Fundamental Rights Report 2016

FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Acronyms

ECHR	European Convention on Human Rights
CJEU	Court of Justice of the European Union (CJEU is also used for the time predating the entry into force of the Lisbon Treaty in December 2009)
EASO	European Asylum Support Office
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
EDPS	European Data Protection Supervisor
ESIF	European Structural and Investment Funds
EU	European Union
EU-MIDIS	European Union Minorities and Discrimination Survey
FRA	European Union Agency for Fundamental Rights
FRANET	Network of Legal and Social Science Experts (FRA)
LGBT	Lesbian, gay, bisexual and transgender
NHRI	National Human Rights Institute
NGO	Non-governmental organisation
OSCE	Organization for Security and Co-operation in Europe
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the EU
UN	United Nations

The FRA highlights the titles of the EU Charter of Fundamental Rights by using the following colour code:

- **Dignity**
- **Freedoms**
- **Equality**
- **Solidarity**
- **Citizens' rights**
- **Justice**

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FRA – European Union Agency for Fundamental Rights
Schwarzenbergplatz 11 – 1040 Vienna – Austria
Tel. +43 1580 30-0 – Fax +43 1580 30-699
Email: info@fra.europa.eu – fra.europa.eu

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Foreword

The *Fundamental Rights Report 2016* summarises and analyses major developments, and gives the opinions of FRA, in the fundamental rights field in the European Union between January and December 2015. Noting both progress made and persisting obstacles, it provides insights into the main issues shaping fundamental rights debates across the EU.

The report begins with a Focus section. This year, it takes a closer look at asylum and migration issues in the EU, exploring: the risks refugees and migrants face to reach safety; challenges with regard to *non-refoulement* and the prohibition of collective expulsion; developments and possible solutions in the field of asylum; and the issue of returns.

In an important milestone, the United Nations Committee on the Rights of Persons with Disabilities in 2015 completed its first review of the EU's implementation of the Convention on the Rights of Persons with Disabilities (CRPD) – the first time an international body examined how the EU is fulfilling its international human rights obligations. In addition, FRA took over the role of chair and secretariat of the EU Framework for the CRPD. To mark these notable events, FRA reports on developments in CRPD implementation in a separate chapter – which will become a regular feature of its annual Fundamental Rights Reports.

The remaining chapters discuss the EU Charter of Fundamental Rights and its use by Member States; equality and non-discrimination; racism, xenophobia and related intolerance; Roma integration; information society, privacy and data protection; rights of the child; and access to justice, including the rights of victims of crime. To avoid duplication with the Focus section, this year's report does not dedicate a thematic chapter to asylum, borders, migration, and integration issues. As in previous reports, the chapters reflect the thematic areas of the agency's Multi-annual Framework – a list of priority areas approved by the Council of the European Union every five years.

The last section of each chapter concludes with FRA opinions that outline evidence-based advice anchored in the facts and research presented in the report. These opinions provide meaningful, effective and relevant assistance and expertise to the main actors in the European Union.

We would like to thank the FRA Management Board for its diligent oversight of the *Fundamental Rights Report 2016* from draft stage through publication, as well as the FRA 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 comments, which bolster 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.

Frauke Lisa Seidensticker
Chairperson of the FRA Management Board

Michael O'Flaherty
Director

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

- Information society, privacy and data protection

JUSTICE

- Access to justice, including rights of crime victims

Contents

Asylum and migration into the EU in 2015

Over a million people sought refuge in EU Member States in 2015, confronting the EU with an unprecedented challenge. Although this represents only about 0.2 % of the overall population, the number was far larger than in previous years. Moreover, with about 60 million people in the world forcibly displaced as a result of persecution, conflict, generalised violence or human rights violations, the scale of these movements is likely to continue for some time. FRA looks at the effectiveness of measures taken or proposed by the EU and its Member States to manage this situation, with particular reference to their fundamental rights compliance.

This FRA *Fundamental Rights Report 2016* focus section looks at four different areas. It first illustrates the risks that refugees and migrants face to reach safety. A second section examines new challenges with regard to non-*refoulement* and the prohibition of collective expulsion. This is followed by a section describing selected developments and possible solutions in the field of asylum. Finally, a fourth section deals with fundamental rights issues in the context of returns of migrants in an irregular situation. The description of developments is complemented by an analysis of selected aspects that raise particular fundamental rights challenges, looking also at the impact of policies on people. Chapter 3 of FRA's *Fundamental Rights Report 2016* complements this focus chapter with information on racism and xenophobia.

Significant arrivals strain domestic asylum systems

According to Frontex, in 2015, over one million refugees and migrants – compared with about 200,000 in 2014 – reached Europe by sea in an unauthorised manner, mainly arriving in **Greece** and **Italy**.[3] Many moved onwards – initially spontaneously and later in an increasingly coordinated manner. Travelling through the western Balkan countries, they headed primarily to **Austria, Germany** and **Sweden** but also to other EU Member States. This put a significant strain on domestic asylum systems in the countries of first arrival, transit and destination. Figure 1 provides a comparative overview of monthly arrivals by sea in 2014 and 2015.

The increase in refugees arriving in Europe mirrors global developments. Worldwide, at the beginning of 2015, almost 60 million people – the highest number ever – were forcibly displaced as a result of persecution, conflict, generalised violence or other human rights violations. Some 20 million among them were displaced as refugees outside their country of origin. Leaving aside the 5.1 million Palestinian refugees in the Middle East, Syrians constituted the largest refugee group: almost 4 million people. Turkey hosted the most refugees in the world. Lebanon hosted the largest number of refugees in relation to its national population, with 232 refugees per 1,000 inhabitants, followed by Jordan (87/1,000).[4]

People moving through the Mediterranean are mainly refugees, many of whom moved on from first countries of asylum after failing to obtain effective protection. More than four out of five people who crossed the Mediterranean Sea to reach Europe came from the top 10 refugee-producing countries, including Syria, Afghanistan, Iraq and Eritrea.[5]

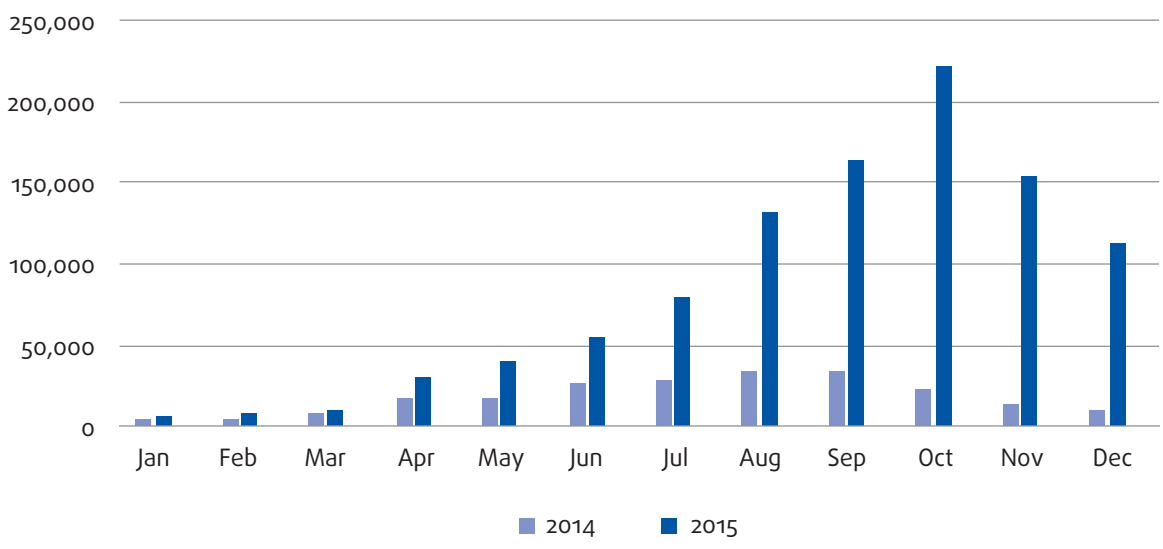
As Figure 2 illustrates, 31 % of new arrivals were children. The increasing number of arriving children – both unaccompanied and travelling with families – strained national child protection capacities. Children are at severe risk of enduring violence along the migration route, as well as sexual violence, exploitation and going missing.

Terminology	
Refugee	A person who fulfils the criteria of Article 1 of the 1951 Convention relating to the Status of Refugees (1951 Geneva Refugee Convention or Geneva Convention), namely a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality (or stateless person outside his/her country of habitual residence) and is unable or, owing to such fear, unwilling to avail him/herself of the protection of that country. This chapter often uses the term refugees to refer to the people who arrived in 2015, even though not all of them are refugees.
Beneficiary of subsidiary protection	A third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, (or in the case of a stateless person, to his or her country of former habitual residence) would face a real risk of suffering serious harm and is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country (Qualification Directive (2011/95/EU),[1] Article 2 (f)).
Asylum seeker	In EU law referred to as "applicant of international protection". A third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken (Asylum Procedures Directive (2013/32/EU),[2] Article 2 (c)).
Migrant	A broader term, referring to a person who leaves one country or region to settle in another.

According to Frontex, some 885,000 people first arrived in **Greece**,[6] of whom many moved northwards. The former Yugoslav Republic of Macedonia initially attempted to stop people at the Greek land border by using force,[7] but in August people were allowed to cross the western Balkans. They re-entered the EU in **Hungary** and subsequently gathered outside Budapest's Keleti train station, waiting for opportunities to reach western Europe. With no trains available, in early September, over 1,000 people set off on foot along the highway to Vienna in Austria. An agreement was made to allow them to enter **Austria** and transit to **Germany**. People continued to follow this route from **Greece** until the end of 2015. Initially, the route passed through **Hungary**; after the country finished setting up a razor-wire fence along the borders with Serbia and **Croatia** on 16 October, it passed through **Croatia**. An average of between 2,000 and 5,000 people reached **Germany** every day. By the year's end, over half a million people had crossed **Croatia** to reach western Europe.

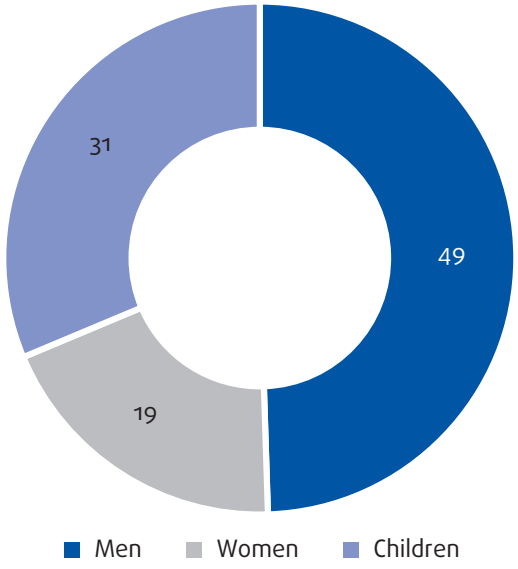
Germany registered over one million arrivals, the majority of whom remained in the country, although some moved on – primarily to northern Europe. By the end of the year, **Sweden** became the EU Member State with the highest number of asylum applications per capita, with some 11.5 applicants per 1,000 inhabitants.[8]

Figure 1: Comparison of monthly Mediterranean Sea arrivals, 2014–2015 (persons)



Source: United Nations High Commissioner for Refugees (UNHCR), 2016

Figure 2: Demographic breakdown of sea arrivals, 2015 (%)



Source: UNHCR, 2016

With over one million people requesting asylum in the EU, numbers in 2015 exceeded those during the conflict in the former Yugoslavia.[9] The visible presence of refugees in need of help triggered an unprecedented response by the population. A large number of volunteers – often self-organised – provided food, clothing and other support to new arrivals at points of entry and transit. At the same time, however, anti-refugee attitudes increased significantly, sometimes prompting violent xenophobic outbursts in some EU Member States. For example, the German Federal Criminal Police Office registered nearly 1,000 offences against accommodation centres for refugees in 2015, including around 150 violent attacks – over five times as many as in 2014, when 28 violent attacks were registered.[10] Chapter 3 provides further details on similar trends in other EU Member States.

EU and Member States' activities touching on fundamental rights

National governments reacted to the new situation in various ways. Some Member States announced or implemented restrictive asylum and family reunification laws. **Hungary** and **Slovenia** erected fences on borders with countries outside the Schengen area, and **Bulgaria** extended the existing fence along Turkey's borders. Eight countries introduced temporary border controls inside the Schengen area.

At the EU level, heads of government met six times in an attempt to agree on a common approach to the new situation.[11] The European Commission published the European Agenda for Migration, a strategic document, which was followed up by two specific action plans: the first to fight migrant smuggling and the second to ensure effective returns.[12] For the first time ever, the Commission triggered the emergency response mechanism under Article 78 (3) of the Treaty on the Functioning of the European Union (TFEU), resulting in a plan to relocate 160,000 people from **Greece** and **Italy**, with the first ones relocated towards the end of the year.[13] Although the number of relocated people remains low, it will be an important element of the substantial rethink of the rules for distributing asylum applicants in the EU, set out in the Dublin Regulation ((EU) No. 604/2013).[14] The EU also significantly enhanced its operational dimension. It supported the setting up of 'hotspots' in **Italy** and **Greece** to support frontline Member States. These hotspots are centres where relevant justice and home affairs agencies and the European Commission coordinate their operational work. In addition, it proposed replacing Frontex with a European Border and Coast Guard Agency with a strengthened role.[15]

These EU- and Member State-level policy measures and operational activities in the field of asylum, border management, combating and preventing migrant smuggling, and return, are significant and touch upon issues that are very sensitive from a fundamental rights perspective. They involve actions that – if carried out inadequately – may result in serious violations of fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union (EU Charter).

This FRA *Fundamental Rights Report 2016* Focus touches on many rights and principles set forth in the Charter of Fundamental Rights of the European Union (EU Charter). At its core is the right to asylum under Article 18 and the prohibition of *refoulement* and collective expulsion under Article 19. Measures taken by EU Member States to address migrant smuggling may affect the rights to life and to the integrity of the person, protected by Articles 2 and 3 of the EU Charter, respectively. The non-discrimination rules in Article 21 guide Member States in ensuring that asylum seekers are treated equally. Article 24 of the EU Charter, which outlines the rights of the child, and the social rights set forth in European and international human rights and refugee law frameworks are considered in the focus' description of how refugees and migrants were received by Member States. Other EU Charter rights, such as the right to respect for private and family life (Article 7) and the right to an effective remedy (Article 47), are also used as yardsticks for the analysis presented. The right to liberty, enshrined in Article 6, is addressed in the section on returns.

1. Reducing risk: strengthening safety and fundamental rights compliance

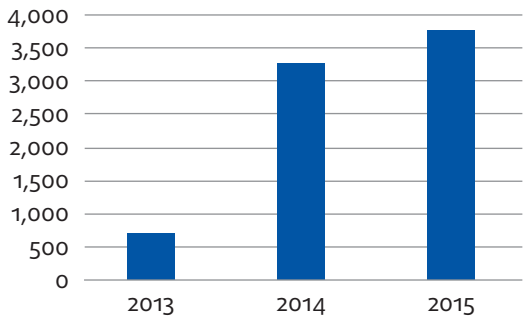
This section discusses three issues. First, FRA points out that legal avenues for refugees seeking to reach the EU are limited. Second, it looks at policies against smuggling of migrants and the risk of criminalising humanitarian actions. The third part reviews the temporary reintroduction of border controls within the Schengen area, briefly describing the effects of asylum and border management policies on intra-EU free movement rules.

According to the International Organisation for Migration (IOM), some 3,771 people died in 2015 while crossing the Mediterranean Sea on unseaworthy and often overcrowded boats provided by smugglers. Figure 3 shows the trend in fatalities over the past three years.

Children made up about 30 % of recent deaths in the eastern Mediterranean (Figure 4).[16] In early 2016, international organisations reported that an average of two children have drowned every day since September 2015.[17] The vast majority of men, women and children attempting this dangerous journey were Syrian nationals.[18]

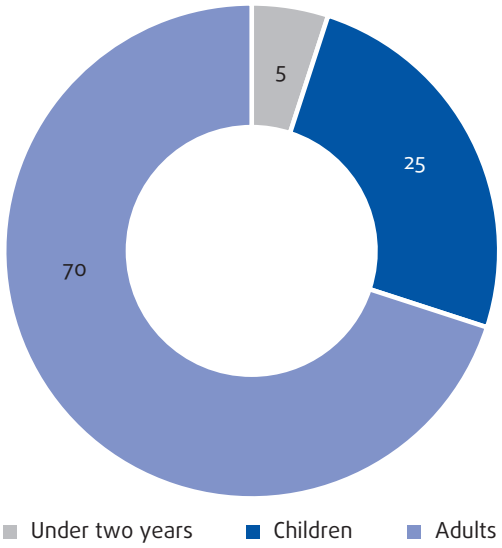
Article 2 of the EU Charter guarantees everyone the right to life. It is one of the core human rights protected at the international and European levels. The International Covenant on Civil and Political Rights (ICCPR) stipulates that every human being has an inherent right to life (Article 6). As early as 1982, the Human Rights Committee, the covenant's supervisory body, stressed that protecting this right also "requires that States adopt positive measures".[19] A state may therefore have a duty to act when loss of life is foreseeable and the state can prevent the loss. Under the European Convention on Human Rights (ECHR), responsibility may be triggered if a state avoids taking preventative measures within the scope of its powers in a situation where it knew or ought to have known of real or immediate risks to individuals.[20]

Figure 3: Estimated fatalities in the Mediterranean, 2013–2015



Sources: IOM (2015), Missing migrants project*; Brian, T. and Laczko, F., (2014),* Fatal journeys: Tracking lives lost during migration*, IOM.*

Figure 4: Deaths in the eastern Mediterranean Sea, by age group, 1 September to 27 November 2015 (%)



Source: IOM and UNICEF (2015), IOM and UNICEF data brief: Migration of children to Europe*, 30 November 2015.*

The absolute number of fatalities in 2015 was higher than in 2014.[21] Effective action by the EU and concerned Member States has reduced the number of deaths relative to the total number of people crossing the Mediterranean but not the absolute number.

In 2015, 21 % of deaths along the Mediterranean route occurred in the eastern Mediterranean, particularly in a small strip of sea separating the Turkish coast from the **Greek** islands and islets. By contrast, only 1% did so in 2014.[22] With the support of Frontex, the Hellenic Coast Guard increased its efforts and commitment to rescue people in distress at sea. According to Amnesty International and Human Rights Watch, in the recent past, the Hellenic Coast Guard implemented deterrent measures that increased the risk of boats sinking, such as stopping overcrowded boats at the outer edge of the Greek territorial sea or towing them away until Turkish rescue boats arrived.[23] Information provided by Frontex indicates that in 2015 criminal networks in Turkey instructed migrants heading to Greece by sea to destroy their boats once on Greek territorial waters and detected by the Hellenic Coast Guard.

In the central Mediterranean, according to IOM, the number of fatalities – mainly from Libyan shores – decreased, from about 3,170 fatalities to 2,892. The operational plan of Operation Triton, coordinated by Frontex, included a strong rescue-at-sea component. In addition, the increased maritime surveillance activities were extended to the sea near the Libyan coast and allowed for the early identification of unseaworthy boats. This substantially contributed to the rescue of persons in distress found at sea.[24]

In addition to the conflict in Syria, other realities pushed people to embark on the dangerous sea crossing. These include serious problems with security, healthcare and insufficient food in Syrian refugee camps in Lebanon and Jordan, as well as protection gaps – including the lack of livelihood prospects in Turkey, where, in 2015, refugees did not enjoy the right to work.[25] For example, more than two-thirds of men individually surveyed in Jordanian refugee camps reported experiencing threats to their safety, and some 17.74 % recounted concrete incidents of abuse and/or exploitation. Male refugees reported not seeking help from authorities because they lacked access to justice and/or lacked confidence in the justice system.[26]

Opening legal avenues for reaching the EU

Most people crossed the sea in overcrowded and unseaworthy boats, usually provided to them by often ruthless smugglers. In the absence of legal channels to reach the EU, smugglers are the only option for refugees who seek safety. This dependence on smugglers exposes migrants and refugees to a heightened risk of abuse, violence and exploitation.

In the absence of alternatives, many people in need of protection resort to smuggling networks to reach safety or join their families, putting at risk their lives and physical integrity. Increasing the availability of legal avenues to reach the EU would allow at least some of those refugees who do not enjoy effective protection in the country where they are staying to reach safety without incurring risks of abuse and exploitation while on the way. Legal ways to reach the EU – such as resettlement or humanitarian admission programmes – can also target those refugees most in need of protection, such as victims of torture, single heads of households, or women and children at risk. The European Agenda for Migration calls for more action in this regard,[27] reflecting a similar call by FRA in March 2015.

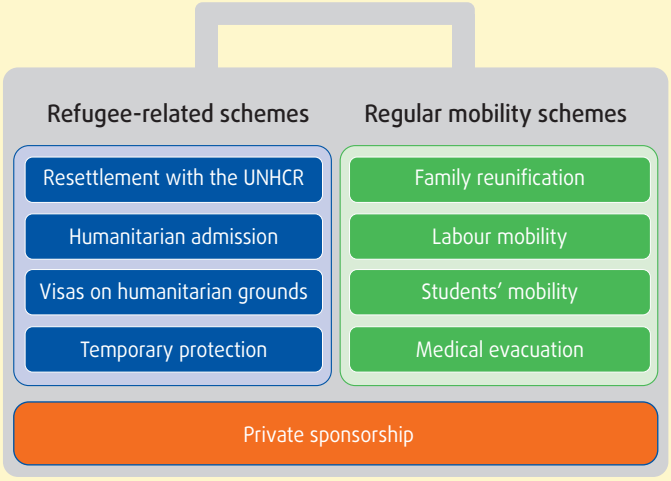
At the policy level, some progress occurred. As a first concrete measure, in July 2015, the Council of the European Union adopted conclusions on resettlement, inviting EU Member States (plus Schengen Associated Countries) to pledge 20,000 resettlement places over a two-year period (2015–2017). Ultimately, 27 Member States and Iceland, Liechtenstein, Norway and Switzerland pledged some 22,500 resettlement places, with refugees to be selected by United Nations High Commissioner for Refugees (UNHCR) according to its global resettlement criteria.[28] In December, the European Commission proposed complementing this programme, issuing a recommendation for a Voluntary Humanitarian Admission Scheme (VHAS) for Syrian refugees registered in Turkey before 29 November 2015.[29] That all EU Member States agreed to accept resettled refugees and to pledge a specific quota is an important step forward, even though the quota is zero for Hungary and even if, for the time being, it is

FRA ACTIVITY

FRA toolbox: Operationalising legal entry options

FRA has outlined possible ways to increase the number of persons in need of international protection, staying outside the EU, who are legally admitted into the EU. Its toolbox lists refugee-related schemes as well as regular mobility schemes that Member States could use to increase the possibilities of legal entry, making it a viable alternative to risky irregular entry.

FRA (2015), Legal entry channels to the EU for persons in need of international protection: a toolbox*, Luxembourg, Publications Office, p. 5*



a one-off quota. – This is particularly true given that, in recent years, about half of all EU Member States had a resettlement programme. UNHCR-assisted resettlements took place in 14 Member States in 2012 and in 12 Member States in 2013.[30]

From 2015 to 2017, as per EU recommendation, 27 EU Member States will accept resettled refugees; by contrast, only 16 Member States received resettled persons in 2014. In terms of concrete numbers, however, refugee resettlement to the EU remains – and will remain – limited based on current commitments. For example, in 2015, some 8,622 UNHCR-referred persons arrived in EU Member States,[31] whereas globally over 1.15 million people need resettlement.[32] Moreover, some Member States in central Europe indicated that they prefer to accept only Christian refugees, arguing that an absence of pre-existing Muslim communities would make it difficult to integrate persons of Muslim faith. This may not be compatible with the non-discrimination provision of Article 21 of the EU Charter and other human rights standards.[33]

Next to resettlement, family reunification is another important legal avenue for family members of persons found to be in need of international protection in the EU. Restrictions on family reunifications announced by some EU Member States towards the end of the year may, however, offset the small progress made on resettlement. Some of the most affected destination countries, including **Austria**, **Denmark**, **Finland**, **Germany** and **Sweden**, announced changes to their national laws that would delay family reunification or make it more difficult for refugees and/or people granted subsidiary protection.[34] Denmark already adopted the announced changes in January 2016,[35] and the German parliament approved the so-called asylum package II (*Asylpaket II*) on 25 February 2016.[36] It remains to be seen how Member States will implement these restrictions in 2016. They may have considerable impact on people, given that in some of these Member States family reunification is already an administratively complex process. In addition, its duration is subject to the processing capacities of the competent authorities, including the consular authorities in countries such as Jordan, Lebanon and Turkey, which are currently under strain. Further requirements could prolong the procedure to such an extent that the right to family reunification would no longer be effectively safeguarded, raising issues under Article 7 of the EU Charter.

In 2014, a study commissioned by the European Parliament[37] proposed introducing common rules for issuing humanitarian visas in the EU Visa Code – a matter FRA also suggested exploring, together with the idea of 'mobile' Schengen Visa Centres to ease refugees' access to visa applications.[38] This would allow EU Member States to take a more harmonised approach to issuing visas to people fleeing war or persecution. Although the legislation of many EU Member States allows the issuance of humanitarian visas, the discussions on the revision of the Visa Code did not seriously consider this issue.

Combating smuggling without criminalising migrants and those who help them

Most people fleeing across the Mediterranean Sea take to sea in unseaworthy boats. Signatories to the UN International Convention for the Safety of Life at Sea (SOLAS Convention) – which include all Mediterranean coastal states except Bosnia and Herzegovina – are required to prevent the departure of such boats, as laid down by Regulation 13 of Chapter 5. This regulation includes a general obligation for governments to ensure that all ships be sufficiently and efficiently manned from a safety point of view.[39]

Smuggling and trafficking

Trafficking in human beings is different from the smuggling of irregular migrants. Trafficked migrants are further exploited in coercive or inhuman conditions after having crossed the border. People are trafficked for the purpose of sexual and labour exploitation, the removal of organs or other exploitative purposes. Women and children are particularly affected. Children are also trafficked to be exploited for begging or illegal activities, such as petty theft.

Migrants who are smuggled to the EU are at risk of becoming victims of exploitation or abuse. As documented in FRA's report on the situation at Europe's southern sea borders, refugees and migrants are already exposed to serious risks of abuse and exploitation by smugglers before the sea crossings, with women and children facing heightened risks of sexual and gender-based violence.[40] Effective action to combat migrant smuggling not only serves to improve the security of maritime traffic and to curb irregular migration; it is also important for addressing impunity for crimes against migrants and refugees, and could be seen as a positive obligation by states to protect the right to the integrity of the person set out in Article 3 of the EU Charter.

Several incidents that occurred in August 2015 exemplify smugglers' ruthlessness. On 15 August, 49 migrants crossing to **Italy** died from inhaling fumes in the hold of a boat, into which smugglers had put them.[41] On 27 August, the Austrian authorities found a truck – parked along the highway from **Hungary** – that contained 71 people who had suffocated.[42] On 29 August, a 17-year-old Iraqi boy was shot during an operation to arrest smugglers on board of a yacht near the **Greek** island of Symi, underscoring the risks associated with law enforcement efforts to stop smugglers.[43]

Soon after the adoption of the European Agenda for Migration, the European Commission issued an Action Plan against Migrant Smuggling (2015–2020).[44] It aims to improve the collection, sharing and analysis of information; to strengthen the police and judicial response to migrant smuggling; lists preventative actions to take; and promotes stronger cooperation with third countries. The document identifies several actions that may help reduce the risks migrants face, including opening more safe and legal ways to reach the EU, as well as evaluating and improving relevant EU legislation (Directive 2002/90/EC[45] and Council Framework Decision 2002/946/JHA[46]) to avoid the risk of criminalising those who provide humanitarian assistance – an issue regarding which FRA has expressed concerns in the past.[47] However, implementing some of the proposed actions may raise issues under the EU Charter of Fundamental Rights, including the plan to capture and dispose of boats used or intended to be used by smugglers, particularly given that boats may often be used for multiple purposes.

Authorities' efforts to fight the smuggling of people sometimes involved excessive reactions. After an increase in arrivals, many people decided to help refugees reach a shelter or get closer to their destinations – for example, by buying them train tickets or transporting them in their cars. In Lesbos, the police threatened to arrest local volunteers for providing lifts to refugees found walking along the 70-kilometre road to the island's capital, Mytilene; a UNHCR intervention resolved this issue.[48] In **Germany**, a number of Syrians who picked up relatives and friends in **Austria** and brought them to Germany had to pay fines for assisting unauthorised entry (on the basis of Sections 14 and 95 of the German Residence Act (*Aufenthaltsgesetz*)).[49] A **Danish** court imposed a fine of DKK 5,000 (some €700) on a man who gave a family with children a lift in his car from Germany to Denmark without taking any money for it.[50]

Measures taken also resulted in the punishment of refugees themselves, raising issues under the non-penalisation provision in Article 31 of the UN Convention relating to the Status of Refugees (1951 Geneva Refugee Convention). Notably, **Hungary** in September amended its criminal code to punish the crossing of the border fence. By 31 January 2016, criminal proceedings were initiated against more than 800 people for irregularly crossing the border by evading, destroying or committing some other form of abuse of the fence guarding the state border.[51] As individuals usually admitted having crossed the border irregularly, they were processed quickly. Those convicted received an expulsion order – the implementation of which was suspended if the individual requested asylum[52] – and a one- or two-year entry ban. Furthermore, some 10 people were charged with the aggravated form of irregular border crossing, which is punishable by one to five or, in some cases, even two to eight years of imprisonment.[53] In January 2016, the first convictions were imposed, with the highest sanction amounting to 18 months' imprisonment.[54]

Controlling onward travel without excessively limiting free movement in the EU

Most of the people who crossed the Mediterranean Sea moved on through the Balkans to **Germany** and northern Europe. The movement was spontaneous and initially uncontrolled. This resulted in risks for the people concerned, but also prompted fears that free movement within the Schengen area would allow potential criminals – including terrorists – to move around uncontrolled, particularly after the Paris attacks in November 2015.

EU Member States took several measures to ensure that those who cross their borders are registered and move onwards in an organised manner. Along the main route in **Croatia**, **Slovenia**, **Hungary**, **Austria**, **Germany** and **Sweden**, they set up transit or distribution facilities from which people moved onwards to the neighbouring Member State or to a reception facility by bus or train. Efforts were made to channel the movement across borders through specific border crossing points and to equip these to handle the flow and register new arrivals. To ensure that all new arrivals are effectively registered, uncontrolled movements through the borders had to be prevented. To do this, in the second half of the year, eight Schengen states made use of the option to reintroduce temporary intra-Schengen border controls, as illustrated in Table 1. Previously, this measure was primarily used in connection with large sporting events or high-level meetings. In 2015, it became a tool to better control and manage refugee movements across Europe.

In exceptional circumstances – such as in the event of a serious threat to public policy or internal security – Regulation (EU) No. 1051/2013,[55] which amended the Schengen Borders Code, allows the temporary reintroduction of intra-Schengen border controls. It is a measure of last resort that can normally be extended up to a maximum of six months. In exceptional circumstances, where the overall functioning of Schengen is put at risk as a result of persistent serious deficiencies relating to external border controls, it can be extended for up to two years (Article 26). The European Commission and neighbouring Member States must be informed before the controls are activated, except in cases of imminent threats.

The free movement of persons is a basic pillar of EU integration and a citizens' right protected by Article 45

Table 1: Temporary reintroduction of border controls within Schengen in 2015

State	Start date	End date	Reason
AT	16 September	–	Large influx of asylum seekers
DE	16 May	15 June	G7 summit
	13 September	–	Large influx of asylum seekers
FR	13 November	–	21st UN Conference on Climate Change (until 13 December), and then emergency situation after Paris attacks
HU	17 October	26 October	Large influx of asylum seekers
MT	9 November	31 December	Valletta Conference on Migration; terrorist and irregular migrant threats
SE	12 November	–	Large influx of asylum seekers
SI	17 September	16 October	Large influx of asylum seekers
NO	26 November	–	Large influx of asylum seekers

Note: – *means still in place at end of year. Denmark reintroduced temporary controls on 4 January 2016. Belgium did the same on 23 February 2016.*

Source: European Commission, DG Home, list of Member States' notifications of the temporary reintroduction of border control at internal borders pursuant to Article 23 et seq. of the Schengen Borders Code, 2016

of the EU Charter. The absence of border controls at most intra-EU borders is an important component of this right. Reintroducing border controls at crossing points that had been open for many years affected many people, including cross-border workers and transport companies, who were otherwise not affected by the refugee situation.

Fundamental rights to guide the way forward

Although the absolute number of fatalities in the Mediterranean Sea rose in 2015, EU and Member State measures to bolster the rescue element of border management, and thus protect the right to life set out in Article 2 of the EU Charter, prevented an even greater increase. FRA's 2013 report on the situation at Europe's southern sea borders outlines additional suggestions on how to uphold the right to life in the maritime context, such as ensuring that patrol boats are adequately equipped with water, blankets and other first aid equipment.[56] Only a global approach, however, involving all relevant states and actors, and building on the conclusions of the World Humanitarian Summit to be held in Istanbul on 23 and 24 May 2016, may succeed in the longer term in putting to an end the high death toll at sea.

To guarantee the right to asylum in Article 18 of the EU Charter, EU Member States should, with the support of the European Commission, offer more possibilities for persons in need of protection to enter the EU legally, through resettlement, humanitarian admission or other schemes, so that these can constitute a viable alternative to risky irregular entry – particularly for vulnerable people. Member States should work to overcome practical and legal obstacles preventing or significantly delaying reunification with family members and refrain from imposing new ones. Doing so would both respect the right to family life enshrined in Article 7 of the EU Charter and help prevent irregular entries by people who want to join their families.

In the EU Action Plan against Migrant Smuggling, the European Commission announced an evaluation and a review of the relevant EU legislation. This presents an opportunity to address the risk of criminalising humanitarian assistance as well as the provision of support – for example, by renting accommodation – to migrants in an irregular situation, as outlined in FRA's March 2014 paper on criminalisation of migrants in an irregular situation and of persons engaging with them.[57]

2. Preventing *refoulement* and collective expulsion

The principle of *non-refoulement* is the cornerstone of the international legal regime for the protection of refugees. Article 33 of the Convention relating to the Status of Refugees enshrines the prohibition against returning (*refouler*) a refugee – and hence also a person seeking asylum – to a risk of persecution. The prohibition of *refoulement* is also reflected in primary EU law, specifically in Articles 18 and 19 of the EU Charter and Article 78 of the Treaty on the Functioning of the EU (TFEU). The 28 EU Member States accepted this obligation when ratifying the EU treaties.

Secondary EU law relating to borders, asylum, migration and return also prohibits *refoulement*. Article 3 of the ECHR, as interpreted by the European Court of Human Rights (ECtHR), and the EU asylum *acquis* have

expanded the type of harm to which a person cannot be returned, to include a prohibition against returning someone to torture, inhuman or degrading treatment or punishment, and other serious harm.

The prohibition of *refoulement* is absolute – it does not allow any derogation or exception. The principle of *non-refoulement* bans not only a return to the country of origin (direct *refoulement*) but also a transfer to countries where individuals are exposed to the risk of onward removal to the country of origin (indirect or onward *refoulement*).[58] This means, for example, that returning an asylum seeker to a country neighbouring the EU in which he or she previously stayed (for example, Serbia or Turkey) is only possible if – after assessing the individual's personal circumstances – the authorities are satisfied that he or she will be readmitted by the third country and protected from unsafe onward removal. Return to a third country is not allowed if there is a real risk that the individual would be subjected to inhuman or degrading treatment[59], including, for example, in detention facilities. International refugee law further requires that the person concerned be allowed to access asylum procedures in the third country.[60] There is a general consensus that international refugee law also requires that the asylum seeker has access to sufficient means of subsistence to maintain an adequate standard of living in the third country, and that the third country takes into account any special vulnerabilities of the person concerned.[61] EU law also reflects this requirement: Article 38 (1) (e) of the Asylum Procedures Directive (2013/32/EU) requires that, if found to be a refugee, the individual must have access to protection in accordance with the Geneva Convention.

Any form of removal or any interception activity that prevents entry may result in collective expulsion if the removal or interception is not based on an individual assessment and if effective remedies against the decision are unavailable. Collective expulsion is prohibited by Article 19 of the EU Charter and Article 4 of Protocol 4 to the ECHR. The ECtHR has made clear that this prohibition also applies on the high seas.[62]

This section first describes the different types of actions that may give rise to a risk of *refoulement* or collective expulsion. The second part deals with the increasing presence of fences at Europe's borders – a development that may raise questions under Articles 18 and 19 of the EU Charter.

Addressing the fundamental rights impact of new migration management measures

Last year, FRA reported an increase in cases of persons allegedly being pushed back at the EU's external border, particularly in **Bulgaria**, **Greece** and **Spain**. In 2015, this extended to **Hungary**. Conduct raising questions regarding the prohibition of *refoulement* and collective expulsion became more frequent.

In **Bulgaria** and **Greece**, people were reportedly physically turned back at the land or sea borders, sometimes with force. At the Greek land border with Turkey, Amnesty International reported incidents of people being brought back to the other side of the border without their protection needs first being assessed.[63] In March, UNHCR reported that a group of Yazidis from Iraq were pushed back to Turkey from Bulgaria after being beaten and having their belongings seized. Two men, suffering from severe injuries, later died of hypothermia on the Turkish side of the border.[64] These do not appear to be isolated incidents in Bulgaria, where refugees reported having been forced to return to the Turkish side of the land border,[65] sometimes allegedly threatened by unleashed dogs.[66]

In **Spain**, an amendment to the Aliens Law entered into force on 1 April 2015, allowing third-country nationals to be rejected if they are detected trying to irregularly cross the border into the enclaves of Ceuta and Melilla.[67] The law contains a safeguard specifying that rejection at the border is allowed only if it is in compliance with international human rights law and international protection standards; however, no protocol on how the Guardia Civil should act in these cases is in place yet. Applications for international protection are to be lodged at special offices set up at the border crossing points. In 2015, some 6,000 people, mainly Syrian nationals, requested asylum at such offices.[68]

Hungary implemented new legislation that resulted in summary rejections of asylum claims submitted by applicants who entered through Serbia, based on the rationale that they could have found protection in Serbia. This goes against UNHCR's advice not to consider Serbia a safe third country.[69] In July 2015, amendments to the Hungarian asylum rules declared Serbia a safe third country and established two transit zones at the land border in Röszke and in Tompa, where asylum applications, except those submitted by vulnerable people, were processed through a border procedure.[70] A total of 579 asylum seekers were registered in the two transit zones along the Serbian border in 2015, the majority of whom (510 people) were deemed vulnerable and channelled into the normal asylum procedures. The remaining 69 applicants were processed in the border procedure.[71] Non-governmental organisations (NGOs) have reported that this fast-track procedure fell short of basic fair trial standards set out in EU law.[72] Access to legal assistance was limited in practice, as legal aid officers were not regularly present in the transit facilities and lawyers of the Hungarian Helsinki Committee did not have full and unimpeded access. Asylum interviews were reported to be extremely

short, and it was claimed that some asylum seekers were processed in less than a day, according to the Council of Europe's Commissioner for Human Rights. The right to an effective remedy against a rejection of their asylum application was substantially curtailed. Even though the deadline to submit an appeal was increased from three to seven days,[73] limited access to legal counselling and information, practical difficulties in getting qualified legal aid and courts not being allowed to examine new facts made it difficult for applicants to access an effective remedy in practice. While at the border, asylum seekers were held in containers installed in the transit zone. In an *amicus curiae* submission to the ECtHR, the Council of Europe's Commissioner for Human Rights concluded that Hungary's rules expose asylum seekers to a very high risk of being subject to deportation to Serbia and to onward chain *refoulement*, with the corresponding risk of treatment contrary to Article 3 of the ECHR.[74]

Profiling based on nationality emerged as a new pattern in late 2015. Only some nationalities were allowed admission to the territory or access to asylum procedures. This raises questions under the non-discrimination provision in Article 21 of the EU Charter. In November 2015, only certain nationalities – namely Afghans, Iraqis and Syrians – were allowed to transit from **Greece** through the western Balkans following a policy change in the former Yugoslav Republic of Macedonia.[75] Nationals of other countries remained stuck in **Greece**. UNHCR supported the authorities in transporting many of them to temporary reception facilities set up in the country. In **Italy**, towards the end of the year, UNHCR and civil society organisations reported that many nationals of sub-Saharan African countries, particularly from West Africa, were not given a real chance to register their asylum claims, but received expulsion orders to leave the country within 30 days.[76] In an effort to address the matter, the Italian Ministry of the Interior issued internal instructions on 8 January 2016, reminding all first line officials to provide information about access to international protection procedures to newly arriving persons.

Violations of the principle of *non-refoulement* and collective expulsion may occur in different ways. In addition to returns or push-backs at borders, measures taken to manage or channel migration flows – even if well-intended – can result in people being sent back to risks of serious harm, if there is no procedure to assess the individual situation of each migrant or refugee. In light of evolving law, this risk increases when Member States or Frontex engage in operational cooperation with third countries on border controls, as envisaged by the concept of Integrated Border Management.[77] In these situations, it often remains unclear what measures are allowed and what measures may not be possible under EU law or international human rights law.[78]

Operationalising *non-refoulement* in the presence of fences

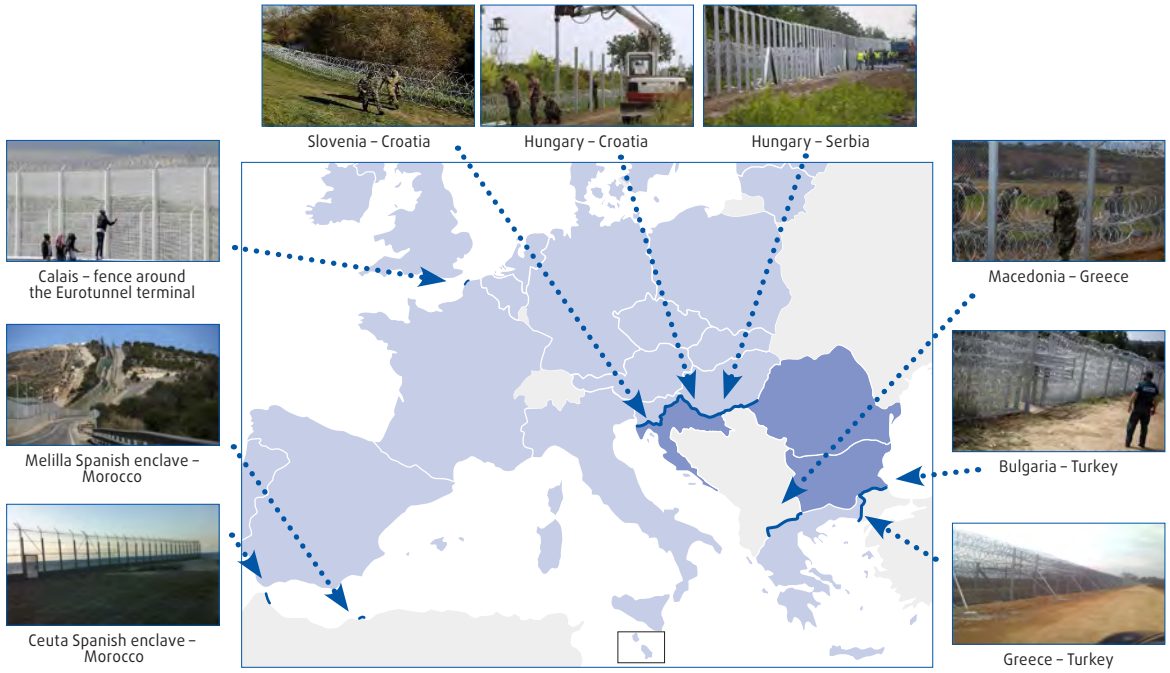
The installation of fences at the EU's external land borders to curb irregular migration and limit irregular movements to other EU Member States continued in 2015. By the end of the year, a significant part of the land border with Turkey was fenced off (along the Evros river, surveillance was strengthened but no fence built), as was most of the Schengen border with the western Balkans. **Bulgaria** extended its three-metre high fence to the land border with Turkey, and **Greece** completed its electronic surveillance installations along the Evros river.[79] **Hungary** completed a 175-kilometre long razor-wire fence on its Serbian border and subsequently extended it to the border with **Croatia**.[80] **Slovenia** followed by extending the razor wire to most of its land border with Croatia, except Istria.[81] In addition, the Former Yugoslav Republic of Macedonia installed a fence at parts of its border with **Greece** in November 2015.[82] In July 2015, in agreement with **France**, the **United Kingdom** decided to bolster physical security in Nord-Pas-de-Calais, increasing security at the waiting area for boarding the ferry and in the Channel Tunnel, after migrants repeatedly attempted to enter the tunnel from the French side.[83] Figure 5 illustrates the current state of fences at the EU's borders.

FRA's 2013 Annual report noted that the construction of border fences may limit the ability of persons in need of international protection to seek safety. If there are no places along the border that asylum seekers can reasonably reach to request asylum, the presence of a fence might violate the obligation of EU Member States, under Article 3a of the Schengen Borders Code, to apply the code in full compliance with the EU Charter and with obligations related to access to international protection.[84] At the end of 2015, the European Commission stressed that, although installing fences for the purposes of border control is not in itself contrary to EU law, it will monitor the installation to see that it does not impinge upon the right to have effective access to the asylum procedure at the border crossing points.[85]

Fundamental rights to guide the way forward

With Europe facing increased migratory pressure in 2015, it is particularly important for the EU and its Member States to remain vigilant and ensure that their border and migration management policies do not violate the principle of *non-refoulement* or the prohibition of collective expulsion. There is a general understanding in the EU that the prohibition of *refoulement* should be respected, but law evolving in this field causes legal uncertainties, as pointed out at the 2014 FRA Fundamental Rights Conference in Rome.

Figure 5: Fences at borders, end of 2015



Source: FRA, 2016 (Photos from © Reuters)

The absolute nature of the prohibition of *refoulement* needs to be respected both when devising legislative or policy measures and during their implementation by the authorities. More specific guidance on how to mitigate the risk of violations of the principle of *non-refoulement* would be needed when dealing with new situations, such as those emerging as a result of the installation of fences or the enhanced cooperation with third countries on border management. FRA stands ready to provide its fundamental rights expertise on this issue.

3. Building a rights-compliant asylum system

In last year's Annual report, FRA already noted the unequal distribution of asylum seekers in the EU, with about half of the applications being lodged in **Germany** and **Sweden**. This pattern continued in 2015. Due to the scale of movements, delays in registration and double-counting, no exact statistics are available. Of the 1.25 million new asylum applicants in the EU reported by Eurostat,[86] at least half applied for asylum in Germany and Sweden. The proportion may be much higher given that over one million asylum seekers were initially recorded in Germany on arrival.[87] Some of them, however, moved on or do not intend to lodge an asylum claim. At the same time, many were still queuing to have their asylum application registered at the end of the year. Some 85,000 people applied for asylum in **Austria**. **Hungary**, the only other Member State with over 100,000 new asylum applications in 2015, mainly experienced transit movements, as most of the applicants moved on to **Austria**, **Germany** and other EU Member States. Other Member States were also affected: based on Eurostat data in 2015, the numbers of first-time asylum seekers more than doubled in nine EU Member States, with serious practical consequences for the domestic asylum systems and the asylum applicants concerned. In **Finland**, the number of asylum seekers rose almost tenfold – from 3,000 in 2014 to 32,000 in 2015.[88]

The increased number of arrivals put a significant strain on domestic asylum systems in countries of first arrival (mainly **Greece** and **Italy**), transit countries (**Croatia**, **Hungary**, **Slovenia** and to some extent **Austria**) and countries of destination (**Austria**, **Germany** and **Sweden**, as well as to a lesser extent other Member States). Among the last group, **Sweden** recorded the highest number of applications per capita in the EU (some 11.5 applicants per 1,000 inhabitants). As **Sweden**'s asylum and reception system was no longer able to cope with the arrivals, a proposal to suspend relocation to the country was tabled in December.[89]

Ineffective early warning and preparedness mechanisms prevented EU Member States from predicting the large influx of people and starting contingency planning. Partly taken by surprise, countries of first arrival, countries of transit, as well as the main countries of destination faced serious difficulties in responding adequately to the flow. Refugees

and migrants moving spontaneously faced high risks while travelling through Europe. Initially, civil society – including many individual volunteers – took care of them, offering them food, clothing, healthcare and other emergency assistance. In September, UNHCR launched an emergency operation in Europe, appealing for USD 83.2 million. This appeal was complemented by a USD 96.15 million appeal for the Winterization Plan for the Refugee Crisis in Europe and a revised appeal for USD 128 million for the Special Mediterranean Initiative (SMI).[90] UNHCR tents were set up in several locations to host refugees, a significant number of UNHCR staff were deployed and relief items were distributed.[91] Transit through the Balkans and **Austria** became increasingly organised towards the end of the year, with authorities providing buses and trains, setting up transit centres and registering people crossing the border.

FRA ACTIVITY

Providing regular updates on fundamental rights in Member States most affected by new arrivals

In view of the increasing numbers of refugees, asylum seekers and migrants entering the EU, the European Commission asked FRA to collect data about the fundamental rights situation of people arriving in EU Member States that have been particularly affected by large migration movements. In October 2015, FRA started to publish regular overviews of migration-related fundamental rights issues in Austria, Bulgaria, Croatia, Germany, Greece, Hungary, Italy, Slovenia and Sweden. Initially issued every week, the regular overviews continue on a monthly basis since December 2015. The updates cover the following issues:

- initial registration and asylum applications, with particular attention to the situation of vulnerable people;
- criminal proceedings initiated for offences related to irregular border crossings;
- child protection;
- reception conditions for new arrivals, focusing on the situation of children and other vulnerable people;
- access to healthcare;
- public response such as rallies of support, humanitarian assistance or voluntary work;
- racist incidents, such as demonstrations, online hate speech or hate crime.

The updates are available on FRA's website.

In January 2016, the European Committee of Social Rights issued a Statement of Interpretation, highlighting the challenges that refugees continue to face – for example, regarding access to education and restrictions on employment. It also stressed the importance of states adopting an integration-based approach to ensure that refugees enjoy basic social rights not only once they are formally recognised, but starting from the moment they enter a state's territory and throughout the entire process of seeking asylum.[92]

Finding adequate housing

According to Article 18 of the Reception Conditions Directive (2013/33/EU),[93] asylum seekers must be provided with an adequate standard of living during the time required to examine their application for international protection. The directive formally applies only from the moment an individual has made an application for international protection, but many of its provisions reflect international human rights and refugee law standards that are binding on EU Member States as soon as a refugee is within a state's jurisdiction.

Although Member States made efforts to give new arrivals a dignified reception, some remained homeless and many others were hosted in overcrowded temporary facilities or placed in detention centres, exposing them to protection risks. Because reception and transit centres were overcrowded, some asylum seekers were forced to sleep on the floor, on blankets in the corridors of reception centres, or out in the open. In addition to the limited space in first arrival and transit facilities, rain and winter temperatures created serious health risks, particularly for children and the more vulnerable. Many protection concerns typically arising in refugee emergencies emerged inside the EU.

On various occasions, refugees were stranded in desperate and deteriorating conditions at the border. In mid-September, the **Hungarian** authorities reduced the number of people allowed to enter the country to 100 a day, and some 2,000 people gathered at the outer side of the newly built fence at the Serbian border. The situation escalated. After repeated calls in Arabic and English, the Hungarian authorities used tear gas and water cannons to disperse people, who were throwing objects and trying to force themselves through the cordon to enter Hungary. The police used batons against a UNHCR staff member and a father who was seeking help to find his two young children.[94] In October, thousands of migrants walked from **Croatia** to **Slovenia** through difficult terrain in the cold and rain, as they were not allowed to cross the border-crossing point, adding further health and protection risks to the journey.[95] Another several thousand people had to wait for admission to **Austria** out in the open overnight at the border with **Slovenia**.[96]

UNHCR issued an alert indicating that in **Greece**, throughout the islands, thousands of refugee women and children had to stay out in the open at night, or

in overcrowded and inadequate reception facilities.[97] On Leros and Kos, adults and children were reportedly sleeping in police station cells while waiting to be registered because there were no reception centres.[98] The situation was also critical in Athens, where two centres – Elliniko and Elaionas – were established for people who were brought back from the northern Greek border because they were not allowed to move onwards. Because space was limited, people were sent away from these centres if they did not comply with certain criteria: only nationalities qualifying for relocation and people who intended to apply for asylum, as well as those who met certain vulnerability criteria, were allowed to stay. As a result, many people gathered in the informal open-air site at Victoria Square or squatted in abandoned buildings.

In November 2015, *Médecins Sans Frontières* (MSF) criticised the conditions of the first aid and reception centre in Pozzallo in Sicily (**Italy**), stating that the often overcrowded facility did not meet minimum standards of hygiene and exposed inhabitants to protection risks.[99] Hygiene and general conditions became so dire that MSF decided to leave by the end of the year.[100]

Overcrowding in reception facilities was also common in other Member States. In **Slovenia**, for example, the Brežice registration centre – which can normally accommodate up to 450 people – registered 1,500 to 4,300 people daily during October. In **Bulgaria**, the Special Home for Temporary Accommodation of Foreigners in Lyubimet hosted 43 % more people than its capacity.[101]

Struggling to ensure that nobody remained without a roof over their heads, countries of destination often had to host new asylum seekers in temporary mass accommodation facilities, where basic safety, sanitation and privacy standards could not be met. One of the largest temporary accommodation facilities was set up in the former Berlin Tempelhof airport (**Germany**): over 2,000 people were staying in the three hangars in December 2015, and there were plans to double or triple its capacity.[102] Moving from temporary facilities intended for short-term stays to adequate reception centres was often difficult, partly because of delays in registering new asylum claims and partly because of limited space in mainstream reception centres. From 15 November 2015 to 11 December 2015, for example, on average, some 800–1,000 persons were staying for days in the Malmömässan conference hall in southern **Sweden**, where they shared eight toilets, until their asylum applications were registered.[103] In August 2015, Amnesty International and the **Austrian** Ombudsman raised concerns about the large number of asylum seekers, including unaccompanied children, without a bed in the Traiskirchen facility.[104]

Support came from volunteers, who offered help to understaffed reception centres. Many local citizens offered new arrivals a place to sleep in their homes until accommodation was organised.[105]

Humanitarian situation in Calais

Over the past years, a mixed group of refugees and migrants has settled near Calais in northern **France**. In August, about 3,000 refugees and migrants were encamped there, hoping to reach the United Kingdom, where some of them had family or other links. From June to August 2015, at least 10 people died while attempting to pass through the Channel Tunnel.

Following an intervention by a coalition of NGOs, which pointed to the lack of adequate shelter, on 26 October 2015, the Administrative Tribunal of Lille ordered French authorities to take immediate measures to address the inhumane and degrading conditions affecting some 6,000 people in and around the Calais camp. The judge requested the French authorities to immediately install 10 additional water points and 50 latrines, implement a rubbish collection system, install mobile rubbish containers, clean the site and make one or more routes available for emergency access. On 29 February 2016, the French police took action to dismantle the camp, using tear gas and water cannons to disperse some 150 migrants and militants who resisted the police by throwing projectiles. Two bulldozers and twenty people from a private company were commissioned by the state to dismantle twenty shelters located in a 100-square-meter area.

In addition, at Grande-Synthe, a suburb of Dunkirk situated 35 km from Calais, some 3,000 people were reported to live in freezing and inhumane conditions towards the end of 2015.

Sources: ECRE (2016), 'From bad to worse: Dunkirk refugee camp makes Calais pale in comparison'*, 15 January 2016; ECRE (2015),* 'Calais: Time to tackle a migratory dead-end, by Pierre Henry, General Director of France Terre d'asile'*, 9 October 2015; EDAL (2015),* 'France: Administrative Tribunal of Lille ruling on conditions in Calais'*, 2 November 2015; Le Monde (2016),* 'Violences en marge du démantèlement partiel de la « jungle » de Calais'*, 29 February 2016; UNHCR (2015),* 'UNHCR calls for comprehensive response to the Calais situation'*, 7 August 2015.*

Promising practice

Hosting refugees at home

Hundreds of asylum seekers were able to avoid moving from shelter to shelter thanks to the help of volunteers who opened their doors to them in a number of Member States. In a year that saw large numbers of asylum seekers struggling to find emergency accommodation, local initiatives such as *Flüchtlinge Willkommen* (Refugees Welcome) helped match asylum seekers with host families. In 2015, 251 asylum seekers were welcomed into homes in **Germany** and 240 into homes in **Austria**. This initiative is also in place in **Greece**, **Italy**, the **Netherlands**, **Poland**, **Portugal**, **Spain** and **Sweden**.

Source: Flüchtlinge Willkommen

Twenty-four-year-old law student (foreground) who fled Aleppo in the Summer of 2015, enjoying student life in Berlin with his new German flatmates.

Photo: © UNHCR/Ivor Prickett, 2015

Preventing sexual and gender-based violence

Overcrowded reception centres, insufficient lighting and sanitary and sleeping facilities that have to be shared by men, women and children all expose refugees to risks of sexual or gender-based violence. UNHCR, the United Nations Population Fund (UNFPA) and the Women's Refugee Commission (WRC) carried out a joint assessment mission in **Greece** and in the Former Yugoslav Republic of Macedonia in November 2015, and concluded that female refugees and migrants face grave protection risks. The report noted, for example, that the overcrowded detention centre used to host new arrivals in Samos has "an insufficient number of beds, hygiene conditions in the latrines and showers are very poor, and there is no separation between men and women" – all conditions that increase the risk of sexual and gender-based violence.[106]

These findings are not limited to **Greece**. In December 2015, Amnesty International interviewed 40 refugee women and girls in northern Europe who had travelled from Turkey via Greece onwards. Many reported that they experienced physical abuse and exploitation in almost all countries they passed through. Women felt particularly under threat in transit areas and camps while traveling across the Balkan route, where they were forced to sleep alongside hundreds of refugee men; they also reported having to use the same bathroom and shower facilities as men.[107] An additional risk was the absence of vetting procedures for volunteers, particularly those working with children.

Article 18(4) of the Reception Conditions Directive (2013/33/EU) requires Member States to "take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment" in facilities used to host asylum seekers. This is part of a more general duty by Member States to prevent acts that could amount to torture, inhuman or degrading treatment or punishment against anyone who is staying within their territory. The ECtHR has stated on numerous occasions that states are obliged "to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals" and "the required measures should, at least, provide effective protection in particular of children and other vulnerable persons and should include reasonable

Promising practice

Developing an online tool to identify vulnerable people

In 2015, the European Asylum Support Office (EASO) developed an online tool for identifying persons with special needs. If broadly disseminated and used, it could provide at least some basic guidance to officers and aid workers present on the ground, provided it is complemented by targeted training and the establishment of effective national referral mechanism for victims. The tool may help Member States comply with their duty, under Article 21 of the Reception Conditions Directive (2013/33/EU), to assess vulnerabilities within a reasonable period of time after an asylum application is made.

Source: EASO (2015), EASO tool for identification of persons with special needs *(online)*

steps to prevent ill-treatment of which the authorities had or ought to have had knowledge".[108] The lack of standardised methodologies among Member States to identify vulnerable people results in victims of sexual and gender-based violence not being identified, preventing the implementation of support measures.

Addressing the specific needs of children

In 2015, one in four arrivals was a child, and this percentage is increasing in 2016. The EU Charter of Fundamental Rights requires that children receive the protection and care necessary for their well-being. Article 24 of the Charter applies to all children, regardless of their status or nationality. Migrant and refugee children were among those most subject to violations of their fundamental rights in several Member States, as reported by FRA in its regular updates published since October 2015.[109]

In the absence of specialised facilities, children were often accommodated in adult facilities, without appropriate safeguards and care.

The European Network of Ombudspersons for Children expressed its concern over the proportion of children going missing from reception centres.[110] Europol declared that, in 2015, some 10,000 unaccompanied children disappeared from reception facilities in countries of first arrival, transit countries and countries of destination.[111] In **Greece**, for example, a significant number of unaccompanied children went missing from accommodation centres within a few days of their referral. METAction, an NGO, reported that, on average, children stay in the accommodation facilities for around two days. In **Hungary**, most leave for western Europe after spending an average of six to eight days in reception facilities.[112] But a significant number also disappeared in **Sweden**, a country of destination, where some 35,369 unaccompanied children sought asylum in 2015.[113] When they disappear, any follow-up is difficult. Such children are rarely registered in the Schengen Information System, the EU database used to record missing people. The system does not allow for sub-categories of missing children, such as missing unaccompanied children, to be registered.

Unaccompanied children continued to be detained, as the following examples illustrate. On the island of Kos in **Greece**, due to a lack of other facilities, unaccompanied children were temporarily placed in police custody, together with adults and criminal detainees.[114] On the **Italian** island of Lampedusa, unaccompanied children who refused to be fingerprinted were kept in the centre for several weeks. Children travelling alone may also end up in detention because they are perceived to be adults. For example, civil society organisations found some children hosted in **Hungarian** pre-removal detention facilities; they were moved to specialised facilities for children only after their intervention and an age assessment.[115]

Families were separated during chaotic transit or border crossings, particularly when entering **Slovenia** at the border with **Croatia**,[116] following registration at the Opatovac camp,[117] or at the Bapska Serbian–Croatian border crossing while entering buses. A tent was set up as an "inquiry service for missing and lost persons" in the Šentilj accommodation centre at the Slovenian exit point to the Austrian border,[118] and the Red Cross Slovenia (*Rdeči Križ Slovenije*) was given the task of organising family reunifications[119] at the border and at reception and accommodation centres.[120]

Appointing guardians to unaccompanied children is an important safeguard to ensure their best interests, as they should not be required to decide difficult legal matters on their own. Therefore, in many EU Member States, this is a precondition for an unaccompanied child to apply for asylum. Delays in appointing guardians – as FRA's regular updates documented in some parts of **Germany**, for example – meant delaying the asylum procedures and thus durable solutions for the children. In **Italy**, the long waiting time for the appointment of guardians is one of the factors that have *de facto* excluded unaccompanied children from relocation.

Promising practice

Setting up child and family protection centres along the migration route

UNHCR and UNICEF are setting up 20 special support centres – to be known as "Blue Dots" – for children and families along Europe's most frequently used migration routes in Greece, the former Yugoslav Republic of Macedonia, Serbia, Croatia and Slovenia. The hubs aim to support vulnerable families on the move, especially the many unaccompanied children at risk of sickness, trauma, violence, exploitation and trafficking. The hubs will play a key role in identifying these children, providing the protection they need, and reuniting them with family when in their best interests. In addition, the hubs, located in selected strategic sites – border entry/exit points, registration sites, and strategic urban centres – will provide child-friendly spaces and dedicated mother and baby/toddler spaces, private rooms for counselling, psychosocial first aid, legal counselling, safe spaces for women and children to sleep, and information desks with Wi-Fi connectivity.

Source: UNHCR (2016), 'UNHCR, UNICEF launch Blue Dot hubs to boost protection for children and families on the move across Europe', Press release, 26 February 2016.

Taking fingerprints while complying with fundamental rights

The majority of asylum seekers reached Europe by crossing the Mediterranean Sea to **Greece** and **Italy**. Since 2014, at the point of entry, a significant number of them have not been fingerprinted for Eurodac, the database created by the EU for the smooth running of the Dublin system, a mechanism established by Regulation (EU) No. 604/2013 to determine the Member State responsible for examining an asylum application.[121] In some cases, this was because frontline states had limited capacity to deal with increased arrivals. **Greece** and **Italy** started to address this issue in 2015 with targeted support from Frontex, EASO and the European Agency for the Operational Management of large-scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA). In other cases, those arriving – including individuals from Eritrea or Syria likely to be in need of international protection – refused to give their fingerprints and some refused to apply for asylum altogether, as they intended to move on to their preferred country of destination. The sheer numbers of new arrivals and the absence of their systematic registration in Eurodac made it difficult to implement EU rules – set forth in the Dublin Regulation – for identifying the Member State responsible for examining an asylum application, as well as to implement relocation procedures.

Registration is a fundamental component of international refugee protection. It helps protect refugees against *refoulement*, arbitrary arrest and detention, is necessary to give access to services, and enables the identification of vulnerable people.[122] The absence of systematic registration at the point of entry makes it easier for those who have the means to reach their preferred country of destination, but also exposes those who are more vulnerable to protection risks. Systematic registration also helps address the host society's security concerns and helps authorities and the UNHCR find durable solutions for refugees.

Based on these considerations, steps were taken to promote systematic fingerprinting at points of entry. This also features prominently in the European Agenda for Migration. It also led to a discussion about the feasibility and appropriateness of using restrictive measures to force third-country nationals or stateless persons to give their fingerprints.[123] FRA contributed to the discussion with fundamental rights expertise.

FRA ACTIVITY

In October 2015, FRA published a checklist to assist national authorities in complying with fundamental rights obligations when obtaining fingerprints for Eurodac. FRA notes that:

- compliance with the obligation to provide fingerprints for Eurodac should primarily be secured through effective information and counselling, carried out individually as well as through outreach actions targeting migrant communities. To be effective, information should be provided in a language people understand and take into account gender and cultural considerations;
- refusal to provide fingerprints does not affect Member States' duty to respect the principle of *non-refoulement*;
- deprivation of liberty to pressure persons to give their fingerprints must be an exceptional measure and should not be used against vulnerable people;
- it is difficult to imagine a situation in which using physical or psychological force to obtain fingerprints for Eurodac would be legally justified.

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

Sharing responsibility

In 2015, the EU took a new approach to sharing responsibility for asylum seekers among EU Member States. For the first time, it triggered the emergency solidarity measure envisaged in Article 78(3) of the TFEU to support Member States affected by a sudden inflow of third-country nationals. A relocation mechanism was set up to support **Greece** and **Italy,** aiming to transfer 160,000 asylum applicants to other EU Member States.[124]

According to a decision the Council of the European Union adopted in September 2015, all EU Member States – except the **United Kingdom**, which opted out – will admit an agreed number of asylum seekers who submitted an asylum claim in **Greece** or **Italy** and are likely to be in need of international protection. **Denmark** and **Ireland** declared their readiness to participate in meeting the relocation efforts. In October, Ireland notified the Council of the EU and the European Commission of its wish to opt-in to the two Council Decisions on Relocation, which will see approximately 2,600 persons relocated to Ireland. [125] The United Kingdom declared its preference to resettle refugees directly from conflict regions. Access to the relocation mechanism is limited to those applicants who originate from a country that, according to the latest available quarterly Eurostat data, has a Union-wide average recognition rate of 75 % or higher. By the year's end, these countries were, essentially, Iraq, Eritrea and Syria. Applicants' fingerprints need to be registered in Eurodac before they are eligible for relocation.

The relocation mechanism was subject to intense discussions within the Council. Some EU Member States that were not directly on the main migration route repeatedly expressed their scepticism about the future scope and sustainability of the mechanism. Eventually, the Council decision was adopted by a formal vote against the continued objections of several Member States. In December, **Slovakia**, followed by **Hungary**, filed an action for the annulment of the measure with the Court of Justice of the European Union (CJEU) citing, among other grounds, a breach of EU procedural rules, the division of competences within the EU and the principle of proportionality.[126]

In practice, relocation is meant to occur from the hotspots established in southern **Italy** and on selected **Greek** islands with the help of EASO. In 2015, the relocation scheme was still at a very early stage, with many aspects still to be resolved.[127] Logistical constraints and gaps in providing information and counselling, as well as lack of cooperation by some groups of asylum applicants, gave relocation a slow start. By the year's end, only 82 asylum seekers had departed from **Greece,** and 190 from **Italy**. However, with further counselling and trust-building measures, as well as streamlining and simplifying procedures at the sending and receiving ends, relocation has the potential to become an important tool to address the protection gaps that asylum seekers face in countries of first arrival, and at the same time reduce unregulated refugee movements within the EU. However, it may also raise new fundamental rights challenges – for example, if relocation candidates object to moving to the respective relocation country because they have friends or relatives in another EU Member State.

The experience gained from the temporary relocation mechanism is likely to affect the revision of the Dublin Regulation ((EU) No. 604/2013), planned for 2016. In September, the European Commission tabled a proposal to complement the Dublin Regulation by establishing a permanent relocation mechanism, to be triggered at times of crisis, which entails a mandatory distribution key to determine the responsibility for examining applications.[128] Asylum seekers do not have a right to choose their country of asylum. Nonetheless, events in 2015 illustrated that any distribution criteria that does not at least to some degree take into account people's preferences – which often derive from family links, presence of diaspora and integration prospects – is likely to fail and lead to undesired secondary movements within the EU and the Schengen area.

Addressing unfounded applications without undermining fairness

In 2014, one in six asylum applications in the EU were lodged by applicants from the western Balkans, who had little chance of success. This phenomenon continued in 2015: some 200,000 applicants were from the western Balkans, of whom some 27,000 people submitted repeat applications.[129] This contributed to the congestion of national asylum systems, resulting in longer procedures for all asylum applicants. For example, more than 470,000 asylum applications were pending in **Germany** at the end of December 2015, around 144,000 of which were from western Balkan countries, including over 23,000 repeat applications.[130]

This meant reception capacities were partly occupied by people who were largely not in need of international protection, particularly in Member States with backlogs of unprocessed asylum applications or in which processing takes a long time. This further exacerbates the shortage of adequate reception facilities for those who arrive in Europe after crossing the Mediterranean.

One of the ways Member States dealt with applications that are likely unfounded is the creation of 'safe country of origin' lists. An application submitted by an individual coming from a country on the list is presumed to be manifestly unfounded. Unless he or she can rebut the assumption of safety, the application is processed in an accelerated manner, with reduced procedural safeguards. According to the European Commission, the 'safe country of origin' concept features in the legislation of 22 Member States, but only 15 Member States apply the concept in practice and 10 have established lists.[131] They differ substantially. Whereas the **United Kingdom**'s list contains 26 third countries, **Bulgaria**'s has 17 and **Ireland**'s only one. In an effort to increase the efficiency of national asylum systems in dealing with significant numbers of largely unfounded asylum applications, many of them repeat applications, the European Commission in September proposed to set up a common EU-level 'safe country of origin' list.[132] The proposal suggests designating Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey as safe countries of origin in all EU Member States. In addition, it allows Member States to maintain their national lists of safe countries.

The use of 'safe country of origin' lists is not in itself incompatible with the EU Charter, as long as applicants have an effective way to rebut the presumption of safety. This requires that each asylum applicant be heard in an individual eligibility interview, in which he or she can put forward his or her personal circumstances. Legal assistance and the possibility to stay in the country while a court reviews a rejected application are other important safeguards.[133] Moreover, in light of continuing human rights violations against specific groups, such as LGBTI persons or members of national minorities in parts of the western Balkans, measures are required to ensure that the proposal does not result in indirect discrimination against groups at risk and lead to their *refoulement*. Finally,

the rationale for including Turkey on the list requires convincing justification in light of Article 18 of the Charter; approximately one in four applicants from Turkey were granted international protection in 2014, and one out of five received such protection in 2015.[134]

Fundamental rights to guide the way forward

The current patchwork approach to fundamental rights at hotspots should be revised. The European Union's and its Member States' responses need a comprehensive fundamental rights assessment, covering first disembarkation, reception, humanitarian assistance and identification of vulnerable people, registration, screening, relocation, asylum procedures, protection standards and return. That would help avoid protection gaps that can create fundamental rights risks, particularly for the most vulnerable.

Many of the challenges that emerged in 2015 – the difficulties concerning registration and fingerprinting, the uncoordinated response to Syrian refugees, the significant number of disappearing children and the different approaches taken by EU Member States to tackle manifestly unfounded applications – would be mitigated by a single EU asylum space, in which asylum applicants would be treated in a comparable manner and would have the same chances of receiving the same protection, regardless of where an asylum claim was lodged. As FRA noted at the end of 2013,[135] the EU could consider the risks and benefits of replacing, in the long term, national processing of requests for international protection with processing by an EU entity. As a first step, and together with measures to enforce European asylum standards throughout the EU and the effective use of available funding, forms of shared processing between the EU and its Member States could be explored to promote, across the EU, truly common procedures and protection standards that are anchored in the EU Charter for Fundamental Rights.

4. Returning migrants in an irregular situation while fully respecting fundamental rights

According to the European Agenda on Migration, the EU return system's lack of effectiveness is one of the incentives for irregular migration.[136] The EU Action Plan on return, issued by the European Commission in September, makes the same argument, quoting estimates that fewer than 40 % of irregular migrants ordered to leave the EU departed effectively in 2014.[137] It outlines a series of initiatives to enhance both the effectiveness of the EU return system as well as cooperation with countries of origin or transit on readmission.

The effective return of migrants who are in an irregular situation and for whom there are no legal bars to removal is essential for upholding the credibility of the asylum system. When implemented speedily, effective returns also reduce the incentive for people without protection needs to put their lives at risk by crossing into the EU in an unauthorised manner.

However, assessing the overall effectiveness of the EU return policy is difficult. As figures are not yet fully reliable and are not comparable between Member States, it is difficult to conclude how many migrants who are issued return decisions leave the European Union. In particular, the number of voluntary departures is not sufficiently documented, as not all EU Member States have mechanisms in place to record these departures. Furthermore, Eurostat data show considerable differences between individual EU Member States in the rate of voluntary returns compared with forced returns.[138] The lack of complete and comparable data hampers the development of evidence-based responses to possible current deficiencies.

Supporting fundamental rights compliance in practice

In 2015, application of the EU return *acquis* became part of the Schengen evaluations jointly conducted by the European Commission and EU Member States. The evaluations focused on the practical application of the Return Directive (2008/115 EC),[139] including fundamental rights safeguards. Table 2 provides a snapshot of some of the fundamental rights considerations examined during the process. FRA was invited to support the evaluations with fundamental rights expertise, and participated as an observer in on-site visits to four EU Member States evaluated this year: **Austria**, **Belgium**, **Germany** and the **Netherlands**.

Promoting a uniform approach that would ensure effective but fundamental rights-compliant implementation of the return *acquis*, particularly the Return Directive (2008/115/EC), is also a key objective of the Return handbook, a comprehensive guidance document issued by the European Commission in October. It covers topics such as apprehension, alternatives to detention and procedural safeguards for persons in return proceedings.[140]

Addressing the rights of persons who cannot be removed

Some persons who have not obtained a right to stay cannot be removed for practical or other reasons. Calls for more effective returns also need to take this

Table 2: Schengen evaluations, selected fundamental rights issues in return and readmission

☑	Organisation of the apprehension procedure of irregular migrants
☑	Primacy of voluntary departure
☑	Procedural safeguards for vulnerable persons
☑	Alternatives to detention
☑	Ensuring best interests of the child in case of return of unaccompanied children
☑	Role of courts in imposing and reviewing detention orders
☑	Detention conditions inside the territory and at the border
☑	Maximum period of detention and possibility of re-detention
☑	Immigration detention of children
☑	Nature and independence of the forced return monitoring system
☑	Arrangements for persons who cannot be removed

Source: European Commission (2014), Annex to the Commission Implementing Decision establishing a standard questionnaire in accordance with Article 9 of the Council Regulation (EU) No. 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis, C(2014) 4657 final, 11 July 2014

into account, particularly if the persons cannot depart through no fault of their own. Obstacles can include lack of cooperation by the country of origin (such as the country of nationality's refusal to issue identity and travel documents) and statelessness. According to Article 14 (2) of the Return Directive (2008/115/ EC), these persons are entitled to receive written confirmation that their removal cannot currently be enforced, so that they can demonstrate their specific situation in the event of other controls or checks. As clarified by the CJEU in *Mahdi* (C-146/14), EU Member States may also authorise these persons to stay, particularly for compassionate or humanitarian reasons. But Member States enjoy broad discretion in this regard,[141] which can leave these persons without any clarity about their rights and future. The current migration trend has the potential to further increase the proportion of such persons. In January 2016, the European Committee of Social Rights published a guidance document on the application of the rights of migrant workers and their families, warning against expelling migrants on grounds beyond those permitted by the European Social Charter.[142] A more systematic approach to determining their status at the EU level would be in the interest of both the persons themselves and of the host EU Member States.

Responding to the healthcare needs of migrants in an irregular situation

The increased arrivals of refugees and migrants in 2015 put significant pressure on national health systems. With the support of the European Commission, IOM has carried out a one-year study that includes a component on healthcare provided to migrants in an irregular situation in reception and detention centres at borders.[143] Although a significant number of the people who arrived in 2015 are likely to be granted international protection – and, with it, the same access to the national healthcare system as nationals – there are also individuals whose applications for asylum will be rejected. Not all of them will be immediately removed, given practical or other obstacles to returning them. It is likely that many will remain in the EU for at least some time, often in legal limbo.

EU law does not address access to healthcare for migrants in an irregular situation, except in situations involving individuals who have been given a period for voluntary departure and for those whose removal was formally postponed. On the basis of the Return Directive (2008/115/EC), these two categories of people are entitled to "emergency healthcare and essential treatment of illness". This is the same level of healthcare accorded to asylum seekers.

Building on the international and European human rights law framework,[144] FRA has recommended that migrants in an irregular situation should, as a minimum, be entitled to necessary healthcare services, which should include the possibility of seeing a general practitioner and receiving necessary medicines.[145] Four years after FRA's first reports covering access to healthcare by migrants in an irregular situation were published,[146] substantial differences between EU Member States remain.

This sub-section reviews the healthcare entitlements of migrants in an irregular situation across the EU. The following definitions of emergency, primary and secondary healthcare apply.

- *Emergency care* includes life-saving measures as well as medical treatment necessary to prevent serious damage to a person's health.
- *Primary care* includes essential treatment of relatively common minor illnesses provided on an outpatient or community basis (e.g. services by general practitioners).
- *Secondary care* comprises medical treatment provided by specialists and, in part, inpatient care.[147]

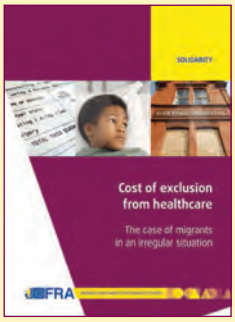
In all EU Member States, migrants in an irregular situation (and asylum seekers whose applications have been rejected) can access healthcare services in cases of emergency (some Member States provide 'treatment that cannot be deferred', which may be broader than emergency healthcare). As illustrated in the table available online on FRA's web page, nine Member States require migrants to pay for the cost of the emergency healthcare provided (compared with 11 in 2011). In a few of these (Cyprus and Sweden), fees are low and the same fees are charged to nationals when accessing emergency healthcare. For instance, in **Cyprus**, a standard fee of €10 is charged to all those accessing emergency healthcare, including migrants in an irregular situation.[148] In **Sweden**, migrants in an irregular situation must pay a patient fee of SEK 50 (approximately €5) to visit a doctor.[149] In the other seven Member States, access to emergency healthcare is provided against full payment. Although in most cases emergency treatment would not be denied, the sums charged may amount to thousands of euros.

Since FRA's 2011 report on the fundamental rights of migrants in an irregular situation was published,[150] the number of Member States providing cost-free emergency, primary and secondary healthcare has decreased from five to four (**Belgium**, **France**, the **Netherlands** and **Portugal**). In **Germany**, in principle, migrants in an irregular situation are entitled to healthcare beyond emergency services, but social welfare staff have a duty to report such migrants to the police if they receive non-emergency care.[151] Given the risk of being reported, the right to primary and secondary healthcare remains only on paper. In other EU Member States, access beyond emergency healthcare may be possible in some instances. For example, in **Denmark**, people without a registered residence who have received emergency healthcare enjoy the right to subsequent treatment when it is deemed unreasonable to refer them to their home country. The decisions are made by the healthcare professionals responsible for the treatment and are based on a medical assessment of the patient's condition.[152]

In its 2015 report *Cost of exclusion from healthcare: The case of irregular migrants*, FRA looked into the potential costs of providing migrants in an irregular situation with timely access to health screening and treatment, compared with providing medical treatment in cases of emergency only.[153]

FRA ACTIVITY

Using economic considerations to support fundamental rights and public health care arguments



This report presents an economic model for analysing the costs of providing regular access to healthcare for individuals and compare these with the costs incurred if these persons are not provided with such access and, as a result, need to use more expensive emergency healthcare facilities. It does so by analysing two medical conditions: hypertension and prenatal care. To better illustrate its application in practice, the model was applied to three EU Member States: Germany, Greece and Sweden. The results of applying the model show that providing regular preventative care saves costs for healthcare systems in comparison with providing emergency care only. This is true of hypertension as well as prenatal care. Providing access to prenatal care may, over the course of two years, generate savings of up to 48 % in Germany and Greece, and up to 69 % in Sweden. For hypertension, the results suggest that, after five years, the cost savings would be around 12 % in Germany, 13 % in Greece and 16 % in Sweden. These results are a powerful indication that governments would save money by providing access to preventative and primary healthcare to migrants in an irregular situation in the cases of hypertension and prenatal care.

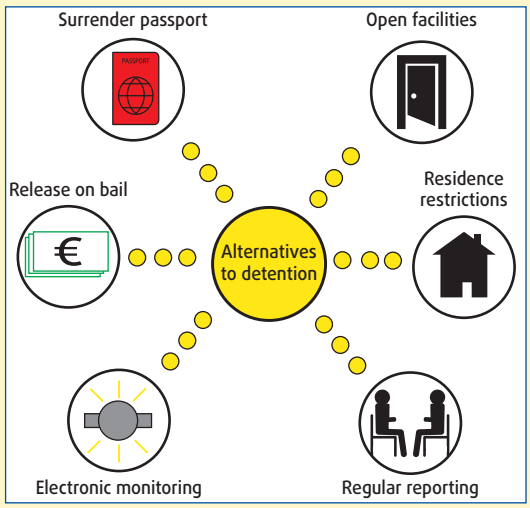
FRA (2015), Cost of exclusion from healthcare: The case of irregular migrants*, Luxembourg, Publications Office*

Avoiding unlawful or arbitrary immigration detention

The EU Action Plan on return highlights the need for compliance with international human rights standards and subscribes to increasing voluntary returns as the preferred option. At the same time, it emphasises the role of detention where necessary to prevent absconding and secondary movements of irregular migrants between EU Member States. To comply with Article 6 of the EU Charter, deprivation of liberty must be used only as a measure of last resort in immigration proceedings. Member States must provide for alternatives to detention in law, and must also apply these in practice.

FRA ACTIVITY

Promoting alternatives to detention



In October 2015, FRA published a compilation of instruments and existing standards related to alternatives to detention for asylum seekers and people in return procedures. It aims to provide guidance to policymakers and practitioners on the use of the most appropriate measures in various scenarios.

FRA (2015), Alternatives to detention for asylum seekers and people in return procedures, *Luxembourg, Publications Office*

Monitoring of forced returns

According to Article 8 (6) of the Return Directive (2008/115/EC), where forced returns take place, they need to be subject to effective monitoring. There is pressure to increase forced returns to match the number of migrants in an irregular situation who have been issued with return decisions. This creates the need to increase the capacity to monitor returns. However, some Member States do not yet have effective monitoring mechanisms in place, while mechanisms in some other Member States could be improved.

As illustrated in a table published on FRA's website, five years after the transposition deadline of the Return Directive (2008/115/EC), appropriate mechanisms for monitoring forced returns are still not in place in seven of the 26 EU Member States bound by the directive.[154] In **Cyprus** and **Italy**, return monitoring is not yet carried out, even though bodies responsible for monitoring have been appointed in both Member States. In **Portugal**, a newly created forced return monitoring mechanism – located within the General Inspectorate of Internal Affairs – conducted monitoring operations on the ground, but monitors did not join flights. The monitoring carried out by the Lithuanian Red Cross, in **Lithuania** since 2010 was discontinued and the responsibility transferred to the Ministry of the Interior, which has yet to start conducting monitoring in cooperation with civil society. In **Germany**, no mechanism exists at the federal level and the scope of existing partial monitoring activities at individual airports is limited. Furthermore, in **Slovakia** and **Sweden,** monitoring is conducted by an agency belonging to the same branch of government that is responsible for returns, which does not appear to satisfy the Return Directive's requirement of 'effective' – meaning independent – forced return monitoring. Finally, public reporting of findings made during the monitoring operations is also either not conducted or remains limited in some of the Member States where otherwise operational forced return monitoring mechanisms exist.

At the same time, in 2015, monitoring mechanisms became operational in **Bulgaria**, where several flights were monitored by the National Preventive Mechanism and a non-governmental organisation, and in **Greece**, where the office of the Ombudsman began conducting monitoring. In **Croatia**, a system based on monitoring by a non-governmental organisation was in place for a short period in 2015. Although this project was discontinued, a new system involving the National Preventive Mechanism became operational in 2016. In **Slovenia**, a non-governmental organisation was appointed to carry out monitoring, which became operational in October.

Fundamental rights to guide the way forward

Developments in 2015 and the emphasis placed on increased effectiveness underline the need to fully integrate fundamental rights safeguards into return policies. As shown by practical tools such as the Schengen evaluations or the Return handbook, respect for fundamental rights does not pose an obstacle but can be an important building block of return policies. It can contribute to their effectiveness by making them more humane, by favouring less intrusive alternatives to detention; more predictable, by addressing the issue of non-removed persons; and also more sustainable, such as by further supporting voluntary returns as opposed to forced returns. Through effective return monitoring, removals can be made more transparent and more accepted by the population. Finally, FRA research in the field of healthcare indicates that fundamental rights-oriented policies can also be underpinned by economic logic.

The creation of a dedicated Return Office within the planned European Border and Coast Guard Agency should enhance the coordination of forced return operations, including forced return monitoring. The agency should also place additional emphasis on capacity building in the field of return, which entails increased responsibility for ensuring the proper implementation of fundamental rights safeguards. FRA can support this effort.[155]

FRA opinions

In 2015, over one million refugees and migrants – compared with about 200,000 in 2014 – arrived in Europe by sea, mainly in Greece and Italy. Although rescue elements were strengthened in the management of maritime borders, the number of fatalities in the Mediterranean Sea increased further in 2015. According to the International Organisation for Migration (IOM), some 3,771 people died when crossing the Mediterranean Sea on unseaworthy and often overcrowded boats provided by smugglers.

FRA opinion

To ensure human dignity, the right to life and to the integrity of the person guaranteed by the EU Charter of Fundamental Rights, it is FRA's opinion that the EU and its Member States should address the threats to life at Europe's doorstep. To put an end to the high death toll at sea, they could consider working towards a global approach, involving all relevant states and actors, and building on the conclusions of the World Humanitarian Summit, held in Istanbul on 23 and 24 May 2016. They could also consider FRA's proposals, issued in its 2013 report on Europe's southern sea borders, on how to uphold the right to life in the maritime context, namely to ensure that patrol boats from all participant nations are adequately equipped with water, blankets and other first aid equipment.

The EU continues to offer only limited avenues to enter its territory legally for persons in need of protection. This implies that their journey to Europe will be unauthorised and therefore unnecessarily risky, which applies especially to women, children and vulnerable people who should be protected. There is clear evidence of exploitation and mistreatment of these groups by smugglers.

FRA opinion

To address the risks of irregular migration to the EU, it is FRA's opinion that EU Member States should consider offering resettlement, humanitarian admission or other safe schemes to facilitate legal entry to the EU for persons in need of international protection. They should have the opportunity to participate in such schemes in places accessible to them. To respect the right to family life enshrined in Article 7 of the EU Charter of Fundamental Rights but also to prevent the risks of irregular entry for people who want to join their families, there is a need to overcome practical and legal obstacles preventing or significantly delaying family reunification and to refrain from imposing new ones.

While effective action is required to fight people smuggling, there is a danger of putting at risk of criminal prosecution well-meaning individuals who help migrants. Where citizens seek to help refugees to reach a shelter or to move on to their place of destination, for example by buying train tickets or transporting them in their cars, they are to be considered part of the solution rather than part of the problem. Measures resulting in the punishment of refugees themselves may raise issues under the non-penalisation provision in Article 31 of the UN Convention relating to the Status of Refugees.

FRA opinion

To address the identified challenges, it is FRA's opinion that, as announced in the EU Action Plan against Migrant Smuggling (2015-2020), the relevant EU legislation should be evaluated and reviewed to address the risk of unintentionally criminalising humanitarian assistance or punishing the provision of appropriate support to migrants in an irregular situation.

Increased migratory pressure on the EU led to new measures, including the building of fences at land borders, summary rejections, accelerated procedures or profiling by nationality. There is a general understanding in the EU that we should respect the prohibition of *refoulement*, but law evolving in this field causes legal uncertainties, as pointed out at the 2014 FRA Fundamental Rights Conference in Rome. Any form of group removal or interception activity at sea could effectively add up to collective expulsion, if the removal or interception is not based on an individual assessment and if effective remedies against the decision are unavailable. Both Article 19 of the EU Charter of Fundamental Rights and Article 4 of Protocol 4 to the European Convention on Human Rights (ECHR) prohibit such proceedings, with the European Court of Human Rights (ECtHR) upholding that such prohibition also applies on the high seas.

FRA opinion

To ensure that the right to asylum guaranteed by the EU Charter of Fundamental Rights is fully respected, it is FRA's opinion that the EU and its Member States should ensure that their border and migration management policies do not violate the principle of **non-refoulement** *and the prohibition of collective expulsion. The absolute nature of the prohibition of* **refoulement** *needs to be respected both in legislative or policy measures and in their implementation. FRA considers that more specific guidance on how to mitigate the risk of violations of the principle of* **non-refoulement** *would be necessary to address new situations, such as those emerging as a result of the installation of fences or through interception at sea or enhanced cooperation with third countries on border management.*

On various occasions and across many Member States, refugees have been recorded as being in desperate and deteriorating conditions in 2015. According to Article 18 of the Reception Conditions Directive, asylum seekers must be provided with an adequate standard of living during the time required for the examination of their application for international protection. Although the directive formally applies only from the moment an individual has made an application for international protection, many of its provisions reflect international human rights and refugee law standards that are effectively binding on EU Member States from the moment a refugee is in a state's jurisdiction.

Article 18 (4) of the directive requires Member States to "take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment" in the facilities used to host asylum seekers. 2015 witnessed many well documented reports about women who felt under threat in transit zones and camps. In the case of unaccompanied children, the EU Charter of Fundamental Rights requires that children receive the protection and care necessary for their well-being. Nonetheless, many thousands of unaccompanied children went missing from accommodation facilities in EU Member States, others were kept in detention and again others were separated from their families during chaotic transit or border crossings. Shortcomings like these are due to the high numbers of refugees and the current patchwork of inadequate asylum reception systems. It is not always clear which institutions within the EU and Member States share responsibility for this – a shortcoming the European Commission planned to address in early 2016 through a *Communication on the state of play of implementation of the priority actions under the European Agenda on migration*.

FRA opinion

To address the identified shortcomings, it is FRA's opinion that the EU could consider the risks and benefits of replacing in the long term national processing of requests for international protection with processing by an EU entity. This could, in time, produce a system based on shared common standards. As a first step, and with the effective use of available EU funding, shared forms of processing between the EU and its Member States could be explored to promote common procedures and protection standards, anchored in the EU Charter of Fundamental Rights.

A comprehensive fundamental rights assessment at the hotspots in Greece and Italy, covering all phases from disembarkation, initial reception, screening, relocation to asylum and return, would contribute in closing protection gaps that particularly affect the most vulnerable.

Evidence shows that national child protection systems are not always integrated in asylum and migration processes and procedures involving children. More needs to be done to bridge resulting protection gaps and encourage all relevant actors to work together to protect refugee children and, in particular, address the phenomenon of unaccompanied children going missing.

Statistics suggest that fewer than 40 % of irregular migrants ordered to leave the EU departed effectively in 2014. Some persons who have not obtained a right to stay cannot be removed for practical or other reasons. Obstacles can include lack of cooperation by the country of origin (such as refusal to issue identity and travel documents) or statelessness. The international and European human rights framework requires that these persons are provided with access to basic services, including healthcare. Making healthcare more accessible for irregular migrants is a good investment in the short and medium term in areas such as controlling communicable diseases, as FRA research indicates. Unlawful and arbitrary immigration detention has to be avoided, while the potential of returns remains underused. Respect for fundamental rights does not pose an obstacle; on the contrary, it can be an important building block towards the creation of return policies.

FRA opinion

To prevent ill treatment of forcibly removed people, it is FRA's opinion that EU Member States should consider establishing effective monitoring mechanisms for the return of irregular migrants. Fundamental rights safeguards in return procedures contribute to their effectiveness and make them more humane, by favouring less intrusive alternatives to detention and by supporting more sustainable voluntary returns as opposed to forced returns. By addressing the issue of non-removable persons, fundamental rights can also make return procedures more predictable. For migrants in an irregular situation living in the EU, FRA in its past reports has called on Member States to respect fully the rights migrants are entitled to under international and European human rights law, be it the right to healthcare or other legal entitlements.

A significant number of migrants and refugees who arrived in the EU are likely to stay, many of them as beneficiaries of international protection. Given the situation in their countries of origin, return is not

a likely option in the near future. Their integration and participation in society through peaceful and constructive community relations pose a major challenge to EU societies. Successful integration of newly arrived migrants and refugees potentially supports the inclusive growth and development of the EU's human capital and promotes the humanitarian values the EU stands for globally.

FRA opinion

To facilitate the swift integration of migrants and refugees in host societies, it is FRA's opinion that the EU Member States should consider reviewing their integration strategies and measures based on the EU's Common Basic Principles for Immigrant Integration Policy in the EU. They should provide effective and tangible solutions, particularly at local level, to promote equal treatment and living together with respect for fundamental rights.

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Endnotes

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

Since the end of 2009, the EU has its own legally binding bill of rights: the Charter of Fundamental Rights of the European Union, which complements national human rights and the European Convention on Human Rights (ECHR). Whereas national human rights and the obligations under the ECHR are binding on EU Member States in whatever they do, the Charter is binding on them only when they are acting within the scope of EU law. While the EU stresses the crucial role of national actors in implementing the Charter, it also underlines the need to increase awareness among legal practitioners and policymakers to fully unfold the Charter potential. FRA therefore examines the Charter's use at national level.

In autumn 2015, the European Parliament stressed that "national authorities (judicial authorities, law enforcement bodies and administrations) are key actors in giving concrete effect to the rights and freedoms enshrined in the Charter".[1] Indeed, it is mainly at the national level that fundamental rights, as reflected in the Charter, have to be respected and protected to make a difference in the lives of rights holders.

However, awareness of the Charter's content remains low. In February 2015, a Flash Eurobarometer survey did show that general awareness of the Charter's existence has increased, with 40% having heard of the Charter in 2007 and 65% having done so in 2015. But this can hardly be said about the public's understanding of what the Charter is really about: in 2015, only 14 % of respondents said that they were "familiar with the Charter" and knew "what it is" – compared with 11 % in 2012 and 8 % in 2007. This signals a need for awareness raising. Legal practitioners particularly have to be familiar with the Charter's rights if these are to be implemented in practice. In June 2015, the Council of the European Union noted that it is "necessary to continue promoting training and best practice sharing in the field of judiciary at national and EU level thus enhancing mutual trust".[2] The European Parliament echoed this sentiment in September, calling "on the Commission, with the support of the EU Agency for Fundamental Rights (FRA), to strengthen awareness-raising, education and training measures and programmes with regard to fundamental rights".[3]

Against this background, this chapter explores whether, and how, courts and political and other actors use the Charter at national level. Section 1.1 reviews the judiciary's use of the Charter. Section 1.2 looks into legislators' use of the Charter, be it in assessing impacts of national legislation, in compliance reviews, or in legislative texts. Section 1.3 addresses the Charter's use in national policy documents and training activities.

1.1. National high courts' use of the Charter

A review of national high courts' use of the Charter raises various questions. Who is taking the initiative to use the Charter (Section 1.1.1)? In what areas is it used most often, and what Charter rights appear most relevant in national courtrooms (Section 1.1.2)? Do national courts refer Charter-related questions to the Court of Justice of the European Union (CJEU) (Section 1.1.3)? Do national judges refer to the Charter in isolation or in combination with other human rights standards; if the latter, with which standards (Section 1.1.4)? To what extent do national judges address the scope of the Charter (Section 1.1.5)? And, where judges do apply the Charter, what function do they assign to it (Section 1.1.6)?

The following analysis is based on a review of 68 court decisions issued in 26 EU Member States, mostly by constitutional, supreme, cassation, high and supreme

administrative courts. The decisions were selected based on the relevance of the Charter references. The review focused on court decisions that use the Charter in their reasoning; cases in which judges simply refer to the fact that parties cited the Charter were not taken into account. Up to three court decisions per EU Member State were considered. Like last year, no relevant case was identified for **Denmark**. Similarly, no such case was communicated for **Croatia**.

1.1.1. Invoking the Charter: national courts continue to bring 'in' the Charter

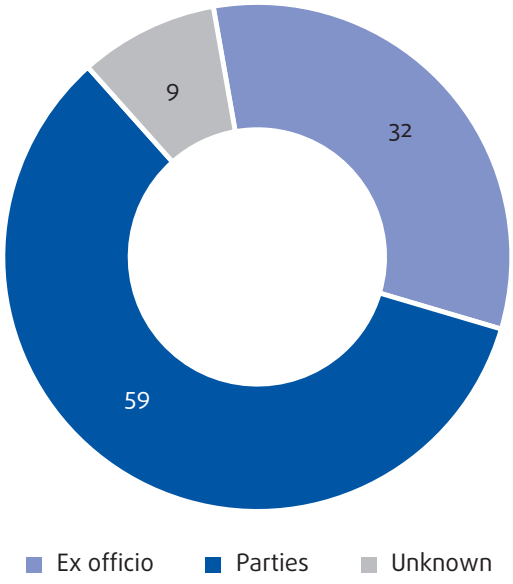
In national courts, parties can invoke the Charter at their own initiative, or judges can invoke it on their own motion. Whether parties and judges can invoke legal sources such as the Charter, and at which stage of a procedure they may do so, depends on the procedural norms in place. In 2015, national court judges referred to the Charter on their own initiative in a substantial proportion of cases: in one third of the decisions analysed, it was the judge(s), and not the parties, who first invoked the Charter. As illustrated in Figure 1.1, in a few cases it was impossible to track who first invoked it. This represents a decrease; in the two previous years, judges invoked the Charter in almost 50 % of cases analysed.

Judges may invoke the Charter to decide in favour of a party's claim or, to the contrary, point out that following a party's arguments would contravene the Charter – an argument made, for instance, in a case before **Bulgaria**'s Supreme Cassation Court.[4]

1.1.2. Procedural rights and policy area of freedom, security and justice remain prominent

As already indicated in previous FRA annual reports, national judges often use the Charter in the area of freedom, security and justice. This trend continued. There was also continuity in terms of the specific rights referred to in the analysed judgments: the right to an effective remedy and to a fair trial (Article 47), the right to respect for private and family life (Article 7), and the protection of personal data (Article 8) remained the most frequently cited. And, as in previous years, the general provisions on its scope and on the interpretation of guaranteed rights (Articles 52 and 51) made up a substantial part of Charter references.

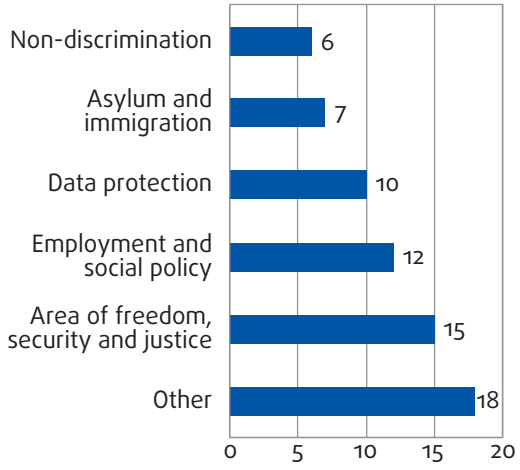
Figure 1.1: National courts: references to the Charter introduced by a party or *ex officio* (on the court's own motion) (%)



Note: *Based on 68 national court decisions analysed by FRA. These were issued in 26 EU Member States in 2015 (up to three decisions per Member State; no 2015 decisions were reported for Croatia and Denmark).*

Source: *FRA, 2015*

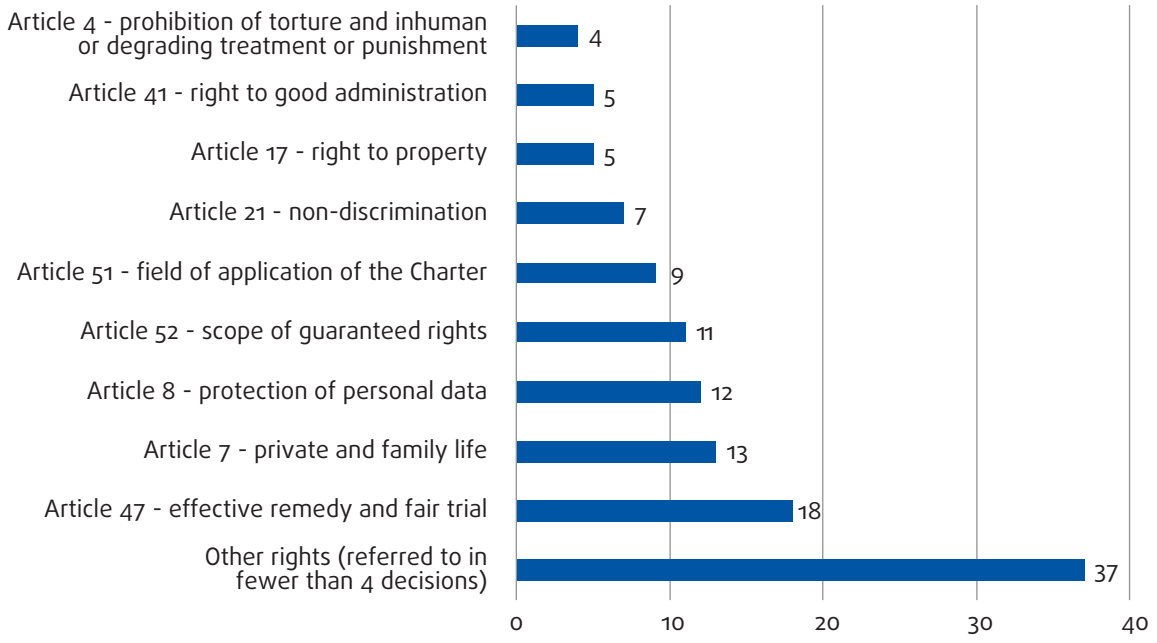
Figure 1.2: Charter-related decisions of national courts, by policy areas



Note: *This chart shows the total number of references made to the Charter in 2015 in 68 national court decisions analysed by FRA. These were issued in 26 EU Member States (no 2015 decisions were reported for Croatia and Denmark).*

Source: *FRA, 2015*

Figure 1.3: Number of references to Charter articles in selected decisions by national high courts



Note: *This chart shows the total number of references made to the Charter in 2015 in 68 national court decisions analysed by FRA.These were issued in 26 EU Member States (no 2015 decisions were reported for Croatia and Denmark).*

Under 'Other rights': three decisions referred to Art. 11, 19, 20, 24, 27 and 50; two decisions referred to Art. 48, 45 and 34; one decision referred to Art. 1, 3, 5, 10, 12, 15, 16, 18, 28, 33, 39 and 49.

Source: FRA, 2015

1.1.3. Referring cases to Luxembourg: divergence persists

The dialogue between national courts and the CJEU continued in 2015. Courts from 25 EU Member States sent 302 requests for preliminary rulings to the CJEU – 125 fewer than in 2014. No **French**, **Lithuanian** or **Spanish** courts did so. Thirty-four of these requests, from 11 Member States, referred to the Charter – an only slightly higher proportion than in 2014 (11 % instead of 10 %).

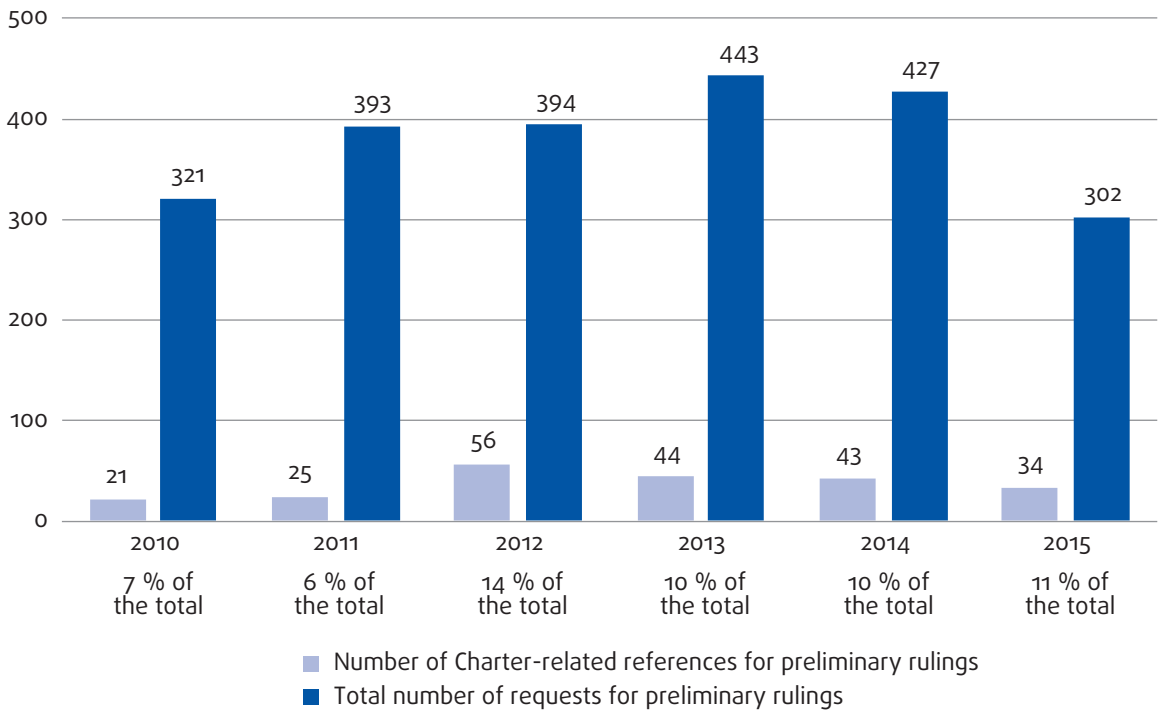
The data available on the CJEU's website reveal large variations between EU Member States. For example, **Hungary** and **Malta** referred many cases to the CJEU in 2015, and a very substantial portion of them involve the Charter. **Romania** and **Greece** sent very high numbers of requests for preliminary rulings to the CJEU, but few referred to the Charter (three of 59 from Romania and none of the 33 from Greece). Figures for **Germany**, **Italy**, **Luxembourg** and the **United Kingdom** were similar but less striking. Comparing these figures with previous years confirms that the numbers fluctuate widely. Only from a medium-term perspective do certain patterns emerge:

- **Croatia**, **Cyprus**, the **Czech Republic**, **Denmark** and **Sweden** have not referred to the Charter when referring cases to the CJEU in the past five years. Courts in **Malta** did not make any references to the Charter in their requests for preliminary rulings between 2010 and 2014; in 2015, seven of the 20 requests sent to the CJEU did refer to the Charter.

- National courts in **Austria**, **Belgium**, **Bulgaria**, **Spain**, **Hungary**, **Ireland** and **Romania** rather regularly referred to the Charter in a significant proportion of their requests for preliminary rulings in the past five years. **Italy**'s courts referred to the Charter in 5 % to 16 % of preliminary ruling requests in 2010–2014. However, in 2015, none of the 17 requests from Italy used any arguments explicitly based on the Charter.

A request filed by the Administrative Court in **Luxembourg** provides an example of requests submitted to the CJEU in 2015: it asked the CJEU whether, in provisions of the free movement *acquis,* the term "child" should be read as "the frontier worker's 'direct descendant in the first degree whose relationship with his parent is legally established' " or rather as a young person for whom the "frontier worker 'continues to provide for the student's maintenance' without necessarily being connected to the student through a legal child–parent relationship, in particular where a sufficient link of communal life can be identified". The national court asked these questions in

Figure 1.4: Number of Charter-related references for preliminary rulings submitted by national courts to the CJEU in 28 EU Member States, by year



Source: FRA, 2016 (based on CJEU data)

the context of Article 33 of the Charter on "family and professional life".[5]

Requests for preliminary rulings can be expected where national courts have doubts about the reach of an EU law provision. However, not all highly important cases reach the CJEU before a national court delivers a decision that relies on the Charter. This is illustrated by two examples analysed in Section 1.1.6: *Benkharbouche/Janah v. Sudan Embassy/Libya* decided in the **United Kingdom** and a **German** Constitutional Court decision on the European Arrest Warrant.

1.1.4. Other human rights sources and the Charter: joining up rights from different layers of governance

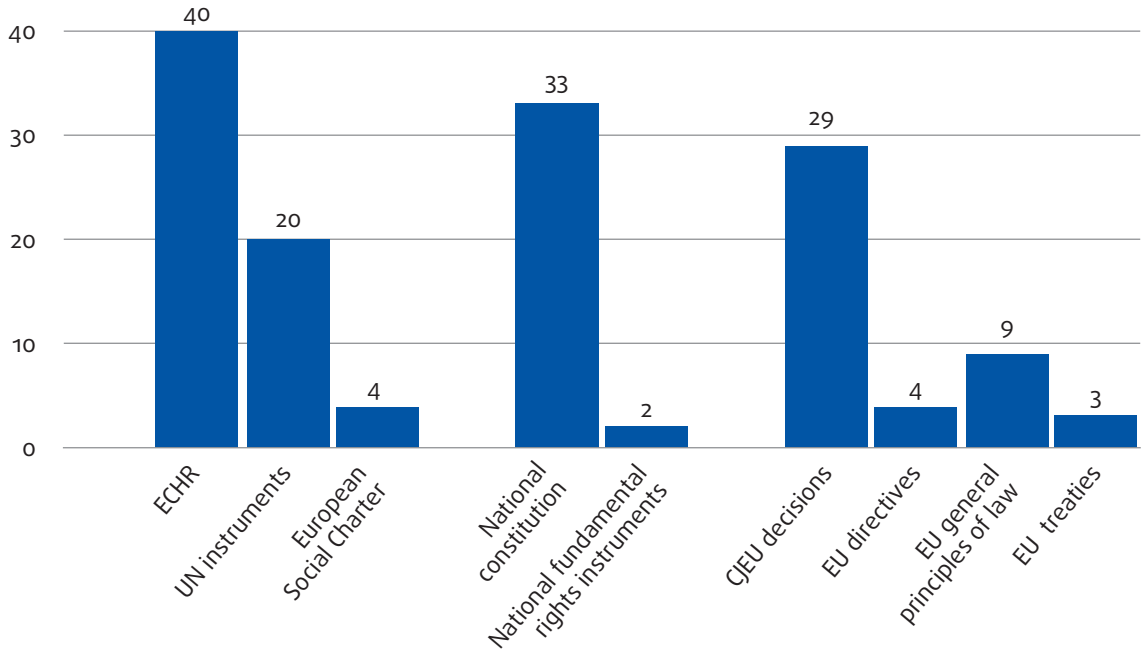
Only five of the 68 cases analysed in 2015 referred to the Charter alone. All other cases referred to the Charter and to other legal sources. Twelve of the analysed decisions referred to the Charter and to the European Convention on Human Rights (ECHR); eight decisions also addressed national constitutional provisions; and 14 decisions referred to the Charter in combination with both national human rights legislation and the ECHR. Twenty-four decisions used the Charter in combination with other EU law sources, such as general principles of EU law or secondary EU law.

Many decisions mention the Charter in combination with sources from different layers of governance, combining references to the Charter with international human rights law and EU law. These findings are in line with previous FRA Annual reports and confirm that national constitutional law and the ECHR play a prominent role in cases referring to the Charter. Similarly, the ECHR remains the legal source most often referred to in decisions using the Charter. Figure 1.5 specifies the absolute numbers of references in the analysed decisions.

1.1.5. Scope of the Charter: an often ignored question

According to Article 51 of the Charter, the Charter applies to Member States only when they are "implementing Union law" – a provision interpreted broadly by the CJEU and legal doctrine as meaning that the facts of the case should fall within the scope of EU law. Although this criterion requires appropriate analysis, it appears that the question of whether – and why – the Charter applies is rarely addressed in detail by national judges. Just as in previous years, courts often relied on the Charter without explaining whether, or why, the Charter legally applies. However, it would be beneficial for national courts to apply a systematic 'Article 51 screening'. This could help ensure that the Charter is referred to in all cases in which it has the potential to add value; it would also increase awareness

Figure 1.5: National court references to different legal sources alongside the Charter (number of total references made to the respective sources)



Note: *Based on 68 national court decisions analysed by FRA. These were issued in 26 EU Member States in 2015 (no 2015 decisions were reported for Croatia and Denmark).*

Source: *FRA, 2015*

of the Charter among the national judiciary and serve legal certainty.

Judgments also again referred to the Charter in cases concerning areas that largely fall outside the scope of EU law. Examples from the area of education include a case in **Greece**, in which the Council of State referred to Article 24 of the Charter in a case concerning a request to annul a Deputy Minister of Education decision on merging primary schools.[6] In the **Czech Republic**, the Constitutional Court had to decide whether it was legitimate to ban the meeting of an anti-abortion association on a town square near a primary school. The meeting included an exhibition of photos of aborted human embryos and Nazi symbols, with abortions compared to the Nazi genocide. The municipality banned the event to protect children from the shocking photos – a decision the Constitutional Court deemed legitimate in a judgment that also referred to the EU Charter of Fundamental Rights.[7]

Some cases, however, clearly addressed the scope of EU law and the Charter's applicability. Again in the area of education, in a case litigated in the **Netherlands**, parents argued that compulsory education without exemptions for children of parents with particular religious persuasions conflicts with the ECHR and the Charter. The parents maintained that they should be free to act in line with their beliefs and remove their child from school. The Supreme Court stated very clearly: "No Union law is implemented in the current prosecution, as the Act on Compulsory Education on which the prosecution is based does not implement Union law. Moreover, in other respects as well there is no legal situation within the scope of Union law".[8]

Some cases addressed the Charter's applicability in more detail before excluding it. For instance, the Supreme Court of **Cyprus** did so in the context of reviewing the national data retention law transposing the Data Retention Directive (which was invalidated by the CJEU's judgment in *Digital Rights Ireland*). The court concluded that, although the national data retention law states in its preamble that it purports to transpose the Data Retention Directive, the law's ambit is wider than that of the directive because it seeks to regulate access to data in addition to the duty to retain data.[9] Therefore, the Charter was not to be applied – although this did not prevent the court from stating that, even if it were, the legislative provisions under review would not conflict with the Charter. In fact, courts in various Member States, including **Estonia**[10] and the **Netherlands**,[11] used the Charter in cases dealing with the legality of national legislation implementing the Data Retention Directive, which was declared null and void by the CJEU. Chapter 5 contains further information on court decisions regarding this directive.

A decision by **France**'s *Conseil d'Etat* also paid considerable attention to the reach of EU law. The case concerned a citizen of both Morocco and France who was stripped of French nationality after a final judgment of the High Court of Paris convicted him of participating in a criminal association to prepare an act of terrorism. Indirectly recognising that the case fell within the reach of EU law, the court referred to Articles 20 and 21 of the Charter; it then checked the case against the more detailed parameters developed in relevant CJEU case law (*Rottman v. Freistaat Bayern* (C-135/08)) to conclude that the withdrawal was not inconsistent with EU law.[12] A judgment by the Federal Court of Justice in **Germany** also made rich reference to CJEU case law. The case concerned litigation between the Stokke company, which sells high chairs for babies, and the internet trading platform eBay. Stokke claimed that offers by competitors are displayed as hits when eBay visitors use trademark labels registered by Stokke as search words. The court described the complex interaction of the protection of personal data (Article 8), the right to conduct a business (Article 16), and the right to an effective remedy and a fair trial (Article 47) and concluded that eBay is required to perform supervisory duties with regard to trademark infringements on its online trading platform if notified about violations by trademark holders. Similarly, the **Greek** Council of State also referred extensively to CJEU case law (*Åklagaren v. Hans* Åkerberg *Fransson (*C-617/10)) in a judgment concerning double penalties (monetary fine and penal sentence) imposed for smuggling; the council found that these complied with the Charter.[13]

"By interpreting EU directives the national courts are bound to ensure a fair balance of fundamental rights, protected by the Union's legal order, as well as of general principles of Union law."

Source: Germany, Federal Court of Justice, Decision No. I ZR 240/12, 5 February 2015

1.1.6. Role of the Charter: interpretative tool, constitutional benchmark and individual horizontal right

National courts sometimes use the Charter to grant direct access to an individual right or to assess the legality of EU legislation. However, 2015 data confirm that the Charter is most often used in interpreting national law or EU secondary law. Courts also sometimes consider the Charter as part of their constitutional reviews of national laws; in 2015, national courts even attributed forms of direct horizontal effect to a Charter provision, signalling that it can apply between individuals rather than only between an individual and a public authority. Finally, the Charter also serves as a source of legal principles that can address gaps in national legal systems.

1.1.7. Legal standard for interpreting national and EU legislation

In late 2015, the **German** Constitutional Court delivered a decision that interpreted the European Arrest Warrant in light of the Charter. The case concerned a U.S. citizen who was sentenced to 30 years in custody by a final judgment of the Florence *Corte di Appello* in 1992, for participating in a criminal organisation and importing and possessing cocaine. Over 20 years later, in 2014, he was arrested in Germany based on a European arrest warrant. In the extradition proceedings, he submitted that he did not have any knowledge of his conviction and that, under Italian law, he would not be able to have a new evidentiary hearing in the appellate proceedings. The Higher Regional Court declared the complainant's extradition to be permissible and the case was brought before the Constitutional Court in Karlsruhe. The case raised major interest because the court referred to, and explained in detail, the German Basic Law's so-called 'identity clause'. That clause may, by way of exception to the general rule, limit the precedence of EU law over national law. In exceptional cases, where EU law is "*ultra vires*" (goes beyond the competences laid down in the treaties) or interferes with principles protected by the constitutional identity as protected by the German Basic Law, Union law may ultimately have to be declared inapplicable. Under Germany's constitutional identity, criminal law is based on the principle of individual guilt, which in itself is enshrined in the guarantee of human dignity and in the rule of law. The court stated that the effectiveness of this principle is at risk where, as appeared likely in the case in question, it is not ensured that the true facts of the case are examined by a court.

The Constitutional Court argued that such an 'identity review' is a concept inherent in Article 4 (2) of the Treaty on European Union (TEU) and, as such, does not violate the principle of sincere cooperation under EU law as outlined in Article 4 (3) of the TEU. The court also stressed that the identity review does not threaten the uniform application of Union law, because the powers of review reserved for the Federal Constitutional Court have to be exercised with restraint and in a manner open to European integration. Importantly, the court concluded that, in this case, there was no need to apply the identity clause and that the primacy of Union law was not restricted, because the obligation to execute arrest warrants in a manner compatible with fundamental rights is already guaranteed under European Union law in itself. The Framework Decision on the European Arrest Warrant, the court stressed, must be interpreted in line with the Charter and the ECHR. Therefore, it is EU law itself that "not only allows that the national judicial authorities establish the facts of the case in a rule of law based procedure, but requires such a procedure".[14] Thus, the court used the Charter and its linkage to the ECHR to interpret EU secondary law in a way that avoids any conflict with a fundamental rights guarantee (the

right to dignity) at national level. The court argued that this reading of the framework decision was so obvious that there was no need to refer a question to the CJEU ("*acte clair*" doctrine).

"The Charter of Fundamental Rights requires [...] that the court in the executing state eventually receiving appeals against an in absentia judgment is mandated to hear the accused person and examine the allegations not only in law but also in facts. [...] An European Arrest Warrant must not be executed, if such an execution would not be in line with the Charter of Fundamental Rights, which has a higher rank than the Framework Decision on the European Arrest Warrant."

Source: Germany, Constitutional Court, 2BvR 2735/14*, 15 December 2015, paras. 94, 96, 98*

Courts interpret national law in line with the Charter – particularly in the context of applying EU secondary law. For instance, in **Lithuania**, the Supreme Court interpreted national law in line with the Charter against the background of the EU Data Protection Directive. The case concerned litigation between two joint owners of a house. One of the owners decided to install surveillance cameras on his part of the building without asking for permission from the second owner – whose part of the property and house was put under constant surveillance by the cameras. The second owner reacted by bringing a case against his co-owner. The question to be decided by the court was whether, and to which degree, such a private use of cameras falls within the scope of the law on legal protection of personal data. The court referred to the Charter, including the respect for private and family life (Article 7) and the protection of personal data (Article 8). It noted that processing data in the course of a purely personal or household activity is not covered by the respective norms, but emphasised that such an exception from the scope of data protection should be interpreted narrowly – and decided in favour of the claimant.[15] A case confronted by the **Czech** Constitutional Court involved a challenge to a national law on European Parliament elections, which set a 5 % electoral threshold. The plaintiffs included a political party that did not succeed because of this threshold. The Constitutional Court rejected the challenge; it pointed out that 14 of the 28 EU Member States have an electoral threshold and concluded that the right to vote and to stand as a candidate in European Parliament elections (Article 39 of the Charter) did not foreclose the use of such thresholds.[16]

"The Charter guarantees every EU citizen the right to vote for Members of the European Parliament in elections by direct universal suffrage in a free and secret ballot, under the same conditions as nationals of the given State (Article 39 of the Charter), but the Charter does not guarantee an equal share of representation in the election results based on the national election legislation that implements the Act in Member States."

Source: Czech Republic, Constitutional Court, Decision No. CZ:US:2015:Pl. US.14.14.1*, 19 May 2015*

The fundamental rights implications of implementing EU funds was addressed by the European Ombudsperson,[17] in academia,[18] and also by some national courts. In the **Czech Republic**, the Constitutional Court made rather detailed reference to CJEU case law in a case concerning a project co-financed by the EU Operational Programme Research and Development for Innovations. The Ministry of Education, Youth and Sport decided to stop the funding, claiming the Technical University of Ostrava had broken financial rules. The university appealed. The case, including the question of whether there should be a judicial review at all, went up to the Constitutional Court. The court concluded that "it is clear that introducing a judicial review in this case is not in contradiction with EU law; on the contrary, the absence of it would probably be in conflict with the case law of the CJEU or the Charter."[19]

1.1.8. Legal standard for constitutional reviews of national laws

The Charter can also be used in the context of constitutionality reviews of national legislation, and courts again did so in 2015. In **Portugal**, under Article 278 of the country's constitution, the president sought an *ex ante* evaluation of the constitutionality of a provision in a parliamentary decree sent to him for promulgation. The decree – on Portugal's information system – allowed certain officials from the Security Information Service and the Strategic Defence Information Service to access, in specific circumstances, banking and tax data, data on communication traffic, locality, and other information. The Constitutional Court referred to respect for private and family life (Article 7 of the Charter) and the protection of personal data (Article 8 of the Charter), among other principles, and declared the provision unconstitutional.[20] In **Slovakia**, 31 members of parliament submitted a motion to check whether the Electronic Communications Act, the Criminal Procedure Code and the Act on Police Force are compatible with the Charter, the ECHR, and the constitution. The Constitutional Court found the Charter applicable and stated that, in accordance with Article 7(5) of the constitution, it took precedence over domestic legislation; however, because it found that the challenged legislation was unconstitutional, the legislation's compatibility with the Charter did not need to be further established.[21]

"Given the constant case law of the Constitutional Court, which, in accordance with the principle of pacta sunt servanda*, requires that the fundamental rights and freedoms under the Constitution be interpreted and applied at least in the sense and spirit of international human rights and fundamental freedoms treaties [...] and the relevant case law issued therewith [...], fundamental rights and freedoms under the Constitution need to be interpreted and applied within the meaning and spirit of the Charter and relevant case law issued by the ECJ [European Court of Justice] in cases where the challenged national legislation falls within the scope of the EU law."*

Source: Slovakia, Constitutional Court, Decision No. PL. ÚS 10/2014-78*, 29 April 2015*

The Constitutional Court of **Romania** addressed to what degree the Charter can be relied upon to review national legislation in a case on collective redundancies in the context of insolvency procedures.[22] The Romanian constitution was changed in 2003 to enshrine, in Article 148, a provision guaranteeing the supremacy of EU acts over Romanian laws (but not the constitution). Quoting its earlier case law, the court stated that "using a rule of European law in the constitutional review as the reference standard involves, under Article 148 paragraphs (2) and (4) of the Constitution, two cumulative requirements: on the one hand, that the rule must be sufficiently clear, precise and unequivocal itself or its meaning must be clearly established, precise and unambiguous; on the other hand, that the rule must have a certain level of constitutional relevance, so that it can be used to find a violation of the Constitution by national law – the Constitution being the only direct reference in the constitutionality review".

The case at issue concerned a series of collective redundancies based on Article 86 (6) of Law No. 85/2006 on insolvency procedures. This provision establishes an exception, allowing dismissals without undergoing the collective redundancies procedure and providing that employees receive only 15 days' notice when dismissed under such circumstances. A number of cases pending before national courts questioned the constitutionality of this provision, with former employees represented by their trade unions. The Constitutional Court declared unconstitutional the bypassing of the collective redundancies procedure, but accepted the 15 days' notice. It referred explicitly to the workers' right to information and consultation within the undertaking (Article 27 of the Charter) and deemed this provision "sufficiently clear, precise and unambiguous", meaning it fulfilled the first requirement mentioned above. The court continued: "On the second requirement, the Court finds that the content of the legal acts of the European Union protects the right to 'information and consultation', supporting and complementing the activities of the Member States, therefore aimed directly at the fundamental right to social protection of labour provided by Article 41 paragraph (2) of the Constitution as interpreted by this decision, the constitutional text which ensures a standard of protection equal to that resulting from the acts of the European Union. It follows, therefore, that the European Union acts mentioned above [including Article 27 of the Charter] have an obvious constitutional relevance, which means they relate to Article 41 para. (2) of the Constitution by fulfilling both the requirements mentioned above, without violating the national constitutional identity".

The Constitutional Court of **Hungary** took a more hesitant position. In line with its earlier case law, it concluded that it does not have a mandate to review whether legislation has, in terms of form and content, been adopted in line with the law of the European Union.[23] The petitioner in the case – a bank – had argued that Act No. XXXVIII of 2014 violated the right to property (Article 17) and the right to a fair trial (Article 47) as laid down in the Charter. Act No. XXXVIII of 2014 repealed the exchange rate gap clauses and set a fixed rate. It introduced a statutory presumption of unfairness for unilateral amendment option clauses allowing financial institutions to increase their interest rates, costs, and fees; and prescribed the procedure through which financial institutions could rebut the presumption. The act also retroactively established conditions against which the fairness of the unilateral amendment option clauses was to be assessed; mandated a procedure with short deadlines; and limited the possibility to present evidence. The Constitutional Court did not use the Charter when assessing the legality of Act No. XXXVIII of 2014. Instead, it concluded on the basis of national constitutional law protecting property that the act does not lead to a direct violation of the right to property, as it primarily protects property that has already been acquired, and only exceptionally protects future acquisitions.

1.1.9. Direct horizontal effect

Concerning the effects of Charter rights, the question of the Charter's horizontal application continued to raise considerable interest amongst experts in 2015, as the amount of academic writing on the topic shows.[24] National courts issued important decisions on this matter. Following up on a court decision of 2013, the Court of Appeal (Civil Division) in the **United Kingdom** concluded – in the joined appeals *Benkharbouche v. Embassy of the Republic of Sudan* and *Janah v. Libya* – that the right to an effective remedy and a fair trial (Article 47) can have direct horizontal effect in the national system.[25] The case concerned two employees of the embassies of Sudan and Libya in the UK. They made several employment claims, which the employment tribunal turned down because the employees were considered 'members of the mission' under the State Immunity Act 1978. This raised the question of whether this procedural limitation imposed by the State Immunity Act was compatible with the right to an effective remedy and a fair trial under Article 47 of the Charter and Article 6 of the ECHR. It was uncontested that both persons' claims fell under EU law: one employee's claims under the Working Time Regulations and the other's under the Working Time Regulations and the Racial Equality Directive. But the court needed to resolve whether Article 47 could be given direct horizontal effect, meaning that the appellants could rely on it even though Libya is not a Member State or one of the EU institutions referred to in Article 51 of the Charter (Libya, not bound by EU law, is here equated to a private party). Secondly, the court had to decide if it could simply

disapply the relevant sections of the State Immunity Act. The court referred extensively to CJEU case law – including *Association de Médiation Sociale v. Union locale des syndicats CGT and others* (C-176/12), which denied horizontal applicability to the workers' right to information and consultation within the undertaking (Article 27 of the Charter). It stated that, in contrast to Article 27, the right to an effective remedy and a fair trial (Article 47 of the Charter) reflects a general principle of law "which does not depend on its definition in national legislation to take effect".

Granting direct horizontal effect to the *procedural* provision of Article 47 of the Charter allowed the Court of Appeal to disapply the provisions of the State Immunity Act that conflict with the Charter, enabling the two claimants to further pursue their *substantive* claims under the relevant provisions of the Working Time Regulations and the Racial Equality Directive. The decision showcases the difference in the procedural force of the ECHR and the Charter against the background of the **United Kingdom**'s specific legal situation. Although the UK Human Rights Act allows courts – only higher courts – to issue a 'declaration of incompatibility' when an act of parliament is not in line with the ECHR, the act remains in force and is only for parliament to amend. In contrast, courts – including lower courts – that come across human rights enshrined in EU law have to disapply contrasting national norms if EU human rights are directly applicable. The *Benkharbouche* decision is still under appeal to the Supreme Court.

"As this court stated in Benkharbouche at paras 69 to 85, (i) where there is a breach of a right afforded under EU law, article 47 of the Charter is engaged; (ii) the right to an effective remedy for breach of EU law rights provided for by article 47 embodies a general principle of EU law; (iii) (subject to exceptions which have no application in the present case) that general principle has horizontal effect; (iv) in so far as a provision of national law conflicts with the requirement for an effective remedy in article 47, the domestic courts can and must disapply the conflicting provision; and (v) the only exception to (iv) is that the court may be required to apply a conflicting domestic provision where the court would otherwise have to redesign the fabric of the legislative scheme."

Source: United Kingdom, Court of Appeal, Decision No. A2/2014/0403, *27 March 2015, para. 98 (under appeal)*

A similar decision was issued in a case involving Google (based in the USA) and internet users in the **United Kingdom**.[26] Google tracked private information about the claimants' internet use – without their knowledge or consent – by using cookies and gave that information to third parties. Google's publicly stated position was that such activity would not be performed without users' consent. The claimants sought damages for distress under the Data Protection Act, but did not claim any pecuniary loss. They argued that interpreting the Data Protection Act's provisions on 'damage' as requiring pecuniary loss amounted to not effectively transposing Data Protection Directive 95/46/EC into domestic law. Just as in the case described above, the national appellate court concluded that Article 47 applied directly between the parties. It further stated that national norms obstructing access to effective judicial remedies in violation of the Charter could simply be disapplied because it was clear to which degree national law had to be set aside and no choices had to be made to devise a substituted scheme (which could be seen as the court replacing a "carefully calibrated Parliamentary choice").

1.1.10. Inspirational standard for filling 'gaps'

The Charter can also be a relevant reference point for courts looking to close gaps left open in national systems. For instance, national courts in **Malta** have in the past referred to the Charter to justify awarding compensation in contexts where national law does not establish entitlement to compensation. In a 2015 civil court decision, the court explicitly excluded the Charter's applicability, but mentioned that lower courts have used Article 3 of the Charter – the right to the integrity of the person, which does not have a corresponding provision in the Maltese constitution – to endorse the possibility of claiming moral damages.[27] The court held that it would be desirable and more practical to incorporate remedies for moral damages into ordinary law so that lower courts could use national norms to award appropriate compensation.

A very different, but related, case arose before the Constitutional Court in **Spain**. In that case, the Charter was referred to by a dissenting judge who claimed that the court's majority vote misinterpreted the reach of the right to conscientious objection – a right mentioned in the Charter but not in Spanish constitutional law. The case concerned a pharmacy co-owner's refusal, based on conscientious objection, to sell condoms and the 'day-after pill'. His defence relied on, among others, Article 16 of the Spanish Constitution, which guarantees ideological and religious freedom. The court affirmed the claimant's right to conscientious objection, which it deemed part of the fundamental right of ideological freedom. The dissenting judge used the Charter to contest the presumption used in the court's reasoning. In her dissenting opinion, the judge referred to the Charter's right to freedom of thought, conscience and religion (Article 10) and the preparatory work of the Charter (Article 51(7)) to emphasise that only legislators may establish how the right to conscientious objection can be exercised in contexts where conflicts between different fundamental rights may arise.

"[T]he right to conscientious objection is the only right of the Charter for which the explanations do not refer to an additional source for its recognition, as for example the [ECHR…] The reference that Article 10.2 of the Charter makes to 'national laws' highlights firstly the lack of a 'common constitutional tradition' to which EU institutions could directly refer. Secondly, it underlines the need for the national legislator to acknowledge the possibility of conscientious objection in the different contexts of the activity that may be detrimental to citizens' rights. In other words, outside the constitution and the law, nobody can use their conscience as supreme norm, and nobody can object when and how they want to."

Source: Spain, Constitutional Court, dissenting opinion by Judge Adela Asua Batarrita, Decision No. STC 145/2015, *25 June 2015*

As pointed out in last year's Annual report, the right to good administration (Article 41 of the Charter) appears to influence national administrative cases, even though this provision is directed to the "institutions, bodies, offices and agencies of the Union". For example, **Italy**'s Lazio Regional Administrative Tribunal in 2015 ruled on a complaint filed by a lawyer who was refused admission to the oral test of the bar examinations by the Bar Examinations Board of the Ministry of Justice.[28] The court ruled that the Ministry of Justice's decision did not comply with the minimum conditions of transparency, stating: "The lack of motivation directly affects the administrative act, thus hindering compliance with the parameter set out in Article 3 of Law No. 241/1990, interpreted in the light of Article 97 [on impartiality of public administration] of the Italian constitution and of Article 41 of the EU Charter of Fundamental Rights, which expressly sets out the obligation to state reasons as an aspect of the right to good administration."

"The Charter of Fundamental Rights of the European Union establishes the right to good administration, which means that institutions must handle requests impartially, fairly and within a reasonable time […] The principle of accessibility to public services means that an institution of public administration has the obligation to consult the applicant on how to initiate the process concerning the relevant issue, and to provide information enabling a private person to find the most effective ways to attain desired aims."

Source: Lithuania, Supreme Administrative Court, Decision No. eA-2266-858/2015, *7 July 2015*

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

In many systems, including at the EU level, impact assessments inform the drafting of legislative bills by examining the potential impact of different aspects of legislative proposals. Impact assessments most commonly focus on economic, social or environmental impacts, but fundamental rights are increasingly taken into consideration. As Section 1.2.1 shows, legislators can, and sometimes do, refer to the Charter in such assessments. Moreover, all draft legislation has to undergo legal scrutiny to see whether it is in line with human rights standards; as outlined in Section 1.2.2, the Charter can play a role in this context, too. The Charter may also be referred to in the final versions of legislative texts, although this remains rare – as discussed in Section 1.2.3. Finally, as Section 1.2.4 illustrates, the Charter is also cited in political debates on legislative initiatives and in other parliamentary debates.

1.2.1. Assessment of fundamental rights impacts

Many Member States appear to have conducted *ex ante* impact assessments of their legislation as a regular practice in 2015, if not as a mandatory part of the pre-legislative process. For 18 Member States, at least one example of an impact assessment referring to the Charter was identified. However, it has to be emphasised that these references were often superficial and sometimes not part of the assessment itself, but rather part of the justifications cited for the draft law. For instance, in **Germany**, the opposition Left Party tabled a proposal to amend the Basic Law, with the aim of extending fundamental rights guaranteed to German citizens (the freedoms of assembly and association, free movement, and free choice of profession) to citizens of other states. The section of the proposal outlining justifications for the law mentions the EU Charter of Fundamental Rights four times.[29]

In countries such as **Belgium**, **Croatia**, **Denmark**, **Estonia**, **France**, **Germany**, **Greece**, **Italy**, **Lithuania** and **Poland**, impact assessments are mandatory. In other Member States (such as **Austria**, **Ireland, Malta** and the **United Kingdom**), they are regular practice. However, even when states have mandatory and systematic impact assessments, these may not necessarily take the Charter into consideration. In **Greece**, for example, bills are subject to systematic and mandatory impact assessments. These must follow a template of questions to be answered. One question explicitly refers to the ECHR and the jurisprudence of the European Court of Human Rights, but not to the EU Charter of Fundamental Rights.[30] In **Finland**, the government issued two manuals[31] to assist the drafting of legislation; both explicitly state that the Charter should be taken into consideration.

In a sample of 33 impact assessments examined in 2015, two policy areas were especially prominent: criminal law and data protection. Two thirds of the impact assessments examined involved these two areas. Just as in previous years, impact assessments referred to the Charter alongside other international

human rights references, making it difficult to track the impact of such references. There are, however, cases where impact assessments affected the initial proposals. In **Slovenia**, the Information Commissioner acknowledged, in the context of discussing the Court Register of Legal Entities Act,[32] that strengthening public scrutiny of public spending is a legitimate aim. However, he stressed that the act had to be aligned with the right to private life and family life (Article 7) and the protection of personal data (Article 8). These concerns were partly addressed in the final proposal by reducing the amount of publicly accessible data.

"The significance of the European Union as an actor in the field of fundamental and human rights has increased, and EU law has a notable impact on the realisation of rights at the national level. The fundamental rights norms of the EU must be introduced more clearly to the work of national authorities and courts, and there is a need to increase awareness concerning the content of rights and principles that are protected by the Charter of Fundamental Rights and the way these rights and principles are applied. This has been the position of the Grand Committee of the Parliament in its statement 6/2014. Guardians of law, other oversight authorities, courts and other human rights actors have a central role in this process."

Source: Finland, Chairperson of the parliament's Constitutional Law Committee, parliamentary debate on the Annual Report 2014 of the Parliamentary Ombudsman, 2 December 2015

1.2.2. Assessment of fundamental rights compliance

In most Member States, draft legislation is systematically checked against the constitution and various international instruments (especially the ECHR) to make sure it is in line with the relevant human rights standards. For 19 Member States, at least one example of legal examinations referring to the Charter were identified in 2015; in total, 46 were identified. However, as the example of **Malta** shows, these documents are not necessarily accessible to the public. Moreover, the Charter is sometimes referred to peripherally but not actually applied in the legal scrutiny of the legislative proposals, as an example from **Sweden** shows.[33]

The authors of the legal assessments vary. Of the 46 compliance checks examined, 20 were carried out by independent administrative or judicial bodies, 21 by political actors (government, parliamentary group) and five by civil society institutions. Draft legislation was particularly often checked against the Charter in the areas of data protection and intelligence: 27 of the 46 compliance checks concerned these two areas, with one third of the assessments pertaining to data protection. For instance, in **Poland**, the modification of the Act on Police prompted the Inspector General for Personal Data Protection to intervene, with her opinion referring to the respect for private and family life (Article 7) and the protection of personal data (Article 8).[34] In **France**, the National Consultative Commission on Human Rights (*Commission nationale consultative des droits de l'homme*, CNCDH) issued an opinion[35] that mentioned the Charter in the context of intelligence-gathering legislation. When the **Danish** Security Intelligence Service Act and Customs Act were amended, the proposer of the bill noted the risk of interference with Article 7 and 8 of the Charter but added that this risk was justified and in line with Article 52 of the Charter.[36] Article 52, which describes the scope and the interpretation of the rights and principles laid down in the Charter, also played an important role in an opinion issued by the Human Rights League in **Luxembourg**. The opinion claimed that a bill on the reorganisation of the state's intelligence services did not sufficiently address the proportionality of the means used by the intelligence agencies.[37] The **Portuguese** Data Protection Authority raised concerns in comments on a draft law on the Information System of the Portuguese Republic, referring to the CJEU's Charter-related case law.[38] In **Germany**, a draft law on the mandatory retention of telecommunications metadata was accompanied by an assessment of whether the data retention was compatible with EU law. That analysis was based in large part on the Charter.[39]

Similarly to previous years, the Charter's role appeared limited or difficult to quantify. However, there were instances where Charter compliance checks made a difference. To give an example from criminal law, a draft law introduced by the president of **Lithuania** stipulated, among other things, that an alien's request for a residence permit shall not be considered if a relevant institution has received information that the alien is suspected of committing a crime abroad.[40] The European Law Department of the Ministry of Justice issued an opinion pointing out that such a provision may contravene the presumption of innocence (Article 48 of the Charter). The final law does not contain the criticised provision. Also, in the **Netherlands**, the government appeared to accept advice received from the National Commission for International Private Law during the review of a draft law against forced marriages.[41] The draft legislation did not recognise marriages between cousins concluded in other countries, which the commission identified as a violation of the right to marry (Article 9).

1.2.3. National legislation

Whereas the Charter plays a certain role in impact assessments and legal compliance checks, it is hardly ever referred to in the final texts of national legislation. The Charter is sometimes referred to in draft legislation or in texts accompanying such legislation. For **Germany**, nine draft laws referencing the Charter were identified in 2015.[42] Meanwhile, 11 final legislative texts from six Member States were identified as having references to the Charter in 2015; in 2014,

15 such statutes were identified in nine Member States. Of these 11 statutes, three are from **Croatia** and three are from **Spain**. The other statutes were from **France**, **Ireland**, **Italy** and **Latvia.** In Spain, similarly to the previous year, two of the three statutes mentioning the Charter were adopted at regional level. The laws concern very different areas. In **Croatia** and **Spain**, the legislative texts concerned persons with disabilities. Legislation on criminal justice also had references to the Charter (**Ireland** and **Spain**). Some of the laws have a clear link with EU legislation; this was the case in **Ireland**, where the law reproduced the text of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, which in turn contains a reference to the Charter.[43] In other cases, such as a regional law in **Spain** and a national law in **Croatia**, the link to EU law is much less obvious.

"The Charter of Fundamental Rights of the EU, proclaimed at the Nice European Council on 7 December 2000, recognises for the first time in Europe the right to good administration. According to what is established in Article 6 of the Lisbon Treaty, such Charter has the same legal force as the treaties of the EU. Even though such legal force is not of direct application to the acts that Member States or Autonomous Communities adopt in the framework of their competencies, it has to be taken as an action framework for public activity. Article 41 of the Charter makes express reference to the importance for institutions to address issues in an impartial and fair manner, within reasonable deadlines and invokes the right of citizens to be heard, to access personal files and to address public administration and be treated in one's own language, as well as the obligation for the Administration to motivate the acts that affect the person concerned."

*Source: Spain, Galicia, Act 1/2015 of April 1 on the guarantee of the quality of public services and sound management (*Ley 1/2015, de 1 de abril, de garantía de la calidad de los servicios públicos y de la buena administración*), 2015*

1.2.4. Parliamentary debates

The Charter continued to be referred to in parliamentary debates in 2015. Such references were reported for 21 EU Member States in 2015 – compared with 12 in 2014. Of the 239 references, FRA closely reviewed 45 that more prominently cited the Charter. In half of these cases, the Charter was cited alongside other international human rights instruments. The references to the Charter tended to be made in passing. For example, a search for "Charter of Fundamental Rights" in the database for parliamentary debates in the **Netherlands** yields 106 hits for 2015, the majority of which lead to Charter references that do not cite the Charter in detail but rather include it as one of many background materials for the debate.[44]

The respective discussions covered a very wide spectrum of thematic areas. Some emphasised the

"When monitoring the electoral campaign and presenting the election activities, all media publishers are obliged to guarantee journalistic independence, professionalism and expertise, consistent compliance with the journalistic code and especially the fundamental principle of freedom of expression that is provided by the provisions of the Croatian Constitution, the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Union Charter of Fundamental Rights, guided by the interests of the public at the same time."

*Source: Croatia, Act on Election of Representatives to the Croatian Parliament (*Zakon o izborima zastupnika u Hrvatski sabor*), 2015*

EU law dimension, as was the case with a parliamentary question in **Italy** aimed at stopping prefects from cancelling the registration of certifications of same-sex marriages entered into abroad.[45] But the debates did not necessarily deal with issues falling within the scope of EU law. For instance, in **Austria**, the Charter was mentioned during discussions of a report by the parliament's Human Rights Committee on Austria's leading role in abandoning the death penalty.[46] Similarly, the Charter was mentioned in the **Dutch** parliament[47] during a discussion about statements made by the prime minister of Hungary. The prime minister had stated in April that the death penalty should be kept on the agenda, adding – after international protest – that there was no plan to introduce the death penalty in Hungary. Article 2 of the Charter declares everyone's right to life: "No one shall be condemned to the death penalty, or executed".

In **Bulgaria**, the Charter was referred to in the context of draft amendments to the criminal law. The debate concerned proposals submitted by the populist party *Ataka*. One proposal aimed to allow self-defence not only in defending one's home against break-ins or forcible entry, but also when defending any home – irrespective of ownership and the intruders' manner of entry – or when defending any other property, including movable property (e.g. cars). Another proposal aimed to criminalise manifestations of homosexual orientation. The Prosecutor's Office of the Republic of Bulgaria considered these proposals to violate the Charter.[48] In **Poland**, the Charter was referred to, for instance, in the context of reforming the Constitutional Tribunal: a senator argued that limiting the disciplinary procedure for judges to one single instance was contrary to the Charter.[49]

In the **United Kingdom**, the Charter was referred to in the context of the Counter-Terrorism and Security Act 2015. The discussion centred on how to deal with the Charter, which was considered "more difficult and invasive" than the ECHR, when addressing counter-terrorism measures.[50] **Spanish** parliamentarians raised similar concerns in discussions of a law on the protection of public security.[51]

"[T]he present bill comes after five years of social and financial devastation to safeguard fundamental social needs such as housing, food and energy, as described in the Charter of Fundamental Rights of the European Union."

Source: Alexis Tsipras, Prime Minister, Hellenic Parliament, debate on adopting immediate measures to address the humanitarian crisis, Minutes of Plenary Session, 16th period, 1st Convention, 12th Session, 18 March 2015, p. 150

1.3. National policy measures and training: lack of initiatives

In addition to implementing the Charter where legally obliged to do so, EU Member States can also help fulfil the Charter's potential – and strengthen fundamental rights more generally – by increasing awareness about the instrument. According to Article 51 of the Charter, the EU and the Member States are required to do more than simply respect the Charter's rights: they are under an obligation to actively "promote the application" of its rights and principles. Member States can play an important role in this regard by fostering awareness of the Charter and proactively designing policy documents referring to the instrument.

1.3.1. Policies referring to the Charter

Policy documents and initiatives referring to the Charter were identified for close to half (13) of the Member States. However, many of these are very limited in scope and intensity. Just as in previous years, a national policy dedicated specifically to proactively promoting the Charter and its rights could not be identified.

Some major planning documents do, however, refer to the Charter. In **Greece**, a Human Rights Action Plan[52] was introduced for 2014–2020, aiming to protect human rights in a clear, coherent, and systematic manner. It makes repeated mention of the Charter throughout its description of existing protected rights. Another example is **Slovenia**, where the proposed Healthcare Plan 2015–2025 also refers to the Charter.[53]

The Charter is more commonly used in targeted policies that seek to promote populations protected by a specific article in the Charter. For example, policies introduced in **Bulgaria** refer to the integration of persons with disabilities (Article 26).

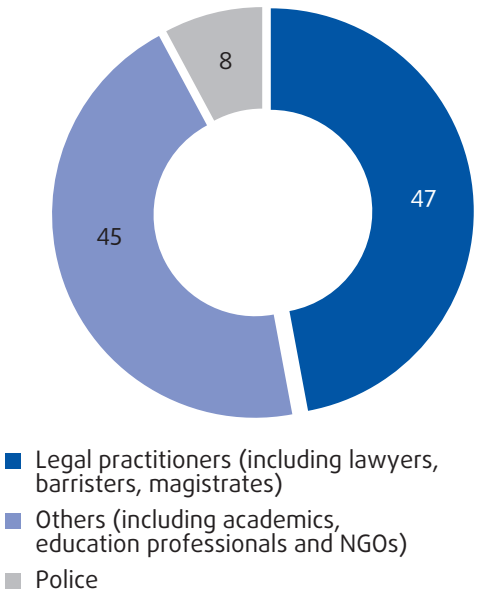
1.3.2. Training related to the Charter

Fifty-one Charter-relevant training programmes in 23 EU Member States were identified in 2015. The Charter was usually not the main focus of such training. In fact, only 10 of the identified programmes focused on the Charter. For instance, in **Denmark**, four Charter-specific seminars were organised by the information office of the European Commission and European Parliament in cooperation with other partners.

The Charter is mostly presented and discussed alongside the ECHR or EU legislation. It is included in training on fundamental rights in general, on fundamental rights in the EU, or sometimes on one specific fundamental right. In **Austria**, the police training course 'Human rights – police: Protection or threat' looked at the Charter in combination with other instruments, such as the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the National Preventive Mechanism under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

A quarter of the courses analysed targeted academia, and slightly less than a quarter at least partly addressed magistrates. Lawyers, police officers, and teachers were also among the target groups. Teachers are important multipliers because they can raise awareness of the Charter among the general population. To this effect, in **Slovenia**, for instance, a course for education workers addressed teaching about privacy rights and personal data protection in primary and middle schools. In **Italy,** the Italian Society for International Organisations and the Education Ministry organised a course for school teachers entitled 'Teaching human rights'. The training included a presentation of the main international and European instruments for protecting fundamental rights, including the Charter.

Figure 1.6: Training related to the Charter in 2015, by target audience (%)



Note: Based on 51 trainings held in 23 EU Member States in 2015. Member States where no 2015 trainings were reported and hence not included: the Czech Republic, Finland, Malta, Sweden and the United Kingdom.

Source: FRA, 2015 (including data provided by NLOs)

FRA opinions

According to the Court of Justice of the European Union (CJEU) case law, the EU Charter of Fundamental Rights is binding on EU Member States when acting within the scope of EU law. National courts continued in 2015 to refer to the Charter without a reasoned argument about why it applies in the specific circumstances of the case; this tendency confirms FRA findings of previous years. Sometimes, courts invoked the Charter in cases falling outside the scope of EU law. There are, nonetheless, also rare cases where courts analysed the Charter's added value in detail.

FRA opinion

To increase the use of the EU Charter of Fundamental Rights in EU Member States and foster a more uniform use across them, it is FRA's opinion that the EU and its Member States could encourage greater information exchange on experiences and approaches between judges and courts within the Member States but also across national borders, making best use of existing funding opportunities such as under the Justice programme. This would contribute to a more consistent application of the Charter.

According to Article 51 (field of application) of the EU Charter of Fundamental Rights, any national legislation implementing EU law has to conform to the Charter. The Charter's role remained, however, limited in the legislative processes at national level: it is not an explicit and regular element in the procedures applied for scrutinising the legality or assessing the impact of upcoming legislation, whereas national human rights instruments are systematically included in such procedures.

FRA opinion

It is FRA's opinion that national courts when adjudicating, as well as governments and/or parliaments when assessing the impact and legality of draft legislation, could consider a more consistent 'Article 51 (field of application) screening' to assess at an early stage whether a judicial case or a 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 only in very few Member States the case – could provide legal practitioners with a tool to efficiently assess the Charter's relevance in a case or legislative file.

Under Article 51 of the EU Charter of Fundamental Rights, EU Member States are under the obligation to respect and observe the principles and rights laid down in the Charter, while they are also obliged to actively "promote" the application of these principles and rights. In light of this, one would expect more policies promoting the Charter and its rights at national level. Such policies as well as Charter-related training activities are limited in quantity and scope, as 2015 FRA findings show. Since less than half of the trainings address legal practitioners, there is a need to better acquaint them with the Charter.

FRA opinion

To strengthen respect for fundamental rights guaranteed by the EU Charter of Fundamental Rights, it is FRA's opinion that EU Member States should complement their efforts with more proactive policy initiatives. This could include a pronounced emphasis on mainstreaming Charter obligations in EU-relevant legislative files. It could also include dedicated policymaking to promote awareness of the Charter rights among target groups; this should include targeted training modules in the relevant curricula for national judges and other legal practitioners. As was stressed in 2014, it is advisable to embed training on the Charter in the wider fundamental rights framework including the ECHR and the case law of the European Court of Human Rights (ECtHR).

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48 Bulgaria, National Assembly (Народно събрание) (2015), Minutes from the 41st session of the 43rd National Assembly (Стенограма на четиридесет и първо заседание на 43-то Народно събрание), 19 February 2015.

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50 United Kingdom, UK Parliament (2015), 'Counter-terrorism', 24 March 2015, Columns 1376, 1385 and 1386.

51 Spain, Organic law for the protection of public security (Proyecto de Ley Orgánica de protección de la seguridad ciudadana) (621/000102) (Congreso de los Diputados, Serie A, No. 105, exp. 121/000105), 13 February 2015 – Propuestas de veto.

52 Greece, General Secretariat for Transparency and Human Rights, Hellenic Ministry of Justice (Γενική Γραμματεία Διαφάνειας και Ανθρωπίνων Δικαιωμάτων, Υπουργείο Δικαιοσύνης), Human Rights National Action Plan 2014-2016 (Εθνικό Σχέδιο Δράσης για τα Ανθρώπινα Δικαιώματα), 2014.

53 Slovenia, Resolution on National Healthcare Plan 2015–2025: Together for a healthy society, a proposal for public debate (Resolucija o Nacionalnem Planu Zdravstvenega Varstva 2015 – 2025: Skupaj za družbo zdravja, predlog za javno razpravo), June 2015.

UN & CoE

January

February

March

April

May

10 June – In *Y. Y. v. Turkey* (14793/08), the European Court of Human Rights (ECtHR) rules that denying the applicant the possibility of undergoing gender reassignment surgery for many years because the applicant is fertile is in violation of the right to respect for private life (Article 8 of the ECHR)

21 June – In *Oliari and Others v. Italy* (18766/11 & 36030/11), the ECtHR rules that Italy failed to ensure to same-sex couples a specific legal framework providing for the recognition and protection of their union, breaching the applicants' right to respect for private and family life (Article 8 of the ECHR)

June

July

August

September

October

November

December

EU

21 January – In *Georg Felber v. Bundesministerin für Unterricht, Kunst und Kultur* (C-529/13), the Court of Justice of the European Union (CJEU) rules that allowing civil servants to contribute to the pension scheme only from the age of 18 onwards does not amount to age discrimination under the Employment Equality Directive (2000/78/EC)

28 January – In *ÖBB Personenverkehr AG v. Gotthard Starjakob* (C-417/13), the CJEU holds that budgetary considerations cannot in themselves justify age discrimination and do not constitute a legitimate aim within the meaning of Article 6 (1) of the Employment Equality Directive

January

26 February – In *Ingeniørforeningen i Danmark v. Tekniq* (C-515/13), the CJEU finds that refusing to pay a severance allowance to an employee who exceeded the retirement age at the time of dismissal is both objectively and reasonably justified and therefore in accordance with the Employment Equality Directive

February

March

29 April – In *Geoffrey Léger v. Ministre des Affaires sociales, de la Santé et des Droits des femmes and Établissement français du sang* (C-528/13), the CJEU holds that men who have had sex with other men may be prevented from donating blood, if the referring court determines that there is a high risk of acquiring severe infectious diseases and that no effective detection techniques or less onerous methods are available to ensure a high level of health protection for recipients

April

May

June

July

August

9 September – In *Daniel Unland v. Land Berlin* (C-20/13), the CJEU rules that allocating a basic pay grade to civil servants according to their age constitutes a difference in treatment on the ground of age that may be justified by the aim of protecting acquired rights in light of Article 6 (1) of the Employment Equality Directive

September

October

November

December

2 Equality and non-discrimination

The EU's commitment to countering discrimination, promoting equal treatment and fostering social inclusion is evidenced in legal developments, policy measures and actions taken by its institutions and Member States in 2015. The proposed Equal Treatment Directive, however, had still not been adopted by the year's end. As a result, the protection offered by EU legislation remained disparate depending on the area of life and the protected characteristic, perpetuating a hierarchy of grounds of protection against discrimination.

2.1. Progress on proposed Equal Treatment Directive remains slow in 2015

The EU benefits from an advanced legal and policy framework promoting equality and non-discrimination. The Lisbon Treaty[1] makes non-discrimination a cross-cutting principle that guides the Union in defining and implementing its policies and activities. Taken together, the directives on gender equality[2] and the Racial Equality Directive (2000/43/EC)[3] offer comprehensive protection against discrimination on the grounds of sex and racial or ethnic origin, and the Employment Equality Directive (2000/78/EC)[4] prohibits discrimination on the grounds of religion or belief, disability, age or sexual orientation in the areas of employment, occupation and vocational training.

Furthermore, the Audiovisual Media Services Directive prohibits commercial communications from including or promoting discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation. In addition, the EU and nearly all of its Member States are parties to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). FRA is a member of the EU framework to promote, protect and monitor the convention.

Negotiations on the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (the Equal Treatment Directive) entered their seventh year in 2015. Adopting this directive would put an end to the so-called hierarchy of grounds by ensuring that the EU and its Member States offer comprehensive protection against discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation on an equal footing.

At the end of 2014, the Council of the European Union affirmed that it would continue working towards unanimity in the Council rather than proceeding via enhanced co-operation. In 2015, the Latvian and Luxembourgian Presidencies focused their attention on clarifying the directive's scope, as it relates to social protection, education and access to goods and services for persons with disabilities. The unanimity required to adopt the Equal Treatment Directive was not reached by the year's end.

The Luxembourg Presidency's progress report on the directive, released in November, noted that, "[w]hile emphasising the importance of the fight against discrimination, certain delegations have, in the past, questioned the need for the Commission's proposal, which they have seen as infringing on national competence for certain issues and as conflicting with the principles of subsidiarity and proportionality." The

report adds that one delegation has maintained a general reservation, and that "[c]ertain other delegations continue to question the inclusion of social protection and education within the scope".[5]

Another stumbling block involves proposed obligations relating to the accessibility of goods and services, and of new and existing buildings, facilities, transport services and infrastructure. The Commission's adoption of the proposal for a European Accessibility Act could clarify the nature of these accessibility obligations and facilitate discussions in the Council, which will continue under the Dutch Presidency.

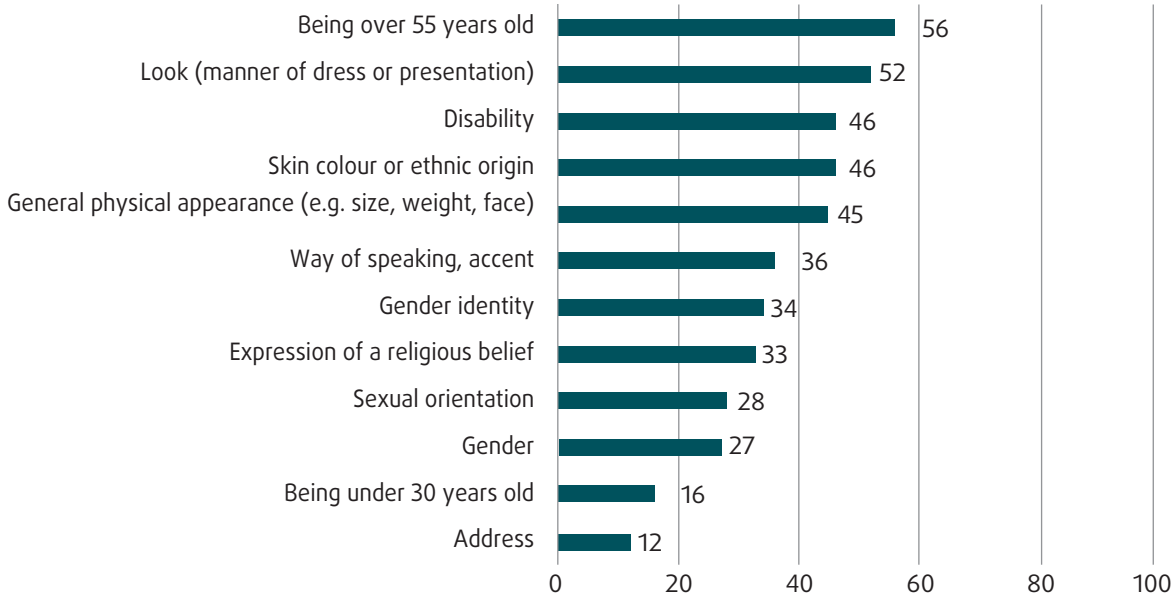
2.2. Promoting equal treatment by supporting the ageing population and tackling youth unemployment

Older people make up an increasing proportion of the EU's population, a phenomenon driven by declining fertility rates and a higher life expectancy. Based on the latest available data, Eurostat estimates that about 64.5 million people in the EU were aged between 55 and 64 years in 2014.[6] People over the age of 55 are at a serious disadvantage when trying to access the labour market; hiring rates for that group are below 10 %.[7] Older people also face negative stereotyping and ageist attitudes at work.[8] Findings from the 2015 Eurobarometer on discrimination show, for example, that 56 % of those living in the EU consider being over 55 to be a disadvantage when looking for work, while 16 % consider this to be the case for those under 30, as Figure 2.1 shows.

The effects of an ageing population on society as a whole are of increasing concern to policy actors at the international, European and national levels. The United Nations (UN) General Assembly, for example, recommended in November 2015 "that States parties to existing international human rights instruments, where appropriate, address the situation of older persons more explicitly in their reports".[9]

This recommendation relates to five principles that States parties should seek to follow when implementing national programmes relating to older persons: independence, participation, care, self-fulfilment, and dignity. In relation to independence, the UN calls upon governments to ensure that "older persons [...] have the opportunity to work or to have access to other income-generating opportunities [and] be able to participate in determining when and at what pace withdrawal from the labour force takes place."[10]

Figure 2.1: Characteristics perceived as disadvantageous when looking for work in the EU-28 in 2015 (%)



Question: *QC3 In (our country) when a company wants to hire someone and has the choice between two candidates with equal skills and qualifications, which of the following criteria may, in your opinion, put one candidate at a disadvantage? (Multiple answers possible)*

Source: *European Commission, Special Eurobarometer 437: Discrimination in the EU in 2015*

"Age discrimination towards older people in employment is becoming increasingly relevant due to the demographic changes in Europe which are at the root of most of the recent age-related legislation such as the abolition of or increase in mandatory retirement ages, disincentives for early retirement and other measures to keep older workers in the labour market."

European Commission (2015), Joint Report on the application of the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC)

At the other end of the age spectrum, youth unemployment remains high across the EU. Being excluded from the labour market or having a low quality of employment[11] affects young people's eligibility for social and/or unemployment benefits, sickness and maternity leave, healthcare and access to pension schemes. The International Labour Organization highlights that:

> *"Providing opportunities for young people to access decent jobs means more than just earning a living. It means getting youth into decent and productive work in which rights are protected, an adequate income is generated and adequate social protection is provided. Scaling up investments in decent jobs for youth is the best way to ensure that young people can realise their aspirations, improve their living conditions and actively participate in society."*[12]

The Employment Equality Directive introduced the prohibition of discrimination on the ground of age into Union law, and the CJEU's holding in *Mangold* (C-144/04) established non-discrimination in respect of age as a general principle of EU law (see Section 2.3 for information on 2015 CJEU case law). In its report on the application of the Employment Equality Directive, the European Commission notes, however, that "legislation alone is not enough to ensure full equality, so it needs to be combined with appropriate policy action".[13]

Accordingly, this chapter examines how the EU promotes non-discrimination on the ground of age through measures to allow older people who wish to remain in active employment do so and measures to facilitate younger people's access to the labour market. This commitment is reflected in the preamble of the Employment Equality Directive when it refers to the Community Charter of the Fundamental Social Rights of Workers, which "recognises the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration of elderly [...] people". Article 151 of the Treaty on the Functioning of the EU explicitly refers to the provisions of the community charter, and these were also taken up by the EU Charter of Fundamental Rights.

Recital 9 of the Employment Equality Directive stresses that employment and occupation are key elements in guaranteeing equal opportunities for all, and contribute to the full participation of citizens in economic, cultural and social life and to realising their potential. Recital 25 further states that prohibiting age discrimination is an essential part of meeting the aims set out in the Employment Guidelines proposed by the European Commission and approved by the Council of the European Union.

These guidelines were updated in March 2015, when the European Commission "adopted a proposal for a new package of integrated policy guidelines to support the achievement of smart, sustainable and inclusive growth [i.e. the Europe 2020 strategy], and the aims of the European Semester of economic policy coordination."[14] These frame the scope and direction of policy coordination among Member States, and provide the basis for country-specific recommendations.

The updated guidelines outline four key domains of intervention, one of which relates to promoting equal opportunities.

"The Union is to combat social exclusion and discrimination and promote social justice and protection, as well as equality between women and men. In defining and implementing its policies and activities, the Union is to take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education and training."

Council Decision (EU) 2015/1848 of 5 October 2015 on guidelines for the employment policies of the Member States for 2015

Some measures to address the social and economic consequences of an ageing population and persisting youth unemployment were proposed in the context of the European Semester. This is the yearly cycle of economic policy coordination in the EU to meet the targets of the Europe 2020 strategy. In 2014, the European Parliament had called for employment and social indicators to "have a real influence on the whole European Semester process".[15]

In response, the European Commission introduced three labour market indicators to the scoreboard of the Macroeconomic Imbalance Procedure in 2015, enabling a deeper analysis of the social consequences of macroeconomic imbalances: activity rate, long-term unemployment rate and youth unemployment rate. Country-specific recommendations made to Member States in 2015 reflect concern over such social consequences, as regards youth unemployment, the participation of older people in the labour market and vulnerability to discrimination on more than one ground.[16]

More specifically, recommendations for **Belgium**, **Bulgaria**, **Croatia**, **Ireland**, **Italy**, **Poland**, **Portugal**, **Romania**, **Spain** and the **United Kingdom** point to

a mismatch between the skills young people have and the needs of the labour market, which lessens their employability. The recommendations for **Bulgaria** and **Italy** address the situation of young people not in education, employment or training. The recommendations for **Romania** are the only ones to address the implementation of the Youth Guarantee established by the EU in 2013. Under Youth Guarantee schemes, Member States should ensure that people under 25 years of age have a good-quality job offer, are in continued education, or have an apprenticeship or traineeship within four months of leaving school or becoming unemployed.

Some recommendations encouraged governments to address the impact of an ageing population on the labour market. Recommendations included keeping older people in work for longer periods by increasing the age of retirement (**Austria**, **Bulgaria, Croatia**); increasing the participation of older workers in the labour market (**Luxembourg, Romania, Slovenia**); providing incentives to support the employability of older workers (**Belgium**); or addressing the lack of a comprehensive active ageing strategy at national level (**Lithuania**). It must be noted that many people in the EU are not in favour of increasing the retirement age, as data from the 2006 wave of the European Social Survey in 23 Member States show.[17]

People vulnerable to discrimination on more than one ground also figured in country-specific recommendations. Young people with migrant backgrounds were shown to be in particular danger of remaining at the margins of the labour market in **Austria, Belgium**, the **Czech Republic**, **Denmark** and **Slovakia.** The recommendations for **Bulgaria**, the **Czech Republic**, **Romania** and **Slovakia** addressed high levels of inactivity among Roma youth.

Civil society organisations recognise the importance of the European Semester, and many joined the EU Alliance for a democratic, social and sustainable European Semester (EU Semester Alliance), an EU-wide coalition of civil society organisations and trade unions. But the EU Semester Alliance was critical of the 2015 recommendations, mainly because it does not see these recommendations as fulfilling their potential to address social inequalities. In its 2015 position paper, the alliance held that:

> *"The EU has so far failed in implementing its legal obligations – as enshrined in the Treaties and the European Charter of Fundamental Rights – to ensure people's right to live in dignity. The pressure on public budgets through the European Semester is increasing the risk of human rights violations for many population groups. Refocusing the Semester through a limited number of recommendations to only cover key priority issues is detrimental to the development of policies that will address the persistent social inequalities within and among Member States."*[18]

Measures that improve the employment situation of older and young people and foster social inclusion could be framed in a rights-based context to ensure that fundamental rights considerations are embedded in the design and implementation of such measures. This would contribute to solidifying the new European Pillar of Social Rights proposed by the European Commission in its annual work programme for 2016, entitled *No time for business as usual*, which was released in October 2015.

Continuing efforts from previous years, the EU and its Member States took significant steps in 2015 to foster social inclusion by focusing on the ageing population and youth unemployment. Measures implemented address three categories of individuals: older people; young people and those not in employment, education or training; and the long-term unemployed.

Measures addressing older people

EU-level measures mainly focus on keeping older people at work by promoting healthy and active ageing. One such measure is the European Innovation Partnership on Active and Healthy Ageing, which falls under the Europe 2020 strategy.[19] This partnership aims "to add an average of two years of healthy life for everyone in Europe".[20]

Another relevant measure is the Active Ageing Index (AAI),[21] for which data on outcomes were released in 2015. This index measures the extent to which older people can live independently and participate in paid employment and in social activities. EU Labour Force Survey (EU-LFS) data have been used to populate the employment domain of the AAI. The European Commission, together with the United Nations Economic Commission for Europe and the European Centre for Social Welfare Policy and Research, developed the AAI in the framework of the 2012 European Year for Active Ageing and Solidarity between Generations.

AAI outcomes show that more than half of the Member States should increase the rate of employment of older men and women if they are to foster social inclusion:[22] **Austria**, **Bulgaria**, **Croatia**, the **Czech Republic**, **Finland**, **Greece**, **Hungary**, **Ireland**, **Italy**, **Luxembourg**, **Malta**, **Poland**, **Slovakia**, **Slovenia** and **Spain**. Four EU Member States should particularly address unemployment among older women: the **Czech Republic**, **Italy, Malta** and the **Netherlands**. Three Member States should address unemployment among people above 60 years of age: **Belgium**, **France** and **Hungary**.

Member State-level measures addressing the employment of older people tend to focus on keeping older people in work. Means to achieve this include restricting access to early retirement or raising the retirement age. Data published in 2015 show that eight Member States link postponing the retirement age to increased life expectancy: **Cyprus**, **Denmark**, **Greece**, **Italy**, the **Netherlands**, **Slovakia**, **Portugal** and the **United Kingdom**.[23]

Austria[24] introduced the possibility of working part-time for people approaching the age of retirement, and a bill to that effect is under discussion in **Luxembourg**.[25] Such schemes enable people to receive their pensions at retirement age despite working fewer hours, as they pay full pension contributions.

In **Denmark**, an amendment to the Act on Prohibition of Differential Treatment in the Labour Market abolished the 70-year age limit, enabling those above that age to continue working or seek employment. Being laid off or not being offered a job because of their age would constitute direct age discrimination.[26]

Member States also made financial incentives available to employers if they hire older workers, as happened in **Bulgaria**,[27] **Croatia**[28] and the **Netherlands**.[29] The Bulgarian scheme, for example, aims to facilitate employing people who lack the required age or length of service to obtain a pension. The government will reimburse the salary and social security costs incurred by employers who hire unemployed persons who are within 24 months of reaching the age to be eligible for a pension or of reaching the required length of service.

Measures addressing youth unemployment and people not in employment, education or training

Member States also introduced financial incentives to address youth unemployment in 2015. This was the case, for example, in **Belgium**[30] and **Estonia**,[31] where employers receive subsidies if they hire young workers or those for whom it is their first job, as in **Slovakia.**[32]

The EU developed a range of measures to tackle youth unemployment, partly as a response to the economic crisis. Foremost among these is the Youth Guarantee – established in 2013 – which Member States continued to implement in 2015. **Hungary**, for example, launched its Youth Guarantee Scheme in 2015.[33]

As mentioned above, under Youth Guarantee schemes, Member States should ensure that people under 25 years of age have a good-quality job offer, are in continued education, or have an apprenticeship or traineeship within four months of leaving school or becoming unemployed. The Youth Employment Initiative complements the Youth Guarantee and targets regions where the rate of youth unemployment reached 25 % in 2012.

The proportion of people aged 15 to 24 not in employment, education or training decreased from 13 % in 2013 to 12.5 % in 2014, the latest Eurostat data show.[34] This means that many young people in the EU face disengagement and social exclusion, particularly those with disabilities or with a migrant background, Eurofound notes.[35]

In September 2015, the European Commission prioritised empowering "more and more diverse young people, especially those at risk of exclusion" in the 2016–2018 work cycle of the cooperation framework for youth. This includes young people not in employment, education or training.[36]

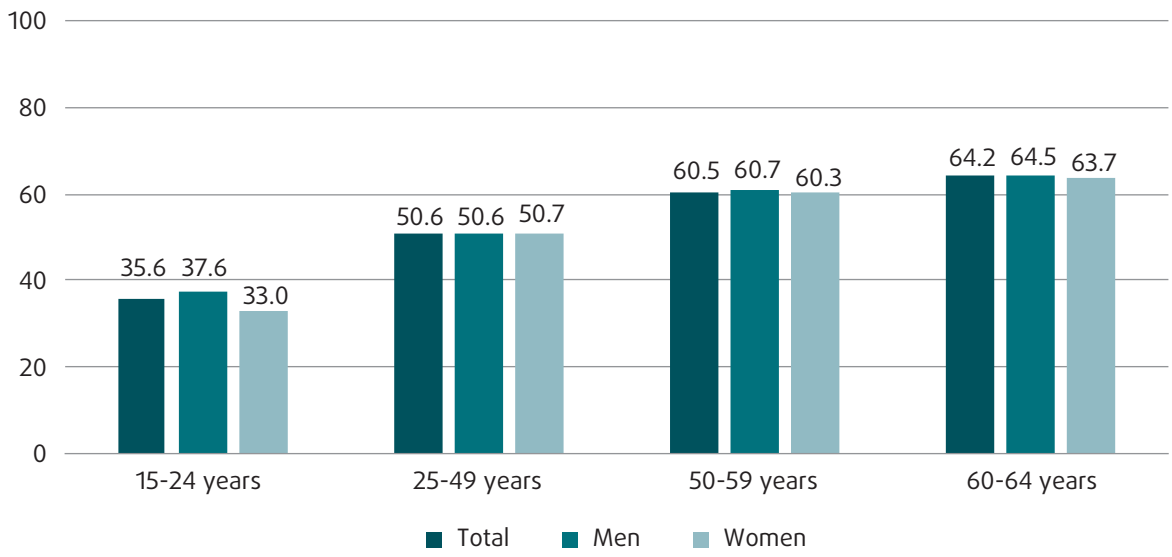
The commitment to tackle exclusion is also evidenced in the €6.4 billion available for 2014–2018 under the Youth Employment Initiative to support people not in employment, education or training. In February 2015, the European Commission advanced around €1 billion to support Member State efforts to get young people back into work, to return to education or get a traineeship. As the Commission noted, this allows young people not only "to contribute to the economy and society through their skills and dynamism, but they also regain their dignity".[37]

Member States implemented different types of measures to bolster young people's access to employment, education and training in 2015. Examples include reforming legislation to improve vocational training or apprenticeships (**Italy**,[38] the **Netherlands**,[39] the **United Kingdom**[40]) or developing skills through providing financial support, training or personalised guidance to any or all of the following: young persons with disabilities, parents, single parents, women, early school leavers, recent graduates and those in long-term unemployment (**Austria**,[41] **Cyprus**,[42] **Greece**[43]). **Spain** took measures to reduce social security contributions for companies that hire unemployed young people under thirty years of age.[44]

Measures addressing long-term unemployment

According to Eurostat's latest available data, 5.1 % of the labour force in the EU-28 had been unemployed for more than one year in 2014, and more than half of these – 3.1 % of the labour force – had been unemployed for more than two years.[45] Long-term unemployment is most prevalent among third-country nationals, people with disabilities and members of disadvantaged minorities, such as the Roma. The share of unemployed people who are in long-term unemployment increases with age in the EU, as Figure 2.2 shows. For example, 63.7 % of unemployed women

Figure 2.2: Long-term unemployment by age group and gender in the EU-28 in 2014, as share of total number of unemployed people in that age group (%)



Source: *Eurostat (2016), Long-term unemployment (12 months or more) as a percentage of the total unemployment, by sex, age and citizenship (%) [lfsa_upgan], accessed on 25 January 2016*

aged between 60 and 64 were long-term unemployed in 2014, compared with 33 % among women aged between 15 and 24.

Long-term unemployment is a major concern for policymakers – not only does it have both financial and social effects on people's personal lives, but it also negatively affects social cohesion. The EU has made tackling long-term unemployment a priority, and, in September 2015, the European Commission tabled a proposal for a Council recommendation on the integration of the long-term unemployed. The proposal "helps combat poverty and social exclusion and ultimately reinforces human dignity".[46] It also reinforces rights enshrined in the EU Charter of Fundamental Rights, particularly in Article 29 (access to placement services) and Article 34 (social security and social assistance).

2.3. Multiple court decisions clarify Employment Equality Directive's provisions on age discrimination

With the ageing population bringing with it a higher likelihood of age discrimination in employment, court cases addressing the Employment Equality Directive's provisions on age discrimination are particularly relevant. The CJEU and national courts issued several such judgments in 2015.

The CJEU handed down five significant judgments relating to Article 6 of the Employment Equality Directive, which allows differences of treatment on the ground of age where these are justified by a legitimate aim pursued by appropriate and necessary means.[47] Article 6(1) specifies that legitimate differences of treatment "may include, among others: the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection".[48]

In *ÖBB Personenverkehr AG v. Gotthard Starjakob* (C-417/13),[49] the CJEU considered whether budgetary considerations constitute a legitimate aim in accordance with Article 6(1). The Austrian Law on Federal Railways was amended with the aim of ending discrimination against employees who began their service with an apprenticeship before the age of 18. Prior to this amendment, periods of service completed before the age of 18 were not taken into account when calculating advancement to the next salary level. While the amendment repealed this provision, it extended the period required for moving up a salary level by another year. The CJEU found that budgetary considerations alone do not constitute a legitimate aim justifying different treatment based on age, and so held that this practice amounted to discrimination under Article 6(1) of the directive.

In *Georg Felber v. Bundesministerium für Unterricht, Kunst und Kultur* (C-529/13),[50] the CJEU found a difference

in treatment based on age to be in accordance with Article 6(1). The court held that Austrian law enabling civil servants to contribute to their pension scheme only once they are above the age of 18 is not contrary to EU law, because adopting an employment policy that enables all civil servants to begin contributing to the pension scheme at the same age and therefore have equal chances in acquiring the right to receive full retirement pensions constitutes a legitimate aim pursued by necessary and appropriate means under the directive, guaranteeing the equal treatment of all civil servants.

In *Ingeniørforeningen i Danmark v. Tekniq* (C-515/13),[51] the CJEU held that the Danish law on salaried employees complies with EU legislation. According to that law, employees who work for a company for periods of 12, 15 or 18 years are entitled, upon dismissal, to a severance allowance worth one, two or three months of salary, respectively. The applicant, who was dismissed after reaching the legal retirement age, did not receive such an allowance and claimed age discrimination under Article 6 of the Employment Equality Directive. The CJEU disagreed, stressing that severance allowances aim to support employees in coping with labour market conditions after being dismissed from a long-term employment relationship. Since the applicant had reached the legal retirement age and was entitled to a state pension, not granting the severance allowance was objectively and reasonably justified.

The CJEU addressed a similar issue in *O v. Bio Philippe Auguste SARLS* (C-432/14).[52] In that case, a severance allowance was not paid to a student who had been employed during his university vacation. At the end of his fixed-term employment contract, the applicant was not granted an end-of-contract allowance, in contrast to other employees whose fixed-term contracts expired without subsequent renewal.[53] The applicant's employer refused such a payment based on an exception in the French Labour Code, according to which young persons who work during their university vacations are excluded from receiving such an allowance.[54] In line with the reasoning in *Ingeniørforeningen i Danmark v. Tekniq*,[55] the CJEU held that exempting pupils and students from receiving such an allowance does not violate the Employment Equality Directive, because the purpose of the allowance is to compensate for the insecurity of needing to face labour market conditions. Since pupils and students do not experience such insecurities to the same extent as adults, the CJEU held that the difference of treatment did not amount to age discrimination.

In *Daniel Unland v. Land Berlin* (C-561/2015),[56] the CJEU held that rules governing the reclassification and career progression of judges under a new remuneration system are not contrary to EU law. Whereas the old remuneration system grouped the salaries of judges according to age, the new remuneration system calculates the pay according to experience, though the initial pay step allocated to judges under the new system is based on the basic pay received under the old system. The applicant thus complained in domestic proceedings that he was discriminated against on the grounds of his young age when becoming a judge. The CJEU found that the different treatment of judges under the new system can be justified by the aim of protecting acquired rights.

At national level, the Supreme Court in **Cyprus** ruled on the legality of using age seniority as a criterion for promotion.[57] The applicant applied for a promotion that was eventually awarded to an older candidate. The applicant argued that the Civil Service Law, which allows seniority to be taken into account in such cases, contradicts the Employment Equality Directive and constitutes age discrimination. The Supreme Court disagreed, holding that that the Civil Service Law is not discriminatory because it applies to all employees in the same position in the same way.

The **French** *Conseil d'État* ruled that Law 421-9 of the Code for Civil Aviation, which sets the age limit for pilots at 60, does not pursue a legitimate aim within the meaning of the Employment Equality Directive's Article 2(5) on public safety and Article 6(1) on employment policy.[58] Similarly, the *Cour de Cassation* ruled that setting the maximum age limit for ski instructors at 62 violates national law and Article 6(1) of the Employment Equality Directive, since this limit merely serves client satisfaction.[59]

The Athens Administrative Court of Appeals in **Greece** ruled on the mandatory retirement age for civil servants.[60] The applicant was a diplomatic official of the Foreign Ministry for 33 years when he reached the mandatory retirement age of 65. Employees are only entitled to full pension rights after being in service for 35 years. Since the mandatory retirement age is not set at 65 for other officials and civil servants, the applicant argued that he was discriminated against on the ground of age. The court disagreed, holding that the difference in treatment of diplomatic officials pursues a legitimate aim and is appropriate and necessary and does not contradict either domestic law or the Employment Equality Directive. The Administrative Regional Court in **Latvia** took a similar decision, holding that the discontinuation of civil service upon reaching retirement age complies with national and EU law.[61]

The **Danish** High Court also ruled on a case relating to the mandatory retirement age.[62] The applicant was a member of the Unemployment Insurance Fund. He was notified that his fund membership would be terminated once he reached the age of 65 and that he would instead receive a state pension. The applicant did not want to retire and argued that terminating his membership was contrary to Article 6(1) of the Employment Equality Directive and constituted unjustified age discrimination. The court held that Section 43

of the Act on Unemployment Insurance, on which the membership termination was based, complies with the Employment Equality Directive.

2.4. EU and Member States take action to counter discrimination

The year 2015 also saw developments relating to countering discrimination on the grounds of sex (including gender reassignment), religion or belief, disability, sexual orientation and gender identity. For developments relating to racial or ethnic discrimination and to national equality bodies, see Chapter 3 of this report. For developments concerning the implementation of the CRPD, see Chapter 8. For additional information on discrimination on the ground of sex, consult the work of the European Institute for Gender Equality (EIGE).

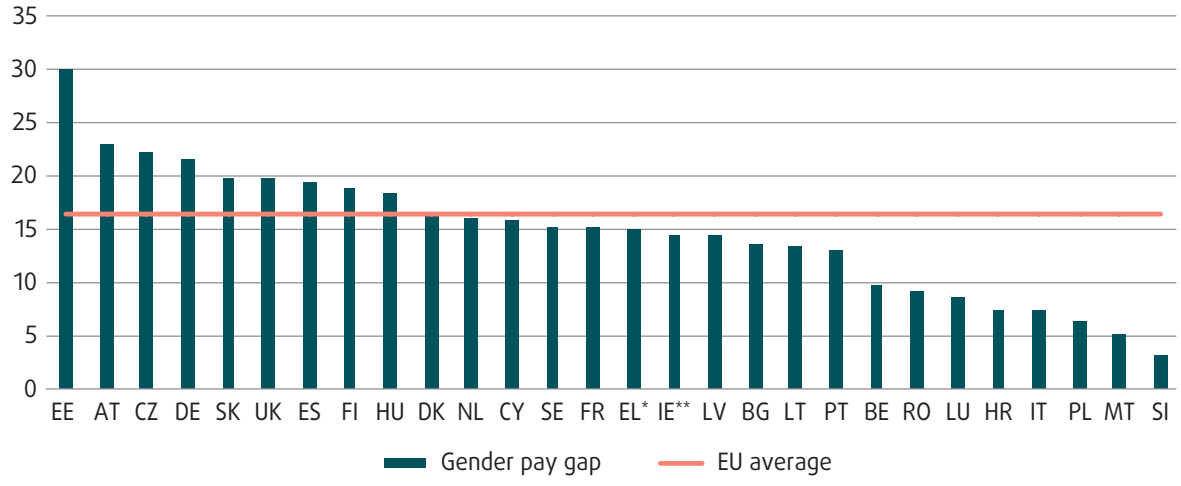
2.4.1. Tackling discrimination on the ground of sex, including gender reassignment

In December 2015, the European Commission published its Strategic engagement for gender equality 2016–2019. This strategy identifies more than 30 actions in five priority areas to promote equality between women and men. These areas are: increasing female labour-market participation and the equal economic independence of women and men; reducing the gender pay, earnings and pension gaps and thus fighting poverty among women; promoting equality between women and men in decision-making; combating gender-based violence and protecting and supporting victims; and promoting gender equality and women's rights across the world.

Concerning the gender pay gap, which has been covered in previous FRA Annual reports, the latest available estimates from Eurostat show that women in the EU on average earn 16 % less than men per hour worked (see Figure 2.3). The largest gap is found in **Estonia**, where women's gross hourly earnings are on average 30 % below those of men, and the smallest gap is observed in **Slovenia**, where the gross hourly earnings of women are on average 3 % below those of men. As Eurostat explains:

> *"There are various reasons for the existence and size of a gender pay gap and they may differ strongly between Member States, e.g. kind of jobs held by women, consequences of breaks in career or part-time work due to childbearing, decisions in favour of family life, etc. Moreover, the proportion of women working and their characteristics differ significantly between countries, particularly because of institutions and attitudes governing the balance between private and work life which impact on the careers and thus the pay of women."*[63]

Figure 2.3: Unadjusted gender pay gap, by EU Member State, 2013 (%)



Notes: *The figure shows the difference between average gross hourly earnings of male and female employees as a percentage of male gross earnings.*

'Unadjusted' means that the gender pay gap is calculated "without correcting for national differences in individual characteristics of employed men and women - the main reason is that, at this stage, there is neither consensus nor scientific evidence on which adjustment method should be used", Eurostat (2016), Glossary: Gender pay gap (GPG).

** Data for Greece are current up to 2010.*

*** Data for Ireland are current up to 2012.*

Source: *Eurostat, Gender pay gap statistics*

EU Member States took a number of initiatives to address the gender pay gap. The **German** Federal Anti-Discrimination Agency, for example, published a report by an independent commission with recommendations for measures against gender discrimination.[64] The commission supports the federal government's plans for an equal pay act, but calls for businesses of all sizes to fall under the act. The government's coalition agreement currently plans to require only companies with more than 500 employees to issue reports on pay gaps.

The **German** Act for the Equal Participation of Women and Men in Management Positions in the Private Sector and in Public Service came into force. The law aims to increase the ratio of women in higher management positions in the private and public sectors. For the private sector, all shareholder companies that fall under the Workers' Participation Act are obliged to reach a 30 % ratio of women in their supervisory boards as of 1 January 2016. For the public sector, all layers of the federal administration have to define targets and implementation measures for equal gender representation in management positions.[65]

Some Member States marked Equal Pay Day 2015 with initiatives to raise awareness on the gender pay gap. A European Commission report notes that **Estonia** marked Equal Pay Day on 21 April 2015, with activities focusing on young parents and how to reconcile career and family life. In addition, given that the gender pay gap reached 29.9 % in the country, restaurants offered dishes with special ingredients for prices 29.9 % higher than those for dishes without these ingredients. Some restaurants also served 'soup for working women', and shops offered a 29.9 % discount to women.[66]

Also on Equal Pay Day, a self-diagnosis gender pay gap tool was launched in **Spain**, enabling companies to identify wage inequalities between women and men, in accordance with measures foreseen in the Strategic Plan for Equal Opportunities 2014–2016 to combat the gender pay gap. Similarly, **Portugal**'s Commission for Equality in Labour and Employment launched a gender pay gap calculator in 2015.

The **Lithuanian** national programme on equal opportunities for women and men 2015–2021[67] aims to promote equal opportunities in occupation and employment. The programme sets three goals: reduce wage differences; reduce sectoral and professional segregation in the labour market; and increase opportunities for women, especially those living in rural areas, to launch and develop businesses. Similarly, in **Spain**, a plan for the promotion of women in rural areas covering the period 2015–2018 was approved in October 2015.

Luxembourg's Ministry for Equal Opportunities outlined[68] the main points included in a draft bill amending the Labour Code:[69] simplification of the procedure to obtain benefits when recruiting staff from the under-represented sex; clarification of the conditions for obtaining financial assistance in the framework of a specific programme targeting equal salaries between men and women; and inclusion of the principle of equal pay in the legislation.

The **United Kingdom** government introduced "an obligation for every company with more than 250 employees to publish the difference between the average pay of their male and female employees" to increase pay transparency in large companies.[70]

In **Luxembourg**, the legislature also began discussing a bill to amend the labour and criminal codes so that the principle of non-discrimination would apply to gender reassignment.[71]

Promising practice

Fostering an inclusive workplace for transgender persons

The Government Equalities Office in the **United Kingdom** published guidance for employers on recruiting and retaining transgender staff, which could be applied to other population groups vulnerable to discrimination. The guidance identifies good practices in a number of employment-related areas. It suggests, for example, that an employer's website should make clear that it values having a diverse workforce by including a statement of values and by giving access to inclusion plans in its human resources policy. To retain transgender staff, employers are advised to foster and promote an organisation-wide culture of dignity and respect. The guide identifies providing diversity and equality training for all staff members and having accessible role models and mentors as good practices for achieving this objective.

For more information, see: UK, HM Government (2015), Recruiting and retaining transgender staff: A guide for employers*, 26 November 2015, pp. 17–18*

2.4.2. Confronting discrimination on the ground of religion or belief

National courts referred preliminary questions relating to discrimination on the ground of religion and belief to the CJEU for the first time in 2015. Both cases involved women whose employment contracts were terminated because they wore Islamic headscarves at work. The cases originated in Belgium and France, and were still to be decided upon by the CJEU at the time of writing.

The **Belgian** case concerned an employee of a security company, who, after three years of service,

informed her employer that she had decided to wear an Islamic headscarf to work.[72] Based on a policy of neutrality, the employer prohibited wearing signs that mark adherence to religious, political or philosophical beliefs. When the applicant refused to continue working without her veil, the employer terminated her employment contract, stating that this violated the neutrality policy. The applicant argued that her dismissal was counter to Belgium's anti-discrimination laws and violated Article 2(2) of the Employment Equality Directive relating to the concept of discrimination. After the court of first instance found in favour of the employer, the applicant appealed to the Supreme Court, which stayed proceedings and referred the case to the CJEU for a preliminary ruling.

The case in **France**[73] concerned an employer who received complaints from customers and asked the applicant to take off her veil. The employer reminded her of the duty to dress in a neutral fashion when dealing with clients, but the applicant refused to take off her veil and was subsequently dismissed. The applicant alleged that her dismissal was unjustified and contrary to Article 2(2) of the Employment Equality Directive. Proceedings at national level were stayed and the case was referred to the CJEU to ask if the dismissal can be justified in light of Article 4(1) of the Employment Equality Directive, relating to legitimate and justified occupational requirements.

2.4.3. Targeting discrimination on the ground of disability

Cyprus, **Malta**, the **Netherlands**, **Slovakia**, **Spain** and the **United Kingdom** took action to counter discrimination based on disability. More specifically, in Slovakia, the government adopted a strategy on the implementation and protection of human rights, which contains a chapter on the rights of persons with disabilities.[74] The strategy defines the following priorities: ensure that persons with disabilities are not discriminated against when exercising their right to engage in work; support enforcement of legislation relating to employing persons with disabilities; and provide assistance when anti-discrimination laws have been violated against persons with disabilities accessing employment and in employment.

The Slovak parliament elected a commissioner for persons with disabilities, whose role is to monitor and assess observance of the rights of persons with disabilities, based on individual petitions or on her or his own initiative. The commissioner is also tasked with assessing Slovakia's fulfilment of its commitments ensuing from international agreements.[75] In a similar development, the United Kingdom saw the creation of a House of Lords Committee on the Equality Act 2010 and Disability.[76] This committee is tasked with considering the impact of the Equality Act 2010 on people with disabilities, with a first reporting deadline of 23 March 2016.[77]

The Ombudsman in Cyprus – in its capacity of independent authority for the rights of persons with disabilities – found that requiring persons with intellectual disabilities to present a court order appointing someone as their legal representative to manage their affairs is an obstacle to equal access to the minimum guaranteed income. The Ombudsman equated the duty to provide support to persons with disabilities to exercise their legal capacity with the duty to provide reasonable accommodation, the breach of which amounts to unlawful discrimination.[78] The law governing the minimal guaranteed income has since been amended, removing the requirement for a court-ordered legal authorisation of the applicant's representative.[79]

In a case involving teachers whose appointment to posts in public schools were passed up in favour of teachers with disabilities, the Supreme Court in Cyprus affirmed the lawfulness of quotas in employment for persons with disabilities, in accordance with national legislation on hiring persons with disabilities in the public sector.[80] The Maltese Parliament adopted legislation imposing a quota of persons with disabilities in a number of public entities/authorities, including the national equality body.[81] Should any such entity not hire at least one person with a disability or a representative thereof, the entity will not be considered to be legally constituted.

The Netherlands adopted a law that could benefit persons with disabilities. The Participation Act, which came into force on 1 January 2015, introduces wage subsidies and job coaching for employers who hire persons with disabilities and other persons who have difficulty gaining access to the job market.[82] In addition, the Quota Act took effect on 1 May 2015.[83] It requires employers with 25 or more employees to hire a percentage of people who fall under the remit of the Participation Act. Employers in both the private and public sectors that not meet their targets will incur fines.

A number of developments relating to persons with disabilities took place in Spain in 2015. A comprehensive plan to support people with disabilities in the armed forces was adopted, and legal protection and social support for persons with disabilities as victims of certain serious crimes was strengthened.[84] An inclusive approach for people with disabilities was adopted in the national system of civil protection,[85] and accessibility and participation of people with disabilities in education was increased.[86] In addition, legal provisions were introduced that provide deaf and deaf-blind citizens in criminal proceedings with the tools they need, such as sign language interpreters or other support for oral communication.[87]

2.4.4. Countering discrimination on the grounds of sexual orientation and gender identity

The European Commission published a list of actions to advance equality for lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in December 2015. This list highlights areas in which the European Commission will take action: anti-discrimination policy, freedom of movement for LGBTI families, workplace diversity, enlargement and foreign policy. The European Commission will cooperate with FRA, EIGE and other EU agencies in implementing actions in these areas.

Any efforts pursued to advance equality under this list of actions will be able to draw on data collected by FRA, such as the EU LGBT survey (which the European Commission invites the agency to repeat); an updated comparative legal analysis of protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU, published in December 2015; and an analysis of the views and experiences of public officials and professionals in 19 EU Member States with regard to respecting, protecting, promoting and fulfilling the fundamental rights of LGBT people, to be published in 2016.

Meanwhile, the Supreme Court in **Finland** adjudicated a case relating to discrimination based on sexual orientation.[88] The applicant was asked during her job interview if she or her spouse were politically engaged, which she denied without any further explanation. After being hired, the applicant's employer discovered that the applicant was living in a legally registered partnership and that her partner was politically engaged. The employer terminated the employment relationship with the applicant on that basis. The Supreme Court held that the termination was not justified, since neither the gender nor the political engagement of the applicant's partner was relevant to her employment.

> *"The principle that marriage requirements discriminate indirectly against same-sex couples was concisely stated by the legal report on homophobia published by the European Union's Agency for Fundamental Rights in June 2008."*
>
> *ECtHR,* Oliari and Others v. Italy (Nos. 18766/11 and 36030/11), 21 July 2015

Cyprus[89] and **Greece**[90] adopted legislation on same-sex civil unions. The Cypriot Civil Cohabitation Act provides that a civil union entered into under this law broadly corresponds to a union under Marriage Law 104(I) of 2003. One main difference is that the Civil Cohabitation Act expressly excludes adoption. Similarly, the law on civil cohabitation passed by the Greek parliament puts same-sex cohabitation on an equal footing with marriage, except for adoption.[91] That law also abolished a provision of the Criminal Code relating to the age of consent for homosexual acts between men (Article 347), effectively equalising the age of consent.

In **Ireland**, the Constitution was amended in August 2015, enabling same-sex couples to marry: "Marriage may be contracted in accordance with law by two persons without distinction as to their sex."[92]

The autonomous community of Extremadura in **Spain** adopted a law relating to the equal treatment of LGBT persons and public policies on anti-discrimination.[93] Next to bringing Extremadura in line with the practice of other autonomous communities, one core aspect of this law is the creation of a monitoring centre against discrimination on the grounds of sexual orientation or gender identity.

In the framework of the "Understanding Discrimination, Recognizing Diversity" (CORE) project, Spain launched a report on Embracing diversity: proposals for an education free of homophobia and transphobia. The report offers a conceptual, legal and incidents-based analysis, selected educational resources, best practices as well as recommendations, indicators and strategies to prevent, identify and intervene in cases of homophobic and transphobic bullying in schools. The document also provides a protocol of five phases to comprehensively intervene in cases of homophobic and transphobic bullying in schools, involving all members of the education community.

Finally, **Portugal** adopted legislation that resulted in gender identity being included among the protected grounds of discrimination in the field of employment and occupation.[94]

FRA opinions

While benefiting from a solid legal basis from which to counter discrimination, the EU effectively still operates a hierarchy of grounds of protection from discrimination. The gender and racial equality directives offer comprehensive protection against discrimination on the grounds of sex and racial or ethnic origin in the EU. Discrimination on the grounds of religion or belief, disability, age or sexual orientation, in contrast, is prohibited only in the areas of employment, occupation and vocational training under the Employment Equality Directive. Negotiations on the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation – the Equal Treatment Directive – entered their seventh year in 2015. By the year's end, the ongoing negotiations had not reached the unanimity required in the Council for the directive to be adopted.

FRA opinion

To guarantee a more equal protection against discrimination across areas of life, it is FRA's opinion that the EU legislator should consider all possible avenues to ensure that the proposed Equal Treatment Directive is adopted without further delay. Adopting this directive would guarantee that the EU and its Member States offer comprehensive protection against discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation on an equal basis.

The year saw a range of developments relevant to protection against discrimination on the grounds of sex, including gender reassignment, religion or belief, disability, sexual orientation and gender identity. These are all protected characteristics under the Gender Equality Directives and the Employment Equality Directive, with the exception of gender identity and gender reassignment. Although gender identity is not explicitly a protected characteristic under EU law, discrimination arising from the gender reassignment of a person is prohibited under Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). Civil unions for same-sex couples in two Member States became largely equivalent to marriage, except as regards adoption, with marriage for same-sex couples legalised in its own right in one Member State. Discrimination on the ground of gender identity was the subject of reforms in other Member States. Some Member States took steps to address the gender pay gap. Preliminary questions relating to discrimination on the ground of religion and belief were referred to the CJEU for the first time. Some Member States introduced quota for the employment of persons with disabilities.

FRA opinion

To ensure a more equal protection against discrimination, it is FRA's opinion that all EU Member States should consider extending protection against discrimination to different areas of social life, such as those covered by the proposed Equal Treatment Directive. In doing so, they would go beyond minimum standards set by existing EU legislation in the field of equality, such as the Gender Equality Directives, the Employment Equality Directive or the Racial Equality Directive.

In continuing to implement measures that address the social consequences of an ageing population, EU Member States contributed to making people's right to equal treatment under EU law effective. The European Commission's country-specific recommendations to Member States by the European Semester in 2015 reflect the concern of EU institutions for the social consequences of an ageing population. Relevant country-specific recommendations addressed youth unemployment, the participation of older people in the labour market and vulnerability to discrimination on several grounds, which relates to Article 23 on the right of elderly persons to social protection under the European Social Charter (Revised), as well as to a number of provisions of the EU Charter of Fundamental Rights, including Article 15 on the right to engage in work; Article 21 on non-discrimination; Article 29 on access to placement services; Article 31 on fair and just working conditions; Article 32 on the protection of young people at work; and Article 34 on social security and social assistance.

FRA opinion

To ensure that the right to non-discrimination guaranteed by the EU Charter of Fundamental Rights is implemented effectively, it is FRA's opinion that EU institutions should consider referring explicitly to the fundamental right of non-discrimination when proposing structural reforms in the country-specific recommendations by the European Semester, in particular when promoting gender equality and non-discrimination, as well as the rights of the child. FRA is of the opinion that such an approach would strengthen the postulations made and raise awareness about the fundamental rights dimension of fostering social inclusion.

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UN & CoE

28 January – The Parliamentary Assembly of the Council of Europe (PACE) adopts a resolution on the terrorist attacks in Paris

29 January – PACE adopts a resolution on tackling intolerance and discrimination in Europe, with a special focus on Christians

January

20 February – Poland ratifies the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems

24 February – The European Commission against Racism and Intolerance (ECRI) publishes its fifth monitoring report on Greece and conclusions on the implementation of a number of priority recommendations made in its country reports on Italy, Latvia, and Luxembourg in 2012

February

18 March – The Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe (CoE) publishes its fourth opinion on Cyprus

March

20 April – The United Nations Human Rights Council (UNHRC) publishes the annual report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance

April

15 May – The UN Committee on the Elimination of Racial Discrimination (CERD) publishes concluding observations on Germany and Denmark

May

9 June – ECRI publishes its fifth monitoring reports on Hungary and Poland and conclusions on the implementation of a number of priority recommendations made in its country reports on Croatia, Denmark, and Sweden in 2012

10 June – CERD publishes concluding observations on France

26 June – PACE adopts a resolution on recognising and preventing neo-racism

June

9 July – ECRI publishes its annual report 2014

July

25 August – The UN publishes the Sweden report of the Working Group of Experts on People of African Descent, focusing on racism against Afro-Swedes

August

24 September – CERD publishes concluding observations on the Netherlands

25 September – CERD publishes concluding observations on the Czech Republic

September

13 October – ECRI publishes its fifth monitoring reports on Austria, the Czech Republic, and Estonia

15 October – In *Perinçek v. Switzerland* (No. 27510/08), the European Court of Human Rights (ECtHR) distinguishes the denial of genocide against the Armenian people from Holocaust denial and holds that the failure to prove that the applicant's conviction was supported by a pressing social need violated his right to freedom of expression under Article 10 of the ECHR

20 October – In *M'Bala M'Bala v. France* (No. 25239/13), the ECtHR rules that the highly negationist and antisemitic content of the applicant's performance is not protected by freedom of expression (Article 10)

20 October – In *Balázs v. Hungary* (No. 15529/12), the ECtHR holds that the Hungarian authorities failed to effectively investigate a racist attack against a Roma man in 2011, violating Article 14 read in conjunction with Article 3 of the ECHR

October

November

7–8 December – CERD adopts concluding observations on Lithuania

9 December – CERD adopts concluding observations on Slovenia

December

EU

11 January – Ministers for culture of all 28 European Union (EU) Member States issue a joint statement on freedom of expression

17 January – European Commission publishes a communication calling for the prevention of radicalisation and violent extremism

January

February

March

April

May

June

16 July – In *CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia* (C-83/14), the Court of Justice of the EU (CJEU) for the first time applies the concept of 'discrimination based on association' under Directive 2000/43 and holds that the principle of equal treatment applies to persons who suffer a particular disadvantage or less favourable treatment due to association with a group

July

August

September

October

25 November – The European Parliament passes a resolution to fight radicalisation of young EU citizens

November

December

3 Racism, xenophobia and related intolerance

Expressions of racism and xenophobia, related intolerance, and hate crime all violate fundamental rights. In 2015, xenophobic sentiments came to the fore in several EU Member States, fuelled largely by the arrival of asylum seekers and immigrants in large numbers, as well as the terrorist attacks in Paris and Copenhagen and foiled plots in a number of Member States. Whereas many greeted the arrival of refugees with demonstrations of solidarity, there were also public protests and violent attacks. Overall, EU Member States and institutions maintained their efforts to counter hate crime, racism and ethnic discrimination, and also paid attention to preventing the expression of such phenomena, including through awareness raising activities.

3.1. Terrorist attacks and migration into the EU spark xenophobic reactions

Je suis Charlie… Refugees Welcome! – The year 2015 was marked by the aftermath of terrorist attacks in **France** and **Denmark** and reactions to the arrival of asylum seekers and immigrants in large numbers across the EU. These events had a profound impact on the Union and its Member States, and the effects on society are likely to be felt for years to come. As this chapter shows, EU institutions and Member States are faced with open and sometimes violent manifestations of racism, xenophobia and related intolerance, as well as hate crime, which implicate Council Framework Decision (2008/913/JHA) of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

Whereas terrorist attacks in Paris and Copenhagen indiscriminately killed people from all walks of life, religions and nationalities, Jews were specifically targeted in January in Paris and in February in Copenhagen. This continued a trend of deadly antisemitic attacks, including those in Toulouse in March 2012 and in Brussels in May 2014. The common thread in these attacks relates to the identified perpetrators: young Muslim EU citizens with immigrant backgrounds, who were radicalised at home and had returned from terrorist training camps; and men – some known to security services – travelling via the so-called Western Balkans refugee route.

Muslim populations in the EU faced intense scrutiny throughout the year – some because they were perceived as perpetrators or sympathisers of terrorist attacks, others because they were part of refugee flows seen as threatening safety and security in the European Union. Political rhetoric in some Member States focused on how religious and cultural differences between Muslims and the majority population could negatively affect social cohesion. Asylum seekers and immigrants – many of whom are Muslims – also became victims of racist and xenophobic incidents, including violent attacks (see also the Focus section of this report).

Although little evidence is available on the perpetrators of such incidents, it is worth noting that, according to Europol:

> *"Acts of violence by Islamic State have the potential to increase the number and intensity of extreme-right wing activities, both legal (e.g. demonstrations) and illegal (e.g. violent acts), in EU Member States. […] Against the background of the current situation in Syria and Iraq it is likely that a number*

of EU Member States will remain prone to experiencing further harassment, hate-filled rhetoric and unprovoked, opportunistic attacks towards Muslims and Muslim institutions by right-wing extremists."[1]

One concrete example is the case of Germany, where the parliament published data on the number of incidents targeting accommodation centres for asylum seekers. These data show a dramatic increase in such incidents – from 203 recorded in 2014 to 1,031 in 2015, as Table 3.1 shows. Between 2012 and 2014, most violent incidents "in connection with the accommodation of asylum seekers" (see Table 3.2) were attributed to perpetrators with a left-wing background (politically motivated criminality – left; *politisch motivitierte Kriminalität – Links*). The tendency reversed in 2015, with perpetrators of violent incidents mainly identified as having a right-wing background (politically motivated criminality – right; *politisch motivitierte Kriminalität – Rechts*).[2]

The recording system for politically motivated crimes in Germany is divided into various broad categories, such as 'foreign/asylum'. The system also records four types of political motivations: right-wing, left-wing, foreign and others. Until 2014, crimes targeting asylum seeker accommodations were recorded under the broader category of 'foreign/asylum' – subtopic "in connection with the accommodation of asylum seekers". Examples of crimes recorded under this category include attacks against the police or violations of assembly laws in the context of pro-refugee demonstrations organised by members of left-wing groups.

In 2014, a new sub-category was added to the classification system: politically motivated criminality – "right targeting asylum accommodations". This category includes incidents targeting accommodation facilities as well as the people who reside in them. The focus on right-wing motivation in this category helps explain the increase in crimes attributed to perpetrators with a right-wing background, noted in Table 3.2.

Most of these crimes in 2015 consisted of "damage to property" (383), followed by "propaganda crimes" (206), "incitement to hatred" (109) and "arson" (95). Data from the Federal Criminal Police Office show that, in 2014, in 33 % of the cases, the suspects were known to the police for politically motivated crimes, with 31 % not known to the police. Up to the third quarter of 2015, 22 % of the suspects were known for politically motivated crimes, with 47 % not known to the police.

With data on perpetrators scarce, FRA's first survey on discrimination against immigrants and minorities (EU-MIDIS), while published in 2009, remains the most comprehensive source of comparative data on the issue. The survey found that respondents perceived between 1 % and 13 % of perpetrators of crimes to be members of right-wing/racist gangs; between 12 % and 33 % as someone from the same ethnic group; between 12 % and 32 % as someone from another ethnic group; and between 32 % and 71 % as someone from the majority population.[3]

Table 3.1: Number of incidents 'targeting asylum accommodations' (cases with proven right-wing motivation or where right-wing motivation cannot be excluded) in Germany, 2014–2015

	Violent incidents	Total number of incidents
2014	29	199
2015	177	1,031

Source: *Germany, Federal Ministry of the Interior*

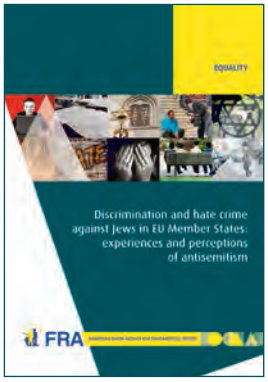
Table 3.2: Number of incidents 'in connection with the accommodation of asylum seekers' in Germany, 2012–2015

Year	Violent incidents	Total number of incidents
2012	21	62
2013	121	399
2014	188*	895*
2015 (up to 10 November)	140	1,610

Note: ** Not comparable with previous years because of a change in the recording procedure*

Source: *German Bundestag (2015), German government's response to inquiry from several members of German parliament (Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Monika Lazar, Luise Amtsberg, Volker Beck (Köln), weiterer Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN – Drucksache 18/6513)*

Twenty-seven per cent of respondents to FRA's survey on discrimination and hate crime against Jews – published in 2013 – said that the perpetrator involved in the most serious incident of antisemitic harassment they had experienced over the previous five years was someone with a Muslim extremist view. By comparison, victims identified 22 % of perpetrators of such acts as holding a left-wing political view, 19 % as having a right-wing political view, and 7 % as holding an extremist Christian view.[4]



In other words, racist, xenophobic and antisemitic incidents involve a variety of offenders, including people stemming from the majority population and those with minority ethnic or religious backgrounds. This complex reality needs to be taken into account by actors devising strategies or measures to counter racism, xenophobia and related intolerance.

The January attacks in Paris prompted community leaders throughout the EU to express grave concerns over the safety of Jews and Muslims.[6] Increased fear and feelings of insecurity among Muslim communities were reported in the majority of Member States, and Jewish communities reinforced existing security measures, temporarily closing schools and appealing to the police for enhanced protection. Mosques began to receive police protection, as synagogues have for years. Spikes in incidents involving anti-Muslim sentiment were recorded after the January and November attacks in Paris. The French Ministry of the Interior recorded 134 anti-Muslim and racist incidents in January 2015 – 10 more than for all of 2014. In November 2015, the ministry recorded 74 anti-Muslim incidents.

Meanwhile, political rhetoric about asylum seekers in many Member States made reference to their Muslim religion and the risks this is perceived to pose to the values and traditions of the Union and its Member States. This theme continued throughout the summer, when issues of relocation, resettlement, and quotas for asylum seekers were being discussed. For instance, in July, **Estonia**'s Minister for Social Protection expressed reluctance about accepting Muslim refugees, pointing out that, "[a]fter all, we are a country belonging to Christian culture."[7] The spokesperson of the **Czech** President argued that "refugees with a completely different cultural background would not be in a happy situation [in the Czech Republic]."[8] In August, the spokesperson of the **Slovak** Interior Ministry stated, "We could take 800 Muslims but we do not have any mosques in Slovakia so how can Muslims be integrated if they are not going to like it here?"[9] In September, the Interior Minister of **Cyprus** expressed a preference to host Orthodox Christian Syrian refugees, as they could more easily integrate into Cypriot society. That same

Promising practices

Educating children about racism

In **Spain,** as part of a project on 'Training for the prevention and detection of racism, xenophobia and related forms of intolerance at schools: Migrants and ethnic minorities at school',[5] the Spanish Observatory against Rac ism and Xenophobia published the *Handbook for preventing and detecting racism, xenophobia and other forms of intolerance in schools*. The handbook targets professionals in the educational system.

For more information, see: Manual de apoyo para la prevención y detección del racismo, la xenofobia y otras formas de intolerancia en las aulas

Sweden has implemented several programmes that deal with racism at schools through training for personnel of pre-school, school and after-school programmes. It has also implemented training on past and current racism for all students in compulsory (age 6–15) and upper-secondary schools (age 16–18).

For more information, see: Awareness-raising measures in schools regarding xenophobia and related intolerance *and* Assignment to implement an educational programme on different forms of racism and intolerance in history and today

In **Greece**, a model academy was held during 2015 to promote democratic citizenship, human rights, and intercultural understanding in 13 school communities across the country. The project resulted from cooperation between the Council of Europe, the European Wergeland Centre, and the Greek Ministry of Education, Research and Religious Affairs; the Institute of Educational Policy also contributed to the effort.

For more information, see: European resource centre on education for intercultural understanding, human rights and democratic citizenship

Germany has implemented a programme that funds projects and initiatives that deal with racism and xenophobia and provide support for victims of racism and individuals who wish to exit racist and radical groups. The programme seeks to promote democracy in society by supporting initiatives that aim to prevent Islamist, left-wing, right-wing, and nationalist radicalization.

For more information, see: Demokratieförderung und Extremismusprävention

month, **Hungary**'s prime minister commented that "those arriving have been raised in another religion, and represent a radically different culture. Most of them are not Christians, but Muslims. This is an important question, because Europe and European identity is rooted in Christianity."[10]

The 2015 Eurobarometer on discrimination was conducted between May and June 2015, surveying a representative sample of Europeans.[11] The results show that most people in the EU would be more at ease working with Christian, atheist, Jewish or Buddhist colleagues than with Muslims.[12] Results varied between Member States, but in some countries with very small proportions of Muslims, a significant proportion of respondents said that they would not feel comfortable working with them. For example, 27 % of respondents in the **Czech Republic**, where Muslims represent about 0.02 % of the population,[13] expressed such discomfort, as did 37 % in Slovakia, where Muslims constitute about 0.09 % of the population.[14]

The year's terrorist attacks reinforced negative stereotyping of Islam and Muslims as a security threat, partly fuelled by concerns over so-called 'foreign fighters' returning to the EU. Few reliable data are available on this phenomenon (see Table 3.3 for data on numbers of foreign fighters).[15] Independent sources estimated that "between 5–10 per cent of the foreigner [fighters] have died, and that a further 10–30 per cent have left the conflict zone, returning home or being stuck in transit countries."[16]

Concerned about individuals who flee conflict and seek protection in the EU facing extensive scrutiny, the European Parliament spoke out against linking them with terrorism. In its resolution on preventing the radicalisation and recruitment of European citizens by terrorist organisations,[17] it condemned "the use of stereotypes and xenophobic and racist discourse and practices by individuals and collective authorities which, directly or indirectly, link the terrorist attacks to the refugees who are currently fleeing their countries in search of a safer place, escaping from war and acts of violence which occur in their home countries on a daily basis".

> *"While, quite rightly, security services around Europe have indeed been prioritising their work in dealing with the foreign fighters who are returned from Syria and Iraq, what the events in Paris [in January 2015] show is that there is also a threat, clearly, from sleeping networks, dormant networks, that suddenly can reawaken."*
>
> *Rob Wainwright, Director General, Europol, Oral evidence on counter-terrorism in Europe given to the Home Affairs Committee of the United Kingdom, 13 January 2015*

Table 3.3: Estimated number of foreign fighters from EU Member States in Syria and Iraq, by EU Member State

Member State	Foreign fighters in Syria and Iraq
AT*	150
BE**	440
DE**	700
DK*	150
ES*	100
FI*	70
FR**	1,550
IE*	30
IT*	80
NL*	250
SE**	300
UK**	700
Estimated EU total*	4,000

Sources: ** Munich Security Conference (2015), Munich Security Report 2015: Collapsing order, Reluctant Guardians?, p. 38, for AT, DK, ES, FI, IE, IT, NL, and estimated EU total. Estimates based on data available up until December 2014.*

*** Lister, C., Brookings Doha Center (2015), Returning foreign fighters: Criminalization or reintegration?, Foreign Policy at Brookings, p. 2, for BE, DE, FR, SE and UK. Estimates based on data available up until April 2015.*

The conclusions on the renewed Internal Security Strategy for the period 2015–2020 also demonstrate the increased emphasis on security at EU-level following the terrorist attacks of 2015.[18] Adopted by the Council in June 2015, they focus on countering terrorism, radicalisation, recruitment, and financing related to terrorism. The strategy builds on the Commission's Communication on the European Agenda for Security[19] of April 2015, which lists tackling terrorism and preventing radicalisation as one of three priorities.

As FRA highlighted in February 2015, any law enforcement and counter-radicalisation measures must be proportional and legitimate.[20] This can help limit potentially adverse effects of security measures on the rights of individuals and reduce the risk of alienating communities with measures that could be perceived as discriminatory. It would also help ensure the full compliance of security measures with fundamental rights – one of the declared principles of the European Agenda for Security. (Section 3.2.1 further discusses discriminatory ethnic profiling.)

3.2. Countering hate crime effectively: full implementation of relevant EU *acquis* required

The European Commission already stressed in 2014 that the "full and correct legal transposition" of Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia "constitutes a first step towards effectively combating [these phenomena] by means of criminal law in a coherent manner across the EU".[21] In October 2015, the Commission's first annual colloquium on fundamental rights focused on tolerance and respect through preventing and combating antisemitic and anti-Muslim hatred. In its conclusions, the Commission again emphasised that getting all Member States to effectively transpose and implement the framework decision remains a priority.[22]

The European Commission acquired the power to oversee – under the CJEU's judicial scrutiny – the transposition and implementation of framework decisions on 1 December 2014, following the end of a transitory period set by Protocol No 36 to the Lisbon Treaty. Since then, the Commission has held bilateral dialogues with Member States with a view to ensuring the full and correct transposition and implementation of Framework Decision 2008/913/JHA.

In the course of these bilateral exchanges, progress was reported in a number of Member States. Specifically, **Austria**,[23] **Cyprus**,[24] **Romania**[25] and **Spain**[26] all made relevant amendments to their criminal laws in 2015. However, in December, the European Commission began initiating formal inquiries regarding the instrument's transposition and implementation in a number of Member States, with a view to launching infringement proceedings where necessary.

As part of the conclusions of its fundamental rights colloquium, and within its efforts to ensure that national rules on combating hate crime and hate speech are implemented on the ground, the European Commission announced its intention to turn the Experts Group on the Framework Decision on racism and xenophobia – in existence since 2010 – into a High Level Working Group on combating racism, xenophobia and other forms of intolerance. This working group will serve as a platform to facilitate the exchange of best practices, develop guidance for Member States, and step up cooperation with relevant actors, including civil society. The Working Party on hate crime coordinated by FRA contributes to these efforts, focusing on ways to improve the recording and reporting of hate crime. Building on this work, FRA will support the High Level Working Group by collaborating with Member States on developing methodologies to improve the recording of hate crime.

In addition to the Framework Decision on racism and xenophobia – which obliges Member States to criminalise the most serious forms of hate crime and hate speech on grounds of race, colour, religion, descent, and national or ethnic origin – the Victims' Rights Directive (2012/29/EU) provides the EU with a solid set of rules to protect victims of bias-motivated crime.

The Victims' Rights Directive establishes minimum standards on the rights, support, and protection of crime victims. Although applicable to all victims of crime, it recognises the particular vulnerability of victims of hate crime and their right to be protected according to their specific needs. Article 25 is particularly relevant. It requires Member States to ensure that all officials likely to come into contact with victims, such as police officers and court staff, receive appropriate training to enable them to deal with victims in an impartial, respectful, and professional manner (see also Chapter 7 for more information on the Victims' Rights Directive).

In 2015, several Member States adopted strategies, campaigns, and initiatives aimed at encouraging people to report hate crime. Some Member States made changes to improve their recording systems. Other Member States provided law enforcement personnel and judicial authorities with specialised training related to hate crime. For example, in **Finland**[27] and **France**,[28] information campaigns were launched in cooperation with national human rights bodies and civil society organisations. Public authorities – such as the police in **Scotland (UK)**[29] and the Ministry of the Interior in **Spain**[30] – also launched such campaigns.

In **France**, the Public Defender of Rights – supported by the Inter-ministerial Delegation Against Racism and Antisemitism and about 40 other partners from private and public companies, NGOs, and local governments – launched a campaign to mobilise against racism, targeting victims and witnesses of racist incidents. In the **Czech Republic**,[31] **Denmark**,[32] **France**,[33] **Ireland**,[34] **Italy**,[35] **Luxembourg**,[36] the **Netherlands**,[37] **Spain**[38] and **Sweden**,[39] national public campaigns and/or information websites were launched on living together without prejudice, racism and xenophobia; on increasing the reporting of racist and discriminatory incidents; and on victim support. In **Germany**, an agreement was reached with social media companies. The agreement entails measures and practices for swiftly reviewing and removing illegal racist and xenophobic hate speech on social media platforms.[40]

Professionals working in the field of access to justice for hate crime victims believe that the police and the

judiciary need to take hate crimes more seriously, data collected by FRA show.[41]

FRA interviewed police and other law enforcement officers, public prosecutors and judges from criminal courts, experts working for victim support services, and representatives of civil society organisations. The results indicate that professionals believe that many police officers and judicial staff do not fully understand what hate crime constitutes and often lack the commitment necessary to identify hate crimes and prosecute and sentence offenders.

Awareness-raising and specialised training for relevant staff can help address such a lack of understanding or commitment. This was provided in a number of Member States in 2015: in the **Czech Republic**, on victims of crime;[42] in **Bulgaria**[43] and **Italy**,[44] on hate crime generally; on racist crime in **Bulgaria**,[45] **Cyprus**[46] and **France**;[47] and on recognising and dealing with cyber-hate in **Slovakia**.[48]

Promising practice

Developing an EU model of good practice to tackle hate crime

The project *Good Practice Plus* is developing an EU model of good practice to tackle racial and religious hate crime and hate speech and to promote effective reporting systems on hate crime. It promotes measures to build the capacity of law enforcement officials, prosecutors and personnel of victim support services; awareness-raising programmes; and efforts to empower ethnic minority communities. The project aims to improve the position of hate crime victims, provide them with support, and ensure access to justice for victims of racism and hate speech. The project is a partnership between the Northern Ireland Council for Ethnic Minorities, the Police Service of Northern Ireland, Migrant Centre NI and Finland's Ministry of the Interior.

Seven other countries are formally engaged with the project: Belgium, the Czech Republic, Estonia, Greece, Ireland, Italy, and the Netherlands. The European Commission co-founded the project.

For more information, see: http://goodpracticeplus.squarespace.com/

In other Member States, such as **Romania**[49] and **Poland**,[50] representatives of the judiciary were trained in investigating hate crime cases; in **Denmark**, training focused on relevant sections of the criminal code.[51] In **Germany**, the Federal Anti-Discrimination Agency published a legal opinion on the effective prosecution of hate crime,[52] interpreting the terminology and existing legal provisions on hate crime in Germany and proposing relevant legislative amendments for prosecuting hate crime. In **Spain**, a protocol for law enforcement agencies to counter hate crimes and discrimination entered into force in January 2015. This protocol contains guidelines on how to deal with victims to guarantee their protection and assistance and on how to deal with hate crimes committed on the internet and in sport.[53]

Two multi-year strategic documents adopted by the government of **Slovakia** in 2015 address the issue of hate crime in the broader framework of countering racism and extremism.[54] In **France**, the plan to fight racism and antisemitism (2015–2017) contains 40 measures that aim to punish racist and/or antisemitic offences; protect victims; increase citizens' awareness through education and culture; fight hate speech on the internet; and mobilise society as a whole. Relevant European and national stakeholders will regularly assess the measures' implementation and adequacy.[55] Also in **France**, a framework partnership between the Ministry of Justice and the Holocaust Memorial will allow for citizenship training courses for racist or antisemitic offenders.[56] Following a recommendation issued by ECRI in its latest report, the **Greek** Ministry of Justice, Transparency and Human Rights set up the National Council against Racism and Intolerance; it will mainly plan the implementation of policies on preventing and combating racism and intolerance and monitor the application of anti-racism and intolerance legislation.[57]

Better recognition of hate crime can also improve the recording of such crime. The classification of Member States based on official data collection mechanisms pertaining to hate crime did not change in 2015. This means that data are still not comparable between Member States and that large gaps in data collection remain across the EU.[58] Some Member States did, however, introduce changes that could lead to improved recording of hate crime. This is particularly the case in **Greece**,[59] **Hungary**[60] and **Portugal**,[61] which instituted working groups on hate crime that represent various stakeholders. The working groups aim to develop a common approach to recording hate crime incidents among these stakeholders and to ensure more efficient information exchanges between them.

Other Member States provided for the registering of a broader range of bias motivations underlying hate crimes – such as racism in **Estonia**;[62] anti-Muslim hatred in the **United Kingdom**;[63] and racism, homophobia, anti-Traveller prejudice, ageism, bias against people with disabilities, sectarianism, anti-Roma hatred, Islamophobia, antisemitism, transphobia, and gender prejudice in **Ireland**.[64] **Poland** introduced a system to flag hate crimes in the police database, which makes it possible to identify hate crimes regardless of an offence's legal qualification.[65]

3.2.1. Courts confront racist and related crime

In *Balázs v. Hungary* (No. 15529/12), the ECtHR found that state authorities failed to effectively investigate a racist attack against a person of Roma origin. The court reiterated that offences against members of particularly vulnerable population groups require vigorous investigation and found – by six votes to one – a violation of Article 14 (prohibition of discrimination) read in conjunction with Article 3 (prohibition of torture, inhuman and degrading treatment) of the ECHR. It ordered **Hungary** to pay EUR 10,000 in damages to the applicant. Pursuant to Article 43(1) of the ECHR, the government of Hungary requested the judgement's referral to the court's Grand Chamber.

The ECtHR also issued a decision relating to hate speech. In *M'Bala M'Bala v. France* (No. 25239/13), it held that a comedian's stand-up performance – which promoted hatred, antisemitism, and Holocaust denial – could not be regarded as entertainment, but instead was an expression of an ideology that runs counter to values of the ECHR, namely justice and peace. The court therefore ruled that the applicant's performance was not entitled to the protection of Article 10 of the ECHR, which guarantees freedom of expression.[66]

"When investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent State's obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not absolute. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence."

ECtHR, Balázs v. Hungary *(No. 15529/12), 20 October 2015*

At national level, in a case concerning **France**,[67] the Court of Appeal of Cayenne reversed a 2014 judgment[68] regarding a member of the *Front National* movement.[69] **Austria**'s Supreme Court issued a landmark decision, holding that using the motive behind a crime of incitement as an aggravating circumstance in sentencing does not violate the prohibition of double jeopardy. The case involved an individual convicted of incitement to hatred against Jews and Israeli citizens under section 283 (2) of the Criminal Code. In the judgment, a stronger sentence had been applied because of the racist motive underlying the crime.[70]

3.2.2. Targeting discriminatory attitudes among law enforcement to increase reporting of hate crime

FRA research shows that practitioners in the field of access to justice for hate crime victims believe that many people do not report hate crimes because they feel the police would not treat them sympathetically.[71] They stress that it is necessary to increase victims' trust in the police, with many emphasising that measures to tackle discriminatory attitudes among the police are essential. This is particularly relevant in the context of discriminatory ethnic profiling, an unlawful[72] and inefficient practice that can undermine social cohesion because it makes people lose trust in law enforcement. Nevertheless, this practice persists in several EU Member States.

In **France**, the Paris Court of Appeal decided in favour of five out of 13 claimants who filed a complaint against police identity checks, claiming they were stopped and searched solely based on their skin colour and presumed ethnic origin. One of the successful claimants presented as evidence witness testimony showing that all the persons who were stopped and searched were young and of African or Arab origin. The court held that, according to international standards set by the International Convention on the Elimination of All Forms of Racial Discrimination and Article 13 of the ECHR, such a discriminatory practice in itself constitutes "serious misconduct". The court ordered the state to pay damages of €1,500 to each successful claimant.[73] The French government appealed the decision in October. The unsuccessful claimants had already filed an appeal in cassation, so the government argued that, to achieve a strong precedent with the case, all claims should be reviewed by the Court of Cassation, including those that were successful.[74]

In its report on **France**, the United Nations Committee on the Elimination of Racial Discrimination (CERD) called on the authorities to "establish sufficient guarantees to ensure that the practical application of anti-terrorism measures does not interfere with the exercise of Convention rights, particularly those relating to racial or ethnic profiling".[75] In its report on the **Netherlands**, CERD called on the authorities to adopt the necessary measures to ensure that stop and search powers are not exercised in a discriminatory manner.[76] CERD also called on the **German** authorities to amend or repeal section 22 (1) of the Federal Police Act, which, for the purpose of controlling immigration, enables police to stop and question persons in railway stations, trains and airports; demand their identity documents; and

inspect objects in their possession.[77] Similarly, the Council of Europe Commissioner for Human Rights expressed concern regarding reports about "racial profiling practices among the German police".[78]

The **United Kingdom** is the only Member State that systematically collects and publishes data on police stops disaggregated by ethnicity. These data show that, in 2015, black people were more likely to be stopped and searched than any other ethnic group. In England and Wales as a whole, 48 % of those searched under section 60 of the Criminal Justice and Public Order Act 1994 in the year ending on 31 March 2014 were white; 29 % were black. In comparison, in the year ending on 31 March 2013, 41 % were white and 36 % were black.[79] Commenting in response to stop and search figures published by the UK police, the spokesperson of the Equality and Human Rights Commission (EHRC) stressed that "concerted efforts by the Commission and the police service have resulted in some valuable improvements but these figures show there is still a long way to go".[80]

Also in the **United Kingdom**, the College of Policing announced that it would be launching a new Stop and Search Pilot.[81] The pilot will deliver training, designed by the College of Policing in partnership with the EHRC, to: improve the quality and recording of 'reasonable grounds'; improve the quality of police/public encounters; and address the effects of unconscious bias, particularly of police officers towards persons of minority ethnic backgrounds when exercising their powers of stop and search. Approximately 1,320 officers across six forces have been selected to take part in the pilot. To test the effects of the training, half of the selected officers will receive the training and half will not. The results of the trial will be published, following peer review, in June 2016.

Meanwhile, ECRI recommended that the **Austrian** Ombudsman Board use its powers to investigate allegations of racial profiling and misconduct towards persons with migrant backgrounds by police officers.[82] ECRI also called on the **Greek** authorities to instruct police officers to refrain from racial profiling during stop and search operations and to ensure a respectful tone and behaviour towards all persons stopped.[83] ECRI[84] and the UN special rapporteur on contemporary forms of racism[85] stressed that people of African origin are more frequently stopped and searched by the police than white people. Similarly, the UN Working Group on People of African Descent expressed concerns about racial profiling of Africans and black people in **Sweden**.[86]

Several Member States took measures and initiatives to raise human rights awareness among law enforcement officials. Topics covered included legislation in force to counter racism and ethnic discrimination and policing diverse societies. The **Bulgarian** police, for example, implemented measures against racism and xenophobia in compliance with the annual action plan of the Ministry of the Interior's Permanent Commission on Human Rights and Police Ethics. The action plan for 2015 includes a separate section with measures on human rights in the context of an increased flow of immigrants and refugees, and measures against discrimination and hate crime.[87]

The **Estonian** Academy of Security Sciences started providing training to the Border Guard Board and police officers in 2015. The training focused on multiculturalism, as well as on different habits and customs of people with different cultural backgrounds and origins. The training aims to build relations and partnerships with local communities and to use community policing measures to prevent radicalisation at its early stages.[88]In **Ireland**, Garda Ethnic Liaison Officers (ELOs) have been appointed to work with minority communities at local level throughout the country. These officers, combined with the Garda Racial Intercultural and Diversity Office (GRIDO), are intended to play a key role in liaising with minority groups and to work in partnership to encourage tolerance, respect and understanding within communities, with the aim of preventing hate crime and racist crime.[89]

Similarly, in the **Czech Republic**, the police project 'Introduction of police specialists for police work with the Roma minority in socially excluded areas' aims to increase trust between the police and Roma living in socially isolated localities. This should aid conflict prevention and lead to more effective policing.[90]

Promising practice

Police training on matters of discrimination and profiling

The Interfederal Centre for Equal Opportunities is the **Belgian** equality body. In collaboration with the Institute for Equality of Men and Women and the NGOs Çavaria and Transgender Infopoint, it organises training sessions designed for police officers on matters of discrimination and hate crime. In 2015, the centre trained 40 police officers in Flanders. Once trained, police officers become the reference persons in matters of hate crimes and discrimination within their police districts. In 2016, training sessions on combating racial profiling and hate crime will take place in police academies of the French-speaking community.

For more information, see: Belgische Kamer van volksvertegenwoordigers/Chambre des représentants de Belgique (2015), Schriftelijke vragen en antwoorden/Questions et réponses écrites

In a letter to the House of Representatives, the **Dutch** Minister of Security and Justice announced in

November that the police had laid down the final policy framework for diversity. Entitled *The power of difference*,[91] it sets four goals: strengthening ties between the police and society; improving the way the police deals with discrimination in society; a more inclusive work culture; and a more diverse workforce.[92]

3.3. Tackling discrimination by strengthening implementation of the Racial Equality Directive

The European Commission already indicated in 2014 that increasing awareness of existing protection and ensuring "better practical implementation and application" of the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC) were a major challenge.[93] The Commission continued to closely monitor the implementation of the Racial Equality Directive in 2015, initiating and continuing infringement proceedings against Member States found to be in breach of its provisions.

In April, the European Commission initiated proceedings against **Slovakia**, alleging discrimination against Roma children in the educational context, both in terms of legislation and practice. The allegations targeted both mainstream education and special education for children with mental disabilities, since disproportionately high numbers of Roma children are systematically misdiagnosed as mentally disabled and attend special schools and classes for children with mental disabilities.[94] In addition, the Council of the European Union called on Slovak authorities to "increase the participation of Roma children in mainstream education and in high-quality early childhood education".[95] In June, the Slovak Republic adopted amendments to its Education Act to address issues in the legislation.

The European Commission pursued similar infringement proceedings with respect to the Race Equality Directive against the **Czech Republic** in 2014, also alleging discrimination against Roma children in educational legislation and practice because of the disproportionately high numbers of Roma children systematically misdiagnosed as mentally disabled and placed into special schools for children with learning difficulties.[96] In May 2015, the Council of the European Union called on the Czech Republic to "ensure adequate training for teachers, support poorly performing schools and take measures to increase participation among disadvantaged children, including Roma".[97] The Czech Republic introduced changes to its Education Act to address issues in the legislation in March 2015. The amendment, which passed its first reading on 27 October, provides a number of support measures – including an obligatory pre-school year from September 2016 onwards and a guarantee of kindergarten places for all three-year-old children by 2018.[98] In November, the European Commissioner for Justice, Consumers and Gender Equality voiced her appreciation for the steps undertaken by the Czech Ministry of Education in the field of inclusive education[99] (see Chapter 4 for further information on Roma issues).

The European Commission also very closely monitors the setting up of equality bodies in EU Member States. Pursuant to Article 13(2) of the Racial Equality Directive, these bodies should be able to provide independent assistance to victims of discrimination. In that respect, the Commission has launched infringement proceedings against **Slovenia** for failing to set up an independent equality body able to provide efficient assistance to victims of discrimination[100] and against **Belgium** for failing to set up at all political levels an equality body competent for gender matters. Meanwhile, the Commission discontinued infringement proceedings[101] against **Finland** in May, following adoption of the new Non-Discrimination Act. The new law, which entered into force in early 2015, replaced the former equality body – the Ombudsman for Minorities – with the Non-Discrimination Ombudsman. The law entrusts the new equality body with relevant tasks in the field of employment, in compliance with Article 13 of the Racial Equality Directive.[102]

Strengthening the powers of equality bodies contributes to more effective implementation of the Racial Equality Directive. A number of Member States took action in this regard. For example, in December, the **Danish** parliament amended the Act on the Board of Equal Treatment,[103] allowing the equality body (the Danish Institute of Human Rights) to bring cases before the Equality Board if they are of general public interest. In **Estonia**, the Office of the Gender Equality and Equal Treatment Commissioner amended its procedural rules to prioritise cases of victims who claim discrimination on grounds of racial, xenophobic or related intolerance.[104] **Finland**'s new Non-Discrimination Act also puts the Non-Discrimination Ombudsman in charge of a wider range of discrimination grounds, including age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation, and other personal characteristics.[105]

The 2015 Eurobarometer on discrimination shows that 45 % of respondents say that they would know their rights should they fall victim to discrimination or harassment – an eight-point increase since 2012. Meanwhile, 47 % answered that they would not know their rights, one percentage point fewer than the previous year.[106]

A number of equality bodies sought to raise awareness of anti-discrimination legislation by developing

information and guidance documents. In **Belgium**, in light of persisting ethnic discrimination in the housing sector, the Inter-federal Centre for Equal Opportunities released guidelines for landlords and industry professionals, listing the criteria to be used in tenant selection to comply with anti-discrimination legislation.[107] The **German** Federal Anti-Discrimination Agency published a guide to assist work councils and labour unions in dealing with ethnic discrimination and racism at work, providing legal and practical advice on how to combat and prevent ethnic and religious discrimination.[108] It also published a manual on legal discrimination protection that sets out the possible legal steps to be taken in discrimination cases. The manual provides legal guidance to lawyers, counsellors, advisers, and people who are victims of discrimination on various grounds, including race and ethnicity.[109] **Finland** adopted a non-discrimination planning guide for preventing employment discrimination on ethnic grounds in the private sector.[110]

Promising practice

Guidance on racial discrimination at the workplace

In August 2015, the Advisory, Conciliation and Arbitration Service (ACAS) – an independent statutory body in the **United Kingdom** – issued guidance on *Race discrimination: Key points for the workplace*. The guidance targets employers, managers, human resources personnel, and trade union representatives and provides them with tools to identify how race discrimination can occur in the workplace, how to deal with it, and how to reduce its occurrence. It covers recruitment, pay, terms and conditions of employment, promotion, training, and dismissal, and lays out the obligations under the Equality Act 2010. In 2016, ACAS intends to publish similar guidance for each of the nine protected characteristics under the Equality Act 2010.

For more information, see: ACAS (2015), Race discrimination: Key points for the workplace

The Racial Equality Directive requires Member States to provide effective, proportionate, and dissuasive sanctions in cases of infringement of the principles defined in the directive. In its 2014 report on the application of the equality directives, the European Commission raised concerns regarding "the availability of remedies in practice and whether sanctions that are imposed in concrete cases comply fully with the [directives'] requirements", noting that "national courts appear to have a tendency to apply the lower scale of sanctions provided for by law and in terms of the level and amount of compensation awarded."[111]

This echoes FRA's findings on access to justice in cases of discrimination, which show that "compensation in discrimination cases is very often too low to be dissuasive" and that "generally the range of remedies available did not always reflect complainants' aspirations".[112] Research conducted by the European Network of Equality Bodies (Equinet) stresses the key role of equality bodies in making sure that sanctions and remedies in discrimination cases are effective, dissuasive, and proportional. The Equinet analysis shows that equality bodies are competent to issue sanctions and recommendations in several Member States, including **Belgium**, **Bulgaria**, **Cyprus**, **Denmark**, **Finland**, **France**, **Hungary**, **Latvia**, **Lithuania**, **Malta**, **Portugal** and **Romania**. The report also shows that the judiciary in some Member States could apply a wide set of sanctioning options, but that these remain unused or underused because judges lack knowledge or are reluctant to apply sanctions that are not common in their national legal systems. Equinet therefore calls on the equality bodies "to motivate judges to apply those sanctions, which are available in law, also in practice."[113]

The European Commission's report on the application of the equality directives also stressed that "legislation alone is not enough to ensure full equality" and that "appropriate policy action" is also needed.[114] In this respect, a number of Member States adopted policies to support the effective implementation of the Racial Equality Directive in 2015.

In **Belgium**, the Minister for Equal Opportunities of the Wallonia–Brussels Federation adopted an Antidiscrimination Plan consisting of 53 anti-discriminatory measures.[115] The plan aims to address discrimination in compulsory education, higher education, media and social networks, the youth sector, sport, the public sector, and in connection with equal opportunities. The **French** Minister for Labour presented a 'Programme to combat discrimination in recruitment and employment', which focuses on four themes: discrimination at the time of recruitment, discrimination in employment, awareness raising/training, and sharing good practices.[116]

The **Italian** Ministry of Labour and Social Policies adopted a National Plan against Racism, Xenophobia and Intolerance. It aims to monitor and support the implementation of the racial and employment equality directives by collecting data on labour discrimination, promoting diversity management policies, and taking measures to combat discrimination in the private sector.[117]

In **Lithuania**, the Inter-institutional Action Plan for the Promotion of Non-discrimination (2015–2020) aims to counter discrimination and promote respect. Its measures include public awareness-raising campaigns and training for various professional groups – such as employers and journalists – and disseminating

information about the activities of the Office of Equal Opportunities Ombudsman.[118]

Tackling ethnic discrimination is part of the **Maltese** framework document *Towards a National Migrant Integration Strategy 2015–2020*, which deals with integration of third-country nationals.[119] In the **United Kingdom**, the Racial Equality Strategy 2015–2025 for Northern Ireland aims to tackle racial inequalities and open up opportunity for all, eradicate racism and hate crime, and promote good race relations and social cohesion.[120]

3.3.1. Courts address ethnic and racial discrimination

EU and national case law in 2015 analysed key concepts of the Racial Equality Directive, including the principle of indirect discrimination by association and the distinction between direct and indirect discrimination.

The CJEU's landmark judgment in *CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia* (C-83/14) clarified the interpretation of key concepts of the Racial Equality Directive.[121] The case – the first CJEU decision on discrimination against the Roma –challenged the business practice of a Bulgarian electricity supply company. In neighbourhoods with a predominantly Roma population, the company installed electricity meters at a height of 6 metres, whereas it usually placed the meters at the more convenient height of 1.7 metres. The company justified this policy by citing the unusual amount of tampering that allegedly occurred in neighbourhoods with large Roma populations.

The claimant – a Bulgarian national of non-Roma origin – owned and operated a grocery store in a neighbourhood in which meters were installed at a height of 6 metres. Although not herself of Roma origin, the claimant brought a claim before the Bulgarian Anti-Discrimination Commission (*Komisia za zashtita ot dikriminatsia*, KZD), arguing that she too suffered discrimination because of this practice. The CJEU held that equal treatment also applies to individuals who, although not themselves a member of the ethnic group concerned, suffer – together with the former – a disadvantage on account of discrimination. The judgement is considered significant for a variety of reasons. Besides clarifying that the principle of associative discrimination also applies to indirect discrimination cases, it offers new perspectives on the interpretation of the Racial Equality Directive concerning, among others, the directive's personal scope of application, certain aspects of its material scope, and the distinction between direct and indirect discrimination.[122]

In the **Czech Republic**, the Constitutional Court deemed improper the Regional Court of Prague's reasoning in its acquittal of Kladno city authorities regarding the assignment of municipal flats to Roma in a socially isolated area. It directed the regional court to consider indirect discrimination.[123]

In **Belgium**, the Brussels Court of Appeal found employment agencies guilty of using discriminatory references during recruitment procedures at the request of clients who did not wish to hire people of foreign origin.[124] The companies' staff set up on their internal computer systems separate lists for Belgians and for people of foreign origin. The Belgians were systematically encoded with the label "BBB" ("*Blanc, Bleu, Belge*"). The NGO SOS Racisme and the trade union FGTB claimed discrimination, arguing that the companies violated several provisions of the Racial Equality Directive as implemented in national law. The court found that, under Article 1384 of the Civil Code, the employment agencies were responsible for the acts of their staff, who had used the code BBB with a racial and ethnic connotation. The court concluded in regard to damages that "a purely symbolic compensation would not meet the requirements of an effective transposition of EU law into national law" and ordered the employment agencies to pay compensation of €25,000 to each claimant.

In May 2015, the Central London County Court held that JD Wetherspoon, one of the largest **UK** pub chains, discriminated against Irish Travellers by refusing to serve them at a London branch. The incident took place at a pub close to the location at which the annual Traveller Movement Conference was taking place. Some, but not all, of the group refused entry were Irish Travellers or of Roma origin. Nineteen claims of racial discrimination were brought against the pub chain in *Traveller Movement and others v. JD Wetherspoon*.[125] One of the claims was a group claim by the Traveller Movement, a charity that promotes the interests of Irish Travellers and Roma,[126] as it can be considered "a person" under the Equality Act 2010. The court found in favour of nine of the claims, including the group claim by the Traveller Movement. The successful claims included some by individuals who were not Irish Travellers and not of Roma origin, confirming that discrimination by association can also be justiciable. JD Wetherspoon was ordered to pay GBP 3,000 in damages to each of the claimants identified as having been a victim of racial and ethnic discrimination.

Also in the **United Kingdom**, in April 2015, the Wiltshire Police accepted a judgement of the Employment Tribunal, which found it had discriminated against and harassed an officer because of his ethnicity.[127] The police issued a statement saying that it would learn lessons from the tribunal's findings and urging people in the black and ethnic minority community not to be discouraged from joining the force.[128]

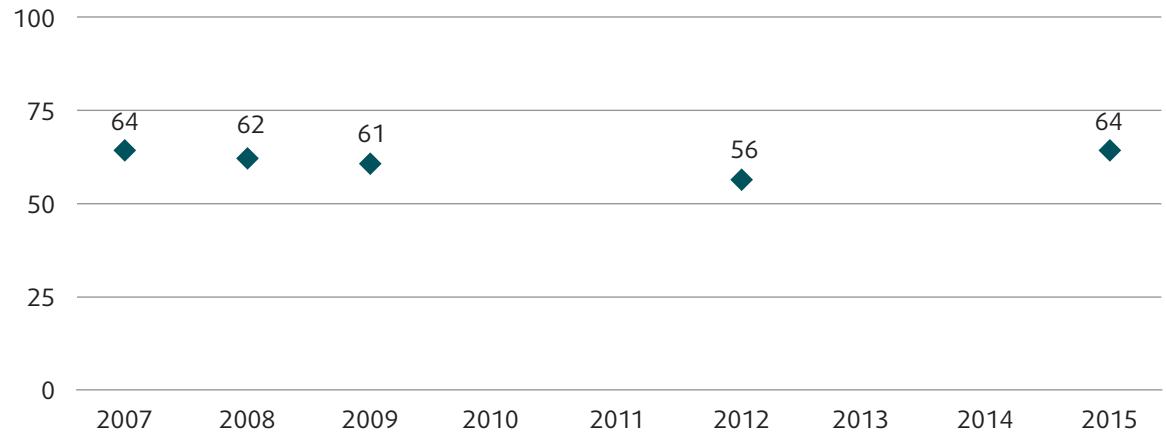
3.4. More data needed to effectively counter ethnic discrimination

Surveys on experiences of discrimination, as well as on attitudes and opinions, are a useful tool to inform policymakers about the prevalence and types of discriminatory practices, prejudices, and stereotypes within the general population. Findings on changes over time can serve as an early warning system for policymakers. The Eurobarometer provides data concerning the general population's perceptions of discrimination over the last eight years. Of the six grounds of discrimination covered in the surveys (ethnic origin, age, disability, sexual orientation, gender, and religion or belief), the majority of Europeans perceive discrimination on the ground of ethnic origin as the most widespread. (See Chapter 2 for more on the 2015 special Eurobarometer on discrimination.) As Figure 3.1 illustrates, almost two in three Europeans perceive ethnic discrimination as widespread in the EU.

Eurobarometer surveys are conducted on a sample of the general population and can therefore include only a very small number of respondents with a minority background. FRA's European Union Minorities and Discrimination (EU-MIDIS) and Roma surveys, on the other hand, are conducted on samples of respondents with different ethnic minority or immigrant backgrounds across the EU, and deal with experiences of discrimination, criminal victimisation, and rights awareness. By conducting similar surveys at national level, Member States could document the situation of their minority groups and assess the progress and impact of their policies on the ground.

Formulating policies to effectively target ethnic discrimination requires reliable and comparable data, including data disaggregated by self-identified ethnicity. FRA's opinion on the implementation of the equality directives shows that only a few Member States collect and publish disaggregated data on the number of cases on discrimination reported and taken to court.[129] The 2015 Eurobarometer on discrimination shows, however, that "a large majority of respondents expressed support for providing personal details on an anonymous basis [...] on their ethnicity (72%), if it would help combat discrimination in their country."[130] This confirms FRA's findings in EU-MIDIS I, which showed that 65 % of respondents said they would be willing to provide information about their ethnicity on an anonymous basis as part of a census if doing so could help combat discrimination.[131]

Figure 3.1 Perception of the extent of ethnic discrimination, average across the EU-28, 2007–2015 (%)



Notes: *2007: except for Bulgaria, Croatia and Romania*
2008, 2009 and 2012: except for Croatia
2010, 2011, 2013 and 2014: no data available

Question: *QC1.1 For each of the following types of discrimination, could you please tell me whether, in your opinion, it is very widespread, fairly widespread, fairly rare or very rare in (OUR COUNTRY)? Discrimination on the basis of...*

Sources: *European Commission,* Special Eurobarometer 263 *(2007),* Special Eurobarometer 296 *(2008),* Special Eurobarometer 317 *(2009),* Special Eurobarometer 393 *(2012), and* Special Eurobarometer 437 *(2015); and FRA.*

EU-MIDIS II: assessing progress

In 2015, FRA launched the second wave of the European Union Minorities and Discrimination Survey (EU-MIDIS II) to assess progress made over time regarding the actual impact of EU and national anti-discrimination and equality legislation and policies on people's lives. EU-MIDIS II is conducted in all 28 EU Member States and aims to achieve a total sample size of 25,200 randomly selected respondents from different ethnic minority or immigrant backgrounds across the EU, covering experiences of discrimination, criminal victimisation, and rights awareness. In addition, it collects data on socio-economic conditions and issues related to social inclusion and participation. The survey's results will provide evidence to guide policymakers in developing more targeted legal and policy responses to address racism and hate crime, and can also support the advocacy work of civil society organisations. The first EU-MIDIS II results are expected in the second half of 2016; further outcomes, as well as data visualisation on the FRA webpage, will follow in 2017.

For more information, see: FRA (2015), EU-MIDIS II: European Union minorities and discrimination survey

FRA opinions

Looking at manifestations of racism and xenophobia, 2015 was marked by the aftermath of terrorist attacks attributed to the Islamic State, as well as by the arrival in greater numbers of asylum seekers and migrants from Muslim countries. Available evidence suggests that Member States that have seen the highest numbers of arrivals are the most likely to be faced with spikes in racist and xenophobic incidents, which will call for the attention of law enforcement agencies, criminal justice systems and policymakers. This is particularly relevant for the implementation of Article 1 of the EU Framework Decision on Racism and Xenophobia on measures Member States shall take to make intentional racist and xenophobic conduct punishable. Article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination also lays down this obligation, providing for the convention's State parties to declare an offence punishable by law for incitement to racial discrimination, as well as acts of violence against any race or group of persons.

FRA opinion

To address phenomena of racism and xenophobia, it is FRA's opinion that EU Member States should ensure that any case of alleged hate crime or hate speech is effectively investigated, prosecuted and tried in accordance with applicable national provisions and, where relevant, in compliance with the provisions of the Framework Decision on Racism and Xenophobia, European and international human rights obligations, as well as relevant ECtHR case law on hate speech.

Systematically collected and disaggregated data on incidents of ethnic discrimination, and hate crime and hate speech can contribute to better implementing the Racial Equality Directive and the Framework Decision on Racism and Xenophobia. Such data also allow the development of targeted policy responses to counter ethnic discrimination and hate crime. Case law of the European Court of Human Rights (ECtHR) and national courts from 2015 further demonstrates that such data can serve as evidence to prove ethnic discrimination and racist motivation, and hold perpetrators to account. Under Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, EU Member States have accepted the obligation to ensure effective protection of and remedy for victims. Persistent gaps, nevertheless, remain in how EU Member States record incidents of ethnic discrimination and racist crime.

FRA opinion

To develop effective legal and policy responses that are evidence based, it is FRA's opinion that EU Member States should make efforts to collect data on ethnic discrimination and hate crime in a way that renders them comparable between countries. FRA will continue working with Member States on improving reporting and recording of ethnic discrimination or hate crime incidents. Data collected should include different bias motivations, as well as other characteristics such as incidents' locations and anonymised information on victims and perpetrators. The effectiveness of such systems could be regularly reviewed and enhanced to improve victims' opportunities to seek redress. Aggregate statistical data, from the investigation to the sentencing stage of the criminal justice system, could be recorded and made publicly available.

Although the Framework Decision on Racism and Xenophobia and the Racial Equality Directive are in force in all EU Member States, members of minority groups as well as migrants and refugees faced racism and ethnic discrimination in 2015, namely in education, employment and access to services, including housing. Members of ethnic minority groups also faced discriminatory ethnic profiling in 2015, despite this practice running counter to the International Convention on the Elimination of All Forms of Racial Discrimination and being unlawful under the European Convention on Human Rights (Article 14), and the general principle of non-discrimination as interpreted in the ECtHR case law. Article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination also obliges EU Member States to ensure effective education to fight prejudices that lead to racial discrimination.

FRA opinion

To make efforts to tackle discrimination more effectively, it is FRA's opinion that EU Member States could, for instance, consider raising awareness and providing training opportunities to public officials and professionals, in particular law enforcement officials and criminal justice personnel, as well as teachers, healthcare staff and housing authority staff, employers and employment agencies. Such activities should ensure that they are well informed about anti-discrimination rights and legislation.

Equality bodies in several EU Member States developed information and guidance documents in 2015 to raise awareness of legislation relevant to countering ethnic discrimination. Evidence shows that, despite the legal obligation to disseminate information under Article 10 of the Racial Equality Directive, public awareness remains too low for legislation addressing ethnic discrimination to be invoked often enough.

FRA opinion

To address the persisting low levels of awareness about equality bodies and relevant legislation, it is FRA's opinion that EU Member States could intensify awareness-raising activities about EU and national legislation tackling racism and ethnic discrimination. Such activities should involve statutory and non-statutory bodies such as equality bodies, national human rights institutions, non-governmental organisations (NGOs), trade unions, employers and other groups of professionals.

Evidence from 2015 shows that remedies are insufficiently available in practice and that sanctions in cases of discrimination and hate crime are often too weak to be effective and dissuasive. They thus fall short of the requirements of both the Racial Equality Directive and the Framework Decision on Racism and Xenophobia, as underpinned by Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination. Furthermore, in only a few Member States are equality bodies competent to issue sanctions and recommendations in cases of ethnic discrimination. How far complaint procedures fulfil their role of repairing damage done and acting as a deterrent for perpetrators depends on whether dispute settlement bodies are able to issue effective, proportionate and dissuasive sanctions.

FRA opinion

To improve access to justice, it is FRA's opinion that EU Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of national provisions transposing the Racial Equality Directive and the Framework Decision on Racism and Xenophobia. Member States could also consider broadening the mandate of equality bodies, which are currently not competent to act in a quasi-judicial capacity, by empowering them to issue binding decisions. Furthermore, equality bodies could monitor the enforcement of sanctions issued by courts and specialised tribunals.

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UN & CoE

January

24 February – European Commission against Racism and Intolerance (ECRI) publishes its fifth report on Greece and conclusions on the implementation of a number of priority recommendations made in its 2012 country reports on Italy and Latvia

February

March

April

7 May – United Nation (UN) Committee against Torture adopts its concluding observations for Romania

8–10 May – Committee on the Elimination of Racial Discrimination (CERD) adopts concluding observations for France

13–15 May – CERD adopts concluding observations for Germany and Denmark, respectively

May

9 June – ECRI issues its fifth monitoring reports on Hungary and Poland

15 June – UN Special Rapporteur on minority issues presents the *Comprehensive study of the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism*

22 June – CoE Commissioner for Human Rights issues his report following a visit to Bulgaria in February

June

9 July 2015 – CoE Ad hoc Committee of Experts on Roma Issues (CAHROM) releases a thematic report on pre-school education for Roma children

9 July – ECRI publishes its annual report 2014

16 July – CoE Commissioner for Human Rights publishes a human rights comment on Roma migrants in Europe

July

10 August – UN Committee against Torture adopts its concluding observations for Slovakia

17 August – UN Human Rights Committee adopts its concluding observations on France

24 August – CERD adopts concluding observations for Czech Republic

26–27 August – CERD adopts concluding observations for the Netherlands

August

September

1 October – CoE Commissioner for Human Rights issues a report following visits to Germany in April and May

13 October – ECRI issues its fifth monitoring reports on Austria, Czech Republic and Estonia

CoE Commissioner for Human Rights issues report following June visit to the Slovak Republic

20 October – In *Balázs v. Hungary* (No. 15529/12), the European Court of Human Rights (ECtHR) holds that the Hungarian authorities failed to effectively investigate a racist attack against a Roma man in 2011, violating Article 14 read in conjunction with Article 3 of the ECHR

October

November

7–8 December – CERD adopts concluding observations for Lithuania

9 December – CERD adopts concluding observations for Slovenia

December

EU

January

February

11 March – European Parliament adopts a resolution on the European Semester for economic policy coordination, focusing on employment and social aspects (2014/2222(INI))

March

15 April – European Parliament adopts a resolution on the occasion of International Roma Day, on anti-Gypsyism in Europe and EU recognition of the memorial day of the Roma genocide during World War II (2015/2615(RSP))

April

May

9 June – European Parliament adopts a resolution on the EU Strategy for equality between women and men post-2015 (2014/2152(INI))

17 June – European Commission issues a Communication on the implementation of the EU Framework for National Roma Integration Strategies 2015

June

16 July – In *CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia* (C-83/14), the Court of Justice of the European Union (CJEU) applies the concept of 'discrimination based on association' to Directive 2000/43 and holds that the principle of equal treatment applies to persons who have suffered a particular disadvantage or less favourable treatment by association with a group

July

August

9 September – European Parliament adopts a resolution on investment for jobs and growth, focusing on promoting economic, social and territorial cohesion in the EU (2014/2245(INI))

9 September – European Parliament adopts a resolution on empowering girls through education in the EU (2014/2250(INI))

September

30 October – European Parliament adopts a resolution on cohesion policy and marginalised communities (2014/2247(INI))

October

November

December

4 Roma integration

Discrimination and anti-Gypsyism continue to affect the lives of many of the EU's estimated six million Roma. Fundamental rights violations hampering Roma integration made headlines in 2015. Several EU Member States thus strengthened the implementation of their national Roma integration strategies (NRISs) by focusing on local-level actions and developing monitoring mechanisms. Member States also increasingly acknowledged the distinct challenges Roma women face. Roma from central and eastern European countries residing in western EU Member States also received attention in 2015, as practices to improve local-level integration of different Roma groups were discussed regarding the right to freedom of movement and the transnational cooperation on integration measures.

4.1. Obstacles to strengthening Roma integration remain

Discrimination and anti-Gypsyism continued to pose challenges to effective Roma integration. The European Commission noted in its *Report on the implementation of the EU Framework for National Roma Integration Strategies 2015* that in many Member States, "especially those with the largest Roma communities and which have been strongly hit by the economic crisis, anti-Gypsyism, far right demonstrations, hate speech and hate crime have been on the rise", adding that "[p]oliticians and public authorities often failed to publicly condemn such negative trends".[1] Debates on free movement and social benefits exacerbated negative stereotyping.

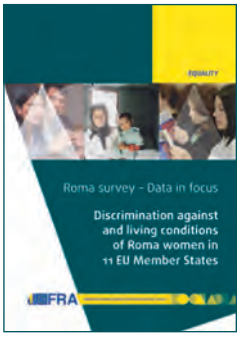
The 2015 Eurobarometer survey on discrimination[2] shows that ethnic origin remains the most prevalent ground of discrimination. Results concerning Roma indicate that anti-Gypsyism is widespread: the percentage of respondents who would feel comfortable working with someone with a minority ethnic origin drops to 63 % for a Roma person, compared with 83 % for a "black" or "Asian" person and 94 % for a "white" person.[3] The proportion of those comfortable with having a son or daughter in a relationship with a Roma person is even lower (45 %).[4] Although the data overall show that respondents' social networks are increasingly diverse across the EU population, the proportion of respondents with Roma friends or acquaintances remains low (18 %)[5] (see also ▶ Chapter 3 for the Eurobarometer survey). Meanwhile, qualitative research conducted by the Roma Matrix project on policy and practice for Roma integration in 10 EU Member States shows that both Roma and non-Roma respondents see anti-Gypsyism as a persistent and pervasive common facet of everyday life

EU-MIDIS II: tracking trends

In 2015, fieldwork activities began for the second wave of FRA's European Union Minorities and Discrimination Survey (EU-MIDIS II) (see also Chapter 3 for more general information on EU-MIDIS II). The survey incorporates the second wave of FRA's Roma-targeted survey. It aims to analyse trends by comparing results with the first EU-MIDIS survey from 2008, as well as with FRA's 2011 Roma survey. It will provide comparable data on four core areas – employment, education, health and housing – as well as on discrimination and criminal victimisation, rights awareness, and other issues. The results will show what progress has been achieved on the ground in the context of implementing the EU Framework for National Roma Integration Strategies in several EU Member States. Roma are surveyed in nine Member States, namely **Bulgaria**, **Croatia**, the **Czech Republic**, **Greece**, **Hungary**, **Portugal**, **Romania**, **Slovakia** and **Spain.** The first results are expected in the second half of 2016.

that inhibits the effective implementation of policy at national, regional and local levels.[6]

The European Parliament is playing an increasingly important role in promoting Roma integration. On International Roma Day, it issued a resolution recognising the Roma genocide during World War II and condemning "utterly and without equivocation all forms of racism and discrimination faced by the Roma".[7] In another resolution adopted in late 2015, the European Parliament drew attention to the need for more effective use of EU funds so that marginalised communities do not remain excluded but become a priority of Europe's cohesion policy instruments. It also calls for action to tackle the social exclusion of Roma and to improve their living conditions.[8]



The European Parliament's resolutions propose several measures to tackle intersectional discrimination. Building on FRA report's on *Discrimination against and living conditions of Roma women in 11 EU Member States*, among other sources, the European Parliament Resolution on the EU Strategy for equality between women and men post-2015 refers explicitly to the particularly worrying situation of Roma women in the EU. The resolution calls for the adoption of a new strategy for women's rights and gender equality in Europe to recognise "the multiple and intersectional forms of discrimination" that certain groups of women face, and for developing specific actions to strengthen the rights of these different groups of women, among them Roma women.[9] The Resolution on empowering girls through education in the EU also calls on Member States "to develop specific programmes to ensure that Roma girls and young women remain in primary, secondary and higher education."[10] Furthermore, it invites Member States "to consider including a gender dimension in National Roma Integration Strategies (NRISs), propose concrete measures aiming at gender mainstreaming and ensure proper monitoring of their implementation."[11]

The European Parliament's resolutions also distinctively recognise particular vulnerabilities that emerge from the intersection of age and ethnic origin. Noting the overrepresentation of Roma among young people not in education, employment or training, the parliament calls for measures to support high-quality job creation.[12] In this respect, children and young people should be prioritised in NRISs and relevant measures and actions to ensure equal access to healthcare, education, services and dignified living conditions.[13]

4.1.1. Housing, education and intra-EU migration pose particular challenges for Member States

Despite various efforts, challenges persist in respect to access to education and poor housing conditions. **France**'s intergovernmental circular on planning and supporting operations to evacuate illegal camps includes actions initiated at local level that are aimed at slum clearance. According to the French inter-ministerial delegation for housing (*Délégation interministérielle à l'hébergement et à l'accès au lodgement – DIHAL*), the 59 local actions financed in 2014 by the dedicated state fund for those actions enabled 2,109 persons living in illegal settlements to access housing or accommodation.[14] At the same time, a study mapping evictions in living areas occupied mostly by Roma reveals that more than 11,000 people were evicted by authorities from over 100 living sites across various regions of France in 2015 – a decrease from 2014.[15] These findings come in the wake of criticism expressed by international treaty bodies, including the UN Committee on the Elimination of Racial Discrimination and the Human Rights Committee, over forced evictions in **France**. The UN High Commissioner for Human Rights expressed concern over an "increasingly apparent systematic national policy to forcibly evict the Roma" and urged Member States, including **France** and **Bulgaria**, to refrain from evictions without providing alternative housing.[16] **France** responded by underlining that decisions to evacuate are made on a case-by-case basis and that solutions for accommodation and housing are proposed whenever possible, depending on local capacities.

ECRI noted that the **Czech Republic** has made little improvement in the areas of education and housing, particularly regarding housing segregation and eviction from town centres.[17] The Council of Europe expressed concerns over deep-rooted anti-Gypsyism after neighbours prevented authorities from providing alternative accommodation to survivors of a fire that broke out in a site near Dublin, **Ireland**. The fire resulted in the death of 10 persons.[18] ECRI also raised concerns about planned evictions of hundreds of Roma families in **Hungary**.[19] The Hungarian authorities took steps to manage these concerns. For example, pursuant to a decision of the Equal Treatment Authority *(Egyenlő Bánásmód Hatóság)*, the municipality of Miskolc will develop an action plan regarding evictions; it will also pay a fine because of its unlawful conduct.[20] Regarding **Italy**, ECRI urged full legal protection and the provision of decent accommodation in the case of any evictions.[21] Forced evictions against Roma were also the subject of a European Parliament hearing on fighting racial discrimination in housing.[22]

School segregation remains a persistent problem in certain Member States, triggering reactions at EU and international level. The European Commission opened

Figure 4.1: Evictions from living areas by local authorities across various regions of France in 2015

	Number of evictions by the authorities	Number of fires	Number of evacuated sites	Some other accommodation offered	Number of persons evicted by the authorities	Number of persons evicted because of fires or other causes	Number evicted
1st quarter 2014	27	9	36	17	2,904	524	3,428
2nd quarter 2014	38	2	40	18	3,756	51	3,807
3rd quarter 2014	41	2	43	21	3,693	74	3,767
4th quarter 2014	32	4	36	15	3,130	317	3,447
Total for 2014	138	17	155	71	13,483	966	14,449
1st quarter 2015	18	2	20	7	1,966	110	2,076
2nd quarter 2015	25	0	25	6	2,776	0	2,776
3rd quarter 2015	47	1	48	11	4,972	100	5,072
4th quarter 2015	21	2	23	5	1,414	200	1,614
Total for 2015	111	5	116	29	11,128	410	11,538

Source: *European Roma Rights Centre and Ligue des droits de l'Homme, 2016*

an infringement procedure in relation to **Slovakia** in 2015, alleging discrimination against Roma children in education, in breach of the Racial Equality Directive.[23] It launched a similar procedure against the **Czech Republic** in 2014[24] (see also Section 4.1.2. and Chapter 3 on racism, xenophobia and related intolerance). In other Member States, such as **Germany**, criticism targeted the placement of children whose mother tongue is not German into separate preparatory classes. CERD expressed concern that early selection for separate educational levels "leads to an overrepresentation of minority students in [the] lower school stratum" and, particularly for Sinti and Roma, "further creates segregation [...] with no real chances of enhancing their education and work."[25]

Roma EU citizens also face particular challenges when exercising the right to freedom of movement. These challenges, and solutions for integrating Roma migrants, were actively discussed in 2015, particularly at events on East–West cooperation in both municipalities of origin and municipalities of destination.[26] Such discussions build on the emphasis of the Council's 2013 Recommendation on effective Roma integration measures in the Member States, which highlights that:

> *"in the context of intra-Union mobility, it is necessary to respect the right to free movement of the citizens of the Union and the conditions for its exercise [...] while also seeking to improve the living conditions of Roma and pursuing measures to promote their economic and social integration in their Member States of origin as well as their Member States of residence."*[27]

Although Roma EU citizens are entitled to specific rights, they often face exclusion and challenges similar to those of third-country nationals in accessing services, education, health care, housing and employment.

Promising practice

Promoting integration at schools

The organisation eduRoma started offering assistance in the process of desegregating a school in Šarišské Michaľany, **Slovakia**, in 2013. The effort followed a regional court decision and was part of a project financed by the Open Society Foundations' Roma Initiative Office and Education Support Program and the EEA grants. The goal was finally accomplished in September 2015, following a wide range of activities at the local level, such as training and other extracurricular activities, with all key stakeholders – teachers, municipality representatives and parents of both Roma and non-Roma children. In parallel, eduRoma engaged in advocacy activities at the central level, especially with the State School Inspection (Štátna školská *inšpekcia*). The organisation has developed a model of desegregation that is sensitive to, and takes into consideration, the particular local context. The approach specifically involves engaging local stakeholders, developing tailor-made plans for a specific community, improving the capacity of teachers, supporting Roma children to achieve better academic performance, and improving interaction between Roma and non-Roma children. It is transferable to other settings in Slovakia and possibly to other Member States.

For more information, see: www.eduroma.sk

Nevertheless, some municipalities have implemented targeted efforts to support and promote the integration of Roma EU citizens from other Member States. This is being done, for example, through language and learning support aid in Vienna, **Austria**;[28] through drop-in day centres providing basic services and health

care in Helsinki, **Finland**;[29] and through information campaigns and training of neighbourhood stewards in Ghent, **Belgium**.[30] In Gothenburg, **Sweden**, support services are provided for vulnerable EU citizens through public partnerships with local NGOs.[31]

The government of **Romania** aproved a protocol of cooperation between the National Agency for Roma *(Agenția Națională pentru Romi)* and the municipality of Milan, with a view to strengthening the social inclusion of Romanian citizens who belong to the Roma minority and live in Italy.[32] The protocol's overall objective is to implement a pilot project aimed at improving the process of inclusion of Romanian citizens of Roma origin in Milan. However, there is limited evidence of effective and targeted activities or strategies in the municipalities of origin to promote reintegration in the case of return or to provide tailored support in cases of circular migration.

4.1.2. European Semester highlights persisting challenges

The European Semester is the EU's annual cycle of economic policy coordination. The Commission analyses Member States' plans for budgetary, macroeconomic and structural reforms in detail and provides them with country-specific recommendations.

In 2015, the Commission referred to Roma integration measures in the country-specific recommendations for five Member States: **Bulgaria**, the **Czech Republic**, **Hungary**, **Romania** and **Slovakia**. It already did so in 2014, and referred to these measures again in 2015 because these countries continued to show insufficient or limited progress in the areas of education and employment for Roma. The recommendations address various measures in the field of education. These include increasing participation in education – for example, in **Bulgaria**,[33] the **Czech Republic**[34] and **Hungary**[35] – and providing adequate training for teachers (in **Hungary**). The recommendations for **Romania**[36] and **Slovakia**[37] include improving access to quality early-childhood education. They also mention the need to strengthen measures to facilitate transitions between different stages of education and to the labour market in **Hungary** (see also Chapter 3).The European Semester Alliance, a coalition of major EU networks, organisations and trade unions, welcomed references to inclusive education for Roma in the country-specific recommendations. However, it noted that "inclusive education is only specifically supported in Hungary, whilst other groups are often solely referred to as disadvantaged, which leaves significant room for interpretation at national level".[38]

The recommendations noted certain improvements (in **Romania** and **Hungary**) on active labour market policies and activation programmes mainly aimed at young people. Nonetheless, they also deemed persistent various issues[39] – such as higher unemployment levels for certain "disadvantaged groups"; high numbers of Roma not in education, employment or training; and longer periods of unemployment among Roma. The Commission therefore called for measures to increase the employability of broader categories, among which Roma are implicitly included.

4.2. Going local: implementing national Roma integration strategies on the ground

Human rights are enforced by 'duty bearers'; at the local level, these are mainly the local authorities. The EU Framework on NRISs and the Council's 2013 recommendation on effective Roma integration measures[40] both stress the importance of the local level and the need to adapt Roma integration efforts to the specific circumstances and needs on the ground. The European Roma Summit in April 2014 paved the way for further focus on the local level; it placed particular emphasis on the role of local and regional authorities, as well as civil society, and argued that these bodies should be able to benefit more from EU funding, so that they have the means to actually transform policy commitments into concrete measures.[41]

The Commission's 2015 report on the implementation of the EU Framework for NRISs[42] recognised the key competences of local-level actors to address challenges – for example, in housing and education – but noted that "the involvement of local authorities in implementation varies widely." The report also noted progress in drawing up, revising and planning local-level action plans in Member States, such as **Bulgaria**, the **Czech Republic**, **Greece**, **Hungary**, **Ireland**, **Italy**, **Poland**, **Romania**, **Slovenia**, **Spain** and **Sweden**. Furthermore, the report recognised that turning national strategies into concrete "action at local level is in an early phase and needs to be supported with sustainable funding, capacity building and full involvement of local authorities and civil society, and robust monitoring to bring about the much needed tangible impact at local level, where the challenges arise."

International organisations continued to implement activities that focused on the potential of the local level. The Council of Europe/European Commission Joint Programme ROMACT[43] continued to be implemented in 2015 in five Member States (**Bulgaria**, **Hungary**, **Italy**, **Romania** and **Slovakia**), with the aim of building up the capacity of local authorities and improving their responsiveness and accountability towards marginalised Roma communities. The project

also complements the Council of Europe/European Commission's ROMED 2,[44] which ran in parallel with ROMACT in 2015; it focuses on mediation and participation of Roma citizens in decision-making processes at local level in their municipalities through the development of Community Action Groups.

"Local and regional authorities have a unique opportunity to coordinate the broad range of services provided to their residents in a rights-based and person-centred way. In fact, they can ensure that the residents' human rights are not only respected but also fulfilled. This means that human rights are brought home in people's everyday lives."

Nils Muižnieks, Council of Europe Commissioner for Human Rights, Speech at the International Implementation Forum for Local and Regional Authorities, 28 May 2015

FRA is aware of the significance of local-level action. Since 2012, its work on Roma integration has included qualitative research through the project Local Engagement for Roma Inclusion (LERI).[45] The project aims to identify, examine and develop ways of improving the design, implementation and monitoring of Roma integration policies and other efforts at the local level, by identifying drivers and barriers and possible ways of overcoming the latter. Better understanding the dynamics of Roma integration efforts at the local level will help to design more effective interventions, make better use of resources, and contribute to more tangible realisation of fundamental rights for Roma. Following a preparatory phase in 2014, the implementation of the fieldwork started in 2015, covering 22 localities across 11 Member States (**Bulgaria**, the **Czech Republic**, **Finland**, **France**, **Greece**, **Hungary**, **Italy**, **Romania**, **Slovakia**, **Spain** and the **United Kingdom**; see Figure 4.2). Local authorities, Roma and non-Roma community members and civil society joined in carrying out participatory needs assessments. On the basis of the identified needs, local project plans outlining small-scale interventions and the design of participatory methodologies were adapted to the local context.

Figure 4.2: Localities covered by FRA's local engagement for Roma inclusion project

Note: *In total, FRA's project covers 22 localities across the EU, namely in: Bulgaria (Pavlikeni; Stara Zagora); the Czech Republic (Brno; Sokolov); Finland (Helsinki; Jyväskylä); France (Lezennes and Lille Metropolitan Area; Strasbourg); Greece (Aghia Varvara; Megara); Hungary (Besence; Mátraverebély); Italy (Bologna; Mantova); Romania (Aiud; Cluj-Napoca); Slovakia (Rakytník; Hrabušice); Spain (Córdoba; Madrid); and the United Kingdom (Glasgow; Medway).*

Source: *FRA, 2015*

4.2.1. Local-level action in national Roma integration strategies

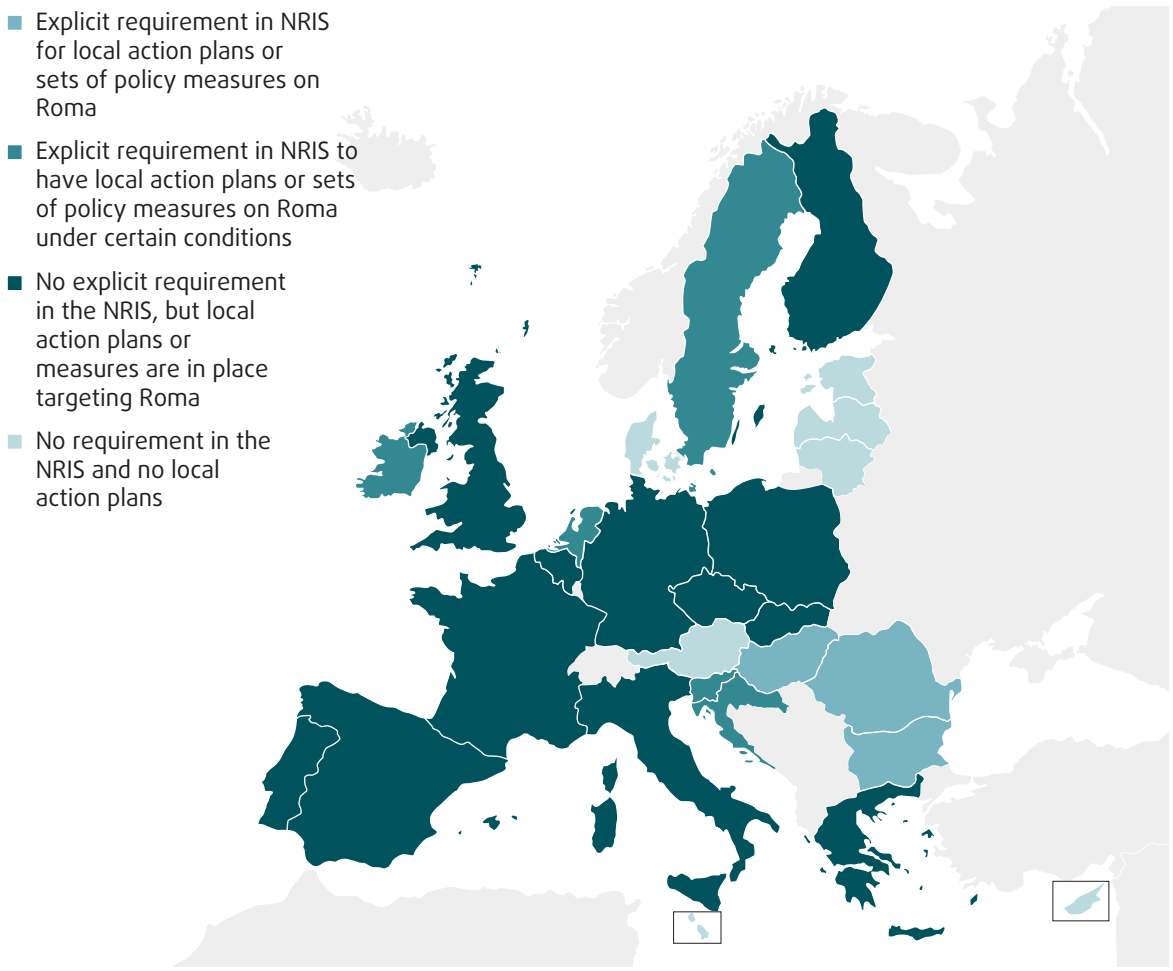
Member States adopted different approaches to implementing their NRISs at local level (Figure 4.3). Some of these include:

- a requirement in the NRIS to put in place local action plans or sets of policy measures at local level that target Roma (specifically, as well as those that address Roma explicitly but not exclusively, i.e. Roma among other groups within a local action plan);
- a requirement in the NRIS to put in place local action plans or sets of policy measures only under certain conditions (e.g. only for municipalities with known Roma populations, only for specific groups of Roma, or only in specific thematic areas);
- no such requirements in the NRIS, but local action plans or measures that target Roma explicitly are in place;
- no requirements in the NRIS and no local action plans.

Information collected by FRA corroborates the findings of the Commission's 2015 report on the implementation of the EU Framework on NRISs, showing that the planning of actions and measures at local level is still at an early phase. As shown in Figure 4.3, several Member States have explicit requirements in their NRISs to put in place local action plans in all localities, targeting Roma exclusively – for example, **Bulgaria** and **Romania**. Nevertheless, not all municipalities across these Member States fulfil these requirements yet. **Hungary**'s NRIS obliges municipalities to have in place a "Local Equal Opportunity Programme" (*Helyi Esélyegyenlőségi Program*, HEP). This programme has a broader focus on vulnerable people and social groups, such as Roma, women, people living in extreme poverty, persons with disabilities, children, and the elderly. **Croatia** and **Slovenia** have the same requirement in their NRISs, but only for localities with Roma populations.

In several Member States, municipalities have put in place local action plans that target Roma specifically, but not exclusively, despite the absence of such

Figure 4.3: Overview of local action plans on Roma in place across EU Member States



Source: *FRA, 2015*

a provision in the NRIS – for example, in the **Czech Republic**, **Italy**, **Spain** and the **United Kingdom**. In the **Czech Republic**, the governmental Agency for Social Inclusion (*Agentura pro sociální začleňování*) is relied upon to cooperate with municipalities, support Roma communities and social inclusion activities, and give support in developing local action plans, even though the agency is not formally accountable for the NRIS.[46] **Italy** set up regional and local boards to implement the NRIS, as well as coordination bodies of regional and local authorities. Only half of the regions approved strategies and set up boards, whereas by 2015 most municipalities had developed local strategies, despite the lack of any formal obligation to do so.[47] In the **United Kingdom**, which has a broad set of mainstream social inclusion measures rather than an NRIS, a recent study showed that 21 local authorities had policies with specific mention of Roma or UK Gypsies and Travellers.[48] The presence of local action plans and strategies in many municipalities despite the lack of any explicit requirements for them shows the potential for further developing local-level actions that may include marginalised populations such as Roma and cater to the specific needs of these populations.

4.2.2. Local action plans: coverage, quality and status of implementation

Both the EU Framework on National Roma Integration Strategies and the Council's 2013 recommendation on effective Roma integration strategies place Roma integration firmly in a human rights context. They cite articles of the Treaty on the European Union, the Charter of Fundamental Rights of the European Union and the Racial Equality Directive (2000/43/EC) that refer to the need to combat social exclusion and discrimination, and they lay down the frameworks for combating discrimination on the grounds of racial or ethnic origin. These articles extend to areas such as education, employment, access to healthcare and housing. Given this, the NRISs and relevant policy measures are expected to address these four key areas in which Member States as duty bearers should fulfil their obligations to ensure fundamental rights and combat discrimination in the context of Roma integration.

Local-level action plans on Roma integration vary in depth, level of detail, appropriateness of measures proposed, and relevance of indicators used to measure progress, according to information collected by FRA. There are differences in local authorities' capacity and familiarity with certain policy areas within the different regions, and between rural and urban local authorities.

In **Hungary**, municipalities must submit a Local Equal Opportunity Programme every five years based on an analysis of the local situation. A governmental body[49] supported the development of the programmes by providing training to the staff of each responsible municipality. In addition, an equal opportunity mentoring network was put in place to help municipality staff in the self-review process (due every second year, with the first review currently ongoing) and the preparation of successive programmes.[50]

Raising awareness about the provisions of the NRIS among local authorities and local decisionmakers is an important factor that has the potential to enhance the measures and actions taken to support the Roma community. In **Portugal**, an increasing number of requests by local governments and partnership networks were submitted to the High Commission for Migrations (*Alto Comissariado para as Migrações, I. P.*, ACM) in 2015, with the aim of improving the understanding and dissemination of the national strategy locally. As a result of these requests, the ACM drew up a set of guidelines.

In Member States where there are clear requirements to include strategies targeted at Roma, or where Roma are explicitly, but not exclusively, included in strategies and policy measures at the local level, there is still variation in how far these requirements have been fulfilled. In **Bulgaria**, all 28 districts had developed and adopted district strategies by 2014, and 184 out of 265 municipalities had adopted updated municipal action plans for 2014–2017.[51] In **Croatia**, five regional self-government units adopted action plans, and one municipal level action plan had been adopted by 2015. In **Hungary**, almost all local municipalities (3,174 out of the total 3,178) had put in place their Local Equal Opportunity Programme.[52]

An important element in the design and implementation of Roma integration measures is explicitly mentioned in the EU Framework on NRISs as well as the Council's 2013 recommendation on such measures. Both documents refer to two of the 2009 Common Basic Principles on Roma inclusion, namely the involvement of civil society and the active participation of Roma themselves. In this regard, despite some progress, the engagement of local communities in the design and monitoring of local-level interventions is still largely uncharted. In 22 municipalities included in FRA's LERI research project (see Section 4.2), the project used different approaches to local engagement in 2015 by applying participatory action research methodology.[53] In bringing together local stakeholders, including Roma, small-scale plans and actions are developed to cater to the real needs and specificities of the local communities. For example, in Besence, **Hungary**, the project brings together relevant local stakeholders to mobilise and motivate community members to contribute to a micro-regional development strategy. In Bologna, **Italy**, the project strengthens the participation of Roma and Sinti groups in a local support group. In Cordoba, **Spain**, the project

supports a participatory process contributing to a strategic plan for Roma integration. In Cluj-Napoca, **Romania**, the project focuses on identifying obstacles and opportunities in local housing policies to make them accessible to socially excluded and marginalised residents, predominantly Roma.

Thematic focus of local action plans

Local action plans usually concern the four core thematic areas of the EU Framework on NRISs: education, employment, health and housing. Additionally, local action plans sometimes set out non-discrimination measures – for example, in **Bulgaria**, **Italy**, **Romania**, and **Slovenia**.

In some Member States, the extent to which local action plans actually cover the areas of the NRIS varies. For example, in **Croatia**, most local action plans cover four to eight areas. Some strategies elaborate particular areas in more detail than others – for example, through measurable objectives. In **Italy**, some local action plans include measurable objectives in terms of reducing school drop-outs, increasing Roma families' access to social services, developing school projects and eliminating a specific number of camps by certain deadlines. In addition, access to services is reported to be the focus of existing action plans targeting Roma specifically but not exclusively in **Slovakia** and **Sweden,** for example.

Housing continued to be an important issue across many Member States in 2015, as discussed in Section 4.1.1. It was a focus in many local-level strategies and action plans, as well as an area of particular concern in implementing Roma integration on the ground.

Certain Member States increasingly acknowledged the particular problems facing many settlements and neighbourhoods where Roma communities live, and proposed immediate corresponding measures to help alleviate the situation. These efforts show a trend of moving beyond objectives of resolving housing issues towards more pragmatic approaches through concrete, achievable, and realistic measures. Measures undertaken in this direction included increasing access to infrastructure (bus stops, public lighting, and sewage); legalising settlements; and regulating property. Although they are not definitive overall solutions, such measures can be seen as examples of progress in implementing the objectives of the NRIS through small steps towards Roma integration and reintegration.

In **Slovenia**, the boundaries of Roma settlements and their legalisation must be worked out in municipal spatial plans. Nine municipalities made drafts in 2015, two municipalities were at the proposal phase, and 21 municipalities where Roma live have already accepted municipal spatial plans.[54] **Bulgaria**'s district strategies focus on de-ghettoisation, improving housing conditions, renovating and building new social housing, and improvements to infrastructure through specific planned activities.[55]

Funding of local-level action plans

Lack of funding, as well as underspending, remains one of the essential challenges in supporting local-level implementation and monitoring, as mentioned in the Commission's 2015 report on implementing the EU Framework for NRISs.

> *"I know that in municipalities, many people are trying, on a daily basis, to bring practical solutions to practical problems. [...] Therefore, when I hear about budget constraints of municipalities that have no funding left to implement their Roma action plans, when I hear about civil society activists unable to reach decision-makers in government, I know what you mean. When I hear about National Roma Contact Points with no resources to coordinate Roma integration across ministries, I know what you mean. We need to address this. Together, we are mobilising all our available tools: policy, legal and financial."*
>
> *Věra Jourová, European Commissioner for Justice, Consumers and Gender Equality, Speech at the European Roma Platform, 17 March 2015*

Funding for implementing and monitoring local-level strategies and action plans varies greatly across Member States. In many cases, actions are funded through combinations of the national budget, municipal budgets and European Structural and Investment Funds (ESIF).

For example, in **Ireland**, where municipalities develop the Traveller Accommodation Programme, financed from government sources, funding for these programmes has been significantly reduced over the past few years, although a slight increase was registered in 2015.[56] In other Member States, such as **Denmark** and **Germany**, Roma integration has been incorporated into general sets of policy measures and, at the local level, assistance measures may include Roma among the beneficiary groups. The German federal programme 'Live Democracy! Active against Right-wing Extremism, Violence and Hate'[57], for instance, funds specific pilot projects dealing with anti-Gypsyism and supports the structural development of a nation-wide NGO, the Documentation and Cultural Centre of German Sinti and Roma (*Dokumentations- und Kulturzentrum Deutscher Sinti und Roma*).[58] In **Greece**, many national and regional programmes funded through ESIF focus on poverty, families with many children, domestic violence, and other areas where many of the beneficiaries are also Roma. In **Spain,** the majority of the regions have chosen in their European Social Fund Operational Programs the Thematic Objective 9.2., which allows them to allocate an important amount of resources in favour of Roma population inclusion at regional and local level.

4.2.3. Monitoring progress on Roma integration: indicators and tools

The EU Framework on NRISs and the Council's 2013 recommendation on effective Roma integration highlight the importance of regularly monitoring progress on Roma integration. The recommendation also explicitly encourages Member States to make use of indicators and monitoring tools with the support of FRA.

FRA assists the European Commission and Member States in developing and applying a robust system for monitoring progress on Roma integration. It consists of two pillars: a framework of rights-based indicators following the structure-process-outcome (SPO) indicator model; and an information collection tool for generating the data necessary for populating the process indicators (data for outcome indicators come from FRA's regular surveys and other sources).

In 2015, FRA – together with the Commission and Member States participating in FRA's Ad-Hoc Working Party on Roma integration – developed the information collection template that the Commission used for the first round of reporting from Member States on measures taken in implementing the Council's 2013 recommendation. The data generated allowed for populating the progress indicators elaborated by FRA. On the basis of the pilot application of this reporting framework (the data collection tool and the indicators), the Commission is developing a full-fledged online reporting tool that will be rolled out in 2016.

At the international level, different monitoring mechanism are in place. For example, the European Committee of Social Rights – a Council of Europe independent monitoring body – is assessing the situation of CoE Member States with respect to the European Social Charter, adopting conclusions and decisions on state compliance. The latest conclusions (2015) were dedicated to the topic of "children, families and migrants". On the basis of the collective complaints procedure, the committee adopted several decisions directly involving the situation of Roma in different member States. At present, the European Committee of Social Rights has adopted 13 decisions regarding Roma.[59]

Some Member States have monitoring mechanisms at regional or local levels. For example, in **Bulgaria**, district monitoring and evaluation units monitor strategies according to instructions by the National Council for Cooperation on Ethnic and Integration Issues, and report annually on the implementation of municipal action plans within each district.[60] However, the link between regional- and local-level monitoring is not always clear. Where local action plans or strategies exist, they do not always include measurable objectives and indicators. Monitoring and evaluation units are in place in each municipality, but not all of the 265 municipal action plans have indicators, and those with indicators do not necessarily apply the same ones.[61] In the **Czech Republic**, Roma advisors, local consultants and NGOs are involved in monitoring local and regional strategies and action plans.[62] The City of York Council in the **United Kingdom** also developed a specific strategy and action plan for Roma, Gypsies and Travellers, with specific objectives, targets, timelines, responsibilities and progress reports.[63] Reporting on progress towards priorities set out in the strategy is overseen twice a year and through an annual progress report. Both in England and Wales and in Scotland, local authorities also carry out a caravan count twice a year.[64] **Greece** recently developed a mechanism for monitoring and evaluating NRIS implementation, structured on local, regional and national level.

Local plans are usually reviewed through self-assessments. The municipality itself reports on its achievements and elements that need to be revisited or amended, without any external evaluation or assessment. For example, in **Romania**, the members of local working groups (*grupul de acțiune local*, GLL) are responsible for implementing and monitoring measures corresponding to their specific area of activity, as included in the local action plan, and report on its implementation to the mayor and governmental bodies twice a year. Conversely, in **Sweden**, efforts towards Roma integration are included in the NRIS and implemented through five pilot projects in municipalities. The proposed strategic evaluation is contracted out to an independent entity, which assesses the five pilot cities over a three-year period and produces a learning evaluation. In addition, each municipality has a set of indicators and provides an annual follow-up report to the County Administrative Board of Stockholm (*Länsstyrelsen Stockholms län*).[65] Evaluations of other components of the NRIS are commissioned from external actors.[66]

Most Member States have monitoring processes in place at national level, under the responsibility of central state institutions such as ministries. This is the case in **Croatia**, **Italy** and the **Netherlands,** for example. The **Netherlands** developed a Roma Inclusion Monitor, which was populated for the second time with qualitative data based on interviews with Roma and Sinti on areas including education, work, housing, health, security and safety, and contact with local government.[67] In **Croatia**, local action plans outline some specific activities, but there is a lack of data and indicators to monitor them. Following an external evaluation of the National Roma Inclusion Strategy and accompanying Action Plan implementation, **Croatia** has envisaged comprehensive research to determine the size of the Roma population at local/regional and national level, base-line data for monitoring the NRIS and subsequent action plan, as well as the Roma's needs and obstacles to their integration.

Even where national-level monitoring systems are established to evaluate progress in NRIS implementation, not all national-level monitoring bodies have developed procedures to monitor and evaluate the implementation of local action plans and strategies. For example, in **Latvia**, the Advisory Council on the Implementation of the Roma Integration Policy (*Romu integrācijas politikas īstenošanas konsultatīvā padome*), established under the Ministry of Culture, has not developed monitoring tools at the local level to facilitate the monitoring of the national strategy,[68] although local education boards and local branches of the state employment agency submit data on Roma to the relevant ministries. On the other hand, in **Spain**, the Local Strategy on the Roma population of Barcelona,[69] newly adopted in 2015, includes a monitoring mechanism that involves relevant stakeholders, including civil society organisations. It is composed of four bodies in charge of follow up and monitoring: a technical working group for planning, a technical working group for follow up, a municipal inter-sectoral group for coordination, and a political working group for follow up.

Although some national monitoring frameworks are in place, local policies targeting Roma are not yet being monitored and evaluated consistently and systematically. This implies that readjustments made to local policies to increase their responsiveness to local needs are not done in a manner that ensures full complementarity between needs and policies at the local level. Another challenge is the absence of disaggregated data that can identify Roma at national, regional and local levels – the type of data that could inform policy cycles.

Stakeholders' involvement in monitoring EU funding at the local level

Participation is one of the key principles of the Human Rights Approach to Poverty Reduction Strategies as outlined by the Office of the United Nations High Commissioner for Human Rights[70] and enshrined in the 10 Common Basic Principles on Roma Inclusion.[71] The participation of local-level stakeholders, including civil society and communities themselves, in the whole cycle of an intervention – design, implementation, monitoring implementation, and assessing results – helps achieve tangible and sustainable results. Civil society and other regional and local stakeholders can play an essential role in the design and monitoring of the implementation of NRISs and of EU funds.

For the programming period 2014–2020, certain investment priorities under Thematic Objective 9 – promoting social inclusion, combating poverty and any discrimination – for the European Social Fund (ESF) and the European Regional Development Fund (ERDF) require recipients to already have in place a national Roma inclusion strategic policy framework.[72] In most countries that address Roma under Objective 9-2 (integration of marginalised Roma communities) for inclusion in the ESIF for the programming period 2014–2020, the operational programme monitoring committees are the main mechanisms for monitoring the use of EU funds. However, the extent and quality of participation, particularly in monitoring and evaluation, vary greatly between national and local levels and in the type of actions monitored.

Promising practice

Transferring local-level initiatives

The Roma Secretariat Foundation (*Fundación Secretariado Gitano*, FSG) (**Spain**) and *Consorzio Nova Onlus* (**Italy**) are implementing an ESF-funded project that aims to develop and adapt the model of the 'Acceder programme' to the Italian context. The Acceder programme, implemented by FSG since 2000, aims to help the Roma population integrate into the job market. It is present in 14 Spanish regions and involves 51 employment mechanisms. Transferring it to the Italian context involves several phases, such as carrying out feasibility studies for selecting a pilot locality, drafting an implementation plan for the selected locality, and implementing pilot projects. Involving various relevant stakeholders – including Roma associations – in the design, assessment and implementation of the programme in Italy is instrumental for creating an effective mechanism. The added value rests in the fact that the same scheme can also be replicated in other Member States, together with any necessary adaptations. Doing so would maximise resources and expertise, and reinforce transnational cooperation between Member States on common issues.

For more information, see FSG, 'Transferencia Acceder a Italia'

Local and regional authorities are often represented on national monitoring committees – for example, through national associations of municipalities. This is the case in **Bulgaria**, **Croatia, Ireland**, **Italy**, the **Netherlands** and **Romania**. Civil society organisations dealing with Roma issues, particularly Roma NGOs, are also involved in the monitoring process for EU funds in, for example, the **Czech Republic**, **Croatia,** the **Netherlands**, **Romania** and **Slovakia**. In the **Czech Republic**, local-level partnerships are established to support the monitoring of the use and implementation of ESIF funds. Roma experts, local consultants and civil society representatives participate in monitoring ESIF and in monitoring and evaluating various interventions and local action plans. At the regional level, regional coordinators for Roma affairs are also involved in monitoring. In the **Netherlands**, the Platform Roma Municipalities is involved in the formal monitoring of ESIF, and civil society is also included in the advisory committee to the Roma Inclusion Monitor at national level. In **Romania**,

civil society organisations that deal with Roma issues are represented at the level of the Management Coordination Committee of the Partnership Agreement (*Comitetul de Coordonare pentru Managementul Acordului de Parteneriat*, CCMAP), as well as on monitoring committees for relevant programmes, such as the Human Capital Operational Programme (*Programul Operațional Capital Uman*, POCU).[73] In **Slovakia**, four out of 15 members of the Commission of the Monitoring Committee for the Operational Programme Human Resources, priority axes 5 and 6 (*Komisia pri monitorovacom výbore pre Operačný program Ľudské zdroje pre prioritné osi 5.a 6.*) represent NGOs, two of which are Roma NGOs.[74]

On the other hand, **Hungary** and **Sweden** opted for independent expert monitoring carried out by external actors without the involvement of local authorities or civil society.

The European Commission took action in 2015 to improve the capacity of Roma civil society, facilitating its involvement in monitoring NRISs by supporting the development of pilot projects for shadow monitoring and reporting on Roma integration.[75] In addition to providing data and information on the status of implementation in key thematic areas, the monitoring will focus on the local implementation of strategies and provide information on the involvement of civil society and the use of EU funds.

FRA opinions

Ethnic origin is considered the most prevalent ground of discrimination according to 2015 data. Non-discrimination is one of the rights in the EU Charter of Fundamental Rights, as well as of several general and specific European and international human rights instruments. Notably, Article 2 (1) (e) of the International Convention on the Elimination of All Forms of Racial Discrimination, to which all 28 EU Member States are party, emphasises the commitment to "pursue by all appropriate means and without delay" to "eliminat[e] barriers between races, and to discourage anything which tends to strengthen racial division". In 2015, European institutions, including the European Parliament, called attention to the problems of intersectional discrimination and encouraged EU Member States to implement further measures to tackle anti-Gypsyism and intersectional discrimination, also addressing the particular situation of Roma women and girls.

FRA opinion

To tackle persisting discrimination against Roma and anti-Gypsyism, it is FRA's opinion that EU Member States should put in place specific measures to fight ethnic discrimination of Roma in line with the Racial Equality Directive provisions and anti-Gypsyism in line with the Framework Decision on Racism and Xenophobia provisions. To address the challenges Roma women and girls face, Member States could include specific measures for Roma women and girls in national Roma integration strategies (NRISs) or policy measures to tackle intersectional discrimination effectively. Member States should explicitly integrate an anti-discrimination approach in their NRISs implementation.

Living conditions of Roma EU citizens living in another Member State, and progress in their integration, further posed a challenge in 2015. FRA evidence shows that the respective NRISs or broader policy measures do not explicitly target these populations. As a result, few local strategies or action plans cater to the specific needs of these EU citizens.

FRA opinion

To address the challenges Roma EU citizens living in another Member State face, it is FRA's opinion that the EU's Committee of the Regions' and the European Commission's continued support would be beneficial for an exchange of promising practices between regions and municipalities in Member States of residence and Member States of origin.

Member States of origin and destination could consider developing specific integration measures for Roma EU citizens moving to and residing in another Member State in their national Roma integration strategies (NRISs) or policy measures. Such measures should include cooperation and coordination between local administrations in the Member States of residence and the Member States of origin.

Participation is one of the key principles of the Human Rights Approach to Poverty Reduction Strategies, as outlined by the United Nations Office of the High Commissioner for Human Rights (OHCHR) and enshrined in the 10 Common Basic Principles on Roma Inclusion. FRA research shows that in 2015 efforts were made to actively engage local residents, Roma and non-Roma, in joint local-level activities together with local and regional authorities. There is, however, no systematic approach towards engaging with Roma across Member States; structures of cooperation vary greatly, particularly in monitoring NRISs and the use of EU funds.

FRA opinion

To enhance the active participation and engagement of Roma, it is FRA's opinion that public authorities, particularly at local level, should take measures to improve community cohesion and trust involving local residents, as well as civil society, through systematic engagement efforts. Such measures can contribute in improving the participation of Roma in local level integration processes, especially in identifying their own needs, in formulating responses and in mobilising resources.

Practices regarding the monitoring of the local action plans or local policy measures vary within EU Member States, as well as across the EU. In some Member States, the responsibility for monitoring the implementation of these local policies is at the central level, whereas in others it is with the local level actors who often face a lack of human capacity and financial resources. The extent to which Roma themselves and civil society organisations participate in monitoring processes also varies, as does the quality of the indicators developed.

FRA opinion

To address the challenges of monitoring the implementation of local action plans or local policy measures, it is FRA's opinion that EU Member States should implement the recommendations on effective Roma integration measures in the Member States, as adopted at the Employment, Social Policy, Health and Consumer Affairs Council on 9 and 10 December 2013. Any self-assessment through independent monitoring and evaluation, with the active participation of civil society organisations and Roma representatives, should complement the national Roma integration strategies (NRISs) and policy measures in that regard. Local level stakeholders would benefit from practice-oriented trainings on monitoring methods and indicators to capture progress in the targeted communities.

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4 *Ibid.*, QC 14: "Regardless of whether you have children or not, please tell me, using a scale from 1 to 10, how comfortable you would feel if one of your children was in a love relationship with a person from each of the following groups. '1' means that you would feel, 'not at all comfortable' and '10' that you would feel 'totally comfortable'. 1) A Roma person 2) A black person 3) An Asian person 4) A white person."

5 *Ibid.*, SD 1: Do you have friends or acquaintances who are...? 1) People whose ethnic origin is different from yours 2) Roma 3) Gay, lesbian or bisexual 4) Disabled 5) Of a different religion or have different beliefs than you 6) Transgender or transsexual, p. 10.

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UN & CoE

January

February

March

1 April – CoE Committee of Minsters adopts Recommendation CM/Rec(2015)5 on processing personal data in the context of employment

21 April – CoE Parliamentary Assembly (PACE) adopts Resolution 2045 (2015) and Recommendation 2067 (2015) on mass surveillance

April

May – UN High Commissioner for Refugees publishes the Policy on the Protection of Personal Data of Persons of Concern to UNHCR

May

16 June – In *Delfi AS v. Estonia* (No. 64569/09), the European Court of Human Rights (ECtHR) rules that a company running an internet news portal is to be held liable for user-generated anonymous comments that amount to unlawful forms of speech, and that such liability is a justified and proportionate restriction on its right to freedom of expression (Article 10 of the ECHR)

23 June – PACE adopts Resolution 2060 (2015) on improving the protection of whistle-blowers

June

3 July – UN Human Rights Council appoints the first-ever Special Rapporteur on the right to privacy

July

August

September

27 October – 37th International Privacy Conference of Data Protection and Privacy Commissioners issues the "Amsterdam Declaration" on the oversight of intelligence services, stating that no single oversight model works for all states

October

November

1 December – In *Cengiz and Others v. Turkey* (Nos. 48226/10 and 14027/11), the ECtHR rules that a blanket order blocking access to YouTube unlawfully interferes with the applicants' rights to receive and impart information, guaranteed by Article 10 of the ECHR

4 December – In *Roman Zakharov v. Russia* (No. 47143/06), the ECtHR concludes that the lack of adequate and effective safeguards against arbitrariness and the risk of abuse inherent in the Russian law on secret interception of mobile telephone communications violate the applicant's rights under Article 8 of the ECHR

December

EU

January

February

2 March – European Data Protection Supervisor (EDPS) Strategy 2015–2019 summarises the main data protection and privacy challenges over the coming years, and specifies three objectives and 10 actions to address them

March

April

6 May – European Commission announces a Digital Single Market Strategy for Europe

May

15 June – Council of the European Union agrees on a general approach to the General Data Protection Regulation

June

July

August

8 September – EU and US finalise negotiations on the data protection "Umbrella Agreement", covering the exchange of data for law enforcement purposes

September

1 October – In *Weltimmo s.r.o. v. Nemzeti Adatvédelmi és Információszabadság Hatóság* (C-230/14), the Court of Justice of the European Union (CJEU) holds that a national data protection authority (DPA) has jurisdiction over companies processing data within the DPA's territory, even if the companies' headquarters are in another country

6 October – In *Maximillian Schrems v. Data Protection Commissioner* (C-362/14), the CJEU invalidates the European Commission's Adequacy Decision on the Principles of Safe Harbour and clarifies that the Commission's decision cannot prevent an individual from lodging a complaint or limit a DPA's powers to check whether a data transfer complies with Directive 95/46/EC

October

6 November – European Commission issues a communication to the European Parliament and the Council of the European Union, providing guidance on transatlantic data transfers and urging the prompt establishment of a new framework following the *Schrems* ruling

November

15 December – European Commission, Council of the European Union and European Parliament provisionally agree on the EU data protection reform package, which includes a General Data Protection Regulation and a directive on data protection in the police and criminal justice sectors

December

5 Information society, privacy and data protection

The terrorist attacks on the offices of Charlie Hebdo *magazine, a Thalys train and various locations throughout Paris in November 2015 intensified calls to better equip security authorities. This included proposals to enhance intelligence services' technological capacities, triggering discussions on safeguarding privacy and personal data while meeting security demands. EU Member States confronted this challenge in debates on legislative reforms, particularly regarding data retention. The EU legislature made important progress on the EU data protection package, but also agreed to adopt the EU Passenger Name Record (PNR) Directive, with clear implications for privacy and personal data protection. Meanwhile, the Court of Justice of the European Union (CJEU) reaffirmed the importance of data protection in the EU in a landmark decision on data transfers to third countries.*

5.1. Mass surveillance remains high on the agenda

5.1.1. United Nations and Council of Europe respond to surveillance concerns

After vocally condemning mass surveillance in recent years,[1] the United Nations (UN) in 2015 further underscored its commitment to protecting privacy at a global level: in July, the UN Human Rights Council appointed the first-ever UN Special Rapporteur on the right to privacy.[2] The Special Rapporteur, an independent expert 'body', will provide insights into key privacy issues relating to new technologies, the challenges confronted in the digital age, and human rights infringements by mass surveillance practices.[3] More specifically, the Special Rapporteur will address relevant issues at the international level by gathering information on national and international practices, making recommendations, exchanging information with stakeholders, singling out shortcomings and raising awareness regarding the effective promotion and protection of the right to privacy.[4] The mandate also includes reporting on violations of the right to privacy as protected by Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights (ICCPR). Joseph Cannataci, who was appointed as the first Special Rapporteur on the right to privacy, identified four areas as requiring particular attention: defining the notion of privacy, developing a universal surveillance law, challenging the conduct of global IT companies, and raising awareness among the public.[5]

At the European level, the Parliamentary Assembly of the Council of Europe (PACE) adopted two important resolutions in 2015: a resolution on mass surveillance[6] and a resolution on protecting whistle-blowers.[7] The resolution on mass surveillance acknowledges the need for "effective, targeted surveillance of suspected terrorists and other organised criminal groups". However, it also urges Member States to ensure that their intelligence services are subject to effective judicial and/or parliamentary oversight, and calls on them to protect whistle-blowers who expose illicit surveillance activity.[8] In addition, the resolution proposes developing an "intelligence codex" that outlines rules governing cooperation between intelligence services in the fight against terrorism and organised crime. The Committee of Ministers of the Council of Europe (CM) rejected this

last suggestion. Nevertheless, acknowledging FRA's work on the protection of fundamental rights in the context of large-scale surveillance, the CM emphasised its aim to intensify cooperation with EU bodies concerning such protection.[9]

The PACE resolution on improving the protection of whistle-blowers provides Member States with guidance on setting up comprehensive national frameworks to ensure the protection of public interest whistle-blowers, and emphasises that secrecy based on grounds such as "national security" does not justify covering up misconduct.

Reacting to revelations regarding cooperation between different intelligence authorities, such as the German *Bundesnachrichtendienst* (BND) and the US National Security Agency (NSA), various Council of Europe (CoE) bodies called for stronger parliamentary oversight of secret services.[10] The Commissioner for Human Rights advised CoE Member States to better equip national bodies in charge of overseeing intelligence services and to provide them with effective means for safeguarding human rights, particularly the right to privacy.[11] The commissioner indicated that the mere existence of a general parliamentary oversight body does not suffice. While acknowledging the role played by the existing oversight bodies in Germany, the commissioner also raised concerns about their powers, resources and technical expertise. In addition, the commissioner noted that the system's fragmentation and the absence of effective remedies also called for reforms.[12]

> *"Terrorism is a real threat and it requires an effective response. But adopting surveillance measures that undermine human rights and the rule of law is not the solution."*
>
> *Nils Muižnieks, Council of Europe Commissioner for Human Rights, 'Europe is spying on you', The International New York Times, 27 October 2015*

In December, the European Court on Human Rights (ECtHR) issued an important judgment that significantly clarified its case law on secret surveillance measures. In *Roman Zakharov v. Russia* (No. 47143/06),[13] the court thoroughly assessed Russian legislation on mobile phone interception and concluded that the law violated the applicant's rights under Article 8 of the ECHR (right to respect for private and family life). The decision particularly illuminated its case law on applicants' status as victim. Specifically, the court held that, where the applicable legal framework does not provide enough safeguards and effective remedies are absent at national level, it can assess the overall legal framework even when an applicant cannot prove that he or she was under surveillance.[14] *Zakharov* also reiterates the minimum safeguards to be set out in law to avoid abuses of power, and recalls the safeguards that secure proper limitation and supervision.

Minimum legal safeguards in secret surveillance

- Delimitation of the nature of offences that may give rise to an interception order
- Definition of the categories of people whose telephones may be tapped
- Time limit for the tapping of telephones
- Principles and safeguards for the processing of collected data as well as their transfer to third parties
- Criteria for the deletion of collected data
- Effective oversight mechanisms
- Availability of remedies

Source: ECtHR, Roman Zakharov v. Russia, *No. 47143/06, 4 December 2015, paras. 229–234*

5.1.2. CJEU and European Parliament emphasise rights protection

The 2013 revelations by Edward Snowden continued to prompt discussion at the EU level in 2015. The issue of data transfers to third countries received considerable attention, with a landmark CJEU ruling underscoring the importance of privacy safeguards in the EU.

Extensive and indiscriminate large-scale surveillance is often justified with references to national security, and the legal scope of that justification at EU level remains somewhat uncertain.[15] In October, the CJEU issued a decision – *Maximillian Schrems v. Data Protection Commissioner* (C-362/14) – that shed some light on the issue, focusing on situations involving personal data transfers to companies in third countries and subsequent access to the data by national intelligence services for reasons of national security.[16] Specifically, the court looked into personal data transfers to the USA on the basis of the European Commission's Safe Harbour Adequacy Decision,[17] which it retroactively invalidated.

Recalling its April 2014 decision in *Digital Rights Ireland and Seitlinger and Others* (C-293/12 and C-594/12) [18] – which invalidated the Data Retention Directive (2006/24/EC) – the CJEU assessed the lawfulness of interferences with fundamental rights when personal data are stored and accessed by national intelligence services. It held that:

> *"legislation is not limited to what is strictly necessary where it authorises, on a generalised basis, storage of all the personal data of all the persons whose data has been transferred from the European Union to the United States without any differentiation, limitation or exception being made in the light of the objective pursued and without an objective criterion being laid down by which*

to determine the limits of the access of the public authorities to the data, and of its subsequent use, for purposes which are specific, strictly restricted and capable of justifying the interference which both access to that data and its use entail".[19]

The CJEU further held that legislation must provide effective oversight and redress mechanisms. An individual must be able to pursue legal remedies, either administrative or judicial, to access his or her own personal data and, if necessary, to obtain rectification or erasure of such data. Failing to provide these options compromises the essence of the right to an effective remedy enshrined in Article 47 of the EU Charter of Fundamental Rights. The CJEU also emphasised that data protection authorities (DPAs) play a vital role in ensuring compliance with data protection rules. Secondary legislation, such as the Commission's Safe Harbour Adequacy Decision, cannot limit the powers available to DPAs under Article 8 of the Charter and the Data Protection Directive (95/46/EC). Thus, even if the Commission's decision provides otherwise, DPAs must be able to examine, with complete independence, whether or not the transfer of personal data to a third country complies with the requirements laid down in EU law.

The *Schrems* case lent increased urgency to EU-US negotiations on a new data protection regime for transatlantic exchanges of personal data for commercial purposes. Sparked by the 2013 revelations on mass surveillance operations by the United States, and continuing ever since, the negotiations intensified during the last three months of 2015 – but no political agreement was reached by the end of the year.

While *Schrems* deals with the adequacy of levels of protection in a third country to which personal data are transferred in accordance with Article 25 of the Data Protection Directive, it entails broader consequences. The decision may also affect other international data transfer mechanisms – such as standard contractual clauses adopted by the European Commission to ensure adequate safeguards for personal data transferred from EU countries to countries that do not provide adequate data protection, and the binding corporate rules agreed on by a multinational group of companies regarding international transfers of personal data to such countries.[20] Following the judgment, the Article 29 Working Party – which brings together representatives of national data protection authorities, the European Data Protection Supervisor and the European Commission – pledged to examine the consequences of the judgment on these mechanisms. The Working Party also noted that it would take "all necessary and appropriate" actions, including coordinated enforcement actions, if no solution enabling data transfers while respecting fundamental rights was found with US authorities by January 2016.[21]

In the meantime, the European Parliament – which issued a resolution[22] on the matter in 2014 – continued to emphasise the importance of protecting EU citizens' fundamental rights in the context of mass

FRA ACTIVITY

In November 2015, FRA published a report on Surveillance by intelligence services: Fundamental rights safeguards and remedies in the EU. Drafted in response to the European Parliament's call for thorough research on fundamental rights protection in the context of surveillance, the report maps and analyses the legal frameworks on surveillance in place in EU Member States.

FRA's analysis draws on existing international human rights standards as developed by the UN and the Council of Europe, including the ECtHR. The report shows that intelligence services operate in very diverse settings and legal frameworks. It also summarises the various safeguards in place, and analyses the work of oversight bodies.

The report also outlines remedies available to individuals, and shows that the lack of an obligation to notify individuals that they are subject to surveillance, along with strict rules on providing evidence of being subject to surveillance, can make remedies ineffective. In a number of Member States, there either is no notification obligation or the obligation can be restricted on national security or similar grounds. Only 10 Member States have oversight bodies reviewing such restrictions.

To better understand how surveillance laws are implemented in practice and how privacy and data protection are guaranteed in the context of intelligence services' work, FRA launched a new study in December. The in-depth study will include fieldwork interviews with members of parliamentary committees, data protection supervisory authorities and other relevant national actors; the preliminary results should be available towards the end of 2016 or the beginning of 2017.

Source: FRA (2015), Surveillance by intelligence services: Fundamental rights safeguards and remedies in the EU, *Luxembourg, Publications Office.*

surveillance. Its 2014 resolution called for a full investigation by EU institutions, and urged Member States not to remain silent on the issue. In 2015, discussions focused on the measures taken by the Council and the Commission, as well as legislative reforms by Member States. In a follow-up resolution issued in October, the European Parliament deemed the Commission's actions in response to its 2014 resolution "highly inadequate given the extent of the revelations" and "call[ed] on the Commission to act on the calls made in the resolution by December 2015".[23] The European Parliament also called for a full investigation of the matter by national governments and parliaments, as well as EU institutions, and raised concerns regarding legal reforms in several Member States. The 2015 resolution also mentions FRA's report on surveillance – Surveillance by intelligence services: Fundamental rights safeguards and remedies in the EU[24] – with the European Parliament expressing its intention to consider the study's findings concerning the protection of fundamental rights, particularly regarding remedies available to individuals.[25]

5.1.3. EU Member States revisit their intelligence laws

A 2015 Eurobarometer survey on data protection showed that the protection of personal data remains a very important concern for European citizens. Technological developments and surveillance practices can threaten such protection. This reality prompted considerable discussion in 2015, and triggered important judicial decisions and legislative proposals. At the same time, many of the legislative reforms pursued throughout the year sought to extend the powers of intelligence services – a trend that intensified following multiple terrorist attacks.

Special Eurobarometer 431: data protection

According to the survey, only a minority (15 %) of Europeans feel they have complete control over the information they provide online; 31 % think they have no control over it at all. Two thirds of respondents (67 %) are concerned about not having complete control over the information they provide online. A majority of respondents are concerned about the recording of their activities via payment cards and mobile phones (55 % in both cases). The survey results show that half of Europeans have heard about revelations concerning mass data collection by governments. Awareness ranges from 76 % in Germany to 22 % in Bulgaria.

Source: European Commission (2015), Special Eurobarometer 431: Data Protection*, Brussels, June 2015*

In the **United Kingdom,** the 18-month inquiry conducted by the Intelligence and Security Committee (ISC) in response to the Snowden revelations came to the conclusion that the national legal frameworks needed reform. The ISC's findings were published in March 2015, mapping the relevant legislative frameworks and intelligence services' activities.[26] The report stated that the current law needed to be replaced by a more detailed and comprehensive act of parliament. A concurring report also called for reform.[27] In November, the government presented the Investigatory Powers Bill to parliament.[28] The bill aims to consolidate and update the surveillance powers of intelligence services while enhancing the safeguards in place. In particular, the bill would set up a 'double-lock' authorisation procedure through which warrants are administered by a secretary of state and must also be authorised by a judicial commissioner before coming into force.[29] Moreover, it distinguishes between targeted and bulk equipment interference, and includes safeguards to guarantee that bulk equipment interference is used in a proportionate manner and access to data is controlled.[30] The bill also intends to improve the system of judicial redress by introducing a domestic right of appeal to the Investigatory Powers Tribunal (IPT).[31]

Several other Member States – such as **Austria**, the **Czech Republic**, the **Netherlands**, **Poland**, and **Portugal** – began the process of reforming their intelligence laws.

The **Dutch** government in July published a draft bill to reform the Intelligence and Security Act 2002 that would extend the intelligence service's surveillance capabilities.[32] The draft law prompted criticism from the European Parliament because it would potentially infringe on fundamental rights.[33] Similarly, the **Austrian** government presented a bill to reform the surveillance powers of the intelligence service; the State Protection Act (*Staatsschutzgesetz*) is to constitute the federal law on the organisation, tasks and competences of the state protection authority (*Staatsschutz*).[34] In the **Czech Republic**, an amendment to the Act on Intelligence Services, which introduces new powers for intelligence services, came into effect on 25 September 2015.[35]

The constitutional court of **Portugal** ruled against some aspects of the national laws that allow specific surveillance measures. It deemed unconstitutional Article 78(2) of Parliament Decree No. 426/XII, a draft article that allows officials of the Portuguese Security Information Service and Defence Strategic Information Service to access metadata, such as traffic and location data.[36] The court established that, in light of technological developments, the concept of telecommunications includes metadata. Thus, access to metadata constitutes an interference with telecommunications. Furthermore, the court concluded that "prior authorisation" and the "mandatory Preliminary Control Commission" are not equivalent to existing controls in criminal proceedings and that the required constitutional guarantees were therefore not satisfied.

The *Charlie Hebdo* terrorist attacks hastened the adoption of a new intelligence law in **France**; the Law on Intelligence entered into force in July 2015.[37] The law was submitted to the constitutional court before its adoption, and the court found that most of it complied with the French Constitution. However, it did censure one draft article on international surveillance, stating that parliament had not determined in enough detail the fundamental rights guarantees to be provided to individuals in case of international surveillance.[38] Following the court's decision, parliament discussed a new draft bill on the surveillance of international electronic communication, and the new law – enshrining additional safeguards, including an authorisation procedure – was adopted in November.[39] In the meantime, the National Commission on Control of Intelligence Techniques (*Commission nationale de contrôle des techniques de renseignement*, CNCTR), an oversight body set up by the new Law on Intelligence, began its work in October. By mid-December, it had received more than 2,700 requests for opinions on various surveillance techniques. According to the CNCTR, the so-called "black boxes" – the most controversial intelligence technique provided for in the new law – had not yet been used by then.[40] By mid-December, the prime minister also had not made use of the law's absolute emergency procedure (which does not require an *ex ante* CNCTR opinion), and had complied with all negative CNCTR opinions (about 1 % of the total).[41]

Following November's terrorist attacks in Paris, the French president ordered a state of emergency,[42] which was prolonged by law for an initial three-month period.[43] In December, the French government submitted to parliament a constitutional bill aiming to insert the state of emergency into the French Constitution.[44] While the state of emergency only marginally affects the powers of intelligence services, it significantly increases law enforcement's powers, especially regarding ordering house arrests for persons under suspicion. A large number of NGOs called for a prompt suspension of the state of emergency.[45] With the support of Defender of Rights (*Défenseur des droits*)[46] and the national human rights institution (*Commission nationale consultative des droits de l'homme*, CNCDH),[47] the Law Commission of the National Assembly established a continuous watch (*veille continue*) over the implementation of the state of emergency.[48] As a result, members of parliament regularly meet to discuss and assess the measures implemented by law enforcement agencies and call on the government to justify them.

The terrorist attacks that shook **France** in 2015 created a knock-on effect at both EU and national levels, prompting the Council of the European Union to reaffirm the fight against terrorism as a priority objective in the Renewed EU Internal Security Strategy for 2015–2020, and the governments of many Member States to launch efforts to expand security measures. These developments reinforce the need, consistently emphasised by FRA, to promote exchanges between actors to encourage promising practices. Legislative frameworks that govern intelligence services need to be adopted, strengthened, and periodically assessed. Effective oversight mechanisms are especially vital to ensure that powers do not become abusive and that intrusive methods are not legitimised.

5.2. Fostering data protection in Europe

5.2.1. Co-legislators reach agreement on reforming the EU data protection package

Following four years of negotiations, the European Parliament and the Council of the European Union reached an agreement on the reform of the EU data protection package in December.[49] Completing this reform was a key priority for 2015. The final texts are expected to be formally adopted by the European Parliament and Council in 2016, after which EU Member States will have two years before the new rules fully apply.

The new framework aims to give individuals control over their personal data and reduce the complexity of the regulatory environment for businesses.[50] It consists of two legal acts: a regulation establishing a general EU legal framework for data protection (General Data Protection Regulation, GDPR) and a directive on protecting personal data processed for purposes of preventing, detecting, investigating or prosecuting criminal offences and related criminal justice activities (Police Directive). The GDPR updates the principles set out in the 1995 Data Protection Directive (95/46/EC) – which it replaces – to keep pace with technological developments and changes in data processing, such as online shopping, social networks and e-banking services.[51] The regulation reflects some of the recommendations suggested by FRA in its 2012 Opinion on the data reform package. It provides for specific exemptions relating to freedom of expression, strengthens the right to an effective remedy, and enhances standing by enabling organisations acting in the interests of individuals to lodge complaints.[52] The Police Directive replaces the 2008/977/JHA Framework Decision on cross-border processing in police and judicial cooperation. It covers both domestic data processing and cross-border transfers of data, and sets a high level of data protection for individuals.[53] Figure 5.1 outlines the main elements of the new data protection package.

In an opinion issued in September, the European Data Protection Supervisor (EDPS) noted that reforming the regulatory framework was "a good step forward",[54] but emphasised that other aspects of the impact of a data-driven society on dignity need to be further addressed, and stated that legal frameworks need to be underpinned with an ethical dimension to ensure that human dignity is respected and safeguarded.[55] Towards the end of the year, the EDPS launched a call to establish an independent Ethics Advisory Group, which will be tasked with looking at the relationship between human rights, technology, markets and business models from an ethical perspective, paying particular attention to implications for the rights to privacy and data protection in the digital environment.[56] The members of the group will be announced at the end of January 2016.

On the international level, EU and US representatives initialled the EU–US data protection "Umbrella Agreement" in September.[57] The agreement covers transfers of personal data between the EU or its Member States and the USA for the purpose of law enforcement. It does not itself provide a legal basis for the data transfers, which should be established elsewhere, but specifies the data protection rules that apply to such personal data transfers. According to the Commission, the "Umbrella Agreement" intends

Figure 5.1: Main elements of the new data protection package

Empowerment of individuals

- Right of data subjects to know how their personal data are handled is augmented
- Data portability: transferability of personal data between service providers
- "Right to be forgotten" is clarified and codified through the introduction of a "right to erasure"
- Information about when personal data has been hacked, if the breach is likely to result in a high risk to the individual's rights and freedoms
- Non-profit organisations may represent individuals in exercising their rights with regard to administrative and judicial remedies

New rules for businesses

- One-stop-shop: businesses with establishments in more than one Member State will in many cases have to deal with one supervisory authority (lead supervisory authority) only
- European rules on European soil: companies based outside of Europe will have to apply the same rules when offering services in the EU
- Risk-based approach: no one-size-fits-all obligation, obligations now tailored to potential risks
- Data protection by design: the regulation guarantees that data protection safeguards are built into data processing from the earliest stage of development; producers of products and services are encouraged to take into account the right to data protection when developing new products and services that are based on or intended to process personal data
- No more obligation to notify data processing to supervisory authorities
- Obligation to notify data breaches to supervisory authorities, in some instances also to individuals
- Businesses are exempt from the obligation to appoint a data protection officer insofar as data processing is not their core business activity and this does not require regular and systematic monitoring of data subjects on a large scale, or the core business activities do not consist of processing on a large scale special categories of data. Other Union or national law may however extend this obligation.
- Businesses will have no obligation to carry out an impact assessment unless there is a high risk to individuals' rights and freedoms

Data protection in the area of law enforcement

- Law enforcement authorities (LEAs) can exchange information more efficiently and effectively
- LEAs must comply with the principles of necessity, proportionality and legality when processing personal data
- Supervision must be ensured by independent national data protection authorities
- Effective judicial remedies must be provided
- Rules for transfering personal data to third countries are clarified
- Member States may introduce a higher level of protection into their national laws

Source: *FRA, 2016; based on European Commission (2015), 'Agreement on Commission's EU data protection reform will boost Digital Single Market', Press release, 15 December 2015*

to set up a high-level data protection framework for EU–US law enforcement cooperation.[58] From a fundamental rights perspective, several clarifications are vital. In light of the CJEU's recent judgment in *Schrems* (C-362/14), it should be clarified that any onward transfer to, or access by, national intelligence services complies with the EU Charter of Fundamental Rights. In addition, it should be clarified that provisions that affect individuals, including those on judicial redress, do not apply only to nationals of the contracting parties, and generally comply with Articles 7, 8 and 47 of the Charter. Finally, because the agreement provides for independent oversight mechanisms, it should be ensured that these mechanisms are all completely independent in terms of their organisation – as required by the Charter, EU data protection legislation and CJEU jurisprudence.[59]

Promising practice

In **Poland**, the Inspector General for the Protection of Personal Data and the Chief of Police signed a cooperation agreement, agreeing to cooperate in the area of data protection and committing to helping each other in performing tasks set out in law. The cooperation covers research, educational, promotional and publishing activities. The partnership aims to exchange experiences and increase police officers' professional qualification in the area of data protection.

For more information, see 'The memorandum of cooperation of the Inspector General and the Chief of Police and the Police Academy in Szczytnie' *(Porozumienie o współpracy GIODO z Komendantem Głównym Policji i Wyższą Szkołą Policji w Szczytnie)*

5.2.2. Privacy strengthened in national legal frameworks

Several Member States reinforced their legal frameworks for data protection in 2015, either by introducing sectoral laws or by modernising their general legislation.

In **Belgium**, the recently appointed secretary of state for matters of privacy and data protection announced in June that he would present a new bill on privacy and data protection. On 16 December 2015, following the announcement of the agreement on an EU data protection regulation, he stated that he would not wait for the regulation to come into force, and that Belgium was already working on adapting its legislation to the regulation.[60] The Belgian regulation envisions granting the Belgian DPA (the Privacy Commission) the same status as a judicial body.

Malta adopted specific regulations in January 2015 that outline data protection rules for the educational sector.[61] In **Latvia**, the government on 12 May 2015 adopted the Cabinet of Ministers' Regulations No. 216 'On the procedure for preparing and submitting compliance assessment of personal data processing' (*Ministru kabineta noteikumi Nr. 216 "Kārtība, kādā sagatavo un iesniedz personas datu apstrādes atbilstības novērtējumu"*).[62] The regulations are binding for state and municipal institutions and private persons who have been delegated public administration tasks. The assessment allows individuals to ascertain whether existing personal data processing and protection complies with the regulatory framework, and whether the data processor really needs to undertake personal data processing for a specific purpose. It includes a risk analysis concerning the rights and freedoms of personal data subjects. The compliance assessment can be conducted by a data protection specialist or by persons who meet specific professional or academic requirements.

In **Germany**, the Second Act amending the Federal Data Protection Act (*Zweites Gesetz zur Änderung des Bundesdatenschutzgesetzes*) was adopted on 25 February 2015.[63] With this amendment, the Federal Commissioner for Data Protection and Freedom of Information becomes a supreme federal authority that enjoys the same status as, for example, federal ministries, the *Deutsche Bundesbank* or the Federal Constitutional Court once the act comes into force on 1 January 2016. The reform aims to guarantee the full independence of the Federal Data Protection Commissioner, who was previously attached to the Federal Ministry of Interior and under its administrative supervision.

In **Hungary**, the Information Act was extensively amended by Act CXXIX of 2015.[64] Modifications of the act include, among others, the establishment of binding corporate rules. In the **Netherlands**, the Senate in May adopted new legislation that amends the Personal Data Protection Law.[65] The new legislation obliges organisations – both public and private – that process personal data to report to the Dutch DPA (*College Bescherming Persoonsgegevens*, CBP) serious data breaches that result in the risk of loss or illegitimate processing of personal data. When a data breach has or may have negative consequences for those involved, organisations are also obliged to inform these individuals. The CBP may impose administrative fines on organisations that fail to report serious data breaches – an important legal change in the DPA's role. On 21 September 2015, the CBP published draft guidelines about this new obligation for consultation.[66]

In addition, several significant judgments were delivered in the course of 2015. One of these – *President of the Belgian Commission for the protection of privacy v. Facebook Inc., Facebook Belgium SPRL and Facebook Ireland Limited* (Case No. 15/57/C)[67] in **Belgium** – prompted a showdown between Belgian authorities and

the company. In June 2015, the president of Belgium's Privacy Commission revealed that a court proceeding had been launched against Facebook for breaching the Belgian Privacy Act by placing the so-called 'datr cookie' on the computers of people who were not members of Facebook when they clicked the 'Like' button on a website. In October, the chief of security at Facebook emphasised in an online article that the incriminated 'datr cookie' plays a fundamental role in protecting the online safety of Facebook and its users. Nevertheless, the president of the Tribunal of First Instance of Brussels in November issued a summary judgment ordering Facebook to stop tracking Belgian citizens who are not members of Facebook's social network within 48 hours. The tribunal found that the 'datr cookie' used by Facebook contains personal data, the collection of which constitutes the processing of personal data. In the court's view, processing such data for millions of Belgian non-members of Facebook clearly violates Belgian privacy law, irrespective of what Facebook does with the collected data. Furthermore, the tribunal rejected Facebook's argument concerning security, stating that any criminal can easily work around this and prevent the placement of this cookie, and that there are less invasive measures available to achieve Facebook's security objectives. Finally, the court held that the Belgian data protection law applies, as the data-processing operation is carried out in the context of activities of the establishment of Facebook in Belgium. In doing so, the court interpreted the law on the basis of the CJEU's 2014 judgement in *Google Spain SL and Google Inc. v. Agencia Espanola de Proteccion de Datos (AEPD) and Mario Costeja Gonzalez*.[68] Facebook immediately stated that it will appeal. The case also had repercussions at EU level: the Contact Group – a sub-entity established within the Article 29 Working Group that is in charge of dealing with Facebook's new terms of service – declared that it acknowledged the judgment and expected Facebook to comply with it.

5.2.3. Data retention regime remains in flux

The CJEU invalidated the Data Retention Directive (2006/24/EC) in 2014, holding – in *Digital Rights Ireland and Seitlinger*[69] – that it provided insufficient safeguards against interferences with the rights to privacy and data protection. This decision triggered considerable activity at both judicial and legislative levels in 2015.

In the absence of a valid Data Retention Directive, Member States may still provide for a data retention scheme under Article 15 (1) of the ePrivacy Directive (2002/58/EC),[70] which addresses the processing of electronic communications data. However, such schemes must also comply with the rules regarding the rights to privacy and personal data protection set out in Article 15 of the ePrivacy Directive, the EU Charter of Fundamental Rights and the CJEU ruling.

While the court's holding in *Digital Rights Ireland and Seitlinger* prompted several national legislators to revisit the issue of data retention, it did not bring about the widespread revocation of national data retention regimes. Instead, the year's developments indicated that governments are looking to reconcile the precedent set by the CJEU with the need to protect internal security and efficiently prosecute crimes by revising their data retention regimes. Many Member States that annulled data retention laws were actively considering replacement measures. The reluctance to forgo data retention was made explicit at the December Council of Justice and Home Affairs, where a majority of EU Member States indicated that data retention would benefit from reformed EU legislation.[71]

Meanwhile, where the obligation to retain data remained in force, companies were confronted with the dilemma of whether or not to comply – at the risk of violating their customers' rights.

Domestic courts voice considerable scepticism about data retention

In 2014, FRA mapped the Member States' reactions to the data retention laws introduced by the Data Retention Directive. This showed that all constitutional courts that addressed their respective national data retention regimes deemed these either partly or entirely unconstitutional. The validity of data retention laws was also questioned in criminal cases in which retained data were used as evidence. In addition, cases involving telecommunication companies – initiated after the *Digital Rights Ireland* judgment – were still pending in 2015.

The constitutional courts of **Belgium** and **Bulgaria**[72] and the High Court of Justice of the **United Kingdom** all took the position in 2015 that their countries' respective data retention regimes are unconstitutional, and in the **Netherlands** the District Court of The Hague handed down a similar judgment.[73]

The **Belgian** Constitutional Court concluded on 11 June 2015 that the Belgian data retention law disproportionately infringed on the right to privacy. In light of the *Digital Rights Ireland* finding, it highlighted as a particular problem the excessively wide scope of concerned data subjects, undetermined periods of retention, the lack of differentiation with regard to the type of data retained and their uses, and insufficient control mechanisms for access to the data.

The **Bulgarian** Constitutional Court deemed the Electronic Communications Act – the national data retention regulation – unconstitutional on 12 March 2015. The court's judgment emphasised that the law should contain accurate, clear and predictable rules to create secure guarantees for protection and security, given that, objectively, all citizens use modern communications and the vast

majority of them are not suspected of serious and/or organised crime or terrorism.[74] The judgment prompted the government to introduce several amendments to the Electronic Communications Act. The ruling also directly influenced the outcome of a case involving a telecom service provider charged with failing to comply with the obligation to retain data. In that case, an administrative court concluded that the abolition of the requirement to retain data justified repealing sanctions imposed for violating the requirement. However, this would not be applied retroactively, meaning that sanctions already enforced would remain valid.[75]

In the **United Kingdom**, the High Court of Justice ruled on 17 July 2015 that certain sections of the Data Retention and Investigatory Powers Act of 2014 (DRIPA) were incompatible with the right to respect for private life and communications, and to protection of personal data. The case – *R on the application of David Davis MP, Tom Watson MP, Peter Brice and Geoffrey Lewis v. SSHD* – was initiated by two members of parliament. The court also issued a judicial order declaring that sections prescribing indiscriminate data retention are incompatible with EU law and would be inapplicable from 31 March 2016 onwards. It also ordered the government to come up – by the specified date – with a new draft law that serves the purposes of DRIPA without violating the right to privacy.[76] The British government responded by publishing a draft bill in November. It requires judicial authorisation for warrants (in addition to authorisation by a Commissioner) and sets up a system of "retention notices", by which the Secretary of State obliges the telecom industry to retain data; these notices must specify the exact motivation and conditions for the retention.[77]

The unsettled legal landscape also triggered litigation involving telecom service providers; two cases are currently pending. In **Hungary**, an NGO – the Civil Liberties Union (*Társaság a Szabadságjogokért*) – brought a case against the telecom sector for continuing to retain data. In **Sweden**, Tele2, a telecom company, informed the Swedish Post and Telecoms Authority that it would stop storing data to comply with the CJEU judgement. However, the police informed the Post and Telecoms Authority that this would undermine the effectiveness of their work, so the authority requested the company to continue retaining data. Tele2 filed proceedings against the state, arguing that its failure to abolish data retention conflicted with EU law and the Charter of Fundamental Rights. The case is now pending before the CJEU and is expected to shed light on whether or not the mandatory retention of electronic communications data unlawfully interferes with the right to privacy and protection of personal data.[78]

Although no national courts have found that their respective data retention regimes can be reconciled with applicable fundamental rights standards, none has concluded that the Data Retention Directive's invalidation renders inadmissible the evidence gathered via data retention. This question was raised in the Supreme Courts of both **Ireland**[79] and **Estonia**[80] in 2015.

Courts took divergent views on whether or not law enforcement or intelligence authorities can legally access traffic and location data retained by electronic communications providers for billing purposes. In **Austria**, the Supreme Court – which actually revoked the national law implementing the Data Retention Directive – concluded that accessing location data (including network cells) retained for billing purposes is necessary for investigating crimes, meaning that refusing to grant access would violate the law.[81] By contrast, the Constitutional Court of **Romania**, which also revoked the applicable data retention law in 2014, additionally nullified the Romanian Law on Cyber Security (*Legea privind securitatea cibernetică a României*),[82] which enabled intelligence services and law enforcement to access personal data, including traffic data already processed and stored by electronic communications providers for billing and interconnection purposes.[83]

Diverse legislative initiatives aim to uphold data retention

Throughout the year, court decisions critical of the current data retention regime triggered various legislative proposals, which largely aimed to uphold the general regime by introducing additional safeguards.

In **Poland**, where the Constitutional Tribunal declared the respective national regulation partially null and void in 2014, the Senate followed up by submitting a new draft act in 2015.[84] NGOs and the Parliamentary Bureau of Analysis responded critically, noting that the revised law does not offer independent control mechanisms or limit data collection to the most serious crimes, and provides for an imprecise and discretionary period of retention.[85] In **Slovakia**, the Constitutional Court suspended the obligation to retain data in 2014, and ultimately deemed the applicable data retention law unconstitutional on 19 April 2015.[86] Following this decision, the government prepared a draft act that aims to enhance control over the data retention process and clearly details the situations in which data can be retained, stored and requested by state bodies. Specifically, the proposed law permits this only for the most serious crimes, such as terrorism or threats to the integrity of the country.

Shortly after the **Belgian** Constitutional Court struck down bulk data retention, the government – in the commentary on the new Draft Bill on Data Retention – concluded, after having consulted with other European governments, that data retention can be efficient only

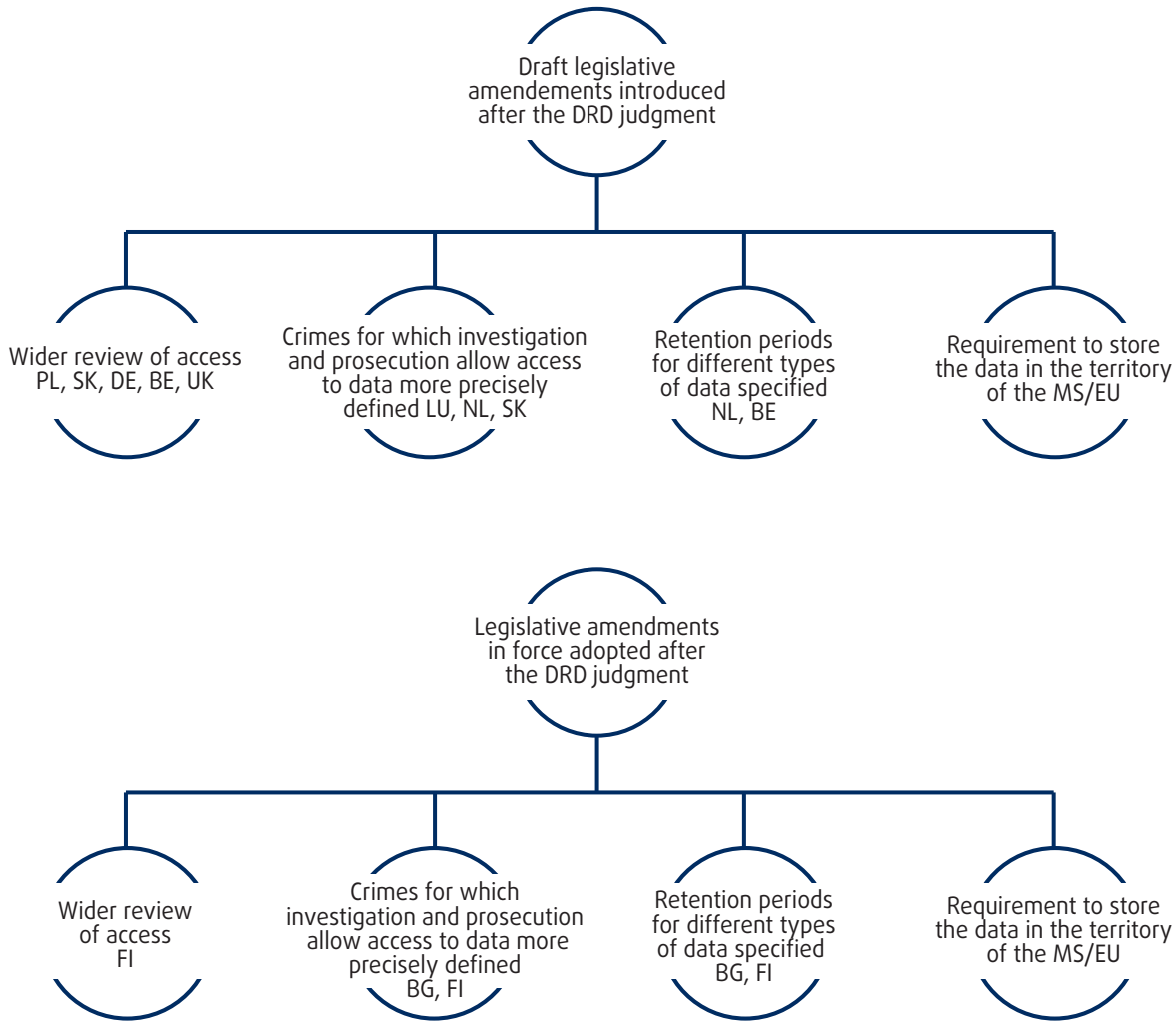
when it is indiscriminate. However, while the government asserted that blanket retention is inevitable, it acknowledged that stricter safeguards should be in place and that more stringent regulation on access conditions and retention periods for different types of data should be set up.[87]

In some Member States – including **Croatia**,[88] **Denmark**, **Estonia**,[89] **Finland** and **Lithuania**[90] – administrative bodies or legislators initiated reviews of the applicable data retention regimes. Among these, only **Finland** has so far enacted legislative amendments. The Information Society Code[91] specifies the retention periods for different types of communications data and requires individual, case-by-case reviews of access requests by the Ministry of the Interior; the new law also gives telecom operators more freedom in decisions regarding the technical implementation of requests.

Some Member States struck down data retention early on. In **Germany**, the parliament adopted legislation to reintroduce it in 2015. However, the proposal includes several safeguards, including the obligation to encrypt and log file access. In addition, it requires applying the "four-eyes principle", which means two persons must always authorise technical access to the data. Moreover, the content of communications, websites accessed and metadata of email traffic are explicitly excluded from the scope of the retained data.[92]

While the issue of whether or not to retain data predominated in 2014, 2015's developments made clear that most EU governments see data retention as an efficient way to protect national security and public safety and address crime. The debate has therefore focused on how to make data retention consistent with the CJEU's ruling in *Digital Rights Ireland*. As illustrated by Figure 5.2, which outlines amendments proposed

Figure 5.2: Amendments to national data retention laws in 2015



Source: FRA, 2016

or enacted in 2015, most governments are attempting to resolve the issue by introducing stricter access controls, specifying what types of crime permit access to retained data, clearly delineating retention periods and requiring data to be retained within the EU.

5.2.4. Terrorism pushes adoption of Passenger Name Record data collection systems

After lengthy and intense negotiations, the European Commission, the Council and the European Parliament's Civil Liberties Committee (LIBE) approved an agreement on a proposal for an EU system for the use of Passenger Name Record (PNR) data in 2015. The draft directive is to be put to a vote by the European Parliament as a whole early in 2016, and then is expected to be formally approved by the EU Council of Ministers.

The European Commission presented its proposal for a directive on using PNR data to combat terrorism and serious crime in 2011. PNR data are collected by airlines from passengers during check-in and reservation procedures.[93] However, the legislative procedure was blocked when the LIBE Committee rejected the proposal in April 2013, questioning its proportionality and necessity, as well as the lack of data protection safeguards and transparency towards passengers.[94] The CJEU's ruling in *Digital Rights Ireland and Seitlinger* (C-293/12 and C-594/12) was also considered relevant for the directive.[95]

However, challenges relating to "foreign terrorist fighters" and the Paris attacks in January 2015 pushed the question of an EU PNR data collection system up the political agenda as a possible measure to prevent and fight terrorism. Member States jointly called for an urgent adoption of the directive as a tool to detect and disrupt terrorist-related travel, particularly that of "foreign terrorist fighters".[96] On the other hand, both the Article 29 Working Party and the EDPS expressed concerns regarding the extent and indiscriminate nature of the processing proposed for the fight against terrorism and serious crime; they urged compliance with the fundamental requirements of necessity and proportionality, and ensuring the respect and protection of the rights set out in Articles 7 and 8 of the EU Charter of Fundamental Rights.[97] The Council of Europe also discussed the PNR data collection scheme in 2015.[98]

The compromise text agreed on by the EU co-legislators in December 2015 incorporates some of FRA's recommendations in its 2011 opinion on the EU PNR data collection system.[99] Taking into consideration the requirements of foreseeability and accessibility, as well as the principle of proportionality, it provides a clearer list of criminal offences that justify the use of PNR data by law enforcement authorities.[100] Moreover, in comparison with the 2011 draft directive, it introduces additional data protection safeguards, such as the duty to create dedicated data protection officers within the national units responsible for processing PNR data.[101] In addition, it does address certain aspects of the necessity and proportionality of the PNR system raised by FRA's opinion.[102]

On the other hand, while the new text envisages a review of the system by the European Commission that will be more comprehensive and based on additional statistical data, these statistics will not include fundamental rights-relevant indicators – such as, for example, the number of persons unjustifiably flagged by the system – as suggested by FRA's opinion.[103] Furthermore, the text opens the possibility of also applying the system to internal flights between EU Member States by leaving this matter up to individual Member States' discretion, potentially multiplying the tool's scope.[104]

> *"An EU PNR scheme programme would be the first large-scale and indiscriminate collection of personal data in the history of the Union. [...] The EDPS as well as the group of data protection authorities in Europe, the Article 29 Working Party, do not oppose any measure which is targeted and for a limited period of time [...] Our freedoms cannot be protected by undermining the right to privacy."*
>
> *European Data Protection Supervisor, Statement, 'EDPS supports EU legislator on security but recommends re-thinking on EU PNR', 10 December 2015*

Concerns about terrorism also affected developments at the national level, with several Member States announcing their intention to present or speed up draft laws to establish domestic PNR data collection systems.

In **Belgium**, following the attack on a *Thalys* train in August, the Minister of the Interior stated that he wished to have a PNR law adopted by the end of the year.[105] On 4 December 2015, the government approved the first draft of a bill on PNR,[106] which was then submitted to the Privacy Commission and the Council of State for their opinions. The Human Rights League criticised the draft text's scope, which also covers serious crimes, as too broad.[107] Similarly, in **Bulgaria**, draft amendments presented to the State Agency for National Security Act would transfer the tasks of collecting and processing PNR data from the National Counterterrorism Centre (CNN) to the State Agency for National Security (SANS).[108] Through this transfer, the Bulgarian government intends to broaden the scope of PNR data collection from the sole ground of terrorism to also include the grounds of preventing, detecting and prosecuting specific criminal offences. The amendments have been subject to public and inter-agency consultations and are pending for adoption by the government and submission to parliament.

In **Denmark**, the government presented an action plan called 'A Strong Defence against Terror', which contains a list of 12 initiatives, including the use of PNR data, to protect against and counter terrorism. The plan provides for access to PNR data by the Danish Intelligence and Security Service (PET). Consequently, a bill amending the PET Act was introduced, which intends to give PET access to PNR collected by the Danish Tax and Customs Authority (SKAT).[109] In **Spain**, an amendment to the draft Security Bill was introduced to provide a legal basis for the use of PNR data. The Bill on Protection of Civil Security was adopted in March 2015[110] and will be complemented by further regulation to launch the collection and processing of PNR data.

Most of the new proposed regulations were influenced by discussions at EU level. In **Latvia**, for instance, the draft law on passenger data processing presented by the Ministry of the Interior in June 2015[111] sets out that processing sensitive data of passengers will be prohibited, that the unit responsible for collecting and processing the data will be able to request passenger data from airlines about intra-EU flights, and that data should be retained for a maximum of five years.

Meanwhile, in three EU Member States (**Finland**, **Hungary** and **Romania**), legislation establishing PNR systems already entered into force in 2015.

In most Member States that had not yet established PNR systems (see Figure 5.3), the terrorist attacks in France revived the political debate on the need to establish such systems at national level. Several governments responded to internal questions by reaffirming that any PNR system should first be established at EU level. This was the case in **Ireland**, for instance, where the government described the proposed directive as a priority for EU security and sought its adoption during 2015.[112] Similarly, in **Luxembourg**, in response to a parliamentary question, the Minister for Internal Security affirmed the need for a European regulation on PNR before drafting a national regulation.[113] **Sweden** has taken a similar approach: although its Police Act[114] provides a legal basis for collecting PNR data in the country, it has not established a database so far and is awaiting the EU directive to properly launch the process at national level.

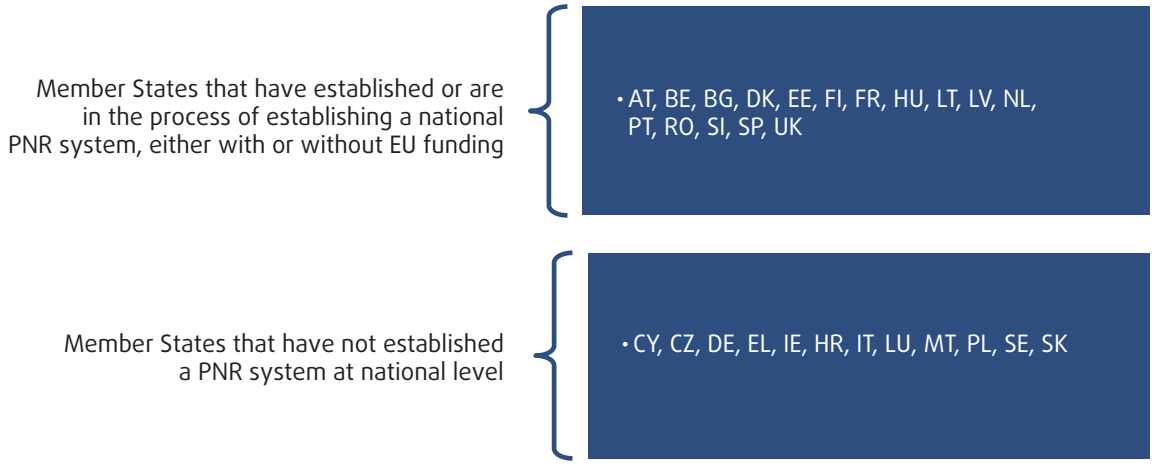
Promising practice

Fostering exchanges between a law enforcement agency and data protection authority while assessing new privacy-invasive practices

In **Slovenia**, when the police started the test phase of the national scheme for collecting and processing PNR information, the Criminal Police Directorate collaborated with the Slovenian DPA (the Information Commissioner) and for the first time decided to make use of guidelines drafted by the entity (*Privacy Impact Assessment guidelines for the introduction of new police powers*). Such a prior assessment of the impact of new police powers on privacy and protection of personal data represents a notable shift towards more transparency in the use of police powers.

For more information, see: Slovenia, Information Commissioner (Informacijski Pooblaščenec) (2014), Privacy Impact Assessment (PIA) guidelines for the introduction of new police powers *(Presoje vplivov na zasebnost pri uvajanju novih policijskih pooblastil).*

Figure 5.3: Overview of national PNR systems in 2015



Source: *FRA, 2016, based on the European Parliament Briefing (April 2015), European Parliamentary Research Service, 'The proposed EU passenger name records (PNR) directive revived in the new security context'*

FRA opinions

A number of EU Member States are in the process of reforming their legal framework for intelligence, as FRA research shows, which is based on a European Parliament request to undertake a fundamental rights analysis in this field. Security and intelligence services receiving enhanced powers and technological capacities often trigger such reforms. These, in turn, might increase the intrusive powers of the services, in particular as concerns the fundamental rights on privacy and protection of personal data, guaranteed by Articles 7 and 8 of the EU Charter of Fundamental Rights, Article 8 of the European Convention on Human Rights (ECHR), Article 17 of the International Covenant on Civil and Political Rights (ICCPR) and Article 12 of the Universal Declaration of Human Rights, as well as access to an effective remedy, enshrined in Article 47 of the EU Charter and Article 13 of the ECHR.

The CJEU and the ECtHR require essential legal safeguards when intelligence services process personal data for an objective of public interest, such as the protection of national security. These safeguards include: substantive and procedural guarantees of the necessity and proportionality of a measure; an independent oversight and the guarantee of effective redress mechanisms; and the rules about providing evidence of whether an individual is being subject to surveillance.

FRA opinion

To address the identified challenges to privacy and the protection of personal data, it is FRA's opinion that, when reforming legal frameworks on intelligence, EU Member States should ensure to enshrine fundamental rights safeguards in national legislation. These include: adequate guarantees against abuse, which entails clear and accessible rules; demonstrated strict necessity and proportionality of the means that aim to fulfil the objective; and effective supervision by independent oversight bodies and effective redress mechanisms.

Since January 2012, EU institutions and Member States have been negotiating the EU data protection package. The political agreement reached in December 2015 will improve the safeguards of the fundamental right to the protection of personal data enshrined in Article 8 of the EU Charter of Fundamental Rights. The data protection package should enter into force in 2018. Data protection authorities will then play an even more significant role in safeguarding the right of data protection. Potential victims of data protection violations often lack awareness of their rights and of existing remedies, as FRA research shows.

FRA opinion

To render the protection of privacy and personal data more efficient, it is FRA's opinion that EU Member States should ensure to provide independent data protection authorities with adequate financial, technical and human resources, enabling them to fulfil their crucial role in the protection of personal data and raising victims' awareness of their rights and remedies in place. This is even more important as the new EU regulation on data protection is going to further strengthen data protection authorities.

Whereas developments in 2014 focused on the question of whether or not to retain data, the prevalent voice among EU Member States in 2015 is that data retention is the most efficient measure to ensure protection of national security, public safety and fighting serious crime. Based on recent CJEU case law, discussions have started anew on the importance of data retention for law enforcement authorities.

FRA opinion

Notwithstanding the discussions at EU level concerning the appropriateness of data retention, it is FRA's opinion that, within their national frameworks on data retention, EU Member States need to uphold the fundamental rights standards provided for by recent CJEU case law. These should include strict proportionality checks and appropriate procedural safeguards so that the essence of the rights to privacy and the protection of personal data are guaranteed.

The European Parliament Civil Liberties, Justice and Home Affairs Committee rejected the proposal for an EU PNR Directive in April 2013 in response to questions about proportionality and necessity, lack of data protection safeguards and transparency towards passengers. In fighting terrorism and serious crime, the EU legislature nonetheless reached an agreement on adopting an EU PNR Directive in 2015. The compromise text includes enhanced safeguards, as FRA also suggested in its 2011 opinion on the EU PNR data collection system. These include enhanced requirements for foreseeability, accessibility and proportionality, as well as introducing further data protection safeguards. Once it enters into force, the directive will have to be transposed into national law within two years.

FRA opinion

It is FRA's opinion that, while preparing to transpose the future EU Passenger Name Record (PNR) Directive, EU Member States could take the opportunity to enhance data protection safeguards to ensure that the highest fundamental rights standards are in place. In the light of recent CJEU case law, safeguards should be particularly enhanced as regards effective remedies and independent oversight.

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UN & CoE

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January

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11 February – In its 24th general report, Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) addresses the treatment of juveniles in police custody and detention centres

12 February – Cyprus ratifies CoE Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Convention)

20 February – Poland ratifies the Lanzarote Convention

February

4 March – European Committee of Social Rights finds France in violation of Article 17 of the European Social Charter for not prohibiting all forms of corporal punishment

March

April

5 May – CoE Human Rights Commissioner issues a comment on inclusive education

27 and 29 May – European Committee of Social Rights finds the Czech Republic, Belgium, Ireland, and Slovenia in violation of Article 17 of the European Social Charter for not prohibiting all forms of corporal punishment

May

8 June – UN Committee on the Rights of the Child issues its concluding observations on the periodic reports of the Netherlands

June

July

3 August – Hungary ratifies the Lanzarote Convention

August

4 September – UN Committee on the Rights of Persons with Disabilities issues its concluding observations on the first report of the EU, noting that disability strategies do not include children and that the EU Agenda for the Rights of the Child has expired

September

2 October – UN Committee on the Rights of the Child issues its concluding observations on the periodic report of Poland

7 October – Denmark ratifies Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure

October

12 November – Finland ratifies Third Optional Protocol to the UN Convention on the Rights of the Child on a communications procedure

18 November – Germany ratifies the Lanzarote Convention

November

2 December – Czech Republic ratifies the Third Optional Protocol to the UN Convention on the Rights of the Child on a communications procedure

5–9 December – European Committee of Social Rights examines reports submitted by 31 States Parties on articles of the European Social Charter relating to children, families, and migrants, adopting the 2015 conclusions (published in January 2016)

December

EU

January

February

9 March – European Parliament adopts declaration on the lack of adequate after-school care facilities for disabled children in the European Union (EU)

11 March – European Parliament adopts resolution on child sexual abuse online

March

30 April – European Commission publishes a reflection paper with guiding principles on integrated child protection systems

April

May

3–4 June – European Commission organises ninth European Forum on the rights of the child, 'Coordination and cooperation in integrated child protection systems'

June

20 July – Council of the EU adopts EU action plan on Human Rights and Democracy, 'Keeping human rights at the heart of the EU agenda'

July

August

September

October

11 November – European Parliament officially endorses a voting age of 16 for European Parliament elections, and asks Member States to consider the proposal

16 November – Victims' Rights Directive 2012/29/EU comes into force, including all procedural safeguards established for child victims of crime

November

14 December – European Parliament adopts Declaration on reducing inequalities with a special focus on child poverty

15 December – European Parliament and Council of the EU agree on new Directive on procedural safeguards for children suspected or accused in criminal proceedings

December

6 Rights of the child

The arrival of thousands of children as refugees in 2015 posed many challenges, including child protection. The European Commission's efforts to provide guidance on integrated child protection systems was a timely development. With 27.8 % of all children at risk of poverty or social exclusion in 2014, reaching the EU 2020 poverty goal remains a daunting task. Children's use of the internet and social media also featured prominently on the policy agenda, with the associated risks and youth radicalisation being of particular concern. Member States continued to present initiatives against cyber abuse and on education in internet literacy, and the upcoming EU data protection package will promote further safeguards.

6.1. Child poverty rates remain high

Five years before the deadline set for the EU 2020 goals, which include the target of having "at least 20 million fewer people in or at risk of poverty and social exclusion",[1] the latest available Eurostat estimates show that the proportion of children at risk of poverty or social exclusion remains high.[2] The numbers changed little between 2010, when the strategy was launched (27.5 %), and 2014 (27.8 %); in fact, 190,000 more children were at risk in 2014 than in 2010. Children also continue to face a higher risk of poverty or social exclusion than adults (23.7 %).

The indicator that measures the EU 2020 target on poverty – 'Population at risk of poverty or social exclusion' – is known as the AROPE indicator. It combines three different indicators, as shown in Figure 6.1: 'at-risk-of-poverty', 'severe material deprivation', and 'very low household work intensity'.[3]

In some EU Member States, the proportion of children at risk of poverty or social exclusion has grown (Figure 6.2): for example, in **Finland** from 13 % to 15.6 %and in **Spain** from 32.6 % to 35.8 %. In **Romania**, despite some improvement in 2013, the number increased from 48.5 % to 51 % in 2014; it is now the country with the highest child poverty rate in the EU. Meanwhile, **Denmark** has the lowest child poverty rate – just below 15 %.

Other countries managed to substantially reduce their national child poverty levels – such as **Lithuania**, moving from 35.4 % to 28.9 %; **Latvia**, from 38.4 % to 35.3 %; and **Ireland**, from 33.9 % to 30.3 %. **Bulgaria** continued the positive trend of the past few years and pushed down the rate by more than 6.3 percentage points as compared with 2013. Nevertheless, at 45.2 %, it has the second-highest child poverty rate in the EU.

Determining how to measure poverty at national level and linking poverty increases or decreases to certain policy developments remains challenging, and was the focus of considerable discussion. In the **United Kingdom**, the government announced in July that it would no longer use relative income or other income and deprivation measures to assess child poverty.[4] The government considers the current child poverty measure – defined as 60 % of median income – deeply flawed, and intends to enact new legislation to measure child poverty, repealing the Child Poverty Act 2010.[5] The new legislation will focus on levels of work within a family, as well as on improvements in attaining education. In addition, the government will develop a range of other measures and indicators of

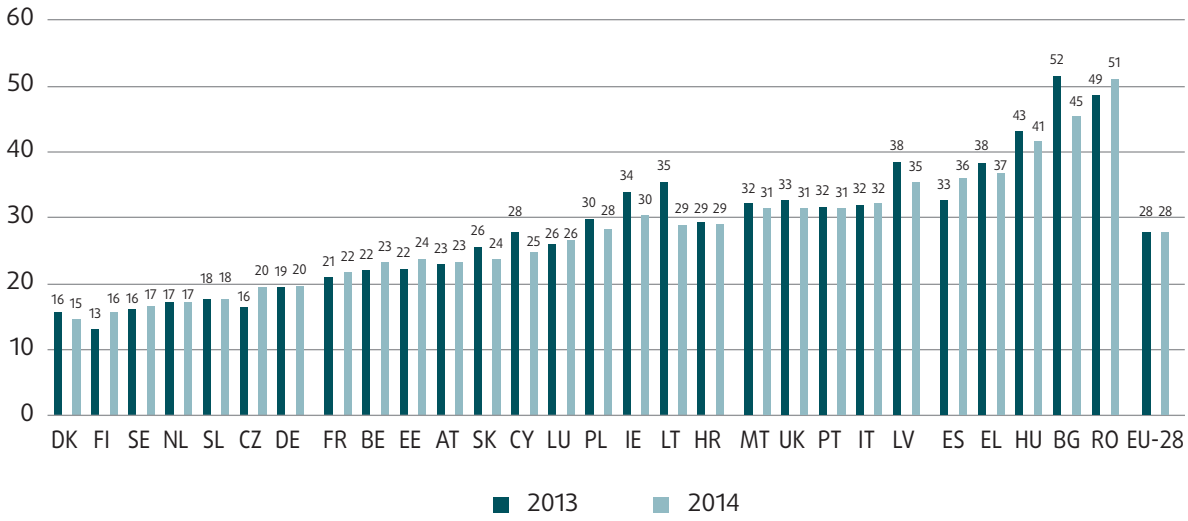
Figure 6.1: EU 2020 indicator on poverty: at risk of poverty or social exclusion (AROPE), children (0–18 years)

AROPE

- **At-risk-of-poverty:** children living in a household with an equivalised disposable income below the at-risk-of-poverty threshold, which is set at 60 % of the national median equivalised disposable income after social transfers.
- **Severe material deprivation:** children living in a household that cannot pay for at least four out of a list of nine items: rent, mortgage or utility bills; keeping their home adequately warm; unexpected expenses; eating meat or proteins regularly; going on holiday; a television set; a washing machine; a car; a telephone.
- **Very low household work intensity:** children living in households in which, on average, adult members aged 18–59 have a work intensity below a threshold set at 0.20. The work intensity of a household is the ratio of the total number of months that all working-age household members have worked during the income reference year and the total number of months the same household members theoretically could have worked in the same period.

Sources: *FRA, 2015; and Eurostat,* 'Glossary: At risk of poverty or social exclusion (AROPE)'

Figure 6.2: Children at risk of poverty or social exclusion in 2013 and 2014, by EU Member State (%)



Note: *EU-28 Eurostat estimation*

Source: *Eurostat, European Union Statistics on Income and Living Conditions (EU-SILC) 2014 [ilc_peps01]*

root causes of poverty and will set these out in a 'children's life chances' strategy. This would allow measurements of child poverty to also consider non-material outcomes. However, this move attracted criticism from civil society organisations, which emphasised that, although an effective child poverty strategy needs a broad, multifaceted approach, income is an important measure that should not be excluded, particularly as two thirds of children in poverty live in working families with low-paying jobs.[6] The government ultimately decided to keep four established indicators, including income, in a new proposal on the Welfare Reform and Work Bill.[7]

The European Social Policy Network (ESPN), established to provide the European Commission with independent information, analysis and expertise on social policies, believes there is no justification for no longer using relative income, or other income and deprivation measures, to assess child poverty.[8] The European Parliament in 2015 recommended developing statistical methods that integrate multidimensional indicators to measure poverty, social exclusion, inequalities, discrimination and child well-being – going beyond the AROPE indicator. Examples include access to adequate education services, exposure to physical risk, and level of life satisfaction.[9]

The European Commission's recommendation[10] 'Investing in children: Breaking the cycle of disadvantage' provides guidance on policies to address child poverty or social exclusion, based on three pillars: access to adequate resources, access to affordable quality services, and children's right to participate.[11] This offers a more comprehensive approach to addressing poverty than do exclusively income-related policies and indicators based mainly on income, such as AROPE. The recommendation provides a set of indicators relating to income support, education, health, and others. It is based on existing sources, such as Eurostat data, and covers indicators on outcomes, many based on household data – such as material deprivation rates, or 15- to 19-year-olds not in employment, education, or training. As explained in the Focus section of FRA's 2014 Annual report, to measure human rights implementation, FRA uses an indicator framework that includes three distinct categories of indicators: structural (e.g. legal and policy provisions), process (e.g. specific measures and budgetary allocations) and outcome (e.g. change in rights holders' situation). Process indicators are particularly important in the EU context, where relevant legislation mostly exists, but is often not effectively implemented. In its November 2015 resolution on child poverty, the European Parliament recommended further developing indicators.[12]

"[The European Parliament] considers that, in order to achieve better results with the three-pillar approach [of the Commission recommendation 'Investing in children: Breaking the cycle of disadvantage'], it could be useful to develop precise and specific indicators of the level of child poverty and the areas more affected by this phenomenon."

European Parliament (2015), Resolution of 24 November 2015 on reducing inequalities with a special focus on child poverty (2014/2237(INI)), Strasbourg, paragraph 6

6.1.1. EU initiatives target child poverty

Although child poverty rates remain high, the European Semester – the EU 2020 monitoring and coordination mechanism – only partly addresses the acute situation of children in Europe. This is partly because the number of country-specific recommendations (CSRs) on children –already low in 2014 – further decreased in 2015, as did the overall number of CSRs issued.

The EU 2020 strategy covers different areas that affect the situation of children, such as measures on poverty reduction; employment growth targets, especially those promoting women's participation in the labour market; promotion of gender equality and reconciliation of work and family life, such as early childhood education and the childcare provision system and flexible working times; inclusive education; and transition from education to employment. These aspects are also related to the recently announced European Pillar of Social Rights, a key element of the Commission's Work Programme for 2016, such as the right to minimum pay, access to provisions relating to child care and benefits, and access to basic social services, including health care.[13] According to the 2016 Annual Growth Survey,[14] the first step in the European Semester process, the EU 2020 review exercise will take the UN Sustainable Development Goals (SDGs)[15] into account. The UN Millennium Developments Goals expired in September 2015, and 17 SDGs replaced them. The SDGs include 169 targets to achieve by 2030, which also address child poverty and well-being.

After it adopts the Annual Growth Survey, and EU Member States submit national reform programmes (NRPs), the Commission drafts CSRs, for endorsement by the Council of the EU. Table 6.1 shows which countries have received recommendations to address the EU 2020 targets. It also shows the percentage of children at risk of poverty or social exclusion in each Member State in 2014.

In 2015, 10 EU Member States received recommendations in child-related policy areas (**Austria**, **Bulgaria**, the **Czech Republic**, **Estonia**, **Hungary**, **Ireland**, **Romania**, **Slovakia**, **Spain** and the **United Kingdom**). This is a remarkably low number. In 2012 and 2013, 14 Member States received recommendations directly related to children. As noted in FRA's 2014 Annual report, it remains unclear why certain Member States with high poverty rates and no comprehensive policies in place do not receive child-related recommendations, while others with similar or lower rates do.

The European Semester was subject to considerable scrutiny, with both the European Parliament and civil society[16] identifying deficiencies in its scope and content. The European Parliament adopted a declaration on investing in children in November 2015,[17] calling for the European Semester to make the reduction of child poverty and social exclusion visible and explicit at all stages. It also called on Member States to effectively integrate relevant aspects of the Social Investment Package into their NRPs and asked the Commission to set an EU 2020 sub-target on reducing child poverty and social exclusion. The parliament also asked the Commission to refrain from recommending reformulations and cuts in the public services of Member States, and from promoting flexible labour relations and the privatisation of public services, stating that these have unequivocally led to the weakening of children's social rights. It also recommended that the Commission, together with

Table 6.1: 2015 European Semester country-specific recommendations (CSRs) including the latest data on children at risk of poverty or social exclusion, by EU Member State (%)

EU Member State	CSRs on childcare services	CSRs on early childhood education	CSRs on inclusive education	CSRs on income-related child poverty	% of children at risk of poverty or social exclusion in 2014 (EU-SILC)
AT	yes	no	yes	no	23.3
BE	no	no	no	no	23.2
BG	no	yes	yes	no	45.2
CY*	N/A	N/A	N/A	N/A	24.7
CZ	yes	no	yes	no	19.5
DE	no	no	no	no	19.6
DK	no	no	no	no	14.5
EE	yes	no	no	no	23.8
EL*	N/A	N/A	N/A	N/A	36.7
ES	no	no	no	yes	35.8
FI	no	no	no	no	15.6
FR	no	no	no	no	21.6
HR	no	no	no	no	29.0
HU	no	no	yes	no	41.4
IE	yes	no	no	yes	30.3
IT	no	no	no	no	32.1
LT	no	no	no	no	28.9
LU	no	no	no	no	26.4
LV	no	no	no	no	35.3
MT	no	no	no	no	31.3
NL	no	no	no	no	17.1
PL	no	no	no	no	28.2
PT	no	no	no	no	31.4
RO	yes	yes	yes	no	51.0
SE	no	no	no	no	16.7
SI	no	no	no	no	17.7
SK	yes	yes	yes	no	23.6
UK	yes	no	no	no	31.3
Total	**7**	**3**	**6**	**2**	**27.8**

Notes: *Highlighted cells indicate that the country at issue received country-specific recommendations on the specified topic.*
** No country-specific recommendations pursuant to an economic adjustment programme*

Source: *FRA, 2015, and Eurostat, European Union Statistics on Income and Living Conditions (EU-SILC) 2014 [ilc_peps01]*

Member States, establish a roadmap for implementing the three-pillar approach taken in the 2013 Commission Recommendation 'Investing in children: Breaking the cycle of disadvantage' in terms of access to resources, services, and children's participation.[18]

6.1.2. Member States tackle child poverty

Member States respond to the child-specific recommendations through the NRPs presented in the European Semester cycle of the following year, indicating – to different extents – what policy, legislative, or budgetary changes they have introduced or are planning.

In 2014, **Bulgaria** received a recommendation to increase efforts to improve access to quality, inclusive pre-school and school education for disadvantaged children, particularly from Roma communities. The government responded by adopting two new programmes. First, the Action Plan for 2015–2016 for the implementation of the National Strategy for Poverty Reduction and Promotion of Social Inclusion[19] envisages supporting children from vulnerable groups – including Roma, rural, or low-income families – to attend school or kindergarten. Secondly, the National Programme for Child Protection for 2015[20] includes a section on ensuring equal access to quality pre-school and school education. Furthermore, to counter the problem of pupils leaving school at an early stage, the Ministry of Education and Science launched the inclusive programme 'School – a territory of the pupils'.[21] The programme aims to bring together school children from different ethnic and social groups and further develop their skills to prevent school drop-outs. (For more information on Roma, see Chapter 4, as well as Chapter 3 on racism, xenophobia and related intolerance.)

Slovakia in 2014 received a recommendation on improving incentives for women's employment, in particular by enhancing the provision of childcare facilities in general and specifically for children under the age of three. The subsequently approved budget for 2015 includes additional capital expenditures designed to extend the capacity of kindergarten buildings and construct new ones; by 2023, the government plans to build some 90 facilities with approximately 1,800 places for children under three years of age.[22] The 'Family and Work' pilot project,[23] implemented since February 2015, also aims to support employment for women with children; it provides several measures, including financial subsidies, for each newly created job for women returning from maternity leave or with a child under 10 years of age.

The **United Kingdom** received a CSR on child poverty in 2014, and Wales adopted a Child Poverty Strategy in March 2015.[24] The strategy reaffirms Wales's commitment to eradicating child poverty by 2020 and focuses on three objectives: reducing the number of families living in workless households; increasing the skills of parents and young people living in low-income households; and reducing the inequalities in the health, education, and economic outcomes of children and families by improving the outcomes of the poorest.

Beyond the specific CSRs, reforms to child allowance systems took place in some Member States, including **Austria**,[25] **Bulgaria**,[26] **Croatia**,[27] **Estonia**,[28] **Finland**,[29] **France**,[30] **Germany**,[31] **Ireland**,[32] **Malta**[33] and **Sweden**.[34] According to an ESPN report on social investment, one interesting trend is that, in some of the countries in which experts report an overall reduction in family benefits, they also report efforts to strengthen early childhood education and care provision. To some extent, this may represent a shift in spending priorities.[35]

The government in **Malta** for the first time introduced a child supplement allowance into the 2015 National Budget.[36] In other Member States, already existing benefits increased. The **Austrian**[37] annual tax-free child allowance doubled to €440 per child, and in **Germany**, the monthly child benefit increased by €4 – from €184 to €188 – in 2015.[38] Some ministries and civil society criticised the increases as insufficient, such as in Austria and Germany.[39]

In **Ireland**, the government introduced a small monthly increase in child benefit payments in the budget of 2015 – the first time in seven years.[40] NGOs, however, expressed concern that this crucial support does not reach certain children, as their parents do not meet certain qualifying criteria set out in social welfare legislation – such as habitual residence. They also claim that, in some cases, it excludes children of migrant parents, including children of all asylum seekers, because of their parents' immigration status.[41]

Reforms in other Member States introduced increases in child allowances targeted at particular groups at risk, such as children with disabilities or those living in single-parent families. For example, **Croatia** introduced an act improving support for children with disabilities as one of the groups at highest risk of poverty.[42] **Estonia** is developing a subsistence support fund for single-parent families (headed by the mother in 92 % of cases), which should be in place by 2017.[43]

Child poverty rates in **Finland** increased from 13 % in 2013 to 15.6 % in 2014.[44] Nonetheless, a government programme plans to delink child allowances from general index increases, allowing savings of €120 million in public spending between 2016 and 2020.[45] In November, the parliament's Constitutional Law Committee reviewed this issue[46] in light of the constitutional right to social security – especially its paragraph on support to families.[47] The committee accepted the legislative reform, but expressed concern

that it particularly affects low-income families, and concluded that it should include a clear account of the proposed cuts' effects on the various forms of families and households.[48] A report from the European Social Policy Network argues that the real value (in 2013 prices) of Finland's child allowance (payable from the first child) dropped from €130 in 1994 to €120 in 2005, and to less than €100 in 2015.[49]

The **Bulgarian** model of allowances has changed, with recent amendments to the Family Allowances for Children Act permitting some family allowances to be distributed in the form of goods or services instead of cash – specifically, when parents do not take good care of a child or when the mother is under 18 years old.[50] The new rules cover three types of benefits: a single allowance for enrolling a child in the first year of primary school; monthly allowances for raising a child up to the age of one year; and monthly allowances for raising a child until completion of high school. To promote responsible parenthood, parents who have their children placed outside the family must return certain benefits.[51]

6.2. Child protection remains central issue, including in the digital world

Protection from all forms of violence is a fundamental right of children. European institutions and Member States dedicate constant efforts to this important matter. Ensuring that national and local child protection systems respond adequately and early to risks and cases of violence is an important element of these efforts.

The European Commission's work on EU guidance regarding integrated child protection systems ultimately resulted in the proposal of a set of 10 guiding principles, outlined in a reflection paper that was presented at the EU Forum on the rights of the child.[52] The principles are informed by both a 2014 public consultation and FRA research on mapping child protection systems,[53] and are firmly grounded in the United Nations Committee on the Rights of the Child General Comment No. 13 (2011)[54] on the right of the child to freedom from all forms of violence. The principles aim to help ensure that national child protection systems form a protective environment around all children in all settings and respond to all forms of violence, in line with Article 19 of the UN Convention on the Rights of the Child. Based on a child-rights approach and fully recognising children as rights-holders, the principles emphasise enhancing children's resilience and capacity to claim their rights, with due regard to the cross-cutting principles: the best interests of the child, non-discrimination, child participation, and the right to life, survival, and development. The principles also address the capacity of duty-bearers to protect children from violence via, for example, support for families, professional and care standards and qualifications, and reporting mechanisms. Aiming to reinforce protection – particularly in cross-border and transnational situations – the principles should also be a key tool when addressing the situation of refugee children.

The Commission also published a report on legislation, policy, and practice of child participation in the EU, highlighting good practices in the area.[55] These include, for example, the Irish initiative to adopt a child participation strategy.[56]

The EU has established common safeguards in relation to specific forms of violence, such as sexual violence against children. But the implementation of the Directive on combating sexual abuse and sexual exploitation of children and child pornography (2011/93/EU)[57] continued to encounter difficulties. In 2014, the Commission opened formal infringement procedures against 11 Member States for non-communication of national measures implementing the directive. By the end of 2015, it did close the cases involving **Cyprus**, **Hungary**, the **Netherlands** and the **United Kingdom** due to correct implementation or submission of information.[58] However, in the cases of **Belgium**, **Greece**, **Italy**, **Malta**, **Portugal**, **Romania** and **Spain**, the Commission launched the second stage of infringement procedures with reasoned opinions, asking them to notify the Commission of all measures taken to ensure full implementation, including bringing national legislation in line with EU law. Should the Member States fail to do so, the Commission may decide to refer them to the Court of Justice of the European Union (CJEU).[59]

The Council of Europe also stepped up its efforts to combat sexual violence. Encouragingly, most EU Member States have now ratified the Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Convention). The **Czech Republic**, **Estonia**, **Ireland**, **Slovakia** and the **United Kingdom** have not done so. Meanwhile, the Lanzarote Committee presented its first implementation report on the convention, identifying gaps in national laws, weak data collection and fragile cooperation, and collecting good practices in assisting child victims of sexual abuse.[60] On 18 November, Europe for the first time celebrated the European Day on the Protection of Children against Sexual Exploitation and Sexual Abuse.[61]

Also in 2015, the European Committee of Social Rights examined reports submitted by 31 States Parties on articles of the European Social Charter relating to children, families and migrants: the right of children and young persons to protection (Article 7); the

right of employed women to protection of maternity (Article 8); the right of the family to social, legal and economic protection (Article 16); the right of children and young persons to social, legal and economic protection (Article 17); the right of migrant workers and their families to protection and assistance (Article 19); the right of workers with family responsibilities to equal opportunity and treatment (Article 27); and the right to housing (Article 31). The reports covered the reference period 2010–2013.[62]

Promising practice

Reaching out to potential child abusers: self-help material

Finland has developed a project that directly addresses potential perpetrators of child abuse offences, as suggested in Article 22 of the Directive on sexual abuse and sexual exploitation of children and child pornography. The 'I take the responsibility' (*Otan vastuun – hanke*) project involved the creation of a website launched in 2015; it is funded by the Ministry of Justice and maintained by Save the Children. The website aims to prevent sexual abuse of children by offering internet-based information and support to people who are worried about their sexual interest in, or online behaviour regarding, children. The website provides self-help material on child sexual abuse in the context of the internet and digital media, as well as tools to reflect more broadly on one's life situation and own actions. The designers used the views of prisoners who have committed sexual crimes in shaping the content and structure of the material. The Forensic Child and Adolescent Psychiatric Unit of the Hospital District of Helsinki and other institutions provided expert advice.

The project won the National Crime Prevention Prize from the Finnish Ministry of Justice in 2015 and represented Finland in the European Crime Prevention Competition 2015.

For more information, see: 'I take the responsibility' project website (in Finnish); Online self-help material from the 'I take the responsibility' project (in English)

Initiatives also targeted other forms of violence, such as corporal punishment, during 2015. The European Committee of Social Rights (ESCR) focused on corporal punishment as a form of violence against children and has now adopted all decisions on the merits of the collective complaints made in 2013 against several Member States. The ESCR found a violation of Article 17 of the European Social Charter in **Ireland**, **Slovenia**, **Belgium**, the **Czech Republic** and **France** – but not in **Italy** – for not explicitly prohibiting all forms of corporal punishments.[63] In the meantime, **Ireland** banned all forms of corporal punishment by adopting the Children First Act 2015, which removes the defence of 'reasonable chastisement' from the law, effectively banning parents from physically punishing their children.[64]

The European Commission also demonstrated commitment to supporting the elimination of corporal punishment by providing funding through the DAPHNE programme; it aims to facilitate the implementation of laws that prohibit corporal punishment through additional supporting measures. The funding is thus open only to countries that already have a legal ban in place.[65]

6.2.1. Internet and social media: a field of risks and opportunities

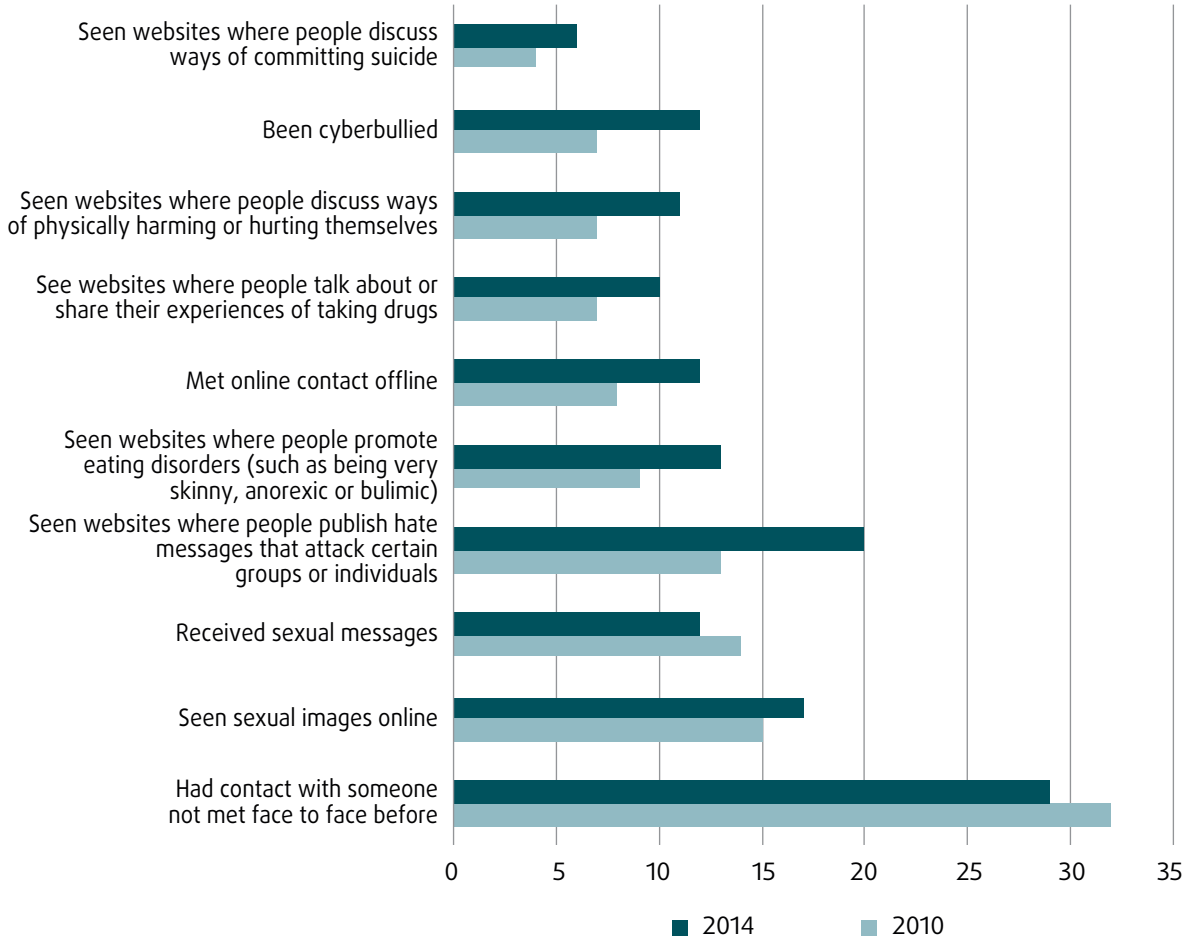
Ensuring that children are protected when accessing the online world via computers or mobile devices stayed high on the political agenda. European institutions and Member States took various initiatives to address internet-related risks, but also promoted the empowerment of children and the benefits the internet brings.

Existing data show that children are more exposed to internet-related risks than in previous years. EU Kids Online[66] is a project that included a 2010 survey asking 25,000 children and parents in 25 EU Member States about children's online habits, skills, and risks. It updated its data for seven countries in 2014. As shown in Figure 6.3, children aged 11–16 are now more likely to encounter hate messages (20 % in 2014 compared with 13 % in 2010) and cyberbullying (12 % in 2014 compared with 7 % in 2010). While the report highlights positive aspects of the internet, it also notes that children's chances of benefiting from it depends on age, gender and socio-economic status, parental support, and the availability of positive content.

Discussions on reforming the EU's data protection package focused on protecting children by imposing age requirements for accessing certain social media networks.[67] The draft regulation initially proposed setting 13 as the uniform age of consent for social media use. A later draft set the age limit at 16, requiring anyone under that age to secure parental consent before using social media. The EU Data Protection Reform ultimately did not include this higher age limit.[68] Instead, following the lack of consensus on a uniform European age of consent, the new draft law – to be adopted in 2016 – allows each Member State to set its own social media age limit within a range of 13–16 years. For more information on the data protection reform, see Chapter 5.

The European Commission's Safer Internet Forum 2015 focused on products that are aimed at younger

Figure 6.3: Children aged 11–16 years exposed to online risks in seven countries,* comparing 2010 and 2014 (%)



Note: * Belgium, Denmark, Ireland, Italy, Portugal, Romania and the United Kingdom.

Source: EU Kids Online (2014), EU Kids Online: Findings, methods, recommendations (deliverable D1.6), London, LSE

users with the Internet of Toys – such as wristbands, dolls, and action figures that connect to the cloud – and their impact on child protection online.[69] The European Parliament raised concerns about the risks of the internet in a Resolution on child sexual abuse online.[70] The resolution strongly emphasises that protecting children and ensuring a safe environment for their development is one of the primary objectives of the European Union and its Member States. It also stresses the need for a comprehensive and coordinated European approach that encompasses the fight against crime together with fundamental rights, privacy, data protection, cybersecurity, consumer protection and e-commerce.

Throughout the year, Member States such as **Austria**, **Bulgaria**,[71] **Germany**, **Ireland**, **Portugal**,[72] **Spain**,[73] and **Croatia**[74] updated their legislation to include various provisions on sexual crimes against children that contain specific references to new technologies. For example, the Criminal Law (Sexual Offences) Bill 2015 introduced in **Ireland** included two new offences targeting online sexual offenders to protect children from exploitation by way of new technologies, including social media.[75]

> *"[The European Parliament] stresses in the strongest terms that the rights and protection of children online must be safeguarded, and that steps must be taken to ensure that any illicit content is promptly removed and reported to law enforcement authorities, and that there are sufficient legal instruments for investigating and prosecuting offenders".*
>
> European Parliament (2015), Resolution of 11 March 2015 on child sexual abuse online (2015/2564(RSP)), Strasbourg, 11 March 2015, paragraph 2

Austria introduced the offence of cyberbullying,[76] while **Germany** also criminalised the unauthorised distribution of photos likely to significantly damage the reputation of the person shown, with the aim of combating cyberbullying.[77] Meanwhile, a new **French** decree allows the police services in charge of the fight against cybercrime to require owners of search

engines or directories to de-list sites that incite acts of terrorism or deny war crimes and sites that contain images of child pornography.[78] A second new decree permits the police to block internet sites that contain child pornography.[79]

There were other positive developments at Member State-level. Several states adopted policy measures that increased resources for anti-cybercrime operations, including the **Netherlands**,[80] **Portugal**, **Spain**,[81] **Sweden,** and the **United Kingdom**. For example, in **Portugal**, a law set up new national cybercrime research.[82] The **United Kingdom** opened a co-located National Crime Agency and Government Communications Headquarters Joint Operations Cell in November 2015. The unit brings together officers from both agencies to tackle online child sexual exploitation.[83] The **Swedish** police created a national centre for IT crimes, doubling the number of police working on IT-related crimes. The centre is in charge of efforts targeting child sexual abuse material.[84]

The internet and social media platforms certainly involve risks and trigger a need for protection, but also promote education, democratic participation, and critical thinking, including by providing basic access to information and services through digital media.[85] However, according to an EU Kids Online report, more research covers the risks and harm of the internet and mobile technologies than the opportunities and benefits their use brings. In 33 European countries analysed, for every two studies that focus on opportunities and benefits, there are roughly three studies that focus on risks and harm.[86]

Promising practice

Supporting child journalism through internet platforms

A **Spanish** social network of young journalists provides a good example of how to use the internet as a tool for empowerment. The project 'cibercorresponsales', funded by the Ministry of Health, Social Services and Equality and other public and private institutions, offers children the opportunity to talk about their views, feelings, worries, and things they want to change. There are currently 1,496 'cibercorresponsales' – children who have their own blog and participate in groups formed by schools, NGOs, or local governments. Children write all articles published and cover issues such as political news, solidarity and media, as well as humour, poetry, and films. The site also provides educational materials for children, teachers, journalists, and parents.

The content is available through an internet site and an app for mobile devices.

For more information, see: www.cibercorresponsales.org/

With some institutions recognising the importance of asking children about their views on the online world, several Member States are directly involving children in the development of internet policies or programmes. For example, the Children's Commissioner for England (**United Kingdom**) launched the 'Digital Taskforce' in 2015, with the purpose of bringing together children and experts to make recommendations to policy-makers and industry and exert influence over the future development of the internet for children.[87]

The **Swedish** Digitalisation Commission appointed a group of young experts aged seven to 18 to make up the 'young commission', which was active until December 2015.[88] The Digitalisation Commission had the mission of analysing and monitoring progress on meeting Sweden's goal of becoming a world leader in exploiting the opportunities of digitalisation. The young commission served as discussion partners and provided advice. At the closing meeting, the children created a list of "ten digital things to learn or understand before you become an adult", which was handed over to the Minister for IT.

The **Estonian** 'Smartly on the Web' project includes a youth panel whose members advise the project team on the planning and implementation of activities aimed at young people.[89] The project is multi-faceted. It is involved in awareness raising via training sessions, develops and disseminates teaching and awareness materials, holds creative competitions for students, and does awareness-raising campaigns and events. In addition, it engages in counselling on internet safety issues via the children's helpline (116111), and operates a web-based hotline to enable internet users to report websites that contain child sexual abuse material.

6.2.2. Growing concern over child and youth radicalisation online

Terrorist attacks in **France** in January and November prompted a number of European and national actors to address youth radicalisation, including through the internet.[90] Meanwhile, the UN Security Council adopted the first-ever resolution on youth, peace, and security. It also expresses "concern over the increased use, in a globalized society, by terrorists and their supporters of new information and communication technologies, in particular the Internet, for the purposes of recruitment and incitement of youth to commit terrorist acts".[91]

The 2013 'EU Strategy preventing radicalisation to terrorism and violent extremism: Strengthening the EU's response' already pointed out that the online radicalisation of young people posed a risk, and noted that further research was needed.[92] In November 2015, the European Parliament called for a new strategy to fight the radicalisation of young EU citizens.[93] The resolution

'on the prevention of radicalisation and recruitment of European citizens by terrorist organisations' sets out proposals for a comprehensive strategy to tackle extremism, for application particularly in prisons, online, and through education and social inclusion.[94] It also notes the increased vulnerability of young people in relation to online terrorist radicalisation. In response to this, it voices support for the "implementation of youth awareness programmes concerning online hate speech and the risks that it represents, of programmes promoting media and internet education [and of] training programmes with a view to mobilising, training and creating networks of young activists to defend human rights online". In setting out steps to take against radicalisation, it emphasises the particular vulnerability of 'minors' in public youth protection institutions and detention or rehabilitation centres. Finally, the resolution also emphasises the role of schools at both primary and secondary levels in promoting integration, developing critical thinking and non-discrimination, and teaching responsible internet use. (Chapter 3 on racism, xenophobia and related intolerance further addresses radicalisation and online hate speech.)

Preventing and countering youth radicalisation in the EU – a study by the European Parliament's Civil Liberties, Justice and Home Affairs Committee (LIBE) released in 2014 –drew attention to the need to overcome the counterproductive stereotype of the internet as a catalyst in pushing individuals from radical thought to action.[95] The study acknowledged that new technologies are used for recruitment, networking, and propaganda, but noted that their role should be carefully assessed and not overestimated. Another study, entitled *Radicalisation in the digital era: The use of the internet in 15 cases of terrorism and extremism*, came to a similar conclusion.[96] It acknowledged that the internet increases opportunities for radicalisation, but also stated that the

> *"hypothesis that internet allows radicalisation without physical contact cannot be supported. In all our cases the so called offline world played an important role in the radicalisation process. The subjects had offline contact with family members or friends who shared their beliefs. The internet is therefore not replacing the need for individuals to meet in person during their radicalisation."*

Member States introduced several legislative and policy initiatives to address youth radicalisation, the internet, and the role of schools in particular. In the **United Kingdom**, the Counter-Terrorism and Security Act 2015 imposed new legal duties on specific authorities in England, Wales and Scotland, including educational and childcare bodies, to 'have due regard to the need to prevent people from being drawn into terrorism'.[97] The government provided statutory guidance[98] for schools and child care providers in England and Wales, requiring schools to ensure that children are safe from terrorist and extremist material when accessing the internet in school and ensure that suitable filtering is in place. The government also made clear in separate advice for schools and childcare providers in England[99] that schools have an important role to play in equipping children and young people to stay safe online, both in school and outside, and that internet safety will usually be integral to a school's ICT curriculum.

The **Belgian** Ministry of Education of the Wallonia–Brussels Federation created two new tools to promote teachers' use of ICT and social networks as part of their mission of education;[100] it also proposed creating working groups to develop tools and educational support to combat internet abuse, and the radicalisation of children in particular.[101] Flanders set up a similar online prevention tool for schools and teachers, dealing with the radicalisation of pupils.[102]

6.3. Supporting children involved in judicial proceedings

Access to justice is a fundamental right for everyone, including children who may, for example, have experienced or witnessed violence, have committed a crime, or whose parents are divorcing. According to international and European standards, children must be given access in ways that avoid traumatisation and ensure that their participation is informed and effective.

A 2015 European Commission policy brief[103] concludes that there has been progress across the EU in implementing international standards in the area of child-friendly justice; however, implementation remains selective and inconsistent. It also notes that children's enjoyment of their rights in practice depends on a number of conditions – such as age, their role in the proceedings, and the discretion of the judicial authorities. The policy brief recommends several measures to Member States, including establishing specialised courts, ensuring the right to mandatory defence, providing training, and investing in data collection. The report closes by suggesting that the Commission develop an action plan to advance child-friendly justice in the EU. The policy brief completed a series of Commission reports on legislation and policy on children's involvement in criminal, civil, and administrative proceedings in the EU28.[104] FRA carried out complementary research, focusing on practice. The Commission's efforts in this area also included providing funding for the promotion of child-friendly systems in the Member States.[105]

Although all Member States have ratified the UN Convention on the Rights of the Child (CRC), in

19 Member States, it remains impossible for children to access justice at the international level for violations of the convention. An optional protocol that has been open for signature since early 2012 – the Third Optional Protocol to the CRC on a communications procedure – provides the possibility for children themselves to bring complaints of rights violations before the Committee on the Rights of the Child. However, only nine Member States have ratified this protocol. In 2015, the **Czech Republic**, **Denmark**, and **Finland** did so, joining the six Member States already party to the protocol (Belgium, Germany, Ireland, Portugal, Slovakia, and Spain). By failing to ratify the protocol, the remaining countries thus continue to deny children the possibility of bringing cases before the committee.

FRA published several reports in 2015 that address the various hurdles encountered by children when trying to access justice and participate in judicial proceedings, and outline their rights in such situations. These include a report on child-friendly justice (*Child-friendly justice: Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States)*; a handbook covering children's rights more generally (*Handbook of European law on the rights of the child)*; and a report focusing on children with disabilities (*Violence against children with disabilities: Legislation, policies and programmes in the EU)*.

6.3.1. Diverse efforts emphasise rights of children accused or suspected of crimes

The rights of children accused or suspected of crimes received considerable attention, with various reports, an upcoming directive, and multiple legislative proposals in Member States touching on the issue.

Several international bodies issued reports focusing on children deprived of liberty, underlining existing international standards that deem the deprivation of liberty as a measure of last resort that should be used for the shortest time possible. The UN's Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment dedicated his 2015 thematic report to the unique forms of protection of children deprived of their liberty and the particular obligations of states to prevent and eliminate torture and ill-treatment of children in the context of deprivation of liberty.[106] The report outlines a comprehensive set of recommendations, including: to provide non-custodial, community-based alternative measures to the deprivation of liberty; to set the minimum age of criminal responsibility to no lower than 12 years, and to consider progressively raising it; not to detain children in law enforcement establishments for more than 24 hours, and only in child-friendly environments; and to ensure that states never use immigration detention as a penalty or punishment for migrant children, including for irregular entry or presence.

The 24th general report issued by the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), also gave prominence to juveniles deprived of liberty.[107] In addition to articulating a number of recommendations, the report notes that, in its country visits, the committee continues to find juveniles in police custody being accommodated in the same cells as adults, as well as juvenile prisons with poor material conditions, a lack of trained staff, and inadequate support and supervision.

Within the European Union, the European Commission, the Council of the EU and the European Parliament reached an agreement in late 2015 regarding the text of the Directive on procedural safeguards for children suspected or accused in criminal proceedings.[108] The EU expects to adopt the directive in early 2016, giving Member States 36 months to incorporate it into national law. A core provision of the directive relates to mandatory assistance by a lawyer, which a child cannot waive. Member States need to make sure that children receive the assistance of a lawyer, where necessary by providing legal aid. Other important provisions of the directive concern the oral and written provision of information on rights and procedures, the right to an individual assessment, the right to a medical examination, and the right to audio-visual recording of questioning. It also provides special safeguards for children while they are deprived of liberty, particularly during detention.

Several EU Member States made changes to their juvenile justice systems in 2015, largely with respect to detention. For example, in **Spain**, a law reforming the Criminal Procedure Law was adopted in October.[109] The changes establish that authorities cannot hold children under 16 in solitary confinement. Furthermore, the code now sets out an obligation to immediately inform children's parents or guardians about their detention, as well as to put the child at the disposal of the Public Prosecutor's Office for Minors.

The **Austrian** Juvenile Court Act,[110] which will enter into force on 1 January 2016, establishes that pre-trial detention for adolescents is to be used only in exceptional cases. Pre-trial detention is no longer permissible for adolescents suspected of having committed a criminal offence punishable with a fine or imprisonment of up to one year; measures are also in

place to encourage replacing pre-trial detention with less severe measures.[111]

In **Sweden**, although there were no changes to the law, new guidelines concerning detention –including of young suspects – came into effect in 2015. The General Prosecutor's guidelines regarding restrictions and long detention-periods aim to decrease the use of restrictions and make the prosecutor assess proportionality.[112] The government also appointed an inquiry chair in 2015 to propose measures for reducing the use of detention and restrictions for children and young offenders.

In **Lithuania**, amendments to the Criminal Procedure Code[113] reduced the permissible length of pre-trial detentions of children. The law now provides that these should initially last no more than two months; that extensions should not last more than four months; and that, in total, pre-trial detentions of children should not exceed six months.

The ECtHR's ruling in *Grabowski v. Poland* (No. 57722/12)[114] also scrutinised the detention of juveniles. It held that continuing to detain a juvenile in a shelter for juveniles under an order referring his case for examination in correctional proceedings – without a separate judicial decision or review – violated the juvenile's right to liberty and security, guaranteed by Article 5 (paragraphs 1 and 4) of the ECHR. In the court's view, the problems identified in the applicant's case could give rise to other well-founded applications, given that – according to statistics as of 2012 – 340 juveniles were apparently similarly placed in shelters. The court therefore called on Poland to take legislative measures to stop this practice and to ensure that specific judicial decisions authorise each and every deprivation of a juvenile's liberty.

FRA will further explore the issue of detention in research on administrative, migration-related detentions of both unaccompanied children and children detained with parents or legal guardians in the context of the recast Reception Conditions Directive (2013/33/EU) and the Returns Directive (2008/115/EC). It will focus on the conditions of detention, covering issues such as access to health and education, the monitoring of detention facilities, and ensuring children's well-being. Its findings will feed into the Council of Europe's work on developing European Immigration Rules on detention.[116]

6.3.2. Protecting children involved in proceedings as victims, witnesses, and other roles

With the deadline for transposing the Victims' Rights Directive (2012/29/EU)[117] set for November 2015, EU Member States introduced various initiatives relating to the rights of children involved in proceedings as victims or witnesses.

FRA research shows that Member States have made progress in making both criminal and civil proceedings more child-friendly – largely by ensuring that social care professionals participate more throughout judicial proceedings, especially in civil law hearings.[118] The adoption of special measures to protect children from repeat victimisation has also made a difference.

> *"And the judge came. He was totally different how I imagined. He was very young and was not wearing a robe like the most of the judges on TV shows do. He was normal, was wearing jeans and a shirt, my friend at school has the same shirt. It was like a bit peculiar. [...] The judge was 30 and my friend is 15. Such an age difference and they wear identical clothes. [...] This showed me he [the judge] is a man like everyone else, not a machine or something like that."*
>
> *Girl, 15 years old, involved as victim in a domestic violence proceeding, Poland (FRA, 2015)*

However, FRA's 2015 report *Child-friendly justice: Perspectives and experiences of professionals on*

New handbook outlines European law relating to children's rights

FRA's *Handbook on European law relating to the rights of the child*, developed together with the Council of Europe and the ECtHR, provides a comprehensive overview of key CJEU and ECtHR case law on the matter.[115] The handbook provides information on the Charter of Fundamental Rights of the EU and relevant regulations and directives; ECtHR jurisprudence concerning the rights of the child; the European Social Charter; decisions of the European Committee of Social Rights; other Council of Europe instruments; and the CRC and other international instruments.

The publication aims to assist lawyers, judges, prosecutors, social workers, NGOs and other bodies confronted with legal issues relating to rights of the child. It covers issues such as equality, personal identity, family life, alternative care and adoption, migration and asylum, and child protection against violence and exploitation, as well as children's rights within criminal justice and alternative proceedings.

For more information, see FRA (2015), Handbook on European law relating to the rights of the child, Luxembourg, Publications Office (available in various EU languages).

children's participation in civil and criminal judicial proceedings in 10 EU Member States shows that Member States sometimes fail to deliver on a child's right to be heard in judicial proceedings. Findings demonstrate that children are heard more often in criminal than in civil proceedings, given the need for evidence in criminal cases. Children do not always have to participate in civil proceedings, such as family law cases involving divorce and custody. Hearings in both civil and criminal proceedings can be traumatising for children. Although the research was carried out before the deadline for incorporating the Victims' Rights Directive into national law, the findings identify a few areas in which Member States could strengthen their efforts – mainly in relation to the protection measures established in Articles 21, 22, 23, and 24. For example, using video cameras to record interviews with children to avoid repeated questioning is a legal possibility in many countries, but not necessarily standardised practice. According to the professionals interviewed, its use often depends on the individual professional's decision, and on very practical questions, such as whether or not video equipment is available or functional.[119] The responsible bodies do not always ensure that rooms designed or adapted for interviewing child victims are available.[120] Among the 570 professionals interviewed in FRA's research, approximately two thirds have participated in training programmes, with social professionals more likely to undergo training than legal professionals. Although legal regulations in a number of countries stipulate that training is mandatory, in practice, attendance is generally voluntary.[121]

FRA's research also identified key weaknesses in how judicial systems address the need, established in Article 3 of the Victims' Rights Directive, to inform victims about their rights. In response, FRA developed awareness-raising material – such as videos (Figure 6.4) and infographics (Figure 6.5) – for children. In 2016, FRA will publish a second report based on interviews with children about how they found participating in judicial proceedings, what areas need improvement, and what areas worked well in their personal experiences.

The ECtHR also addressed children's right to be heard in 2015. The ECtHR does not interpret the right to respect for private and family life (Article 8 of the ECHR) as always requiring a child to be heard in court. Instead, it is generally up to the national courts to assess the evidence, including the means used to ascertain the relevant facts. However, in the case of *M. and M. v. Croatia* (No. 10161/13),[122] the court found it particularly noteworthy that the child, aged 13½, had not yet been heard in ongoing custody proceedings and thus had not had the chance to express, before the courts, with which parent she wanted to live. The court found **Croatian** authorities in violation of several articles of the ECHR, including Article 8, on account of the child's lack of involvement in the decision-making process on custody. It noted, in particular, substantial delays in the criminal proceedings brought against the father as well as in the custody proceedings – both still pending after more than four years, without anyone ever having interviewed the child in either proceeding.

Also in a custody case, the **Spanish** Supreme Court nullified a lower court judgment and concluded that, in judicial proceedings regarding child custody, a child with sufficient capacity, in accordance with their age and maturity, must always be heard, and in all cases if they are over 12 years old.[123]

The process of transposing the Victims' Rights Directive prompted a number of beneficial developments in national laws, with the vast majority of Member States proposing or adopting new legislation on the rights of crime victims during 2015. (For more information on the Victims' Rights Directive, see Chapter 7.)

For example, draft legislation in **Ireland** provides children with access to support services, free of charge, according to their particular needs before, during, and for a period after criminal proceedings.[124] The Criminal Law (Sexual Offences) Bill 2015 aims to protect child victims of sexual offences from any additional trauma that may arise as a result of giving evidence during criminal trials; it introduces measures extending the use of video-recorded evidence and limiting the circumstances in which an accused can personally

Figure 6.4: FRA videos help raise children's awareness of their rights

Source: FRA, 2015

Figure 6.5: FRA's infographic on the right to be heard in judicial proceedings

Source: FRA, 2015

cross-examine a child witness. Draft legislation in **Bulgaria** provides for child victims and witnesses under 14 to be interviewed a limited number of times and immediately after initiating the case. The authorities should always record interviews and use them as evidence. Interviews are to take place in specially equipped premises to avoid any contact between witnesses and defendants or their attorneys, and are to be conducted by specially trained experts.[125]

> *"Well, it was a bit strange to me – why so many times. We [he and his sister] had to confirm the same things multiple times, and so on. I mean, we had to go there more than once, sometimes we had to come back to the same place two or three times about the same thing, and I could not see the reason for that, exactly. Why we had to go several times, if we had done it already."*
>
> *Boy, 16 years old, involved in several proceedings, who faced six hearings in one year, including as a victim in a domestic violence case, Croatia (FRA, 2015)*

Promising practice

Supporting child victims

The Child Protection Centre, founded by municipal authorities in Zagreb, **Croatia**, provides help and support to children who have endured various traumatic experiences, including neglected and abused children and children at risk of abuse. The children and their families receive individual or group therapy and support from a multidisciplinary team composed of various professionals, including psychologists, psychiatrists, a paediatrician, social workers, social educators, nurses, and jurists.

In addition, the Child Protection Centre conducts medical, psychiatric, and psychological multidisciplinary evaluations ordered by courts. Two expert evaluators from the centre conduct the interviews with the children in the centre's child-friendly rooms. Interviews are done in the presence of the judge, court recorder, state attorney, and the party attorney in the course of pre-trial investigation. The procedures are recorded to avoid further interviewing the child during the trial, preventing re-traumatisation.

For more information, see: www.poliklinika-djeca.hr

The parliament of **Estonia** passed changes to the Code of Criminal Procedure and other laws with the purpose of broadening the rights of victims in criminal procedures; among others, the changes affect the granting of state legal aid for child victims who are in a vulnerable situation, such as separated children.[126] **Spain**'s Law 4/2015 on the Status of Crime Victims requires professionals to consider the opinions and interests of children and persons with disabilities when preparing the individual assessments established in the Victims' Rights Directive.[127] The UN Committee on the Rights of Persons with Disabilities also mentioned access to justice of children in particularly vulnerable situations – such as children with disabilities who are victims of violence – in its concluding observations to the first periodic report of the EU, noting a lack of procedural accommodation in justice systems across Member States.[128]

> *"We have noticed that it is quite difficult for a child or even his parents to find justice in such situations, because no one believes them. It is always said that this child with disabilities is making things up, that it is all nonsense and that nothing happened there, this probably is the reason why those children do not always seek help."*
>
> *National Human Rights Bodies (NHRB) representative, Lithuania (FRA, 2015)*

A FRA report issued in 2015 – *Violence against children with disabilities: Legislation, policies and programmes* – also touches upon access to the justice system for children with disabilities who are victims of violence. Its findings suggest that people often dismiss claims or statements by children with disabilities; that national courts reduce sentences because they do not fully take into account, or question, the truthfulness of such statements; and that police and judicial staff lack the relevant training. The report encourages Member States to ensure that victim support services, as well as judicial and non-judicial redress mechanisms, are fully accessible to children with disabilities; and that specially trained staff take part in investigating and following up on reported incidents of violence against such children, including during the individual assessments required by Article 22 of the Victims' Rights Directive.

The report addresses these issues in the context of examining legal and policy provisions that address violence against children with disabilities, as well as national measures for preventing such violence and protecting against it.[129] Based on desk research and interviews with stakeholders, the report also includes a number of promising practices and examples of programmes in Member States that effectively address violence against children with disabilities. For more information on the rights of persons with disabilities, see Chapter 2 and Chapter 8.

FRA opinions

Five years before the deadline set in the EU 2020 strategy to reduce poverty, child poverty continues to stagnate at around the same high level as in 2010. Children continue to be at higher risk of poverty than adults. Article 24 of the EU Charter of Fundamental Rights requires that "[c]hildren shall have the right to such protection and care as is necessary for their well-being". The European Semester attracted criticism for not paying enough attention to persisting child poverty. The Commission's 2015 announcement on the development of a European Pillar of Social Rights, however, gives rise to some expectations as it refers to the possible development of EU legislation on various 'social rights', including the right to access provisions on childcare and benefits.

FRA opinion

To address child poverty, it is FRA's opinion that the EU and its Member States need to intensify their efforts to fight child poverty and promote child well-being. They could consider implementing such efforts across all policy areas for all children, while specific measures could target children in vulnerable situations, such as children with a minority ethnic background, marginalised Roma, children with disabilities, children living in institutional care, children in single-parent families and children in low work-intensity households.

The EU and its Member States should consider that measures taken under the European Semester contribute to improving the protection and care of children, as is necessary for their well-being, and in line with the European Commission's recommendation 'Investing in children: Breaking the cycle of disadvantage'. These measures could particularly increase the effectiveness, quantity, amount and scope of the social support for children and parents, especially those at risk of poverty and social exclusion.

The internet and social media tools are increasingly relevant in children's lives, as 2015 research shows. This so called digital revolution brings with it a variety of empowering opportunities, such as child participation initiatives, but also risks, such as sexual violence, online hate speech, the proliferation of child sexual abuse images and cyber bullying. The EU data protection regulation, which reached political consensus at the end of 2015, requires that EU Member States and the private sector act to implement the child protection safeguards established in it.

FRA opinion

To address the challenges of the internet, it is FRA's opinion that the EU could consider developing together with Member States guidance on how to best implement child protection safeguards, such as the parental consent established in the Data Protection Regulation. These safeguards need to be in line with the EU Charter of Fundamental Rights provisions on the right of the child to protection and the right to express views freely (Article 24 (1).

Infringement procedures continued in 2015 against seven EU Member States regarding Directive (2011/93/EU) on combating sexual abuse and sexual exploitation of children and child pornography. FRA research issued in 2015 shows that, while some of the procedural guarantees for child victims established in Articles 23 and 24 of the Victims' Directive were already in place in some Member States, they were not widely applied. A new Directive on procedural safeguards for children suspected or accused in criminal proceedings reached political consensus at the end of 2015 and is likely to be adopted in early 2016.

FRA opinion

To complement recent child-related EU legislation, it is FRA's opinion that the EU could consider developing together with Member States guidance on how to best implement these new obligations, taking also into consideration the Council of Europe Guidelines on child-friendly justice. Such guidance could address specific safeguards for children in vulnerable situations, such as children on the move, children with minority ethnic backgrounds, including Roma and children with disabilities. Member States should ensure that they effectively implement the Victims' Directive, particularly Articles 23 and 24, by allocating adequate resources to address aspects such as training (Article 25), professional guidance and material needs (e.g. availability of communication technology, Article 23), all in compliance with the right to protection of children under Article 24 of the EU Charter of Fundamental Rights.

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UN & CoE

January

3 February – Luxembourg becomes the sixth European Union (EU) Member State to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR), which establishes an individual complaints mechanism for the covenant

5 February – Slovenia ratifies the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

20 February – Italy becomes the seventh EU Member State to ratify the OP-ICESCR

February

16–20 March 2015 – Sub-Committee on accreditation of the international coordinating committee for national human rights institutions recommends accrediting the national human rights institution (NHRI) of Latvia with A status

18 March – France becomes the eighth EU Member State to ratify the OP-ICESCR

March

9 April – In *A. T. v. Luxembourg* (No. 30460/13), the European Court of Human Rights (ECtHR) clarifies the scope of the right to effective legal assistance in criminal proceedings under Article 6 of the European Convention on Human Rights (ECHR)

17 April – Finland ratifies the Istanbul Convention

24 April – Parliamentary Assembly of the Council of Europe adopts Resolution 2054 (2015) on equality and non-discrimination in the access to justice

27 April – Poland ratifies the Istanbul Convention

29 April – UN Working Group on Arbitrary Detention adopts final text of the 'Basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court'

April

28 May – in *Y. v. Slovenia* (No. 41107/10), the ECtHR rules that exposing a victim of alleged sexual assault to offensive questioning by the alleged offender violates Articles 3 and 8 of the EHCR, and refers in this context to the Victims' Rights Directive (2012/29/EU)

May

June

23 July – UN Committee on the Elimination of Discrimination against Women (CEDAW) adopts its General Recommendation No. 33 on Women's Access to Justice

July

August

18 September – Committee on Economic, Social and Cultural Rights issues its first decision (Views) in an individual case submitted under the OP-ICESCR (which entered into force on 5 May 2013). The decision finds Spain to be in violation of an individual's right to housing

September

20 October – in *Dvorski v. Croatia* (No. 25703/11), the ECtHR rules that the applicant's inability to make an informed choice of lawyer undermined his defence rights and the fairness of the proceedings as a whole, in violation of Article 6 of the ECHR

October

18 November – Netherlands ratifies the Istanbul Convention, bringing the total number of EU Member States that have ratified the convention to 12

November

17 December – UN General Assembly adopts Resolution 70/163 on enhancing the participation and contributions of Paris Principles-compliant national human rights institutions to the work of relevant UN processes and mechanisms

December

EU

11 January – Transposition deadlines of Regulation 606/2013 on mutual recognition of protection measures in civil matters and Directive 2011/99/EU on the European Protection Order expire

January

February

March

April

May

June

July

August

September

9 October – European Commission publishes the Roadmap for (a possible) EU Accession to the Istanbul Convention

15 October – In *Criminal proceedings against Gavril Covaci* (C-216/14), the Court of Justice of the European Union (CJEU) clarifies the scope of Directive 2010/64/EU on the right to interpretation and translation and Directive 2012/13/EU on the right to information, of suspects and accused persons in criminal proceedings

22 October – EU signs Council of Europe Convention and Additional Protocol on Prevention of Terrorism

October

16 November – transposition deadline for the Victims' Rights Directive (2012/29/EU), setting minimum standards for the rights, support and protection of victims across the EU, expires

November

16 December 2015 – Regulation 2015/2422 amending Protocol No. 3 on the Statute of the CJEU is adopted. It provides for a progressive increase in the number of judges at the General Court and for the merging of the Civil Service Tribunal with the General Court

December

7 Access to justice, including rights of crime victims

With developments in some EU Member States causing concern, the United Nations, Council of Europe and the EU continued efforts to reinforce the rule of law, including judicial independence and justice systems' stability. Several Member States strengthened the rights of accused persons and suspects with a view to transposing relevant EU secondary law. 2015 also marked the deadline for Member States to transpose the Victims' Rights Directive, but more work is required to achieve effective change for crime victims. In the meantime, Member States introduced important measures to combat violence against women, and the European Commission communicated its plans for the EU's possible accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

7.1. European and international actors continue to push for stronger rule of law and justice

The rule of law is part of, and a prerequisite for the protection of, the fundamental values listed in Article 2 of the Treaty on European Union (TEU), as well as a requirement for upholding fundamental rights deriving from the EU treaties and obligations under international law. Access to justice is an intrinsic part of the rule of law. Various efforts at European and international levels aimed to further strengthen the rule of law in 2015.

On September 25, the UN General Assembly adopted a plan of action called the 2030 Agenda for Sustainable Development.[1] According to the agenda, making sustainable development a reality requires equal access to justice and effective rule of law. The agenda consists of 17 Sustainable Development Goals, which are a universal set of goals, targets and indicators that UN member states are expected to use to frame their agendas and political policies over the next 15 years. Goal 16 refers to the need to promote the rule of law at the national and international levels and ensure equal access to justice for all.

Highlighting the need for a solid criminal justice response to terrorism, the European Agenda on Security, endorsed by the Council and European Parliament as the EU Renewed Internal Security Strategy for 2015–2020, emphasised the importance of firmly basing all security measures on the rule of law and respect for fundamental rights.[2]

Effective and independent justice systems are essential safeguards of the rule of law. The Commission's EU Justice Scoreboard aims to achieve effective justice by identifying trends in the efficiency, quality and independence of civil, commercial and administrative justice systems across the EU.[3] The information feeds the European Semester, the EU's annual economic policy coordination. Together with individual country assessments, the scoreboard helps identify possible shortcomings and encourages Member States to carry out, where necessary, structural reforms to make their justice systems more effective and thereby contribute to mutual trust, as well as sustainable and more inclusive economic growth.

The 2015 edition of the EU Justice Scoreboard took into account new parameters, such as the use and promotion of alternative dispute resolution methods, including in consumer disputes; the quality of online small claims

proceedings; courts' communications policies; and the proportion of female professional judges. One of the key findings of the 2015 edition is that, although the efficiency of justice systems has improved in Member States, the situation varies significantly depending on the Member State and indicator.

In September, the European Parliament passed a resolution urging the Commission to broaden the EU Justice Scoreboard's scope to include periodical assessments of each state's compliance with fundamental rights and the rule of law. According to the European Parliament, such assessments should be based on indicators reflecting the Copenhagen political criteria governing accession, and the values and rights laid down in Article 2 of the treaties and the EU Charter of Fundamental Rights.[4]

Meanwhile, a report by Thorbjørn Jagland – the Council of Europe's Secretary General – on the state of democracy, human rights and the rule of law in Europe identified judicial weakness as one of the top human rights concerns of the 47 Council of Europe member states in 2015.[5]

> *"Honest and decent courts are essential for supporting democracy and maintaining stability, yet over a third of our member countries are failing to ensure that their legal systems are sufficiently independent and impartial."*
>
> *Thorbjørn Jagland, Council of Europe Secretary General, 29 April 2015*

EU institutions highlighted developments in two Member States as troubling in terms of the rule of law in 2015. Constitutional amendments in Hungary were already subject to criticism for this reason in 2012 and 2013.[6] In 2015, EU institutions again raised concerns about the situation in **Hungary**, and for the first time also with regard to **Poland**.

Referring to a number of amendments adopted by the **Hungarian** Parliament – particularly to the law on asylum, the penal code, the law on criminal procedure, the law on the border, the law on the police and the law on national defence – the European Parliament called on the Commission to:

> *"activate the first stage of the EU framework to strengthen the rule of law, and therefore to initiate immediately an in-depth monitoring process concerning the situation of democracy, the rule of law and fundamental rights in Hungary, including the combined impact of a number of measures, and evaluating the emergence of a systemic threat in that Member State which could develop into a clear risk of a serious breach within the meaning of Article 7 TEU".*[7]

Regarding **Poland**, the Commission announced plans to review the situation in the country in January 2016, following legislative amendments made in 2015 to the composition and powers of its constitutional court as well as to its media law. The Commission's review uses the 'Rule of Law Framework', adopted in 2014.[8] It was the first time that the Commission applied this new framework, which aims to address threats to the rule of law that are of a "systemic nature". It is to be activated only when national rule of law safeguards do not seem capable of effectively addressing those threats.[9] The framework precedes the procedure laid down in Article 7 TEU which, among others, allows sanctions against Member States that violate the values shared between the EU and its Member States.

The First Vice-President of the European Commission recommended that the Polish government consult the Council of Europe's European Commission for Democracy through Law – known as the Venice Commission – before enacting the proposed changes to the Law on the Constitutional Tribunal. The Venice Commission provides "constitutional assistance" to member states of the CoE and, in particular, helps states that wish to bring their legal and institutional structures in line with common European standards and international experience in the fields of democracy, human rights and the rule of law. The Polish government requested a legal assessment from the Venice Commission on 23 December, but concluded the legislative process before receiving its opinion.[10]

7.2. Progress on EU directives strengthens procedural rights in criminal proceedings

Efforts to strengthen the procedural rights of those suspected or accused in criminal proceedings across the EU continued in 2015, following up on the 2009 Roadmap on procedural rights of suspects and accused persons in criminal proceedings (see Figure 7.1). On 27 October, the Presidency of the Council of the EU and the European Parliament reached an agreement on the final compromise text for the proposed Directive on the strengthening of certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings.[11] The presumption of innocence is a fundamental principle of the legal process and one of the most important rights of the defence. The proposed text includes two rights directly linked to the presumption of innocence: the right to remain silent and the right against self-incrimination. The Council and the European Parliament are expected to formally adopt the directive in 2016.

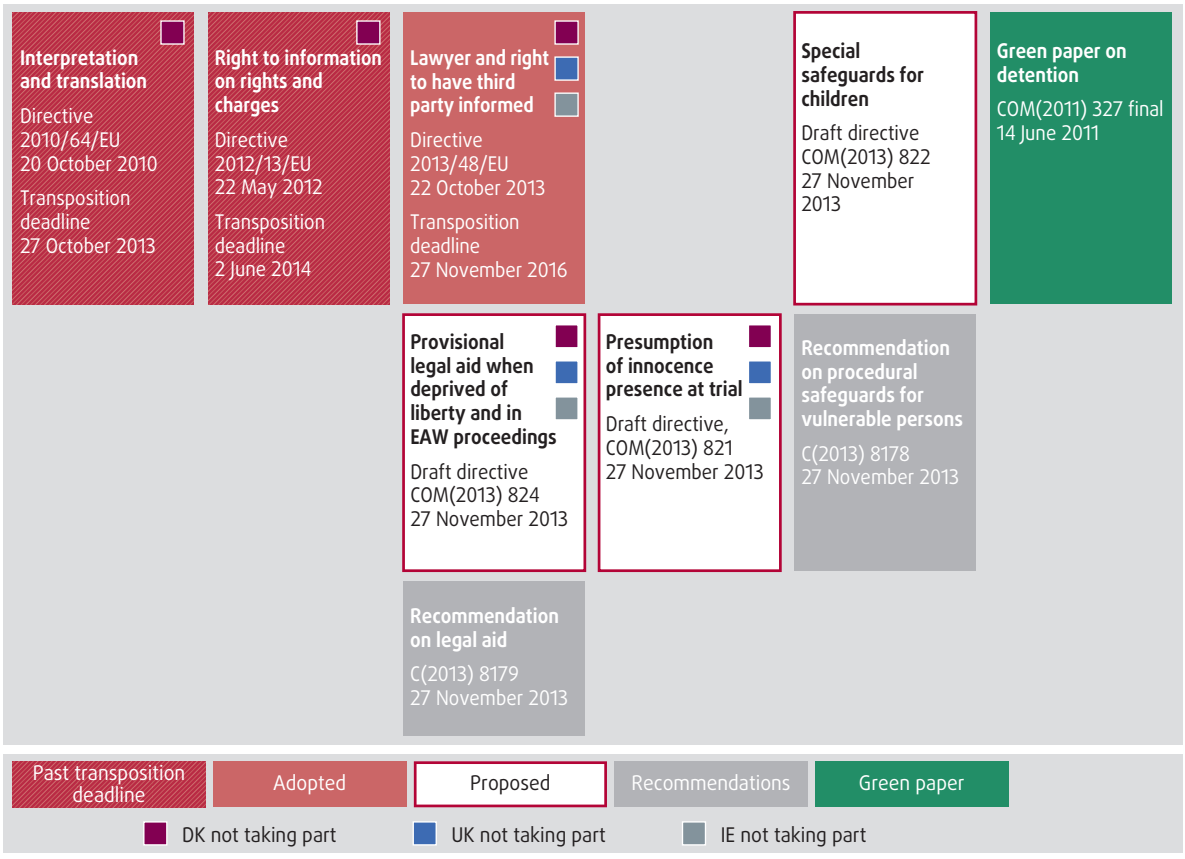
In December 2015, the Council and the European Parliament reached a political agreement on the actual wording of the proposal for safeguards for children. Meanwhile, negotiations on proposals for legal aid continued during 2015.[12] These proposals also form part of the efforts prompted by the 2009 Roadmap.

Three EU directives have already been adopted under the roadmap: Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings; Directive 2012/13/EU on the right to information in criminal proceedings; and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings.[13]

In 2015, the CJEU delivered its first judgment dealing with the first two of these three directives.[14] *Criminal proceedings against Gavril Govaci* (C-216/14) concerned German legal provisions imposing fines for minor offences through written penalties. The CJEU stated that the Directive on the right to interpretation and translation does not prevent national law from requiring the written opposition to such penalty orders to be drafted in the national language, even when the accused person does not speak it – given that the individual could also present the opposition by other means, e.g. orally and through the assistance of an interpreter. With respect to the Directive on the right to information, the CJEU found that provisions requiring the accused to mandate a resident of the Member State in which the offence was committed to receive notification of the penalty order on the person's behalf were compatible with this principle. However, the law cannot be read to mean that the two-week term for opposing the order runs from notification; instead, it must be interpreted as meaning that the term runs from the date on which the accused actually became aware of the order to allow the person to benefit from the full two-week term for preparing the defence.

In *A. T. v. Luxembourg* (No. 30460/13), the ECtHR made reference to the Directive on the right to information in the context of addressing arguments on access to the case file. The case involved a person arrested under a European Arrest Warrant (EAW), and centred on the right to a fair trial under Article 6 of the ECHR in the course of criminal proceedings.[15] The ECtHR found that the applicant's lack of access to the case file prior to his first appearance before the investigating judge did not violate Article 6, because the provision does not guarantee unlimited access to the file in situations where national authorities have sufficient reasons, relating to protecting the interests of justice, not to undermine the effectiveness of their enquiries. However, the ECtHR found that the absence of a lawyer during the

Figure 7.1: Roadmap on procedural rights of suspects and accused persons in criminal proceedings



Note: *Roadmap for strengthening procedural rights of suspects and accused persons in criminal proceedings (OJ C 295, 4 December 2009), adopted by the Council of the European Union on 30 November 2009 and incorporated into the Stockholm Programme.*

Source: *FRA, 2015*

applicant's initial interrogation by the police, as well as the applicant's inability to communicate with his lawyer prior to his first appearance before the investigating judge, did violate Article 6 ECHR.

The ECtHR issued another important judgment dealing with the right to access a lawyer in *Dvorski v. Croatia* (No. 25703/11).[16] In that case, the police refused to allow a lawyer hired by the applicant's parents to represent him while he was under questioning at a police station on suspicion of multiple murders, armed robbery and arson. The applicant signed a power of attorney authorising another lawyer to represent him, but did not know that the lawyer hired by his parents had come to the police station to see him. He confessed to the offences. The court's Grand Chamber held that the applicant's choice was not an informed one, and that his inability to make such a choice undermined his defence rights and the fairness of the proceedings as a whole.

The deadlines for EU Member States to transpose Directive 2010/64/EU on the right to interpretation and translation and Directive 2012/13/EU on the right to information expired in 2013 and 2014, respectively. Due to its specific opt-out regime, **Denmark** is not bound by either directive.[17] The rights to interpretation, translation and information in criminal proceedings allow suspects and accused people to follow and actively participate in judicial proceedings, in accordance with existing international standards, in particular those arising from the right to a fair trial under Article 47 of the EU Charter of Fundamental Rights and Article 6 of the ECHR.

Spain adopted legislation with a view to transposing both directives in 2015.[18] While still awaiting the final adoption of the national laws implementing both EU instruments,[19] the Prosecutor General of **Luxembourg** issued a circular note indicating that the provisions of the Directive on the right to interpretation and translation were to be directly applied.[20] This followed a 2014 Court of Appeal decision that referred to established CJEU case law and confirmed that private individuals can directly rely on EU directive provisions when these are sufficiently precise and unconditional.[21]

The vast majority of EU Member States already adopted various legislative measures with a view to transposing both directives in previous years. In 2015, many of these EU Member States proposed amendments to their original implementation laws to clarify certain mechanisms put in place by them, address omissions or issues that arose from their practical implementation, or redefine their scope of application.

Estonia further delimited the extent to which it will provide translation and interpretation services to suspected and accused persons.[22] **Hungary**, among other amendments, further specified details on the content of the letter of rights and the extent of access to information about the case upon detention.[23] **Latvia** considered more detailed rules concerning the deadline for providing a person who is under arrest with information about the case.[24] Legislative amendments in the **Netherlands** concerned the list of authorities and bodies obliged to use a sworn interpreter or translator in the course of criminal proceedings.[25] In **Poland**, the Ministry of Justice adopted a regulation on the model letter of rights.[26]

Amendments to the laws of several other Member States addressed the quality of translation and interpretation services in criminal proceedings. **Romania** drafted amendments addressing the conditions for getting certified as a translator or interpreter, their obligation of confidentiality and the specific written format in which to provide suspects and accused persons with information about their rights.[27] **Portugal** further discussed the issue of establishing an official register of independent translators and interpreters,[28] while **Finland** officially set up a register of legal interpreters.[29] **Slovakia** introduced new modes to examine official translator and interpreter candidates registered on the list of the Ministry of Justice, and new rules in the context of transposing the Directive on the right to interpretation.[30] **Sweden** proposed different ways of using authorised translators and interpreters more effectively in courts, such as – for example – using technical solutions more efficiently and extensively, improving judicial staff's knowledge about interpretation matters, or enhancing administrative support.[31]

Promising practice

Developing a common voluntary regulatory framework to enhance the quality of interpretation and translation services

In **Italy**, more than 5,000 professionals operating in the field of translation and interpretation –particularly for judicial bodies – developed a regulatory framework to guarantee a minimum level of quality of legal translation and interpretation services, and to provide general criteria for access to this profession. The framework specifies standards and competence requirements for individuals exercising the profession to adhere to on a voluntary basis.

For more information, see: La Norma UNI 11591:2015, 'Professional activities not regulated – Professional figures operating in the field of translation and interpretation – Requirements for knowledge, skills and competence' *(*Attività professionali non regolamentate – Figure professionali operanti nel campo della traduzione e dell'interpretazione – Requisiti di conoscenza, abilità e competenza*), 10 September 2015*

Several national courts issued judgments in 2015 that provide guidance on domestic laws governing the rights of suspects or accused people to interpretation,

translation and/or information in criminal proceedings. The **Austrian** Supreme Court held that there was no violation of the right to a fair trial in criminal proceedings in which a person accused of murder had the opportunity to raise problems concerning understanding the interpreter during the main court hearings, but did not do so.[32] The Court of Cassation in **France** reviewed a case concerning an investigating judge's failure to proceed on their own initiative with a written translation of essential documents in a procedure against a person accused of stealing valuable historic maps. The court ruled that this failure did not have any bearing on the validity of acts lawfully carried out by criminal authorities – such as the arrest or placement in detention – unless this compromised the right of defence and the right of the accused to pursue an appeal.[33] In **Italy**, the Court of Cassation reviewed the validity of a judgment sentencing a Spanish-speaking defendant to 15 years in prison for international drug trafficking, which was not immediately translated.[34] The Court of Cassation held that judgments that are not immediately translated are not invalid, but extend the applicable appeal period until the person concerned receives the translated decision.

The Supreme Court of the **Netherlands** held that a summons issued to an accused person (or relevant parts of the summons) must be in a language intelligible to the person concerned, who in this case had insufficient command of Dutch. Since the person did not receive a translation and the Court of Appeal proceeded with its session, the resulting verdict was invalid.[35] In a case concerning the conviction of a lawyer for accepting money in exchange for promising to exert influence over judges about an ongoing case, the High Court in **Romania** confirmed that a police officer cannot act as a translator and that, when recordings are transcribed, an authorised translator must take part.[36]

Directive 2013/48/EU on the right of access to a lawyer and communication lays down minimum rules concerning the right of access to a lawyer in criminal proceedings and in proceedings for the execution of an EAW, the right to have a third party informed upon deprivation of liberty, and the right to communicate with third persons and with consular authorities while deprived of liberty. The deadline for EU Member States to transpose this directive expires on 27 November 2016. **Denmark** and the **United Kingdom** are not taking part in this directive, and **Ireland**, which has yet to opt in, is reflecting on the matter.

In 2015, several EU Member States started or continued discussions on legislative and policy measures needed to transpose the directive. **Austria**,[37] **Croatia**,[38] **Estonia**,[39] **Italy**,[40] **Latvia**[41] and **Sweden**,[42] for example, continued existing legislative processes or proposed new draft legislation. **Belgium**[43] and **Bulgaria**[44] established special drafting committees and working groups to work on legislative measures to ensure the directive's effective transposition. In the **Netherlands,** although parliament has not yet approved an implementing law, the Supreme Court referred to Directive 2013/48/EU and held that, from 1 March 2016 onwards, suspects have a right to the assistance of a lawyer during police questioning.[45]

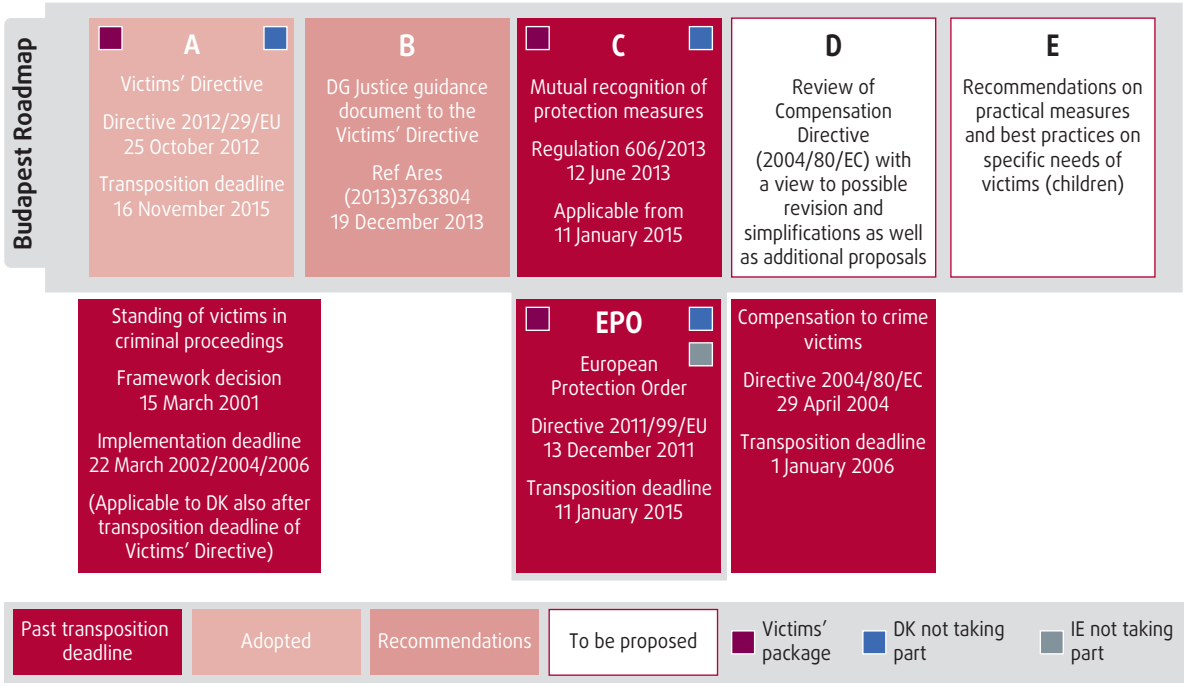
7.3. Member States' implementation of victims' rights

It was a milestone year for the rights of crime victims in Europe, with 16 November marking the deadline for Member States to transpose the Victims' Rights Directive (2012/29/EU). The vast majority of EU Member States proposed or adopted new legislation on the rights of crime victims by the deadline. However, less than one quarter of Member States registered notification of transposition with the European Commission by the deadline, meaning many Member States must transpose and implement the directive at national level at the earliest opportunity.

Some Member States made progress in key areas highlighted in FRA's 2014 Annual report – such as improving legislation, support services, training, data collection, and the provision of information and individual assessments. However, FRA evidence shows that challenges regarding several aspects addressed in the directive remain, including: the practical application of information provided to victims (Article 4), establishing and providing support services free of charge (Articles 8 and 9), and individual assessments of victims by police (Article 22). FRA's report on *Victims of crime in the EU: The extent and nature of support for victims*, published in January 2015, provides comparative EU data and analyses of these areas.[46]

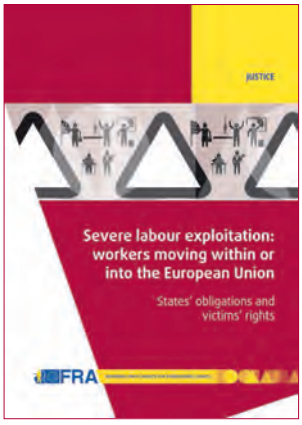
FRA evidence also points to a lack of adequate and appropriate means of informing children about their rights. In an effort to assist Member States, FRA in 2015 developed videos and infographics for children, informing them about their rights. Member States also adopted special measures to protect children from repeat victimisation in 2015 (for more information, see Chapter 6 on children's rights). FRA also coordinates the Working Party on improving reporting and increasing recording of hate crime, which in 2015 started to develop awareness-raising material to

Figure 7.2: EU instruments relating to victims of crime and to support services in particular



Source: FRA, 2015

assist Member States in their efforts to combat hate crime and increase recording and reporting of such crime (for more information, see Chapter 3 on racism, xenophobia and related intolerance).



A 2015 FRA report on severe labour exploitation contains important insights about victims of crime.[47] Although focused on the exploitation of foreign workers, it underlines findings from broader FRA surveys on crime victims. For example, the report shows that victims of labour exploitation rarely report crimes to the police – which FRA's four large-scale surveys on the victimisation of minorities, LGBT persons, antisemitic offences and violence against women also showed. Victims of labour exploitation also lack access to victim support and effective remedies. They do not report crimes because they are unaware of their right to access affordable legal assistance and representation, and of how to access justice.

In addition, many victim support organisations do not have sufficient resources to provide support to such victims – a right they have under the Victims' Rights Directive, which applies to all victims of crime. Experts note that providing victims with information about their rights and making targeted support services and legal aid available could go a long way towards improving the situation of victims of severe forms of labour exploitation. However, their situation also involves a specific context, and their needs may differ from those of other crime victims; for example, given that most victims of severe labour exploitation who have moved within or into the EU do so because of poverty and economic interests, they will naturally resist interventions that jeopardise their employment situations without offering viable alternatives.[48]

> *"FRA evidence shows that police and victim support services in most states have special measures in place to deal with at least certain categories of victims, such as victims of trafficking – where the focus has more recently addressed the needs of victims of labour exploitation. In general, however, there is a lack of comprehensive support service systems for victims of severe forms of labour exploitation, and many existing services exclude particular groups. Experts interviewed by FRA [...] confirm that not all victims are treated equally. While some groups of victims are prioritised, others, such as migrants in an irregular situation, are in a disadvantaged position regarding access to effective support services and protection in criminal proceedings. Under Article 8 of the Victims' [Rights] Directive, all victims have a right to access support services in accordance with their needs. Victim support services must operate in the interest of the victim and be confidential and free of charge. If access is denied, Article 47 of the Charter requires that an effective remedy be available to the victim."*
>
> *Source: FRA (2015),* Severe labour exploitation: Workers moving within or into the European Union, *Luxembourg, Publications Office, pp. 20–21*

7.3.1. Transposing the Victims' Rights Directive: progress and challenges

Five EU Member States registered transposition of the Victims' Rights Directive with the European Commission by 16 November 2015: the **Czech Republic**, **Malta**, **Portugal**, **Spain** and **Sweden**. By January 2016, the addition of **Estonia**, **Finland, Germany, Hungary**, **Italy**, **Poland** and the **United Kingdom** brought the total to 12. An additional eight Member States notified the Commission of partial transposition by the end of 2015 (**Austria**, **Belgium**, **Croatia**, **France**, **Ireland**, **Lithuania**, the **Netherlands**, and **Romania**).

The **Czech** Government adopted an amendment to the Act on Victims of Crime that refines some definitions in line with the directive, such as broadening the definition of a 'particularly vulnerable' victim. In cases of doubt, one is to consider a victim 'vulnerable'. The draft also requires police, victim support organisations and other bodies involved in the criminal justice system to better support victims, including by improving the provision of information.[49]

Malta adopted a law transposing the directive in April 2015.[50] However, according to Victim Support Malta, an NGO, the new law does not fully transpose all of the rights and obligations emanating from the directive;[51] for example, it completely omits provisions pertaining to the protection of victims, including children. Also, according to Victim Support Malta, while Standing Operating Procedures delineate how police should deal with crime victims during the investigation and prosecution of offences – a positive development – they do not encapsulate all of the directive's requirements and need to be revised. In addition, Member State authorities must effectively communicate these to all relevant police officers, particularly in relation to the individual needs assessment under Article 22.[52]

In **Portugal**, legislation that entered into force in October ensured the Victims' Rights Directive's transposition.[53] The directive was transposed into **Spanish** law through Law 4/2015 on the Status of Crime Victims, which also provides for an assessment of the possible special needs of certain categories of victims, such as victims of racist crime, gender-based crime or victims with an illness or disability.[54] According to the Second Additional Provision of the Spanish law, the measures included in the law should not lead to an increase in staff resources, remunerations or other staff costs.

Finally, in **Sweden**, the Implementation of the Victims' Directive Bill was approved and entered into force on 1 November 2015.[55] The law amends the Code of Judicial Procedure[56] to ensure that courts employ an interpreter; that documents are translated on demand; and that victims can demand notification about the time and place of court proceedings. The government also announced a package of measures to strengthen support for crime victims, including by improving information provided to victims about the release of perpetrators, about available protection and care measures, and the individual safety assessment made by the police.[57]

The **German** law on strengthening victims' rights in criminal proceedings came into force on 31 December 2015.[58] Besides amending the Criminal Code, the act also established a new law: the Act on Psychosocial Assistance in Criminal Procedure (which FRA's 2014 Annual report addressed in Section 7.3.1). The court must assign psychosocial assistance to all victims of sexual abuse and victims of serious crime under the age of 18. Older victims of serious crimes such as rape, human trafficking and attempted murder can also request free support.

Bolstering victim support

Establishing effective victim support services for all victims of crime is one of the key provisions of the Victims' Rights Directive, as, without support services, victims are not able to access many other rights they have under the directive. As noted in FRA's 2015 report on *Victims of crime in the EU: the extent and nature of support victims*, eight EU Member States have yet to establish the generic victim support services that Article 8 of the directive requires (see Table 7.1).

Some Member States introduced significant measures and practices to build up victim support services and proactively encourage victims to access those services – for example, by providing clear information to victims and, crucially, increasing funding of victim support organisations, which need to function effectively if victims are to receive helpful and timely support free of charge. Some Member States also rolled out special victim support units in police stations. For more information on linking victim support work to police stations, see FRA's 2015 report on *Victims of crime in the EU,* which provides a comprehensive assessment of victim support services throughout the EU.[59]

In **Belgium**, the 'Reception services of the House of Justice of Liege' supports victims by providing them with information and guidance on their rights in criminal proceedings. Assistants will regularly contact victims who seek such assistance to evaluate their situation and evolving needs. This signals the start of a more proactive approach by authorities, who previously offered support only at the start of a case and then left it up to victims to take the initiative to seek further support. This change recognises that victims often do not necessarily understand what is at stake right away, or may not be in an emotional state to respond positively to an offer of support. The project

Table 7.1: Main models of victim support

	1. At least one national generic - main provider/structure is state run and funded	2. At least one national generic - main provider/structure is non-governmental but relies strongly on state funding	3. At least one national generic - main provider/structure is non-governmental, but does not rely strongly on state funding
AT			✓
BE	✓		
BG			
CY			
CZ	✓		
DE			✓
DK		✓	
EE	✓		
EL			
ES	✓		
FI		✓	
FR		✓	
HR	✓		
HU	✓		
IE		✓	
IT			
LT			
LU	✓		
LV			
MT		✓	
NL		✓	
PL		✓	
PT		✓	
RO			
SE		✓	
SI			
SK			✓
UK		✓	
Total	7	10	3

Note: *The table refers to those EU Member States with at least one national generic VSS (from the research it appears there are no generic victim support services (i.e. aimed at all rather than specific categories of victims) in BG, CY, EL, IT, LT, LV, RO and SI). Orange-shaded areas indicate that no generic victim support service exists.*

Source: *FRA, 2014*

aims to transfer this practice to other support services after a testing period.[60]

Ireland rolled out Garda Victim Service Offices to 28 Garda (police) divisions by 2015. (Section 7.3 of FRA's 2014 Annual report reported on the introduction of these offices).[61] Each office has a police officer and a civilian, whom NGOs have trained to deal with victims of crime and act as the central point of contact and support for victims.[62] The functions carried out by the office include identifying and liaising with victims of crime; arranging call-backs to victims by community police; sending them initial contact letters and follow-up letters (translated versions are available in many languages);[63] providing information on available services; emailing embassies and tourists to assist with arranging travel documents, etc., at short notice; and referring tourist victims to the Irish Tourist Association Services.[64] The police sends letters to victims of crime. These come from the superintendent of the relevant police station (at which the crime was reported), and contain the name of the investigating officer, the 'pulse' number of the crime, the telephone number of the investigating police station and the number of the Crime Victims Helpline. Police are also updating their information systems to help identify people who are at risk by flagging this in their IT systems.[65] In addition, the Director of Public Prosecutions is to get additional staff members to assist with obligations under the Victims' Rights Directive.[66]

Promising practices

Notifying victims of their rights in Slovenia and the United Kingdom

A new **Slovenian** website offers an online form that enables victims who report a crime to the police to get status updates regarding the report. It also provides victims with a brochure about procedural rights and victim support. The application requires victims to fill in a form about their crime report. They then receive automated responses about its status – for example, if it has been registered in the system, if an investigation is under way, or if the report is in the hands of a prosecutor.

For more information, see: the Ministry of the Interior's website

The **United Kingdom**'s government launched the Victims Information Service, a 'one-stop shop' for information and advice. It provides factual information about what happens after a crime and what help victims can expect, including how to claim compensation. It also allows people to search for the services available in their locality.

For more information, see: UK, HM Ministry of Justice (2015), 'New national service to help victims', August 2015

In January 2015, the Victims' Commissioner for England and Wales produced a review of complaints and resolutions for crime victims, which assessed the experiences of 200 victims. Almost 75 % of victims who complained were unhappy with the response they received, it shows. The findings also highlight that the main reasons victims did not complain was either that they did not feel confident that anyone would take their complaint seriously or that they did not know to whom to complain.[67] In response,[68] the government, accepting the Commissioner's recommendations, introduced a number of changes to improve complaints handling and resolutions for crime victims. In addition, in May 2015, the government in England and Wales announced plans to introduce a Victims Law, which should further strengthen the rights and entitlements of crime victims.[69] In addition, revisions to the Victims' Code were launched in November 2015.

Member States increase funding to victim support organisations

The **Dutch** government increased the budget for victim support by more than €7 million in 2015.[70] In **France,** the budget dedicated to victim support was to increase by 22 % (after having already been increased by 7 % in 2014 and 26 % in 2013), bringing it to almost €17 million.[71] The government plans to further increase it – to €25 million – in 2016.[72]

In **Ireland**, the government announced a 21 % increase in funding for the Victims of Crime Office in 2016, bringing the overall budget to €1.5 million, which amounts to an increase of approximately €300,000 for 50 victim support organisations. As indicated in FRA's 2014 Annual Report, the Victims' Rights Alliance has previously noted a resource issue in relation to victim support services. The alliance voiced concerns that the announced increase will not suffice to ensure the provision of information, support and protection to crime victims under the Victims' Rights Directive. It pointed out that some victim support organisations have no paid staff and are run solely by volunteers – for example, Advocates for Victims of Homicide (AdVIC), Support after Homicide (SAH), and the Irish Road Victims Association (IRVA).[73] However, counselling services provided by AdVic are delivered by trained and paid professionals from the funds provided by the Victims of Crime Office. FRA research underlines the need for EU Member States to strike a balance between the number of volunteers and professional staff working in victim support, stressing that "organisations relying on volunteers should make sure that permanent staff offer effective guidance to volunteers and supervise the quality of their work."[74]

In **Finland**, the budget of the Ministry of Justice will strengthen state funding allocated to victim support organisations from 2016 onwards to fulfil the

requirements of the directive.[75] Victim Support Finland will have a budget of approximately €3.4 million in 2016, a major increase (of 80–90 %).[76] The main funding comes from the Ministry of Justice (approximately €2.4 million), municipalities and Finland's Slot Machine Association.

Sweden in 2015 increased the fee that must be paid to the Swedish Crime Victim Fund by anyone found guilty of a crime that carries a prison sentence – from SEK 500 (€53) to SEK 800 (€85).[77] Authorities also further simplified the application form – introduced in 2014 – for applying for compensation for an injury related to a crime (see FRA's 2013 Annual report, Section 9.2).

Promising practice

Bolstering employee competence in serving persons with disabilities who become victims of crime

During 2015, the **Swedish** Crime Victim Compensation and Support Authority, in accordance with a commission from the government, focused on persons with disabilities who become victims of crime. The aim was to increase employees' competence in dealing with this group and to share knowledge about what obstacles people with disabilities face in the legal system and how to manage these obstacles. In accordance with a commission from the government, the National Council for Crime Prevention began working on a project exploring how to increase crime victims' involvement in judicial procedures, including what kind of support they need and how to satisfy these needs.

*Source: Email correspondence with the Crime Victim Compensation and Support Authority, Knowledge Centre (*Brottsoffermyndigheten Kunskapscentrum*), 21 September 2015*

Further efforts required to fully enforce victims' rights

As highlighted in FRA's 2014 Annual report, **Slovakia** does not yet have a comprehensive legislative and institutional framework for the protection of victims' rights, and it lacks support services. There were no developments in this regard in 2015. NGOs provide all support to victims and depend on foreign project financing.[78]

Romania has not yet transposed the directive. It does not offer generic victim support services (accessible to all crime victims) that are separate from probation services – although victims of various categories of crime can avail themselves of specialised services (for example, child victims, victims of domestic violence, and victims of human trafficking).[79] According to feedback received by the probation services, victims are reluctant to seek their assistance because probation officers also provide services to accused and convicted persons, and victims are afraid of meeting them while accessing these services. Victim support services also have limited resources and personnel, and few psychologists, which impedes their ability to provide services for crime victims.[80]

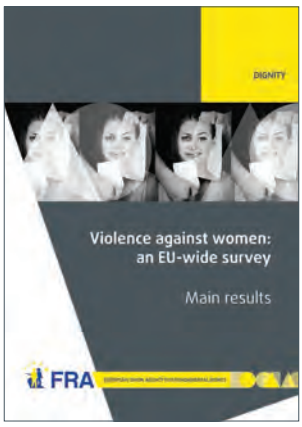
In the **Czech Republic**, the Probation and Mediation Service is the only public body providing victim support – it carries out legal and psycho-social counselling, crisis intervention and provides support to victims during criminal proceedings.[81] FRA evidence shows that, to guarantee confidentiality and the interests of the victim, "organisations providing victim support should not also be tasked with providing mediation or probation services."[82]

7.4. Countering violence against women

FRA focused on particular fundamental rights issues linked with violence against women in 2015 – including EU institutions' and Member States' efforts to enhance victims' access to justice and address violations of victims' dignity through legislative, policy and institutional changes that combat violence and abuse.

7.4.1. EU institutions tackle violence against women

As reported in *Violence against women: An EU-wide survey* – FRA's 2014 report on its survey on women's experiences of violence – women in all 28 EU Member States face physical and sexual violence, alongside psychological abuse, harassment and stalking.[83]



The European Institute for Gender Equality (EIGE) began implementing its long-term work plan on gender-based violence, covering 2015–2018. It focuses on, among other things, mapping the concepts and methodologies Member States use in data collection; facilitating the harmonisation of data collection; and highlighting good practices in data collection on gender-based violence.[84] EIGE's 2015 *Study to identify and map existing data and resources on sexual violence against women in the EU* focused on rape, marital rape, sexual abuse/assault, sexual coercion and sexual harassment outside the workplace. It highlighted a lack of available and systematically collected data on sexual violence in EU Member States.[85]

In an effort to address the data collection gap, FRA in June 2015 made available its violence against women survey data set free of charge through the UK Data Service, a recognised international service widely used by governmental and non-governmental institutions that produce survey data.[86] EIGE published the second edition of its Gender Equality Index (GEI) to assess the impact of gender equality policies in the EU and by Member States over time. The 2015 edition includes, for the first time, data for the domain of violence by providing a composite indicator of direct violence against women based on the data FRA collected through its survey on violence against women.[87] The European Commission also reported on trends and measures in Member States to prevent gender-based violence and protect and support victims in 2015.[88]

The European Parliament underscored its commitment to countering violence against women in several resolutions and recommendations. In its Resolution on Gender Equality,[89] it drew on data from FRA's survey in its recommendations on stalking, cyber harassment and workplace harassment. Based on FRA data on victims of stalking, the parliament recommended that the European Commission continue to protect victims by adopting more measures like the European Protection Order and the Victims' Rights Directive, and by assisting Member States in drawing up national action programmes for gender equality. The European Parliament highlighted the need to promote policies against harassment in the workplace in a recommendation for the Commission to encourage gender balance in decision-making in politics, government and economics. This Resolution on the progress on equality between women and men in the EU in 2013[90] also called on FRA, EIGE and Eurostat to continue collecting harmonised comparable data on violence, deeming it a useful tool for Member States and the Commission for effective policy-making.[91]

Calling for strengthened efforts to combat violence against women and girls, and citing evidence that one in three women in the EU has experienced some form of gender-based violence in her life,[92] the European Commission indicated its intention to propose the EU's accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). It published a Roadmap towards accession in October. [93] The roadmap for a "possible EU accession" to the Istanbul Convention expresses Commissioner Jourová's commitment to explore and propose the EU's accession to the convention "in as far as the EU has competence to sign and ratify," describing an initiative that could potentially lead to a Council Decision on EU accession to the convention.

> *"We support the EU accession to the Council of Europe Convention on preventing and combating violence against women and domestic violence as a further step to effectively combat violence against women and girls at national and European levels."*
>
> *Source: European Commission, 'Joint statement on the International Day for the Elimination of Violence against Women, 25 November 2015', Brussels, 24 November 2015*

According to an initial assessment, the convention is generally compatible with the EU *acquis* – although some convention articles are more specific than the relevant EU legislation. Ongoing preparatory work is assessing the nature of any legal implications of a possible accession. The roadmap notes that is important for the Commission and various stakeholders to cooperate in getting more accurate and comparable data on violence against women, which are crucial to strengthening policy responses. It also refers to FRA's survey and some of its key findings, as well as to an online mapping tool on administrative data sources and related statistical products published by EIGE.[94]

7.4.2. Member State efforts to combat violence against women: legislation and policy

Sexual assaults reported in Cologne and other European cities on 31 December 2015 attracted public attention, mixing issues of ethnicity and asylum with violence against women. But, as FRA's research underscores, women in the EU are at risk of sexual harassment and assault in all areas of life, and most perpetrators are EU citizens and among the victims' families, friends or acquaintances. Member States took diverse steps to counter this reality in 2015.

The European Protection Order (EPO) and Regulation 606/2013 on mutual recognition of protection measures in civil matters, both of which apply since 11 January 2015, prompted various activity at Member State level. Both instruments represent a step forward in ensuring that victims of, in particular, domestic violence and stalking who obtain protection in one EU Member State can enjoy similar protection in another Member State. The instruments are not restricted or directed at gender-based crime, but are intended to give protection to all potential victims. However, they have a clear role to play in reducing gender-based violence risks.

The EPO binds 26 EU Member States, 22 of which had national measures in place by the end of 2015. Many designated competent authorities for the functioning of Regulation 606/2013. Member States also introduced domestic violence protection orders and measures ensuring the recognition of orders issued by other Member States; introduced new sanctions, such as obliging perpetrators of violence to live separately

from the victim and prohibiting them from approaching the victim; and criminalised stalking.

The Victims' Rights Directive also set important new minimum standards for responding to victims of gender-based violence across the EU. National developments with regard to this directive are outlined in Section 7.3. In addition, EIGE published an analysis of the Victims' Rights Directive from a gender perspective in 2015.[95]

Meanwhile, the influence of the Istanbul Convention grew, with numerous countries adopting measures in line with its goals of preventing violence against women, enhancing victim protection and prosecuting perpetrators. **Finland**, the **Netherlands**, **Poland** and **Slovenia** ratified the convention, bringing the total number of EU Member States that have ratified it to 12. **Belgium** took significant steps towards ratifying the convention in 2015.[96] It completed the ratification process at regional and community levels in July, meaning only the final act of ratification by the federal parliament remains.

A further two Member States signed the convention (**Cyprus** and **Ireland**), bringing the total number of EU Member State signatories to 25. **Bulgaria**, the **Czech Republic** and **Latvia** are the only EU Member States that have not signed. [97] (For a full list of core international human rights instruments that the EU and its Member States have formally accepted, see FRA's online overview of international obligations). However, the Cabinet of Ministers of **Latvia** approved a Government Action Plan for the implementation of a Cabinet of Ministers' Declaration. One of its goals is to sign the Istanbul Convention by 1 September 2017.[98]

Although **Hungary** signed the Istanbul Convention in March 2014, its ratification – i.e. actual implementation – was rejected in a parliamentary session held in March 2015.[99] A member of parliament argued that the convention did not cover what the member deemed to be 'the most common form of domestic violence': abortion.[100] Governing parties in the Justice Committee rejected a proposal on urgent ratification, reasoning that the process is already on-going and that the government is committed to facilitating the process by preparing the necessary legislation to implement the convention's requirements.[101]

Also in Hungary, a 2015 parliamentary decision on the national strategic goals for the efficient fight against domestic violence outlined strategic principles relating to the strict rejection and zero tolerance of any forms of domestic violence, and authorises the government to take measures to establish an effective system to fight domestic violence.[102] The year's only published court decision on domestic violence – a criminal offence since 2013[103] – rejected a plaintiff's motion for a preventative restraining order.[104] For a court to issue such an order, there must be a realistic chance that one party will hurt the other. In this case, the court did not find sufficient probable cause for such an action.

The government of **Poland** changed in October 2015, with the Law and Justice Party (PiS) now leading it. This party opposed ratification of the Istanbul Convention and very actively participated in the ratification debate, so it remains to be seen if this change in government will negatively affect the convention's implementation in Poland.

In **Slovakia**, the NGO Možosť voľby launched a campaign to increase support for ratification of the Istanbul Convention, which Slovakia signed in May 2011. The campaign involved many male celebrities, which the organisation believes benefitted the impact on the public's perception of the problem. NGOs claim that the government's efforts to tackle violence against women lack a systemic approach and the necessary budget and human resources to implement support programmes for victims.[105]

Spain made substantive amendments to its criminal code[106] to bring its legislation in line with the Istanbul Convention. Gender is mainstreamed; a prohibited ground of discrimination is to be an aggravating circumstance; and harassment and forced marriage are now offences.

The **German** Federal Ministry of Justice and Consumer Protection in July presented a draft law to adapt the criminal law on sexual abuse and rape (an issue addressed in Section 7.4.1 of FRA's 2014 Annual report). This introduced legal changes to define as rape several acts that are not defined as such under current law.[107] According to some human rights and women's rights organisations, the changes still fall short of the requirements of the Istanbul Convention.[108]

The **Danish** parliament amended the Act on social service to strengthen support for women at shelters.[109] Whereas previous legislation only required counselling for women with children, the law now obliges municipalities to offer preliminary and coordinating counselling as early as possible to all women at shelters. In a legal brief on the new legislation, the Danish Institute for Human Rights (DIHR) expressed satisfaction with the decision to include all women. However, the DIHR criticised the lack of gender equality assessment of the legislation, noting that the changes overall improve the situation for women only. Men who have been victims of domestic violence are not equal with women under the law.[110]

New legislation in **Portugal** strengthened prevention measures. It set up a unit for the retrospective analysis of situations involving domestic violence murders for

which there are already final judgments, and set up a database on incidents reported to Portuguese law enforcement agencies and risk assessments thereof.[111] The law also reinforces victims' right to be informed about the protection of their rights in a language that they understand. In addition, a new law approves the system of granting compensation to victims of violent crimes and domestic violence;[112] this includes the possibility – under exceptional circumstances (e.g. proved lack of subsistence means) – for the victim to receive the amount of the advance payment in one single instalment.

The Serious Crime Act 2015 in the **United Kingdom (England and Wales)** created a new offence, namely: controlling and coercive behaviour in an intimate or family relationship ('domestic abuse') that has a "serious effect", such as causing fear that violence will be used or causing alarm or distress that adversely affects day-to-day activities.[113]

Based on evidence of high rates of violence against women highlighted in FRA's survey findings, the agency's 2014 Annual report concluded that Member States should develop and implement national action plans to combat violence against women. Some Member States developed and implemented such plans in 2015.

In **Belgium**, the French community, the Walloon region and the Commission of the French Community (which takes care of the French community's responsibilities in the Brussels-Capital region)[114] adopted an 'intra-francophone' plan for 2015–2019 in preparation for implementing the Istanbul Convention.[115] It pays particular attention to sexual violence. The plan contains 176 measures, including the financing of a free helpline for rape victims, the financing of training for staff who deal with sexual violence, the establishment of a unit in hospitals to care for victims of genital mutilation, and a protocol for assisting victims of forced marriages.[116] In a separate development, the Institute for the Equality of Women and Men (IEFH), with a government mandate, finalised a national plan on the fight against gender-based violence for 2015–2019.[117]

The most important measure taken in the field of gender-based violence in the **Czech Republic** was the approval of the Action Plan for the Prevention of Domestic and Gender-Based Violence 2015–2018.[118] The term 'gender-based violence' now appears in the title of all sections that previously focused only on domestic violence. The plan defines a new set of cross-sectional priorities – including looking at the special position of persons with disabilities, persons at risk of social exclusion, seniors, homeless persons, Roma, migrants, and other persons facing multiple discrimination.[119]

Combating violence against women is one of the priority goals of the action plan for gender equality for 2014–2017 in **Cyprus**.[120] The interim goals it sets include signing the Istanbul Convention; training professionals who come into contact with victims; public awareness campaigns; research on sexual harassment at the workplace; data collection; adopting victim support measures; adopting a code against sexual harassment in the public service; and monitoring the activities of job placement agencies to combat trafficking of female migrant domestic workers.

7.4.3. Countering violence against women with targeted projects and studies

Improvements in support services

The **Croatian** Ministry of Social Welfare and Youth is financing a three-year programme (2014–2017) to ensure the effective integration of women who are victims of violence after they leave shelters, with a focus on women acquiring skills, qualifications and employment. There is evidence that the perception of domestic violence has significantly changed, from relegating it to the private sphere to recognising that domestic violence is a violation of human rights.[121]

Promising practice

Financing efforts to support refugee women who are victims of violence

The Ministry for Health, Emancipation, Care and Old Age of the State of North Rhine-Westphalia, in **Germany**, in 2015 allocated €900,000 to counselling and support of refugee women who have been victims of violence and are traumatised. Organisations working in the field may apply for additional funding to increase their work or initiate particular projects. The money can also be used to finance urgent psychotherapeutic treatment of refugee women who have no possibility of receiving funding for the treatment under the Victims Compensation Act, or whose right to financing of treatment is uncertain under the Asylum Seeker's Benefits Act. The organisations can also use the money to pay for refugee women to stay in women's shelters.

For more information, see: Ministerium für Gesundheit, Emanzipation, Pflege und Alter des Landes Nordrhein-Westfalen, 'Advice and assistance to traumatized refugee women who have been victims of violence' (Beratung und Unterstützung von Gewalt betroffenen traumatisierten Flüchtlingsfrauen)

In 2015, **Denmark** launched a project to test Critical Time Intervention as a method to provide coordinated counselling to women who move out of a women's shelter, and to create better opportunities for women to rebuild their lives.[122] Denmark also opened a centre

to disseminate knowledge and advice on, and support victims of, stalking.[123]

Ireland increased funding to the National Office for the Prevention of Domestic, Sexual and Gender-Based Violence (COSC), from €1.9 million to €2.4 million.[124] It will use this extra €500,000 towards a national awareness campaign allied to the Second National Strategy on Domestic, Sexual and Gender-based Violence 2016–2021. There are concerns that this increase will not be enough to ensure the provision of information, support and protection to victims of crime under the Victims' Rights Directive.[125]

The **Netherlands** established the Advice and Reporting Centres on Domestic Violence and Child Abuse, called Safe at Home, which offer specialist support services to victims of domestic abuse and child abuse.[126] As of September 2015, there are four sexual assault centres in the Netherlands: in Utrecht, Maastricht, Enschede and Nijmegen.[127] A 'Forced Marriage and Abandonment Centre' was also opened in The Hague to provide information, advice and support to professionals dealing with cases of forced marriage and abandonment.[128]

In the **United Kingdom,** the Scottish government funded Victim Support Scotland, People Experiencing Trauma and Loss (PETAL), Trafficking Awareness Raising Alliance (TARA), and Migrant Help with a total of over £5 million for the financial year 2015/2016. In March 2015, the Scottish government announced an additional £20 million funding over the next 3 years to, among other things, enhance support for victims of violence and sexual assault; widen access to specialist advocacy and support services for victims of crime; and reinforce a zero-tolerance approach to domestic abuse and sexual crimes. From this additional funding, £1.85 million was awarded to Rape Crisis Scotland over the next 3 years – nearly doubling the funding to each of their existing centres across the country, as well as extending Rape Crisis services to Orkney and Shetland.

National studies and data collection on violence against women

In 2015, a foundation and two associations – the STER Foundation, in cooperation with the WAGA Association and the VICTORIA Association for Women – began a project in **Poland** to improve society's knowledge and awareness of rape. The project aims to identify the scale of the phenomenon, verify the implementation of the law on public prosecution of rape, and look at the role of police and prosecution. The points of departure for the project were various studies conducted on the subject of physical violence, including, to a great extent, FRA's survey. The project covers 450 women of different backgrounds, ages and education levels.[129] Preliminary results show that 87 % of women have experienced some form of sexual abuse (including obscene behaviour, attempted physical contact, involuntary touching and obscene jokes); 37.5 % have experienced unwanted sexual advances; 23.1 % have experienced a rape attempt; and 22.2 % have been victims of rape. In the majority of rape cases, a current or previous partner committed the rape – the perpetrator was an unknown person in only 8 % of cases. 91 % of the rape cases reported in this study had not been reported to the police.[130]

A national study on violence against women in **Belgium** – carried out as part of a European project entitled Companies Against Gender Violence – was published in November 2015. It aims to support dialogue between companies, institutions and NGOs, as well as creating a good practice guide for companies' involvement in tackling violence against women. It provides information on what concrete actions companies take to support and protect women, and makes recommendations for fighting violence against women.[131]

Germany's Federal Anti-Discrimination Agency published a report by an independent expert commission in December 2015, outlining recommendations for measures against gender discrimination.[132] One of the three key issues identified in the report is better protection against sexual harassment at work. Findings show that at least 50 % of women in Germany encounter sexual harassment at work in all kinds of sectors. The report recommends strengthening employers' efforts to combat sexual harassment by increasing training for higher management and workers' councils, and establishing complaint mechanisms. The commission also suggests legal reforms – such as increasing the maximum period for taking legal action from two to six months, and allowing representative legal action by anti-discrimination organisations.

In **Spain**, the Government Office against Gender-based Violence published results from a wide population-based survey – covering 10,171 women aged 16 or above – on the prevalence of violence against women in the country. The survey followed the quality requirements recommended by the UN Statistics Committee as well as by FRA's survey on violence against women. The survey measured intimate partner violence, and, for the first time in Spain, collected data on the prevalence of non-partner physical and sexual violence. The survey shows that 12.5% of women have experienced physical or sexual violence from their current or former partners; 2.7% reported that they were currently experiencing physical or sexual intimate partner violence. 7.2% reported non-partner lifetime sexual violence, and 0.6% had experienced this type of violence in the 12 months prior to the interviews. These results are in line with FRA survey results.

FRA opinions

The rule of law is part of and a prerequisite for the protection of all fundamental values listed in Article 2 TEU, as well as a requirement for upholding fundamental rights deriving from the EU treaties and obligations under international law. The UN, Council of Europe and EU continued their efforts to reinforce the rule of law, including stressing the importance of judicial independence and stability of justice systems in the EU. Developments in some EU Member States in 2015, nevertheless, raised several rule of law concerns, similar to those seen in past years.

FRA opinion

To address the rule of law concerns raised about some EU Member States in 2015 and prevent further rule of law crises more generally, it is FRA's opinion that all relevant actors at national level, including governments, parliaments and the judiciary, need to step up efforts to uphold and reinforce the rule of law. They should in this context consider acting conscientiously on advice from European and international human rights monitoring mechanisms. Regular exchange with the EU, and among the Member States themselves, based on objective comparative criteria (such as indicators) and contextual assessments, could be an important element to mitigate or prevent any rule of law problems in the future.

In transposing the EU directives on the right to translation and interpretation, and on the right to information in criminal proceedings, most EU Member States decided to propose legislative amendments, as FRA findings in 2015 show. They did this to further clarify certain mechanisms put in place by the original implementing laws; to address omissions or issues that arose from the practical implementation of these laws; or to redefine their scope of application. Evidence shows, however, that gaps remain when it comes to the adoption of policy measures.

FRA opinion

To ensure that procedural rights like the right to translation or to information become practical and effective across the EU, it is FRA's opinion that the European Commission and other relevant EU bodies should work closely with Member States to offer guidance on legislative and policy actions in this area, including an exchange of national practices among Member States. In addition to reviewing their legislative framework on the EU directives on the right to translation and interpretation, and on the right to information in criminal proceedings, it is the opinion of the FRA that EU Member States need to step up in the coming years to complement their legislative efforts with concrete policy measures, such as providing guidelines and training courses for criminal justice actors concerning the two directives.

In line with the November 2015 transposition deadline for the Victims' Rights Directive (2012/29/EU), some Member States took important steps to realise the minimum rights and standards of the directive. Evidence from FRA research shows, however, that significant gaps remain, such as the practical application of information provided to victims (Article 4), establishing and providing support services free of charge (Articles 8 and 9) and individual assessment of victims by police (Article 22). Most EU Member States must still adopt relevant measures to transpose the directive into their national law.

FRA opinion

To enable and empower victims of crime to claim their rights, it is FRA's opinion that Member States should, without delay, address remaining gaps in their legal and institutional framework. In line with their obligations under the Victims' Rights Directive, they should reinforce the capacity and funding of comprehensive victim support services that all crime victims can access free of charge.

Recognition of violence against women as a fundamental rights abuse, which reflects the principle of equality on the ground of sex, through to human dignity and the right to life, gained more ground in 2015 as four EU Member States ratified the Istanbul Convention and the European Commission announced a 'Roadmap for possible accession of the EU to the convention'. The need for further legal as well as policy measures to prevent violence against women remains nevertheless. The Commission and individual Member States used data from FRA's EU-wide survey on the prevalence and nature of different forms of violence against women to argue for enhanced legal and policy responses to combat violence against women.

FRA opinion

To enhance legal and policy responses to combat violence against women, it is FRA's opinion that the European Union accedes to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), as outlined in the Commission's roadmap. EU Member States should ratify and effectively implement the convention.

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UN & CoE

January

February

March

27 April – In *Q v. Denmark* (2001/2010), the United Nations (UN) Human Rights Committee concludes that Denmark violated the right to equality before the law and to equal protection of the law (Article 26 of the International Covenant on Civil and Political Rights) of an applicant with severe mental health problems who requested exemption from the language requirement for naturalisation because of his medical condition, finding that Denmark failed to demonstrate that refusing to grant the exemption was based on objective and reasonable grounds

April

13 May – UN Committee on the Rights of Persons with Disabilities (CRPD Committee) publishes concluding observations on the initial report of Germany

15 May – CRPD Committee publishes concluding observations on the initial reports of the Czech Republic and Croatia, and the list of issues on the initial report of the EU

May

June

July

August

4 September – CRPD Committee publishes concluding observations on the initial report of the EU

CRPD Committee adopts guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities (CRPD) (on the liberty and security of persons with disabilities)

September

1 October – CRPD Committee publishes lists of issues on the initial reports of Lithuania, Portugal, and Slovakia

October

November

December

EU

January

February

March

April

11 May – European Ombudsman closes the own-initiative inquiry OI/8/2014/AN into the respect of fundamental rights in the implementation of European Union (EU) cohesion policy, including eight guidelines for improvement

20 May – European Parliament adopts a resolution on the list of issues adopted by the CRPD Committee in relation to the initial report of the EU, following a public hearing in the European Parliament on 12 May

May

June

July

August

September

15 October – At a public hearing, the European Parliament launches a study on the protection role of the Committee on Petitions in the context of the implementation of the CRPD

October

13 November – FRA becomes interim chair and secretariat of the EU Framework to promote, protect and monitor the implementation of the CRPD (EU Framework)

November

2 December – European Commission adopts its proposal on the European Accessibility Act

December

8 Developments in the implementation of the Convention on the Rights of Persons with Disabilities

Five years on from the EU's accession to the Convention on the Rights of Persons with Disabilities (CRPD), for the first time in 2015 a United Nations (UN) treaty body, the Committee on the Rights of Persons with Disabilities (CRPD Committee), reviewed the EU's fulfilment of its human rights obligations. In its concluding observations, the CRPD Committee created a blueprint for the additional steps required for the EU to meet its obligations under the convention. At national level, the CRPD is driving wide-ranging change processes as Member States seek to harmonise their legal frameworks with the convention's standards. These processes are likely to continue as monitoring frameworks set up under Article 33 (2) of the convention further scrutinise legislation for CRPD compatibility.

8.1. The CRPD and the EU: a year of firsts

Developments in the implementation of the CRPD by the EU in 2015 were dominated by the Union's first review by the CRPD Committee, the body responsible for monitoring States parties' implementation of the convention (see Figure 8.1).[1] To mark this milestone, FRA is, for the first time, reporting on developments in the implementation of the CRPD by both the EU and its Member States in a separate chapter that will become a regular feature of FRA's Fundamental Rights reports. Other important issues concerning the rights of persons with disabilities are covered in Chapter 2 (discrimination on the ground of disability) and Chapter 6 (children with disabilities).

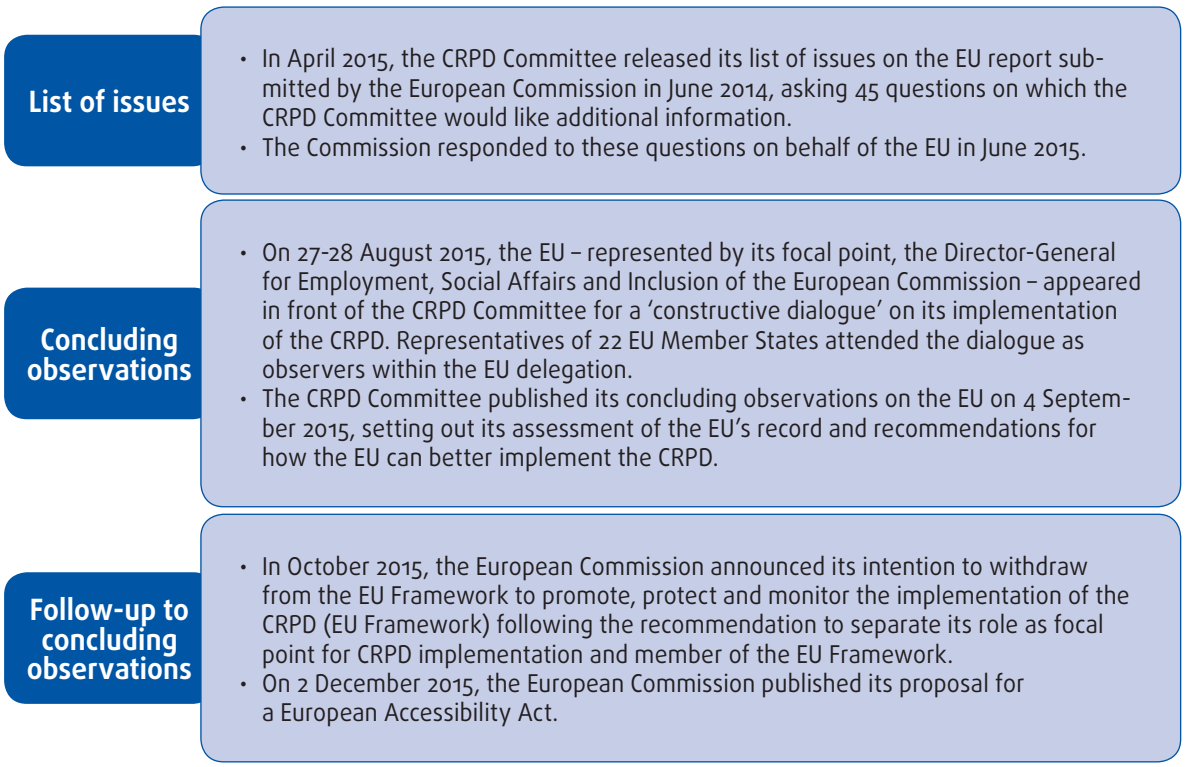
"The Committee notes with appreciation that the EU is the first regional organization to ratify a human rights treaty concluded under the auspices of the United Nations, thus setting a positive precedent in public international law."

CRPD Committee (2015), Concluding observations on the initial report of the European Union*, CRPD/C/EU/CO/1, 4 September 2015, para. 4*

Marking the first time that an international body examined how the EU is fulfilling its international human rights obligations, the review process served as a symbol of the EU's evolution from an economic organisation to "a union with various degrees of integration and cooperation, covering diverse areas such as non-discrimination, employment, justice and development cooperation".[2] More importantly, in making recommendations (called 'concluding observations') regarding most of the 26 specific rights set out in the convention, the CRPD Committee presented its view of what the EU needs to do to fulfil the promise of the convention.[3] These recommendations call for wide-ranging legal and policy initiatives by the EU across its spheres of competence, from making sure that the emergency number 112 is fully accessible (Article 11 of the CRPD) to ensuring the portability of social security benefits in a coordinated manner (Article 18 of the CRPD).[4]

The CRPD Committee's recommendations on the CRPD's general principles and obligations, set out in Articles 1–4 of the convention, set a frame for further EU action to implement the convention. In particular, the committee requests that the EU "conduct a cross-cutting, comprehensive review of its legislation in order to ensure full harmonization with the provisions of the Convention", and that it adopt "a strategy on the implementation of the Convention, with the allocation of a budget, a time frame for implementation and a monitoring

Figure 8.1: Key steps in the review of the EU by the CRPD Committee in 2015



Source: FRA, 2016

mechanism".[5] Reflecting the principle of 'nothing about us without us', which demands that persons with disabilities be involved in decision-making concerning their lives, the committee also called on the EU to set up a structured dialogue for "meaningful consultation with and the participation of persons with disabilities, including women, and girls and boys with disabilities, through their representative organizations".[6]

The review process itself also reflected this call for consultation, with civil society organisations – including disabled persons' organisations (DPOs) – engaged closely at each stage. Many of the specific suggestions for questions and recommendations made by the numerous pan-European organisations and networks that submitted reports were taken up by the CRPD Committee in its list of issues and concluding observations, as the examples in Table 8.1 illustrate.

Table 8.1: Selected examples of civil society submissions reflected in the CRPD Committee's list of issues and concluding observations on the EU

Civil society submissions for list of issues	CRPD Committee
Has the EU undertaken a review of EU legislation and policies for compliance with the CRPD [...]? ***European Network on Independent Living – European Coalition for Community Living***	List of issues: 7. Please indicate what practical initiatives the [EU] is taking or planning to take to ensure that all new and existing legislation, regulations and policies are systematically harmonised with the Convention. Concluding observations: 9. The Committee recommends the [EU] to conduct a cross-cutting, comprehensive review of its legislation in order to ensure full harmonisation with the provisions of the Convention.
Has a comprehensive screening exercise of all existing EU policy instruments been undertaken regarding their compatibility with the UN CRPD [...]? ***European Disability Forum***	
Describe what measures were taken by the [EU] to assess the compliance of EU legislative and regulatory schemes, customs and practices with the CRPD. ***Mental Disability Advocacy Centre***	

Note: Submissions relate to 'General principles and obligations' under the CRPD (Articles 1–4).

Source: FRA, 2015, selected from documents available on the website of the UN High Commissioner for Human Rights

8.1.1. First concluding observations underscore need for coordinated action

As the focal point for the EU, the European Commission, working with the Council of the EU, has primary responsibility for following up on the recommendations set out in the concluding observations. The CRPD is, however, a 'mixed agreement' in the context of the EU, meaning that the "the Union and its Member States are subject to a duty of sincere cooperation" when fulfilling its obligations across their respective areas of competence.[7] As with overall implementation of the CRPD, successfully addressing the concluding observations' numerous recommendations will require the European Commission to collaborate closely with Member States as they put EU law into practice. This also holds true for cooperation with the EU's other institutions and bodies for those recommendations concerning the EU's public administration.[8]

In line with this obligation, the publication of the concluding observations in September prompted a swift response from the European Commission. This related in particular to the second and third of the three recommendations on whose implementation the CRPD Committee requested that the EU report back within 12 months: the declaration of competence; the European Accessibility Act, which was first announced in the European Disability Strategy 2010-2020;[9] and the EU Framework to promote, protect and monitor the implementation of the CRPD (EU Framework) established under Article 33(2) of the convention (see Figure 8.2).

In keeping with many of the developments related to CRPD implementation, the proposal for a European Accessibility Act, adopted by the European Commission in December, is characterised by several novel features.[10] Although its stated aim is to improve the functioning of the EU's internal market, the act represents a new approach to promoting fundamental rights by setting common requirements and creating market opportunities for businesses developing accessible products and services. In addition, the proposed directive will apply to existing EU law by further defining the general accessibility obligations contained in other instruments – for example, relating to public procurement and the European structural and investment funds (ESIF). Looking ahead, its requirements could also "help to define the concept of accessibility in other instances, such as in the context of the Commission proposal for a horizontal equal treatment Directive".[11]

While specifying which features and functions of key products and services need to be accessible, the act does not give technical details of how this accessibility should be achieved. For example, it requires that websites be designed in a way that allows users to perceive the information it presents, use its functions and navigate its pages, but does not provide implementing details.[12] Making explicit reference to Article 9 of the CRPD on accessibility, the act – if adopted – will cover products and services including cash machines and banking services, computers and operating systems, smartphones and telephony services, TV equipment, transport, audiovisual services, and e-books and e-commerce. The proposal opened for public consultation in December 2015.

> *"Disability should not be a barrier to full participation in society, nor should the lack of EU common rules be a barrier to cross-border trade in accessible products and services. With this Act, we want to deepen the internal market and use its potential for the benefit of both companies and citizens with disabilities. In fact, we all may benefit from it."*
>
> *Marianne Thyssen, Commissioner for Employment, Social Affairs, Skills and Labour Mobility, press release, IP/15/6147, Brussels, 2 December 2015*

Selected concluding observations on the initial report of the EU

The CRPD Committee requested that the EU provide within 12 months written information on measures taken to implement three of its recommendations:

17. The Committee recommends that the European Union regularly update the declaration of competence and its list of instruments to include recently adopted instruments and instruments that may not specifically refer to persons with disabilities, but that are relevant to persons with disabilities.

29. The Committee recommends that the [EU] take efficient measures towards the prompt adoption of an amended European Accessibility Act that is aligned to the Convention, [...] including effective and accessible enforcement and complaint mechanisms. The Committee also recommends that the [EU] ensure the participation of persons with disabilities, through their representative organizations, in the adoption process.

77. The Committee recommends that the [EU] take measures to decouple the roles of the European Commission in the implementation and monitoring of the Convention, by removing it from the independent monitoring framework, so as to ensure full compliance with the Paris Principles, and ensure that the framework has adequate resources to perform its functions. The Committee also recommends that the [EU] consider the establishment of an interinstitutional coordination mechanism and the designation of focal points in each [EU] institution, agency and body.

Source: CRPD Committee, 2015, Concluding observations on the initial report of the European Union*, CRPD/C/EU/CO/1, 4 September 2015*

The second main element of the European Commission's immediate response to the concluding observations was its decision to withdraw from the EU Framework responsible for monitoring the EU's implementation of the CRPD (see Figure 8.2). Within the framework, the Commission undertook activities related to the key tasks of promotion, protection and monitoring, including monitoring Member States' compliance with EU law.[13] Its withdrawal followed consistent criticism from national human rights institutions and civil society, as well as the CRPD Committee, that the Commission's dual status as both focal point for CRPD implementation and member of the EU Framework meant it was effectively monitoring itself.[14] Although the decision has not yet been officially communicated, the Commission announced its intention to withdraw at several public events in late 2015.[15]

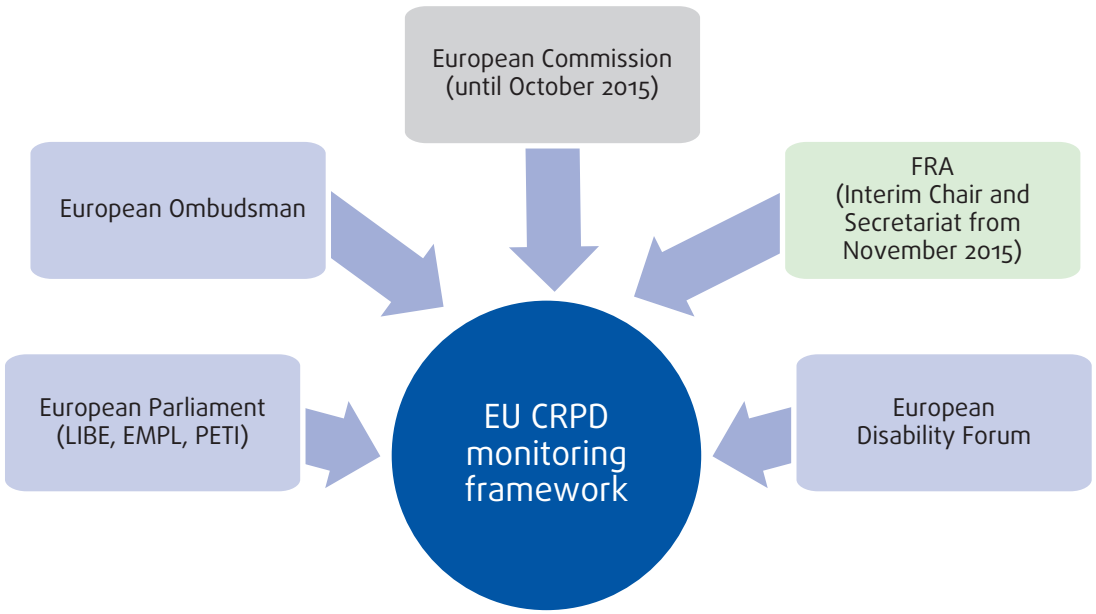
Implementing many of the other concluding observations will be a longer-term process. An early test of the EU's wider commitment to taking on board the CRPD's Committee's recommendations will be the mid-term review of the European Disability Strategy 2010–2020.[16] Scheduled for 2016, the review could reflect the committee's call to "establish clear guidelines for including the recommendations in the [...] concluding observations, with clear benchmarks and indicators, in close consultation with persons with disabilities and their representative organizations".[17] Another signal would be ensuring that the CRPD is fully incorporated into the European Semester process, for example by including "disability-specific indicators in the Europe 2020 strategy", as called for by the CRPD Committee.[18]

8.1.2. Members of 'EU Framework' collaborate to support EU review

Contributing to the EU's review by the CRPD Committee helped to drive closer coordination and cooperation in 2015 between the members of the EU Framework, namely: the European Parliament, the European Ombudsman, the European Commission (until November), FRA, and the European Disability Forum.[19] Frequent meetings culminated in opening and closing statements during the constructive dialogue, in addition to two private briefings with the CRPD Committee to present the framework's activities (see Figure 8.3).

The publication of the concluding observations raises important questions for the framework concerning both its activities and its financing and functioning. With regard to its activities, the withdrawal of the European Commission (see Section 8.1.1), combined with the confirmation in January of the decision by the Conference of Presidents of the European Parliament to alter the parliament's representation to include the Committee on Employment and Social Affairs and the Committee on Civil Liberties, Justice and Home

Figure 8.2: Members of the EU Framework to promote, protect and monitor the implementation of the CRPD



Note: *EMPL is the Committee on Employment and Social Affairs; LIBE is the Committee on Civil Liberties, Justice and Home Affairs; and PETI is the Committee on Petition. The European Commission withdrew from the framework following publication of the concluding observations on the EU by the CRPD Committee in September 2015. FRA was appointed, by consensus, as chair and secretariat of the framework on an interim basis in November 2015.*

Source: *FRA, 2016*

Affairs, means that the distribution of tasks initially envisaged will need to be revisited.[20] Such a review could consider issues such as how members might work together on joint initiatives within their various mandates, and their independence in terms of the Paris Principles establishing standards for national human rights institutions.[21]

With regard to financing and functioning, the concluding observations highlight the importance of the framework having "adequate resources to perform its functions".[22] This potentially challenges the initial proposal for the framework,[23] which foresees members each allocating existing resources to carry out their framework tasks. In addition, the conclusion of the review process marks an opportunity to reflect on the framework's operational provisions, which set out the roles of the chair and secretariat, as well as working methods.[24] Following on from the European Disability Forum and the European Commission, which acted as chair and secretariat of the framework, respectively, between 2013 and 2015, FRA took on both roles in an interim capacity in November.

The questions concerning the EU Framework's activities, financing and functioning highlight the lack of a formal legal basis for the framework, such as the legislative act setting up the **Austrian** Independent Monitoring Committee[25] or the parliamentary decision designating the **Danish** monitoring mechanism.[26] While any legal designation would need to reflect the specificities of the EU context, clearly setting out the framework's role and scope would strengthen the foundations on which it can support the EU in following up on the concluding observations. Working through these questions to ensure an effective framework would require regular communication between the European Commission, as focal point for CRPD implementation, and the remaining members of the framework.

In addition to their work on the review process, framework members took steps to fulfil their individual and collective tasks as set out in the work programme they agreed on in March.[27] The launch of a joint webpage in July gave the promotion aspect of the framework's activities a major boost (see Figure 8.4). Incorporating accessibility features such as easy-read text and sign language video, the webpage presents information about the membership, activities and partners of the framework, and enhances transparency by providing access to meeting minutes and other documents.

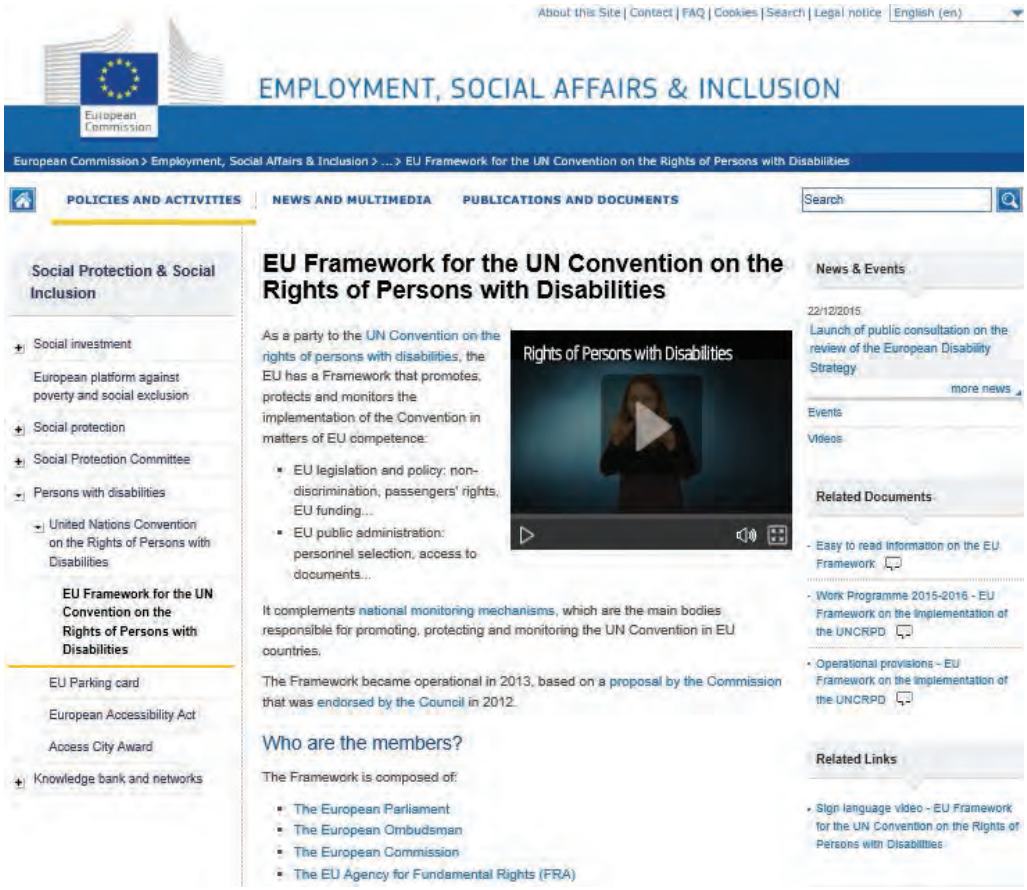
On the protection side, proactive steps taken by the framework's two complaints-receiving members – the European Ombudsman and the Petitions Committee of the European Parliament – illustrate how the convention is increasingly influencing the work of EU institutions and bodies. In May, following a targeted

Figure 8.3: Role of the EU Framework in the 2015 review process

March 2015	• Framework members affirm at a high-level meeting their willingness and availability to participate actively in the review process and in the follow-up to the concluding observations
April 2015	• Closed briefing of the EU Framework with the CRPD Committee to discuss the List of Issues
May 2015	• Participation in a European Parliament hearing on the CRPD
August 2015	• Opening and closing statements during the constructive dialogue between the EU and the CRPD Committee • Closed briefing of the EU Framework with the CRPD Committee
September 2015 onwards	• Follow-up of the concluding observations, including withdrawal of the European Commission after recommendation to decouple its roles in the implementation and monitoring of the CRPD

Source: *FRA, 2016*

Figure 8.4: Webpage of the EU Framework to promote, protect and monitor the implementation of the CRPD



Source: *European Commission, DG Employment, Social Affairs and Inclusion,* Webpage on EU Framework for the UN Convention on the Rights of Persons with Disabilities

consultation, the European Ombudsman published its decision on the own-initiative inquiry concerning respect for fundamental rights in the implementation of the EU cohesion policy, including eight guidelines for improvement.[28]

Although much broader in scope than the place of the CRPD in cohesion policy, the guidelines for improvement reflect many of the concerns raised by civil society regarding the use of the funds to further CRPD implementation.[29] In particular, the guidelines call for strict enforcement of the control mechanisms to ensure proper use of the funds, as well as a framework through which civil society can contribute to the European Commission's supervision of ESIF spending. The former would include strict application of the *ex ante* conditionalities – preconditions that must be met before funds are released – related to disability included in the main ESIF regulation.[30]

The European Parliament's Petitions Committee, for its part, examined its protection role by commissioning an analysis of the disability-related petitions it receives.[31] The ensuing report illustrates that a large proportion of these petitions concern social protection and standard of living, employment opportunities, community living, and accessibility issues, all areas where Member States retain most responsibility for law and policy. Nevertheless, the report argues that the EU's accession to the CRPD could expand the scope of the European Parliament's concern with disability issues in areas of shared EU and Member State competence.

Reflecting its monitoring role in the framework, FRA published its human rights indicators on Article 19 of the CRPD, on the right to live independently and be included in community life.[32] To be applied by FRA in 2016 using data collected from across the 28 EU Member States, the indicators will enable Member States to assess their implementation of Article 19 standards and to identify gaps in existing law and policy. In addition, FRA's report on violence against children with disabilities (see ▶ Chapter 6) gives clear recommendations on how EU institutions and Member States can meet their obligations under both the CRPD and the Convention on the Rights of the Child.[33] Evidence from both these activities will also feed into the mid-term review of the European Disability Strategy 2010–2020, which will be completed in 2016.[34]

8.2. The CRPD and the EU Member States: a driver of change

"Much progress has been achieved in the past 10 years [...]. From changes in legislation to better service delivery, from improvements in physical environments to changes in attitudes, Europe has become a better place to be for persons with disabilities. However, many challenges still remain. [...] Europe has a lot to do to bridge the gap between legal standards and the daily reality of persons with disabilities."

Thorbjørn Jagland, Secretary General, Council of Europe, 'Disability: human rights should come first', *Statement on the occasion of the International Day of Persons with Disabilities, 3 December 2015*

FRA's evidence consistently shows that the CRPD has been recasting approaches to the rights of persons with disabilities across the EU since the first Member States ratified it in 2007.[35] This process continued in 2015, paying powerful testimony to how international human rights treaties and commitments can stimulate change at national level. Nevertheless, significant challenges remain in terms of both the shift to the human rights-based approach to disability demanded by the CRPD and the implementation of its individual articles on the ground. Furthermore, many Member States have yet to build up effective structures for the implementation and monitoring of the convention, as required under Article 33 of the CRPD. A table presenting the bodies designated under Article 33 in all EU Member States, as well as the EU itself, is available on FRA's website.[36]

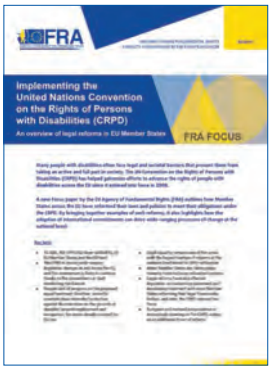
The three EU Member States yet to ratify the convention each took steps towards completing the ratification process in 2015. In October, the **Irish** government published a roadmap to ratification of the CRPD, setting out the legislative measures needed to meet the convention's requirements.[37] The **Finnish** parliament accepted both the CRPD and its Optional Protocol in March, pending final legislative reforms.[38] A discussion in the **Dutch** parliament of the draft bill for the implementation of the CRPD was scheduled for October, but postponed twice to January 2016 (see Section 8.2.1 for more information).[39] Meanwhile, **Bulgaria**, the **Czech Republic**, **Poland**, **Romania**, and the EU have still not ratified the Optional Protocol to the CRPD, which allows for individuals to bring complaints to the CRPD Committee.

8.2.1. CRPD-led reforms focus on equality and participation

Many legislative and policy developments in 2015 centred on issues highlighted in FRA's previous annual reports, reflecting Member States' ongoing focus on specific elements of the CRPD, including:

- strategies and action plans for implementing the CRPD;
- consultation and involvement of people with disabilities (Article 4);
- involuntary placement and treatment (Articles 14, 15, 17 and 25);
- accessibility (Article 9).

As highlighted in FRA's 2015 overview of national legal reforms linked to CRPD ratification,[40] as well as in the 2014 FRA Annual report, these are also areas in which the principle of non-discrimination is increasingly shaping action to harmonise national legislation with the CRPD (see Chapter 2 for more information on equality and non-discrimination).



Although not an obligation under the convention, the CRPD Committee has repeatedly recommended that States parties develop action plans and strategies to give overarching direction to their actions to implement the CRPD.[41] Reflecting these calls, in 2015 half of EU Member States introduced action plans related to the CRPD, were in the process of drafting new strategies, or reviewed the outcomes of previous such documents.

Among those introducing new strategies (see Table 8.2), the **Dutch** Secretary of State for Health, Welfare and Sport published an action plan for the implementation of the CRPD in June.[42] Part of its final preparations for ratifying the convention, the action plan explains how an administrative consultation committee, including DPOs, the local government association, and employers organisations will guide CRPD implementation. The **Czech** National Plan to Support Equal Opportunities for Persons with Disabilities 2015–2020 is more specific; it sets out measures to implement the convention across a wide range of policy areas, including equality and non-discrimination, awareness-raising, accessibility, access to justice, and independent living.[43]

With the CRPD having been in force for five years or more in most Member States, attention is increasingly turning to evaluating existing action plans that are coming to the end of their implementation period. Reflecting a wider trend for developing action plans targeting specific CRPD articles, the **Slovak** Ministry of Labour, Social Affairs and Family assessed the implementation of two strategies – the first on deinstitutionalisation of social care[44] and the second on development of living conditions for persons with disabilities.[45] Such assessments in turn often result in follow-up

Table 8.2: Strategies and action plans relevant to the CRPD adopted in 2015, by EU Member State

EU Member State	Strategy or action plan
BE	Flanders: Overall Objective Framework for the Flemish Policy of Equal Opportunity 2015–2019 (*Algemene doelstellingenkader Vlaams Horizontaal Gelijkekansenbeleid 2015–2019*)
BG	Action Plan for the Application of the Convention for the Rights of Persons with Disabilities 2015–2020 (План за действие на Република България за прилагане на Конвенцията за правата на хората с увреждания 2015–2020)
CZ	National Plan to Support Equal Opportunities for Persons with Disabilities 2015–2020 (*Národní plán podpory rovných příležitostí pro osoby se zdravotním postižením na období 2015–2020*)
HU	National Disability Programme 2015–2025 (*Országos Fogyatékosságügyi Program 2015–2025*) and Action Plan for the National Disability Programme 2015–2018 (*Országos Fogyatékosságügyi Program végrehajtásának 2015-2018. évre szóló intézkedései*)
LT	Action plan 2015 (*Nacionalinės neįgaliųjų socialinės integracijos 2013–2019 metų programos įgyvendinimo 2015 metų veiksmų planas*) and Action plan 2016–2018 (*Nacionalinės neįgaliųjų socialinės integracijos 2013–2019 metų programos įgyvendinimo 2016–2018 metų veiksmų planas*) on the implementation of the National Programme on the Social Integration of People with Disabilities 2013–2019 Action plan on the implementation of the complex (integrated) services model of social integration for persons with epilepsy for 2015–2020 (*Socialinės integracijos kompleksinių (integruotų) paslaugų modelio neįgaliesiems, sergantiems epilepsija, įgyvendinimo 2015–2020 metų veiksmų planas*)
LV	2015–2017 Implementation Plan of the Guidelines for the Implementation of the United Nations Convention on the Rights of Persons with Disabilities 2014–2020 (*Pamatnostādņu „Apvienoto Nāciju Organizācijas Konvencijas par personu ar invaliditāti tiesībām īstenošanas pamatnostādnes 2014.-2020.gadam" īstenošanas plāns 2015.-2017.gadam*)
NL	Action Plan for the Implementation of the CRPD (*Plan van aanpak implementatie VN-verdrag Handicap*)
SK	National Strategy for the Protection and Promotion of Human Rights (*Celoštátna stratégia ochrany a podpory ľudských práv v Slovenskje republike*)
UK	Northern Ireland: Strategy to improve the lives of people with disabilities 2012–2015 (extended until March 2017)

A more comprehensive table presenting an overview of national strategies relevant to the CRPD can be found in FRA (2015), Implementing the United Nations Convention on the Rights of Persons with Disabilities: An overview of legal reforms in EU Member States, FRA Focus 06/2015, Vienna.

Source: FRA, 2015

strategies, such as that developed in **Bulgaria** for the period 2015–2020. The new plan addresses objectives that were not reached during the period of the 2013–2014 plan, including designating Article 33 bodies (see Section 8.2.2) and drafting a longer-term national strategy for CRPD implementation.[46]

Again reflecting the principle of 'nothing about us, without us', action plans are often developed with input from DPOs, among other stakeholders. As part of the preparation of its 2016–2020 delivery plan for the CRPD, the **Scottish** government, for example, launched an open consultation on the draft plan, including an easy-read version of the consultation questions.[47]

Unlike developing national action plans, structured consultation with DPOs is a cross-cutting obligation of the CRPD. The active involvement required by the CRPD can be achieved in myriad ways, but must include active and "meaningful" involvement, including of women and children with disabilities.[48] FRA evidence shows that EU Member States have implemented a wide range of measures to bring persons with disabilities into the policy-making process. For example, nearly all Member States have mechanisms in place to involve DPOs in policy-making, although this consultation is a legal requirement in only half of the states.[49]

Two examples from 2015 highlight the variety of possible approaches. **Malta** moved to formalise the participation of persons with disabilities in decision-making by amending a number of legal acts to provide for persons with disabilities' membership of the governing authorities of different public entities. For instance, the Housing Authority Act was amended to require that one of the up to 11 members of the Board of Directors of the Housing Authority will be a person with a disability; similarly, one of the seven to 10 members of the

National Commission for Further and Higher Education must now be a person with a disability.[50]

Promising practice

Highlighting accessible services for persons with disabilities

The **Estonian** Gender Equality and Equal Treatment Commissioner has launched a scheme for providers of services to highlight the steps they are taking to improve accessibility for persons with disabilities. The 'BE Here. Access for all' (*SIIA SAAB. Ligipääs kõigile*) project encourages participating organisations to display signs indicating that their premises, operations and information are accessible to persons with different impairments. The scheme also facilitates mutual learning, as services just starting to improve accessibility can share experiences with others with more long-standing accessibility initiatives.

For more information, see the project's website

Taking a different approach, the **German** Federal Ministry of Labour and Social Affairs followed up the 2014 evaluation of the Federal Act on Disability Equality[51] by inviting experts from political parties, federal ministries, commissioners for matters concerning persons with disabilities, and civil society to a forum to discuss possible revisions of the act.[52] Drawing on this input, the revised draft bill to amend the act includes a proposal to promote participation by organisations representing the interests of people with disabilities.[53]

> *"Article 14 of the Convention is, in essence, a non-discrimination provision. [...] The Committee has repeatedly stated that States parties should repeal provisions which allow for involuntary commitment of persons with disabilities in mental health institutions based on actual or perceived impairments."*
>
> *CRPD Committee,* Guidelines on Article 14 of the CRPD: the right to liberty and security of persons with disabilities*, September 2015, paras. 4 and 10*

Turning to legislative actions tied to particular CRPD articles, the issue of involuntary placement and involuntary treatment again served to highlight tensions between CRPD standards and long-established national legal frameworks. CRPD ratification in **Finland** is stalled, for example, pending the finalisation of ongoing legislative amendments to meet the requirements of Article 14 on the right to liberty and security of the person.[54]

Amid concern about misinterpretations of CRPD obligations in this area, the CRPD Committee further clarified its authoritative interpretation of Article 14 in September. The committee's guidelines strongly criticise laws allowing persons to be detained on the basis of an actual or perceived impairment, viewing them as "incompatible with article 14; [...] discriminatory in nature and amount[ing] to arbitrary deprivation of liberty".[55]

The guidelines were in part developed in response to the proposed additional protocol to the Council of Europe Convention on human rights and biomedicine (Oviedo Convention), a draft of which was published for consultation in June.[56] The binding additional protocol is intended to clarify the "standards of protection applicable to the use of involuntary placement and of involuntary treatment" for persons with "mental disorder", which is "defined in accordance with internationally accepted medical standards".[57]

Responding to the consultation, the Council of Europe Commissioner for Human Rights underlined his misgivings about many of the draft additional protocol's basic assumptions, concluding that it represents a "risk of an explicit conflict between international norms at the global and European levels, owing to the divergence of interpretation between the [Committee on Bioethics of the Council of Europe] and the Committee on the Rights of Persons with Disabilities."[58] Reiterating its previous comments on an earlier proposal for the additional protocol, FRA's response emphasised that this divergence could make adopting the protocol difficult for those EU Member States that have ratified the CRPD.

> *"Having carefully examined the [draft additional protocol] and its draft explanatory report, [...] the Commissioner came to the conclusion that he cannot subscribe to many of the basic assumptions underpinning the draft Additional Protocol and has serious misgivings about the compatibility of the draft's approach with the [CRPD]."*
>
> *Comments of the Council of Europe Commissioner for Human Rights on the 'Working document concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment', CommDH(2015)28, Strasbourg, 9 November 2015, para. 3*

The discrepancy between the CRPD Committee's interpretation of Article 14 and that of States parties is highlighted in amendments to laws governing coercion in psychiatry adopted in **Denmark** in 2015.[59] Intended to reduce the use of coercion in psychiatry, one focus of the reforms is to increase safeguards for the use of physical restraint. For example, an external medical assessment must be conducted in all instances of forced physical restraint after 24 hours, rather than 48 hours as required before.[60] Nevertheless, these reforms do not sit easily with the committee's call for States parties to "eliminate[e] the use of forced treatment, seclusion and various methods of restraint in medical facilities, including physical [...] restraints".[61]

Implementing the accessibility requirements of the CRPD does not pose the same conceptual challenges, but nonetheless highlights the wide range of the convention's obligations. In the area of information and

communication technology, for example, the **Italian** Digital Agency adopted guidelines for public administration on the improvements necessary to guarantee full access to technology for employees with disabilities.[62] Regarding physical accessibility, the **Latvian** Cabinet of Ministers approved new requirements for the accessibility of public buildings.[63] This suggests ongoing reforms after evidence analysed by FRA in 2014 indicated that just 15 EU Member States had mandatory accessibility standards in place for the construction and alteration of national and local authority buildings.[64] Importantly, the Latvian regulations include a requirement for the availability of information for persons with hearing and visual impairments, as well as common elements such as wheelchair ramps and accessible toilets.

Promising practice

Promoting positive attitudes towards persons with disabilities

The **Irish** Department of Justice and Equality's Disability Awareness Funding Programme 2015 provides grants to initiatives that promote positive attitudes towards persons with disabilities. While raising awareness of disability among the public generally, funded projects should particularly target people involved in delivering mainstream services and information, in employment, community and sporting activities, and in the media and education. In addition, proposals for funding should highlight the transferability of the project and how its approach and deliverables can be used by other organisations as a model of good practice.

For more information, see: Department of Justice and Equality (2015), Disability awareness grant scheme 2015: promoting positive attitudes to people with disabilities – guidance manual for grant applications

The proposed draft bill on accessibility prepared by the **Luxembourg** Ministry of Family Affairs, Integration and the Greater Region is broader in scope.[65] Incorporating 'design for all' principles, the draft bill, which is scheduled to be introduced in 2016, aims to ensure equal opportunities for persons with disabilities in all areas of life. In light of its wide application, preparation of the draft bill involves cooperation with diverse stakeholders, including civil society organisations, the National Competence Centre for Accessibility to Buildings, and professional groups.

8.2.2. Monitoring CRPD implementation: challenges and opportunities

As at EU level, reviews of Member States' implementation of the CRPD by the CRPD Committee increasingly serve both as an opportunity for critical reflection on progress made and as a catalyst for further reforms. By the end of 2015, all but two of the 25 EU Member States that have ratified the CRPD had submitted their initial reports to the CRPD Committee, as required under Article 35 of the convention. **France** and **Romania** both have yet to publish their reports, despite deadlines of March 2012 and March 2013, respectively.

The **Czech Republic** and **Germany**, two of the nine EU Member States so far reviewed by the CRPD Committee, used the release of their concluding observations as an opportunity to discuss follow-up actions. The German Federal Government Commissioner for Matters of Persons with Disabilities, along with the German Institute for Human Rights, organised a major conference a month after the publication of the concluding observations.[66] Participants from government, public administration, and civil society discussed implications for policy-making at federal, regional, and local levels, highlighting the situation of persons with psychosocial disabilities, supported decision-making, and healthcare for refugees with disabilities as particularly urgent issues. On a smaller scale, the Czech Government Board for People with Disabilities met to debate the CRPD Committee's recommendations.[67]

The review process also provides an opportunity for civil society actors to offer their own assessment of CRPD implementation, often in the form of so-called shadow reports to the State party's initial report. In September, for example, a coalition of national non-governmental organisations (NGOs) published a report – available in easy-read and sign language versions – summarising their views on how the CRPD is being applied in **Poland**.[68] The report drew on consultations with over 250 representatives of NGOs and DPOs – the first shadow report submitted to a UN Committee to be prepared on such a scale.

Nevertheless, following up on the CRPD Committee's wide-ranging concluding observations, which often demand profound shifts in approaches to disability issues, poses an ongoing challenge. One particular difficulty is coordinating reforms that may cut across different ministries, as well as the responsibilities of federal, regional, and local government. Looking back at the concluding observations published in September 2013, for example, the **Austrian** Monitoring Committee for the CRPD argued that it is not sufficiently clear who is responsible for implementing the CRPD Committee's recommendations. It also highlighted that, as of May 2015, the National Action Plan on Disability had yet to be updated to incorporate the concluding observations.[69]

Such analysis underlines the key role of strong monitoring structures, in line with the standards set out in Article 32(2) of the convention, in supporting effective domestic scrutiny of the compatibility of national legislation with CRPD requirements. A positive step in this regard is the adoption of legislation establishing

Promising practice

Increasing awareness of universal accessibility

The **French** government launched a public awareness campaign on universal accessibility in partnership with *France Télévisions*, a public broadcaster, and the popular television series *Plus belle la vie*. Broadcast with subtitles and audio description, the 20 one-minute sketches illustrate various aspects of universal accessibility. By focusing on everyday scenes such as using a smartphone and waiting for the doctor, the series highlights how improving accessibility for persons with disabilities can result in much broader benefits for all members of society.

For more information, see the France Télévisions website

a commissioner for persons with disabilities in the **Slovak Republic**. Although the law does not specifically mention Article 33(2), the commissioner is tasked with "monitoring the rights of persons with disabilities, in particular, conducting independent surveys of obligations under international agreements", including the CRPD.[70] The commissioner will also be able to receive complaints, including from children and persons lacking full legal capacity without the knowledge of their parent or guardian.

Although this means that all but four (**Bulgaria**, the **Czech Republic**, **Greece** and **Sweden**) of the Member States that have ratified the CRPD have now appointed Article 33(2) bodies, concerns persist about the effectiveness of some of these monitoring mechanisms. For example, in **Estonia**, the Committee on the Rights of Persons with Disabilities created under the Centre for Policy Studies PRAXIS as a temporary mechanism in 2013 to monitor the implementation of the convention has not been active due to problems with state funding.[71] While the draft law to extend the role of the Gender Equality and Equal Treatment Commissioner to incorporate monitoring under Article 33(2) would bridge this gap, it had not been adopted by the end of 2015.[72]

Monitoring mechanisms should also have sufficient financial and human resources to carry out their functions, as highlighted in the conclusions of FRA's 2014 Annual report. In practice, however, these resources are often lacking. For example, the job of the Secretary of the Council for Persons with Disabilities, the **Slovenian** Article 33(2) body, is performed as an additional task by an official working full time at the Ministry of Labour, Family, Social Affairs and Equal Opportunities. An initiative to set aside further resources to carry out this task has received widespread support – including from the President, the President of the National Assembly, and most ministries[73] – but the allocation of further resources will be determined only during the next budget period.[74]

With the CRPD Committee scheduled to review the implementation of the CRPD by another five Member States (**Cyprus**, **Italy**, **Lithuania**, **Portugal**, and **Slovakia**) in 2016 (see Table 8.3), national efforts to meet the convention's standards will face further international and domestic scrutiny. Having consistently emphasised the lack of independence and resources available to Article 33(2) bodies in its concluding observations, equipping monitoring mechanisms with the tools they need to effectively monitor CRPD implementation is likely to be a central focus of the CRPD Committee's recommendations.

Table 8.3: CRPD Committee reviews in 2015 and 2016, by EU Member State

EU Member State	Date of submission of initial report	Date of publication of list of issues	Date of publication of concluding observations
CY	2.8.2013	9.2016	
CZ	1.11.2011	28.10.2014	15.5.2015
DE	19.9.2011	11.5.2014	13.5.2015
HR	27.10.2011	30.10.2014	15.5.2015
IT	21.1.2013	3.2016	9.2016
LT	18.9.2012	1.10.2015	4.2016
PT	8.8.2012	1.10.2015	4.2016
SK	26.6.2012	1.10.2015	4.2016
EU	5.6.2014	15.5.2015	4.9.2015

Note: Shaded cells indicate review processes scheduled for 2016.

Source: FRA, 2016 (using data from the Office of the High Commissioner for Human Rights)

FRA opinions

As for the first time a UN treaty body, the CRPD Committee, reviewed the EU's fulfilment of its international human rights obligations, the committee's concluding observations on the EU's implementation of the CRPD, published in 2015, are an important milestone for the EU's commitment to equality and respect for human rights. The wide-ranging recommendations offer guidance for legislative and policy actions across the EU's sphere of competence.

FRA opinion

To allow for a full implementation of the CRPD, it is FRA's opinion that the EU institutions should use the CRPD Committee's concluding observations as an opportunity to set a positive example by ensuring rapid implementation of the committee's recommendations. Representing the EU under the convention, the European Commission needs to work closely with other EU institutions, bodies and agencies, as well as Member States, to coordinate effective and systematic follow-up of the concluding observations. Modalities for this cooperation could be set out in an implementation strategy of the CRPD, as recommended by the CRPD Committee, as well as in the updated European Disability Strategy 2010–2020.

As the 10-year anniversary of the entry into force of the CRPD approaches in 2016, evidence shows that it has served as a powerful driver of legal and policy reforms at European and national levels. Nevertheless, the human rights-based approach to disability demanded by the convention is yet to be fully reflected in either EU or national law- or policymaking.

FRA opinion

To address the fact that a human rights-based approach to disability is not yet fully endorsed, it is FRA's opinion that the EU and its Member States should consider intensifying efforts to align their legal frameworks with CRPD requirements. As the CRPD Committee recommends, this could include a comprehensive review of their legislation to ensure full harmonisation with the convention's provisions. Such EU and national level reviews could set clear targets and timeframes for reforms, identifying the actors responsible.

The CRPD Committee's reviews of the EU, Croatia, the Czech Republic and Germany in 2015 show that review processes by monitoring bodies offer a valuable opportunity for input from civil society organisations, including organisations for persons with disabilities. Retaining this level of involvement and consultation throughout the follow up of the concluding observations presents a greater challenge, given the wide-ranging scope of the committee's recommendations.

FRA opinion

To retain the level of involvement the CRPD review process has so far witnessed, it is FRA's opinion that, when taking steps to implement the CRPD Committee's concluding observations, both the EU and the Member States should consider structured and systematic consultation and involvement of persons with disabilities. This consultation should be fully accessible, allowing all persons with disabilities to participate, irrespective of type of impairment.

By the end of 2015, only Finland, Ireland and the Netherlands had not ratified the CRPD, although each took significant steps towards completing the reforms required to pave the way to ratification. A further four Member States, and the EU, are still to ratify the Optional Protocol to the CRPD, allowing individuals to bring complaints to the CRPD Committee, despite each having ratified the main convention by 2012.

FRA opinion

To achieve full ratification of the CRPD, it is FRA's opinion that the EU Member States that have not yet done so should consider taking rapid steps to finalise the last reforms standing in the way of CRPD ratification. The EU and the Member States yet to complement their ratification of the CRPD with adoption of the Optional Protocol should consider completing quickly the necessary legal actions to ratify the Optional Protocol.

At the end of 2015, four of the 25 EU Member States that have ratified the CRPD were yet to establish or designate a body to implement and monitor the convention, as required under Article 33, according to a FRA comparative analysis. Evidence shows that a lack of financial and human resources, as well as the absence of a solid legal basis for the bodies'

designation, impedes the work of those bodies already established, in particular the monitoring frameworks set up under Article 33 (2).

FRA opinion

To improve monitoring of CRPD obligations, it is FRA's opinion that the EU and all Member States should consider allocating the monitoring frameworks established under Article 33 (2) sufficient and stable financial and human resources to enable them to carry out their functions. They should also consider guaranteeing the independence of monitoring frameworks by ensuring that their composition and operation takes into account the Paris Principles on the functioning of national human rights institutions, as required under Article 33 (2). Establishing a formal legal basis for monitoring frameworks at EU and national levels, clearly setting out frameworks' role and scope, would support their independence. Those Member States still to designate Article 33 bodies should do so as soon as possible and equip them with the resources and mandates to effectively implement and monitor their obligations under the CRPD.

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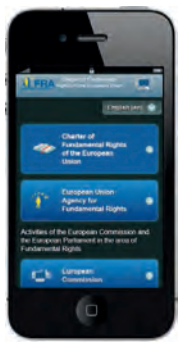

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EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

The European Union (EU) and its Member States introduced and pursued numerous initiatives to safeguard and strengthen fundamental rights in 2015. Some of these efforts produced important progress; others fell short of their aims. Meanwhile, various global developments brought new – and exacerbated existing – challenges. The arrival of over one million refugees and migrants strained domestic asylum systems and risked triggering rights violations, including by fuelling xenophobic reactions. But it also prompted considerable support from citizens and EU-level initiatives, including relocation and resettlement measures. The year's developments were also marked by a string of terrorist attacks across the EU. Some legislators sought to extend the powers of intelligence services, and concerns about further attacks put data collection and retention back on the agenda. Many discussions of such proposals, however, acknowledged the importance of safeguarding rights, and an agreement on a reformed EU data protection package showed promise.

Some challenges proved particularly persistent. Five years before the deadline set for the EU 2020 goals, the proportion of children at risk of poverty or social exclusion remained high. Discussions on the Equal Treatment Directive entered their seventh year – without successful conclusion in sight. Although insights about the importance of local action began shaping Roma integration efforts, these continued to face serious hurdles.

But 2015 also brought positive news. Measures to make the judicial process more child-friendly yielded clear progress, and a variety of initiatives strengthened the procedural rights of individuals involved in criminal proceedings. It was also a milestone year for the rights of crime victims, with the November deadline for transposing the Victims' Rights Directive triggering an array of legislative changes. Another milestone was the completion of the first review of the EU's implementation of the Convention on the Rights of Persons with Disabilities (CRPD) by the United Nations CRPD Committee – the first time an international body examined how the EU is fulfilling its human rights obligations. These obligations include raising awareness of the EU Charter of Fundamental Rights. As the report's chapter on the Member States' use of the Charter underscores, further efforts are necessary to better familiarise EU citizens and relevant professional groups with this important instrument.

FOCUS

This year's Focus section takes a closer look at asylum and migration issues in the EU. It explores the risks refugees and migrants face to reach safety; addresses challenges with regard to non-*refoulement* and the prohibition of collective expulsion; outlines developments and possible solutions in the field of asylum; and discusses developments on the issue of returns.

FRA - EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS
Schwarzenbergplatz 11 – 1040 Vienna – Austria
Tel. +43 1580 30-0 – Fax +43 1580 30-699
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