

# FUNDAMENTAL RIGHTS REPORT — 2021

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 [fra.europa.eu](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		



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# Foreword

The year 2020 was one of remarkable juxtapositions. On the one hand, the EU introduced and developed multiple policy and legal frameworks, long-term strategies and action plans relating to a broad spectrum of fundamental rights. The reflection and foresight they embody will shape political agendas for years to come – whether on equality, social inclusion, artificial intelligence, migration, disability, victims’ rights or the EU Charter of Fundamental Rights.

On the other hand, the outbreak of the COVID-19 pandemic served as a brutal reminder of how quickly unanticipated challenges can dominate world events – and underlined the importance of being able to tear up scripts and adapt on the spot. It too will surely leave a lasting mark.

Not surprisingly, this year’s focus section, ‘The Coronavirus pandemic and fundamental rights: a year in review’, explores the pandemic’s profound effect on a wide range of human and fundamental rights. The section also highlights some positive measures nimbly devised by diverse authorities. Yet mostly it paints a rather grim picture of challenges and inequalities often exacerbated by the – still ongoing – health crisis.

The report’s remaining chapters review the main developments of 2020 regarding: the EU Charter of Fundamental Rights; equality and non-discrimination; racism, xenophobia and related intolerance; Roma equality and inclusion; asylum, borders and migration; information society, privacy and data protection; rights of the child; access to justice; and the implementation of the Convention on the Rights of Persons with Disabilities. The report covers the 27 EU Member States as well as the Republic of North Macedonia (hereafter North Macedonia) and the Republic of Serbia.

The *Fundamental Rights Report 2021* also presents FRA’s opinions on the outlined developments. Separately available in all EU languages, these opinions recommend a range of evidence-based, timely and practical actions for consideration by EU bodies and national governments.

As always, we thank FRA’s Management Board for overseeing this report from draft stage through publication, as well as the Scientific Committee for its advice and expert support. Such guidance helps guarantee that the report is scientifically sound, robust and well founded.

Special thanks go to the National Liaison Officers, whose input bolsters the accuracy of EU Member State information. In addition, we are grateful to the various institutions and mechanisms – such as those established by the Council of Europe – that consistently serve as valuable sources of information for this report.

**Elise Barbé**  
Chairperson of the FRA Management Board

**Michael O’Flaherty**  
Director

# THE CORONAVIRUS PANDEMIC AND FUNDAMENTAL RIGHTS: A YEAR IN REVIEW

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As the COVID-19 pandemic spread across the globe, authorities across the European Union adopted myriad restrictive measures to protect people's lives and health. These interfered with a wide range of fundamental rights, such as to movement and assembly; to private and family life, including personal data protection; and to education, work and social security. The pandemic and the reactions it triggered exacerbated existing challenges and inequalities in all areas of life, especially affecting vulnerable groups. It also sparked an increase in racist incidents. A human rights-based approach to tackling the pandemic requires balanced measures that are based on law, necessary, temporary and proportional. It also requires addressing the pandemic's socio-economic impact, protecting the vulnerable and fighting racism.

**"We must look out for each other, we must pull each other through this. Because if there is one thing that is more contagious than this virus, it is love and compassion. And in the face of adversity, the people of Europe are showing how strong that can be."**

Ursula von der Leyen, President of the European Commission, **Speech** at the plenary session of the European Parliament, 26 March 2020

## 1.1. AN UNPRECEDENTED CHALLENGE TO FUNDAMENTAL RIGHTS

In 2020, the COVID-19 pandemic and the measures it prompted raised an unprecedented collective challenge to the fundamental and human rights of everyone living in the EU. The EU Charter of Fundamental Rights enshrines these rights.<sup>1</sup>

Fundamental and human rights obligations of EU Member States also derive from other international human rights instruments. These include the European Convention on Human Rights (ECHR),<sup>2</sup> or the treaty system of the European Social Charter,<sup>3</sup> and the instruments adopted in the context of the United Nations (UN), such as the international covenants on civil and political rights and on economic, social and cultural rights.<sup>4</sup> In addition, fundamental and human rights are well rooted in the constitutions and legislation of EU Member States. They are also among their commonly shared values on which the EU is founded.<sup>5</sup>

All these instruments shape the human and fundamental rights framework that calls for a rights-based approach in dealing with the COVID-19 pandemic and its consequences.

This chapter takes a look at measures imposed in response to the pandemic, and explores their implications for a wide range of rights. Specifically, it first looks at states of emergency, and equivalent emergency situations and measures, that Member States

have declared ([Section 1.2](#)). It then examines the pandemic's impact on rights in key areas of daily life ([Section 1.3](#)), and on the rights of particular groups in our diverse societies ([Section 1.4](#)).

The evidence provided is mainly linked to provisions of the EU Charter of Fundamental Rights, which is of particular importance in the EU context.



## EU and its Member States bound by Charter when tackling the pandemic

Tackling a public health crisis is primarily the responsibility of EU Member States. EU institutions, as required by the EU Treaties, provide coordination and support. The EU Charter of Fundamental Rights applies, however, when the measures taken by the Member States to contain COVID-19 are linked to the implementation of EU law.

For instance, they may affect non-discrimination and equality in accessing rights (e.g. in healthcare, education, services, social protection), freedom of movement within the EU, the internal market, working conditions, data protection, or asylum and migration. More broadly, the emergency measures have implications for human dignity, the functioning of democratic institutions, rule of law and the overall respect for human rights – all core EU values. In this regard, upholding the Charter when taking decisions to fight the pandemic

is obligatory for EU institutions and for Member States when implementing EU law.

In addition, EU Member States remain bound by the provisions of the ECHR and by other international human rights obligations.

As the European Affairs Committee of the French Senate stressed – while recognising the need for Member States to take urgent measures to tackle COVID-19 – “the Charter of Fundamental Rights of the European Union continues to apply during the pandemic”.\*

For more on the Charter, see **Chapter 2**.

*\* France, Senate (Sénat), European Affairs Committee (2020), **Minutes** of the session of 6 May 2020, ‘Respect for the rule of law in Europe during the COVID-19 epidemic’.*



## A human rights-based framework to tackle the COVID-19 pandemic

Since the outset of the COVID-19 pandemic, international organisations have recalled that fighting against the pandemic is also a matter of human rights. They have consistently promoted a rights-based approach to tackling the pandemic.

Such an approach requires, for example, protecting everyone's right to life and the right to health without discrimination, paying attention to the needs and rights of the most vulnerable, balancing rights when adopting restrictive measures, or using emergency legislation and measures in compliance with the standards and guarantees of international human rights law for emergency situations. It also requires ensuring transparency and involving those concerned in decision making.

As the UN Secretary General underlined in April 2020, "human rights can and must guide COVID-19 response and recovery" while "people – and their rights – must be front and centre".<sup>1</sup>

The Office of the UN High Commissioner for Human Rights (OHCHR) provided guidance throughout 2020.<sup>2</sup> It published a compilation of statements that UN human rights treaty bodies adopted on COVID-19, which addressed rights-related issues based on their mandate. In addition, the OHCHR prepared a toolkit translating international human rights standards, as the international human rights instruments and relevant jurisprudence shaped them, "into an operational contribution to strengthen the human rights-based approach".

The human rights-based approach is also at the heart of the work of the Council of Europe (CoE) on the pandemic. For example, the CoE addressed guidance to governments on respecting human rights, democracy and the rule of law in the context of the pandemic.<sup>3</sup> It is a useful, practical reminder for CoE member States of their obligations on issues such as derogating from the ECHR and upholding the rule of law and democratic principles in times of emergency; human rights standards, including freedom of expression, privacy and data protection, protection of vulnerable groups from discrimination and the right to education; and protection from crime and protecting victims of crime, in particular regarding gender-based violence and human trafficking.

The CoE also focused on children by adopting a rights of the child perspective when reviewing measures taken.<sup>4</sup>

Throughout the year, the CoE Commissioner for Human Rights raised issues of particular concern as regards vulnerable groups, for example older persons; persons with disabilities; persons in care facilities; Roma and Travellers; refugees and migrants, including in the context of rescue operations at sea and migration detention; or prisoners.<sup>5</sup>

Treaty bodies of the CoE also provided human rights guidance on specific topics, such as the treatment of persons deprived of their liberty; the protection of children against sexual exploitation and abuse; human rights principles guiding health decisions; tackling domestic violence and gender-based violence against women; fighting trafficking in human beings; and COVID-19 tracing apps and their side effects on data protection.<sup>6</sup>

Of particular importance in the context of the health crisis was the 'Statement of interpretation on the right to protection of health in times of pandemic' (Article 11 of the European Social Charter) by the European Committee of Social Rights (ECSR). It called for the adoption of all necessary emergency measures and highlighted the goal of "health equity".<sup>7</sup>

In a rare public statement, the European Commission against Racism and Intolerance (ECRI) raised the alarm about the situation of Roma and migrants as well as LGBTI persons during the pandemic, and provided guidance.<sup>8</sup>





Different aspects of life are becoming ever more digital during the pandemic. Reflecting the general trend, the CoE Human Rights Education for Legal Professionals (HELP) platform for online human rights education went from 42,000 users in January to 78,000 in December 2020. HELP topical courses cover both the CoE and EU legal systems.<sup>9</sup>

Academic analysis also focused on the impact of the pandemic and the measures taken to contain it on human and fundamental rights. Debates and country reports examined how states used their emergency powers from the perspectives of democracy, human rights and the rule of law.<sup>10</sup>

Research suggested models for assessing human rights protection and promotion during the pandemic in a comprehensive way. These models aim to measure the impact on economic and social rights, civil and political rights, equality and non-discrimination, as well as the rule of law.<sup>11</sup>

<sup>1</sup> UN Secretary General (2020), *Statement 'We are all in this together: Human rights and COVID-19 response and recovery'*, 23 April 2020; UN Secretary General (2020), *Policy Brief 'COVID-19 and human rights – We are all in this together'*, 23 April 2020.

<sup>2</sup> OHCHR (2020), *'COVID-19 guidance'*, 13 May; OHCHR, Human Rights Treaties Branch (HRTB) (2020), *'Compilation of statements by human rights treaty bodies*

*in the context of COVID-19'*, September; OHCHR, HRTB (2020), *'Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19'*, 15 July 2020.

<sup>3</sup> CoE (2020), *'Coronavirus: Guidance to governments on respecting human rights, democracy and the rule of law'*, 8 April 2020.

<sup>4</sup> CoE (n.d.), *'Protecting and empowering children during the Covid-19 pandemic'*.

<sup>5</sup> CoE Commissioner for Human Rights (n.d.), *'Pandemic and human rights'*.

<sup>6</sup> CoE, *'Covid-19: Human rights are more important than ever in times of crisis'*.

<sup>7</sup> CoE, ECSR (2020), *Statement of interpretation on the right to protection of health in times of pandemic*, 21 April 2021.

<sup>8</sup> CoE, ECRI (2020), *Statement on the impact of the Covid-19 pandemic and related government responses on groups of concern to ECRI*, 19 May 2020.

<sup>9</sup> CoE (n.d.), *'HELP online courses'*.

<sup>10</sup> Verfassungsblog (2020), *'COVID 19 and states of emergency'*.

<sup>11</sup> Scheinin, M. and Molbæk-Steensig, H. (2020), *'Pandemics and human rights: Three perspectives on human rights assessment of strategies against COVID-19'*, European University Institute, Department of Law, EUI Working Paper LAW 2021/01.

First and foremost, the deadly impact of the virus and the obligation of governments to act to protect the rights of people to life (Article 2) and health (Article 35 on healthcare) required their urgent action.

Following advice and guidance by national, EU and international health authorities, including the European Centre for Disease Prevention and Control (ECDC), they took a wide range of measures to deliver on this obligation. These measures ranged from imposing curfews, travel restrictions and bans, and preventing people from meeting, to closing schools and restricting the functioning of many economic sectors.

## Towards a European Health Union

On 11 November 2020, the European Commission took a first step towards a European Health Union, acknowledging that more coordination at EU level is necessary to tackle the pandemic and future health crises effectively.

Its proposal refers to the EU's obligation to ensure a high level of human health protection, as the EU Charter of Fundamental Rights requires. It aims to strengthen the EU's health security framework and reinforce its crisis preparedness, enhancing the mandates of the two key EU agencies, the ECDC and the European Medicines Agency (EMA).\*

*\* European Commission (2020), **Communication from the Commission on Building a European Health Union**, COM(2020) 724 final, Brussels, 11 November 2020.*

However, many of these measures had significant implications for nearly all other rights that international human rights law enshrine and the Charter sets out. For instance, they interfered with:

- the right to the integrity of the person and the prohibition on selecting persons when practising medicine and biology (Article 3);
- the rights to liberty and security (Article 6), private and family life (Article 7) and the protection of personal data (Article 8);
- the freedoms of religion (Article 10), expression and information (Article 11) and assembly and association (Article 12);
- the prohibition of discrimination (Article 21);
- and the freedoms of movement and residence (Article 45).

They also affected how people access and enjoy many social and economic rights, in particular:

- the right to education (Article 14);
- rights related to the labour market (e.g. to engage in work, to conduct a business and make use of property, or to fair and just working conditions; Articles 15, 16 and 17, and 31 respectively);
- the right to social protection and assistance (Article 34);
- or the right to healthcare (Article 35) for reasons other than COVID-19, including mental health.

The pandemic particularly affected:

- the rights of children (Article 24);
- older persons, especially those living in institutions (Article 25);
- persons with disabilities (Article 26);
- as well as the equal access to rights (Article 21) of vulnerable groups of the population such as Roma, refugees and migrants, or homeless people.

Moreover, it had implications on people's access to justice and their right to an effective remedy and a fair trial (Article 47).

Overall, the pandemic exacerbated already existing challenges and inequalities. According to the United Nations, it had major implications on the efforts to achieve the global Agenda 2030 for sustainable development and its Sustainable Development Goals (SDGs).<sup>6</sup> The global Agenda 2030 and the SDGs are closely linked and reflect human and fundamental rights commitments and obligations.<sup>7</sup> Its core principle requires that "no one will be left behind".<sup>8</sup>

By accelerating the process of digitalisation of our societies, the pandemic also revealed how important it is, for that purpose and for equality, to ensure that everyone has access to the internet and appropriate digital equipment and is able to profit from technological developments.

## FRA ACTIVITY

# Highlighting the pandemic's fundamental rights implications

Between April and November 2020, FRA published a series of six bulletins looking at the impact on fundamental rights of the COVID-19 pandemic across the EU and the measures to contain it.\*

These bulletins aim to provide evidence to inform the efforts of the EU and its Member States to provide rights-based responses to the pandemic and its consequences.

Five of the bulletins looked at three fundamental rights aspects of the impact of the pandemic: states of emergency

and other emergency situations; impact on key areas of daily life; and impact on particular groups in society.

In addition, Bulletin 2 had a specific focus on contact-tracing apps, Bulletin 3 considered how the pandemic has affected older persons, and Bulletin 6 addressed the impact of the pandemic on social rights. Bulletin 5 looked specifically at the pandemic's impact on the rights of Roma and Travellers.

*\* FRA (2020), **Fundamental rights implications of COVID-19.***

## Vaccination plans in full respect of fundamental rights

In late December 2020, vaccination against COVID-19 started in some Member States.\* It will be crucial to ensure that the rollout of the vaccines fully respects fundamental rights, including equitable access to vaccines, the principle of non-discrimination and the right to personal data protection.

Encouragingly, national vaccination plans, in line with EU guidelines,\*\* prioritise healthcare workers, older persons, those with pre-existing health conditions, and those at greater risk of exposure to the virus due to their living settings and conditions. These may include people living in care settings, Roma and Traveller settlements, refugee and migrant facilities, prisons or homeless shelters.

In this regard, the statement of the CoE's Committee on Bioethics about equitable access to vaccination underlines that, within each group that the prioritisation process defined, everyone, without discrimination, should be offered a fair opportunity to receive a safe and effective vaccine.\*\*\*

Vaccination plans and rollouts have important fundamental rights implications. So do interrelated issues. For example, free and informed consent to have the vaccine is linked to the right to personal integrity, and access to rights depending on whether people have been vaccinated or not (e.g. 'vaccine passports') is linked to equality. These topics will be under scrutiny in 2021.

*\* European Commission (2020), 'European Commission authorises first safe and effective vaccine against COVID-19', press release, 21 December 2020; Euractiv (2020), 'EU begins vaccinations to end Covid "nightmare"', 28 December 2020.*

*\*\* European Commission (2020), 'Coronavirus vaccines strategy'; ECDC (2020), 'ECDC releases COVID-19 vaccination rollout strategies for EU/EEA', 22 December 2020.*

*\*\*\* Council of Europe, Committee on Bioethics (2021), 'COVID-19 and vaccines: Equitable access to vaccination must be ensured', 22 January 2021.*





## 1.2. EMERGENCY MEASURES: IMPACT ON FUNDAMENTAL RIGHTS

Starting in the spring of 2020, to contain the spread of the virus, the majority of EU Member States, exercising their national competence, officially declared a state of emergency or resorted to other equivalent emergency legislation. This other legislation included declaring, for example, a 'state of alarm', 'state of health emergency', 'state of epidemic situation', 'state of calamity', or 'state of danger'.<sup>9</sup>

Nine EU Member States – **Bulgaria, Czechia, Finland, Estonia, Hungary, Luxembourg, Portugal, Romania, and Spain** – declared an official state of emergency or equivalent, based on constitutional provisions.<sup>10</sup> Another five EU Member States declared a state of emergency under their ordinary laws – namely **France, Germany, Italy, Latvia and Slovakia**.

This meant granting governments extraordinary decision-making powers. It affected all human rights and allowed governments to impose restrictions on many of them, such as the freedom of movement, including travelling within the EU and within countries, the freedom of assembly, the right to private and family life, the right to access goods and services or the right to work and conduct a business.



As the situation improved, states of emergency or equivalent legislation were gradually lifted or eased over the summer, only to be partially or fully reinstated in the autumn with the 'second wave' of the pandemic. This happened, for example, in **Czechia, France** and **Slovakia**. Emergency legislation remained in force in **Italy**. Other Member States – such as **Bulgaria, Hungary, Portugal, Romania** and **Spain** – kept in force or introduced special emergency legislation that replaced previously applied states of emergency or similar legal regimes.<sup>11</sup>

During 2020, three EU Member States (**Estonia, Latvia** and **Romania**), as well as **North Macedonia** and **Serbia**, gave notice under Article 15 of the ECHR that they exercised their right to temporarily derogate from their obligations enshrined in the Convention.<sup>12</sup> In December, for the second time in a year, **Latvia** notified the CoE under Article 15 about measures taken concerning in particular the freedom of assembly.<sup>13</sup> Such notices reveal the gravity of the situation. At the same time, however, they ensure transparency and comply with the rules set in the ECHR.

As many as 13 EU Member States – **Austria, Belgium, Croatia, Cyprus, Denmark, Greece, Ireland, Lithuania, Malta, the Netherlands, Poland, Sweden** and **Slovenia** – adopted exceptional, emergency and restrictive measures without declaring a state of emergency or introducing equivalent legislation during the pandemic.<sup>14</sup>

The use of emergency legislation drew the attention of the European Parliament and the European Commission.

In a November 2020 resolution, the European Parliament, echoing the CoE's Venice Commission,<sup>15</sup> recalled that "even in a state of public emergency, the fundamental principles of the rule of law, democracy and respect for fundamental rights must prevail, and that all emergency measures, derogations and limitations are subject to three general conditions, those of necessity, proportionality in the narrow sense and temporariness".<sup>16</sup> It called on Member States "to explicitly define in a legislative act, where a de facto state of emergency is maintained, the objectives, content, and scope of the delegation of power from the legislature to the executive".

## A stringency index to measure strictness of policies

Oxford University has developed a COVID-19 Government Response Tracker. Through 19 indicators it systematically collects information on policy responses to the pandemic, such as school closures and travel restrictions. It now has data from more than 180 countries. The tool also includes a 'stringency index', which records the strictness of policies that restrict people's behaviour.

*University of Oxford, Blavatnik School of Government, 'Coronavirus government response tracker'.*

According to the Venice Commission, a system of de jure constitutional state of emergency is preferable to a de facto extra-constitutional one because it “provides for better guarantees of fundamental rights, democracy and the rule of law and better serves the principle of legal certainty”.<sup>17</sup> However, the constitutional framework of Member States may not always provide for such options.

The European Commission has been monitoring the emergency measures in all the Member States. Its first annual Rule of Law Report, published in September 2020, reflected this where relevant.<sup>18</sup> The Commission monitored in particular if safeguards exist to ensure that measures are necessary, strictly proportionate and clearly limited in time, and if parliamentary and judiciary oversight, as well as scrutiny by the media and by civil society, continue.

For more about the rule of law, see [Chapter 9](#).

## FRA ACTIVITY

### Highlighting civil society experiences

COVID-19 and measures introduced to contain it had a strong impact on civil society organisations and their work. There were obvious practical challenges, such as reduced access to beneficiaries, travel bans, or the cancellation of events. In addition, there were far-reaching consequences on the space to operate, notably as regards access to decision-makers, freedom of assembly and, to some extent, freedom of expression.\*

In November 2020, FRA conducted an online consultation with its civil society network, the **Fundamental Rights Platform**, on how measures taken since March 2020 to address the COVID-19 pandemic affected their work, and how organisations could mitigate adverse effects. In total, 177 human rights civil society organisations (CSOs) from across the EU completed the brief online survey. For many CSOs, measures to contain the pandemic exacerbated pre-existing civic space challenges.\*\*

The majority (75 %) of the responding CSOs found the measures to contain the pandemic overall justified. Fewer (56 %), albeit still the majority, considered them proportional. Moreover, most CSOs (75 %) said that the impact of measures on their

operations and activities since March 2020 had been negative. Of those who said the measures had a negative impact, 41 % were very worried and 52 % somewhat worried that this would persist for the next 6 months.

Some restrictions affected CSOs’ physical access to their beneficiaries, e.g. older persons, asylum seekers and protestors. They significantly affected 44 % of CSOs. More than a quarter (27 %) faced financial difficulties “often”, and 15 % “every time”. Almost a third (29 %) also said that reduced work contribution by volunteers was “often” an important practical challenge, and 18 % “every time”.

The full results from the consultation, including examples of promising practices – such as dedicated financial support to CSOs – will be published in autumn 2021 as part of FRA’s upcoming report on civic space in the EU.

\* *FRA, COVID-impact on civil society work – Results of consultation with FRP 2020, Vienna, 24 February 2021.*

\*\* *FRA (2018), Challenges facing civil society organisations working on human rights in the EU; FRA (2020), Civic space – Experiences of organisations in 2019.*



It is a basic international human rights principle that any restrictions to a right – including in emergencies, when certain rights may even be suspended – must be prescribed by law, proportionate, necessary and non-discriminatory, and of limited duration. The approach of the European Parliament and the European Commission adheres to this principle.<sup>19</sup> The European Court of Human Rights (ECtHR) has based well-established case law on Article 15 of the ECHR. It also provides that derogations from the ECHR, which may result in the suspension of certain rights, need to be notified, and should happen only in exceptional circumstances and in a limited and supervised manner.<sup>20</sup>

Moreover, certain rights – such as the right to life, or the right to be free from torture and other inhumane or degrading treatment or punishment – are non-derogable. Last but not least, emergency measures must be under parliamentary and judicial scrutiny. Governments should not use their extraordinary powers to bypass parliaments and their legislative function on issues unrelated to the pandemic.<sup>21</sup> The CoE also points out that “as a general rule, fundamental legal reforms should be put on hold during the state of emergency”.<sup>22</sup>

## Tackling disinformation while upholding rights

An emergency can generate disinformation and the spread of conspiracy theories. They may negatively affect citizens’ trust in democracy, the rule of law and fundamental rights. In a health crisis, they may affect public trust in the efforts of the authorities and undermine the fight against the pandemic. Fighting disinformation is therefore an important aspect of safeguarding fundamental rights in times of emergency, including protecting people’s life and health.

The results of a large-scale online survey about COVID-19 disinformation/fake news in **France, Italy, Germany, Spain** and the **United Kingdom** came out in September. Over half of those surveyed in each country had seen COVID-19 disinformation/fake news, it found. A smaller but substantial portion reported sharing COVID-19 disinformation with others either intentionally or unintentionally.\* Despite significant differences between countries, respondents who had seen and/or shared COVID-19 disinformation/fake news tended overall to be younger, daily users of social media, with fewer years of formal education and more likely to self-identify as a minority.

Effectively fighting disinformation needs adequate and accurate data, and transparency about the data and the criteria used to inform and justify authorities’ decisions. However, evidence collected by FRA indicated data gaps in 2020 – for example, regarding the numbers of infections and deaths of people living in institutional settings.\*\*

On 13 November 2020, the European Parliament called on Member States to provide citizens with comprehensive, up-to-date, precise and objective information about public health and measures taken to safeguard it. Furthermore, it urged Member States to fight disinformation that discredits or distorts scientific knowledge, but at the same time to ensure freedom of expression and information, and media pluralism. They should not create a chilling effect on freedom of expression and on journalists, healthcare workers or others by resorting to criminalisation or disproportionate sanctions.\*\*\*

For its part, the European Commission highlighted the crucial role that freedom of expression and a pluralistic democratic debate play in fighting disinformation.\*\*\*\*

*\* Crime and Security Research Institute, Cardiff University (2020), ‘Survey of public attitudes to coronavirus disinformation and fake news in France, Germany, Italy, Spain and the UK – Summary findings’.*

*\*\* FRA (2020), Bulletin #3 – Coronavirus pandemic in the EU – Fundamental rights implications: With a focus on older people, p. 37.*

*\*\*\* European Parliament (2020), Resolution on the impact of COVID-19 measures on democracy, the rule of law and fundamental rights, P9\_TA(2020)0307, Brussels, 13 November 2020.*

*\*\*\*\* European Commission (2020), Tackling COVID-19 disinformation – Getting the facts right, JOIN(2020) 8 final, 10 June 2020.*

### States of emergency and emergency measures under judicial scrutiny

The examples below highlight select high court decisions that examined limitations on freedom of movement, including travelling within a given country, on freedom of assembly and demonstration, and on freedom of religion. Other areas of life and the impact of emergency measures on relevant rights are covered in the following sections.

The **Belgian** Council of State rejected an urgent appeal to suspend a prohibition on protest. It stated that the infringement of the freedom to demonstrate was not sufficient to justify the urgency of the appeal.<sup>23</sup> The court highlighted, however, that the measure banning protests was temporary and subject to continuous review.

The **Greek** Council of State rejected a similar appeal for the suspension of an order prohibiting demonstrations. It considered the order justified for overriding reasons of public interest relating to the protection of public health.<sup>24</sup>

The **French** Council of State ruled that the prohibition of demonstrations in public is justified only when COVID-19 physical distancing and other preventive measures cannot be respected or when the event may bring together more than 5,000 people.<sup>25</sup> Considering the scope of and grounds for the curfew restricting freedom of movement, the same court concluded in October that the curfew did not violate fundamental rights.<sup>26</sup>

In **Germany**, the Federal Constitutional Court ruled on an application for a temporary injunction. It found that some local authorities infringed the freedom of assembly when they banned an assembly after interpreting a regulation in Hesse as generally prohibiting any meeting of more than two persons.<sup>27</sup>

In a separate case, the court provisionally disappplied a provision of a COVID-19-related regulation in Lower Saxony. The provision did not allow for case-by-case exceptions to the general ban on religious services and other religious gatherings, even where there was no significant increase in the infection risk.<sup>28</sup> The court had previously ruled that prohibitions of religious services are severe limitations of religious freedom and require strict scrutiny of proportionality in the light of new developments concerning the pandemic.<sup>29</sup>

In April, the **Slovenian** Constitutional Court assessed if a government ordinance restricting freedom of movement and assembly in public places, and banning the movement and travel of residents outside their municipalities, was constitutional. To ensure that the measures were proportionate, the court ordered the government to assess, at least every seven days, if they remain necessary to achieve the objectives pursued.<sup>30</sup> The same court, however, found in August that measures restricting movement between municipalities were proportionate.<sup>31</sup>

These national high court decisions confirm, first of all, the critical role of the judiciary as a safeguard for human and fundamental rights when emergency legislation applies. Second, they also confirm that all restrictions of rights need to be in line with international standards (i.e. legality, necessity, temporariness, proportionality). Third, they prove that in each case the balancing of requirements deriving from different rights and objectives is a challenging exercise. This makes it important to collect evidence on fundamental and human rights implications of the pandemic, and to provide, promote and make visible the guidance from international human rights bodies, as well as international human rights jurisprudence.

### 1.3.

## IMPACT OF THE PANDEMIC ON FUNDAMENTAL RIGHTS IN DAILY LIFE

This section outlines how COVID-19 has affected fundamental rights in six key areas of daily life, namely social interaction, healthcare, education, work, the judicial system, and travel to and within the EU. It also highlights concerns regarding privacy and personal data protection.

### 1.3.1. Social interaction

At the outbreak of the pandemic, EU Member States introduced physical distancing measures limiting social interaction.<sup>32</sup> Most instituted mandatory physical distancing measures for everyone, such as suspension of mass gatherings, stay-at-home requirements (including quarantine measures), closure of public spaces, limitations in public transport and physical distancing when outside the house.

In some cases entire provinces, regions or cities were placed under quarantine (e.g. in **Austria, Bulgaria, Italy** and **Lithuania**). In others, leaving home without a permit was prohibited (e.g. in **France, Greece, Italy** and **Spain**).



Such measures affected different rights enshrined in national constitutions, EU and international human and fundamental rights instruments. They primarily affected the right to liberty and security, including freedom of movement, and the right to private and family life. They also had an impact on other rights, such as the right to protection of personal data, freedom of religion, the right to education, work and business-related rights, or the right to health, especially mental health.

The use of the internet and digital communication tools helped keep alive some interaction between people, alleviating feelings of loneliness and psychological stress. At the same time, it highlighted the importance of having access to the internet and digital equipment, and of digital literacy.

Social and physical distancing measures were lifted or eased over the summer,<sup>33</sup> but were largely reintroduced after the summer to mitigate the health impact of subsequent pandemic waves.<sup>34</sup> The adoption and easing of measures varied in each country and region depending on its epidemiological situation. Sanctions were introduced to ensure enforcement – typically fines, but in some cases also custodial sentences.

Courts and oversight bodies scrutinised if actions enforcing such measures complied with fundamental rights. For example, **France's** highest administrative court ruled out the use of drones to observe if people were respecting the lockdown rules in Paris.<sup>35</sup>

In **Poland**, the Ombuds body warned that no legal provision permitted police officers to forward personal data obtained from police interventions to the sanitary inspector for imposing penalties.<sup>36</sup> In **Slovenia**, the Ombuds body stated that the failure to comply with the government decree on the mandatory use of face masks in enclosed public spaces could not be penalised because it was not based on proper legal grounds.<sup>37</sup>

A common factor in these cases is that they highlight that not only do the measures themselves need to comply with human rights standards – so do the authorities’ enforcement actions.

### 1.3.2. Healthcare

The measures taken to fight the pandemic have sometimes had an adverse impact on the right they sought to protect, namely the right to health and healthcare. It requires ensuring access to both preventive healthcare and medical treatment.<sup>38</sup> A major issue was how to ensure access to healthcare on an equal footing for all, in a context where health systems had to prepare for and faced huge pressure, as well as limited staff and equipment (e.g. intensive care beds).

FRA’s collected evidence indicated cases of de-prioritisation based on age and medical triage on the same ground.<sup>39</sup> At the same time, the need to fight the pandemic, to prevent health staff and patients from infections, and to prioritise treating people infected with COVID-19 led to de-prioritising access to healthcare for reasons other than COVID-19. That sometimes affected patients with other critical health conditions such as cancer, or people facing mental health issues.<sup>40</sup>

Physical access to doctors and healthcare services, including hospitals, was limited, at least at the onset of the pandemic. Non-urgent medical treatment, including surgical interventions, was often postponed. For example, in **Romania** the number of hospitalised cancer patients dropped by 46 % between 2019 and 2020.<sup>41</sup> In **Finland**, at the end of August 2020, 137,165 patients were waiting to receive non-urgent specialised healthcare.<sup>42</sup>

This situation affected particularly older people, as they are more likely to have pre-existing health conditions requiring medical attention.



More broadly, certain groups of the population, in particular people living in institutions, people with disabilities, Roma and Travellers, refugees and immigrants, or homeless people, may face compounded difficulties in accessing healthcare.<sup>43</sup> People also reported incidents of discrimination based on their racial or ethnic minority background.<sup>44</sup>

Such practices raised concerns about the equal treatment of all when accessing healthcare. Several **German** medical associations recommended, for instance, that prioritisation in providing medical treatment should follow the principle of equality.<sup>45</sup> It should not only cover those infected with COVID-19 and should not be based solely on age or social criteria. The main criteria are the urgency of treatment and its chances of success.

Last but not least, the pandemic has put a lot of pressure on healthcare workers, threatening their rights to life and health. Healthcare workers have been the most infected community during the COVID-19 pandemic, as a World Health Organization (WHO) report highlights.<sup>46</sup>

Data from EU Member States corroborate this finding.<sup>47</sup> In **Ireland**, for example, healthcare workers exceeded 20 % of the total number of COVID-19 infections as of the middle of October. Several COVID-19 hospital units in **Romania** temporarily suspended their operations because so many medical workers were either sick or in quarantine. Reports of burnout among medical staff emerged in **Latvia**.

As an acknowledgement of their efforts, many Member States introduced additional financial benefits in 2020.<sup>48</sup> To address staff shortages, several Member States also relaxed recruitment procedures and the working conditions of medical staff. Some countries also mobilised military staff to support hospitals.

### 1.3.3. Education

By late March 2020, almost all EU Member States had closed their educational facilities. This led to an unprecedented shift to distance learning to ensure the continuity of education.<sup>49</sup> Educational facilities started reopening in late spring. After the summer break most Member States sought to keep them open, in particular primary schools, to minimise the impact on children's right to education and their well-being.

However, the rise of infections in autumn soon led many to close them again and reintroduce distance learning to varying extents.<sup>50</sup> Some kept a number of schools open for children of parents working in 'essential' professions, or for families that had no other solution but childcare provided by grandparents. In some cases authorities distinguished between age groups, usually keeping older children in distance learning.

The sudden transition to distance learning affected the education of all children. Educational systems were not prepared for such a swift transition. They often lacked the necessary digital infrastructure or training. Fewer than 40 % of educators felt ready to use digital technologies in teaching, according to the 2018 Organisation for Economic Co-operation and Development (OECD) Teaching and Learning International Survey (TALIS), but there were wide differences between Member States.<sup>51</sup> Moreover, children in many cases lacked support to cope with the needs of distance learning, although measures such as special leaves for parents to stay at home and take care of their children were helpful.



The European Commission highlighted that many low-income homes have no access to computers, and broadband access varies widely across the EU depending on household income.<sup>52</sup> Throughout the EU, children from socio-economically disadvantaged backgrounds were particularly negatively affected, FRA's evidence confirms. They lacked adequate computer equipment, internet access and appropriate work spaces, as well as home support. This situation exacerbated existing learning inequalities.<sup>53</sup>

For example, in **Bulgaria** the Ombuds body expressed concern that some 70,000 children, particularly from families with low incomes, unemployed parents or more than one child, did not have computers and internet access.<sup>54</sup> In **Romania**, 25 % of all children did not have access to online education, a survey by the NGO Save the Children shows.<sup>55</sup> In **Spain**, a survey with almost 11,000 respondents found that only one third of Roma children had access to a computer at home and more than 40 % of Roma students did not have access to the internet.<sup>56</sup>

## EU action plan promotes digital education

Member States are responsible for education, in particular for teaching and the organisation of their education systems. However, the EU can contribute and support their efforts, including through guidance and recommendations. The European Commission published its Digital Education Action Plan 2021–2027 on 30 September 2020. It sets out key measures for high-quality and inclusive digital education and training where the EU can bring added value to national efforts.

Acknowledging the impact of the pandemic on education and training systems, the Action Plan points out that these difficult circumstances accelerated the digital transformation, triggering rapid, large-scale change. In this light, the Action Plan asks Member States to develop higher quality, more accessible and more inclusive digital teaching, learning and assessment, making full use of the EU's Recovery and Resilience Facility to adapt their education and training systems to the digital age.

*European Commission (2020), **Digital Education Action Plan 2021–2027: Resetting education and training for the digital age**, COM(2020) 624 final, 30 September 2020.*



Another issue that required attention is the protection of children's privacy and personal data in digital education settings. The CoE adopted relevant guidelines in November 2020 addressing policymakers, data controllers and the industry.<sup>57</sup>

For more information on the impact of COVID-19 on children's rights, see **Chapter 8**.<sup>58</sup>

Encouragingly, all Member States intensified their efforts to support schools' capacity for distance learning – for example, by creating online platforms, and providing disadvantaged pupils with digital devices and internet connections.<sup>59</sup> To promote the digitisation of schools, **Germany** increased its investments in the School Digital Pact to € 6.5 billion.<sup>60</sup> The funding can be used, for example, to procure suitable devices for teachers, as well as for pupils in need, who can receive them through their schools.

Such efforts deliver on the obligation to ensure the right of children to education. During emergencies, such as the COVID-19 pandemic, that right requires effective distance learning systems. By including targeted measures for children in more disadvantaged socio-economic situation, those efforts also deliver on the obligation to ensure the equal access of all children to education. At the same time, they help bridge the digital divide between different social groups, implementing the principle of the European Pillar of Social Rights that everyone has the right to access essential services, including digital communications.<sup>61</sup>

#### **1.3.4. Work and business activity**

Many sectors of the economy remained closed for long periods during 2020. The impact on a range of social and economic rights became increasingly clear, in particular on those relating to work. These include the rights to engage in work, to fair and just working conditions, to conduct a business and to make use of property.

The pandemic exacerbated existing inequalities, widening the gap between rich and poor and disproportionately affecting those in precarious and low-income jobs, young people, women and minority ethnic groups. It exposed serious gaps in EU's and Member States' social safety nets, raising concerns about the effective implementation of the right to social security and assistance.

The EU and Member States put in place wide-ranging economic support measures to mitigate the impact on businesses, workers and their families and to bolster their incomes.<sup>62</sup> These included helping businesses by supplementing wages; other financial support, including unemployment benefits and relief for home owners and renters; support and compensation for self-employed people and businesses (e.g. by covering loss of monthly turnover to a certain extent); support for particular groups in society; support for people with caring responsibilities; sick leave; and support for people in quarantine.

Several Member States introduced programmes specifically targeting those employed in precarious forms of work, such as seasonal workers, domestic workers or those on 'zero-hours' contracts. However, the pandemic worsened the already precarious situation of platform workers, research published by the European Trade Union Institute (ETUI) shows.<sup>63</sup>



## EU action counters pandemic's social and economic impact

The EU took extensive measures in 2020 to contain the spread of the pandemic, counter its socio-economic impact and support national healthcare systems.\*

In May, the Council of the EU adopted the European instrument for temporary support to mitigate unemployment risks in an emergency (SURE), a temporary scheme to provide up to € 100 billion in loans to Member States to support businesses and self-employed people, among other purposes.\*\*

In November, the European Parliament and the Council of the EU reached agreement on a recovery package of € 1.8 trillion.\*\*\* It combines the EU budget for 2021-27 and NextGenerationEU, a temporary recovery instrument allowing the Commission to raise funds on the capital market to address the immediate economic and social damage the pandemic has caused in the Member States.

To monitor progress systematically across the EU, on 17 December Eurostat launched the European Statistical Recovery Dashboard. It gives monthly and quarterly indicators from a number of statistical areas that are relevant to tracking the economic and social recovery from the COVID-19 pandemic.\*\*\*\*

\* See the European Commission's **Coronavirus response web page** for an overview.

\*\* **Council Regulation (EU) 2020/672 of 19 May 2020.**

\*\*\* **European Commission welcomes agreement on €1.8 trillion package to help build greener, more digital and more resilient Europe.**

\*\*\*\* See an overview of relevant data in the **European Statistical Recovery Dashboard**.

Overall, in spite of all efforts, unemployment rose, particularly among young persons. The number of unemployed young persons (under 25) was much higher in December 2020. Compared with December 2019, it increased by 438,000 persons in the EU, an increase of 3 percentage points (from 14.8 % to 17.8 %).

The EU unemployment rate was 7.5 % in December 2020, according to Eurostat.<sup>64</sup> That was up from 6.5 % in December 2019, an increase of around 15 %. This increase amounts to around 1.95 million more people unemployed. Almost 1.1 million of them were women, showing that women are affected more than men.

Unemployment rates were alarmingly high in certain EU countries and in particular sectors of the economy, such as tourism, hospitality, entertainment and the arts, in which businesses and related employment were disproportionately affected. The risk of layoffs or reduced hours in the second quarter of 2020, measured as a probability from 0 to 1, was 0.5 for the sector of accommodation and food services and more than 0.3 for other services.<sup>65</sup>

Another significant consequence of the pandemic was the expanded use of teleworking. In July a third (34 %) of respondents were solely working from home, according to the second Eurofound 'Living, Working and Covid-19' survey.<sup>66</sup> Telework/information and communication technology mobile work (T/ICTM) tends "to extend working hours, create an overlap between paid work and personal life due to a blurring of work-life boundaries, and also lead to the intensification of work".<sup>67</sup> Eurofound advised better regulation of T/ICTM, including the 'right to disconnect' to improve work-life balance.<sup>68</sup>

For many types of work, teleworking arrangements, and hence saving jobs, were not an option. These jobs are often lower paid. Those who telework tend to be relatively privileged in terms of their high levels of educational qualifications and economic resilience, Eurofound's data show.<sup>69</sup>

From a fundamental rights perspective, the evidence presented here indicates the areas where action by duty-bearers is most urgent. This action needs to have a particular focus on those most affected by unemployment, reduced working hours and income. It also needs to pay attention to the new working environment that moving to teleworking arrangements creates – especially for those who face more challenges to keep their work-life balance, including as a result of caring responsibilities.

## Pandemic proves particularly challenging for women

The pandemic has disproportionately affected women, particularly in employment, work-life balance and caring responsibilities, evidence indicates. They have also been more exposed to health risks, as they are more represented among essential workers, especially as frontline workers in the health and care sector.\*

For example, people are returning to more traditional gender roles at home, research by the Vienna University of Economics and Business and the Chamber of Labour in Austria shows.\*\* Women report feeling that they do most of the work at home and that they are under intense pressure to handle the multiple responsibilities of telework, childcare and domestic work.

Women are more likely than men to be caring for a child and, as a result, are finding it more difficult to work from home, a survey by the Irish Central Statistics Office reveals. Similarly, the expansion of unpaid work in the care of children, older family members and the home is a serious challenge for women's professional lives, the women's office of the trade union Pancypríot Confederation of Labour highlights.\*\*\*

Unemployment prompted by the pandemic also affects women more adversely than men, a study published by the National Institute for Demographic Studies in France (INED) shows.\*\*\*\* Only two in three women employed on 1 March 2020 were still in employment two months later, compared with three in four men. This corroborates Eurostat's data.

*\* For a comprehensive presentation of gendered impacts of the pandemic, see the European Institute for Gender Equality's dedicated web page on **COVID-19 and gender equality**.*

*\*\* Vienna University of Economics and Business and Chamber of Labour (2020), **Online survey on time use of couples during COVID-19**.*

*\*\*\* FRA (2020), **Bulletin #4 – Coronavirus pandemic in the EU – Fundamental rights implications**, p. 22.*

*\*\*\*\* INED (2020), **How the COVID-19 epidemic changed working conditions in France**, July 2020.*



**“The [ECtHR] has established that physical absence does not necessarily constitute a violation of the right to a fair trial. The ECtHR has pointed to several international law instruments that provide for participation in the trial using videoconferencing as a way of respecting Article 6 of the ECHR, and it has adopted several judgments as regards the use of videoconferencing. It should be noted that, when establishing videoconferencing in courts, due attention should be paid to the preservation of the right of defence.”**

The Consultative Council of European Judges (CCEJ) of the Council of Europe (2020), **Statement of the President of the CCEJ on the role of judges during and in the aftermath of the COVID-19**

### 1.3.5. Justice

Restrictive measures affected the work of courts in EU Member States.<sup>70</sup> This had an impact on people’s access to justice, which is important for ensuring the right to an effective remedy and a fair trial. From the end of May 2020, courts began to resume functioning in many Member States, but new restrictions were adopted in the autumn.

Courts were often closed down, ‘non-urgent’ cases and investigations were suspended, and hearings were postponed. In many cases this extended both proceedings and case backlogs.<sup>71</sup> In some cases concerns were also raised about people missing judicial deadlines.<sup>72</sup> Detailed information on temporary measures taken in EU Member States is available on the European Commission’s e-Justice Portal.<sup>73</sup> The CoE has also created a web page on national judiciaries’ COVID-19 emergency measures.<sup>74</sup>

To mitigate the effects of the pandemic and ensure the continuity of justice as much as possible, digital and videoconference tools were used. However, challenges emerged with respect to the judicial system’s ability to work remotely using electronic devices for communication, to access files through databases, and to conduct proceedings by videoconference. This affected in particular those Member States with less developed information technology (IT) systems in their judiciaries.

Overall, the pandemic accelerated the digitalisation of justice. In this process it is crucial to ensure the respect of the minimum standards developed under Articles 47 and 48 of the Charter and Article 6 of the ECHR, regarding effective participation in proceedings, particularly criminal ones, including one’s right to be present, and the principle of publicity. Ensuring appropriate training for the judiciary is also important. For more on access to justice, see **Chapter 9**.

## Guidance on online court proceedings

On 15 April 2020, **Finland’s** National Courts Administration published a guide on online court proceedings for legal practitioners to follow during the emergency. The guide includes practical information on various communication tools as well as general recommendations on how to organise court proceedings online.

*Finland, National Courts Administration (2020), ‘A guide for courts to use remote access in proceedings’, 15 April 2020.*



### 1.3.6. Travelling within and into the EU

In March 2020, EU Member States restricted travel by introducing controls at the internal borders between them and limiting the movements of those entering and leaving their territory.<sup>75</sup>

In a number of cases, the restrictions partially or almost completely closed borders, through banning flights, closing airports or reducing the number of border-crossing points. More often they meant requirements to undergo health checks, present a negative COVID-19 test and/or self-isolate after entry for a certain period, which could be up to 14 days. There were also exemptions – for example for healthcare, cross-border or seasonal workers.<sup>76</sup>

These practices interfered with the freedom of movement and residence enshrined in Articles 21 and 45 of the Treaty on the Functioning of the EU, and Article 45 of the Charter. This is a fundamental component of Union citizenship. Details about its exercise are set in Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.<sup>77</sup>

The restrictions and controls were based on Article 28 of the Schengen Borders Code (Regulation (EU) 2016/399), which allows this possibility under strict conditions and for a limited period.<sup>78</sup> Articles 27 and 29 of Directive 2004/38/EC also justify measures restricting the freedom of movement in cases of “diseases with epidemic potential”, such as COVID-19, provided they comply with the principle of proportionality.

In this context, when implementing public health measures, the European Commission noted that these must not discriminate between Member States’ own nationals and resident EU citizens.<sup>79</sup> It also underlined that a Member State must not deny entry to EU citizens or third-country nationals residing on its territory and must facilitate the transit of other EU citizens and residents who are returning home.

In May 2020, the European Commission proposed a return to the unrestricted free movement of persons in the EU and the Schengen area, as the health situation was improving.<sup>80</sup> By July, all EU Member States eased their travel restrictions regarding internal borders.

However, the increase in infections in the autumn resulted in new border controls and travel restrictions. This time the restrictions were less severe, in line with the Council Recommendation on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic, adopted in October.<sup>81</sup>

**“Without the return to a fully functional Schengen Area, we are still missing an essential stepping-stone on our way to recovery. A complete return to free movement, no discrimination, mutual trust and solidarity are of utmost importance and core values of the EU.”**

Juan Fernando López Aguilar, Chair of the European Parliament Committee on Civil Liberties, Justice and Home Affairs, **Press release**, 19 June 2020



## 'Re-open EU' platform guides travellers

On 15 June, the Commission launched the web platform 'Re-open EU'. Available in all EU languages, it provides real-time information on borders, available transport, travel restrictions, health and safety measures and other practical information for travellers. National governments also publish up-to-date online information on travel restrictions.

*European Commission (2020), web platform 'Re-open EU'.*

The ECDC started publishing a weekly map of EU Member States and regions, marking areas in 'traffic light' colours (red, orange and green), depending on the COVID-19 infection rates, to facilitate the EU's coordinated approach.<sup>82</sup> Border controls, mandatory health tests, self-isolation rules and lists of 'safe' countries and regions were applied, depending on the epidemiological developments, but Member States avoided closing down their internal borders in the rest of the reporting period. In this way they served better the requirements of the freedom of movement, as enshrined in EU law.

At the onset of the pandemic, Member States restricted travel to and from third countries, with special measures and exemptions for certain categories. To promote a coordinated approach to border controls, on 16 March 2020, the European Commission recommended the

temporary restriction of non-essential travel to the EU to prevent the further spread of COVID-19.

These restrictions – initially for 30 days – were extended until 30 June, when the Council of the EU adopted a recommendation providing for coordinated gradual lifting of travelling restrictions from third countries.<sup>83</sup> This recommendation is regularly reviewed and amended on the basis of health data and containment measures in each country. Its last amendment in 2020 was in December and included a list of third countries whose residents could be allowed to enter the EU for non-essential travel.<sup>84</sup>

In October, the Commission published guidance on persons exempted from the temporary restriction on non-essential travel to the EU.<sup>85</sup> This is necessary to ensure the respect of the right of certain third-country nationals (e.g. family members of Union citizens, third country nationals holding a valid residence permit, cross-border workers) to enter the EU. That is linked to the exercise of other rights, for example to private and family life or to engage in work. Other exemptions served the needs of Member States for workers, for instance seasonal workers in agriculture or healthcare workers.

### **1.3.7. Privacy and personal data protection – use of technology to fight the pandemic**

Following advice from international and EU health institutions, most Member States used digital tracking and monitoring tools to limit the spread of the pandemic, particularly tracing apps.<sup>86</sup> Some countries also allowed health and police authorities to access traffic and geolocation data from telecommunication providers to track individuals subject to quarantine measures.<sup>87</sup>

Other technological tools were employed, as well. These included, for example, drones to monitor compliance with physical distancing measures in public spaces; online forms or text messages before leaving the house or for travelling across the EU; thermal cameras to measure people's temperatures; and collecting and sharing of lists of patients with COVID-19.<sup>88</sup>

FRA's Bulletin 2 focused on these tools and their fundamental rights implications.<sup>89</sup> It highlighted that tools that interfere with the right to privacy and personal data protection need to be grounded in law, and must be necessary and proportionate, as the General Data Protection Regulation (GDPR)<sup>90</sup> and ultimately the EU Charter (Articles 7 and 8) require. It also noted that Article 23 of the GDPR provides the possibility for legislative measures to restrict data subjects' rights, including where required for public health reasons.

As regards COVID-19-tracing apps, the EU's eHealth network,<sup>91</sup> the European Commission<sup>92</sup> and the European Data Protection Board<sup>93</sup> adopted guidance on how to uphold data protection standards in the development and use of tracing apps.

At the CoE level, two joint statements by the Chair of the Consultative Committee of Convention 108 (the Council of Europe Convention on the protection of individuals with regard to automatic processing of personal data) and the Data Protection Commissioner recalled the principles to be upheld to help fight the pandemic while respecting individuals' right to privacy and data protection, and warned against unwanted effects.<sup>94</sup> The Council of Europe report *Digital solutions to fight COVID-19*, published in October, examined key legal and policy developments from a data protection perspective, focusing in more depth on the use of tracing apps and other monitoring tools.<sup>95</sup>



In April, the OECD also published recommendations for preserving privacy when using apps and biometric data in the fight against COVID-19.<sup>96</sup>

A set of common recommendations emerged from these documents aiming to safeguard privacy and data protection. They all emphasised the need to ensure that only minimal, accurate and secure data are collected, and that they are processed in a transparent way and with appropriate technological methods. For tracing apps this implies, for instance, using Bluetooth proximity data, decentralised storage methods and open source codes. They also noted that any data collection and processing to address the pandemic must be limited in time and linked to the health crisis. Finally, they emphasised that using such digital tools should be voluntary.

At national level, in most cases data protection authorities (DPAs) provided extensive guidance on how to employ tracing apps in line with international rules and guidance, and monitored their use, as far as possible.<sup>97</sup> Member States developed and used tracing apps that overall complied with this guidance. Notably, all use of tracing apps was voluntary.<sup>98</sup>

For more on privacy and data protection, see [Chapter 7](#).



## 1.4. IMPACT OF PANDEMIC ON RIGHTS OF PARTICULAR GROUPS

The pandemic affects everyone, but its impact has not been even across society. The pandemic and the measures to contain it hit vulnerable groups harder, FRA evidence and other data suggest.<sup>99</sup> Overall, the pandemic accentuated the fundamental rights challenges that certain groups already faced. Thus it further entrenched existing inequalities and discrimination, and exacerbated social exclusion and marginalisation.

### 1.4.1. Older persons

Older people have been severely affected by the pandemic – especially those living in institutional settings or with underlying health conditions.<sup>100</sup> The death toll was much higher than in other age groups. Infection and mortality rates for those in institutions were worrying.<sup>101</sup> In addition, the measures to contain the pandemic affected older people's right to a life of dignity, independence and participation, as enshrined in Article 25 of the EU Charter of Fundamental Rights, and their right to non-discrimination based on age (Article 21).



For example, older persons faced more restrictions relating to physical distancing (e.g. bans on visiting those living in institutions, and stay-at-home rules or recommendations) and accessing goods and services.<sup>102</sup>

### Council of Europe bodies highlight pandemic's effects

The Steering Committee on Anti-discrimination, Inclusion and Diversity (CDADI) of the Committee of Ministers of the CoE published a study on the anti-discrimination, diversity and inclusion dimensions of the pandemic.\*

The Parliamentary Assembly of the CoE adopted, on 13 October 2020, Resolution 2340 on the humanitarian consequences of the Covid-19 pandemic for migrants and refugees.\*\*

\* CoE, Committee of Ministers, CDADI (2020), Study, **COVID-19: an analysis of the anti-discrimination, diversity and inclusion dimensions in Council of Europe member states**, November 2020.

\*\* CoE, Parliamentary Assembly (2020), **Resolution 2340 on humanitarian consequences of the Covid-19 pandemic for migrants and refugees**, 13 October 2020.

There is also evidence of problems in access to medical treatment for reasons other than COVID-19; medical triage practices based on age as a deciding factor when selecting whom to treat in hospitals faced with large numbers of patients and limited resources; an adverse impact on their psychological well-being and mental health; and discriminatory public discourse or practices, particularly about their participation in the labour market.

FRA dedicated the focus section of Bulletin 3 to the pandemic's impact on the fundamental rights of older persons. For more on the rights of older persons, see [Chapter 3](#).

#### **1.4.2. Persons with disabilities**

The consequences were also grave for many people with disabilities.<sup>103</sup> Pre-existing health conditions increased the risks to their health and lives from a possible COVID-19 infection. The risks proved to be higher for those in institutional care settings, who also faced bans on visits, isolation and psychological stress.<sup>104</sup>

A major issue was the disruption of and decrease in essential services for persons with disabilities. They include education, schools and other learning support for children with disabilities, healthcare, community-based and at-home support, and facilitated transport.<sup>105</sup> Transition to digital and remote learning and working arrangements did not help much either. It revealed a risk of an increased digital divide between persons with disabilities and the rest of the population.

Member States took a number of measures to address these challenges, in line with their obligations under the Convention on the Rights of Persons with Disabilities (CRPD).<sup>106</sup> The CRPD is also binding on the EU. Moreover, Article 26 of the Charter provides for "the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community".

The measures included, for example, additional funding for services to persons with disabilities, targeted financial assistance, financial support for maintaining persons with disabilities in employment, special leave for persons with disabilities and those facing pre-existing health conditions, special leave for parents of children with disabilities following school or day-centre closure, home assistance for students or special arrangements for schools with children with disabilities, and targeted hotlines for psychological support and assistance.<sup>107</sup>

Despite these efforts, the situation worsened for persons with disabilities because of the pandemic, and further action is needed, FRA's evidence suggests. For more on this topic, see [Chapter 10](#).

#### **1.4.3. Victims of domestic violence**

Based on previous experiences, already at the outset of the pandemic WHO warned of a likely increase in intimate partner violence against women.<sup>108</sup> In 2020, domestic violence incidents increased, evidence collected by FRA confirmed.<sup>109</sup> For example, **Czechia** and **Germany** indicated that calls to their national domestic violence hotlines rose by 50 % and 20 %, respectively, between March and June.<sup>110</sup>



In **Italy**, calls to the national helpline between 1 March and 16 April increased by 73 %, and the number of victims asking for help increased by 59 %, compared with the same period in 2019, according to a report published by the National Institute for Statistics in June.<sup>111</sup> The data also show that 45 % of the victims reported being afraid for their safety and life, 73 % decided not to report the violence to the police, 93 % of the incidents occurred at home, and 64 % involved children witnessing violence.

In June, the Technical University of Munich in **Germany** published the findings of a representative online survey on women and children's experiences of domestic violence during the pandemic.<sup>112</sup> It asked around 3,800 women aged 18 to 65 about their experiences during the lockdown period between 22 April and 8 May. About 3 % of women respondents became victims of physical violence at home. In 6.5 % of all households, children were subjected to corporal punishment.

Member States took steps to address rising levels of domestic violence, as FRA reported.<sup>113</sup> Measures included, for example, awareness raising; provision of information in a safe environment; keeping hotlines active; opening shelters for victims; and continuing to issue protection orders and handle court cases of domestic violence during the lockdown. In 2020, the European Institute for Gender Equality (EIGE) assessed more systematically the measures taken by Member States to protect women against intimate partner violence.<sup>114</sup> The relevant report is expected in 2021.

Member States are obliged to address domestic violence effectively to deliver on their duties to protect women and children. Domestic violence is a severe violation of their fundamental rights, which the Istanbul Convention of the Council of Europe enshrines.<sup>115</sup> EU law also binds Member States to provide support services to victims based on individual assessments of their specific protection needs, according to the Victims' Rights Directive.<sup>116</sup>

On violence against women and children, including the increased risk of children being exposed to sexual abuse, see also [Chapter 8](#) and [Chapter 9](#).

#### **1.4.4. Roma and Travellers**

Roma and Travellers often live in marginalised settings, in substandard and overcrowded housing conditions. Not only did they face an increased risk of contracting COVID-19, but containment measures also disproportionately affected them. Evidence points to the heightened risk of disrespect and violation of Roma and Travellers' fundamental rights, as enshrined in the

EU Charter.<sup>117</sup> This concerns in particular their right to non-discrimination and equal treatment with the non-Roma population, including in healthcare, work, education, social security and assistance, and housing.

In September 2020, FRA's Bulletin 5 examined the situation of Roma and Travellers during the first wave of the pandemic. In a number of countries, entire Roma neighbourhoods were put in strict quarantine. Lockdowns left many Roma unemployed if they had been engaged in precarious work, and many could not work as street vendors and travelling traders. Working informally, and sometimes having no formal registration of residence, made it difficult for them to claim support and benefits available to workers in the formal labour market. This resulted in increased poverty and risk of malnutrition.

Housing deprivation or poor housing conditions, and limited access to water, electricity and sanitation, created serious health concerns. Barriers to accessing health services exacerbated them. The younger generation faced yet another hurdle: without internet access and appropriate IT equipment, they run the risk of falling even further behind at school or even dropping out.

Amid these difficult realities, the persistent scourge of antigypsyism remained ever present. Media and social networks especially portrayed Roma as a public health hazard and responsible for spreading the virus. For more on this topic, see [Chapter 5](#).

#### **1.4.5. LGBTI people**

The pandemic compounded challenges for lesbian, gay, bisexual, trans and intersex (LGBTI) persons, who are protected against discrimination under Article 21 of the EU Charter. In April, the OHCHR drew attention to COVID-19's impact on LGBTI people and their rights. It underlined issues such as limited access to health services; stigmatisation, discrimination and hate speech, and even being blamed for the pandemic; increased risk of violence; and difficulties in accessing the labour market and social assistance services and benefits.<sup>118</sup>





## Mitigating the pandemic's impact on LGBTIQ people



The European Commission issued its first-ever EU lesbian, gay, bisexual, trans, non-binary, intersex and queer (LGBTIQ) equality strategy in 2020. It noted that it will encourage Member States to make full use of the NextGenerationEU financial instrument to mitigate the disproportionate impact of the COVID-19 pandemic on LGBTIQ people and to advance LGBTIQ equality.

*European Commission (2020), **Union of Equality: LGBTIQ Equality Strategy 2020–2025**, COM(2020) 698 final, Brussels, 12 November 2020.*

Also in April, ILGA-Europe sent an open letter to the President of the European Commission, urging the Commission to keep equality for all at the core of EU policies.<sup>119</sup> It warned, for example, that young LGBTI people were particularly at risk, finding themselves trapped in hostile, locked-down family situations.

In June, ILGA-Europe published a rapid assessment report presenting evidence of the impact of COVID-19 on LGBTI people, organisations and communities in Europe and Central Asia.<sup>120</sup>

Intersex people face a highly increased risk of being unable to access healthcare because of their medical history, even when infected with COVID-19, the Organisation Intersex International Europe (OI Europe) found in an online survey. Most respondents (62 %) said that their mental health had deteriorated and

21 % that they had experienced a relapse into a previous mental health condition as a result of the pandemic.<sup>121</sup>

For more information on the rights of LGBTI persons, see [Chapter 3](#).

### 1.4.6. Refugees and migrants

Asylum seekers, refugees and migrants have also been disproportionately affected. These include children, and in particular unaccompanied minors. FRA's COVID-19 bulletins,<sup>122</sup> and its quarterly bulletins on migration,<sup>123</sup> repeatedly reported on their situation during the pandemic. The measures taken to contain it had an impact on their rights, as enshrined in EU law, including the EU Reception Conditions Directive for those recently arrived in the EU.<sup>124</sup>

Overcrowded accommodation, poor hygiene conditions and limited access to health services increased the risk of infection among all different migrant groups, evidence shows.<sup>125</sup> Research in a number of countries found that infection rates were much higher among them, in particular for those who were at risk of poverty and social exclusion and were living in overcrowded housing and poor hygienic conditions, than in the general population.<sup>126</sup>



Evidence from some Member States suggests that the pandemic resulted in job losses, especially among those in precarious and unofficial jobs, and rising poverty levels among asylum seekers, refugees and migrants.<sup>127</sup>

The situation was particularly challenging in reception and detention facilities, as the ECDC also highlighted.<sup>128</sup> Member States introduced physical distancing or quarantine measures, banned residents from leaving accommodation facilities, and restricted or did not allow visits, including by providers of social services.<sup>129</sup>

Evidence collected by FRA indicated concerns that such measures in severely overcrowded camps could deepen human suffering, increase existing tensions and exacerbate the risk of violence. Moreover, restrictive measures affected the right of asylum seekers to look for protection in the territory of the EU, as well as their right and that of migrants to access relevant procedures, their residence status and permits, and the enjoyment of other rights, including to access health services and education.

In March 2020, FRA, in cooperation with the Special Representative of the CoE on Migration and Refugees, published an analysis on fundamental rights at the external borders of the EU, including during a pandemic.<sup>130</sup> It underlines that “[p]rotection needs cannot be set aside while implementing measures to address public health considerations at the borders” and therefore “[r]efusing entry of all asylum applicants, or of those of a particular nationality, does not comply with the right to seek asylum and could lead to a risk of violating the principle of *non-refoulement*”.

For more information on asylum and migration, see [Chapter 6](#). On issues relating to children, see [Chapter 8](#).

#### 1.4.7. Homeless people

Homeless people live constantly in conditions that jeopardise their right to life and health and often violate human dignity. Worryingly, homelessness increased during the pandemic.<sup>131</sup> This reflected job dismissals and loss of income, which may lead to failure to pay rent or a mortgage, and hence may result in eviction.

At the outset of the pandemic, the European Federation of National Organisations Working with the Homeless (FEANTSA) warned that COVID-19 put homeless people’s health at greater risk because of poor living conditions combined with the fact that many of them have underlying medical conditions.<sup>132</sup>

Difficulties in and barriers to accessing healthcare, including testing and protective equipment, and lack of information on hygiene measures increased demand for places in shelters. That led to overcrowding because shelters needed to reduce their capacity to comply with physical distancing measures. Together with disruption in other support services, including the provision of food, it heightened health risks and further worsened the living conditions of homeless people.<sup>133</sup> Containment measures, in particular stay-at-home, curfew and physical distancing measures, added further hardship.



## Focus on adequate housing

In March, the UN Special Rapporteur on the right to adequate housing urged states to:

- cease all evictions;
- provide emergency housing with services for those who are affected by the virus and must isolate;
- ensure that enforcing containment measures (e.g. curfews and stay-at-home measures) does not lead to the punishment of homeless people;
- provide equal access to testing and healthcare;
- provide adequate housing.

*UN Special Rapporteur on the right to adequate housing (2020), “Housing, the front line defence against the COVID-19 outbreak,” says UN expert’.*

FEANTSA noted that staying at home is not an option for homeless people. Nevertheless, FEANTSA reported sanctions against homeless people who infringed lockdown rules.<sup>134</sup>

National, regional and local authorities adopted measures to alleviate the difficulties homeless people or people at risk of homelessness face.<sup>135</sup> For example, **France**, the **Netherlands** and **Spain** introduced moratoria on evictions and/or rent increases. In **Belgium** and **France**, the number of available accommodation places, including in hotels, increased.

Municipal authorities (e.g. Barcelona, Budapest, Lisbon and Madrid) also took action. Authorities in **Belgium**, **France** and the **Netherlands** set up special accommodation facilities for homeless people who become infected. **French** authorities distributed vouchers enabling homeless people to buy food and hygiene products. In **Finland**, service centres for homeless people took their services to the streets, offering meals and guidance.

Nevertheless, the authorities need to devote systematic attention and action to their obligation to protect the human dignity and the rights to life and health of people deprived

of their right to housing and experiencing homelessness.

### 1.4.8. Detainees

The structure and internal organisation of prisons, particularly when overcrowded, make it difficult to observe hygiene and physical distancing rules. This exposes both detainees and staff to severe risks to their life and health. To avoid the spread of COVID-19 in prisons, authorities in Member States adopted restrictive measures.<sup>136</sup>

These measures concerned visits to detainees, time granted outside their cells, sports and other external activities, and prison transfers. Sometimes they included total bans on visits, including from their lawyers. That could undermine their right to access to justice. People infected had to quarantine. Preventive quarantine applied in many cases to those newly entering a facility.

The restrictions affected the rights of detainees and put a severe psychological strain on them, affecting their mental health. In some cases they increased tension. For instance, in **Italy**, they led to revolts in detention facilities, during which some prisoners died, and several others and prison officers were injured.<sup>137</sup>

These challenges prompted many international organisations,<sup>138</sup> national human rights and monitoring bodies<sup>139</sup> and CSOs<sup>140</sup> to call on authorities to drastically reduce prison populations through measures such as temporary or early releases and minimising pre-trial detention. For example, the UN High Commissioner for Human Rights encouraged authorities to “examine ways to release those particularly vulnerable to COVID-19 as well as low-risk offenders”.<sup>141</sup>

For its part, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the CoE issued a statement of principles in March 2020 relating to the treatment of persons deprived of their liberty during the pandemic.<sup>142</sup> In a follow-up statement in July, the CPT welcomed that most states had increased the use of non-custodial measures as alternatives to detention, such as suspending or deferring sentences, bringing forward conditional release, temporary release, commuting imprisonment into house arrest or extended use of electronic monitoring.<sup>143</sup>

After the first phase of the pandemic, restrictive measures were eased, FRA evidence shows. Alternative arrangements (e.g. using protective screens during visits) ensured access to lawyers and communication with family members.<sup>144</sup>

Most importantly, a significant number of EU Member States adopted measures to reduce their prison population. For example, between mid-March and mid-May, **France** reduced its prison population by 13,082.<sup>145</sup> In **Germany**, several *Länder* released prisoners in the last stages of their prison sentences for minor criminal offences.<sup>146</sup>

A new law adopted in **Portugal** on 9 April provided for an amnesty for prison sentences and remaining prison terms of up to two years, as well as for special measures for vulnerable inmates aged 65 or more, with the exception of those convicted for serious crimes.<sup>147</sup> Portugal also established an extraordinary leave regime.

In October, **Italy** allowed the extension of 'special leaves' from prison and permitted detainees with sentences of up to 18 months to serve them in home custody until 31 December 2020, monitored using electronic bracelets.<sup>148</sup> Exceptions applied for those serving sentences for serious offences.

Measures to reduce prison populations were also adopted in **Cyprus**, following an intervention by the Ombuds body.<sup>149</sup>

#### 1.4.9. Ethnic minorities

The COVID-19 pandemic triggered an increase in racist and xenophobic incidents, including verbal insults, harassment, physical aggression and online hate speech, according to evidence that FRA and other sources collected.<sup>150</sup> This increase undermines and violates Article 21 of the Charter, EU criminal provisions combating racism and xenophobia,<sup>151</sup> and the Racial Equality Directive.<sup>152</sup>

Initially, racist incidents targeted people of perceived Chinese or other Asian origin. For example, according to the **French** Public Defender of Rights (Ombuds institution and equality body), anti-Asian racism took on a new dimension with insults and assaults in public places and harassment of children at school.<sup>153</sup> By 19 June, the **German** Federal Anti-discrimination Office had received some 300 requests for counselling about COVID-19-related incidents,<sup>154</sup> mostly targeting people of Asian origin.





## Highlighting the pandemic's effect on diverse communities

The European Network against Racism released in May 2020 the EU-wide interactive map of COVID-19's impact on racialised communities. It also documents hate speech and hate crime incidents linked to COVID-19.

*European Network against Racism (2020), 'COVID-19 impact on racialised communities: Interactive EU-wide map', 12 May 2020.*

Other minority groups were also blamed and attacked, particularly on social media. This also concerned religious groups, as the UN Special Rapporteur on freedom of religion or belief highlighted in a statement in April 2020.<sup>155</sup> Conspiracy theories driven by antisemitism emerged.<sup>156</sup>

This particularly affected Roma and people with an immigrant background. Some politicians, other public figures and media outlets stirred racist perceptions, while others countered hatred and promoted non-discrimination and tolerance. Persons of Chinese or other Asian origin, and other minority groups, also encountered discrimination in accessing goods, including access to health services and education.<sup>157</sup>

Reports pointed to the strict enforcement of containment measures against minority groups. A June report by Amnesty International covered incidents in 11 EU Member States. It focused on the disproportionate impact of enforcement measures on people of North African and sub-Saharan origin, and other minority ethnic groups living in working-class districts, including cases of disproportionate use of force.<sup>158</sup>

For more information on developments pertaining to racism, see [Chapter 4](#).

## FRA opinions

### FRA OPINION 1.1

EU Member States should assess and balance the requirements of different fundamental and human rights when adopting restrictive measures in an emergency, such as the one presented by the COVID-19 pandemic. To achieve this balance, they should take into consideration international human and fundamental rights standards, including relevant case law and guidance by international human rights bodies. They should also involve national statutory human rights bodies when designing, implementing, and monitoring restrictive measures. These measures should be necessary, temporary and strictly proportionate.

EU Member States should ensure that restrictive measures are based on law and that courts, parliaments, statutory human rights bodies and other stakeholders, including civil society, can scrutinise them.

EU institutions should continue to monitor emergency measures in the light of the EU's founding values as laid down in Article 2 of the TEU, including fundamental rights, rule of law and democracy. Policy documents, such as the new annual European Rule of Law Mechanism report, should reflect the outcome of monitoring the emergency measures, where relevant.

The pandemic and the measures adopted to contain it have seriously affected all aspects of our personal and collective life, including the functioning of our democratic institutions, as the evidence shows. The pandemic has revealed new challenges to upholding the fundamental values of the functioning of our states and the European Union. It has implications for our fundamental rights. Restrictions have an impact on our personal and social interaction, and on the protection of our sensitive personal data. At the same time, the social and economic consequences of the pandemic will be lasting and will significantly exacerbate already existing inequalities.

It is essential, as many have stressed at international, EU and national levels, that emergency and restrictive measures fully respect international human rights and rule of law standards, as international instruments enshrine them and relevant case law shapes them. A large number of documents from authoritative sources have identified these standards, which provide guidance to duty-bearers on how to better protect the rights of people to life and health without negating all their other rights.

As the European Parliament underlined, “even in a state of public emergency, the fundamental principles of the rule of law, democracy and respect for fundamental rights must prevail”. In this respect, the EU Charter of Fundamental Rights is of major importance when it comes to EU actions, and actions of Member States that fall within the scope of EU law. FRA's bulletins throughout 2020 highlighted with evidence the implications on fundamental rights in the EU context.

At national level, restrictive measures have been under scrutiny by courts, parliaments, human rights bodies, civil society and other stakeholders. Although they recognised the need for emergency measures to contain the pandemic, they objected to those that were not based on law, lasted for a long time and were disproportionate. They also stressed the importance of fighting COVID-19-related discrimination, hate speech and racism.

Modern science responded to this challenge in record time, making vaccines available as early as the end of 2020. Still, the pandemic exposed gaps and limitations in the capacity and preparedness of our healthcare, education, employment and social protection systems to deal with such a crisis, and deliver on the obligation to fulfil the rights of all to health, education, work and social security and assistance. It also revealed gaps in our capacity to protect the rights of those more vulnerable. The pandemic is a litmus test of our readiness to respect the promise of the global Agenda 2030 to “leave no one behind” in achieving a socially just transition to sustainable development.

Despite the shortcomings, however, the EU and its Member States made considerable efforts to support their healthcare, education and social protection systems, and to assist individuals and businesses against the economic downturn and the risk of unemployment.

## **FRA OPINION 1.2**

EU Member States should improve the resilience of their healthcare, social welfare and social assistance systems to ensure that they provide equitable services to everyone even during a crisis. To achieve this in a coordinated way across the EU, the European Commission’s proposal for a strong European Health Union should be adopted without delay. The proposal aims to seriously improve the protection of health, but also social and economic life across the EU.

## **FRA OPINION 1.3**

EU Member States should enhance their efforts to ensure the continuity of education for all children under any circumstances, particularly in times of crisis such as the one presented by the COVID-19 pandemic. In this respect, they should prioritise establishing a digital infrastructure across all levels of education, and ensure appropriate training to familiarise teachers with working in a digital environment. In this regard attention should be given to the Digital Education Action Plan (2021–2027), which suggests this, and calls for stronger cooperation at EU level to make education and training systems fit for the digital age.

EU Member States should also ensure that this digital infrastructure is inclusive. This means catering to the needs of those who are socially excluded and vulnerable, such as children with disabilities, children of Roma and Travellers, and children of migrants and refugees.

#### **FRA OPINION 1.4**

The EU and its Member States should continue to fight COVID-19-related discrimination, hate speech and racism against ethnic minority groups, migrants and refugees, or people with a migrant background. This includes strengthening measures against disinformation that spreads hate speech, and discriminatory and racist perceptions, particularly online.

#### **FRA OPINION 1.5**

EU Member States should focus on the needs of vulnerable groups that are most at risk of infection and/or severe disease. These groups include older people, people in care homes, persons with pre-existing health conditions, and those living in limited and overcrowded spaces or poor living and housing conditions. This last group includes many Roma and Travellers, and people in reception or detention facilities for migrants and refugees, prisons, and shelters for homeless.

This also requires prioritising these groups for vaccination and ensuring they enjoy equitable access to health and social services as necessary.

The EU's added value was once again of critical importance. It put in place various instruments to help Member States finance their actions. Looking forward, the EU institutions reached agreement on a recovery package of € 1.8 trillion. It combines the EU budget for 2021–2027 and NextGenerationEU, a temporary recovery instrument allowing the European Commission to raise funds on the capital market to address the immediate economic and social damage caused by the pandemic.

These EU financial measures, together with policy instruments promoting human and fundamental rights, such as the European Pillar of Social Rights, form a comprehensive framework to support national efforts.

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# IMPLEMENTATION AND USE OF THE CHARTER AT NATIONAL LEVEL

## 2

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The year 2020 marked a special milestone for the EU Charter of Fundamental Rights. On 7 December, it was exactly 20 years since the EU proclaimed the Charter in Nice. The European Commission used that date to launch its new 'Strategy to strengthen the application of the Charter of Fundamental Rights in the EU'. The strategy puts increased focus on the Charter's application in the Member States and on the role of national actors in making the Charter effective in people's lives. It provides a blueprint for further collective efforts in the years to come. The Commission also encouraged a more concerted implementation of the Charter at EU level. Meanwhile, its use by national courts, parliaments, governments and other actors continued to show mixed results. National courts paid growing attention to the Charter, but government measures to promote its application remained sparse. Although the COVID-19 crisis strained fundamental rights protection, it also spurred more attention to the EU's bill of rights.



## 2.1. A SHARED RESPONSIBILITY

The Charter of Fundamental Rights of the European Union is of equal relevance to the EU and its Member States.<sup>1</sup> Consequently, the European Commission's new strategy to strengthen its application stresses that all its aspects – prevention, promotion, implementation and enforcement – need to build on shared responsibility and require a collective effort from all concerned.

The strategy stresses that the Charter is a tool for “national and local authorities, including law enforcement authorities, rights defenders, legislators, judges and other legal practitioners, and civil society organisations [CSOs] active in fundamental rights. All these key actors for the Charter's effective application have a role to play in making the Charter a reality in people's lives.”<sup>2</sup>

## 2.2. THE CHARTER AND THE JUDICIARY

Judges are the key to making the Charter relevant in people's lives, as the new Charter strategy highlights. The use of the Charter in national courtrooms is becoming more explicit and frequent.

At the same time, the strategy stresses that knowledge remains low among national justice practitioners. FRA has analysed consultations by the Commission for the purposes of the Charter strategy. Fewer than one third of legal professionals consulted have benefited from training on the Charter, the results show. Most of the judges and other judicial practitioners consulted would welcome training on the Charter to share experiences.<sup>3</sup> This points to a potential for a more prominent role of the Charter in the future.

As in previous years, FRA asked its research network, FRANET, to identify at least two of the most relevant cases in each Member State in which the Charter played a relevant role. These cases were decided in 2020. Nearly half concerned either policies on border checks, asylum and immigration or the area of criminal law. This is similar to previous years.

In many Member States, judgments used the Charter in Dublin procedures or in European Arrest Warrant cases. This is also consistent with earlier findings, as is the relative prominence of certain articles: 19 of the 50 decisions analysed referred to the right to an effective remedy and to a fair trial (Article 47).

In 22 of the 50 national (high) court decisions analysed, the judges brought in the Charter as a legal argument. The intensity of the Charter's usage in the judicial decisions varies. The spectrum ranges from cases in which they assess national law directly against the Charter to those in which the Charter provides a source of information rather than a decisive normative source.<sup>4</sup>

### 2.2.1. Constitutional review

Given that the Charter is a constitutional standard, constitutional courts have a relevant role in its application.

The Constitutional Court of **Germany** confirmed this, stressing in a European Arrest Warrant case that “fundamental rights of the Basic Law are not applied as a direct standard of review when deciding legal questions that are fully determined by Union law”<sup>5</sup> In areas that EU legislation harmonises, it is thus not national fundamental rights but EU fundamental rights, including the Charter, that serve as the relevant standard.



**“With the Charter, we have made a clear shift from the EU being primarily an economic venture, to a Union built on shared values and fundamental rights.”**

Věra Jourová, Vice-President for Values and Transparency, European Commission, speech at the event ‘Reinforcing the EU Charter: Rights of people in the EU in the next decade’, 7 December 2020



**“The Charter has strengthened the role of judges as ‘guardians of democracy, liberty and justice’ in the EU legal order, since judges are called upon to provide effective judicial protection of the rights that EU law confers on individuals, including those recognised by the Charter.”**

Koen Lenaerts, President of the Court of Justice of the European Union, speech at the event ‘Reinforcing the EU Charter: Rights of people in the EU in the next decade’, 7 December 2020

**“Rights of the Charter of Fundamental Rights can be asserted as constitutionally guaranteed rights according to Art. 144 B-VG and [...] within the scope of application of the Charter of Fundamental Rights [...] they form an examination standard in the procedure of general norm control.”**

Austria, Constitutional Court,  
**Case G302/2019**, 26 June 2020

## FRA ACTIVITY

# New e-guidance on Charter’s scope of application

In 2020, FRA developed an online tool to support national judges on questions concerning the applicability of the Charter. This new Charter e-guidance includes elements that they can use in judgments, but it can be equally useful to other legal practitioners.

The tool has two components: step-by-step guidance for a specific case through a series of questions on the Charter’s applicability; and a set of concrete examples of cases, allowing users to assess and expand their knowledge.

The tool is available on the agency’s website, in a section entitled **‘FRA e-learning’**. It complements other FRA Charter tools, such as Charterpedia, the Charter country factsheets, videoclips on the Charter, thematic handbooks and more (available online on FRA’s webpage on **‘FRA Charter resources’**).

In **Austria** too, the Constitutional Court underlined that the Charter forms a standard of constitutional review.<sup>6</sup> Frequently, a review of national norms and decisions against the Charter takes place before administrative courts. For example, the highest administrative court quashed a decision not to hold a hearing in an asylum procedure.<sup>7</sup>

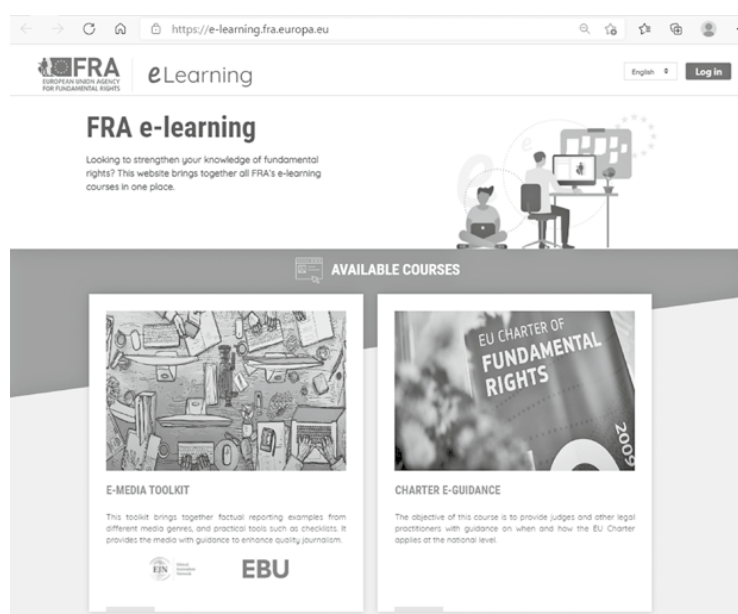
In **Italy**, the Constitutional Court reaffirmed its jurisdiction concerning cases of conflict between national legal principles and the principles enshrined in the Charter. In a case addressing the legality of national provisions establishing that third-country citizens wishing to apply for certain child allowances must hold an EU long-term residence permit, the court stressed the Charter’s role in constitutional review. The Charter complements the guarantees that the Italian constitution lays down, thereby excluding any protection gaps.<sup>8</sup>

In **Croatia**, the Constitutional Court examined a provision of the Act on International and Temporary Protection. The act allows an administrative body to decide on detention. In the view of the petitioner, that violated guarantees of national constitutional law. The court stressed that the examination is not to be limited to national constitutional law, but also includes the Charter.<sup>9</sup>

In **Estonia**, the Supreme Court drew the legislature’s attention to the fact that a provision allowing a court to deprive a person of liberty “must be sufficiently precise and foreseeable to apply in accordance with both the case law of the European Court of Human Rights and Article 52 (1) of the EU Charter of Fundamental Rights, to avoid any risk of arbitrariness”.<sup>10</sup>

The Charter is most frequently used in combination with provisions of national constitutional law and the European Convention on Human Rights (ECHR). This also applies where national law is checked against higher ranking law.

For instance, the Constitutional Court in **Romania** had to determine the legality of provisions that allow judges to assess the appropriateness of the length of a procedure when they were themselves responsible for the delay. Having checked the provision against the relevant norms, including Article 47 of the Charter, the court ruled that Article 524, paragraph 3, of the Romanian Code on Civil Procedure is unconstitutional and hence no longer applicable.<sup>11</sup>



### 2.2.2. Interpretation of national law

Sometimes the Charter can be used as a constitutional standard for checking national legislation. However, in most cases, courts check national law against EU secondary law as interpreted in light of the Charter.

It is widely established that, if national law falls within the scope of EU law, national judges need to interpret it in light of the Charter.

A case from **Ireland** illustrates this. It raised the question of whether or not the right to a fair trial (Article 47) obliges Member States to provide legal aid not only to natural but also to legal persons. The judgment rejected such an interpretation. It stressed that, contrary to the applicant's claim, the Court of Justice of the European Union (CJEU) case law does not establish a general requirement that legal aid must, in principle, be available to all persons relying on the Charter.

The Irish court referred explicitly to the "interpretative obligation (also known as the doctrine of harmonious interpretation)" of national courts. Quoting the CJEU, it explained that this requires national courts to use the "whole body of rules of law and to apply methods of interpretation that are recognised by those rules in order to interpret it, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive".<sup>12</sup> Where such an interpretation would be *contra legem* (against the wording of the law in question), that law must not be applied.

The obligation to disregard national law that contradicts EU law might already follow from national constitutional law. In **Poland**, the Supreme Court underlined that the duty for judges to disregard laws in conflict with the Charter follows from Article 91 (3) of the Constitution of the Republic of Poland, which provides that international agreements have precedence in the event of a conflict of laws.<sup>13</sup> However, the Constitutional Court later deemed the Supreme Court's approach to contradict both constitutional law and even Article 2 of the Treaty on European Union (TEU).<sup>14</sup>

### 2.2.3. Protecting individual rights

Where courts apply the Charter, individuals can end up with more or better-protected rights.

In **Czechia**, the Constitutional Court referred to the legal status of consumer protection. This is a fundamental right under the Charter, but the national legal order does not recognise it as such. The case concerned a proofreading company that delivered a service that did not satisfy the claimant. The Constitutional Court pointed out that the district court could have applied Article 38 of the Charter to ensure a high level of consumer protection when applying relevant provisions of the civil code.

Data protection is an area where national courts frequently refer to the rights of individuals.

**"Among the sources of EU law, the Charter has particular importance for the activities of the Constitutional Court, which the Constitutional Court has described in its previous case law as part of the reference framework for review [...] or has emphasised the need to look at the matter also from the point of view of the Charter."**

Czechia, Constitutional Court,  
**Case II. ÚS 78/19**, 24 January 2020



**“The rights of subjects laid down in the Treaty on European Union and in the Treaty on the Functioning of the European Union take precedence over provisions of national law which are contrary to them. The same applies to the [Charter], which under Article 6 (1) of the [TFEU] has the same legal force as the Treaties.”**

Bulgaria, Supreme Administrative Court,  
**Case 7423/2020**, 20 August 2020

In **Spain**, the Supreme Court had to deal with an app called ‘Juas’. It describes its main purpose as follows: “Laugh out loud playing prank calls to your friends and sharing their reactions”. After a person was not amused at being subjected to this game, the Spanish Data Protection Agency concluded that the company had committed a data-processing breach without consent. It imposed a fine of € 6,000. The Supreme Court upheld that decision, making extensive reference to the Charter and relevant CJEU case law.<sup>15</sup>

In **Hungary**, the Charter played a role in deciding on the redress available to an applicant for the position of a judge. The plaintiff had twice applied for two different positions at Budapest-Capital Regional Court. In both procedures, the plaintiff received the highest scores in the evaluation process. Nonetheless, in both procedures, the President of the National Office for the Judiciary (NOJ) declared the application unsuccessful.

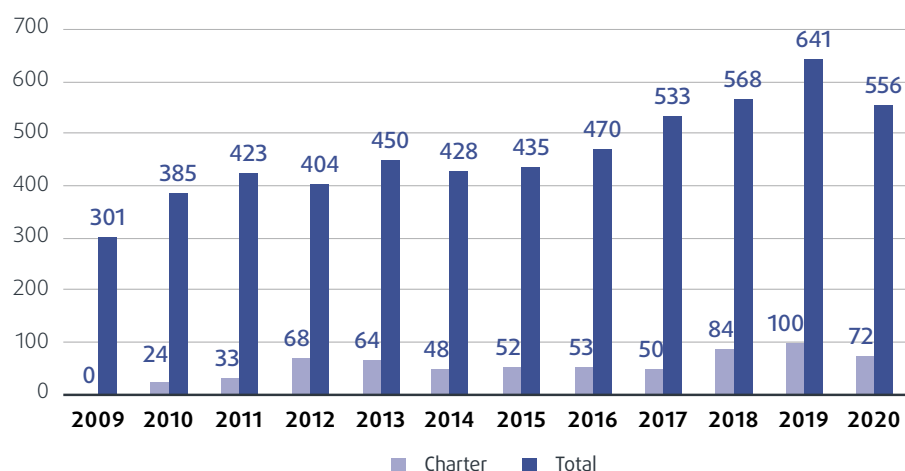
The case came before the Supreme Court, which had to decide whether or not the Hungarian legislation gave the plaintiff the right to challenge the resolutions of the President of the NOJ. Interpreting national law in light of Article 2 of the TEU, Article 19 of the Treaty on the Functioning of the European Union (TFEU), and Article 47 of the Charter, the court declared that the plaintiff did have that right.<sup>16</sup>

#### **2.2.4. Requests for preliminary rulings**

In 2020, courts from EU Member States sent 556 requests for preliminary rulings to the CJEU. Of these, 72 made reference to the Charter. This proportion, 13 %, is broadly in line with previous years.



**FIGURE 2.1: REQUESTS FOR PRELIMINARY RULINGS, 2009–2020, AND NUMBER THAT REFER TO THE CHARTER**



Source: FRA, 2021 [based on data received from the CJEU]

Requests for preliminary rulings may concern technical details or issues of political relevance. Two examples from **Latvia** illustrate this.

In one case, the Supreme Court requested a CJEU preliminary ruling about certain swamp lands included in an area protected under Natura 2000. National law places an absolute ban on cranberry plantations on this land. EU legislation provides that compensation for restrictions on the use of protected lands is to be provided.

The national court requested guidance on the situation when an owner is neither allowed to undertake commercial activity (making cranberry plantations) nor entitled to compensation. It asked the CJEU if such a situation is compatible with the right to property (Article 17), taking into account that the owner knew about the situation before acquiring the land.<sup>17</sup>

A second case involved a matter of major political interest: the use of languages in Latvian universities. The preliminary ruling request concerned amendments to the law on the establishment of higher educational institutions. The law provides that all establishments of higher education – state and private – must implement study programmes in Latvian only, except in a very few cases in which courses in EU languages are permitted.

The Constitutional Court found that the norm violated academic freedom as protected by the constitution. It referred questions to the CJEU regarding the compatibility of the law with both free movement of services and the freedom of establishment, as well as with the freedom to conduct a business, as provided by Article 16 of the Charter.<sup>18</sup>

When national courts request preliminary rulings and the CJEU provides its judgment, the national courts can proceed with the case based on the CJEU's interpretation. This process can trigger additional legal questions for the national courts to clarify.

For example, in **Poland**, the Supreme Court issued a decision establishing criteria to assess when a court formation is unduly appointed, including appointments under the current Act on the National Council for the Judiciary.<sup>19</sup> Due to the manner in which the present Council is constituted, the Supreme Court ruled that panels convened by the Supreme Court are defective when

they include individuals appointed based on a recommendation by the current Council. This Supreme Court decision aimed to implement a judgment of the CJEU regarding the independence and impartiality of courts. However, it was then deemed unconstitutional by the Constitutional Court.<sup>20</sup>

## 2.3. THE CHARTER AND LAWMAKERS

The European Commission's new Charter strategy stresses that national parliaments are central to promoting and protecting Charter rights. It also acknowledges that the use and awareness of the Charter in national parliaments remain low. In its strategy, the European Commission invites "the European Parliament and national parliaments to develop interparliamentary cooperation on issues related to the application of the Charter, to which the Commission stands ready to contribute".<sup>21</sup>

Moreover, the strategy calls on the Member States to use impact assessments and legislative scrutiny procedures to ensure that initiatives implementing EU law comply with the Charter.<sup>22</sup> So far, these procedures tend not to refer to the Charter, even though a significant part of national law and policymaking falls under the scope of EU law and so has to conform fully with the Charter.<sup>23</sup>

Nevertheless, there are examples of national law- and policymaking referring to the Charter in 2020. FRA analysed 33 examples of political debates and 35 examples of impact assessments or legal scrutiny procedures from across the EU. Data protection emerges as the policy area with the most examples of Charter use.

### 2.3.1. Use of the Charter outside the legislative process

Sometimes national political debates with no link to a specific legislative process refer to the Charter.

For instance, the parliament in **Belgium** adopted a resolution on the so-called LGBT-free zones in Poland. It referred to the prohibition on discrimination in Article 21 of the Charter.<sup>24</sup> The **Irish** parliament also referred to the Charter when criticising related government policies in **Poland**. It considered that they violate freedom of expression and information (Article 11) and non-discrimination (Article 21).<sup>25</sup>

A group of parliamentarians addressed similar concerns in **Italy**.<sup>26</sup> These members of the Senate drew attention to arrests and pre-trial custody of activists in Poland. They also highlighted the need to respect non-discrimination (Article 21). They asked if the Italian minister for foreign affairs was aware of these events and if he was considering advocating the liberation of the activists and intervention by the European Commission.

Another example also involved a group of Italian senators. They asked the government if it was aware of allegations concerning municipal elections in Venice. Candidates had reported to the local press that they had sent a formal letter to the President of the European Commission, alleging the violation of the right to vote and stand as a candidate in local elections (Article 40 of the Charter) and of Directive 94/80/EC. They argued that the municipal authorities of Venice had not provided adequate information to EU citizens living in Venice on how to participate as voters in the municipal elections, which require local registration.<sup>27</sup>

COVID-19 and related government measures prompted political debates concerning the fundamental rights foundations that need to be respected when designing and implementing national policies to counter the pandemic.

In **France**, the European Affairs Committee of the Senate recognised the need for Member States to take urgent measures to tackle the COVID-19 epidemic, but stressed that “the Charter of Fundamental Rights of the European Union continues to apply during the epidemic”.<sup>28</sup>

### 2.3.2. Use of the Charter in the legislative process

#### *Debates on adopting bills*

Interventions in parliamentary debates sometimes use the Charter to argue for or against the adoption of a bill. For instance, in **Portugal**, the Charter was used to support a bill that aims to exempt students with disabilities from paying tuition fees.<sup>29</sup> Parliamentarians in Portugal also referred to the Charter when opposing proposals to legalise euthanasia.<sup>30</sup> Meanwhile, others rejected the introduction of a new national charter on digital rights, stating that such an initiative would duplicate rights that other instruments, including the Charter, already established.<sup>31</sup>

Lawmakers also referred to the Charter when discussing COVID-19-related measures. For instance, in **Estonia** a member of parliament made reference to the Charter when expressing concerns about data protection related to a COVID-19 hotline.<sup>32</sup>

In **Finland**, the parliament discussed a government decree that temporarily restricted the freedom of movement to and from the capital region of Uusimaa in order to control the spread of the COVID-19 pandemic. Members referred to the Charter given that it specifically provides a right to free movement (Article 45).<sup>33</sup>

Similar debates took place in other countries, such as **Croatia**, where data protection (Article 8) was referred to in the context of introducing electronic tracking of people’s locations.<sup>34</sup>

#### *Preparation of national bills*

Explanations of bills tend to refer to the Charter when the bills are implementing EU legislation and are relevant to fundamental rights. The preparatory work for bills also refers to the Charter to bolster arguments in favour of legislative proposals.

For instance, in the context of ratifying the Protocol of Amendment to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, **Estonia** made reference to the fact that data protection “has recently been included as a fundamental right in Article 8 of the EU Charter of Fundamental Rights”.<sup>35</sup>

In **Croatia**, a legislative proposal to establish an ombudsperson for the elderly referred to the Charter, which recognises the rights of elderly people to lead a life of dignity and independence and to participate in social and cultural life (Article 25).<sup>36</sup>

In **Hungary**, a member of parliament submitted a bill to bring Hungarian legislation on civil society organisations in line with the CJEU’s judgment in case C-78/18.<sup>37</sup> It refers to the respect for private and family life (Article 7), data protection (Article 8) and freedom of assembly (Article 12).<sup>38</sup> The legislature did not take the bill into consideration.

In **Lithuania**, a bill amending the Law on Criminal Intelligence states in its explanation that the provisions of the law that was then in force would

violate the Charter. Therefore, the obligations under the Charter were one of the motivations of the bill.<sup>39</sup>

In **Romania**, a bill seeks to amend existing anti-discrimination legislation by adding colour as a protected ground of discrimination. It specifies that that is a protected ground under Article 21 of the Charter.<sup>40</sup>

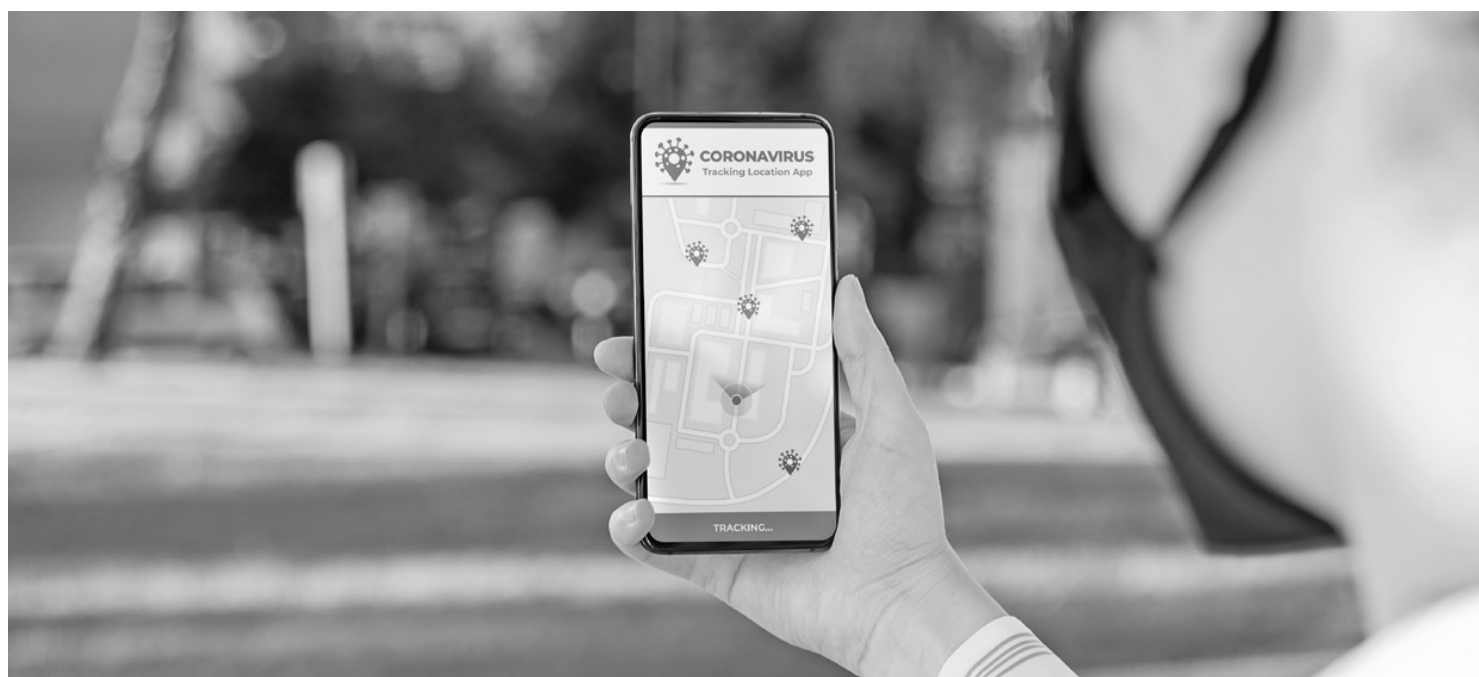
*(Legal) opinions on bills*

In **Bulgaria**, the president maintained that the proposal to criminalise “distributing incorrect information about the spread of an infectious disease” contradicted a number of EU and international standards, including the freedom of expression and information as laid down in Article 11 of the Charter. The president also opposed a provision for a mandatory upper limit on the prices of goods and services during a state of emergency. He maintained that this would violate the principle of free movement of goods and services and the freedom to conduct a business, stipulated in Article 16 of the Charter. Both provisions were removed from the bills.<sup>41</sup>

The Supreme Bar Council of Bulgaria also argued against a bill by invoking the Charter. Increased punishments for computer crimes, sexual crimes, and crimes against intellectual property would render these crimes ‘serious’ and thus allow the tracing of contacts, locations and other circumstances of the personal lives of citizens and their correspondence. The council argued that this would bring a risk of violating citizens’ rights, including the right to private and family life (Article 7) and data protection (Article 8).<sup>42</sup>

In **Finland**, amendments were proposed to the Communicable Diseases Act to develop a mobile application that helps trace and alert people who may have been exposed to COVID-19. The Constitutional Law Committee of Parliament referred to the Charter when reviewing their constitutionality.<sup>43</sup> The parliament and the president adopted the bill after the amendments that the committee suggested were introduced.

In the **Netherlands**, the Council of State used the Charter (in addition to the ECHR) to check if emergency measures to restrict the movement of persons due to COVID-19 were allowed.<sup>44</sup> The council stressed the importance of proportionality but also the need to draft measures clearly and publish them in such a way that citizens can adhere to them.



## 2.4. THE CHARTER AND GOVERNMENT POLICIES

The new Charter strategy stresses that national and local administrations, as well as law enforcement authorities, are “central to promoting and protecting Charter rights”. The European Commission intends “to work hand in hand with Member States’ national and local authorities to ensure the full application of the Charter and of EU laws that promote and protect the rights it enshrines”.<sup>45</sup>

To prevent Charter violations, the Commission stresses that a regular dialogue with Member States and law enforcement authorities is useful to resolve, at an early stage, any emerging issues of incompatibility. Moreover, the strategy underlines that it is “important that Member States promote the development of tools, monitoring mechanisms, training and strategies to ensure compliance with the Charter”.<sup>46</sup>

More specifically the new strategy calls on the Member States to deliver on 10 points. It invites them to:

- share best practices on the use and awareness of the Charter, including at local level;
- nominate a Charter focal point to ease coordination and cooperation;
- use impact assessments and legislative scrutiny procedures to ensure that initiatives implementing EU law comply with the Charter;
- develop guidance and training for national and local administrations;
- ensure that EU funds are used in compliance with the Charter and establish the arrangements provided in the Common Provisions Regulation<sup>47</sup>;
- support national and local staff to design and implement programmes that comply with the Charter, in cooperation with the Commission;
- facilitate the coordination and coherent implementation of enabling conditions for EU funds and make the best use of available technical assistance;
- include fundamental rights bodies in the monitoring committees;
- promote a supportive and safe environment for CSOs and rights defenders in their country, including at local level;
- develop initiatives to promote people’s awareness of their Charter rights and of where to turn when their rights are breached, in particular by empowering local actors.

The strategy also expects solid cooperation from the Member States in the Council. It invites the Council to contribute to better implementation of the Charter by promoting exchanges among Member States in its Working Party for Fundamental Rights, Citizens’ Rights and Free Movement of Persons (FREMP) and to follow up on the Commission’s annual report that will be published in the course of 2021.

Policies related to the Charter and on promoting the application of its provisions could help increase awareness of the instrument. Awareness of the Charter is lower than of the key human rights catalogues established at the level of the Council of Europe (ECHR) or the United Nations (Universal Declaration of Human Rights), FRA survey data show.<sup>48</sup>

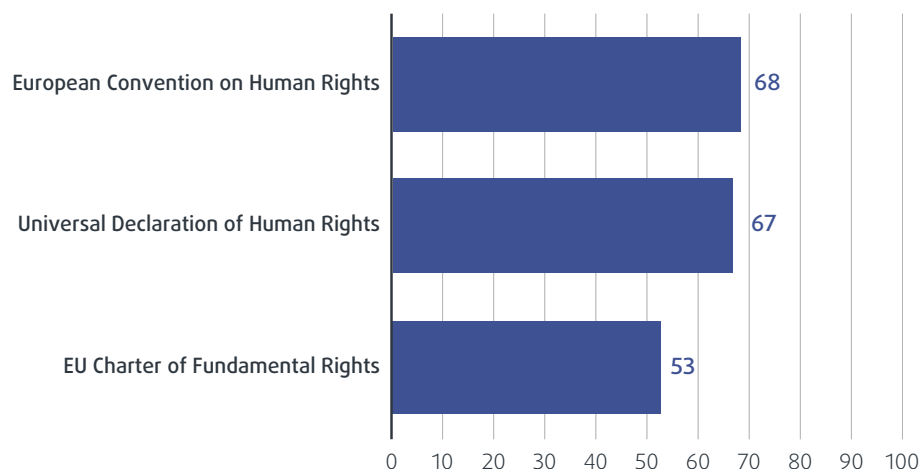
However, the data also suggest that there is less of a gap between the awareness of the ECHR and the awareness of the Charter in countries that have more recently ratified the ECHR. This indicates that time is a key factor in raising awareness of a human rights catalogue.



Notes: Out of all respondents in the EU-27 who were asked to complete the section 'Rights awareness & responsibilities' of FRA's Fundamental Rights Survey 2019 (n = 24,354); weighted results.



FIGURE 2.2: AWARENESS OF HUMAN RIGHTS INSTRUMENTS



Source: FRA, Fundamental Rights Survey 2019 [Data collection in cooperation with CBS (NL), CTIE (LU) and Statistics Austria (AT)]

#### Raising awareness through training and education

A number of existing practices can guide the development of similar initiatives concerning the application of the Charter.

For instance, in 2020, the Ministry of Justice of **Finland** organised an online course on fundamental rights and human rights in the legislative drafting process.<sup>49</sup> In the **Netherlands**, the Expert Centre on European Law of the Ministry of Foreign Affairs provides general information about the Charter.<sup>50</sup>

In **Italy**, the Milan Bar Association (*Ordine degli Avvocati di Milano*) organised a training session on applying the Charter in national judicial proceedings concerning family reunification and legislation countering terrorism. The training was part of the EU-funded project 'Lawyers4Rights', involving legal professionals based in Bulgaria, Italy and Spain.

The local dimension of the Charter was emphasised in **Croatia**. The Association of Cities (*Udruga Gradova*) published an online article on the role of local authorities in implementing the Charter.<sup>51</sup>

In **Italy**, the School Department of the Emilia-Romagna Region carries out an educational programme on rights awareness. It focuses on educating young people about the Charter.<sup>52</sup> It consists of a game for students and an e-learning platform for teachers, providing some key definitions and instruments that can be used during the training sessions. A mobile phone app allows the students to play from home as well.

## 2.5. THE CHARTER AND OTHER ACTORS

The new strategy on better implementation of the Charter stresses that, even though public authorities are primarily responsible for upholding and promoting the Charter, other actors also play a role in its implementation. Rights defenders, such as national human rights institutions (NHRIs), but also civil society, including academia, have an important role in promoting the use and awareness of the Charter and a culture of values.<sup>53</sup> The strategy calls on the Member States to increase the capacity of these actors.

### 2.5.1. NHRIs and other independent bodies

NHRIs, ombuds institutions, equality bodies and other statutory bodies play an important role in the national fundamental rights landscape. However, NHRIs appear to not yet be using the full potential of the Charter. Only four of the 33 NHRIs that FRA consulted for a previous report said they use the Charter systematically.<sup>54</sup>

Nonetheless, some do invoke the Charter in their work. For instance, in **Slovenia**, the Advocate of the Principle of Equality, the national equality body, issued recommendations on a legislative proposal amending the Housing Act. The advocate argued for extending the right to apply for non-profit rental housing to all third-country nationals to avoid a violation of the Charter (Article 34 on social security and social assistance).<sup>55</sup>

In the context of COVID-19-related measures, the National Data Protection Authority (*Comissão Nacional de Proteção de Dados*, CNPD) in **Portugal** issued guidelines for the collection of workers' health data, namely their body temperature. It invoked Article 8 of the Charter, stressing that the consent of the data subjects is relevant only if conditions guarantee that it is free and informed. The authority considered this to be extremely difficult in the context of a working relationship.<sup>56</sup>

Where NHRIs are also active in the field of litigation, they may also make use of the Charter. For example, in **Estonia** the Chancellor of Justice referred to non-discrimination (Article 21) and the integration of persons with a disability (Article 26) in a submission to the CJEU. She raised the question of whether or not an official whose hearing is impaired can be dismissed without assessing if reasonable accommodation can be provided so that he can, for instance, carry out his job using hearing aids.<sup>57</sup> The case is likely to clarify the duty to provide reasonable accommodation within the scope of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

Where national bodies have a mandate to deal with individual complaints, the Charter offers an important standard. In **Lithuania**, the Equal Opportunities Ombuds institution referred to equality (Article 20) and the rights of the elderly (Article 25) in a decision on discrimination on the ground of age. The case concerned a job advertisement targeting people aged 30 to 50. The offender amended the advertisement.<sup>58</sup>

In **Slovakia**, the Office of the Public Defender of Rights (*Kancelária verejného ochrancu práv*) referred to the Charter when assessing various complaints related to data protection, access to documents, refusal of an exemption for entry into the territory of the Slovak Republic for the complainant's fiancée, and the failure of a Slovak embassy to issue a national visa. It identified violations in all four cases.<sup>59</sup>

National bodies also use the Charter in training contexts or to raise rights awareness. For example, in **Belgium**, the equality body referred to the rights of the elderly (Article 25) on the occasion of the International Day of Older Persons (1 October).<sup>60</sup> In **Romania**, the country's NHRI organised a training course on the Charter for lawyers.<sup>61</sup>

**"The implementation of returns carries significant risks related to the fundamental rights set out in the EU Charter of Fundamental Rights, including the right to life, the prohibition of torture, inhuman or degrading treatment or punishment, the right to an effective remedy and the principle of non-refoulement."**

Slovakia, Ombuds institution, **Annual report** submitted to the parliament, p. 15

### 2.5.2. Civil society organisations, professional associations, and academia

Civil society organisations and other associations sometimes raise Charter-related arguments when commenting on bills, and in the broader context of law- and policymaking.

For instance, in **Austria**, the Association of the Wood and Paper Industry Austria and Austropapier invoked the right to conduct a business (Article 16) when criticising a bill. The bill aims to temporarily oblige wood-processing companies to give priority to buying damaged timber from the surrounding region when there is a threat of mass propagation of certain forest pests.<sup>62</sup>



In **Luxembourg**, the Chamber of Employees commented on a bill that introduced the obligation to wear masks in certain conditions. Referring to the Charter, the opinion emphasised that the state's interference in the private life of citizens must be strictly limited to the absolute minimum necessary.<sup>63</sup>

Advocacy campaigns have also used the Charter. In **Germany**, the German Bar Association voiced serious concerns about the announcement of the Greek government that it would suspend the registration of asylum seekers for one month. The association referred to the Charter, among

others.<sup>64</sup> In **Sweden**, seven of the largest CSOs published an opinion piece in a major daily newspaper. It referred to the Charter, calling on the government to rescue unaccompanied minors stuck in refugee camps on the Greek islands.<sup>65</sup>

Interest groups and NGOs also use the Charter in strategic litigation. For instance, in **Hungary**, the Hungarian Civil Liberties Union brought a case in the CJEU against the European Commission, for failing to comply with the right to freedom of expression and information (Article 11) concerning public lighting projects that the EU financed. A company in which allegedly persons close to the government held an interest won the tenders. The European Anti-Fraud Office investigated the matter, but the outcome was not made public. Meanwhile, the case before the CJEU was still pending at the time of writing.<sup>66</sup>

Transparency issues also came up in **Malta**, where a law allows only EU citizens who have been resident for more than five years to request information from the government. Access-Information, a non-profit organisation, challenged this law in court, arguing that it violates a number of legal provisions, including the Charter.<sup>67</sup>

Finally, academia can also play an important role in promoting the implementation of the Charter.

For example, in **Slovenia**, two academics drew attention to the importance of the Charter in a daily newspaper. They stressed that, although as much as 80 % of national legislation has its source in EU law, the Charter has so far not been used much.<sup>68</sup>

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In **Italy**, a research centre published a blog series entitled ‘All EU-r rights’ because it found it “difficult to find expert information in an accessible, concise format which is written in an understandable language”. The series addresses a wider audience by providing short article-by-article comments on the Charter’s provisions.<sup>69</sup>

Academic writings published in 2020 used the Charter’s anniversary to take stock of its implementation<sup>70</sup> or deal with general Charter-related issues.<sup>71</sup> Other writings analysed specific aspects of the Charter, such as social rights,<sup>72</sup> asylum-related questions,<sup>73</sup> protection of children,<sup>74</sup> coronavirus-related aspects,<sup>75</sup> remedies and access to justice,<sup>76</sup> administrative law,<sup>77</sup> the use of the Charter before national courts,<sup>78</sup> the interaction between the national legal system and the Charter,<sup>79</sup> or other aspects.<sup>80</sup> Moreover, extensive article-by-article commentaries were published in French<sup>81</sup> and Greek,<sup>82</sup> which can also provide useful guidance for legal practitioners when applying the Charter.<sup>83</sup>

## FRA opinions

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The Charter is of fundamental relevance for the EU, national and local levels of government, binding them whenever they are acting within the scope of EU law. However, at national level, engagement with the Charter remains rather limited, the evidence shows. This indicates a need for further support by the EU and its Member States, as well as reinforced cooperation. The following three opinions address the EU, national and local levels of government, respectively.

### EU level

Whereas the new European Commission strategy to strengthen the application of the Charter dedicates increased political attention to the national level, it also announces additional EU guidance, stimulus and support, including through new EU programmes. For instance, it announces that the European Commission will strengthen its partnership with EU Member States in various contexts to better help them implement the Charter.

In addition, the European Commission invites both the Council and the Parliament, respectively, to enter into an 'inter-institutional discussion' with the Commission. Agencies are also of relevance in this regard. Whereas FRA and its work are frequently referred to, the strategy does not in more general terms address the role of EU agencies. EU agencies all can contribute to the application of the Charter, although awareness of the Charter and obligations under it vary between agencies, as does their readiness to increase their investment in raising awareness, FRA has reported.

The Charter is important not only for the key EU institutions but for all EU actors, such as, for instance, the Committee of the Regions. Especially its Commission for Citizenship, Governance, Institutional and External Affairs (CIVEX) has an obvious role to play in highlighting local practices and fostering an exchange amongst regional and local actors on how best to apply and promote the Charter.



### FRA OPINION 2.1

The EU institutions, when discussing the application of the Charter as suggested in the European Commission's Charter strategy, should make sure that evidence from relevant national actors is sufficiently taken into account. In addition to FRA, attention should also be dedicated to other EU agencies that have the potential to contribute to better implementation and promotion of the rights in the Charter. Finally, the Committee of the Regions could engage in an annual exchange of promising practices and challenges in the application and promotion of the Charter provisions at local level. This could provide additional evidence to feed into the 'inter-institutional discussion' at EU level, to which the Charter strategy refers.



## FRA OPINION 2.2

EU Member States should consider establishing dedicated Charter focal points, as invited to do under the Charter strategy. This would allow governments to coordinate national actions with actions at EU, regional and local levels to implement the new Charter strategy more effectively. Ideally, the implementation of the strategy would follow a structured process based on concrete targets, milestones and timelines. This could take the form of a dedicated Charter action plan, or making specific references to the Charter in existing action plans or strategies. To allow for mutual learning and synergetic exchange, adopting and implementing these planning documents should go hand in hand with coordination at EU level – for instance, through targeted discussions in FREMP.

### National level

The data collected for this and earlier fundamental rights reports point to a lack of national policies to promote the application of the Charter. Consequently, the 2020 Charter strategy puts a major focus on the role of EU Member States in implementing the Charter. Given the number of concrete proposals for Member States to take action, the strategy forms a blueprint for the years to come.

Application of the Charter could be strengthened by setting up Charter focal points in the national administrations, adapting procedures concerning impact assessments and legal scrutiny, ensuring that committees with sufficient Charter expertise monitor the management of EU funds or, finally, establishing and/or strengthening NHRIs.

Other measures that the strategy lays down require refreshed national policy measures, for example in the area of training, awareness raising or promoting a supportive and safe environment for CSOs and rights defenders. These proposals will require a shift in the fundamental rights culture at national level, which so far appears rather focused on national constitutional law and the ECHR, thereby underusing the added value of the Charter.

## FRA OPINION 2.3

EU Member States should promote the new Charter strategy among local and regional authorities, and explore how these authorities could more regularly refer to and promote fundamental rights in general and the Charter's added value in particular. Local and regional authorities should ensure that relevant local and regional instruments, procedures and policies refer to the Charter. Existing Charter practices should be communicated to the new national Charter focal points to ensure that these can share such practices and experiences with other Member States – for instance, through the European e-Justice Portal. Cities could consider becoming human rights cities and thereby stepping up fundamental rights considerations in their work, programmes, and activities.

### Local level

Local administrations are not very aware of the Charter, according to **FRA's analysis of the data from the consultations** that the European Commission carried out while preparing the strategy. At the same time, the Charter “applies to regional or local bodies, and to public organisations, when they are implementing Union law” (see Explanations, Article 51, Official Journal of the European Union C 303/17 - 14.12.2007).

The strategy uses the term ‘local’ 17 times. It not only calls for the sharing of best Charter practices at local level and promoting a supportive and safe environment for CSOs and rights defenders at local level, but also demands that Member States provide sufficient guidance at local level so that local authorities can comply with their Charter duties. The strategy also points to the potential of local actors to raise awareness about people's rights and about what people can do if their rights are breached.

FRA is currently working on a concept for human rights cities in the EU. That framework of commitment will integrate various Charter-related components and could help increase Charter engagement at local level.

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- 83 For additional article-by-article commentaries, see FRA (n.d.), '[Charter of Fundamental Rights of the European Union](#)'.

# EQUALITY AND NON-DISCRIMINATION

## 3

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14

January

In *Beizaras and Levickas v. Lithuania* (No. 41288/15), the European Court of Human Rights (ECtHR) rules that the domestic court's refusal to investigate hate speech comments posted on Facebook next to a photograph of a male same-sex couple kissing discriminated against them. The ECtHR finds that the applicants' sexual orientation played a role in the domestic authorities' refusal to launch a pre-trial investigation, thereby violating the prohibition of discrimination taken in conjunction with the right to respect for private and family life, and the right to an effective remedy under Articles 8, 13 and 14 of the European Convention on Human Rights (ECHR).

27

February

European Commission against Racism and Intolerance (ECRI) publishes its annual report for 2019.

3

17-19

31

March

In its concluding observations on Hungary, the United Nations Committee on the Rights of the Child called on the government to act, adopt a strategy, and provide information and support to vulnerable children, including specific measures targeting girls, Roma children, asylum-seeking and migrant children and lesbian, gay, bisexual, transgender and intersex children.

ECRI publishes its sixth monitoring reports on Belgium and Germany and conclusions on the implementation of the recommendations in respect of Luxembourg.

Council of Europe (CoE) Commissioner for Human Rights releases recommendations calling on the Bulgarian authorities to strengthen the capacity of police officers, prosecutors and judges to effectively investigate and prosecute violence against lesbian, gay, bisexual, trans and intersex (LGBTI) persons.

19

May

ECRI adopts a public statement on the impact of the pandemic and related government responses on groups of concern to ECRI.

2

15

26

June

ECRI publishes its sixth monitoring report on Austria and conclusions on the implementation of the recommendations in respect of Denmark.

United Nations Independent Expert on Sexual Orientation and Gender Identity submits to the United Nations Human Rights Council and United Nations General Assembly a report documenting the global reach and impact of gay and transgender 'conversion therapy'. It calls for nations around the world to ban this scientifically discredited practice.

Parliamentary Assembly of the Council of Europe (PACE) adopts Resolution 2331 promoting access to contraception in Europe, with specific attention to lesbian and bisexual women and trans and intersex people, who are particularly exposed to both financial and cultural barriers to accessing contraception. It also refers to the situation of vulnerable and marginalised groups, including lesbian and bisexual women and trans and intersex people, people with a migrant background, persons with disabilities, and ethnic and linguistic minorities, who are particularly exposed to barriers in access to contraception.

## UN & CoE

July

9

In *Y.T. v. Bulgaria* (No. 41701/16), the ECtHR rules that the domestic court's refusal to allow a transsexual person of male appearance to be registered as a male, without giving relevant and sufficient reasons and without explaining why it had been possible to recognise identical gender reassignment in other cases, violates his right to respect for private and family life under Article 8 of the ECHR.

16

In *Rana v. Hungary* (No. 40888/17), the ECtHR rules that the lack of access to legal gender recognition procedures by non-Hungarian citizens legally residing in Hungary violates the right to respect for private and family life under Article 8 of the ECHR.

September

8

The CoE Steering committee on anti-discrimination, diversity and inclusion (CDADI) decides to set up two working groups on Covid-19 responses in the field of anti-discrimination, and on national minority and youth participation.

October

13

— PACE adopts Resolution 2339 on upholding human rights in times of crisis and pandemics, highlighting that both the pandemic and state measures in response disproportionately affected women, people living in institutionalised settings, people belonging to national minorities, Roma and Travellers, migrants, LGBTI people and youth, and calling on States to improve responses and bring about the transformation to a more inclusive society that the crisis demands.

— Committee on the Elimination of Racial Discrimination (CERD) publishes concluding observations on the combined 23rd to 25th periodic reports of Bulgaria.

22

CERD publishes concluding observations on the combined 24th to 26th periodic reports of Spain.

23

PACE adopts Resolution 2348 on 'the principles and guarantees of advocates', who continue to be targeted for their involvement in human rights-related cases, such as defending LGBTI persons.

November

26

CDADI publishes the study 'COVID-19: An analysis of the anti-discrimination, diversity and inclusion dimensions in Council of Europe member states'.

PACE adopts Resolution 2351 on the gender dimension of foreign policy, which stresses that the inclusion of a gender and intersectional dimension in foreign policy can benefit society as a whole. Participation, protection, inclusion and non-discrimination are guiding principles for a strong, inclusive gender dimension of foreign policy.

27

PACE publishes a report on preserving national minorities in Europe.

December

3

CoE Commissioner for Human Rights publishes a memorandum on the stigmatisation of LGBTI people in Poland.

8

— ECRI publishes its sixth monitoring reports on Slovakia and Czech Republic.  
— ECRI publishes its conclusions on the implementation of the recommendations in respect to Sweden.



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The European Commission in 2020 adopted major strategies and action plans to promote a Union of Equality, forging a comprehensive framework for EU and national action. While the adoption of the Equal Treatment Directive remained stalled, the Commission highlighted the need to strengthen equality bodies and improve equality data. Efforts to promote the rights of lesbian, gay, bisexual, trans, non-binary, intersex and queer (LGBTIQ) people gained momentum with the adoption of the first-ever EU strategy on LGBTIQ equality. However, evidence also showed that, in some areas and Member States, LGBTIQ people's experiences of discrimination and hate crime are increasing. Meanwhile, the COVID-19 pandemic and the measures it prompted sometimes exacerbated social inequalities, with older persons hit particularly hard.



### 3.1. EU INITIATIVES ENERGISE EQUALITY PUSH WHILE EQUALITY TREATMENT DIRECTIVE REMAINS STALLED

Article 19 of the Treaty of the Functioning of the EU (TFEU) provides the basis for EU legislation to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The EU has adopted comprehensive anti-discrimination legislation protecting against discrimination on grounds of gender, racial or ethnic origin in key areas of life. More limited is the protection of EU law against discrimination based on religion or belief, disability, age and sexual orientation. These grounds are only protected in the area of employment.

To bridge this protection gap, the European Commission proposed in 2008 an Equal Treatment Directive.<sup>1</sup> Twelve years after the Commission tabled this proposal, EU Member States had not reached the unanimity needed in the Council of the EU to adopt this important instrument to fight discrimination and promote equality.<sup>2</sup>

Nevertheless, the European Parliament reiterated its support for the proposal, calling again for its quick adoption.<sup>3</sup> The Commission also continued to work towards the adoption of its proposal. Delivering its 2020 work programme,<sup>4</sup> in the EU anti-racism action plan, the Commission encouraged Member States to “swiftly reach an agreement on the 2008 Commission proposal to implement equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation”.<sup>5</sup>

#### 3.1.1. EU equality strategies and action plans advance equality agenda

The year 2020 saw considerable strategic planning for shaping and promoting the equality agenda in the EU. The European Commission adopted multiple strategies and action plans towards a Union of Equality,<sup>6</sup> calling on Member States to develop their national strategies and action plans in line with the EU. FRA’s data and evidence, as well as its expert assistance, have helped shape these initiatives.<sup>7</sup>

A common and promising element of all these EU strategies and action plans – serving as a model for future initiatives – is that they call for both mainstreaming equality in all policy areas and providing targeted measures for vulnerable groups. They also address intersectionality – where several grounds of discrimination interact with each other at the same time, making them inseparable – calling for actions to tackle intersecting and multiple forms of inequalities. Moreover, they call for the participation of beneficiaries and monitoring the effectiveness and impact of policies.

The EU strategies and action plans on equality draw on the experiences of the COVID-19 pandemic. For example, the EU anti-racism action plan highlights that the pandemic has exacerbated existing inequalities and raised the issue of minorities, especially those with a racial or ethnic background, being targeted and scapegoated for the pandemic. Similarly, the EU Roma strategic framework states that stepping up efforts to achieve Roma equality, inclusion and participation is increasingly important as the pandemic has revealed the “extreme exposure of excluded and marginalised Roma communities to negative health and socioeconomic impacts”.<sup>8</sup> The LGBTIQ strategy also points out that “the COVID-19 crisis has led to yet higher levels of hatred, violence and discrimination against LGBTIQ people”.<sup>9</sup>



Finally, all these initiatives raise awareness of the financial tools that are available to support reforms and investments that promote equality, in particular the EU structural and investment funds 2021–2027 and the NextGenerationEU recovery instrument.<sup>10</sup>

### 3.1.2. Importance of equality data for progress

EU equality strategies and action plans adopted in 2020 acknowledge the significance of robust equality data<sup>11</sup> for developing evidence-based non-discrimination policies and for implementing EU anti-discrimination legislation.

For example, the LGBTIQ equality strategy invites FRA and the European Institute for Gender Equality (EIGE) to continue providing Member States with technical assistance and methodological support on the design and implementation of data collection.<sup>12</sup> Similarly, an aim of the EU anti-racism action plan is for Member States “to move towards the collection of data disaggregated on the basis of racial or ethnic origin, in order to capture both subjective experiences of discrimination and victimisation and structural aspects of racism and discrimination”.<sup>13</sup>

In addition, the EU High Level Group on Non-Discrimination, Equality and Diversity (HLG) agreed in 2020 to prolong the mandate of the Subgroup on Equality Data until 2025. The HLG continued to entrust FRA with a coordination role. The subgroup was first created in 2018 to support Member States in their efforts to improve the collection and use of equality data through guidelines and other tools.<sup>14</sup>

## 3.2. PROMOTING EQUALITY AT NATIONAL LEVEL

A number of Member States proposed initiatives to enhance their equality policies. Some introduced or discussed new equality legislation.

In an interesting development, **Romania** introduced the concept of “moral harassment” at work in its anti-discrimination law.<sup>15</sup> The Labour Code was also amended to include anti-discrimination provisions.<sup>16</sup>

In **Malta**, some progress was made in parliament on the adoption of a new equality law widening the scope of application of equality.<sup>17</sup> In **Sweden**, a government report presented proposals for improving supervision of its anti-discrimination law.<sup>18</sup>

## Promoting equality

The following EU strategies and action plans promoting equality were adopted in 2020:

- **A Union of Equality: EU Gender Equality Strategy 2020–2025**
- **A Union of Equality: EU anti-racism action plan 2020–2025**
- **A Union of Equality: EU Roma strategic framework for equality, inclusion and participation for 2020–2030**
- **A Union of Equality: LGBTIQ Equality Strategy covering the years 2020–2025**
- **Action plan on Integration and Inclusion 2021–2027**



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In the **Netherlands**, the government initiated a bill aimed at ensuring better supervision of equal opportunities in recruitment. It obliges employers to implement recruitment methods that prevent discrimination.<sup>19</sup>

Several developments occurring in a number of Member States may have a positive impact on institutional structures that play a role in promoting equality.

**Belgium** established the management board of the Federal Institute for the Protection and Promotion of Human Rights.<sup>20</sup> In **Malta**, discussions in parliament focused on the creation of a national human rights institution that will carry out the equality body's mandate.<sup>21</sup>

In **Spain**, the government re-established the Ministry of Equality, which has overall responsibility for proposing and implementing the government's equality policy, including through the collection and analysis of equality data.<sup>22</sup> In **Sweden**, the proposals submitted to the government included strengthening the powers of the equality Ombuds institution.<sup>23</sup>

Other Member States developed campaigns to promote equality. In **Estonia**, the focus was on migrant workers, the LGBTI community, national minorities, people with disabilities, and religious beliefs.<sup>24</sup> In **Slovakia**, a campaign was launched to raise awareness of discrimination in the workplace.<sup>25</sup>

In **Slovenia**, the Human Rights Ombuds institution recommended in its Annual Report to adopt legislation that would allow collecting equality data disaggregated as per individual personal circumstances.<sup>26</sup>

### 3.3. NEED TO BOLSTER EQUALITY BODIES PERSISTS

Equality and other human rights bodies with an equality mandate continue to face challenges that affect their ability to act independently and effectively. FRA provided an overview in 2020 of the roles of national human rights institutions (NHRIs) in the EU, many of which also serve as equality bodies. It underlined the importance of a strong mandate, independent functioning, and adequate resources.<sup>27</sup>

EU equality strategies and action plans adopted in 2020 call for strengthening equality bodies, in line with the 2018 Commission Recommendation on standards for equality bodies.<sup>28</sup> For its part, the European Commission's strategy to strengthen the application of the Charter of Fundamental Rights in the EU underlines the important role NHRIs play in making the Charter a reality for people.<sup>29</sup>

## Pandemic shifts focus to structural inequalities

The COVID-19 pandemic had an important impact on equality bodies, shifting much of their focus and actions on issues related to structural inequalities and discrimination.

They identified certain groups of the population as being disproportionately affected by the pandemic, namely:

- older persons;
- people with a minority racial or ethnic background including, in particular, Roma;
- women and girls;
- people with disabilities;
- children;
- and LGBTIQ groups.

Equality bodies also find enhanced challenges for all these groups depending on the socio-economic background and disadvantage of each person.

Moreover, equality bodies have identified among their priority areas of work during and beyond the pandemic healthcare and care provision, education, as well as access to digitalised services. Equality bodies see an opportunity to develop and communicate new narratives on equality as enabling an effective response to overcome the effects of the pandemic.

For an overview of equality bodies' responses to the pandemic, see the **European Network of Equality Bodies' (Equinet) webpage on the response to COVID-19**.



### 3.3.1. Diverse hurdles to effectiveness remain

International monitoring bodies raised concerns in a number of Member States about equality bodies' compliance with international standards on independence (see also [Chapter 4](#)). Such concerns regarded, for example, the selection and nomination of equality bodies' leadership, budgets, and recruitment procedures.

The European Commission against Racism and Intolerance (ECRI) provided recommendations to **Austria**,<sup>30</sup> **Slovakia**,<sup>31</sup> and **Germany**<sup>32</sup> in that respect. In **Austria** and **Germany**, ECRI drew further attention to their limited mandates and lack of sufficient human and financial resources. ECRI also recommended a wider mandate for the **Czech** equality body.<sup>33</sup>

The monitoring body of the Framework Convention for the Protection of National Minorities of the Council of Europe recommended that **Spain** sets up an independent equality body.<sup>34</sup>



#### FRA ACTIVITY

## Highlighting low reporting rates and awareness of equality bodies among Roma

FRA's Roma and Travellers survey, published in 2020, found that few incidents of discrimination are reported to equality bodies. This confirms what has been seen in previous surveys.

Only 5 % of respondents who felt discriminated against reported the last incident to an equality body. In addition, Roma and Travellers' awareness of the existence of statutory specialised bodies with a legal mandate to receive discrimination complaints is rather low. Only one third (33 %) of respondents knew of at least one equality body in the country where they reside.

See **Chapter 5** for more information.

*FRA (2020), Roma and Travellers in six countries, Luxembourg, Publications Office.*

Meanwhile, Equinet pointed to limitations in its mandates and inadequate resources, compromising both its independence and its effectiveness.<sup>35</sup>

**Hungary** merged the Equal Treatment Authority in 2020 and transferred its powers to the Commissioner for Fundamental Rights.<sup>36</sup> The latter institution has a stronger constitutional status, but some civil society organisations argued that the merger will lead to less ambitious anti-discrimination case law.<sup>37</sup>

In **Poland**, the term of office of the Ombudsperson, who also assumes the role of an equality body, came to an end in September 2020. According to law, the outgoing Ombudsperson remains on duty until their replacement is in position.<sup>38</sup> However, Members of Parliament from the ruling coalition lodged an appeal to the Constitutional Court against this provision; it was still pending at the end of 2020.<sup>39</sup> The Venice Commission of the Council of Europe raised concerns about the full and effective functioning of the Ombuds institution, underlining the "utmost importance" of ensuring continuity in office.<sup>40</sup>

In **North Macedonia**, a Constitutional Court decision annulled the new anti-discrimination law for procedural reasons.<sup>41</sup> The law was adopted again in October 2020. This allowed enactment of the procedure for electing members of the new equality body, putting an end to a prolonged standstill period in the functioning of the former equality body. However, criticism was raised about the appointment process.<sup>42</sup>

Tensions arose with respect to other national human rights bodies, which had an impact on their effectiveness and independence. In **Slovakia**, the parliament refused to acknowledge the annual activity report of the Ombudsperson, as a sign of disapproval of her protection and promotion of the rights of LGBTIQ people and her position on abortion.<sup>43</sup>

#### PROMISING PRACTICE

## Providing guidance to fight discrimination

The French Ombuds institution published the practical guide *Discrimination testing, a methodology to follow* for people who feel they have been discriminated against and wish to validate their suspected discrimination.

See French Ombuds institution (Défenseur des droits) (2020), *Discrimination testing, a methodology to follow (Le test de discrimination, une méthodologie à respecter)*, July 2020.

### 3.3.2. EU calls for strengthening equality bodies

In various policy documents issued in 2020, the European Commission insisted on the need to strengthen the mandate, effectiveness, and independence of equality bodies. This is in line with the 2018 Commission Recommendation on standards for equality bodies.<sup>44</sup>

The Commission announced in the EU anti-racism action plan<sup>45</sup> that, in its forthcoming 2021 report on implementation of the Racial Equality Directive, it will examine the role and independence of equality bodies and the potential need for new legislation to strengthen them.<sup>46</sup> The EU equality strategy for LGBTIQ persons states that the Commission will also examine the role of equality bodies with respect to implementation of the Employment Equality Directive.<sup>47</sup>

The Commission's proposal for a Council Recommendation on Roma equality, inclusion and participation states that Member States should support equality bodies to work effectively and independently in protecting and promoting the rights of Roma, including through their involvement in EU Funds programmes.<sup>48</sup>

In the specific field of fighting anti-Muslim discrimination, the crucial role of equality bodies and the need to strengthen cooperation with civil society organisation was underlined in the High level conference hosted in June 2020 by the Commission's Coordinator on combating anti-Muslim hatred jointly with the Croatian Presidency of the Council of the EU and Equinet.<sup>49</sup>

## 3.4. EQUAL TREATMENT AND RIGHTS OF OLDER PERSONS DURING THE PANDEMIC AND BEYOND

The COVID-19 pandemic has posed a major threat to the life and health of older persons,<sup>50</sup> who are overall at greater risk if infected with the virus. The pandemic and measures adopted to protect the right to life and health also had a huge impact on older persons' well-being and related rights.<sup>51</sup>

Concerns were raised whether or not certain measures complied with the principle of non-discrimination based on age and the right to lead a life of dignity and independence and to participate in social and cultural life, as enshrined in the EU Charter of Fundamental Rights.<sup>52</sup>

At the same time, the pandemic helped shed light on the situation of older persons and put in focus the need for their equal treatment and respect of their rights, particularly with regard to care homes.

### 3.4.1. Pandemic undermines older persons' well-being and rights

FRA's bulletins on the pandemic pointed to its profound threat to older persons' life and health, in particular for those living in care homes, where infection and mortality rates were high.<sup>53</sup>

Instances of sick and dying people left unattended were also reported, signalling a flagrant failure to protect their fundamental rights.<sup>54</sup> In a shocking case in March 2020, the military in **Spain** found older persons in care homes who had been abandoned and had died as a result of COVID-19 infection.

Overall, testing to prevent the spread of the virus among older persons during the first wave of the pandemic was not systematic. At the outset of the pandemic, some Member States tested staff and residents in care homes only when a case was detected.<sup>55</sup> Limited use of testing continued to be an issue throughout the year.<sup>56</sup>



Moreover, barriers in accessing health services for reasons other than COVID-19 particularly affected older persons, who are more likely to have a number of health conditions that require medical care.<sup>57</sup> Concerns were also reported about the use of triage, whereby age could potentially be used as a deciding factor when deciding who to treat in hospitals faced with large numbers of patients and limited resources.<sup>58</sup>

Member States imposed stricter measures targeting older persons and affecting their right to move freely, be independent and participate in social life. These included obligations to stay at home for longer periods than the general population and to self-isolate and not meet people; special rules for shopping (e.g. allowing shopping only during limited time slots); accessing services; using public transport; accessing workplaces; leisure time; and participating in communal and voluntary activities.<sup>59</sup> The restrictions were even harder for those living in institutions, where strict visit bans also applied.<sup>60</sup>

During the summer these measures were either lifted or eased, but they were enforced again – to varying degrees – during the second wave of the pandemic in the autumn.<sup>61</sup>

These measures meant many older people were more dependent on help from family members, or on social assistance and support, to access goods and services, including shopping for food and other necessary items.<sup>62</sup> They also affected the employment situation of older workers, increasing, for example, the risks of long-term unemployment or barriers to the use of digital tools, which are necessary to work effectively from home.<sup>63</sup>

Research across a number of EU Member States, such as **Belgium, Germany, Ireland, the Netherlands, and Portugal**, suggests that the pandemic deepened the feelings of stress, fear and isolation among older persons.<sup>64</sup>



### 3.4.2. Equality and human rights bodies express concern

Many equality and other human rights bodies raised concerns about equality and respecting the rights of older persons during the pandemic.<sup>65</sup>

In **Belgium**, Unia, an independent public institution that fights discrimination and promotes equal opportunities, focused on the right of older persons to access health care.<sup>66</sup> It also published a report showing that the majority of individual complaints related to COVID-19 measures came from older persons – for example, on the discriminatory consequences of different measures, including those requiring digital skills.<sup>67</sup>

In **Cyprus**, the Commissioner for Administration and Protection of Human Rights, in her capacity as a NHRI and National Preventive Mechanism, issued a statement regarding the implementation of measures at social care homes.<sup>68</sup>

In **Finland**, the Non-Discrimination Ombuds institution<sup>69</sup> and the Deputy Parliamentary Ombuds institution<sup>70</sup> held that restrictions such as banning visits to care homes may constitute unfavourable treatment and might not be proportional to their aim. The National Ombuds institution in **Spain** also focused on the situation of older persons in residential institutions.<sup>71</sup> In April, the Ombuds institution sent a comprehensive set of formal recommendations to different communities across the country on the functioning of these institutions.<sup>72</sup>

In **Germany**, the Federal Anti-Discrimination Agency (FADA) examined derogatory public statements categorising older persons as “old and weak”.<sup>73</sup> FADA concluded that such a categorisation can lead to a feeling of being worthless and can be an expression of structural discrimination. The **Polish** Ombuds institution looked at discriminatory speech against older persons<sup>74</sup> and issued a number of recommendations on state and social obligations towards them.<sup>75</sup>

In **Lithuania**, the equality body expressed concerns about restrictions imposed on older persons in the workplace or when receiving services or goods during quarantine.<sup>76</sup> In **Slovenia**, the equality body concluded that rules allowing persons aged over 65 to shop only during a specified period of time amounted to direct discrimination and suggested more proportionate measures.<sup>77</sup> The Ombuds institution in **Slovakia** raised the same issue.<sup>78</sup> In **Serbia**, the equality body submitted a legislative proposal to prevent the punishment of older persons suffering from dementia who violated curfew restrictions.<sup>79</sup>

The equality body in **Slovenia** also conducted research based on qualitative and quantitative methods. This included an online survey focusing on the experiences and the perception of the situation of care homes residents.<sup>80</sup> Final results of the research are to be published in 2021. According to preliminary results, almost 60 % of residents said they felt worse because of the restrictions, mostly missing spending time with relatives.

### 3.4.3. Pandemic spurs some positive developments

The disproportionate impact of the COVID-19 pandemic on older people focused public attention on the living conditions and particular challenges that older people face. Given older people’s increased risks if infected, efforts to contain the virus highlighted the attention our societies pay to protecting older people’s life and health.

#### *Measures to alleviate the restrictions’ impact*

At national level, governments, regional and local authorities, and civil society mobilised to protect the rights of older persons and mitigate the impact of the restrictions imposed on them.<sup>81</sup>

## FRA ACTIVITY

### Focus on age and digitalisation

At the request of the German Presidency of the Council of the EU, FRA prepared a background paper to inform discussions at the international online conference ‘Strengthening older people’s rights in times of digitalisation – Lessons learned from COVID-19’.

One of the main conclusions was that the digital divide between generations is significant and increases with age. Citing FRA’s 2019 Fundamental Rights Survey, the paper indicates that, among survey respondents, one in five people (20 %) aged 75 and older said they use the internet at least occasionally, compared with 98 % of those between 16 and 29.

See FRA (2020), *Selected findings on age and digitalisation from FRA’s Fundamental Rights Survey*.

FRA identified across Europe:

- measures to ensure additional funding to support older persons;
- community-based assistance services for those most in need due to their particular health conditions, disability or socio-economic background (e.g. help with shopping for food and hygiene products, help with the housework, keeping company and providing psychological assistance);
- innovative medical services, such as online prescription systems and telemedicine/online visits to medical doctors;
- hotlines and initiatives to reduce isolation;
- and measures to protect older workers.

The use of new technologies and digital tools was a major element in many of these measures (e.g. for telemedicine or online communication with family and friends), revealing their significant potential to improve the lives of older persons.

A number of Member States started to roll out their vaccination plans at the end of 2020,<sup>82</sup> including older persons among the priority groups to receive COVID-19 vaccines, in line with EU guidelines.<sup>83</sup>

#### *Beyond the pandemic*

A more general public debate gained momentum in 2020, promoting a rights-based approach to ageing and the need to fight ageism.<sup>84</sup>

At EU level, the Council of the EU adopted conclusions on the human rights, participation and well-being of older persons in the era of digitalisation.<sup>85</sup> The conclusions take a rights-based approach, acknowledge the right of older persons to equal treatment, and call for strengthening of social inclusion and mainstreaming of ageing in all policy areas. The conclusions have a particular focus on the opportunities of digitalisation, but also highlight potential risks for older persons, recalling the significant digital divide between generations.

The European Commission released in 2020 its first-ever report on the impact of demographic change in the EU, highlighting long-term demographic trends, including ageing.<sup>86</sup> However, the rights-based approach was missing in this document. The Commission also published a review of age discrimination in regional and national law outside the employment field.<sup>87</sup>

At national level, a number of measures promoting the rights of older persons were adopted or suggested.

For example, in **Bulgaria**, older persons remained among the priority target groups of the National Employment Action Plan 2020.<sup>88</sup> In **Portugal**, the Law approving the Major Planning Options for 2020–2023 highlighted targeted measures to support older persons in areas such as housing and residential institutions, loneliness and isolation, and combating all types of violence against them.<sup>89</sup>

In **Belgium**, a proposal for a resolution was submitted to the Flemish Parliament on the setting up of a Commissioner’s Office for the rights of older persons.<sup>90</sup>

Meanwhile, throughout the year, national high courts in a number of countries examined cases of discrimination against older persons based on age in employment and pension rights.

Court decisions ruled against discriminatory law provisions in **Greece**<sup>91</sup> and **Lithuania**<sup>92</sup>, and on cases concerning discriminatory practices of employers in **Bulgaria**<sup>93</sup> and **Czechia**,<sup>94</sup> in an effort to protect the rights of older persons.

In Greece, in particular, the Council of State, the highest administrative court, invoked the Employment Equality Directive and decided against a ministerial decision setting an age limit on hiring doctors in public hospitals.

Equality and human rights bodies also examined cases of discrimination and promoted the equal treatment of older persons – for example, with regard to accessing bank credit (**Czechia**<sup>95</sup>) and state-supported loans (**Hungary**<sup>96</sup>) and employment, services and political participation (**Romania**<sup>97</sup>).

### 3.5. A LONG WAY TO GO FOR LGBTI EQUALITY

There were positive legal and policy developments regarding the rights of lesbian, gay, bisexual, trans, non-binary, and intersex (LGBTI)<sup>98</sup> persons in some Member States in 2020. However, these were accompanied by a weakening of such rights in others.

Many countries adopted targeted action plans, but studies and surveys conducted in several Member States still showed very high levels of experiences of discrimination among LGBTI persons. Regression in the general population's attitudes towards LGBTI persons was also observed in many Member States.

The struggle to safeguard their rights became even more difficult in times of crisis. To address this, the European Commission adopted its first LGBTIQ Equality Strategy in 2020.<sup>99</sup> Meanwhile, courts continued to play an important role in enforcing LGBTI persons' rights.

## New EU LGBTIQ Equality Strategy

The European Commission adopted the first-ever EU strategy on lesbian, gay, bisexual, trans, non-binary, intersex and queer (LGBTIQ) equality – the LGBTIQ Equality Strategy 2020–2025\* – on 11 November 2020.

The strategy builds on the list of actions to advance LGBTI equality.\*\* It sets out a series of targeted actions around four main pillars that focus on tackling discrimination, ensuring safety, building inclusive societies, and leading the call for LGBTIQ equality around the world.

The findings of FRA's second LGBTI survey,<sup>\*\*\*</sup> published in May 2020, clearly show why the equality strategy was needed. The survey provides evidence on where concrete action is most needed to ensure equality for LGBTI people in the EU.

The survey, which was conducted before the COVID-19 crisis, shows that some progress has been achieved since 2012. However, in some areas and certain countries, the situation has deteriorated. Overall, more LGBT respondents in 2019 (43 %) than in 2012 (37 %) felt discriminated against in the 12 months before the survey in all areas of life asked about. The difference was markedly more pronounced for trans respondents (60 % in 2019 compared with 43 % in 2012).

\* *European Commission (2020), A Union of equality: LGBTIQ equality strategy 2020–2025, Luxembourg, Publications Office.*

\*\* *European Commission (2020), Final report 2015–2019 on the list of actions to advance LGBTI equality, Luxembourg, Publication Office.*

\*\*\* *FRA (2020), A long way to go for LGBTI equality, Luxembourg, Publications Office.*

## PROMISING PRACTICE

# Providing a supportive school environment

In the **Netherlands**, the law obliges schools to provide a supportive environment for LGBT students. The Gender and Sexuality Alliance (GSA) Education Standard is a tool that aims to help schools achieve this. Recognised by the Ministry of Education in 2020, it sets criteria for secondary schools to assess whether or not they provide a supportive environment for LGBT persons in an adequate way. The criteria are constructed around three basic principles: good knowledge transfer, good support and good policy.

See *GSA Netwerk (2020), 'GSA education standard' ('GSA Onderwijsstandaard')*.

Among positive developments, national action plans (NAPs) addressing the rights of LGBTI persons were adopted or further implemented in several Member States, including **Denmark**,<sup>100</sup> **Finland**,<sup>101</sup> **France**<sup>102</sup> and **Sweden**.<sup>103</sup> In **North Macedonia**, as announced in 2019,<sup>104</sup> the Ministry of Labour and Social Policy established a working group to draft the first national action plan on LGBTI rights.

Several Member States launched awareness campaigns addressing discrimination against LGBTI persons – for example, **Slovakia**,<sup>105</sup> **Luxembourg**<sup>106</sup> and **Estonia**.<sup>107</sup>

### *Studies show persisting discrimination*

Studies and surveys conducted in several Member States showed persistently high levels of discrimination and harassment (verbal and physical), confirming the findings of FRA's LGBTI survey. In some countries, studies also showed notable decreases in the general population's social acceptance of LGBTI people. FRA's Fundamental Rights Survey conducted in 2019 addressed people's attitudes towards different minority groups. The results showed that 17 % and 14 % of respondents would feel uncomfortable having a trans or LGBT neighbour, respectively.

Several studies on discrimination against LGBTI people were conducted in **Bulgaria**. An online questionnaire among LGBTI students aged 14–19 showed that 70.6 % of respondents had been verbally harassed during the last year, 34.2 % had been physically harassed, and 19.1 % had been attacked.<sup>108</sup> Another study concluded that negative stereotyping, LGBTI invisibility at school, and lack of internal support for victims of bullying were among the most critical problems in Bulgaria.<sup>109</sup> According to a study on perceptions of homosexuality,<sup>110</sup> 48 % of respondents were not accepting of homosexuality.

A **Greek** survey examined LGBTQ youth's experiences in Greek secondary education,<sup>111</sup> revealing that 84.9 % of children hear in school the word "gay" associated with negative connotations.

According to a study in **Cyprus** that analysed the participation of LGBTQI+ persons in public life and politics, 72 % of the LGBTQI+ respondents felt that they could not engage in political processes without the risk of discrimination; 63 % felt that, if they engaged in politics, their views would not be taken into account.<sup>112</sup>

A **German** survey on LGBTQI\* people in the labour market showed that, on average, 30 % of LGBTQI\* people have experienced discrimination in their work life within the last two years.<sup>113</sup>

In **France**, with the support of the Defender of Rights, a study analysed the methods for establishing proof of sexual orientation in asylum applications and compliance with relevant national and international standards. The study identified two key difficulties that undermine the credibility of the risks of persecution: late declaration of sexual orientation in the proceedings and the lack of self-determination.<sup>114</sup>

Some Member States still record a high number of cases of discrimination against LGBTI people. In **Belgium**, Unia<sup>115</sup> expressed particular concern about this development.<sup>116</sup> Its annual statistics show an increase in cases of discrimination.<sup>117</sup> Studies conducted in **Serbia** also showed high rates of experienced discrimination in different situations.<sup>118</sup>



### *Hate speech and hate crime*

Some Member States addressed the issue of hate crime based on gender identity or sexual orientation and the way it is recorded (**Austria**,<sup>119</sup> the **Netherlands**<sup>120</sup>). For more information on hate crime and hate speech, see **Chapter 4** on racism, xenophobia and related intolerance.

In 2020, numerous **Polish** local councils adopted resolutions declaring their jurisdictions zones that are “free of LGBT ideology”, or “family charters” opposing the “propaganda of homosexuality and sexualisation of children”.<sup>121</sup> As of October 2020, some courts had quashed four such resolutions,<sup>122</sup> but other courts dismissed complaints as inadmissible.<sup>123</sup> The Polish Ombuds institution, the European Parliament<sup>124</sup> and the European Commission<sup>125</sup> strongly condemned the ‘LGBT-free-zone’ resolutions. The EU rejected applications for grants under a twinning programme from six Polish cities because they were not in line with the funding programme’s objectives of “equal access and non-discrimination”.

In **Belgium**, a drunk man was found guilty of attacking a man and his male partner in a car park. The court noted that the use of abusive language may indicate that the assault was motivated by homophobia.<sup>126</sup>

In **Poland**, a regional court in Krakow dismissed in December 2020 (in the first instance) a complaint against an archbishop who referred to LGBTI persons as a “rainbow plague”. It found that these words did not exceed the permissible “defence of the faith”.<sup>127</sup>

In contrast, in **Greece**, the Supreme Court upheld the conviction of the Bishop of Kalavryta, who published a homophobic blog post calling for Orthodox community action.<sup>128</sup> It found that the conviction did not violate his freedom of expression, as the blog post could cause discrimination and hatred. It was the first time the Supreme Court upheld a conviction for hate speech.

The Council of Europe Commissioner for Human Rights and ILGA-Europe stated that, in **Poland**, the extent of hate speech against the LGBT community is particularly large in public life. They noted the repeated leniency of authorities towards homophobic acts and the disproportionate sanctions faced by LGBT activists opposing homophobic hate speech.<sup>129</sup>

The Helsinki Foundation published a statement on events in Warsaw on the night of 7-8 August 2020, following the detention of an LGBT+ activist. It blamed public authorities for the escalation of violence against the activists and condemned the brutal suppression of the protest, the use of physical violence, and the disproportionate use of detention.<sup>130</sup> A report published by the Ombuds institution described as degrading the treatment of people detained by the police in August in Warsaw (after the arrest of the activist of the ‘Stop Bullshit’ movement).<sup>131</sup>

### *‘Conversion’ therapies*

The United Nations published a report<sup>132</sup> on the global impact of gay and transgender ‘conversion therapy’ in light of increasing responses to ‘gender ideology’ and discussions about ‘conversion therapies’.<sup>133</sup> It called on states to ban this scientifically discredited practice, which may amount to torture.

Some Member States addressed this issue. In **Germany**, the parliament adopted the Law to protect against conversion treatments.<sup>134</sup> The **Swedish** Agency for Youth and Civil Society reviewed and compiled data on conversion attempts.<sup>135</sup> In **Portugal**, the professional association of psychologists issued

guidelines on psychological interventions involving LGBTI people, condemning any involvement of psychologists in 'conversion' therapies.<sup>136</sup> In **Poland**, the Ombuds institution called on the Prime Minister to prohibit such therapy.<sup>137</sup>

#### *Gender recognition, third gender*

Many Member States took steps to improve equality on the ground of gender identity. In **Belgium**,<sup>138</sup> anti-discrimination laws were expanded to explicitly cover gender identity, gender expression, and sexual characteristics.

In **Austria**, a registry office issued for the first time a birth certificate with the gender entry 'inter', after a complaint against the Minister of the Interior.<sup>139</sup> The software of the Central Register of Civil Status has since been amended to allow the following options: 'diverse', 'inter', 'open' and 'no entry'.<sup>140</sup>

In **Germany**, the Federal Court of Justice ruled<sup>141</sup> that application to the registry to change or delete gender information or the entry 'diverse' under the Civil Status Act is restricted to intersex persons who have a medical certificate confirming that they cannot be physically assigned to either male or female gender. Consequently, this does not include people with 'only' perceived intersexuality, who must submit an application to the court in accordance with the Transsexual Persons Act.

In contrast, the parliament in **Hungary** adopted in May 2020 a law<sup>142</sup> that reverses the legal recognition of gender reassignment for trans and intersex people.<sup>143</sup> According to the law, a person's birth sex, as indicated on their birth certificate and civil registry, will be included on all identification documents that contain reference to the sex. This prevents transgender people from changing their first name. Two months later, the European Court of Human Rights (ECtHR) decided on an earlier application against Hungary and ruled that the denial of legal gender recognition to non-Hungarian citizens legally residing in the country violates Article 8 of the European Convention on Human Rights.<sup>144</sup>

#### *Intersex rights*

Despite some positive developments, intersex children are still not sufficiently protected from unnecessary surgery across the EU.

In **Germany**, the government presented a bill on the protection of children with variations in gender development.<sup>145</sup> The draft bill aims to prohibit changes to a child's sexual characteristics "if these lead to a change in the innate sex".<sup>146</sup>

In its report on **Austria**, ECRI<sup>147</sup> recommended banning unnecessary 'sex-normalising' surgery until a child is able to participate in the decision-making, to effectively protect children's right to bodily autonomy.

In its concluding observations on **Belgium**, the Committee on Economic, Social and Cultural Rights (CESCR) expressed its concern about intersex minors and in particular the practice of performing medically unnecessary – and often irreversible – surgical procedures that are detrimental to their physical and mental integrity.<sup>148</sup>

The Advocate of the Principle of Equality published a special report on medical procedures for intersex people in **Slovenia**,<sup>149</sup> showing key stakeholders' lack of knowledge about intersexuality and that unnecessary medical procedures are performed without informed consent.

### *Same-sex couples*

Improvements in the family rights of same-sex couples occurred in some Member States. For example, in **Croatia**, the Constitutional Court ruled that courts and other bodies are obliged to interpret and apply the Foster Care Act in a way that enables everyone to participate in the public foster care service under equal conditions, regardless of whether a potential foster parent lives in a formal or an informal partnership. This allows same-sex life partners to participate in the foster care system.<sup>150</sup>

**Ireland** further improved the legal recognition of parental rights of female same-sex couples in cases of donor-assisted human reproduction, equating the legal position of female same-sex parents with that of opposite-sex parents,<sup>151</sup> and regulated the retrospective recognition of parentage.<sup>152</sup>

In **Slovenia**, the Advocate of the Principle of Equality assessed as discriminatory provisions of the Family Code and the Civil Union Act that preclude same-sex couples from marrying and applying for adoption. The advocate submitted a request for the constitutional review of both acts to the Constitutional Court.<sup>153</sup>

On the other hand, in **Poland**, the Supreme Administrative Court ruled that a Polish transcript in the civil status register of a foreign birth certificate indicating same-sex persons as the parents of a child would be contrary to the basic principles of the legal order.<sup>154</sup> In this regard, on 20 June 2020, the ECtHR communicated several complaints against **Poland** concerning, in principle, discrimination against same-sex couples in different aspects of their private life, resulting from their inability to gain legal recognition of their unions in Poland.<sup>155</sup>



### *Impact of COVID-19 measures*

LGBTI persons faced particular challenges because of the pandemic and the measures introduced to contain it. In many countries, studies were conducted on the impact of the pandemic on LGBTI persons and their well-being during the lockdowns. The studies showed a higher negative impact on mental health than in the general population and an increase in domestic violence, particularly against young LGBTI people.<sup>156</sup>

For example, studies in **Belgium**<sup>157</sup> showed that the measures had a strong impact on depression, anxiety, loneliness and suicidal feelings.<sup>158</sup> In **Spain**, a report on activities of the National Federation of Lesbians, Gays, Transexuals and Bisexuals (FELGTB) found an important increase in consultations related to hate speech against LGBTI people, psychological care, family conflicts, violence and harassment, as well as the need for guidance.<sup>159</sup>

In **Belgium**, Unia reported a resurgence of domestic violence against young LGBT people. It stated that they are 'trapped in an unsafe environment, exacerbated by the pressure of the quarantine measures', which may lead to suicide attempts, self-harm, and addiction.<sup>160</sup> In **Finland**, medical treatments for gender dysphoria patients were classified as non-urgent healthcare, decreasing their availability.<sup>161</sup>

Some Member States took measures to address these issues. The **Spanish** Ministry of Equality issued several guides for LGBTI people facing the pandemic, hate crime, and violence.<sup>162</sup> In **Sweden**, additional resources were granted to NGOs to address increased vulnerability during the pandemic, including for LGBTI victims of violence.<sup>163</sup> In **Portugal**, the parliament recommended that the government support LGBTI organisations during the crisis.<sup>164</sup> Authorities endorsed a campaign aimed at collecting funds to set up an emergency network for LGBTQI+ people in financial distress, permitting donations to the campaign to be tax deductible.<sup>165</sup>



## FRA opinions

### FRA OPINION 3.1

Learning from the lessons of the COVID-19 pandemic, the EU legislator should continue to explore all possible avenues to adopt the Equal Treatment Directive without further delay. This would ensure that EU legislation offers comprehensive protection against discrimination on grounds of religion or belief, disability, age and sexual orientation in key areas of life, such as education; social protection, including social security and healthcare; and access to and supply of goods and services available to the public, including housing.

Article 19 of the Treaty on the Functioning of the European Union (TFEU) provides the basis for EU legislation to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Council of the EU has adopted comprehensive legislation protecting against discrimination on grounds of gender or racial or ethnic origin in key areas of life. These include employment and occupation; education, though this is not covered by the gender equality directives; social protection; and access to and supply of goods and services that are available to the public, including housing. In contrast, EU legislation protects against discrimination on grounds of religion or belief, disability, age and sexual orientation only in the area of employment and occupation.

As a result, some of the protected characteristics set out in Article 19 of the TFEU (sex and racial or ethnic origin) enjoy wider protection than others (religion or belief, age, disability and sexual orientation), resulting in an artificial hierarchy of protected grounds. The European Commission proposed an Equal Treatment Directive in

2008. Its adoption would close this gap by extending protection against discrimination on grounds of religion or belief, age, disability and sexual orientation to the areas of education, social protection, and access to, and supply of, goods and services available to the public. No progress on adoption of the Commission's proposal was achieved at EU Council level in 2020.

The European Parliament reiterated its call to adopt the proposal, while the European Commission continued to encourage Member States to swiftly reach an agreement on the text. Meanwhile, the COVID-19 pandemic underscored the increased risk of discrimination that people may face in times of health crises on various grounds beyond sex and racial or ethnic origin, in particular age.



Evidence suggests that older people were among the hardest hit by and during the COVID-19 pandemic. Older persons had a greater health risk than younger age groups because of their higher incidence of underlying health conditions.

The pandemic also had broader implications, affecting older persons' well-being and rights. Ageist stereotypes and discriminatory discourse; restrictive measures based on age; difficulties in accessing goods and services, including because of the digital divide between generations; and feelings of isolation and stress undermined their right to lead a life of dignity, independence and participation, enshrined in the EU Charter of Fundamental Rights. These factors also undermined their right to equal treatment and opportunities, as set out in the Charter and the European Pillar of Social Rights.

On the other hand, various actors took measures to alleviate the pandemic's impact on older persons, and to protect and help implement their rights, including through using new technologies and digital tools. Moreover, the broader discussion on the rights of older persons and their well-being gained momentum in 2020. The Council of the EU adopted conclusions calling on EU institutions and Member States to use a rights-based approach to ageing, including in their pandemic exit strategies. It further highlighted the need to take advantage of digitalisation opportunities to promote older persons' well-being.



## FRA OPINION 3.2

EU institutions and Member States should adopt and mainstream a rights-based approach towards ageing and older persons, including in their pandemic exit strategies. This approach should be reflected in all relevant initiatives and policies, including in actions to implement the European Pillar of Social Rights and promote social inclusion policies. This means:

- ★ combating ageist perceptions that lead to age discrimination, which are barriers to the equal treatment of older persons and the full enjoyment of their fundamental rights;
- ★ promoting the participation of older persons in all aspects of social life, including in the design and monitoring of the implementation of measures that affect them;
- ★ focusing on those who are more vulnerable and delivering on particular needs they may have by using all available means, including accessible new technologies and digital tools, while also maintaining non-digital services;
- ★ collecting and analysing robust data and evidence about the rights and well-being of older persons.



### FRA OPINION 3.3

EU Member States are encouraged to avoid any actions that jeopardise the fundamental right to equal treatment regardless of sexual orientation and gender identity and to continue adopting action plans in line with the Commission's LGBTIQ equality strategy. They are encouraged to adopt and implement legal and policy measures to ensure that lesbian, gay, bisexual, trans and intersex persons can fully enjoy their fundamental rights under EU and national law.

EU Member States should consider the available evidence on discrimination, including data from FRA's second LGBTI survey, to identify and adequately address protection gaps. They should also take into account the guidance provided by the LGBTIQ equality strategy. In particular, measures should be taken to effectively combat hate speech and hate crime and to address the harmful impacts of homophobic and transphobic statements made by public authorities and officials.

Certain Member States have introduced legal and policy measures that jeopardise the fundamental right to equal treatment regardless of sexual orientation. FRA's second LGBTI survey and surveys conducted in several Member States showed high levels of discrimination and harassment towards LGBTI+ persons across the EU, and a notable decrease in social acceptance. Hate speech against LGBTI+ persons in public discourse is a particularly worrying phenomenon, as it further incites discrimination.

Measures to contain the pandemic particularly affected LGBTI+ persons, especially young people living at home who faced familial violence because of their sexual orientation and/or gender identity. In this regard, safeguarding their rights became even more difficult.

To address and improve the situation of LGBTIQ persons, the European Commission adopted its LGBTIQ equality strategy 2020–2025. This sets out a series of targeted actions around four main pillars focused on tackling discrimination, ensuring safety, building inclusive societies and leading the call for LGBTIQ equality around the world.

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# RACISM, XENOPHOBIA AND RELATED INTOLERANCE

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## UN & CoE

23

January

UN Committee on the Elimination of Racial Discrimination (CERD) publishes its concluding observations on the combined 22nd to 24th periodic reports of Ireland.

12

27

February

Council of Europe's (CoE's) Committee of Ministers adopts the Resolution on the implementation of the Framework Convention for the Protection of National Minorities by Finland.

CoE's European Commission against Racism and Intolerance (ECRI) publishes its 2019 annual report.

17

18

19

31

March

ECRI publishes its sixth monitoring report on Germany.

ECRI publishes its sixth monitoring report on Belgium.

ECRI publishes its conclusions on the implementation of priority recommendations in respect of Luxembourg.

CoE's Commissioner for Human Rights publishes recommendations on racism, intolerance and discrimination in her report on a visit to Bulgaria.

2

15

17

June

ECRI publishes its sixth monitoring report on Austria, and conclusions on the implementation of priority recommendations in respect of Denmark and Serbia.

UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance reports on 'Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance'.

UN Human Rights Council adopts a resolution on 'The promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against police brutality and other violations of human rights'.

2

July

UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance publishes the report on her visit to the Netherlands.

1

September

In *R. R. and R. D. v. Slovakia* (No. 20649/18), European Court of Human Rights (ECtHR) rules that failing to investigate the applicants' allegation of police racism violated Article 14 of the European Convention on Human Rights (ECHR) (prohibition of discrimination) in conjunction with Article 3 of the ECHR (prohibition of torture).

8

October

In *Ayoub and Others v. France* (Nos. 77400/14, 34532/15 and 34550/15), ECtHR rules that the dissolution of paramilitary-type far right associations did not violate their freedom of assembly and association (Article 11 of the ECHR), examined in light of their freedom of expression (Article 10).

24

November

CERD publishes General recommendation No. 36 on preventing and combating racial profiling by law enforcement officials.

8

December

ECRI publishes its sixth monitoring report on Czechia and Slovakia, and conclusions on the implementation of priority recommendations in respect of Sweden.

## EU

June

19

European Parliament adopts a resolution on 'The anti-racism protests following the death of George Floyd'.

24

European Commission adopts EU strategy on victims' rights (2020–2025), promoting integrated and targeted support to victims with special needs, such as victims of hate crimes.

July

24

European Commission adopts new EU security union strategy 2020–2025, drawing attention to the growing threat of violent right-wing extremism and attacks inspired by racism.

September

18

European Commission publishes 'A Union of equality: EU anti-racism action plan 2020–2025', its plan to step up action against racism in the EU.

October

19

European Commission announces a new "comprehensive strategy on combating antisemitism, to complement and support Member States' efforts as part of the Work Programme 2021", in light of increasing antisemitic violence and hate crime.

December

2

Council of the EU approves a Council declaration on mainstreaming the fight against antisemitism across policy areas.

15

European Commission publishes a proposal for a regulation on a single market for digital services (Digital Services Act), which among others aims to improve the mechanism for the online removal of illegal discriminatory and hate speech content.

The year 2020 was a challenging one. The COVID-19 pandemic brought to the surface existing racism, xenophobia and related intolerance and exacerbated them. The health crisis was increasingly used as a pretext to attack minorities – including migrants, people with immigrant backgrounds and Roma – who were already subject to racial and ethnic discrimination, hate speech and hate crime. The Black Lives Matter movement mobilised societies across the globe to address racism and discrimination by law enforcement authorities. The European Commission adopted its first ever anti-racism action plan, setting out concrete measures for tackling racism and ethnic discrimination in the EU. A number of EU Member States took steps to develop national anti-racism action plans and other measures to address extremism, hate crime and hate speech.

“Racism is a poison. Hatred is a poison. And this poison exists in our society and it has already been responsible for far too many crimes.”

Angela Merkel, Chancellor of Germany, statement of 20 February 2020



## 4.1. DISCRIMINATION, HATE AND VIOLENCE REMAIN POWERFUL SCOURGES

Racism and prejudice, as well as extremist sentiments and violence, posed serious challenges across the EU in 2020. Several people were murdered in hate-based and extremist crimes, as in previous years.

### 4.1.1. Extremism and extremist violence

In February, a far-right extremist gunman killed nine people at two shisha bars in the **German** city of Hanau.<sup>1</sup> The attack underscored that right-wing extremism remains a potent threat throughout the EU.

The **Irish** Network against Racism warned of an increased far-right presence online in 2019, targeting asylum seekers, refugees, Muslims and people of African descent.<sup>2</sup> These same groups continued to be the central focus of the **Austrian** right-wing extremist scene in 2020.<sup>3</sup> **Portugal** also recorded a variety of troubling incidents involving nationalist groups.<sup>4</sup>

Europol, in its most recent report, noted that paramilitary groups emerged in several Member States in 2019, “pretexting the impotence of the state to protect the population against the perceived threat from Islam and immigration”. These Member States included **Belgium**, **France** and **Slovenia**.<sup>5</sup>

In **Denmark**, both right-wing and Islamist extremists used COVID-19 as a pretext to spread hate.<sup>6</sup>

Towards the end of the year, several incidents in **France** and **Austria** were brutal reminders of the continuing danger posed by Islamist extremism. In October, a jihadist sympathiser beheaded a **French** middle-school teacher after he showed cartoons depicting the Prophet Muhammad in class.<sup>7</sup> A few days later, a man entered a church in Nice and stabbed the warden and two worshippers.<sup>8</sup> In November, a radicalised gunman, with ties to the so-called Islamic State (IS), killed four and seriously injured 22 in Vienna, **Austria**.<sup>9</sup>

#### 4.1.2. Hate crime

Hate crime also remained a pervasive scourge throughout the EU.

In **Portugal**, the Judiciary Police is investigating whether or not the murder of a black actor – in July of 2020 – had a racist motive.<sup>10</sup>

Meanwhile, official data published in 2020 – in **Denmark**, **Finland**, and **Slovakia**<sup>11</sup> – show a rise in recorded hate crime incidents. A **Danish** police report, for example, shows a 27 % increase in recorded incidents in 2019 compared with 2018.<sup>12</sup> More than half of the 569 criminal offences recorded as hate crimes related to race and ethnic origin. Similarly, in **Finland** 72.3 % of a total of 650 recorded incidents in 2019 involved bias against ethnic and national background.<sup>13</sup>

Likewise, data published in 2020 from civil society organisations (CSOs) in **Belgium**<sup>14</sup> and **Greece**<sup>15</sup> show high rates of bias-motivated harassment and violent incidents in 2019.

#### 4.1.3. Hate speech

Evidence published in 2020 shows a surge in hate speech targeting migrants and ethnic minorities in several Member States in 2019 – particularly online, and often by media or political figures. This trend intensified in 2020 with the outbreak of the COVID-19 pandemic.

National human rights bodies raised concerns about the growing rate of hate speech in **Belgium**,<sup>16</sup> **Bulgaria**<sup>17</sup> and **Spain**<sup>18</sup> in 2019. Reporting from **Bulgaria** in 2019, the Commissioner for Human Rights of the Council of Europe (CoE) warned of “rampant intolerance manifested towards minority groups”.<sup>19</sup>

Media monitors noted a rise of racist and misogynistic hate speech in **Malta**.<sup>20</sup> A **Spanish** non-governmental organisation monitoring Islamophobia showed an increase in anti-Muslim hate speech online in 2019.<sup>21</sup>

Politicians used their platforms and election campaigns to fuel intolerance. News media published increasing amounts of hate speech by political candidates in 2019, the **Irish** Network against Racism reported.<sup>22</sup> The **Bulgarian** Helsinki Committee highlighted the role of politicians during 2019 in reinforcing negative stereotypes and discriminatory perceptions of minority groups.

The outbreak of the COVID-19 pandemic in 2020 further exacerbated the problem. Ethnic minority groups became scapegoats, hate speech increased, and conspiracy theories proliferated.<sup>23</sup>

For example, the **Belgian** equality body reported a surge in hate speech against asylum seekers, Jews, and Asians.<sup>24</sup> The **Italian** police documented an upsurge in verbal assaults and hate speech against Chinese, Filipino and Japanese citizens.<sup>25</sup>

Racism, conspiracy theories and disinformation proliferated in **Swedish** far-right media channels.<sup>26</sup> In **Germany**, conspiracy theories about the pandemic’s origin and the related restrictions surged online.<sup>27</sup>

Social media content in **Austria**<sup>28</sup> blamed migrants and refugees for the spread of



## PROMISING PRACTICE

### Combating hate by building awareness

The project 'Dialogue instead of hate' explores the legal boundaries between freedom of expression and hate speech through discussion, reflection, and role play with hate speech offenders. It was developed in **Austria** in cooperation with judges and public prosecutors, and replicated in **Luxembourg**.\*

In **Bulgaria**, art serves as the main tool in a multimedia awareness-raising campaign against hate crime and hate speech. It was developed through public discussions in 11 cities, and resulted in urban art interventions, a theatrical performance, and a virtual video documentary.\*\*

\* *Austria, Neustart, Dialog statt Hass; Luxembourg, respect.lu, Dialoguer au lieu de haïr.*

\*\* *Bulgaria, Bulgarian Helsinki Committee, No Hate BG: Заедно в защита на малцинствата и противодействие на престъпленията от омраза.*

COVID-19, human rights organisations reported. In several Member States, the spread of the virus was linked to living conditions in Roma settlements. (For more on Roma, see [Chapter 5](#)).

Antisemitic rhetoric was also a concern. Such rhetoric was reported in **Poland**, among others.<sup>29</sup> The UN Special Rapporteur on freedom of religion or belief also warned of the alarming rise in antisemitic hate speech, including conspiracy theories, since the outbreak of the COVID-19 crisis.<sup>30</sup>

#### 4.1.4. Ethnic discrimination and intolerance

Hate crime and hate speech are extreme manifestations of discrimination. They are part of a wider pattern of prejudice and discriminatory perceptions and practices faced by ethnic minorities and migrants throughout the EU.

For example, in a FRA survey covering almost 4,700 Roma and Travellers in five EU countries and the United Kingdom, almost half of the respondents (45 %) said they felt discriminated against in the 12 months before the survey.<sup>31</sup> (For more information, see [Chapter 5](#) on Roma.)

Likewise, findings of representative surveys in **Denmark**<sup>32</sup> and in the **Netherlands**<sup>33</sup> show high levels of perceived discrimination by ethnic minorities and descendants of migrants in various domains of life when compared to people without a migrant background.

**France**<sup>34</sup> and **Belgium**<sup>35</sup> have high rates of discrimination on grounds of race and ethnicity in access to employment, equality bodies report. In **Austria**, reported cases of discrimination in education increased by 36 % between 2018 and 2019, data published in 2020 show.<sup>36</sup> Of these, 44 % concerned ethnicity, and 43 % religion and belief.

During the COVID-19 pandemic, concerns emerged about ethnic discrimination, especially against persons of Asian origin, in access to healthcare, education and housing.<sup>37</sup> Small-scale surveys and reports looking into discrimination experiences of people of Chinese origin linked to COVID-19 revealed a high prevalence of racist and xenophobic incidents in **Germany**,<sup>38</sup> in the **Netherlands**,<sup>39</sup> and in **Spain**.<sup>40</sup>

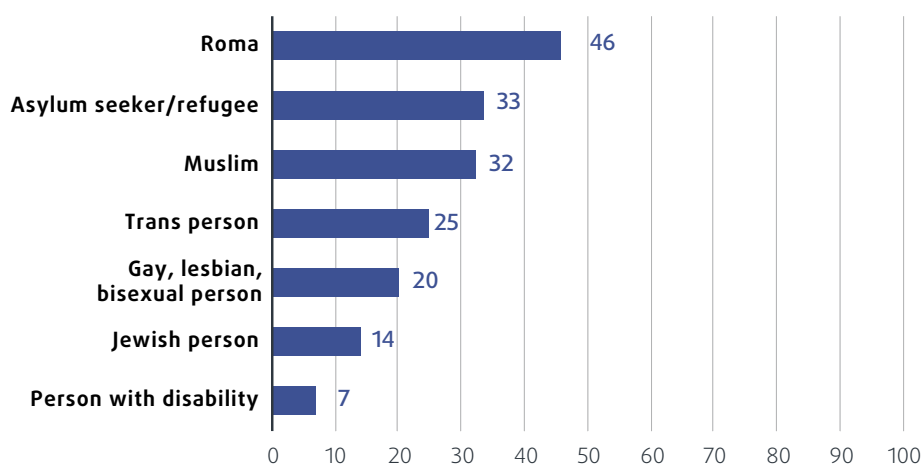
Research findings based on discrimination testing in **Belgium** showed an increase in discrimination against citizens of Moroccan descent in access to rental housing after the first lockdown.<sup>41</sup>

These figures should come as no surprise in light of evidence of persisting discriminatory perceptions of ethnic minorities, religious groups and migrants across the EU.

FRA's Fundamental Rights Survey in 2019 addressed people's views on people from selected groups, including Jews, Muslims and Roma.<sup>42</sup> On average, in the EU-27, 46 % of the respondents to the survey would feel uncomfortable having a Roma as a neighbour, 33 % an asylum seeker or a refugee, 32 % a Muslim, and 14 % a Jewish person.<sup>43</sup>



**FIGURE 4.1: PEOPLE WHO FEEL UNCOMFORTABLE WITH HAVING A NEIGHBOUR FROM SELECTED GROUPS (EU-27, %)<sup>a, b</sup>**



Source: FRA, Fundamental Rights Survey 2019 [Data collection in cooperation with CBS (NL), CTIE (LU) and Statistics Austria (AT)]

Notes:

<sup>a</sup> Out of all respondents in the EU-27 who were asked to complete the section 'Tolerance and equality' of the Fundamental Rights Survey (n = 26,493); weighted results.

<sup>b</sup> The question asked in the survey was "First, how would you feel about having someone from one of the following groups as your neighbour?" Respondents could answer by selecting a value from a scale, ranging from '1 – Totally uncomfortable' to '7 – Totally comfortable'. In addition, respondents had the option to answer 'Prefer not to say' or 'Don't know'. The results presented in the figure correspond to answers 1 to 3 on this scale.

The general populations in **Bulgaria**,<sup>44</sup> **Czechia**<sup>45</sup> and **Latvia**<sup>46</sup> have comparable attitudes to Roma, asylum seekers and other minorities, surveys confirm. In **Slovakia**, the COVID-19-triggered lockdown of Roma localities was one of the government measures that received the highest support, a 2020 poll revealed.<sup>47</sup>

On the other hand, the global antiracism mobilisations inspired by the Black Lives Matter movement have increased the general population's understanding of racism and its impact on individuals. In **Austria**, for example, 55 % of participants in an online survey in 2020 supported more severe punishment of racist offences.<sup>48</sup> Similarly, 63 % of respondents to an opinion poll for a **Dutch** television programme were in favour of ongoing demonstrations against racism.<sup>49</sup>

#### 4.1.5. Spotlight on racism in policing

With thousands of people marching in European cities and around the world in support of protests in the USA following the death of George Floyd, police racism became a more pressing issue in the EU, too.



The European Parliament issued a resolution recognising past oppression and addressing the need to counter institutional racism in the police, including racial profiling.<sup>50</sup> The European Commission's new anti-racism action plan urges Member States to step up their efforts to prevent discriminatory attitudes among law enforcement authorities. The Victims' Rights Strategy stresses, among other things, the need for a safe environment for reporting crime.<sup>51</sup> (For more information, see [Chapter 9](#) on Access to justice).

Discriminatory profiling based on ethnicity persists, surveys and international monitoring bodies' reports underlined.<sup>52</sup> Some countries also reported disproportionate enforcement of COVID-19-related restrictions.

One fifth of almost 300 respondents of African descent reported in a survey by the **Finnish** Ombuds institution that they had experienced ethnic profiling by police or private security.<sup>53</sup>

In the **Netherlands**, in the first nine months of 2020, 168 complaints were filed to the police for discriminatory treatment and ethnic profiling by police officers.<sup>54</sup> A survey asked 750 citizens in Amsterdam how they experience contacts with the police. Of the 255 respondents who had had contact with the police in the previous 12 months, 48 % believed it was because of their ethnic origin, skin colour or appearance.<sup>55</sup>

Research in **Belgium** linked 'police selectivity' to negative perceptions of certain groups.<sup>56</sup>

Meanwhile, FRA's Roma and Traveller survey findings show the extent to which members of this ethnic minority experience racial profiling by the police.<sup>57</sup> For more information, see [Chapter 5](#) on Roma.



Eradicating racial discrimination in policing featured in recommendations of the UN Special Rapporteur on contemporary forms of racism following her visit to the **Netherlands**.<sup>58</sup> The UN Committee on the Elimination of All Forms of Racial Discrimination (CERD) also addressed racial profiling by the police in its report on **Ireland**.<sup>59</sup> So did the CoE's European Commission on Racism and Intolerance (ECRI) in country monitoring reports on **Austria**<sup>60</sup> and **Germany**.<sup>61</sup> ECRI also recommended that **Slovakia** allocate adequate funds to investigate racially motivated misconduct or violence by the police.<sup>62</sup>

FRA's bulletins on the impact of COVID-19 on fundamental rights in the EU included allegations of disproportionate enforcement of COVID-19-related restrictions on ethnic minority groups.<sup>63</sup> Human rights organisations across **Belgium**,<sup>64</sup> **France**<sup>65</sup> and **Spain**<sup>66</sup> also recorded a significant increase in police abuse of ethnic minorities during pandemic-related lockdowns. They called for action against the discriminatory impact of checks and sanctions imposed in connection with lockdown measures.

Discussions on preventing and countering police racism, spurred by cases across the EU and by the Black Lives Matter movement, triggered

various developments at national level. These include enabling independent complaints mechanisms and ensuring accountability and sanctions.

In **Germany**, criminal investigations and disciplinary proceedings were opened against police officers suspected of having shared racist and neo-Nazi content.<sup>67</sup> Furthermore, the **German** catalogue of measures to combat right-wing extremism and racism includes specific measures targeting the police, among others to improve exchanges with the *Länder* on possibilities for disciplinary action.<sup>68</sup> The new Berlin Anti-Discrimination Act (see [Section 4.2.2.](#)) allows complaints against police discriminatory treatment.<sup>69</sup>

**Portugal** has been developing a Discriminatory Practices Prevention Plan regulating police officers' recruitment, training, online presence and community interaction.<sup>70</sup> In addition, a new order prohibits police officers from wearing tattoos containing party, extremist and racist symbols, or images that encourage violence. Police officers with such tattoos have 180 days to remove them.<sup>71</sup>

In **France**, three police officers face charges including several aggravating circumstances, such as 'racist remarks', after beating a music producer.<sup>72</sup> In **Belgium**, the chief of the federal police publicly condemned racist comments made in a closed Facebook group for police officers, and pledged to investigate.<sup>73</sup>

Meanwhile, civil society organisations continued to speak out against ethnic profiling in **Austria**,<sup>74</sup> **Belgium**<sup>75</sup> and the **Netherlands**.<sup>76</sup>

## 4.2. IMPLEMENTING THE LEGAL FRAMEWORK AGAINST RACISM, XENOPHOBIA, ANTISEMITISM AND RELATED INTOLERANCE

Action to combat racism, xenophobia, antisemitism and related intolerance at EU level rests on an established legal framework dating back more than two decades. This includes the Racial Equality Directive and the Council Framework Decision on Racism and Xenophobia.<sup>77</sup>

In monitoring the application of EU law, the European Commission has often called on Member States to fully and correctly enforce the provisions of these legal acts in their national frameworks. To support effective implementation of the legal protections, the EU in 2020 took decisive steps towards a more holistic approach to addressing racism, xenophobia and related intolerance.

### 4.2.1. EU policy developments: towards a more holistic approach

In 2020, the EU stepped up its efforts to act against racism by adopting the first EU anti-racism action plan, for 2020–2025.<sup>78</sup> The action plan addresses both individual and structural forms of racism, sets out a series of measures, including mainstreaming combating racism in all EU policies, and calls for closer and regular coordination and consultation.

Racism, bias-motivated violence and harassment, and protection and support for victims of hate crime feature in a number of other key strategic documents that the European Commission adopted in 2020. These include the EU's strategy on victims' rights (2020–2025),<sup>79</sup> the new EU Roma strategic framework,<sup>80</sup> and the new Security Union strategy 2020–2025.<sup>81</sup> The Commission's action plan on integration and inclusion 2021–2027 stresses that national integration strategies should be aligned with national action plans against racism and racial discrimination.<sup>82</sup> (For more information, see [Chapter 3](#) on Equality.)

### PROMISING PRACTICE

## Tackling racial profiling

'You look like someone we are looking for' is a project by Skåne's City Mission in collaboration with Malmö against Discrimination (anti-discrimination office). It targets young people at risk of racial profiling in **Sweden**. The project aims to raise awareness, offer legal help, and address the invisibility of the racial profiling by collecting victims' stories in a book to give them a voice.

See *Sweden, Skånes Stadsmission, 'Du ser ut som någon vi letar efter – Rasprofilering utifrån ungas egna röster'*.

**"It is not enough to be against racism. We have to be active against it."**

European Commission, **A Union of equality: EU anti-racism action plan 2020–2025**, 18 September 2020

In 2020, the Council of the EU adopted a declaration on mainstreaming the fight against antisemitism. It stressed that “[t]he fight against antisemitism is a cross-cutting issue involving various levels of government and policies at local, national and European level.”<sup>83</sup> It also reaffirmed its call on Member States to endorse the International Holocaust Remembrance Alliance’s (IHRA’s) working definition of antisemitism, which is not legally binding. (For more information on national developments, see [Section 4.1.](#))

The new EU Security Union strategy 2020–2025 draws attention to the growing threat of violent right-wing extremism and attacks inspired by racism. It acknowledges that “law enforcement training related to racism and xenophobia must be an essential component of an EU culture of security”.<sup>84</sup> In a dedicated resolution on the strategy, the European Parliament welcomed the Commission’s counter-terrorism agenda<sup>85</sup> and called on the Commission and Member States to implement a holistic approach to countering radicalisation, combining security, education, social, cultural and anti-discrimination policies.<sup>86</sup>

Council conclusions adopted in December underline that the terrorist threat “emanates from all types of violent extremism, including religious and politically motivated violent extremism, and targets our free and open societies”.<sup>87</sup>

#### 4.2.2. Racial Equality Directive



Twenty years after the adoption of the Racial Equality Directive,<sup>88</sup> Member States still need to step up efforts to implement its provisions more effectively, reports by the European Commission and international monitoring bodies underline. The directive prohibits discrimination based on ethnic or racial origin in the areas of employment and occupation, social protection, social advantages, education and access to and supply of goods and services which are available to the public.

As part of its close monitoring of the implementation of the directive, the European Commission continued with infringement proceedings concerning discrimination against Roma children in education, ongoing in **Czechia**<sup>89</sup>, **Hungary**,<sup>90</sup> and **Slovakia**.<sup>91</sup>

In 2021, the Commission will report on the implementation of the directive, and by 2022 it will present legislation required to address possible shortcomings identified in the implementation report, including to strengthen the role and independence of equality bodies.<sup>92</sup> The directive requires all Member States to designate an equality body to provide independent assistance to victims of discrimination, conduct independent surveys and issue independent reports and recommendations.

ECRI raised its concerns about the independence of such bodies in a number of Member States, including **Austria**,<sup>93</sup> **Germany**<sup>94</sup> and **Spain**.<sup>95</sup> In **Malta**, a bill aiming to create a National Human Rights Institution, in line with the UN Paris Principles, was pending at the end of 2020.<sup>96</sup> (For more information, see [Chapter 3](#) on Equality.)

ECRI and CERD also expressed their concerns about the complexity and the ambiguity of the national legal provisions against ethnic discrimination in **Austria**<sup>97</sup> and **Ireland**.<sup>98</sup>



Yet there were also positive legal developments.

In **Malta**, the new Equality Bill adopts an inclusive definition of harassment, and considers it tantamount to discrimination. It also addresses victimisation, as laid out in the Racial Equality Directive.<sup>99</sup>

In the **Netherlands**, the government initiated a bill requiring employers to prevent discrimination, including on race grounds, during recruitment.<sup>100</sup> Upon its approval by the Dutch parliament, employers will be obliged to implement measures aimed at ensuring an objective recruitment process.

In **Germany**, the Berlin House of representatives adopted an Anti-Discrimination Act, which goes beyond the scope of the Racial Equality Directive. It extends protection against direct and indirect discrimination and harassment by public authorities on a number of grounds, including ethnic origin, racist or antisemitic labelling, language, religion and belief.<sup>101</sup>

#### **4.2.3. 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, which are among the most severe manifestations of racism and xenophobia.<sup>102</sup> However, 12 years after its adoption, several Member States have not yet fully and correctly incorporated its provisions into national law.<sup>103</sup>

The European Commission initiated infringement procedures against **Estonia** and **Romania**, alleging that their legislation does not fully and accurately transpose the provisions of the Framework Decision.

The Commission noted that the **Estonian** Criminal Code does not explicitly ensure that racist and xenophobic motivations for crimes are taken into account as aggravating circumstances. **Estonia** does not provide for adequate penalties for hate speech. It has also failed to transpose the criminalisation of public condoning, denying or gross trivialisation of international crimes and the Holocaust, as well as to correctly transpose the criminalisation of public incitement to violence or hatred against groups.

Conversely, **Romania** only criminalised incitement to hatred against a group of persons defined by reference to race, colour, religion, descent or national or ethnic origin, but not when addressed towards an individual member of such groups. Moreover, it failed to correctly define hate speech, and did not criminalise incitement to violence.<sup>104</sup>

**Romania** did make efforts to improve its legal framework on combatting racism in 2020, focusing on racism against Roma. Specifically, it initiated a draft Law to combat and prevent antigypsyism.<sup>105</sup> For more information, see [Chapter 5](#) on Roma.

Meanwhile, ECRI identified gaps in the legislation against the public expression of and incitement to hatred by persons exercising public office in **Belgium**.<sup>106</sup> It raised similar concerns in its reports on **Austria**<sup>107</sup> and **Serbia**.<sup>108</sup>

Both the CoE Commissioner for Human Rights<sup>109</sup> and the Bulgarian Ombuds institution<sup>110</sup> pointed to deficiencies in the national legal framework for combating hate crime in **Bulgaria**, including the lack of effective measures for prosecuting offenders.

Regarding **Ireland**, CERD recommended that it introduce and enforce “legislative provisions that include racist motivation as an aggravating circumstance that will result in a penalty enhancement”.<sup>111</sup> In November, the **Irish** Ministry of



Justice initiated a bill introducing a statutory aggravation model for hate crime offences.<sup>112</sup> A public consultation report also revealed that there is a clear need for more protection from incitement to hatred.<sup>113</sup>

The **Netherlands** amended its Criminal Code to criminalise the incitement to hatred, discrimination or violence against persons on grounds such as race, religion or belief.<sup>114</sup> The Dutch House of Representatives also initiated a draft bill increasing penalties by one third for criminal offences with a discriminatory motivation on various grounds, including race and religion.<sup>115</sup>

The **Portuguese** Minister of Justice announced in December the revision of the relevant provisions on hate speech within the Criminal Code.<sup>116</sup> Similarly, the Minister of Justice of **Luxembourg** announced the drafting of a bill for addressing hate crime as such in the national criminal law.<sup>117</sup>

Research published in 2020 shows that a large number of complaints involving hate speech and hate crime are not prosecuted. In **Belgium**, this is because of the difficulty in identifying the perpetrators or collecting evidence.<sup>118</sup> **Czechia** does not systematically monitor online hate speech, so usually only cases that gain media visibility are prosecuted.<sup>119</sup> In **Portugal**, the Victim Support Association (*Apoio à Vítima*) proposed a set of recommendations to increase the visibility of hate crimes by making the motivation behind them explicit in the Criminal Code.<sup>120</sup>

Beyond the Framework Decision, Member States took other steps to address online incitement to hatred and violence.

A law against hate on the internet in **Austria** entered into force on 1 January 2021.<sup>121</sup> It specifically addresses racist and xenophobic hate on the internet, and aims to strengthen the procedural rights of victims of online hate speech – for example, by ensuring process support to victims of hate speech on the internet and abolishing court costs for victims of hate speech.



In **Germany**, pending legislation would make providers responsible for reporting content suspected of hate speech on their online platforms.<sup>122</sup> **Luxembourg**<sup>123</sup> plans to make them responsible for ensuring that audiovisual material respects the provisions set by the Audiovisual Media Services Directive.<sup>124</sup>

#### 4.2.4. Courts address hate speech and hate crime

In 2020, several decisions by the European Court of Human Rights (ECtHR) and domestic courts bolstered the fight against hate crime and hate speech. Notably, courts reasserted the importance of considering racial or xenophobic motives when judging a crime, and set limits for relying on freedom of expression to justify hate speech and incitement to hatred.

In *R.R. and R.D. v. Slovakia*, the ECtHR condemned **Slovakia** for failing to investigate the alleged ethnic discrimination against the two applicants of Roma origin, who had been victims of inhuman or degrading treatment by the police.<sup>125</sup> The court argued that “State authorities have the additional duty to take all reasonable steps to unmask any racist motive [...]. Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts which are particularly destructive of fundamental rights”.<sup>126</sup> The ECtHR thus found a violation of Article 14 (prohibition of discrimination) in conjunction with Article 3 (prohibition of torture).

Similarly, the **German** Federal Court of Justice reiterated the importance of always weighing a defendant’s attitude against his or her actions.<sup>127</sup> In that instance, the defendant had sprayed school buildings with far-right slogans, and joined a masked Nazi-inspired torchlight procession. The court established xenophobic goals and motivations behind both his crimes, damage to property and violation of the prohibition of uniforms under the Assembly Act.

In *Ayoub and Others v. France*, the ECtHR ruled that the dissolution of paramilitary-type far-right associations in **France** constituted a necessary interference in a democratic society.<sup>128</sup> It found that “the objectives actually promoted and put into practice by the members of these associations, including on various occasions by violent means, indisputably contained elements of incitement to hatred and racial discrimination aimed in particular at Muslim immigrants, Jewish people and homosexuals”.<sup>129</sup> Accordingly, the court found no violation of their freedom of assembly and association (Article 11), examined in the light of their freedom of expression (Article 10).

In the opinion of the Supreme Court of **Finland**, the activities of such groups represent in themselves an abuse of those freedoms.<sup>130</sup> More specifically, “invoking freedom of association or freedom of expression in order to drive down parliamentary democracy, to promote the National Socialist cause, or to justify the abuse of a group of people is an abuse of the right of the former, since the aim is to overturn democratic structures or essentially reduce other fundamental and human rights”.<sup>131</sup> The termination of the Nordic Resistance Movement, whose writings promoted ethnic agitation and whose activities implied illegal violence, was imperative.

In **Greece**, judges reached a verdict in the Golden Dawn’s trial, which lasted five years and covered four cases, with 68 defendants and over 200 witnesses.<sup>132</sup> The court sentenced the party’s leader and six former members of parliament to 13 years in prison for “running a criminal organisation”. It found several others guilty of affiliation.

In a number of Member States, courts convicted individual political figures for hate speech.

## FRA ACTIVITY

### National strategies on antisemitism

For the first time, FRA's annual overview of antisemitic incidents recorded in the EU provided an overview of national strategies on antisemitism.



Eleven years after the Council of the EU invited Member States to adopt and implement holistic strategies to prevent and fight all forms of antisemitism, some states reported that they had national strategies or action plans in place (**Czechia, Germany, Finland, France, Poland and Sweden**). Others stated that they are in the process of developing such documents (**Austria, Bulgaria, Denmark, Estonia, Hungary, Romania and Slovakia**).

FRA's report also provides information on how national, regional or local authorities use the non-legally binding working definition of antisemitism adopted by the International Holocaust Remembrance Alliance (IHRA).

For more information, see FRA (2020), **Antisemitism – Overview of antisemitic incidents recorded in the European Union 2009–2019**, Luxembourg, Publications Office, pp. 87–88.

A **Dutch** party representative had asked his audience whether they wanted “more or fewer Moroccans”. The Court of Appeal of The Hague, while noting the importance of freedom of expression in political discourse, confirmed that politicians are under a special responsibility to avoid statements insulting racial or ethnic groups.<sup>133</sup> For the purposes of section 137c of the Dutch Criminal Code, then, the court clarified that ‘Moroccans’ could qualify as a ‘race’. The judgment is not final; an appeal is currently pending before the Supreme Court.

A **Czech** political party secretary made remarks against lesbian, gay, bisexual, trans and intersex persons, Jews and Roma in the restaurant of the Chamber of Deputies. The Supreme Court confirmed that the remarks still amounted to public incitement to hatred and approval of genocide.<sup>134</sup> It argued that “speeches by political officials made on the premises of Parliament, though not publicly accessible, send a signal about how the elites are able to behave and thereby shape generally perceived patterns of behaviour”.

### 4.3. NATIONAL EFFORTS TO TACKLE RACISM, ANTISEMITISM AND XENOPHOBIA, EXTREMISM AND HATE CRIME

#### 4.3.1. National action plans and strategies

In 2001 the UN World Conference against racism called on countries to develop and elaborate national action plans against racism.<sup>135</sup> Some 20 years later, the EU and Member States took steps towards establishing a “framework for delivery”. 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” and sets out to develop common guiding principles for national action plans in 2021.<sup>136</sup>

In 2020, more Member States than in previous years took steps towards developing national anti-racism strategies (see **Table 4.1**). National parliaments also played a role. For example, in **Luxembourg**<sup>137</sup> and **Portugal**,<sup>138</sup> they adopted motions calling on the governments to develop a strategy against racism.

National approaches are diverse.

**Austria** is developing both a broader action plan against racism and one against antisemitism.<sup>139</sup> **Belgium** has taken steps to adopt a national strategy that builds up on policy initiatives at local and regional levels.<sup>140</sup> The existing strategy in **Lithuania**<sup>141</sup> was extended. In **Slovakia**,<sup>142</sup> a new strategy is under development following an evaluation of the previous one.

A closer look, however, shows some weaknesses, which could negatively affect their impact, as ECRI and CERD noted. For example, in its report on **Germany**, ECRI raised concern that the national action plan against racism “does not contain concrete objectives, measures, timelines, budgets, indicators with starting and target values, and the authority and member of staff responsible for achieving each objective and implementing each measure”.<sup>143</sup> CERD raised similar concerns in its report on **Ireland**.<sup>144</sup>

**TABLE 4.1: EU MEMBER STATES'/CANDIDATE COUNTRIES' ACTION PLANS AND STRATEGIES AGAINST RACISM, XENOPHOBIA AND ETHNIC DISCRIMINATION, 2020**

Country code	Period covered	Name of the strategy or action plan in English
AT	Under development	National action plan to combat racism and discrimination
	2018 onwards	The Austrian strategy for the prevention and countering of violent extremism and de-radicalisation
BE	Under development	National action plan against racism
BE – Brussels Capital Region	2019-2020	Brussels action plan to fight against racism and discrimination
CZ	2020	Concept on the fight against extremism for 2020
DE	2017 onwards	National action plan to fight racism
	2016 onwards	Federal government strategy to prevent extremism and promote democracy
EL	2020-2023	National action plan against racism and intolerance
	2019-2021	National Integration Strategy
ES	2011 onwards	National comprehensive strategy against racism, racial discrimination, xenophobia and related intolerance
	2019-2021	Action plan to combat hate crimes
FI	Under development	National action plan to combat racism and to promote good relations (2021-2022)
FR	2018-2020	National plan against racism and antisemitism (2018-2020)
	2017-2022	National plan for combating discrimination
HR	Under development	National plan for protection and promotion of human rights and combating discrimination 2021-2027
	Under development	Anti-discrimination action plan 2021-2023
HU	2011-2020	National social inclusion strategy
	2017-2020	The migrant integration strategy
IE	2019-2021	Diversity & integration strategy 2019-2021
	Under development	Action Plan Against Racism for Ireland
IT	2020-2021	National integration plan for persons entitled to international protection
LT	2021-2023	Action plan for promotion of non-discrimination
LV	2019-2020	National identity, civil society and integration policy implementation plan
NL	2016 onwards	National anti-discrimination action programme
	2018-2021	Action plan labour market discrimination
PL	Under development	National equality plan for 2021-2030
PT	2015-2020	Strategic plan for migration
	Under development	National action plan against racism and discrimination
RO	Under development	National strategy on preventing and combating antisemitism, xenophobia, radicalisation and incitement to hate speech
SE	2016 onwards	National plan to combat racism, similar forms of hostility and hate crime
SI	2019-2023	Resolution on the national programme for the prevention and suppression of crime 2019-2023
SK	2020-2024	Strategy on combating extremism for years 2020-2024
RS	Under development	Strategy against discrimination
MK	2016-2020	2016-2020 national equality and non-discrimination strategy
	Under development	Action plan for implementation of ECRI 2016 recommendations for North Macedonia

*Note: Information based on input by FRA's national liaison officers (December 2020).*

*Source: FRA, 2020*

#### 4.3.2. Beyond action plans: diverse national actions target hate and extremism

##### *Combating hate crime*

In addition to efforts towards designing national action plans, Member States also reported targeted measures for combating hate crime.

**Lithuania** established a working group to promote effective responses to hate crime and hate speech. Its plan for 2020-2022 covers strengthened cooperation with civil society organisations, dialogue with communities at risk of hate victimisation, and strengthening the abilities of law enforcement agencies to recognise hate crime and hate speech.<sup>145</sup> In addition, the General Prosecutor's Office updated its recommendations on the organisation of pre-trial investigation and published a list of prosecutors who specialise in hate crime and hate speech.<sup>146</sup>

Efforts to improve national hate crime recording were also made in **Belgium** and **Ireland**, where in 2020 FRA and the ODIHR facilitated national diagnostic workshops.<sup>147</sup>

Furthermore, **Austria's** police and judicial administration started technical implementation of systemic collection of bias motives in their databases.<sup>148</sup> In **Slovenia**, a working group of prosecutors introduced a working definition of 'hate crime', aimed at helping to flag hate crime, without affecting the legal classification of a criminal offence.<sup>149</sup>

##### *Extremism*

There were also developments in addressing extremism in a number of Member States.

In **Germany**, following the attack in Hanau, the Federal Cabinet established a commission for combating right-wing extremism and racism, appointed an independent expert body on hostility against Muslims, and adopted a package outlining measures to combat right-wing extremism and racism.<sup>150</sup>

In the aftermath of the November terrorist attack in Vienna, the **Austrian** government announced a new comprehensive package against all forms of terrorism.<sup>151</sup>

To counter emerging paramilitary groups, **Slovenia** amended its provisions on border controls and public order. Conduct by individuals or groups that gives the impression that they are performing police duties during state border controls is now subject to fines.<sup>152</sup> Courts also addressed extremism, and ruled to dissolve paramilitary groups. For more information, see [Section 4.2.4](#).



## FRA opinions

### FRA OPINION 4.1

EU Member States should fully and correctly transpose and apply the Framework Decision on Racism and Xenophobia to criminalise racist hate crime and hate speech. Accordingly, Member States shall take the necessary measures to ensure that a racist or xenophobic motive is considered an aggravating circumstance or, alternatively, that the courts may take such a motive into consideration in determining the penalties.

In addition to fully transposing and enforcing EU legislation on fighting hate crime, Member States should put measures in place that encourage victims and witnesses to come forward and report hate crime. They should also strengthen the ability of national law enforcement systems to correctly identify and record hate crime.

The Council Framework Decision on Racism and Xenophobia (2008/913/JHA) sets out a common criminal law approach to certain forms of racism and xenophobia that amount to hate speech and hate crime. The European Commission initiated infringement procedures against two Member States that had not fully and correctly incorporated the Framework Decision into national law.

International monitoring bodies similarly revealed legal gaps in the criminal codes of a number of Member States as regards hate speech or the criminalisation of racial or xenophobic motivation as aggravating circumstance. Meanwhile, the European Court of Human Rights (ECtHR) and national high courts set limits on relying on freedom of speech to justify hate speech and incitement to hatred.

Racism and extreme right-wing sentiments continued to pose serious challenges across the EU in 2020. Several people were murdered in hate and extremist crimes, following a trend seen in previous years. International and national human rights bodies raised concerns about the growing rate of hate speech online, often perpetrated by media or political figures, and targeting migrants and ethnic minorities.

Ethnic minorities, including migrants, increasingly experience discrimination across different areas of life, and discriminatory perceptions and stereotypes persist among the general public, survey findings revealed. These trends intensified with the outbreak of the COVID-19 pandemic, as FRA and others reported.

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

The Commission continued infringement procedures against Member States that discriminated against Roma children in education. Meanwhile, international human rights bodies raised concerns about the independence of the equality bodies established by the Racial Equality Directive.

Whereas some forms of ethnic profiling can be legal, discriminatory profiling contradicts the principles of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and other international standards, including those embodied in the European Convention of Human Rights (ECHR) and related jurisprudence of the ECtHR, as well as the EU Charter of Fundamental Rights. Article 11 (3) of the Police Directive (2016/680) on automated individual decision-making prohibits "[p]rofil[ing] that results in discrimination against natural persons on the basis of special categories of personal data". These include data revealing racial or ethnic origin and religious beliefs, and genetic and biometric data.

Discriminatory profiling based on ethnicity persists in the EU, as previous fundamental rights reports noted, and surveys and international monitoring bodies' reports attest. Some countries reported disproportionate enforcement of COVID-19-related restrictions with respect to ethnic minority groups. Discussions of preventing and countering police racism, spurred by cases across the EU and by the Black Lives Matter movement, triggered developments at both EU and national levels.



## FRA OPINION 4.2

EU Member States should significantly improve the effectiveness of their measures and institutional arrangements for applying fully and correctly the Racial Equality Directive. In particular, Member States should enhance the independence of equality bodies. They should ensure that such bodies are appropriately mandated and resourced to fulfil effectively the tasks assigned to them in the EU's non-discrimination legislation.



## FRA OPINION 4.3

EU Member States should adopt the necessary measures to prevent and eradicate discriminatory attitudes among police officers. This can be done by assessing existing safeguards against institutional forms of discrimination, including clear mission statements, robust systems of performance review with regard to preventing institutional discrimination, and inclusive and effective independent complaint mechanisms.

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



## FRA OPINION 4.4

EU Member States are encouraged to develop dedicated national action plans to fight racism, racial discrimination, antisemitism, xenophobia and related intolerance. Implementing such plans would provide EU Member States with an effective framework towards meeting their obligations under the Racial Equality Directive and the Framework Decision on Combating Racism and Xenophobia.

In line with the EU anti-racism action plan, EU Member States should consider developing national plans in a participatory manner, involving regional and local authorities, equality bodies and civil society. Moreover, the impact and effectiveness of actions taken should be regularly and transparently assessed, pursuant to clear goals and timelines, informed by evidence and by using performance indicators.

In 2020, the EU stepped up its efforts to act against racism. The European Commission adopted its first EU anti-racism action plan, for 2020–2025. It also addressed racism, bias-motivated harassment and violence, and protection and support for victims of hate crime in a number of other policy instruments, including the EU's strategy on victims' rights 2020–2025 and the new EU Roma strategic framework.

Almost 20 years after the UN World Conference against racism called on countries to develop and elaborate national action plans against racism, the European Commission encouraged all EU Member States to develop and adopt national action plans against racism and racial discrimination by the end of 2022. In 2020, a number of Member States took steps towards developing national action plans to fight racism, xenophobia and related intolerance.

International monitoring bodies, however, raised concerns about weaknesses in the design of such national action plans, noting that these could negatively affect their implementation, impact and monitoring. Some fail to address racism comprehensively; many lack precision in defining concrete steps; and there is a shortage of means to meet the objectives, of benchmarks and of indicators to measure progress.

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# ROMA EQUALITY AND INCLUSION

# 5

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## UN & CoE

23

- Council of Europe's (CoE's) Advisory Committee for the Framework Convention for the Protection of National Minorities (FCNM) publishes its fourth opinion on Poland.
- United Nations Committee on the Elimination of Racial Discrimination (CERD) publishes its concluding observations on Ireland.

27

January

FCNM Advisory Committee publishes its fourth opinion on Portugal.

20-21

1st meeting of the Committee of Experts on Roma and Traveller Issues (ADI-ROM)

27

February

European Commission against Racism and Intolerance (ECRI) publishes its annual report.

17

ECRI publishes its sixth report on Germany.

18

ECRI publishes its sixth report on Belgium.

26

March

UN Committee on Economic, Social and Cultural Rights (UN CERD) issues its concluding observations on Belgium.

28

April

UN Human Rights Committee publishes its concluding observations on Portugal.

14

- In *Hirtu and others v. France*, European Court of Human Rights (ECtHR) finds that French authorities, who in 2013 forcibly evicted Roma settlers from a municipal land, violated the applicants' rights under Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy) of the European Convention on Human Rights (ECHR).
- European Committee of Social Rights unanimously votes to issue interim measures against Belgium, concerning Romani Travellers whom a large-scale police operation targeted.

28

In *A.P. v. Slovakia*, ECtHR finds that Slovak authorities had violated the applicant's rights under Article 3 of the ECHR (protection against inhuman and degrading treatment). In February 2015, two municipal police officers allegedly beat the applicant, of Roma origin, while investigating him in relation to a violent crime.

May



## UN & CoE

June

2

ECRI publishes its sixth report on Austria; and its conclusions on the implementation of priority recommendations in respect of Denmark and Serbia.

September

1

In *R.R. and R.D. v. Slovakia*, the ECtHR finds a violation of Article 14 (prohibition of discrimination) in conjunction with Article 3 (prohibition of torture) of the ECHR, where two applicants claimed they were subjected to police violence in 2013 during a large-scale police operation in a Roma settlement.

October

8-9

ADI-ROM discusses impact of the COVID-19 pandemic on Roma and Travellers during its 2nd meeting.

12

FCNM Advisory Committee publishes its fifth opinion on Hungary, and its fourth opinion on Bulgaria.

15

FCNM Advisory Committee publishes its fifth opinion on Spain.

23

Committee of Ministers adopts two resolutions on the implementation of the FCNM by Denmark and by Poland.

November

5

In *X and Y v. North Macedonia*, where two applicants claimed they were subjected to police violence during an investigation in May 2014, the ECtHR finds a violation of Article 3 of the ECHR (prohibition of torture), as domestic authorities failed to investigate the allegations.

23

In *ERRC and MDAC v. Czech Republic 157/2017*, European Committee of Social Rights finds a violation of Article 17 of the 1961 Charter and concludes that Czechia failed to fulfil its obligations to ensure appropriate social and economic protection of Roma children and children with disabilities.

December

8

ECRI publishes its sixth reports on Slovakia and Czechia.

## EU

7

European Commission adopts the new EU Roma strategic framework for equality, inclusion and participation until 2030, including a proposal for a Council recommendation on Roma equality, inclusion and participation.

8

International Holocaust Remembrance Alliance (IHRA) adopts a legally non-binding definition of 'antigypsyism'.

12

During a high-level conference, EU Commission launches, together with the German Presidency, the new EU Roma strategic framework for equality, inclusion and participation until 2030, and reaffirms the joint commitment to fight antigypsyism.

17

February

European Commission launches a feedback period for the Roadmap on EU post-2020 Roma equality and inclusion policy.

17

September

European Parliament adopts a resolution on the implementation of national Roma integration strategies: combating negative attitudes towards people with Romani background in Europe (2020/2011(INI)).

October

The first EU Framework on National Roma Integration Strategies ended in 2020, and the new 10-year strategic framework started in the midst of the COVID-19 pandemic. The first framework brought little overall progress. Evaluations show some gains in education and poverty reduction, but none, or even deterioration, in crucial areas such as employment, healthcare and housing. The new EU Roma Strategic Framework for equality, inclusion and participation sets ambitious targets in seven key areas: non-discrimination, inclusion, participation, education, employment, health and housing. It sets out a stronger monitoring framework, with a range of quantifiable and measurable targets to track progress. Meanwhile, the pandemic affected Roma and Traveller communities disproportionately by amplifying inequalities and, in some countries, fuelling antigypsyism and anti-Roma prejudice.



## 5.1. TOWARDS A NEW EFFORT TO IMPROVE ROMA LIVES IN THE EU

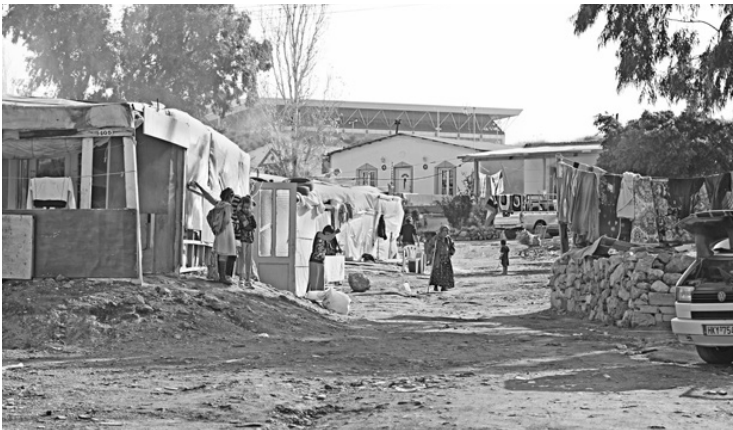
The EU framework on national Roma integration strategies, which the European Commission established, ended in 2020.<sup>1</sup> This framework set out to make a tangible difference to Roma people's lives. It asked Member States to develop national Roma integration strategies or integrated sets of policy measures. They had not reached the ambitious goals in education, employment, healthcare and housing by 2020.<sup>2</sup>

The Commission's evaluation<sup>3</sup> of the framework found that, over the past 10 years, progress in Roma integration has been limited, even if there are significant differences across policy areas and countries. While the framework contributed to the development of EU and national instruments and structures aiming to promote Roma inclusion, it did not achieve its goal of "putting an end to the exclusion of Roma".<sup>4</sup>

FRA data show that Member States made only little progress in the areas of education and poverty reduction, and there was no progress, or even deterioration, in employment, housing and health. For example, Roma participation in compulsory education did increase. Yet school and class segregation remains a pressing problem that undermines inclusion and access to quality education.<sup>5</sup> More needs to be done to ensure the meaningful inclusion of Roma and Travellers<sup>6</sup> until they can fully enjoy their fundamental rights, FRA's data underline.<sup>7</sup>

Both the Commission's evaluation of the framework and its annual assessment of the implementation of the National Roma Integration Strategies identified key challenges that need to be addressed to increase the effectiveness of a new EU framework. These include the need for: better mainstreaming of measures and policies, a clear focus on fighting antigypsyism, improving partnerships and Roma participation, consideration of diversity among Roma (with a focus on Roma women, youth and children), and better target setting, data collection and reporting to promote policy learning.

The European Commission launched its new EU Roma strategic framework in 2020. Seeking to achieve more and faster progress, it promotes equality, socio-economic inclusion, and meaningful participation of Roma (see [Section 5.2](#) for more on the new framework).<sup>8</sup> This new effort is particularly important given that the COVID-19 pandemic both underlined and exacerbated excluded and marginalised Roma communities' exposure to negative health and socioeconomic impacts.

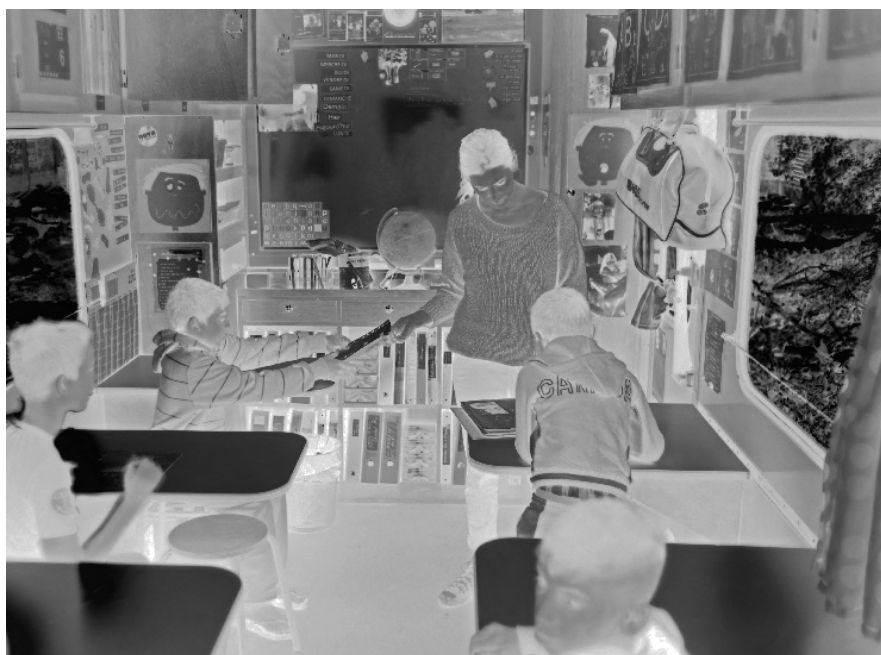


Reports by relevant monitoring bodies of the UN and Council of Europe (CoE), published in 2020, further highlighted the need for action. These reports covered **Austria**,<sup>9</sup> **Belgium**,<sup>10</sup> **Bulgaria**,<sup>11</sup> **Czechia**,<sup>12</sup> **Hungary**,<sup>13</sup> **Ireland**,<sup>14</sup> **Portugal**,<sup>15</sup> **Slovakia**<sup>16</sup> and **Spain**.<sup>17</sup> Taking due account of country-specific differences as regards the general situation of Roma, they reached similar conclusions regarding several aspects of the situation of Roma, Travellers and Sinti in these countries. Despite some legal and policy developments that aimed to improve the situation of Roma, many continue to live on the margins of society. Discrimination and social exclusion in education, health, employment and housing persist. Many Member States do not effectively address hate speech and hate crime. Recommendations point out the importance of developing concrete strategies supported by clear targets, and coordination and monitoring mechanisms.

Available evaluation and monitoring reports also found that the implementation of the national Roma integration strategies up to 2020 shows very limited, if any, progress.

For example, in the **Netherlands**, the Sinti and Roma Inclusion Monitor covers the areas of education, work, health, housing, safety, freedom of choice, and contact with the local government. It shows that the social inclusion of Roma and Sinti still lags behind in all policy areas.<sup>18</sup> **Poland** has achieved none of the indicators that its national Roma strategy set for 2016–2020, a government evaluation report highlighted.<sup>19</sup> Similarly, in **Italy**, the Civil Society Monitoring found no progress in Roma inclusion.<sup>20</sup>

In **Finland**, the implementation of policies at local level suffered for lack of funding, except for localities with strong Roma civil society organisations.<sup>21</sup> In **Cyprus**, the Commissioner of Administration and the Protection of Human Rights reported that, without basic education and Greek language skills, the chances of Roma people to access the labour market are negligible, and their economic dependency on the state continues.<sup>22</sup>



#### FRA ACTIVITY

### COVID-19 pandemic widens gap and jeopardises previous progress

The pandemic affected many Roma and Travellers disproportionately – particularly those living in socially excluded and marginalised settings. FRA highlighted this concern in September 2020, in its COVID-19 Bulletin 5 on Roma and Travellers in 15 EU Member States.

It noted that emergency measures did not take into account the poverty and marginalisation of Roma and Travellers, or their lack of access to education, housing and health services. Precarious housing was of particular concern, as it prevented the introduction of effective hygienic and social distancing measures.

Antigypsyism also increased in some countries during the pandemic. Distance education disproportionately affected Roma children who have no access to the internet and/or computers.

However, during the second wave of the pandemic, some Member States did introduce new targeted measures to improve the situation of Roma.

See FRA (2020), **Bulletin #5 – Coronavirus pandemic in the EU – Impact on Roma and Travellers**.



## PROMISING PRACTICE

### Empowering women as drivers of change

The Czech non-governmental organisation Slovo21 implemented the project 'Bidaripen/Audacity – local Roma leaders' between April and September 2020. It supported 36 Roma women at the local level in some of the most disadvantaged localities in **Czechia**.

Its objective is to empower women as drivers of change. They acquired the skills necessary to identify the needs and requirements for local development and how to improve the quality of life. They learned how to engage with representatives of municipalities and other stakeholders. The project thus created a network of local women leaders, who continue to support each other even after the project formally ended.

For more information, see **Slovo21's webpage on the project**.

In some countries, recent policy developments may influence the future prospects of Roma or Travellers inclusion.

For example, in **Belgium**, in November, the Flemish government announced its decision to stop supporting the National Minorities Forum, which implements targeted programmes with caravan residents. However, the Council of State suspended the implementation order.<sup>23</sup>

In **Ireland**, the Prime Minister appointed a senator of Traveller origin to the upper house of the Oireachtas (parliament).<sup>24</sup> This appointment is the first special measure the state has taken to ensure Traveller representation in the Irish political system.<sup>25</sup> In **North Macedonia**, a Roma woman was elected as a Member of Parliament in July 2020.<sup>26</sup> In **Slovakia**, the new government declared its strong commitment to Roma inclusion.<sup>27</sup>

In 2020, eleven Member States were awarded funding under the EU Rights, Equality and Citizenship Programme to establish or further develop their national Roma platforms. In **Greece** and **Portugal**, the programme plans include projects that promote political participation among Roma communities, with a special focus on engaging youth and women in national- or local-level policy development.<sup>28</sup>

Meanwhile, the Greek National Commission for Human Rights, in its submission to the UN Committee on the Rights of the Child, called upon the competent state authorities to create, in the next National Strategy for the Social Inclusion of Roma, monitoring and accountability mechanisms with Roma representation.<sup>29</sup>

#### 5.1.1. Antigypsyism and discrimination

Antigypsyism remains widespread. Recent data from FRA's Fundamental Rights Survey 2019 underscore this reality. In that survey, almost half of the general population across the EU-27 indicated that they would feel uncomfortable having Roma or 'Gypsies' as neighbours (Figure 5.1).

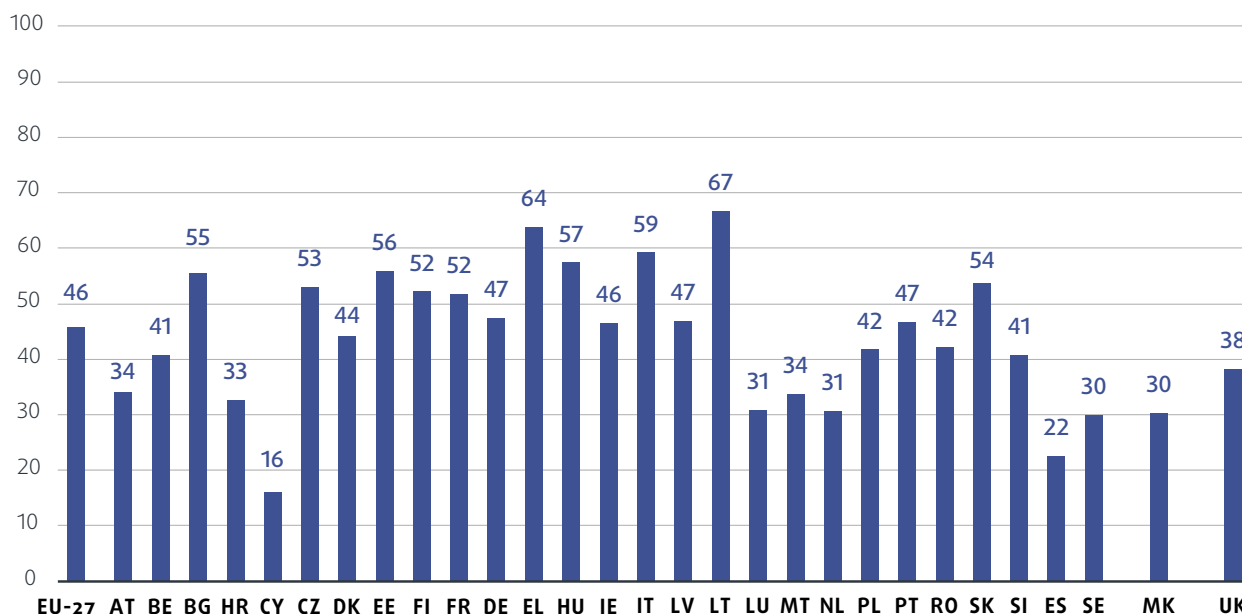
## Defining antigypsyism

In October 2020, the International Holocaust Remembrance Alliance (IHRA) adopted a legally non-binding definition of antigypsyism:

*"Antigypsyism/anti-Roma discrimination is a manifestation of individual expressions and acts as well as institutional policies and practices of marginalization, exclusion, physical violence, devaluation of Roma cultures and lifestyles, and hate speech directed at Roma as well as other individuals and groups perceived, stigmatized, or persecuted during the Nazi era, and still today, as 'Gypsies.' This leads to the treatment of Roma as an alleged alien group and associates them with a series of pejorative stereotypes and distorted images that represent a specific form of racism."*

See webpage on the **IHRA working definition of antigypsyism/anti-Roma discrimination**.

**FIGURE 5.1: SHARE OF PEOPLE WHO WOULD FEEL UNCOMFORTABLE HAVING ROMA AS THEIR NEIGHBOURS (%)<sup>a,b</sup>**



Source: FRA, Fundamental Rights Survey 2019 [Data collection in cooperation with CBS (NL), CTIE (LU) and Statistics Austria (AT)]

Recent national surveys on public attitudes towards Roma confirm the high levels of intolerance illustrated in FRA's survey. In **Bulgaria**, 80 % of respondents stated that they do not trust Roma, while only 51.2 % would accept 'living in the same country with Roma'.<sup>30</sup> In **Romania**, seven out of 10 do not trust Roma, and two out of three Romanians believe that Roma are dangerous, a survey found. At the same time, seven out of 10 respondents believe that the government should invest in high-quality education to support Roma inclusion.<sup>31</sup>

Discrimination against and harassment of Roma and Travellers are even higher in the five western EU Member States covered in FRA's Roma and Traveller Survey (Belgium, France, Ireland, the Netherlands and Sweden) than in the previously surveyed eastern and southern European countries, the new survey results (from 2019) show. In these western EU Member States, almost every second Roma and Traveller felt discriminated against in the last 12 months, while 44 % experienced hate-motivated harassment in the same period. Moreover, every tenth respondent said that law enforcement agencies ethnically profiled them in the 12 months before the survey.<sup>32</sup>

Trust in the police and the judicial system remain a problematic issue. Such trust is notably lower among Roma and Travellers than among the general population. It is even lower among Roma and Travellers who have been victims of discrimination, harassment and violence.<sup>33</sup>

In 2020, the European Court of Human Rights (ECtHR) issued two judgements about police violence and discrimination against Roma in **Slovakia**.

In *R.R. v. Slovakia*, the ECtHR concluded that Slovak authorities had failed to investigate the alleged discrimination in the planning of a police operation. The court found a violation of Article 14 (protection from discrimination) in conjunction with Article 3 (prohibition of torture).<sup>34</sup> For more information on this case, see [Chapter 4](#).



**Notes:**

- a Out of all respondents in the EU-27 + MK+UK who were asked to complete the section 'Tolerance and equality' of the survey (n = 28,240); weighted results.
- b The question asked in the survey was 'First, how would you feel about having someone from one of the following groups as your neighbour?' Respondents could answer by selecting a value from a scale, ranging from '1 – Totally uncomfortable' to '7 – Totally comfortable'. In addition, respondents had the option to answer 'Prefer not to say' or 'Don't know'. The results presented in the figure above correspond to answers 1 to 3 on this scale.

## PROMISING PRACTICE

### Raising awareness among media professionals

In **Germany**, an interdisciplinary and transcultural team under the lead of the Roma organisation Amaro Foro is developing a training programme for media professionals, e.g. journalists, editors and chief editors, photographers, and picture editors. The team is also cooperating with journalism schools to include antigypsyism in their curricula.

The training programme will result in a handbook in 2024. It will be available to media professionals free of charge. The project plans to later help Roma and Sinti become journalists themselves. Together with the participating photographers and Roma activists, the team is setting up a photo pool and making it available free of charge to counter stereotypical images.

*For more information, see Amaro Foro's webpage on the project.*

*A.P. v. Slovakia* concerned the unjustified use of police force when investigating a Roma teenager. The court found a violation of Article 3. However, it did not find sufficient evidence to support the applicant's claim that the police acted in a discriminatory way. Two judges disagreed with this decision, cautioning "against setting an excessively high threshold for the Court to address the merits of complaints under Article 14, especially those brought by applicants belonging to groups subject to discrimination".<sup>35</sup>

On 14 May 2020, the CoE's European Committee of Social Rights issued interim measures against **Belgium** in relation to a large-scale police operation that had taken place in May 2019.<sup>36</sup> The committee ordered national authorities to guarantee that those affected were given access to housing, water, sanitation, electricity, medical and social assistance, and legal aid.<sup>37</sup>

Meanwhile, in a positive development, on 15 December 2020, **Romania** adopted legislation specifically combating antigypsyism ('Anti-Tziganism'). It was the first country in the EU to do so. Article 2 of the bill defines antigypsyism as "both the perception of the Roma expressed as hatred against them, as well as a verbal or physical manifestations, motivated by hatred against Roma directed against Roma or their properties; against institutions/NGOs, leaders of Roma communities or their places of worship, traditions and Romani language".

The new law makes punishable by imprisonment acts that promote 'anti-Gypsy' ideas, conceptions or doctrines. It also provides for punishment for distributing or making public 'anti-Gypsy' materials, disseminating 'anti-Gypsy' symbols, and initiating or establishing an organisation with an 'anti-Gypsy' character.<sup>38</sup>

#### *Scapegoating Roma and Travellers during the pandemic*

Prejudice and discrimination against, and harassment of, Roma and Travellers increased in certain EU countries during the COVID-19 pandemic, FRA's evidence suggests.<sup>39</sup> This was particularly visible during the first wave, when anti-Roma rhetoric "presented Roma as a general threat to the general population" in certain countries, including Bulgaria, Romania and Slovakia.<sup>40</sup>

Furthermore, national and local government officials, as well as far-right politicians, made several discriminatory statements based on negative stereotypes of Roma. They often received widespread media attention and dissemination. Such incidents were reported, for example, in **Austria**,<sup>41</sup> **Bulgaria**,<sup>42</sup> **Greece**,<sup>43</sup> **Portugal**<sup>44</sup> and **Slovakia**.<sup>45</sup>

Media reports scapegoating Roma for spreading the virus appeared in several media outlets as well. In **Romania**, for example, the town of Țândărei was cordoned off in March as a precautionary measure.<sup>46</sup> A news agency reported the issue in racial terms, claiming that 800 Roma had returned from abroad, had brought the disease, and were refusing isolation.<sup>47</sup> The same narrative appeared on television, including prime-time television.<sup>48</sup>

In response to such statements and news broadcasts, the **Romanian** National Council for Combating Discrimination (NCCD) issued sanctions against a local newspaper,<sup>49</sup> a government official, the former president of Romania,<sup>50</sup> and a university professor.<sup>51</sup> In **Portugal**, the Commission for Equality and Against Racial Discrimination fined a right-wing party leader.<sup>52</sup>

In **Italy**,<sup>53</sup> **Romania**,<sup>54</sup> **Slovakia**<sup>55</sup> and **Spain**,<sup>56</sup> some government officials, civil society organisations and human rights institutions published statements in an effort to combat discrimination and antigypsyism.

Meanwhile, incidents of alleged police violence were reported in **Romania**,<sup>57</sup> **Slovakia**,<sup>58</sup> and **North Macedonia**.<sup>59</sup>

In **Romania**, for example, NGOs reported disproportionate use of police force when enforcing quarantine measures. A video recording shows police officers handcuffing and beating eight men in Bolitin-Vale. The Prosecutor's Office opened an investigation, which is still ongoing.<sup>60</sup>

#### 5.1.2. Little progress in closing the educational gap

In the five western EU countries surveyed in 2019, around half (55 %) of Roma and Traveller children aged from three years up to compulsory schooling age participate in early childhood education, FRA data show. Almost two thirds of young Roma and Travellers aged 18 to 24 dropped out of education or training before they completed upper secondary education. Moreover, Roma and Traveller children frequently experience hate-motivated bullying and harassment while in school.<sup>61</sup>

Segregation of Roma children has long been a concern. FRA data from 2016, for example, show that, in nine EU Member States with significant Roma populations, 46 % of Roma children attend schools where all or most of their schoolmates are Roma, which hinders their access to equal and quality education.<sup>62</sup>

Reports issued by the Council of Europe and others in 2020 show that the issue persists across several EU countries.

**"My 13-year-old son never dared to tell at school that he was a caravan resident, as a precaution against being treated badly. In fact, we cannot express our identity freely and have to hide, this is not normal."**

Netherlands, woman, 35, Travellers and Sinti, FRA survey on **Roma and Travellers in six countries**



Specifically, Council of Europe reports published in 2020 on **Bulgaria**,<sup>63</sup> **Czechia**,<sup>64</sup> **Hungary**<sup>65</sup> and **Slovakia**<sup>66</sup> point to de facto segregation of Roma children. The **Czech**<sup>67</sup> and **Slovak**<sup>68</sup> reports highlight persistent overrepresentation of Roma children in special education, which could amount to indirect discrimination. In **Slovakia**, the Ministry of Education acknowledged the problem, set up an Inclusive Education Department, and appointed a state secretary responsible for inclusive education.<sup>69</sup> In **Czechia**, Roma organisations have criticised proposed changes to current legislation on educating children with special education needs, as they might lead to further segregating Roma children.<sup>70</sup>

As part of its monitoring of the implementation of the Racial Equality Directive,<sup>71</sup> the European Commission continued infringement proceedings against **Czechia**,<sup>72</sup> **Hungary**,<sup>73</sup> and **Slovakia**<sup>74</sup> for discrimination against Roma children in education. For more information, see [Chapter 4](#).

In **Romania**, the High Court of Justice and Cassation upheld the decision of the National Council for Combating Discrimination (CNCD) in a segregation case. In 2016, the CNCD found that a school in Iasi disproportionately placed Roma children in a separate building, which was in poor condition and less well equipped. The court issued a fine and ordered the school to prepare a desegregation plan.<sup>75</sup>

Similarly, the Curia, the Supreme Court of **Hungary**, concluded in an *actio popularis* lawsuit that an elementary school in Gyöngyöspata had segregated Roma pupils, and thus denied them access to equal education. The court awarded damages of nearly HUF 100,000,000 (€ 280,000) to the 63 plaintiffs.<sup>76</sup> Politicians widely criticised the decision, including the appropriateness of financial compensation.<sup>77</sup> As a result, the parliament amended the law on education for the future to allow compensation only “in the form of education and training services” and to prevent financial compensation.<sup>78</sup>

#### *More measures needed for inclusive education*

In 2020, Member States introduced or continued various measures to improve Roma children’s participation in and access to education.

For example, in **Slovakia**, mandatory pre-school education at the age of five for all children will commence from 1 September 2021.<sup>79</sup> **Slovenian** kindergartens and primary schools continued to employ Roma mediators to facilitate and encourage the participation of Roma children in early childhood education.<sup>80</sup> At the same time, the Human Rights Ombuds institution noted that there are continuous problems in primary schools, preventing Roma children from accessing primary education. The Ombuds institution also criticised the lack of data on attendance and performance of Roma children in primary schools.<sup>81</sup>

**Bulgaria** introduced compulsory education at the age of four<sup>82</sup> for all children, to improve pre-school attendance among vulnerable children. Meanwhile, the country’s Supreme Administrative Court struck down a positive scholarship measure supporting Roma students;<sup>83</sup> it found that the measure discriminated against non-Roma pupils.

In **Poland**, the education of Roma children will be one of the priority areas for the 2020–2024 government period, the Parliamentary Commission of National and Ethnic Minorities announced.<sup>84</sup> In **Italy**, a ministerial decree introduced new targeted measures fostering the inclusive education of Roma children.<sup>85</sup> The **Netherlands** continued its support scheme programme for schools educating pupils from vulnerable groups, such as Roma and Sinti.<sup>86</sup>



**Portugal**<sup>87</sup> introduced scholarship programmes for Roma students attending secondary and higher education. In 2020, **Greece** started to implement the “*Inclusive schools for Roma*”<sup>88</sup> project and introduced a scholarship program for higher education students.<sup>89</sup>

In **France**, a new ministerial decree<sup>90</sup> specifies the list of supporting documents for school enrolment, so that municipalities do not impose unreasonable requirements (e.g. electricity bills), which those living in informal settlements cannot meet.

In **Austria**, an ECRI report noted that the programme financed through the European Social Fund – which invited organisations to develop projects that offer vocational and educational guidance, vocational training, and counselling – indicated positive results. These include an increasing percentage of Roma with vocational training and recognised qualifications.<sup>91</sup>

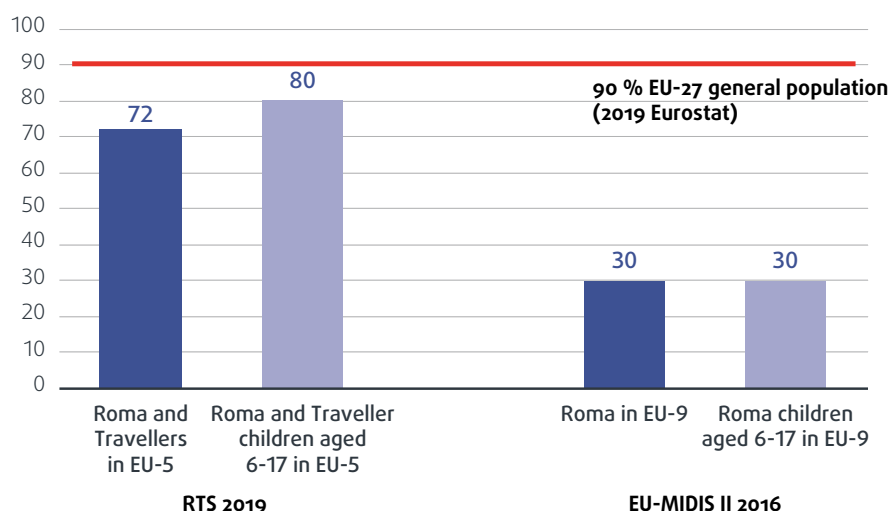
Lastly, several Member States, including **Croatia**,<sup>92</sup> **Ireland**<sup>93</sup> and **Spain**,<sup>94</sup> introduced measures to incorporate Roma and Traveller history, culture or language in their education systems.

#### Digital gap widens education gap

The COVID-19 pandemic affected the education of all children, but Roma and Traveller children living at risk of poverty and social exclusion appeared to be more vulnerable to the swift transition to distance education.<sup>95</sup>

Roma and Travellers in segregated and marginalised settings often lack the necessary IT equipment and/or access to the internet. Most Roma in eastern and southern Member States have no access to the internet or to a computer, according to FRA data from 2016. Only 30 % stated that they have access to the internet. In the five western Member States FRA surveyed in 2019, the situation is significantly better: 72 % of the Roma and Travellers said they have access to the internet, and that 80 % of children below the age of 18 do so.

**FIGURE 5.2: ACCESS TO INTERNET AT HOME FOR ROMA AND TRAVELLERS AND THEIR CHILDREN AGED 6-17, COMPARED WITH GENERAL POPULATION (%)<sup>a,b</sup>**



Sources: FRA, RTS 2019 and EU-MIDIS 2016; Eurostat 2019, general population ([ISOC\_CI\_IN\_H] last accessed on 22 January 2021)

#### Notes:

- a Out of all household members and children aged 6-17 (RTS: n = 12,873; EU-MIDIS II n = 33,274); weighted results.
- b EU-5: countries covered by the Roma and Travellers Survey 2019 – BE, FR, IE, NL and SE. EU-9: countries covered by EU-MIDIS II 2016 – BG, CZ, EL, ES, HR, HU, PT, SK and RO.



A few Member States carried out national data collections to measure the effects of distance learning. In **Bulgaria**, only 21 % of Romani-speaking students have access to a computer, compared with 70 % of Bulgarian-speaking students.<sup>96</sup> In **Romania**, 32 % of all students enrolled in pre-university education were estimated to have little or no access to online education.<sup>97</sup>

In **Slovakia**, 18.5 % of all primary and secondary students did not study online at all during the spring term in 2020. The highest share of pupils not participating in online education was in schools with significant proportions of Roma children.<sup>98</sup> In **Greece**, the National Commission for Human Rights expressed concern about participation of Roma children in compulsory education during distance learning measures due to the lack of internet access and IT equipment.<sup>99</sup>

To mitigate the negative effects of distance learning, a few national governments introduced supportive measures for vulnerable populations. In most cases, the measures included Roma and Travellers, but did not explicitly target them.

In **Bulgaria, Croatia, Hungary, Lithuania, Romania** and **Slovakia**, ministries allocated funds to purchase and distribute IT equipment and/or internet access among vulnerable communities.<sup>100</sup> In **Croatia**, the Ministry of Science and Education also allocated funds to primary schools to purchase laptops and printers for Roma assistants<sup>101</sup> and increased funds for Roma students.<sup>102</sup>

Meanwhile, children dependent on school canteens continued to receive food packages in **Portugal**.<sup>103</sup> **Lithuania** provided possibilities to receive free meals for Roma children entitled to social assistance.<sup>104</sup>

Throughout the pandemic, Roma education mediators and assistants played an important role in a number of countries by ensuring communication between families and schools, visiting the homes of vulnerable children, or even disseminating study materials for children without internet access.<sup>105</sup>

### 5.1.3. Poor housing conditions remain a concern

Some 61 % of Roma in the nine eastern and southern Member States surveyed by FRA in 2016, and 35 % of Roma and Travellers in the five western Member States surveyed in 2019, suffer from housing deprivation – compared with 18 % of the general population across the EU-27. This means that their homes are too dark, have damp walls or leaking roofs, or lack an indoor bathroom, shower or indoor toilet. Access to tap water inside the dwelling was not available for 30 % of Roma in eastern and southern Member States and for 9 % of Roma and Travellers in western Member States.<sup>106</sup>

Moreover, Roma and Travellers often live in informal dwellings and camps. In **Portugal**, substandard housing is a major obstacle to Roma inclusion.<sup>107</sup> In **Italy**, the current housing legislation perpetuates discrimination, so legislative changes are needed to effectively support inclusive Roma housing, a civil society monitoring report concluded.<sup>108</sup>

In **France**, the slum clearance policy continued. Local councils received increased financial support in 2020 to reduce the number of informal camps and settlements. Between 2018 and 2019, almost 3,000 people gained access to secure housing and 5,900 people received healthcare support, according to the Interministerial Delegation for Housing.<sup>109</sup>

In **Cyprus**, the Commissioner of Administration and the Protection of Human Rights issued a report on the living conditions of Roma. It states that residents of remote Roma settlements should be relocated to urban centres, where they can be more easily integrated into the wider Cypriot society.<sup>110</sup>

#### *Pandemic brings lockdowns, evictions, and limited support*

Insecure and deprived housing conditions were particularly problematic for Roma and Travellers during the pandemic, as overcrowding and lack of access to clean water sanitation increase the likelihood of infection.<sup>111</sup>

During the first wave of the pandemic, entire Roma neighbourhoods in **Bulgaria, Greece, Portugal, Romania** and **Slovakia** faced lockdown measures.<sup>112</sup> In **Bulgaria, Romania**, and **Slovakia**, national or local governments deemed such measures necessary because of the high number of migrant workers returning from countries with high infection rates, such as Italy.

It was not always clear that lockdowns and other restrictive measures introduced in Roma neighbourhoods were proportionate. For example, **Bulgaria** placed six Roma neighbourhoods under quarantine as a precautionary measure even before any cases were identified.<sup>113</sup>

In **Portugal**, an entire Roma neighbourhood came under surveillance after one child tested positive. Authorities tested the entire community and found no other cases of COVID-19.<sup>114</sup> After a media report, the confinement of the community was lifted.

In **Slovakia**, the government initially announced that it would introduce lockdown measures only if more than 10 % of inhabitants were infected.<sup>115</sup> In April, it placed five Roma settlements under lockdown without any information on the infection rates.<sup>116</sup>

Roma and Travellers in **Belgium, France, Ireland** and the **Netherlands** were subject to the general restrictions on free movement.<sup>117</sup> **France**,<sup>118</sup> **Hungary**,<sup>119</sup> **Ireland**<sup>120</sup> and **Italy**<sup>121</sup> suspended forced evictions and expulsion orders. Despite this, seven evictions in **Italy** were reported between February and June.<sup>122</sup> In **Hungary**<sup>123</sup> and **Ireland**,<sup>124</sup> emergency measures suspending forced evictions expired after the first wave; no similar measures were introduced during the second wave in autumn 2020.

In April, police operations took place in two unofficial Traveller sites in **Belgium**. The authorities seized their caravans and left the affected Traveller families homeless, without offering them any alternative housing solution, social aid, or COVID-19 emergency support.<sup>125</sup> On 27 April, the European Roma Rights Centre (ERRC) brought a complaint before the Committee of Social Rights, alleging that this operation amounted to ethnically targeted collective punishment.<sup>126</sup>

In **Bulgaria**<sup>127</sup> and **Lithuania**,<sup>128</sup> several illegal dwellings were demolished despite the pandemic. In **Lithuania**, the municipality reportedly provided social housing to 50 families out of 400 former inhabitants. In Bulgaria, 13 Roma families gained access to communal housing for 2 years, while the other 11 families accessed housing through their relatives and friends.<sup>129</sup>

A lack of legal residence can be a barrier to accessing basic services. This was one of the diverse challenges observed during the pandemic.

In **Bulgaria**, the majority of those without a permanent address are Roma, the NGO Helsinki Committee reported. They will most likely not be able to benefit from the general support scheme if it is linked to a registered address.<sup>130</sup> In **Italy**, the government allocated € 400 million for food vouchers to support vulnerable groups.<sup>131</sup> Initially the support scheme was available only to people “legally residing” on municipal territories. In April 2020, a court decision declared that the support scheme must be available to any person, regardless of their residence status.<sup>132</sup>

To compensate for the restricted access to services during the first lockdown, some governments introduced supportive measures. Access to clean water and sanitation was provided for Roma neighbourhoods in **Bulgaria, Portugal, Slovenia and Spain**.<sup>133</sup>

**Ireland** allocated funds to reduce the spread of COVID-19 and lessen the risk of infection to families residing in Traveller-specific accommodation. It included measures for Travellers living on both authorised and un-authorised sites. Additional sanitary facilities and accommodation were provided to allow for self-isolation or to alleviate overcrowding.<sup>134</sup>

In **Belgium**, the Walloon government responded to the challenges during the second wave and introduced new measures to ensure secure and sanitary Traveller accommodation.<sup>135</sup> **Greece** allocated more than € 2.5 million to 106 municipalities with Roma settlements and camps, for emergency measures such as disinfection and the provision of drinking water and food during lockdowns.<sup>136</sup> Similarly, in **Slovakia**, the government allocated € 5.6 million to remedy negative impacts of COVID-19 on Romani communities.<sup>137</sup>



#### 5.1.4. Health efforts focus on emergency responses, not long-term solutions

Adverse living conditions and limitations in accessing health services undermine the health of Roma and Traveller communities. This has serious long-term implications. For example, FRA's 2019 survey on five western EU Member States suggests that Roma and Travellers on average live 10 fewer years than the general population.<sup>138</sup>

Roma and Travellers also face barriers to accessing health services. On average, 74 % of Roma in the nine EU Member States surveyed by FRA in 2016 said they were covered by medical insurance, but only 45 % indicated this in Bulgaria and 54 % did so in Romania.<sup>139</sup> Meanwhile, 83 % in the five EU countries surveyed in 2019 said they had health insurance.<sup>140</sup>

In 2020, the European Roma Rights Centre published two research studies initiated in 2016. They show that Romani women suffer from rights violations in the field of maternity care in **Hungary**<sup>141</sup> and **Bulgaria**.<sup>142</sup>

In May 2020, the Supreme Court of **Hungary** found that a Miskolc hospital engaged in a discriminatory practice by requiring individuals accompanying expecting mothers to purchase certain clothing for hygienic purposes. Refusing it could have resulted in a denial of visits, leaving mothers to give birth without support from their chosen companions. The court found that the practice constituted both direct (financial situation) and indirect (Roma origin) discrimination.<sup>143</sup>

In **North Macedonia**, the Bitola Court of Appeals awarded damages to the husband and children of a 24-year-old Roma woman, who died during childbirth due to medical malpractice. A Roma NGO brought the case to court, using strategic litigation to address discrimination in the public health system.<sup>144</sup>

In September 2020, the **Czech** Deputy Ombudsperson called on decision makers to discuss a draft bill addressing financial compensation for women who had been sterilised without consent starting in the 1970s, and who have been fighting for compensation for decades.<sup>145</sup>

In November 2020, the European Committee of Social Rights issued its decision<sup>146</sup> on a complaint against **Czechia**. In 2015, 24 % of institutionalised children under the age of three were Roma, and 40 % were children with disabilities, the applicants claimed. The committee found a violation of Article 17 of the 1961 European Social Charter.<sup>147</sup> It concluded that Czechia failed to fulfil its obligations to ensure appropriate social protection of Roma children and children with disabilities.





**“We urge Member States to commit to a new EU Roma strategic framework for equality, inclusion and participation to bring social fairness and more equality in all senses of the word.”**

Ursula von der Leyen, President of the European Commission; Věra Jourová, Vice-President for Values and Transparency; and Helena Dalli, Commissioner for Equality, **statement**, 31 July 2020

The pandemic did prompt some positive health-related efforts. **France** introduced mobile testing campaigns and mobilised health mediators to reach out to Roma and Travellers living in illegal camps and squats.<sup>148</sup> In **Portugal**, local governments provided hygiene products and medicines to households in quarantine, including Roma households.<sup>149</sup> In **Slovakia**, the government sent military doctors to test Romani communities, assisted by health mediators, many of whom are Roma.<sup>150</sup>

In fact, all countries with existing networks mobilised health mediators. Beyond completing their usual tasks, health mediators supported local and national authorities in various ways – for example, in providing medical assistance, quarantining persons, monitoring compliance with social distancing and hygiene requirements, and even providing psychological support to families.<sup>151</sup> **Greece**<sup>152</sup> and **Bulgaria**<sup>153</sup> trained and employed new health mediators to provide additional support during the emergency period.

## 5.2. A NEW EU ROMA STRATEGIC FRAMEWORK FOR EQUALITY, INCLUSION AND PARTICIPATION UNTIL 2030

The European Commission published its Communication on the new EU Roma strategic framework for equality, inclusion and participation on 7 October 2020.<sup>154</sup> The framework links to other EU policy documents, such as the new child guarantee (see **Chapter 8** on rights of the child). The framework sets the specific target of “cut[ting] the poverty gap between Roma children and other children by at least half”, which is in line with principle 11 of the European Pillar of Social Rights. It also includes a proposal for a Council Recommendation.<sup>155</sup>

The new framework is part of the EU’s overall strategy towards a ‘Union of Equality’ and a first step in implementing the EU anti-racism action plan 2020–2025.<sup>156</sup> It will contribute to the implementation of the European Pillar of Social Rights and to the development of equal and inclusive democratic societies in line with the global Agenda 2030.

The new framework incorporates lessons learned from the previous decade. It acknowledges that the fight against antigypsyism and fostering trust are key to effective policies that, in line with Article 21 of the EU Charter of Fundamental Rights, “fight and prevent antigypsyism and discrimination”.

National strategic frameworks should ensure consultation and cooperation with Roma civil society and promote the active participation of Roma at all stages of policymaking and implementation. National Roma Contact Points (NRCPs) should have a clear, strong mandate and sufficient resources.<sup>157</sup> To improve implementation, national strategies should set out baselines and targets to reach the EU objectives based on concrete measures, budget and mechanisms for reporting, monitoring and evaluating progress.

The European Commission also adopted a proposal for a Council recommendation with reference to the COVID-19 pandemic.<sup>158</sup> It emphasises the diversity within and between Roma communities and strengthens the use of EU and national funds. It highlights that monitoring and reporting are essential.

For the first time, quantified targets are linked to the objectives. The recommendation asks FRA to carry out regular surveys in 2020, 2024 and 2028 to provide the data for measuring progress, and to support Member States in developing methods to collect such data themselves.

### 5.2.1. Monitoring and data collection

Data collection, monitoring and reporting systems should be strengthened, the evaluation of the previous EU framework shows. In the EU Member States, a lack of reliable data that are disaggregated by ethnicity and a lack of transparency and accountability mechanisms remain key challenges.<sup>159</sup> While respecting data protection and human rights principles, as well as the census recommendations on collecting ethnic data issued by the United Nations Economic Commission for Europe and EUROSTAT, FRA continues to fill the data gap for several Member States.<sup>160</sup>

In 2020, FRA started to work on its fifth survey on Roma populations in eight EU Member States and two candidate countries (Czechia, Greece, Spain, Croatia, Hungary, Italy, Portugal, Romania, North Macedonia and Serbia). In addition, the national statistical institutes in **Bulgaria**<sup>161</sup> and **Slovakia**<sup>162</sup> are beginning to collect data on Roma populations using methods comparable to those that FRA uses. These data collections will be used to populate core indicators for measuring progress in the implementation of the new EU Roma strategic framework.

#### *Countries increase data collection efforts*

In 2020, the Conference of European Statisticians endorsed a new methodological guide for data disaggregation in poverty measurement. It describes how to include hard-to-reach groups in poverty measurement, referring to FRA's methodology.<sup>163</sup> It includes recommendations and good practices to ensure respect of the human rights-based principles in data collection that the UN promotes: participation, self-identification, data disaggregation, transparency, privacy and accountability in the design, collection and use of data. They particularly apply to minority groups that are considered hard-to-reach or elusive populations.<sup>164</sup>

**Slovakia** provides an example of how to integrate residents of marginalised Roma communities in the regular EU-SILC (Statistics on Income and Living Conditions). In both 2018 and 2020,<sup>165</sup> it incorporated the questionnaire module that FRA developed about experiences of discrimination and harassment. In 2020, **Czechia** started to establish a methodology for collecting ethnically segregated data.<sup>166</sup> In **Croatia**, the Office for Human Rights continued to process the data collected in the 2018 baseline study for the effective implementation of the national Roma inclusion strategy.<sup>167</sup>



#### FRA ACTIVITY

### Roma and Travellers survey 2019

In September 2020, FRA launched its first report on the results of the Roma and Travellers survey 2019. It provided, for the first time, comparable data in five western EU Member States and the United Kingdom on the situation of Roma and Travellers with a nomadic lifestyle.

The survey collected information from 4,659 respondents aged 16 years or older who self-identified as Roma or Travellers in Belgium, France, Ireland, the Netherlands, Sweden and the United Kingdom. It paid particular attention to the principle of participation by including communities in the preparation, sampling and implementation of the survey.

The survey findings were discussed at high-level conferences involving Roma and Traveller communities in Belgium (19 November 2020) and Ireland (organised by Travellers on 7 December 2020).

## FRA ACTIVITY

### Providing data on vulnerable groups

The Bulgarian National Statistical Institute, in partnership with FRA, started to develop and test innovative methods to reach out to specific vulnerable groups at regional and local levels. With support from the EEA/Norwegian Financial Mechanism, the project responds to the demand for data disaggregated by various vulnerability criteria (ethnicity, gender, disability, age, region, etc).

Despite the pandemic-related challenges, the representative survey was completed in 2020, with an effective sample of 30,030 respondents from 12,086 households.

The objectives that the new EU Roma strategic framework sets – monitoring, indicators, and related targets and reporting – are embedded in core EU policy cycles, such as the European Semester. However, the persisting lack of disaggregated data on people with Roma background poses a challenge to the monitoring progress. It hampers efforts to identify the effects of investment in Roma inclusion in mainstream social inclusion and other measures.

The new EU Roma strategic framework suggests an indicator framework. FRA developed this to allow an assessment of three essential and interrelated indicators in reference to specific human rights standards that the UN Office of the High Commissioner for Human Rights recommends:<sup>168</sup>

- the legal and policy frameworks in place (structural indicators);
- the concrete interventions to implement the frameworks (process indicators); and
- the achievements, as seen in the experience of the rights holders (outcome indicators).

## FRA ACTIVITY

### Developing indicators to measure progress

In 2020, the European Commission and FRA relaunched the EU Roma Working Party to develop, together with EU Member States, a portfolio of indicators to measure progress on Roma equality and inclusion.

The proposed set of headline indicators uses FRA's survey data as a baseline. FRA prepared a background paper for a monitoring framework, to provide guidance for the Member States on how to collect the portfolio of indicators.

The working party also facilitates the exchange of experiences

between Member States in regard to data collection, monitoring and reporting.

In 2021, the EU Roma Working Party will continue to support Member States in their efforts to develop their own data collection and national indicators, and to exchange good practices. The first round of country reporting under the new framework will take place in 2023, reporting on 2021 and 2022.

*See FRA's webpage on 'Roma Working Party – Consultations on the Roma inclusion monitoring framework'.*

## FRA opinions

### FRA OPINION 5.1

Drawing on lessons learned during the COVID-19 pandemic, EU Member States should ensure that the fight against discrimination and antigypsyism is mainstreamed in all policy areas of their national Roma strategies. The strategies should include targeted measures to tackle antigypsyism and discrimination affecting Roma and Travellers.

Such measures should be designed and implemented together with Roma communities and their representatives to promote positive narratives about Roma and Travellers, raising awareness of their history of discrimination, segregation and persecution.

Article 21 of the EU Charter of Fundamental Rights prohibits discrimination based on ethnic or social origin or membership of a national minority. For the past 20 years, the Racial Equality Directive (2000/43/EC) has promoted equal treatment and prohibited direct and indirect discrimination, including harassment, based on racial or ethnic origin, in areas such as employment, education, social protection and advantages, healthcare, or accessing goods and services, including housing.

However, antigypsyism, a significant barrier for progress in Roma inclusion, is deeply rooted. Almost half of EU citizens (46 %) would be uncomfortable having Roma or Travellers as neighbours, FRA's Fundamental Rights Survey 2019, which addressed the general population, shows. The COVID-19 pandemic, which affected Roma and Traveller communities disproportionately, amplified inequalities and, in some countries, fuelled further antigypsyism and anti-Roma prejudice.

Article 14 of the EU Charter of Fundamental Rights enshrines the right to education. The European Pillar of Social Rights emphasises that everyone has the right to high-quality and inclusive education (Chapter 1, principle 1). Across the EU, including in western Member States, the majority of young Roma and Travellers drop out of education or training early, the most recent data show. Despite a little progress in the past decade, the educational gap between Roma and the general population remains significant.

Moreover, Roma and Travellers living in segregated and marginalised settings often lack the necessary IT equipment and/or internet access, FRA's and other research findings show. Persistent inequality and the lack of successful policies to provide basic infrastructure and services widen the gap between Roma and Travellers and the general population. They also affect the opportunities of Roma children to access education equally. The COVID-19 pandemic made these realities very visible. FRA's research also shows that some mainstream measures have failed to reach Roma and Travellers.

### FRA OPINION 5.3

EU Member States should prioritise the implementation of the new EU Roma strategic framework. Their national plans should define ambitious objectives and targets, which take into account lessons learned from the previous EU framework and evaluations of national strategies as well as the COVID-19 pandemic. Effective monitoring systems should assess progress, measuring the impact of both mainstream and targeted measures for the social inclusion of Roma and Travellers, as well as the effective use of national and EU funds.

National Roma strategies should include specific reference to the meaningful participation of Roma and Travellers in designing, assessing and monitoring implementation measures and actions.

discrimination and on promoting the full participation and inclusion of Roma, through a combination of mainstream and targeted policies.

### FRA OPINION 5.2

EU Member States should implement coordinated measures to ensure that socially excluded and marginalised Roma and Traveller children have access to distance learning tools. Any measures in education should include targeted actions tailored to specific needs of the diverse Roma and Traveller groups, drawing in particular from positive experience with Roma teaching assistants and mediators. Member States should consider encouraging the recruitment, training and deployment of more Roma mediators and teachers with a Roma background. They should also ensure that targeted measures are sustainable and well-funded, making use of EU funds as well as other funding opportunities for measures targeting Roma as well as for structural reforms for inclusive education.

The new EU Roma strategic framework for equality, inclusion and participation is part of the EU's overall political guidelines for building a Union of equality. It will contribute to the EU anti-racism action plan 2020–2025 and to implementing the principles of the European Pillar of Social Rights and the UN Sustainable Development Goals.

The previous EU framework for national Roma integration strategies, which aimed to close the gap between Roma and the general population, did not reach its ambitious goals for education, employment, healthcare and housing by 2020. Member States made only little progress in certain areas of education and poverty reduction, and no progress – or conditions even deteriorated – in employment, housing and health, FRA data show.

Based on an evaluation of the previous framework, the European Commission recognised the urgent need to renew and step up the commitment to Roma equality, inclusion and participation at both European and national levels. The new strategic framework sets seven objectives and related targets to achieve by 2030, with a focus on fighting antigypsyism and



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# ASYLUM, VISAS, MIGRATION, BORDERS AND INTEGRATION

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## UN & CoE



## UN & CoE

July

2

- *N.H. and Others v. France* (No. 28820/13 and two others) concerns asylum applicants who were forced to live on the streets for months in precarious living conditions. ECtHR concludes that the French authorities were responsible for the inhuman and degrading living conditions, in violation of Article 3 of the ECHR.
- CoE Special Representative of the Secretary General on Migration and Refugees publishes a handbook on family reunification for refugee and migrant children.

23

*M.K. and Others v. Poland* (No. 40503/17 and two others) concerns Russian nationals fleeing from Chechnya. ECtHR finds that refusing them entry into Poland pending the examination of their asylum claims violated Article 3 of the ECHR, and rejecting them at the border without an individual assessment of their claims amounted to collective expulsion.

August

27

European Committee on Crime Problems (CDPC) approves CoE action plan on fostering international co-operation and investigative strategies in fighting the smuggling of migrants.

September

18

GRETA issues compendium of good practices in addressing trafficking in human beings for the purpose of labour exploitation.

October

8

UN Special Rapporteur on the human rights of migrants, and other UN experts, condemn the criminalisation in Italy of those saving lives in the Mediterranean.

27

*M.A. v. Belgium* (No. 19656/18) concerns an individual's removal to Sudan despite a court decision suspending the measure. ECtHR finds that the Belgian authorities violated the prohibition of ill-treatment (Article 3 of the ECHR), on the grounds of procedural defects prior to the removal, and violated the right to an effective remedy (Article 13 of the ECHR) by not respecting the suspensive effect of the initial court order.

November

19

CPT publishes report on Greece. It finds inhuman and degrading conditions in immigration detention, pushbacks and ill-treatment of detained migrants by the police.

24

UN Secretary General publishes the first report on the impact of the Global Compact for Migration in the two years since its adoption. It notes efforts required to improve migration governance.

December

10

*Shiksaytov v. Slovakia* (No. 56751/16) concerns the detention of a refugee of Russian origin recognised by Sweden, with a view to his extradition to Russia. ECtHR finds violation of Article 5 (1) (right to liberty and security) and Article 5 (5) (enforceable right to compensation) of the ECHR.

18

UN Migration Network calls on governments to include migrants in their COVID-19 response and recovery.

1

February

With the withdrawal of the United Kingdom (UK) from the EU, citizens of the UK become third-country nationals for the EU.

16

European Commission issues COVID-19 guidelines for border management to protect health and ensure the availability of goods and essential services.

19

In *L.H. v. Bevándorlási és Menekültügyi Hivatal* (C-564/18), Court of Justice of the European Union (CJEU) states that the list of inadmissibility grounds in the Asylum Procedures Directive is exhaustive, such grounds are cumulative, and the concept of 'safe third country' cannot be applied if one of those conditions has not been satisfied.

30

March

- EU adopts new regulation on the European image-archiving system or False and Authentic Documents Online (FADO) (Regulation (EU) 2020/493).
- European Commission publishes guidance on the implementation of COVID-19-related temporary restrictions on non-essential travel to the EU, on the facilitation of transit for the repatriation of EU citizens, and on the effects on visa policy.

2

- In *C-715/17, C-718/17 and C-719/17*, CJEU finds that Poland, Hungary and Czechia breached EU law by refusing to comply with the temporary mechanism for the relocation of applicants for international protection.
- In *Ruska Federacija v. I.N.* [GC] (C-897/19 PPU), CJEU rules that nationals of the European Economic Area (EEA) can benefit from the EEA Agreement, as an integral part of EU law, to gain protection from extradition to a third country under the principle of *non-refoulement*.

16

April

European Commission presents guidance on implementing EU rules on asylum, return and resettlement procedures during the COVID-19 pandemic.

14

May

In *FMS and Others* [GC] (C-924/19 PPU and C-925/19 PPU), CJEU clarifies that placing asylum applicants or returnees in a transit zone at the Hungarian-Serbian border counts as detention. It reconfirms that judicial review of detention measures and of return decisions must always be available, in accordance with Article 47 of the Charter.

11

In *WT* (C-448/19), CJEU interprets the Long-term Residents Directive (2003/109/EC) as precluding national measures that provide for automatic expulsion of long-term residents convicted of criminal offences carrying sentences of more than one year without examining whether or not they pose a sufficiently serious threat to public order and security.

25

June

In *Ministerio Fiscal v. VL* (C-36/20 PPU), CJEU underlines that the lack of places in a reception facility cannot justify holding an applicant for international protection in detention.



# EU

July

1

EU-Belarus visa facilitation and readmission agreements enter into force.

16

*Milkiyas Addis v. Bundesrepublik Deutschland* (C-517/17) concerns a beneficiary of international protection who submitted a new application in another Member State. CJEU clarifies that the reviewing court is entitled to correct the asylum authority's omission of not conducting the personal interview if the court can guarantee all conditions of a personal interview which the Asylum Procedures Directive prescribes.

September

19

In *JP* (C-651/19), the CJEU rules that in the case of a subsequent asylum application, the Asylum Procedures Directive, read in light of Article 47 of the Charter (right to an effective remedy), does not preclude national legislation which provides that appeals against an inadmissibility decision are subject to a deadline of 10 days.

23

European Commission presents a new Pact on Migration and Asylum, a package of hard law proposals and soft law instruments. It sets out a new approach to migration and asylum, with a stronger focus on border procedures.

30

In *B. v. Centre public d'action sociale de Liège* (C-233/19), CJEU clarifies that the enforcement of a return decision issued to a seriously ill person must be automatically suspended when there is reasonable ground to believe that the individual's health would irreversibly deteriorate if returned.

October

21

European Commission publishes the Third report on the progress made in the fight against trafficking in human beings, which also addresses trafficking in the context of international migration and child trafficking.

28

European Commission publishes COVID-19 guidance on persons exempted from the temporary restriction on non-essential travel to the EU, implementing Council Recommendation 2020/912 of 30 June 2020.

November

24

- In *R.N.N.S. and K.A.* [GC] (C-225/19 and C-226/19), the CJEU holds that, if a Member State refuses to issue a Schengen visa because of an objection raised by another Member State, it must indicate the identity of the objecting Member State and the specific ground for refusal, accompanied, where appropriate, by the reasons for that objection. This is to respect the right to an effective remedy.
- European Commission publishes new action plan on integration and inclusion for 2021-2027. European Commission publishes new action plan on integration and inclusion for 2021-2027.

30

European Data Protection Supervisor adopts opinion on the Pact on Migration and Asylum, calling for an in-depth fundamental rights and data protection impact assessment.

December

17

- In *Commission v. Hungary* [GC] (C-808/18), CJEU finds that the Hungarian law and practice of escorting apprehended migrants in an irregular situation back to the outer side of the border fence with Serbia, without issuing a return decision and respecting other safeguards, is in breach of the Return Directive (Directive 2008/115/EC). Restricting access to asylum and unlawfully detaining applicants in transit zones constitute infringements of EU asylum acquis.
- European Parliament adopts resolution on the implementation of the Return Directive (2008/115/EC), based on an implementation assessment by the European Parliamentary Research Service.

---

Respect for fundamental rights at borders remained one of the top human rights challenges in the EU. Deaths at sea, delays in assigning a safe port to rescued migrants and threats against humanitarian rescue boats continued. So did allegations of pushbacks and violence. The European Commission presented a new Pact on Migration and Asylum, a package of hard law proposals and soft law documents that puts a stronger focus on border procedures and proposes new forms of solidarity. Meanwhile, asylum procedures were adapted to cope with COVID-19-related restrictions. The EU made progress in establishing its large-scale information technology (IT) systems and started exploring the use of artificial intelligence for border control and migration management. Following Brexit, citizens of the United Kingdom became subject to new rules.

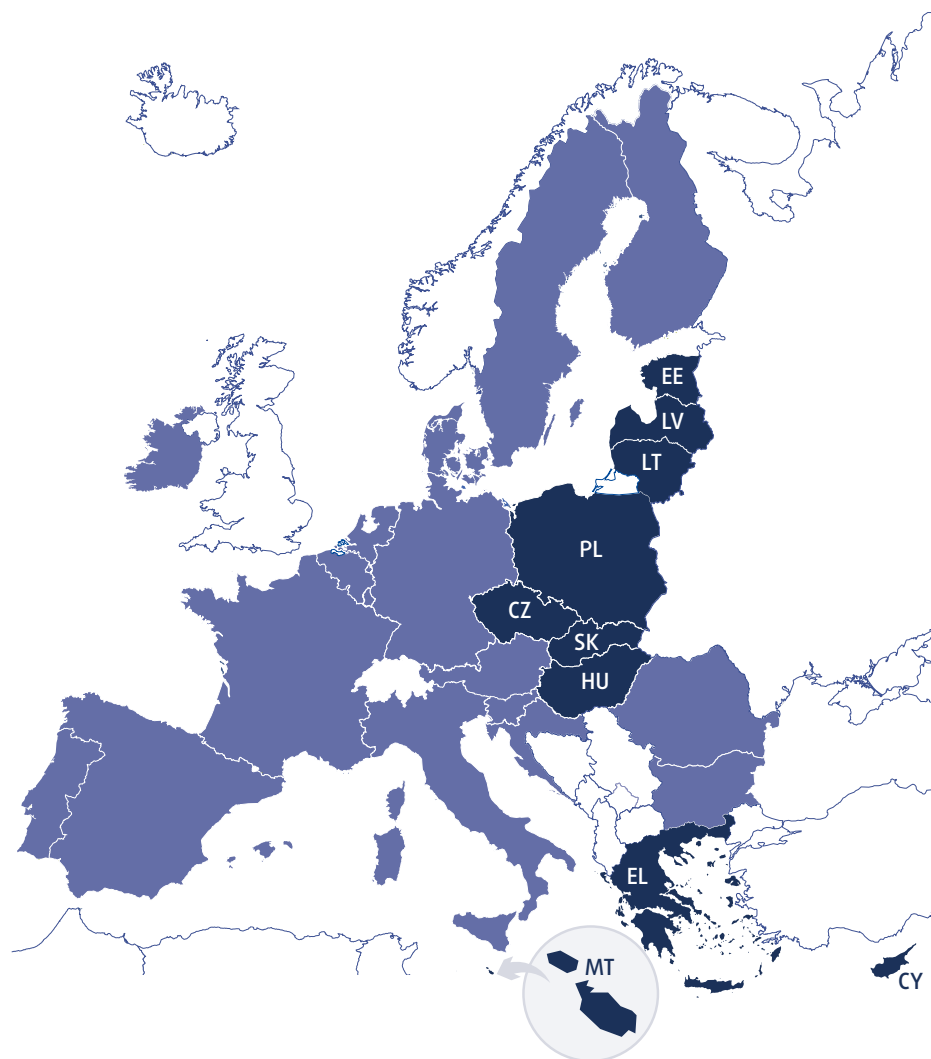
## 6.1. FUNDAMENTAL RIGHTS AT BORDERS

From 2015 to 2019, Europeans saw immigration as the main challenge facing the EU. This changed with the outbreak of the pandemic in 2020.

Still, when asked what they see as the two most important issues facing the EU in 2020, some 23 % of EU citizens listed immigration. In 10 EU Member States, immigration remains the top concern. As Figure 6.1 illustrates, these are Member States in southern Europe particularly affected by irregular arrivals (Cyprus, Greece, and Malta), and Member States in central Europe with low irregular migration figures.<sup>1</sup>

Globally, the number of forcibly displaced people remains high. The United Nations High Commissioner for Refugees (UNHCR) reports an unprecedented 79.5 million displaced people at the end of 2019, which roughly corresponds to 1 % of humanity.<sup>2</sup> Developing countries host some 85 % of those displaced across borders. Only one EU Member State, Germany, features among the top 10 refugee-hosting countries.<sup>3</sup>

**FIGURE 6.1: TEN EU MEMBER STATES IN WHICH EUROPEANS SEE IMMIGRATION AS THE MAIN EU CHALLENGE, 2020**



Source: FRA, 2021 [based on European Commission, **Standard Eurobarometer 93**, October 2020]

Asylum applications in the 27 EU Member States, Norway, and Switzerland dropped by 31 %, from some 671,200 in 2019 to 461,300 in 2020.<sup>4</sup> Most applications were lodged in Germany, France, Spain, and Greece. In proportion to the resident population, most new asylum applications were in Cyprus, Malta and Greece, and fewest in Hungary and Estonia.<sup>5</sup>

The number of migrants apprehended after crossing the EU's external land or sea border without authorisation continued to drop in 2020. Some 127,579 people – including 10,537 women and 15,509 children – crossed the border irregularly in 2020, according to the European Border and Coast Guard Agency (Frontex). This is 11 % fewer than in 2019, although on some routes, particularly towards the Canaries, sea crossings increased.<sup>6</sup>

On 23 September 2020, the European Commission published the new Pact on Migration and Asylum. It sets out the Commission's new approach to migration. It puts a stronger focus on border procedures, suggests new solidarity measures and seeks to ensure more coherence, integrating the internal and external dimensions of migration and asylum policies.<sup>7</sup>



#### 6.1.1. Deaths and disappearances

Some 2,276 people died or went missing in 2020 when trying to cross the sea to reach an EU Member State, the International Organization for Migration (IOM) estimates. Increasing numbers of people are dying or going missing in the Atlantic while trying to reach the Canaries.<sup>8</sup>

The deadliest incident occurred off the coast of Senegal in October 2020: some 140 people drowned.<sup>9</sup> For an increasing number of incidents, there is little evidence on the numbers and whereabouts of victims, partly due to reduced search-and-rescue capacity, the IOM reports.<sup>10</sup> On average, at sea, there were more than six victims per day. Figure 6.2 illustrates the trend in deaths at sea over the past five years.

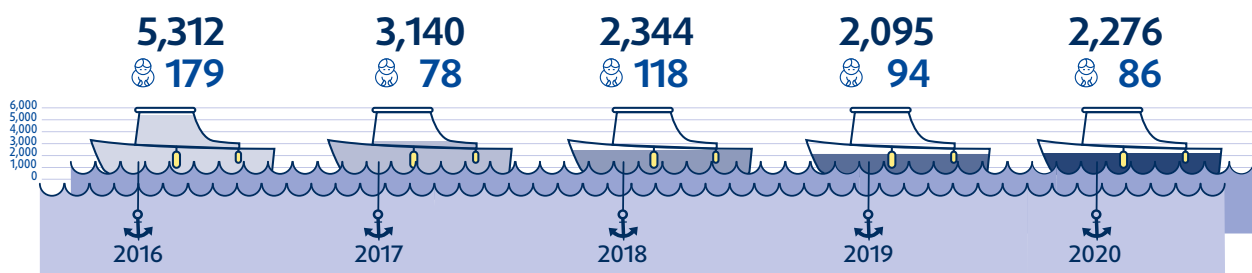
Some 83 migrants and refugees also died at Europe's land borders, most of them along the western Balkan route and at the Greek-Turkish border. In addition, 27 deaths occurred at internal EU borders. The most common causes of death are drowning in rivers, traffic accidents, violence, hypothermia and exhaustion.<sup>11</sup> Border guards regularly have to carry out search-and-rescue operations.<sup>12</sup>

#### Notes:

Numbers in black correspond to the total deaths. ☹️ = Deaths of children.



**FIGURE 6.2: ESTIMATED FATALITIES AT SEA, 2016–2020, MEDITERRANEAN AND ATLANTIC ROUTE TO CANARIES**



Source: FRA, 2021 [based on information from IOM, 2020]

### 6.1.2. *Refolement* and collective expulsions: new legal standards

*Refolement* means returning an individual to a risk of persecution or serious harm. Article 78 (1) of the Treaty on the Functioning of the European Union (TFEU) and Articles 18 and 19 of the EU Charter of Fundamental Rights prohibit *refolement* and collective expulsions.

Pursuant to Article 52 (3) of the Charter, these provisions must be interpreted in light of the meaning of Article 2 (right to life) and Article 3 (prohibition of torture) of the European Convention on Human Rights (ECHR) and of Article 4 of Protocol 4 (prohibition of collective expulsion) of the ECHR. In 2020, the European Court of Human Rights (ECtHR) further clarified the content of these provisions. Following new case law in 2020, Table 6.1 shows where selected legal standards on the prohibition of *refolement* and of collective expulsion converge and where they do not.

Notes:

- a Cases in bold and italics are from 2020. Entries shaded in yellow highlight significant differences.
- b Full case names (2020): ECtHR, *Asady and Others v. Slovakia*, No. 24917/15, 24 March 2020; *M.A. v. Belgium*, No. 19656/18, 27 October 2020; *M.K. and Others v. Poland*, Nos. 40503/17, 42902/17 and 43643/17, 23 July 2020; *Moustahi v. France*, No. 9347/14, 25 June 2020; ECtHR, *N.D. and N.T. v. Spain* [GC], Nos. 8675/15 and 8697/15, 13 February 2020.
- c Full case names (before 2020): *F.G. v. Sweden* [GC], No. 43611/11, 23 March 2016; *Hirsi Jamaa and Others v. Italy* [GC], No. 27765/09, 23 February 2012; *Ilias and Ahmed v. Hungary* [GC], No. 47287/15, 21 November 2019; ECtHR, *M.S.S. v. Belgium and Greece* [GC], No. 30696/09, 21 January 2011; *Soering v. the United Kingdom*, No. 14038/88, 7 July 1989.
- d For further details, see ECtHR, *Case law guides on immigration and on Article 4 of Protocol No. 4 to the ECHR*, which are regularly updated; and FRA and Council of Europe (2020), *Handbook on European law relating to asylum, borders and immigration – Edition 2020*, Luxembourg, Publications Office, December 2020, Section 4.2.
- e Under EU law, Art. 4 of the Schengen Borders Code requires that any decision be taken on an individual basis, which is also a general principle of EU law.

**TABLE 6.1: SELECTED LEGAL STANDARDS ON PROHIBITIONS OF *REFOLEMENT* AND OF COLLECTIVE EXPULSION, UNDER ECTHR CASE LAW AS OF 2020<sup>a,b,c,d</sup>**

Non- <i>refolement</i>		Prohibition of collective expulsion	
Standards	ECtHR judgments (paragraphs)	Standards	ECtHR judgments (paragraphs)
Applies to persons present in the territory, to non-admission at borders, and on high seas	<i>M.K.</i> (129-132, 179) <i>Soering</i> (90, 91) <i>Hirsi</i> (114, 122, 137)	Applies to persons present in the territory, to non-admission at borders, and on high seas	<i>Asady</i> (60) <i>N.D. and N.T.</i> (185, 187) <i>M.K.</i> (200, 204) <i>Hirsi</i>
No need to formally request asylum; authorities must examine bars to removal on their own motion if they are aware of facts that could put a person at risk	<i>M.A.</i> (81) <i>F.G.</i> (127) <i>Hirsi</i> (133)	A state must provide effective access to asylum at its borders	<i>N.D. and N.T.</i> (209)
The action can concern one or more persons	—	The action must concern at least two persons	<i>N.D. and N.T.</i> (193-194 and 202-203)
Requires rigorous scrutiny of the individual circumstances of the case	<i>Ilias and Ahmed</i> (127) <i>M.S.S.</i> (301)	Requires a reasonable and objective examination of the individual case	<i>Moustahi</i> (133-137) <i>Asady</i> (62-71)
		Degree of individual examination depends on several factors; individual's own culpable conduct may exceptionally forfeit the need for an individual expulsion decision <sup>e</sup>	<i>N.D. and N.T.</i> (201, 209-211)
Effective remedy in case of arguable claim implies that the removal be suspended until a court or tribunal reviews the case	<i>M.K.</i> (142-143) <i>M.S.S.</i> (288, 293)	If there is also an arguable claim under Articles 2 or 3 of the ECHR, the remedy must automatically suspend the removal	<i>M.K.</i> (144)
		If there is no arguable claim under these two provisions, there must be an effective possibility of challenging the expulsion decision and having an independent and impartial entity re-examine it thoroughly	<i>Moustahi</i> (151)

Source: FRA, 2021

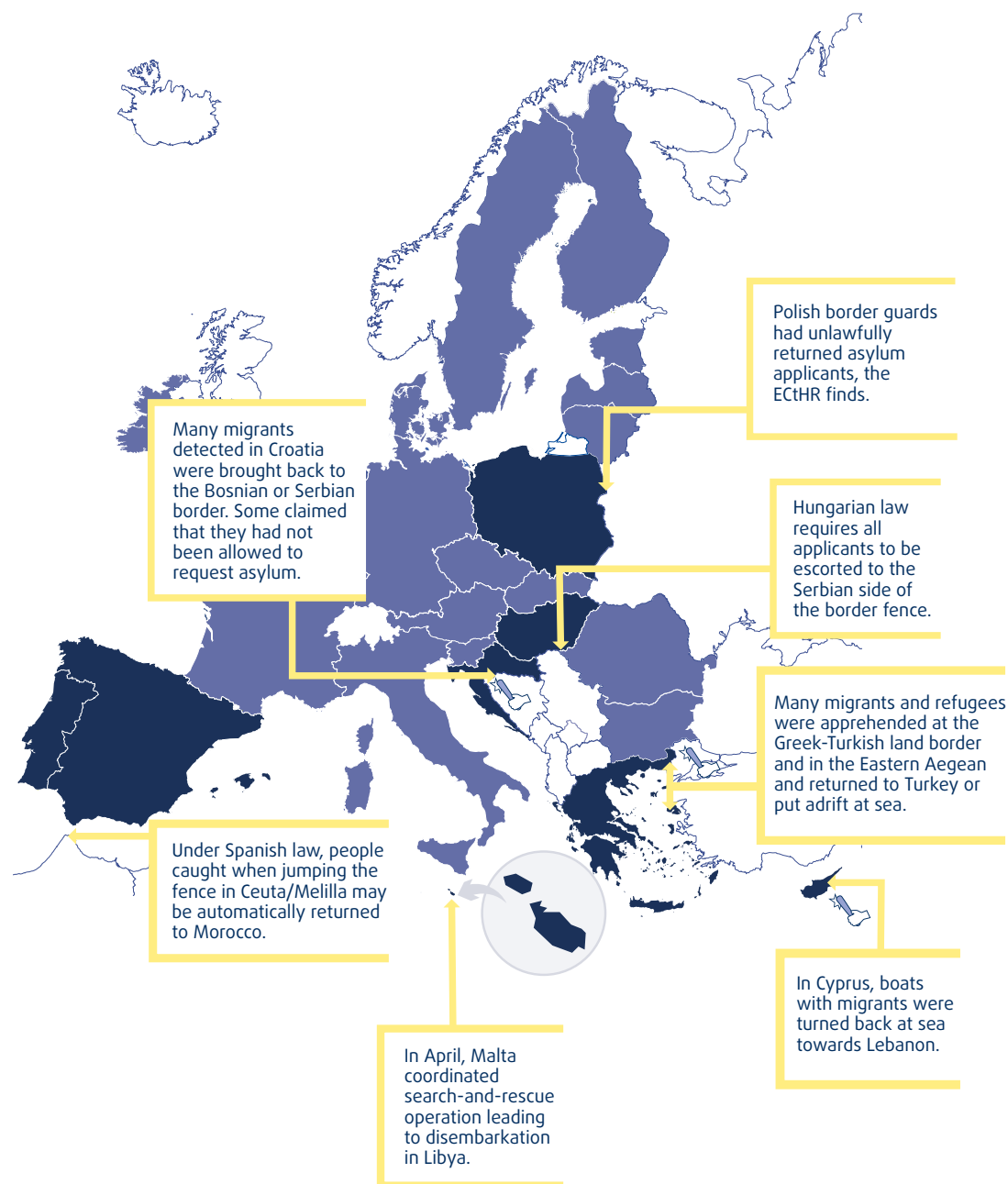
Note:

✎ indicates allegations of ill-treatment or excessive use of force.

### 6.1.3. Refoulement and ill-treatment allegations

In accordance with the general principles of Union law, any decision relating to a person must be taken on an individual basis.<sup>13</sup> If authorities stop or apprehend people at external borders and there are indications that they may wish to make an application for international protection, the authorities must tell them how they can apply.<sup>14</sup> Nevertheless, allegations of unlawful returns or non-admissions continued in 2020, as Figure 6.3 shows.

FIGURE 6.3: CASES OF REFOULEMENT (ALLEGED OR CONFIRMED) AT EU'S EXTERNAL BORDERS, 2020



Source: FRA, 2021[based on sources listed in endnotes 15-28]



In 2020, two EU Member States enacted rules allowing removals without an individual procedure.

- In early 2020, Turkey announced that it would no longer stop refugees and migrants from entering the EU and facilitated their efforts to reach the border. Thousands of people arrived at the Greek land border and tried to enter the EU by force.<sup>15</sup> On 2 March 2020, **Greece** suspended for one month the submission of asylum applications for those who did not fulfil entry conditions.<sup>16</sup> In April 2020, the authorities lifted the suspension, enabling those who arrived in March 2020 to seek international protection.
- In June 2020, **Hungary** introduced a new procedure. It requires individuals to express their intent to seek asylum at designated Hungarian embassies in Belgrade (Serbia) and Kiev (Ukraine) before being authorised to travel to Hungary to apply for international protection.<sup>17</sup> Meanwhile, persons who crossed the Hungarian border unlawfully and sought asylum continued to be escorted to the outer side of the border fence with Serbia, as has been occurring since March 2017.<sup>18</sup> In October 2020, the European Commission opened infringement proceedings against Hungary due to this new requirement for applicants to undergo a ‘pre-procedure’.<sup>19</sup>

In **Spain**, provisions in the Aliens Law regulate the automatic return to Morocco of third-country nationals scaling the fence in Ceuta and Melilla. On 22 December 2020, the Constitutional Court found these to be constitutional. In doing so, it recalled the safeguards in the Aliens Law, which provide that such provisions must be applied in conformity with national and international law. The court underlined the need to take account of people’s vulnerabilities and that there must be real and effective legal entry procedures to access asylum.<sup>20</sup>

A protocol to help apply the Aliens Law’s provisions in line with human rights obligations was announced, but remained pending at the end of the year.<sup>21</sup> The authorities granted access to asylum procedures in some cases, but a few summary returns also occurred in 2020.<sup>22</sup>

In other EU Member States too, in 2020, national human rights institutions, international organisations, and civil society organisations reported removals of persons apprehended after an irregular border crossing, without an individual identification procedure.<sup>23</sup> Most alleged incidents concerned **Croatia** and **Greece** – including, as a new development, at its sea borders with Turkey. Some cases allegedly involved ill-treatment and other fundamental rights violations.<sup>24</sup>

For the first time in years, reports of unlawful interceptions and returns at sea also emerged from **Cyprus**.<sup>25</sup>

In April 2020, **Malta** coordinated the search-and-rescue operation for 51 people who were part of a larger group left for several days adrift at sea before they entered the Maltese search-and-rescue area. A fishing boat took them on board and brought them back to Libya.<sup>26</sup>

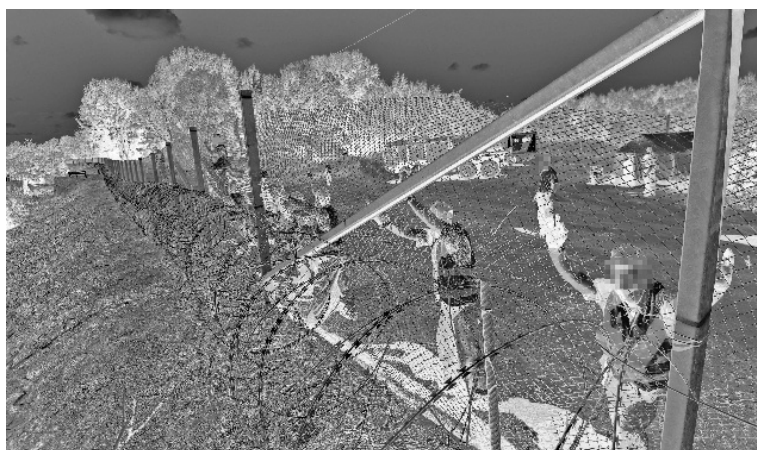
In July 2020, the ECtHR found that **Polish** border guards had in 2017 unlawfully returned asylum applicants at the Terespol border crossing with Belarus.<sup>27</sup>

## FRA ACTIVITY

# Analysing the fundamental rights situation at the EU’s external land borders

In 2020, FRA released two publications on fundamental rights at the external border. In March, together with the Council of Europe Special Representative on Migration and Refugees, FRA explained how European law applies at borders. In December, FRA issued a report on the fundamental rights challenges at the EU’s external land borders. The report also identifies points for future action.

See *FRA and Council of Europe (2020), Fundamental rights of refugees, asylum applicants and migrants at the European borders, March 2020*; *FRA (2020), Migration: Fundamental rights issues at land borders, December 2020*.



## PROMISING PRACTICE

### Allowing re-entry

In August 2020, five Eritreans whom the Italian Navy unlawfully brought back to Libya in 2009 were allowed to re-enter Italy. In 2019, the Civil Court of Rome (**ruling No. 22917 of 28 November 2019**) concluded that a 2009 pushback operation was unlawful and ordered that an entry visa be issued to the victims.

The UN International Law Commission envisages re-entry as a form of restitution in its 2014 **Draft articles on the expulsion of aliens** (Article 29).

Source: *Associazione per gli Studi Giuridici sull'Immigrazione (ASGI) (2020), 'Historic victory for the right to asylum' ('Storica vittoria del diritto di asilo')*, 30 August 2020

#### Notes: ▶

In addition, in Croatia, by 31 December 2020, the Internal Control Department of the Ministry of the Interior had reviewed 633 complaints, finding 75 well-founded and 132 partially founded, and some 30 police officers had been punished, according to the Ministry of the Interior.

No cases of pushbacks and ill-treatment at borders have been investigated in Bulgaria, Cyprus, Finland, France, Hungary (existing investigations concerned pre-2019 cases), Latvia, Lithuania, Malta, Poland, Romania or Slovakia. In France, cases investigated concern incidents in the region of Calais, but not the external border itself. Estonia and Italy did not provide information.

Allegations of fundamental rights violations at borders also affected Frontex, which opened an inquiry.<sup>28</sup>

Article 110 of the European Border and Coast Guard Regulation required Frontex to recruit and deploy fundamental rights monitors by December 2020.<sup>29</sup> Together with other mechanisms to protect fundamental rights, the monitors constitute an important internal tool to promote full compliance with the Charter in Frontex operations.<sup>30</sup> At year end, the monitors were not yet in place.

#### 6.1.4. Investigating alleged fundamental rights violations at borders

Under the ECHR, whenever Articles 2 and 3 are violated, competent authorities must carry out an effective official investigation.<sup>31</sup>

The investigation must be prompt, expeditious and capable of leading to the identification and punishment of those responsible. It must be thorough and make serious attempts to find out what happened. The people responsible for the investigation or carrying it out must be independent in practice. Victims should be able to participate effectively in the investigation.<sup>32</sup>

Table 6.2 shows the number of cases of pushback and ill-treatment allegations at land and sea borders investigated by the police (e.g. disciplinary bodies) and judicial authorities. Except in **Croatia**, investigations are few.

**TABLE 6.2: NUMBER OF ALLEGED PUSHBACKS AND/OR EXCESSIVE USES OF FORCE INVESTIGATED AT EXTERNAL LAND AND SEA BORDERS, 2019-2020**

Member State	Cases investigated by police		Cases investigated by prosecutors	
	2019	2020	2019	2020
Croatia	36	25	6	2
Greece	3	2	4	4
Romania	0	0	0	1
Slovenia	1	1	0	0
Spain	1	0	0	1

Source: FRA, 2021 [based on information from national liaison officers and other national authorities]

In many cases, authorities state that claims are looked into, but that they do not contain enough information to initiate criminal investigations.<sup>33</sup> In some, authorities deny the reported allegations.<sup>34</sup>

National court cases are few.<sup>35</sup> One of the few examples comes from **Italy**, where in July 2020 the Naples public prosecutor indicted the captain of the *Asso 28*, a commercial vessel involved in returning rescued migrants to Libya in 2018.<sup>36</sup>

National preventive mechanisms under the 2002 Optional Protocol of the UN Convention against Torture<sup>37</sup> and national human rights institutions continue to play an important role in monitoring the situation at borders.<sup>38</sup> Although police authorities usually cooperate with them, the **Croatian** national preventive mechanism still faced obstacles to accessing migrants' files in 2020, it informed FRA.<sup>39</sup>

### 6.1.5. Difficulties in finding a safe port

As in previous years, throughout 2020, rescue boats in the central Mediterranean remained at sea for a long time while awaiting authorisation to enter a safe port.

In 22 instances, vessels had to remain at sea for more than a day (in some cases to carry out multiple rescue operations) before the national authorities allowed them to dock. These instances involved a total of 3,597 rescued migrants and refugees, including at least 954 children. In seven cases, they had to wait for a week or more.<sup>40</sup>

In August 2020, some 25 people remained on board a Danish container ship for almost 40 days.<sup>41</sup> Among those disembarked in Italy and Malta, only few relocated to other EU Member States, partly due to the restrictions related to the COVID-19 pandemic.

Many refugees and migrants rescued in the Central Mediterranean were rescued by Libyan coastguards and brought back to Libya: of the people who left Libya by sea, 11,891 disembarked in Libya, compared with 9,225 in 2019.<sup>42</sup> Italy extended its cooperation agreement with Libya in February 2020.<sup>43</sup> Malta signed a memorandum of understanding with Libya in May to cooperate in operations against irregular migration.<sup>44</sup> As the situation in Libya deteriorated, in September 2020 UNHCR asked states to refrain from returning to Libya any persons rescued at sea.<sup>45</sup>

### 6.1.6. Keeping new arrivals at borders

One aspect of the legislative proposals of the new Pact on Migration and Asylum concerns procedures for people at borders who do not fulfil entry conditions, including those rescued at sea. The proposal for a Screening Regulation suggests screening such individuals upon arrival, to establish their identity, verify if they pose a security or public health threat, and establish if they need specific care before channelling them into the appropriate procedure.<sup>46</sup>

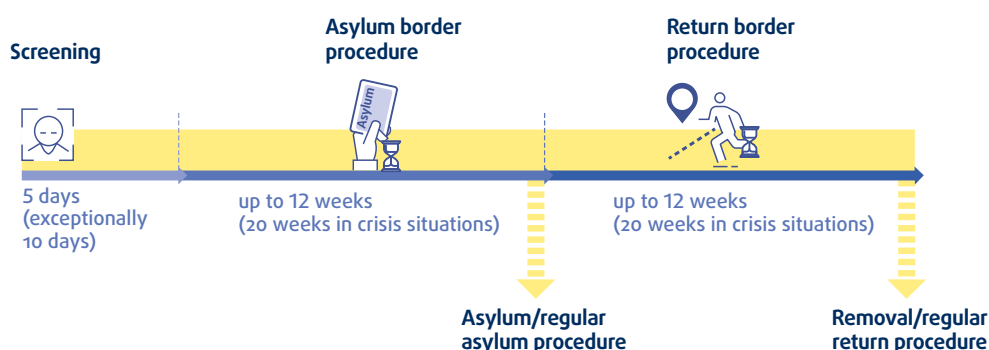
Asylum and return procedures are to increasingly take place while people stay at or near the border.<sup>47</sup> Under the proposed rules, if an asylum applicant's claim is rejected or found inadmissible, they could stay at borders for up to six months and, in crisis situations, for up to 10 months (see Figure 6.4).



Note:

Under the proposed regulation addressing situations of crisis and force majeure in the field of migration and asylum, COM(2020) 613 final, in situations of crisis and force majeure, the timeframe for the asylum and the return border procedures may each be extended by eight weeks.

FIGURE 6.4: TIMELINES OF PROPOSED PROCEDURES AT BORDERS



Sources: Proposed Screening Regulation, COM(2020) 612 final, Article 6; amended Asylum Procedures Regulation proposal, COM(2020) 611 final, Articles 41 (11) and 41a (2)





For several years, **Greece** and **Italy** have been implementing the ‘hotspot approach’ in selected locations.<sup>48</sup> At the external border of the EU, **Cyprus**, **Hungary** and **Spain** have set up special facilities for new arrivals.<sup>49</sup> Hungary closed its facilities in mid-2020, prompted by the CJEU ruling that deemed keeping people there beyond four weeks to be unlawful detention.<sup>50</sup>

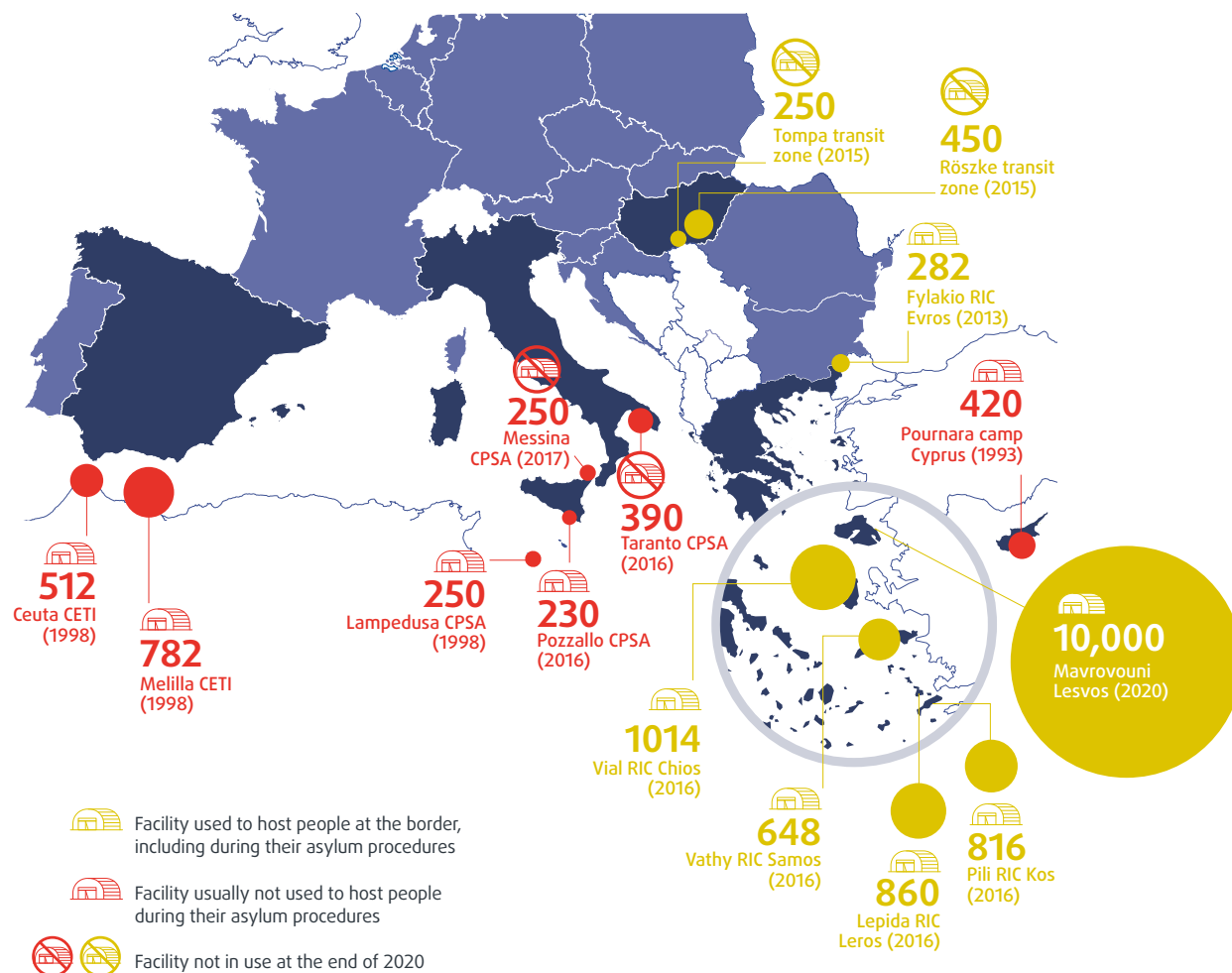
Some of these facilities host new arrivals only during the initial identification and screening phase. In others, people may also remain there during the asylum and/or the return procedure. In these cases, their stay can become protracted, causing overcrowding and serious fundamental rights challenges.<sup>51</sup>

In **Greece**, the overcrowded camps of Moria (Lesvos) and Vathy (Samos)<sup>52</sup> accommodated thousands of asylum applicants in summer tents or makeshift shelters with very limited access to basic services.<sup>53</sup> In Moria, five persons, most of them children, reportedly died as a result of violent incidents in the camp.<sup>54</sup> The inhuman conditions<sup>55</sup> regularly led to tensions, which escalated after the camps were put in quarantine to prevent the spread of the pandemic.

In September 2020, fires destroyed the camp in Moria.<sup>56</sup> A temporary tent facility in Mavrovouni, still unfit for the winter in December, has been hosting asylum applicants until the Greek authorities set up a new facility with the support of EU actors.<sup>57</sup> Reports of poor and unsanitary living conditions also emerged from Pournara in **Cyprus**<sup>58</sup> and the temporary facility in Arguineguín in the Canaries (**Spain**), closed in November 2020.<sup>59</sup>

Figure 6.5 illustrates that several first reception facilities are situated in remote locations, where it may be difficult to adjust reception capacities and the provision of services – for example medical services, education, or legal counselling – when more people arrive or they stay longer.<sup>60</sup>

FIGURE 6.5: FIRST RECEPTION FACILITIES AT OR NEAR THE EXTERNAL BORDER OF THE EU, DECEMBER 2020



Source: FRA, 2021

### 6.1.7. Turning back people at internal EU borders

Another policy objective of the Pact on Migration and Asylum is to counteract unauthorised onward movements of migrants and refugees across the EU.<sup>61</sup> EU law obliges asylum applicants to remain in the EU Member State in which they have applied for asylum to await their decision.<sup>62</sup>

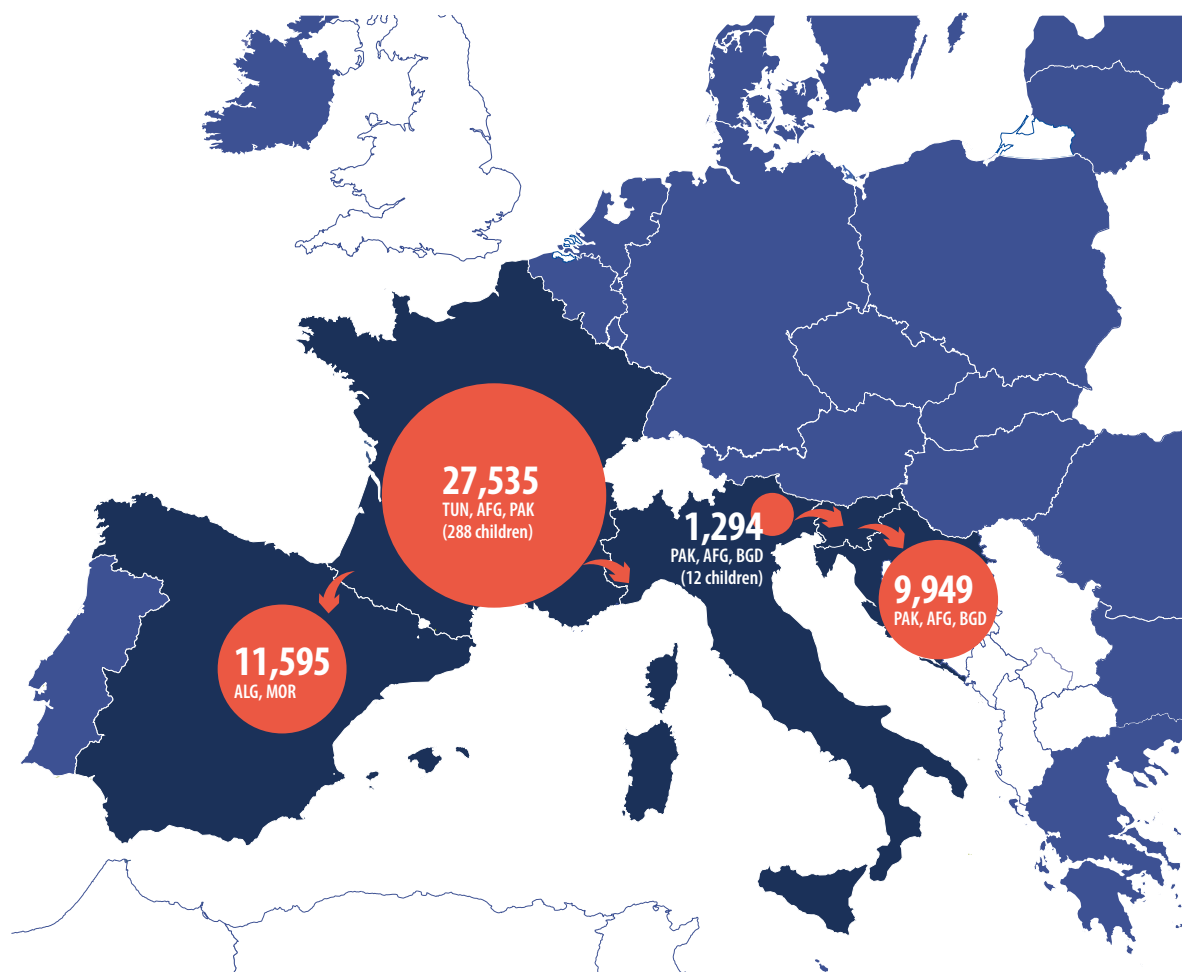
In 2020, some EU Member States in southern Europe and along the Balkan route increased the use of intra-EU readmission agreements<sup>63</sup> to pass back to the neighbouring Member State people whom they apprehended in connection with their irregular crossing of an internal EU border. Article 6 (3) of the Return Directive allows this for migrants in an irregular situation, if the readmission agreement existed before 2009.<sup>64</sup> In contrast, for asylum applicants, the procedure set out in the Dublin Regulation must be used.<sup>65</sup> Figure 6.6 shows for selected routes how EU Member States used readmission agreements and/or refusals of entry to pass migrants back.

#### Notes:

CETI, migrant temporary stay centre (centro de estancia temporal para inmigrantes); CPSPA, first aid and assistance centre (centro primo soccorso e assistenza); RIC, reception and identification centre.

Figure does not include facilities used for the initial stay of less than 72 hours, such as those near the border in Bulgaria or Croatia, and the CATE centres (centros de atención temporal de extranjeros) in Spain.

**FIGURE 6.6: USE OF INTRA-EU READMISSION AGREEMENTS TO PASS BACK MIGRANTS UNLAWFULLY CROSSING AN INTERNAL EU BORDER, 2020, SELECTED ROUTES**



Source: FRA, 2021 [based on national police data from the sending EU Member State, except for Spain]

▲  
**Note:**  
 Number of persons readmitted in 2020 based on readmission agreements. For France, it includes refusals of entry. Data on individuals passed back from France to Spain also include EU nationals.  
 AFG, Afghanistan; ALG, Algeria; BGD, Bangladesh; MOR, Morocco; PAK, Pakistan.

Domestic courts in **France** and **Italy** reaffirmed the duty to respect procedural safeguards on access to asylum.<sup>66</sup> The **Slovenian** Administrative Court (case under appeal) found that the authorities had wrongly removed a Cameroonian national seeking international protection shortly after he was apprehended in connection with his irregular border crossing.<sup>67</sup> These cases show the importance of respecting individuals' right to be heard and to be formally notified of decisions taken against them.<sup>68</sup>

#### **6.1.8. Sanctions against humanitarian workers who help migrants and refugees**

In the past, FRA expressed serious concern about actions intimidating humanitarian workers and volunteers who support migrants in an irregular situation or take part in search and rescue operations.<sup>69</sup> In 2020, measures that hampered humanitarian action by civil society continued, particularly holding rescue vessels in ports using administrative procedures based on the laws of navigation and safety at sea (on which a case is pending before the CJEU).<sup>70</sup>



By the end of 2020, civil society organisations operated four rescue vessels and two aircraft in the Mediterranean. Six vessels were blocked in ports because of ongoing legal proceedings (see Figure 6.7). The European Commission clarified that EU law does not permit the criminalisation of non-governmental organisations (NGOs) that carry out search and rescue operations at sea if they comply with the relevant legal framework.<sup>71</sup> It encouraged Member States to exempt humanitarian action from sanctions against migrant smuggling, as EU law allows.<sup>72</sup>

**FIGURE 6.7: NGO ASSETS INVOLVED IN SEARCH-AND-RESCUE OPERATIONS BETWEEN 2016 AND 31 DECEMBER 2020**



Source: FRA, 2021 [based on various sources]

## 6.2. ASYLUM, IMMIGRATION, AND RETURN PROCEDURES DURING COVID-19 PANDEMIC

### 6.2.1. Access to asylum

At the outbreak of the COVID-19 pandemic, national asylum authorities closed their facilities to the public or restricted access to their offices. Several EU Member States temporarily suspended the registration of new asylum applications. In spring, at least 17 EU Member States and Schengen Associated Countries temporarily discontinued personal interviews.<sup>73</sup>

Remote interviews and the use of electronic tools by applicants are among the tools and processes put in place or strengthened to cope with the situation of *force majeure* during the pandemic. Some will probably remain part of the asylum authorities' toolbox in future. This will raise new fundamental rights challenges.<sup>74</sup>

Developments in **Belgium** illustrate this. In October 2020, a court found that the online appointment system to register asylum applications was contrary to the Reception Act, as it left applicants temporarily without material reception support.<sup>75</sup> In December 2020, the Council of State suspended asylum interviews by videoconference, as national legislation did not provide for such option.<sup>76</sup>

## PROMISING PRACTICE

# Providing advice on asylum procedures during the pandemic

To help national asylum authorities and judicial bodies continue processing asylum applications during the pandemic, the European Commission, EASO, and UNHCR issued practical guidance in April 2020. It advises Member States on medical screening, provision of information and counselling, guidance on how to prevent and protect oneself from COVID-19, the use of electronic tools, and remote interviewing, to enable national authorities to continue to register and examine asylum applications during the pandemic.

See *European Commission (2020), COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement*; *EASO (2020), Practical recommendations on conducting remote/online registration (lodging) and Practical recommendations on conducting the personal interview remotely*; *UNHCR (2020), Practical recommendations and good practice to address protection concerns in the context of the COVID-19 pandemic*.

Another challenge is how to quarantine new arrivals. Member States carried out health screening and adopted other targeted measures, such as self-isolation, placement in special isolation units within existing structures, and the creation of emergency structures, as EASO reported.<sup>77</sup> **Italy** and **Malta** used vessels to quarantine new arrivals rescued at sea.<sup>78</sup>

In **Malta**, some new arrivals were confined for nearly six weeks on private vessels in inadequate conditions and without access to legal and social counselling. UNHCR and the IOM called for their disembarkation. The Council of Europe Commissioner for Human Rights also stressed the need to grant access to monitoring bodies and agencies that provide assistance and protection.<sup>79</sup>

In **Slovenia**, migrants were placed in containers for 10-14 days (in some cases for over a month); these were located in a covered concrete building with little daylight.<sup>80</sup>

Concerns, particularly for unaccompanied children, emerged also from other locations – for example, the quarantine area in the Pournara camp in **Cyprus**,<sup>81</sup> and the bullring in Melilla (**Spain**).<sup>82</sup>

## 6.2.2. Residence permits and visas that expired during the pandemic

EU Member States took pragmatic measures to address the situation of individuals whose visas or permits expired but who could not depart because of travel restrictions.<sup>83</sup> Any overstay, if not regularised, could have a negative impact on people's future possibilities of travelling to the EU.

Approximately two thirds of EU Member States took legal or administrative measures to extend the validity of visas and/or permits.<sup>84</sup> Others formally allowed people whose documents or authorisation to stay expired to remain temporarily.<sup>85</sup> **Denmark** regularised the past stay of foreigners who had not been able to leave before their permits expired upon departure from the country.<sup>86</sup> **Austria** (for some categories), **Cyprus**, **Lithuania** and the **Netherlands** tolerated the stay of people who were unable to return.<sup>87</sup>

In a few cases, existing rules continued to apply, although with some adjustments, such as online processing of renewal or residence permits in **Austria**,<sup>88</sup> or more flexible approaches to requested extensions of permits in **Germany**.<sup>89</sup> Some EU Member States adopted special measures only for the first phase of the pandemic but not after the summer (see Table 6.3).

**TABLE 6.3: MEASURES TO ADDRESS SITUATION OF VISITORS AND IMMIGRANTS WHOSE RIGHT TO STAY EXPIRED BUT WHO COULD NOT DEPART, 27 EU MEMBER STATES, NORTH MACEDONIA AND SERBIA**

Country	Holders of short-term stay visas	Visa-free visitors	Holders of long-stay visas	Holders of resident permits
AT	o	o	o	x (online applications)
BE	✓	✓	✓ (November 2020)	✓
BG	✓✓	✓✓	x	✓✓
CY	o (May 2020)	o (May 2020)	o (May 2020)	o (May 2020)
CZ	✓ (July 2020)	✓ (July 2020)	✓ (July 2020)	✓ (July 2020) ✓✓ (November 2020 for work permits)
DE	✓✓ (September 2020)	x	x	x
DK	✓ (August 2020) ✓✓ (from August 2020 upon application)	✓ (August 2020) ✓✓ (from August 2020 upon application)	o	o

Country	Holders of short-term stay visas	Visa-free visitors	Holders of long-stay visas	Holders of resident permits
EE	✓ (May 2020)	✓ (May 2020)	✓ (May 2020)	x
EL	x	x + o	✓✓ (September 2020)	✓✓
ES	✓✓ (3 months' extension)	✓✓ (3 months' extension)	✓✓ (December 2020)	✓✓ (December 2020)
FI	✓	✓	N/A	✓
FR	✓✓ + ✓ (3 months' extension + temporary residence permit)	✓ (3 months' extension)	✓✓ (3 + 6 + 6 months' extension)	✓✓ (6 months' extension)
HR	✓	✓	N/A	✓
HU	✓	✓	✓✓ (45 days after emergency ends)	✓✓ (45 days after emergency ends)
IE		✓✓ (2 + 2 + 1 + 1 + 4 + 3 months' extension)		
IT	✓✓ (August 2020) ✓✓ (from October 2020)	✓✓ (August 2020) ✓✓ (from October 2020)	✓✓ (August 2020) ✓✓ (from October 2020)	✓✓ (August 2020) ✓✓ (from October 2020)
LT	o (August 2020)	o (August 2020)	o (August 2020)	o (August 2020)
LU	✓✓ (August 2020)	✓✓ (July 2020)	✓✓ (August 2020)	✓✓ (August 2020)
LV	✓ (August 2020)	✓ (August 2020)	✓ (August 2020)	✓ (August 2020)
MT	✓✓ (3 months' extension upon application)	✓✓ (3 months' extension upon application)	✓✓ (3 months' extension upon application)	✓✓ (3 months' extension upon application)
NL	o	o	o	o
PL	✓✓	✓✓	✓✓	✓✓
PT	✓✓	✓✓	✓✓	✓✓
RO	✓✓	✓✓	✓✓	✓✓
SE	✓	✓	✓	✓
SI	✓ (May 2020)	✓ (May 2020)	✓ (July 2020)	✓ (July 2020)
SK	✓	✓	✓✓	✓✓
MK		✓✓ (August 2020)		
RS		✓ (May 2020)		

Source: FRA, 2021 [based on sources listed in endnote 85 and information from FRA's national liaison officers]

### 6.2.3. Increased focus on non-removed migrants

Travel restrictions during the pandemic had a considerable impact on return operations, almost halting them in spring.<sup>90</sup> The situation of migrants in an irregular situation who are not removed gained policy attention.<sup>91</sup> This triggered new research.<sup>92</sup>

Immigrants' stay may change from regular to irregular. FRA's Second European Union Minorities and Discrimination Survey (EU-MIDIS II) shows this. Of the 12,600 first-generation immigrants it covers, some 8 % arrived in an irregular manner, whereas 16 % were in the EU irregularly once (10 %) or more (6 %).<sup>93</sup> Any policy response needs to consider this phenomenon. In 2017, between 2.1 million and 2.6 million people were present irregularly, a 2019 study estimated.<sup>94</sup>

#### ▲ Notes:

*Date indicates the end date of the special measure. If no date is included, the measure was valid on 31 December 2020. If two dates, the first indicates the end date of the first lockdown before the summer, and the second the end date of the second lockdown.*

*The table does not include asylum applicants, persons with a tolerated stay, and persons in return procedures, or measures for special categories (e.g. workers in COVID-19-sensitive sectors or seasonal workers in Austria). For Ireland, North Macedonia and Serbia (not bound by EU law on borders, visa and return), the table shows the measures they took in regard to all authorisations to stay.*

✓✓ Legislative measures/national practices extending validity of visa, residence permits or other authorisations to stay.

✓ Legislative measures/national practices temporarily allowing third-country nationals with expired documents to stay in the territory.

o No extension or new permit but tolerated stay of third-country nationals with expired documents and unable to return.

x No specific measures taken. Ordinary legal procedures pre-existing the COVID-19 pandemic applied.

N/A Not applicable.

#### 6.2.4. New CJEU judgments inform return procedures

In 2020, the CJEU continued to deliver key judgments informing fundamental rights standards and safeguards concerning return procedures and pre-removal detention. Table 6.4 summarises key points stemming from the CJEU's most recent rulings related to the Return Directive (2008/115/EC).<sup>95</sup> It shows the need for a careful balance between Member States' legitimate interests in expelling and removing migrants in an irregular situation and respecting their fundamental rights.

**TABLE 4: SELECTED RETURN-RELATED STANDARDS AND SAFEGUARDS STEMMING FROM CJEU RULINGS IN 2020**

Standards/safeguards	CJEU judgment
Amending the country of destination in the initial return decision is so substantial that it must be regarded as a new return decision. Effective judicial review needs to be available against such a decision.	Joined Cases C-924/19 PPU and C-925/19 PPU, <i>FMS and Others</i> [GC], 14 May 2020, paras. 112–123
Although Member States may make provision for return decisions to be challenged before non-judicial authorities, a person subject to a return decision must, at a certain stage of the procedure, be able to challenge its lawfulness before a court, in accordance with Article 47 of the Charter (right to an effective remedy). In the absence of national rules providing for such a judicial review, the national court is entitled to hear an action seeking to challenge the return decision.	Joined Cases C-924/19 PPU and C-925/19 PPU, <i>FMS and Others</i> [GC], 14 May 2020, paras. 126–130, 144–147
The meaning of term 'detention' under the Return Directive is the same as defined under the Reception Conditions Directive 2013/33/EU in Article 2 (h): 'confinement of an applicant by [an EU] Member State within a particular place, where the applicant is deprived of his or her freedom of movement'.	Joined Cases C-924/19 PPU and C-925/19 PPU, <i>FMS and Others</i> [GC], 14 May 2020, paras. 224–225
A person subject to a return decision may not be detained pending removal solely on the ground that they cannot meet their own needs.	Joined Cases C-924/19 PPU and C-925/19 PPU, <i>FMS and Others</i> [GC], 14 May 2020, paras. 268–272
Prolonged pre-removal detention can never exceed 18 months and may be maintained only as long as removal arrangements are ongoing and are executed with due diligence.	Joined Cases C-924/19 PPU and C-925/19 PPU, <i>FMS and Others</i> [GC], 14 May 2020, paras. 278–280
The lawfulness of pre-removal detention must be subject to judicial review with no exception. This requires that, in the absence of national rules providing for a judicial review, the national court is entitled to rule on the matter and, if detention is found unlawful, to order the release of the person.	Joined Cases C-924/19 PPU and C-925/19 PPU, <i>FMS and Others</i> [GC], 14 May 2020, paras. 276–277
A person may be detained in prison for the purpose of removal, separated from ordinary prisoners, if the person poses a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society or the Member State's internal or external security.	Case C-18/19, <i>W. M. v. Stadt Frankfurt am Main</i> , 2 July 2020, paras. 45 and 48
The enforcement of a return decision issued to a seriously ill person must be automatically suspended when there is reasonable ground to believe that the individual's health would irreversibly deteriorate as a consequence of the return – even when national legislation does not provide for this.	Case C-233/19, <i>B. v. Centre public d'action sociale de Liège</i> , 30 September 2020, para. 68
If a parent of a seriously ill adult child who is dependent on that parent is the subject of a return decision, and its enforcement may expose that child to a serious risk of grave and irreversible deterioration of their state of health, the parent must be able to remain in the Member State with the child and benefit from the safeguards pending return in Article 14 of the Return Directive.	Case C-402/19, <i>L.M. v. Centre public d'action sociale de Seraing</i> , 30 September 2020, paras. 50–52
Forcibly escorting apprehended migrants in an irregular situation back to the outer side of a border fence, to a strip of land devoid of any infrastructure, is equivalent to 'removal' within the meaning of the Return Directive. Such individuals must be subject of a return procedure that complies with the safeguards under the directive.	Case C-808/18, <i>Commission v. Hungary</i> [GC], 17 December 2020, paras. 248–258, 266

Source: FRA, 2021 [based on CJEU case law]

Since the Return Directive entered into force in January 2009, the CJEU has delivered over 30 rulings interpreting it, and several are pending.<sup>96</sup> Nearly all of this case law was produced following the activation of the preliminary ruling reference procedure.<sup>97</sup> *Commission v. Hungary* (C-808/18) was the first case in which the CJEU adjudicated an infringement procedure concerning the directive. In addition to elucidating some key legal principles relating to the return procedures, this major ruling assessed the practical application of the law on the ground against EU law standards.

## 6.3. EU LARGE-SCALE INFORMATION SYSTEMS AND FUNDAMENTAL RIGHTS

The EU has set up six large-scale IT systems to support Member States to manage migration, asylum and borders, enhance judicial cooperation and strengthen internal security. The EU agency eu-LISA is responsible for the operational management of these systems at central level.<sup>98</sup>

Three systems are operational: European Asylum Dactyloscopy (Eurodac), the Visa Information System (VIS), and the Schengen Information System (SIS). The other three are in development: the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), and the European Criminal Records Information System for Third-Country Nationals (ECRIS-TCN).<sup>99</sup>

In future, interoperability will enable authorised users to search and see data stored on individuals across these systems, depending on their access rights laid down in EU law. Earlier FRA reports have pointed out opportunities for and risks to fundamental rights that these systems and their interoperability pose.<sup>100</sup>

### 6.3.1. Progress in establishing the systems

The reform of VIS and Eurodac progressed in 2020, but remained pending at year end.<sup>101</sup>

The European Commission advanced the preparation of the over 70 implementing and delegated acts required for the operation of the IT systems. It had adopted 14 acts by the end of 2020.<sup>102</sup> Although these acts are technical in nature, they also have implications for fundamental rights.

For example, pursuant to the SIS Regulation,<sup>103</sup> an implementing act will define the categories of missing or vulnerable people. When Member States enter alerts on missing or vulnerable people in SIS, they have to indicate the category and type of case, whenever it is known. This will facilitate follow up actions in case of a hit.

In the case of children, it will also help to ensure that these alerts and the corresponding procedures serve the best interests of the child in accordance with Article 24 of the Charter. One specific category is unaccompanied children, which some Member States appear not to register systematically, when they go missing from reception facilities.<sup>104</sup> Registering them in SIS facilitates cross-border tracing when they go missing, contributing to their protection.<sup>105</sup>

Of the three new systems, the EES will be established first. It is expected to start operations in May 2022. The EES will register the entry and exit of all third-country nationals admitted for a short stay in the Schengen area. It will store identity and travel data, including fingerprints and facial images. It will also generate a list of 'overstayers', people whose right to stay in the Schengen area has expired. Staff operating the system must receive fundamental rights training.<sup>106</sup>



### FRA ACTIVITY

## Eurodac – guidance on how to provide information on fingerprinting

To provide migrants and asylum applicants more effectively with information on fingerprinting for Eurodac, FRA developed and published a leaflet jointly with the Eurodac Supervision Coordination Group.

The leaflet helps authorities to comply with their obligation to clearly inform people concerned why fingerprints are taken and what happens to their biometric data in Eurodac. National data protection authorities translated the leaflet into most EU languages.

*See FRA and Eurodac SCG (2020), **Right to information – Guide for authorities when taking fingerprints for EURODAC**, January 2020.*

As the new generation of IT systems and their interoperability is under preparation, few people beyond those entrusted to set them up are aware of the fundamental rights safeguards in the systems.

### 6.3.2. Use of algorithms in future EU IT systems

In 2020, discussions intensified on the potential use of artificial intelligence (AI)-driven technology in home affairs matters.<sup>107</sup> Table 6.5 provides two examples of the envisaged use of algorithms to predict risks and produce analysis to assist decision making.

AI could bring substantial opportunities to improve the efficiency of migration preparedness and management, if it is carefully conceived, implemented, and monitored with necessary safeguards.

AI also brings fundamental rights risks, as Figure 6.8 illustrates. Profiling may be discriminatory,<sup>108</sup> insufficient anonymisation may raise data protection issues, and the lack of transparency combined with limited availability of specialised legal support may make access to remedy more difficult. In its report on AI and fundamental rights, FRA has pointed out that the impact of the use of AI on fundamental rights should be comprehensively assessed (for more, see [Chapter 7](#)).<sup>109</sup>

Note:

<sup>a</sup> Pending adoption of amended Eurodac recast proposal COM(2020) 614 final.

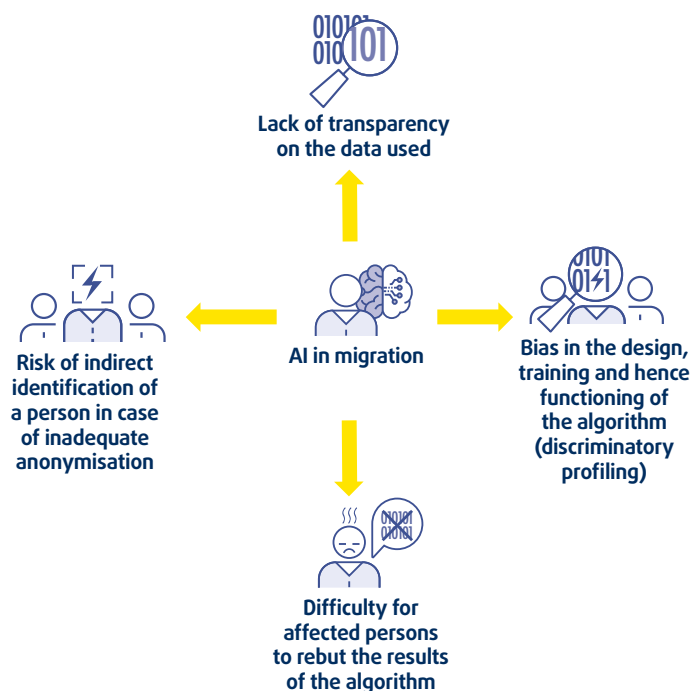
**TABLE 6.5: EXAMPLES OF USE OF ALGORITHMS IN THE NEW EU IT ARCHITECTURE**

Example	What it is	Purpose	Who uses it	Safeguards
ETIAS Screening rules	<p>An algorithm that compares the data provided in a visa-free traveller online application with specific risk indicators corresponding to identified security, irregular migration or public health risks (Art. 33 (1), recital 27)</p> <p>The risk indicators are based on a combination of data on age range, sex, nationality, place of residence, education and occupation (Art. 33 (4))</p>	To assess a traveller's risks of irregular migration, or to security and public health, and, if so, to review the application manually (recital 27)	Frontex (ETIAS Central Unit) verifies application data against the risk indicators (Art. 7, Art. 22); authorised national authorities (ETIAS national units) assess the risks (Art. 26 (6))	<p>Targeted and proportionate use (Art. 33 (5))</p> <p>Not revealing protected attributes – in compliance with non-discrimination principle (Art. 33 (5))</p> <p>Human review of the risk assessment and of the individual case (Art. 22, Art. 26)</p> <p>Regular reviews of the risks, ex ante and ex post evaluations of the indicators (Art. 33 (3), Art. 33 (6), Art. 7)</p> <p>ETIAS Fundamental Rights Guidance Board with FRA as a member (Art. 9 (5) and Art. 10)</p> <p>Access to remedy (Art. 64)</p>
Central Repository for Reporting and Statistics (CRRS) Interoperability	Repository of clearly defined anonymised data relating to individuals whose personal data are stored in EU IT systems (Art. 39 and Art. 66, recital 52 of Regulations 2019/817 and 2019/818)	To obtain customisable reports and cross-system statistics and data for policy, operational and data quality purposes (Art. 66)	Authorised border, visa, immigration and law enforcement authorities in Member States, Europol and Frontex (Art. 66) [and in future asylum authorities and EASO] <sup>a</sup>	<p>Anonymisation of the data contained (Art. 66)</p> <p>General non-discrimination and fundamental rights safeguard clause (Art. 5)</p>

Sources: FRA, 2021 [based on, for ETIAS, **Regulation 2018/1240**; for Central Repository for Reporting and Statistics, **Regulation 2019/817** (borders and visa) and **Regulation 2019/818** (police and judicial cooperation)]



**FIGURE 6.8: KEY FUNDAMENTAL RIGHTS RISKS OF USING ARTIFICIAL INTELLIGENCE IN HOME AFFAIRS**



Source: FRA, 2021

## 6.4. REFUGEE AND MIGRANT INTEGRATION

The European Commission underlines in the new Pact on Migration and Asylum that “[p]art of a healthy and fair system of migration management is to ensure that everyone who is legally in the EU can participate in and contribute to the well-being, prosperity and cohesion of European societies”.<sup>110</sup> Integration of third-country nationals is “a key part of the broader EU agenda to promote social inclusion”.<sup>111</sup>



## PROMISING PRACTICE

### Facilitating children's Greek language learning

The Institute of Educational Policy (IEP) developed – in cooperation with other partners, including UNICEF – an accelerated Greek-language learning programme and educational materials for topics such as mathematics and science. The aim is to accelerate the integration in secondary education of refugee children who have missed out on school or had their education interrupted.

A curriculum, an e-platform, teachers' guides, and six teaching textbooks in 10 different languages support pupils as well as teachers.

See *UNICEF - Refugee and Migrant Response in Europe Situation Report # 35*; *UNHCR - Accelerated Education*.

## FRA ACTIVITY

### Exploring the fundamental rights situation of long-term residents

In 2020, FRA began research on the fundamental rights of long-term residents in the EU. The research will collect information and evidence to help EU institutions and Member States to respect their rights and strengthen their social integration.

#### 6.4.1. A new EU action plan on integration and inclusion

The European Commission adopted a new action plan on integration and inclusion for the period 2021–2027. It covers migrants and EU citizens with a migrant background. The action plan focuses on targeted support in four fields: employment, education, access to health services, and access to adequate and affordable housing. It recognises the need to promote the integration of migrant women, to involve the host society better, and to strengthen the monitoring and evaluation of integration policies.

The plan covers measures ranging from pre-departure and reception to long-term integration and the building of inclusive societies.<sup>112</sup>

Young people are one of the plan's focus areas. Young people who receive international protection face specific integration challenges, as previous FRA research shows.<sup>113</sup>

Young refugees face mental health issues, difficulties in finding adequate housing, and discrimination. They also face specific difficulties in accessing education and vocational training, in particular if they are beyond the age of compulsory education.

The transition to adulthood is typically connected with changes in rights, as young people experience a drop in social support and counselling.<sup>114</sup> At the same time, young people have particular potential to integrate quickly and fully, participate in all aspects of life as they develop, and contribute to the overall well-being of society.

#### 6.4.2. The fundamental rights of long-term residents

About 10.3 million third-country nationals are long-term residents in the EU.<sup>115</sup> They are approximately half of the 21.7 million resident third-country nationals.<sup>116</sup>

The Long-Term Residents Directive (2003/109/EC) sets out the rights of long-term residents.<sup>117</sup> To help refugees acquire long-term residence, in September 2020, the European Commission proposed to reduce the time required to apply for long-term resident status, from five to three years.<sup>118</sup> If adopted, these changes will help them integrate.

From a legal perspective, the integration and social inclusion of third-country nationals are closely linked to their rights and obligations, and to their prospects of staying. Those prospects depend on the type of their residence permit.

Not all immigrants residing in the EU for an extended time hold a secure residence permit. For example, in 2016, fewer than 50 % of sub-Saharan migrants living for at least 10 years in Austria and Portugal, and only 29 % of North African migrants living for at least 10 years in Spain, whom FRA surveyed in EU-MIDIS II, had secure residence.<sup>119</sup>

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#### **6.4.3. New rules for citizens of the United Kingdom**

As of 1 February 2020, the United Kingdom is not part of the European Union. Since then, citizens of the United Kingdom have been third-country nationals in the EU. At the end of 2020, some 862,000 citizens of the United Kingdom were living in the EU, according to Eurostat.<sup>120</sup>

The transition period ended on 31 December 2020. The EU-UK Trade and Cooperation Agreement and its protocols now govern the legal relations between the EU and the United Kingdom.<sup>121</sup> The new arrangements set out the conditions for them to work in, travel in or move to the EU, and provisions on social security coordination. Regulation (EU) 2019/592 exempts citizens of the United Kingdom from visa requirements for short-term stays.<sup>122</sup>

## FRA opinions

In 2020, widely recognised human rights bodies reported allegations of individuals being unlawfully turned back at land and sea borders, at times with police violence. Article 78 (1) of the TFEU and Articles 18 and 19 of the EU Charter of Fundamental Rights prohibit *refoulement* – meaning the return of an individual to a risk of persecution or serious harm – and collective expulsions. Article 7 of Regulation (EU) 2019/1896 on the European Border and Coast Guard and Article 4 of the Schengen Borders Code require border management to comply with fundamental rights. In its Pact on Migration and Asylum, the European Commission proposed new EU rules to monitor fundamental rights at borders.

### FRA OPINION 6.1

EU Member States should promptly and effectively investigate all allegations of pushbacks and ill-treatment at borders, and increase transparency on measures taken.

Member States should set up effective and independent monitoring mechanisms at borders. To guarantee more complete fundamental rights compliance, these mechanisms should also cover the monitoring of border-surveillance activities and not only, as the Pact on Migration and Asylum proposes, the pre-entry screening procedure itself.

### FRA OPINION 6.2

EU Member States should put in place and apply procedures guaranteeing that persons are heard before being passed back to a neighbouring EU Member State, and formally notify them of the decision taken.

Migrants apprehended in connection with their irregular crossing of an internal EU border are not systematically heard before they are passed back to a neighbouring EU Member State. They are also not systematically notified of the decision to pass them back to another EU Member State.

As a general principle of EU law, any decision affecting a person must be taken on an individual basis, and persons have the right to be heard. These principles are important safeguards to enable individuals to raise issues that could bar the passing back, and to exercise their right to an effective remedy under Article 47 of the Charter.



### FRA OPINION 6.3

When implementing the objectives of the Pact on Migration and Asylum, EU Member States should ensure that conditions of stay in first-reception facilities at borders are adequate, and fully respect the right to liberty and other fundamental rights set out in the EU Charter of Fundamental Rights. There should be regular oversight and preventive measures to avoid protracted stays.

The legislative proposals under the Pact on Migration and Asylum put a stronger focus on border procedures, while proposing new solidarity mechanisms. Border procedures may result in asylum applicants being confined to facilities at or near the border, often at remote locations where it may be difficult to meet reception standards or apply safeguards to prevent arbitrary deprivation of liberty, as the Reception Conditions Directive (2013/33/EU) and the Return Directive (2008/115/EC) require. This could result in treatment that may not comply with the right to human dignity, as guaranteed by Article 1 of the Charter.



### FRA OPINION 6.4

EU institutions, agencies and EU Member States should comprehensively assess the impact on fundamental rights of any AI use in the area of home affairs, including asylum, visa, immigration and borders. Stringent, effective and independent oversight mechanisms should accompany the use of AI.

The EU and its Member States are exploring the use of artificial intelligence (AI) to enhance decision making in home affairs, including asylum, borders and immigration. AI-driven tools may affect different fundamental rights. This is due to, for instance, bias in the design of the algorithm; or a lack of transparency in regards to the data used, which makes it difficult for the person concerned to rebut the results produced by such tools.

The EU has set up six large-scale information technology (IT) systems to support Member States to manage migration, asylum and borders, enhance judicial cooperation, and strengthen internal security. Three systems are operational: the European Asylum Dactyloscopy (Eurodac), the Visa Information System (VIS), and the Schengen Information System (SIS). The other three are in development: the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), and the European Criminal Records Information System for Third-Country Nationals (ECRIS-TCN).

The legal instruments setting up such IT systems and their interoperability contain several safeguards to protect fundamental rights that the Charter enshrines, such as the protection of personal data (Article 8), non-discrimination (Article 21) and the rights of the child (Article 24). However, these safeguards remain little known.



### FRA OPINION 6.5

EU institutions, agencies and EU Member States should continue to raise awareness of the fundamental rights safeguards in the large-scale EU IT systems and their interoperability. Data protection authorities should be adequately resourced to support people who wish to exercise their right to access, correction and deletion of their data.

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# INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION

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## UN & CoE

30

January

In *Breyer v. Germany* (No. 50001/12), European Court on Human Rights (ECtHR) finds that the requirement to collect data to identify users of pre-paid SIM cards did not violate Article 8 of the European Convention on Human Rights (ECHR) (right to respect for private and family life).

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March

Chair of the Committee of Convention 108 and Data Protection Commissioner of the Council of Europe (CoE) publish a joint statement on the right to data protection in the context of the COVID-19 pandemic.

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April

CoE Committee of Ministers publishes a recommendation on the human rights impacts of algorithmic systems.

Chair of the Committee of Convention 108 and Data Protection Commissioner of the CoE publish a joint statement on digital contact tracing.

28

May

World Health Organization publishes interim guidance on ethical considerations to guide the use of digital proximity-tracking technologies for COVID-19 contact tracing.

13

June

In *Gaughran v. The United Kingdom* (No. 45245/15), ECtHR finds that indefinite retention of the DNA, fingerprints, and photograph of a man convicted of drunk driving breached his rights under Article 8 of the ECHR (right to respect for private and family life).

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September

Chair of the Committee of Convention 108 and the Data Protection Commissioner of the CoE publish a joint statement titled "Better protecting individuals in the context of international data flows: the need for democratic and effective oversight of intelligence services".

Parliamentary Assembly of the CoE (PACE) publishes two reports, one on the need for democratic governance of AI and one on the brain-computer interface.

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October

PACE publishes two reports, one on AI in healthcare and one on the role of AI in policing and criminal justice systems.

CoE publishes a report entitled *Artificial intelligence and labour markets: friend or foe?*

CoE publishes a report on digital solutions to fight COVID-19, which provides recommendations on data protection.

PACE adopts Resolution 2343 on Preventing discrimination caused by the use of artificial intelligence, calling on CoE member states to review their anti-discrimination legislation and amend it as necessary, to ensure that it covers all cases where direct or indirect discrimination may be caused by the use of AI, and that complainants have full access to justice.

27

November

Committee of Convention 108 adopts Guidelines on Children's Data Protection in an Education Setting.

# EU

January

29

European Commission publishes a communication on 'Secure 5G deployment in the EU – Implementing the EU toolbox'.

February

19

European Commission publishes a white paper on artificial intelligence (AI) and a report on the safety and liability implications of AI, the internet of things and robotics.

April

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European Commission issues recommendations on a common Union toolbox for the use of technology and data to combat and exit from the coronavirus disease 2019 (COVID-19) crisis

16

European Commission adopts a communication establishing guiding principles on apps supporting the fight against COVID-19 pandemic in relation to data protection.

June

15

European Parliament adopts a resolution on the proposal for a Council Decision on the determination of a clear risk of a serious breach by Poland of the rule of law (COM(2017)0835 – 2017/0360R(NLE)), calling on the country to comply with the provisions of the resolution of 18 December 2019 on equal treatment of LGBTI persons.

16

European Data Protection Supervisor adopts Opinion 3/2020 on the European data strategy.

24

- European Commission publishes a communication on the approach to digital transition two years after the GDPR.
- European Commission issues a communication on the way forward on aligning the former third pillar *acquis* with data protection rules.

30

European Data Protection Supervisor publishes its 2020–2024 strategy 'Shaping a safer digital future: A new strategy for a new decade'.

July

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European Commission issues Implementing Decision (EU) 2020/1023 amending Implementing Decision (EU) 2019/1765 as regards the cross-border exchange of data between national contact tracing and warning mobile applications with regard to combating the COVID-19 pandemic.

16

In *Data Protection Commissioner v. Facebook Ireland Ltd and Maximilian Schrems* (C-311/18), Court of Justice of the European Union (CJEU) invalidates Decision 2016/1250 on the adequacy of protection provided by the EU-US data protection Privacy Shield.

24

European Commission publishes an EU strategy for a more effective fight against child sexual abuse material.

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September

European Commission publishes draft Interim Regulation on the processing of personal and other data for the purpose of combating child sexual abuse (COM(2020) 568 final).

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October

In *Privacy International v. Secretary of State for Foreign and Commonwealth Affairs e.a* (C-623/17), and in joined cases C-511/18, C-512/18 and C-520/18, CJEU confirms that EU law precludes national legislation requiring a provider of electronic communications services to carry out the general and indiscriminate transmission or retention of traffic data and location data for the purpose of combating crime in general or of safeguarding national security.

Council of the EU adopts conclusions on digitalisation to improve access to justice, noting the potential of AI, and stressing the need to promote digital skills, including judicial training and awareness-raising.

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November

In *Orange Romania SA v. ANSPDCP* (C-61/19), CJEU holds that a contract for the provision of telecommunications services containing a clause stating that the customer has consented to the collection and storage of his or her identity document cannot demonstrate that this customer has validly given consent if the data controller ticked the box referring to that clause before the contract was signed.

European Data Protection Board adopts a statement on the draft e-Privacy Regulation, focusing on the future role of supervisory authorities.

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December

European Commission adopts communication on the digitalisation of justice in the EU.

Council of the EU adopts a resolution addressing security through encryption and the need for security despite encryption.

— European Commission proposes a new comprehensive set of rules for all digital services: the Digital Services Act and the Digital Market Act.

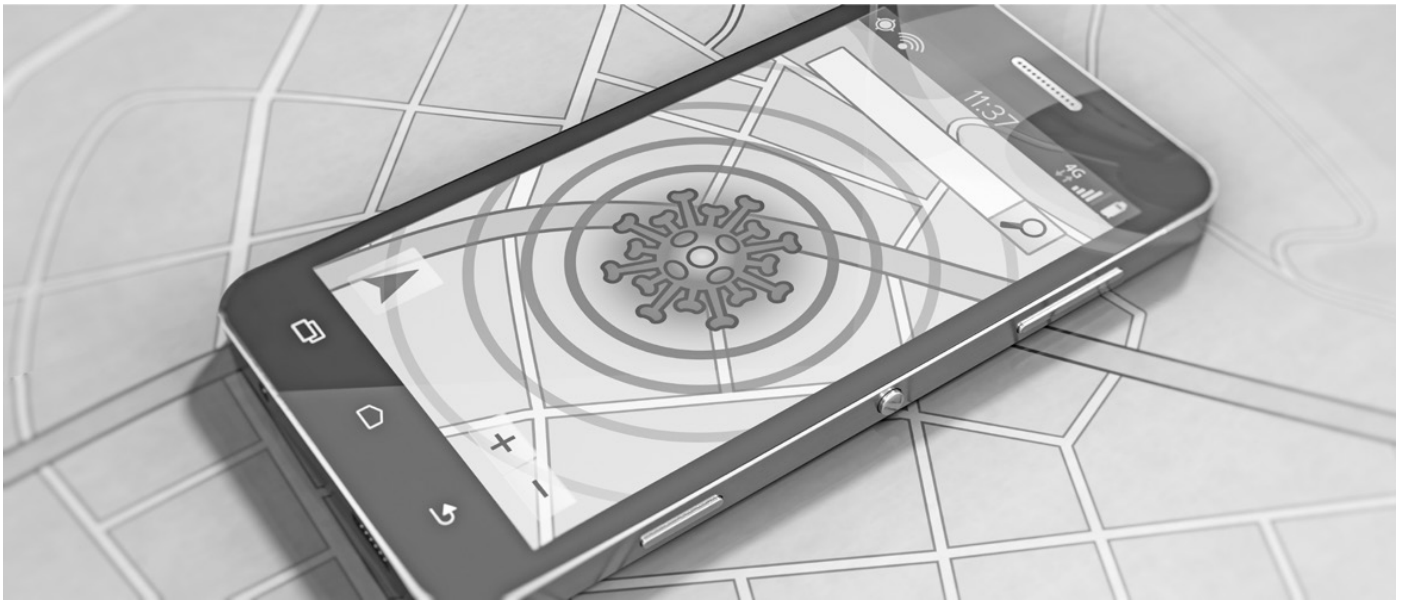
— European Data Protection Board adopts its 2021–2023 strategy.

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In 2020, the COVID-19 pandemic spurred the development and uptake of innovative technologies, including artificial intelligence (AI), to counter its spread. In parallel, the ongoing use of AI technologies brought concerns over the rights to data protection and privacy (alongside other rights, such as non-discrimination). EU and international bodies swiftly responded by emphasising applicable data protection standards. At the same time, the EU continued its work on regulating the use of AI. It published a white paper and accompanying report that recognised the role of fundamental rights – alongside ethical frameworks – in ensuring rights-compliant use of AI. The EU institutions and EU Member States also further developed policies and laws that affect privacy and data protection, in areas ranging from data retention and surveillance to the fight against child sexual abuse material.

## 7.1. DATA PROTECTION MOVES FORWARD, BUT NEW THREATS EMERGE

As the pandemic erupted in the EU, regulators turned to the use of technology to control its spread. Both public and private bodies resorted to various types of data processing. Among other approaches, they developed and deployed tracing applications (not always successfully), and health-reporting applications and websites, but also drones, thermal cameras, and e-forms for exit permits during lockdowns. In addition, some Member States passed legislation to permit access to and processing of traffic and location data.<sup>1</sup>



Several EU and international bodies raised concerns that such processing entails novel risks to the rights to private life and data protection, as FRA's second COVID-19 bulletin highlighted. In parallel, data protection experts worked to ensure the full enforcement of the General Data Protection Regulation (GDPR) principles and requirements across different areas, including those that the pandemic did not affect. However, further progress is needed to ensure greater harmonisation of the GDPR's application at national level.



### 7.1.1. Balancing data protection and health: privacy in the age of COVID-19

By the end of March 2020, the European Commission, the European Data Protection Board, the Council of Europe, and the Organisation for Economic Co-operation and Development had published guidance highlighting common minimum standards to safely implement tracing apps and related technologies.<sup>2</sup> They aimed to strike the right balance between the duty to protect public health and the duty to ensure the protection of personal data and of privacy.

National data protection authorities (DPAs) and civil society organisations (CSOs) took the lead in scrutinising the data protection and privacy compliance of measures to protect health. Many CSOs analysed such measures and technologies.<sup>3</sup> DPAs also produced guidance to ensure that technologies and data are used in a data protection-compliant way.<sup>4</sup>

In several EU Member States, government measures were criticised and challenged for not respecting data protection rules. In **Bulgaria**, for instance, the Constitutional Court ruled that the legislative amendment<sup>5</sup> allowing access to traffic data about individuals in mandatory isolation was unconstitutional, as the six-month period for retaining their data was excessive.<sup>6</sup> In **Croatia**, CSOs strongly criticised<sup>7</sup> the proposed amendments to the Electronic Communications Act, which aimed to track the locations of people in self-isolation.<sup>8</sup> Less than a month later, the government decided to withdraw them.<sup>9</sup>

In **Germany**, the requirement to collect personal data and contact information of restaurants and bars' clients raised criticisms and was declared unconstitutional by the Constitutional Court of Saarland in August 2020. It found that the particular encroachment on the fundamental rights was of such intensity that only a parliamentary act – but not a statutory order of the state government – would justify it.<sup>10</sup>

**“In the context of the coronavirus pandemic, now, more than ever, citizens must be sure that their personal data are well protected. Tracing apps can only become an effective and widely used tool to support the recovery from the pandemic when citizens trust that their privacy is safeguarded. In this respect, the GDPR and EU privacy rules play a vital role.”**

Věra Jourová, Vice-President for Values and Transparency, and Didier Reynders, Commissioner for Justice, **Joint statement ahead of the second anniversary of the GDPR**, 20 May 2020



## FRA ACTIVITY

# Tracing apps and related technology: fundamental rights implications

During 2020, FRA published six bulletins collecting information about and analysing fundamental rights challenges. Bulletins 1, 2 and 4 highlighted data protection and privacy concerns that the use of technological tools to combat the pandemic raised.

Bulletin 2 focused on tracing apps. Several national DPAs called for legislation that would provide legal clarity on tracing apps, restoring public trust and increasing public acceptance. Some Member State governments made efforts to do so, FRA found. However, at the end of 2020, data-processing concerns and lack of clarity about the legal basis for such tools remained, alongside technical challenges.

The bulletins also highlighted concerns about the spread of disinformation, particularly online. Notably, although the circulation of disinformation continues, actions at the start of the pandemic successfully reduced the impact of disinformation, evidence from some Member States indicates. Efforts to fight disinformation at national level included promoting enhanced transparency when publishing statistics related to the virus; creating platforms to rebut disinformation; and allocating funds to the media to counter disinformation.

*For more information, see FRA (2020), **Bulletin #1**, **Bulletin #2** and **Bulletin #4**.*

In the **Netherlands**, a draft bill proposed to amend the Telecommunications Act to oblige telecommunication service providers to process mobile phone metadata and send mobility statistics to the National Institute for Public Health and the Environment. The Dutch DPA assessed the bill negatively. Among other reasons, it lacked precise definitions, justification of the proportionality of the law, and procedural safeguards.<sup>11</sup>

Measures that private entities and public bodies took to alleviate the effects of the lockdown were also critiqued for putting data protection at risk. Notably, in the education sector, the push to use novel technologies raised questions regarding respect for the private lives of children or students.

**Cyprus**<sup>12</sup> required students to install software that might, among other things, film or monitor their eye movements during an exam. The Cypriot DPA criticised this in an opinion, emphasising that GDPR safeguards and principles must be respected.<sup>13</sup> In **Germany**, the use of teleconferencing apps and digital learning platforms raised concerns among several regional (*Länder*) DPAs.<sup>14</sup>

**Ireland** cancelled the Leaving Certificate examinations and replaced them with a system of calculated grades. They presented significant data protection issues in relation to the fairness and reliability of the process.<sup>15</sup> Errors resulted in approximately 6,000 students being issued with lower grades than expected, and approximately 8,000 with higher grades than there were supposed to be.<sup>16</sup>

The University of **Luxembourg** planned to use AI-based video surveillance for remote exam invigilation. The National Union of Luxembourg Students heavily criticised the system. It was finally abandoned.<sup>17</sup>

Disinformation related to the virus, or to political measures to combat the pandemic, rose rapidly across the EU. Several Member States took action to fight and decrease the circulation of fake news and scams.<sup>18</sup>

In **Belgium**, for instance, the government has set up an official website<sup>19</sup> that provides information on the virus and on measures related to confinement and deconfinement. The Belgian institute for health publishes daily updated statistics.<sup>20</sup> **Bulgaria** amended the Radio and Television Act in December 2020. The amendments introduce procedures for blocking access to websites disseminating disinformation, and establish financial sanctions for the spread of disinformation online.<sup>21</sup>

In **Spain**, the National Congress published an advisory resolution in October 2020. It proposed the introduction of legal amendments to combat fake news and unfounded rumours on the internet, including simplified mechanisms to report disinformation.<sup>22</sup>

In **Hungary**, the Parliament amended the Criminal Code in March 2020 to extend the scope of the long-standing offence of fearmongering to the specific situation of the periods of special legal orders.<sup>23</sup> A complaint highlighted that this act would restrict freedom of speech unnecessarily and disproportionately. The Constitutional Court rejected the complaint.<sup>24</sup>

### 7.1.2. The GDPR two years on: much progress, but room for improvement remains



In June 2020, the European Commission published its two-year review of the application of the GDPR. Overall, the Commission believes that the GDPR has met its objective, by offering both stronger protection to individuals and the means to enforce it.

Quoting from FRA's Fundamental Rights Survey, the Commission concluded that individuals are more empowered and aware of their rights, but that more can be done to help individuals exercise their rights – for instance, by unlocking the potential of the right to data portability.

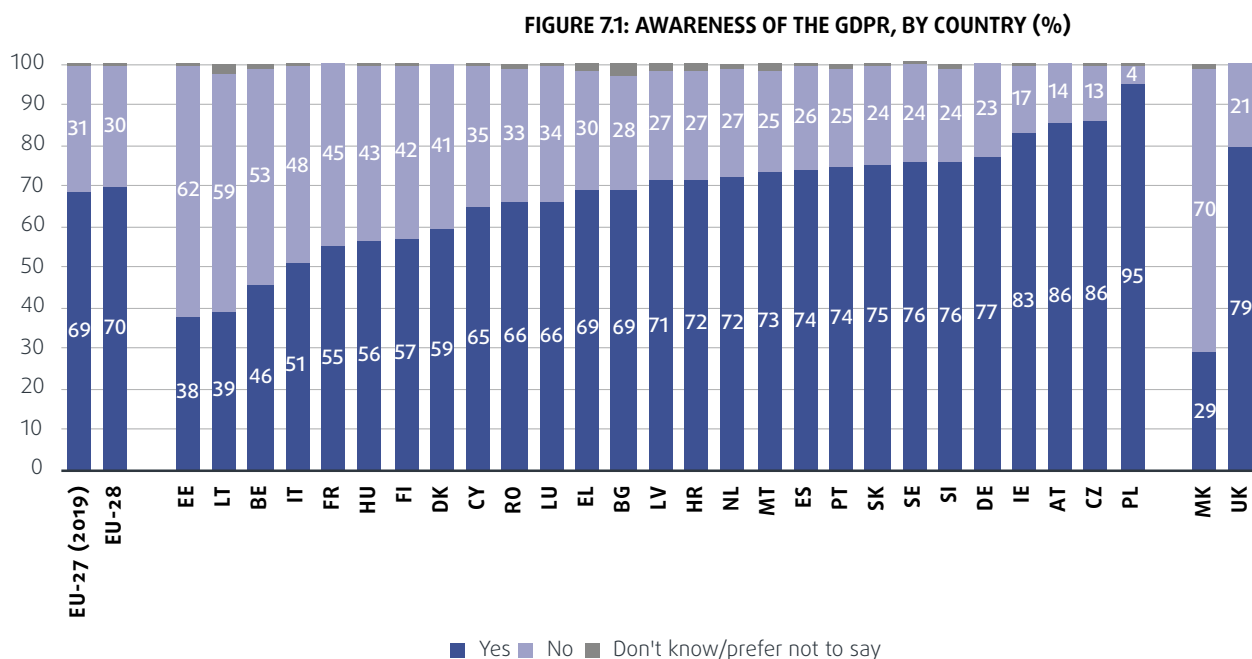
#### FRA ACTIVITY

### Fundamental Rights Survey looks at data protection and privacy

In June 2020, FRA published the findings of the Fundamental Rights Survey about individuals' opinions on data protection and technology. It interviewed just under 35,000 people aged 16 years and older in all EU Member States, North Macedonia and the United Kingdom in 2019.

The findings in that report focus mainly on how people share data about themselves, their willingness to do so, and their awareness of the EU's legal framework for data protection. Regarding the GDPR, it found that, overall, 69 % of people in the EU-27 have heard of the GDPR. Men say slightly more often (71 %) than women (67 %) that they are aware of the GDPR.

*For more information, see FRA (2020), **Your rights matter: Data protection and privacy, fundamental rights survey.***



Note: Out of all respondents in the EU-27, the United Kingdom, and North Macedonia who were asked to complete the section 'Technology' of the survey (n = 25,018); weighted results.

Source: FRA, Fundamental Rights Survey 2019 [Data collection in cooperation with CBS (NL), CTIE (LU) and Statistics Austria (AT)]

#### DPAs' workload and resources

Throughout 2020, national DPAs highlighted the continuous increase in the number of complaints they receive, already identified as an issue in FRA's *Fundamental Rights Report 2020*. For example, **Bulgaria**<sup>25</sup> reported a 46 % increase, **France**<sup>26</sup> a 27 % increase, the **Netherlands**<sup>27</sup> a 79 % increase, and **Spain**<sup>28</sup> a 20 % increase in the numbers of complaints. **Sweden**<sup>29</sup> reported a 23 % increase in the number of personal data breaches.

National DPAs issued 302 fines in 2020, exceeding € 60 million in total.<sup>30</sup> In 2019, they had issued 144 fines.<sup>31</sup> **Spain** was the Member State with the highest total number of fines ordered.<sup>32</sup>

The European Commission identified a positive trend in DPAs' financial and human resources: "overall, there has been a 42 % increase in staff and 49 % in budget for national data protection authorities taken together in the EEA between 2016 and 2019"<sup>33</sup>. However, differences between DPAs remain, prompting the Commission to call upon all Member States to fulfil their obligations to provide DPAs with adequate resources.<sup>34</sup>

For example, the **Irish** Data Protection Commissioner expressed disappointment at receiving less than a third of the planned funding required to fulfil the Data Protection Commission's tasks, while it is dealing with major complaints, as several large tech companies have their European headquarters in Ireland; Google, Facebook, Twitter and LinkedIn, among others, have established their EU headquarters in Dublin. The commissioner highlighted that this would force the DPA to "reassess its planned expenditure for 2020".<sup>35</sup> In October, however, the Irish government announced an important raise in the 2021 budget, which was welcomed by the DPA.<sup>36</sup>

Similarly, the **Dutch** DPA determined that in 2019 it could not deal with 33 % of the complaints it received, and called for an increase in its capacity.<sup>37</sup>

### *Harmonising practices and procedures*

The European Commission also flagged in its evaluation that DPAs could improve cooperation on cross-border cases. It recalled that, through the existence of the European Data Protection Board (EDPB), “close cooperation has become daily practice”.<sup>38</sup> Yet it noted differences between Member States in how they conduct administrative procedures, in their interpretation of key concepts, and in how they approach novel cooperation with other DPAs.

In its draft resolution on the European Commission’s evaluation report, the European Parliament echoed many of the Commission’s concerns.<sup>39</sup> The extensive use of specification clauses by Member States when transposing the GDPR has fragmented the application of the regulation, the Parliament noted.

The EDPB took note of the European Commission’s concerns. Its 2021–2023 strategy insists on the need to advance harmonisation, notably in the administrative procedures relevant to the functioning of the cooperation within the so-called One Stop Shop, by developing guidance on key concepts, by setting up a coordinated enforcement framework meant to facilitate joint actions, and by creating a support pool of experts.<sup>40</sup>

The Global Privacy Assembly, a consortium of 130 national DPAs worldwide, voiced similar concerns. During 2020, it issued a number of resolutions and working groups’ reports.<sup>41</sup> Notably, concerning the common understanding of key concepts, Policy Strategy Working Group 1 adopted the global frameworks and standards report, which analyses key concepts and principles from 10 international frameworks.<sup>42</sup>

Despite improvements, lack of adequate resources and of harmonisation have had an impact on the speed and effectiveness of resolving complaints and disputes, as noted above. For example, the EDPB’s first formal resolution of a dispute between the Irish and other DPAs, based on Article 65 of the GDPR and about a complaint against Twitter,<sup>43</sup> was adopted two years after it received notification of the breach, and after months of discussions between national DPAs.<sup>44</sup>

## **7.2. RECONCILING RIGHTS – DATA PROTECTION AND ITS LIMITS IN SELECT FIELDS**

The question of how authorities can use data and technology for tackling crime and for security purposes in a way that fully respects fundamental rights loomed large in 2020. Terrorist attacks in several Member States renewed tensions. Security policy remained high on the agenda, and included calls to make full use of available data and technologies to fight criminal activity. Yet effective safeguards are lacking to ensure that these will be used in a way that complies with fundamental rights.

### **FRA ACTIVITY**

## **FRA and EDPS renew memorandum of understanding**

In June 2020, FRA and the European Data Protection Supervisor (EDPS) renewed their cooperation agreement to further strengthen data protection across the EU. They signed it during the pandemic, and insisted that respect for fundamental rights, including privacy and data protection, has to be centre stage to make tracing apps, or any other technology, a success.

FRA and the EDPS plan to meet at least once a year to exchange views on the main forthcoming challenges for the fundamental rights to privacy and data protection, and to related rights.

*See **Revised memorandum of understanding on increasing cooperation between the European Data Protection Supervisor and the European Union Agency for Fundamental Rights.***





### 7.2.1. Legislative initiatives related to child protection and data retention

The use of new technologies to fight crime raises numerous challenges to fundamental rights. However, Member States and EU institutions are determined to make the best out of technological developments for law enforcement, as the Council Conclusions on Internal Security and European Police Partnership, adopted in November 2020, stressed.<sup>45</sup>

#### *Fight against child sexual abuse material*

In July 2020, the European Commission published a communication on an EU strategy

for a more effective fight against child sexual abuse material (CSAM).<sup>46</sup> It includes a number of proposals that have legitimate objectives but could affect the rights to data protection and respect for private life. One is the call to address end-to-end encryption. Moreover, the proposed interim regulation to enable communications services to continue detecting child sexual abuse online<sup>47</sup> raised concerns among both privacy activists<sup>48</sup> and institutions.<sup>49</sup>

As of 21 December 2020, the application of the European Electronic Communications Code<sup>50</sup> extends the protection of the ePrivacy Directive to over-the-top services, such as web messaging, voice over internet protocol (VoIP), chat or web-based email services. The purpose of the CSAM proposal is to establish a temporary derogation from this directive, which will allow the voluntary detection of child sex abuse material online to continue.

Yet, as the EDPS highlighted in its opinion, the proposal lacks crucial safeguards to ensure adequate protection of personal data. The opinion emphasises the importance of ensuring that the principles of legality, necessity, and proportionality are duly respected: "Due to the absence of an impact assessment accompanying the Proposal, the Commission has yet to demonstrate that the measures envisaged by the Proposal are strictly necessary, effective and proportionate for achieving their intended objective."<sup>51</sup>

#### *Surveillance and data retention*

With regard to surveillance and data retention, the Court of Justice of the European Union issued two decisions in October 2020. They confirm the principle that general and indiscriminate data retention or acquisition (bulk interception) does not comply with personal data protection, freedom of expression, and the right to privacy.<sup>52</sup>

A study for the European Commission analysed the data retention schemes in 10 Member States. The regulatory and institutional framework for data retention in those Member States is fragmented, it found. It concluded that "in the absence of legal certainty of national legal frameworks on data retention, there is a risk that law enforcement authorities cannot access important evidence needed to investigate and prosecute crimes".<sup>53</sup>



In **Germany**, the Federal Constitutional Court decided in a landmark judgment that the surveillance of extraterritorial communications by the Federal Intelligence Service is disproportionate and therefore unconstitutional, as it guarantees neither adequate protection for the communications of journalists and similar professions nor effective oversight, in particular when it comes to international intelligence cooperation.<sup>54</sup>

However, discussions and negotiations within the Council of the EU mostly stalled in 2020. At national level, a few Member States (such as **Denmark**,<sup>55</sup> **Germany**,<sup>56</sup> and **Lithuania**<sup>57</sup>) began to discuss modifying their data retention schemes, and several Member States adopted laws aiming to enlarge surveillance and security-related powers. They raised concerns and criticism, for example in **Denmark**,<sup>58</sup> **Ireland**,<sup>59</sup> **Italy**,<sup>60</sup> and **Luxembourg**.<sup>61</sup>

In **France**, the proposal for a law on global security triggered a wide debate.<sup>62</sup> Several demonstrations took place against multiple aspects of the draft law on the ground that they endangered fundamental rights. Notably, the bill regulates the use of airborne cameras by drones for a wide range of purposes, and widens the grounds to access images from police body-worn cameras. The French *Défenseur des Droits* criticised both aspects as possibly infringing respect for private life.<sup>63</sup>



### 7.2.2. Setting the boundaries of internet intermediaries' responsibilities

In December 2020, the European Commission published the proposal to reform the EU's eCommerce Directive and address certain questions in the digital economy, as a package of two draft acts: the Digital Services Act<sup>64</sup> (DSA) and the Digital Markets Act.<sup>65</sup> The DSA intends to regulate questions around the responsibility of internet intermediaries in crucial issues such as illegal online content, online hate or disinformation.

CSOs with data protection expertise published preliminary analyses. They welcomed its positive aspects. For example, it does not reverse or diminish the prohibition of general monitoring, a crucial rule that the eCommerce Directive established. It also lays down specific rules for "very large online platforms". However, the CSOs also warned of potential risks to data protection.<sup>66</sup>

The proposal covers topical questions, some of which Member States have addressed. In **Germany**, since 2017, the Network Enforcement Act has obliged social network platforms to remove hate speech by set deadlines. In June 2020, the law was amended to extend platforms' obligations so that they must now report certain types of criminal content to the Federal Criminal Police Office.<sup>67</sup> In May 2020, **France** adopted a new law requiring online platforms to delete hate speech content within 24 hours, but the Constitutional Council declared it largely unconstitutional a month later.<sup>68</sup> In **Austria**, a new law introduces a legal obligation for platforms to set up a complaint management system for handling illegal content and to appoint a responsible representative.<sup>69</sup>

Several Member States (**Austria**,<sup>70</sup> **Denmark**,<sup>71</sup> **Ireland**,<sup>72</sup> the **Netherlands**,<sup>73</sup> **Spain**,<sup>74</sup> and **Sweden**<sup>75</sup>) either introduced legal proposals to combat online hate or announced their intention to do so in 2021. **Denmark** set up an interministerial working group to devise recommendations for a new regulation regarding illegal content on online platforms.<sup>76</sup> However, the Danish Commission on Freedom of Speech recommended that the legislator should be reluctant to establish new legislation and existing legislation should be better enforced.<sup>77</sup>

These complex questions are also subject to international debates. In January 2020, the Council of Europe set up the MSI-DIG Committee of Experts on Freedom of Expression and Digital Technologies. Its task was to develop a draft recommendation for the Committee of Ministers on the impacts of digital technologies on freedom of expression, and a guidance note on best practices by and with internet intermediaries and other stakeholders on effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms.<sup>78</sup>

In May 2020, the UN published a guidance note on addressing and countering COVID-19-related hate speech.<sup>79</sup> It addresses the broader impact of the pandemic, not only on the profusion of illegal online hate speech, but also on the decision of the main online platforms to replace human content moderators with automated decision-making algorithms.<sup>80</sup>

### 7.3. ARTIFICIAL INTELLIGENCE: NEED FOR STRONG FUNDAMENTAL RIGHTS SAFEGUARDS

Continuing the trend of previous years, 2020 witnessed an ever-increasing use of new technologies, in particular technologies that could qualify as AI. The arrival of COVID-19 boosted the trend, as new technologies were considered important tools for fighting the pandemic. National initiatives, building on past analysis, clearly did address potential ethical impacts. Yet, while EU initiatives are increasingly grounded in fundamental rights, national initiatives rarely introduce specific sets of standards and requirements that should be implemented to effectively guarantee the protection of fundamental rights.<sup>81</sup>

#### 7.3.1. EU regulatory framework on AI takes form

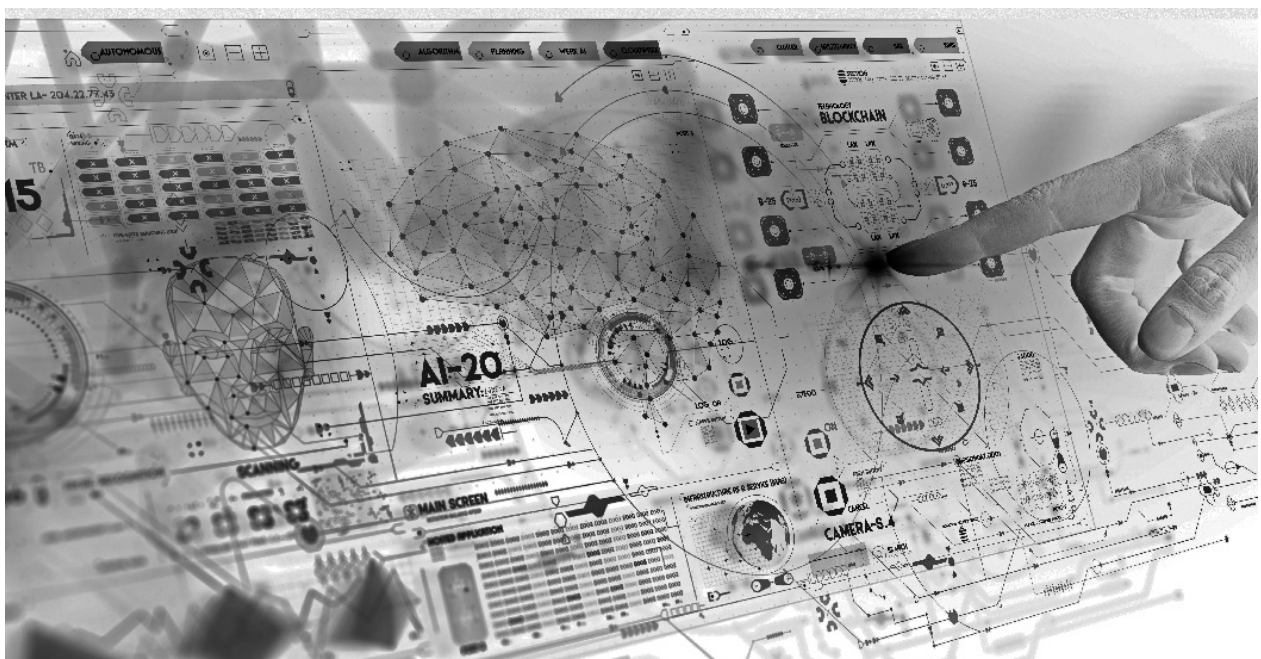
The EU on numerous occasions highlighted the importance of ensuring respect for fundamental rights when dealing with AI. In February 2020, the European Commission underlined the need to build a strong legal framework for fundamental rights and data protection, and to promote the fundamental values of European societies.<sup>82</sup> In October, the Presidency of the European Council emphasised<sup>83</sup> the need for a fundamental rights-based approach to AI.

**“Today we are presenting our ambition to shape Europe’s digital future. It covers everything from cybersecurity to critical infrastructures, digital education to skills, democracy to media. I want that digital Europe reflects the best of Europe – open, fair, diverse, democratic, and confident.”**

Ursula von der Leyen, President of the European Commission, *‘Shaping Europe’s digital future: Commission presents strategies for data and Artificial Intelligence’*, 19 February 2020

**“Europe needs to develop AI that is trustworthy, eliminates biases and discrimination, and serves the common good, while ensuring business and industry thrive and generate economic prosperity.”**

Dragoș Tudorache, Chair, European Parliament Special Committee on Artificial Intelligence in the Digital Age, *‘AI rules: what the European Parliament wants’*, 21 October 2020





## FRA ACTIVITY

# Getting the future right – artificial intelligence and fundamental rights

In December 2020, FRA published its report on artificial intelligence and fundamental rights. Drawing on over 100 interviews with public and private organisations using AI in Estonia, Finland, France, the Netherlands and Spain, it discusses the potential implications for fundamental rights and analyses how using or developing AI applications takes such rights into account. Based on concrete use cases of AI in selected areas, it focuses on the situation on the ground in terms of fundamental rights challenges and opportunities when using AI.

The European Commission White Paper asserts that any regulatory framework for AI must be grounded in the EU's fundamental values, including respect for human rights. The FRA report provides evidence to support this.

FRA and the German Presidency of the Council of the EU co-organised a live event on 14 December 2020 to launch the report. It called on the EU and its Member States to:

- make sure that AI respects all fundamental rights;
- guarantee that people can challenge decisions taken by AI;
- assess AI before and during its use to reduce negative impacts;
- provide more guidance on data protection rules;
- assess whether or not AI is discriminatory;
- create an effective oversight system.

For more, see FRA (2020), *Getting the future right – Artificial intelligence and fundamental rights*, Luxembourg, Publications Office, and the launch event, *Doing AI the European way*.

The European Commission published a *White Paper on artificial intelligence – A European approach to excellence and trust*<sup>84</sup> in February 2020. It repeatedly underlined the need to respect fundamental rights, stressing how AI may affect them. In the White Paper, the Commission proposes a risk-based approach, whereby mandatory requirements would in principle apply only to high-risk applications.<sup>85</sup>

The paper proposes policy options to ensure the trustworthy and secure development of AI in Europe, which would promote, first, “an ecosystem of excellence”<sup>86</sup> that should support the development and uptake of AI across the EU; second, “an ecosystem of trust”<sup>87</sup> that will define the legal requirements applicable to the deployment of AI in high-risk areas; and, third, safeguards for “safety and liability”<sup>88</sup>, to make sure that any AI product or service operates safely, reliably and consistently, and that individuals have access to efficient remedies.

The Commission invited feedback on the White Paper and received over 1,250 replies.<sup>89</sup>

Several Member States published their positions on the AI White Paper, such as **Finland**,<sup>90</sup> **Germany**,<sup>91</sup> **Ireland**,<sup>92</sup> **Lithuania**,<sup>93</sup> **Slovakia**,<sup>94</sup> **Slovenia**<sup>95</sup> and **Sweden**.<sup>96</sup> **Estonia** not only emphasised the need to develop the ethical use of AI but also considered the protection of fundamental rights to be of critical importance in the application and use of AI.<sup>97</sup> **Ireland** welcomed the contents of the White Paper and agreed about the importance of the issues raised in it, notably with regard to the ecosystem of excellence and trust.<sup>98</sup> It addressed, however, the limits of the White Paper and emphasised notably the need to address international human rights standards.

Other Member States (such as **Bulgaria**,<sup>99</sup> **Germany**,<sup>100</sup> and **Latvia**<sup>101</sup>) and **Serbia**<sup>102</sup> referred to the White Paper on AI in their national initiatives, to indicate their support of the positions it developed and to promote ethical or fundamental rights standards of reliable and trustworthy use of AI at national level.

The European Parliament was very active regarding AI in 2020. In June, it established a Special Committee on AI in a Digital Age, tasked with “studying the impact and challenges of rolling out AI, identifying common EU-wide objectives, and proposing recommendations on the best ways forward”.<sup>103</sup>

The Parliament also adopted three resolutions related to AI in October 2020, on ethics,<sup>104</sup> civil liability<sup>105</sup> and intellectual property.<sup>106</sup> Notably, the resolution on a framework of ethical aspects of AI, robotics and related technologies called on the Commission to establish a comprehensive and future-proof European legal framework of ethical principles for developing, deploying and using AI, robotics and related technologies in the EU, including software, algorithms and data.

The Council of Europe's Committee of Ministers published a recommendation on the human rights impact of algorithmic systems in April 2020.<sup>107</sup> It insisted on the importance of compliance with human rights and fundamental freedoms, and provided guidelines on various topics, including discrimination, privacy, transparency, effective remedies, oversight and impact assessments.

In September, the Council of Europe Ad hoc Committee on Artificial Intelligence (CAHAI) published its first progress report.<sup>108</sup> Two months later, it adopted a feasibility study highlighting the need to develop a legal framework for the design, development and application of AI based on human rights, democracy and the rule of law.<sup>109</sup> In October 2020, the Standing Committee of the

Parliamentary Assembly of the Council of Europe confirmed the need to adopt a global regulatory framework for AI.<sup>110</sup>

### 7.3.2. National AI initiatives: need for stronger fundamental rights safeguards

At national level, most Member States adopted studies, reports, projects and opinions as a basis to foster the use of AI, with a strong focus on its development in the public sector.<sup>111</sup>

National initiatives published or adopted in 2020 focused on four areas: health (in **Austria**,<sup>112</sup> **Czechia**,<sup>113</sup> and **Spain**<sup>114</sup>); the security and safety of data infrastructures (in **Croatia**,<sup>115</sup> **Czechia**<sup>116</sup> and **Romania**<sup>117</sup>); research and innovation (in **Poland**,<sup>118</sup> **Portugal**<sup>119</sup> and **Spain**<sup>120</sup>); and the judicial system (in **Austria**,<sup>121</sup> **France**<sup>122</sup> and **Poland**<sup>123</sup>).

In addition, by the end of 2020, a majority of Member States had adopted national AI strategies,<sup>124</sup> following a trend already noted in FRA's *Fundamental Rights Report 2020*.<sup>125</sup>

Few Member States, however, included specific in-depth analysis to ensure reliable and trustworthy AI. An exception was **Bulgaria**, where a policy document on the development of AI until 2030<sup>126</sup> includes practical steps and measures for the implementation of AI ethical standards. Likewise, **Hungary's** AI strategy 2020–2030 includes a proposal to adopt an ethics code for market participants, to guarantee human-centric use of AI and respect for basic ethical requirements.<sup>127</sup>

When addressing fundamental rights, national policy initiatives on AI<sup>128</sup> essentially focus on three main areas: the right to data protection, the right to respect for private life, and the right to non-discrimination. Marginally, they also touch upon other fundamental rights, such as children's rights, the right to defence, and freedom of information.



National initiatives on the use of AI refer to data protection and privacy mostly in the public sector, in particular with regard to health, transport and surveillance. They mention discrimination, on the other hand, mostly in initiatives related to profiling (such as in **Hungary**<sup>129</sup>) and on the use of algorithms and automated decision making (**Estonia**,<sup>130</sup> **Finland**,<sup>131</sup> **France**,<sup>132</sup> **Germany**<sup>133</sup> and the **Netherlands**<sup>134</sup>). This focus is similar to the one already noted in FRA's *Fundamental Rights Report 2020*.<sup>135</sup>

People are increasingly aware of potential fundamental rights interferences stemming from the use of AI. However, there are significant gaps in a number of AI strategies. Although some initiatives expressly refer to fundamental rights and offer in-depth analysis, most limit themselves to merely mentioning the general principle that fundamental rights should be observed.

For example, these initiatives:

- point to the need to protect and strengthen fundamental rights (**Germany**<sup>136</sup> and the **Netherlands**<sup>137</sup>);
- ensure that the development of AI-based systems is being made in accordance with human rights (**Germany**,<sup>138</sup> **Serbia**,<sup>139</sup> and **Slovenia**<sup>140</sup>);
- clarify the need to take fundamental rights into account (**Cyprus**,<sup>141</sup> **Latvia**,<sup>142</sup> and **Malta**<sup>143</sup>); or
- include a general reference to the EU Charter of Fundamental Rights, the GDPR, or other instruments (for example **Bulgaria**,<sup>144</sup> **Slovenia**,<sup>145</sup> **Sweden**,<sup>146</sup> and the **Netherlands**<sup>147</sup>).

As AI technologies are developing at a rapid pace, people raised concerns about the lack of measures implemented to mitigate impacts that specific technologies might have on fundamental rights. Notable examples are facial recognition (in **Ireland**<sup>148</sup> and the **Netherlands**<sup>149</sup>), automatic decision-making systems (in **Finland**<sup>150</sup>), and the increasing use of algorithms in various sectors (see research by the Ombuds institution in **France**<sup>151</sup> and the national supervisory authority in the **Netherlands**<sup>152</sup>).

Public authorities, civil society, and academic experts variously raised the need to conduct efficient and comprehensive analysis of the fundamental rights impact of the use of AI. As AI technology gets more sophisticated, and penetrates a range of fields (from health to education and finance), safeguarding fundamental rights takes more work, as civil society organisations point out.<sup>153</sup> One criticism is that legal instruments such as the GDPR tend to be mentioned in national initiatives without clarifying how much and in what way the instrument plays a role in ensuring that an AI initiative complies with fundamental rights.<sup>154</sup>

Independent public institutions, such as in **Italy**,<sup>155</sup> also emphasised the need to safeguard fundamental rights better for safe and fair use of AI. Academic research in **Cyprus**,<sup>156</sup> **Germany**,<sup>157</sup> the **Netherlands**,<sup>158</sup> and **Greece**<sup>159</sup> similarly pointed out that fundamental rights are not sufficiently assessed and addressed.

### 7.3.3. AI in the age of COVID-19: protecting health and fundamental rights proves challenging

Combating the spread of the Coronavirus became a top priority for the EU and its Member States in 2020. Most COVID-19-related measures referred to the need to use AI technologies to combat the virus, as noted in Section 7.1.

This strong role that AI played during the pandemic manifested itself by different means. First, the development of mobile applications and/or national systems to fight the spread of the virus used AI (**Bulgaria**,<sup>160</sup> **Croatia**,<sup>161</sup> **Finland**,<sup>162</sup> **Lithuania**,<sup>163</sup> **Latvia**,<sup>164</sup> **Portugal**,<sup>165</sup> and **Spain**<sup>166</sup>). Second, the development and use of AI helped to prevent waves of infection (**Austria**<sup>167</sup>) or to facilitate diagnosis (**Belgium**<sup>168</sup> and **Croatia**<sup>169</sup>). Finally, AI also proved essential in other areas that the pandemic affected, namely transport (**Belgium**<sup>170</sup>), education (**Bulgaria**<sup>171</sup> and **Spain**<sup>172</sup>), and surveillance (**Croatia**<sup>173</sup>).





In many instances, AI tools assisted people in various ways during a series of lockdowns that were imposed during the year. For example, they helped children continue their education during school closures.

However, several of the initiatives using AI systems to fight the pandemic can seriously affect the right to privacy and data protection. Some Member States developed specific measures and recommendations to protect fundamental rights (such as **Austria**,<sup>174</sup> **Croatia**,<sup>175</sup> and **Greece**<sup>176</sup>).

The ethical use of AI also came under discussion during its use in the pandemic. Some Member States decided to evaluate the impact of the pandemic in an ethical review rather than assessing fundamental rights challenges. For instance, **France**<sup>177</sup> and **Luxembourg**<sup>178</sup> did so.

#### PROMISING PRACTICE

### University launches course on ethics of AI

The Budapest University of Technology and Economics in **Hungary** introduced a new course for engineering students on the ethics of artificial intelligence.

The course aims to raise awareness and initiate discussions among the engineering students on the potential ethical concerns involved in the use of AI. The university wants to further their critical thinking, encouraging them to understand and analyse the ethical challenges inherent in the introduction of any new AI method, as well as the tools available to overcome these challenges.

*For more information, see Budapest University of Technology and Economics, 'Ethics of artificial intelligence' ('Szabvály ajánló – A mesterséges intelligencia etikája').*

## FRA opinions

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The COVID-19 pandemic prompted people to use digital data and new technologies to curb the spread of the virus and alleviate its negative impacts on society. From contact-tracing and proximity applications, to teleconferencing software or the use of algorithms in education, the intensive collection and treatment of personal data brought risks to the fundamental rights to data protection and respect for private life.

The year's developments underscored that, in times of crisis, it is crucial to conduct effective and appropriate balancing exercises to ensure that health-protecting measures do not unnecessarily or disproportionately affect fundamental rights.



### FRA OPINION 7.1

EU Member States should make sure that any measures, policies or legal initiatives taken in a time of crisis, such as a pandemic, do not interfere disproportionately with the rights to data protection and respect for private life. Specifically, EU Member States should ensure that Article 8 of the EU Charter of Fundamental Rights, as well as the principles of fairness, data minimisation, and purpose limitation, which Article 5 of the GDPR highlights, are applied.



## FRA OPINION 7.2

EU Member States should ensure that national data protection supervisory authorities have sufficient human, technical and financial resources to allow them to carry out their mandates effectively. To assess the adequacy of resources, Member States should support independent and objective reviews of the national data protection supervisory authorities' workload.

Continuing the trend that FRA identified in its *Fundamental Rights Report 2020*, the workload of data protection supervisory authorities remained extremely demanding. The large numbers of investigations and complaints persisted in most Member States. In parallel, the incomplete harmonisation of procedures and key concepts, on which the cooperation procedure on cross-border disputes rests, prevented swift resolution of these disputes.

There were signs of progress in 2020 at both national level (with regard to the increase of financial and human resources) and international level (with regard to the harmonisation of gaps). However, there is still room for improvement. The EU's strong legal framework for data protection will work effectively only when all actors are sufficiently equipped to respond promptly and effectively to all requests.

With terrorist threats and criminal activities persisting throughout 2020, EU institutions and Member States called for the prompt adoption of measures allowing the use of available data and technologies to fight crime. The use of data-mining technologies was variously invoked to fight against online child sexual abuse material, to support criminal investigations, to increase surveillance, and to fight against illegal online content.

However, institutional bodies and civil society often questioned the necessity and proportionality of such measures at both national and EU levels. Although security measures have legitimate objectives, they should not be used as a pretext to lower fundamental rights standards.

The pandemic did not stop work on strategies, legal initiatives and policies aimed at fostering or regulating the use of AI. To the contrary – the crisis pushed bodies to adopt swift measures that support the use of AI, which was also promoted as a tool for fighting the pandemic. Both the EU and Member States very actively developed various AI strategies and new legal instruments throughout 2020.

However, as FRA already flagged in its *Fundamental Rights Report 2019* and *Fundamental Rights Report 2020*, many AI strategies favour a reference to ‘ethics’, and only mention the need to protect fundamental rights, without outlining a detailed rights-based approach. Yet, as FRA’s report on AI and fundamental rights highlighted, the use of AI can have a far-reaching effect on people’s fundamental rights. Therefore, fundamental rights must be firmly embedded in any future legislation.



### FRA OPINION 7.3

EU institutions and EU Member States should ensure that all regulatory efforts to fight against criminal activities contain the necessary safeguards to guarantee compliance with the principles of legality, necessity and proportionality. They should also provide for effective oversight and access to remedial mechanisms. In this context, EU institutions and EU Member States should fully take into account the relevant case law of the Court of Justice of the European Union.



### FRA OPINION 7.4

EU institutions and EU Member States should ensure that any future EU or national AI-related legal and political instruments are grounded in respect for fundamental rights. To achieve this, they should include strong legal safeguards, promote fundamental rights impact assessments, and ensure independent oversight and access to effective remedies.

EU Member States should make sure that extraordinary circumstances, such as the pandemic, do not lower the level of fundamental rights protection in the use of AI-related technologies.

## Endnotes

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- 2 FRA, *Bulletin #2 Coronavirus pandemic in the EU – Fundamental rights implications: with a focus on contact-tracing apps*, April 2020.
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- 4 The Global Privacy Assembly (GPA) collected DPAs’ statements and guidance. They are available on the [GPA website](#).
- 5 Bulgaria, *Electronic Communications Act (ЗАКОН ЗА ЕЛЕКТРОННИТЕ СЪОБЩЕНИЯ)*, 22 May 2007, Art. 251b, para. 2.
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# RIGHTS OF THE CHILD

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## UN & CoE

22

Committee of Ministers of the Council of Europe (CoE) adopts the strategic action plan for Roma and Traveller inclusion (2020–2025), aiming to combat antigypsyism and discrimination, and supporting access to inclusive quality education.

30

Parliamentary Assembly of the CoE (PACE) adopts a resolution and a recommendation on the international obligations concerning the repatriation of children from war and conflict zones.

January

7

In *A.B. v. Spain*, UN Committee on the Rights of the Child establishes that the state had violated the best interests of a child under Article 3 of the Convention on the Rights of the Child (CRC), the right of freedom of opinion and expression (Article 13 of the CRC), and the right to identity (Article 8 of the CRC), and had failed to implement intermediary measures (Article 6 of the Third Optional Protocol to the CRC) during the age assessment of an unaccompanied child.

February

3

UN Committee on the Rights of the Child publishes its concluding observations on Hungary.

6

UN Committee on the Rights of the Child publishes its concluding observations on Austria.

11

Committee of Ministers of the CoE adopts a declaration on strengthening the rights of the child as the key to a “future-proof” Europe.

26

In *Bilalova and Others v. Poland* (No. 23685/14), the European Court of Human Rights (ECtHR) finds a violation of the applicant children’s rights under Article 5 (1) (f) (right to liberty and security) of the European Convention on Human Rights (ECHR). The court finds that there was insufficient evidence that domestic authorities properly assessed the applicants’ detention with their mother, and that no steps were taken to limit its duration.

March

3

Lanzarote Committee Chair and Vice-Chairperson make a statement on stepping up protection of children against sexual exploitation and abuse during the COVID-19 pandemic.

April

26

PACE adopts a resolution and a recommendation on ‘Addressing sexual violence against children: stepping up action and co-operation in Europe’.

30

CoE’s Committee of Ministers publishes a recommendation on the inclusion of the history of Roma and/or Travellers in school curricula and teaching materials.

June

## UN & CoE

July

20

UN Special Rapporteur on the human rights of migrants publishes a report on ending immigration detention of children and seeking adequate care and reception for them.

September

25

In *Moustahi v. France* (No. 9347/14), the ECtHR finds that the detention of two Comorian children in Mayotte, their incorrect association with an unknown adult, and their immediate removal violated Article 3 (prohibition of torture), Article 5.1 and 5.4. (right to liberty and security), Article 8 (right to respect for private and family life), Article 4 of Protocol No. 4 (prohibition of collective expulsions of aliens), and Article 13 (right to an effective remedy) of the ECHR.

28

- In three separate complaints (*S.M.A., L.D., M.B. v. Spain*), UN Committee on the Rights of the Child establishes that the state violated the best interests of the child (Article 3 of the CRC), the right to life (Article 6), and the right to identity (Article 8) during the age assessment of an unaccompanied child.
- In *W.M.C. v. Denmark*, UN Committee on the Rights of the Child establishes that the state violated the best interests of a child (Article 3 of the CRC), the right to life (Article 6 of the CRC), and the right to identity (Article 8 of the CRC) in deporting three children and their mother to China.

October

13

PACE adopts Resolution 2340 (2020) on 'Humanitarian consequences of the Covid-19 pandemic for migrants and refugees'.

19

UN Human Rights Committee publishes its views in an individual communication. It finds that the Netherlands violated a child's right to acquire a nationality due to the lack of a status-determination procedure.

November

19

CoE's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment calls on Greece to put an end to the detention of unaccompanied children and the detention in police establishments of children with parents.

20

The CoE's Consultative Committee of the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (T-PD) adopts Guidelines on children's data protection in an education setting.

December

21

Ireland ratifies the CoE Convention on the protection of children against sexual exploitation and abuse (Lanzarote Convention), which completes its ratification by all CoE member states.

14

January

European Commission adopts the communication 'On a strong social Europe for just transitions', which puts forward several initiatives, including the Child Guarantee set up for the Commission to adopt in 2021.

5

March

European Commission adopts the gender equality strategy 2020–2025, which also addresses violence against girls and challenges gender stereotypes of girls and boys.

12

June

European Commission adopts the EU strategy on victims' rights (2020–2025), which also addresses vulnerable groups, such as children.

12

12

July

In *B.M.M. and Others v. Belgium* (No. 95/20), Joined cases C-133/19, C-136/19 and C-137/19, the Court of Justice of the EU (CJEU) finds a violation of Directive 2003/86/EC on the right to family reunification and Article 4 (prohibition of torture and inhuman or degrading treatment or punishment) and Article 47 (right to an effective remedy and to a fair trial) of the Charter. The case involved an application for family reunification of a 'minor child'. The court holds that the relevant date for determining if a 'minor child' is concerned is that of the submission of the application for asylum for the purposes of family reunification, and not the date on which the authorities make a decision on that application.

European Commission adopts the EU strategy for a more effective fight against child sexual abuse, presenting a framework for EU action in 2020–2025.

1

18

23

29

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September

European Commission opens a public consultation to gather stakeholders' views on the upcoming EU strategy on the rights of the child.

European Commission adopts the EU anti-racism action plan 2020–2025 addressing age-based discrimination and social inclusion through the Child Guarantee, education and digitalisation.

European Economic and Social Committee publishes an opinion on 'The protection of unaccompanied minors in Europe', calling on the EU to develop a coherent and uniform approach to protecting unaccompanied foreign children in Europe.

European Commission proposes a new Pact on Migration and Asylum. The legislative proposals accompanying the pact contain several proposals aiming to strengthen the protection for migrant children, particularly unaccompanied children, and ensure that the principle of the best interests of the child is upheld.

13th European Forum on the rights of the child takes place online. The theme is 'Delivering for children: towards the European strategy on the rights of the child'.

European Commission adopts the digital education action plan 2021–2027.

## EU

October

7

European Commission adopts new EU Roma strategic framework on equality, inclusion and participation until 2030 addressing child poverty, eliminating school segregation, and increasing rates of completing early childhood education and secondary school.

12

European Council adopts conclusions on 'Strengthening minimum income protection in the COVID-19 pandemic and beyond'. It also focuses on children at risk of poverty and social exclusion.

22

European Parliament adopts a resolution on closing the digital gap, as the COVID-19 pandemic has exposed severe inequalities in access to education.

November

24

European Commission presents its action plan on integration and inclusion 2021-2027, recommending specific actions on access to education and facilitating transition to adulthood for unaccompanied children turning 18, and highlighting the best interests of the child as a guiding principle.

December

8

- European Commission adopts the EU Strategy for implementing the EU Charter of Fundamental Rights, highlighting the importance of raising children's awareness of their rights.
- European Commission adopts the European judicial training strategy for 2021-2024, requiring focused training on the rights of specific groups, such as children.

14

Council of the EU adopts conclusions on internal security and European police partnership, underlining the increased online dimension of criminality and welcoming all efforts to fight against online and offline sexual abuse of children.



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The COVID-19 pandemic put unprecedented strain on children and families across the EU in 2020, especially those who were already economically or socially disadvantaged. Despite Member States' efforts, distance education was a challenge for children who lack computers or internet access, or live in overcrowded households. The threat of abuse at home also loomed large. Children continued to submit fewer asylum applications, but their reception conditions remained inadequate in several Member States. Ten Member States welcomed 573 unaccompanied children and 771 children in families who were relocated from the Greek 'hotspots'. Most Member States incorporated into national law the Procedural Safeguards Directive for children who are suspects or accused persons in criminal procedures. However, infringement procedures against seven Member States remain open. The European Commission undertook extensive consultations on the EU strategy on the rights of the child, which it plans to adopt in 2021.

## 8.1. COVID-19 EXACERBATES ALREADY POOR LIVING CONDITIONS

Poverty has long been a reality for many children in Europe, but the trend was decreasing – at least until the COVID-19 pandemic hit. The pandemic jeopardised a number of fundamental rights of children that the EU Charter of Fundamental Rights lays down, notably the rights to education (Article 14) and to the protection and care necessary for their well-being (Article 24).

Despite the decreasing trend in child poverty, in 2019, before the pandemic, 22.2 % of children in the EU-27 were still living at risk of poverty or social exclusion.<sup>1</sup> The actual impact of the pandemic on child poverty rates is not yet known. But it has exacerbated existing challenges and severely hit households with children already in poverty and social exclusion, evidence collected by FRA shows.<sup>2</sup>

FRA has conducted many surveys that provide data about minority ethnic groups. The latest survey, from 2019, looked at the situation of Roma and Travellers in five EU Member States and the United Kingdom. It shows that these children face higher rates of poverty than the general population, no matter the country they live in. For example, high percentages of Roma children faced hunger at least once in the month before the survey: 7 % in Ireland, 9 % in France, 14 % in Belgium and 20 % in Sweden.<sup>3</sup> For more information on Roma, see [Chapter 5](#).

During 2020, the European Commission continued preparations for the Child Guarantee, as the European Parliament requested. The Child Guarantee aims to ensure that “every child in poverty can have access to free healthcare, free education, free childcare, decent housing and adequate nutrition”.<sup>4</sup> It is part of the broader vision on child rights that the EU strategy on the rights of the child, to be adopted in 2021, will reflect.

The European Commission produced the first feasibility study report for the Child Guarantee. It focused on four target groups: children in precarious family situations, children in institutions, recent migrants and refugees, and children with disabilities.<sup>5</sup> The Commission also published a roadmap<sup>6</sup> including the feedback on a consultation in which almost 100 organisations and individuals participated.<sup>7</sup>

Meanwhile, the Child Guarantee received the support of 24 Member States in a joint declaration under the German EU Presidency.<sup>8</sup> It is expected to be adopted in the first quarter of 2021.

### 8.1.1. Protecting the most vulnerable: social protection measures in EU Member States

The COVID-19 pandemic had an enormous impact on the economic, health, and social situation of families in 2020. The wide-ranging measures that Member States put in place affected families and children in social life, education, and other areas.





Some measures shut down sectors of the economy, with a great impact on working parents. By July 2020, 8 % of respondents to a Eurofound survey in the EU had become unemployed during the pandemic; 44 % said that their households had difficulties making ends meet.<sup>9</sup>

The closing down of schools affected the physical and mental health of children, and further exacerbated differences in access to education.

The pandemic put a disproportionate strain on children living in poverty, homeless children, refugee and migrant children, stateless and undocumented children, children in care, and children with disabilities and/or chronic illnesses, among others.<sup>10</sup> For more information on the impact of COVID-19 on fundamental rights, see **Chapter 1**.

EU Member States took a wide range of measures to compensate for the negative impact on families' economic situations. These ranged from supplementing wages and financial support to special paid leave for people with caring responsibilities, such as parents, or sick leave for persons in quarantine.

## PROMISING PRACTICE

### Asking children about the impact of COVID-19

In **Finland**, the Ministry of Education and Culture conducted a broad online hearing on distance education among children. This was implemented in preparation for an amendment to the Basic Education Act to allow distance education. It used separate questionnaires for years 1–3 and years 4–9. It received a total of 58,000 responses.

The majority (80 %) of children said that they felt that everyday life was safe in schools when returning in autumn 2020. Two thirds of the children said that they were satisfied with the distance learning organised in spring 2020.

*For more information, see Finland, Ministry of Education and Culture (Opetus- ja kulttuuri-ministeriö) (2020), 'Consultation with children in preparation of amendment of the Basic Education Act and the Helsinki European School Act'*

*('Opetus- ja kulttuuriministeriö järjestää valtakunnallisen lasten kuulemisen osana perusopetuslain lainvalmistelua').*

In **Belgium**, the Flemish Office of the Children's Rights Commissioner, the Children's Rights Knowledge Centre (KeKi), and the Flemish Child Rights Coalition joined forces to conduct a large-scale survey among children. More than 44,000 children and young people completed the online survey on the situation at home, schoolwork, contact with friends, what they are worried about, and what helps during the pandemic.



The survey shows that most children find this a strange, boring and lonely period in their lives. Children who say it has been more difficult financially

feel even more lonely, sad, angry, stressed, and anxious. More than one in three children are afraid of becoming ill themselves. Meanwhile, some 93 % of the children said they have a good understanding of the COVID-19 measures.

*For more information, see Belgium, KeKi, 'Children and Covid19'.*

In **Slovenia**, more than 5,000 children from the age of 10 were asked about the impact of COVID-19 on their lives.

The findings show that, during the first wave of the epidemic, the well-being and mental health of some children deteriorated, often in connection with a negative use of information and communication technology, increasing addiction or isolation.

One of the key findings is that vulnerability increased the most in groups of children who were vulnerable before the epidemic, widening the gap between different groups of children and the level of their vulnerability.

*For more information, see Slovenia, Social Protection Institute of the Republic of Slovenia.*

A large majority of Member States introduced measures to compensate for loss of income. About half linked this support to the number and age of children in a household. As [Table 8.1](#) shows, some of the monetary allowances were linked to the parents' employment status. While some Member States opted for additional supplements for all children, others focused only on those who were already receiving social benefits.

For example, in **Austria**, among several measures, the Family Crisis Fund allocated € 50 per child per month for two months for parents who became unemployed and for parents who receive social assistance or guaranteed minimum benefits.<sup>11</sup>

In **France**, an estimated 4 million low-income families (who were already receiving social benefits) received a one-off payment of € 150 and an additional € 100 per child.<sup>12</sup>

In **Lithuania**, the authorities paid € 120 for each child who was already receiving regular child benefits. Children from low-income families raising one or two children, large families, and families with children with disabilities were granted € 80 additionally (total sum € 200).<sup>13</sup> Some of these one-off payments were increased or repeated in subsequent emergency decrees as the pandemic continued.



**TABLE 8.1: SELECTED EXAMPLES OF MONETARY SUPPORT TO FAMILIES WITH CHILDREN DURING THE PANDEMIC**

Member State	Payment details	Eligibility
Austria	€ 50 per child for two months (€ 100 per child in total)	Financial support to unemployed parents who receive family allowance, and parents who receive social assistance or guaranteed minimum benefits
Finland	€ 75 per person in the family per month	Low-income families for maximum four months (September – December 2020)
France	A one-off payment of € 150 per family and an additional € 100 per child (May and November 2020)	Low-income families who were already receiving social benefits
Greece	A one-off payment of € 100 for the first child and € 50 for each subsequent one. The maximum amount cannot exceed € 300.	Low-income families who were already receiving social benefits
Latvia	€ 50 per child during crisis period	Children who receive municipal crisis support benefits
Lithuania	A one-off payment of € 120 per child	Children who were entitled to regular child benefits
	A one-off payment of € 200 per child	Children from low-income families already receiving social benefits, large families, and families with children with disabilities
Slovenia	A one-off payment of € 30 per child (April 2020)	Children who were entitled to regular child benefits
	A one-off payment per child of € 150 (April 2020)	Families already receiving social assistance, or parents entitled to parental allowance, childcare allowance, and maternity or parental benefit
	A one-off payment of € 50 per child (December 2020)	All children with permanent or temporary residence in Slovenia

Source: FRA, 2020 [based on information collected by FRANET]



## PROMISING PRACTICE

### Supporting remote learning

The United Nations Educational, Scientific, and Cultural Organization (Unesco) published a toolkit to help education authorities adapt to remote learning. It includes an overview with a link to online resources that education authorities around the world have developed, including in EU Member States.

*For more information, see Unesco, 'COVID-19 response toolkit'; 'National learning platforms and tools'.*

Civil society raised concerns about the effectiveness of monetary support during the pandemic.<sup>14</sup>

The United Nations Children's Fund (Unicef) also noted that, although social support will undoubtedly bring benefits, it will be inadequate to meet the needs of the entire population, if it is not combined with other measures or undertaken for long enough at a high enough level.<sup>15</sup> The Unicef report argues that, at present, benefits are allocated based on existing definitions and conditions related to poverty or vulnerability. This means that people who are 'near-poor', i.e. people whom the pandemic is likely to push into poverty, may not receive support and are likely to miss out on COVID-19-related support.

As FRA noted in its bulletins on the pandemic, certain groups, such as Roma and Travellers, might face additional difficulties in claiming the benefits.<sup>16</sup>

Some Member States also amended their regular family benefits to cover those who had been recently pushed into poverty. For example, in **Lithuania**, the period of the family's income used to evaluate if a family is entitled to child benefits was shortened from 12 to three months.<sup>17</sup>

In **Germany**, between 1 April and 30 September, the procedure for claiming family benefits became easier by not requiring parents to detail their assets. In addition, to calculate the amount of family benefits, the authorities would consider the family income of only the last month, instead of the average income of the last six months as was usually the case.<sup>18</sup>

The Council of the European Union adopted conclusions on strengthening minimum income protection in the COVID-19 pandemic and beyond. These underlined the importance of minimum income protection for families and children at risk of poverty and social exclusion.<sup>19</sup> The Council asked Member States to examine, as part of their regular evaluations, the functioning and adequacy of minimum income protection schemes for mitigating the negative socio-economic consequences of the COVID-19 crisis as well as for supporting social and labour market inclusion and, where necessary, to define and implement measures to improve their effectiveness.

#### 8.1.2. Ensuring equal access to education during the pandemic

Almost all EU Member States closed down schools and switched to distance learning during 2020 because of COVID-19. The level of success in switching from regular to home schooling depended on a variety of factors, notably the socio-economic background of children's families.

Children living in poor or overcrowded housing, with no access to the internet or to tablets or computers, were in practice limited in enjoying their right to education. This was often the case for Roma or migrant children. According to the 'best interests of the child' principle enshrined in Article 24 of the Charter, and the right to education (Article 14), every child has the right to education, which must be provided without discrimination (Article 21).<sup>20</sup>

Member States closed schools for different periods, with disparities within regions or towns, and sometimes only for certain school years. During the first wave, at least a third of Member States kept a number of schools open for children of parents in 'essential' professions.<sup>21</sup> Acknowledging the difficulties of distance learning for younger children and their families, most Member States tried to leave pre-primary and primary schools open during the subsequent waves.



School closures posed an additional difficulty for children who received free lunches at school. Some EU Member States tried to continue providing free meals despite school closures, mainly through local authorities.



For example, in **Finland**, schools have provided a daily free meal for all children since 1948. In March 2020, only around 44 % of municipalities managed to offer meals to students in distance learning.<sup>22</sup> Therefore, the parliament amended the Basic Education Act, explicitly stipulating that, during the pandemic, schools remain obliged to provide free school meals.<sup>23</sup>

In **Lithuania**, the government provided guidelines to ensure that schools and other organisations providing free lunches continue doing so.<sup>24</sup> The Children's Rights Alliance in **Ireland** launched a scheme providing food to children under the age of six.<sup>25</sup>

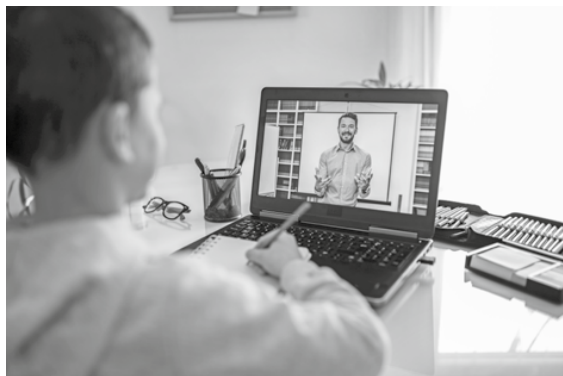
The suspension of school lunches has a particularly great impact on children in Roma communities and families in precarious situations. In **Slovakia**, more than 110,000 children, many of Roma origin, depend on free school meals, but it took no special measures.<sup>26</sup>

On the other hand, **Spain** allocated € 25 million to cover school lunches for children who were already entitled to them.<sup>27</sup> Nevertheless, civil society organisations argued that this amount could cover only half of those entitled to free lunches.<sup>28</sup> The Ombudsperson had to intervene, given the low nutritional quality of food provided.<sup>29</sup>

An additional challenge for students from low-income families was the lack of internet access or electronic devices in the household to allow them to follow the online lessons and communicate with their teachers. Children in vulnerable situations, such as Roma or migrant children, were particularly affected.

In the **Netherlands**, the 'Working Group on Children in Reception Centre' informed the State Secretary for Justice and Security that a lot of children in the reception centres for asylum applicants have no access to distance learning. An inventory among employees from reception centres and schools attended by children in reception centres showed that 24 out of 46 respondents indicated that the quality of the WiFi was not good enough for distance learning.<sup>30</sup>





In **Spain**, only one third of Roma children have access to a computer at home, a survey showed.<sup>31</sup> For more information on Roma children, see **Chapter 5**.

Initiatives in a number of Member States focused on ensuring that children and teachers have access to computers or tablets. Sometimes the EU co-funded them.

In **Bulgaria**, around 70,000 children in low-income families did not have computer and internet access, the Ombudsperson calculated.<sup>32</sup> Authorities have now allocated funds to purchase 80,000 laptops for 60,000 students and 20,000 teachers, using the financial instrument Recovery Assistance for Cohesion and the Territories of Europe.<sup>33</sup> In addition, funds from the Ministry of Labour and Social Policy were provided for the purchase of computer devices and internet access for nearly 1,800 children in residential care.<sup>34</sup>

In **Germany**, the federal government allocated € 500 million to provide laptops and tablets to students.<sup>35</sup>

The private sector played an important role in several Member States, donating electronic devices or lowering internet fees. In **Slovenia**, the Ministry of Education, Science and Sport established the project DIGI School, inviting donations of funds or technical equipment.<sup>36</sup>

In **Greece**, students are entitled to receive digital devices for distance learning.<sup>37</sup> Schools received more than 18,000 devices. The private sector provided half. Priority went to families with low incomes, single-headed families, children with special needs, and students with excellent performance records.<sup>38</sup>

Other measures in Member States aimed to facilitate access to the internet or to mobile data. In **Hungary**, the government ordered internet service providers to provide access to the internet free of charge to families with children in secondary education.<sup>39</sup>

In **Slovakia**, the Ministry of Education, in cooperation with all mobile operators, increased the data usage free of charge for all teachers.<sup>40</sup> In **Greece**, the Ministry of Education and Religious Affairs secured a zero-rating agreement with telecom companies for data used to connect to the ministry's educational platforms.<sup>41</sup>

In **Bulgaria**, the Ministry of Education and Science created 11 Wi-Fi zones in nine towns. It adjusted legislation so that schools can fund internet connectivity for students' homes during online learning.<sup>42</sup>

The European Commission adopted the digital education action plan (2021-2027), which proposes a set of initiatives for high-quality, inclusive, and accessible digital education.<sup>43</sup> The plan acknowledges the need to improve digital education, as the pandemic highlighted.

The European Parliament has pointed out the inequalities in accessing education during the pandemic, and called on the European Commission and Member States to strengthen efforts to guarantee access to quality education for all.<sup>44</sup>

The Council of Europe adopted Guidelines to address the risks that children face regarding the protection of their privacy and data in the digital education setting.<sup>45</sup>

## PROMISING PRACTICE

### Private sector helps support the most vulnerable

The 'flying classroom' is an initiative of the private sector together with the Vienna Education Directorate in **Austria**. It aims to make use of facilities in hotels, apartments, and cafés that are left empty during quarantine periods.

It allows children, families, and teachers to book a space, free of charge, to learn or prepare classes. It helps children living in overcrowded homes or without internet access. The online platform allows people to book a whole room for a family ('flying work room'), a cafe space for a student ('flying learning café'), or a conference room for teachers ('flying classroom').

*For more information, see 'Book your room'.*

### 8.1.3. Protecting children from abuse during the pandemic

Several international<sup>46</sup> and European<sup>47</sup> bodies reported an increase in children's exposure to violence during the pandemic. Lockdown and quarantine measures resulted in families staying at home together for long periods, leaving children without physical access to schools or other social spaces where they could interact with their peers or with support adults. More children experienced violence or witnessed violence between their parents or caregivers, and the number of calls to helplines increased.<sup>48</sup>

In **Austria**, the national helpline for children reported that phone calls increased by a third, and the number of chats asking for advice rose by 82 %.<sup>49</sup> In **Spain**, a national phone line and chat line for children reported that requests for help doubled in 2020 in comparison with 2019.<sup>50</sup> For more information on domestic violence, see **Chapter 9** on access to justice.

School closures and switching to home schooling meant children and young people spent more time at home – and more time online. Child sexual abuse online increased during the COVID-19 crisis, Europol reported.<sup>51</sup> It also noted that, since March 2020, countries had reported growing attempts to access illegal websites featuring child sexual exploitation material and, in some countries, an increase in adult offenders attempting to initiate contact with children via social media.<sup>52</sup>



In its strategy to combat sexual abuse, the Commission announced new legislation that would allow independent interpersonal communication services to detect child sexual abuse online.<sup>53</sup> Meanwhile, it proposed a regulation to temporarily derogate from Directive 2002/58/EC, known as the e-Privacy Directive.<sup>54</sup> Temporary derogation from the e-Privacy Directive would allow communication services to continue with the existing voluntary practices of detecting child sexual abuse online.

The infringement procedures against 23 Member States initiated in 2019 for non-compliance with Directive 2011/93 on combating child sexual abuse<sup>55</sup> are still open.<sup>56</sup>

EU Member States introduced new measures or enhanced old initiatives to address violence against children during the COVID-19 pandemic. Most increased resources for social services or telephone services to deal with violence.<sup>57</sup>

For example, in **Ireland**, the Courts Service prioritised domestic violence and childcare cases. The Legal Aid Board provided additional support for such cases and established a helpline to assist victims of domestic violence.<sup>58</sup>

In **Romania**, most childcare services adapted their activities so that they could continue to provide support to victims of domestic violence, by keeping social distance and using alternative means of communication such as telephones, WhatsApp and Skype.<sup>59</sup>

In **Denmark**, the parliament granted DKK 131 million (almost € 18 million) to fund different initiatives, including for the support for children in households with alcohol or drug abuse.<sup>60</sup>

In about half of the Member States, non-governmental organisations (NGOs) or governmental bodies initiated public campaigns to prevent family violence during the pandemic.

For example, in **Croatia**, the Ministry of the Interior issued a public warning about increased risks of domestic and online violence, published instructions for recognising domestic violence, and launched the campaign ‘Behind closed doors’.<sup>61</sup>

In **Latvia**, the State Children’s Rights Inspectorate implemented an awareness campaign on electronic mass media about internet grooming. The campaign included social media ads, and three short films for teachers, parents and professionals on how to talk with children about grooming.<sup>62</sup>

In **Slovenia**, on 1 January 2021, a 24-hour, free and anonymous SOS phone-line for victims of violence was provided by the NGO SOS Phone and further promoted by the Human Rights Ombudsperson.<sup>63</sup> The Ombudsperson launched his own campaign on children’s rights – “If You See Injustice, Use Justice” – through public and social media, as well as through schools and other institutions. The Ombudsperson also launched a specific free telephone line for children, as well as an e-mail address and a renewed webpage.<sup>64</sup>

## 8.2. CHILDREN’S RIGHTS IN ASYLUM AND MIGRATION

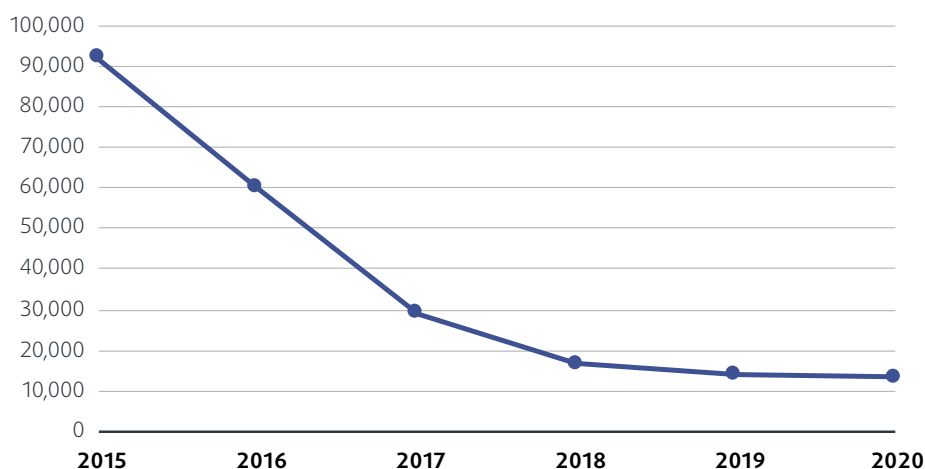
Asylum-seeking and migrant children, particularly if unaccompanied, are entitled to special care and protection under EU law. The number of children – both unaccompanied and arriving with families – applying for asylum in EU Member States continued to decrease in 2020.

The number of children with families applying for asylum in the EU-27 decreased compared with previous years, with just under 130,000 applications in 2020.<sup>65</sup> **Germany, France and Spain** (in that order) received the highest numbers of applications from children.

Meanwhile, 13,550 unaccompanied children applied for asylum in the EU-27 in 2020. By comparison, 14,115 did so in 2019. As Figure 8.1 shows, this was a continuation of the downward trend since 2015.<sup>66</sup> In 2020, most unaccompanied children applied for asylum in **Greece, Germany and Austria**, in that order.



**Figure 8.1: Asylum applications by unaccompanied children in the EU-27, since 2015**



Source: FRA, 2020 [based on Eurostat, Asylum applicants considered to be unaccompanied minors – annual data [TPS00194], last accessed on 22 April 2021]

### 8.2.1. Relocating unaccompanied children: EU initiatives

The new Pact on Migration and Asylum underlines that the protection of children in migration is a priority for the EU. (For more on the pact, see [Chapter 6](#) on asylum.) It also recalls the primacy of the best interests of the child and the role of child-protection authorities in providing adequate guardianship and support to unaccompanied children.

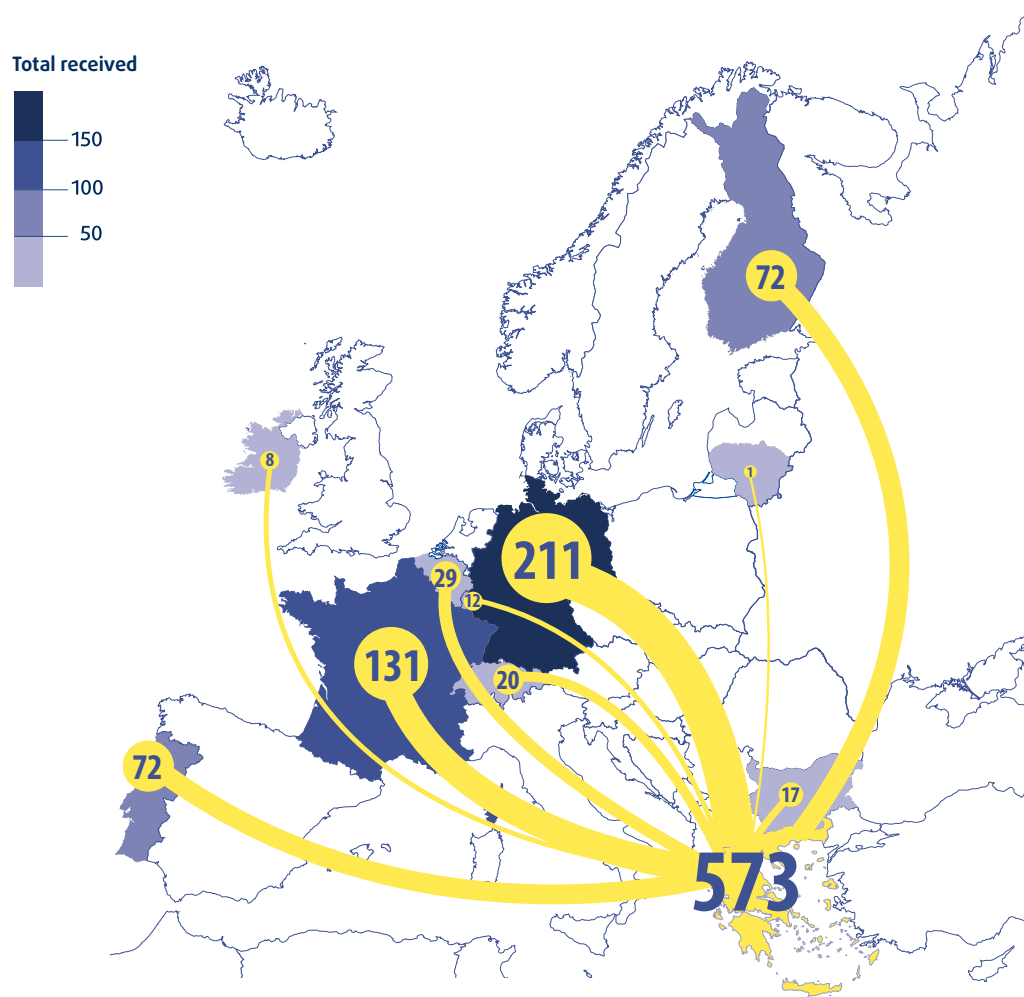
Civil society organisations have criticised certain aspects of the proposals accompanying the pact, including the possible increase in detention in the context of border procedures and return of children. One of the main criticisms has been that families with children over the age of 12 are not exempted from border procedures, which entail accelerated processes.<sup>67</sup>

The pact introduces different solidarity mechanisms at times of migratory pressure, including the relocation of applicants between Member States. It does not specify a quota for the relocation of unaccompanied children, but proposes a financial incentive for national authorities to accept them.<sup>68</sup>

The voluntary or mandatory relocation of unaccompanied children, if properly implemented, can provide positive long-term solutions for many unaccompanied children, FRA research shows.<sup>69</sup> However, Member States have often shown limited political willingness or have imposed stringent conditions for relocation. As a result, only 1,400 unaccompanied children were relocated between 2015 and 2019.

The Greek government called for EU solidarity in late 2019. In 2020, the European Commission launched a voluntary initiative, aiming to relocate 1,600 unaccompanied children from **Greece**.<sup>70</sup> By the end of the year, only 573 unaccompanied children were relocated (Table 8.2). This was partly due to only 12 Member States volunteering to participate, as well as to logistical difficulties created by COVID-19-related restrictions.

FIGURE 8.2: NUMBER OF UNACCOMPANIED CHILDREN RELOCATED FROM GREECE DURING 2020



Source: FRA, 2020 [based on International Organization for Migration, Voluntary relocation scheme from Greece to other European countries – Factsheet, 23 December 2020]

▲  
Note:  
In addition, at least 771 children suffering from severe or chronic illnesses were relocated together with their families.

In addition to voluntary relocations of unaccompanied children shown in Figure 8.2, **France** and **Germany** decided to also relocate asylum-seeking families with children, particularly children with medical conditions. Accordingly, 521 adults and 771 children were relocated. **Germany** (291 persons), the **Netherlands** (49 persons), and **Luxembourg** (4 persons) also relocated families with children who had been granted international protection.<sup>71</sup>

The European Economic and Social Committee in 2020 adopted its own-initiative opinion on unaccompanied children. It highlights some of the key challenges in protecting children, and calls on Member States to continue relocating unaccompanied children as a matter of urgency.<sup>72</sup> The opinion urges the European Commission to draw up a directive on the protection of unaccompanied children. It also recommends that national authorities stop using bone tests to assess the age of children, because they are unreliable.

Violations of the best interests of the child, the right to life, and the right to identity during the age assessment procedure of specific unaccompanied children were again the focus of several decisions against **Spain** by the Committee on the Rights of the Child.<sup>73</sup>

### 8.2.2. Reception conditions remain a challenge

In **Croatia, Cyprus, France, Greece, Hungary, Italy, Malta** and **Spain**, limited capacity and reception conditions for, in particular, unaccompanied children remained a concern. The COVID-19 pandemic exacerbated the situation, making access to accommodation, education, and health services even more challenging.<sup>74</sup>

In **Spain**, irregular land and sea arrivals increased by 29 % compared with 2019.<sup>75</sup> This was because of increased sea arrivals in the Canary Islands – more than 23,000, compared with fewer than 3,000 in 2019. Despite the creation of new centres<sup>76</sup> and additional central government funding,<sup>77</sup> the reception capacities for unaccompanied children in the Canary Islands remained insufficient<sup>78</sup> in 2020 for around 2,000 unaccompanied children there.<sup>79</sup>

In the **Spanish** enclave in Melilla, 1,400 persons, including 150 children, were living in the Migrant Temporary Centre during the COVID-19 pandemic. It has a capacity of 750 persons. Several institutions raised concerns.<sup>80</sup> The Ombudsperson asked the Ministry of the Interior to relocate vulnerable asylum applicants to the Spanish mainland, such as groups at particular risk of COVID-19, single women, and families with children.<sup>81</sup>

The Ombudsperson in **France** visited Calais in September 2020 and noted the “shameful living conditions” of about 1,200 to 1,500 persons still living there.<sup>82</sup> She raised special concerns about the situation of women and children, including unaccompanied children as young as 12. She made several recommendations for the protection of unaccompanied children and called for an effective family reunification procedure for children with relatives in the **United Kingdom**.

In **Cyprus**, the conditions in the Pournara centre improved with the creation of a safe zone for unaccompanied children. However, the COVID-19 isolation areas had no separate zones for unaccompanied children and lacked sufficient sanitary facilities and electricity.<sup>83</sup> The Commissioner for the rights of the child expressed concern about the transformation of both Pournara and Kofinou camps into closed centres.<sup>84</sup> The Council of Europe Commissioner for Human Rights<sup>85</sup> requested the immediate release of children.



## FRA ACTIVITY

# Relocating unaccompanied children: lessons learnt from previous efforts

Following the 2019 request by Greek authorities for the relocation of unaccompanied children from **Greece**, FRA published a compilation of lessons learnt from previous relocation exercises.

The report also includes promising practices and provides practical guidance for relocating unaccompanied children in accordance with fundamental rights. It can support national authorities of sending and receiving Member States when relocating unaccompanied children under current or future relocation schemes.

*For more information, see FRA (2020), **Relocating unaccompanied children: Applying good practices to future schemes**, Luxembourg, Publications Office.*

**“You can see yourselves the situation here, how it is. It is better that I don’t stay here, I want to leave... there is no school, I cannot work either, it is far from everything. We just eat, drink and sleep.”**

Refugee from Eritrea, male, France, interview conducted for FRA’s report **Integration of young refugees in the EU: Good practices and challenges**



In **Greece**,<sup>86</sup> reception conditions remain very poor, especially in the reception and identification centres ('hotspots') on the Greek islands. The fire in the Moria refugee camp in Lesbos and the COVID-19 pandemic exacerbated the difficulties.<sup>87</sup> Conditions in the hotspots and the lack of prospects take an immense toll on the mental health of residents, including children in families and unaccompanied children.<sup>88</sup>

However, thanks to the joint efforts of the Special Secretariat for the Protection of Unaccompanied Minors of the Greek Ministry of Migration and Asylum, Member States relocating unaccompanied children, and UN and EU agencies, the number of unaccompanied children accommodated in the Greek hotspots was drastically reduced, as **Figure 8.3** shows. There were still around 1,000 children in insecure accommodation in Greece.<sup>89</sup> Thanks to ongoing efforts, and according to Greek authorities, 279 children previously registered as homeless had been traced by early September 2020.<sup>90</sup>

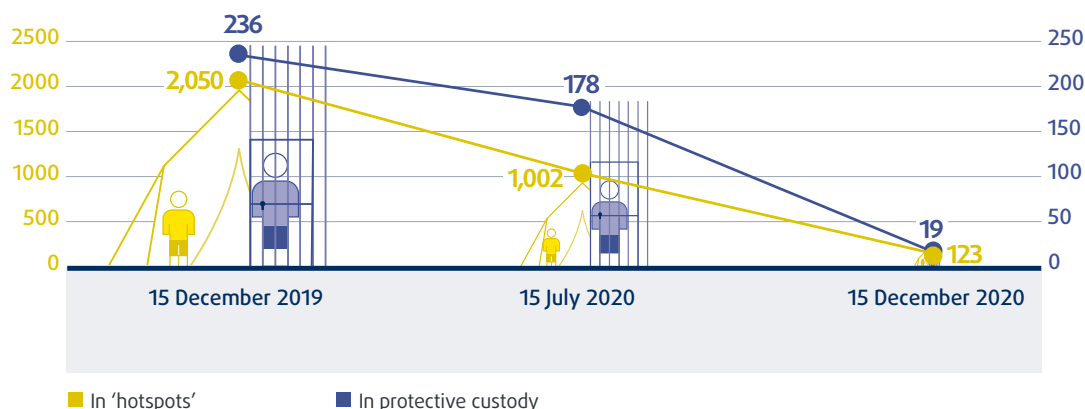
Poor reception conditions have been linked to children going missing and to an increased risk of their becoming victims of trafficking in human beings.<sup>91</sup> In a recent report, the European Migration Network points to the lack of data on the number of children going missing throughout the EU. Almost all Member States reported on their elaborate procedures to deal with cases of children going missing, often similar to the procedures for national children. NGOs, however, contend that these procedures are not followed and that missing unaccompanied children are not always reported to the police.<sup>92</sup>

#### *Detention continues to be a reality for some migrant children*

EU law does not prohibit immigration detention of children, but the Charter, the Reception Conditions Directive, and case law of the ECtHR lay down strict conditions. They make detention an exceptional measure of last resort. In reality, detention also happens in cases that are not exceptional, as FRA has previously reported.<sup>93</sup>

A positive development in **Greece** was the adoption of Law 4760/2020. It should bring an end to the 'protective detention' of unaccompanied children.<sup>94</sup> The law provides that unaccompanied children should not be placed in protective custody simply because they do not have a safe or known place of residence. The Council of Europe's Anti-torture Committee had criticised migration detention of families with children and unaccompanied children, after a visit to Greece.<sup>95</sup> At the end of 2020, 19 children were still in protective custody (see **Figure 8.3**).<sup>96</sup>

**FIGURE 8.3: UNACCOMPANIED CHILDREN ACCOMMODATED IN HOTSPOTS AND IN PROTECTIVE CUSTODY**



Source: FRA, 2020 [based on EKKA situation update: Unaccompanied children (UAC) in Greece]

In 2020, 610 people who claimed to be children – including some 40 girls – arrived in **Malta** irregularly by sea. Most of them – 537 – arrived unaccompanied. Based on information available to UNHCR, all individuals who stated that they are children were detained upon arrival for an average period of six months, often alongside adult detainees.<sup>97</sup>

In **Slovenia**, children continued to be detained in the Postojna Centre for Foreigners, in similar numbers to previous years. In 2020, 304 unaccompanied children (average stay 3.7 days) and 97 children with their families (average stay 1.3 days) were detained.<sup>98</sup> In **Croatia**, a total of 48 children with their families were placed in immigration detention during 2020, in facilities at Tovarnik, Ježevu and Trilj.<sup>99</sup>

Meanwhile, in **Poland**, the number of children in detention slightly decreased in 2020, when 22 unaccompanied children and 79 children with their families were detained.<sup>100</sup>

In a report on the immigration detention of children, the UN Special Rapporteur on the human rights of migrants points to the worrying impact of detention on children, whether alone or with their families.<sup>101</sup> The report considers detention an expensive, administratively burdensome, and ineffective migration management tool. It calls on Member States to end child immigration detention and provide alternative care and reception arrangements that promote children's rights and well-being.

#### *Guardianship for unaccompanied children*

A key element of a well-functioning system for the reception of unaccompanied children is a functioning guardianship system. Such systems assign unaccompanied children a person to support them to ensure their well-being, safeguard the child's best interests, and exercise legal representation on their behalf.

In **Greece**, Law 4554/2018 on guardianship of unaccompanied children is still pending implementation.<sup>102</sup> A temporary guardianship scheme set up in 2018 came to an end, leaving many unaccompanied children without support.<sup>103</sup> A new temporary system supported by UNHCR covered only children participating in relocation.<sup>104</sup> The Public Prosecutor for Minors or, in the event there isn't one, the Public Prosecutor of First Instance by law remains the temporary guardian of the unaccompanied minors in her/his area of authority.

**Malta** adopted the Minor Protection (Alternative Care) Act, which introduced changes to the guardianship system. These require a court to provide tutors for unaccompanied children.<sup>105</sup>

In **Bulgaria**, an amendment to the Asylum and Refugees Act entrusts to certain lawyers the representation, in international protection proceedings, of unaccompanied children who are seeking or have received international protection. These lawyers are all included in the legal aid register of the National Legal Aid Bureau.<sup>106</sup>

In **Cyprus**, the Social Welfare Service increased the number of guardians from six at the end of 2019 to 19 at the end of 2020.<sup>107</sup>

### 8.3. CHILDREN IN JUDICIAL PROCEEDINGS: INCORPORATING THE PROCEDURAL SAFEGUARDS DIRECTIVE INTO NATIONAL LAW

The Procedural Safeguards Directive (2016/800) aims to enhance the right to a fair trial. It lays down minimum rules to ensure respect of procedural safeguards for children who are suspects or accused persons in criminal proceedings, in accordance with existing international standards and guarantees.



Member States had to incorporate the directive into national law by 11 June 2019.<sup>108</sup> However, around half missed the deadline. Infringement procedures began in 2019 (with formal notice under Article 258 of the Treaty on the Functioning of the European Union). At the end of 2020, they were still open against **Bulgaria**,<sup>109</sup> **Croatia**,<sup>110</sup> **Cyprus**,<sup>111</sup> **Czechia**,<sup>112</sup> **Germany**,<sup>113</sup> **Greece**,<sup>114</sup> and **Malta**.<sup>115</sup>

In May 2020, the Commission sent reasoned opinions to **Cyprus** and **Greece** for failing to communicate on the measures taken to implement the Procedural Safeguards Directive.<sup>116</sup> Both countries had four months to respond and take the relevant action, before the Commission could refer the case to the Court of Justice of the EU.

**Cyprus** has not yet incorporated the directive into national law, but a bill is now under final discussions before the Cyprus Parliament.<sup>117</sup> In **Greece**, Law 4689/2020<sup>118</sup> introduced provisions incorporating a number of aspects of the Procedural Safeguards Directive.<sup>119</sup> Only remedial or therapeutic measures can be imposed in the age group 12 to 15, but older children can also be deprived of liberty, if this is deemed necessary and under certain conditions, as provided in Article 127 the directive. Children have the right to assistance by both a lawyer and their guardian in all stages of a criminal prosecution.

A few Member States changed their national laws in 2020 to incorporate the directive. **Slovenia** did so in December through the Act amending the Criminal Procedure Act.<sup>120</sup> **Malta** reformed its Criminal Code in 2020, including new provisions on the right of the child to information, to access a lawyer, and to a medical examination.<sup>121</sup>

**Latvia** had already amended its Criminal Procedure Law in 2018. It amended the Criminal Law in relation to juveniles in December 2020.<sup>122</sup> Chapter VII of the criminal law underlines that the resocialisation of a child offender is the primary aim.

Several Member States are still working on incorporating the directive into national law. In July 2020, **Bulgaria** invited public discussion on proposals to amend the Criminal Procedure Code, including the right of the child to information and to medical examination.<sup>123</sup> It then sent a revised draft for parliamentary discussion.<sup>124</sup>

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In **Poland**, the Ministry of Justice is developing a draft Act on Juveniles, which will regulate the status of children in conflict with the law, guarantees during judicial proceedings, and the rights and duties of children in detention.<sup>125</sup>

**Luxembourg**<sup>126</sup> is developing a new bill on juvenile justice after several stakeholders heavily criticised the previous one.<sup>127</sup>

During 2020, despite the COVID-19 pandemic, some Member States provided capacity-building activities for law enforcement practitioners, as Article 20 of the directive requires. In the mandatory initial training of magistrates and law students, **Bulgaria**<sup>128</sup> and **Poland**<sup>129</sup> introduced a number of courses on child-friendly justice.

**Croatia**<sup>130</sup> and **Lithuania**<sup>131</sup> focused on police training to deal with child participants in criminal procedures. In 2020, the Lithuanian Police School updated its curriculum to include the topic of child rights during criminal proceedings.<sup>132</sup>

## FRA opinions

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The COVID-19 pandemic had a strong impact on the well-being of children in Europe. Loss of family income, closure of schools, and increased violence at home and online raised concerns about rights under Article 3, 14 and 24 of the EU Charter of Fundamental Rights. Member States have provided families with a number of economic support packages to compensate for the loss of income. However, the limited amount and length of the support raise questions about the long-term usefulness and sustainability of such financial packages.

The transition to home schooling was not the same for all families. Some children were not fully able to participate in school routines, as they lacked access to an internet device or to a quiet space to learn. Others lost the entitlement to free school lunches. During school closure and quarantines, the longer periods spent at home resulted in an increase in reported cases of violence against children, and of cases of children being sexually exploited via the internet.

Preparations for an EU Child Guarantee continued. A scheme requested by the European Parliament, it aims to provide all children with equal access to basic services, focusing on healthcare, education, early childhood education and care, decent housing and adequate nutrition. The EU Child Guarantee is expected to be adopted in 2021.



### FRA OPINION 8.1

The European Commission should consider the impact of COVID-19 when preparing to launch initiatives under the EU Child Guarantee. The guarantee should define targeted initiatives and allocate sufficient funding to protect the most vulnerable children, especially in the areas of education, housing, health and social welfare.

EU Member States should continue their efforts to ensure that all children, especially the most vulnerable, have access to school on equal terms, and to protect children from violence. Member States should make sure that economic measures to support families with children produce a sustainable benefit and are accessible to the most vulnerable families, such as Roma and migrant families. For example, Member States could assess the need to review the threshold for accessing regular social payments for low-income families.

To develop evidence-based policies, Member States and the European Commission should collect data assessing children's own experiences of, and views on, the impact of the pandemic on their physical and mental well-being.



## FRA OPINION 8.2

The European Commission and EU Member States should strengthen efforts to relocate unaccompanied and other vulnerable children currently living in Member States where they encounter inadequate reception conditions. Member States should consider existing good practice in the relocation of children to ensure the best interests of the child throughout the procedure.

Member States should make every effort to ensure the protection of children, making sure reception conditions respect minimum standards for a dignified standard of living and child-appropriate facilities, which the Reception Conditions Directive sets out.

Member States should develop credible and effective systems that will make it unnecessary to detain children for asylum or return purposes.

Children arriving in Europe are entitled to protection under Article 24 of the EU Charter of Fundamental Rights, and to adequate reception conditions in accordance with the Reception Conditions Directive. The directive requires Member States to assess the reception needs of children and provide access to education and to an adequate standard of living, among others. However, in daily practice, reception conditions raise serious concerns in some Member States, with overcrowded centres, inadequate hygiene, or a lack of child-appropriate reception centres.

Children with families and unaccompanied children continue to face detention. Although EU law does not prohibit the administrative detention of children in a migration context, undocumented children, and children applying for asylum or in a return procedure, should not be deprived of liberty. Detention of children is to be understood only as an exceptional measure of last resort.

The European Commission launched the Pact on Migration and Asylum, which proposes a set of solidarity mechanisms for moments of pressure, including relocation. The joint efforts of the European Commission, Greek authorities and 10 Member States allowed the relocation of 573 unaccompanied children, and 771 children in families, from the Greek hotspots. Meanwhile, there are still around 1,000 children in insecure accommodation in Greece. Around 100 of them live in hotspots.

Article 49 of the EU Charter of Fundamental Rights guarantees important safeguards for the presumption of innocence and right of defence. Article 24 makes the best interests of the child a primary consideration. The Procedural Safeguards Directive for children who are suspects or accused persons in criminal proceedings (2016/800/EU) defines and expands on those points. It requires Member States to promptly inform children and their parents of their rights when children are suspects or accused persons, ensure a lawyer assists the child, and assess the individual situation of each child.

By the end of 2020, most Member States had amended their national laws to incorporate the directive. The deadline to do so was 11 June 2019. However, the infringement procedures that began against seven Member States in 2019 remained open at the end of 2020.



## FRA OPINION 8.3

EU Member States should strengthen efforts to implement the Procedural Safeguards Directive (2016/800/EU) in the daily practice of professionals. They could do so by providing training and professional guidance to all practitioners, including police officers, judges, lawyers and prosecutors.



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## UN & CoE

13

The Group of Experts on Action Against Violence Against Women and Domestic Violence (GREVIO) publishes its first (baseline) evaluation report on Italy.

16

In an urgent opinion, the Council of Europe's (CoE's) Venice Commission, jointly with its Directorate General of Human Rights and Rule of Law, concludes that the amendments to the laws on the judiciary passed by the Polish *Sejm* (lower house of parliament) on 20 December 2019 and at that time under deliberation in the Senate may further undermine judicial independence.

20

GREVIO publishes its first (baseline) evaluation report on the Netherlands.

28

By adopting Resolution 2316 (2020) on the functioning of democratic institutions in Poland, the Parliamentary Assembly of the CoE (PACE) votes to open a monitoring procedure for Poland, declaring that recent reforms "severely damage the independence of the judiciary and the rule of law".

January

6

UN Statistical Commission adopts a new Sustainable Development Goal indicator to measure "proportion of the population who have experienced a dispute in the past two years and who accessed a formal or informal dispute resolution mechanism", capturing the justice problems people face and how they try to resolve them.

31

CoE publishes 2019 report on judicial independence and impartiality in the member states. It expresses concerns about the developments and situations in certain member states, which have the potential to jeopardise the independence of the judiciary.

March

6

GREVIO publishes its first General Activity Report, accounting for its first four years of monitoring work (2015-2019). This report is the first to offer insights into the trends and challenges in the implementation of the Istanbul Convention. Explaining its mandate, composition and working methods, the report demonstrates how, as an independent monitoring body, GREVIO has joined the ranks of other global and regional women's rights monitoring bodies and mandates.

April

5

In *Kövesi v. Romania* (No. 3594/19), European Court of Human Rights (ECtHR) holds, among others, that the right of the anticorruption chief prosecutor to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) was violated when she was dismissed for expressing her critical opinion on legislative reforms that could have an impact on the judiciary and its independence, and on the fight against corruption.

May

10

The Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) adopts a 'Declaration on lessons learnt and challenges faced by the judiciary during and after the COVID19 pandemic'.

9-11

CoE's Group of Experts on Action against Trafficking in Human Beings (GRETA) publishes its third reports on Austria, Slovakia and Cyprus, focusing on victims' access to justice and effective remedies and examining progress in the implementation of previous GRETA recommendations.

24

GRETA publishes new guidance for states on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection.

June

## UN & CoE

July

17

UN Human Rights Council adopts a resolution (A/HRC/44/L.7) on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. It calls upon all states to guarantee the independence of judges and lawyers and the objectivity and impartiality of prosecutors, and their ability to perform their functions accordingly.

September

21

GREVIO publishes its first (baseline) evaluation report on Belgium.

October

9

CoE's Venice Commission adopts its interim report on the impact of measures taken as a result of the COVID-19 crisis in the EU Member States. It highlights that exceptional circumstances must not necessarily entail a conflict between effective action to deal with the emergency and democratic constitutionalism, or between protecting public health and the rule of law.

22

CEPEJ publishes its eighth report, containing figures on the efficiency of the functioning of judicial systems in Europe.

November

6

In its opinion on 'The role of associations of judges in supporting judicial independence', the CoE's Consultative Council of European Judges (CCJE) calls upon member states to provide a framework within which judges can effectively exercise their right to associate, and to refrain from any interventions that might infringe the independence of the associations of judges.

19

In its opinion on 'The role of prosecutors in emergency situations, in particular when facing a pandemic', the CoE's Consultative Council of European Prosecutors (CCPE) calls upon member states to assume the corresponding responsibility of not unduly interfering with prosecutorial activity.

23

GREVIO publishes its first (baseline) evaluation report on Malta.

25

GREVIO publishes its first (baseline) evaluation report on Spain.

December

3

GRETA publishes its third report on Croatia, focusing on victims' access to justice and effective remedies and examining progress in the implementation of previous GRETA recommendations.

14

European Commission asks the Court of Justice of the European Union (CJEU) for interim measures regarding the Disciplinary Chamber of the Supreme Court in Poland.

16

January

In its Resolution 2020/2513 on ongoing hearings under Article 7 (1) of the TEU regarding Poland and Hungary, European Parliament calls on the Council of the European Union to also address new developments and assess risks of breaches of the independence of the judiciary and freedom of expression; and calls on the European Commission to make full use of the tools available to address a clear risk of serious breaches by Poland and Hungary of the values on which the Union is founded.

5

The European Commission publishes the Gender Equality Strategy 2020-2025. It sets out key actions for the next five years and commits the Commission to including an equality perspective in all EU policy areas, including by supporting and protecting victims of gender-based violence.

26

March

In *Miasto Łowicz v. Skarb Państwa – Wojewoda Łódzki* (C-559/18 and C-563/18), CJEU holds that provisions of national law exposing national judges to disciplinary proceedings for submitting a reference to the court for a preliminary ruling cannot be permitted, as they are likely to undermine the effective exercise by the national judges concerned of the discretion that Article 267 TFEU allows.

8

April

In *Commission v. Poland* (C-791/19), CJEU orders that Poland must immediately suspend the application of the national provisions on the powers of the Disciplinary Chamber of the Supreme Court with regard to disciplinary cases concerning judges.

11

May

- Commission submits to the European Parliament and the Council its report on the implementation of the Victims' Rights Directive, assessing how far Member States have taken the necessary measures to comply with the directive (in accordance with its Article 29).
- Commission submits to the European Parliament and the Council its report on the implementation of Directive 2011/99/EU on the European protection order, assessing the application of the directive (in accordance with its Article 23).

24

June

Commission presents its first ever EU Strategy on victims' rights (2020-2025).

## UN & CoE

July

10

European Commission publishes the 2020 EU Justice Scoreboard, a comparative overview of the efficiency, quality, and independence of justice systems in all EU Member States.

16

Grand Chamber of the CJEU passes its judgment in Case C-129/19 concerning the interpretation of the Compensation Directive (2004/80/EC). It clarifies that under Article 12 (2) of the directive, a Member State has to provide compensation to victims of violent intentional crime resident in that Member State.

20

Council of the EU adopts the 2020 country-specific recommendations of the 2020 European Semester. Recommendations to several Member States (Croatia, Cyprus, Italy, Malta, and Slovakia) relate to their justice systems.

September

30

European Commission publishes the 2020 Rule of Law Report, which emphasises the persisting lack of judicial independence in certain countries.

October

2

In its Resolution 2020/2793, the European Parliament calls on the Bulgarian government to address its concerns on the rule of law and fundamental rights.

7

European Parliament adopts Resolution 2020/2072 on establishing an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights.

November

26

European Parliament adopts its annual report on the situation of fundamental rights in the EU between 2018 and 2019. It condemns the efforts in some Member States to weaken the separation of powers, and reiterates the need for an EU mechanism on democracy, the rule of law and fundamental rights.

December

17

In its judgement in joined cases C-352/20 and C-412/20 PPU, CJEU (Grand Chamber) considers that evidence of deficiencies in judicial independence in Poland does not in itself justify the judicial authorities of other Member States refusing to execute any European arrest warrant that a Polish judicial authority issues under the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

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At EU level, 2020 brought significant innovations in the political and institutional framework on victims' rights. The European Commission established a victims' rights coordinator, adopted its first victims' rights strategy, for 2020–2025, and set up a victims' rights platform. At national level, the COVID-19 pandemic largely dictated developments. It drew attention to domestic violence and to difficulties in ensuring access to justice during times of severely restricted mobility and public life. Meanwhile, challenges to judicial independence persisted in several Member States. The Commission published its first ever rule of law report in 2020, and the European Council adopted the Regulation on a general regime of conditionality for the protection of the Union budget.

## 9.1. EU AND MEMBER STATES STRIVE TO IMPROVE VICTIMS' RIGHTS PROTECTION

### 9.1.1. EU measures set new institutional and policy framework

In 2020, the European Commission took measures that together amount to a major overhaul of the institutional and policy framework on victims' rights in the EU. These include:

- adopting the first EU strategy on victims' rights (2020–2025);<sup>1</sup>
- establishing the new Victims' Rights Platform, bringing together EU-level actors relevant to victims' rights;<sup>2</sup>
- appointing the Commission's first Coordinator for Victims' Rights.<sup>3</sup>

The strategy and the platform offer an extended framework for upholding the rights of victims of crimes against the person and their access to justice in line with Article 47 of the EU Charter of Fundamental Rights. The strategy also draws on FRA's research.



It focuses on five key priorities: effective communication with victims and a safe environment for victims to report crime; improving support and protection to the most vulnerable victims; facilitating victims' access to compensation; strengthening cooperation and coordination among all relevant actors; and strengthening the international dimension of victims' rights. The success of the new strategy will largely depend on Member States' commitment to putting it into practice.

On 11 May 2020, the Commission submitted its report assessing how far the Member States have taken the necessary measures to comply with the Victims' Rights Directive.<sup>4</sup> The report concludes that the implementation of the directive is not satisfactory because Member States have incompletely or incorrectly incorporated it into national law.



At international level, in 2020 the United Nations (UN), supported by the UN Victims' Rights Advocate and Field Victims' Rights Advocates, enhanced the implementation of its Protocol on Provision of Assistance to Victims of Sexual Exploitation and Abuse. The protocol establishes a common set of norms and standards to strengthen a coordinated approach to providing assistance and support. It prioritises the rights and dignity of victims, regardless of the affiliation of the alleged perpetrator.<sup>5</sup>

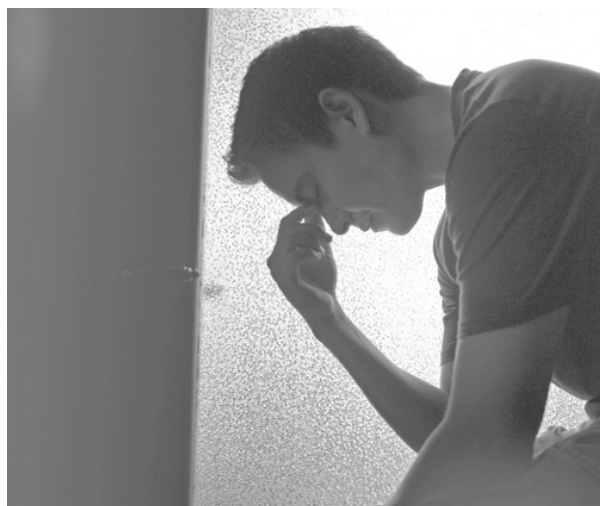
## FRA ACTIVITY

# Fundamental Rights Survey: crime, safety and victims' rights

FRA's Fundamental Rights Survey collected data in 2019 from 35,000 interviewees in all EU Member States about their experiences, perceptions, and opinions on a range of issues that involve human rights.

A special report on crime victimisation and safety, published in February 2021, drew on these data. The key findings include:

- Nearly one in 10 people (9 %) in the EU experienced physical violence in the five years before the survey, and two in five people (41 %) experienced harassment.
- Some of the groups that experience physical violence and harassment at higher rates than average include young people, those who consider themselves to be part of an ethnic minority, people who self-identify as lesbian, gay, bisexual or 'other', and persons with health problems or a disability.
- The context and consequences of physical violence are different for women and men. Physical violence against men often occurs in public places, while women more often than men experience violence at home, by perpetrators who are family members or relatives. More women than men indicate that the violence has had various negative psychological consequences.
- The survey asked about three property crimes. In the five years before the survey, 8 % experienced a burglary of their home or other property, 8 % experienced online banking or payment card fraud, and 26 % experienced consumer fraud.
- Property crimes are reported more often. For example, 73 % of burglaries were reported to the police, compared with only 30 % of incidents of physical violence and 11 % of incidents of harassment.
- While many people would be willing to intervene, call the police or give evidence in court as a result of seeing a crime take place, 17 % say they are 'not at all willing' to give evidence in court when witnessing a person hit their partner on the street, and 25 % in the case of a parent slapping their child. However, these results vary considerably between EU Member States.
- In the EU, 64 % of women and 36 % of men at least sometimes avoid going to places where there are no other people around, out of concern that they could be physically or sexually assaulted or harassed. Rates of various risk avoidance measures are higher still for young people.



See FRA (2021), *Crime, safety and victims' rights – Fundamental Rights Survey, Luxembourg, Publications Office*.

### 9.1.2. Support for victims in proceedings grows, but challenges remain

Empowering victims is a crucial first step towards granting them effective access to justice. A number of Member States took steps to improve the provision of victim support services, including the accompaniment of victims in criminal proceedings by a person they trust.

In a legislative package amending the Criminal Procedure Code and the Victim Support and Financial Compensation Act, the **Bulgarian** Ministry of Justice invited public discussion on proposals to further incorporate the Victims' Rights Directive into Bulgarian legislation.<sup>6</sup> They would expand the range of persons who would benefit from support services, to include the victim's relatives; reinforce the obligation to inform victims of their rights; and strengthen provisions aimed at protecting victims from secondary victimisation.

In **Estonia**, the Ministry of Social Affairs presented an initiative to develop a draft law to amend the Victim Support Act, with a view to improving the accessibility of support services and making it easier to receive compensation.<sup>7</sup>

In **Lithuania**, the Ministry of Social Security and Labour drafted a Law on Support to Victims of Crimes, considering the reasoned opinion that the European Commission issued in infringement proceedings.<sup>8</sup> The draft provides for the establishment of a comprehensive network of accredited generic victim support organisations that will perform the various tasks specified in Articles 8 and 9 of the Victims' Rights Directive. They include extensively informing victims of their rights and accompanying victims to the institutions involved in the investigation or court trial phase of the proceedings.

In **Germany** the Federal Ministry of Justice and for Consumer Protection presented a draft bill, containing a definition for 'victims of crime' in criminal proceedings to meet the requirements of Article 2 of the Victims' Rights Directive.<sup>9</sup>

The **Serbian** government adopted a victims' rights strategy for 2020–2025, which provides for the establishment of a National Service for Assisting and Supporting Victims of Crime within all higher courts in Serbia, and for a National Network of Victim and Witness Support Services.<sup>10</sup>

In **Luxembourg**, legislation was adopted which, in line with Article 13 of the Victims' Rights Directive, entitles victims to legal aid if they are third-country nationals or not resident in Luxembourg.<sup>11</sup>

Still, implementing the Victims' Rights Directive remains challenging. In **Slovenia**, the legislature entrusted social work centres with the new task of victim support in 2019. It is not yet working adequately for victims in practice, according to information collected by the ministry in charge. Social work centres provide support mainly when victims turn to them for other services.<sup>12</sup>

In **Ireland**, the Department of Justice and Equality updated the Victims Charter<sup>13</sup> in February.<sup>14</sup> Section 16 informs victims about non-governmental victim support services and the Garda Victim Service Offices. However, whereas Article 8 of the Victims' Rights Directive grants victims a right to access appropriate support services, this charter has no statutory force and does not provide any rights.

In the **Netherlands**, the House of Representatives was reviewing a bill that would extend victims' rights during the trial phase.<sup>15</sup>

**"The victims-rights approach means encouraging people to report allegations, investigating these claims with compassion, and holding perpetrators accountable."**

Jane Connors, UN Victims' Rights Advocate, *Annual report 2019*, p. 6

## Pandemic boosts use of technology in reporting and proceedings

Victims have the rights to initiate an investigation and to be heard during proceedings, under Article 47 of the Charter and Articles 10 and 11 of the Victims' Rights Directive. Despite restrictions on freedom of movement due to the COVID-19 pandemic, several administrations took steps to enforce these rights.

Specifically, they extended the application of telecommunication technologies in various ways to facilitate communication between victims and authorities involved in proceedings. This occurred, for example, in Belgium,<sup>\*</sup> Estonia,<sup>\*\*</sup> Luxembourg,<sup>\*\*\*</sup> Malta<sup>\*\*\*\*</sup> and Sweden.<sup>\*\*\*\*\*</sup>

In Poland, recent COVID-related legislation allowed remote interviews with victims. Under a new provision of the Criminal Procedure Code, questioning of victims may take place using simultaneous direct transmission of image and sound.<sup>\*\*\*\*\*</sup>

<sup>\*</sup> Belgium, Law of 31 July 2020, Article 109.

<sup>\*\*</sup> Estonia, Ministry of Justice (Justitsministeerium) (2020), Response to request for information, 24 September 2020.

<sup>\*\*\*</sup> Luxembourg, Act of 20 June 2020 on the temporary adaptation of certain procedural modalities in criminal matters (Loi du 20 juin 2020 portant adaptation temporaire de certaines modalités procédurales en matière pénale).

<sup>\*\*\*\*</sup> European Network on Victims' Rights (2020), 'Malta – Specific measures during COVID-19 crisis'.

<sup>\*\*\*\*\*</sup> Sweden, email correspondence with Swedish National Courts Administration (Domstolsverket), 30 June 2020.

<sup>\*\*\*\*\*</sup> Poland, Act on interest-rate subsidies for investment loans offered to entrepreneurs affected as a consequence of COVID-19 and on simplified procedure for the approval of the agreement, 23 June 2020; Criminal Procedure Code (Ustawa z dnia 19 czerwca 2020 r. o dopłatach do oprocentowania kredytów bankowych udzielanych przedsiębiorcom dotkniętym skutkami COVID19 oraz o uproszczonym postępowaniu o zatwierdzenie układu w związku z wystąpieniem COVID19) Article 177 (1a)-(1b).

### 9.1.3. Victim compensation

In Sweden, the government assigned a special inquirer to investigate possibilities of improving and extending state compensation to crime victims.<sup>16</sup> In March 2020, the Swedish Crime Victim Authority (*Brottsoffermyndigheten*) stated that it had recovered SEK 37 million (€ 3.6 million) from perpetrators. That is a record amount, marking an increase of just over SEK 2 million (€ 192,180) from the previous year.<sup>17</sup>

In Slovenia, the Human Rights Ombudsperson warned again<sup>18</sup> that the right to state compensation of victims of criminal offences is limited only to Slovenian citizens and citizens of the European Union.

On 16 July 2020, the Grand Chamber of the Court of Justice of the European Union (CJEU) issued its judgment in *Presidenza del Consiglio dei Ministri v. BV*.<sup>19</sup> It concerns the interpretation of Article 12 (2) of Directive 2004/80/EC.<sup>20</sup>

The directive requires all Member States to "ensure that their national rules provide for the existence of a scheme on compensation to victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims".

The CJEU clarified that Article 12 (2) confers the right to obtain compensation not only on victims of violent crime who find themselves in a cross-border situation, but also on victims who reside in the territory of the Member State where the crime was committed. Consequently, if a Member State has failed to establish a compensation scheme that meets the requirements of Article 12, it is liable to compensate a victim for damages, whether the victim is a resident of that Member State or not.

In **Serbia**, the Novi Sad Higher Court in April issued a landmark decision<sup>21</sup> in a case concerning trafficking in human beings. The defendant was sentenced to five years and three months in prison and ordered to pay material and non-material damages amounting to RSD 1,117,000 (approximately € 10,000). Before this judgment, victims could claim damages only through long and expensive civil proceedings with uncertain outcomes. In addition, this case marked the first time a Serbian court ordered a provisional measure during the proceedings – the freezing of the defendant’s bank account – to secure a victim’s claim.

## 9.2. VICTIMS OF GENDER-BASED AND DOMESTIC VIOLENCE

### 9.2.1. EU policies countering gender-based violence

On 5 March, the European Commission presented its gender equality strategy.<sup>22</sup> It emphasises the objective of ending gender-based violence. To this end, the Commission continues to pursue, as a key priority, the EU’s accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention).

Upon the request of the European Parliament,<sup>23</sup> the CJEU is currently assessing the compatibility, with the EU Treaties, of the modalities of the EU’s accession to the Istanbul Convention. On 11 March 2021, Advocate General Hogan delivered his Opinion, proposing that the court hold that the Council is entitled to wait, without however being forced to do so, for the common agreement of all Member States to be bound by the Convention before deciding whether and to what extent the EU will accede to it.<sup>24</sup> The court’s opinion is expected in the second quarter of 2021.

As stated in President von der Leyen’s letter of intent and the Commission Work Programme 2021, the Commission intends to also issue a legislative proposal to prevent and combat gender-based violence. This legislative initiative shares the same objectives as the Istanbul Convention. Depending on the outcome of the negotiations on the EU’s accession to the Convention, the legislative initiative will either implement the Convention under EU competence or implement the rights and obligations under the Convention in an alternative way.

The Commission’s determination to improve the protection of women against gender-based violence is echoed in the Victims’ Rights Strategy, which envisages measures aimed to reinforce protection measures at the level of Member States. While the Victims’ Rights Directive grants victims of gender-based violence several rights as a group of vulnerable victims, the Commission’s recent monitoring report shows that implementation of these obligations in the Member States has been uneven.<sup>25</sup>

As concerns evidence that can serve as a basis for drafting and implementing EU policies on gender-based violence, the findings from FRA’s Violence against Women survey (published in 2014<sup>26</sup>) remain the primary source for comparative data at EU level. These are complemented by FRA’s Fundamental Rights Survey report on crime, safety and victims’ rights, published in February 2021 and introduced above.

As the European Institute for Gender Equality (EIGE) has repeatedly pointed out, the availability of comparable data for populating the indicators defined by EIGE – e.g. on intimate partner violence – is only slowly improving and



overall still far from satisfactory.<sup>27</sup> In this regard, the EU survey on gender-based violence against women and other forms of inter-personal violence (EU-GBV survey), coordinated by Eurostat, began fieldwork data collection in 2020 on women and men's experiences of violent crime. However, ten EU Member States opted not to participate in this survey, which will be completed in 2023.

#### **9.2.2. Istanbul Convention guides national developments**

The Istanbul Convention and the monitoring work of the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) together form the main European mechanism for setting and assessing standards for measures aimed at preventing gender-based violence and providing access to justice to women who are victims of such crimes.

By the end of 2020, all Member States except **Bulgaria, Czechia, Hungary, Latvia, Lithuania** and **Slovakia** had ratified the Convention.<sup>28</sup> In Czechia, the government had planned to formally propose the Convention's ratification to parliament in July 2020, but postponed this.<sup>29</sup>

The impact of GREVIO's monitoring reports on Member States' policies continues to be significant. For example, in **Finland**, the Ministry of Justice published an action plan for combating violence against women for 2020–2023.<sup>30</sup> It seeks to respond to GREVIO's recommendations for Finland.<sup>31</sup>

Similarly, **Portugal** incorporated GREVIO's recommendations in its strategic major planning options for 2020–2023.<sup>32</sup> In **Belgium**, the House of Representatives released a 'Note on political orientation' on 6 November. It refers to the Istanbul Convention and GREVIO's recommendations as the compass guiding political initiatives addressing violence against women.<sup>33</sup>

**Spain** has laid out a five-year road map, in the form of the State Pact on Gender-based Violence, towards greater implementation of the Istanbul Convention. It identifies a total of 481 individual measures.<sup>34</sup> In addition, the Spanish government committed to implementing the Istanbul Convention. It also expressed its appreciation of the proposals and suggestions made by GREVIO, and provided examples of resulting efforts made, notably to offer more comprehensive protection to victims of sexual violence.<sup>35</sup>

In **Sweden**, the Swedish Gender Equality Agency is actively raising awareness among municipalities, regions, and relevant government agencies about the findings made by GREVIO in its baseline evaluation report on the country. With the help of a website and an explanatory video, it is calling on all relevant stakeholders to take an active role in implementing GREVIO's 41 findings.<sup>36</sup>

In **Cyprus**, the Ministry of Justice launched a consultation in December on a bill on domestic violence and other forms of gender-based violence. It aspires to bring national legislation in line with the Istanbul Convention.<sup>37</sup>

In **Slovenia**, a discussion emerged concerning the redefinition of the criminal offence of rape in accordance with Article 36 of the Istanbul Convention. The Human Rights Ombudsperson also observed in its submission to GREVIO that there is no special crisis referral centre for victims of rape or sexual violence, which would perform a medical and forensic investigation and provide trauma assistance and counselling to victims.<sup>38</sup>

Resistance to the Istanbul Convention continued in **Bulgaria, Hungary, Latvia, Lithuania**,<sup>39</sup> **Poland**, and **Slovakia**.<sup>40</sup>

In **Hungary**, the Ministry of Justice published an overview table on its website, indicating which Hungarian legislative measures correlate, in its view, with the provisions of the Istanbul Convention. It maintains that Hungary has already duly implemented the Convention without ratifying it.<sup>41</sup>

The Minister for Justice stated that, although the Hungarian legal system already grants women a higher level of protection than the Convention, Hungary would still not ratify the Convention because it "supports migration and maintains that people are not born as men or women, as there are also social genders".<sup>42</sup> The provisions of the Istanbul Convention, however, seek to ensure that women in migration, just like all other women and girls irrespective of their status and irrespective of their gender identity and sexual orientation, receive the necessary protection and support for experiences of gender-based violence.

In March, the **Polish** government submitted a state report pursuant to Article 68 of the Istanbul Convention. A GREVIO delegation subsequently visited Poland from 28 September to 2 October. Yet some high-ranking politicians continued to challenge the Convention as "gender gibberish" and "neo-Marxist propaganda",<sup>43</sup> and as being "a Convention that makes a number of extreme leftist assumptions",<sup>44</sup> according to media reports.

### **9.2.3. Important progress in countering intimate partner violence**

Several Member States strengthened the legal basis for police measures intended to protect women against partner violence, in accordance with Articles 50 and 52 of the Istanbul Convention.

A very significant development concerns the anti-violence package that the **Polish** parliament passed in April. The amendments came into force on 30 November.<sup>45</sup> They provide police officers with new powers to immediately distance the perpetrator from the victim of violence.



The act obliges the police to verify at least three times that the perpetrator of domestic violence is not violating an order to leave the premises that the victim occupies.<sup>46</sup> The police must provide victims of domestic violence with sufficient information on how to obtain lasting restraining orders and about available support services. The responsibility for contacting a support organisation remains, however, with the victim.

**Estonia** introduced emergency barring orders as part of legislation reacting to the COVID-19 pandemic. It entered into force on 7 May 2020. According to the new provisions, in urgent cases the prosecutor's office may issue a temporary restraining order, and within two working days must inform a court so that it can review the admissibility of the order.



Before these amendments, the police were already able to ban the offender from the victim's vicinity for up to 12 hours, or longer with the authorisation of a prefect.<sup>47</sup> However, an evaluation in 2018 assessed different approaches to the protection of victims of partner violence. It advised that the prosecutor should gain additional powers to impose a temporary restraining order in urgent cases, which a court would approve afterwards.<sup>48</sup>

In **Austria**, a third Protection from Violence Act entered into force on 1 January 2020.<sup>49</sup> It provides for a 'prohibition of approach' to complement any police barring order, preventing the alleged offender from coming within 100 metres of the victim.

Where legislation meets a Member State's obligations to immediately protect a woman against repeat partner violence, the question of consistent implementation still arises. For example, civil society representatives in **Hungary** maintained that police protection measures are ineffective if

they depend on the victim's consent.<sup>50</sup>

**Belgium's** prosecution services have, since 2012, powers to temporarily remove an offender who lives under the same roof as the victim. However, the legislation in question is used very little, if at all, in some judicial districts, according to the GREVIO baseline report.<sup>51</sup>

#### 9.2.4. Pandemic sparks domestic violence concerns

Lockdowns during the COVID-19 pandemic led to an increase in calls to domestic partner violence support services and helplines in many countries, overwhelming evidence suggests. These include **Belgium**,<sup>52</sup> **Bulgaria**,<sup>53</sup> **Cyprus**,<sup>54</sup> **Czechia**,<sup>55</sup> **France**,<sup>56</sup> **Germany**,<sup>57</sup> **Greece**,<sup>58</sup> **Ireland**,<sup>59</sup> **Lithuania**,<sup>60</sup> **Malta**,<sup>61</sup> **Romania**,<sup>62</sup> **Slovakia**,<sup>63</sup> and **Serbia**.<sup>64</sup>

Noteworthy exceptions are **Estonia**<sup>65</sup> and **Finland**.<sup>66</sup> In the **Netherlands**, on 9 April, the Sexual Assault Centre informed the public that the number of applications for support had declined dramatically after the outbreak of the coronavirus.<sup>67</sup> In June, the 'Safe at Home' organisations (*Veilig Thuis organisaties*) observed that, contrary to what had been expected, the number of reports of domestic violence had not increased during the lockdown.<sup>68</sup>

Overall, however, more victims needed protection, as the increased numbers of calls to helplines and domestic violence civil society organisations in many

Member States show. Nonetheless, state authorities did not impose protective measures against further violence, such as protection orders or arrests, more often during this time period, or at least did not do so significantly more often. This is the case, for example, in **Czechia**,<sup>69</sup> **Ireland**,<sup>70</sup> and **Lithuania**.<sup>71</sup>

Similarly, in May, the **Italian** National Institute for Statistics (*Istituto Nazionale di Statistica* – ISTAT) issued a report<sup>72</sup> based on an analysis of requests for support that the national phone helpline received from victims of domestic violence from 1 March to 16 April 2020. The helpline registered 5,031 calls during this period, a 73 % increase on the same period in 2019. At the same time, the cases of domestic abuse that the police registered decreased by 43.6 %.

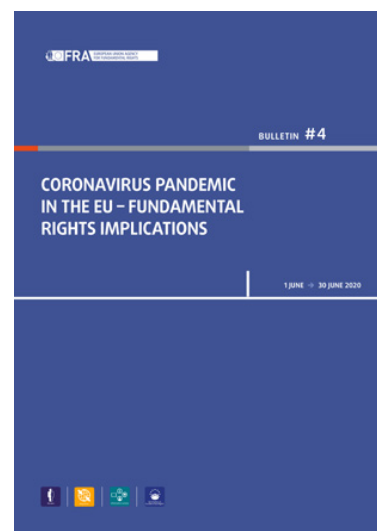
In **Luxembourg**, the number of police interventions and emergency barring orders issued during the acute phase of the COVID-19 crisis (March, April and May 2020) did not increase substantially compared with the same months in previous years.<sup>73</sup>

More research is clearly required to better understand the pandemic's impact on partner violence and on the reactions of victims and organisations contacted by victims, alongside the reasons for non-reporting by victims.

Meanwhile, in **Serbia**, the Autonomous Women's Centre reported that several women who were victims of violence were fined for breaching the curfew while attempting to report their abusers,<sup>74</sup> although the police had committed to not punishing them.<sup>75</sup> The Commissioner for the Protection of Equality suggested to the government that women who are victims of violence should be exempt from obligatory curfews.<sup>76</sup> However, no formal instructions to that effect were issued.

#### FRA ACTIVITY

## Highlighting the heightened risk of domestic violence



In 2020, FRA regularly reported on the fundamental rights implications of the COVID-19 pandemic. Bulletin no. 4 highlighted the impact on particular groups, including women as victims of domestic violence.

It noted that confinement measures exacerbated the risk of domestic violence, especially for women and children.

See FRA (2020), **Coronavirus pandemic in the EU – fundamental rights implications**, Bulletin 4, Publications Office, July 2020.

### 9.3. CHALLENGES TO JUDICIAL INDEPENDENCE PERSIST



**“Judicial independence is not a prerogative or privilege in the interests of judges and prosecutors. Rather, it is a crucial requirement in the separation of powers. It is needed to ensure impartial justice, to prevent corruption, and to hold governments and others to account. It is, in short, a precondition of the rule of law in a healthy democracy.”**

Marija Pejčinović Burić, Secretary General of the Council of Europe, *Conference of Ministers of Justice of the Council of Europe*, 9 November 2020

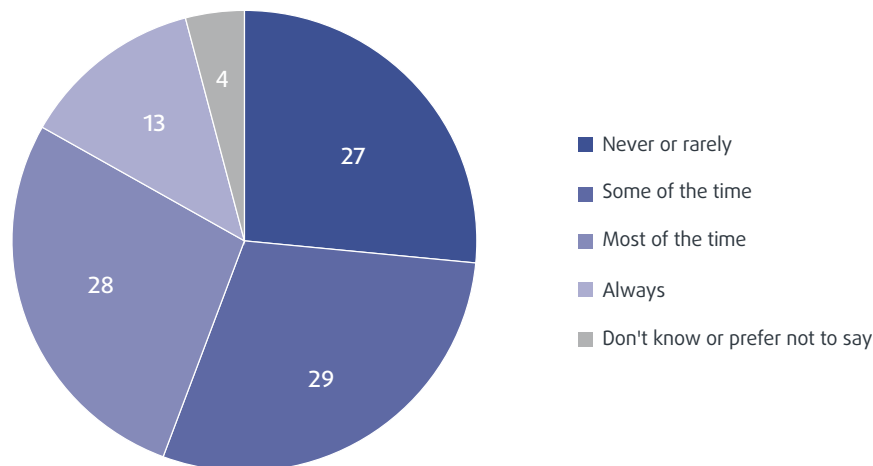
An independent judiciary is the cornerstone of the rule of law and access to justice. Article 19 (1) of the Treaty on European Union, read in connection with Article 47 of the Charter, establishes a right to an effective remedy and to a fair trial before an independent and impartial court.

The Council of Europe, particularly through European Court of Human Rights rulings relating to Articles 6 and 13 of the European Convention on Human Rights, also plays an important role in ensuring the respect of these principles.<sup>77</sup> The UN, in its 2030 Sustainable Development Goals (Target 16.3), similarly expects Member States to promote the rule of law at national and international levels and to ensure equal access to justice for all.<sup>78</sup>

In 2020, judicial independence was also highlighted as one of the crucial prerequisites for effective oversight of the proportionality and legality of Member States’ emergency measures adopted to combat COVID-19. The Venice Commission, for example, highlighted that all Member States’ actions to address the COVID-19 crisis must be subject to meaningful judicial review by independent courts at national and European levels.<sup>79</sup> The President of the Council of Europe’s Consultative Council of European Judges (CCJE) equally underlined that the principle of judicial independence should not be called into question during the pandemic or any other emergency situation.<sup>80</sup> For more information, see [Chapter 1](#).

Yet FRA’s Fundamental Rights Survey suggests that there is considerable scepticism among the general public regarding judicial independence. In 2019, some one in four people in the EU (27 %) believed that, in their country, judges are never able to do their job free from government influence or that they can do so only rarely.<sup>81</sup>

**FIGURE 9.1: PERCEPTIONS OF JUDGES' ABILITY TO DO THEIR JOB FREE FROM GOVERNMENT INFLUENCE IN THE EU**



Source: FRA, Fundamental Rights Survey 2019

In September, the European Commission published its first Rule of Law Report, providing an overview of significant developments related to the rule of law in all 27 EU Member States.<sup>82</sup> The issue of justice systems was one of four pillars the report focuses on; it also reflects on issues in overcoming the COVID-19 pandemic. Judicial independence remains an issue of concern in some Member States. Infringement proceedings and Article 7 (1) proceedings have been initiated against Poland (initiated by the Commission) and Hungary (initiated by the European Parliament). The report also refers to Bulgaria, Croatia, Romania, and Slovakia.

**Poland's** justice reforms since 2015 have raised serious and persisting concerns, the Rule of Law report notes. The reforms affect the Constitutional Tribunal, the Supreme Court, ordinary courts, the National Council for the Judiciary, and the prosecution service. They have increased the influence of the executive and legislative powers over the justice system and therefore weakened judicial independence, according to the report.<sup>83</sup>

Regarding **Hungary**, the Rule of Law report raises concerns about the independence of the Supreme Court (*Kuria*) in the context of the rules on judicial appointments. In late 2019 and early 2020, rules on judicial appointment to the *Kuria* increased the role of parliament in this process, it notes. Accordingly, members of the Constitutional Court, who are elected by the Parliament, can request an appointment as a judge and then be appointed at the *Kuria* on the termination of their mandate, without going through normal procedures.

The Commission also observes that it is difficult for the National Judicial Council to counterbalance the powers of the president of the National Office for the Judiciary, over whom there is no effective judicial control. While election of a new President of the National Office for the Judiciary may open the way for reinforced cooperation, no legislative steps have been taken to address these structural issues so far, the report notes.<sup>84</sup>

The Rule of Law report also refers to issues in the composition and functioning of the Supreme Judicial Council in **Bulgaria**.<sup>85</sup> The Council of Europe's Group of States against Corruption (GRECO) as well as Venice Commission have also identified this as a concern.<sup>86</sup> In particular, the overall number of judges elected by their peers did not form a majority of the Supreme Judicial Council, which is responsible for managing the judiciary and ensuring its independence.

Concerns have been raised due to the combination of the powers of the Prosecutor General with his position in the Supreme Judicial Council.<sup>87</sup>

In **Croatia**, the State Judicial Council lacks sufficient resources to adequately fulfil its mandate, and its role in selecting judges has been reduced, the Commission notes.<sup>88</sup>

In **Romania**, reforms enacted in 2017–2019 have a negative impact on judicial independence and continue to apply. In 2020, the Romanian government expressed its commitment to restoring the path of judicial reform after the backtracking of previous years, leading to a significant decrease in tensions with the judiciary, the Commission added.<sup>89</sup>

Finally, regarding **Slovakia**, the Commission expressed concern over long-standing issues regarding the independence and integrity of the justice system.<sup>90</sup> In April 2020, the Slovakian government announced important reform plans to strengthen judicial independence and integrity, and the appointment process for the Constitutional Court, the report noted.

In October 2019, the Commission referred **Poland** to the CJEU on the grounds that the disciplinary regime undermines the judicial independence of Polish judges and does not ensure the necessary guarantees to protect judges from political control.<sup>91</sup> In January 2020, the Commission asked the CJEU to impose interim measures on Poland, ordering it to suspend the functioning of the Disciplinary Chamber of the Supreme Court.<sup>92</sup>

On 8 April 2020, the CJEU ruled that **Poland** must immediately suspend the application of the national provisions on the powers of the Disciplinary Chamber of the Supreme Court with regard to disciplinary cases concerning judges. The CJEU confirmed in full the position of the Commission.<sup>93</sup> This order applies until the CJEU renders its final judgment in the infringement procedure.

On 5 June 2020, the ECtHR gave notification to **Poland** concerning cases of alleged lack of independence of the Supreme Court.<sup>94</sup> The applications concerned complaints that the two chambers of the Supreme Court were constituted on the recommendations of the National Council of the Judiciary, whose independence has been repeatedly challenged.

The law governing the functioning of the justice system in Poland entered into force on 14 February 2020. It prompted another Commission infringement procedure against **Poland**. In its letter of formal notice of 29 April 2020, the Commission states that the law undermines judicial independence and is incompatible with the primacy of EU law. Moreover, the new law prevents Polish courts from directly applying certain provisions of EU law protecting judicial independence, and from sending requests for preliminary rulings on such questions to the CJEU.<sup>95</sup>

Article 7 (1) procedures against **Poland** continued in 2020. In September, the Commission provided the Council of the EU with an update on rule of law developments in Poland.<sup>96</sup> The Commission particularly focused on disciplinary sanctions for judges and the implementation of the CJEU's order of 8 April 2020 on the Disciplinary Chamber of the Polish Supreme Court. The loss of trust affecting judicial cooperation between the Member States was also discussed.

Regarding Article 7 (1) procedures against **Hungary**, in September the Commission provided the Council of the EU with an update on rule of law developments since the end of 2019. In November, GRECO issued recommendations on the situation in Hungary.<sup>97</sup> It concluded that its

previous three remaining recommendations regarding judges had not been implemented.<sup>98</sup> In particular, its findings on the powers of the President of the National Judicial Office, regarding both the process of appointing or promoting candidates for judicial positions and the process of reassigning judges, remain of special significance.<sup>99</sup>

In addition to these developments, the Council of the EU adopted country-specific recommendations of the 2020 European Semester on 20 July 2020. They included specific reference to the justice systems of several EU Member States (**Croatia, Cyprus, Italy, Malta, and Slovakia**).<sup>100</sup>

#### *Further actions of EU institutions to strengthen rule of law*

In July, the European Commission published the eighth edition of its Justice Scoreboard. This is an annual comparative overview of the efficiency, quality, and independence of justice systems in all EU Member States. In relation to judicial independence, the Scoreboard contains data on:

- perceived independence of courts and judges (among general public and companies);
- disciplinary proceedings regarding judges;
- authority that can instruct prosecutors in individual cases, and safeguards;
- the appointment of members of the Councils for the Judiciary; and
- disciplinary proceedings regarding prosecutors.

The 2020 Scoreboard draws on the results of the Eurobarometer survey. It shows that, while the effectiveness of justice systems has improved in a large majority of Member States, the perception of judicial independence has decreased since 2019.<sup>101</sup> Interference or pressure from governments and politicians often explains the poor perception of independence.

The findings of the Scoreboard are key references for country assessments in the European Semester. They also feed into the Commission's Rule of Law report, on the basis of which the Council of the EU launched the annual Rule of Law Dialogue at its meeting on 13 October.<sup>102</sup>

It followed an approach that the German Council Presidency introduced. The dialogue is organised into a horizontal (i.e. not a country specific) discussion on general rule of law developments in the EU, and country-specific discussions addressing key developments one by one in each Member State. At the meeting on 13 October, ministers held their first horizontal discussions. The Council meeting on 17 November discussed country-specific aspects.<sup>103</sup>

At this second meeting, the discussion focused on key developments in five EU Member States, following the EU protocol order for addressing each Member State in turn. In this instance they covered **Belgium, Bulgaria, Czechia, Denmark, and Estonia**. Subsequent meetings will cover other Member States, following protocol order.



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In a resolution that preceded this discussion in the Council, the European Parliament proposed an EU mechanism to protect and strengthen democracy, the rule of law, and fundamental rights.<sup>104</sup> The Parliament reiterated the need to protect the independence of the judiciary. It urged the Commission to use all instruments to prevent Member States from exposing courts and judges to undue pressure.

In December, the Regulation on a general regime of conditionality for the protection of the Union's budget was adopted.<sup>105</sup> It aims to protect the financial interests of the EU against breaches of the rule of law. It explicitly mentions corruption and compromising the independence of the judiciary among the indicators of such a breach.

Before the regulation, the European Council adopted formally non-binding conclusions on how to apply rule of law conditions to the EU budget.<sup>106</sup> The regulation applies from 1 January 2021 onwards<sup>107</sup> and the Commission will adopt guidelines for its application.



## FRA opinions

### FRA OPINION 9.1

EU Member States need to follow up on their commitment to ensuring full and correct implementation of the Victims' Rights Directive. They should also further develop the rights of crime victims in line with the European Commission's victims' rights strategy.

Member States should take effective measures to help implement the right of all victims to comprehensive support services, including information, advice and support relevant to the rights of victims and to their appropriate role in criminal proceedings.

Victims of crimes against the person have rights to recognition and justice as provided for in Article 47 of the EU Charter of Fundamental Rights. In 2020, the European Commission created a framework to further develop these rights and draw closer to the objective of fully acknowledging them and giving them effect. Building on the Victims' Rights Directive, it appointed a Victims' Rights Coordinator, adopted the first EU victims' rights strategy, and established the Victims' Rights Platform. However, to a considerable extent, the strategy's success will depend on Member States' commitment to implementing it.

The strategy identifies key priorities, including supporting victims in reporting crimes, improving support and protection of vulnerable victims, facilitating victims' access to compensation, and strengthening cooperation and coordination among all relevant stakeholders. In all these respects, victim support organisations perform a crucial role. Therefore, to make the strategy work, Member States' readiness to assess and, where necessary, improve and strengthen existing support structures is essential.

In 2020, several EU Member States (including Bulgaria, Estonia and Lithuania), as well as Serbia, established or reinforced the structures of victim support organisations. However, challenges remain. These include, for example, challenges to providing victims information about their rights; to providing practical advice and support to victims in making use of their rights; and to victim support services informing victims about their role in criminal proceedings and providing relevant support, in accordance with Article 9 (1) (a) of the Victims' Rights Directive.

The Council of Europe's Istanbul Convention not only defines standards but, through the work of its monitoring body (GREVIO), also drives and guides the development of women's rights to protection against gender-based violence and to recognition and justice if they become victims. However, by the end of 2020, Bulgaria, Czechia, Hungary, Latvia, Lithuania and Slovakia had still not ratified the Convention.

In addition, the EU's accession to the Convention is still pending. At the request of the European Parliament, the CJEU worked on an opinion assessing if signing and adopting the Convention is compatible with the EU treaties. Its opinion is expected in the second quarter of 2021.



## FRA OPINION 9.2

The EU Member States that have not yet ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) are encouraged to do so.

FRA encourages Member States to address gaps in national legislation concerning the protection of women who are victims of violence, including by guiding the police on their task of intervening in cases of partner violence, and to adopt measures that ensure the immediate and robust protection of women against repeat victimisation and retaliation.



### 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.

In addition, the Member States concerned should take prompt action to fully comply with the relevant judgments of the Court of Justice of the European Union (CJEU). Member States are also encouraged to act promptly on recommendations, such as those the European Commission issues in its rule of law procedure.

An independent judiciary is the cornerstone of the rule of law and of access to justice (Article 19 of the TEU, Article 67 (4) of the TFEU, and Article 47 of the EU Charter of Fundamental Rights). Challenges in the area of justice persisted in several EU Member States, particularly regarding judicial independence. The European Commission issued its first annual Rule of Law Report in 2020. The issue of justice systems and their independence was one of the four focus areas covered by the report.

The year also saw the adoption of the Regulation on a general regime of conditionality for the protection of the Union budget. It explicitly mentions corruption and compromising the independence of the judiciary among the indicators of a breach of the rule of law.

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<sup>104</sup> European Parliament (2020), **The establishment of an EU mechanism on democracy, the rule of law and fundamental rights**, P9\_TA(2020)0251, Brussels, 7 October 2020.

<sup>105</sup> **Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget**, OJ L 433I, 22.12.2020, p. 1–10.

<sup>106</sup> European Council (2020), **‘European Council meeting, 10 and 11 December 2020. – Conclusions’**, press release, 14 December 2020.

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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

23

January

In *L.R. v. North Macedonia* (No. 38067/15), European Court of Human Rights (ECtHR) rules that North Macedonia violated Article 3 (prohibition of torture, inhuman and degrading treatment) of the European Convention on Human Rights (ECHR) because a deaf child had been mistreated in an institution, including being tied to a bed.

3

Committee on the Rights of Persons with Disabilities publishes the list of issues before reporting on Croatia.

14

Belgium submits its combined second and third periodic reports under Article 35 of the Convention on the Rights of Persons with Disabilities (CRPD).

25

Denmark submits its combined second and third periodic reports under Article 35 of the CRPD.

April

20

July

UN Special Rapporteur on the rights of persons with disabilities publishes a report on disability-inclusive international cooperation, and later presents it to the 75th session of the General Assembly.

6

October

Human Rights Council appoints Gerard Quinn as Special Rapporteur on the Rights of Persons with Disabilities.

# EU

February

20

Committee on Employment and Social Affairs (EMPL) of the European Parliament adopts the text of the motion for the Resolution on the EU disability strategy post 2020.

March

2

EMPL tables a motion for a resolution urging the Commission to deepen its commitment to the rights of persons with disabilities.

April

8

48 Members of the European Parliament across all political groups address an open letter to the President of the European Council and the European Commission highlighting the "threat to the human rights of persons with disabilities and other persons with support needs due to COVID-19, in particular due to difficulties in accessing care and support services".

17

European Parliament adopts a resolution on EU coordinated action to combat the COVID-19 pandemic and its consequences, calling for "the measures adopted by the EU and by Member States to respect the rights of persons with disabilities in line with the UN Convention on the Rights of Persons with Disabilities".

June

3

European Ombudsman launches a strategic initiative (SI/2/2020/MMO) on "how the European Commission accommodates the special needs of staff members with disabilities in the context of the COVID-19 emergency".

18

European Parliament adopts the Resolution on the European disability strategy post 2020 based on an EMPL motion for resolutions in March.

July

8

European Parliament approves a motion for a resolution on the rights of persons with intellectual disabilities in the COVID-19 crisis.

30

European Ombudsman publishes her decision in case 1233/2019/MMO on how the European Commission ensures that Member States spend European structural and investment funds in line with the obligations stemming from the CRPD.

September

2

Grand Chamber of the Court of Justice of the European Union (CJEU) rejects a case by non-governmental organisations claiming that Bulgarian funding of institutions using EU funds violates EU law. The court finds that the organisations have no legal standing to bring the case.

October

8

European Parliament holds a plenary debate on the impact of the COVID-19 outbreak on long-term care facilities.

15

European Commission publishes a roadmap for the European disability rights strategy 2021-2030.

November

27

European Commission publishes an independent evaluation of the European disability strategy 2010-2020.



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The European Commission started to develop a new disability strategy in 2020, initiating a consultation process that continued throughout the year. It will launch a new strategy in the first quarter of 2021. The European Parliament and Council reached a political agreement on a new Common Provisions Regulation governing EU funds, which covers the rights of persons with disabilities. Meanwhile, the COVID-19 pandemic put to the test the duty of the EU and its Member States to comply with the Convention on the Rights of Persons with Disabilities (CRPD). Member States introduced a wide range of measures that significantly affected the rights of persons with disabilities. Persons with disabilities and their representative organisations, as well as the structures set up under the CRPD to protect them, took action to ensure that these measures comply with the Convention. Overall, the pandemic underlined the importance of involving persons with disabilities and their representative organisations in situations of risk, and the value of strong national CRPD structures.

## 10.1. THE CRPD AND THE EU: NEW STRATEGY AND PANDEMIC TAKE CENTRE STAGE

At the EU level, 2020 was the key year for developing the new disability strategy. The European Commission published a review of the existing strategy, and consulted a wide range of stakeholders on the new strategy throughout the year. Meanwhile, the EU responded to the pandemic by taking a range of measures relevant to persons with disabilities. Negotiations on the Common Provisions Regulation, which governs the use of EU funds and includes enabling conditions<sup>1</sup> concerning the CRPD, resulted in political agreement in November.

### 10.1.1. Consultation on new disability strategy kicks off

The European Commission began developing a new EU disability strategy in 2020. It organised exploratory consultations with civil society organisations (CSOs) and the EU CRPD Framework, in which FRA participates, in July, and published a roadmap for the new strategy in October. A second round of consultations took place online in October–November.

The Commission published an independent evaluation of the 2010–2020 strategy in November. It concludes that the strategy made a significant contribution to the implementation of the CRPD at EU level, and to the implementation of several important legislative and policy instruments in the field of disability. However, not all the actions of the strategy were fully implemented, and its objectives were only partly achieved. The evaluation concludes that the new strategy would need realistic objectives supported by appropriate actions, measurable policy indicators, statistics and data collection. It should involve persons with disabilities fully. It would require a comprehensive overview and monitoring of national-level progress in the situation of persons with disabilities.<sup>2</sup>

On 11 November, Helena Dalli, the EU Commissioner for Equality, outlined key priorities for the upcoming strategy. These included political participation, inclusive education, accessibility of new technology, de-institutionalisation, accessible transport and built environment, boosting participation in employment, and digital upscaling. The strategy will ensure systematic data collection and will also address the pandemic.

### 10.1.2. Pandemic triggers EU support for persons with disabilities

The Commission's response to the COVID-19 pandemic included a range of actions related to CRPD implementation. They included more flexible use of EU funds, coordinated action on healthcare, and the purchase of protective equipment and of vaccines.

The EU legislator adopted a regulation making spending on various EU funds more flexible. It allows the funds to be used to support the income of groups requiring assistance, such as persons with disabilities.<sup>3</sup>

Meanwhile, the Commission continued to monitor the implementation of the Web Accessibility Directive.<sup>4</sup> It required all public sector websites to be accessible by 23 September 2020, and public sector mobile apps to be accessible by 23 June 2021. These online resources contain important information on COVID-19 and related measures.



The revised Audiovisual Media Services Directive<sup>5</sup> requires Member States to ensure that information on emergencies is available in an accessible manner to the public through audiovisual media services. The European Regulators Group for Audiovisual Media Services accelerated its implementation.<sup>6</sup>

In addition, the Commission gave guidance to organisations involved in mass transport to remind them of their passenger and mobility obligations under EU law.<sup>7</sup>

Forty-eight Members of the European Parliament from all across the political spectrum sent an open letter to the Presidents of the European Council and the European Commission. It highlighted the “threat to the human rights of persons with disabilities and other persons with support needs due to COVID-19, in particular due to difficulties in accessing care and support services”.<sup>8</sup>

In April, the European Parliament adopted a resolution on EU coordinated action to combat the COVID-19 pandemic. It called for particular attention to equal access to healthcare, proper staffing and equipment of community-based care and support services, accessible public information on the pandemic and inclusive income protection measures.<sup>9</sup>

Following a petition,<sup>10</sup> the European Parliament adopted a motion drawing attention to the denial of medical treatment to persons with intellectual disabilities, and the exclusion and social isolation they faced in the course of the pandemic.<sup>11</sup>

On 3 June 2020, the European Ombudsman launched a strategic initiative<sup>12</sup> setting out a series of questions “on issues such as the measures in place for remote working and health insurance, as well on lessons that could be learned for the Commission’s wider interaction with members of the public with disabilities”.

#### **10.1.3. ESIF negotiations and use of EU funds for de-institutionalisation**

The proposed new Common Provisions Regulation (CPR)<sup>13</sup> will govern the European Structural and Investment Funds (ESIF) for 2021–2027. Negotiations on it continued throughout 2020, with Parliament and Council reaching political agreement at the end of 2020.<sup>14</sup>

Implementing the CRPD is among the proposed horizontal enabling conditions that Member States have to comply with to access ESIF. This means that Member States will have to set up national frameworks with objectives that serve the implementation of the CPR. It also requires them to make arrangements to ensure that the preparation and implementation of EU-funded programmes properly reflect accessibility policy, legislation and standards.

In addition, the proposed CPR allows bodies promoting the rights of persons with disabilities to participate in the monitoring committees of the programmes. It also requires that Member States include in their programmes measures that promote community-based services, including prevention and primary care, as well as home care.<sup>15</sup>



During 2020, a decision by the European Ombudsman addressed compliance with the CRPD when using EU funds. Past FRA research on independent living also raised this issue.<sup>16</sup> The complainant maintained that the European Commission should have taken action on projects involving the construction of institutional care facilities in **Hungary** and **Portugal**, as it believed them to contravene the EU's de-institutionalisation obligations.

The Ombudsman found that, in the first phase of the de-institutionalisation process in **Hungary**, the Commission had not acted in a sufficiently timely manner. Thanks to the lessons learnt in that phase, however, the Ombudsman stated that "the Commission has shown greater caution as regards the use of ESI funds to continue the deinstitutionalisation process in that Member State". In the case of **Portugal**, the Ombudsperson concluded that she trusts that the Commission will act effectively upon the findings and recommendations of the UN and an upcoming expert report.<sup>17</sup>

Non-governmental organisations (NGOs) brought a case to the Court of Justice of the European Union challenging similar EU funding in **Bulgaria**. In September, the court deemed it inadmissible. This holding is currently under appeal.<sup>18</sup>

## 10.2. CRPD IN EU MEMBER STATES: PANDEMIC HIGHLIGHTS NEED FOR APPROPRIATE RESPONSES TO NEEDS OF PERSONS WITH DISABILITIES

EU Member States responded to the pandemic by taking a range of measures, not all of them sensitive to the rights of persons with disabilities. This led to reactions by organisations and individuals in the disability community.

In 2020, the pandemic delayed the CRPD Committee's work. It did not publish concluding observations on any of the Member States. It did publish a list of issues concerning **Croatia** during its thirteenth pre-sessional working group (30 March to 3 April 2020). **Belgium** and **Denmark** submitted their state reports.

### 10.2.1. Pandemic raises risk of discrimination in healthcare access

Article 25 (f) of the CRPD requires States Parties to “prevent discriminatory denial of health care or health services”. The Special Rapporteur on the Rights of Persons with Disabilities presented a report to the February–March session of the UN Human Rights Council. It noted on this issue that “[t]here is a deep-rooted belief, carved with fear, stigma and ignorance, that persons with disabilities cannot enjoy a fulfilling life, that their lives are incomplete and unfortunate, and that they cannot attain a good quality of life.”<sup>19</sup>

These considerations raised concerns during the pandemic. Advocates for persons with disabilities in **Germany** argued that the Clinical Frailty Scale based triage guidelines on outdated views on impairment and disability, and could lead to denials of life-saving intensive care even without lower chances of survival.<sup>20</sup> However, the Federal Constitutional Court rejected a complaint by nine persons with disabilities based on the guidelines. It noted that choosing who gets intensive care treatment was not likely to arise considering the resources of the German healthcare system.<sup>21</sup>

The **Belgian** National High Council for Persons with Disabilities also maintained that existing ethical guidelines on triage were not clearly formulated and could also lead to persons with disabilities being denied intensive care.<sup>22</sup>

After a similar debate in **Spain**, the national Bioethics Committee recalled that discrimination on the basis of disability in health care is prohibited.<sup>23</sup> The Spanish Ombudsperson also pointed out that “it is not acceptable” for scientific bodies to recommend the sacrifice of persons with disabilities because of lack of means.<sup>24</sup> The Ministry of Health responded that the state guarantees healthcare for those affected by COVID-19 on an equal basis.



### 10.2.2. Anti-COVID-19 measures affect the rights of persons with disabilities

Governments took a wide range of measures to address the pandemic. These included lockdowns, social distancing, school closures, and mask mandates. Each of these led to significant challenges to the rights of persons with disabilities, which were not always taken into account.

This section outlines diverse challenges triggered by the pandemic and responses thereto. One way to avoid such problems would be to ensure that persons with disabilities, through their representative organisations, participate in crisis management. Article 11 of the CRPD (situations of risk) requires this in any case. The CRPD Committee Chair and the Special Envoy of the UN Secretary-General on Disability and Accessibility have advocated it. In 2020, they called on states to “ensure that persons with disabilities, through their representative organisations, are closely consulted with and actively involved in the planning, implementation and monitoring of COVID-19 prevention and containment measures.”<sup>25</sup>

In a positive development, **Croatia** announced that it would set up a working group to monitor the impact of measures on persons with disabilities.<sup>26</sup>

Meanwhile, in **Spain**, the pandemic showed that there is a low level of awareness of the rights of persons with disabilities and of the CRPD, the disability organisation Comité Español de Representantes de Personas con Discapacidad noted.<sup>27</sup>

#### *Limitations on visits*

Partial or general visit bans affected many institutions where persons with disabilities live. For example, **Denmark**<sup>28</sup> and the **Netherlands**<sup>29</sup> allowed visits only in exceptional cases, but eased bans in the summer. These visitor bans led to a range of problems for persons with disabilities and their families.

The **Dutch** disability organisation Ieder(in) surveyed persons with disabilities and their relatives. Even after the easing of restrictions, 52 % felt that they were insufficiently involved in decision-making on the rules. Nevertheless, the satisfaction of this group with the visiting regulations (79 %) was higher than that of their relatives (66 %).<sup>30</sup>

Visitor restrictions in supported housing had an excessive impact on inhabitants’ rights, including their right to independent living, the **Danish** Institute for Human Rights found.<sup>31</sup>

The **Finnish** Parliamentary Ombudsperson decided in June, on the basis of several complaints, that restrictions to accessing care homes lacked a precise enough legal basis, were not communicated properly, and did not strike

## Feeling overlooked

Already before the pandemic, FRA’s Fundamental Rights Survey, conducted in 2019, showed that people who experience long-standing limitations in their usual activities (due to disability or long-term health problems) feel overlooked by politicians.

For example, 69 % of people with severe limitations tended to agree, or strongly agreed, that “mainstream parties and politicians do not care about people like me”. Meanwhile, 63 % of those who are limited, but not severely, feel this way. By comparison, 58 % of those without limitations hold this view.\*

\* *FRA (2020), What do Fundamental Rights mean for people in the EU?, Luxembourg, Publications Office, Figure 14, p. 39.*



a balance between stopping the spread of the virus and the rights of the persons in care homes.<sup>32</sup> An NGO submitted a complaint on this and other issues to the European Committee on Social Rights in November.<sup>33</sup>

In **Sweden**, people complained about the legality of general visit bans.<sup>34</sup> The Health and Social Care Inspectorate responded that staff may suggest other ways of keeping in contact, and could inform the residents and their relatives of the risks of spreading the infection on a visit instead of banning them.<sup>35</sup> In **Estonia**, the Chancellor of Justice raised concerns about banning visitors to institutions, considering that many of those housed there did not belong to a high-risk group.<sup>36</sup>



The virus did spread fast within institutions. In **Romania**, 1,796 residents in institutions had COVID-19 and 870 out of a total of 55,000 residents in institutions had died from it, according to data made available on 30 December 2020.<sup>37</sup> As a countermeasure, governments introduced various policies to mitigate the risk, including equipping facilities with protective equipment, testing, and banning social events.<sup>38</sup>

In **Cyprus**, the Confederation of Organisations for Persons with Disabilities pointed to the high number of victims in closed institutions of all kinds as a sign that more should be done to guarantee independent living.<sup>39</sup>

### *Schooling*

Measures to limit the spread of the virus also affected schools.

The **Greek** NHRI issued a report on the need for protection of human rights with regard to the measures taken in response to the pandemic, which included the necessity of including the dimension of disability in all measures taken in the field of education with special emphasis on the right to education of children with disabilities and/or special educational needs and equal treatment in practice.<sup>40</sup>

In **Greece**, special education schools retained their face-to-face operation throughout the school year 2020-2021, even though all other primary and secondary schools operated with distance learning for long time periods.

In **Lithuania**, following disability NGO advocacy, children with disabilities were exempt from distance learning.

In May 2020, the Ministry of Education, Culture, Sport and Youth of **Cyprus** put in place a specific procedure, in cooperation with the Ministry of Health, for students with disabilities less able to follow health protocols or at high risk of COVID-19 on the grounds of public health. This procedure was challenged by parents, academics, and the Commissioner for Administration and Protection of Human Rights (Ombudsperson) by submitting a relevant report. It was later dropped in accordance with the Commissioner's recommendations.<sup>41</sup>

In **Portugal**, the public authorities took measures to support the home-schooling of students with disabilities, which disabled people's organisations considered insufficient.<sup>42</sup>

The **Belgian** Task Force for vulnerable groups called for additional and more flexible 'corona parental leave', which the government adopted.<sup>43</sup>

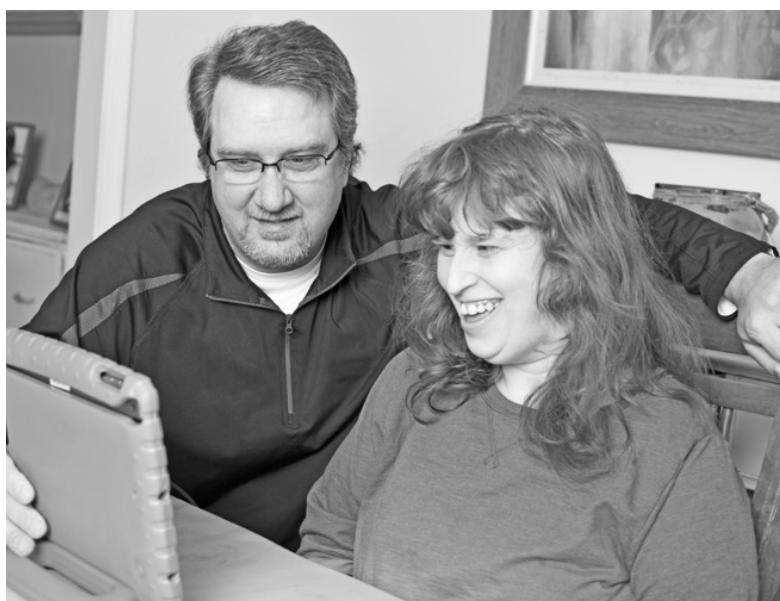
#### *Providing support*

Lockdown measures affected people with disabilities in other ways. For instance, it made distribution of food, medical and cleaning supplies more difficult.

In **Serbia**, for example, families of persons with disabilities reportedly had difficulty obtaining curfew passes to provide care and support.<sup>44</sup> In response to similar concerns, in **Bulgaria** the government mobilised emergency teams, which helped persons with disabilities pay utility bills and delivered food and other essential items.<sup>45</sup> The **Spanish** Ministry of Health published a ruling providing lockdown exemptions for people on public roads and in public spaces when accompanying persons with disabilities.<sup>46</sup>

The lockdown also affected the mental and physical well-being of persons with disabilities. Half (50 %) of the respondents to a survey in the **Netherlands**<sup>47</sup> had suffered physical deterioration in recent months, 45 % had been lonely, and more than 41 % had suffered from increased stress or psychological complaints. They attributed this to lack of contact with close family, fear of contamination, and the postponement of medical treatments and appointments.

Lockdowns had a particularly negative effect on certain categories of persons with disabilities, including persons with autism who are not able to communicate by mobile phone or other equipment, reports from **Slovakia** indicate.<sup>48</sup> The particularly negative effect of lockdowns on persons with autism<sup>49</sup> also prompted the Commissioner for the Protection of Equality in **Serbia** to issue a recommendation on the urgent resolution of the various problems they faced.<sup>50</sup>





Governments and CSOs took some steps to address the profound need for psychological support of people with disabilities in some circumstances. In **Croatia**, CSOs designed measures to reduce social isolation. In cooperation with the Croatian Red Cross, the Croatian Association of Deaf and Hard of Hearing Persons activated a line to provide psychosocial support for deaf and hard of hearing persons in self-isolation. They can send a text message or contact the organisations using the Viber application.<sup>51</sup>

In **Cyprus**, personal assistants were instructed to call and visit persons with disabilities regularly in order to support and accompany them while they exercise in the neighbourhood.<sup>52</sup>

The **Austrian** Independent Monitoring Committee called for inclusive holiday offers for children with disabilities, which would allow children to recover after the long lockdown.<sup>53</sup>

#### *Supporting families and carers*

The **Finnish** Ministry of Social Affairs and Health appointed a working group, which found that the coronavirus crisis had considerable and often negative impacts on the well-being of families of children with disabilities. It recommended a comprehensive plan to ensure their well-being.<sup>54</sup>

Similarly, a survey in **Belgium** found that persons with disabilities and those close to them felt overlooked and lacked care at home, which increased pressure on family members to take over caring roles.<sup>55</sup>

Home-schooling arrangements, loss of childcare, and loss of support for daily issues particularly affected women in families with children with disabilities. The **Austrian** Independent Monitoring Committee, for example, noted this and called for additional support, including setting up crisis-proof networks.<sup>56</sup>

## PROMISING PRACTICE

# Helplines for persons with disabilities and parents of children with disabilities

Helplines took on a new significance during the COVID-19 pandemic.

The **Estonian** service 'The Helper' started in July. It is a confidential free telephone counselling and communication service for elderly people and people with disabilities. It brings together volunteers and those in need, to give people who feel alone the opportunity to communicate and be better involved in society. The project is a collaboration between local governments and NGOs.\*

The **Slovak** initiative *Inklulinka* is a helpline for parents of children with disabilities or other family members who are seeking advice on various areas of the life of a child with disability. Experienced parents provide advice on topics such as benefits and services to compensate for the disability, how to secure the child's education, and on the powers of various public institutions in relation to disability.\*\*

The **Greek** Centers for Educational and Advisory Support (KESY) operated helplines for persons with disabilities and parents of children with disabilities and offered remote assistance and advisory services to pupils with disabilities and their parents. \*\*\*

\* *Surts Koolitus OÜ (2020), Abitaja (The Helper).*

\*\* *Children of Slovakia Foundation, Platform of families of children with disabilities (Nadácia pre deti Slovenska, Platforma rodín detí so zdravotným postihnutím) (2020), Inklulinka.*

\*\*\* *Ministry of Education and Religious Affairs of the Hellenic Republic, Circular 39317/GD4/19-3-2020, Υπουργείο Παιδείας και Θρησκευμάτων, Εγκύκλιος 39317/ΓΔ4/19-3-2020 – Έξ αποστάσεως υποστήριξη μαθητών/τριών με αναπηρία ή/και ειδικές εκπαιδευτικές ανάγκες (Distance learning for pupils with disability and/or special educational needs).*

### *Protective equipment and other containment measures*

The lack of personal protective equipment for assistants severely hampered the right of persons with disabilities to live independently, the **Austrian** Independent Monitoring Committee noted.<sup>57</sup> Similar concerns were reported in **Serbia**.<sup>58</sup> In **Slovenia**, there were reports that programmes for social inclusion and vocational rehabilitation were not operating because of the measures to contain infection.<sup>59</sup>

The requirement to wear face masks, usually indoors and sometimes also outdoors, created challenges for some persons with disabilities.

**Cyprus** initially announced a requirement for everyone over the age of six to wear face masks but later revised it to everyone over the age of 12. The Ombudsperson pointed out the need to accommodate children who lip-read, and suggested using face shields or partially transparent masks. Following the report, the Commissioner's recommendations were completely implemented.<sup>60</sup>

In **Slovenia**, the Human Rights Ombudsperson issued several recommendations on mask-wearing exemptions. They prompted the government to issue an exception to the obligation to wear masks to facilitate communication with deaf and hard-of-hearing persons.<sup>61</sup>



The **Croatian** Institute of Public Health noted the difficulties some persons with disabilities may have in washing hands or wearing masks. It emphasised the wearing of masks and regular health checks for those assisting or interacting with them.<sup>62</sup> The government of **Croatia** exempted persons with certain physical and mental health impairments, including autism spectrum disorders, from the obligation to wear masks. It also exempted those with hearing impairments, interpreters for deafblind people and other accompanying persons.<sup>63</sup>

In **Austria**, persons with hearing impairments and their communication partners are exempted from the obligation of wearing masks during communication.<sup>64</sup>



**Lithuania** confirmed that persons with disabilities need not wear masks in public places if their state of health means that they cannot wear masks or wearing one may endanger their health. It recommended that these individuals wear a face shield.<sup>65</sup> **Italy** passed a decree in November with similar exemptions. The decree also allowed persons with disabilities to keep a reduced physical distance from caregivers and assistance providers.<sup>66</sup>

Persons with disabilities who use personal assistance cannot follow social distancing rules during service provision, the Austrian Monitoring Committee noted. They face major problems due to the shortage of protective equipment/clothing for personal assistants. That has a negative impact on their right to live independently.<sup>67</sup> To address this matter, the Austrian Minister of Health exempted persons with disabilities and their personal assistants from the obligation to follow distance rules.<sup>68</sup>

The **Croatian** Ombudsperson for Persons with Disabilities also warned of the difficulties such rules posed to persons with disabilities.<sup>69</sup> Accompanying persons cannot keep the requisite physical distance in public, as a report by Unia, the **Belgian** CRPD framework, pointed out.<sup>70</sup> Another report by Unia called for priority access in shops and in home deliveries for persons with disabilities, and for them to be allowed to enter with a person assisting them.<sup>71</sup>

The Belgian national railway company discontinued support services to persons with disabilities because it was impossible to maintain the required 1.5 metres distance. After Unia raised the issue,<sup>72</sup> the Task Force for Vulnerable Persons intervened. The service was subsequently reinstated in part,<sup>73</sup> but not for visually impaired persons.<sup>74</sup>



### 10.2.3. Pandemic increases economic challenges and prompts government support

The pandemic increased unemployment, which also affected persons with disabilities. In **Germany**, for example, unemployment among people with relatively serious disabilities reportedly increased by about 13 % between October 2019 and October 2020. In one region (Bavaria), it increased by 19.1 %.<sup>75</sup>

In **Cyprus**, on 26 March, all organisations running supported employment programmes were instructed to suspend the employment of persons with intellectual disabilities in order to protect them. The persons who stopped working in these schemes were eligible for a special sickness benefit.<sup>76</sup>

Governments stepped in to mitigate the financial impact of the pandemic on persons with disabilities, for example through forms of one-off payments, e.g. in **Slovenia**<sup>77</sup> and **Lithuania**.<sup>78</sup>

In **Estonia**<sup>79</sup> and **Lithuania**,<sup>80</sup> decisions on disability status/allowances were automatically renewed. In **Bulgaria**, support provided in accordance with the Persons with Disabilities Act was extended only on the basis of documents, without an in-person assessment.<sup>81</sup>

In the long run, only structural measures can provide a durable solution for the employment of persons with disabilities in line with Article 27 (1) (e) of the CRPD. Such measures can take various forms, as last year's Fundamental Rights Report noted. They include subsidising employers to hire people with disabilities, as in **France**,<sup>82</sup> **Portugal**<sup>83</sup> and **Bulgaria**,<sup>84</sup> or increasing the subsidy employers can request for measures to provide reasonable accommodation, as in **Latvia**.<sup>85</sup> **Lithuania** introduced a quota system for social enterprises with additional incentives to hire more severely disabled workers.<sup>86</sup>

### 10.2.4. Communicating on the virus and on risks: a steep learning curve

Information on COVID-19 and measures to contain it must also reach persons with disabilities. Article 9 (1) (b) (accessibility) and Article 21 (a) (access to information) of the CRPD require that such information be accessible to persons with disabilities.

Individuals with severe limitations generally find it harder to access online information from their local/public authorities than those without limitations do, FRA's Fundamental Rights Survey of 2019 indicates.<sup>87</sup> Inadequate information can cause stress to persons with disabilities, as an Unia survey in **Belgium** found.<sup>88</sup>

## PROMISING PRACTICE

### Start spinning the wheels: suggestions for more growth and better welfare

The damaging effects of the COVID-19 crisis motivated the Disabled People's Organisations in **Denmark** to develop a plan to improve economic growth and give more people with disabilities the opportunity to participate in and contribute to the community, during and after the COVID-19 crisis.

The plan contains several recommendations aiming to improve the accessibility of homes and train stations, improving health, and increasing access to vocational education.

Stakeholders themselves developed the plan. It can be useful for other EU Member States, as well.

*For more information, see Danske Handicaporganisationer (Disabled People's Organisations Denmark) (2020), 'Start spinning the wheels' ('Gang i hjulene').*



## PROMISING PRACTICE

# Making government information more accessible

In **Austria**, the Independent Monitoring Authority published material developed by the association *Leicht Lesen* (Easy Reading) in easy-read format, supplemented by explanatory pictures. Experts from the monitoring committee reviewed it for comprehensibility and approved it. This text, together with explanatory pictures, enables barrier-free access to the latest information and important measures taken by the government.\*

The government of **Luxembourg** translated all press briefings into German sign language, and *Klaro*, the official centre for plain language, translated the safety measures into plain language. A short clip explaining the rules to follow was published. Pictograms made the awareness campaign visually comprehensible.\*\*

\* *Austria, Independent Monitoring Authority (2020), Information on the coronavirus in easy-read format (Informationen zum Corona Virus in Leichter Sprache).*

\*\* *Klaro (2020), Information about Corona, (Infos zu Corona).*

Many problems regarding appropriate communication with and information for persons with disabilities occurred at the beginning of the pandemic. In **Slovakia**, during the first and second waves of the pandemic, politicians and moderators on television wore face masks, so those with hearing impairments could not read their lips. That prompted the Commissioner responsible to propose solutions.<sup>89</sup>

In **Croatia**, the national television broadcaster shut down its sign interpretation department in March, so it did not provide sign interpretation during COVID-19 press conferences.<sup>90</sup> After the Croatian Association of Deaf and Hard of Hearing intervened, it reintroduced subtitles in most shows. However, the Croatian Association of Sign Language Interpreters for the Deaf, in cooperation with the Ministry of Science and Education, designed a system to offer support to deaf students using Facebook.<sup>91</sup>



In the **Netherlands**, there were no sign interpreters at some of the government's first coronavirus press conferences on television. They reappeared after the Prime Minister's press conference on 12 March.<sup>92</sup> In **Portugal**, televised press conferences on the COVID-19 situation used sign interpreters.<sup>93</sup>

Governments took various measures to improve the accessibility of communications. In **Portugal**, public bodies and NGOs published information sheets, guidelines and directives about COVID-19 in simplified language.<sup>94</sup>



In **Cyprus**, the Department for Social Inclusion of Persons with Disabilities uploaded information to its website that was easily convertible into braille and into sound format.<sup>95</sup> The Committee on the Protection of Persons with Mental Disability took the initiative of monitoring announcements, converting texts into easy-read format, and uploading them. The Confederation of Disability Organisations circulated a weekly newsletter with information on matters pertaining to the pandemic that were of interest to persons with disabilities.<sup>96</sup>

The Commissioner for Administration and the Protection of Human Rights (Ombudsperson), within the framework of her jurisdiction as an Independent Mechanism for the Promotion, Protection and Monitoring of the CRPD, submitted an own initiative intervention in April regarding the access of persons with disabilities and/or other vulnerable groups, including persons who live in psychiatric institutions and social care homes, to information on the coronavirus pandemic.<sup>97</sup> Following the report, the relevant authorities implemented the Commissioner's suggestions.

In **Greece**, information on COVID-19 and related measures has been communicated as social stories as well as in Greek sign language, in easy-to-read and in braille, as well as in magnified print type editions for visually impaired persons.<sup>98</sup> All TV lessons for elementary schools are interpreted in sign language.<sup>99</sup>

In **Estonia**, information on the COVID-19 pandemic was communicated in sign language<sup>100</sup> and plain language,<sup>101</sup> and a remote video sign language interpretation service was expanded.<sup>102</sup>

Apps that track COVID-19 cases need to be accessible to persons with disabilities. From March to October 2020, the **Spanish** ONCE Social Group worked with the government on an independent audit of the Radar COVID app's accessibility.<sup>103</sup> The government took into account concerns raised about the tool's lack of accessibility and possible discrimination against persons with disabilities.

In **Sweden**, the National Board of Health and Welfare (together with other national authorities and intellectual disability organisations)<sup>104</sup> developed support material for professionals on how to talk about COVID-19 to persons with intellectual disabilities and autism.<sup>105</sup> Noting a lack of available accessible information, the Swedish Agency for Participation, in collaboration with the Swedish Civil Contingencies Agency and the Swedish National Association for Persons with Intellectual Disabilities, created an information film for persons with intellectual disabilities, informing them about the coronavirus.<sup>106</sup>

Other general measures may also help improve responses in future. In **Finland**, the government created a new permanent committee on sign language to promote the rights of sign language users and foster dialogue between authorities and sign language users.<sup>107</sup> In **Bulgaria**, a draft law on Bulgarian Sign Language was tabled in October.<sup>108</sup>

#### FRA ACTIVITY

### Supporting efforts to develop monitoring indicators

The **Bulgarian** and **Czech** monitoring frameworks invited FRA to provide an overview of human rights indicators to help them develop indicators to monitor the situations in their Member States. In February, a seminar took place in Sofia. In November, FRA held an online event with the Czech Human Rights Defender.

Based on suggestions by members of the ENNHRI Disability Working Group, FRA used indicators that the UN, other national monitoring frameworks, and FRA itself had developed to inform the participants of the available options.

The events were organised collaboratively and used an interactive approach. Engagement on this topic is set to continue in the coming years.

*FRA (2014) Human rights indicators on Article 19 CRPD and the ongoing Bridging the Gap project.*

The implementation of the Web Accessibility Directive, the European Accessibility Act and the revised Audiovisual Media Services Directive should also help ensure improvements in this area. For example, **Estonia** set up an interministerial working group on incorporating the Accessibility Act into national law, under the auspices of the Ministry of Social Affairs.<sup>109</sup> The **Swedish** government appointed a special inquirer to determine how the directive could be implemented.<sup>110</sup>

Overall, the pandemic appears to have raised awareness of the need to inform persons with disabilities in accessible formats. The **Dutch** Senate passed the Dutch Sign Language Act,<sup>111</sup> making sign language an official language of the Netherlands, alongside Dutch and Frisian. The legislative process began in 2016, but the COVID-19 pandemic accelerated it by putting sign language in the public spotlight.

### 10.3. CRPD MONITORING FRAMEWORKS: KEY CHALLENGES

As outlined above, national monitoring frameworks provided added value during the pandemic by raising a wide range of concerns and making important recommendations regarding CRPD implementation. Challenges related to the functioning of these mechanisms persist, however, and this is of particular significance during a crisis.<sup>112</sup>

These challenges include lack of funding for the **Lithuanian**<sup>113</sup> and **Portuguese** mechanisms; insufficient human resources and working space for the **Portuguese** mechanism; and start-up problems related to the pandemic in **North Macedonia**.

In **Romania**, the Council for Monitoring the Implementation of the UN CRPD appears to have become inactive.<sup>114</sup>

In 2019, **Slovenia's** Ministry of Labour, Family, Social Affairs and Equal Opportunities proposed a Draft Council for Persons with Disabilities Act, regulating its composition, tasks, powers and funding, but it stalled after criticism from the Commission for the Prevention of Corruption, and is currently on hold because of the pandemic.<sup>115</sup> In 2020, however, the Human Rights Ombudsperson, who is a National Human Rights Institution, proposed in its Annual Report for 2019 that the Ombudsperson is prepared to assume this responsibility and mission.<sup>116</sup> Despite several positive responses in the Parliament, no such response has been received by the resource Ministry.<sup>117</sup>

On the positive side, the government of **Sweden** has proposed a new Institute for Human Rights.<sup>118</sup> Its tasks would include the national monitoring of the CRPD.<sup>119</sup>

The EU CRPD Framework sent a joint letter outlining its vision to Commissioner Dalli in preparation for the new European disability strategy in January.<sup>120</sup> It reiterated the points in that letter during an online consultation with the Commissioner in July.<sup>121</sup>

The framework also had a meeting with the Commission and discussed activities on COVID-19. It later summarised them in a list.<sup>122</sup> Framework members agreed that future joint framework activities on the impact of the pandemic and the post-COVID world would be important. It also met with the European Network of National Human Rights Institutions (ENNHRI) Disability Working Group to discuss cooperation in the area of indicators, and promising practices of monitoring bodies.

## FRA opinions

### FRA OPINION 10.1

In line with the CRPD, EU Member States should, as part of their checks on legislative and executive measures dealing with situations of risk (such as the COVID-19 pandemic), consider the impact of such measures on the rights of persons with disabilities and take steps to avoid any negative impact. Measures to address situations of risk that may directly or indirectly affect the rights of persons with disabilities should be provided by law, non-discriminatory and proportionate to the legitimate aim pursued. In line with the CRPD and the EU Charter of Fundamental Rights, Member States should fully involve persons with disabilities and their representative organisations, as well as the national monitoring bodies set up under Article 33 of the CRPD, in planning and monitoring such measures.

The EU institutions and EU Member States could support these checks by facilitating the exchange of promising practices, particularly between national parliaments.

Governments took a broad range of measures to curb the spread of the coronavirus. Some of these measures did not fully take into account the rights of persons with disabilities under the CRPD, in particular Article 4 (duty to ensure and promote the rights of persons with disabilities) and Article 11 (situations of risk and humanitarian emergencies), or the EU Charter of Fundamental Rights, in particular Article 21 (non-discrimination) and Article 26 (integration of persons with disabilities). Some bans on visits were excessive, persons with disabilities could not attend schools, or they had too few exemptions from rules on wearing masks or social distancing.

Lockdown measures also caused problems, including in the distribution of food and medical and cleaning supplies to persons with disabilities. Triage guidelines did not conform to CRPD standards, and could lead to the denial of life-saving intensive care to persons with disabilities who had similar chances of survival to persons without disabilities. In addition, the lockdowns often had a more negative impact on the mental and physical well-being of persons with disabilities. Their specific needs were frequently overlooked.

There was a lack of appropriate communication with persons with disabilities and of information for them about measures taken to address the pandemic, especially in its early stages, and they seldom took part in planning such measures. Some EU Member States have worked to ensure greater involvement of persons with disabilities in planning and monitoring such measures in the future. That could help reduce the risk that future measures will violate the CRPD.

The pandemic has shown that crisis communications strategies of Member States seldom make fully accessible all information about emergencies. Information during the pandemic was not always presented by means and in formats that allowed persons with disabilities to access it, even though this is required by EU law, including the revised Audiovisual Media Services Directive (2018/1808) and the Web Accessibility Directive (2016/2102).



### **FRA OPINION 10.2**

EU Member States should communicate their emergency responses in a fully accessible way. They should fully implement relevant EU directives, such as the revised Audiovisual Media Services Directive and the Web Accessibility Directive. Member States should provide information using appropriate means and formats – for example, subtitles, sign interpretation, and easy-read language.

The pandemic has underlined the urgent need for de-institutionalisation. It has shown not only that persons with disabilities are at greater physical risk in this particular pandemic, but also that their mental well-being is at greater risk when they are in institutionalised settings, because of the resultant isolation and lack of social contact.

Article 19 of the CRPD requires de-institutionalisation, and the new European disability strategy is likely to include it. The entry into force of the new Common Provisions Regulation and the roll-out of the disability strategy will increase the pressure to complete the process of de-institutionalisation.



### **FRA OPINION 10.3**

In line with Article 19 of the CRPD and as part of the new European disability strategy, the EU and its Member States should urgently accelerate their efforts to achieve de-institutionalisation, including through the appropriate use of EU funds to ensure that persons with disabilities can live independently and be included in the community.

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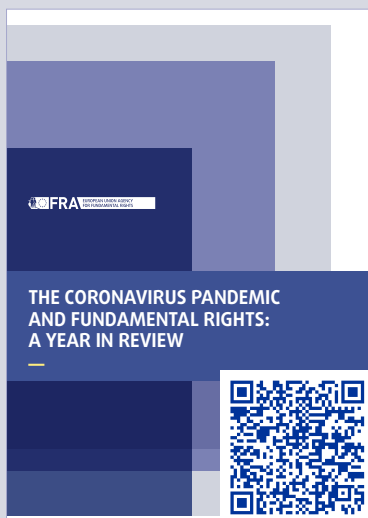
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### FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Schwarzenbergplatz 11 – 1040 Vienna – Austria

T +43 158030-0 – F +43 158030-699

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