
- Children continue to encounter legal and practical obstacles to access asylum procedures. Some Member States have begun to initiate asylum procedures in practice without a guardian being present (for example in Bulgaria, Greece and Italy).
- The "ageing out" of children turning 18 during the procedure and prior to accessing asylum is a persistent concern in all Member States.
- Providing adequate specialised facilities for unaccompanied children remains a challenge in several Member States (for example in Bulgaria, Hungary and Italy); Austria, Greece and Sweden have increased the number of such facilities.
- Children mainly go missing from transit and temporary first reception facilities that do not meet child protection standards.
- The legislation in some Member States (for example in Bulgaria, Hungary and Italy) prohibits the detention of unaccompanied children. However, Bulgaria and Hungary have detained unaccompanied children in practice. Greece holds unaccompanied children in detention to prevent absconding until they are placed in specialised facilities. Sweden also occasionally detains unaccompanied children. In Austria and Germany, the detention of older children is allowed by law.

### Safety and protection at reception facilities

- The seven EU Member States reported on apply various protection and safety measures in reception facilities. Only Sweden has specific guidelines on protecting migrants and asylum seekers from violence and exploitation, which are, however, not always implemented in practice.
- Most Member States have no specific mechanisms to prevent gender-based violence at reception or detention centres.
- Several incidents of abuse and sexual assaults affecting women and children have been reported in Germany, Greece and Sweden.
- Practices of ensuring sensitive and safe procedures for lesbian, gay, bisexual, trans and intersex (LGBTI) persons at reception facilities vary among the seven Member States; only a few have developed specific protection measures, such as offering separate housing, zero tolerance policies for discriminatory behaviour by staff, or standard operating procedures to identify sexual and gender-based violence.

## Impact on local communities

- Negative reactions towards asylum seekers and migrants have increased in many locations over the past year. These appear to relate to a lack of information about plans of authorities, as well as limited contact between local and refugee communities.
- A shift of budget resources to the local level has covered the costs for accommodation and access to basic services in many EU Member States, unless these services are directly paid for by the federal budget (as in Hungary).
- The integration of migrant and asylum-seeking children into schools has largely improved. The main receiving countries (Austria, Germany and Sweden) offer preparatory training prior to integrating children into regular classes. Sweden arranges schooling within a month.

## Violence and hate speech against migrants

- Most of the seven EU Member States under review do not publish data on the use of excessive force by the police. Many incidents of police violence have been reported in the past year from Greece and Hungary, and isolated severe cases from Bulgaria and Germany. In some Member States (Germany, Greece and Sweden), violence and abuse were also reported on part of staff of (child) reception facilities.
- Racist incidents against asylum seekers and third-country nationals increased in Germany, Greece and Sweden; such incidents also continued to occur in Austria and Italy, some of these being extremely violent.
- Hate crime incidents include violent attacks against asylum seekers (with and without bodily injuries), property damage, arson attacks against reception and accommodation centres, homicide, threats to aid workers and service providers, and hostile demonstrations against refugees.
- In Germany, politically-motivated violent attacks against asylum seekers and third-country nationals almost doubled during the past year. Every third day, a reception facility is subject to an arson attack. In Austria and Sweden, (planned) reception facilities are also regularly under attack. In Greece, demonstrations have taken place against hotspots and, at local level, against refugee children enrolling in schools.
- With the exception of Austria, violent activities by local vigilante groups have been reported from all of the Member States covered, although attribution to a specific group is not always clear. In Bulgaria, the authorities endorsed members of vigilante groups detaining asylum seekers at the border.
- Hate crime attacks by vigilante groups are not limited to border areas and asylum seekers but also regularly affect residing third-country nationals. The detection rate of these crimes is low. Many of them are not reported because the persons concerned are afraid of the police and/or a negative impact on their residence status and pending procedures.
- Reports of hate speech in relation to the migration situation have increased in Austria, Bulgaria and Sweden.
- Online hate speech remains difficult to investigate as many websites are based in foreign countries where hate speech does not constitute a criminal offence.

## Key issues in need of priority action

Responses to the migration situation in the European Union (EU) have directly affected several fundamental rights referred to in the Charter of Fundamental Rights of the European Union, including: human dignity (Article 1); the prohibition of slavery and forced labour, including trafficking in human beings (Article 5); the right to respect for private and family life (Article 7);

the rights of the child (Article 24); the right to an effective remedy (Article 47); the principle of non-discrimination (Article 21); the right to asylum (Article 18) and protection in the event of removal, expulsion or extradition (Article 19). The key issues addressed in the following sections remain areas in need of priority action by the EU Member States.

## Unaccompanied children

The best interests of the child must be a primary consideration in all actions affecting children, including those in asylum and migration procedures, as required by Article 24 (2) of the Charter of Fundamental Rights of the European Union (the Charter) and the United Nations Convention on the Rights of the Child (CRC).

For unaccompanied and separated children, safeguards in EU secondary law further aim to ensure timely identification, guardianship and legal representation, adequate and safe reception conditions, family unity, and prevention of arbitrary detention (see, for example, the Reception Conditions Directive (2013/33/EU), the Asylum Procedures Directive (2013/32/EU), the Anti-Trafficking Directive (2011/36/EU) and the Return Directive (2008/115/EC)). While protecting the child's best interests within asylum and migration procedures, these safeguards should also ensure effective referral and adequate protection in EU Member States.

Looking back at the past 12 months of the migration crisis, the following recurring challenges can be identified as affecting the situation and treatment of unaccompanied children in the EU Member States under review.

### Identifying children at risk

The identification of children as vulnerable persons should immediately take place at initial registration (Articles 22 and 23 of the Reception Conditions Directive, Article 24 of the Asylum Procedures Directive and Article 11 of the Anti-Trafficking Directive). Officials coming in direct contact with children should be adequately trained and qualified to identify children at risk, inform them and respond to their protection needs.

Due to their increased risk of abuse and exploitation as well as their need for protection, unaccompanied and separated children automatically qualify as vulnerable persons, by virtue of the definitions of the Reception Conditions Directive (Article 21) and the Return Directive (Article 3 (9)).

The lack of clear guidance on how to identify children at risk and the lack of qualified staff at registration and first reception remain issues of concern (for example in Italy), even if several EU Member States have increased the number of ad hoc training initiatives.

Specialised staff of child protection authorities is not systematically involved early on in the procedure (e.g. Germany), although they should contribute

to the early identification of children at risk and ensure prompt referral to child protection services. Identifying and protecting separated children – children who are accompanied by adults who are not their parents or primary care givers – is a challenge in many Member States, for example in Bulgaria and Greece. In some Member States, vulnerability screening takes place at a late stage in the procedure (Germany) or is carried out summarily (Sweden).

Age assessment procedures have generally not been applied at first reception facilities (particularly in transit countries), nor have they been adequately explained to children.

In some Member States, age assessment takes place before the appointment of a guardian (e.g. Germany and Hungary). Hungary does not apply the principle of the benefit of the doubt; persons who are subject to age assessment procedures are therefore treated as adults and risk detention.

### Guardianship and legal representation

Guardians are key in ensuring that children's views are taken into consideration and that they have access to adequate reception, healthcare and education services. Guardians are also essential in safeguarding children's procedural rights. Unaccompanied children seeking asylum have to be provided with an independent and qualified guardian as soon as they are identified by the competent authorities. In addition, unaccompanied children seeking international protection should have legal representation during the proceedings (Article 6 of the Dublin Regulation (EU) No. 604/2013, Article 24 of the Reception Conditions Directive and Article 25 of the Asylum Procedures Directive, also echoed in Articles 12 and 20 of the CRC).

Despite EU Member States' efforts in the past year to strengthen their guardianship systems and ensure the prompt appointment of guardians, significant delays remain in appointing guardians in most Member States; unaccompanied children have to wait for several months in Germany (up to five months<sup>1</sup>) and in Italy (up to eight months<sup>2</sup>). In practice, authorities often start the asylum procedure without the presence of a guardian (Bulgaria, Greece and Italy).

<sup>1</sup> Bundesfachverband Unbegleitete Minderjährige Flüchtlinge: Die Aufnahmesituation unbegleiteter minderjähriger Flüchtlinge in Deutschland. Erste Evaluation zur Umsetzung des Umverteilungsgesetzes, August 2016, p. 12.

<sup>2</sup> Oxfam (2016), Oxfam Media Briefing, 8 September 2016.

Additional challenges and delays in appointing guardians are reported about unaccompanied children who do not seek asylum (for example in Bulgaria), since recent legislative and policy developments mainly target asylum-seeking children. Challenges and inconsistent practices in the identification of separated children also leads to delays or no appointment of guardians.

In most of the Member States under review, guardians are assigned to a great number of children, which in practice makes it impossible for them to fulfil their guardianship role and tasks. Sweden entrusts guardianship functions to local-level services, and persons appointed as guardians are volunteers. One of the regions introduced a limit of eight children per guardian; however, pending the appointment of an individual guardian, there are still reports of cases of 50 children per guardian. Sadly, the guardianship system in Greece has not been improving over the reporting period; local prosecutors continue to be appointed as temporary guardians for a great number of children, which makes the system ineffective.<sup>3</sup>

A number of EU Member States (for example Bulgaria and Italy) promote the assignment of guardianship responsibilities to staff members of reception facilities where children are placed. It is a practical measure to overcome the challenge to promptly appoint a guardian and make individual guardians available. Such measures, however, disregard the potential **conflict of interests** between the reception facility staff member assigned guardianship responsibilities with the interests of the child; it also raises concerns about the **independence** and **impartiality** of guardians.

There are still considerable shortages concerning the necessary professional qualifications of and specialised trainings available for guardians. This remains a challenge in almost all EU Member States under review, although various actors have organised trainings for guardians; in Bulgaria and Sweden, for example, officials in municipal authorities, who were assigned guardianship responsibilities without having the necessary educational and professional qualifications, received training.<sup>4</sup>

To speed up the assignment of guardians, who by law should be appointed within eight days, the Hungarian immigration office established a special register of unaccompanied children in 2016. The guardianship authority receives this register by email every day. As a result, the authority took less time to notify the immigration office about the

assignment of a guardian in 2016 while this process took up to several weeks in 2015.

## Accessing asylum procedures

As enshrined in Article 18 of the Charter (the right to asylum), unaccompanied children must have access to asylum procedures without any obstacles. The best interests of the child should be a primary consideration throughout the asylum and migration procedures. EU law provides specific safeguards in this regard, including the early appointment of a guardian, access to information, legal representation and specialised training for the officials working with children. In certain Member States, it has not been an issue in the past 12 months; for example, in Austria, unaccompanied children are never subject to Dublin transfers since the country examines their asylum claims as responsible Member State,<sup>5</sup> or in Hungary claims of unaccompanied children are processed in an expedited procedure pursuant to the asylum law.

Children encounter legal and practical obstacles to accessing asylum procedures in all seven Member States covered.

Delays are often due to general shortcomings of national asylum systems, such as the limited number of asylum and migration officers and interpreters, and the non-prioritisation of cases of unaccompanied children in the procedures. However, in some Member States such as in Germany, asylum applications of unaccompanied children are further delayed because they can only apply for asylum after a legal guardian has been appointed. This usually takes a long of time. In addition, social and child protection services that are responsible for unaccompanied children at the first reception stage often do not prioritise access to asylum and international protection for unaccompanied children (e.g. Germany).<sup>6</sup>

National legislation may also hinder and further delay the access to asylum procedures for unaccompanied children, if it does not explicitly allow these children to personally lodge an application for international protection. In Bulgaria, for example, the asylum law does not specify when a child can lodge an application on their own behalf, nor

<sup>3</sup> NGO "ARSIS", NGO "PRAKSIS", Médecins du Monde Greece.

<sup>4</sup> State Agency for Refugees; County Administrative Board Västra Götaland.

<sup>5</sup> Caritas Styria (Caritas Steiermark).

<sup>6</sup> Bundesfachverband Unbegleitete Minderjährige Flüchtlinge: *Die Aufnahmesituation unbegleiteter minderjähriger Flüchtlinge in Deutschland. Erste Evaluation zur Umsetzung des Umverteilungsgesetzes*, August 2016.

does it specify when a legal representative must lodge the application for the child.<sup>7</sup>

Delays in accessing the asylum procedure impedes family reunification for unaccompanied children close to adulthood, since once they reach the age of majority they are subject to more restricted legal provisions of **family reunification** laws (for example in Austria, Germany, Greece and Sweden).<sup>8</sup> The protection of unaccompanied children who are **aged out** (turning 18) before accessing the asylum procedures or during these procedures is of great concern in all seven Member States.

Despite the preferential legal framework or administrative practices, it was reported during the period of larger influx of asylum seekers that the authorities did simply not have the capacity to register the asylum applications lodged by unaccompanied children in a swift manner (as experienced in Sweden between September and December 2015). Child-friendly and child-specific information material has been progressively becoming available for unaccompanied children. The lack of adequate information for these children, however, remains an obstacle in accessing international protection and/or family reunification procedures. In many cases, they are not systematically and adequately informed about the possibility to apply for international protection and their entitlements to family reunification (e.g. in Italy).<sup>9</sup>

## Reception conditions for unaccompanied children

In addition to the Convention on the Rights of the Child (Articles 20 and 22), the Reception Conditions Directive (Articles 12, 18, 22, 23 and 24) stipulates that children should be accommodated in specialised facilities and foster care placements to guarantee the protection and care necessary for their wellbeing. Articles 14, 17 and 19 of the directive further lay down children's access to education and healthcare.

Provision of adequate and safe accommodation for unaccompanied children remains a challenge in several EU Member States (such as in Germany, Greece, Hungary, Italy and Sweden) despite the significant increase of specialised facilities for unaccompanied children in some Member States.

The number of accommodation places for unaccompanied children has increased, for example, in Greece from 477 places in March 2016 to 891 places in September 2016,<sup>10</sup> in Austria from two accommodation facilities to 11 at the federal level<sup>11</sup> and in Sweden it is fivefold.<sup>12</sup> Bulgaria is the only Member State covered in the data collection that has not yet established any specialised facility for unaccompanied children;<sup>13</sup> unaccompanied children aged under 14 years, however, are accommodated in residential centres for children deprived of parental care.<sup>14</sup> Germany has also increased the availability of specialised facilities for unaccompanied children throughout the country in the past year; for example, Baden-Württemberg created several thousands of new places for them.<sup>15</sup>

Overall, the number of places in specialised facilities is still insufficient for unaccompanied children. As a result, children remain in crowded first reception and transit facilities (for example in Germany and Sweden) and in hotspots (as in Greece and Italy) where quality and child protection standards are not met for lengthy periods before they are transferred to specialised facilities. In some Member States, unaccompanied children (particularly older children) are placed in separated sections within adults' reception facilities (such as in Bulgaria and Greece). Unaccompanied children have sometimes been placed in facilities with unrelated adults (e.g. Bulgaria) or with accompanied adults or relatives who are not the child's guardian (e.g. Germany) without receiving adequate care and protection. Austria and Greece developed specialised facilities for unaccompanied girls to overcome accommodation shortages and provide special protection for girls. In some German cities, despite the protection-sensitive legislative

<sup>7</sup> Ilareva, Valeria, *Analysis of legal and administrative barriers to the operation of a Coordination mechanism ensuring interaction among institutions and organisations involved in guaranteeing the rights of unaccompanied minor aliens staying in the Republic of Bulgaria, including those who seek or have been granted international protection*, UNICEF Bulgaria, 2016, p. 5 and following.

<sup>8</sup> NGO "ARSIS", NGO "PRAKSIS", Médecins du Monde Greece; Caritas Styria (Caritas Steiermark); Swedish Migration Agency; <https://www.bundesregierung.de/Content/DE/Artikel/2016/02/2016-02-03-asylpaket2.html>

<sup>9</sup> OXFAM (2016), Oxfam Media Briefing, 8 September 2016; information provided by ASGI in the interview held on 23 September 2016.

<sup>10</sup> National Centre of Social Solidarity, MDM Greece, PRAKSIS, ARSIS, Ministry of Migration.

<sup>11</sup> Federal Ministry of the Interior, Department III/9 (*Bundesministerium für Inneres, Abteilung III/9 Grundversorgung und Bundesbetreuung*).

<sup>12</sup> Health and Social Welfare Inspectorate (Sweden).

<sup>13</sup> Refugee Support Group.

<sup>14</sup> Bulgarian Red Cross.

<sup>15</sup> Municipal Association of Youth and Social Affairs of Baden-Württemberg, Department Youth - State Youth Welfare Office (*Kommunalverband für Jugend und Soziales Baden-Württemberg, Dezernat Jugend - Landesjugendamt*), 29 September 2016.



amendments in force since November 2015,<sup>16</sup> hostels or shelters have accommodated a number of unaccompanied children.

Unaccompanied children are often transferred several times before they are placed in a specialised reception facility at municipal or local level (for example in Germany, Italy and Sweden). Italy, for example, has developed a two-pronged system for the reception of unaccompanied children: they are initially placed in first reception centres, then in second reception centres, both of which are specialised in accommodating them, and eventually they enter child protection facilities run by municipal authorities. Reports show that in the case of great numbers of migrants arriving, unaccompanied children might stay for several weeks in first reception centres or even in hotspots before they are placed in a dedicated facility.<sup>17</sup>

A majority of children go missing from transit and temporary facilities that do not meet child protection standards where children are placed during the first reception stage, according to a study on missing unaccompanied children in Sweden and data on disappearances of unaccompanied children in Hungary and Italy.

The lack of reception standards is one of the challenges that EU Member States may have overseen but need to address.

Several Member States have made progress in developing reception standards, including also for the specialised shelters for unaccompanied children (such as in Austria, Germany and Italy), to improve the quality of reception facilities for these children.

In Germany, the federal Ministry for Family (*Bundesministerium für Familie, Senioren, Frauen und Jugend, BMFSFJ*), with the support of Unicef and several NGOs,<sup>18</sup> has developed such minimum standards for children, adolescents and women in refugee camps. These standards do, however, not have statutory power and are not mandatory. Therefore, most service providers do not apply them. In Austria, reception standards are available at provincial but not at national level. A new Italian law, which entered into force in September 2016, lays down the minimum reception standards of first recep-

tion centres for unaccompanied children providing care for 24-hours seven days a week (24/7).<sup>19</sup> In cases of a great surge in arrivals, the Italian law, Decree Law No. 113 of 24 June 2016, provides for the accommodation of children in larger reception facilities (up to 50 children) with lower standards.

As Sweden lacks national standards for reception facilities for unaccompanied children, the Health and Social Welfare Inspectorate (Swedish oversight authority) developed quality indicators to facilitate inspections and oversight mechanism for such facilities. The set indicators includes criteria such as qualifications and training of staff, as well as measures to prevent abuse and exploitation. When inspecting such specialised accommodation centres, the Health and Social Welfare Inspectorate found that many of these facilities were inadequate. As a result, some 23 to 40 such accommodation centres, which various actors and service providers ran, were closed during the past 12 months.<sup>20</sup>

When unaccompanied children are placed in foster care, foster parents are not always adequately vetted and trained, and incidents of abuse have been reported.<sup>21</sup>

### Promising practice

#### City of Jönköping, Sweden

The city has chosen to use a child rights approach and involve unaccompanied children in the design and implementation of policies and measures for them. Children themselves are called to participate and co-decide about their housing situation. The city has also engaged in a long-term evaluation of the reception and integration of the unaccompanied children through repeated focus groups in order to monitor progress over time.<sup>22</sup>

Meanwhile, many unaccompanied children continue waiting outside the fence at the Hungarian-Serbian border under very poor living conditions. The two children's homes in Hungary have only limited capacity, with significant fluctuations in the number of children accommodated; by September 2016, the number of children had dropped significantly.

<sup>16</sup> Law to improve the care and accommodation of foreign children and young people" (*Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher*).

<sup>17</sup> Oxfam (2016), Oxfam Media Briefing, 8 September 2016.

<sup>18</sup> BMFSFJ/UNICEF: Minimum standards for the protection of children, adolescents and women in refugee camps.

<sup>19</sup> Decree of the Ministry of the Interior of 1 September 2016, Establishment of government's first reception centres targeted at foreign unaccompanied minors (*Decreto del Ministero dell'Interno 1 settembre 2016, Istituzione di centri governativi di prima accoglienza dedicati ai minori stranieri non accompagnati*).

<sup>20</sup> Health and Social Welfare Inspectorate (Sweden).

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

## Migration detention of children

Detention of a person is a major interference with the right to liberty, as set out in Article 6 of the Charter and Article 5 of the European Convention on Human Rights (ECHR). Any deprivation of liberty must therefore respect the established safeguards to prevent unlawful and arbitrary detention, including of children. Children should only be detained as a measure of last resort and for the shortest appropriate period of time (Article 37 of the CRC).

EU law strongly discourages the detention of children for migration purposes. The Reception Conditions Directive (Article 11) and the Return Directive (Articles 16 (3) and 17) set forth specific requirements concerning the detention of unaccompanied children or children with families, underlining that particular attention must be paid to their specific situation and vulnerability. All efforts shall be made to release and place them in accommodation suitable for children. Unaccompanied children seeking asylum may only be detained in exceptional circumstances and never placed in a prison-like accommodation.

In Bulgaria, Italy and Hungary, legislation prohibits migration detention of unaccompanied children. In practice, however, children are detained for migration purposes in several EU Member States.

Although not permitted by law in Hungary, for example, civil society organisations reported multiple cases when they could identify underage asylum seekers in detention facilities. To **prevent absconding** pending placement in specialised facilities, Greece often detains children in police custody, together with adults and criminal detainees. Despite an increased number of accommodation places for unaccompanied children, 140 children are still placed in detention waiting for their transfer.<sup>23</sup> In Bulgaria, children can be detained with their relatives.<sup>24</sup> In Germany, failed asylum-seeking children are sometimes detained with their parents before their removal.<sup>25</sup> Sporadic detention of unaccompanied children has also been reported in Sweden.<sup>26</sup>

Unaccompanied children are also often detained because they are assigned to unrelated adults or have been wrongly registered as adults (for example in Bulgaria and Hungary). Following legislative changes in Hungary in 2016, detainees claiming to be underage have to bear the costs of their age

assessment.<sup>27</sup> Separated children are also often detained with accompanied adults in Hungary.

In terms of figures, there are about 400 places in closed facilities for children with families in Germany which are not specifically dedicated to migration detention purposes. Some 87 children with families have been detained in closed facilities in Hungary until September this year to keep them together with their parents.<sup>28</sup> Overall, the number of children in detention has increased in Sweden since last year.<sup>29</sup>

In Germany, authorities run specialised facilities for unaccompanied children who are involved in criminal proceedings. Similar facilities are going to be developed in Austria targeting children with violent or criminal behaviour.<sup>30</sup>

## Safety and protection at reception facilities

Under the Reception Conditions Directive, asylum seekers have a right to be supported as soon as they apply for international protection. EU Member States are required to provide persons seeking international protection with material reception conditions, including "an adequate standard of living for applicants, which guarantee their subsistence and safeguard their physical and mental health" (Article 17). Further to that, Member States must take measures to prevent assault and gender-based violence at the reception facilities (Article 18). The duty to give support also applies to persons processed under the Dublin Regulation.

## Protecting from violence, exploitation and abuse

Various protection and safety measures are in place at reception facilities in many of the seven Member States, notably in Austria, Bulgaria, Hungary and Sweden.

These include separate accommodation of women and families (in individual apartments), key card systems and video recording to monitor entries and movements in the camps, specially trained personnel, psychological support, workshops on the prevention of violence, and female security

<sup>23</sup> MDM Greece.

<sup>24</sup> Ministry of the Interior, Directorate General Border Police, State Agency for Refugees.

<sup>25</sup> See <http://www.taz.de/Freiheitsentzug-fuer-Gefluechtete/!5325301>

<sup>26</sup> Swedish Migration Agency.

<sup>27</sup> UNHCR Hungary.

<sup>28</sup> Office of Immigration and Nationality.

<sup>29</sup> Swedish Migration Agency.

<sup>30</sup> Caritas Styria (Caritas Steiermark).



personnel.<sup>31</sup> In addition, asylum seekers placed in reception facilities are informed on how to contact law enforcement authorities and support organisations if needed (for example in Austria and Hungary).

Only Sweden has prepared guidelines on protection from violence and exploitation which are, however, not always implemented in practice and thus inefficient. Reports of generalised threats, violence and sexual molestation against women and girls in different reception centres illustrate this.<sup>32</sup>

Bulgaria put in place standard operating procedures to identify sexual and gender-based violence. Victims of gender-based violence can notify any person whom they consider may be of help. Those persons must then refer the victim to the authorities and notify the State Agency for Refugees.<sup>33</sup> Non-governmental organisations, however, reported that these standard operating procedures are not working in practice.<sup>34</sup>

Most EU Member States, however, do not have specific mechanisms in place to prevent gender-based violence at reception or detention centres. As a positive development, Austria opened a special facility for unaccompanied girls.<sup>35</sup>

Several incidents of child abuse and sexual assaults have been reported in Germany, where similarly to Italy accommodation facilities do not have any systematic safety and protection measures in place and existing recommendations are only hardly followed<sup>36</sup>. The independent ombudsperson for issues of child sexual abuse, for example, registered more than 40 cases of sexual offences in refugee camps since the beginning of 2016, while the Ministry of the Interior counted 128 attacks against women and children in reception centres between January and the beginning of September 2016.<sup>37</sup>

<sup>31</sup> Red Cross Austria (*Österreichisches Rotes Kreuz*); Swedish Migration Agency; State Agency for Refugees (Bulgaria); Office of Immigration and Nationality (Hungary).

<sup>32</sup> Swedish Migration Agency.

<sup>33</sup> UNHCR Bulgaria (2007), *Standard Operating Procedures for Prevention and Reaction in Cases of Sexual and Gender-Based Violence in the Republic of Bulgaria* (Стандартни оперативни процедури за предотвратяване и ответни действия при сексуално и свързано с пола насилие), p. 6.

<sup>34</sup> Tisheva, G. (Тишева, Г.) and Nikolova, A. (Николова, А.) (2015), 'Мониторингов доклад за 2014 г. за сексуално и основано на пола насилие в контекста на международната закрила в Република България' ('Monitoring Report on Sexual and Gender-based Violence in the Context of International Protection in the Republic of Bulgaria in 2014'), UNHCR, p. 12 or executive summary in English.

<sup>35</sup> Caritas Styria (*Caritas Steiermark*).

<sup>36</sup> BMFSFJ/UNICEF: *Minimum standards for the protection of children, adolescents and women in refugee camps*.

<sup>37</sup> See [http://www.deutschlandfunk.de/fluechtlinge-in-deutschland-kein-schutz-fuer-kinder.720.de.html?dram:article\\_id=365529](http://www.deutschlandfunk.de/fluechtlinge-in-deutschland-kein-schutz-fuer-kinder.720.de.html?dram:article_id=365529)

## Promising practice

### Special safe housing in Sweden

Accommodation centres in Malmö, Gothenburg and Stockholm provide special safe housing for at least 15 people each. They are strategically located in the major cities to allow residents to access networks that are often not available in the smaller communities.

Source: Swedish Migration Agency

As far as the efforts to reduce risks of trafficking and (sexual) exploitation are concerned, the International Organisation for Migration (IOM) is a key stakeholder, towards which Member State authorities can turn (for example Italy). To raise awareness, the Bulgarian Red Cross offered a series of information sessions, where social workers explain the risks of exploitation, abuse and trafficking.<sup>38</sup> Sweden applies a different technique: on suspicion of human trafficking, possible victims are summoned for a dialogue, during which the authorities inform them about the possibility to report the incident to the police. In addition, asylum seekers will be put in contact with social services and receive information about support organisations, if they feel threatened and need protection.

## Ensuring sensitive and safe procedures for LGBTI persons

Practices ensuring sensitive and safe procedures for LGBTI persons at reception facilities vary among the EU Member States under review.

Sweden, for example, has developed fairly progressive and sophisticated measures. The Swedish Migration Agency has established three safe accommodations in Malmö, Gothenburg and Stockholm; in addition, LGBTI asylum seekers are allowed to stay in separate housing if they organise it themselves. A volunteers' network usually helps LGBTI persons in doing so. Trainings for staff members are regularly organised as well. Moreover, some accommodation centres have a so-called LGBTI certification (although this is not a requirement from the Migration Agency), and certain municipalities have procured LGBTI-certified accommodation centres for unaccompanied children.

Other Member States have reserved separate spaces in reception centres for LGBTI persons (for example, Bulgaria, Greece and Hungary) and give priority to

<sup>38</sup> Bulgarian Red Cross.

identified LGBTI persons for the registration and access to asylum procedures. In Greece, LGBTI persons receive special care.<sup>39</sup> A non-governmental organisation in Hungary, nevertheless, flagged a worrying practice of Hungarian authorities which use humiliating methods to verify asylum seekers' sexual orientation, by asking, for example, what position the applicant prefers during sexual intercourse.<sup>40</sup>

Measures to ensure sensitive and safe procedures for LGBTI persons are still the exception in Germany and Italy, but in the past few months, private initiatives in Germany established some safe accommodations for LGBTI asylum seekers in several cities, notably in Berlin, Chemnitz, Dresden and Nuremberg.<sup>41</sup> Applicants for international protection frequently use leaflets and factsheets (Germany, Italy and Sweden), as well as information websites in various languages.<sup>42</sup>

Only Sweden reports to have put in place a **'zero tolerance policy'** for discriminatory behaviour by staff and subcontractors. The Swedish Migration Agency has the mandate to dismiss staff who acts inappropriately towards persons in need of international protection. It should be noted, however, that no central monitoring system of such behaviour is in place.

## Impact on local communities

In practice, the local level needs to ensure that access to basic rights is guaranteed, which in turn incurs associated costs. Several rights enshrined in the EU Charter of Fundamental Rights that are important for everyday life apply to third-country nationals and EU residents alike, for example: the principle of non-discrimination (Article 21), the right to education (Article 14), the rights of the child (Article 24); and the rights to human dignity (Article 1) and to life (Article 2) are basic parameters for minimum living standards. Referring to asylum seekers, the Reception Conditions Directive requires that "material reception conditions provide an adequate standard of living for all applicants" (Article 17 (2)).

<sup>39</sup> Ministry of Migration.

<sup>40</sup> Hungarian Helsinki Committee, Pseudoscientific methods used to examine the sexual orientation of the gay asylum seekers (*Áltudományos eszközökkel vizsgálják a meleg menekülők szexuális irányultságát*).

<sup>41</sup> Lesbian and Gay Association Germany (Lesben- und Schwulenverband Deutschland), 26 September 2016.

<sup>42</sup> In Germany e.g. [www.queer-refugees.de](http://www.queer-refugees.de); in Italy e.g. [www.arcigaymilano.org/Web/10/](http://www.arcigaymilano.org/Web/10/).

## Recurrent reactions at local level

At local level, negative reactions of the population and authorities persist alongside positive actions and initiatives.

Many locations have observed an increase in negative reactions towards migrants over the past year, for example: in Bulgaria, protests of the local population living close to reception centres increased;<sup>43</sup> in Greece, racist, xenophobic and related incidents including demonstrations increased;<sup>44</sup> and Italy observed stronger reluctance at local level, particularly in smaller municipalities, to receive refugees and asylum seekers.<sup>45</sup>

As reported by the Austrian regional government of Styria, there is stronger resistance in localities where no refugees have lived before and there is the fear that newcomers would change local community life.

Reasons for protests against new refugee facilities – as mentioned for Germany – are manifold, including fear of economic harm to the local population and a decline in existing standards (e.g. longer waiting periods when accessing services) alongside general racist attitudes.<sup>46</sup>

The lack of information about plans by the authorities and the lack of contact with refugees influence the resistance of the local population.

To counteract negative reactions, especially protests and resistance against accommodation facilities, local communities increasingly realise the need for being fully transparent and informing early the local population about plans and actions concerning asylum seekers and refugees. Germany reports some promising examples of initiatives, where prejudice and fear in the local population could be reduced through cooperation of authorities, the police, local politicians, local organisations, business and civil society. Positive initiatives include early information and promoting meetings between asylum seekers and the local population, organised together with civil society.<sup>47</sup>

In Styria, Austria, a special programme called 'living together in quarters and communities' (*Zusammenleben in Quartier und Gemeinde*), financed by the regional government of Styria and carried out

<sup>43</sup> Bulgarian Red Cross.

<sup>44</sup> All stakeholders contacted in Greece.

<sup>45</sup> National Association of Italian Municipalities.

<sup>46</sup> German Association of Towns and Municipalities (*Deutscher Städte- und Gemeindebund*).

<sup>47</sup> *Ibid.*

by the NGO Zebra, organises information events with the population in cooperation with mayors in communities. Starting in four communities in 2014, pre-dating the current crisis, the project has meanwhile expanded to more than 60 communities where asylum facilities are located. The positive outcomes of this initiative underlines how important it is to inform the local population. Zebra supports municipalities in organising events and networking, which contributes to integrating refugees in local communities and reducing barriers between the local population and refugees. Informing the local population also prevented that false rumours started to spread among them.<sup>48</sup>

Yet, municipalities across the EU do not always succeed in convincing the local population to accept facilities for refugees and asylum seekers. This also led to cases where the establishment of accommodation centres was stopped, centres were closed, or kept secret – as reported from different countries.

## Resource allocation and budgetary adjustments

Predominantly, the main destination countries for asylum seekers and refugees made necessary budgetary adjustments to cover financial costs incurred at municipal level. Austria, Germany and Sweden adjusted the allocation of budget from the central level to the local level.

Budgetary adjustments are necessary to accommodate refugees and to provide basic services, such as education and training.

For example, the German Association of Towns and Municipalities expects around 300,000 additional children and adolescents in the educational system, as well as about 60,000 additional children in nurseries. Schools and nurseries thus plan to employ some 33,000 to 44,000 additional teachers and social workers. According to a draft bill, the German federal Ministry of Finance will allocate additional funds to the federal states and municipalities to cover related costs. This includes an annual lump sum of 2 billion Euro for such integration measures between 2016 and 2018.<sup>49</sup>

In Hungary, the central government and EU sources finance the reception of asylum seekers; no particular additional costs occur for local authorities,

except for increased waste removal.<sup>50</sup> The Bulgarian Red Cross reports no resource adjustments so far, but additional resources are expected after receiving financial aid from the European Union.

In Italy, problems with a lack of financial resources occur with respect to special reception centres (*Centri di Accoglienza Straordinaria, CAS*), which are managed at regional level as reported by the National Association of Italian Municipalities.<sup>51</sup> Even more serious is the challenge related to the reception of children. Even though municipalities are supported by the central government's fund targeted at the reception of children, the strong increase in numbers of children arriving in Italy and special needs of unaccompanied children caused a lack of resources.

Another persistent problem is reported from the Greek islands, where local businesses, most notably in the tourism branch, suffer from the refugee crisis. Some benefits, however, have also been acknowledged relating to the local recruitment of staff and deployed international/NGO staff spending money.

## Integrating children into the educational system

Arranging education for many newcomers continues to be challenging for most local communities. However, the reports show that this is increasingly better handled in the main receiving countries.

After some problems in providing quick access to education to children, municipalities manage better now to integrate children into the school system. In Sweden, for example, the municipalities are responsible for arranging schooling within a month, which now works well according to the National Agency for Education. Although arrangements vary across municipalities, a strengthened regulation at national level and new general guidelines have helped schools to arrange for asylum-seeking children.

The three main receiving countries – Austria, Germany and Sweden – apply tests to assess the skills of children and arrange temporary classes separately for asylum seekers and refugees, who are in need of additional training before being able to be included in mainstream classes.

<sup>48</sup> Zebra (2016), *Zusammenleben in Quartier&Gemeinde*.

<sup>49</sup> See <https://www.bundesfinanzministerium.de/Content/DE/Pressemitteilungen/Finanzpolitik/2016/09/2016-09-14-PM18-integration-entlastung-laender-kommunen.html>.

<sup>50</sup> Office of Immigration and Nationality and Office for the City Mayor of Röske

<sup>51</sup> National Association of Italian Municipalities (*Associazione Nazionale dei Comuni Italiani, ANCI*).

Such temporary classes (referred to as reception classes, preparatory classes or interim classes) often focus on language acquisition to prepare children for mainstream school as quickly as possible. Reported challenges include, in Germany for example, longer waiting times which can take up to nine months.<sup>52</sup> Unaccompanied children often have to wait until a legal guardian is appointed and accompanied children wait during their stay in reception centres and then after they have been allocated to one of the 16 federal states.

The Austrian regional authority responsible for education in Styria reports that challenges for school integration include resistance among the local population and the integration of children with literacy problems into adequate levels in school. NGOs provide literacy courses and volunteers provide support; children are often able to but not always catch up. However, all children have a place in a school as close as possible to their home based on two principles: not to have more than three to five asylum-seeking children in one class and to avoid placing asylum-seeking children in classes which have already reached the maximum number of pupils.<sup>53</sup>

Different approaches are reported from Bulgaria and Hungary. In Hungary, separate classes are provided for asylum seekers without integrating them into general classes, and in Bulgaria asylum-seeking children are directly enrolled in mainstream classes.

In Italy, the Central Service for the National Asylum Seekers and Refugees Protection System (*Servizio centrale del Sistema di protezione per richiedenti asilo e rifugiati*, SPRAR) launched several projects for school integration of children in 2015. Despite the general success to integrate children in classes according to their age in 2015, there were also challenges reported with identifying appropriate classes in some cases. No data are, however, available for the recently started school year.

In Greece, the Ministry of Education plans to establish reception classes in educational priority areas for refugee children in large reception facilities to assist their integration; children below the age of six will not be enrolled in kindergartens or pre-school classes but will receive courses in the reception facilities.

## Violence and hate speech against migrants

Violence and aggression against migrants has continued to be reported from several EU Member States during the past year, whether committed by the authorities, private individuals or groups.

The excessive use of force may in specific circumstances meet the threshold of inhuman or degrading treatment or punishment prohibited by Article 4 of the EU Charter of Fundamental Rights of the European Union and Article 3 of the European Convention on Human Rights (ECHR). It can also raise serious fundamental rights concerns in light of Article 3 of the Charter, which enshrines the right of everyone to respect for their physical and mental integrity, as well as Article 6 of the Charter and Article 5 of the ECHR, which safeguard the right to liberty. In extreme instances, it may result in deprivation of life prohibited by Article 2 of the Charter and Article 2 of the ECHR.

### Police violence

Most Member States do not publish statistics that would allow identifying a trend concerning the use of excessive force by the police.

Furthermore, the overall scale of this phenomenon is difficult to assess as these cases are often not reported officially. In most instances, they are investigated internally.

An increase in incidents of violence by the police has been observed in the past year in Greece<sup>54</sup> and Hungary<sup>55</sup>, in the latter including military personnel against people who try to cross irregularly.

The excessive use of force includes beatings, the use of unleashed dogs and pepper-spray, humiliating treatment as well as physical abuse and harassment.<sup>56</sup> There were even cases of shootings reported in Bulgaria and Germany. In October 2015, an Afghan asylum seeker was shot dead by Bulgarian police after crossing the Bulgarian-Turkish border.<sup>57</sup> Recently, in Berlin, Germany, police killed an Iraqi refugee during an intervention, which trig-

<sup>52</sup> Federal Association of Unaccompanied Minor Refugees (*Bundesfachverband Unbegleitete Minderjährige Flüchtlinge*).

<sup>53</sup> Regional Education Authority in Styria (*Landesschulrat Steiermark, Abteilung Schulpsychologie-Bildungsberatung*).

<sup>54</sup> Ministry of Migration, Greece.

<sup>55</sup> MigSzol, UNHCR, Hungary.

<sup>56</sup> Ibid.

<sup>57</sup> Bulgaria, Mediapool Online (2016), 'A border policeman shot a migrant near the Turkish border' (Граничен полицаи застреля мигрант близо до турската граница).

gered a debate in the media on alternatives to using firearms by police officers.<sup>58</sup>

Incidents of police violence in Italy, applied to persuade persons to cooperate during identification, continue to be reported when implementing identification and receptions procedures,<sup>59</sup> although no formal complaint has ever been filed.<sup>60</sup> Despite establishing the hotspot system in Italy to cope with the high number of arrivals, transfers and relocation upon arrival and registration remain difficult as many of the arrivals continue to be disembarked in other locations than the formally established hotspots. In Greek Reception and Identification Centres, police violence was observed both against unaccompanied children and adults but rarely officially reported.<sup>61</sup> In Germany, NGOs reported about police violence in the context of the campaign for victims of racist police brutality,<sup>62</sup> as well as deportation measures.<sup>63</sup>

## FRA ACTIVITY

### Fundamental rights implications of the obligation to provide fingerprints for Eurodac

In a focus paper, FRA provides guidance on fundamental rights-compliant measures to enforce the obligation of newly arrived asylum seekers and migrants to provide fingerprints.

*For more information, see FRA (2015), Fundamental rights implications of the obligation to provide fingerprints for Eurodac, Luxembourg, Publications Office.*

In addition, the incidents of human rights violations and violence do not only refer to law enforcement agents but are also observed from operators and security staff of reception centres, for example in Germany.<sup>64</sup> This also raises questions of liability and complaint options available to the persons affected.

<sup>58</sup> Germany, Der Tagesspiegel, 'Polizisten erschießen Flüchtling in Berlin. Wann der Taser eine Lösung ist - und wann nicht',

<sup>59</sup> Brigida, V. and Poeta, M. (2016), 'Hotspot, le impronte dei migranti', Internazionale, 12 May 2016; The situation experienced in the centre for asylum-seekers reception (centro per l'accoglienza dei richiedenti asilo, CARA) located in Mineo (Sicily) is described in Siciliamigranti (2016), 'Al Cara di Mineo i migranti arrivati a Catania il 18 maggio. Racconti sull'uso della forza per le identificazioni', 20 May 2016.

<sup>60</sup> Information provided by ASGI.

<sup>61</sup> Arsis, Municipality of Lesvos.

<sup>62</sup> KOP - Kampagne für Opfer rassistischer Polizeigewalt.

<sup>63</sup> The Voice Refugee Forum - A Network of Refugee Community Initiatives in Germany.

<sup>64</sup> Kempkens S. (2016), 'In die Enge getrieben', 23 August 2016; Sprengart F. (2016), 'Frau berichtet von Entführung aus Burbacher Flüchtlingsheim', 12 August 2016.

## Hate crime incidents

Article 21 of the EU Charter of fundamental rights obliges Member States not to ignore if crimes are motivated by hatred or prejudice but instead to investigate, unmask and punish any such motivation. The European Court of Human Rights has ruled in a number of cases<sup>65</sup> that countries must clearly state the motivation behind racist crimes or those committed because of a victim's religious belief. Overlooking the bias motivation behind a crime amounts to a violation of Article 14 of the ECHR.

Hate crime incidents have affected many asylum seekers, refugees, migrants and third-country nationals across the EU since the beginning of the persistent migration situation in the second half of 2015.

Racist incidents, some of them very violent, against asylum seekers and third-country nationals increased in Germany<sup>66</sup>, Greece<sup>67</sup> and Sweden<sup>68</sup>, and continued in Austria<sup>69</sup> and Italy<sup>70</sup>, according to the respective authorities and NGOs.

In Austria, personal threats to aid workers and service providers were reported.<sup>71</sup>

The nature of some of the incidents is very violent. In Fermo, Italy, a Nigerian asylum seeker, reacting to racist insults addressed to his wife, was attacked and killed with an iron pole.<sup>72</sup> In Sicily, Italy, four children were violently attacked by locals and hospitalised, one being in a serious condition.<sup>73</sup> In Eisenstadt, Austria, a person shot three times with an alarm pistol

<sup>65</sup> ECtHR put emphasis on the need to investigate vigorously all racially motivated crimes (Menson case) and the obligation of authorities to investigate the racist motivation of violent police officers (Nachova and Bekos and Koutropoulos).

<sup>66</sup> Federal government's response to a parliamentary minor interpellation, 2 September 2016 (not published yet).

<sup>67</sup> Racist Violence Recording Network.

<sup>68</sup> Swedish Crime Victim Compensation and Support Authority.

<sup>69</sup> Federal Agency for State Protection and Counter Terrorism (Bundesamt für Verfassungsschutz und Terrorismusbekämpfung, BVT), 'Verfassungsschutzbericht 2015'.

<sup>70</sup> The Observatory on Security against Discrimination (Osservatorio per la sicurezza contro gli atti discriminatori, OSCAD).

<sup>71</sup> Anti-Discrimination Bureau Styria.

<sup>72</sup> Information available at: <http://popoffquotidiano.it/2016/07/06/fermo-emmanuel-sta-morendo-lha-ucciso-la-violenza-razzista/>; [www.redattoresociale.it/Notiziario/Articolo/511926/In-fuga-da-Boko-Haram-insultato-e-picchiato-Emmanuel-e-morto](http://www.redattoresociale.it/Notiziario/Articolo/511926/In-fuga-da-Boko-Haram-insultato-e-picchiato-Emmanuel-e-morto); <http://cartadiroma.waypress.eu/RassegnaStampa/LeggiArticolo.aspx?codice=SIA4025.TIF&subcod=20160707&numPag=1&>

<sup>73</sup> Information available at: <http://stranieriinitalia.it/attualita/attualita/attualita-sp-754/pezzi-di-m-ve-ne-dovete-andare-raid-contro-quattro-minori-egiziani.html>, <http://cartadiroma.waypress.eu/RassegnaStampa/LeggiArticolo.aspx?codice=LL31300.TIF&subcod=20160822&numPag=1&>



in the direction of asylum seekers walking by, claiming later that he wanted to try out the alarm pistol.<sup>74</sup>

Attacks on reception centres remain high in Germany. According to the Amadeu Antonio Foundation and Pro Asyl, on average, every three days a refugee accommodation is affected by arson attacks.<sup>75</sup> Further attacks with violent nature are also reported in Austria<sup>76</sup>, Greece<sup>77</sup> and Italy<sup>78</sup>. In the autumn of 2015, Sweden was subject to the most intense wave of attacks against asylum accommodations ever.<sup>79</sup>

## Vigilante groups

In six of the seven Member States, local vigilante groups emerged, set up by private persons against refugees, migrants and foreigners in general. With the exception of Austria, where no activities could be reported so far, these groups committed different violent activities against asylum seekers and migrants.

The incidents of violent attacks are not limited to specific areas of territory such as borders but occur in different places across the territories of the EU Member States, and have involved not only asylum seekers but also regularly residing foreigners.

In Greece, an increase in terms of acts of violence by vigilante groups could be observed during the past year, while in Hungary, reports on local vigilante groups only emerged as of August 2016.<sup>80</sup> Over the past 12 months, several cases of violence against migrants have also been reported in Italy, however, it is impossible to identify trends due to the absence of official data on the issue.<sup>81</sup>

The vigilante groups have often **strong links to right-wing extremism and Nazism** (e.g. Sweden, Hungary<sup>82</sup>, Bulgaria) and are responsible for a range of

crimes including violence against women<sup>83</sup> and arson attacks.<sup>84</sup> The attacks by vigilante groups are not always easy to distinguish from other acts of violence against refugees and asylum seekers. A link to the group can often not be established, in particular in countries where these groups are not well known.

In some cases, private persons were found to: control persons they perceived as 'foreign' (Austria)<sup>85</sup>, detain foreigners (Bulgaria),<sup>86</sup> capture immigrants and tie their hands (Bulgaria).<sup>87</sup>

In Germany, the cases of politically motivated violent attacks against asylum applicants and refugees almost doubled since last year. The figures are estimated to be significantly higher since many cases are never reported.

It has been observed that the victims often do not report violent incidents<sup>88</sup> due to fear of the police or concerns about their residence status or ongoing asylum procedures.<sup>89</sup>

There are various responses of authorities, investigations and criminal sentences; the **detection rate of these crimes remains very low**, due to partially the nature of the crimes themselves since they are mostly committed at night, involving fire that destroys evidence or concern shelters that are away from residential areas. In addition, effective investigations require significant technical and human resources, which have generally decreased.<sup>90</sup>

In some cases, public and/or political actors even welcomed the activities of vigilante groups, specifically regarding the illegal detention of asylum seekers (Bulgaria) and their capturing at the borders (Hungary).

The civil society organisations in Hungary reported several cases of refugees trying to cross the border

<sup>74</sup> Federal Agency for State Protection and Counter Terrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung, BVT*), Austria.

<sup>75</sup> Blätter, 'Starker Anstieg rassistischer Gewalt im Jahr 2016'.  
<sup>76</sup> Red Cross Austria.

<sup>77</sup> An informal refugee housing settlement in Greece is attacked with gas-bottle bombs, Official Facebook Page of the housing squat for Refugees and Migrants Notaraz6

<sup>78</sup> Information available at: [http://bari.repubblica.it/cronaca/2016/08/09/news/brindisi\\_disordini\\_al\\_cie\\_arrestato\\_un\\_migrante-145663913/](http://bari.repubblica.it/cronaca/2016/08/09/news/brindisi_disordini_al_cie_arrestato_un_migrante-145663913/)

<sup>79</sup> Sweden, Expo, 'The most intensive wave of attacks against asylum accommodation centres ever' (*Mest intensiva attackvägen mot asylboenden någonsin*), 8 December 2015.

<sup>80</sup> MigSzol, UNHCR, Hungary

<sup>81</sup> Information is based on previous monthly reports and on the interview with OSCAD held on 23 September 2016.

<sup>82</sup> MigSzol, UNHCR, Hungary

<sup>83</sup> Sweden, Expo, 'Soldiers of Odins bakom fasaden – rasism och våldsmantik'.

<sup>84</sup> Sweden, Expo, 'The most intensive wave of attacks against asylum accommodation centres ever' (*Mest intensiva attackvägen mot asylboenden någonsin*), 8 December 2015.

<sup>85</sup> Anti-Discrimination Bureau Styria (*Antidiskriminierungssstelle Steiermark*).

<sup>86</sup> Bulgaria, BTV Novinite Online (2016), 'A man from Yambol catches illegal immigrants with his bare hands' (Мъж от Ямбол залавя нелегални имигранти с голи ръце), 18 February 2016.

<sup>87</sup> Bulgaria, Mediapool online (2016), 'Refugee hunter Perata is no longer under house arrest' (Ловецът на бежанци Перата вече няма да е под домашен арест), 20 July 2016.

<sup>88</sup> Blätter, 'Starker Anstieg rassistischer Gewalt im Jahr 2016'.

<sup>89</sup> *Mut gegen Rechte Gewalt, 'Neue Dimension der Gewalt'*.

<sup>90</sup> Die Zeit, 'Germany in flames'.



illegally from Serbia being captured by local vigilante groups who beat them and turned them back to Serbia.<sup>91</sup> The mayor of Ásotthalom (a city at the Serbian-Hungarian border) even claimed that local villagers might be better than the police in catching people and enforcing the newly established deeper border control policy because they have a better knowledge of the territory.<sup>92</sup>

## Hate speech

Article 1 of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia requires EU Member States to take measures to punish “public incitement to violence or hatred directed against a person or persons belonging to a group defined by reference to race, colour, religion, descent or national or ethnic origin and the commission of such acts by public dissemination or distribution of tracts, pictures or other material.” According to the European Commission report on the implementation of the Framework Decision<sup>93</sup>, racist and xenophobic attitudes expressed by opinion leaders may contribute to a social climate that condones racism and xenophobia and may therefore propagate more serious forms of conduct, such as racist violence.

The EU High Level Group on Combating Racism, Xenophobia and Other Forms of Intolerance signed a specific code of conduct on illegal online hate speech in May 2016 in cooperation with Facebook, Microsoft, Twitter and YouTube.<sup>94</sup> The code may also be a useful reference for authorities in fighting hate speech.

Hate speech incidents appear to have increased in Austria<sup>95</sup>, Bulgaria<sup>96</sup> and Sweden<sup>97</sup>.

Social media continues to be a medium for spreading anti-migrant propaganda in Bulgaria<sup>98</sup>, Italy<sup>99</sup> and Sweden (including organisation of arson attacks through extreme-right Facebook groups in

Sweden).<sup>100</sup> The Hungarian government continues to portray refugees as potential terrorists and threats to national security.<sup>101</sup>

The Bulgarian Prime Minister expressed his thanks to vigilante groups that illegally detain asylum seekers at the border, known as ‘refugee hunters’.<sup>102</sup> The Sofia City Prosecutor’s Office refused to open pre-trial proceedings against the Prime Minister and found that the statement would not negatively affect a large part of the population, did not intend to incite hostility, hatred or unfair treatment, and only expressed a personal opinion.<sup>103</sup>

Despite the increasing numbers of hate speech incidents, investigations remain difficult.

Investigations remain difficult because the websites are often based in foreign countries where hate speech does not constitute a criminal offence (Italy<sup>104</sup>) or criminal proceedings are many times not initiated at all (Bulgaria<sup>105</sup>). As a result, there is increased public tolerance of hate speech combined with a lack of awareness that hate speech is punishable as a crime.

## Victim support

Article 1 of the Victims’ Rights Directive (2012/29/EU) states that EU Member States shall ensure that “victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner”. Victims of hate crime must be able to report to the police without a fear that the officers will share the biased attitude of the perpetrators. According to Article 22 of the directive, particular attention must be paid to victims who have “suffered a crime committed with a bias or

<sup>91</sup> MigSzol.

<sup>92</sup> MigSzol.

<sup>93</sup> Report from the Commission to the European Parliament and the Council, on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

<sup>94</sup> See [http://ec.europa.eu/justice/fundamental-rights/files/hate\\_speech\\_code\\_of\\_conduct\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/hate_speech_code_of_conduct_en.pdf)

<sup>95</sup> Federal Agency for State Protection and Counter Terrorism (Bundesamt für Verfassungsschutz und Terrorismusbekämpfung, BVT).

<sup>96</sup> Open Society Institute – Sofia (Институт „Отворено общество” – София) (2016), Public Attitudes towards Hate Speech in Bulgaria in 2016, Sofia, Open Society Institute – Sofia (Институт „Отворено общество” – София).

<sup>97</sup> Expo Sweden.

<sup>98</sup> Mediapool (2016), ‘Bulgarians become more hostile towards asylum seekers’, Mediapool.bg, 30 March 2016.

<sup>99</sup> The Observatory on Security against Discrimination (Osservatorio per la sicurezza contro gli atti discriminatori, OSCAD).

<sup>100</sup> Sweden, Expo, ‘Incitements to arson and terrorist acts in SD-friendly facebook groups’ (Uppmaning till mordbrand och terrordåd i SD-vänliga facebookgrupper, 21 October 2015).

<sup>101</sup> These slogans are advertised by the Government before the quota referendum (Ezeket a plakátokat tolja az arcunkba a kormány a kvótanépszavazás előtt), available at: <http://nol.hu/belfold/ezeket-a-plakatokat-tolja-az-arcunkba-a-kormany-a-kvotanepszavazas-elott-1624327>

<sup>102</sup> Bulgaria, Mediapool online (2016), ‘Borisov with stronger stance against ‘refugee hunters’ (‘Борисов втвърди тона срещу “ловците” на бежанци’), 11 April 2016.

<sup>103</sup> Bulgaria, Bulgarian Helsinki Committee (Български хелзински комитет) (2016), ‘Human Rights Activists and Citizens Appealed the Refusal of Sofia City Prosecutor’s Office to Initiate Proceedings against the Bulgarian Prime Minister for Praising Vigilante Refugee Hunters’, Press release, 27 June 2016.

<sup>104</sup> The Observatory on Security against Discrimination (Osservatorio per la sicurezza contro gli atti discriminatori, OSCAD).

<sup>105</sup> Open Society Institute – Sofia (Институт „Отворено общество” – София) (2016), Public Attitudes towards Hate Speech in Bulgaria in 2016, Sofia, Open Society Institute – Sofia (Институт „Отворено общество” – София).

discriminatory motive.” Judgements of the courts should publicly state that discriminatory motivations lead to harsher sentences.

In many of the countries reported on, it was observed that **victims are afraid to report** to the police and/or are concerned that this would negatively affect their pending status procedures. As a result, many crimes remain unreported, unprosecuted and, therefore, invisible.

Only a small proportion of all hate crimes are reported to the police in Sweden; the police statistics therefore do not fully reflect the actual situation.<sup>106</sup> Germany observes similar problems.<sup>107</sup>

<sup>106</sup> Swedish Crime Victim Compensation and Support Authority.

<sup>107</sup> Amadeu Antonio Foundation and Pro Asyl.

## FRA ACTIVITY

### Victims of crime in the EU: the extent and nature of support for victims

The report provides concrete examples of different practices in the area of victim support that can serve as a source of inspiration to Member States in implementing the Victims' Rights Directive.

For more information, see FRA (2015), *Victims of crime in the EU: the extent and nature of support for victims*, Luxembourg, Publications Office.

### Ensuring justice for hate crime victims: professional perspectives

This FRA report further explores the reasons why victims are often reluctant to report the crimes that affect them. It examines professionals' views on the complexities that victims face in reporting, the organisational and procedural factors that impede victims' access to justice, and the proper recording of hate crime.

For more information, see FRA (2016), *Ensuring justice for hate crime victims: professional perspectives*, Luxembourg, Publications Office.







## Further information:

After one year of regular reporting, the EU Agency for Fundamental Rights will change the format and Member State coverage of its regular overviews of migration-related fundamental rights concerns. Future reports will cover up to 14 EU Member States and will be shorter, including main findings for the Member States covered together with a thematic focus section. Specific findings for the Member States will include references to these for a better understanding of the challenges which affect several EU Member States or the EU as a whole.

For the full report of the *Monthly data collection on the migration situation in the EU* in October 2016, see:  
<http://fra.europa.eu/en/theme/asylum-migration-borders/overviews/october-2016>

For all previous monthly and weekly reports in 2015 and 2016, see:  
<http://fra.europa.eu/en/theme/asylum-migration-borders/overviews>



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