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Migration to the EU: five persistent challenges

February 2018

EU Member States' legal and practical responses to migrants and refugees implicate several of their fundamental rights, as enshrined in the Charter of Fundamental Rights of the European Union (EU). The EU Agency for Fundamental Rights (FRA) has regularly reported on these issues since September 2015. This report highlights key trends and persistent concerns between October 2016 and December 2017. It focuses on five areas: access to territory, reception conditions, asylum procedures, unaccompanied children and immigration detention.

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Introduction

The number of people arriving irregularly in the EU dropped significantly in 2017 – to some 204,300 people, compared to over 500,000 in 2016.[1] During the first three quarters of 2017, 164,300 first-time applicants sought asylum in the EU-28 – 55 % fewer than did so during the first three quarters of 2016.[2] At the same time, the number of displaced persons worldwide remained at a record-high level of some 65 million people.[3]

While fewer people arrived and applied for asylum in the EU overall, this was not the case in all EU Member States. The number of asylum applications fell in some countries and increased in others. For example, in 2017, asylum applications decreased in **Austria, Bulgaria, Denmark, Finland, Germany, Hungary, the Netherlands, Poland** and **Sweden**.[4] At the same time, applications for international protection increased in **France, Greece, Italy** and **Spain**.[5] For example, in **France**, 100,412 asylum applications were lodged in 2017, a 17 % increase compared to 2016.[6] In **Spain**, during the first three quarters of 2017, the number of arrivals by sea and land was 90 % higher than during the first three quarters of 2016, according to UN Refugee Agency UNHCR.[7] More and more migrants arrived on small inflatable boats and more rescues at sea were carried out in 2017 than in 2016.[8]

Meanwhile, some EU Member States stepped up their efforts to review pending applications. For example, in the first six months of 2017, **Germany** issued decisions on almost 358,000 asylum applications – more than in all other EU Member States combined.[9]

National responses to migrants and refugees implicate their fundamental rights, as enshrined in the EU Charter of Fundamental Rights (the Charter). The EU Fundamental Rights Agency (FRA) promotes compliance with these rights by highlighting issues of concern, including in its regular reports on the asylum situation.

1 Frontex (2018), Migratory flows in 2017 – pressure eased on Italy and Greece; Spain saw record numbers, 5 January 2018.
2 Eurostat (2017), Asylum quarterly report.
3 UNHCR, Figures at a Glance.
4 Eurostat, Asylum and first time asylum applicants by citizenship, age and sex Monthly data (rounded), Due to the limited data available for November and December 2017, the available data for each EU Member State was compared with the same period in 2016 in the respective EU Member State (data was extracted on 17 January 2018).
5 *Ibid.*
6 OFPRA (2018), *Les données de l'asile 2017 à l'OFPRA.*
7 UNHCR (2017), Desperate journeys; FRA, Monthly migration report, December 2017.
8 Spain, El País (2017), *La ruta española de pateras alcanza cifras de 2008*, 14 September 2017; FRA, Monthly migration report, October 2017.
9 FRA, Monthly migration report, December 2017.

Fundamental rights at stake

National practices and policies regarding migrants and refugees mainly implicate the following fundamental rights:

- human dignity (Article 1 of the EU Charter of Fundamental Rights)
- prohibition of slavery and forced labour, including trafficking in human beings (Article 5)
- right to respect for private and family life (Article 7)
- rights of the child (Article 24)
- right to an effective remedy (Article 47)
- principle of non-discrimination (Article 21)
- right to asylum (Article 18)
- protection in event of removal, expulsion or extradition (Article 19)

FRA ACTIVITY

Eye on migration: timely updates, targeted thematic reports

FRA has issued regular updates on fundamental rights concerns in selected EU Member States since September 2015.

The reports currently focus on 14 countries particularly affected by large migration movements: Austria, Bulgaria, Denmark, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Slovakia, Spain and Sweden.

The 'highlight' reports – issued bi-monthly as of March 2018 – provide concise but thorough overviews on the situation in these countries.

FRA has also published focus sections on particular themes. These looked in detail at: the plight of children; healthcare; trafficking in human beings; gender-based violence; the impact of migrant arrivals on local communities; migrants with disabilities; family tracing and family reunification; hate crime; separated children; torture, trauma and its possible impact on drug abuse; and issues relating to lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum seekers.

FRA's 'highlight' reports were initially issued on a weekly basis, and first covered the situation in eight EU Member States. All reports can be found on FRA's website.

In October 2016, FRA published a report on *Key migration issues: one year on from initial reporting*. It focused on particularly persistent concerns in four areas: unaccompanied children, safety and protection at reception facilities, impact on local communities, and violence and hate speech against migrants.[10]

One year later, the overall number of asylum seekers in the EU has decreased, but several issues persist – and some have even deteriorated.[11]

Building on the findings of the October 2016 report, this report presents the most pressing fundamental rights concerns between October 2016 and December 2017. It focuses on five areas:

- access to territory;
- reception conditions;
- asylum procedures;
- unaccompanied children;
- immigration detention.

The report also looks at positive developments in EU Member States. These are connected to both the lower number of new arrivals and improvements in asylum systems and the professional capacity of staff since the peak of the migration situation in 2015.

[10] FRA, Key migration issues: one year on from initial reporting, October 2016.

[11] This report is based on information from all of FRA's regular overviews of migration-related fundamental rights concerns from October 2016 to December 2017.

MAIN FINDINGS

Access to territory

- Access to EU Member States' territory has become more difficult in almost half of the EU Member States covered. Despite a significant drop in newly arriving asylum seekers, in most EU Member States, the management of external and internal borders remained in emergency mode or became stricter. Several EU Member States re-introduced border controls and kept them throughout 2017.
- Police and border guards reportedly ill-treated migrants, particularly on the Western Balkan route, and in Spain in certain locations.
- Some persons wishing to apply for asylum were denied entry to the EU and/or returned without an opportunity to apply for protection; others were collectively pushed back at land or sea borders.

Reception conditions

- The number of asylum applicants that a country received is not necessarily linked to the quality of its reception conditions. Despite the relatively low numbers, reception conditions in several EU Member States did not improve. In countries where numbers of new arrivals remained high, capacity and poor living conditions caused concern.
- Inadequate reception conditions sparked many protests and other incidents.
- Although some positive developments regarding the protection of vulnerable asylum seekers were reported, these were outweighed by challenges regarding their identification, accommodation, and provision of special care and support.
- Sexual and gender-based violence in reception centres remains an issue in some EU Member States.
- Room for improvement in the treatment of lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum seekers was observed in the majority of EU Member States.

Asylum procedures

- Challenges regarding the identification and registration procedures persisted in some EU Member States; for example, required timeframes were not respected or qualified staff was lacking.
- Some EU Member States decided on applications for international protection in border or transit zones, leading to long waiting periods in inadequate conditions, including for vulnerable persons.
- Issues regarding lengthy asylum procedures, too little time for decision-making, shorter deadlines for appeals and insufficient justifications of appeal decisions were reported in several EU Member States.
- Due to the large backlog of asylum applications, some EU Member States accelerated the asylum procedure, raising concerns over the quality of interviews and decision-making.
- Specific national guidelines for interviewing persons facing persecution based on sexual orientation or gender were available only in a few EU Member States, and LGBTI asylum applicants faced credibility doubts.
- Legal and practical obstacles to accessing legal aid, information and interpretation existed in all EU Member States covered.

Unaccompanied children

- In most EU Member States, reception places for unaccompanied children were sufficiently available due to a drop in new arrivals. In a few EU Member States, the number of children decreased and the quality of child reception facilities improved. In many EU Member States, however, reception standards for children remained critical.
- Asylum-seeking children in several EU Member States had no or limited access to education.
- Children continued to face legal and practical obstacles to accessing asylum procedures in several EU Member States. In particular, problems regarding the appointment of guardians for unaccompanied children barely improved.
- Age assessment methods have been heavily criticised from a fundamental rights perspective – for example, when children were not given the benefit of the doubt concerning their age and treated as adults, or because age assessment procedures consisted purely of medical examinations.
- Legal and practical barriers to family reunification for beneficiaries of subsidiary protection was a great concern for unaccompanied children in several EU Member States.

Immigration detention

- Some positive developments in alternatives to detention and the provision of leisure activities to children were reported in some EU Member States covered. Nonetheless, in several EU Member States, challenges remained regarding legal assistance and information, conditions in detention facilities and the detention of vulnerable persons.
- In recent months, the use of immigration detention increased in certain EU Member States covered.
- Obstacles to obtaining legal aid and/or information were reported in some EU Member States.

1. Access to territory

Over the past two years, it has become more difficult for migrants and refugees to access the territory of EU Member States in almost half of the EU Member States covered. This risks interfering with their right to asylum (Article 18 of the Charter) and violating the prohibition of collective expulsions and *refoulement* (Article 19). Main concerns involved strict border management practices that were not sufficiently sensitive to protection needs, ill-treatment by law enforcement, as well as refusals of entry and summary returns.

Border management

At the end of 2017, at least for some sections of the **Austrian**, **Danish**, **French**, **German** and **Swedish** borders, temporary controls within the Schengen area were still in place.[12]

Hungary launched a 'border hunting programme', which included the training of volunteers to become police officers to assist the authorities with guarding the borders.[13] A new 'smart technology' fence was erected at the Serbian border, capable of delivering small electric shocks to migrants and armed with heat sensors, cameras, and loudspeakers that blare warnings, in several languages, to not cross the border.[14]

In the Central Mediterranean, non-governmental organisations (NGOs) deploying rescue vessels faced pressure from authorities to abstain from providing assistance.[15] **Italy** resumed cooperation with Libya by signing a Memorandum of Understanding with the Libyan Government of National Accord.[16] Pursuant to a request from the latter, Italy deployed military assets inside Libyan territorial waters.[17]

Ill-treatment by law enforcement

Police and border guards reportedly ill-treated migrants, particularly on the Western Balkan route[18] and in Ceuta and Melilla, **Spain**.[19] *Médecins Sans Frontières* (MSF) reported that most migrants who visited their mental health clinics in Serbia in the first half of 2017 had experienced physical violence by police or border authorities in **Bulgaria**, **Croatia** and **Hungary**.[20] In **Hungary**, several reports were published on police violence against people attempting to cross or having crossed the border fence.[21] Police cameras recorded the use of severe force by **Spanish** border guards and police against people trying to cross the border irregularly in El Tarajal/Ceuta.[22]

Refusals of entry and summary returns

Persons wishing to apply for asylum were denied entry and/or returned without an opportunity to

12 See European Commission, Migration and Home Affairs, Full list of EU Member States' notifications of the temporary reintroduction of border control at internal borders pursuant to Article 25 et seq. of the Schengen Borders Code, 4 January 2018. See also European Commission, Temporary Reintroduction of Border Controls.

13 Hungary, National Headquarters of the Police, December 2017; FRA, Monthly migration report, October 2016, December 2016, September 2017 and December 2017.

14 Reuters, Dunai, M. (2017), ‚Hungary builds new high-tech border fence – with few migrants in sight', 2 March 2017; FRA, Monthly migration report, December 2016 and April 2017.

15 See, for example: *Redatorre Sociale* (2017), *Migranti, le ong fermano le navi: stop di Save the Children e Sea-Eye*, 13 August 2017; *Internazionale* (2017), *Tutte le accuse contro l'ong Jugend Rettet*, 8 August 2017; FRA, Monthly migration report, September 2017.

16 Italy, *Memorandum d'intesa sulla cooperazione nel campo dello sviluppo, del contrasto all'immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere tra lo Stato della Libia e la Repubblica Italiana*, signed in Rome on 2 February 2017. NGOs criticised the cooperation due to a likely violation of fundamental rights of people on the move. Italy, ASGI (2017), *ASGI : C'è il rischio di riaprire la stagione buia dei respingimenti già condannati dalla CEDU,* 11 August 2017; FRA, Monthly migration report, September 2017.

17 The terms of reference of the deployment are included in the decision of the Italian Council of Ministers, 28 July 2017, Doc. CCL, No. 2, available on the webpage of the Senate subsequently endorsed by the Italian Senate, Joint Resolutions of the 3rd and 4th Commissions, Doc. XXIV, No. 78, 1 August 2017 and by the Lower Chamber.

18 See, for example, the Border Violence Monitoring website.

19 Spain, Amnesty International (2016), *En tierra de nadie, La situación de las personas refugiadas y migrantes en Ceuta y Melilla;* FRA, Monthly migration report, January 2017.

20 Medecins Sans Frontieres (MSF), Games of Violence: Unaccompanied children and young people repeatedly abused by EU Member State border authorities, 5 October 2017, pp. 4, 5, 7 and 8.

21 The Independent (2017), Hungarian border guards 'taking selfies with beaten migrants' as crackdown against refugees intensifies, 4 March 2017; MigSzol; FRA, Monthly migration report, December 2016, January 2017, March 2017, April 2017, May 2017, August 2017, November 2017 and December 2017.

22 Spain, *El País* (2017), Video shows baton blows and kicks in bid to stop migrants entering Spain, 8 August 2017; FRA, Monthly migration report, September 2017.

apply for protection, or even collectively pushed back at land and at sea borders. For example, in **Poland**, border guards at some border crossing points continuously refused entry to persons wishing to apply for international protection.[23] Persons who managed to submit their applications sometimes had to file them 30 or more times.[24] The European Court of Human Rights (ECtHR) ordered interim measures that asylum seekers should not be refused entry at the Terespol and Medyka border crossing points, which border guards disregarded.[25]

Migrants reaching the Italian-French border were, according to NGO reports, either returned to **Italy** without a formal decision or detained in **France** without receiving information about their rights or the opportunity to apply for protection.[26] According to some sources, almost all (95 %) apprehended persons in the Alpes-Maritimes Department in 2016 were returned to Italy.[27] The French border police allegedly allowed entry only to particularly vulnerable people, since they had a higher chance of obtaining asylum.[28]

Hungary frequently returned persons apprehended within eight km of the border, including vulnerable people, to the Serbian side of the fence, where they had to wait until they could submit their asylum claims in one of the two transit zones.[29] Push-backs allegedly also happened at the **Greek**-Turkish land[30] and sea border.[31] In the **Spanish** enclaves Ceuta and Melilla, immediate returns were carried out quickly, not allowing for identifying vulnerabilities and protection needs.[32] The ECtHR found that the return of migrants violated the prohibition of collective expulsions.[33]

FRA ACTIVITY

Avoiding violations of non-*refoulement*

FRA published a report on the scope of the principle of non-*refoulement* to encourage fundamental-rights compliant border management. The agency also prepared guidance on how to reduce the risk of *refoulement* when EU Member States work in or together with third countries.

For more information, see FRA (2016), Scope of the principle of non-refoulement in contemporary border management: evolving areas of law, Luxembourg, Publications Office of the EU (Publications Office); and FRA (2016), Guidance on how to reduce the risk of refoulement in external border management when working in or together with third countries, Luxembourg, Publications Office.

23 Poland, UNHCR and NGOs, February 2017 and November 2017; Ombudsperson, November 2017; Human Rights Watch, Poland: Asylum Seekers Blocked at Border, 1 March 2017; FRA, Monthly migration report, January 2017, February 2017, March 2017, June 2017, July 2017, August 2017, November 2017 and December 2017.

24 Poland, NGOs, January 2017; FRA, Monthly migration report, January 2017.

25 Poland, *Helsińska Fundacja Praw Człowieka* (2017), Border Guard ignores ECtHR measures again, 21 July 2017; Liberties (2017), Watch: Poland Is Closing Its Borders to Refugees, 21 August 2017; NGOs, October 2017; FRA, Monthly migration report, August 2017, September 2017 and October 2017.

26 France, *La ANAFÉ, La Cimade* and Roya citizen, August 2017; *La Cimade* (2017), *Frontière Franco-Italienne: des atteintes inadmissibles aux droits des personnes migrantes et réfugiées*, 18 October 2017; FRA, Monthly migration report, August 2017, November 2017 and December 2017.

27 France, NGO *Forum Réfugiés-Cosi, Les obstacles à l'accès à la procédure d'asile dans le département des Alpes-Maritimes pour les étrangers en provenance d'Italie*, April 2017; FRA, Monthly migration report, June 2017.

28 France, *La ANAFÉ*, August 2017; FRA, Monthly migration report, August 2017.

29 FRA, Monthly migration report, October 2016, November 2016, December 2016, January 2017, March 2017 and December 2017.

30 Greece, Hellenic League for Human Rights, 'New refoulements of Turkish asylum seekers in Evros' (Νέες επαναπροωθήσεις Τούρκων αιτούντων άσυλο στον Έβρο); UNHCR Greece (2017), UNHCR deeply concerned at reports of informal forced returns from Greece to Turkey, 8 June 2017; efsyn.gr, Ντοκουμέντο βίαιης επαναπροώθησης ('Proof of violent *refoulement*'), 23 June 2017; FRA, Monthly migration report, July 2017.

31 Greece, NGO Watch the Med, September 2017; Watch the Med (2017), Greek coastguards pushed boat carrying 26 people back to Turkey, 22 July 2017; FRA, Monthly migration report, September 2017.

32 Spain, UNHCR, February 2017; FRA, Monthly migration report, November 2016, February 2017 and March 2017,

33 European Court of Human Rights (ECtHR), *N.D. and N.T. v. Spain*, No. 8675/15 and 8697/15, 3 October 2017; FRA, Monthly migration report, November 2017.

2. Reception conditions

EU Member States must ensure that material reception conditions provide an adequate standard of living for asylum seekers, which guarantees their subsistence and protects their physical and mental health.[34]

The numbers of asylum applicants that countries received over the past two years were not necessarily linked to the quality of reception conditions in the countries. Key concerns included overcrowding and inadequate conditions, which triggered protests and incidents. The situation of vulnerable persons as well as the level of safety and protection in reception centres also posed problems.

Capacity

At the end of 2017, sufficient reception capacity was available in many EU Member States – for example, in **Austria**, **Bulgaria**, **Denmark**, **Finland**, **Germany**, the **Netherlands, Poland**, and **Slovakia**.[35] **Bulgaria**, for example, had previously faced issues with overcrowding.[36]

The lower number of arrivals prompted the closure of reception centres in some EU Member States. Closures were reported in **Denmark**, **Finland**, **Germany**, **Hungary** and **Sweden**.[37] In **Hungary**, reception centres were closed due to the country's extended border policy, pursuant to which all asylum seekers – except children below 14 years of age – were escorted to the outer side of the border fence to wait for admission to the transit zones.[38]

In EU Member States that faced significant numbers of arrivals in 2017 – **France**, **Greece**, **Italy** and **Spain** – reception facilities remained overcrowded.[39] For example, the hotspots in Lesvos and Samos, **Greece**, were hosting almost three times more people in October 2017 than there were available places.[40] In **Italy**, a facility in Cona (Veneto), built for a maximum of 540 people, hosted more than 1,300 asylum seekers.[41] In **France**, the reception capacity of 70,000 – 80,000 places remained inadequate compared to some 100,000 registered asylum applicants in 2017.[42] In **Spain**, overcrowding was reported in the reception centres in Ceuta and Melilla.[43]

Insufficient reception capacities led to the establishment of informal camps in **France**,[44] **Greece**[45] and **Italy.**[46] Living conditions were sometimes critical, with limited access to water, sanitary facilities and food.[47]

Inadequate conditions

In many facilities, conditions improved due to the drop in numbers or following repair and construction work – such as in **Bulgaria**, where most facilities were refurbished. Nonetheless, shortcomings persisted.[48]

Although the majority of EU Member States have adopted some form of written standards for reception conditions, they reported significant challenges in respecting these in practice.[49] For instance, the standard of living varied significantly between different **Italian** reception facilities.[50] Many asylum seekers lived at 'special reception centres' (*Centri*

34 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ 2013 L 180, (*Reception Conditions Directive*), Art. 17 (2). Out of the EU Member States covered in this report, Denmark is not bound by the Reception Conditions Directive.

35 FRA, Monthly migration report, December 2017.

36 FRA, Monthly migration report, February 2017.

37 For Denmark: Danish Immigration Service, September 2017; FRA, Monthly migration report, September 2017; For Finland: FRA, Monthly migration report, September 2017 and December 2016; For Germany: Regional authorities, September 2017; FRA, Monthly migration report, September 2017; For Hungary: FRA, Monthly migration report, December 2016, January 2017 and April 2017; For Sweden: Save the Children, November 2017; FRA, Monthly migration report, November 2017.

38 Hungary, *Wolters Kluwer, 2017. évi XX. Törvény a határőrizeti területen lefolytatott eljárás szigorításával kapcsolatos egyes törvények módosításáról*; FRA, Monthly migration report, April 2017.

39 FRA, Monthly migration report, December 2017.

40 Greece, Joint letter of 19 organizations to Greek Prime Minister concerning the conditions for asylum seekers on the Aegean islands, 23 October 2017; FRA, Monthly migration report, October 2016, November 2016, December 2016, January 2017, March 2017, May 2017, June 2017, August 2017, September 2017, October 2017, November 2017 and December 2017.

41 Italy, *La Repubblica* (2017), *Tra I migrant in marcia nella nebbia 'Mai più a Cona, ci trattano da schiavi'*, 17 November 2017; FRA, Monthly migration report, December 2017.

42 France, OFPRA (2018), *Les données de l'asile 2017 à l'OFPRA;* FRA, Monthly migration report, December 2017; *La Cimade*, December 2017.

43 Spain, *Público* (2017), *España* acumula 19.000 peticiones de asilo sin resolver, según ACNUR, 10 January 2017; UNHCR, February 2017; FRA, Monthly migration report, February 2017, April 2017 and May 2017.

44 France, *La Cimade,* October 2017; FRA, Monthly migration report, November 2016, April 2017, May 2017, June 2017, September 2017, October 2017 and December 2017.

45 FRA, Monthly migration report, June 2017.

46 FRA, Monthly migration report, December 2016.

47 FRA, Monthly migration report, July 2017.

48 Bulgaria, Ombudsperson, October 2017; State Agency for Refugees, December 2017; FRA, Monthly migration report, October 2017 and December 2017.

49 FRA, Current migration situation in the EU: Oversight of reception facilities, September 2017, p. 2.

50 Italy, AIDA (2016), Country Report: Italy; FRA, Monthly migration report, May 2017.

di accoglienza straordinaria -Cas), intended for initial reception, where conditions had to satisfy only basic needs. Only some managed to get a place in municipal SPRAR facilities, where more support was available.[51] Of the 205,000 migrants in reception facilities in July 2017, 158,607 were hosted by the Cas and 31,313 in SPRAR facilities. Places in SPRAR increased from about 26,000 to 35,000 in 2017.[52]

Ombuds institutions, NGOs and other stakeholders reported that reception conditions were inadequate in at least some facilities in **France**, **Greece**, **Hungary**, **Italy** and **Spain**.[53] For example, in the **Greek** hotspots, facilities often did not provide shelter from bad weather.[54] Together with overcrowding, this exacerbated tensions and safety risks.[55] In **Germany**, emergency shelters – such as former commercial halls – were still used as reception centres in some regions, despite the sharp decline in new arrivals.[56]

In **Hungary**, in the transit zones in Tompa and Röszke, asylum seekers – including children above the age of 14 – are accommodated in shipping containers and surrounded by high razor fences, where they are under constant monitoring.[57] The authorities gradually banned access to most civil society organisations undertaking protection work.[58]

Issues with providing support to asylum seekers were also reported. For example, in **Austria**, the reduction of social allowances (*Bedarfsorientierte Mindestsicherung*) for both beneficiaries of subsidiary protection and refugees in some *Länder* was a major concern.[59] In the **Greek** hotspots, the increase in arrivals presented a challenge to providing support services,[60] which were handed over from NGOs to authorities in the summer of 2017.[61] In September, UNHCR urged authorities to improve reception conditions on the Eastern Aegean islands and to deploy more staff in the areas of health care, psychosocial support and the protection of unaccompanied children.[62]

Protests and incidents

Overcrowding, inadequate reception conditions and the closure of reception centres (and the subsequent relocation of asylum seekers) exacerbated tensions in several reception facilities. Incidents of violence were reported, among others, in **Finland** and the **Netherlands**.[63]

Protests against reception conditions took place in **Greece**,[64] including a general strike in the Municipality of Lesvos.[65] Similarly, in **Italy**, several demonstrations and other actions criticising reception conditions took place.[66]

51 Italy, *Centro Astalli* (2017), *Rapporto annuale* 2017, 2017; FRA, Monthly migration report, May 2017

52 Italy, ANCI press release of November 2017.

53 For Bulgaria: FRA, Monthly migration report, February 2017; For France: *Fédération des acteurs de la solidarité*, letter to Emmanuel Macron, 14 November 2017; FRA, Monthly migration report, December 2017; For Greece: Ombudsman, February 2017; Ombudsman (2017), Ombudsman's Special Report on migration flows and refugee protection, press release, 19 June 2017; FRA, Monthly migration report, February 2017 and July 2017; For Hungary: UNHCR (2017), UNHCR Chief visits Hungary, calls for greater access to asylum, end to detention and more solidarity with refugees, 12 September 2017; FRA, Monthly migration report, November 2016, February 2017, May 2017, June 2017, August 2017, September 2017 and October 2017; For Italy: *Bari* (2017), *Migranti, protesta all'hotspot di Taranto: «Sommersi dalle polveri dell'Ilva»*, 24 July 2017; FRA, Monthly migration report, October 2016 and August 2017; For Spain: UNHCR, January 2017 and February 2017; *El Mundo* (2016), *Acnur denuncia que los CETI de Melilla y Ceuta «no son aptos para refugiados»*, 26 December 2016; FRA, Monthly migration report, January 2017 and February 2017.

54 FRA, Monthly migration report, December 2016, February 2017.

55 FRA, Monthly migration report, November 2016, December 2016, January 2017.

56 Germany, Workers' Welfare Organisation, October 2017; FRA, Monthly migration report, October 2017.

57 Hungary, Hír TV (2017), *Embertelen körülmények a tranzitzónákban*, 1 August 2017; FRA, Monthly migration report, August 2017, May 2017 and June 2017.

58 FRA, Monthly migration report, January 2017, September 2017 and December 2017.

59 See the HELP.gv.at webpage on Foreign cizitens

60 FRA, Monthly migration report, September 2017.

61 FRA, Monthly migration report, August 2017. Several NGOs raised concerns over it.

62 Greece, UNHCR (2017), UNHCR urges action to ease conditions on Greek islands, 8 September 2017; FRA, Monthly migration report, October 2017.

63 For the Netherlands: FRA, Monthly migration report, November 2016; For Finland: FRA, Monthly migration report, July 2017.

64 FRA, Monthly migration report, October 2016, November 2016, December 2016, July 2017 and November 2017.

65 Greece, Municipality of Lesvos, Escalation of mobilisation by the Municipality of Lesvos regarding the refugee/migrant issue (Κλιμάκωση των κινητοποιήσεων από το Δήμο Λέσβου για το προσφυγικό/μεταναστευτικό), press release, November 2017; FRA, Monthly migration report, December 2017.

66 Italy, Palermo Today (2017), *Casteldaccia, lancio di sedie e divani in strada: "rivolta" dei giovani migranti* 25 June 2017; *La Repubblica* (2017), *Catania, protesta al Cara di Mineo: bloccata la strada statale*, 27 June 2017; *La Repubblica* (2017), *Migranti, sassi sui poliziotti al Cara di Bari: otto agenti feriti, arrestati tre ospiti della struttura*, 26 June 2017; *CronacaQUI* (2017), *Protestano i profughi ospitati nelle stanze dell'ex albergo: 'Dateci cibo e vestiti'. Arrivano i carabinieri*, 14 August 2017; FRA, Monthly migration report, February 2017, July 2017, September 2017 and December 2017.

Vulnerable persons

To secure vulnerable persons' rights, EU Member States need to identify the special reception needs of applicants within a reasonable period of time after they apply for international protection.[67] In the reception of applicants for international protection, EU Member States must take into account the specific situation of vulnerable persons.[68]

In the past months, positive developments regarding the identification and reception of vulnerable persons were reported in some EU Member States. In **Italy**, the number of potential trafficking victims among arrivals increased by 600% in the past three years.[69] In response, authorities issued guidelines[70] and organised training[71] on identifying trafficking victims among asylum seekers.

Despite some positive trends, several challenges regarding identification, special care and support, and accommodation persisted in some EU Member States.[72] In **Germany**, no standardised procedures for recognising specific needs of vulnerable asylum seekers were in place[73] and safeguards for vulnerable persons during the registration, asylum and return procedures were reported to be insufficient.[74] In **Poland**, special needs were often not recognised at an early stage and therefore not taken into account in the asylum procedure.[75]

Vulnerable persons faced difficulties in accessing special care in some EU Member States.[76] In **Austria**, interpretation services in health care and psychological treatment for traumatised persons were not sufficiently available.[77] In **Bulgaria**, available psychologists were insufficiently qualified.[78] The lack of specialised staff to respond to the needs of torture survivors often led to long waiting periods.[79] In **Greece**, access was difficult because referrals to mainland facilities took a long time.[80]

In **Finland**, **Germany**, **Italy** and **Spain**, conditions in reception facilities were sometimes insufficient for vulnerable persons.[81] In **France** and **Italy**, some pregnant women and children were left in the streets due to overcrowding.[82]

67 Reception Conditions Directive, Art. 22 (1).
68 Reception Conditions Directive, Art. 21.
69 Italy, IOM, *La tratta di esseri umani attraverso la rotta del Mediterraneo centrale: Dati, storie e informazioni raccolte dall'organizzazione internazionale per le migrazioni*; FRA, Monthly migration report, August 2017.
70 Italy, Ministry of the Interior, *Commissione nazionale per il diritto di asilo*, 12 December 2016; FRA, Monthly migration report, January 2017.
71 Italy, Ministry of the Interior, *Riconoscere le vittime di tratta, un seminario a Firenze*, 4 April 2017; Monthly migration report, May 2017.
72 For Greece:, MSF (2016), Greece in 2016: Vulnerable People Left Behind, 24 October 2016; Human Rights Watch (2017), EU/Greece: Pressure to Minimize Numbers of Migrants Identified As 'Vulnerable', 1 June 2017; FRA, Monthly migration report, November 2016 and July 2017; For Finland: FRA, Monthly migration report, January 2017; For Poland: UNHCR, February 2017; FRA, Monthly migration report, February 2017; For Spain: UNICEF, *Son niños y niñas, son víctimas, Situación de los menores de edad víctimas de trata en España*, February 2017, FRA, Monthly migration report, March 2017; FRA, Current migration situation in the EU: Torture, trauma and its possible impact on drug use, February 2017, p. 2.
73 Germany, Caritas, August 2017 and December 2017; Jesuit Refugee Service and the Workers' Welfare Association, October 2017; FRA, Monthly migration report, February 2017, August 2017, October 2017 and December 2017.
74 Germany, Caritas, August 2017; FRA, Monthly migration report, August 2017.
75 Poland, UNHCR, February 2017; NGOs, June 2017; RPO, *Krajowy Mechanizm Prewencji przeprowadził wizytację w Strzeżonym Ośrodku dla Cudzoziemców w Kętrzynie*; FRA, Monthly migration report, February 2017, June 2017, July 2017 and August 2017,
76 For Greece: MSF (2017), Dramatic deterioration of the conditions for asylum seekers in Lesvos (Δραματική επιδείνωση των συνθηκών για τους αιτούντες άσυλο στη Λέσβο), 13 July 2017; MSF (2017), We call upon you to take a brave, humanitarian decision: Decongest the islands, (Σας καλούμε να πάρετε μια γενναία, ανθρωπιστική απόφαση¨Αποσυμφορήστε τα νησιά), 10 October 2017; FRA, Monthly migration report, December 2016, August 2017 and November 2017; For the Netherlands: FRA, Monthly migration report, February 2017; For Bulgaria: State Agency for Refugees, October 2017; FRA, Monthly migration report, October 2017.
77 FRA, Monthly migration report, December 2017.
78 Bulgaria, State Agency for Refugees, October 2017; FRA, Monthly migration report, October 2017.
79 FRA, Current migration situation in the EU: Torture, trauma and its possible impact on drug use, February 2017, p. 2.
80 FRA, Monthly migration report, December 2016.
81 For Finland: Non-discrimination Ombudsman, Women of Nigerian origin in Finland who have been subjected to trafficking for sexual exploitation: Practice in applying the Aliens Act; FRA, Monthly migration report, January 2017; For Spain: Amnesty International (2016), *En tierra de nadie, La situación de las personas refugiadas y migrantes en Ceuta y Melilla*, 29 November 2016; FRA, Monthly migration report, January 2017; For Italy: Danish Refugee Council, Swiss Refugee Council (2017), Is mutual trust enough? The situation of persons with special reception needs upon return to Italy, 9 February 2017; FRA, Monthly migration report, March 2017; For Germany: German Caritas Association, December 2017; FRA, Monthly migration report, December 2017.
82 FRA, Monthly migration report, April 2017; For Italy: Danish Refugee Council, Swiss Refugee Council (2017), Is mutual trust enough? The situation of persons with special reception needs upon return to Italy.

Safety and protection

The Reception Conditions Directive (2013/33/EU) requires EU Member States to take appropriate measures to prevent assault and gender-based violence at reception facilities.[83] Nevertheless, in some EU Member States, sexual and gender-based violence remained an issue – this was reported, for example, in **Greece**[84] and **Italy**.[85] The lack of certain basics at reception centres[86] – such as adequate lightning, sufficient police patrols[87] and overcrowding[88] – increased these risks. After special reception facilities for women and new-born children were closed in **France**, instances of sexual violence and exploitation reportedly increased.[89]

[83] Reception Conditions Directive, Art. 18 (4).
[84] Greece, *Diotima*, Gender-based violence in the refugee population, (Έμφυλη βία στον προσφυγικό πληθυσμό); FRA, Monthly migration report, October 2017.
[85] Italy, *La Sicilia* (2017), *Al cara la donne terrorizzate dagli stupri*, 26 May 2017; FRA, Monthly migration report, June 2017.
[86] FRA, Monthly migration report, April 2017.
[87] Greece, *Diotima*, Gender-based violence in the refugee population (Έμφυλη βία στον προσφυγικό πληθυσμό); FRA, Monthly migration report, October 2017.
[88] Italy, *La Sicilia* (2017), *Al cara la donne terrorizzate dagli stupri*, 26 May 2017; FRA, Monthly migration report, June 2017.
[89] France, *Défenseur des droits* (2017), *Décision du Défenseur des droits n2017-206*, 21 June 2017; FRA, Monthly migration report, July 2017.

3. Asylum procedures

Over the past two years, increasingly restrictive asylum policies and practices in many EU Member States call into question to what extent the right to asylum – as enshrined in Article 18 of the EU Charter of Fundamental Rights and in the 1951 Convention relating to the Status of Refugees – is guaranteed. The main issues centred on identifying and registering asylum applicants, border procedures, standards and the duration of asylum procedures, as well as access to legal aid and information.

Identification and registration procedures

EU Member States must register an application for international protection no later than three working days after the application is made.[90] However, this timeframe was not always respected. Issues regarding identification and/or registration procedures were observed in some EU Member States (**France**, **Greece**, **Italy** and **Spain**).[91]

For example, in **France**, difficulties with registration were continuously reported.[92] In certain departments, asylum seekers had to wait more than two months before obtaining an appointment at the Prefecture.[93] Asylum seekers without a registered application remained undocumented and did not receive any allowances.[94] In mainland **Greece**, asylum seekers were asked to make Skype appointments to lodge their applications,[95] because submitting an asylum application to the Regional Asylum Offices or the Asylum Units in person was almost impossible. At the same time, Greek authorities applied a pre-registration procedure (instead of immediate full registration), which led to long delays of up to 10 months before individual asylum applications could be lodged.[96] In **Italy**, procedures were less clear for asylum applicants who arrived outside the normal landing points, particularly as regards the provision of information on asylum.[97]

Border procedures

EU Member States may decide on the admissibility of an application for international protection or its substance in border or transit zones, provided the decision is taken within a reasonable time.[98]

Using such an approach, **Hungary** gradually limited admissions to the transit zones at its border with Serbia to an average of a handful of persons per day in each of the two transit zones. Many people, including vulnerable persons, waited for their admission in Serbia for months – some up to a year.[99]

Access to asylum was also difficult at **Polish** borders in Terespol and Medyka, where only a few persons per day managed to register their applications.[100] Facilities for interviewing applicants allegedly did not ensure privacy or confidentiality.[101]

Duration of asylum procedures

EU Member States must ensure that the examination procedure is concluded within six months after an application is lodged.[102]

Due to the large backlog of asylum applications, some EU Members States tried to accelerate their

90 Or six days, if the application was lodged with an authority which is not competent for the registration, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, (*Asylum Procedures Directive*), Art. 6 (1).

91 For France: *France Terre d'Asile*, September 2017; *La Cimade*, October 2017, November 2017 and December 2017; FRA, Monthly migration report, November 2016, May 2017, September 2017, October 2017, November 2017 and December 2017; For Greece: Aitima (2017), Asylum seekers on hold, Aspects of the asylum procedure in Greece, April 2017; FRA, Monthly migration report, December 2016, May 2017; For Italy: *Commissione Parlamentare di Inchiesta sul Sistema di accoglienza e di identificatzione ed espulsione, nonchè sulle condizioini di trattenimento dei migranti e sulle risorse publlihe impegnate, Relazione di minoranza,* Doc. XXII-bis, No. 8-bis, at 2.3, 26 October 2016; FRA, Monthly migration report, December 2016, January 2017 and July 2017; For Spain: *Cadena SER* (2017), *Solicitantes de asilo sin techo porque el Gobierno les niega la ayuda*, 24 August 2017; FRA, Monthly migration report, September 2017.

92 France, *France Terre d'Asile*, September 2017, November 2017 and December 2017; *La Cimade*, October 2017; FRA, Monthly migration report, November 2016, May 2017, September 2017, October 2017, November 2017 and December 2017.

93 France, *La Cimade*, October 2017, November 2017 and December 2017; FRA, Monthly migration report, October 2017, November 2017 and December 2017.

94 FRA, Monthly migration report, May 2017.

95 Greece, Greek Asylum Service, 'What is the procedure'.

96 Greece, Aitima (2017), Asylum seekers on hold, Aspects of the asylum procedure in Greece, April 2017; FRA, Monthly migration report, May 2017.

97 Monthly migration report, January 2017.

98 Asylum Procedures Directive, Art. 43 (1).

99 FRA, Monthly migration report, November 2016, December 2016, January 2017, February 2017, March 2017, April 2017 and May 2017.

100 FRA, Monthly migration report, November 2016 and April 2017.

101 FRA, Monthly migration report, January 2017.

102 Asylum Procedures Directive, Art. 31 (3).

asylum procedures – **France**,[103] **Germany**,[104] **Hungary**[105] and **Italy**[106]. However, this raises concerns regarding the quality of interviews and decision-making. In **Germany**,[107] an internal investigation revealed severe deficiencies in the asylum procedure after it was accelerated.[108]

Issues regarding lengthy asylum procedures were reported in EU Member States such as **Austria**,[109] **Finland**,[110] **Germany**,[111] **Greece**,[112] **Spain**[113] and **Sweden**[114]. In **France**, delays remained significant; however, the examination time was reduced from eight months in 2015 to five months in July 2017, despite an increase in asylum applications in 2017.[115]

Access to legal aid and information

EU Member States must inform asylum seekers of the available asylum procedure and of their rights and obligations.[116] In addition, they must make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure.[117]

Asylum seekers do not generally have the right to a lawyer, but must be able to communicate with UNHCR or other organisations that provide legal advice or other counselling.[118]

Legal aid, information and interpretation were not accessible in all EU Member States covered due to legal and practical obstacles. Legal assistance became less accessible for asylum seekers in **Finland** following changes to the legal aid system in September 2016, which also reduced the time to appeal negative asylum decisions from 30 to 21 days.[119] In some parts of **Germany**, asylum procedures for applicants from third countries regarded as safe countries of origin were accelerated to an extent that individual counselling was often not possible.[120] There was a lack of provision of legal information to asylum seekers in **Greece**, in particular on the islands. Legal assistance at first instance examinations of asylum requests was limited and exclusively provided by civil society organisations.[121]

103 France, *La Cimade*, November 2017; Public Defender of Rights (2017), *Avis du Défenseur des droits n°17-09*, 25 September 2017; FRA, Monthly migration report, November 2017.
104 FRA, Monthly migration report, November 2016.
105 Hungary, *Wolters Kluwer, 2017. évi CXLIII. Törvény az egyes migrációs tárgyú törvények módosításáról*; FRA, Monthly migration report, December 2017. Amendments entered into force in January 2018.
106 FRA, Monthly migration report, April 2017. See critique on the decree: ASGI (2017), *Il D.L. 13/2017: le principali ragioni di illegittimità*, 7 March 2017; ASGI (2017), *Decreto Legge 13/2017 : audizione dell'ANM alle Commissioni parlamentari*, 9 March 2017.
107 FRA, Monthly migration report, November 2016.
108 Germany, *Welt* (2017), *Untersuchung deckt erhebliche Mängel bei Asylverfahren auf*, 31 May 2017; FRA, Monthly migration report, July 2017.
109 Austria, Austrian Ombudsman Board, August 2017, November 2017 and December 2017; Caritas, Asylum Coordination Austria, December 2017; Monthly migration report, December 2016, August 2017, September 2017, November 2017 and December 2017.
110 Finland, Parliamentary Ombudsman, November 2017; FRA, Monthly migration report, November 2017.
111 Germany, *Deutscher Bundestag, 18. Wahlperiode* (2017), *Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Frank Tempel, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE. – Drucksache 18/13188 –, Ergänzende Informationen zur Asylstatistik für das zweite Quartal 2017*, 11 September 2017; FRA, Monthly migration report, November 2017.
112 Greece, Aitima (2017), Asylum seekers on hold, Aspects of the asylum procedure in Greece, April 2017; FRA, Monthly migration report, December 2016 and May 2017.
113 Spain, CEAR, *Informe 2017: Las personas refugiadas en España y Europa*; FRA, Monthly migration report, July 2017.
114 FRA, Monthly migration report, December 2017.
115 France, *l'Opinion* (2017), *Pascal Brice (Ofpra): «Le droit d'asile doit être dissocié de la politique migratoire»*, 12 July 2017; FRA, Monthly migration report, December 2016 and August 2017.
116 Asylum Procedures Directive, Art. 12 (1) (a).
117 Asylum Procedures Directive, Art. 8 (1).
118 Asylum Procedures Directive, Art. 12(1) (c).
119 FRA, Monthly migration report, November 2016.
120 FRA, Monthly migration report, December 2016.
121 Greece, Aitima (2017), *Asylum seekers on hold : Aspects of the asylum procedure in Greece*, April 2017.

4. Unaccompanied children

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

Although the number of unaccompanied children declined in several EU Member States over the past two years, their level of protection barely improved. In most EU Member States, the quality of child reception facilities, appointment of guardians, access to the asylum procedure and obstacles related to family reunification remained key issues.

Reception conditions

Asylum-seeking children should be accommodated in specialised facilities and foster care placements to guarantee the protection and care necessary for their wellbeing.[122] They should also have access to education and healthcare.[123]

In most EU Member States, reception places for unaccompanied children were sufficiently available due to a drop in new arrivals. Several child reception facilities closed down in **Austria**,[124] **Denmark**,[125] **Finland**,[126] the **Netherlands**[127] and **Sweden**.[128] Children had to move to other locations, resulting in a change of their known environment, including schools and guardians; interruptions in the provision of mental health care; and difficulties for their wellbeing and integration prospects.[129]

In a few EU Member States, the number of arriving children decreased and the quality of child reception facilities improved. **Bulgaria** amended a regulation on the reception of asylum seekers to allow for separate units for unaccompanied children.[130] In **Slovakia**, where hardly any unaccompanied children arrived, preparatory work for a new educational space for unaccompanied children started in the children's home in Medzilaborce.[131]

In many EU Member States, however, despite the decreasing numbers, standards of reception facilities for children did not improve and conditions remained critical. For example, in **Hungary**, insufficient psychological and psychiatric care was provided to children, despite their traumatic experiences. Children complained about violence and intolerant behaviour by the authorities. Instead of being placed in facilities with child-specific services, children over 14 were transferred to the transit zones at the border with Serbia, where they had to stay until their asylum claims were processed.[132] In **Denmark** and in the **Netherlands**, some unaccompanied children stayed in adult facilities. In two cases in **Denmark**, child siblings were separated and placed into different accommodation centres when one of them turned 17.[133]

In **France**, **Greece**, **Italy** and **Spain**, high numbers of unaccompanied children continued to arrive, leading to insufficient capacity and reception conditions. For example, in **Italy**, since 2011, there has been a sixfold increase in annual arrivals, a gradual increase in the proportion of children under the age of 15, and a growing number of girls among unaccompanied children.[134]

In **France**, children had to stay in hotels in poor sanitary conditions. Informal camps – such as in Calais – reappeared; authorities tried to carry out evacuation measures. Children at the camps risked becoming victims of crime, such as trafficking, sexual assault and rape.[135] Throughout 2017, between 900 and 3,300 unaccompanied children were waiting for appropriate shelter in **Greece**.[136] Unaccompanied children were often registered as adults and left in overcrowded and unsafe camps on the Aegean islands or at police stations for several weeks, without specific services or protection, adequate sanitary conditions or basic resources.[137]

122 Convention on the Rights of the Child, Art. 20 and 22; Reception Conditions Directive, Art. 12, 18, 22, 23 and 24.
123 Reception Conditions Directive, Art. 14, 17 and 19.
124 FRA, Monthly migration report, January 2017.
125 Denmark, the Danish Immigration Service (*Udlændingestyrelsen*), 21 June 2017.
126 FRA, Monthly migration report, February 2017 and April 2017.
127 FRA, Monthly migration report, December 2016.
128 FRA, Monthly migration report, January 2017.
129 FRA, Monthly migration report, January 2017.
130 FRA, Monthly migration report, October 2016.
131 Slovakia, Ministry of Labour, Social Affairs and Family; FRA Monthly migration report, November 2017.
132 FRA Monthly migration report, April 2017, July 2017 and August 2017.
133 Denmark, Red Cross and Danish Immigration Service; FRA, Monthly migration report, April 2017, August 2017 and September 2017.
134 Italy, Save the Children, Atlas of Unaccompanied Children in Italy (*Atlante minori stranieri non accompagnati in Italia*); FRA Monthly migration report, July 2017.
135 FRA, Monthly migration report, March 2017.
136 Greece, National Centre for Social Solidarity; FRA, Monthly migration report, November 2016, December 2016, April 2017, October 2017, November 2017 and December 2017.
137 Greece, Human Rights Watch (2017), Greece: Lone Migrant Children Left Unprotected, 19 July 2017; Greek Ombudsman (Συνήγορος του πολίτη), Unacceptable conditions for the detention of unaccompanied minors in Northern Greece, press release, 31 July 2017; FRA, Monthly migration report, August 2017 and September 2017.

In **Italy**, the reception system could not accommodate the increasing number of arriving unaccompanied children; many of them – an average of 28 daily – lived on the streets, stayed in adult facilities or disappeared.[138] Some 540 unaccompanied children were presumed to live in Melilla, **Spain**, including at least 100 of whom were sleeping on the streets.[139]

Some unaccompanied children reported ill-treatment and beatings by security staff in a Centre for Minors in Madrid, **Spain**.[140] 92 % of the children in the overcrowded 'La Purisima' facility for boys said they experienced violence daily.[141]

Asylum-seeking children in the hotspots in **Greece** and in parts of **France**, **Hungary** and **Spain** had no or limited access to education. Only 29 % of children in reception centres attended regular schools in **Germany**;[142] in large cities, children had to wait for a place in regular school for up to one year.[143] In some EU Member States, when compulsory schooling ended, some 16- and 17-year-olds were not offered any education and faced difficulties getting into vocational training or employment. In **Germany**, some young refugees did not get work permits even though they had already been accepted for apprenticeships by an employer.[144]

Appointment of guardians

Unaccompanied children seeking asylum should swiftly be provided with an independent and qualified guardian to ensure that children's views are taken into consideration and that they have access to adequate reception, healthcare and education services. Guardians are also essential in safeguarding children's procedural rights.

Compared to 2016, problems regarding the appointment of guardians for unaccompanied children barely improved. Guardians were overburdened in several EU Member States – such as **Austria**[145], **Finland**[146], **France**[147] and **Sweden**[148]. For example, in **Austria**, one guardian was in charge of some 50 to 200 children. In addition, in several cases, adult siblings were appointed as guardians for their younger siblings.[149]

However, a significant change occurred in **Italy**: to overcome systemic shortcomings, a new law created the function of volunteer guardians; the training and recruitment of such guardians started at the end of 2017.[150]

FRA ACTIVITY

Reinforcing guardianship systems

The handbook on guardianship jointly published by FRA and the European Commission aims to help standardise guardianship practice. It provides guidance and recommendations to EU Member States on strengthening their guardianship systems, setting forth the core principles, fundamental design and management of such systems.

For more information, see FRA (2014), Guardianship for children deprived of parental care, *Luxembourg, Publications Office.*

In several countries, severe problems regarding the appointment of guardians persisted. In **Greece**, no functioning guardianship system was established and no progress occurred regarding adoption of the draft guardianship law.[151] In **Hungary**, guardians were only assigned to unaccompanied children under the age of 14.[152] In Como, northern **Italy**, legal counselling and a guardian were only available to unaccompanied children once they applied for asylum.[153] In **Poland**,[154] the appointment of guardians took a very long time – in some cases up to nine months.[155] Access to guardians varied greatly in **Sweden**'s 290 municipalities, but the lack of resources for supervising the guardians was an overall concern.[156]

In **Germany**, NGOs, guardians and employees of youth services and care institutions lacked the necessary psychological and legal qualifications. This includes knowledge about asylum law and recent reforms – a gap also likely to exist in other EU Member States.[157]

138 FRA, Monthly migration report, October 2016.
139 FRA, Monthly migration report, December 2016.
140 FRA, Monthly migration report, December 2016.
141 FRA, Monthly migration report, May 2017.
142 Germany, Unicef (2017), *Kindheit im Wartezustand*; FRA, Monthly migration report, April 2017.
143 FRA, Monthly migration report, December 2016.
144 FRA, Monthly migration report, November 2017.
145 FRA, Monthly migration report, December 2017.
146 Finland, Ombudsperson for Children and Amnesty International; FRA, Monthly migration report, October 2016, November 2016 and December 2016.
147 FRA, Monthly migration report, October 2016, November 2016 and January 2016.
148 FRA, Monthly migration report, December 2017.
149 FRA, Monthly migration report, August 2017.
150 Italy, Law No. 47, *Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati*, 7 April 2017, Official Gazette No. 93, 21 April 2017.
151 FRA, Monthly migration report, August2017 and October 2017.
152 FRA, Monthly migration report, August 2017, September 2017 and October 2017.
153 FRA, Monthly migration report, April 2017.
154 FRA, Monthly migration report, April 2017 and August 2017.
155 FRA, Monthly migration report, September 2017.
156 Sweden, Chief Guardian Committee; FRA, Monthly migration report, August 2017.
157 FRA, Monthly migration report, February 2017.

Accessing asylum procedures

The best interests of the child must be the guiding principle when unaccompanied children make use of their right to asylum.[158] For this purpose, EU law provides specific safeguards, including access to information, legal representation, and specialised training for the officials working with children. Children continued to face legal and practical obstacles to accessing asylum procedures in several EU Member States.

General shortcomings in the asylum system particularly affect children. In **Austria**, asylum procedures for unaccompanied children took more than a year.[159] It sometimes took authorities in **Germany** several months to make decisions about unaccompanied children's placements into care and specific benefits.[160]

When authorities doubt that an applicant's claimed age is correct, they can ask the applicant to undergo an age assessment. There are different methodologies to assess a child's age. EASO published information on age assessment practice in Europe, and highlighted key points that should be taken into consideration when undertaking age assessments.[161] It is also developing guidance for EU Member States on how to assess the age from a holistic and multidisciplinary approach and on the implementation of the principle of the best interests of the child, as well as an update of the information collected for the first edition of the publication. In practice, the applicant's age may be estimated through visual estimation by a doctor, X-rays, medical examinations (of wrists, teeth, genitals), or a combination of these measures. Such examinations, in particular of sexual maturity, can be traumatising for the child and impinging human dignity. Based on its research, FRA recommends that assessments should be multidisciplinary and not be based solely on medical examinations, and applicants should be given the benefit of the doubt.[162]

In parts of **France**[163] and in **Hungary**,[164] children were reportedly not given the benefit of the doubt concerning their age and treated as adults. In **Hungary**, age assessment procedures consisted purely of medical examinations.[165] In **Italy**, assessments were made without using the multidisciplinary approach envisaged under national law.[166]

FRA ACTIVITY

Scrutinising guardianship systems to improve child protection

A FRA report covers the type of guardianship systems in place for children deprived of parental care in the EU, the profile of appointed guardians, the appointment procedures, and the guardians' tasks. It aims to help readers better understand the strengths and weaknesses of national guardianship systems, and, ultimately, to assist decision-makers in promoting measures that effectively protect all children.

For more information, see FRA (2018), Guardianship systems for children deprived of parental care in the European Union - Summary, *Luxembourg, Publications Office.*

Family reunification

EU law regulates family reunification for refugees – but not for beneficiaries of subsidiary protection – in the Family Reunification Directive (2003/86/EC).[167] Legal and practical barriers to family reunification for beneficiaries of subsidiary protection were a great concern for unaccompanied children in several EU Member States.

Germany and **Sweden** adopted temporary measures excluding beneficiaries of subsidiary protection from applying for family reunification for a certain time period.[168] In **Austria**[169] and **Denmark**,[170] family reunification for beneficiaries of subsidiary protection was only granted after three years.

158 Charter of Fundamental Rights of the European Union, OJ C 326, Arts. 18 and 24.
159 Austria, Asylum Coordination Austria; FRA, Monthly migration report, May 2017, August 2017 and December 2017.
160 FRA, Monthly migration report, October 2016.
161 EASO (2013), Age assessment practices in Europe, December 2013.
162 FRA (2010), Separated, asylum-seeking children in European Union Member States, December 2010.
163 FRA, Monthly migration report, May 2017.
164 Hungary, Hungarian Helsinki Committee (2017), *A gyerek az gyerek akkor is, ha menekülő*, 20 November 2017; FRA, Monthly migration report, December 2017.
165 *Ibid.*
166 FRA, Monthly migration report, February 2017.
167 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (Family Reunification Directive), OJ L 251.
168 Germany, Amendments made to the German Residence Act (*Aufenthaltsgesetz*) (*Asylpaket II in Kraft – Kürzere Verfahren, weniger Familiennachzug*), *Die Bundesregierung* (2016), *Kürzere Verfahren, weniger Familiennachzug*, 17 March 2016; Sweden, Act on temporary restrictions of the possibility to obtain a residence permits in Sweden (*Lag (2016:752) om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige*), 20 July 2016. For restrictions to family reunification introduced by EU Member States in 2016, see also FRA, Fundamental Rights Report 2017, Chapter 5.4.
169 FRA, Monthly migration report, November 2017.
170 FRA, Monthly migration report, December 2017.

Practical obstacles also slowed down or prevented family reunification. These included high fees (**Spain**[171] and **Poland**[172]); restrictive deadlines (**Austria**,[173] **Germany**[174] and **Poland**[175]); the requirement to provide evidence of having sufficient living space (**Germany**[176]); closed embassies in countries such as Syria and Iraq; delays due to limited resources in the Immigration Service (the **Netherlands**[177]); and authorities' strict approach to accepting unofficial documents as evidence of family ties (the **Netherlands**[178]).

Applicants in **Greece** – including many unaccompanied children – faced significant delays in joining their family members in **Germany**.[179] As of mid-August 2017, some 4,339 applicants had been accepted by Germany but were not yet transferred. Over 60 % were children, some unaccompanied.[180]

171 FRA, Monthly migration report, March 2017.
172 FRA, Monthly migration report, May 2017.
173 FRA, Monthly migration report, March 2017.
174 FRA, Monthly migration report, August 2017.
175 FRA, Monthly migration report, May 2017.
176 FRA, Monthly migration report, August 2017.
177 FRA, Monthly migration report, March 2017.
178 FRA, Monthly migration report, July 2017.
179 Germany, Greece, Pro Asyl and Refugee Support Aegean (2017), The Dublin family reunification procedure from Greece to Germany, 2 August 2017. See also the leaked letter by the Greek Minister of Migration Policy to the German Minister of Interior, Ref. No. 2789, 4 May 2017.
180 Germany, *Deutscher Bundestag*, *Drucksache 18/13408*, Response by the German authorities to the question by MEP Ulla Jelpke (*DIE LINKE.*), 22 August 2017.

5. Immigration detention

According to Article 6 of the EU Charter of Fundamental Rights, everyone has the right to liberty and security of person. While EU Member States can detain asylum seekers and returnees under certain circumstances, they need to respect their fundamental rights and safeguards provided for in the EU asylum *acquis*. If this is not done, the deprivation of liberty becomes arbitrary. The Reception Conditions Directive (2013/33/EU) and the Return Directive (2008/115/EC) provide an exhaustive list of grounds based on which an individual may be detained.[181] Detention should be a measure of last resort, applied after an individual assessment in each case.[182] Asylum applicants must not be detained only because they are seeking international protection.[183]

The lack of legal assistance and information during detention, inadequate conditions and inhumane treatment, and immigration detention of vulnerable persons remained key concerns.

Immigration detention: figures and trends

In recent months, the use of immigration detention increased in certain EU Member States covered, as reported in **France** and the **Netherlands.** In others (**Germany**, **Italy** and **Spain**), construction of new detention facilities are planned. The **Spanish** Ombuds institution questions the effectiveness of pre-removal detention, as only 29 % of the detainees were returned in 2016.

In **Poland**, where migrants in an irregular situation who are apprehended include a significant number of families with children, the proportion of decisions imposing an alternative to detention increased from 11 % in 2014 to over 23 % in 2017.

Sources: France, La Cimade (2017), Première version de la nouvelle loi sur l'immigration : « liberticide et sans précédent », 28 September 2017; La Cimade, November 2017; Mediapart (2017), Deux fois plus de personnes enfermées en rétention: la machine à expulser s'affole, 9 November 2017; The Netherlands, Ministry of Justice and Security (Ministerie van Veiligheid en Justitie) (2017), Rapportage Vreemdelingenketen, August 2017; Spain, El Diario (2017), Interior anuncia la creación de tres nuevos CIE en Málaga, Algeciras y Madrid, 4 April 2017; Spanish Ombuds institution (Defensor del Pueblo) (2017), Mecanismo Nacional de Prevención de la Tortura, Informe anual 2016, 2017; Poland, data provided to FRA by the Border Guard Headquarters (Komenda Główna Straży Granicznej), January 2018; FRA Monthly migration reports, May, June, October, November and December 2017.

Alternatives to detention

There were some positive developments regarding alternatives to detention in **Bulgaria**, **Finland** and **Poland**. In **Bulgaria**, legislative amendments in November 2017 introduced new alternatives – bail and the deposit of passports or travel documents – to pre-removal detention.[184] In **Finland**, 'designated residence' became an alternative to detention for children aged 15 to 17.[185]

Legal assistance and information

Detained asylum seekers are entitled to free legal assistance and representation under certain conditions.[186] Asylum seekers and returnees must be provided with information on their rights and obligations.[187] Obstacles to obtaining legal aid and/or information were reported in **Bulgaria,**[188] **Italy,**[189] **Poland**,[190] **Slovakia**[191] and **Spain**.[192]

The European Court of Human Rights found that **Italy** violated migrants' right to liberty and security by not promptly informing them of the reasons for their detention.[193] The case concerned three Tunisian nationals who, while trying to reach Italian shores, were apprehended and held in a detention centre and in two harboured ships for several days before being deported to Tunisia without being given the opportunity to apply for protection. A study by ECRE and other civil society organisations stated that migrants held in Italian hotspots did not have access to an

[181] Reception Conditions Directive, Art. 8; Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, Art. 15.
[182] Reception Conditions Directive, Recital 20, Art. 8 (2).
[183] Reception Conditions Directive, Art. 8 (1).
[184] Bulgaria, Amendments and supplements to the Ministry of the Interior Act (Закон за изменение и допълнение на Закона за Министерството на вътрешните работи), 23 November 2017; FRA, Monthly migration report, December 2017.
[185] Finland, *Laki ulkomaalaislain muuttamisesta*; FRA, Monthly migration report, December 2016 and April 2017.
[186] Reception Conditions Directive, Art. 9 (6), (7).
[187] Reception Conditions Directive, Art. 10 (5); Return Directive, Art. 16 (5).
[188] FRA, Monthly migration report, October 2016.
[189] ECtHR, *Khlaifia and Others v. Italy*, No. 16483/12, 15 December 2016; FRA, Monthly migration report, January 2017 and December 2017.
[190] Poland, UNHCR and NGOs, March 2017; FRA, Monthly migration report, March 2017 and May 2017.
[191] Slovakia, Human Rights League, November 2017; FRA, Monthly migration report, November 2017.
[192] Spain, NGOs, November 2016; *Europa Press* (2017), *El juez emite cuatro autos para requerir al CIE de Aluche que cumpla la normativa en asilo, deportaciones y sanidad*, 18 July 2017; FRA, Monthly migration report, November 2016 and August 2017.
[193] ECtHR, *Khlaifia and Others v. Italy*, No. 16483/12, 15 December 2016; FRA, Monthly migration report, January 2017.

effective remedy to challenge their deprivation of liberty.[194] In **Poland**, courts reviewing appeals by individuals who were detained often ignored their requests to be present at their appellate hearings on the decision to detain them, and failed to inform applicants about extensions of their detention.[195]

Inadequate conditions and inhumane treatment

Asylum seekers and returnees must as a rule be placed in specialised detention facilities.[196] Inadequate conditions were observed in certain detention and/or pre-removal facilities in **Bulgaria**,[197] **Denmark**,[198] **France**,[199] **Germany**,[200] **Greece**,[201] **Hungary**,[202] **Italy**[203] and **Spain**.[204]

Spanish courts ordered several measures for the improvement of the conditions in different Aliens Detention Centres (CIE).[205] The Court of Algericas, **Spain**, described the CIE in Algericas and buildings in Tarifa as looking and being organised like prisons.[206]

The **Danish** Helsinki Committee for Human Rights deemed the conditions at the departure centre Kærshovedgård worse than in prison[207] and the Association of Immigration Lawyers plans to challenge the legality of the conditions.[208] The **German** lawyers' association raised concerns over plans to establish prison-like detention centres in Hesse and Saxony.[209]

Conditions in the pre-removal detention facilities located in Western **Greece** were inadequate, including – among others – serious overcrowding, a lack of natural light, substandard hygiene conditions, and limits on time detainees can spend outdoors.[210] The **Bulgarian** Ombudsperson[211] noted unsatisfactory detention conditions in the country's two pre-removal facilities. However, according to the Ministry of Interior, authorities were improving living conditions in these facilities.[212]

194 ECRE, Dutch Council for Refugees, Greek Council for refugees et al. (2016), The implementation of the hotspots in Italy and Greece, 9 December 2016; FRA, Monthly migration report, January 2017.
195 FRA, Monthly migration report, March 2017.
196 Reception Conditions Directive, Art. 10 (1), (2); Return Directive, Art. 16 (1).
197 Bulgaria, Bulgarian Ombudsman, September 2017, FRA, Monthly migration report, September 2017.
198 Denmark, Danish Helsinki Committee for Human Rights, - Philip, B. and Stevns, A. (2017), *'Udlændinge- og udrejsecentre i Danmark', Den danske Helsinki-Komité for Menskerettigheder'Udlændinge- og udrejsecentre i Danmark', Den danske Helsinki-Komité for Menskerettigheder*, May 2017; FRA, Monthly migration report, December 2017.
199 France, NGOs, July 2017; FRA, Monthly migration report, July 2017.
200 Germany, German Lawyers Association (*Deutscher Anwaltsverein*), *Stellungnahmen SN 55/17: RefE Abschiebungshaft/Ausreisegewahrsam in Sachsen*, 1 November 2017; FRA, Monthly migration report, November 2017.
201 Greece, NGO *Arsis*, Serious concerns regarding the procedure and detention conditions of unaccompanied children in Amygdaleza, (Σοβαρές Ανησυχίες για την διαδικασία αλλά και τις συνθήκες κράτησης ασυνόδευτων ανηλίκων στο ΠΡΟΚΕΚΑ Αμυγδαλέζας), press release, 6 July 2017; NGO Greek Council for Refugees, The Greek Council for Refugees identifies adverse detention conditions in Western Greece, (Το ΕΣΠ διαπιστώνει δυσμενείς συνθήκες κράτησης στη Δυτική Ελλάδα), press release, 31 October 2017; NGO Aitima, December 2017; FRA, Monthly migration report, August 2017, November 2017 and December 2017.
202 FRA, Monthly migration report, October 2016.
203 Italy, *Garante Nazionale dei diritti delle persone detenute o private della libertà personale* (2017), *Concluso con Torino il monitoraggio CIE e hotspot del garante nazionale persone detenute o private libertà personale*, 19 January 2017; *Garante Nazionale dei diritti delle persone detenute o private della libertà personale* (2017), *Rapporto sulle visite nei Centri di identificazione ed espulsione e negli hotspot in Italia (2016/2017: primo anno di attività)*, 11 May 2017; *Lasciate Cientrare* (2017), *Migranti, LasciateCIEntrare visita a sopresa il CIE di Restinco (Brindisi). Online il report*, 29 June 2017; FRA, Monthly migration report, February 2017, July 2017 and August 2017.
204 Spain, UNHCR (2017), *ACNUR desmiente informaciones sobre "llegadas masivas" a España*, 1 August 2017; Ombudsman (*Defensor del Pueblo*) (2017), *El Defensor del Pueblo inspecciona el CIE de Aluche y la sala de asilo del aeropuerto de Barajas*, 3 August 2017; FRA, Monthly migration report, January 2017, February 2017, June 2017, September 2017 and October 2017.
205 Spain, *El Diario* (2017), *La justicia ordena a la Policía que tome medidas para evitar el frío en el CIE de Madrid*, 25 January 2017; *El Diario* (2017), *Una jueza requiere 31 medidas „urgentes" en los CIE de Algeciras y Tarifa*, 8 May 2017; FRA, Monthly migration report, February 2017 and June 2017.
206 FRA, Monthly migration report, January 2017. Spain, *Juzagado de instrucción No uno de Algeciras (Cádiz), Expediente de control de estancia en cie No 242/2016*, 12 December 2016.
207 Denmark, Danish Helsinki Committee for Human Rights, Philip, B. and Stevns, A. (2017), *'Udlændinge- og udrejsecentre i Danmark', Den danske Helsinki-Komité for Menskerettigheder*, May 2017; *Politiken* (2017), *Tidligere fængselsinspektør og chefanklager: Kærshovedgård er værre end fængsel*, 29 June 2017; FRA, Monthly migration report, December 2017.
208 Denmark, *Foreningen af Udlændingeretadvokater*, *FAU vil have forbedret forholdene på Kærshovedgård*; FRA, Monthly migration report, August 2017.
209 Germany, German Lawyers Association (*Deutscher Anwaltsverein*), *Stellungnahmen SN 55/17: RefE Abschiebungshaft/Ausreisegewahrsam in Sachsen*, 1 November 2017; FRA, Monthly migration report, November 2017.
210 Greece, Council of Europe, Report to the Greek Government on the visits to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), September 2017; NGO Greek Council for Refugees, The Greek Council for Refugees identifies adverse detention conditions in Western Greece (Το ΕΣΠ διαπιστώνει δυσμενείς συνθήκες κράτησης στη Δυτική Ελλάδα), press release, 31 October 2017; FRA, Monthly migration report, November 2017.
211 Bulgaria, Ombudsman, September 2017; FRA, Monthly migration report, September 2017.
212 Bulgaria, Ministry of Interior, November 2017; FRA, Monthly migration report, November 2017.

Inhumane treatment by the authorities was reported in some detention centres in **Hungary**,[213] **Italy**[214]and **Spain**.[215] In the Nyírbátor asylum detention facility, **Hungary**, NGOs reported in 2016 that asylum seekers were handcuffed and taken to medical appointments on a leash.[216] Detainees in Nyírbátor reported humiliating treatment and occasional physical violence by armed security guards.[217] In **Italy**, the Ordinary Court of Bari (Apulia) ordered the state to pay € 30,000 in compensation for the inhumane and degrading treatment of migrants in the former detention centre in Bari.[218] The supervisory judge of the CIE in Madrid, **Spain**, confirmed several complaints about inhumane treatment, including verbal abuse, humiliation, harassment, gross assaults, and solitary confinement for minor offences. [219]

In the same EU Member States, detainees in certain detention centres protested against the conditions and lack of procedural safeguards.[220]

Detention of vulnerable persons

Under EU law, Articles 15 to 17 of the Return Directive regulate the detention of migrants in an irregular situation pending removal. Articles 8 to 11 of the Reception Conditions Directive govern the detention of applicants for international protection.[221] These instruments emphasise that children are to be detained only as a last resort and only if less coercive measures cannot be applied effectively. Such detention must be for the shortest period of time possible.[222] The stringent requirements flowing from the Charter and from Articles 3 (prohibition of torture) and 5 (right to liberty and security) of the ECHR mean that deprivation of liberty will only be in line with EU law in exceptional cases.

EU Member States efforts to speed up asylum processing and make returns more effective may prompt an increased use of immigration detention, possibly also affecting children. This can entail serious risks of violating children's right to liberty and security if the strict safeguards protecting children from arbitrary detention are disregarded. According to FRA research in 2016, high numbers of children were detained in **Bulgaria, Greece, Hungary, Poland** and **Slovakia**.[223]

Certain EU Member States detained children and/or other vulnerable persons, such as victims of trafficking or violence.[224] Sometimes this occurred as a result of deficient identification mechanisms. For instance, according to various sources, victims of violence were regularly detained in **Poland** due to inadequate identification procedures, although in breach of Polish law.[225] In **Spain,** trafficking victims and children were often detained, especially when arriving by sea. In most cases, the authorities did not identify these migrants as vulnerable.[226]

Detention of children, often under poor conditions, was reported in **France,**[227] where children were placed in pre-removal detention on a regular basis without individual assessments.[228]

213 Hungary, NGOs, May 2017; FRA, Monthly migration report, May 2017.

214 Italy, *Il fatto quotidiano* (2017), *Migranti, Stato condannato per il Cie Bari. "Come Auschwitz, Guantanamo e Alcatraz: lede l'immagine del territorio"*, 11 August 2017; FRA, Monthly migration report, September 2017.

215 Spain, *El Diario* (2016), *El juez de control del CIE de Madrid: "Quienes denuncian maltrato suelen ser deportados rápidamente"*, 23 October 2016; *El País* (2017), *Unos 40 internos del CIE de Aluche denuncian vivir en un "infierno"*, 6 October 2017; *El Diario* (2017), *Un interno del CIE de Madrid denuncia una "agresión policial brutal" sin asistencia médica posterior*, 9 October 2017; FRA, Monthly migration report, December 2016 and November 2017.

216 Hungary, Aida (2016), Conditions in detention facilities; FRA, Monthly migration report, May 2017.

217 Hungary, Hungarian Helsinki Committee (2017), *Jelentés a Magyar Helsinki Bizottság*, 6 March 2017; FRA, Monthly migration report, May 2017.

218 Italy, *Il fatto quotidiano* (2017), *Migranti, Stato condannato per il Cie Bari. "Come Auschwitz, Guantanamo e Alcatraz: lede l'immagine del territorio"*, 11 August 2017; FRA, Monthly migration report, September 2017.

219 Spain, *El Diario* (2016), *El juez de control del CIE de Madrid: "Quienes denuncian maltrato suelen ser deportados rápidamente"*, 23 October 2016; *El País* (2017), *Unos 40 internos del CIE de Aluche denuncian vivir en un "infierno"*, 6 October 2017; *El Diario* (2017), *Un interno del CIE de Madrid denuncia una "agresión policial brutal" sin asistencia médica posterior*, 9 October 2017; FRA, Monthly migration report, December 2016 and November 2017.

220 For Spain: FRA, Monthly migration report, December 2016; For Hungary: FRA, Monthly migration report, April 2017; For Italy: NGO Borderline Sicilia, December 2017; FRA, Monthly migration report, December 2017.

221 Article 28 of the Dublin Regulation also envisages the detention in the context of a transfer between Member States.

222 Reception Conditions Directive, Art. 11 (2); Return Directive, Art. 17 (1).

223 FRA, European legal and policy framework on immigration detention of children (2017), p. 13.

224 For Spain: FRA, Monthly migration report, December 2016, April 2017 and September 2017; For Poland: FRA, Monthly migration report, January 2017 and December 2017; For Hungary: FRA, Monthly migration report, February 2017; For Greece: NGO Aitina, December 2017; FRA, Monthly migration report, December 2017.

225 Poland, UNHCR, the Ombudsperson and a number of NGOs, December 2017; Act on foreigners (*Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach*), 12 December 2013; FRA, Monthly migration report, December 2017.

226 Spain, *El País* (2017), *'Esclavas' en los CIE*, 24 March 2017; FRA Monthly migration report, December 2016 and April 2017.

227 France, NGOs, July 2017; FRA, Monthly migration report, July 2017.

228 France, Joint report on administrative detention centres by Assfam, Forum Réfugiés, France land of asylum, Cimade, the Order of Malta and Solidarity Mayotte (2017), *Centres et Locaux de retention administrative* (2016), June 2017; FRA, Monthly migration report, August 2017.

As reported by several NGOs, regional courts in **Poland** tended not to give a primary consideration to the best interests of the child when deciding upon children's placement in or prolongation of immigration detention.[229] In **Sweden**, legislative changes extended the possibilities for detention of children.[230] To address past shortcomings, legislative amendments in **Slovakia** provided for access to mental health and social services for families with children and established the right of children to receive meals five times a day and access outdoor space three times a day.[231]

FRA ACTIVITY

Avoiding unlawful detention of children

In a report on immigration detention of children, FRA outlined available safeguards against unlawful and arbitrary detention of children. It also identified good practices in the EU Member States.

For more information, see FRA (2017), European legal and policy framework on immigration detention of children, Luxembourg, Publications Office.

[229] Poland, Association of Legal Intervention, Helsinki Foundation for Human Rights and the Rule of Law Institute Foundation, December 2017; FRA, Monthly migration report, December 2017.

[230] Sweden, *Sveriges Riksdag, Utlänningslag (2005:716)*; FRA, Monthly migration report, November 2017.

[231] Slovakia, *Vládny návrh zákona, ktorým sa mení a dopĺňa zákon č. 404/2011 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a ktorým sa menia a dopĺňajú niektoré zákony*, FRA, Monthly migration report, April 2017.

Conclusion

Two years after FRA began regularly reporting on fundamental rights issues relating to migration, key concerns persist. This report covers the five areas where challenges remain across several EU Member States: access to territory, reception conditions, asylum procedures, unaccompanied children, and immigration detention. Concerted efforts by all actors at the European as well as national levels are necessary to address remaining protection gaps.

In addition, based on their research over the past two years, members of FRA's contracted research network, FRANET, identified up to three of the most persistent fundamental rights concerns in their countries. These issues – outlined per Member State in the following table – should be tackled through immediate action to ensure that responses to asylum seekers and migrants are in line with the law and are upheld in practice. This is not a comprehensive list, but serves to highlight particular issues that remain persistent in the covered EU Member States. Certain issues may apply across Member States, while others are only an issue in the Member State in question. If a particular issue is not listed for an EU Member State in the table, this does not mean that the problem does not exist, but rather only that it does not rank among the top three issues.

EU Member State	Persistent key fundamental rights concerns
AT	• Three-year waiting period for beneficiaries of subsidiary protection before being allowed to ask for **family reunification**. • Overworked/overburdened **guardians** and resources for an **unaccompanied child** above the age of 14 being lower than for Austrian children in out-of-home care. • Limited availability of **interpretation services in health care** and insufficient offer for psychological treatment for traumatised persons.
BG	• Difficulties with the **integration** of persons who have been granted international protection. • Inadequate representation of and support for **unaccompanied children** (*could be addressed as a result of recent amendments to law and/or policy at the national level*). • Insufficient use of **alternatives to detention** of migrants in an irregular situation in practice (*could be addressed as a result of recent amendments to law and/or policy at the national level*).
DE	• Restricted **access to medical care** for asylum seekers in reception centres and in remote areas. • Practical and legal barriers to **family reunification**. • No standardised procedures for the recognition of specific needs of **vulnerable** applicants for asylum.
DK	• Restrictions of **family reunification** for persons with temporary protection status. • **Unaccompanied children** of 17 years of age are accommodated in adult centres. • Inadequate conditions in certain **pre-removal facilities**.
EL	• **Delays in the asylum procedure and family reunification transfers** from Greece to other EU Member States under the Dublin Regulation. • **Overcrowding** and living conditions in the hotspots. • **Push-backs** at the Greek-Turkish border.
ES	• Difficulties in **accessing the asylum procedure** for those arriving by sea. • Long **waiting periods** at Barajas Airport's (Madrid) asylum room. • Situation of **unaccompanied children** in Spain in general, and in particular in the Andalusia Autonomous Community and the autonomous city of Melilla.
FI	• High occurrence of **hate speech** on the internet. • Asylum seekers' inadequate access to **mental health care and services**. • Restricted access to and **poor quality of legal aid** and other support services for asylum seekers.
FR	• Significant **health risks** of asylum seekers in informal camps. • Migrants at the Italian-French border being **returned to Italy** without the opportunity to apply for protection. • **Police harassment**.
HU	• Activity of human **smugglers**. • Growing xenophobic attitude of **local communities**. • **Deprivation of liberty** in the transit zones.
IT	• Overcrowded and poor **reception conditions**. • **Border management** and fundamental rights: role of NGO rescue vessels, implementation of the MoU with Libya. • **Hate crime** occurrence.
NL	• Doubts about credibility faced by **LGBTI**-refugees during their asylum procedures. • Returns to Afghanistan. • Difficulties in **children's amnesty procedures** (*so-called 'Kinderpardon'*).
PL	• Lack of access to the **asylum procedure** at Polish border crossings. • Detention of victims of **violence**. • **Lack of systematic legal assistance** to asylum seekers in detention as well as open centres.
SE	• **Long asylum procedures**. • Act on temporary restrictions' impact on the possibility to obtain a **residence permit**. • Problems related to the accuracy of **age assessment** methods/the burden of proof.
SK	• **Lack of adequate legal aid** provided to migrants. • Quality of **interpretation**. • **Detention of families with children**.

Further information

After two years of reporting, FRA will continue to report on migration-related fundamental rights concerns in selected EU Member States.

The drop in new arrivals has not led to a decrease in fundamental rights concerns, but identified problems appear to persist, often remaining the same throughout several months. FRA will therefore issue its 'highlight' reports on a bi-monthly basis as of March 2018.

In addition, Croatia will replace Slovakia as of 2018. The number of new arrivals in Slovakia has been consistently low in recent months. Meanwhile, the fundamental rights situation of migrants in Croatia, particularly at the border with Serbia, has continuously caused concern.

For the February 2018 *Focus section on the impact of migration on local communities (update)*, see:
http://fra.europa.eu/en/publication/2018/current-migration-situation-local-communities-update

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

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