



Fundamental Rights Report 2018



FRA

EUROPEAN UNION AGENCY
FOR FUNDAMENTAL RIGHTS



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Fundamental Rights Report 2018

Foreword

We are not getting any younger! It is a simple truth we must face both about ourselves and Europe as a whole. In two generations, by 2080, those aged 65 or above will account for almost 30 % of the European Union's population.

Traditionally, we tend to see this development in terms of its considerable economic and societal implications, and focus on the resources required to address them. This can encourage an ugly rhetoric that belittles older people's myriad contributions – as carers in the family, mentors and volunteers, for example – and instead emphasises their supposed 'deficits' and needs.

But a shift is gradually taking place. While the EU Charter of Fundamental Rights has long affirmed older people's right to live in dignity and participate in social and cultural life, diverse initiatives introduced during the past decade have helped increase awareness of both their rights and their potential.

This year's focus chapter, 'Shifting perceptions: towards a rights-based approach to ageing', discusses how this new approach to ageing is gradually taking hold. Anchored in the recognition that equal treatment is a right regardless of age, it does not ignore the reality of age-specific needs, but refuses to let these define a vital part of Europe's population.

The signing of the European Pillar of Social Rights has the potential to add momentum to this shift. The Pillar's 20 principles and rights mark an encouraging step forward. But while legal and policy texts provide crucial bases for action, tangible improvements on the ground can take long to materialise. As our continuing analysis of the use of the EU Charter of Fundamental Rights underscores, such texts must be proactively promoted if they are to fulfil their potential.

In addition to these issues, the *Fundamental Rights Report 2018* explores the main developments of 2017 in eight specific areas: equality and non-discrimination; racism, xenophobia and related intolerance; Roma integration; asylum, borders and migration; information society, privacy and data protection; rights of the child; access to justice, including rights of crime victims; and implementation of the Convention on the Rights of Persons with Disabilities.

The report also presents FRA's opinions. These outline evidence-based, timely and practical advice on possible policy responses for consideration by the main actors within the EU.

As always, we would like to thank FRA's Management Board for its diligent oversight of this report from draft stage through publication, as well as the Scientific Committee for its invaluable advice and expert support. Such guidance helps guarantee that this important report is scientifically sound, robust, and well-founded. Special thanks go to the National Liaison Officers for their input, which bolsters the accuracy of EU Member State information. We are also grateful to the various institutions and mechanisms – such as those established by the Council of Europe – that consistently serve as valuable sources of information for this report.

Sirpa Rautio
Chairperson of the FRA Management Board

Michael O'Flaherty
Director

A fully annotated version of this report, including the references in endnotes, is available for download at: <http://fra.europa.eu/en/publication/2018/fundamental-rights-report-2018>.

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

EQUALITY

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

FREEDOMS

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

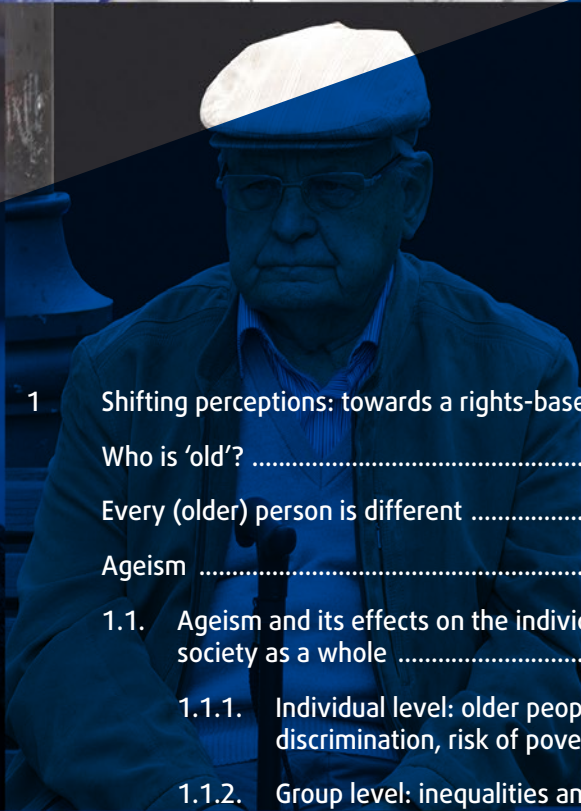
JUSTICE

- ▶ Access to justice including rights of crime victims

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1

Shifting perceptions: towards a rights-based approach to ageing



This chapter explores the slow but inexorable shift from thinking about old age in terms of ‘deficits’ that create ‘needs’ to a more comprehensive one encompassing a ‘rights-based’ approach towards ageing. This gradually evolving paradigm shift strives to respect the fundamental right to equal treatment of all individuals, regardless of age – without neglecting protecting and providing support to those who need it. A human rights approach does not contradict the reality of age-specific needs; on the contrary, a rights-based approach enables one to better meet needs, as required, while framing them in a human rights-based narrative.

All individuals have an inherent right to human dignity, which is inviolable and must be protected and respected. Fundamental rights, whether civil and political or social and economic, as enshrined in the Charter of Fundamental Rights of the European Union, and all other international human rights instruments, do not carry an expiry date. Rights do not change as we grow old, and their full respect on equal terms is an essential precondition for living a dignified life, defined by choice and control, autonomy and participation, whatever one’s age.

In modern societies, however, ‘old’ age has come to bear negative connotations and ‘old people’ are often thought of as a burden, especially those who need the support of social protection systems. Ageing appears more in public discourse in connection to a progressive loss of physical and mental capabilities than to positive aspects, such as the accumulation of experience. This understanding of ageing is confirmed by policy responses focusing primarily on the physical or mental ‘deficits’ individuals accumulate as they age and on how their ‘needs’ should be met by state and society, neglecting older people’s contribution to society.

In addition to broader negative attitudes towards ageing affecting day-to-day experiences of older people, there is evidence of discriminatory practices, to which older people might be more exposed. These range from discrimination when looking for a job to structurally embedded ageist practices. The latter include discriminatory age limits in accessing goods and services, as well as low policy attention to

issues such as exposure to poverty and the increased risk of violence and abuse for those in care. The 2015 Eurobarometer survey on discrimination shows that discrimination or harassment because of old age is the most frequently mentioned type of discrimination: 42 % of Europeans perceive discrimination due to old age (being over 55 years old) as “very” or “fairly” widespread in their country.

Moreover, aspects such as gender, health condition, income and financial means to support an independent living, the broader socio-economic environment or a person’s place of residence (e.g. urban or rural), as well as his or her self-perception, may increase or decrease the risk of fundamental rights violations. As such, focusing on a single ground of discrimination – age – fails to capture the various forms in which unequal treatment and exclusion can manifest themselves. Older women, older migrants, older people with disabilities and older people living in poverty face compound and aggravated challenges and a higher risk of experiencing human rights violations.

“[A]lthough the Universal Declaration on Human Rights proclaims that all human beings are born free and equal, it is evident that the enjoyment of all human rights diminishes with age, owing to the negative notion that older persons are somehow less productive, less valuable to society and a burden to the economy and to younger generations.”

Report from the Eighth working session of the UN Open-ended Working Group on Ageing, 28 July 2017

Ageist and deficit-based approaches and perceptions also affect how older people are treated as a social group. Stereotypes of ageing and old age lead to ageist rhetoric. This portrays older people as a 'silver tsunami' curtailing economic growth and being a 'burden' to society. Older people are characterised as unproductive, frail and incapable, especially in the context of an ageing society facing challenges regarding its demographic future and the sustainability of its pensions and social protection systems.

At a societal level, such ageist perceptions can reinforce exclusion, discrimination and marginalisation and affect intergenerational solidarity by pitting younger people against older people.

Such one-sided views fail to recognise the valuable contributions older people make to their families, communities and wider society in many ways. Many older people are unpaid, informal carers of grandchildren and family members, participate in volunteer activities in their communities and act as mentors.

Building on selected illustrative data, this chapter addresses the effects of ageism by adopting a multilevelled approach which focuses on, respectively, the individual, older people as a social group and the society as a whole. It sheds light on distinct challenges older people face and examines their experiences, taking into account other characteristics, such as gender, immigrant or minority status, disability or living in rural areas. Second, this chapter briefly reflects on legal and policy developments in the EU by examining how selected legal and policy instruments affect the rights and experiences of older people. Noting the move towards a human rights-based approach to ageing in the EU, the section identifies opportunities to strengthen that shift. Set against developments on the international and broader European level, the chapter calls for further development and implementation of a comprehensive human rights-based approach to ageing, to ensure that life in old age is defined just as much by choice, control and autonomy as in other stages of life.

Who is 'old'?

Referring to 'old people' and to 'ageism', one should consider how society views the concept of being 'old' and how it treats 'older people'. This is not only related to a person's 'chronological age' (for example, being over 55, 60, 65 or 70 years) and the biological process of getting older. Being 'old' and treated as an 'old person' is also a social construction linked to social realities and perceptions about age that change over time and differ across societies within Europe and globally.

Individuals also have different perceptions of what age means depending on where they are on the age

continuum, as they experience throughout their life cycle what it means to be 'young', 'middle-aged' or 'old'.¹ Moreover, defining an age group under a common denominator 'older people' is not possible, and varies depending on the policy field. For example, an older adult may find it harder to get a job as early as at 50 years. Access to the old age benefits of social security systems is tied with pensionable age – commonly around 65 years in the EU. Very old age is often associated with the use of long-term care, commonly concentrated in the last years of a person's life – late 70s with the average life expectancy in the 28 EU Member States (EU-28) at 80.6 years.²

Age and ageing are usually discussed and addressed from four distinct but intersecting perspectives:

- chronological age, based on the date of birth;
- biological age, linked to physical changes;
- psychological age, referring to mental and personality changes during the life cycle;
- social age, which defines the change of an individual's roles and relationships as they age.³

These four aspects of ageing can develop at different speeds and affect individual experiences as well as social reaction differently, influenced also by the social, historical and cultural environment. This affects not only how society views older people, but also how older people perceive themselves.⁴

Every (older) person is different

We all experience ageing in a different, individual, way. Understanding and addressing older people as a social group – defined by chronological age – leads to generalised views. Experiences in old age are not determined by simply reaching a certain age or only by individual characteristics, such as health condition, but are largely determined by various structural, social and cultural contexts throughout an individual's life-course. Individuals have diverse life experiences which accumulate over a life-time and determine old age outcomes – both in terms of opportunities as well as challenges. If people have not enjoyed equal rights and opportunities in earlier stages of life, these disadvantages will accumulate and also affect the enjoyment of rights in later stages of life.⁵

However, societal perceptions and policy responses are often based on a conception of older people as a homogenous 'group' with common needs and experiences. This has led to polarised and distorted views of older people, affecting their human rights. One



Younger generations face greater risks of inequality in old age

A report by the Organisation for Economic Co-operation and Development (OECD) stresses that rising inequality will hit young generations hard and calls for preventing inequality throughout the life course which cumulates over time and materialises in old age.

The report highlights that demographic changes combined with entrenched inequalities lead to changing balances in society, and that a risk of increasing inequality among future retirees is building up in many countries. For now, current generations of retirees experience higher incomes and a lower risk of poverty than other age groups. However, inequalities in education, health, employment and earnings will dramatically change how younger generations will experience old age.

For more information, see OECD (2017), *Preventing ageing unequally*.

view sees older people as 'dependent and vulnerable', associating old age with a withdrawal from economic activity and increased illness and disability. This view influences policy approaches aimed at compensating deficits and meeting needs. The other view sees older people as active contributors to economic and social life. This view calls for policies that focus on active ageing and increasing opportunities for participation. Such polarised views, "portraying later life as common experience", fail to capture the distinct experiences of individuals with different life courses, incomes or genders, which affect their later life.⁶

Ageism

What is ageism?

Ageism is the stereotyping of, prejudice or discrimination against individuals or groups based on their age. Although ageism can target young people, most studies in this area focus on the unfair treatment of older people.

Ageism is deeply structural, "find[ing] expression in institutional systems, individual attitudes and inter-generational relationships."^{*} All manifestations of ageism – at the individual, group or societal level – gravely undermine older people's right to human dignity and reduce their potential to contribute actively to society.

For a definition of ageism, see World Health Organisation (WHO) (2016), *Valuing older people: time for a global campaign to combat ageism*; read more at: Swift, H. J., Abrams, D., Lamont, R. A., Drury, L. (2017), 'The risks of ageism model: how ageism and negative attitudes toward age can be a barrier to active ageing', *Social Issues and Policy Review*, 13 January 2017; Trusínová, R. (2013), 'No two ageism are the same: testing measurement invariance in ageism experience across Europe', *International Journal of Social Research Methodology*, 17 (6), pp. 659-675.

* Equinet Secretariat (2011), *Tackling ageism and discrimination*, p. 7, Brussels; see also: Levy, S. R., Macdonald, J. L. (2016), 'Progress on Understanding Ageism', p. 14, *Journal of Social Issues*, 72 (1), pp. 5-25.

Ageism, commonly defined as a negative social construct of a particular age group, can affect people at any life stage. 'Old' age, however, bears a particular negative connotation and 'old people' are often viewed as carrying no value to society. In contrast with other forms of discrimination, such as racism or sexism, it often tends to be 'normalised', with age stereotypes accepted and going unchallenged.⁷ It is not uncommon that age in itself is a valid justification for differential treatment, setting age limits, or excluding people from treatments or services – all undermining older people's right "to lead a life of dignity and independence and to participate in social and cultural life", as enshrined in Article 25 of the EU Charter of Fundamental Rights.

1.1. Ageism and its effects on the individual, the group and society as a whole

"Older persons have exactly the same rights as everyone else, but when it comes to the implementation of these rights, they face a number of specific challenges. For example, they often face age discrimination, particular forms of social exclusion, economic marginalisation due to inadequate pensions, or are more vulnerable to exploitation and abuse, including from family members."

Nils Muiznieks, former Commissioner for Human Rights, *Human rights comment*, Strasbourg, Council of Europe, 18 January 2018

Demographic changes in Europe and other highly developed countries have placed the growing number of older people at the centre of public debate on the allocation of social and public resources. The increasing number of older persons has also prompted an evolving discussion around better protection of individuals' fundamental rights in older age. While the universality of rights is one of the basic principles of the human rights framework, and rights do not change or diminish as we grow older, evidence points to a number of barriers older people face in the exercise of their fundamental rights.

Population ageing in the 28 EU Member States

The EU population's age structure will continue to change due to increasing life expectancy accompanied by decreasing or stable fertility rates. This change is also quickened by people born during the 'baby boom' years (1950-1960) now reaching retirement age.

By 2080, Eurostat projects that those aged 65 years or over will account for 29.1 % of the EU-28 population, compared with 19.2 % in 2016. This will result in a sharp increase of the old-age dependency ratio, from 29.3 % in 2016 to 52.3 % by 2080.*

This puts a heavier burden on a diminishing population of workers to provide for the social expenditure required for a range of public services.** In 2016, more than three persons of working age (15 to 64 years) were supporting one older person. In 2080, this will drop to fewer than two persons. This can spur ageist rhetoric, undermining intergenerational solidarity.

* Old-age dependency ratio is the ratio between people aged 65 or above (typically in retirement) relative to those typically in the labour force (aged 15-64). The value is expressed per 100 persons of working age (15-64). For more information, see Eurostat, *Population structure and ageing*.

** Eurofound (2017), *Working conditions of workers of different ages*, Research Report, Luxembourg, Publications Office of the European Union.

This section explores distinctive barriers and situations which could result in violating older people’s fundamental rights and undermine their ability to contribute and participate in society on an equal footing. It aims to highlight how stereotypes, prejudice and discrimination on the ground of age may affect:

- each individual rights holder, albeit differently depending on an individual’s life course, social status, gender and other characteristics (Section 1.1.1.);
- older people as a social group who could experience increased barriers and be exposed to more vulnerable situations (Section 1.1.2.);
- eventually, society as a whole (Section 1.1.3.).

Figure 1.1: Effects of ageism



Source: FRA, 2018

1.1.1. Individual level: older people’s experiences of discrimination, risk of poverty and violence

“Ageism remains a form of abuse that is largely ignored by society although it is a very common phenomenon [...]. The worst is that many people are not even aware of their ageist attitudes as they have subconsciously internalized stereotypes about older persons.”

Rosa Kornfeld-Matte, Independent Expert on the enjoyment of all human rights by older persons, ‘Ageism should not be downplayed: it is an infringement of older person’s human rights’, Press release, 1 October 2016

Enabling older people’s equal participation in society requires fighting discrimination and the differential treatment of individuals because of their old age. This involves countering often structurally and societally accepted practices. This section provides data illustrating some distinct barriers older people face, addressing discrimination in employment, access to healthcare, poverty, and the risk of abuse and violence against older people in need of support. These areas are not exhaustive. Age-related barriers may also limit older people’s participation in other aspects of life, ranging from renting a car or accessing bank credit, to being a member of a jury service or an association. However, in light of the limited scope of this chapter

and a lack of statistical data, it is not possible to provide an overview of all challenges that affect and undermine older peoples’ right to dignity, autonomy, independence and participation.

Employment

Eurobarometer: Discrimination against older people perceived to be widespread

The 2015 Eurobarometer survey on discrimination finds that 42 % of the respondents in the EU-28 perceived discrimination due to old age (being over 55 years old) as “very” or “fairly” widespread in their country. This perception varies widely among Member States, ranging from 22 % in **Denmark** to close to 60 % in **Bulgaria**, the **Czech Republic**, **Hungary** and **Romania**. With 5 % of all respondents reporting to have personally felt discriminated against or harassed because of old age, this becomes the most frequently mentioned type of discrimination.

*See European Commission (2015), *Discrimination in the EU in 2015*, Special Eurobarometer 437, pp. 16, 70, 71, Brussels.*

The Eurobarometer survey shows that 56 % of the respondents consider being over 55 years to be a disadvantage when looking for work, while 16 % consider this to be the case for those under the age

of 30.⁸ Older people also face negative stereotyping and ageist attitudes at work.⁹ While 80 % of Eurobarometer survey respondents reported being comfortable working with someone over 60 years,¹⁰ the European Working Conditions Survey shows that 7 % of employees aged 50 or above experienced age discrimination in the 12 months before the survey.¹¹

The European Commission's 2018 Ageing Report projects an increase in labour force participation by older workers due to implemented pension reforms.¹² While some may wish to work longer, others might be burdened by increases in the pension age or the financial need to continue working. These preferences and experiences are strictly individual and depend on the individual life course and working conditions. Therefore, optimising opportunities for, and combating discrimination against, older people who can and wish to remain in work for longer should be complemented with sufficient instruments addressing the support needs of older people.

Access to healthcare

The concept of 'active ageing' was introduced by the World Health Organisation (WHO), and is widely used to frame current policy discourse at the international and EU levels. It refers to a "process of optimizing opportunities for health, participation and security [...] allow[ing] people to realize their potential for physical, social, and mental well-being throughout the life course and to participate in society, while providing them with adequate protection, security and care when they need".¹³

Therefore, measures to safeguard older persons' independence and dignity – also ensuring active ageing – include addressing discriminatory practices and barriers in accessing health and care services. Growing old is associated with an increased risk of health deterioration and limitation in daily activities, making it necessary to call upon different types of health and support services. In 2016, one third of persons (35 %) aged 50 to 64 in the EU indicated that they have at least one chronic physical or mental health problem or disability, compared to 49 % of those aged 65 or over.¹⁴ There are significant differences between Member States. For example, 73 % of persons aged 65 or over in **Estonia** declared that they have a chronic physical or mental health problem or disability, compared to 31 % in Ireland.¹⁵

There are different reasons for difficulties in accessing health services. For instance, in 2016, one out of four persons (26 %) aged 65 or over in the EU reported having at least some difficulties reaching a doctor's office because of the distance. Additionally, one out of five (20 %) had difficulties accessing health care because of the costs related to the medical visit.¹⁶ Furthermore, across the EU, one third of persons

(36 %) aged 65 or over had at least some difficulties accessing long-term care due to the related costs. The figures are diverse and show great disparities across the EU Member States. While 60 % of older persons in **Greece** reported great difficulties in accessing long-term care because of the costs, in **Denmark**, the **Netherlands** and **Sweden**, 90 % of persons aged 65 or above declared no cost-related difficulties.¹⁷ Distance and costs are not the only barriers. Although statistical data are limited, evidence suggests that old age can limit access to surgical treatment or rehabilitation services. This can be because of age screening, prejudicial attitudes towards older patients, or limited access to health insurance due to age limits or prohibitively higher premiums.¹⁸

Risk of poverty

The EU average risk of poverty for those 65 or older is lower than that for the total population – 14.6 % and 17.3 %, respectively. However, the situation varies significantly across countries. In **Latvia** and **Estonia**, for example, the proportion of people aged 65 and above at risk of poverty is 16 to 19 percentage points higher than that for the population as a whole. In contrast, in **Spain** and **Greece**, the proportion of older persons at risk of poverty is around nine percentage points lower than that of the total population.¹⁹ These variations reflect differences in the pension and social protection systems in the Member States and in the kind and extent of support provided by families and the state. In most EU Member States, the majority of older people are at least in general at lower risk of poverty and are better off than the general population. However, evidence suggests that this will not be the case for future generations.

Violence, abuse and neglect

The manner in which support is provided can put older people in need of support in situations of vulnerability to inhuman or degrading treatment, violence, abuse and neglect. In 2011, the WHO estimated that, in the European region, every year "at least 4 million people aged 60 years and older experience elder maltreatment in the form of physical abuse, 1 million sexual abuse, 6 million financial abuse and 29 million mental abuse."²⁰ Violence and abuse may also result from neglect and failure to provide care to persons in need; it can be both physical and psychological. Such abuse can be a single occurrence or repeated and can target an individual or be part of institutional practices.²¹ WHO evidence shows that women were slightly less likely than men to be victims of physical abuse (2.6 % versus 2.8 %), psychological abuse (18.9 % versus 20.0 %), and financial abuse (3.7 % versus 4.1 %), but more women than men were victims of sexual abuse (1.0 % versus 0.3 %) and suffered injuries (0.9 % versus 0.4 %).²²

The settings vary. Violence and abuse can take place in the home, by family members, friends or professional care workers; or in institutional settings by professional staff. A recent study by the European Network of National Human Rights Institutions (ENNHRI) found that “although there were no clear signs of torture or deliberate abuse or ill treatment, several practices witnessed in all six countries [covered in the study] raised concerns, particularly in upholding dignity, the right to privacy, autonomy, participation, and access to justice”. This points to a need for a human rights-based approach in all aspects of service planning, policy and practice.²³

1.1.2. Group level: inequalities and intersectional discrimination affecting specific groups

Little research, and none across all EU Member States, addresses the complex aspects of multiple and intersectional discrimination affecting older persons depending on their gender, disability, sexual orientation²⁴ or minority and migrant status. Older people are a widely heterogeneous group with quite diverse needs, possibilities and preferences. Understanding intersecting forms of discrimination and how they affect older people is therefore key to crafting effective policies across a range of issues to safeguard the dignity of all older people. The following examples serve as an illustration of some challenges some groups face, undermining their fundamental rights.

Older women

Gender creates particular inequalities and discrimination in old age, as life-course inequalities accumulate and inevitably undermine the full enjoyment of rights. In 2015, the EU average gender pension gap – the average difference between a man’s and a woman’s pension – was 37.6 % for those 65 and over.²⁵ In contrast, the 2015 gender pay gap was 16.3 %.²⁶ While there are variations across Member States, women receive lower pensions in all countries.²⁷ Reasons for these differences include the principles on which pension benefits are calculated; these “generally privilege men, as women’s life course often involve periods of unpaid care work and an average of five years shorter working lives than men”.²⁸

At birth, life expectancy differs according to gender, and women generally outlive men. In the EU-28, life expectancy was estimated at 83.3 years for women and 77.9 years for men in 2015.²⁹ In 2015, Eurostat data show life expectancy at age 65 to be estimated at 21.2 years for women and 17.9 years for men.

Therefore, the proportion of older women among older people increases with age.

Older people with immigrant or ethnic minority background

Older people with migrant backgrounds are not a homogenous group, and their experiences and needs in older age may differ. However, evidence points that life trajectories of migrants are affected by “lower income, poorer working and housing conditions, including their concentration in low-income neighbourhoods”.³⁰ Such situations might place them at a disadvantage compared to those without migrant backgrounds. This results in social exclusion and worse socio-economic and health status.

As an illustration, FRA’s second European Union Minorities and Discrimination Survey (EU-MIDIS II)³¹ collected information on the socio-economic conditions of 34,000 Roma household members in nine EU Member States. The results show that, when compared to the general population, “on average only 16 % of Roma aged between 55 and 64 years are in paid work, compared with, on average, 53 % of the same age group in the EU-28. Only in **Portugal** (46 %) and **Greece** (39 %) are the paid work rates for Roma older than 55 close to employment rates in the general population, but for all groups the rates are far below the Europe 2020 target of 75 % in employment”.³² These results suggest that being part of an ethnic minority increases the difficulties older people face in the area of employment.



Older people with disabilities

In the EU-28, an estimated 49 % of people aged 65 years and over reported long-standing limitations in usual activities due to health conditions in 2016. The results also show that more women than men experience long-standing limitations (51.5 % versus 44.4 %), which is likely because the proportion of older women among older people increases as age increases.³³ This number can be seen as a proxy for older people in need of some sort of support.

While old age *per se* does not mean disability and not all old people have an impairment, the probability of developing a disability or requiring support increases with age. As older people make up an increasing proportion of the EU’s population, the number of people who might face cumulative challenges both because of their age and disability, and at the intersection of the two, also rises.

Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD), to which the EU acceded in 2010 and which is ratified by all 28 EU Member States, applies to all people with disabilities. While not all old people have a disability, developing an impairment with age is more likely. The convention does not provide any special rights to people with disabilities, young or old, nor does it single out older people for special protection.

However, it does reiterate the principle of universality of human rights and sets out some key concepts that are especially tailored. The CRPD sets out the right to dignity, autonomy and non-discrimination, full participation and equal recognition before the law. Beyond this, its conceptual frame puts the individual at the center, focusing on self-determination, autonomy and choice and control over one's life.

For more on the CRPD and developments across the EU in 2017, see Chapter 10.

Regardless of whether people age with existing disabilities or they develop disabilities in old age, all older people in the EU should have equal access to quality health care or long-term care support. However, evidence points to a number of barriers contributing to inequalities. These include age requirements for access to support services that enable older people to live independently and unmet care needs across the EU.

"All too often double standards apply in law and practice, excluding older people from some benefits, applying different eligibility criteria or giving less support when disability occurs in old age. Moreover, when ageism interferes with disability assessments, older people are not offered the same level, quality or ranges of support as younger people with disabilities."

AGE Platform Europe submission to Draft General Comment in Article 5, CRPD, 30 June 2017

The World Health Organisation (WHO) estimates that roughly 5 % of the world population are affected by dementia. Increased longevity contributes to its growing prevalence. Dementia is "an umbrella term for several diseases that are mostly progressive, affecting memory, other cognitive abilities and behaviour, and that interfere significantly with a person's ability to maintain the activities of daily living. Women are more often affected than men"³⁴ Especially in its later stages, dementia is a major cause of disability and dependency, gravely affecting a person's memory and cognitive abilities. This means that older people with dementia need the necessary support to avoid the risk of having their legal capacity (their ability to autonomously hold and exercise their rights before the law) restricted.

The capacity to make one's own decisions is a precondition to individual autonomy. Depriving an individual of legal capacity – be it partially, regarding certain decisions, or fully restricting their right to make any legally binding decisions – results in a clear denial of legal personality to people under guardianship. Equality before the law is one of the key provisions provided for in Article 12 of the CRPD, affirming people with disabilities', including older people with disabilities', right to exercise their legal capacity by providing necessary support.³⁵

Older people living in rural areas

According to Eurostat data based on a 2011 population and housing census, a higher proportion of the older population lived in rural areas; the majority of regions with high numbers of older people (over 65) were also rural and sometimes quite remote.³⁶ Living in rural areas can entail additional challenges for older people, especially in the enjoyment of their right to health. This is particularly relevant for remote regions or regions and Member States with poor health and social service infrastructure.³⁷ Particular challenges include availability and accessibility of public transport, home- and community-based services and long-term care.³⁸

1.1.3. Societal level: ageism's effects on society as a whole

"Longevity offers an enormous potential for the economy and society, which has not been fully realized. Older persons contribute to the generation of wealth as entrepreneurs and employees. As consumers they stimulate innovation and contribute to developing new markets in the 'silver economy'. They volunteer in civil society organizations and in their communities. They provide unpaid care and support for their families."

Economic Commission for Europe, Synthesis Report on the implementation of the Madrid International Plan of Action on Ageing in the ECE region between 2012 and 2017, p. 5

A recurrent stereotype linked to ageism is that older persons are a burden. Such negative societal attitudes affect policy responses relating to old age, which can undermine the potential positive contribution of older people to economic, social and cultural life.

Scientific evidence contradicts these stereotypes, showing the valuable and important contribution of older people to their families and community. For example, a recent European Quality of Life Survey finds that, in 2016, persons aged 65 or above spent at least several days a week caring for grandchildren (23 %), children (14 %) and disabled or sick relatives or friends (7 %). They also spent a significant part of their time volunteering in the community and social services (8 % at least every month), or participating in social activities in a club, society or association (17 % at least once a week).³⁹

Furthermore, intergenerational learning – the transfer of knowledge and experience between generations by, for example, older workers mentoring and coaching younger generations or taking up apprenticeships – spreads benefits across a number of areas. It fosters innovation and “can also strengthen intergenerational relations and help to break down negative stereotypes and attitudes”.⁴⁰

Still, public debate is often dominated by issues related to the inter-generational distribution of costs and risks,⁴¹ instead of encouraging measures to bridge the gap between younger and older persons to restore fairness and equity across generations.⁴² In the context of fiscal consolidation, structural ageism⁴³ targets old people as a burden for the younger generation to bear, instead of pointing out opportunities of older people to participate and contribute equally to society. One aspect, for instance, is that older people may choose to stop working and care for the grandchildren to “ease the pressure on their children and enhance the work-ability of this intermediate generation”.⁴⁴ This is why attempts to curb age-related expenditures should not ignore the potential of older persons to contribute positively to different aspects of economic, social and cultural life.⁴⁵

Moving away from viewing old age merely in terms of burden or losses⁴⁶ and towards acknowledging the positive role of older persons in the community can reinforce the respect of their human rights and dignity.

Need for more and better data

Developing effective policies to promote active ageing and older people’s potential to live independently and contribute to their communities requires robust and reliable data. Such policies should promote the 2030 Agenda for Sustainable Development, which seeks to realise the human rights of all people by “leaving no one behind”, regardless of age. Some goals are of particular importance to older people, including: Goal 3 on ensuring healthy lives and promoting well-being for all at all ages; Goal 1 on poverty; Goal 5 on gender equality; Goal 8 on decent work; and Goal 10 aiming to reduce inequalities.



Many Sustainable Development Goal (SDG) indicators specifically call for data to be presented by age. While UN member states agree on specific age groups for each indicator, it would be important to collect sufficient data relating to the situation of older people.

The indicators for the goals mentioned above should be populated with data disaggregated by sex and other important characteristics, such as ethnic origin, religion or belief, sexual orientation and gender identity or place of residence (for example urban or rural areas).

Ageing cuts across all goals. Collecting and using good quality data would not only improve the monitoring of the SDGs, but also assist policymakers in defining and implementing policy initiatives to address ageing.

It remains to be seen, however, if and what data will be collected and how they will be presented. Lumping the evidence into one single group, such as 55 years and over or 60 years and over (the age group usually used for UN statistical practices when addressing older people) would fail to reflect distinct experiences of a very heterogeneous target group. Old age spans 40 years; not breaking it down into smaller clusters will fail to capture a true and clear picture of the situation of older people. In addition, it would also be essential to capture and reflect on experiences of older individuals with intersecting characteristics, such as being an older woman, an older immigrant or an older person with a disability.

Collecting data and understanding how exclusion and intersectional discrimination affect achieving the 2030 Agenda is important. However, affirming the contributions of older people to their communities and society, and not just focusing on addressing needs and challenges of a group often perceived as ‘vulnerable’, is essential to “achieve truly transformative, inclusive and sustainable development outcomes” and realise the fundamental rights of all people.⁴⁷

Including older people in large-scale surveys

Older persons are included in the large EU-wide surveys that build, among others, the basis for Eurostat’s social database. These surveys mostly set only lower, and no upper, age limits, covering all persons from 15 or 16 years onwards, as long as they fulfil the eligibility criteria. Some EU Member States, nonetheless, have introduced an upper age limit of 74 years for the EU labour force survey. Results for older persons are often presented for large, open-ended age groups, as the sample sizes of surveys include too few respondents in older age groups to allow for detailed analysis. One solution to this problem is increasing the sample sizes or ensuring targeted oversampling. Both practices, however, lead to increased survey costs.

The Survey of Health, Ageing and Retirement in Europe (SHARE) targets particularly older persons aged 50 years or over, collecting information on health, ageing and retirement. By concentrating on a specific age group, statistically significant conclusions can be drawn regarding the living conditions of older persons.



An additional challenge for the representative coverage of older people is that surveys generally only target people in private households. This excludes all persons living in institutions or residential care settings, where older residents make up a considerable proportion. Some national surveys in the European Health Interview Survey (EHIS) included people living in institutions, and SHARE as a longitudinal survey follows persons even if they move into institutionalised care. However, as part of the Synergies for Europe's Research Infrastructures in the Social Sciences (SERISS) project, possibilities and existing practices for including persons in institutions in social surveys are examined.

For more information, see: EU labour force survey: Methodology; SHARE website, Survey of Health, Ageing and Retirement in Europe and Europe's Research Infrastructures in the Social Sciences (2017), 'Report on sampling practices for the institutionalized population in social surveys.'

1.2. EU's increasing focus on rights of older people

Societal and demographic transformation calls for policy and legislative responses in many different fields. These range from respecting fundamental civil, political and social rights regardless of age and combating discrimination against older people to addressing concerns about pensions and the old-age dependency ratio. At the EU level it has led to EU policies relating to older people evolving from a welfare care-orientated approach, based on needs and protection, to a more participative one revolving around rights and the concept



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of active ageing. The EU's increasing efforts towards a human rights-approach to ageing are reflected in both the EU legal framework and the design and implementation of its policies.

1.2.1. From the Community Charter of Fundamental Social Rights of Workers to the EU Charter of Fundamental Rights

The first attempt to establish a protective framework for older people at the EU level dates back to the 1989 political Declaration of the Community Charter of Fundamental Social Rights of Workers. The approach is narrow and addresses older people under their capacity and status as 'workers' or former workers, focusing on access to "resources affording [...] a decent standard of living" or to "sufficient resources" for those without any means of subsistence, as well as access to medical and social assistance "specifically suited to [their]

needs".⁴⁸ This narrow approach reflects a deficits- and needs-based standpoint addressing older people as people "in retirement", recipients of old-age benefits and in need of protection.

Since 1989, developments have marked a slowly evolving paradigm shift towards a new and more encompassing rights-based approach to older people. However, in the EU's primary legal framework, explicit fundamental rights references to older people are rather scarce and, from a normative point of view, weak. A closer and fairer overview of the EU primary rules, as adopted by the Treaty of Lisbon, suggests that there is a significant untapped normative potential. EU primary law does provide the basis for developing comprehensive policies at the EU and national level that implement a rights-based approach towards older people by ensuring a life in dignity for all persons, independent of age. In this respect, recognising the binding nature of the EU Charter of Fundamental Rights and making it an integral part of primary EU law was a decisive step forward.

The most promising provision for changing perceptions about people in older age and their rights in the context of primary EU law is the non-discrimination clause, introduced in EU primary law by the Treaty of Amsterdam in 1999. It is currently enshrined in Article 19 of the TFEU. It provides a legal basis for the EU to establish and implement policies addressing discrimination based on age. Furthermore, non-discrimination is not the only legal basis for EU action. It is true that most of the competences regarding issues such as social policies, employment or public health lie primarily with Member States. Nevertheless, the EU does have the competence to support and complement Member States' activities in these fields.⁴⁹ Moreover, the EU is competent to take initiatives to ensure cooperation and coordination between national states. Processes such as the European Semester monitor policies implemented in all the areas of as social policies, employment or public health. Furthermore, EU funding instruments, particularly European Structural and Investment Funds (ESIF), can drastically affect national policies in accordance with EU policies (see [Section 1.2.2](#)).

EU Charter of Fundamental Rights and rights of older people

When EU institutions exercise their competences and when Member States implement EU law, they are bound by the EU Charter of Fundamental Rights. The Charter constitutes primary EU law and encompasses a very broad spectrum of rights. It does not distinguish or limit the enjoyment of rights on the basis of age. Human dignity, the integrity of the person and the prohibition of torture and inhuman or degrading treatment or punishment, the right to private and

family life, freedom of expression, the right to property, the right to access vocational training, to engage in work and to have access in placement services, social assistance and health care and all other civil, political and socio-economic rights listed in the Charter are universally valid fundamental rights unequivocally applied to everyone, regardless of age. To dispel any doubts, Article 21 on non-discrimination provides explicit and clear protection from age discrimination. Moreover, under Article 10 of the TFEU, the EU is explicitly and horizontally obliged to actively “combat discrimination based on [...] age” in “defining and implementing [any of] its policies and activities”.

Most importantly, the Charter goes beyond generally applicable fundamental rights clauses to include in Article 25 one of the first legally binding human rights provisions addressing particularly the rights and principles regarding the treatment of older people, stipulating that: “[t]he Union recognises and respects the rights of the elderly [older people] to lead a life of *dignity* and *independence* and to *participate* in social and cultural life” (emphasis added).

With this, the Charter is signalling acceptance and respect for the fundamental rights of older people. It aims to ensure their equal participation in society and their independence, which is pivotal in shifting perceptions about people’s agency in older age. Meanwhile, Article 34 recognises older people’s right to a social protection safety net. It leaves space for duty bearers to re-design social support systems into more personalised social services. The scope of these provisions is not restricted to persons in the work environment (as was the case for the Community Charter), and hence can be far-reaching. When acting within the scope of EU law, the EU and its Member States are under the obligation to respect rights and observe principles deriving from the Charter, in particular those enshrined in Article 25, in view of promoting older people living an independent life in dignity. EU policies and relevant legislative measures need to be designed and implemented in light of these rights and principles, whereas adopted EU secondary legislation should be interpreted accordingly.

The emphasis on acceptance, respect and inclusion of older people enshrined in the Charter reflects a broader equal opportunities philosophy focusing on ‘personhood’, autonomy and active citizenship. This philosophy also characterises other international human rights instruments, in particular the Convention on the Rights of Persons with Disabilities (CRPD), to which the EU acceded in 2010, making it an integral part of the EU legal order (see [Chapter 10](#) on CRPD developments). The CRPD is clearly applicable to older people with disabilities, and even though not all old people have a disability, developing an impairment with age is likely.⁵⁰ More importantly, it marks a shift

from a traditional narrowed welfare state approach, based on needs to compensate for ‘deficits’, to a more comprehensive participatory approach based on dignity, autonomy and rights. Among others, it introduces the concept of “reasonable accommodation” that entails necessary and appropriate modifications in the physical environment, public transport, schools and universities or workplaces to ensure that persons with disabilities enjoy or exercise on an equal basis with others all fundamental rights.⁵¹

To summarise, from the Declaration of the Community Charter of Fundamental Social Rights of Workers in 1989, to the adoption of the Treaty of Lisbon making the Charter of Fundamental Rights a legally binding instrument, there has been a shift towards adopting a more comprehensive and rights-based approach towards older people. Older people are no longer perceived solely as ‘retired’ former workers, nor as a homogenous, vulnerable group. On the contrary, they are considered largely as ‘persons’ with rights, who deserve equal treatment and recognition of their potential to participate and contribute actively in all aspects of life, in spite of their age, and to enjoy their right to live independently and be included in the community.

1.2.2. EU legislative measures and policies: mainstreaming a rights-based approach to ageing?

EU legislative measures

Transforming the new rights-based approach reflected in the Charter of Fundamental Rights into concrete EU legislative measures and policy actions has been a slow process. The EU has not yet succeeded in delivering a comprehensive secondary legal framework ensuring substantive equality for older people. The only exception is the Employment Equality Directive.⁵² This directive, although limited to employment-related issues, was ground-breaking when adopted, since it introduced the criterion of age as a prohibited ground for discrimination in a legally binding text for the first time.

However, the prohibition of discrimination on the ground of age is far from absolute. Article 6 of the directive allows for differential treatment on the basis of age, providing for a “broader range of exceptions to the principle of equal treatment than is permitted in connection with any other protection characteristic” in so far as this is “objectively and reasonably justified by a legitimate aim” (e.g. legitimate employment policies or labour market objectives) and the means used are “appropriate and necessary” (proportionality principle). In this context, differential treatment may

also include measures that promote young or old people in the labour market to fight unemployment, particularly long-term unemployment, or to promote better distribution of work among generations.⁵³

Despite its narrow scope and broad range of exceptions, the Employment Equality Directive has been a useful tool for embedding fundamental rights in legal and policy instruments in this area. First of all, it has led to very interesting and rights-promoting case law by the Court of Justice of the European Union. The *Mangold* case remains emblematic, recognising that non-discrimination on grounds of age is a general principle of EU law.⁵⁴ This ruling has since been constantly reaffirmed by the court, which additionally invokes Article 21 of the Charter in its more recent judgments.⁵⁵

FRA ACTIVITY

2018 edition of the *Handbook on European non-discrimination law*

A specific section in the *Handbook on European non-discrimination law* looks at the developments in jurisprudence on age discrimination. It highlights the different scope of and approach to age as a ground of discrimination in international instruments. In so doing, the handbook illustrates the differences in the application of non-discrimination law by the relevant bodies, including the European Committee of Social Rights.

FRA, together with the Council of Europe and the European Court of Human Rights (ECtHR), published in March 2018 an update of the *Handbook on European non-discrimination law*. The handbook is designed to assist legal practitioners – such as judges, prosecutors and lawyers, as well as law-enforcement officers – and improve knowledge of relevant EU and Council of Europe standards, particularly through case law of the Court of Justice of the EU (CJEU) and the ECtHR.

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

At the national level, the directive resulted in the introduction of legislation prohibiting age discrimination in employment throughout all Member States. In addition, although it does not provide explicitly for the setting up of equality bodies – as is the case in the EU anti-discrimination directives on the grounds of gender or race – it contributed to establishing equality bodies and/or attributing to them relevant competences. However, not all equality bodies have competences on age discrimination.⁵⁶

The directive has also raised awareness on the rights of older people in the area of employment and contributed to changing attitudes of state authorities and private employers on a range of issues. These

issues range from formulating job vacancy notes to debates on extending working life. For example, since the adoption of the directive, “more attention is paid to avoiding stereotype ‘age requirements’ (like looking for a ‘young and dynamic’ colleague) in job vacancy notes”, which could also be seen as stereotyping gender or family situation.⁵⁷ Moreover, in relation to the sustainability of pension systems, the directive has triggered controversial debates relating to extending working life and postponing retirement. This could be achieved by abolishing mandatory retirement ages or encouraging people receiving pensions to continue working, so as to earn some income without losing their pension entitlement.⁵⁸

Outside the scope of the Employment Equality Directive, areas of particular importance for older people – such as social protection, health care, access to goods and services or housing – are not covered by EU legislation as regards the ground of age, in contrast with the Race Equality Directive.⁵⁹ The proposal for an Equal Treatment Directive (ETD)⁶⁰ – presented by the Commission in 2008 – could fill this gap. It provides for extending the principle of non-discrimination horizontally, on the basis of various grounds, including age, to these areas of importance for older people.⁶¹

However, its adoption is still pending – even though, following the model of the Employment Equality Directive, it leaves a large margin of discretion to Member States, which is even broader regarding acts differentiating the treatment of older people. The EU Council has not yet reached the necessary unanimity, which reveals the reluctance and difficulties in moving forward faster. Major issues of concern remain, necessitating further political discussions. These include the directive’s scope, with certain delegations opposing the inclusion of social protection and education. The division of competences and the principle of subsidiarity also remain issues, as does legal certainty regarding the obligations that the directive would entail.⁶²

Furthermore, given that older people, especially those in need for support, may more often be exposed to the risk of suffering neglect, abuse or violence, the Victims’ Rights Directive is also particularly relevant for their well-being.⁶³ In accordance with the directive, older people who are victims of crime should benefit from all rights enshrined therein on an equal basis with any other victim. Moreover, age is among the personal characteristics to be taken into account in the context of an individual assessment,⁶⁴ when identifying specific protection needs and special measures for victims in criminal proceedings. The directive also underlines that special attention should be paid to victims whose relationship to and/or dependence on the offender puts them into particularly vulnerable situations.

A number of more recent EU legislative initiatives could also contribute to mainstreaming a rights-based approach to ageing. These include the draft European Accessibility Act, the draft Directive on work-life balance for parents and carers, and the draft Regulation on a Pan-European Personal Pension Product (PEPP).⁶⁵ For instance, the European Accessibility Act could lead in providing people with disabilities and older people facing ‘functional limitations’ with more accessible, affordable and quality goods and services. This would foster independent living and inclusion in the community. For more information, see [Chapter 10](#) on the CRPD.

For its part, the adoption of the Work-life Balance Directive could improve intergenerational solidarity, resulting in better and more respectful tailor-made and home-centred caring services for older people. However, this does not mean and should not result in exempting states from their care responsibilities in the context of a modern welfare state. At the same time, the Work-life Balance Directive would be the first step in recognising and supporting the contribution of family members in informal unpaid assistance to older people in need of care.

As regards the Pan-European Personal Pension Product Regulation, it is expected to offer more options to people who want to invest financial resources in view of supplementing their future retirement income, thus enhancing their independence and, by extension, their participation.

EU policies fostering a human rights-approach to older people

The slow transition towards a human rights approach concerning the treatment and rights of older people is not limited to the EU legislative level. A whole spectrum of different efforts and EU policy initiatives address challenges faced by older people. These efforts strive to promote the new human rights approach, linked closely to the concept of active ageing.

Ageing societies and the role of older people has thus become a key issue for the EU 2020 Strategy.⁶⁶ It focuses on the need to develop technologies allowing older people to live independently and in dignity, as active members of society. This focus is reflected in the European Innovation Partnership on Active and Healthy Ageing (EIPAHA), which seeks to promote the perception of ageing as “an opportunity [more] than a burden” and to replace reactive and hospital-based care with proactive and home-based services and health care.⁶⁷

Active ageing and intergenerational solidarity has also been the topic of the 2012 European Year for Active Ageing and Solidarity between Generations, which

resulted in a relevant Council Declaration and guiding principles,⁶⁸ as well as in the development of the Active Ageing Index (AAI). The AAI aims to provide comparative data and evidence among EU Member States regarding the contribution and potential of older people in various aspects of life and to help identify challenges, priorities and possible policy developments in the future. The AAI toolkit is comprised of 22 statistical indicators grouped in four domains: employment; social participation; independent living, and capacity for active ageing. The latest data are from 2014, but further activities are foreseen.⁶⁹

The implementation of policies promoting a human rights paradigm towards older people also requires appropriate funding both at EU and national levels. In this respect, the European Structural and Investment Funds (ESIF)⁷⁰ are crucial, since for many Member States they are the key source of funding to introduce and support reforms and innovative policies. The ESIF Regulation⁷¹ acknowledges demographic ageing as a challenge and calls on Member States to use ESIF “to create growth linked to an ageing society”. It therefore sets out active and healthy ageing as an investment priority under thematic objective eight concerning the promotion of sustainable and equality employment and the support of labour mobility.

Other ESIF thematic objectives are also relevant for the rights of older people. For example, objective nine on promoting social inclusion, combating poverty and any discrimination defines active inclusion, equal opportunities and improving employability as investment priorities. This is in addition to investing in health and social infrastructure to reduce inequalities, improve social, cultural and recreational services, and assist the transition from institutional to community-based services. These investment priorities apply to everyone, including people in older age in so far as they count among the target groups of each investment priority.

More importantly, the regulations that govern the 2014–2020 funding period introduce new measures aiming to ensure that ESIF funding complies with the EU’s fundamental rights obligations. Chief among these are the *ex-ante* conditionalities, which set sector-specific and horizontal conditions to be met by Member States. These include: a) *ex-ante* conditionality 8.4, which addresses active and healthy ageing, requiring the development of active ageing policies retaining older people in the labour market and reducing early retirement; and b) *ex-ante* conditionality 9.1 on poverty reduction and inclusion of people excluded from the labour market, which calls on Member States, depending on the identified needs, to develop measures for the shift from institutional to community-based care to all people



in need of such care, including older persons.⁷² In this way, EU legislation compels Member States to develop comprehensive rights-promoting policies for older people and links EU funding to the effective implementation of these policies. This strong preference for independent and community living for older people in the ESIF is reflected in the EU Social Pillar, which states that “everyone has the right to long term care services of good quality, in particular home care and community based services” (Principle 18).

The monitoring and coordination process of the European Semester is also a major EU tool for affecting national reform policies, especially through the Country Specific Recommendations (CSRs) to the Member States. In response, Member States adopt the appropriate policy decisions. An analysis prepared for the European Parliament in 2016⁷³ shows that the CSRs continue to focus more on employment issues such as facilitating the access to labour market and reducing early retirement, rather than issues linked to a more comprehensive rights approach, such as social policies, financial resources or health care.

However, the European Commission, in its 2017 Communication on the European Semester’s CSRs,⁷⁴ refers explicitly to the concept of active ageing when defining the key objectives of its recommendations. It underlines that “a combination of pension reforms, labour market policies, lifelong learning and health policies is required to support a more active older population”.

Meanwhile, the Commission’s Annual Growth Survey⁷⁵ for the 2018 European Semester notes that to ensure the sustainability and adequacy of pension systems for all, Member States should go beyond ensuring the sustainability of public pension systems, even under adverse conditions. In addition, they should boost retirement incomes by extending working lives, linking retirement age to life expectancy, avoiding early exit from the labour market, etc. Moreover, taking into consideration the ageing population, it underlines the need for health care reforms and long-term care systems. This is to enhance their cost-effectiveness and ensure their fiscal sustainability and affordable access to quality preventive and curative healthcare.

1.2.3. Potential of the European Pillar of Social Rights

The joint proclamation of the European Pillar of Social Rights, adopted by the EU institutions on 17 November 2017 in Gothenburg, is the most recent and promising development in the field of social rights. It is undoubtedly a step forward and an opportunity for a more “social Europe”, for a Europe with stronger social rights protection both at the EU and the national level. In particular for older people, the proclamation

of the European Pillar of Social Rights could be the occasion to renew and intensify efforts to promote the implementation of the human rights approach enshrined in the Charter of Fundamental Rights. The political will and commitment of all stakeholders is a *sine qua non* condition. But now, it should be translated into concrete actions in terms of legislative measures and policy initiatives at both the EU and the national level.

“This should be a landmark moment – with the proclamation of the European Pillar of Social Rights, we are showing our joint commitment to protect and uphold the rights of equality, fairness and opportunity that we all stand for and that all citizens are entitled to. And it must also be the first step of many in this direction.”

European Commission President Juncker, Press release, 16 November 2017

The weakness of the European Pillar of Social Rights – similarly to the 1989 Community Charter on the fundamental social right of the workers – is its nature as a legally non-binding text of rights and principles. In the Preamble, Member States point out that the Pillar “does not entail an extension of the Union’s powers and tasks as conferred by the Treaties” and “does not affect the right of Member States to define the fundamental principles of their social security systems and manage their public finances”. It is hence unequivocally stipulated that for the rights and principles enshrined in the text to be legally enforceable, it would “first require dedicated measures or legislation to be adopted at the appropriate level”.

However, the common political will and commitment expressed in the European Pillar of Social Rights should not be underestimated. As stated again in the Preamble, all Member States agree that “economic and social insecurity needs to be addressed as a matter of priority” in view to “safeguard[ing] of our way of life”. It calls for Member States to acknowledge that, in an era of globalisation, digital revolution, changing work patterns and societal and demographic developments, “challenges, such as significant inequality, long-term and youth unemployment or intergenerational solidarity, are often similar across Member States although in varying degrees”. Besides, some of the rights and principles enshrined in the Pillar are “already present in the Union acquis”.

The linkage between the rights enshrined in the European Social Charter of the Council of Europe and the rights and principles of the Pillar is not clearly articulated, which arguably limits the Social Charter’s relevance in terms of using it to interpret and implement the Pillar. Nonetheless, as stated by the Commission, the Pillar also builds on existing international law, including the European Social Charter of 1961, as well as its revised version of 1996.⁷⁶

In view of the above, the proclamation of the European Pillar of Social Rights signals the opportunity for EU institutions and Member States to make full use of existing tools. These include the EU primary legal framework and the competences already conferred to the Union by the Treaties in a wide range of areas related to social rights of particular significance for the well-being of older people. Such areas include social policy, employment and vocational training, health or non-discrimination. It is an opportunity to try to “give more weight” to these “less well-known rights enshrined in the EU legislation”, as already pointed out in FRA’s *Fundamental Rights Report 2017*.⁷⁷

European Pillar of Social Rights – selected key principles relevant to older people

3. Equal opportunities. Regardless of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation, everyone has the right to equal treatment and opportunities regarding employment, social protection, education, and access to goods and services available to the public. Equal opportunities of under-represented groups shall be fostered.

9. Work-life balance. Parents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services. Women and men shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be encouraged to use them in a balanced way.

15. Old age income and pensions. Workers and the self-employed in retirement have the right to a pension commensurate to their contributions and ensuring an adequate income. Women and men shall have equal opportunities to acquire pension rights.

17. Inclusion of people with disabilities. People with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs.

18. Long-term care. Everyone has the right to affordable long-term care services of good quality, in particular home-care and community-based services.

In addition to the key principles set out in the European Pillar of Social Rights referring directly to older people, most of the rights and principles in the Pillar are recognised on equal terms, regardless of any differentiating ground, including age. This is the case, for example, regarding the right of “everyone” to:

1. life-long learning (Principle 1);
2. adequate minimum income benefits ensuring a life in dignity at all stages of life (Principle 14);

3. affordable, preventive and curative health care of good quality (Principle 16);
4. access to social housing or housing assistance of good quality (Principle 19);
5. access to essential services of good quality (Principle 20).

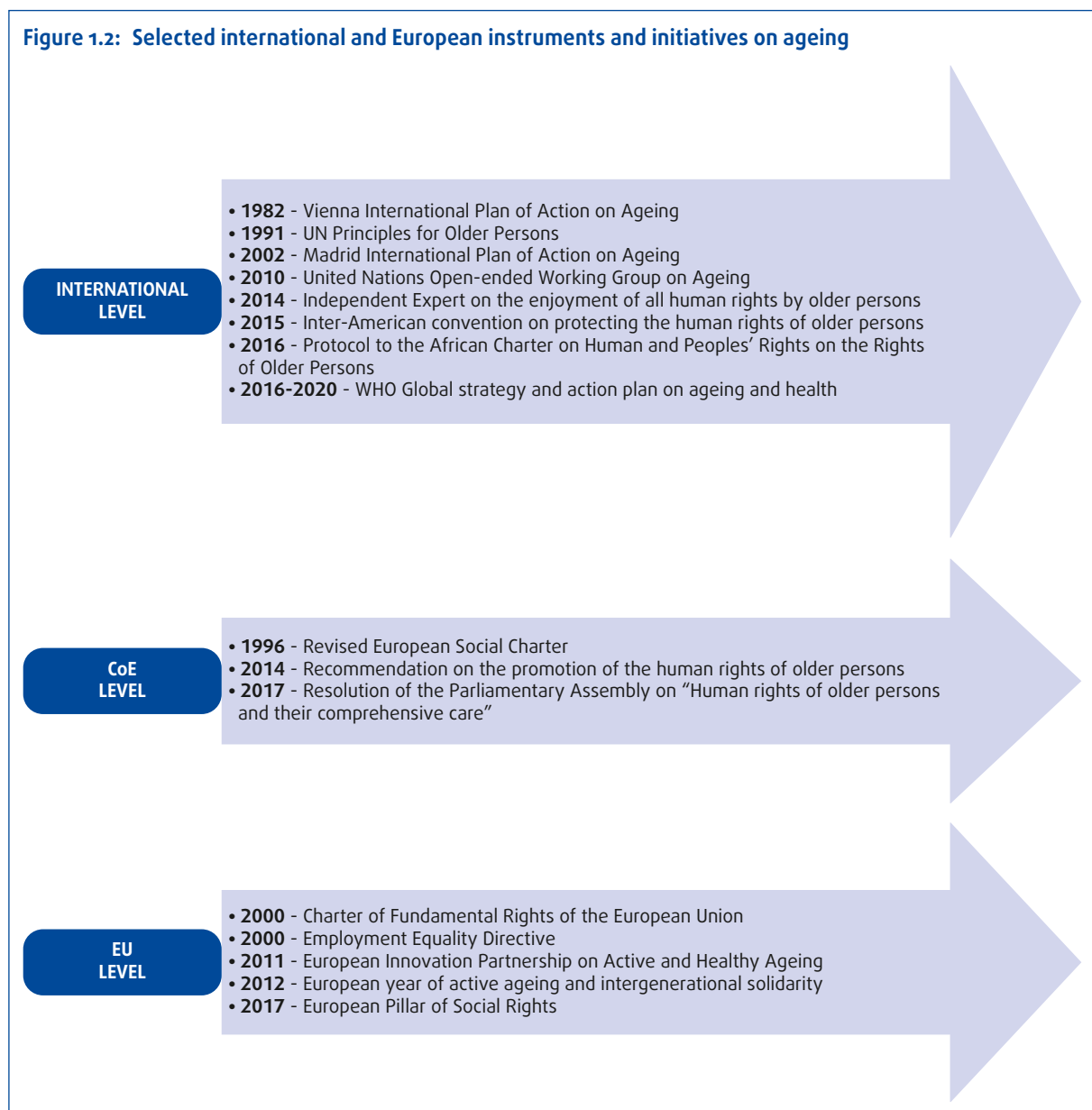
Proclaiming all these social rights and principles on equal terms to everyone, the Pillar reaffirms the importance of older people exercising their rights, and participating in all aspects of life equally, as already enshrined in the Charter of Fundamental Rights. At the same time, the European Pillar of Social Rights’ special provision on issues such as old-age income and pensions or housing assistance for vulnerable people (Principle 19) shows that the EU and Member States recognise the need to elaborate and maintain a protective framework for older people. This is done keeping the balance between independence, participation and protection under the common denominator of “dignity”.

In conclusion, the European Pillar of Social Rights reaffirms and builds on the concept of “active ageing” already enshrined in the EU legal order as reflected in the Charter of Fundamental Rights, particularly in Article 25. It is a positive development towards a more social and respectful EU for older people. However, given its non-binding nature, it is up to EU institutions and Member States to transform their expressed political commitment into concrete legal action and policies. Adopting legislative proposals already presented by the Commission, in particular the proposal for the Equal Treatment Directive, and introducing considerations regarding the rights of older people in the European Semester, would mark significant progress.

1.2.4. EU policy responses reflecting global developments

Legal and policy developments at the EU level signal a slow but clear shift towards a human rights-based approach to older people. This is reflected in ongoing debates and actions at the broader European and international level. With the exception of South America and Africa, where dedicated legal instruments were recently signed,⁷⁸ there are no legally binding instruments specifically addressing the human rights of older people. Nevertheless, important non-binding instruments and policy responses have been developed over the last 30 years. This points to the growing attention paid by international stakeholders to increasing efforts towards fulfilling all universal rights for people of all ages.





In 2002, 20 years after the first World Assembly on Ageing in 1982, 159 UN member states adopted the most recent instrument on ageing, the Madrid International Plan of Action on Ageing (MIPAA). This marked a turning point in promoting a "society for all ages".⁷⁹ In this context, the European regional strategy (MIPAA/RIS) sets a focus on "securing gender-sensitive and evidence-based co-ordinated and integrated policies to bring societies and economies into harmony with demographic change". The European regional strategy makes 10 commitments covering different facets of population and individual ageing.⁸⁰ More recently, the 2017 Lisbon Ministerial Declaration outlines the three policy goals for European states to work towards for 2022. These are:

- recognising the potential of older persons;
- encouraging longer working life and ability to work;
- ensuring ageing with dignity.⁸¹

The MIPAA is also relevant to Sustainable Development Goals that address the needs of older persons, in particular those related to social protection, health, reducing inequalities and ending poverty (Goals 1, 3, 10, and 11). Older persons are also mentioned under targets related to nutrition, resource use, healthcare, accessibility, safety and age-specific data collection and analysis.⁸²

All the policies outlined above are, however, soft-law instruments. While commitments are wide ranging and MIPAA addresses more aspects of older people's lives than its predecessors, it "was not drafted as a human rights instrument; [but] a series of recommendations to achieve socio-economic objectives."⁸³ To respond to these shortcomings and ensure that older people can fully enjoy their human rights, the UN General Assembly has recently established two additional processes.

The UN Open-ended Working Group on Ageing was established in 2010. A mandate for an Independent Expert on the Enjoyment of all Human Rights by Older Persons was created in 2014. Both instruments mark a clear “paradigm shift from a predominant economic and development perspective to ageing to the imperative of a human rights-based approach that views older persons as subjects of law, rather than simply beneficiaries, with specific rights, the enjoyment of which has to be guaranteed by [s]tates.”⁸⁴ The Open-ended Working Group on Ageing is the first global process set up to assess existing instruments. If gaps are identified, it seeks to “consider proposals for an international legal instrument to promote and protect the rights and dignity of older persons”.⁸⁵ In the context of its work, the independent expert on the enjoyment of all human rights by older persons concluded that the existing policy framework – MIPAA – is “not sufficient to ensure full enjoyment of [...] human rights by older people”. It called on states to step up efforts to protect the rights of older people, including by considering the elaboration of a new convention for older people.⁸⁶

The Council of Europe’s existing instruments do not address age and age discrimination explicitly, neither under Article 14 of the European Convention on Human Rights (ECHR) or the Protocol No. 12 to the ECHR on anti-discrimination nor in Article E addressing discrimination in the Revised European Social Charter. However, the European Court of Human Rights (ECtHR) has recognised that “age might constitute ‘other status’ for the purposes of Article 14 of the Convention” and hence discrimination on grounds of age is prohibited by the Court.⁸⁷

The revised European Social Charter (ESC) contributes to the further recognition of the rights of older persons to lead a life of dignity and independence and to participate in social and cultural life.⁸⁸ Interestingly, Article 23 of the revised ESC, setting forth the right of older people to social protection, explicitly links adequate resources, housing and health care – as aspects of the right to social

protection – with enabling older people to participate in social life and “lead independent lives in their familiar surroundings”. In addition, Article 30 of the revised ESC, establishing a right to protection against poverty and social exclusion, provides that such a right entails the effective access of people living or at risk of living in a situation of poverty or social exclusion to employment, housing, training, education, culture and social and medical assistance.

A review of Council of Europe soft law instruments shows that the Council of Europe Committee of Ministers recommendations addressing older people primarily focus on two aspects:

1. on situations of vulnerability – for example, they address the “protection of incapable adults” or the “organisation of palliative care”;⁸⁹
2. they examine aggravating disadvantage from intersecting grounds – for example, by looking at “older people with disability” or “elderly migrants”.⁹⁰

However, the Committee of Ministers adopted a dedicated Recommendation on the rights of older people in 2014. It marked the first dedicated European human rights instrument, albeit of non-binding nature.⁹¹ Furthermore, in 2017, the Parliamentary Assembly of the Council of Europe adopted a resolution on ‘Human rights of older persons and their comprehensive care’, calling on member states to take measures to combat ageism, improve care and prevent social exclusion of older people.⁹² Moreover, a Recommendation was adopted asking the Committee of Ministers to “consider the necessity and feasibility of drawing up a legally binding instrument” devoted to the rights of older persons.⁹³

All these developments – at the EU and broader European and international level – point to a slow but inexorable development towards recognising the need for stronger protection of older persons’ rights. This indicates a move towards a human rights-based approach to ageing.



FRA opinions

Labour markets and national social protection systems have already undergone profound transformations to respond to longevity and the challenges an ageing society poses to national economic and social systems. This process has started with a number of initiatives in the EU and the world. These include fighting old age discrimination in the area of employment, promoting active ageing and incentivising longer working lives, as well as introducing reforms in social protection systems addressing old age, namely in pensions, health services and long-term care provision. Reforms are also starting to move away from needs-based approaches aimed at responding to age-related 'deficits', towards shifting the focus to the individual, a human being with fundamental rights and inherent human dignity. According to Article 1 of the EU Charter of Fundamental Rights, human dignity is inviolable and must be protected and respected, regardless of age.

However, this shift should not overlook the age-specific needs of older people, nor downgrade the importance of the state's responsibilities towards individuals – including older people – who may need support. Moreover, older people are a heterogeneous group with quite diverse needs and preferences. Many preferences and experiences in the life course affect outcomes at older age. Gender, immigrant or ethnic minority status, disability as well as socio-economic status and geographical or other aspects can have a compound negative impact on older people. This largely determines to what extent they enjoy their rights.

The civil, political, economic, social and cultural rights enshrined in the EU Charter of Fundamental Rights apply to everyone, regardless of age. Nevertheless, age features specifically under Article 21 as a protected ground for discrimination and under Article 25, which recognises a right for older people "to lead a life of dignity and independence and to participate in social and cultural life".

Non-discrimination and equal opportunities for older people in various areas of life, as well as their living in dignity, are also embedded in the recently proclaimed European Pillar of Social Rights. According to the European Commission, the European Pillar of Social Rights "partially goes beyond the current acquis". The objective is to reflect on how to extend protection against discrimination on the grounds of age to the areas of social protection, including social security and healthcare, education, and access to goods and services available to the public.

The proclamation of the Social Rights Pillar, albeit a non-legally binding set of principles and rights, signals a strong political will and commitment by EU institutions and Member States to work towards a more social and inclusive Europe – a Europe that makes better and more respectful use of all its human capital without excluding anyone. It is an opportunity for the EU and Member States to deliver concrete results on promoting and implementing the rights of older people, who are an important part of human capital and have the potential to contribute substantially to all aspects of life.

However, setting rules and minimum standards is only the first step in this process. Raising awareness and using coordination and monitoring mechanisms are all equally essential to fulfil fundamental rights of all, including older people, as provided in the Charter. In this effort, the engagement of both the EU institutions and the Member States is more than necessary.

In this respect, FRA's opinions outlined below should be seen as building blocks in support of the shift towards a comprehensive human rights-based approach to ageing.

FRA opinion 1.1

The EU legislator should continue its efforts for the adoption of the Equal Treatment Directive. The directive will extend horizontally protection against discrimination based on various grounds, including age, to areas of particular importance for older people, including access to goods and services, social protection, healthcare and housing.

FRA opinion 1.2

To deliver on stronger social rights protection, the EU legislator should proceed with concrete legal action, further implementing the principles and rights enshrined in the Pillar of Social Rights. In this regard, it should ensure the rapid adoption of the proposed Work-life Balance Directive and accelerate the procedures for the adoption of a comprehensive European Accessibility Act. To ensure coherence with the wider body of EU legislation, the Accessibility Act should include provisions linking it to other relevant acts, such as the regulations covering the European Structural and Investment Funds.

FRA opinion 1.3

EU institutions and Member States should consider using the European Structural and Investment Funds, as well as other EU financial tools, to promote a rights-based approach to ageing. To enhance reforms which promote living in dignity and autonomy, as well as opportunities to participate for older people, EU institutions and Member States should reaffirm and reinforce in the coming programming period (post 2020) ex-ante conditionalities. Such measures should provide for monitoring their implementation, seeking to ensure that EU funding is used in compliance with fundamental rights obligations.

Furthermore, EU institutions and Member States should systematically address challenges older people face in core policy coordination mechanisms, such as the European Semester.



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2

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



In 2017, the Charter of Fundamental Rights of the European Union was in force as the EU's legally binding bill of rights for the eighth year. It complements national human rights documents and the European Convention on Human Rights (ECHR). As in previous years, the Charter's role and usage at national level was mixed: there appears to be no significant improvement in its use by the judiciary or in legislative processes; and it proved hard to identify government policies aimed at promoting the Charter. Instead, with references in national courts, parliaments and governments remaining limited in number and often superficial, the Charter's potential was once again not fully exploited.

The EU Charter of Fundamental Rights applies to the European Union itself, as well as to the EU Member States "when they are implementing Union law", that is, when they are acting within the scope of EU law.¹ While it is not always easy to draw the borders of the Charter's field of application, its role is central for a proper implementation of EU law. Given that EU law is predominantly implemented at national level, and not directly by the EU institutions themselves, national judges, parliamentarians and government officials are core 'Charter agents' that the EU system relies on.

"The Council acknowledges that the protection of fundamental rights is a horizontal issue which affects all fields of EU activity and can only be realised with the support and active cooperation of all stakeholders at EU as well as at national level. The Council recalls the importance of awareness-raising on the application of the Charter at national as well as at EU level among policymakers, legal practitioners and the rights holders themselves."

Council of the European Union, Conclusions on the application of the EU Charter of Fundamental Rights in 2016, adopted on 12 October 2017

Against this background, since 2013, the EU Agency for Fundamental Rights (FRA) has dedicated a chapter of its Fundamental Rights Report to the use of the Charter at national level. The agency asked its research network, Franet, to provide up to three specific and relevant examples under each of the following categories:

- court decisions where judges use the Charter in their reasoning;

- impact assessments/legal scrutiny that make references to the Charter in the context of legislative proposals;
- parliamentary debates referring to the Charter;
- national legislation referring to the Charter, as well as academic writings on the Charter, comprising, for instance, general articles on the Charter,² on the Charter's role and its impact at national level,³ or on specific Charter rights or the Charter's effect in specific policy areas.⁴

This methodology only provides a small sample that does not allow for a quantitative assessment. However, it brings to the fore those judicial and administrative decisions that national experts considered as most relevant for the use of the Charter in the given Member State. Based on this and additional information on national Charter-related policies requested from the agency's contact persons in national administrations – the National Liaison Officers (NLOs) – this chapter looks at the use of the Charter in national courts, in national parliamentary debates and in legislative procedures. Given that neither Franet nor the NLOs identified relevant national policies promoting the Charter, no section is dedicated to such policies. The necessity for such policies stems in particular from Article 51 of the Charter, which obliges the Member States to respect the rights it covers and to "promote the application thereof in accordance with their respective powers."

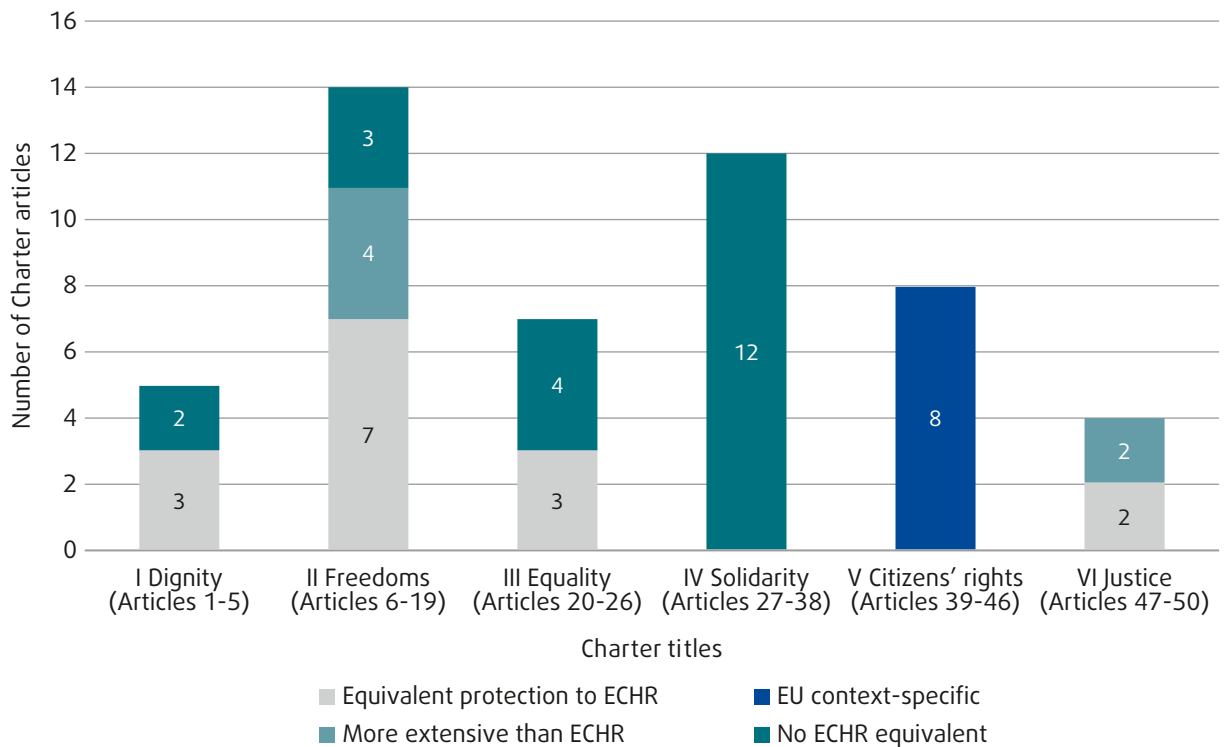
2.1. National (high) courts' use of the Charter: a mixed picture

The analysis below is based on 71 court decisions from 28 EU Member States. Fradet was to report three court decisions per Member State by selecting those where the Charter was most relevant to the reasoning of the court, giving preference to decisions from high courts, which handed down more than two thirds of the analysed decisions. In many Member States, the absolute numbers of court decisions using the Charter continue to be hard to identify – for example, because electronic databases covering all case law are lacking. Often, the frequency of Charter references varies from court to court within a country itself. By way of illustration: in **Austria**, the Supreme Court referred to the Charter 14 times, the Constitutional Court did so 34 times and the Supreme Administrative Court did so 140 times. The data collection considered only those court decisions where the judges used the Charter in their reasoning and did not merely report that the parties had referred to the Charter.

2.1.1. Charter's overall role in national case law: some trends emerge

Looking back five years, a mixed picture emerges on the role of the Charter in national legal systems. For many countries, it is difficult to identify three judgments a year in which a national court has made substantial use of the Charter. In the majority of judgments reported to FRA, the Charter did not have a decisive impact on the outcome. This might indicate that awareness of the Charter and its added value compared with other sources is still limited. This is despite the fact that the Charter offers great potential, which becomes obvious when we compare the fundamental rights protection provided by the Charter articles with those of the ECHR (see Figure 2.1). Just as in previous years, in 2017 there were court decisions where the Charter indeed played a decisive role. For instance, in the **United Kingdom**, the Supreme Court noted that fees introduced in 2013 by employment tribunals contravened EU law's guarantee of an effective remedy before a tribunal as enshrined in Article 47 of the Charter. Because the fees were unaffordable in practice, the Fees Order was deemed a disproportionate limitation on Article 47 in light of Article 52 (1) of the Charter.⁵

Figure 2.1: Number of Charter articles offering protection equivalent to or greater than the ECHR, by Charter title



Note: Based on a comparative analysis of articles of the EU Charter of Fundamental Rights and the ECHR.

Source: FRA, 2017

When national judges use the Charter, they refer to it alongside other legal sources. The ECHR is an especially prominent ‘twin source’ in this regard (see Figure 2.2). Like in the previous four years, in 2017 the ECHR, national constitutional provisions and relevant CJEU case law were the sources used most frequently in conjunction with the Charter.

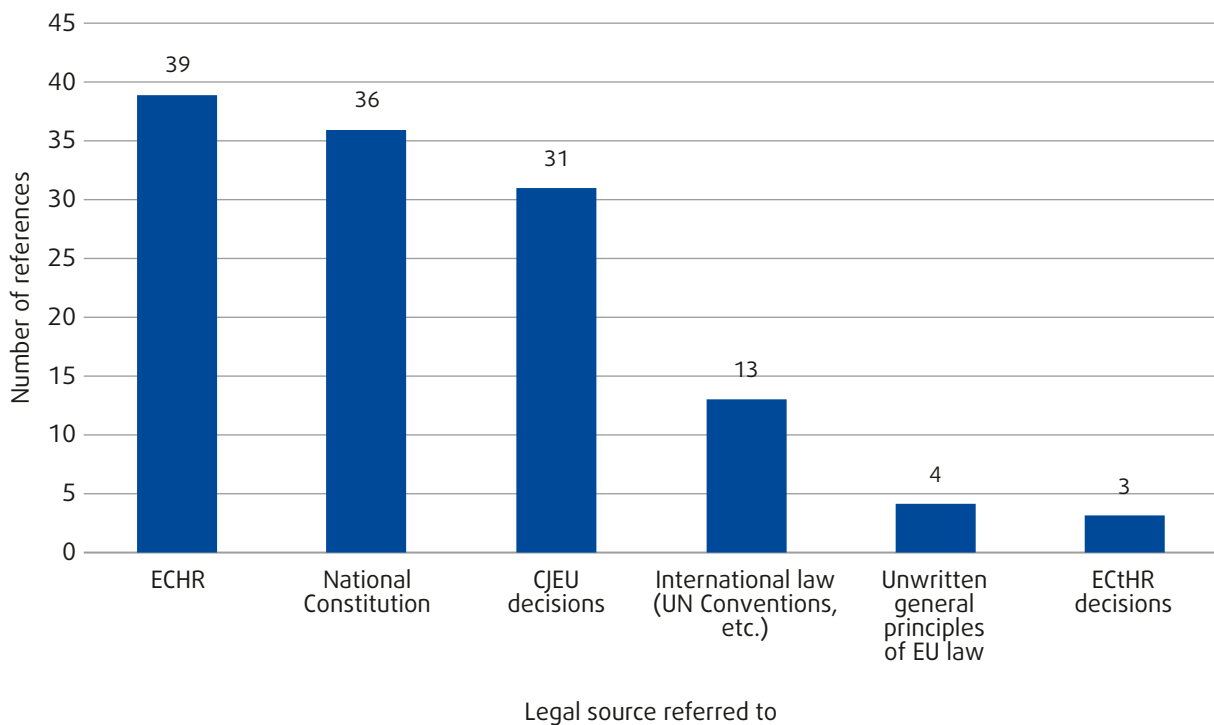
The continuing mixture of sources might signal that judges are aware of the existence of the Charter, but less aware of its scope and the potential value of individual Charter provisions, so they ‘package’ various human rights sources in order to ‘play it safe’. The agency has in previous years called for more emphasis on awareness raising. That judges are aware of the Charter is confirmed by the fact that national judges continued to raise Charter-related arguments on their own initiative in 45 % of the 71 cases analysed in 2017. In the other cases, the parties had already referred to the Charter.

Of the Charter-relevant court decisions reported in 2017, 30 % dealt with border checks, asylum and migration (Figure 2.3). This is in line with the previous four years, when this policy area was always among the four policy areas to which most of the reported Charter cases related.

The right to an effective remedy and to a fair trial (Article 47) remained the provision most often referred to. Indeed, in the past five years (2013–2017), this provision was always – aside from the general Charter provisions, such as the scope of guaranteed rights (Article 52) – the most frequently used Charter provision among the Charter relevant cases reported to the agency (Figure 2.4). This does not come as a surprise, as the provision is horizontal in nature and relevant in all policy contexts. Whereas the prohibition of torture and inhuman or degrading treatment or punishment (Article 4) surfaced only in 2017 as a prominent substantial right in the national court decisions analysed, the right to respect for private and family life (Article 7) was often referred to in recent years. The right to good administration (Article 41) also featured prominently throughout the past five years in the national court decisions reported to the agency.

When it comes to the use of the Charter in the context of requests for CJEU preliminary rulings, diversity persists. In 2017, 50 such requests mentioned the Charter, including references to different articles of the Charter. The number of references to the Charter remained relatively stable in the past years. The most prominent article referred to is Article 47, followed by Article 21. Figure 2.5 shows the number of times Charter articles

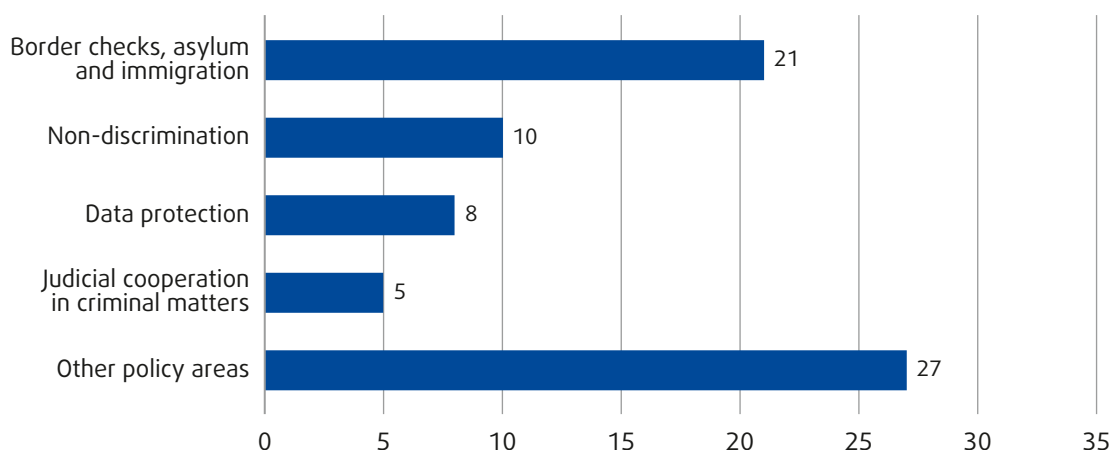
Figure 2.2: Number of references to other legal sources alongside the Charter in analysed court decisions, by legal source referred to



Notes: Based on 71 court decisions analysed by FRA. These were issued in 28 Member States in 2017. Up to three decisions were reported per Member State. More than one legal source can be referred to in one court decision.

Source: FRA, 2017

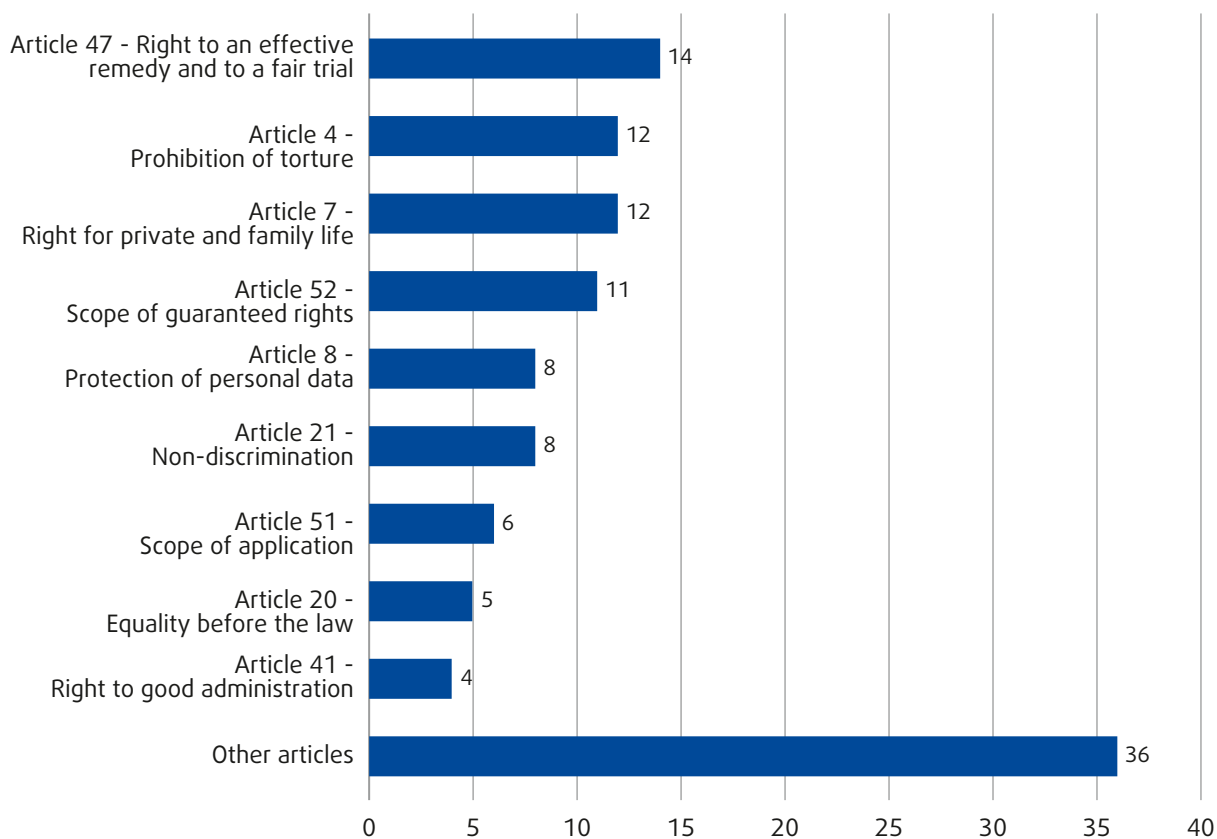
Figure 2.3: Policy areas addressed in analysed court decisions



Notes: Based on 71 court decisions analysed by FRA. These were issued in 28 Member States in 2017. Up to three decisions were reported per Member State. For every case, only the predominant policy area was taken into account. The category 'Other policy areas' includes policy areas that were referred to in fewer than three court decisions. The categories used in the graph are based on the subject matters used by EUR-Lex.

Source: FRA, 2017

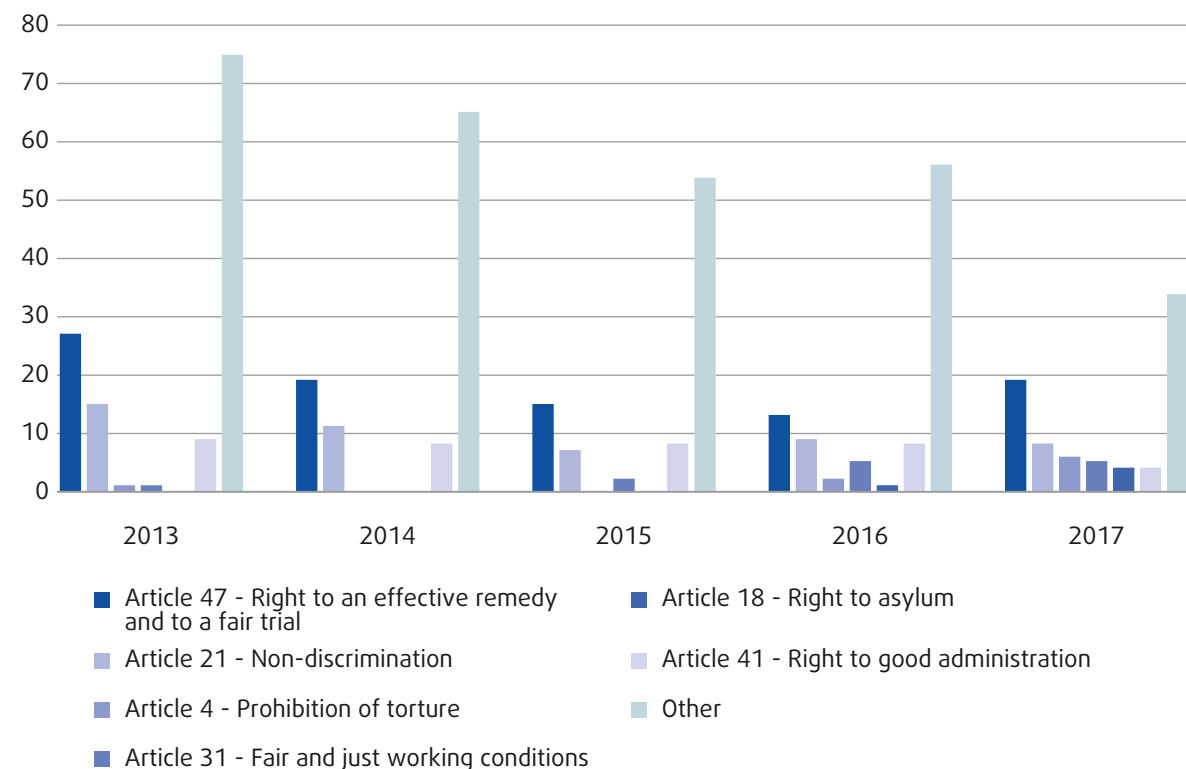
Figure 2.4: Number of references to Charter articles in the 2017 court decisions analysed, by article



Notes: Based on 71 court decisions analysed by FRA. These were issued in 28 Member States in 2017. Up to three decisions were reported per Member State. The category 'Other articles' includes articles that were referred to in fewer than four analysed court decisions. More than one article can be referred to in one court decision.

Source: FRA, 2017



Figure 2.5: Most prominent articles mentioned in preliminary ruling requests, 2013–2017

Source: FRA, 2017 (based on data provided by CJEU on all preliminary ruling requests mentioning the Charter between 2013 and 2017; statistical analysis prepared by FRA)

were mentioned in preliminary ruling requests between 2013 and 2017. In 2017, Article 47 was mentioned most often, in 19 requests; followed by Article 21 (8 times), Article 4 (6 times) and Article 31 (5 times). Most Charter-relevant requests for preliminary rulings in 2017 came from Italy (10), followed by Germany (8), Austria (6) and the Netherlands (6).

2.1.2. Scope of the Charter: still an often ignored question

Article 51 of the Charter defines its scope by stressing that it applies to Member States “only when they are implementing Union law”. CJEU case law interprets this widely as “acting within the scope of EU law”. However, the limits of the scope of EU law are not always easy to delineate. This might contribute to the fact that, just as in previous years, in the majority of the 2017 court decisions analysed, the questions of whether or not and why the Charter applied to the specific case in question remained unaddressed.

A case decided by a regional court in **Poland** serves as an example.⁶ It concerned an application to the local self-government authority for the ‘500+’ social benefit. This benefit is available to families who have at least two children. The applicant did not properly explain his family situation, so the local self-government

authority ordered a social interview. The applicant refused the interview and the authority therefore decided not to grant the benefit. The court held that the authority had not violated Article 7 (respect for private and family life) of the Charter. It did not first examine whether EU law applied to the case.

In 2017, courts continued to use the Charter to interpret national law in contexts where it does not appear to apply. This was especially obvious with Charter provisions that offer more specific wording than one would traditionally find in fundamental rights provisions, such as the right to good administration and the best interests of the child. In this context, the Charter is used to complement national law. For example, the Supreme Administrative Court of **Lithuania** used Article 41 of the Charter, the right to good administration before EU institutions and bodies, to interpret national law. In light of this Charter provision, the court obliged national authorities to re-examine requests to renew temporary residence permits because the applicants had no opportunity to provide explanations and information to dispel any doubts about the reason for their presence in Lithuania.⁷

In **Portugal**, a court of appeal dealt with a case in which the father of a child complained that the child’s mother had failed to comply with the parental responsibility

agreement.⁸ He claimed that the child's mother had decided to change the child's residence and school without his consent and that she had not complied with the court-ordered visiting arrangements. The court concluded that the mother had not breached parental responsibilities and had not violated any of the child's rights. The court made a rather detailed reference to the child's best interests and to Article 24 of the Charter, without explaining if and why the Charter would apply at all.

Article 1 (human dignity) of the Charter is also often referred to in cases beyond the scope of EU law. In a case concerning a supposed theft in a store in Rijeka and the subsequent behaviour of the security guards, the Constitutional Court of **Croatia** gave the Charter considerable prominence. A boy and his father went shopping and, when they left the store, the anti-theft alarm went off. The security guard started checking the boy in a manner causing fear and shame in front of a large group of people and continued even after the police had concluded that nothing had been stolen. The court of first instance granted him compensation for non-material damages in relation to the violation of the right to human dignity and reputation and for the violation of his personal rights. The county court confirmed the first, but decided to deny the second violation on the basis that a 12-year-old child could not develop a sense of personality. The Constitutional Court declared void the decisions of the lower courts. It emphasised, among other things, that "by joining the European Union, the Republic of Croatia has accepted the contents of the Charter, whose chapter I is titled Dignity [...]. In this way, by committing to the contents of the Charter, human dignity becomes a component of the human rights catalogue of the Croatian Constitution."⁹

Where courts are applying an act of EU secondary law, they are more likely to refer explicitly to the Charter's applicability. For instance, in **Bulgaria**, the Supreme Administrative Court had to decide on an appeal against the denial of family reunification. It stated that, "[a]s the right to family life of third country nationals is subject to regulation by EU law, the Charter of Fundamental Rights of the European Union (the Charter) is applicable to this right."¹⁰

Sometimes, when dealing with the applicability of the Charter, national courts simply repeat the wording of Article 51. In some cases, the court makes reference to earlier CJEU and national case law on the question of when the Charter applies. The federal Administrative Court in **Germany**, for instance, did this when it had to decide on the argument of a plaintiff who claimed that the fee for public service broadcasting violated the principle of equal burden. In addition, the plaintiff argued that the right to information also covers the right to escape from information for which fees are required. Hence, the plaintiff raised an issue under

Article 11 (1) of the Charter (freedom of expression and information). The Administrative Court referred to the case law of the Constitutional Court, stating that "the law of the Member States only needs to be assessed in the light of the fundamental rights guaranteed by the Charter if it is determined by the law of the Union. The law of the Union has to substantially determine national law; it especially has to state the obligation of transposition. Moreover, the Charter is applicable if fundamental freedoms of the Treaty on the Functioning of the European Union are at stake."¹¹

However, this year cases were also reported where the judges analysed the Charter's applicability in greater detail. For instance, in the **United Kingdom**, in a case concerning the rights of so-called 'Zambrano carers' (citizens of third countries taking care of their children who are EU citizens), the Supreme Court addressed the applicability of the Charter and Article 21 thereof in greater detail.¹² The Supreme Court in **Spain** also provided full-fledged argumentation about why the Charter did not apply in a case concerning the use of the national flag and emblem on envelopes used by the political party Vox in the Spanish elections. The Spanish Electoral Board declined to distribute the envelopes to the electorate. The Supreme Court made it clear that the Charter was not applicable and therefore could not be invoked against the decision of the Electoral Board. The court referred in detail to relevant case law of the CJEU and concluded: "The Spanish courts, in the same way as European Union judges, can and must apply the Charter; however, in this case there is no connection with any European legislation, so it is enough to take into consideration the constitutional provisions."¹³

"However, the Charter is considered to be ordinary law, as opposed to the Constitution, and is only applicable with respect to matters that fall within the competencies and duties of the European Union. This is not the situation in this case as it deals with matters that fall within national competence. Therefore, inasmuch as the plea is based on the Treaty, it will not be accepted due to the fact that the subject raised in front of this Court is not within Treaty competence."

Malta, First Hall Civil Court, Case 52/2016/LSO, decision of 28 March 2017

Another political case concerned a quota for women in **Cyprus**. Parliament voted for a law and the President of the Republic referred it to the Supreme Court for an opinion. The law introduced a quota of one third of women on the management boards of public organisations. The court unanimously concluded that the specific provision is not allowed under Cypriot law, as it is a measure of positive discrimination and affirmative action in favour of women, in breach of basic equality provisions of the Cypriot constitution, and cannot be defended with reference to EU law. In fact, the court stated explicitly that Article 23 (equality between men and women) "does not apply because



the issue at stake does not concern Union law, as per Article 51 of the Charter".¹⁴ In **Malta**, a case brought before a civil court concerned the requirement for women, but not men, to include their marital status when, for instance, registering a contract of sale with the Public Registry. Although the administrative court found that the requirement violated the constitution and the ECHR, it clarified that the Charter did not apply.¹⁵

2.1.3. The Charter as legal standard: reviewing compatibility of national law with fundamental rights

National judges' use of the Charter was again manifold. They most frequently used it to interpret national law. Sometimes they used it to interpret EU law. Sometimes they also used the Charter to check the legality of national law. In **Austria**, since 2012, the Constitutional Court has used the Charter in the context of constitutional reviews, thereby granting the Charter a constitutional role. In a case concerning online booking platforms and whether or not 'vertical parity clauses', which oblige hotels to offer the same price on the platform as on their own online sale systems, were prohibited, the Constitutional Court confirmed its case law. It underlined that, "if a constitutionally guaranteed right [...] has the same scope as a right of the Charter of Fundamental Rights, the decision of the Constitutional Court is usually based on the Austrian constitutional situation".¹⁶ However, even where the Charter is not formally acknowledged as part of the standards for use in constitutional reviews, the Charter can play a role.

The Constitutional Court in **Bulgaria** referred to the Charter in the context of a constitutional review of a provision in the Judiciary Act (*Закон за съдебната власт*), which prohibits discharging judges or prosecutors from their duties when they resign, if there is a pending disciplinary procedure against them, until the closing of the procedure. The court concluded that the provision violated the principle of freedom of work, enshrined in Article 48 (3) of the Bulgarian Constitution. It then also prominently referred to the Charter, "in accordance with which everyone has the right to engage in work and to pursue a freely chosen or accepted occupation."¹⁷

The Supreme Administrative Court in **Finland** checked the Personal Data Act (523/1999) against the Charter and the ECHR. The case concerned the Finnish Embassy in Switzerland, which had rejected a passport application because the applicant had not agreed to have his fingerprints stored not only in the passport's data chip but also in the passport register. The court concluded that the provisions in the Passport Act concerning storage of fingerprint data in the passport

register and the limitations imposed on the right to private life and the protection of personal data are precise and defined in sufficient detail.¹⁸

Data protection was also at the centre of a case decided by a Higher Administrative Court in **Germany**. The court dealt with whether the relevant provisions of the Telecommunication Act, implementing the EU e-Privacy Directive (2002/58/EC), are compatible with various Charter provisions. The court deemed the limitation of the freedom to conduct business (Article 16 of the Charter) unjustified and hence incompatible with the Charter.¹⁹

2.1.4. The Charter as legal standard: interpreting national law in a fundamental rights-compliant manner

In the cases analysed, courts most frequently used the Charter in the context of interpreting national law. For instance, the Supreme Administrative Court of **Bulgaria** was the last instance court in litigation concerning a teacher who had refused to allow a pupil with a disability to join a school excursion – an alleged violation of the Protection against Discrimination Act (*Закон за защита от дискриминация*). The Supreme Administrative Court confirmed the lower court's decision and rejected the teacher's appeal. To reinforce its argument, the court referred to various rights under the Charter, including Article 1 (human dignity), Article 24 (rights of the child) and Article 26 (integration of persons with disabilities).²⁰

Another example is a case decided by the Supreme Court of **Croatia**, which dealt with a Finnish citizen arrested in Croatia pursuant to a Turkish international arrest warrant. The person had thrown a homemade Molotov cocktail at the Turkish Embassy in Helsinki, causing fire and material damage. A Finnish court had convicted the defendant of sabotage in 2009. The question arose of whether or not the Finnish final judgment could be considered equivalent to a domestic judgment in accordance with Croatian legislation. The court confirmed that the Dubrovnik County Court had correctly concluded that the term 'domestic court' in Article 35, paragraph 1, point 5, of the Act on International Legal Assistance in Criminal Matters (*Zakon o međunarodnoj pravnoj pomoći u kaznenim stvarima*) in this case covered not only the courts of the Republic of Croatia, but also of other EU Member States. The provision has to be interpreted in light of Article 50 of the Charter, according to which no one shall be tried or punished twice in criminal proceedings for the same criminal offence.²¹ Similarly, in **Denmark**, the Supreme Court found that the relevant provisions of the Danish Extradition Act

“should be interpreted in accordance with Article 4 of the EU Charter and Article 3 of the ECHR”.²²

2.1.5. The Charter as legal standard: interpreting EU law

National courts also refer to the Charter when interpreting EU law – typically secondary law, i.e. EU legislation. However, in certain cases, national courts may also interpret a provision of EU primary law in light of the Charter. In **Germany**, the Federal Court of Justice dealt with a case concerning a woman who had received in-vitro fertilisation (IVF) treatment as well as prolonged embryo cultivation (blastocyst transfer) in the Czech Republic.²³ She was charged around € 11,000 by the IVF centre and sought reimbursement from her German insurance company, arguing that, according to the general insurance conditions, treatments in other European countries are insured. She was refused reimbursement, which she believed violated the freedom to provide services (Article 56 of the Treaty on the Functioning of the European Union). The court, however, agreed with the insurance company that – since fertilisation by means of egg cell donation is prohibited under German law – the insurance did not cover the treatment in the Czech Republic, although egg cell donation is permitted there. The court did not find that the insurance conditions violated EU law. In any event, a possible restriction of the freedom to provide services in the event of disputes is to be considered justified by the insurance company’s freedom to conduct a business (Article 16 of the Charter).

2.2. National legislative processes and parliamentary debates: Charter of limited relevance

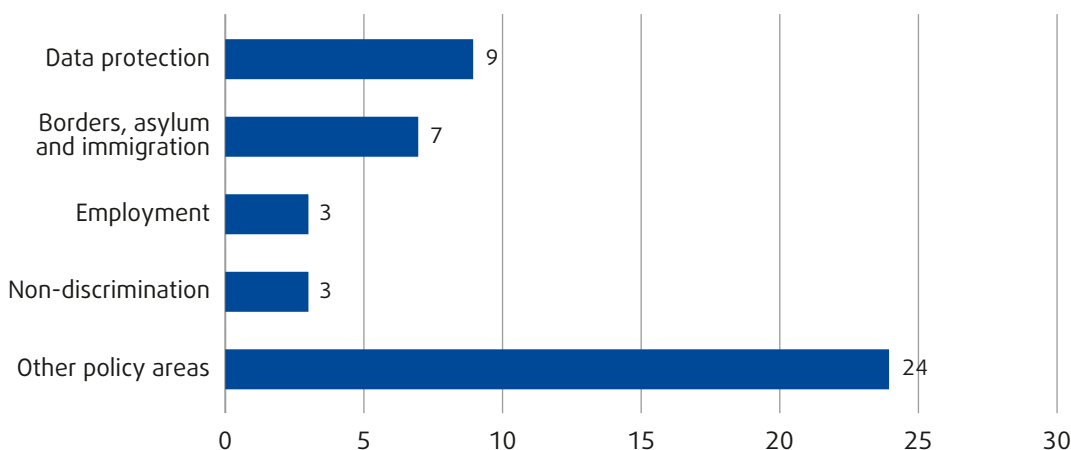
The Charter is sometimes referred to in the legislative process. Parliamentarians occasionally mention the Charter, and legislatures – be they government or parliaments – do use the Charter, even if only occasionally rather than consistently, when assessing bills or their impact. Sometimes references to the Charter are even incorporated in the text of national laws.²⁴ The following evidence, however, points to a rather limited significance of the Charter in these contexts.

2.2.1. Parliamentary debates

FRA collected information on 46 examples of Charter references registered in parliamentary debates of Member States, covering a wide spectrum of thematic areas. It asked Franet to select examples of such references where the Charter played a relevant role. Data protection and borders, asylum and immigration were the predominant topics (Figure 2.6).

Data protection was, for instance, a central topic in a parliamentary debate in **France**, where a legislative proposal raised concerns under Articles 7 (respect for private and family life) and 8 (protection of personal data) of the Charter. A Member of Parliament expressed the view that systematically collecting personal data

Figure 2.6: Policy areas addressed in parliamentary debates identified as referring to the Charter in 2017



Notes: Based on 46 parliamentary debates analysed by FRA. These took place in 20 EU Member States in 2017. Up to three debates were reported per Member State; no parliamentary debates were reported for Bulgaria, Cyprus, the Czech Republic, Latvia, Lithuania, Malta, Romania and Slovenia. The category ‘Other policy areas’ includes policy areas that were referred to in fewer than three parliamentary debates analysed. The categories used in the graph are based on the subject matters used by EUR-Lex.

Source: FRA, 2017

of flight passengers who are not criminal suspects and being able to share those data with other countries would violate the right to respect for private life and data protection as enshrined in the Charter.²⁵

During a plenary debate in **Germany** on various traffic laws, a Member of Parliament invoked the Charter when criticising the working conditions of employees. The member pointed out that “Article 31 of the Charter of Fundamental Rights of the European Union states that every worker has the right to working conditions which respect his or her health, safety and dignity. The European road transport industry has now developed into a sector in which human dignity does not count much, not to mention the protection of safety and health.”²⁶

In light of judicial reforms in **Poland**, the importance of Article 47 (right to an effective remedy and to a fair trial) of the Charter was highlighted in a parliamentary debate on the separation of powers and the independence of the justice system. The Ombudsman expressed concern about a draft law that aimed, among other things, to introduce a retirement regime for Supreme Court judges and to widen political control over the process of appointing and dismissing them.

► For more information on this issue, see [Chapter 9](#).

“We can’t forget that Poland is an EU Member State and each of the Polish courts is also a court of the European Union which has to interpret and apply EU law. That’s why the standards set by Article 47 of the Charter are essential. It matters that the courts are independent from the executive.”

Poland, Adam Bodnar, Ombudsman, *Stenogram of the Sejm’s session*, 18 July 2017

Some debates that referred to the Charter did not necessarily deal with issues falling within the scope of EU law. For instance, a Member of Parliament in **Belgium** asked about the possibility of the Turkish population in Belgium participating on Belgian territory in a Turkish referendum on the death penalty. The Prime Minister replied that this would not be tolerated, citing the Charter as one of the sources from which the prohibition of capital punishment stems.²⁷

In **Spain**, the High Court of Catalonia prohibited the Catalan autonomous broadcaster from airing content that could enable the organisation or holding of a referendum on the self-determination of Catalonia. This prompted a Member of Parliament to ask if this decision violated Article 11 (freedom of expression and information) of the Charter.²⁸ Another reference to Article 11 of the Charter occurred in the **Danish** Parliament, where representatives of the Danish People’s Party made a motion for a parliamentary resolution requesting the government to announce to the Council of the European Union that it would

seek to repeal the EU’s Code of Conduct countering illegal hate speech online, which was developed by the European Commission, Facebook, Twitter, YouTube and Microsoft.²⁹

“The Government must remind the Council of the European Union and the Commission that Article 11 of the EU’s Charter on Fundamental Rights protects the freedom of expression and that it is a requirement that limitations of the freedom of expression are strictly necessary, measure up to the pursued aim and have a clear and transparent basis in national law. The Code of Conduct does not comply with these requirements.”

Members of Parliament, Danish People’s Party (2017), ‘Motion for a bill repealing the EU’s Code of Conduct countering illegal hate speech online’, 29 November 2017

Not all Charter-related statements in parliaments are necessarily restricted to the national territory. In **Portugal**, the Charter was referred to in a debate on amendments to the Hungarian Act on National Higher Education, which especially caused concern regarding its effects on Central European University in Budapest. The law was criticised in the parliamentary debate for violating Article 13 (freedom of the arts and sciences) of the Charter, which provides for freedom of academic and scientific research.³⁰ The Charter was also referred to in the context of the **United Kingdom’s** withdrawal from the EU, during a debate concerning the European Union (Withdrawal) Bill. A Member of Parliament stressed that the envisaged bill did not allow the rights enshrined in the Charter to be retained in British law, and called for an extensive discussion of the topic.³¹

“The hon. and learned Lady is ably illustrating why we need a debate about this. Despite the fact that the EU charter of fundamental rights will not be part of domestic law, she thinks that those rights will, nevertheless, still be protected. Let us have a debate about how we are going to do that. That is my point. On the face of the Bill, it looks like these rights will be lost.”

United Kingdom, UK Parliament, House of Commons (2017), ‘Emergency debate (Standing Order No. 24) – Volume 627’, 17 July 2017

A similar concern was raised during a debate in the **Irish** Parliament on the Good Friday Agreement in relation to Brexit. In response to a question about how equivalent human rights protection in Ireland and Northern Ireland could be ensured, Deputy Charles Flanagan referred to the Charter, underlining that “the Charter provides an important and effective common reference on rights across the island of Ireland, as it does across the EU as a whole. [...] The British Government expressly indicated that the provisions of the EU Charter of Fundamental Rights in Northern Ireland will not be applied as part of British law after the UK leaves the EU. This may require that a consideration may be given to alternative means of ensuring the coherence of rights frameworks across the island of Ireland.”³²

2.2.2. Legislative processes

A considerable part of national legislation is directly or indirectly influenced by EU law and is thus likely to fall within the scope of EU law. It is therefore advisable to check such legislation for potential effects on rights enshrined in the Charter. Fundamental rights considerations can be raised during the legislative process in different ways, including in impact assessments or when a bill comes under legal scrutiny. An impact assessment is an exercise evaluating potential impacts of upcoming legislation. It typically happens when a bill has not yet been fully defined, so that various legislative options can be compared. Member States have procedures that examine the potential impact of different aspects of legislative proposals. While these assessments predominantly focus on economic, environmental and social impacts of bills, many also consider effects on fundamental rights. As the exercise focuses on potential effects rather than on compatibility with higher ranking legal norms, the exercise is not necessarily legal in nature but employs social science, natural science, statistical and other methods.

Another avenue is for legislating bodies – units in the government or the parliament – or independent expert bodies to subject legislation to legal scrutiny. Contrary to impact assessments, which do not necessarily constitute a legal exercise, the legal scrutiny of a bill is a legal assessment based on the specific wording of a final bill, examining the

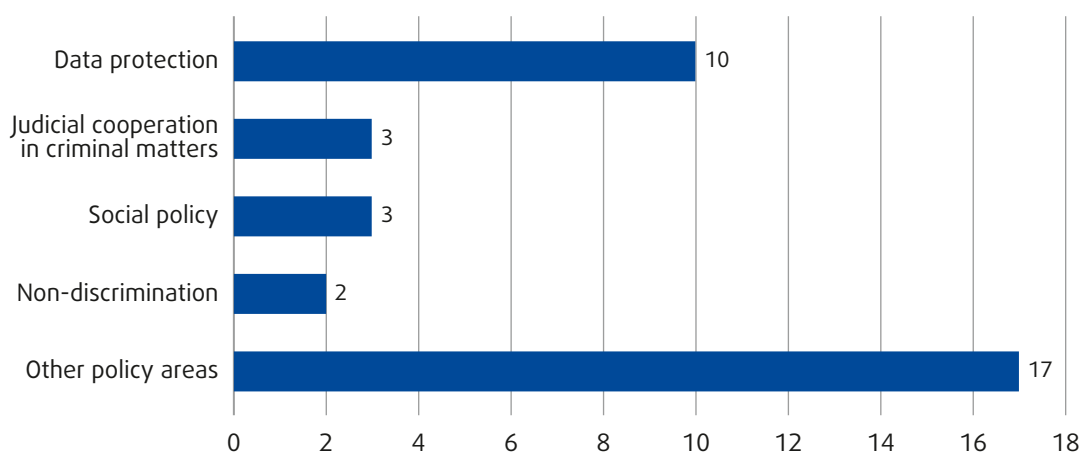
draft legislation’s compatibility with constitutional, supranational and international law. Since some national systems do not neatly differentiate between impact assessments and legal scrutiny, this section analyses both procedures together.

Looking at the 35 examples of impact assessments and legal scrutiny reported in 2017, it appears that the areas of data protection and judicial cooperation in criminal matters are most prone to raising Charter concerns – as was the case, for instance, in **Germany**,³³ **Portugal**³⁴ and **Romania**³⁵ (Figure 2.7).

Many of the references were general and only briefly mentioned the Charter without going into further detail – for example, in **Greece**³⁶ and **Poland**.³⁷ Others, however, were more explicit.

Latvia, for instance, amended its National Security Law in response to security concerns relating to radicalisation and extremism in Europe. The amendment introduces the right of the Minister of the Interior to issue a decision prohibiting an individual from leaving the country if there is sufficient ground to believe that he or she intends to engage in terrorist activities or join armed conflicts abroad. The legislative amendment was assessed to ensure its compliance with Article 45 of the Charter (freedom of movement), with the review pointing out that freedom of movement can be subject to certain restrictions imposed by law if the public interest of a democratic society prevails in the specific context.³⁸

Figure 2.7: Number of impact assessments and legal assessments referring to the Charter in 2017, by policy area



Notes: Based on 35 impact assessments and legal assessments (legal scrutiny) analysed by FRA. These took place in 18 EU Member States in 2017. Up to three examples were reported per Member State; none were reported for Cyprus, Estonia, Hungary, Lithuania, Malta, Romania, Slovakia, Slovenia, Spain and the United Kingdom. The category ‘Other policy areas’ includes policy areas that were referred to in only one assessment analysed. The categories used in the graph are based on the subject matters used by EUR-Lex.

Source: FRA, 2017

An assessment in **Denmark** provides an example in the area of data protection. The Ministry of Justice issued a report to ensure the correct implementation of the General Data Protection Regulation. The regulation formed the basis for the government's proposal for the Danish Act on Data Protection. The report emphasised Article 6 (right to liberty and security), Article 8 (protection of personal data) and Article 28 (right of collective bargaining and action) of the Charter.³⁹

Impact assessments and legal scrutiny often refer to the Charter alongside other international legal instruments, making it difficult to assess the relevance of the Charter itself. For instance, in **Belgium**, the Council of State stressed the need to find the right balance between animal rights and freedom of religion in the context of the implementation of Council Regulation 1099/2009 on the protection of animals at the time of killing and prohibiting ritual slaughter without stunning. The Council of State concluded in its impact assessment that the legislative proposal should be revised to include necessary adjustments ensuring respect for freedom of religion as laid down in, among others, Article 10 (freedom of thought, conscience and religion) of the Charter. The Walloon Parliament took this assessment into consideration by adding that it must be possible to purchase meat coming from a Member State that authorises ritual slaughter without prior stunning.⁴⁰

In **Belgium**, the Federal Migration Centre (Myria) concluded that Bills 2549/001 and 2548/001 of 22 June 2017 modifying the law of 15 December 1980 on removal and detention were not in line with Article 27 of the Dublin III Regulation (Remedies). Considering the latter in combination with Article 47 (right to an effective remedy and to a fair trial) of the Charter, Myria called for an effective remedy to have a suspensive effect on an asylum seeker's transfer where such transfer carried a serious risk of mistreatment. The legislature ultimately did not take this concern into account.⁴¹

2.2.3. National legislation

While the Charter does play somewhat of a role during the legislative process, the texts of adopted national legislation rarely mentions it. However, as the past five years have shown, some examples can be identified. The data collected from 2017 contain 12 examples of explicit references to the Charter in the legislation of seven EU Member States, covering a wide range of thematic areas. The references range from rather symbolic references in a law's preamble to references in operational provisions.

In Article 15 of the law incorporating Directive 2014/92/EU related to payment accounts, **Greece** refers to Article 21 (non-discrimination) of the Charter. The latter serves as a point of reference for the prohibited grounds of discrimination that credit institutions must be aware of when persons legally residing in the EU want to open or access a payment account in Greece.⁴² In **Germany**, paragraph 28 (2) No. 4 of the Federal Criminal Police Office Law, which comes into force on 25 May 2018, clarifies that the transmission of data to Member States of the EU and non-EU countries is precluded in cases where it would amount to a violation of the principles contained in the Charter.⁴³ In **Belgium**, a law on the execution of a European investigation order refers to the Charter as a possible ground for refusal to follow such an order in cases where the latter is incompatible with the rights enshrined in the Charter.⁴⁴

In some cases where the law itself did not mention the Charter, explanatory memoranda to bills mentioning it were reported, instead. An explanatory memorandum for a proposed bill regulating integrated prevention and protection services for people with Down syndrome in **Romania** emphasises Article 26 (integration of persons with disabilities) of the Charter, pointing out that Member States have to develop mechanisms that ensure the full integration of persons with disabilities and their independent living.⁴⁵

FRA opinions

According to the case law of the Court of Justice of the European Union (CJEU), the EU Charter of Fundamental Rights is binding on EU Member States when they act within the scope of EU law. The EU legislature affects, directly or indirectly, the lives of people living in the EU across almost all policy areas. In light of this, the EU Charter of Fundamental Rights should form a relevant standard when judges or civil servants in the Member States deliver on their day-to-day tasks. However, as in recent years (2012–2016), FRA's evidence suggests that judiciaries and administrations make only rather limited use of the Charter at national level. It appears that hardly any policies aim to promote the Charter although Member States are obliged not only to respect the rights covered by the Charter, but also to "promote the application thereof in accordance with their respective powers" (Article 51 of the Charter). Where the Charter is referred to in the legislative process or by the judiciary, its use often remains superficial.

FRA opinion 2.1

The EU and its Member States should encourage greater information exchange on experiences with and approaches to referencing and using the Charter – between judges, bar associations and administrations within the Member States, but also across national borders. In encouraging this information exchange, EU Member States should make best use of existing funding opportunities, such as those under the Justice programme.

EU Member States should promote awareness of the Charter rights and ensure that targeted training modules are offered for national judges and other legal practitioners.

According to Article 51 (field of application) of the EU Charter of Fundamental Rights, all national legislation implementing EU law has to conform to the Charter. As in previous years, the Charter's role in legislative processes at national level remained limited in 2017: the Charter is not a standard that is explicitly and regularly applied during procedures scrutinising the legality or assessing the impact of upcoming legislation – whereas national human rights instruments are systematically included in such procedures. Moreover, just as in previous years, many decisions by national courts that used the Charter did so without articulating a reasoned argument about why the Charter applied in the specific circumstances of the case.

FRA opinion 2.2

National courts, as well as governments and/or parliaments, could consider a more consistent 'Article 51 (field of application) screening' to assess at an early stage whether or not a judicial case or legislative file raises questions under the EU Charter of Fundamental Rights. The development of standardised handbooks on practical steps to check the Charter's applicability – so far the case only in very few EU Member States – could provide legal practitioners with a tool to assess the Charter's relevance in a particular case or legislative proposal. The FRA Handbook on the applicability of the Charter could serve as inspiration in this regard.



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UN & CoE

January

February

March

10 March – Parliamentary Assembly of the Council of Europe (PACE) adopts a resolution on the political rights of persons with disabilities: a democratic issue

17 March – United Nations (UN) Human Rights Committee (HRC) adopts a resolution on freedom of religion or belief

20 March – UN HRC adopts a resolution on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief

April

6 April – In *A.P., Garçon and Nicot v. France* (Nos. 79885/12, 52471/13 and 52596/13), the European Court of Human Rights (ECtHR) holds that requiring sterilisation or treatment involving a risk of sterility to change entries indicating the applicants' sex on their birth certificates violates the right to respect for private and family life (Article 8 of the ECHR)

19 April – UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity issues first report

27 April – PACE adopts a resolution on the protection of rights of parents and children belonging to religious minorities

May

30 May – PACE adopts a resolution on the human rights of older persons and their comprehensive care

June

16 June – UN HRC adopts a resolution on the Special rapporteur on the rights of persons with disabilities

23 June – UN HRC adopts a resolution on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in the implementation of the 2030 Agenda for Sustainable Development

July

11 July – In *Belcacemi and Oussar v. Belgium* (No. 37798/13), the ECtHR holds that banning the wearing in public of clothing that partly or totally covers the face does not violate the right to respect for private and family life (Article 8 of the ECHR); freedom of thought, conscience and religion (Article 9); or the prohibition of discrimination (Article 14)

11 July – In *Dakir v. Belgium* (No. 4619/12), the ECtHR holds that banning clothing that covers the face from being worn in public does not violate the right to respect for private and family life (Article 8 of the ECHR); freedom of thought, conscience and religion (Article 9); or the prohibition of discrimination (Article 14), in combination with Articles 8 and 9 of the ECHR

19 July – UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity issues second report

25 July – In *Carvalho Pinto de Sousa Morais v. Portugal* (No. 17484/15), the ECtHR holds that reducing compensation awarded for a medical error committed during gynaecological surgery on account of the applicant's gender and advanced age violates the prohibition of discrimination (Article 14 of the ECHR) in conjunction with the right to respect for her private and family life (Article 8)

August

September

28 September – UN HRC adopts a resolution on mental health and human rights

October

12 October – PACE adopts a resolution on promoting the human rights of and eliminating discrimination against intersex people

26 October – In *Ratzenböck and Seydl v. Austria* (No. 28475/12), the ECtHR holds that excluding heterosexual couples from entering into registered partnerships reserved exclusively for same-sex couples does not violate the prohibition of discrimination (Article 14 of the ECHR) in conjunction with the right to respect for private and family life (Article 8 of the ECHR)

November

December

5 December – In *Ribač v. Slovenia* (No. 57101/10), the ECtHR holds that not granting an old-age pension on the ground of not having Slovenian citizenship violates the prohibition of discrimination (Article 14 of the ECHR) in conjunction with the protection of property (Article 1 of Protocol No. 1 of the ECHR)

14 December – In *Orlandi and Others v. Italy* (Nos. 26431/12; 26742/12; 44057/12 and 60088/12), the ECtHR holds that the inability for same-sex couples to have marriages contracted abroad registered as a union in Italy violates their right to respect for private and family life (Article 8 of the ECHR)

EU

January

19 January – European Parliament (EP) adopts a resolution on a European Pillar of Social Rights

February

15 February – EP adopts a resolution on the European Semester for economic policy coordination: Employment and Social Aspects in the Annual Growth Survey 2017

March

9 March – In *Petya Milkova v. Izpalnitelen direktor na Agentsiata za privatizatsia i sledprivatizatsionen control (C-406/15)*, the Court of Justice of the EU (CJEU) holds that national law giving additional protection to employees with certain disabilities in the event of dismissal but not to civil servants with the same disabilities is permissible, provided this does not infringe on the principle of equal treatment, in line with the UN Convention on the Rights of Persons with Disabilities in conjunction with the general principle of equal treatment enshrined in Articles 20 and 21 of the EU Charter of Fundamental Rights

14 March – In *Achbita, Centrum voor Gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions (C-157/15)*, the CJEU (Grand Chamber) holds that internal rules of an undertaking prohibiting employees from wearing visible political, philosophical or religious signs do not constitute direct discrimination under the Employment Equality Directive (2000/78/EC); such rules may, however, constitute indirect discrimination if they put persons of a specific religion at a particular disadvantage

14 March – In *Boungaoui and Association de défense des droits de l'homme (ADDH) v Micropole Univers (C-188/15)*, the CJEU (Grand Chamber) holds that an employer cannot stop an employee from wearing an Islamic headscarf upon a customer's wish not to be served by said employee; such wishes cannot be considered genuine and determining occupational requirements within the meaning of the Employment Equality Directive (2000/78/EC)

April

May

22 May – European Commission releases country specific recommendations under the European Semester 2017, also specifically addressing age and disability

June

14 June – EP adopts a resolution on the protection of vulnerable adults

14 June – EP adopts a resolution on the need for an EU strategy to end and prevent the gender pension gap

July

19 July – In *Abercrombie & Fitch Italia Srl v. Antonio Bordonaro (C-143/16)*, the CJEU holds that an employer can dismiss workers on an on-call contract when they reach 25 years of age, since that provision pursues a legitimate aim of employment and labour market policy and the means laid down to attain the objective are appropriate and necessary, in line with the Employment Equality Directive (2000/78/EC – Article 2(1), Article 2(2)(a) and Article 6(1))

August

September

October

November

16 November – EP adopts a resolution on combating inequalities as a lever to boost job creation and growth

17 November – EP, Council of the EU, and European Commission proclaim the European Pillar of Social Rights, including gender equality, equal opportunities, old age income and pensions, and the inclusion of people with disabilities among its 20 key principles

30 November – EP adopts a resolution on the implementation of the European Disability Strategy

December

3

Equality and non-discrimination



The year 2017 brought mixed progress in promoting equality and non-discrimination in the European Union (EU). While the Equal Treatment Directive – proposed in 2008 – had not been adopted by year-end, the EU proclaimed the European Pillar of Social Rights, which is rooted in the principle of non-discrimination. Restrictions on religious clothing and symbols at work or in public spaces remained a subject of attention, particularly affecting Muslim women. Equality for lesbian, gay, bisexual, transgender and intersex (LGBTI) persons made some advances, particularly regarding the civil status of same-sex couples. Meanwhile, findings drawing on a wide range of equality data – including data obtained through discrimination testing – show that unequal treatment and discrimination remain realities in European societies.

Discrimination and unequal treatment manifest themselves in many ways, in a range of contexts and across all areas of life. This chapter begins by considering progress made relating to equality and non-discrimination in the EU. It then moves to the issue of restrictions on religious symbols, followed by an analysis of advances made in EU Member States with regard to the fundamental rights of LGBTI persons. A section on equality data – crucial for evidence-based policymaking – provides evidence of (in)direct discrimination in employment and housing and highlights that social exclusion and unequal treatment persist throughout Europe. The chapters on ageing, on racism and xenophobia, on Roma integration, and on the implementation of the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) complement the findings outlined in this chapter.

3.1. Mixed progress in promoting equality and non-discrimination in the EU

The multiplicity of ways in which people in the EU experience discrimination and unequal treatment reinforces the need for the Council of the EU to progress in its negotiations on the adoption of the proposed

Equal Treatment Directive. These entered their ninth year in 2017, and had not been concluded by year-end.¹ Adopting this directive would ensure that the EU does not operate an artificial hierarchy of grounds. Instead, the EU would offer people comprehensive protection against discrimination in key areas of life, irrespective of their sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. For more information on the proposed Equal Treatment Directive, see [Chapter 1](#).

If adopted, this directive could also contribute to the realisation of a range of principles and rights included in the European Pillar of Social Rights. The European Parliament, the Council of the EU and the European Commission proclaimed the Pillar in November 2017. This provides the Union with an additional means through which to promote equality and non-discrimination. The Pillar includes gender equality, equal opportunities, old age income and pensions, and the inclusion of people with disabilities among its 20 key principles.² For more information on the European Pillar of Social Rights, see [Chapter 1](#).

*“The [European] Pillar [of Social Rights] partially goes beyond the current *acquis* by extending protection against discrimination on the grounds of religion or belief, disability, age and sexual orientation to the areas of social protection, including social security and healthcare, education, and access to goods and services available to the public. The Pillar also extends the prohibition of discrimination based on gender to the area of education, which is not covered by the current *acquis*.”*

European Commission (2017), *Establishing a European Pillar of Social Rights*

As noted in previous editions of the Fundamental Rights Report, one way to promote equality and non-discrimination in the EU is to provide national equality bodies with the necessary human, technical and financial resources, premises and infrastructure. This would allow them to fulfil their functions and deploy their powers within their legal mandate effectively and independently.



The Racial Equality Directive requires all EU Member States to designate an equality body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin (Article 13.1). However, the directive only provides minimum standards for the competences of such bodies. Article 13.2 of the directive lists the competences of these bodies as follows: providing assistance to victims of discrimination; conducting surveys on discrimination; and publishing reports and making recommendations in relation to discrimination.

Against this backdrop, the European network of equality bodies (Equinet) continued working on developing standards for equality bodies during 2017, following up on the publication of its working paper on the topic in November 2016.³ Further development of these standards will be based on the revision of the general policy recommendation issued by the Council of Europe’s European Commission against Racism and Intolerance (ECRI), which urges setting up specialised bodies to combat racism, xenophobia, antisemitism and intolerance at the national level.⁴ While ECRI adopted a revised recommendation in December 2017, the final text had not been published by year-end.

3.2. Religious symbols remain centre of attention

About one in three self-identified Muslim men and women who took part in FRA’s Second EU Minorities and Discrimination Survey (EU-MIDIS II) and who wear visible religious symbols indicated that they experienced discrimination, harassment or police stops. This contrasts with Muslim men and women

who do not wear such symbols, about one in four of whom indicated having had such experiences. The survey findings also show that about three in 10 women who wear a headscarf or a niqab are in employment, compared to about four in 10 for women who do not.⁵

Restrictions on religious clothing or symbols at work or in public spaces remained a subject of attention in the EU in 2017, particularly regarding face-covering garments worn by some Muslim women. This is evidenced in findings from an analysis of related legislation in the EU 28;⁶ in preliminary rulings issued by the CJEU (*Achbita* and *Bouagnaoui*) and judgments of the European Court of Human Rights (ECtHR – *Belcacemi and Oussar v. Belgium* and *Dakir v. Belgium*) in 2017; and in legal developments in some EU Member States (**Austria, Germany, Latvia**). These developments mainly concern the religious practices of some Muslim women.

“[A] minority of [EU] Member States have national, regional and/or local legal prohibitions relating to the wearing of (some forms of) religious clothing and symbols at work in public and/or private employment, in other areas or even in all public spaces. A few other Member States are considering such legislation. There is case law from just over half of the 28 EU Member States but there are also Member States where the issue has not (or not yet) arisen. Therefore, practices vary significantly between Member States, but the issue of the wearing of religious clothing or symbols has arisen in case law or debates in a considerable number of EU Member States.”

European network of legal experts in gender equality and non-discrimination (2017), *Religious clothing and symbols in employment – A legal analysis of the situation in the EU Member States*, p. 6

In *Achbita*, the CJEU held that internal rules prohibiting employees from wearing visible political, philosophical or religious signs do not constitute direct discrimination within the meaning of the Employment Equality Directive. The CJEU did hold, however, that such rules may constitute indirect discrimination if they put persons of a specific religion at a particular disadvantage.⁷ On 7 October, the Belgian Court of Cassation ordered a retrial of the *Achbita* case,⁸ finding that the arguments of the Antwerp Labour Court had failed to test the employer’s policy of neutrality against the Belgium antidiscrimination law.⁹

In *Bouagnaoui*, the CJEU held that an employer cannot stop an employee from wearing an Islamic headscarf if a customer does not wish to be served by said employee. Such wishes cannot be considered genuine and determining occupational requirements within the meaning of the Employment Equality Directive.¹⁰ On 22 November, the French Court of Cassation annulled the judgment of the Paris court of appeals and ordered a retrial of the *Bouagnaoui* case. Among others, the Court of Cassation found that

banning the wearing of a veil in a private commercial enterprise, even if only when in contact with clients, is an unjustified and disproportionate restriction on religious freedom.

The ECtHR also issued relevant judgments in this area in 2017. In *Belcacemi and Oussar v. Belgium*, as well as in *Dakir v. Belgium*, the ECtHR held that banning the wearing in public of face-covering clothing does not violate the right to respect for private and family life (Article 8 of the ECHR); freedom of thought, conscience and religion (Article 9); or the prohibition of discrimination (Article 14). Both cases drew on jurisprudence established by *S.A.S. v. France*, where such restrictions were analysed in light of the principle of ‘living together’.

Meanwhile, legislation banning face-covering in public spaces was adopted in **Austria** and **Germany**, with **Latvia** tabling a bill to that effect in 2017. While the **Austrian** legislation adopted in October¹¹ applies to all forms of face-covering gear, the media and public debates commonly referred to the law as a ban on burqas.¹² The stated aim of the law is to facilitate integration by increasing participation in society, with the legal text premising integration on how people interact with each other.

Comparable legislation was adopted in Lower Saxony, **Germany**, in August.¹³ The relevant act provides that pupils must not make it significantly difficult to communicate with others at school because of their behaviour or dress. It was adopted in the wake of a case involving a Muslim pupil who refused to come to school without wearing a niqab.¹⁴

Still in August, the **Latvian** Cabinet of Ministers approved a bill from the Ministry of Justice that would put restrictions on covering one’s face in public, except where necessary for professional, health or artistic reasons.¹⁵ According to the Minister of Justice, the “main aim of the law is prevention, so that people know beforehand that they will have to observe the rules of our cultural historical environment”.¹⁶ The bill seeks to ensure unity and harmony in society, foster communication between members of the public and promote living together. It foresees a complete ban on face-covering in public places, except in churches, prayer rooms or premises reserved for religious activities. In November, the parliament’s legal office advised against adopting this bill, because there was not sufficient justification to conclude that the restrictions it proposes are proportionate and in compliance with either the Latvian constitution or the European Convention on Human Rights.¹⁷

EU Member States sometimes also adopt legislation banning religious symbols with the intention of preserving the neutrality of public authorities, as

was the case in Baden-Wuerttemberg in **Germany** in May.¹⁸ The relevant act prohibits judges and state prosecutors from wearing religious headgear, such as the hijab or the kippah, to ensure that they are not seen as being religiously or politically biased.¹⁹ The law will come into force on 1 January 2018. In June 2017, similar national legislation took effect, prohibiting civil servants in Germany from covering their faces when completing their duties, except for health reasons.²⁰

3.3. LGBTI equality in the EU advances

The European Commission published a list of actions to advance equality for lesbian, gay, bisexual, trans and intersex (LGBTI) persons in December 2015. This list covers the period 2016–2019, and includes improving rights and ensuring legal protection of LGBTI people and their families, as well as monitoring and enforcing existing rights among its objectives. A number of EU Member States introduced relevant legal changes and policy measures throughout the year.

Several EU Member States aligned the civil status of same-sex couples to that of married couples (**Austria, Finland, Germany, Ireland, Malta**), although sometimes with limitations regarding adoption or assisted procreation (**Slovenia**). Other EU Member States took steps to de-medicalise the process of gender reassignment (**Austria, Denmark, the United Kingdom**), with another adopting simplified procedures for trans persons to alter their registered sex (**Greece**). The issue of binary gender markers came to the foreground in some EU Member States (**France, Germany, Luxembourg, Malta**). Concerning intersex persons, the **Austrian** bioethics commission published a position paper on intersexuality and trans identity (*Transidentität*).

Regarding same-sex couples, the ECtHR held in *Orlandi and Others v. Italy* that not registering or recognising the union of same-sex couples who had their marriages contracted abroad violates the right to respect for private and family life (Article 8 of the ECHR). Marriage became gender neutral in **Malta**, with the amended marriage act coming into force in September.²¹ Similarly, an act took effect in **Germany** in October, allowing same-sex couples to marry.²² In December, the constitutional court in **Austria** deemed discriminatory existing legislation preventing same-sex couples from marrying. This legislation will be annulled as of 31 December 2018.²³

In **Finland**, amendments to the marriage act allowing same-sex marriage came into force in March 2017,²⁴ thereby also making it possible for married same-sex couples to adopt children.²⁵ In October, it became possible for unmarried couples, including

same-sex couples in civil partnerships, to adopt children in **Ireland**.²⁶ Civil unions became equivalent to marriage in **Slovenia** in February, including for same-sex couples, except as regards adoption and medically assisted procreation.²⁷

In the United Kingdom, the **Scottish** Government announced measures to promote equality for LGBT persons in July.²⁸ One of these aims to de-medicalise the process for gender reassignment through a review of the gender recognition act.²⁹ At the time of writing, individuals still needed a diagnosis of gender dysphoria and to provide evidence that they have been in transition for at least two years before they can apply to legally change their gender.

In June, the **Austrian** Ministry for Health and Women published updated recommendations on the treatment procedure for gender dysphoria; the first such recommendations were published 20 years earlier. The recommendations cover the steps to take regarding the diagnostic process; the treatment plan; the therapeutic process; preparations for hormonal therapy; the hormonal therapy itself; preparations for the operation; the operation itself; and the post-operative phase.³⁰

Similarly, the **Danish** Ministry of Health published guidelines on health assistance in the context of gender identity and gender reassignment in September.³¹ Notable aspects of the guidelines include efforts to de-stigmatise transgender people within the health care system, as well as reducing the threshold for hormonal treatment for adults undergoing gender reassignment.

Legislation establishing a framework for a simplified procedure enabling trans persons to alter their registered gender came into force in **Greece** in October.³² Previously, trans persons could only alter their registered gender by filing a petition with the magistrate court, which would issue a decision ordering the registry office to alter the registered gender. This required applicants to submit evidence of having undergone a psychiatric evaluation and gender reassignment surgery. Though a court decision is still needed under the new law, it is now sufficient for trans persons to make a declaration before a magistrate judge for a decision to be made on altering their registered gender.

Changing attitudes towards gender identity, gender expression and gender characteristics can also be observed in **Germany**, as evidenced in a position paper published by the Ministry for Family Affairs, Senior Citizens, Women and Youth in November.³³

In this paper, the ministry called for the existing transsexual persons act³⁴ to be replaced with an act on the protection and acceptance of gender diversity; banning sex reassignment surgery for intersex children; and introducing a third gender category in the civil status act.³⁵ In addition, the National Action Plan to Fight Racism, which the German Cabinet passed in June 2017, includes measures to combat homophobia and transphobia.³⁶

Concerning gender markers, the German Federal Constitutional Court ruled, in October, that the civil status act is discriminatory towards intersex persons on the ground of their gender. The act will have to be revised by the end of 2018.³⁷ This relates to a complaint lodged by an intersex person who wanted to be registered as 'inter/diverse' or 'diverse' rather than as 'female' or without any gender in the civil registry.

In November, the **Luxembourg** Government Council mandated an inter-ministerial committee to reflect on the possibility of adding a third sex category to the civil code, in response to a parliamentary question.³⁸ Following up on the LGBTIQ action plan 2015-2017,³⁹ it has been possible to introduce an 'X' gender marker in passports and identity cards in **Malta** since September 2017.⁴⁰ This marker is not considered a third gender, but rather as a recognition of non-binary or genderqueer persons. The only requirement to opt for the 'X' marker is for the applicant to take an oath before a notary and to submit the necessary forms indicating 'X' for gender.⁴¹ This change did not require any legal amendments, but simply approval at Cabinet level.

This contrasts with the situation in **France**. In May, the court of cassation rejected a person's request to have their gender recorded as 'neutral' in the civil registry. The court argued that granting this request "would have profound repercussions on the rules of French law based on the binary nature of the sexes and would require many legislative coordination modifications".⁴²

As noted above, the **Austrian** bioethics commission published a position paper on intersexuality and trans identity (*Transidentität*), addressing 25 recommendations to the Federal Government. These cover preventing exclusion of and discrimination against intersex and trans persons; gender assignment; and gender reassignment.⁴³



Promising practice

Public authorities actively engage to advance LGBTI equality

The Finnish Ministry of Justice launched *Project Rainbow Rights Promoting LGBTI Equality in Europe* on 1 January 2017, to support the implementation of non-discrimination legislation in **Finland** and in the Baltic States. The project includes four objectives: mainstreaming equality and non-discrimination in Finnish municipalities; raising awareness of LGBTI-relevant issues at the local level; enhancing transnational and cross-border cooperation on LGBTI policy; and tackling multiple discrimination. The project is funded by the EU's Rights, Equality and Citizenship Programme and runs until 31 December 2018. The Finnish Ministry of Justice coordinates the project, and implements it in cooperation with the Association of Finnish Local and Regional Authorities and two civil society organisations active in the field of LGBTI rights (Seta – LGBTI Rights in Finland and Lithuanian Gay League). The Ministry of Social Affairs and Health also participates in the project.

For more information, see Finland, Ministry of Justice (2017), Project Rainbow Rights Promoting LGBTI Equality in Europe.

In **France**, on the international day against homophobia, transphobia and biphobia, the French defender of rights unveiled a guide to prevent and identify discrimination towards LGBT people at work. The guide invites employers to take a stand against such discrimination, within and outside their organisations, including if it comes from suppliers or customers. The guide suggests concrete action that can be taken in this regard, such as awareness raising and training for staff, adopting internal equality policies, or taking decisive action against homophobic or transphobic behaviour.

For more information, see France, Défenseur des droits (2017), Agir contre les discriminations liées à l'orientation sexuelle et à l'identité de genre dans l'emploi.

In **Italy**, the Ministry of Education, Higher Education and Research sent a circular to all seven school authorities in the country to mark the international day against homophobia, transphobia and biphobia. Calling for its wide diffusion among educational institutions, the circular stressed the important role schools play in raising awareness of discrimination on all grounds. The circular encourages school authorities to provide educational institutions with the means to enable staff to promote an inclusive culture. To support this initiative, the ministry relaunched an online platform called "We are equal" (*Noi siamo pari*) to enable an exchange of good practices implemented by educational institutions to promote equal opportunities.

For more information, see Italy, Ministero dell'Istruzione, dell'Università e della Ricerca (2017), 17 maggio - Giornata internazionale contro l'omofobia and Noi siamo pari – il portale delle pari opportunità.

Over 1,000 schools in the United Kingdom will launch projects during the course of the academic year 2017–2018 to address homophobic, biphobic and transphobic bullying in the classroom. This is part of a £ 3 million initiative led by the Government Equalities Office, which aims to ensure that children are not subject to bullying due to their sexual orientation or gender identity. As part of this initiative, primary and secondary schools will establish partnerships with the National Children's Bureau and civil society organisations active in the fields of LGBT rights and children's rights.

For more information, see UK, Government Equalities Office (2017), Schools around the country to stamp out LGBT bullying.

Intersex & Transgender Luxembourg organised the Intersex Days 2017 on March 20 and 21, under the patronage of the **Luxembourg** Minister of Health. Noting that about 1.7 % of human beings are estimated to be intersex, these days aimed to break taboos surrounding the issue. One of the main themes discussed was non-consensual surgical and hormonal treatment of children and adults and the impact of such treatments on their health, education and social relations. The Commissioner for Human Rights of the Council of Europe, public authorities and non-governmental organisations supported the initiative.

For more information, see Luxembourg, Intersex & Transgender Luxembourg (2017), Journées Intersexes 2017.

3.4. Discrimination and unequal treatment remain realities, data underscore

Solid data crucial to foster equality

EU and national policy actors need to rely on robust data if they are to identify and act upon patterns of inequality. There is a need for data that measure the outcome of policies put in place to foster equality, increase social inclusion and combat discrimination. Systematic data collection provides the EU and its Member States with baseline information they can use to ensure that people who live there are treated equally and in full respect of their fundamental right to non-discrimination.



Different types of data, such as statistical and administrative data, as well as scientific evidence can be used to support policymaking to promote equal treatment and combat discrimination. Such data can be used to assess the implementation of the Racial Equality Directive (2000/43/EC) or the Employment Equality Directive (2000/78/EC). The European Commission against Racism and Intolerance (ECRI) further stresses the need for good data to support the fight against discrimination in its general policy recommendations No. 1 and No. 4.⁴⁴ The United Nations Convention on the Rights of Persons with Disabilities (CRPD) offers guidance on the collection of equality data.

In addition, EU Member States and the European Commission⁴⁵ are committed to the 2030 Agenda for Sustainable Development,⁴⁶ in which the work of FRA is anchored. The agenda outlines 17 sustainable development goals (SDGs), each of which includes specific targets and indicators. SDG 10 on reducing inequality within and among countries is of particular relevance when considering equality data. The availability of such data would enable the EU and its Member States to measure progress with regard to meeting targets 10.2 and 10.3 of the Agenda for Sustainable Development:

- **Target 10.2:** By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status.
 - **Indicator 10.2.1:** Proportion of people living below 50 per cent of median income, by age, sex and persons with disabilities.
- **Target 10.3:** Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and

promoting appropriate legislation, policies and action in this regard.

- **Indicator 10.3.1:** Proportion of the population reporting having personally felt discriminated against or harassed within the previous 12 months on the basis of a ground of discrimination prohibited under international human rights law.

Equality data are powerful tools through which to uncover patterns of discrimination on different grounds. The *European Handbook on Equality Data* defines data as “any piece of information, whether in numerical or in some other form. The function of data is that they reveal something about some aspect of reality and can therefore be used for analysis, reasoning or decision-making”. The handbook defines equality data as “any piece of information that is useful for the purposes of describing and analysing the state of equality”.⁴⁷

Following up on the publication of this updated handbook, the EU High Level Group on Non-Discrimination, Equality and Diversity agreed, in October 2017, to set up a Subgroup on Equality Data. The European Commission invited FRA to facilitate the work of this subgroup, which has been mandated to draft non-binding guidelines on improving the collection and use of equality data. The subgroup will be formally set up in 2018, bringing together EU Member States, the European Commission, the statistical office of the EU (Eurostat) and FRA.

Data reveal persistence of inequality

The year 2017 saw the publication of research findings drawing on equality data (including nationally representative surveys), showing some of the manifold ways in which discrimination and unequal treatment affect European societies. EU institutions and Member States can draw on such findings to assist them in monitoring the implementation of policies and measures put in place to foster equality and promote non-discrimination. Such data thereby offer a solid foundation on which to develop evidence-based policymaking.

In 2017, FRA published findings from its Second European Union Minorities and Discrimination Survey (EU-MIDIS II). The survey looked at experiences of perceived discrimination among immigrants, descendants of immigrants and members of ethnic and religious minorities across a range of areas of life. EU-MIDIS II is the most comprehensive survey in the field to date and provides comparable data at EU Member State level that are otherwise not available.

The survey as a whole collected information from over 25,500 respondents drawn from seven target population groups in all 28 EU Member States.⁴⁸

These groups include immigrants and descendants of immigrants from Asia and South Asia, North Africa, Sub-Saharan Africa and Turkey, as well as recent immigrants, Roma and members of the Russian minority. Detailed findings on these people's experiences of discrimination drawn from EU-MIDIS II are available on [FRA's website](#). For more information ► on ethnic and racial discrimination, see Chapter 4.

Research conducted by equality bodies and public authorities further show that members of the general population also experience discrimination and unequal treatment on a number of grounds, with many not reporting incidents to any authority (**Bulgaria, Croatia, France, Germany, Hungary, Poland**).

Other research conducted or published by public authorities 2017 sheds light on the social exclusion of people in situations of vulnerability (**Latvia**); limitations on the inclusion of foreigners in the labour market (**Estonia**); and unequal working and living conditions for persons with disabilities compared to persons without disabilities (**Denmark, Germany, Ireland, Sweden**).

The **Bulgarian** commission for protection against discrimination conducted a national representative survey to identify those most often exposed to discrimination.⁴⁹ The results show that slightly more than one in 10 respondents perceived themselves as victims of discrimination, mostly on the ground of ethnicity, followed by age, religion and then disability. About one in 20 respondents claimed they experienced discrimination at work, most often on the grounds of ethnicity, followed by age and gender.

Similarly to findings of EU-MIDIS II, only one in 10 of those who said they experienced discrimination in Bulgaria reported this to the authorities. The most common reasons for not reporting include a lack of confidence that anything would change as a result of reporting; solving the problem alone or with family or friends; the case was trivial and not worth reporting; and not knowing where to report a case. Just under two-thirds of respondents said they were not informed about their rights in cases of discrimination, with more than eight in 10 of those who reported incidents to the police not satisfied with the police's reaction.

The **Croatian** Ombudsperson Office repeated, for the third time, a general population survey on attitudes to and awareness of discrimination.⁵⁰ The findings show that people in Croatia perceive nationality/ethnicity as the most common ground of discrimination in the country. In terms of specific population groups, the respondents perceived Roma as the most discriminated against, followed by LGBT people, persons with

disabilities and poor people. Employment is perceived as the most common area where people experience discrimination, with public authorities regarded as the main culprits. As far as their own experiences are concerned, one in five respondents stated that they had been discriminated against in the past five years. About two-thirds of these did not take any steps to seek redress, mainly because they thought that nothing would change as a result. Where people reported incidents of discrimination, they mainly turned to the police, followed by the Ombudsperson Office.

The **Hungarian** Equal Treatment Authority published the findings of a nationally representative survey on personal experiences of discrimination, social perceptions of discrimination, and rights awareness.⁵¹ The survey findings show that slightly more than one third of the Hungarian population experienced discrimination on the basis of at least one of the 20 protected grounds. Age, financial situation, state of health and social origin were the most frequently mentioned grounds of discrimination. Concerning social perceptions, the most frequent ground of discrimination identified by the respondents was someone's Roma origin, followed by age and disability. As regards rights awareness, just over one in four people knew of the Equal Treatment Authority.

Similarly, other nationally representative research commissioned by the **Polish** commissioner for human rights shows low levels of awareness of legislation prohibiting discrimination and any form of compensation to which a person facing discrimination may be entitled.⁵²

Slightly under one in three people in **Germany** stated that they had experienced discrimination in the past two years. This is evidenced in findings of research published jointly, and for the third time, by the federal anti-discrimination agency and the commissioners of the Federal Government and the Federal Parliament.⁵³ The most commonly experienced ground of discrimination was age, followed by sex, religion or belief, race/ethnicity, disability and then sexual orientation. The research further shows that women experience discrimination on the ground of sex five times more often than men, also frequently on a combination of grounds. This includes, for example, in combination with age, when women are not hired because they might become pregnant; in combination with sexual orientation, when lesbian women are predominantly exposed to homophobia or sexual assault; or in combination with religion, when Muslim women who wear different forms of head-coverings are primarily affected by prohibitions of religious symbols.

Promising practice

Providing guidance on fighting discrimination to public authorities

The Secretary of State for towns and cities in **France**, in partnership with the *Délégation Interministérielle à la Lutte Contre le Racisme, l'Antisémitisme et la Haine anti-LGBT* (DILCRAH), produced an inter-ministerial guide for public authorities at national and local level. This practical guide to combat discrimination covers four main areas of relevance to public authorities:

- the regulatory framework and institutional environment relating to non-discrimination;
- training that public and private sector stakeholders are entitled to;
- tools to support how to respond to victims of discrimination;
- existing anti-discrimination measures and actions in the areas of education, employment, culture, housing and citizenship.

A booklet was also produced for users of local public services, such as town halls, employment centres, family allowance offices, social centres and public service buildings. The booklet comprises examples of discrimination drawn from daily life and aims to help citizens identify discriminatory situations, as well as whom to contact and what action to take in such cases.

For more information, see France, Ministère de la ville, de la jeunesse et des sports (2017), Guide pratique de lutte contre les discriminations and Discriminations, c'est non!

In March 2017, the **French** public defender of rights and the International Labour Organization presented findings of the 10th barometer on the perception of discrimination in employment.⁵⁴ The findings indicate that one in two people consider discrimination to be common when looking for work. One in three consider discrimination a frequent occurrence during the course of one's career. Regarding personal experiences, about a third of the working population said it experienced at least one instance of discrimination in the past five years, on the grounds of either sex, health or disability, age, pregnancy or maternity, religious beliefs or origin.

Research conducted in **Latvia** concerning the social inclusion of persons in situations of vulnerability shows that public awareness of discrimination is low, with gender discrimination often perceived as not being a problem.⁵⁵ The findings also show that persons with intellectual disabilities and Roma people often face discrimination in employment. As is the case in other EU Member States, most people who experience discrimination do not know where to turn to report incidents.

The research included an opinion poll,⁵⁶ which shows that Latvian residents often harbour negative attitudes towards asylum seekers and visible minorities. The poll shows that about one third of Latvian residents do not want to either live next to, work with or be friends with Roma. Similar findings emerge with regard to Muslims, refugees and asylum seekers.

The position of non-Estonians on the labour market is worse than that of Estonians, findings from the regular integration monitor of **Estonian** society show.⁵⁷ This is reflected in (un)employment rates, pay gaps and security on the job market, as well as perceptions of experiences of discrimination based on nationality. According to the monitor's findings, this mainly concerns Russian-speaking non-Estonians, while non-Estonian women were found to be the most likely to perceive experiencing inequalities in the job market. Other areas where non-Estonians were found to perceive experiencing discrimination and unequal treatment include participation in politics and education. According to findings of the monitor, one in 10 non-Estonians believed they experienced intolerance based on their nationality or ethnicity, with one in five feeling that they are second-class citizens in the country.

Persons with disabilities are particularly vulnerable to social exclusion and likely to experience unequal living and working conditions (see also [Chapter 10](#)). This is reflected, for example, in the application of statistical outcome indicators developed by the **Danish** institute for human rights to monitor the implementation of the CRPD – in 'The Disability Index'.⁵⁸ The second wave of a survey on health, impairment and living conditions in Denmark applied all 10 indicators, covering about 20,000 people. The findings show that, for nine of the 10 indicators, persons with disabilities are at a disadvantage compared to the rest of the population. This included health conditions and experiences of violence or discrimination.⁵⁹

An analogous pattern emerges from research published in **Germany** in 2017, which shows that the participation of people with disabilities is limited in many areas of life.⁶⁰ For example, in 2014, only about a third of pupils with special educational needs attended a regular school. In 2013, 47 % of women and 52 % of men with disabilities went to work, compared to 64 % of women and 77 % of men without disabilities. This research drew on the official micro-census, the socio-economic panel and official statistics such as social security statistics, statistics of the Federal Employment Agency, care statistics, child care statistics, and statistics on child and youth welfare, as well as existing quantitative and qualitative research.

Similarly, an analysis of the **Irish** quarterly national household survey published in 2017 shows that

people with disabilities “were less likely to enter work and more likely to leave work, even when they do not report difficulties with self-care, going out alone, participating in a job or business or school/college”.⁶¹

Sweden’s Public Employment Agency drew on the population register to identify persons with disabilities and assess their experiences of discrimination in the labour market.⁶² Persons who self-identified as having a disability were interviewed, regardless of whether they were employed at the time of the survey. Among persons with disabilities with a reduced ability to work, two-thirds answered “yes” to at least one of the questions on discrimination. Negative attitudes among employers was the most common type of discrimination they reported experiencing in the past five years. This was nearly twice as common as violations of integrity, discrimination in access to employment, or bullying.

3.5. Discrimination testing provides empirical evidence of discrimination



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Discrimination testing is a reliable and robust method for generating empirical evidence of discrimination that usefully complements information on perceptions of discrimination collected through surveys. In such tests, fictitious applications are used to uncover discrimination, often in access to employment or housing. Implemented since the 1970s, this method to detect discrimination is being used more regularly in EU Member States.⁶³ In addition,

findings of discrimination testing are accepted in court in a number of EU Member States, including Belgium, the Czech Republic, Finland, France, Hungary, the Netherlands and Sweden. In 2017, legal developments in the field occurred in **Belgium**. In addition, relevant research findings were published in **Belgium, Finland, the Netherlands, and Sweden**.

Flanders and the Brussels-Capital region in **Belgium** adopted instruments that relate to the regulation of situation testing. In July, Flanders adopted a decree that obliges companies that want to be accredited as suppliers of service vouchers (*dienstencheques*) to perform situation testing (*praktijktesten*). Having come into force in August, the decree obliges these

companies to report breaches of anti-discrimination legislation to the Flemish labour inspectorate.⁶⁴

In October, the Brussels-Capital Region adopted an ordinance relating to the use of fictitious CVs for the purposes of situation testing in the labour market. The ordinance, which comes into force in January 2018, allows labour inspectors to perform situation tests to verify whether employers discriminate in recruitment. Labour inspectors can also perform so-called ‘mystery calls’ to see whether employers would accept instructions to discriminate. Where conclusive, findings of such tests can be used to establish direct or indirect discrimination in legal proceedings.⁶⁵

In **Sweden**, a field experiment that involved sending fictitious CVs to employers showed a strong negative effect for age, also in combination with gender.⁶⁶ Over 6,000 spontaneous applications were sent to potential employers, with information on applicants’ age and gender randomly assigned. The findings show that, across all occupations, the likelihood of being contacted by an employer falls sharply from the age of 40, with women more affected than men. For applicants close to the retirement age of 65, the response rate was found to be close to zero. For more information on ► discrimination based on age, see [Chapter 1](#).

Situation testing conducted in the **Netherlands** examined the influence of a person’s criminal record on their employment chances, in combination with ethnicity.⁶⁷ This test consisted of sending CVs and motivation letters in response to online job vacancies. All 520 job applications were identical, except for the type of criminal offence (none, violent offence, property offence, sexual offence); the period of time that elapsed between the conviction and the application; the business sector applied for; and the ethnicity of the applicant. The marker for ethnicity consisted of the applicant’s name, which could either be a typically Dutch name or a non-Western name. The findings showed no overall effect for the type of offence. Meanwhile, they did show a strong effect for ethnicity, albeit on the basis of a low number of CVs: members of ethnic minorities without criminal convictions were found to have lower chances of receiving a positive response than applicants with Dutch names who had been convicted of violent offences.

Comparable findings emerge from research conducted on access to housing in **Finland**, which shows discrimination against men with Arabic names in the rental market.⁶⁸ In the study, 1,459 enquiries were sent out across Finland in response to apartment vacancies. Those interested were divided into six groups: men and women with an Arabic name; men and women with a Finnish name; and men and women with a Swedish name. The findings show a response rate of 42 % for women with a Finnish-sounding name, compared to

16 % for men with an Arabic-sounding name. Overall, men received fewer responses than women, and enquiries signed with an Arabic name received fewer than those signed with a Finnish or Swedish name. The landlord's gender had no effect on the results.

A wide-ranging study on access to the rental housing market in Brussels, **Belgium**, showed discrimination on a number of grounds.⁶⁹ The study implemented 10,978 correspondence tests and 1,542 situation tests by phone, covering discrimination on the grounds of ethnic origin, age, mental or physical disability, source of income, family composition and gender. For these tests, potential tenants contacted real estate agents in response to vacancies advertised on an online platform. The study also placed 648 mystery calls to real estate agents, with instructions to discriminate on the grounds of either ethnicity or source of income.

The correspondence and situation tests found widespread discrimination against potential tenants with North-African or sub-Saharan African names compared to those with French-sounding names. No effect was found for candidates with Eastern European-sounding names. The study also uncovered discrimination based on the source of income, regardless of the actual level of income, which affects people on

unemployment benefits. Blind candidates and those with mental disabilities also faced discrimination. The findings indicate gender differences, although in combination with other grounds. For example, female North African and Eastern European candidates were treated less favourably, as were unemployed males and male single parents.

The mystery calls found that real estate agents do grant discriminatory requests, even when they are aware that this is illegal. When requested to discriminate based on ethnicity, about half of the real estate agents responded that such requests are illegal. About one third noted this in response to instructions to discriminate based on the source of income. Nonetheless, about one third of real estate agents granted requests to discriminate based on ethnicity, compared to 16 % for requests based on the source of income. The level of discrimination was found to be influenced by the price category of the housing unit, as well as by the ethnic composition of the municipality where the housing unit is located. Specifically, more discrimination was found for pricier housing units in boroughs where fewer members of ethnic minorities tend to live.



FRA opinions

The findings of FRA's Second European Union Minorities and Discrimination Survey (EU-MIDIS II) and diverse national research published in 2017 confirm that discrimination and unequal treatment on different grounds remain realities in key areas of life throughout the EU. The EU and its Member States can, however, draw on policy instruments to foster equality, with the European Pillar of Social Rights promoting protection against discrimination beyond the current *acquis* in the area of equality. Nonetheless, with the proposed Equal Treatment Directive not yet adopted, the EU operates a hierarchy of grounds. Negotiations on the proposed directive in the Council of the EU entered their ninth year in 2017 and had not been completed by year-end.

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

FRA opinion 3.1

The EU legislator should continue its efforts for the adoption of the Equal Treatment Directive to ensure that the EU offers comprehensive protection against discrimination in key areas of life, irrespective of a person's sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

FRA opinion 3.2

The EU legislator should proceed with concrete legal action to deliver on stronger social rights protection and further implement the principles and rights enshrined in the Pillar of Social Rights.

Restrictions on religious clothing and symbols at work or in public spaces continued to shape debates on religion in the EU in 2017. These restrictions particularly affect Muslim women who wear different forms of head or face-covering garments. The CJEU and the European Court of Human Rights (ECtHR) offered further guidance in this area, regarding genuine occupational requirements, the prohibition of visible religious symbols, and the wearing in public of religious

garments that fully cover the face. Some EU Member States put restrictions on face-coverings in public places to promote their ideal of inclusive societies, or to preserve the neutrality of civil servants, judges and public prosecutors.

Article 10 of the EU Charter of Fundamental Rights guarantees everyone's right to freedom of thought, conscience and religion. This right includes the freedom to change religion or belief and the freedom to manifest religion or belief in worship, teaching, practice and observance, either alone or in community with others. Article 21 of the EU Charter of Fundamental Rights prohibits any discrimination on the ground of religion or belief. Article 22 of the EU Charter of Fundamental Rights further provides that the Union shall respect cultural, religious and linguistic diversity.

FRA opinion 3.3

EU Member States should ensure that fundamental rights and freedoms are safeguarded when considering any restrictions on symbols or garments associated with religion. Any legislative or administrative proposal that risks limiting the freedom to manifest one's religion or belief should embed fundamental rights considerations and respect for the principles of legality, necessity and proportionality.

EU Member States continued to implement measures to advance the equality of lesbian, gay, bisexual, trans and intersex (LGBTI) persons. Several EU Member States aligned the civil status of same-sex couples to that of married couples, although sometimes with limitations regarding adoption or assisted procreation. Others took steps to de-medicalise the process of gender reassignment, with one EU Member State adopting simplified procedures for trans persons to alter their registered sex. The issue of binary gender markers came to the fore in some EU Member States, with one making it possible to use the 'X' marker in official documents, as an alternative to male or female.

Article 21 of the EU Charter of Fundamental Rights prohibits discrimination based on sex and sexual orientation. The European Commission published a list of actions to advance LGBTI equality in December 2015, including improving rights and ensuring legal protection of LGBTI people and their families, as well as monitoring and enforcing existing rights. The list of actions covers the period 2016–2019. Although not legally binding, the list provides guidance as to where and how EU Member States can work towards ensuring that LGBTI persons can avail themselves of their right to equality and non-discrimination. The EU and its Member States have committed to meeting the targets of the 2030 Agenda for

Sustainable Development. Sustainable Development Goal 10 on reducing inequality within and among countries sets, as one of its targets, ensuring equal opportunity and reducing inequalities of outcome. This includes eliminating discriminatory laws, policies and practices, and promoting appropriate legislation, policies and action.

FRA opinion 3.4

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

Equality data offer a powerful means to uncover patterns of inequality in EU Member States, as well as a solid foundation for evidence-based policymaking. Findings of EU-MIDIS II and of research published by national equality bodies and public authorities in 2017 amply demonstrate that discrimination and unequal treatment deeply affect European societies. Findings of research implementing the discrimination testing method provide further empirical evidence of discrimination in access to employment and housing on a number of grounds in several EU Member States. By systematically collecting data on patterns of inequality, the EU and its Member States can monitor the impact of policies and measures put in place to foster equality and promote non-discrimination and adjust them to improve their effectiveness. The EU and its Member States have committed to meeting the targets of the 2030 Agenda for Sustainable Development. The

availability of robust and reliable equality data would enable the EU and its Member States to measure progress with regard to meeting targets 10.2 and 10.3 under Sustainable Development Goal 10 on reducing inequality within and among countries.

Different types of data, such as statistical and administrative data, as well as scientific evidence can be used to support policymaking to promote equal treatment and combat discrimination. Such data can also be used to assess the implementation of the Racial Equality Directive (2000/43/EC) or the Employment Equality Directive (2000/78/EC). In its general policy recommendations, the European Commission against Racism and Intolerance (ECRI) highlights the need for good data to support the fight against discrimination. In addition, the United Nations Convention on the Rights of Persons with Disabilities offers guidance with regard to the collection of equality data.

FRA opinion 3.5

EU institutions and EU Member States are encouraged to continue supporting and funding the collection of reliable and robust equality data by EU agencies and bodies, national statistical authorities, national equality bodies, other public authorities and academic institutions. In addition, EU Member States are encouraged to provide the Statistical Office of the European Union (Eurostat) with robust and reliable equality data, so as to enable the EU to develop targeted programmes and measures through which to foster equal treatment and promote non-discrimination. Where possible and relevant, the collected data should not only be disaggregated by sex and by age, but also by ethnic origin, disability and religion.



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UN & CoE

January

17 January – In *Király and Dömötör v. Hungary* (No. 10851/13), the European Court of Human Rights (ECtHR) holds that shortcomings of an investigation into an anti-Roma demonstration amounted to a violation of the right to respect for private and family life (Article 8 of the ECHR)

25 January – PACE adopts Resolution 2144 (2017) on ending cyber discrimination and online hate

31 January – UN Committee on Convention on the Elimination of All Forms of Racial Discrimination (CERD) publishes concluding observations on 15th to 17th periodic reports of Portugal

February

28 February – European Commission against Racism and Intolerance (ECRI) publishes its fifth monitoring report on Luxembourg and conclusions on the implementation of a number of priority recommendations made in its country reports on Germany and Belgium released in 2014

March

April

May

16 May – ECRI publishes its fifth monitoring report on Denmark and conclusions on the implementation of a number of priority recommendations made in its country reports on Bulgaria, Romania and the Slovak Republic released in 2014

16 May – CERD publishes concluding observations on the combined 20th to 22nd periodic reports of Bulgaria

June

2 June – CERD publishes concluding observations on the combined 23rd and 24th periodic reports of Cyprus

2 June – UN Human Rights Council adopts a report of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action

8 June – CERD publishes concluding observations on the 23rd periodic report of Finland

22 June – ECRI publishes its annual report 2016

28 June – In *Škorjanec v. Croatia* (No. 25536/14), the ECtHR reiterates that the national authorities' failure to carry out a thorough investigation into the link between the applicant's relationship with her partner, a man of Roma origin, and the racist motive for the attack on both of them, amounted to a violation of the procedural aspect of the prohibition of torture (Article 3 of the ECHR) in conjunction with the prohibition of discrimination (Article 14 of the ECHR)

July

22 July – No Hate Speech Movement Youth Campaign (NHSM) of the Council of Europe organises a Europe-wide Action Day in support of victims of hate crime

August

September

19 September – ECRI publishes its conclusions on the implementation of a number of priority recommendations made in its country report on Slovenia, Germany and Belgium released in 2014

October

9 October – UN Human Rights Council extends the mandate of the Working Group of Experts on People of African Descent for a further period of three years

31 October – In *M.F. v. Hungary* (No. 45855/12), the ECtHR holds that the Hungarian authorities failed to investigate the ill-treatment of a Roma man by the police, violating the prohibition of torture (Article 3 of the ECHR) in conjunction with the prohibition of discrimination (Article 14 of the ECHR)

November

December

EU

January

February

February – EU High Level Group on combating racism, xenophobia and other forms of intolerance publishes *'Hate crime training for law enforcement and criminal justice authorities: 10 guiding principles'*

March

April

6 April – In *Jyske Finans A/S v. Ligebehandlingsnævnet* (No. 668/15), the Court of Justice of the European Union (CJEU) clarifies in a preliminary ruling request regarding the interpretation of direct and indirect discrimination under the Racial Equality Directive, that a person's country of birth cannot, in itself, justify a general presumption that the person is a member of a given ethnic group, such as to establish the existence of a direct or inextricable link between those two concepts

May

June

1 June – European Commission releases the results of the second evaluation of the Code of Conduct on countering online hate speech

1 June – European Parliament (EP) adopts a resolution calling on all Member States and their institutions to apply the working definition of anti-Semitism of the International Holocaust Remembrance Alliance

July

August

September

28 September – European Commission adopts a communication on *'Illegal Content Online. Towards an enhanced responsibility of online platforms'*

October

November

December

December – EU High Level Group on combating racism, xenophobia and other forms of intolerance publishes key guiding principles on *'Ensuring justice, protection and support for victims of hate crime and hate speech: 10 key guiding principles'*

5 December – EU High Level Group on combating racism, xenophobia and other forms of intolerance endorses the key guiding principles on *'Improving the recording of hate crime by law enforcement authorities'*

4

Racism, xenophobia and related intolerance



Seventeen years after the adoption of the Racial Equality Directive and nine years after the adoption of the Framework Decision on Racism and Xenophobia, immigrants and minority ethnic groups continue to face widespread discrimination, harassment and discriminatory ethnic profiling across the EU, as the findings of FRA's second European Union Minorities and Discrimination Survey (EU-MIDIS II) show. The European Commission supported EU Member States' efforts to counter racism and hate crime through the EU High Level Group on combating racism, xenophobia and other forms of intolerance. It also continued to monitor closely the implementation of the Racial Equality Directive and of the Framework Decision. Although several EU Member States have been reviewing their anti-racism legislation, in 2017 only 14 of them had in place action plans and strategies aimed at combating racism and ethnic discrimination.

4.1. No progress in countering racism in the EU

Racism and intolerance ranged from everyday harassment to outright violence in 2017. In the **United Kingdom**, a man was charged with terrorism-related murder and attempted murder after driving a van into a crowd of Muslim worshippers, killing one person and injuring 11.¹ In the **Czech Republic**, a group of 20 football fans violently assaulted a West African man travelling in a tram because he was black.² In **Greece**, a group of masked teenagers used iron bars and knives to beat and stab two migrant workers in a field, while yelling racist insults. Police arrested the three teenagers.³

Refugees and asylum seekers continued to be violently attacked and harassed across the EU in 2017, but few EU Member States record or publish data on such hate crimes. **Finland** records data on attacks against accommodation centres for asylum seekers, while **Germany** also records and publishes data on attacks targeting refugees and asylum seekers themselves. In the first nine months of 2017, there were 243 attacks on refugee homes throughout the country, compared

with 873 attacks in the first nine months of 2016, data from the German Federal Criminal Police Office show.⁴ More than 3,500 attacks against refugees and asylum shelters were recorded in 2016, according to data made available by the German Federal Government in 2017 in response to a parliamentary question.⁵ A total of 2,545 attacks against individual refugees were reported in 2016. These attacks left 560 people injured, including 43 children.⁶

In 2017, FRA published the results of the second European Union Minorities and Discrimination Survey (EU-MIDIS II) on experiences of ethnic minorities and immigrants with discrimination and hate crime. Many of the respondents experienced racism in the form of discrimination incidents, harassment or hate crime, but few reported these to the authorities. Overall, the results show very little progress compared with eight years earlier, when the survey's first wave was conducted. Persisting harassment, discrimination and violence limit the ability of people with a minority background to fully enjoy their fundamental rights and freedoms, and undermine their equal participation in society. Lack of progress in preventing and countering racism indicates that laws and policies may inadequately protect the people they are meant to serve.

Such incidents occurred against a backdrop of persisting racist and xenophobic attitudes and rhetoric, which some opinion leaders and EU politicians embrace, normalising such discourse. A Bloomberg analysis of 30 years of election results across 22 European countries reveals that ‘populist far-right parties’ won, on average, 16 % of the overall vote in the most recent parliamentary elections in each country, up from 5 % in 1997.⁷ In Austria, for example, a coalition was formed with the Freedom Party of Austria (FPÖ) in government, prompting the European Jewish Congress to express, in December 2017, grave concerns about the coalition’s impact on minorities.⁸ Overall, these election results throughout Europe foster a social climate that provides fertile ground for racism, discrimination and hate crime.

4.1.1. EU and Member States respond to persisting hate crime and hate speech

People with ethnic or immigrant minority backgrounds in the EU face harassment and violence – both online and offline – evidence from EU-MIDIS II demonstrates. In the 12 months preceding the survey, one in four respondents (24 %) experienced at least one form of hate-motivated harassment, and 3 % experienced a hate-motivated physical attack. Harassment is defined as a range of actions that the respondent found ‘offensive’ or ‘threatening’, namely offensive or threatening comments in person; threats of violence in person; offensive gestures or inappropriate staring; offensive or threatening emails or text messages (SMS); and offensive comments made about them online. Second-generation immigrants experience more hate-motivated harassment than do first-generation immigrants (32 % vs 21 %). Second-generation immigrants are also more likely to experience recurrent incidents. Half of them experienced at least six incidents of hate-motivated harassment in the 12 months preceding the survey. Overall, the survey respondents identified perpetrators as being from the majority population in 71 % of cases of hate-motivated harassment and 64 % of cases of violence.

The findings also show that as many as 90 % of incidents of hate-motivated harassment and 72 % of incidents of hate-motivated violence are never reported. Since 2008, the Framework Decision on Racism and Xenophobia has criminalised certain forms of racist and xenophobic hate speech and hate crime. As reported in last year’s Fundamental Rights Report, the European Commission – having acquired, in December 2014, the power to review Member States’ compliance with Framework Decisions under the supervision of the CJEU – initiated formal inquiries with

Member States that still had major gaps in transposing the Framework Decision on Racism and Xenophobia into national law. The Commission intended to launch infringement procedures where necessary. This prompted notable legislative developments in a number of Member States in 2017.

For example, **Italy** adopted legislation that increases the penalty for intentionally denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes. The law also introduces administrative responsibility for companies that engage in racist and xenophobic conduct.⁹ Likewise, **Portugal** amended its Penal Code to punish – with imprisonment ranging between six months and five years – anybody who establishes an organisation or develops or encourages propaganda activities inciting discrimination, hatred or violence against a person or group of persons because of their race, colour, ethnic or national origin, ancestry, religion, sex, gender, sexual orientation, and physical or intellectual disability.¹⁰

Relevant legislative developments regarding hate crime and hate speech also occurred in other Member States. **Cyprus** amended its Criminal Code by empowering the national courts to take into account as an aggravating factor the motivation of prejudice on the grounds of race, colour, national or ethnic origin, religious or other beliefs, ‘genealogical origin’, sexual orientation or gender equality.¹¹ Similarly, **Latvia** amended its legislation to prohibit associations and foundations from propagating openly Nazi, fascist or communist ideology and conducting activities aimed at inciting national, ethnic, racial and religious hatred or enmity.¹²

France adopted a law generalising aggravating sanctions in cases of racism, homophobia and sexism to all crimes and offences punished by imprisonment.¹³ The **German Bundestag** passed a law requiring operators of social media networks to fight and remove unlawful content from their platforms.¹⁴ Manifestly unlawful content must be taken down or blocked within 24 hours after receipt of a complaint. Other criminal content must generally be taken down or blocked within 7 days of receiving a complaint. Social networks that fail to set up a complaints management system or do not set one up properly are committing a regulatory offence. This is punishable with a fine of up to € 50 million. Critics of the law point out that it enables unjustified censorship, leading to violations of freedom of expression by private companies without granting the possibility of redress; they also fear that it will serve as a precedent for other countries to follow.¹⁵ Social networks, such as Facebook, also expressed their concern about the law’s effect on freedom of expression. They also emphasised that the transition period for putting into place new mechanisms is too short, that the law is not precise enough, and that the penalties are disproportionate, harming especially smaller companies.¹⁶



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The European Commission has put in place a range of policy measures to support the implementation of the Framework Decision on Racism and Xenophobia and of the Victims' Rights Directive. Among these, the EU High Level Group on combating racism, xenophobia and other forms of intolerance has published two sets of key guiding principles¹⁷ – on hate crime training and on supporting victims of hate crime – to provide information about the work of national authorities and practitioners in these two key areas. For more information on the Victims' Rights Directive, see [Chapter 9](#).

Antisemitism manifests itself in many forms, FRA's annual overview of the available data shows.¹⁸ Even events that not everyone deems antisemitic¹⁹ can create major concerns, fears and worries within Jewish communities. Hungary's largest Jewish organisation, Mazsihisz, called on the prime minister to stop a government campaign against a Hungarian-born Jewish émigré, adding that the "poisonous messages harm the whole of Hungary".²⁰ In June, the European Parliament approved a resolution on antisemitism, calling on politicians to oppose antisemitic statements, and urging Member States to appoint a national coordinator to combat antisemitism.²¹ The European Parliament also called on Member States and the EU institutions and agencies to adopt and apply the International Holocaust Remembrance Alliance's (IHRA's) working definition of antisemitism.

FRA ACTIVITY

Improving hate crime recording and data collection in Member States

In 2016, the European Commission invited FRA to become a permanent member of the EU High Level Group on combating racism, xenophobia and other forms of intolerance. FRA coordinates the Subgroup on improving recording and collecting data on hate crime. In December 2017, the High Level Group endorsed key guiding principles on improving the recording of hate crime by law enforcement authorities, which the Subgroup had developed. Three of these guiding principles concern organisational and structural aspects of police work, and two relate to operational and everyday police work. The principles are tested and implemented through national workshops that FRA and the Office for Democratic Institutions and Human Rights (ODIHR) facilitate jointly. These workshops aim to raise awareness of the need to properly record hate crimes; to identify gaps in existing hate crime recording and data collection frameworks; and to identify practical steps to improve these frameworks.

Source: European Commission (2017), *Improving the recording of hate crime by law enforcement authorities: key guiding principles*, Brussels, December 2017. For more information, see FRA's [web page on the Subgroup](#).

Alongside Roma and Muslims, people of African descent and black Europeans are particularly vulnerable to racist crime and discrimination, according to EU-MIDIS II. An estimated 15 million people of African descent and black Europeans live in Europe, many of whom have been living in Europe for several generations.²² Historical abuses and racism still profoundly affect their everyday lives, EU-MIDIS II and other evidence²³ show. EU-MIDIS II interviewed 5,803 persons with sub-Saharan African background and found that, on average, one in five respondents of this group (21 %) felt harassed because of their ethnic or immigrant background in the year preceding the survey. Many respondents with a sub-Saharan background who were victims of hate-motivated harassment were repeatedly harassed, as [Figure 4.1](#) shows. Nonetheless, three years after the launch of the United Nations International Decade for People of African Descent, only a few EU Member States have taken measures to ensure full participation and equal rights for people of African descent or marked the decade in any way.

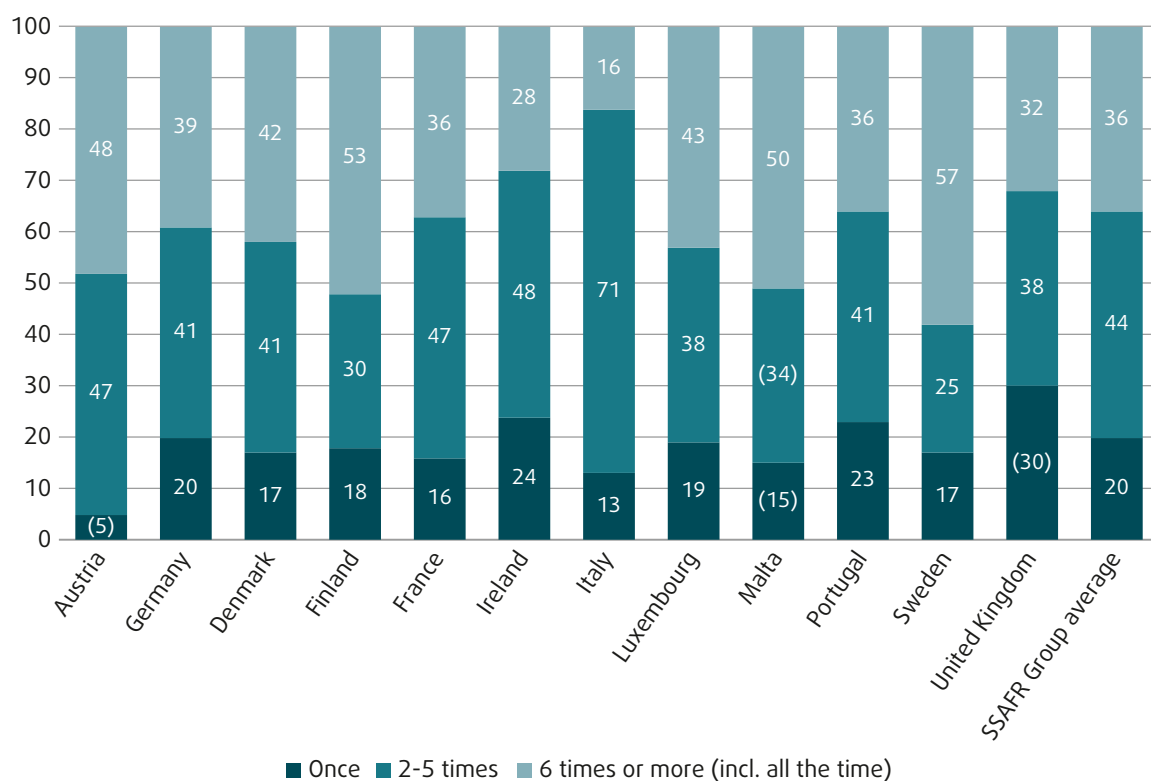
4.1.2. Tackling online hatred

Certain forms of xenophobic and racist speech are illegal in the EU, as outlined in the 2008 Framework Decision on Racism and Xenophobia. This includes online hate speech. Acknowledging the spread of such illegal content online, the European Commission under the motto 'What is illegal offline is also illegal online' adopted a communication entitled *Tackling Illegal Content Online: Towards an enhanced responsibility of online platforms* in September 2017.²⁴ The Communication lays down a set of guidelines and principles for online platforms to step up the fight against illegal content online in cooperation with national authorities, Member States and other relevant stakeholders. It complements other non-legislative measures, such as the Code of Conduct on Countering Illegal Hate Speech Online and the work of the EU Internet Forum as regards terrorist propaganda.

The second evaluation of the Code of Conduct on Countering Illegal Hate Speech Online took place in June 2017. It indicated that removal of hate speech had increased from 28 % to 59 % in some EU Member States over six months.²⁵ The speed of removals also improved: 51 % of the content was removed after 24 hours (as prescribed by the Code of Conduct), compared to 40 % six months earlier. The results on the implementation of the Code of Conduct were also taken into account for mid-term review of the implementation of the Digital Single Market Strategy.²⁶

The Commission's proposal for a revision of the Audiovisual Media Services Directive²⁷ contains provisions that would oblige social media platforms to set up a system to flag audiovisual material containing hate speech.

Figure 4.1: Number of times respondents with sub-Saharan African background experienced harassment due to ethnic or immigrant background in the past 12 months, by Member State (%)



Notes: Out of all respondents with sub-Saharan African background (n = 5,803); weighted results. Results based on a small number of responses are statistically less reliable. Results based on 20–49 unweighted observations in a group total or based on cells with fewer than 20 unweighted observations are noted in parentheses. SSAFR refers to immigrants and descendants of immigrants from sub-Saharan Africa. Question: “How many times have such incidents [that is, each of the five acts of harassment asked about in the survey] related to your ethnic or immigrant background happened in the past 12 months?”

Source: FRA, EU-MIDIS II 2016

Social media often amplify xenophobic and racist speech that publicly incites hatred and violence. For example, the Centre for the Analysis of Social Media, part of the UK-based cross-party think tank Demos, conducted research to measure the volume of messages on Twitter in a one-year period. It detected 143,920 derogatory and anti-Islamic tweets – this is about 393 a day. Over 47,000 different users sent them, and they range from directly insulting individuals to broader political statements.²⁸

4.1.3. Courts confront racist and related offenses

Several European Court of Human Rights (ECtHR) rulings adopted in 2017 concluded that Member States violated rights guaranteed by the European Convention on Human Rights (ECHR) by failing to efficiently investigate incidents potentially involving discriminatory and racist motives. At national level, various court decisions further clarified what kind

of acts and statements constitute incitement to hatred and insult.

In *Škorjanec v. Croatia*,²⁹ the ECtHR found that the failure of the investigating authorities to carry out a thorough assessment of the link between the applicant’s relationship with her partner, a man of Roma origin, and the racist motive for the attack on them amounted to a violation of the procedural aspect of Article 3 (prohibition of torture) in conjunction with Article 14 (prohibition of discrimination) of the ECHR. The court concluded that the prosecuting authorities’ focus on the fact that the applicant herself was not of Roma origin led them to ignore the connection between the racist motive for the attack and the applicant’s association with her partner. The court ordered **Croatia** to pay € 12,500 for the non-pecuniary damage. The Croatian authorities have undertaken measures to prevent similar violations and to execute this judgment by disseminating the judgment to the authorities competent for processing hate crimes,

and incorporating the judgment into the material for seminars on hate crimes aimed at judges, prosecutors, police officers and civil society organisations.

Similarly, in *M.F. v. Hungary*³⁰ the ECtHR ruled in favour of a man of Roma origin who claimed that the police subjected him to ill-treatment and discriminatory practice after arresting him for a crime. The court established that the applicant's injuries were caused by his ill-treatment in police custody and that the authorities failed in their duty to effectively investigate the allegations of such ill-treatment, violating Article 3 (prohibition of torture) of the ECHR. In addition, the authorities failed to take all possible steps to investigate whether or not discrimination played a role in the alleged incident, hence violating Article 14 (prohibition of discrimination) of the ECHR, taken together with Article 3 (prohibition of torture) in its procedural aspect. The court ordered **Hungary** to pay € 10,000 for non-pecuniary damage and € 4,724 for costs and expenses.

In *Király and Dömötör v. Hungary*,³¹ the ECtHR concluded that shortcomings in an investigation of an anti-Roma demonstration amounted to a violation of Article 8 (right to respect for private and family life). The case concerned a protest that, although not violent per se, caused the applicants, Hungarian nationals of Roma origin, to suffer a well-founded fear of violence and humiliation. The court found that the investigating authorities' failure to prepare themselves for the event and interrogate more people after the protest, and the subsequent lack of a thorough law-enforcement procedure, allowed an openly racist demonstration to take place without legal consequences. The court concluded that the applicants' right to psychological integrity had not been protected, and ordered **Hungary** to pay € 7,500 to each of them for non-pecuniary damage.

In **Austria**, the Supreme Court found that asylum seekers also fall under the protection of the first sentence of § 283 (1) of the Criminal Code (*Strafgesetzbuch* (StGB)). The court deemed inaccurate Graz's High Regional Court's interpretation of this provision, which had concluded that asylum seekers could not form a 'defined group' in the sense of that law.³² In the case in question, a man had been indicted for incitement to hatred and violence after posting, on his Facebook page, a picture of two snipers lying in a trench with machine guns, including the caption 'The fastest asylum procedure in Germany ... rejects up to 1,400 requests per minute'. The court established that the provision in question does not require the group to be defined according to the existence or absence of one or multiple criteria for it to be protected. Rather, it also includes clearly defined subcategories, such as asylum seekers, that fulfil one of the listed criteria, e.g. nationality.

In **Bulgaria**, the Regional Court of Vratsa convicted one adult and three juveniles of a violent attack against a group of Roma.³³ The court found that the victims were attacked because of their Roma ethnic origin. The adult offender received a suspended sentence of three months' imprisonment, while the three juvenile offenders were sentenced to probation.

In **France**, an appeals court of Aix-en-Provence found that Jean-Marie Le Pen incited hatred and made racist statements at a public event in Nice in 2013. The court fined him € 5,000 for inciting hatred against Roma and ordered him to pay € 2,000 in damages to SOS Racisme, a civil party plaintiff, and € 1,000 to the League of Human Rights, a civil party in the first instance.³⁴

An **Italian** member of the European Parliament (MEP) was tried for incitement to racist hatred over discriminatory statements he made during a radio broadcast targeting the former Minister for Integration, an Italian citizen of African origin. The ordinary Court of Milan considered in its decision Article 10 of the ECHR (freedom of expression) and its limitations when a political debate is at stake and concluded that the MEP offended the former minister on the grounds of her African origin and skin colour. The MEP was fined € 1,000 and ordered to pay € 50,000 in compensation to the victim.³⁵

In **Lithuania**, the Supreme Court dismissed a defendant's cassation appeal, ruling that the right to hold beliefs and freedom of expression are not in conformity with public insult, incitement to hatred and discrimination, and incitement to violence against a group of people of a certain nationality.³⁶ The defendant was tried for having publicly written comments to various articles published on the news portal www.15.min.lt, which insulted persons and incited hatred, discrimination and violence against them based on their Russian nationality.

4.2. More efforts needed for correct implementation of the Racial Equality Directive

The Racial Equality Directive (2000/43/EC) represents a key legal measure for combating ethnic and racial discrimination, and its practical implementation is crucial for promoting equality. Despite its strong legal provisions, immigrants, descendants of immigrants, and minority ethnic groups continued to face widespread discrimination across the EU and in all areas of life, as the findings of EU-MIDIS II underscored.

The European Commission continued to closely monitor implementation of this directive in 2017, pursuing infringement proceedings against Member States found to be in breach of its provisions. In particular, the European Commission focused on education and housing. Cases of systematic discrimination against Roma on grounds of their ethnicity have been investigated. Infringement proceedings concerning discrimination against Roma children in education have been ongoing in the **Czech Republic, Hungary** and **Slovakia**.³⁷ For more information, see [Chapter 5](#) on Roma integration.

A number of Member States amended their legislation to incorporate provisions of the directive in 2017. **Hungary** amended its legislation in the field of education, guaranteeing that “the organisation of education on the basis of religious or other ideological conviction may not lead to unlawful segregation on the basis of race, colour, ethnicity or ethnic affiliation”.³⁸ Similarly, **Sweden** amended its legislation to state that employers and educational actors should take preventive and active measures to combat discrimination and promote equal rights and opportunities covering all seven discrimination grounds, including racial and ethnic discrimination.³⁹ **Portugal** also adopted legislation prohibiting discriminatory practices on ethnic and racial grounds in access to employment, education, housing and services.⁴⁰

In 2017, the CJEU’s judgment in *Jyske Finans A/S v. Ligebehandlingsnævnet* on a preliminary ruling request regarding the interpretation of direct and indirect discrimination on ethnic grounds under the Racial Equality Directive clarified that ethnic origin cannot be determined on the basis of a single criterion, such as a country of birth. On the contrary, ethnic origin is based on a number of factors, such as common nationality, religious faith, language, cultural and traditional origin, and background.⁴¹ The court concluded that the practice of requesting additional proof of identity for individuals born outside the EU or EFTA was neither directly nor indirectly connected with the ethnic origin of the person applying for a loan.

Formulating policies to effectively target ethnic discrimination requires reliable and comparable data, including data disaggregated by ethnicity. Surveys on experiences and perceptions of discrimination are a useful tool to inform policymakers about the prevalence and types of discriminatory practices experienced by ethnic and immigrant groups. See also [▶ Chapter 3](#) on equality and non-discrimination.

A considerable proportion of respondents believe they experienced discrimination because of their ethnic or immigrant background, EU-MIDIS II results show. In the five years before the survey, four out of 10 respondents

(38 %) felt discriminated against because of their ethnic or immigrant background in one or more areas of daily life. This happened more often when they were looking for work and when accessing public and private services, as [Figure 4.2](#) shows. Some 29 % of all respondents who looked for a job in the five years before the survey felt discriminated against on this basis; 12 % experienced this in the year preceding the survey.⁴² Among all groups surveyed, similarly to the findings of EU-MIDIS I, respondents with a North African background, Roma respondents and respondents with a sub-Saharan African background continued to indicate the highest levels of discrimination based on ethnic or immigrant background.⁴³

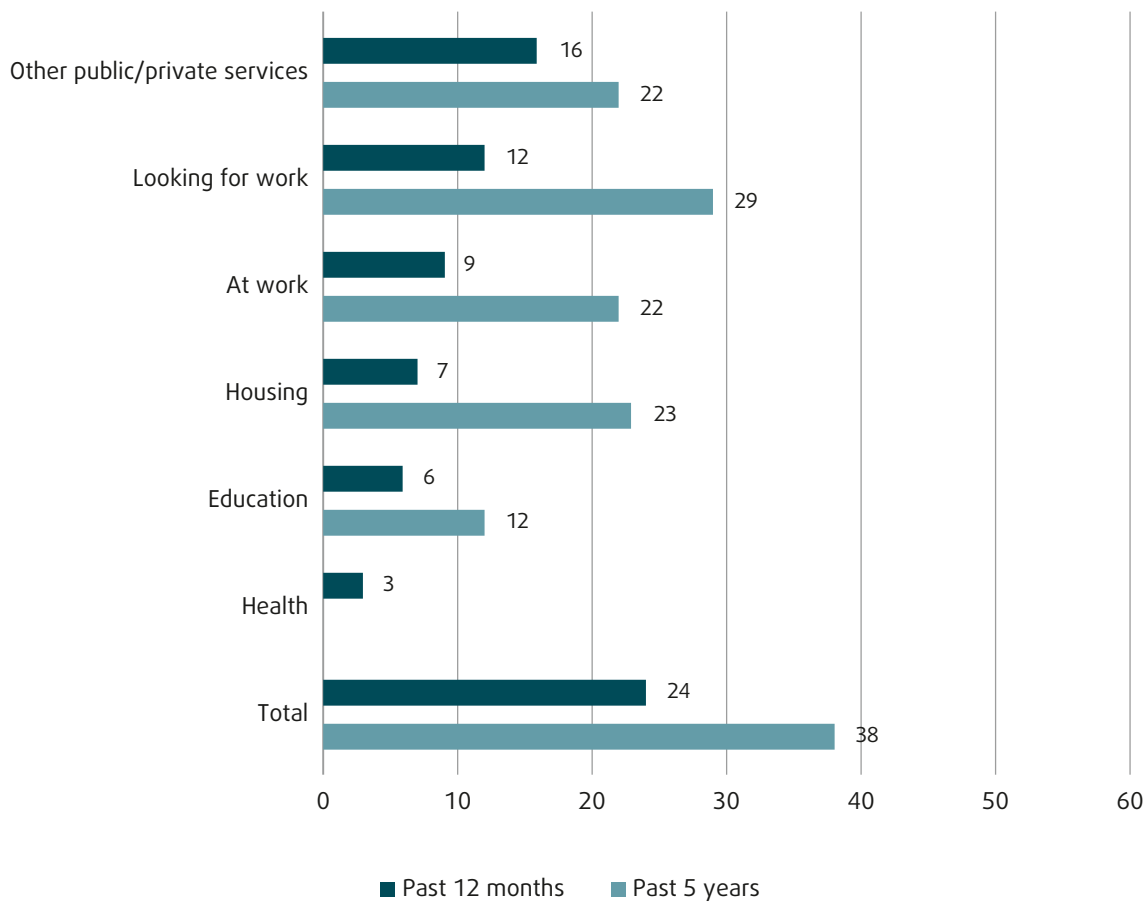
Regarding awareness of antidiscrimination legislation, a majority of EU-MIDIS II respondents (67 %) knew that discrimination based on skin colour, ethnic origin or religion is unlawful in their country. However, 71 % of respondents were not aware of any organisation that offers support or advice to discrimination victims and 62 % were not aware of any equality body. This could partly explain the low rates of reporting of discrimination among members of ethnic minorities.⁴⁴

4.2.1. Ethnic minorities face discrimination on multiple grounds

Members of ethnic minorities in the EU experience discrimination on more grounds than their ethnicity, such as their sex, religious beliefs or origins, evidence collected by FRA consistently shows.⁴⁵ More than one in three Muslim women who wear a headscarf or niqab in public experience harassment because of their ethnic or immigrant background (31 %), compared with under one quarter (23 %) of women who do not wear such clothing, EU-MIDIS II found.⁴⁶ While perpetrator(s) of both bias-motivated harassment and violence were mostly not known to the victim and did not have an ethnic minority background, about half (48 %) of Muslim women respondents identified someone from another ethnic minority group as perpetrator, compared with just over one in four (26 %) Muslim men.

Refugee and asylum-seeking women and girls are often victims of racist and gender-based violence and harassment, FRA’s research on challenges to women’s rights in the EU indicates.⁴⁷ In addition, they face particular barriers to accessing their social and economic rights regarding employment, housing, health, education, social protection and welfare. For more information on 2017 developments concerning measures addressing violence against women in [▶ general](#), see [Chapter 9](#).

Figure 4.2: Discrimination based on ethnic or immigrant background in different areas of life in 12 months and 5 years before the survey (%)



Notes: Out of all respondents at risk of discrimination based on ethnic or immigrant background in the particular domain (total n: 'in 5 years before the survey', n = 25,228; 'in 12 months before the survey', n = 25,403); weighted results, sorted by 12-month rate.
 Domains of daily life summarised under 'other public or private services': public administration, restaurant or bar, public transport, shop.
 Discrimination experiences in 'access to health care' were asked about only for the 12 months preceding the survey due to a routing mistake in the questionnaire.

Source: FRA, EU-MIDIS II 2016

Racism plays a significant role in how children and young people are treated, according to research on refugee children and young people by the United Nations Children's Fund (UNICEF) and the International Organization for Migration: over 80 % of refugee adolescents and young people from sub-Saharan Africa reported exploitation, compared with around 55 % of those originating from elsewhere.⁴⁸

Over 850 black, white, Asian, Arab, and mixed race gay men participated in a survey by the Fact Site in the UK, where they shared their thoughts on experiencing racism in the 'gay community'. The survey found that 80 % of black men, 79 % of Asian men, 75 % of South Asian men, 64 % of mixed race men, and most Arab men who responded had experienced some form of racism by other members of the 'gay community'.⁴⁹

Promising practice

'Be honest: we need a reality check on racism'

On the International Day for the Elimination of Racial Discrimination, the International Lesbian, Gay, Bisexual, Trans and Intersex Association – Europe (ILGA-Europe) launched a campaign to acknowledge that racism and ethnic discrimination exists both inside and outside the lesbian, gay, bisexual, trans and intersex (LGBTI) communities. ILGA-Europe called on LGBTI organisations to make sure that their doors are open to everyone in the LGBTI communities, of all races, ethnic backgrounds and identities.

For more information, see ILGA-Europe's website.

4.2.2. Promoting national action plans against racism, xenophobia and ethnic discrimination

The UN Durban Declaration and Programme of Action emphasises states' responsibility to combat racism, racial discrimination, xenophobia and related intolerance¹⁸ and calls upon states "to establish and implement without delay" national policies and action plans to combat these phenomena. The European Commission, in its joint report on the application of the Racial Equality and Employment Equality Directives, stressed that legislation alone is not enough to

ensure full equality and needs to be combined with appropriate policy action.⁵⁰ Nearly 16 years after the adoption of the UN Durban Declaration and Programme of Action, only 14 EU Member States had in place dedicated action plans against racism, racial/ethnic discrimination and related intolerance in 2017 (see [Table 4.1](#)). States that do not have such plans and policies in place could consider the practical guide of the Office of the UN High Commissioner for Human Rights to develop national action plans against racial discrimination.⁵¹

Table 4.1: EU Member States with action plans and strategies against racism, xenophobia and ethnic discrimination in place in 2017

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

4.3. Stepping up efforts to counter discriminatory profiling

“Racial profiling shall mean: ‘The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities’.”

European Commission against Racism and Intolerance (ECRI) (2007), General Policy Recommendation No 11 on Combating Racism and Racial Discrimination in Policing, Doc. CRI (2007) 39, 29 June 2007, p. 4

When a decision to stop an individual is motivated solely or mainly by a person’s race, ethnicity or religion, this constitutes discriminatory ethnic profiling. Such practices can alienate certain communities in the EU, and in turn contribute to inefficient policing, as disproportionate policing practices do not necessarily match higher crime detection rates. Discriminatory ethnic profiling is unlawful; it offends human dignity and can spur the deterioration of relations between different groups in society.

Nevertheless, such practices persisted in several EU Member States in 2017, as the findings of EU-MIDIS II and other national surveys reveal. A number of national courts’ rulings, which confirmed that discriminatory ethnic profiling is unlawful, complement this evidence.

A relatively high proportion of the respondents who were stopped by the police in the five years before the survey believe that this was because of their immigrant or ethnic minority background, very valuable evidence from EU-MIDIS II shows. The survey interviews were conducted during a period that included major terrorist attacks in France and Belgium, which prompted an increase in police surveillance and identity checks. Overall, discriminatory police practices affect certain respondent groups more than others, the EU-MIDIS II results indicate, which is consistent with findings in EU-MIDIS I. On average, of those who have recently been stopped by the police, nearly every second (47 %) respondent with an Asian background, 41 % of those with a sub-Saharan background and 38 % of those with a North African background perceived the most recent stop as ethnic profiling. Similarly, nearly every second Roma respondent stopped (42 %) believed that this was because of their ethnic background. By contrast, this proportion is much lower (17 %) among the stopped respondents with a Turkish background⁵² (Figure 4.3).

In **France**, young men of Arab and African descent are 20 times more likely to be stopped and searched than any other male group, results of a national survey with more than 5,000 respondents reveal.⁵³ The *Commission Nationale Consultative des Droits de l’Homme* expressed concerns about increased

discriminatory profiling exercised by the police forces.⁵⁴ In the **United Kingdom**, people with ethnic minority backgrounds are three times more likely to be stopped and searched than white people, Home Office statistics show. This is particularly true for individuals who are black, who are over six times more likely to be stopped.⁵⁵

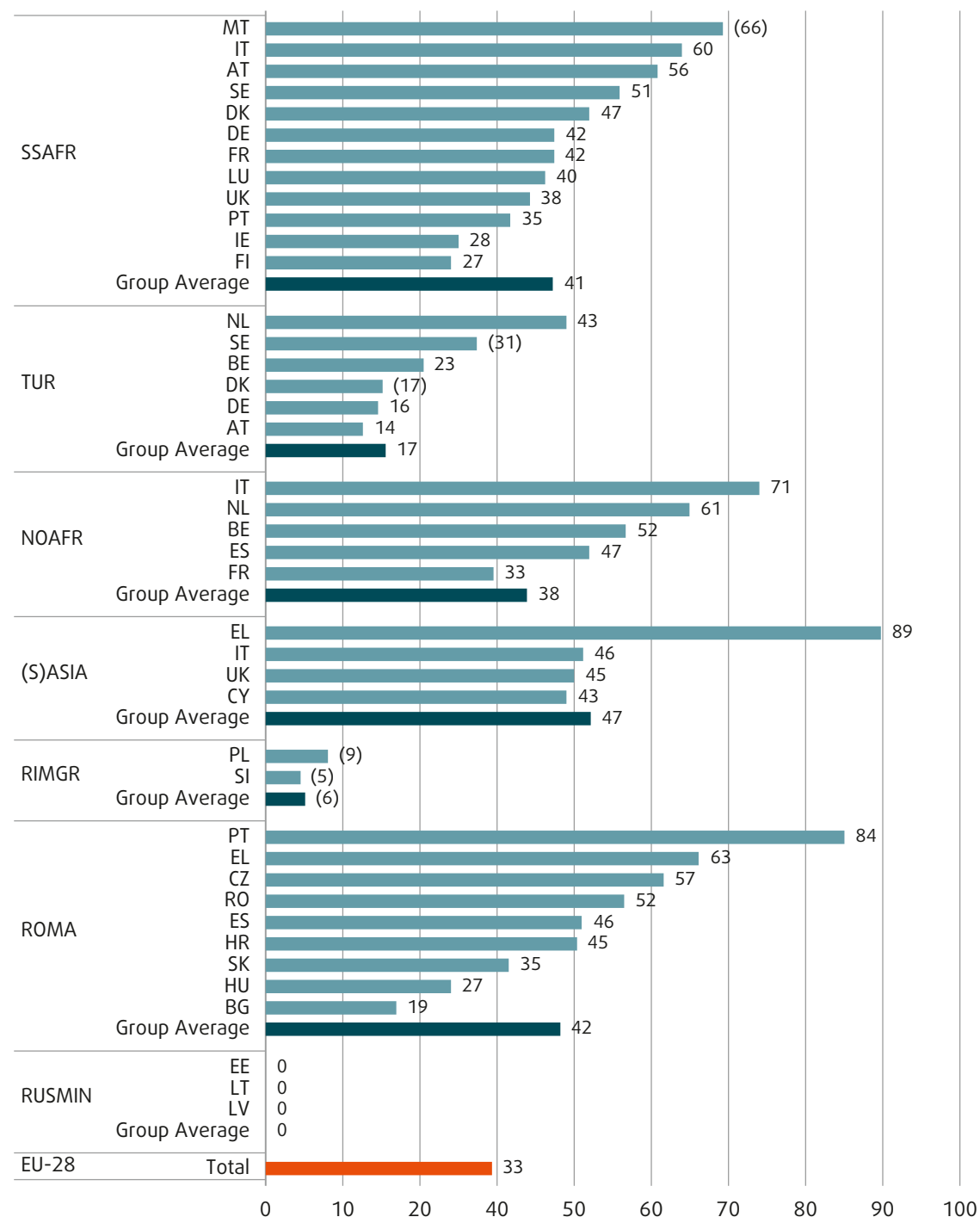
Still in the **United Kingdom**, based on a series of freedom of information requests sent to the Home Office, the Bureau of Investigative Journalism revealed that large numbers of British citizens are being caught up in immigration checks. Nearly one in five of those stopped between January 2012 and January 2017 were UK citizens, the figures showed. As a result, a number of lawyers and Members of Parliament have criticised the Home Office for using ethnic profiling.⁵⁶

A number of national court rulings issued in various Member States in 2017 found unlawful discriminatory ethnic profiling. For example, in **Germany**, the Administrative Court of Dresden reviewed claims by a man alleging that he was chosen for a police check at the train station in Erfurt based on his skin colour.⁵⁷ The defendants, two police officers, denied such claims and said that they based their decision to check the plaintiff on his suspicious behaviour. The court found that the two defendants could not sufficiently prove that the police check was based on lawful reasoning about suspicious activities by the plaintiff and that it was based on ethnic profiling, making it illegal.

In **Sweden**, the Svea Court of Appeal reviewed the claims of 11 persons of Roma origin who alleged that they were included in a Swedish police registry because of their Roma ethnic origin, as they were friends or relatives of three Roma families with a criminal record.⁵⁸ The court applied the burden of proof principle and asked the State to prove that there was another valid reason for including the persons in the registry. As the State could not prove this, the court concluded that ethnicity was the sole reason, which amounted to a violation of the Police Data Act and of Article 14 (prohibition of discrimination) of the ECHR in conjunction with Article 8 (right to respect for private and family life).

In **France**, the Constitutional Council assessed the conformity of the Code of Penal Procedure and the provisions of the Code of Entrance and Residence of Foreigners and of Asylum Law⁵⁹ with the Constitution. The Court of Cassation challenged the provisions, alleging that they could be interpreted to allow discriminatory identity checks based on physical characteristics and a constant and generalised use of police controls over time and space. Clarifying the proper interpretation of the provisions in question, the council rejected that claim.

Figure 4.3: Most recent police stop perceived as ethnic profiling among those stopped in five years before the survey, by EU Member State and target group (%)



Notes: Out of respondents who were stopped by the police in the five years before the survey (n = 6,787); weighted results. Results based on a small number of responses are statistically less reliable. Therefore, results based on 20 to 49 unweighted observations in a group total or based on cells with fewer than 20 unweighted observations are noted in parentheses. Results based on fewer than 20 unweighted observations in a group total are not published. Questions: "In the past five years in [COUNTRY] (or since you have been in [COUNTRY]), have you ever been stopped, searched or questioned by the police?"; "Do you think that THE LAST TIME you were stopped was because of your ethnic or immigrant background?"

Abbreviations for target groups refer to immigrants from [country/region] and their descendants: ASIA, Asia; NOAFR, North Africa; RIMGR, recent immigrants from non-EU countries; ROMA, Roma minority; RUSMIN, Russian minority; SASIA, South Asia; SSAFR, sub-Saharan Africa; TUR, Turkey.

Source: FRA, EU-MIDIS II 2016

All EU Member States are parties to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and are bound by its provisions. The UN Committee on the Elimination of all Forms of Racial Discrimination (CERD) underlined the need to address ethnic discriminatory profiling by law enforcement officers. In its concluding observations on **Bulgaria**,⁶⁰ **Cyprus**⁶¹ and **Finland**,⁶² it recommended that the respective authorities continue to conduct training programmes with law enforcement officers on the prevention of racial profiling and non-discrimination. CERD also raised concerns about the abusive acts of the police against members of ethnic minorities in **Portugal**.⁶³

Several countries implemented educational measures and initiatives aimed at raising human rights awareness among law enforcement officials. These included initiatives to counter racism and ethnic discrimination, and on policing diverse societies.

In **Romania**, the police continued to include special places for national minorities at admittance examinations for police schools and the Police Academy.⁶⁴ In **Sweden**, the police introduced a project aimed at hiring civilians from diverse ethnic backgrounds for 12 months to foster relations with different ethnic communities and encourage more applicants to the Swedish Police Academy.⁶⁵ In **Belgium**, the Ministry of Security, Interior and Justice included training on 'Discrimination, hate speech and hate crimes: circular 13/2013' in its new National Security Plan 2016–2019 to give a bigger role for reference officers responsible for discrimination and hate crime.⁶⁶ Furthermore, in an effort to ensure that all citizens are treated equally and to fight ethnic profiling, the police zone of Mechelen-Willebroek has been registering every identity check of civilians since May 2017.⁶⁷ In **Greece**, the Ombudsman provided training courses to police forces on how to tackle racist violence and combat discrimination.⁶⁸ In **Portugal**, the Inspectorate General of Home Affairs developed a manual of procedures aiming to improve police practices by preventing racial discrimination and defending human rights.⁶⁹ In **Spain**, the Ombudsman recommended the use of templates for police identity checks that provide information about the police officers and about the nationality and ethnic origin of the individuals stopped and searched.⁷⁰ The EU Agency for Law Enforcement Training offers

a variety of training courses, including online, on the topics of policing and fundamental rights.⁷¹

Promising practice

Providing guidelines for identity checks

The **Dutch** police adopted guidelines for police officers when conducting proactive checks. Proactive checks are checks that police officers carry out on selected persons without noticing (in advance) a violation of a rule or an offence. The guidelines state that proactive checks by the police can be done when there is an objective reason to stop and search a person. According to the guidelines, skin colour, ethnic origin or religion are not objective reasons, except in the case of a description of, for example, a wanted person. Instead, a person's behavior can provide an objective reason for stopping and searching a person.

The guidelines are designed to strengthen police officers' awareness during the decision process. They state that police officers – without being asked – have to explain to persons why they decided to check them. The guidelines also include a new definition of ethnic profiling, which is very similar to ECRI's definition.

Source: The Netherlands, Politie (2017), 'Guidelines on carrying out proactive checks' (Handelingskader proactief controleren), 27 October 2017.

Promoting inclusive police forces

In the **United Kingdom**, the College of Policing has been commissioned to develop a national programme to improve the recruitment, development, progression and retention of black and minority ethnic (BME) officers and staff. The programme aims, among other things, to support forces in improving recruitment, retention and progression of BME officers through the provision of advice; to design, deliver, test and evaluate positive action learning and development programmes; to collate and share effective practice on the recruitment, retention and progression of BME officers; and to undertake relevant research, evaluation and surveys to inform the support being provided to forces and to provide evidence to enable standards to be set.

Source: UK College of Policing (2017), BME Progression 2018 programme.

FRA opinions

Despite the policy initiatives undertaken within the framework of the EU High Level Group on combating racism, xenophobia and other forms of intolerance, racist and xenophobic hate crime and hate speech continue to profoundly affect the lives of millions of people in the EU. This is illustrated in findings from EU-MIDIS II and reported in FRA's regular overviews of migration-related fundamental rights concerns.

Article 1 of the Framework Decision on Racism and Xenophobia outlines measures that Member States shall take to punish intentional racist and xenophobic conduct. Article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) further obliges State parties to make incitement to racial discrimination, as well as acts of violence against any race or group of persons, offences punishable by law.

FRA opinion 4.1

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

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

Despite the strong legal framework set by the Racial Equality Directive (2000/43/EC), EU-MIDIS II results and other evidence show that a considerable proportion of immigrants and minority ethnic groups face high levels of discrimination because of their ethnic or immigrant backgrounds, as well as potentially related characteristics, such as skin colour and religion. The results show little progress compared with eight years earlier, when the first EU-MIDIS survey was conducted; the proportions of those experiencing discrimination remain at levels that raise serious concern. They also reveal that most respondents are not aware of any organisation that offers support or advice to discrimination victims, and the majority are not aware of any equality body.

FRA opinion 4.2

EU Member States should ensure better practical implementation and application of the Racial Equality Directive. They should also raise awareness of anti-discrimination legislation and the relevant redress mechanisms, particularly among those most likely to be affected by discrimination, such as members of ethnic minorities. In particular, Member States should ensure that sanctions are sufficiently effective, proportionate and dissuasive, as required by the Racial Equality Directive.

In 2017, only 14 EU Member States had dedicated national action plans in place to fight racial discrimination, racism and xenophobia. The UN Durban Declaration and Programme of Action resulting from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance assigns State parties primary responsibility to combat racism, racial discrimination, xenophobia and related intolerance. The EU High Level Group on combating racism, xenophobia and other forms of intolerance provides EU Member States with a forum for exchanging practices to secure the successful implementation of such action plans.

FRA opinion 4.3

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

As reported in previous Fundamental Rights Reports, evidence from EU-MIDIS II shows that members of ethnic minority groups continue to face discriminatory profiling by the police. Such profiling can undermine trust in law enforcement among persons with ethnic

minority backgrounds, who may frequently find themselves stopped and searched for no reason other than their appearance. This practice contradicts the principles of the ICERD and other international standards, including those embodied in the European Convention on Human Rights and related jurisprudence of the ECtHR, as well as the EU Charter of Fundamental Rights and the Racial Equality Directive.

FRA opinion 4.4

EU Member States should end discriminatory forms of profiling. This could be achieved through providing systematic training on antidiscrimination legislation to law enforcement officers, as well as by enabling them to better understand unconscious bias and challenge stereotypes and prejudice. Such training could also raise awareness of the consequences of discrimination and of how to increase trust in the police among members of minority communities. In addition, to monitor discriminatory profiling practices, EU Member States could consider recording the use of stop-and-search powers. In particular, they could record the ethnicity of those subjected to stops – which currently happens in one Member State – in accordance with national legal frameworks and EU data protection legislation.

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UN & CoE

January

27 January – Parliamentary Assembly of the Council of Europe (PACE) adopts Resolution 2153 (2017) on promoting the inclusion of Roma and Travellers

February

28 February – European Commission against Racism and Intolerance (ECRI) publishes fifth monitoring report on Luxembourg and conclusions on the implementation of a number of priority recommendations made in its country reports on Germany and Belgium, released in 2014

March

8 March – CoE Commissioner for Human Rights issues report following a country visit to Portugal in March 2017

29 March – Congress for Local and Regional Authorities of the Council of Europe adopts Declaration of Mayors and Elected Local and Regional Representatives of Council of Europe Member States against anti-Gypsyism

29 March – CoE Commissioner for Human Rights issues report following a country visit to Ireland in November 2016

April

May

12 May – CoE Commissioner for Human Rights releases statement urging the Czech Republic to create the necessary conditions to build a monument on the former Nazi concentration camp for Roma in Lety u Pisku

16 May – ECRI publishes fifth monitoring report on Denmark and conclusions on the implementation of a number of priority recommendations made in its country reports on Bulgaria, Romania and the Slovak Republic, released in 2014

June

8 June – Launch of European Roma Institute for Arts and Culture in Berlin

22 June – ECRI publishes its annual report on 2016

July

11 July – CoE Commissioner for Human Rights issues report regarding the protection of vulnerable people, following a visit to Slovenia in March 2017

August

2 August – CoE Commissioner for Human Rights issues statement calling for CoE member states to enhance their efforts towards fully acknowledging the Roma genocide and other past atrocities committed against the Roma

September

12 September – CoE Commissioner for Human Rights publishes a position paper on fighting school segregation in Europe through inclusive education

19 September – ECRI publishes conclusions on the implementation of a number of priority recommendations made in its country reports on Slovenia, Germany and Belgium, released in 2014

October

November

December

EU

January

February

March

April

26 April – European Commission presents the European Pillar of Social Rights

May

22 May – European Commission publishes Country Specific Recommendations (CSRs) for 2017, as part of the European Semester process; four Member States receive CSRs related to Roma (Bulgaria, Hungary, Romania and Slovakia)

June

July

August

30 August – European Commission issues a Communication on the midterm review of the EU Framework for national Roma integration strategies

30 August – European Commission issues an accompanying Staff Working Document presenting a scoreboard that assesses the changes in Roma integration indicators between 2011 and 2016

September

October

25 October – European Parliament adopts a resolution on fundamental rights aspects in Roma integration in the EU: fighting anti-Gypsyism (2017/2038(INI))

November

December

5

Roma integration



The EU Framework for national Roma integration strategies has not yet resulted in significant and ‘tangible progress’, despite the continued implementation of measures to improve Roma inclusion in the Member States. Roma participation in education has increased, but early school leaving and segregation in education remain problems. The situation of Roma in employment, housing and health shows little improvement, while persisting anti-Gypsyism, which manifests itself in discrimination, harassment and hate crime, remains an important barrier to Roma inclusion. The need to tackle anti-Gypsyism became a higher political priority in 2017, reflected in the European Parliament Resolution on fundamental rights aspects in Roma integration in the EU. Enhanced efforts to monitor the implementation and effectiveness of integration measures are necessary, while special attention should be paid to marginalised and socially excluded young Roma and Roma women.

5.1. Taking stock of progress on Roma integration

The situation of Roma in the EU in 2017 did not change significantly from the previous years. The overwhelming majority of Roma remain at risk of poverty (80 % in 2016). Early childhood education enrolment increased to 53 % on average, but dropping out early from education remains a problem, particularly among Roma girls. The situation for young Roma, and particularly young Roma women, worsened; the proportion of young Roma not in education, employment or training (NEET) increased from 56 % to 63 %, on average.

Limited progress and persisting challenges to social inclusion indicate that the political tools in place to foster Roma inclusion have not yet achieved the desired results. In the EU, with some of the world’s richest economies, Roma continue to live in conditions similar to those in the world’s poorest countries. Promoting Roma inclusion is therefore also important in light of the 2030 Agenda for Sustainable Development,¹ in particular Goal 1, to end poverty in all its forms; Goal 4, to ensure inclusive and equitable quality education and promote lifelong learning

opportunities for all; and Goal 10, to reduce inequality within and among countries.

Who are the Roma?

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

See the Council of Europe’s webpage dedicated to Roma and Travellers.

In 2017, the European Commission launched an evaluation of the EU Framework for national Roma integration strategies, which will build on the mid-term review published in 2017, engaging Roma civil society at grassroots, national and EU levels. The Council of Europe through its JUSTROM, ROMACT² and ROMED joint programmes with the European Commission, and FRA through its Local Engagement for Roma Inclusion (LERI) research project, which published relevant findings in 2017,³ have increasingly promoted a participatory approach to Roma inclusion.

The European Commission issued a Communication in August, highlighting the results of the mid-term review and taking stock of the progress in Roma integration since 2011.⁴ It took into account data and indicators from FRA⁵ surveys, reports of national Roma contact points, and consultations with civil society, international organisations and other partners. The review “confirms the added value of the framework, the relevance of EU Roma integration goals and the continued need for a combination of targeted and mainstream approaches”.⁶

The mid-term review acknowledges some progress in education, noting the growing participation of Roma children in early childhood education and care, but specifies that early-school leaving and risk of poverty remain serious concerns. It also notes that “the growing proportion of young Roma who are not in education, employment or training (NEET) is an alarming signal that translating results in education into employment and other areas requires a more effective fight against discrimination”.⁷ It also links the still-limited impact of the EU Framework in improving the situation of Roma with persisting anti-Gypsyism, a lack of local capacity to implement integration measures and access funding, and declining levels of political commitment. The mid-term review concludes by identifying priority areas for strengthening the implementation of the EU Framework, such as strengthening the focus on anti-Gypsyism; promoting the participation and empowerment of Roma women and young people; reinforcing structural areas such as coordination structures, cooperation with civil society, transparent reporting and monitoring; and promoting more effective use of and better access to EU funds.⁸

FRA ACTIVITY

Collecting data on Roma

In 2011, FRA carried out its Roma survey in eleven EU Member States. In 2016, the second wave of its European Union Minorities and Discrimination Survey (EU-MIDIS II) covered Roma in nine Member States with the largest Roma populations.

FRA carried out analysis in 2017 to identify changes in key indicators on education, employment, health, housing and discrimination. These results fed directly into the mid-term review of the EU Framework and were annexed to the Commission Communication as a staff working document containing a Roma integration indicators scoreboard.

For more information, see FRA (2011), Multi-Annual Roma Programme: Pilot Survey; FRA (2016), Second European Union Minorities and Discrimination Survey (EU-MIDIS II): Roma – Selected Findings, Publications Office of the European Union (Publications Office), Luxembourg, November 2016; European Commission (2017), Commission Staff Working Document: Roma integration indicators scoreboard (2011–2016), SWD/2017/286 final accompanying COM(2017)458 final, Brussels, 30 August 2017.

The European Commission, as guardian of the Treaties, monitors Member States’ compliance with anti-discrimination legislation. In this context, it initiated infringement proceedings against the **Czech Republic, Hungary and Slovakia** for failure to correctly implement the Racial Equality Directive (2000/43/EC), due to different situations of systemic discrimination and segregation of Roma children in schools. In response, Hungary in 2017 amended the legislative provisions criticised in the infringement procedures, with the new provisions coming into effect in July.⁹ During 2017, FRA supported these ongoing proceedings through country visits and data collection.¹⁰ For more information on the implementation of the Racial Equality Directive, see ► [Chapter 4](#) on Racism, xenophobia and related intolerance.

The European Semester provides a policy framework for monitoring and guiding economic and social reforms by EU Member States to reach the Europe 2020 targets. Country-specific recommendations, which the Council of the EU has adopted, reflect challenges and proposed solutions specific to each EU Member State. Regarding Roma inclusion, since 2012 the European Commission has issued country-specific recommendations for **Bulgaria, the Czech Republic, Hungary, Romania and Slovakia**. In 2017, these recommendations – with the exception of the **Czech Republic**, which did not receive a recommendation on Roma – focused on the need to promote Roma participation in inclusive, mainstream education.¹¹

The European Pillar of Social Rights, proclaimed in 2017, makes reference to education, training and lifelong learning to help manage successful transitions into the labour market, as well as gender equality, equal opportunities and active support to employment, particularly for young and unemployed people. It does not explicitly mention Roma, but they would benefit from the majority of measures.

With these EU policy frameworks, legal and funding instruments in place,¹² and a number of targeted and mainstream measures implemented in the Member States, the focus in 2017 was on the intermediate progress achieved in terms of changes in the situation of Roma on the ground.

5.2. Overview of the fundamental rights situation of Roma

5.2.1. Combating anti-Gypsyism

Anti-Gypsyism remained a challenge to Roma inclusion in 2017 despite the existing EU legal frameworks, which envisage the adoption of measures to eliminate race-motivated crime and harassment. During 2017, tensions escalated and resulted in prolonged clashes

between Roma and non-Roma residents – for example, in the Menidi district of Athens in **Greece**¹³ and in **Bulgaria**, where an increase in racist mob attacks on Roma communities and settlements was recorded.¹⁴ Anti-Gypsyism¹⁵ manifests itself in discrimination, harassment and hate crime, and is a barrier to Roma inclusion. For more information on discrimination on the grounds of ethnic origin and hate crime affecting Roma,

- ▶ see [Chapter 3](#) on Equality and non-discrimination and
- ▶ [Chapter 4](#) on Racism, xenophobia and related intolerance.

Article 21 of the EU Charter of Fundamental Rights prohibits discrimination based on any ground, explicitly including membership of a national minority.¹⁶ Article 2 (3) of the Racial Equality Directive prohibits all acts of harassment and discrimination on the grounds of ethnicity or race, and the Framework Decision on Racism and Xenophobia (2008/913/JHA) requires Member States to impose criminal penalties to combat racism.

There was a greater focus on anti-Gypsyism at EU level in 2017. A large proportion of Roma continue to feel discriminated against in key areas of daily life, according to FRA data.¹⁷ While experiences of discrimination when looking for work decreased by 10 percentage points between 2011 and 2016, there was no significant change regarding discrimination in housing and in education. European Parliament Resolution [2017/2038\(INI\)](#) marked an important development in recognising the urgency of the challenge,¹⁸ and independent research on “Combating Institutional Anti-Gypsyism” provided examples of promising practices and experiences from five Member States.¹⁹ Several Member States enhanced their efforts to collect information on the topic. In **Germany**, Amaro Foro e.V. published a report of all recorded incidents of anti-Gypsyism in Berlin.²⁰ In **Austria**, the Roma organisation Romano Centro published its third incident report, covering the period 2015–2017.²¹ In **Italy** the “Don’t say Roma” programme continued to research the language used in the media and its impact on racial stereotypes targeting Roma.²²

Anti-Gypsyism manifests itself in various aspects of daily life, as some national court rulings from 2017 show. For example, in **Ireland**, a court ruled that a property owner neglected their contractual responsibilities to perform maintenance work because of the tenant’s Roma background.²³ Meanwhile, in the **Czech Republic**, the Ombudsman tested discrimination by sending housing applications under a fictitious, typically Roma, name to a real estate agency. In response, the Regional Court in Ostrava ruled that it was neither discriminatory nor humiliating for the agency to ask the applicant if they were Roma.²⁴ In **Spain**, the Supreme Court upheld a decision to deny a Roma widow recognition of her late husband’s pension, holding that their traditional Roma marriage was not recognised by Spanish civil authorities.²⁵

At policy level, the renewed National Traveller and Roma Inclusion Strategy in **Ireland**²⁶ and the National Programme of Measures for Roma of the Government of the Republic of **Slovenia**²⁷ highlight the fight against discrimination as a key priority. **Portugal** launched a national campaign against Roma discrimination, with particular emphasis on Roma children.²⁸ Similarly, the **United Kingdom** announced a Legal Support Project aiming to increase access to justice for victims of identity-based bullying and discrimination in schools.²⁹ The project is a mainstream measure, but may benefit Roma and Traveller students in particular.

There are promising practices in certain Member States regarding raising awareness of Roma culture. UNICEF **Bulgaria** launched a programme in March in which young people identify examples of negative attitudes and hate speech towards Roma children, and initiate discussions on how to change such attitudes.³⁰ Similarly, **Latvia** promoted Roma arts to counter stereotyping and promote mutual understanding and intercultural dialogue.³¹ Finally, the Flemish Ministry of Culture in **Belgium**³² recognised caravan culture as part of Flanders’ cultural heritage, and **Ireland** recognised Travellers as an ethnic group.³³

Promising practice

Working with professionals to tackle anti-Gypsyism

The federal programme “Live Democracy!” of the **German** Ministry of Family Affairs, Senior Citizens, Women and Youth funds a number of pilot projects and NGOs that address the issue of anti-Gypsyism – amongst other phenomena of group-focused enmity.

Within this framework, Lower Saxony continued its programme of educating and sensitising professional groups on anti-Gypsyism, focusing on public institutions, municipal authorities, police and prisons. The Lower Saxony Memorials Foundation provides the educational project “Competence against discrimination against Sinti and Roma” in cooperation with Roma and Sinti organisations and experts. It offers educational seminars to different professional groups each year, with the objective of promoting critical reflection over one’s own behaviour and raising awareness of structural barriers and institutional discrimination. Examples of both historical and current forms of anti-Gypsyism with practice-oriented exercises are incorporated into the training.

For more information, see Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (2017) “Live Democracy”; Lower Saxony Memorials Foundation (Stiftung niedersächsische Gedenkstätten) (2017), Project ‘Competent against anti-Gypsyism’ (Projekt ‘Kompetent gegen Antiziganismus’).

5.2.2. Education

Significant challenges remain in achieving full inclusion of Roma in education, despite some progress recorded



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in a number of EU Member States in recent years. The EU Framework sets a target for all Roma children to complete at least primary school, and calls on Member States to “ensure that all Roma children have access to quality education and are not subject to discrimination or segregation.”³⁴ Although participation in education has improved in many

Member States, segregation in education increased. National measures in 2017 focused on funding support for schools, scholarships, tutoring programmes, and measures to foster diversity in schools such as teacher training. It is still too early to assess how effective these measures are.

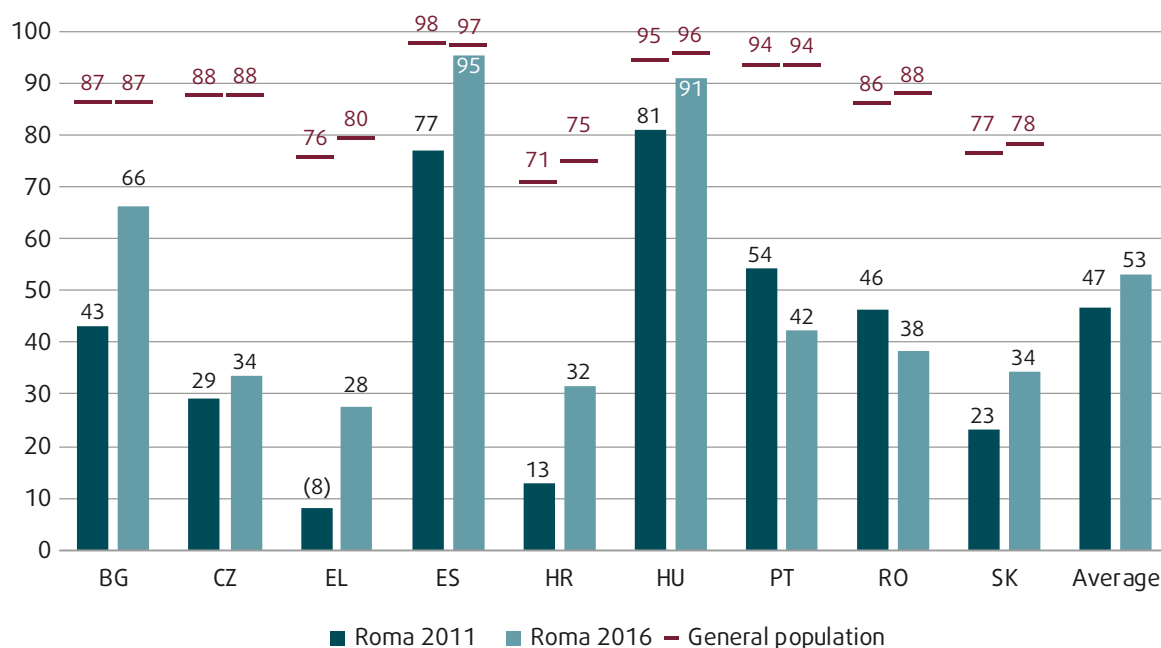
Article 14 of the EU Charter of Fundamental Rights stipulates that free, compulsory education is a fundamental right for all, while Article 21 prohibits

discrimination on grounds of racial or ethnic origin. Furthermore, Article 24 of the Charter and Article 3 (3) of the Treaty on European Union (TEU) outline the importance of combating social exclusion and discrimination and protecting the rights of the child, including the right to education. Article 9 of the Treaty on the Functioning of the European Union (TFEU) also stresses the need of promoting advanced education and training.

Enrolment in education increased slightly, an analysis of FRA survey data shows. On average, 9 out of 10 Roma of compulsory schooling age are enrolled in education, converging towards the general population’s enrolment rate. However, enrolment rates remain low in **Greece** and **Romania**, with nearly 7 and 8 out of 10 Roma enrolled in education, respectively.³⁵

Early childhood education enrolment rates for Roma also increased on average, from 47 % in 2011 to 53 % in 2016, according to FRA’s analysis. This marks an improvement in most Member States, and reflects an increased number of investments and measures by governments to support early education.³⁶ However, the gap between the general population and Roma remains significant, especially in the **Czech Republic**, **Greece**, **Portugal** and **Romania** (see Figure 5.1).³⁷ Early childhood education enrolment was similar for Roma

Figure 5.1: Children, aged between 4 years and the (country-specific) starting age of compulsory primary education, who attend early childhood education (%)



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

Sources: FRA, EU-MIDIS II 2016, Roma; FRA, Roma Pilot Survey 2011; UNDP, World Bank and EC 2011 (for Croatia); Eurostat 2016, General population; Eurostat 2011, General population

and non-Roma children only in **Hungary**, where early childhood education has been compulsory from the age of 3 since 2015,³⁸ and in **Spain**. Worryingly, despite a drop in the rate of young Roma early school leavers, approximately 7 out of 10 Roma aged 18–24 years still left school early in 2016.³⁹ Furthermore, in **Bulgaria**, **Croatia** and **Slovakia**, more Roma girls than boys left education early.⁴⁰

Troublingly, segregation in education – Roma children attending classes where all classmates are Roma – on average increased in the Member States FRA surveyed, from 10 % in 2011 to 15 % in 2016.⁴¹

To address this situation and promote the participation of Roma in education, some Member States introduced legislative measures in 2017. For example, the Amendment to the Education Act in the **Czech Republic** came into effect in September 2017, ensuring that compulsory early childhood education starts at the age of five.⁴² **Slovakia** introduced a subsidy to increase access to pre-school education.⁴³ Moreover, **Slovakia** revised the criteria for determining if a child is socially disadvantaged to increase schools' access to funds earmarked for teaching support of pupils from socially disadvantaged backgrounds.⁴⁴ Legislative changes in **Bulgaria** allow funds to be distributed directly to schools for additional Bulgarian language classes.⁴⁵ Several Member States also made legislative amendments in primary school legislation through education and equal treatment acts, to address concerns raised by the European Commission under the infringement proceedings. **Hungary** published a modification of its equal treatment act and its public education act in 2017.⁴⁶

At policy level, **Bulgaria** approved an Action Plan for 2017–2018 that – among other provisions – envisages project-based funding for additional courses for national minority children.⁴⁷ **Slovenia** adopted a National Programme of Action for Roma for 2017–2021, to promote early childhood education and prioritise the strengthening of language skills through learning supports.⁴⁸ **Slovakia** adopted the revised Action Plans of the Strategy for Roma Integration until 2020 to improve access to early childhood education.⁴⁹

Furthermore, **Hungary**,⁵⁰ **Poland**,⁵¹ **Portugal**,⁵² **Slovenia**⁵³ and **Spain**⁵⁴ implemented measures to provide learning support or financial support for young Roma in the form of scholarships, grants and apprenticeships. Additional policies adopted include the provision of professional orientation in schools in **Bulgaria**,⁵⁵ while **Hungary**⁵⁶ expanded its vocational training and study halls programmes. **Greece** introduced legislation for the appointment of psychologists and social workers to support children in vulnerable situations, including in schools situated in areas with high concentrations of Roma.⁵⁷

Bulgaria,⁵⁸ the **Czech Republic**,⁵⁹ **Hungary**,⁶⁰ **Latvia**,⁶¹ **Romania**⁶² and **Slovenia**⁶³ continued, expanded or introduced programmes using Roma mediators and teaching assistants. In some cases, Member States introduced sanctions in cases where children are left out of compulsory education (**Bulgaria**⁶⁴ and the **Netherlands**⁶⁵); in other cases, they provided material assistance in the form of stationary and school equipment (**Cyprus**⁶⁶) or vouchers for pre-schools (**Greece**⁶⁷) or by providing public transport to schools (**Lithuania**⁶⁸).

Member States also introduced measures to foster diversity and the inclusion of minorities, such as Roma. For example, **Lithuania** introduced legislative changes to improve the integration of national minorities in education through educational material and guidelines for cultural diversity.⁶⁹ **Austria** approved a major reform of the school system in June 2017.⁷⁰ It plans to create regional advisory boards of the Department of Education, which can include representatives of national minorities, such as Roma. The Ministry of Education in **Spain** committed itself to including Roma history and culture in the national curriculum.⁷¹ Some Member States developed policies aimed at sensitising and training teachers about ethnic or cultural minorities – for example, in **Ireland**,⁷² **Lithuania**,⁷³ **Portugal**,⁷⁴ **Slovakia**⁷⁵ and **Slovenia**.⁷⁶

Promising practice

Fostering local-level participation to improve education

FRA's Local Engagement for Roma Inclusion (LERI) research project published a number of case studies in 2017 that illustrate how local-level approaches to education can provide promising examples for replication and scaling up.

For example, in Aghia Varvara, **Greece**, Roma and non-Roma students took photos of their everyday lives, then discussed these in groups to gain insights into inter-ethnic relations in school. This so-called photovoice technique allowed students to openly address existing tensions, as well as to engage with local authorities in presenting students' ideas for how to improve the community.

Other promising practices in education emerged through the LERI research. In Sokolov, **Czech Republic**, and in Medway, **United Kingdom**, early school leaving and other educational needs were addressed through participatory community-level actions and family learning models that engaged with Roma parents through educational workshops, continuing education, leisure activities and parents' groups.

For more information, see FRA's webpage on the LERI project.

5.2.3. Employment

Improved educational attainment is expected to result in greater employment and labour market participation rates. For Roma, this has not been the case, as the mid-term review in 2017 noted. The European Roma Platform in November 2017 discussed the barriers facing young Roma in their transition from education to employment, as well as the effectiveness of measures taken by Member States to support youth employment.⁷⁷

The EU Framework sets a target to reduce the gap between the employment rates of Roma and of the majority population, and to provide “full access in a non-discriminatory way to vocational training, to the job market and to self-employment tools and initiatives”;⁷⁸ fulfilling the fundamental right to engage in work, which Article 15 (1) of the EU Charter of Fundamental Rights enshrines. This is also relevant to UN Sustainable Development Goal (SDG) 8 on promoting inclusive and sustainable economic growth, employment and decent work for all.



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Overall, key employment indicators have not improved, a comparison of FRA survey results from 2011 and 2016 shows.⁷⁹ The proportion of Roma in paid work remains at only 25 %, and the average percentage of Roma women in paid work is nearly half that of Roma men. Linked to the limited improvements in employment, the overwhelming majority of Roma remain at risk of poverty despite small improvements (80 % in 2016, compared with 86 % in 2011). Country differences are important: whereas the **Czech Republic, Hungary, and Romania** saw improvements in the rate of Roma at risk of poverty, this rate increased in **Greece** and in **Spain**.⁸⁰ The severity of the situation becomes even more striking when compared with the national at-risk-of-poverty rates for the general population, which remained between 10 % and 25 % across Member States from 2011 to 2016. The situation of Roma is alarming, including in light of SDG 1 on ending poverty in all its forms everywhere.

Some Member States adopted legislation in 2017 to support Roma in employment. For example, **Greece** passed a law to make it easier for Roma street vendors to obtain permits for selling in street markets and for organising markets through unions and associations.⁸¹ **Slovakia** relaxed the qualification criteria for community workers who provide crisis interventions in marginalised Roma communities, to allow more Roma to apply for these positions.⁸² In the **Czech Republic**, a legislative proposal on social entrepreneurship

would give businesses the status of “integrated social businesses”, which provide employers with additional benefits, if at least 30 % of employees are from groups that are disadvantaged in the job market and if they are also provided with psycho-social support.⁸³

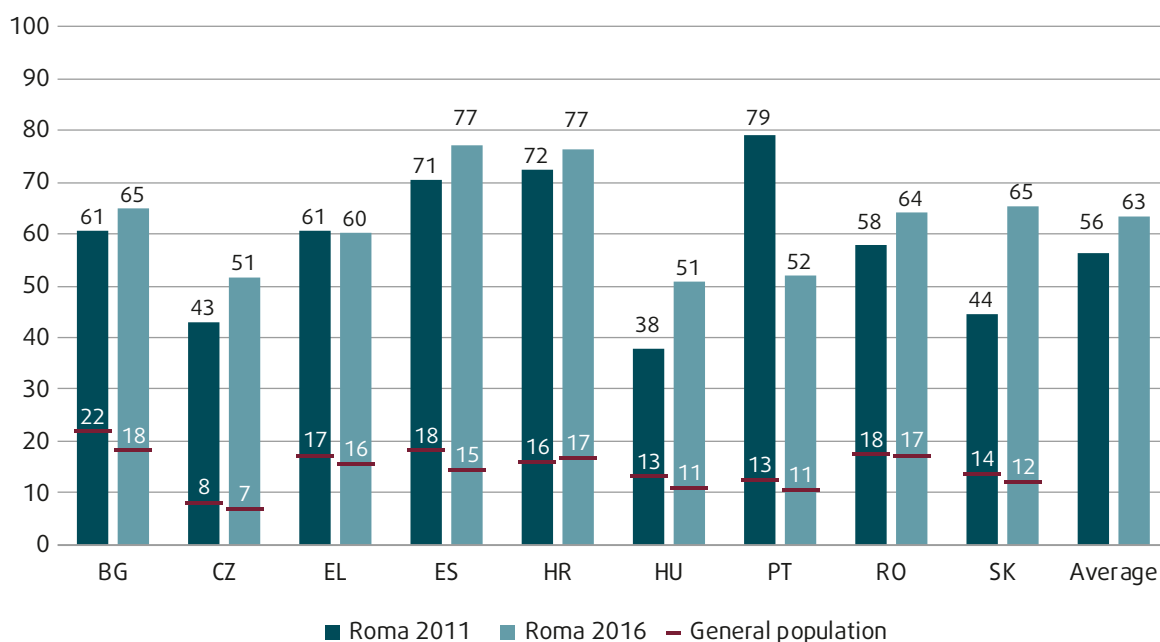
In **Greece**, the Union of Roma Mediators and Partners was established, and cooperates with the Special Secretariat for Social Inclusion of Roma in the Ministry of Labour to explore how Roma mediators can be recognised as a profession.⁸⁴ **Croatia** took measures to employ Roma in local government to enhance cooperation between local authorities and Roma communities.⁸⁵ **Croatia** also put in place active employment measures to allow persons to continue receiving social benefits while employed under the ‘public works’ measure.⁸⁶

Additional measures to support Roma in employment include qualification courses and counselling for the long-term unemployed – for example, in **Bulgaria**⁸⁷ through qualification courses and subsidised employment; in **Hungary**⁸⁸ through training for the low skilled, long-term unemployed and public workers as well as by providing employment and labour market services; and in **Romania** through counselling, mediation and training courses.⁸⁹ **Ireland’s** updated national Traveller and Roma inclusion strategy also plans similar measures to ensure that those who register as job seekers receive good-quality offers of employment, continued education and apprenticeships.⁹⁰

Local-level actions to improve labour market inclusion continue. For example, the *Acceder* and *Aprender Trabajando* programmes continued in **Spain**.⁹¹ In **Sweden**, the National Employment Office continued informational campaigns for job seekers from the Roma community in pilot municipalities, increasing the number of Roma using these services and the number of employed Roma.⁹² FRA’s LERI research also focused on community-level solutions to employment. Case studies from **Greece, France** and **Hungary** published in 2017 show that training and other participatory support activities to support integration into the labour market can help micro-enterprises and support Roma entrepreneurs.⁹³

Another key focus of employment has been on supporting young Roma into the labour market, as the proportion of Roma NEET aged 16–24 years remains far higher than that of the general population (see Figure 5.2). Between 2011 and 2016, the situation among young Roma actually worsened: the proportion increased from 56 % to 63 % on average, with the biggest increases in **Slovakia**, followed by **Hungary** and the **Czech Republic**.⁹⁴ The increase in young Roma NEET was larger for Roma women than men, further widening the gender gap to 17 percentage points.

Figure 5.2: Percentage of persons aged 16–24 years with current main activity not in employment, education or training (%)



Sources: FRA, EU-MIDIS II 2016, Roma; FRA, Roma Pilot Survey 2011; UNDP, World Bank and EC 2011 (for Croatia); Eurostat NEET rate 2016; Eurostat NEET rate 2011

Member States continued to put, or put additional, measures in place to address the situation of young people in the labour market in 2017, sometimes through general measures that also have an impact on young Roma. For example, **Hungary** continued its Youth Guarantee Programme to support NEETs gain certificates from vocational schools and place them in jobs. While the programme does not target Roma exclusively, many young Roma have benefited. By the end of 2017, more than 50,000 participants were employed within the programme, more than 27,000 participated in training and almost 11,000 obtained certificates.⁹⁵ **Romania** provided personalised assistance to young people at risk of marginalisation, in particular Roma, through solidarity contracts and other services under the national employment programme for 2017.⁹⁶

Few Member States focused specific employment measures on Roma women; however, some projects and practices were identified. For example, **Hungary** developed several schemes to improve the social acceptance and employment of unemployed Roma women in particular, reaching out to nearly 1,000 women and providing training and jobs in the public sector.⁹⁷ In **Sweden**,⁹⁸ awareness-raising efforts by the national employment office reached out to Roma women.

Promising practice

Municipalities find new ways to generate employment

The Municipality of Ulič in Slovakia has developed a model to address long-term unemployment and create employment opportunities for low-skilled and disadvantaged job seekers, such as Roma. It ran an employment workshop and set up a municipal waste management firm to provide services in neighbouring villages and heating for municipal buildings in Ulič. As the firm developed into a self-sustaining company, it used revenues to pay wages, invest in new technologies and fund a local municipal community centre that provides joint activities for Roma and non-Roma.

The firm and the centre have slowly improved interethnic relations and increased the chances of its employees in the open labour market. The initiative dates back to 2006 and was financed by a combination of EU Structural Funds and national and municipal budgets.

Several other municipalities in Slovakia have developed similar approaches – for example, Spišský Hrhov and Raslavice.

For more information, see the Ulič municipality's website.

5.2.4. Housing

One of the EU Framework’s objectives is to increase access to housing and public utilities for Roma. Despite some positive legislative developments and measures, housing remained an area of concern in many Member States in 2017. The proportion of Roma living in severely deprived housing conditions remained constant, while evictions continued to take place.



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Housing assistance is recognised as a fundamental right under Article 34 (3) of the Charter, to ensure a decent existence for all those who lack sufficient resources. Moreover, Article 31 of the revised European Social Charter declares that “everyone has the right to housing”.⁹⁹

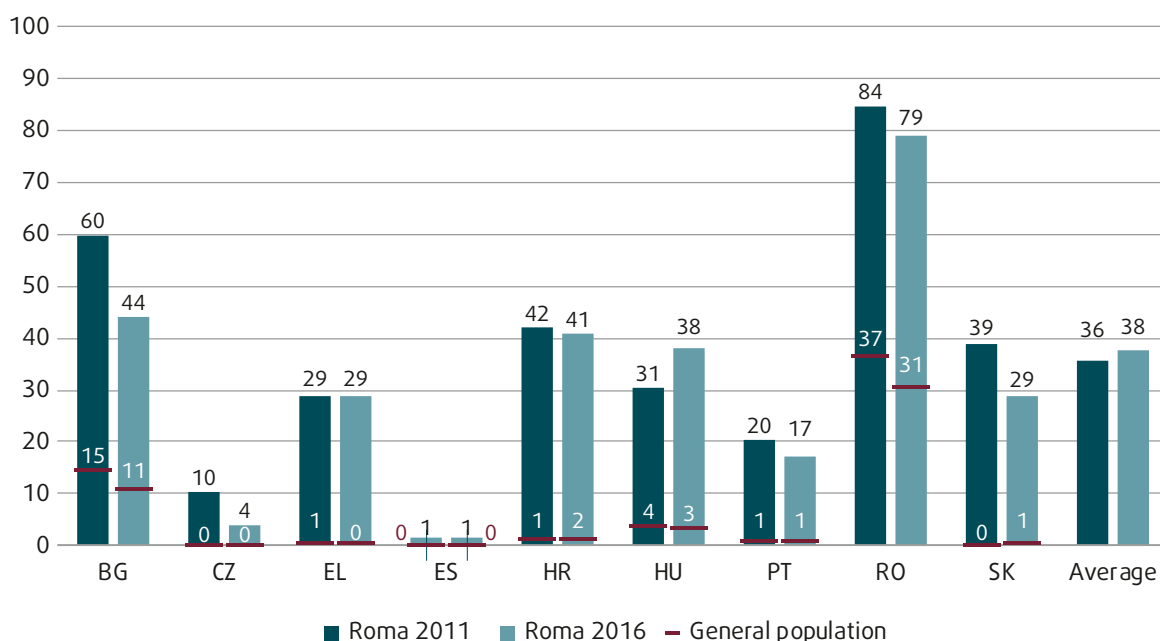
While some positive trends concerning access to basic amenities are evident, Roma continue to live in overcrowded households and face conditions of severe housing deprivation, FRA analysis in 2017 shows (see Figure 5.3). Some improvements, however, are noticeable in **Bulgaria**, the **Czech Republic**, **Romania** and **Slovakia**. Despite measures to promote non-discriminatory access to social housing, rates of perceived discrimination when looking for housing because of being Roma increased in many countries,

including the **Czech Republic**, **Portugal** and **Spain**. Only **Slovakia** saw an improvement, with the rate of perceived discrimination in access to housing decreasing from 44 % to 30 %.¹⁰⁰

In 2017, the European Roma Rights Centre (ERRC) published a report based on field research in 93 Roma neighbourhoods and settlements across three EU Member States (**France**, **Hungary** and **Slovakia**) and four non-EU countries (Albania, the former Yugoslav Republic of Macedonia, Moldova, and Montenegro), highlighting the large disparities between Roma and non-Roma in access to water and sanitation services.¹⁰¹

Several relevant legislative developments in the area of housing took place in 2017. **Greece** introduced a new law with a special procedure concerning social housing policy and a mechanism for relocating Roma from rough/irregular accommodation.¹⁰² Dependent on the approval of the population to be relocated, the law permits social groups living in makeshift or illegally built accommodation to be temporarily relocated to appropriate social housing complexes, in addition to receiving social support services. A new law on equality and citizenship in **France** grants those residing in shanty towns the same rights as the tenants of squats regarding evictions.¹⁰³ It will impose a ban on evictions during winter, apply a two-month deadline following an order to leave the premises, and allow judges to grant deadlines from three months to three years before an eviction.

Figure 5.3: Percentage of people living in households that have no toilet, shower or bathroom inside the dwelling (household members)



Sources: FRA, EU-MIDIS II 2016, Roma; FRA, Roma Pilot Survey 2011; UNDP, World Bank and EC 2011 (Croatia 2011); Eurostat, EU-SILC 2015; Eurostat, EU-SILC 2011, General population

In contrast, some legislative developments may negatively affect Roma. For example, the **Czech Republic** amended the Act on Material Needs Benefits, allowing municipalities to deny the provision of supplementary housing benefits in regions with a high prevalence of social inclusion challenges.¹⁰⁴ According to the Inter-ministerial Commission for Roma Community Affairs, this will probably hinder the ability of poor Roma to secure housing.¹⁰⁵

At policy level, several Member States made efforts to map Roma housing needs in 2017. For example, **Finland** adopted the National Action Plan on Fundamental and Human Rights for 2017–2019, which envisages a study of homelessness among Roma and their access to housing.¹⁰⁶ In **Ireland**, the newly adopted National Traveller and Roma Inclusion Strategy 2017–2021 requires reviews of the barriers that Travellers face in access to social housing.¹⁰⁷ The Ombudsman in the **Netherlands** published a report concluding that local governments have to take account of the specific housing needs of Travellers, Roma and Sinti, and have to ensure enough locations and pitches based on actual local needs.¹⁰⁸ In **Portugal**, a study conducted by the Institute of Housing and Urban Rehabilitation – a public institute under the Ministry of the Environment – found that the housing situation of Roma has not improved.¹⁰⁹ In **Spain**, a study of Roma housing showed that a considerable number of Spanish Roma still live in substandard housing.¹¹⁰

Member States continued to focus attention on social housing and expanding access to housing and infrastructure for marginalised groups in 2017. Several implemented relevant measures, including **Bulgaria**¹¹¹ and **Croatia**.¹¹² Scotland, **United Kingdom**, published a reviewed social housing charter, including minimum site standards.¹¹³ A guide for local authorities addresses how to manage unauthorised camp sites following basic principles of minimising disruption for all and respecting common standards of behaviour.¹¹⁴

Evictions continued and the legalisation of irregular housing remains controversial. In **France**, civil society organisations repeatedly raised concerns. The number of forced evictions by French authorities increased in the second half of 2017, according to a report published by the ERRC. Many cases were not supported by a legal decision and did not include an offer of adequate alternative accommodation, it said.¹¹⁵ Similarly, civil society organisations raised concerns regarding the increasing number of forced evictions in **Italy**.¹¹⁶ In response, the municipality of Rome earmarked € 1.5 million to provide Roma with alternative housing options to encampments.

Several court cases addressed informal encampments. For example, in **Italy**,¹¹⁷ a court upheld a complaint that the mayor of Milan issued, requesting the closing of an informal encampment. The court found that health and safety reasons prevailed over the right to “maintain Roma identity”.

Other court decisions were more positive. For example, in **Slovenia**, an administrative court ruled that Roma should enjoy special protection in housing even when living in illegally constructed buildings, as enshrined in Article 8 of the European Convention on Human Rights.¹¹⁸ This judgment was also approved by the Constitutional Court.¹¹⁹ In the **Netherlands**, the Dutch Human Rights Institute ruled that the so-called “extinction policy” and “reduction policy” – which allow municipalities to reduce the number of caravan sites – are discriminatory towards Travellers because they reduce the number of camps, which are essential to the Travellers’ way of life.¹²⁰

Some Member States took measures to address evictions and legalise irregular housing. For example, in Vidin, **Bulgaria**, the NGO Organisation Drom continued to implement a pilot model through its project Equal Access to Housing for Roma in Vidin, to legalise informal settlements in a preventive effort to avoid evictions.¹²¹ The organisation also cooperated with the municipality to organise round-table discussions, training and a housing-rights campaign. In **Slovakia**, the Ministry of Interior approved a national project that aims to legalise the use of land in marginalised Roma communities across 150 municipalities.¹²²

Local-level approaches to housing challenges have had promising results. In the context of FRA’s LERI research,¹²³ local communities tested participatory approaches to housing exclusion and risk of evictions, particularly in Stara Zagora, **Bulgaria**, where mapping evicted families helped the local authorities to find appropriate solutions, while at the same time raising awareness among Roma households of legal options to rebuild their homes. In Aiud and in Cluj-Napoca, **Romania**, the project developed local action groups on housing inclusion to address the housing insecurity of families in informal settlements, looking for ways to give houses official legal status, submit social housing applications, and propose changes to criteria for social housing allocation that are less likely to exclude socially marginalised groups.

Promising practice

Providing guidance materials and training for property owners

National authorities in **Sweden** have taken an initiative to combat discrimination against Roma in the housing market in recent years. Activities include guidance materials aimed at property owners and landlords, as well as the establishment of a network consisting of Roma representatives, property owners and landlords. The Swedish National Board of Housing, Building and Planning uses the materials for awareness-raising activities, including training programmes. Roma representatives also received free training about their rights in the housing market.

For more information, see Sweden, National Board of Housing, Building and Planning (Boverket) (2017), New education on equal treatment of Roma persons in the housing market (Ny utbildning för likabehandling av romer på bostadsmarknaden), 5 September 2017.

measures to address discriminatory treatment in the healthcare system.

The picture is mixed, an analysis of FRA survey data in 2017 indicates. The proportion of those who say that they are covered by medical insurance fell by more than 10 percentage points in the **Czech Republic** and **Hungary**, while **Greece** achieved a considerable increase (Figure 5.4). On average, the number of Roma respondents who self-assessed their health in positive terms (“very good” or “good”) increased from 55 % in 2011 to 68 % in 2016. However, a small gender gap in self-reported health conditions remains, with Roma men on average reporting slightly better health than Roma women in most countries. Overall, roughly 1 in 10 Roma still reported that they had felt discriminated against while accessing healthcare services.¹²⁴

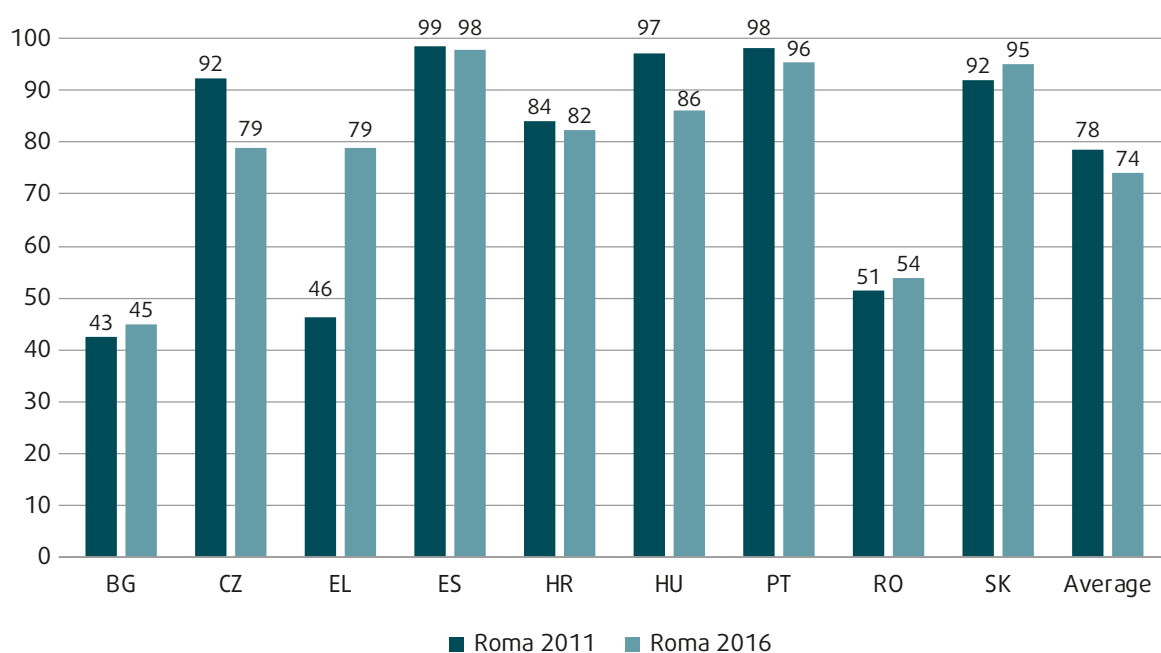
In terms of legislative developments, **Greece** introduced Law 4486/2017, which grants free healthcare coverage to vulnerable social groups, including Roma.¹²⁵ In addition, legislative changes in **Romania** included the adoption of Emergency Ordinance No. 6/2017, which increased investments in medical units, among other public infrastructure.¹²⁶ While not directly affecting Roma, the distribution of additional funds has the potential to benefit marginalised populations.

Member States also adopted policy initiatives and measures to combat the exclusion of Roma from the national healthcare systems. In its new National Programme of Measures for Roma, **Slovenia** plans to

5.2.5. Health

The EU Framework calls on Member States to provide access to quality healthcare for Roma, under the same conditions as the rest of the population. However, in 2017, healthcare did not appear to be a priority on the legislative agenda in comparison with education, employment and housing. Member State efforts concentrated on specific health challenges and

Figure 5.4: Roma respondents, aged 16 years and over, with medical insurance coverage (%)



Sources: FRA, EU-MIDIS II 2016, Roma; FRA, Roma Pilot Survey 2011; UNDP, World Bank and EC 2011 (for Croatia)

carry out research and evaluation on any potential structural, institutional or individual barriers to accessing healthcare.¹²⁷ The Foundation for the Roma Secretariat in **Spain** continued to assist Roma families in marginalised communities to access health and social services.¹²⁸ In **Italy**, the municipality of Naples created a reception centre for Roma, which provides access to healthcare services.¹²⁹ Meanwhile, the integrated case management approach adopted in **Romania** envisages measures to facilitate access to healthcare through community nurses and Roma health mediators.¹³⁰ The use of Roma mediators, who act as community representatives and liaise with local authorities and health services, was common practice in a number of Member States, such as **Bulgaria**, which continued to fund the work of 215 health mediators (€ 800,000 in 2017).¹³¹

Member States also took action to address specific health challenges affecting Roma. For example, **Bulgaria** concentrated efforts on preventing, screening and treating tuberculosis,¹³² while Roma doctors and health mediators played a central role in managing a measles epidemic that affected Roma children.¹³³ Similarly, **Greece** targeted Roma in the pan-European measles vaccination,¹³⁴ while **Hungary**¹³⁵ and **Ireland**¹³⁶ developed measures to prevent and combat drug addiction within Roma communities.

Some Member States developed policies to make healthcare systems more inclusive. Such measures target both the general population and Roma, and seek to promote the active engagement of Roma as both healthcare providers and receivers. For example, **Hungary**,¹³⁷ **Ireland**,¹³⁸ **Slovenia**¹³⁹ and **Sweden**¹⁴⁰ developed policies to provide diversity training for health-service providers, and **Bulgaria** developed programmes to train Roma medical professionals.¹⁴¹

5.3. Implementing monitoring frameworks

The EU Framework for national Roma integration strategies envisages “strong monitoring methods to evaluate the impact of Roma integration actions”, including consultation with Roma civil society and local authorities.¹⁴² Several Member States further developed monitoring mechanisms in 2017, incorporating both quantitative and qualitative indicators. However, a number of Member States still do not have effective monitoring mechanisms in place.

Quantitative indicators – such as enrolment rates in education, employment rates or the number of beneficiaries receiving certain services – are a useful tool to measure progress towards targets and objectives. They also help to assess the efficiency and quality of projects. Such information could improve

the use of European Structural and Investment Funds (ESIF), which would enhance the impact and success rate of projects combating Roma exclusion.

In 2017, Member States adopted various approaches to incorporating quantitative indicators in their monitoring. For example, in **Bulgaria**, an annual monitoring report on the implementation of the national Roma integration strategy collects information regarding the projects conducted under ESIF funding, using quantitative indicators when possible.¹⁴³ Similarly, **Lithuania**’s annual report on the implementation of the Action Plan for Roma Integration for 2015–2020 is based on yearly outputs, including indicators such as the number of Roma children in general schools, the number of Roma women involved in social activities and the number of illegal buildings in Roma ghettos.¹⁴⁴ **Poland** assesses expenditures within the 2014–2020 Roma integration programme and collects information on indicators such as the number of Roma who have undergone preventive medical treatment, whose accommodation has been renovated or who have received new accommodation.¹⁴⁵ The Supreme Audit Chamber conducted further monitoring at municipal level.¹⁴⁶

Hungary considers quantitative targets, outputs, results and impact indicators in its annual monitoring report of its national strategy. Notably, all stages of monitoring include gender and age, and it also measures the situation of children where applicable.¹⁴⁷ A mid-term monitoring report of the Hungarian National Social Inclusion Strategy was also developed in 2017, focusing on results and recommendations for the upcoming three-year period.¹⁴⁸ **Slovakia** applies a holistic approach using quantitative indicators for all thematic areas, including financial inclusion and non-discrimination.¹⁴⁹

Following governmental decisions adopted in late 2016, an annual evaluation cycle in the **Czech Republic** will use quantitative indicators to assess the fulfilment of major targets outlined by the National Roma Integration Strategy in any given year.¹⁵⁰ In **Greece**, the Special Secretariat for the Social Integration of Roma is tasked with developing quantitative targets for assessing progress on Roma integration in education, employment, housing and health.¹⁵¹ However, official data disaggregated by Roma origin are still not available.

Several Member States opted to develop, monitor and evaluate qualitative indicators. In **Austria**, the Federal Chancellery commissioned qualitative studies on an *ad hoc* basis, in preparation of an update of the national Roma strategy. In addition, the Roma Dialogue Platform regularly meets to discuss issues related to Roma, including such studies.¹⁵² Examples of indicators include the experiences of Roma students and teachers,

barriers to education and the level of family support.¹⁵³ Similarly, in **Slovenia**, a network of coordinators has the task of evaluating the implementation of measures in the National Programme of Measures for Roma for 2017-2021.¹⁵⁴ **Croatia** will provide base-line qualitative – and quantitative – data for measuring the efficiency of implementation of the National Roma Inclusion Strategy and accompanying Action Plan.¹⁵⁵

Sweden upheld gender mainstreaming as a cross-cutting principle that all projects financed by the European Social Fund should use, including during their implementation and monitoring phases.¹⁵⁶ As a result, qualitative impact indicators consider women and children as especially prioritised groups.¹⁵⁷

A number of Member States do not use qualitative or quantitative indicators, partly because of challenges in data collection on ethnicity or race. In these Member States, a lack of statistical data disaggregated by ethnicity can prevent the population of robust indicators that track progress in the implementation of measures to promote Roma inclusion. However, some Member States have attempted to work around these constraints to monitor their Roma integration efforts. For example, the Advisory Group for the Integration of Roma Communities in **Portugal** holds

regulation meetings every four months and carried out an operational evaluation in March 2017, although it considered no impact assessments or indicators beyond recording the number of actions and activities implemented in each thematic area.¹⁵⁸

Finland appointed a new National Advisory Board on Romani Affairs for 2017-2019, which along with the Ministry of Social Affairs and Health carried out an evaluation of the outcomes of the first Roma political programme (ROMPO1). In addition, the National Institute for Health and Welfare carried out a national Roma research project tasked with developing indicators for measuring progress in health and welfare related issues.¹⁵⁹ In **Ireland**, the Department of Justice and Equality established a steering group with the mandate of producing annual and mid-term reports about the implementation of the National Traveller and Roma Inclusion Strategy. In both countries, the precise nature of the indicators and monitoring agreements has yet to be confirmed.¹⁶⁰

Finally, a report published in May 2017 monitored Roma-related institutional, training-related and education-related initiatives, their access to justice and the nature of media and political discourses, and compared the situation in selected Member States.¹⁶¹



FRA opinions

Anti-Gypsyism remains an important barrier to Roma inclusion, findings of FRA surveys on Roma show. Roma continue to face discrimination because of their ethnicity in access to education, employment, housing and healthcare. Discrimination and anti-Gypsyism violate the right to non-discrimination as recognised under Article 21 of the EU Charter of Fundamental Rights, the Racial Equality Directive (2000/43/EC) and other European and international human rights instruments. Furthermore, the 2013 Council Recommendation on effective Roma integration measures recommends that Member States take necessary measures to ensure the effective practical enforcement of the Racial Equality Directive. The need to tackle discrimination against Roma by implementing the Racial Equality Directive and the Framework Decision on Combating Racism and Xenophobia, with a particular focus on gender aspects, was highlighted in previous FRA reports, including the EU-MIDIS II report on *Roma – Selected findings* and the *Fundamental Rights Report 2017*.

FRA opinion 5.1

EU Member States should ensure that combating anti-Gypsyism is mainstreamed into policy measures and combined with active inclusion policies that address ethnic inequality and poverty, in line with the Racial Equality Directive and the Framework Decision on Combating Racism and Xenophobia. They should also include awareness-raising measures on the benefits of Roma integration, targeted towards the general population, service providers, public educational staff and the police. Such measures could include surveys or qualitative research conducted at national or local level to understand the social impact of anti-Gypsyism.

Early-childhood education enrolment rates for Roma have increased, reflecting investments and measures by governments to support early education. Despite a drop in the rate of young Roma early school leavers, about 7 out of 10 Roma aged 18–24 years still leave school early. Furthermore, segregation in education has increased in several EU Member States and discrimination in education has not significantly improved. Article 3 (3) of the Treaty on European Union (TEU) outlines the importance of combating social exclusion and discrimination, and of protecting the rights of the child, which include the right to education. Article 21 of the EU Charter of Fundamental

Rights explicitly prohibits discrimination on the grounds of ethnicity or race. The 2013 Council Recommendation on effective Roma integration measures calls for the elimination of any school segregation and to ensure the sustainability and long-term impact for eliminating segregation. The Racial Equality Directive also applies to the area of education. Infringement procedures brought against three Member States concerning segregation in education in the context of violations of the Racial Equality Directive reflect the severity of this issue.

FRA opinion 5.2

National educational authorities should provide necessary support and resources to schools with Roma student populations to address all aspects of educational inclusion: to increase participation in education and to reduce dropout rates. EU Member States should implement further efforts to address segregation in education that focus on longer-term sustainability and in parallel address discrimination and anti-Gypsyism. Desegregation measures should be accompanied by awareness-raising efforts and diversity promotion in schools addressed to teachers, students and parents.

Improved educational participation of Roma has not always resulted in higher employment rates or labour market participation. Long-term unemployment remains a challenge, while integration in the labour market is even more difficult for young Roma and Roma women. While some specific projects and policy measures have targeted the needs of young Roma and Roma women in employment, little systematic attention has been paid to these particular groups. The 2013 Council Recommendation on effective Roma integration measures asks EU Member States to take effective measures to ensure equal treatment of Roma in access to the labour market – for example, through measures to support first work experience and vocational training, self-employment and entrepreneurship, access to mainstream public employment services and eliminating barriers such as discrimination. The European Pillar of Social Rights, proclaimed in 2017, makes reference to education, training and lifelong learning to help manage successful transitions into the labour market, as well as gender equality, equal opportunities and active support to employment, particularly for young people and the unemployed.

FRA opinion 5.3

EU Member States should strengthen measures to support access to the labour market for Roma. Employment policies, national employment offices and businesses, particularly at local level, should provide support to enable self-employment and entrepreneurship activities. They should also implement outreach efforts to Roma to support their full integration into the labour market, with a focus also on Roma women and young people.

For Roma integration measures to succeed, the meaningful participation of Roma in projects and in the design and implementation of local policies and strategies is essential. National-level participation by Roma is important for the design and monitoring of national Roma integration strategies or integrated sets of policy measures and should be supported through national-level dialogue and participation platforms. Particularly at the local level, mechanisms for cooperation with local authorities and civil society organisations can facilitate the involvement of local people, including Roma. The 2013 Council Recommendation on effective Roma integration measures calls for active involvement and participation of Roma, and appropriate local approaches to integration. FRA's experience through its Local Engagement for Roma Inclusion (LERI) research shows how local communities can become empowered to participate in projects and strategy development.

FRA opinion 5.4

EU Member States should review their national Roma integration strategies or integrated sets of policy measures to advance efforts to promote participatory approaches to policymaking and in integration projects, paying particular attention to the local level and supporting community-led efforts. European Structural and Investment Funds and other funding sources should be used to facilitate participation of Roma and community-led integration projects.

The 2013 Council Recommendation on effective Roma integration measures calls on EU Member States to appropriately monitor and evaluate the effectiveness of their national strategies and social inclusion policies. Such monitoring mechanisms need to include relevant qualitative and quantitative data where possible, ensuring that the data collection is in line with applicable national and Union law, particularly regarding the protection of personal data. While several Member States have included quantitative and qualitative indicators to measure progress in Roma integration, some still do not have any monitoring mechanisms in place. Few monitoring mechanisms include information on effective use of EU funds.

FRA opinion 5.5

Member States should improve or establish monitoring mechanisms on Roma integration, in line with the 2013 Council Recommendation on effective Roma integration measures in the Member States. Monitoring mechanisms should include further collection of anonymised data disaggregated by ethnicity and gender, in line with EU data protection legislation, and include relevant questions in large-scale surveys such as the Labour Force Survey and the EU Statistics on Income and Living Conditions. Monitoring mechanisms should involve civil society and local Roma communities. Independent assessments, involving Roma, should also review the use and effectiveness of EU funds, and should feed directly into improving policy measures.



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