ANNUAL REPORT 2013

Fundamental rights: challenges and achievements in 2013

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
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
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the EU
UN	United Nations

Note: A list of international and regional human rights conventions and their abbreviations can be found in Chapter 10.

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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A great deal of information on the European Union Agency for Fundamental Rights is available on the Internet. It can be accessed through the FRA website at fra.europa.eu.

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Fundamental rights: challenges and achievements in 2013

Foreword

2013 was characterised by an intense debate on how best to protect and promote the rule of law within the European Union (EU). This year's Focus section, 'An EU internal strategic framework for fundamental rights: joining forces to achieve better results', therefore looks at how to improve the protection of fundamental rights within EU Member States and the Union they are collectively building. To ensure that the EU and its Member States fulfil their legal obligations, fundamental rights must become more firmly embedded in the EU's policy cycle.

FRA's 2011 Annual report dedicated its focus section to the theme 'Bringing rights to life: The fundamental rights landscape of the European Union' describing the existing system of fundamental rights protection in Europe. Last year's focus examined 'The European Union as a Community of values: safeguarding fundamental rights in times of crisis'; it dealt with the question on how the existing system reacts under the stress test of different crisis phenomena. Building on these previous focus sections, this year's looks forward, offering some ideas for strengthening the Union's fundamental rights profile and rendering the efforts of different actors at all governance layers more efficient.

Based on the agency's new Multi Annual Framework for 2013–2017, this year's Annual report follows a slightly revised structure including a chapter on the integration of Roma populations in Europe. The reader will also discover another new chapter on 'The Charter before national courts and non-judicial human rights bodies'. In this chapter, we throw light on a less prominent but very important aspect of the EU Charter of Fundamental Rights, namely its use before national courts.

Looking at the future of FRA's Annual report, the reader will see more changes in future: next year's annual report will become shorter and sharper. We thus seek to meet our stakeholders' expectations who, over the past years, have provided such valuable feedback on and recognition of our annual report.

As in past years, we would like to thank the FRA Management Board for its diligent oversight of the Annual report 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 FRA report is scientifically sound, robust and well-founded. Special thanks go to the National Liaison Officers for their comments on the draft, thereby improving the accuracy of EU Member State information. We are also grateful to various institutions and mechanisms, such as those established by the Council of Europe, which continue to provide valuable sources of information for this report.

Maija Sakslin
Chairperson of the Management Board

Morten Kjaerum
Director

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

FREEDOMS

- Asylum, immigration and integration
- Border control and visa policy
- Information society, respect for private life and data protection

EQUALITY

- The rights of the child and the protection of children
- Equality and non-discrimination
- Racism, xenophobia and related intolerance
- Roma integration

JUSTICE

- Access to justice and judicial cooperation
- Rights of crime victims

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FOCUS

An EU internal strategic framework for fundamental rights: joining forces to achieve better results

The European Council will map out new strategic priorities in 2014 for the European Union (EU) in policy fields linked to fundamental rights. A new European Parliament and European Commission will support the EU in concluding the ratification of the European Convention on Human Rights (ECHR). To make sure that the EU and its Member States, which form a community of values, fulfil their legal obligations, fundamental rights must become more firmly embedded in the EU's policy cycle: public authorities at all layers of governance must join up to guarantee that the EU and its Member States fully conform to the Charter of Fundamental Rights of the EU in Justice and Home Affairs, and all other policy fields in which they interact. This could best be provided in a 'Strategic EU Framework on fundamental rights' complementing the newly presented EU Framework on strengthening the rule of law. This focus section presents some first thoughts on how fundamental rights considerations could feed more systematically into concrete policy making at national and EU level without interfering with the principle of subsidiarity and the balance between the different layers of governance. Rather than describing the format of such a strategic EU framework, this focus section presents ideas for some of its potential content ('tools').

This focus section of the Annual report explores how to improve the protection of fundamental rights within EU Member States and the Union they are collectively building. It thus forms the third pane in a triptych of focus sections. The first presented the fundamental rights landscape in Europe, that is the standards, institutions and mechanisms existing at all levels of governance of the United Nations (UN), the Council of Europe, the EU and its Member States.[1] The second pane analysed whether and how to safeguard fundamental rights in times of crisis, be it economic, social or political.[2]

The evidence FRA has collected over the years consistently shows that there is no room for complacency. If fundamental rights are to be safeguarded, all those involved must commit to them with vigour. The rule of law debates, which gained intensity in 2013, confirmed this, by focusing on how to ensure that all EU Member States uphold the values of the Union as enshrined in Article 2 of the Treaty on European Union (TEU). The debates signalled clearly that respect for these values cannot be taken for granted but requires a shared and regularly renewed commitment by all those concerned, at all levels of governance.[3]

> *"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."*
>
> *Treaty on European Union (TEU), Article 2, OJ 2012 C 326*

The year 2014 offers a window of opportunity to underline and promote these shared values. Indeed, as the Stockholm Programme runs its course by the end of the year, the EU will again need to define its strategic priorities in policy fields relevant to fundamental rights, including immigration, asylum, visa, border control, integration, criminal justice and civil justice.[4]

During the year, the EU will continue to take decisive steps towards acceding to the ECHR, thereby submitting the Union to an external fundamental rights scrutiny and further improving fundamental rights protection in the EU. At the end of 2014, the transitional period for police cooperation and judicial cooperation in criminal matters elapses. In practice, this means that the jurisdiction of the Court of Justice of the European Union (CJEU)

will be extended and the European Commission will be entitled to bring infringement procedures in additional areas of relevance to fundamental rights to the court.[5]

The question then arises how the EU and its Member States could establish a more structured framework for developing and implementing fundamental rights-related policies at various levels of governance, and this in a joint effort. Such an internal framework could be equivalent to the EU Strategic Framework and Action plan, which has been guiding the EU's external human rights policies since 2012. Adopting such a framework would show that EU practices at home accord with what the EU projects to the outside world.[6]

Before suggesting 20 tools that could be used to make such a framework a reality, this focus section outlines how discussions on the EU's values gained momentum in 2013 and how fundamental rights fit into that picture.

Debate on EU values gains momentum in 2013

The debate on the EU's values gained intensity and depth in 2013 as a result of proposals and ideas tabled by the European Commission,[7] the European Parliament,[8] ministers,[9] academic writers[10], policy consultants[11] and civil society organisations.[12] The idea of a new instrument to protect the EU values in Article 2 of the TEU garnered increasing consensus, but views diverged on the actors to involve, the procedures to apply and whether or not to impose sanctions.[13]

In May 2013, the Council of the European Union called for "consensus on what needs to be done in a systematic way to protect fundamental rights even at a time of severe economic crisis and to promote the rule of law, while also respecting the national constitutional traditions of the Member States".[14] The Council further stressed the need "to take forward the debate [on the rule of law] in line with the Treaties on the possible need for and shape of a collaborative and systematic method to tackle these issues".

The Council of the European Union raised seven points to guide this debate, stressing that the discussion and respective proposals should:

1. be inclusive in terms of relevant bodies and participation of civil society;
2. be based on an agreed understanding of the problems to be addressed and methods applied;
3. guarantee full synergy and avoid overlaps, especially with the Council of Europe;
4. identify the EU's added value of action;
5. consider the full range of possible avenues and seek consensus among Member States;
6. be based on transparency and equality;
7. aim at real positive impact on the lives of ordinary persons.

The European Parliament also voiced its views, calling on the European Council, the European Commission and national parliaments to take action in order to protect Article 2 values. It underlined, vis-à-vis the European Commission, that infringement procedures are insufficient to guarantee such respect. It also provided benchmarks for "a new and more effective method of safeguarding fundamental values", including judicial independence, synergy or respect for national constitutional traditions and equality among Member States. The European Parliament called on national parliaments to "enhance their role in monitoring compliance with fundamental values and to denounce any risks of deterioration of these values that may occur within the EU borders".[15]

On a more operational level, the European Parliament reiterated that "the setting up of such a mechanism [to safeguard fundamental rights] could involve a rethinking of the mandate of the European Union Agency for Fundamental Rights [FRA], which should be enhanced to include regular monitoring of Member States' compliance with Article 2 TEU".[16] The parliament recommended the creation of a "monitoring mechanism, to be dealt with by the [European] Commission with exclusive priority and urgency, coordinated at the highest political level and taken fully into account in the various EU sectoral policies".[17]

The European Parliament also recommended setting up a commission to ensure the continued and robust use of the eligibility prerequisites that states must currently fulfil to join the EU, known as the Copenhagen criteria. This commission would be a high-level group that would cooperate with existing mechanisms and structures to ensure the Copenhagen criteria's continued use.[18] In early 2014, the European Parliament reiterated these proposals and called on the European Commission, "in collaboration with the FRA, to adopt a decision establishing this 'new Copenhagen mechanism', as it did for the monitoring of corruption in the EU and in the Member States, and to revise the FRA rules in order to give it enhanced powers and competences".[19]

In November 2013, the European Commission convened the 'Assises de la justice' conference, where over 100 contributions to the discussions on the rule of law and future of justice policies were submitted.[20] The discussions and submissions fed into the Commission's EU Justice Agenda for 2020[21] and into a new framework to strengthen the Rule of Law.[22]

"Today everybody mentions the situation in Hungary and Romania. Are we sure that we will not see such a situation again in a couple of weeks in another EU country? Now let us be honest – and some of the parliamentarians have said it very clearly – we face a Copenhagen dilemma. We are very strict on the Copenhagen criteria, notably on the rule of law in the accession process of a new Member State but, once this Member State has joined the European Union, we appear not to have any instrument to see whether the rule of law and the independence of the judiciary still command respect."

"We as a European Union need to stand firm on our values and on the rule of law, and that is why I think that we need to put in place an objective mechanism to assess the judicial systems in all of our [...]Member States, because our infringement procedures are too technical and too slow to react to high-risk situations concerning the rule of law, and because the Article 7 procedure is a nuclear option that should only be used by the Commission, Parliament and the Council when there is really no other solution."

Viviane Reding, Vice President of the European Commission, speech to the European Parliament on 12 September 2012, Doc. 13780/12, PE 413, Annex III, available at: http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%2013780%202012%20INIT

This framework is meant "to address and resolve a situation where there is a systemic threat to the rule of law", complementing the infringement procedure under Article 258 of the TFEU as well as the procedures under Article 7 of the TEU.[23] Rule of law is referred to as "a constitutional principle with both formal and substantive components [...] intrinsically linked to respect for democracy and for fundamental rights".[24]

The framework as presented by the European Commission is "not designed to be triggered by individual breaches of fundamental rights or by a miscarriage of justice". Rather it will be activated in "situations where the authorities of a Member State are taking measures or are tolerating situations which are likely to systematically and adversely affect the integrity, stability or the proper functioning of the institutions and the safeguard mechanisms established at national level to secure the rule of law."[25]

The European Commission envisages a three-stage process for the mechanism. First, the Commission assesses if there are "clear indications of a systemic threat to the rule of law". Such an "assessment can be based on the indications received from available sources and recognised institutions, including notably the bodies of the Council of Europe and the European Union Agency for Fundamental Rights".[26] In this first stage, the Commission could send a "rule of law opinion" substantiating its concerns and allowing the EU Member State to respond. The opinion would be made public, but the exchanges with the Member States would, as a rule, be kept confidential.

At a possible second stage, if the European Commission finds that there is "objective evidence of a systemic threat and that the authorities of that Member State are not taking appropriate action to redress it", it would issue a "rule of law recommendation". The Commission's assessment and conclusions would be based on a dialogue with the Member State concerned.

At a third stage, the European Commission would monitor the follow-up to that recommendation. If the EU Member State does not follow up the recommendation in satisfactory fashion, the Commission will assess the possibility of activating one of the procedures laid down in Article 7 of the TEU.

This new rule of law framework clarifies how the European Commission will, in the future, proceed in situations where an EU Member State runs the risk of violating the Article 2 values. It complements both the European Commission's first corruption report as presented in early 2014[27] and its efforts to assist the EU and Member States to "achieve more effective justice by providing objective, reliable and comparable data on the functioning of the justice systems of all Member States" through its annual "Justice Scoreboard".[28]

Protecting and promoting fundamental rights is a means to prevent rule of law crises proactively. Moreover, less regard for fundamental rights can indicate systemic deficiencies in the rule of law.[29] Given the persisting fundamental rights challenges that FRA evidence consistently identifies, and recognising the window of opportunity offered by the incoming 2014–2019 legislative period, EU Member States and institutions could, therefore, consider complementing this rule of law framework with a strategic fundamental rights framework. Bearing in mind the interdependencies between the rule of law and fundamental rights (Table 0.1), a renewed and enlarged commitment to fundamental rights could be beneficial to the European Commission's rule of law framework.

Complementing the European Commission's framework on the rule of law with a strategic framework on fundamental rights would allow the EU to take three steps forward:

- **enable a more encompassing and substantial reading of the rule of law**, covering explicitly all fundamental rights corresponding largely to the values in Article 2 of the TEU (see Table 0.1) – areas where the EU undoubtedly plays a role and has much to offer in terms of standards and procedures;
- **render the EU's role more inclusive by involving all relevant players**, including the European Parliament, the Council of the European Union and other relevant EU bodies as well as relevant actors at national level, such as national parliaments, bodies with a human rights remit and civil society;

Table 0.1: TEU Article 2 values compared with the Charter of Fundamental Rights

Values as listed in Article 2 TEU	Equivalence in the Charter (shaded Charter titles cover the corresponding Article 2 values only partly)
Human dignity	Human dignity (Title I)
Freedom	Freedoms (Title II)
Democracy	Citizens' rights (Title V)
Equality	Equality (Title III)
The rule of law	Justice (Title VI); Citizens' rights (Title V)
Respect for human rights	All titles of the Charter
Rights of persons belonging to minorities	Equality (Title III)
Pluralism	Equality (Title III)
Non-discrimination	Equality (Title III)
Tolerance	Equality (Title III)
Justice	Justice (Title VI)
Solidarity	Solidarity (Title IV)
Equality between women and men	Equality (Title III)

Source: *FRA*

- **not only address the behaviour of EU Member States but also put emphasis on the EU's own performance** in terms of upholding the rule of law and safeguarding fundamental rights.

Towards an EU strategic framework on fundamental rights

A renewed commitment to fundamental rights could be instrumental in ensuring that the EU and its Member States conform to their obligation to "respect the rights [as laid down in the Charter of Fundamental Rights], observe the principles and promote the application thereof".[30] Moreover, providing a new internal EU strategic framework would be beneficial to promote "the well-being of its peoples", including social progress and social inclusion, "social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child" – which are all explicit and overarching EU aims.[31] Adopting such a framework would increase the consistency between the EU's policies towards other countries and the Union's commitment to its own institutions and its Member States.

Three questions arise when proposing a strategic framework on fundamental rights:

- **What would an EU strategic framework deliver?** A well-designed and implemented EU strategic framework could help render the interventions of the European Parliament, the Council of the EU and the European Commission in the area of fundamental rights more structured, better coordinated and effective. Such a framework, which would include existing strategies in specific sectors, would help give effect to the Union's obligation to comply with fundamental rights in the development of its legislation and policies, as well as that of EU Member States when they implement EU law. Such effects would enhance the levels of trust between Member States' legal systems and, among those who live there, in the EU. The protection of fundamental rights is considered as the value that is most representative of the EU.[32] The protection of fundamental rights is not only expected but also instrumental for the EU's functioning. High levels of trust between national legal systems are essential in a system such as the EU's, which is built on mutual recognition and makes use of such instruments as the European Arrest Warrant.[33]

Whereas the values in Article 2 are "common to the Member States", the fulfilment of these fundamental rights standards varies within the EU. As the CJEU confirmed in the context of asylum law, "European Union law precludes the application of a conclusive presumption that the [responsible] Member State [...] observes the fundamental rights of the European Union."[34] An EU strategic framework could make evidence and assessments accessible to form a basis for trust, allowing for reliable but not not "conclusive", presumptions that Member States reach the shared standards. Equally, such a strategic framework could provide further instruments to guarantee that the EU itself conforms with the Charter of Fundamental Rights, the ECHR and other human rights standards.

- **How would an EU strategic framework achieve this aim?** Whereas the rule of law framework is reaching out to areas beyond the scope of EU law, an EU strategic framework on fundamental rights would concentrate on areas covered by EU law and pay respect to the principle of subsidiarity. It would also be more encompassing than the framework for strengthening the rule of law, as it would cover all Charter rights (see Table 0.1); it would bring all actors together; and it would establish a policy cycle making the respect for the Charter a permanent and operational policy consideration rather than an ad hoc and crisis-driven concern.

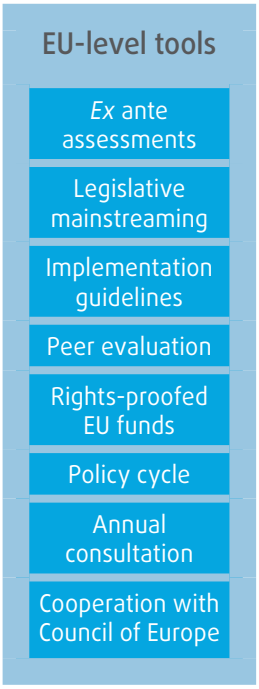
  An EU strategic framework should start with the EU itself, including the way EU law is created: legislation that is understood by both those to whom it is addressed and its intended beneficiaries, and that is perceived as legitimate, could be better implemented at all layers of governance. An EU strategic framework would – through tools such as those proposed in the following section – help ensure that fundamental rights are taken into account at all stages of enforcement. EU law is typically implemented not by EU bodies but by a variety of actors at different layers of governance, including the local level. An EU strategic framework could substantially contribute to more coordination, cooperation and participation. The 20 tools proposed below should be able to enhance the quality of legislation and to lead to better implementation and higher levels of trust without any of them extending the field of EU law application or necessitating any changes to the EU treaties.

- **Who are the relevant actors in such an EU strategic framework?** Against the backdrop of the EU system's multilevel character, a strategic EU framework would need to involve the EU level as well as the national, regional and local levels so that all fundamental rights actors can join efforts within their respective competencies. Such a joined-up approach would aim at achieving shared objectives while optimising the potential for synergies.

FRA evidence shows that institutions and procedures at international, European, national,regional and local levels tasked with the protection of fundamental rights should better coordinate responses to fundamental rights, ensuring that the various components work well together without leaving gaps in rights protection.[35]

By way of illustration, FRA submits for consideration 20 tools that could form part of a future EU strategic framework. To facilitate readability, these tools are divided into clusters at three levels: EU, Member State and general. Taken together, the three clusters form building blocks for a genuine EU internal fundamental rights strategy that would link all relevant actors in a fundamental rights policy cycle. Investing in the implementation of only some of these tools could contribute to increasing consistency between the EU's external and internal behaviour in the area of fundamental rights protection.

Tools at EU level



1. Assessing fundamental rights implications

To avoid the EU legislature unnecessarily compromising fundamental rights and exceeding "the limits imposed by compliance with the principle of proportionality in the light of [...] the Charter",[36] various EU mechanisms assess fundamental rights impacts and the compatibility of forthcoming EU legislation with human rights standards. These could be reviewed to identify potential improvements. Such an exercise could look into the practical application of different mechanisms such as the European Commission's Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union,[37] the Council's Guidelines on methodological steps to be taken to check fundamental rights compatibility in the Council's preparatory bodies[38] or the European Parliament's Rule 36 on "respect for the Charter of Fundamental Rights of the European Union".[39] It would also be worth exploring how to involve independent external expertise where doubts arise about compatibility with the Charter of Fundamental Rights; and how to involve grass-roots civil society organisations when assessing upcoming EU legislation's potential impacts.[40]

Such avenues could further increase the efficiency and transparency of the existing mechanisms. Moreover, such mechanisms should also be used where the EU is involved in austerity measures: the European Parliament called on the Troika composed of the European Central Bank, the European Commission and the International Monetary Fund to ensure compliance with fundamental rights, "as failure to comply constitutes an infringement of EU primary law".[41]

2. Mainstreaming fundamental rights as required by primary law

Fundamental rights should not be reduced to a function of imposing limits on legislation and public administration. Fundamental rights have a dual role: they do not act just as a shield; they are also an enabling 'sword' that can point towards the design, adoption and implementation of certain initiatives, thereby fencing potential violations.[42] In certain instances, this active, galvanising function is not an option but a legal obligation. According to the TFEU, the Union must "in all its activities" aim to "eliminate inequalities, and to promote equality, between men and women" (Article 8), 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, training and protection of human health" (Article 9) and to "combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation" (Article 10). As the Lisbon Treaty approaches its fifth anniversary as a binding treaty in late 2014, it is time to assess how the EU legislator has delivered on this transversal fundamental rights obligation to promote fundamental rights actively throughout all policy fields. It is also important to check the competence basis in EU treaties that can be used to improve the enjoyment of fundamental rights in the different policy fields (see Tool 8, on the cooperation between the EU and the Council of Europe).[43]

3. Developing implementation guidelines

EU law is often the result of difficult compromises achieved after long negotiations, so sometimes it is vague or contains broad scope for exceptions or derogation at national level. The CJEU has, for example, issued over 20 rulings since 2009 clarifying provisions of the EU asylum *acquis* alone.[44] It would therefore be useful to introduce, especially in policy contexts that are sensitive in terms of fundamental rights, explanations that can guide national authorities in implementing EU legislation in a way that avoids violating fundamental rights. Recent examples include the European Commission's guidance on the implementation of the Family Reunification Directive,[45] the Victims Directive[46] and the Free Movement Directive.[47] Where such guidance aims specifically at protecting and promoting fundamental rights – such as the guidance FRA offers on personal name records[48] or on apprehending irregular migrants[49] – it could form an important element of an EU strategic framework on fundamental rights. Implementing guidelines could also serve the strategic framework in advising on how fundamental rights concerns should be taken into consideration when implementing legislation that is not specific to fundamental rights, such as a regulation on specific EU funds (see Tool 5).

4. Establishing peer-monitoring and peer-evaluation practices

A true fundamental rights culture requires the regular and independent monitoring of how relevant legislation is applied. Schengen evaluations covering sea borders should review, for example, as part of their overall assessment, if instructions and training provided to law enforcement officers patrolling sea borders adequately address fundamental rights and in particular the principle of non-*refoulement*. To this end, evaluators should be provided with appropriate guidance and training on fundamental rights. Ex post evaluation of legislation is especially useful if fed into a reform of EU legislation and policies as part of a fundamental rights policy cycle. To provide for a general evaluation format across all Justice and Home Affairs policies, the European Commission could submit a proposal according to Article 70 of the TFEU, "laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies". The results of such an evaluation, which involves input from independent expert bodies and civil society organisations, should be reported back to the European and national parliaments and feed directly into the fundamental rights policy cycle (see Tool 7).

5. Guaranteeing that use of EU funds is 'fundamental-rights-proof'

EU funds are administered in a decentralised way. It is important to ensure that all EU-financed projects and activities adhere to the obligations flowing from the Charter of Fundamental Rights. The EU should make this explicit in the operational parts of the respective legal instruments rather than in their preambles.[50] In addition, ex ante conditionalities could be introduced whenever the EU provides funds. The regulation laying down such conditionalities for Structural Funds disbursals adopted at the end of 2013[51] was an encouraging example but could be expanded and improved. When reviewing expenditures, the Court of Auditors should take into account ex ante conditionalities, and other provisions related to fundamental rights, in 'basic measures', or secondary provisions on which an expenditure is based. The possibility of introducing sanctions should be considered in cases where the use of EU funds infringes fundamental rights. Moreover, it appears important that any bodies

set up at national level to decide which projects receive EU funding, such as boards, include 'fundamental rights focal points' from relevant departments of the administration as well as independent fundamental rights experts. These fundamental rights experts could be selected from academia, national human rights institutions (NHRIs) or non-governmental organisations (NGOs). All tools developed for the planning, implementation and evaluation of EU-funded projects should incorporate fundamental rights in an effective and meaningful manner. This not only helps protect and promote fundamental rights but also avoids tensions with EU primary law and obligations under international law.[52]

6. Creating an EU fundamental rights policy cycle

At the end of 2012, the European Parliament called for "the launch of a 'European fundamental rights policy cycle', detailing on a multiannual and yearly basis the objectives to be achieved and the problems to be solved". Such a cycle should "foresee a framework for institutions and the FRA, as well as Member States, to work together by avoiding overlaps, building on each others' [...] reports, taking joint measures and organising joint events with the participation of NGOs, citizens, national parliaments, etc."[53] It would help ensure that national experiences feed into EU-level policy developments, and that EU-level developments are implemented on the ground. It would further allow better coordination of the policies of the European Parliament, the Council of the European Union and the European Commission that are relevant to fundamental rights, rendering their respective roles and interventions more efficient. A policy cycle would also, for example, assign specific objectives to the different fundamental rights reports which the European Parliament, the European Commission and FRA deliver annually. Such a policy cycle would ensure that these reports are presented in a timely manner to feed best into the relevant processes. The development of an EU action plan on fundamental rights would be an appropriate framework for a fundamental rights cycle; such an action plan could be inspired by some of the promising practices existing at national level (see Tool 12).

7. Increasing coordination at EU level through an annual consultation meeting

Assigning 'fundamental rights focal points' in relevant units of the European Parliament, Council of the EU and European Commission administrations could support the work and impact of the parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), the Council of the EU's Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP) and the relevant units in the European Commission's Directorate-General Justice. Moreover, the European Commission, the European Parliament and the Council of the EU could benefit from periodic consultation with relevant stakeholders and experts, bringing them together with independent EU expert bodies, such as FRA, the European Data Protection Supervisor (EDPS), the European Ombudsman and representatives from the Committee of the Regions, the European Economic and Social Committee, the European network of national equality bodies (Equinet), the European Network of NHRIs and the European Network of Ombudsmen, as well as EU-level umbrella organisations representing NGOs. Such an annual consultation meeting should establish communication channels with national-level actors by, for instance, allowing prior online submissions to a dedicated web forum, which could structure input and feedback in a systematic way. Such a regular fundamental rights consultation meeting would ideally take place before the European Commission finalises its annual work programme, to guarantee that its results feed into EU-level legislative and policy planning. The exercise should ensure that those attending have an opportunity to provide feedback, including on the effectiveness of measures taken to safeguard fundamental rights in the implementation of EU law. There should be full transparency on whether and how such feedback and input are taken into account.

8. Developing greater synergies between the EU and the Council of Europe

In line with the "guidelines on the Relations between the Council of Europe and the European Union" adopted in 2005 by the Heads of State and Government of the Member States of the Council of Europe, both international organisations "should work towards joint activities, when they add value to their respective endeavours [... and] consult regularly at all appropriate levels, including the political level, to make better use of each other's relevant expertise".[54] In addition to the EU joining selected Council of Europe conventions, the cooperation,[55] which at technical level is already active, fruitful and efficient,[56] should be construed as a two-way process also covering the Council of Europe's political bodies. To increase the level of implementation of Council of Europe standards, the EU could offer its legal leverage, including the principles of supremacy and direct effect. In this regard, the guidelines stress that the "European Union shall strive to transpose those aspects of Council of Europe Conventions within its competence into European Union Law".[57] To make this commitment more operational, it would be timely to map existing EU legislation covering issues dealt with in Council of Europe conventions and explore the potential to complement the already existing *acquis* with new EU legislation. Another concrete project of close cooperation providing added value would be the establishment of a shared European fundamental rights information system that would increase the accessibility and visibility of the standards, reports and analysis produced by the Council of Europe (see Tool 18).

Tools at Member State level

9. Recognising the local dimension of multilevel protection of rights

The subnational – that is, regional and local – dimension of fundamental rights is the one that is closest to the individual and hence of the utmost importance. For the EU's external relations, the Council of the EU emphasised that local authorities and their associations are "important actors for change in reducing poverty and in promoting human rights and democracy [and] are key to the enhancement of public sector accountability to citizens, as well as promoting justice and core principles of equality including the rights of women and girls, ensuring transparency, and broad-based participation in the public sphere, building resilience and reaching out to all citizens, including vulnerable groups".[58] The same could be said for the situation within the EU. FRA has underlined in various contexts that it is important that different actors at the national and the sub-national level join their efforts to protect and promote fundamental rights, which play an essential role in this regard. The Committee of the Regions adopted the Charter for multilevel governance in Europe, reaffirming the importance of "coordinated action by the European Union, the Member States and regional and local authorities according to the principles of subsidiarity, proportionality and partnership, taking the form of operational and institutional cooperation in the drawing up and implementation of the European Union's policies".[59] This Charter emphasises that multilevel governance helps governments at different levels and in different states "to learn from each other, experiment with innovative policy solutions, share best practices and further develop participatory democracy, bringing the European Union closer to the citizens." One of the objectives of multilevel governance as outlined in the Charter is precisely "ensuring maximum fundamental rights protection at all levels of governance". Pilot research conducted by FRA has identified a number of steps that can be taken to enhance the implementation of fundamental rights at local and regional levels. A joined-up e-toolkit for local, regional and national public officials is available at the FRA website.[60]

10. Increasing cooperation at national level

Cooperation between different bodies contributes to the effectiveness of the rights enshrined in the Charter. The need is not so much to establish new mechanisms and procedures as to develop further the available resources, existing channels and forums for regular exchanges and synergies between existing structures.[61] Such increased levels of cooperation and coordination are particularly important in countries organised in a federal structure, in which the implementation of fundamental rights falls under the competences of different levels of authorities. Ombudsperson institutions, NHRIs, equality bodies, data protection authorities, national parliamentary committees dealing with fundamental rights issues and local authorities that are closest to the citizens could develop more concrete synergies, for example by setting up formal and/or informal fundamental rights networks (see also Tool 14).

11. Recognising the role of national parliaments

EU directives are binding on the Member States about the result to be achieved, but leave to national parliaments the choice of form and methods. This is of special relevance where directives are likely to raise fundamental rights concerns, as was the case, for instance, with the Data Retention Directive. The Treaty of Lisbon increased the relevance of national parliaments by giving them a role in evaluating EU policy implementation in the former third pillar and in the activities of Eurojust and Europol.[62] National parliaments also play a special role at EU level in developing judicial cooperation in civil matters based on the principle of mutual recognition of judgments.[63] Against this background, the national parliamentary committees dealing with fundamental rights could possibly be brought together in an EU-wide network and gain more direct access to the relevant EU developments.[64]

12. Establishing national action plans

National action plans (NAPs) in the area of fundamental rights protection have proved to be "useful tools for clarifying the authorities' responsibilities and for identifying and addressing gaps in human rights protection".[65] EU Member States such as Croatia, Finland, the Netherlands, Spain, Sweden and the United Kingdom (Scotland) have experience with such action plans and a number of other Member States including Austria and Greece are considering introducing NAPs. The integration of international reporting obligations into a NAP process can improve the coordination of reporting and would render it more efficient and cost-effective. Such a combined approach could also provide for the exchange of promising practices between Member States. Moreover, NAPs and their

evaluations could feed into the national positions in the EU legislative process and hence link the different layers of governance so that experiences and evidence from the ground do not get lost but rather contribute to an EU fundamental rights policy cycle (see Tool 6).

13. Increasing rights awareness within the EU

Data collected by FRA, as well as Eurobarometer surveys, show that rights awareness tends to be very low among both the general population and minority groups. This is true of the Charter of Fundamental Rights, in general,[66] as well as with relevant legislation, more specifically. In the case of equality legislation, for example, almost 60 % of 23,500 immigrants and ethnic minorities interviewed by FRA "were either unaware or unsure about the existence of legislation covering [...] non-discrimination on the basis of racial or ethnic origin."[67] In relation to equality legislation, such low rates of rights awareness are especially striking since the relevant EU directives set out an explicit obligation to make rights known.[68] EU Member States, with the support of the EU, should revamp their plans to better target their awareness-raising efforts.

14. Ensuring strong and independent national-level monitoring

To improve access to justice, the EU and its Member States should keep non-judicial and quasi-judicial bodies, as well as courts, in mind. All EU Member States should appoint or establish NHRIs with a view to their full accreditation (A-status) under the so-called Paris Principles.[69] Currently, only 11 of the 28 EU Member States have fully compliant (A-status) NHRIs and an additional seven have NHRIs with B-status. The EU could establish or promote similar minimum standards for the independence and effectiveness of other bodies with a human rights remit, in particular those required under EU law, such as equality bodies or data protection authorities. Current EU legislation does not provide clear standards, but recent CJEU jurisprudence points to shortcomings in the independence of data protection authorities.[70]

15. Creating a business environment that respects and promotes fundamental rights

EU law establishes duties between private parties and regulates large areas of economic activity in EU Member States. It is, therefore, important that EU law recognise economic players' special responsibilities with regard to fundamental rights as the proposed Directive on non-financial information disclosure does,[71] or that it acknowledge the importance of social, labour and environmental concerns as the legislative package for the modernisation of public procurement does.[72] The renewed EU strategy on corporate social responsibility (CSR) identifies human rights as a prominent aspect and requires enterprises to have in place a process to integrate human rights into their business operations in close collaboration with their stakeholders.[73] As part of its strategy, the European Commission published an *Introductory guide to human rights for SMEs* and human rights guidance for three sectors: employment and recruitment agencies; information and communication technology; and oil and gas. The guide and other guidance strengthen the link between the EU's CSR activities and the United Nations Guiding Principles on Business and Human Rights (UNGPs). EU Member States are encouraged to develop national action plans to implement the UNGPs. Where Member States decide to develop stand-alone action plans (see Section 10.5.3), they should make sure that fundamental rights protection is prominently integrated into these.

General tools

16. Involving civil society organisations (CSOs) in policy development and assessment

Civil society is a main stakeholder in the field of fundamental rights protection. For the EU's external relations, it is recognised that there is a need to "develop country roadmaps for engagement with CSOs, to improve the impact, predictability and visibility of EU actions, ensuring consistency and synergy throughout the various sectors".[74] Increasingly, the EU is also involving civil society within the EU in contexts relevant to fundamental rights. The experience of FRA with its Fundamental Rights Platform,[75] for instance, inspired the establishment of similar mechanisms at Frontex and Easo. It appears the right time to make civil society input possible on a wider scale, so that relevant NGOs are heard when the impact of upcoming EU legislation is assessed or where the implementation of existing legislation is reviewed. It would also be beneficial to provide at national level regular channels and allow key civil society actors to meet, exchange experiences and best practices and formulate proposals for the improvement and implementation of policies. Building on FRA's experience with its Fundamental Rights Platform, establishing similar platforms at national level could be considered where comparable tools do not yet exist. The shaping of fundamental rights policies through participation of various segments of society is one of the key concerns of the Paris Principles for NHRIs.

17. Investing in transnational trust and accessibility of fundamental rights knowledge

Mutual trust can be enhanced by fostering transnational contacts between practitioners. National judges and other law enforcement agencies should be trained to make certain that, in cooperating with their counterparts from other EU Member States, they take into account their duty under EU law to ensure that no decision implementing EU law violates either substantive standards or procedural rights that are embodied in the EU Charter of Fundamental Rights or in the general principles of EU law. To underpin such measures, the EU should provide sufficient funds for the relevant EU funding schemes. Training modules and a general guide on the scope of the Charter might also be helpful instruments.[76] FRA has developed – in cooperation with the Council of Europe and the European Court of Human Rights (ECtHR) – a series of handbooks on CJEU and ECtHR case law in targeted areas.[77] Additional handbooks could be prepared to raise awareness among legal practitioners about the scope of the Charter's safeguards. The European fundamental rights information system, proposed below, could also cover national case law referring to the Charter as well as the role of the Charter before non-judicial bodies, thereby providing evidence of how the Charter is, de facto, used at national level.

18. Establishing a European fundamental rights information system

The EU could also provide funds for the creation of a European fundamental rights information system that would form a hub, bringing together, in an accessible manner, existing information from the United Nations (UN) (mainly from the treaty bodies and special procedures but also from other sources), the Council of Europe (monitoring mechanisms and expert bodies), the Organization for Security and Co-operation in Europe, the EU (data from the European Commission, including Eurostat; FRA; Council working parties such as Genval, the Working Party on General Matters including Evaluation, or SchEval, the Working party on Schengen Evaluation Mechanisms; the European Ombudsman; etc.). Such a system would enhance transparency and objectivity and increase awareness about European and international standards, especially those of the Council of Europe in the EU context. It would also allow practitioners to make an informed assessment of a given country's fundamental rights situation in a specific area.

19. Developing fundamental rights indicators

To allow comparable assessments of fundamental rights legislation, policies and their effects, it is important to develop fundamental rights indicators. The indicators should be organised in a systematic framework, such as that applied by FRA, which is built on that of the UN Office of the High Commissioner for Human Rights. This 'S-P-O' (structure–process–outcome) framework captures the situation on the ground (outcome) and policy and structure levels. Reliance on such an information system should not, of course, be a substitute for a case-by-case assessment required in the practical application of mutual recognition, since each individual case confronting a national authority may present its own particularities. A system of indicators would also only indicate concerns, not replace a thorough contextualisation and analysis in detail when indicators point to the need for such. The need for developing reliable and objective fundamental rights indicators is increasingly recognised. For instance, in the context of monitoring and evaluating national strategies for Roma integration, the Council recommended Member States to make use of "any relevant core indicators or methods of empirical social research or data collection for monitoring and evaluating progress on a regular basis, particularly at the local level, enabling efficient reporting on the situation of Roma in the Member States with the optional support of the European Union Agency for Fundamental Rights".[78]

20. Exchanging promising practices across borders in a spirit of a shared 'fundamental rights culture'

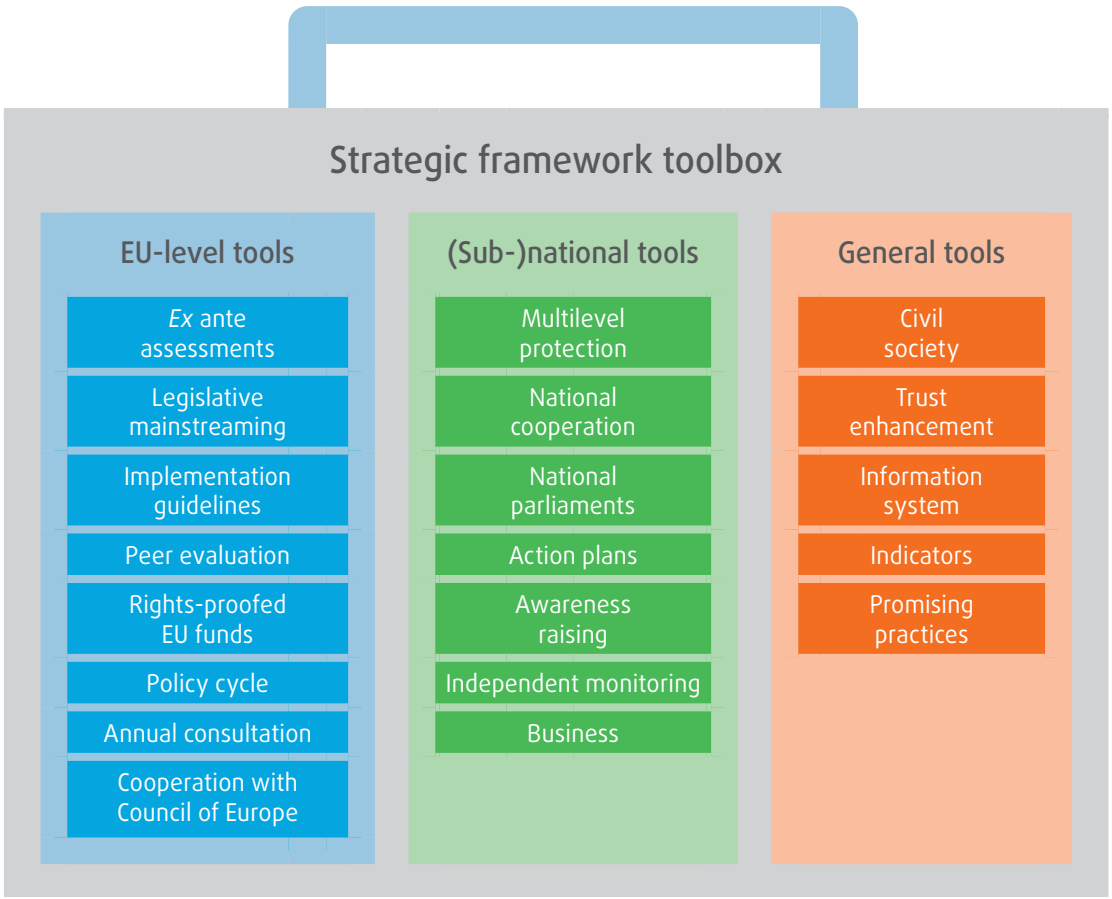
The EU and its Member States should approach the revamping of their shared 'fundamental rights culture' by exchanging promising practices through more and better-structured multilateral and bilateral contacts. Such a culture would perceive constructive critique as a natural part of a shared desire to pool forces and experiences to raise the bar in the area of fundamental rights protection. To give just one example: the European e-justice portal could become a suitable access point for promising practices on how best to live up to EU standards on justice.[79] It could, for instance, offer a search function for vetted practices. FRA initiated a modest attempt in this regard with an online toolkit for public officials, which includes examples under various headings of how to better join up fundamental rights.[80] Simple and practical tools are needed to ensure that fundamental rights standards are upheld in practice. The identification of such practical tools is again to be based on an open exchange of experiences. To give an example from the area of home affairs: Member States' experts and the European Commission in collaboration with FRA developed concrete practical guidance on apprehension practices in the form of 'dos and don'ts' for immigration law enforcement officials.[81] Practical support to mainstream fundamental rights at the operational level should be a priority for the allocation of funds (for instance under the future Internal Security Fund and the Asylum and Migration Fund; see Tool 5).

Conclusion

The EU and its Member States have come a long way in developing their community of values, even if economic, social and political crises in several Member States put these values under stress. Debates on how to safeguard the EU's founding values, as enshrined in Article 2 of the TEU, gained in depth and intensity in 2013. These values are shared between the EU and its Member States and include respect for human dignity, freedom, democracy, equality, the rule of law, respect for human rights and the rights of persons belonging to minorities, but also pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men. The Charter of Fundamental Rights largely covers these values and further defines them.

Against the backdrop of major policy discussions and developments that will occur in 2014, this focus section proposes a toolbox with which a new EU strategic fundamental rights framework could be shaped. Since such a framework would be 'co-owned' by the EU and its Member States, it could strengthen the commitment to fundamental rights at the EU, national and sub-national levels. Some of the tools proposed here are relevant mainly at the EU level, others at the (sub-) national level and still others at both levels. The list of 20 tools proposed is neither exhaustive nor definitive; other tools could be added, discussed and used.

In any event, making use of such a toolbox could help shape an EU internal framework for fundamental rights that mirrors the existing external fundamental rights framework. This would send a strong signal to the outside world, showing that the EU and its Member States are prepared to 'walk their talk' and thus increase the consistency between the Union's internal and external behaviour. The challenge now is to get all the actors concerned to make use of these tools to achieve the expected result: promoting fundamental rights to safeguard the rule of law.



Endnotes

All hyperlinks accessed on 30 April 2014.

1 FRA (2012), *Bringing rights to life: The fundamental rights landscape of the European Union*, Luxembourg, Publications Office of the European Union (Publications Office), http://fra.europa.eu/en/publication/2012/bringing-rights-life-fundamental-rights-landscape-european-union.

2 FRA (2013), *The European Union as a Community of values: Safeguarding fundamental rights in times of crisis*, Luxembourg, Publications Office, http://fra.europa.eu/en/publication/2013/european-union-community-values-safeguarding-fundamental-rights-times-crisis.

3 European Commission (2014), *A new EU framework to strengthen the rule of law,* COM(2014) 158 final, 11 March 2014, http://ec.europa.eu/justice/effective-justice/files/com_2014_158_en.pdf.

4 See FRA's contribution to the consultation processes leading up to the new document: FRA (2013), *Fundamental rights in the future of the European Union's Justice and Home Affairs*, http://fra.europa.eu/sites/default/files/fra_submission_on_the_future_of_eu_justice.pdf. See also FRA (2009), *The Stockholm Programme: A chance to put fundamental rights protection right in the centre of the European Agenda*, http://fra.europa.eu/sites/default/files/fra_uploads/538-FRA-comments-on-Stockholm-Programme.pdf.

5 See Art. 10 of Protocol No. 36 on transitional provisions, OJ C 326, 26 October 2012.

6 Council of the European Union (2012), *EU strategic framework and action plan on human rights and democracy*, adopted in June 2012, www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf.

7 Reding, V. (2013), 'The EU and the rule of law: What next?', speech given at CEPS on 4 September 2013, http://europa.eu/rapid/press-release_SPEECH-13-677_de.htm.

8 See e.g. European Parliament, Resolution of 3 July 2013 on the situation of fundamental rights: Standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012), http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-315

9 See, for example, the letter sent by four EU Member State foreign affairs ministers to the President of the Commission, highlighting the need for a new and more effective mechanism to safeguard fundamental values in Member States, see Council of the European Union (2013), Council conclusions on fundamental rights and rule of law and on the Commission 2012 Report on the Application of the Charter of Fundamental Rights of the European Union, Justice and Home Affairs Council meeting, 6 and 7 June 2013, p. 2, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/137404.pdf, and Council of the European Union (2013), '3235th Council meeting General Affairs', Press release, 22 April 2013, p. 8, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/genaff/136915.pdf

10 See e.g. Closa, C., Kochenov, D. and Weiler, J. H. H. (2014), 'Reinforcing rule of law oversight in the European Union', RSCAS 2014/25, http://cadmus.eui.eu/bitstream/handle/1814/30117/RSCAS_2014_25_FINAL.pdf?sequence=3.

11 See e.g. Advisory Council on International Affairs (2014), The rule of law, safeguard for European Citizens and foundation for European Cooperation, http://www.aiv-advies.nl/ContentSuite/upload/aiv/doc/webversie_AIV87_ENG_2(1).pdf; Bingham Centre for the Rule of Law (2013), *Safeguarding the Rule of Law, Democracy and Fundamental Rights: A Monitoring Model for the European Union*, http://www.biicl.org/files/6758_main_report_15_11_2013_commission_consultation.pdf; Centre for European Policy Studies (2013), The Triangular Relationship between Fundamental Rights, Democracy and the Rule of Law in the EU. Towards an EU Copenhagen Mechanism, http://www.ceps.be/ceps/dld/8617/pdf.

12 Joint NGO statement on the forthcoming European Commission Communication on safeguarding the rule of law in the EU, 10 March 2014, http://www.hrdn.eu/hrdn/eu-internal-human-rights-policy.php?menu_selected=124&sub_menu_selected=1020&language=US

13 For an overview, see, for example, Democracy Reporting International (2013), 'Proposals for new tools to protect EU values: An overview', Briefing Paper 43, http://www.democracy-reporting.org/files/dri-bp-guiding_principles_for_new_tools_to_protect_eu_values_2013-11-11-3_rms.pdf; Toggenburg, G. N. (2013), 'Was soll die EU können dürfen, um die EU-Verfassungswerte und die Rechtsstaatlichkeit der Mitgliedstaaten zu schützen?', ÖGfE Policy Brief 10, 2013, http://www.oegfe.at/cms/uploads/media/OEGfE_Policy_Brief-2013.10.pdf.

14 Council of the European Union (2013), Council conclusions on fundamental rights and rule of law and on the Commission 2012 Report on the Application of the Charter of Fundamental Rights of the European Union, Brussels, p. 5, point 11.

15 European Parliament, Resolution of 3 July 2013 on the situation of fundamental rights: Standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012), para. 64, http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-315.

16 *Ibid.*, para. 80.

17 *Ibid.*, para. 70.

18 *Ibid.*, para. 79.

19 European Parliament, Resolution as of 27 January 2014 on the situation of fundamental rights in the European Union, para. 10, http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2014-0051&language=EN&mode=XML.

20 See discretionary hyphenhttp://ec.europa.eu/justice/events/assises-justice-2013/index_en.htm.

21 COM(2014) 144 final as of 11 March 2014, discretionary hyphenhttp://ec.europa.eu/justice/effective-justice/files/com_2014_144_en.pdf.

22 COM(2014) 158.

23 *Ibid.*, p. 3.

24 *Ibid.*, p. 4.

25 *Ibid.*, p. 6.

26 *Ibid.*, p. 7.

27 European Commission (2014), *EU anti-corruption report*, COM(2014) 38 final as of 3 February 2014, http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf.

28 See COM(2013) 160 final as of 27 March 2013; and COM(2014) 155 final as of 11 March 2013.

29 Compare von Bogdandy, A. and Ioannidis, M. (2014), 'Systemic deficiency in the rule of law: What it is, what has been done, what can be done', *Common Market Law Review*, Vol. 51,No.1,pp. 59–96, 76.

30 Charter of Fundamental Rights of the European Union, Art. 51 (1).

31 Treaty on European Union, OJ C 83, 30 March 2010, Art. 3, p. 13.

32 See e.g. Eurobarometer 69, Values of Europeans, p. 21, http://ec.europa.eu/public_opinion/archives/eb/eb69/eb69_values_en.pdf.

33 See Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, in OJ L 190, 18 July 2002.

34 CJEU, Joined cases C-411/10 and C-493/10, *N. S. v. Secretary of State for the Home Department and M. E. and Others v. Refugee Applications Commissioner & Minister for Justice*, Equality and Law Reform, 21 December 2011, para. 105.

35 See FRA (2013), *Joining up fundamental rights: Toolkit for local, regional and national public officials*, http://fra.europa.eu/en/joinedup/home; and FRA (2012), *Bringing rights to life: The fundamental rights landscape of the European Union*, Luxembourg, Publications Office, http://fra.europa.eu/en/publication/2012/bringing-rights-life-fundamental-rights-landscape-european-union.

36 See CJEU, Joined cases C-293/12 and C-594/12, *Digital Rights Ireland Ltd v. The Minister for Communications, Marine and Natural Resources, The Minister for Justice, Equality and Law Reform, The Commissioner of the Garda Síochána Ireland and The Attorney General and Kärtner Landesregierung, Seitlinger and Others*, 8 April 2014.

37 COM(2010) 573 final, 19 October 2010.

38 Council of the European Union (2011), *Guidelines on methodological steps to be taken to check fundamental rights compatibility in the Council's preparatory bodies*, Council Doc 10140/11 18 May 2011, http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010140%202011%20INIT.

39 See: rule 36 on "respect for the Charter of Fundamental Rights of the European Union".

40 Compare also de Witte, B., *et al* (2010), *Legislating after Lisbon*, p. 29, http://www.eui.eu/Projects/EUDO/Documents/EUDO-LegislatingafterLisbon(SD).pdf.

41 European Parliament (2014), Resolution of 13 March 2014 on Employment and social aspects of the role and operations of the Troika (ECB, Commission and IMF) with regard to euro area programme countries, 2014/2007(INI), www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0240+0+DOC+XML+V0//EN.

42 de Schutter, O. (n.d.), *The new architecture of fundamental rights policy in the EU*, http://cms.horus.be/files/99907/MediaArchive/Presentation_110215_ODeSchutter_2FRAND.pdf.

43 Compare in this regard, for instance, European Commission (2010), European Disability Strategy, 2010-2020, COM(2010) 636 final, 15 November 2010.

44 For an overview, see FRA (2013), *Fundamental rights: Challenges and achievements in 2012*, Annual Report, Luxembourg, Publications Office, Chapter 1, http://fra.europa.eu/sites/default/files/fra-2013-safeguarding-fundamental-rights-in-crisis_en.pdf. Some of the cases listed as pending have since been decided.

45 European Commission (2014), Communication on guidance for application of Directive 2003/86/EC on the right to family reunification, COM(2014)210 final as of 3 April 2014.

46 European Commission (2013), Ares (2013)3763804, 19 December 2013, http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf.

47 European Commission (2009), COM(2009) 313 final as of 2 July 2009.

48 FRA (2014), *Twelve operational fundamental rights considerations for law enforcement when processing Passenger Name Record (PNR) data*, http://fra.europa.eu/sites/default/files/fra-2014-fundamental-rights-considerations-pnr-data-en.pdf.

49 FRA (2013), *Apprehension of migrants in an irregular situation: Fundamental rights considerations*, http://fra.europa.eu/sites/default/files/fra-2013-apprehension-migrants-irregular-situation_en.pdf.

50 Compare consideration No. 24 of COM(2011) 751 final, consideration No. 4 of COM(2011) 753 final or consideration No. 3 of COM(2011) 750 final.

51 See Regulation (EU) No. 1303/2013, OJ L 347 as of 20 December 2013, pp. 320–469.

52 The Convention on the Rights of Persons with Disabilities (CRPD), Article 4 (1) (c), requires parties to take into account the protection and promotion of rights "in all policies and programmes".

53 European Parliament (2012), resolution of 12 December 2012 on the situation of fundamental rights in the European Union, para. 20, http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0500&language=EN&ring=A7-2012-0383.

54 Council of Europe, Committee of Ministers (2005), Action Plan, CM(2005) 80 final, 17 May 2005, www.coe.int/t/dcr/summit/20050517_plan_action_en.asp.

55 For the priorities for 2014–2015, see Council document 16444/13, 19 November 2013, http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%2016444%202013%20INIT.

56 See, for example, the overview of the cooperation between the European Union Agency for Fundamental Rights and the Council of Europe, July 2012 to June 2013, http://fra.europa.eu/sites/default/files/fra-coe-cooperation-overview-2012-2013_en.pdf.

57 Guideline No. 5 (Appendix 1 of the Action Plan).

58 Council Conclusions of 22 July 2013 on Local Authorities in Development, Council document 12459/13, 22 July 2013, http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%2012459%202013%20INIT.

59 Committee of the Regions (2014), Resolution on the Charter for multilevel governance in Europe, 3 April 2014, http://www.cor.europa.eu/en/activities/governance/Documents/mlg-charter/en.pdf.

60 http://fra.europa.eu/en/joinedup/home.

61 FRA (2010), *National human rights institutions in the EU Member States: Strengthening the fundamental rights architecture in the EU I*, Luxembourg, Publications Office, http://fra.europa.eu/sites/default/files/fra_uploads/816-NHRI_en.pdf.

62 Arts. 70, 85 and 88 of the TFEU.

63 Arts. 81 of the TFEU.

64 A comparable structure exists for parliamentary committees dealing with EU integration (the Conference of Parliamentary Committees for Union Affairs of Parliaments of the EU).

65 Council of Europe, Commissioner for Human Rights (2014), background paper on national action plans.

66 For proposals to increase awareness about the Charter, see FRA (2012), *Bringing the Charter to life: Opportunities and challenges of putting the EU Charter of Fundamental Rights into practice*, http://fra.europa.eu/sites/default/files/copenhagen-seminar-report.pdf.

67 FRA (2010), *EU-MIDIS, Data in Focus 3: Rights awareness and equality bodies – strengthening the fundamental rights architecture in the EU III*, Luxembourg, Publications Office, p. 3, http://fra.europa.eu/sites/default/files/fra_uploads/854-EU-MIDIS_RIGHTS_AWARENESS_EN.PDF.

68 See Art. 10 of Council Directive 2000/43/EC implementing the principle of equal treatment between persons

irrespective of racial and ethnic origin, OJ 2000 L 180 (Racial Equality Directive) or Art. 12 of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303 (Employment Equality Directive).

69 UN, General Assembly (1993), The principles relating to the status and functioning of national institutions for protection and promotion of human rights (The Paris Principles), Resolution A/RES/48/134, 20 December 1993. See also FRA (2012), *Handbook on the establishment and accreditation of national human rights institutions in the European Union*, Luxembourg, Publications Office.

70 CJEU, *Commission v. Germany*, C-518/07, 9 March 2010; and *Commission v. Austria*, C-614/10, 16 October 2012. See also the Advocate General's Conclusions, *Commission v. Hungary*, C-288/12, 10 December 2013.

71 European Commission (2013), COM(2013)207 final.

72 The package was proposed in late 2011 and adopted in early 2014, for information see: http://ec.europa.eu/internal_market/publicprocurement/modernising_rules/reform_proposals/index_en.htm.

73 European Commission (2011), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A renewed EU strategy 2011–14 for corporate social responsibility, COM(2011) 681 final, 25 October 2011, p. 14, Section 4.8.2, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF.

74 European Commission (2012), *The roots of democracy and sustainable development: Europe's engagement with civil society in external relations*, COM(2012) 492 final as of 12 September 2012, p. 9, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0492:FIN:EN:PDF.

75 For more information, see the FRA website (http://fra.europa.eu/en/cooperation/civil-society) and Kjaerum, M. and Toggenburg, G. N. (2012), 'The Fundamental Rights Agency and civil society: Reminding the gardeners of their plants' roots', *European Diversity and Autonomy Papers*, EDAP 02/2012, available at: http://webfolder.eurac.edu/EURAC/Publications/edap/2012_edap02.pdf.

76 FRA (2012), 'Bringing the Charter to life: Opportunities and challenges of putting the EU Charter of Fundamental Rights into practice', Copenhagen Seminar Report, Danish Presidency of the Council of the European Union and EU Agency for Fundamental Rights, http://fra.europa.eu/sites/default/files/copenhagen-seminar-report.pdf.

77 See FRA (2013), *Handbook on European law relating to asylum, borders and immigration*, Luxembourg, Publications Office, http://fra.europa.eu/en/publication/2013/handbook-european-law-relating-asylum-borders-and-immigration.

78 Council of the European Union (2013), Council recommendation on effective Roma integration measures in the member states, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/139979.pdf.

79 Available at: https://e-justice.europa.eu/home.do?action=home&plang=en.

80 Available at: http://fra.europa.eu/en/joinedup/home. See examples at, for instance: http://fra.europa.eu/en/joinedup/tools/communicating-fundamental-rights/engaging-public/champions.

81 FRA (2014), *Twelve operational fundamental rights considerations for law enforcement when processing passenger name record (PNR) data*, http://fra.europa.eu/sites/default/files/fra-2014-fundamental-rights-considerations-pnr-data-en.pdf.

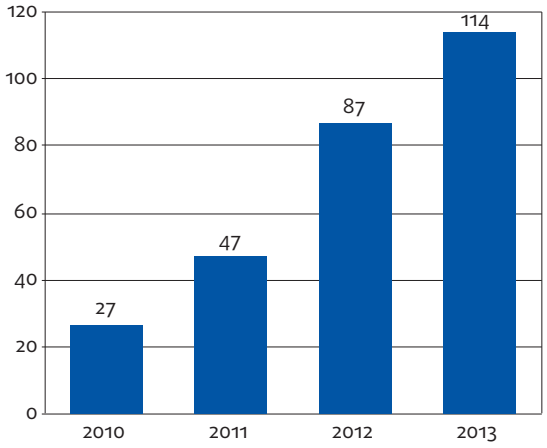
The EU Charter of Fundamental Rights before national courts and non-judicial human rights bodies

The Charter of Fundamental Rights of the European Union (Charter), the EU's human rights bill, expresses the values at the heart of the Union which all Member States have pledged to uphold. Although a new instrument, it is gaining in use and prominence. As the Charter approaches its fifth anniversary as a binding document in December 2014, it is timely to explore its impact. Much is already known about how the Charter works at the level of the EU. Indeed, the Charter primarily addresses the EU, including its institutions and bodies. However, there is more to the Charter, namely its use at national level. The Charter binds the EU Member States and thereby all its authorities at various levels of governance, including regions or municipalities when they are acting in the scope of EU law. One indicator of how the Charter penetrates national legal systems is its use in national court rooms. For the first time, the FRA Annual report looks at national court judgments and the use of the Charter by national bodies with a human rights remit such as national human rights institutions, equality bodies and Ombudsperson institutions, thereby throwing light on a lesser-known side of the Charter's life.

The Charter of Fundamental Rights of the European Union (Charter) is cited across EU legislative and administrative acts, European Parliament petitions and European Ombudsman cases. Similarly, it is carving an ever deeper imprint into jurisprudence, with a steady rise in mentions of its provisions by the Court of Justice of the European Union (CJEU). The number of decisions in which the CJEU (in all its formations: Court of Justice, General Court and Civil Service Tribunal) quotes the Charter in its reasoning, for example, more than quadrupled in three years to 114 decisions in 2013 from 27 in 2010 (some 7 % of the total number of decisions in 2013 as opposed to 2 % in 2010, see Figure 0.1),[1] whereas the general number of CJEU decisions in the same time increased only from 1,152 in 2010 to 1,587 in 2013 – a rise in three years of almost 38 %. In 2013 alone, the CJEU referenced the Charter more often than in the nine years from the Charter's proclamation in late 2000 to the end of 2009, when it became legally binding with the entry into force of the Lisbon Treaty.

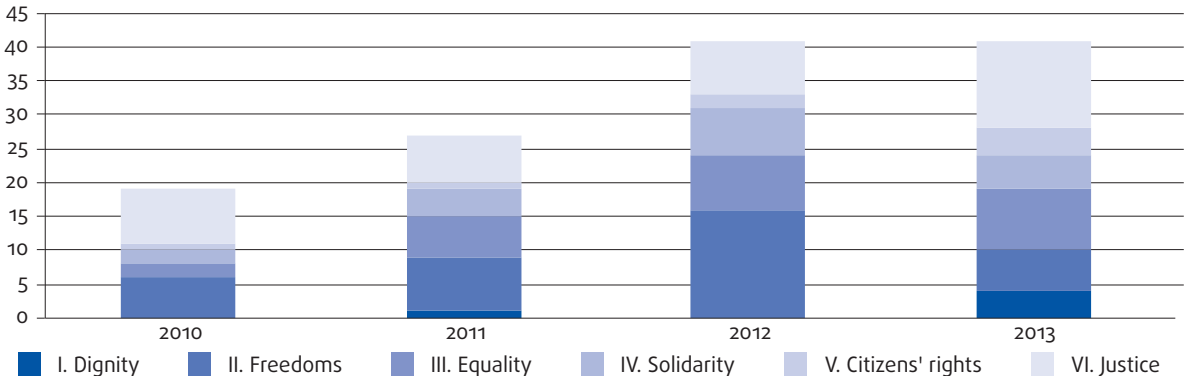
The CJEU's increasing number of citations makes the Charter relevant in practice, as demonstrated by the greater interest from national courts which can refer cases to the CJEU. Such requests for preliminary rulings by national courts invoking the Charter increased from 18 in 2010 to 27 in 2011[2] and reached 41 in 2012. In 2013, 9 % of the cases that national courts referred to the CJEU (41 of them) cited the Charter.[3] Figure 0.2 shows the rise in such references over the years and the Charter title that the courts referenced.

Figure 0.1: Number of decisions in which the CJEU references the Charter in its reasoning, 2010–2013



Source: FRA 2013, based on CJEU data

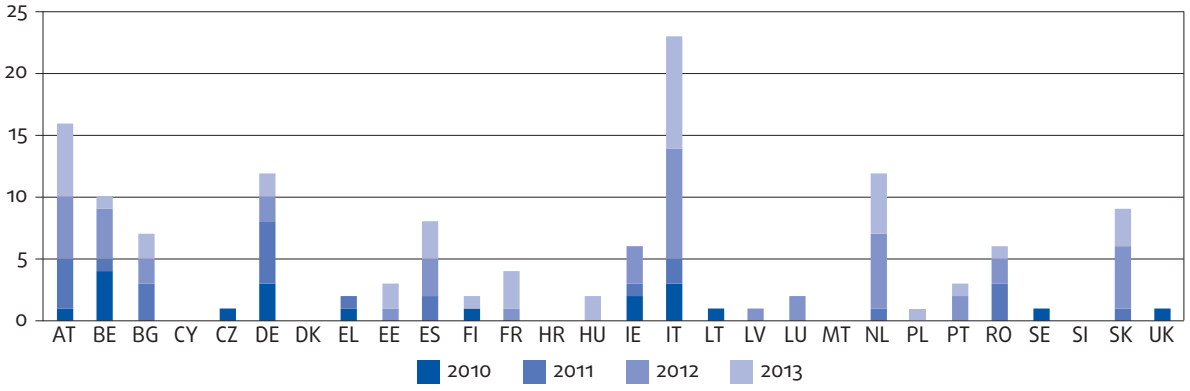
Figure 0.2: Total number of requests for preliminary rulings in which national courts mention the Charter, by Charter title, 2010–2013



Note: *This chart excludes cases concerned with Title VII (general provisions) of the Charter.*

Source: *European Commission (2014),* 2013 report on the application of the EU Charter of Fundamental Rights, *p. 8*

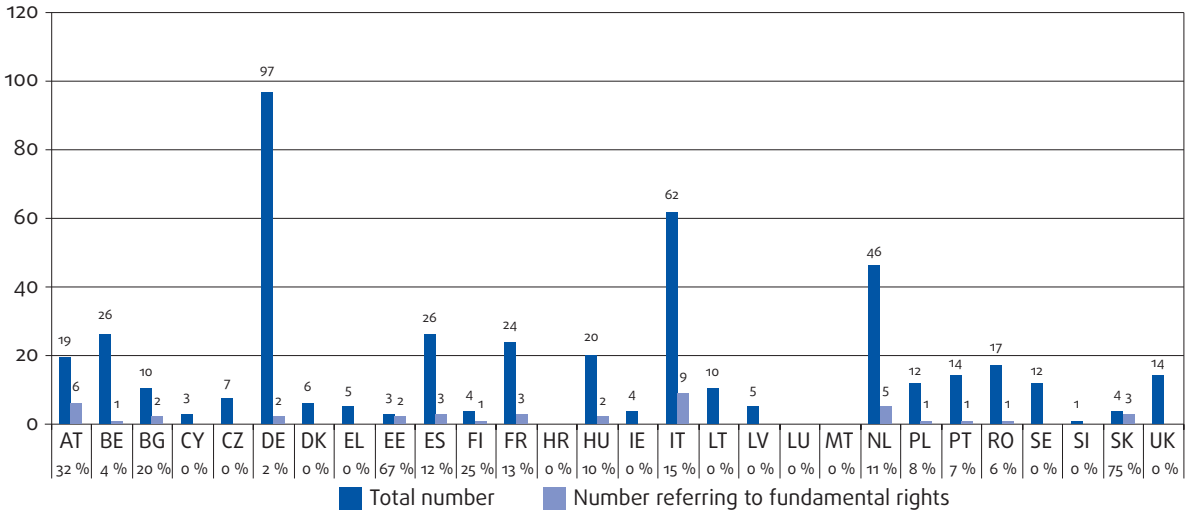
Figure 0.3: Number of requests for preliminary rulings in which national courts mention the Charter, by EU Member State, 2010–2013



Note: *Croatia is included as from the date it joined the EU, 1 July 2013.*

Source: *Data available with the European Commission*

Figure 0.4: Requests for preliminary rulings: total number and number referring to the Charter, by EU Member State, 2013



Note: *The percentage figure below the country code corresponds to the share of requests for preliminary rulings referring to the EU Charter of Fundamental Rights.*

Source: *FRA 2014; CJEU (2014), Annual Report 2013*

When looking at the EU Member States' courts and how often they refer to the Charter when approaching the CJEU for a preliminary ruling, no overall trend appears. As shown in Figure 0.3, **Austria** shows a definite rise in Charter-related requests, but most Member States do not display such a clear-cut trend (e.g. **Belgium**, **Bulgaria**, **Ireland** and **Italy**). Some Member States' courts have yet to make a single reference to the Charter in their requests for preliminary rulings by the CJEU since the Charter entered into force. Besides **Croatia**, which joined the EU only in July 2013, this applies to **Cyprus**, **Denmark**, **Hungary** and **Slovenia**.

However, national courts also use the Charter beyond requests to the CJEU for preliminary rulings. Indeed, only a fraction of cases in which national courts refer to the Charter reach the CJEU. The Charter is regularly used in national courtrooms. Nevertheless, so far the attention has been focused on the EU institutions' Charter use, for instance before the CJEU.[4] Less light has been thrown on how national courts use the Charter.[5]

Given that EU law is mainly implemented at national level through national institutions, the national judiciary's use of the Charter is an important facet to examine. Every judge at national level serves two masters, the national and EU systems, and has hence to apply – where appropriate – EU law, including the Charter. In fact, national courts began using the Charter before it became legally binding. In some of these cases, they even used the Charter to prevent the application of contradictory national norms.[6] It thus appears timely and important to take up the Council of the European Union's recent call and follow the Charter's use in national courtrooms.

"The Council considers it important to follow developments in evolving case-law and notes the Fundamental Rights Agency's work in publishing regular updates in this regard."

Council of the European Union (2013), Council conclusions on fundamental rights and rule of law and on the Commission 2012 Report on the Application of the Charter of Fundamental Rights of the European Union, Justice and Home Affairs Council meeting Luxembourg, 6 and 7 June 2013, Point 2, available at: www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/137404.pdf

To examine national developments, FRA asked its Franet contractors to provide key information across the 28 EU Member States on national case law referring to the Charter. More specifically, FRA requested information on up to five national judgments, preferably from the highest courts, including constitutional courts, supreme courts and the highest administrative courts which used the Charter in their reasoning.

For **Belgium**, **Bulgaria**, **Slovenia** and **Sweden**, Franet experts did not identify any judgments satisfying this request. For the other Member States, FRA received information on 70 judgments altogether, 50 of which were delivered by a high court. Since the national experts were asked to identify the five most relevant judgments and in many Member States fewer than five were found, this set of judgments probably represents a good proportion of the most relevant 2013 Charter references made before the 28 EU Member States' national courts. Nevertheless, the sample is still limited, since references to the Charter before lower courts will often not be traceable because these sorts of decisions are not public and courts' registers do not mark Charter references.

Very often, the national court only reports that parties referred to the Charter but does not picking up the Charter in its own legal arguments. In **Belgium**, for instance, the Constitutional Court in 2013 handed down judgments referring to Article 47, Article 18 and Articles 20, 21, 26 and 34 of the Charter without relying on these provisions in its own reasoning.[7] The 70 judgments that were included in the sample did not contain such references to the Charter.

The Charter's 'national life' also unfolds outside the courtroom before other bodies with a human rights remit, such as national human rights institutions (NHRIs), equality bodies and Ombudsperson institutions. Therefore, this chapter offers some additional information on the use of the Charter outside courtrooms in the Section on 'How non-judicial bodies at national level use the Charter'.

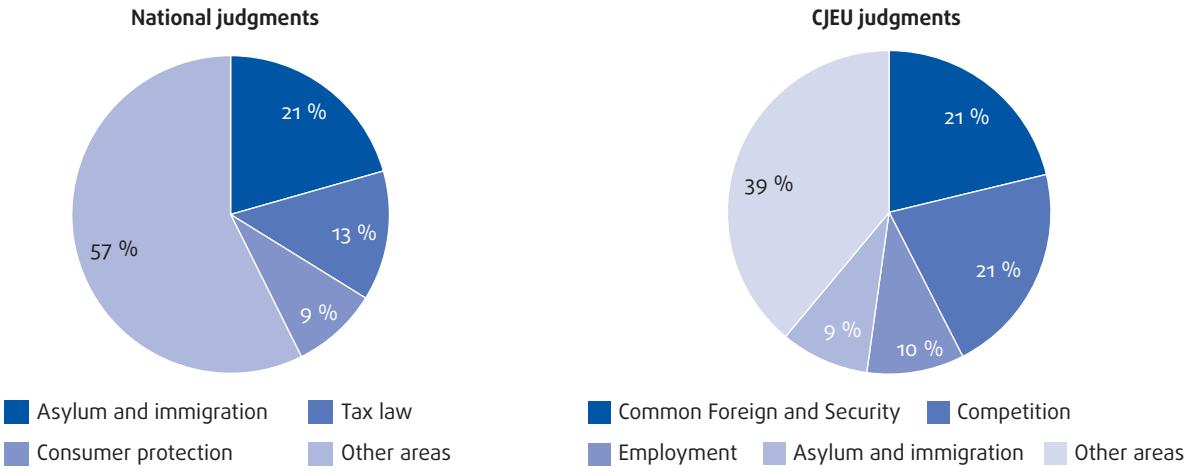
How national courts deploy the Charter

The most relevant policy fields

Of the relevant judgments that national courts handed down in 2013, the most prevalent substantive areas were on asylum and immigration. Out of the 70 judgments analysed for the year 2013, the largest group, namely 14 judgments, concerned these two fields. Other prominent areas for the year were tax law (nine judgments) and consumer protection (six judgments). There were also four judgments in each of the following fields: employment, social security, expropriation/compensation and administrative procedures. These findings are similar to those of 2012, when FRA looked into 240 national judgments by 15 EU Member States' courts and found that half dealt with asylum and immigration issues.[8] Asylum and immigration unsurprisingly comprise the lion's share of rulings, because they are defined principally by EU secondary law and are highly sensitive from a fundamental rights point of view.

The patterns of reference to the Charter differ between national and CJEU judgments. For the CJEU, 114 decisions referred to the Charter in 2013;[9] in contrast to national courts, these judgments dealt principally with the EU

Figure 0.5: Charter-related judgments, national or CJEU, by policy area (%)



Source: FRA, 2013, own data

Common Foreign and Security Policy, as well as with competition policies. The EU plays a strong role in both these fields, with competition policy a prime example of an area in which the EU is also entrusted with implementation. Other very prominent areas – again, similar to the situation before national courts – included employment (particularly employment at EU institutions), and asylum and immigration.

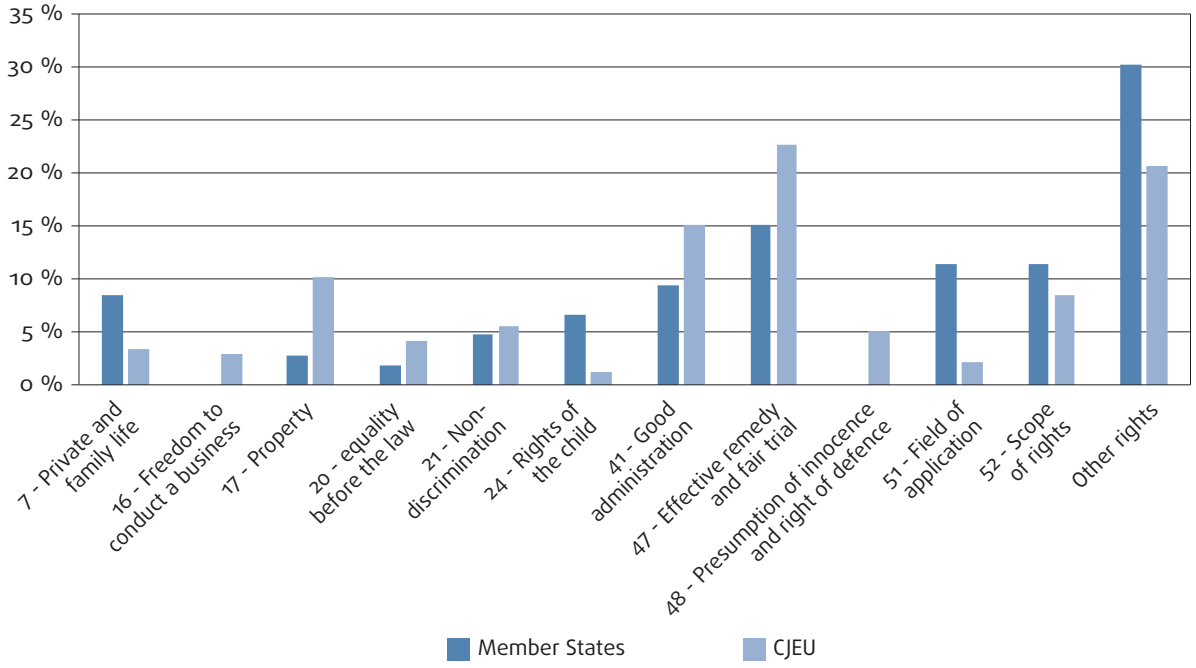
Charter rights that receive most prominent use

The right to an effective remedy and a fair trial (Article 47) was the Charter right most frequently referred to in national courtrooms. Indeed, this right and the right to good administration (Article 41) together accounted for almost a quarter (23 %) of all the national references analysed. The Charter's horizontal provisions on its application and scope (Articles 51 and 52) represent almost another quarter (22 %) of the national judgments. The right to privacy and family life (Article 7), the rights of the child (Article 24) and the right to non-discrimination (Article 21) were referred to in one in five of the cases (19 %) analysed. Additionally, 25 of the remaining Charter articles received one or two references.

In the national judgments analysed, 22 Charter articles received no mention at all. These concern some rights not easily compromised by EU law, including the right to life (Article 2), the right to the integrity of the person (Article 3) and the prohibition of slavery and forced labour (Article 5). Others left unmentioned concern rights that are especially relevant to policy fields where the EU's competence is limited, such as the right to marry and found a family (Article 9), the freedom of arts and science (Article 13) or the right to education (Article 14). It is also not surprising that national courts failed to refer to rights that address the EU level, such as the right to access to documents (Article 42), related to the European Ombudsman (Article 43), the right to petition (Article 44), or diplomatic and consular protection (Article 46). An easy explanation does not, however, suggest itself for the entire picture. Of the 12 rights listed under the Charter's 'solidarity' title, for instance, the national judgments analysed made no mention of eight.

When comparing the 2013 national court decisions analysed with the 114 CJEU decisions that refer to the Charter, both differences and similarities emerge. The right to an effective remedy and a fair trial is used most often, at both the EU and national levels. The right to good administration comes second, again in both CJEU and national court references. Finally, both the CJEU and national courts give the right to non-discrimination similar importance. However, these 2013 judgments also reveal differences. Close to 10 % of the national judgments analysed referred to the rights of the child, but the CJEU share is much smaller: it mentioned Article 24 in just three of its 114 Charter-related decisions. The right to private and family life (Article 7) also features more prominently in the national cases analysed than in the CJEU's 2013 decisions. In contrast, the CJEU refers more often to the right to property (Article 17) and the freedom to conduct a business (Article 16). With regard to the horizontal provisions in Title VII of the Charter, national courts often referred to the Charter's field of application (Article 51). The CJEU invoked this article less often, preferring instead to refer to the scope and interpretation of rights and principles (Article 52). This reflects the nature of the articles. Article 51 incorporates EU Member States as Charter addressees, whereas the Charter's interpretation (Article 52) falls as a core task to the CJEU as interpreter of EU primary law.

Figure 0.6: References to Charter articles in national court and CJEU decisions, by article (% of total Charter references in decisions analysed)



Note: The category 'other rights' contains different rights for national courts and the CJEU.
Source: FRA, 2014

The reach of the Charter and the scope of EU law

National procedural laws differ substantially on the degree to which the arguments put forward by the parties determine the scope of the proceedings. Consequently, whether or not a Court can raise a 'Charter argument' independently (ex officio) differs from state to state.[10] In 2013, out of the 70 cases examined, 31 included an earlier invocation by parties. In a further 33 cases, the adjudicating Court raised the Charter as a legal argument in its reasoning without the parties having done so.[11] Thus, the Charter enters national courtrooms not only by the initiative of the parties but also through the national courts, which themselves often invoke the Charter as a legal source.

Since the Charter addresses the EU Member States "only when they are implementing Union law" (Article 51), one critical argument for a national court to refer to the Charter would seem to be that EU law applies to the case at hand. Although this holds true in part for courts, parties do not necessarily appear to check whether or not EU law applies. However, there are also national judgments in which the Court uses the Charter in its reasoning in cases that do not display any link with EU law. In most of these cases, the Charter was referred to in a rather superficial manner; the court did not explicitly state whether or not the Charter directly applies. In any event, the Charter did not appear to make any difference to the outcome of these cases.

The Charter was invoked, as were other international documents, in, for instance, a **Czech Republic** case concerning the violation of human dignity. A woman who was chained to a toilet for four hours in a psychiatric hospital died, allegedly as a result of insufficient supervision.[12] In other cases, the Charter functioned as an "additional confirmation" of the rights guaranteed by the European Convention of Human Rights (ECHR).[13] In cases appearing to fall outside the scope of EU law, the Charter often served to strengthen rights guaranteed by national constitutional law. In a judgment from **Portugal**, for instance, Article 53 of the Constitution, laying down the right to job security, is described as central element in the constitutional architecture whose "extreme importance [...] is [...] consolidated by its condition as a principle of European public law, as stated in [...] Article 30 of the EU Charter of Fundamental Rights".[14] Sometimes national courts used the Charter to interpret national law. In an **Italian** case concerning gender balance in an executive body of a municipality, the court referred to Charter Articles 21 and 23, concluding that "a normative *corpus* exists and it should become the tool for interpreting the domestic legal order".[15] Another Italian court judgment, while recognising that the Charter did not apply to the case at hand, seemed to say that this would not necessarily limit its interpretative value. The Italian court underlined that

the Charter was an expression of common principles of European legal systems and therefore had – as a source of interpretation – a function within the national legal system even outside the scope of EU law.[16]

In contrast, however, other national courts have denied the Charter's interpretive function precisely because they recognise the case as falling outside the scope of EU law. In a judgment from **Portugal**, for instance, the court recalls that the Charter applies to the EU Member States only when they are implementing EU law. Accordingly, the constitutional court found that the interpretation of what is the right to a fair trial as enshrined in the Portuguese Constitution is not "directly bound up in the hermeneutical assessment emitted by the Charter". Rather, what should apply is an "autonomous interpretation, founded within the precinct of internal constitutional rule-making, even", the court continues, "if it is unable to disregard the enlightening function of other external sources about the contents of the fundamental rights in question".[17]

When the national courts examine whether or not the facts of a case fall within the scope of EU law, their approaches differ widely. In some judgments, a detailed assessment is provided. This assessment sometimes includes reference to the case law of the CJEU in general or to specific judgments. An **Austrian** court,[18] for instance referred to the CJEU judgment in the *Åkerberg-Fransson* case[19] and a **Danish** court[20] referred to the CJEU judgment in the *Marks & Spencer* case.[21] In some judgments, the national court even provides a detailed assessment of the facts of the case against the CJEU's case law concerning the scope of law. Such was the case when an **Irish** court referred to the CJEU judgment in the *Zambrano* case and the subsequent CJEU case law, and presented the respective principles of EU law.[22] There are also examples where judgments deal with the scope of EU law by referring to statements in earlier national court judgments or opinions from academic literature.[23]

At the other end of the spectrum, there are national judgments that do not even raise the question of the Charter's applicability and yet nevertheless provide an interpretation of the Charter. In a **Slovak Republic** case, for instance, a regional court invoked the Charter without examining its scope and applicability and stated that "Article 98" would oblige all EU Member States to ensure a high level of consumer protection. What is meant, instead, is obviously Article 38, not 98, and it merely states that "Union policies [not Member States] shall ensure a high level of consumer protection".[24]

In general, it appears that national courts do not consistently address in their judgments the question of whether or not the Charter applies. While national courts frequently quoted Article 51 on the field of application of the Charter, such a reference rarely led them to decide how the situation at stake would qualify under this provision.[25] Equally, few judgments provide an interpretation of Article 51, even if they identify a wider or a more restrictive reading of the Charter's scope. A judgment from **Malta** might serve as an example of the latter type of reading. The Maltese court stated that the Charter was "totally unrelated [to the facts of the case] as the rights in the Charter only apply to administrative acts of the European Institutions and to the regulations, directives and decisions emerging from the Treaties".[26]

The standing of the Charter in the national legal system

In many cases analysed, the Charter was used to add (additional) legal heft to the interpretation of a national law provision, including cases dealing with national constitutional law. To give an example from **Spain**, the Constitutional Court referred to its standing case law when stating that treaties and international agreements including EU law may constitute "valuable interpretive criteria of the meaning and scope of the rights and freedoms recognised by the Constitution". The court underlined that these "valuable interpretive criteria" also includes the interpretation developed by the organs established in those treaties and international agreements.[27] Such judgments reveal that the Charter's guiding function is not necessarily limited to cases where EU law in general and the Charter in particular apply.[28]

Less frequent were judgments using the Charter to interpret EU secondary law, although there is an example from **France** in the context of the Free Movement Directive (2004/38/EC). There are also cases where the Charter, secondary law and national law implementing EU legislation are looked at from the perspective of a triangular relationship, as a **German** judgment did. At stake was the scope of Article 2 (2) of the Employment Directive (2000/78/EC), which says that the directive "shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others." The case concerned alleged age discrimination in a regional provision, which required house inspectors to be no older than 70. The national court admitted that the provision did indeed compromise Article 21 of the Charter, but it argued that this intrusion was justified in accordance with Article 52 (1) of the Charter. The justifications for interference under that article are, the court said, "for the very same reasons" as those justifying interferences with fundamental rights under national constitutional law.[29]

In the **United Kingdom**, the standing of the Charter in the national legal system was addressed explicitly in

some judgments and consequently picked up in the political debate. In a case concerning an asylum seeker who was returned to his country of origin, the claimant argued that the UK government interfered with his rights under Article 7 of the European Charter, among others, by causing private information to be disclosed to his home country's authorities. In the end, the claim was dismissed. However, the judge referred to the judgment of the CJEU in the case *N. S. v. Secretary of State for the Home Department*,[30] stressing that:

> *"The constitutional significance of this decision can hardly be overstated. The Human Rights Act 1998 incorporated into our domestic law large parts, but by no means all, of the European Convention on Human Rights. Some parts were deliberately missed out by Parliament. The Charter of Fundamental Rights of the European Union contains, I believe, all of those missing parts and a great deal more. Notwithstanding the endeavours of our political representatives at Lisbon it would seem that the much wider Charter of Rights is now part of our domestic law. Moreover, that much wider Charter of Rights would remain part of our domestic law even if the Human Rights Act were repealed."*[31]

In another judgment, a national court in the **United Kingdom** took a more operational approach to the standing of the Charter. The case concerned two applicants: a cook at the Sudanese embassy and a member of the domestic staff of the Libyan embassy. Both had made claims arising out of their employment and were met with pleas of state immunity. These pleas were upheld by two separate employment tribunals and both parties appealed. The claimants invoked Article 47 of the Charter and argued that the State Immunity Act 1978 (SIA), which provides for state immunity in UK law, should be disapplied to the extent the claims fell within the material scope of EU law. The employment appeal tribunal addressed the question whether a direct application of the Charter implies that national law contrary to the Charter must be disapplied in a claim litigated between private individuals. The Court stated that the claims relating to discrimination, harassment and breaches of the Working Time Regulations were subject to Article 47 of the Charter, but those for unfair dismissal and minimum wages were not. The Court concluded that, whereas the Human Rights Act "does not permit the disapplication of any statutory provision, [...] EU law requires it where it concerns the material scope of EU law"; thus, for the claims covered by EU law, certain provisions of the SIA were "to be disapplied".[32] The discussions that were sparked by these judgments led the European Scrutiny Committee in the House of Commons to prepare a report on the application of the Charter in the UK, which will be presented in 2014.

The sample of cases analysed here does not contain cases where the standing of the Charter was addressed in other Member States, but this should not lead to the conclusion that national courts in other countries did not address the Charter's legal standing. A look back to 2012 is instructive in this regard. The Constitutional Court in **Austria** had referred to a principle of equivalence and concluded that the rights of the Charter can be invoked as constitutional rights and, within the scope of the Charter, constitute a standard of review in the proceedings of constitutional complaints, in particular pursuant to specific provisions of the Austrian Constitution (Articles 139 and 149).[33] In the same year, the Constitutional Court of **Romania** said that Charter provisions are applied when checking constitutionality, basing this Charter role on the Romanian constitution's integration clause in Article 148.[34] In 2013, a national court in **France** stressed, in a case concerning the lack of suspensive effect of an appeal against expulsion orders, that the national judge does not have the power under the Code of Administrative Justice to rule on the compatibility of such laws with the provisions of an international convention or reject their application under the European Union law. However, the court added that the situation is different where these legal dispositions appear to be manifestly incompatible with European Union law requirements, which was – according to the national court – not the case.[35] In a case in **Cyprus**, the parties referred in their argumentation to the Charter as higher-ranking law. The court, however, limited itself to establishing that Articles 20 and 21 of the Charter are largely identical to the national constitution's provisions and "for that reason" there was no need to refer a question of interpretation to the CJEU.[36]

The Charter and other non-national legal sources

Even if the Charter within the EU system is the most prominent legal source of fundamental rights, it is by no means the only relevant document in the field. The Charter text makes the link to the ECHR explicit. Article 52 (3) of the Charter establishes that the "meaning and the scope" of the rights in the Charter are linked to the corresponding rights in the ECHR. This parallelism is reflected in national case law. In nearly two thirds of the 69 national judgments, reference was made to the ECHR. Just as the data collection for 2012 revealed, there is a degree of parallelism in using the ECHR and the Charter.

A few judgments explicitly mention the relationship between the Charter and the ECHR by referring to Article 52 (3) and underlining that the meaning and the scope of the rights mentioned in both instruments are the same. In **Romania**, a court identified Charter Article 41 as a benchmark for the administrative conduct of EU Member States' public authorities. Where the state complies with this benchmark, protection ensured

by Article 6 of the ECHR is guaranteed.[37] Conversely, in a judgment from the **Netherlands**, the national court, "not taking into consideration whether in this case the law of the Union is implemented in the sense of [A]rticle 51", checked the national norms against Article 6 of the ECHR and concluded that national law is not contrary to Article 6 of the ECHR and therefore, given the similarity of the provisions in the ECHR and the Charter, also not contrary to Article 47 of the Charter.[38]

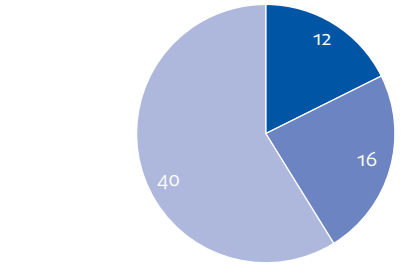
Where national courts are confronted with differences in wording between the Charter and the ECHR, European Court of Human Rights (ECtHR) case law may play a special role. For instance, unlike the ECHR's wording, the Charter establishes in Article 47 (2) that everyone shall have "the possibility" of being advised, defended and represented in judicial proceedings. Given ECtHR case law establishing that a statutory obligation to be represented by a lawyer before certain courts does not infringe Article 6 of the ECHR, a national court in **Germany** developed case law clarifying that such an obligation is thus also in line with Article 47 of the Charter.[39] In another judgment delivered by a German court, EU secondary law was interpreted not through CJEU case law but through that of the ECtHR. The judgment concerned the Free Movement Directive and how it relates to homosexual relationships. Since the ECtHR subsumes questions of sexual self-determination and of one's sex life under the term 'private life' protected by Article 8 (1) of the ECHR, the court saw no need for a preliminary ruling by the CJEU. Against the background of the EctHR's case law, the national court had no doubts on the classification of homosexuality and considered the feature of "sexual orientation" to be an element which forms identity as defined in Article 10 (1) (d) of EU Directive 2004/83/EC.[40]

Unlike the ECHR, Charter Article 53 also recognises other international agreements to which the Union or all the EU Member States are party. Where national courts use the Charter in their reasoning, they sometimes refer in parallel to other international documents. Such parallel references are not as frequent as parallel references to the ECHR. Most prominently featured is the UN Convention on the Rights of the Child, to which six judgments referred. Judgments also made three references to the Universal Declaration of Human Rights; two references to the International Covenant on Economic, Social and Cultural Rights; two references to the International Covenant on Civil and Political Rights; two references to the European Social Charter; and one reference to the Convention on the Elimination of All Forms of Racial Discrimination.

National courts and the Court of Justice of the European Union

In 41 of the 70 judgments analysed, the CJEU was not mentioned at all. However, 13 judgments referred to the court in general terms and 17 also referred to specific CJEU judgments. National courts might also refer to CJEU case law more generally, as a judgment from **Poland** shows. In this example, the national court denied a violation of Article 47 of the Charter, "as neither this provision nor the Court of Justice of the European Union provide such procedural requirements".[41] Other judgments gave concrete and detailed reference to CJEU judgments, at times setting them into the perspective of national law. In a ruling from **Slovakia**, for instance, the national Constitutional Court's conclusions are set in relation to the CJEU's conclusions.[42]

Figure 0.7 References to the CJEU in the context of the Charter in national judgments (analysed)



Source: FRA, 2014

The CJEU's jurisprudence was used to provide guidance in the interpretation of national constitutional law outside the scope of EU law, for example in a judgment from **Spain**. In a case concerning the civil legislation that regulates the order of surnames in Spain and civil registration of names, the national court used the CJEU judgment in C-208/09, the *Sayn-Wittgenstein* case, to stress that the name of a person is an element of his or her identity and privacy, whose protection is guaranteed by Article 7 of the Charter.[43]

Some preliminary references were sparked by a doubt concerning the interpretation of a Charter right, without it necessarily translating into questions explicitly mentioning the Charter. In some cases, national courts do not share a party's view that the Charter right in question was not clear in a given context. For instance, in an **Austrian** judgment, the court saw no need to ask for clarification on the (non-)applicability of Article 47 in the context of national electricity legislation.[44] In a case from **Lithuania**, the Supreme Court decided to stay the proceedings and refer to the CJEU question in the context of Article 47 of the Charter and the applicability of consumer protection rules. The case concerned a contract concluded between a practising lawyer and a natural person; it was unclear if this

contract should be viewed as concluded between a customer and a business service provider, which would make consumer protection rules applicable. In an **Estonian** case concerning Article 47 of the Charter, the question arose whether a circuit court was entitled to suspend the procedure and refer the case to the CJEU for a preliminary ruling.[45] The case concerned an Estonian–Latvian Territorial Cooperation Programme implemented under the EU's cohesion policy. The decisions of the programme's monitoring committee could not be appealed against, raising the question of their conformity with the Charter, especially with Article 47.

The **Netherlands** made a preliminary reference to the Court of Justice in the context of the Charter right to good administration (Article 41).[46] The national court sought guidance from the CJEU on how to read the "right of defence" in the administrative context. The Dutch court acknowledges CJEU case law, recognising that this right is now also laid down in Article 41 of the Charter. It notes, however, that CJEU case law shows that the right is not absolute and that the Charter, "according to its wording, is only addressed to institutions, bodies, offices and agencies of the Union". A judgment delivered in **Portugal** illustrates a case in which the court discussed in detail whether or not to refer it to the CJEU.[47] In a case concerning a legal amendment to lower the pension rights of former communist security officials, a regional Court in **Poland** requested the CJEU for a preliminary ruling whether the amendment was not infringing with Charter Articles 1 (human dignity), 17 (right to property), 20 (equality before the law), 21 (non-discrimination) and 47 (right to an effective remedy and to a fair trial). For this case, Protocol No. 30 on the applicability of the Charter is of relevance. [48]

How non-judicial bodies at national level use the Charter

Fundamental rights generally, and the Charter specifically, should be embedded within the work of all entities that provide and support access to justice at all levels of government. Courts alone do not carry out this function. A range of bodies with a human rights remit, some of which are considered non-judicial in that they do not adjudicate cases, also play a crucial role. Some of these bodies are called quasi-judicial; they adjudicate cases but are not courts of law. EU Member States have a wide range of such bodies, whose powers, goals and operations vary greatly.

To explore the extent to which these bodies make use of the Charter and related EU fundamental rights law, the European Commission (DG Justice, C1) started in 2013 to collect information from NHRIs accredited under the Paris Principles, equality bodies and ombudsperson institutions as well as specific ombudsperson institutions for children. The information was collected through the respective European networks of these four types of bodies, and FRA was asked to provide an analysis.

The categorisation into the four types of bodies mentioned is not clear cut: an NHRI can at the same time serve as an equality body and also as an ombudsperson institution, and any of these bodies could also have an explicit mandate regarding children, thus forming part of the European network for such bodies. In addition, a designated equality body is a requirement for all Member States under EU law,[49] whereas no such legal requirement exists for the other bodies. Basically, each Member State could have an entity in each of the four categories, but, commonly, Member States do not have all types. Some states have more than one of a particular type of body; the United Kingdom, for example, has separate NHRIs for Scotland and Northern Ireland, as well as one for England and Wales (for more details on NHRIs, see Chapter 8 on access to justice and judicial cooperation and Chapter 10 on EU Member States and international obligations). A short questionnaire containing six broad questions was sent to the relevant bodies in all EU Member States. The questions concerned the role of the Charter in:

1. training
2. awareness raising
3. processing complaints
4. advising government
5. litigating cases before courts
6. mediation.

Each of the six areas contained subquestions to quantify the responses, such as how many persons had undergone training on the Charter or how many cases had related to the Charter. Not all the questions would be applicable to all bodies; some provide training, others advise governments and yet others process complaints or litigate on behalf of complainants.

The time frame about which answers should be provided was between the entry into force of the Charter, in December 2009, and the questionnaire's cut-off date, 31 October 2013. The last two areas, litigation and mediation, were an exception: answers about them were to refer solely to 2013.

All told, there are approximately 100 bodies of the four types across the 28 EU Member States. In total, there were 43 responses to the questionnaire. Bodies across all four types responded from 25 of the 28 EU Member States. Among the respondents were five specialised in children and five regional Ombudsperson institutions (from Italy and Spain). The European Ombudsman also responded.

Of the six questions, some received more concrete responses, largely because of the nature of the issues

they cover being more or less precise. Awareness raising, in particular, tends to be done through general campaigns on, say, equality. A particular role for the Charter, or relevant EU legislation which the questionnaire also addressed, cannot usually be distinguished. Training has a similar nature in that it tends to cover issues and principles, drawing on the most relevant sources which may include UN, Council of Europe and EU law. But again, specific references to EU fundamental rights standards might not be needed for training, so it is difficult to pinpoint the role these standards play in training. Still, it is clear from the responses, in particular from the equality bodies, that the transposed EU law on equality is very influential.

Processing complaints and advice is more easily associated with EU fundamental rights. The same applies to litigation where the bodies in question have judicial functions or can support or bring cases before courts. Finally, the sixth area, mediation, is difficult to associate with any legal standards, given that legal arguments are probably not at the core of such a process. The brief overview of the responses below consequently focuses on those provided to Questions 3, 4 and 5.

Comparability is essential for detailed analysis. The diversity of the organisations that responded to questions that were intentionally brief and straightforward did not allow for a strong comparative framework. For this reason, the number of bodies responding positively or negatively should be read as a general indication rather than as a detailed review.

Training and awareness raising

About half of the bodies (22 of the 43 that responded) provided training related to the Charter and or EU legislation. The scope of the training varied from general staff-only training to outreach including thousands of participants. Twenty-one bodies said they provided no training, with six explaining that training was outside their mandate. A few said they limited their training focus to the ECHR or, for bodies active in this area, to the UN Convention on the Rights of the Child.

More concrete examples of engagement with EU fundamental rights instruments include the **Romanian** Institute of Human Rights. It organises a week-long summer course every year, to which a Charter module was added after the entry into force of the Lisbon Treaty in 2009. Practitioners and academics participate, some 30 per year.

The Parliamentary Ombudsman in **Sweden** organised internal training for some 50 persons covering the Charter in greater detail. The Public Defender of Rights in **Slovakia** said it covers the Charter right to good administration (Article 41) in all staff training.

Slightly fewer than half (18) of the bodies provided awareness raising on EU fundamental rights. About half (22) responded negatively, with five stating that it was not within their mandate. A few others said they focused on the ECHR and the UN Convention on the Rights of the Child. The Mediator in Luxembourg said it planned a campaign on Article 41 of the Charter.

Processing complaints

Of the 43 bodies which responded, 26 processed complaints using EU fundamental rights. Seventeen answered no. Of these, 12 responded that they had not yet received any complaints related to EU fundamental rights. Two said that they were not mandated to deal with complaints or cases.

Complaints that refer to EU fundamental rights appear to be limited. The European Ombudsman replied that some 13 % of cases referred explicitly to the Charter. The Parliamentary Ombudsman in **Sweden** estimates that only applicants include such references in a mere 1 %–3 % of complaints. It could not identify any case where the Charter would have had a clear and traceable impact on the outcome. The Defender of Rights in **France** estimated the equivalent number to be a fraction of 1 %. The Ombudsman in **Greece** concluded that in some 2 %–3 % of cases the complainant would invoke the Charter. The Advocate of the Principle of Equality, the equality body in **Slovenia**, reported that 15 % of complaints made reference to EU fundamental rights, but that in the majority of these cases the EU element was provided by the Advocate of the Principle of Equality, not the complainant.

As for the Charter's influence on substantive issues, the European Ombudsman stressed public administration and the related relevance of Charter Article 41, as did the Parliamentary Ombudsman in **Finland**. The Ombudsman in **Greece**, the equality body, referred to discrimination against Roma. Other equality bodies, including the National Centre for Human Rights in **Slovakia** and the Centre for Equal Opportunities and Opposition to Racism in **Belgium**, also noted that the equality title of the Charter was influential. The Parliamentary Ombudsman in **Finland** also mentioned cases concerning freedom of movement, access to healthcare and discrimination on the basis of religion.

Advising government

Around half (21) of the bodies that replied to the survey provide advice to governments on the basis of the Charter or related EU legislation. Of those responding, 17 answers were negative, with 10 of the bodies not having a mandate to provide such advice. Of those lacking a mandate on the Charter, four reported that they were authorised to advise on the basis of other instruments, such as the constitution or international

treaties. The National Commission for the Promotion of Equality in **Malta** reported that it had used EU secondary legislation on discrimination to provide advice. Although the Charter is a relative newcomer among human rights instruments and many bodies do not have mandates explicitly referencing the Charter, the act establishing the **Danish** Institute for Human Rights contains an explicit reference to the Charter as part of the basis on which the body should operate.[50] The Human Rights Defender in **Poland** has advised the government on the basis of the Charter in relation to age discrimination, gender equality, rights of persons with disabilities and data protection.

Litigating cases before courts and mediation

Litigation before courts based on EU fundamental rights law was used by just over a quarter (12) of the bodies responding. This also reflects the limited mandate of many of the bodies. In fact, out of 30 responses saying that the body did not litigate, 18 said that their mandate prevented them from bringing cases before a court. Another four of those 30 responses said they had not dealt with any cases related to EU fundamental rights law. One of the 43 responses was not clear on whether or not litigation was possible.

Four of the bodies provided explicit examples of how the Charter had related to their litigation work. The Public Defender of Rights in the **Czech Republic** assisted a court case that concerned discrimination. The Human Rights Defender in **Poland** has motioned the constitutional court, supported by the Charter in relation to the freedom of assembly, rights of persons with disabilities and data protection. The Commissioner for Fundamental Rights in **Hungary** has sought the Charter's support when bringing cases to the constitutional court concerning data protection, right to an effective remedy and to a fair trial, freedom of information, the right to property and the right to social security. The Public Defender in **Spain** reported that claimants use Article 41 of the Charter to argue that bodies within the public administration should justify their decisions.

Five of the bodies referred to mediation in the context of EU fundamental rights. Thirty-five responded negatively. Of these, 12 responded that the reason was a lack of mandate for it. Six of the 35 stated that it would be possible to rely on EU fundamental rights if there were a case appropriate for mediation.

Conclusion

It is in the fields of asylum and immigration that national courts most often refer to the Charter of Fundamental Rights of the European Union. More than one in five of the cases analysed deal with these policies (21 %). The Charter right that national courts most commonly refer to is the right to an effective remedy and a fair trial (Article 47). Together with the right to good administration (Article 41), these rights formed a quarter of all the references to the Charter in the 2013 judgments analysed. This reflects the situation before the CJEU, which invokes Articles 41 and 47 in half of all the cases in which it refers to the Charter.

Of all the cases in which national courts referred to the Charter, 22 % were devoted to the Charter's horizontal provisions, encompassing its scope (Article 51) and interpretation (Article 52). Despite these provisions' prominence before national courts, their judgments rarely analyse the Charter's reach in detail. The Charter is often rather superficially referred to as a means of interpretation, without the question of whether or not the Charter applies being addressed.

Occasionally, national courts also refer to the Charter in their reasoning in cases that clearly fall outside the scope of EU law. As an expression of the values on which the Union is built and to which all Member States adhere, the Charter thus reverberates beyond EU law.

National courts tend to cite in parallel the Charter, which is the EU human rights bill, and the ECHR, the Council of Europe's human rights treaty. In nearly two thirds of the judgments analysed, the courts paired references to the Charter and the ECHR.

The Charter is also used and referred to before bodies with a human rights remit, including NHRIs, Ombudsperson institutions and equality bodies. However, given the diversity of these institutions, the role of the Charter is more mixed and less pronounced than before national courts. Just like the national courts, the bodies with a human rights remit often refer both to the Charter and to human rights treaties, although the latter see more use than the former. Many of the bodies are specialised equality bodies, which tend to draw on the Charter's equality title. However, other rights, including to data protection and to good administration, are also highlighted before such bodies. Nevertheless, there remains potential for much greater use of the Charter before bodies with a human rights remit.

Endnotes

All hyperlinks accessed on 30 April 2014.

1 European Commission (2012), *2011 report on the application of the EU Charter of Fundamental Rights*, p. 8, http://ec.europa.eu/justice/fundamental-rights/files/charter_report_en.pdf; European Commission (2013), *2012 report on the application of the EU Charter of Fundamental Rights*, p. 24, http://ec.europa.eu/justice/fundamental-rights/report/2012/index.html.

2 European Commission (2012), *2011 report on the application of the EU Charter of Fundamental Rights*, p. 8, http://ec.europa.eu/justice/fundamental-rights/files/charter_report_en.pdf.

3 European Commission (2014), *2013 report on the application of the EU Charter of Fundamental Rights*, p. 7.

4 European Parliament (2012), 'Main trends in the recent case law of the EU Court of Justice and the European Court of Human Rights in the field of fundamental rights', PE462.446, http://www.europarl.europa.eu/RegData/etudes/etudes/join/2012/462446/IPOL-LIBE_ET(2012)462446_EN.pdf. A recent example is de Burca, G. (2013), 'After the EU Charter of Fundamental Rights: The Court of Justice as a human rights adjudicator', *Maastricht Journal*, Vol. 20, No. 2, pp. 168–184.

5 For exceptions confirming the rule, see de Visser, M. (2013), 'National constitutional courts, the Court of Justice and the protection of fundamental rights in a post-Charter landscape', *Human Rights Review*; Bazzocchi, V. (2011), 'The European Charter of Fundamental Rights and the courts', in Di Federico, G. (ed.), *The EU Charter of Fundamental Rights*, Springer, pp. 55–75.

6 Italy, Corte Appello Firenze sez. lav (2007), judgment of 9 June 2007, quoted by Amici, F., Papa, V,. and Sacca E., (2009), *The courts and the Nice Charter: Technical arguments and interpretative activity*, p. 259, http://csdle.lex.unict.it/Archive/AC/Dossiers/EU%20law/20120206-101728_INT_dossier12_fund-rights_2009pdf.pdf; Italy, *Tribunale Ravenna* (2008), judgment of 16 January 2008, quoted *ibid.*, p. 268.

7 Belgium, Cour constitutionnelle/Grondwettelijk Hof, No. 73/2013, 30 May 2013, No. 107/2013, 18 July 2013, and No. 124/2013, 26 September 2013.

8 Similarly, the ACA general report on the implementation of the Charter (seminar of 24 November 2011) states: "The area of law in which the Charter seems to have played the most prominent role to date is immigration and asylum law: apart from *Spain*, *Hungary* and *Austria*, the Charter has had an impact (to a greater or lesser extent) in this area of law in every country." ACA, *General report*, www.aca-europe.eu/seminars/DenHaag2011/Gen_Report_en.pdf.

9 For the list of the 114 decisions, see the annex to European Commission (2014), *2013 report on the application of the EU Charter of Fundamental Rights,* Luxembourg, Publications Office.

10 See Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (2012), *General report*, p. 10, www.aca-europe.eu/seminars/DenHaag2011/Gen_Report_en.pdf.

11 In some of the judgments, it remained unclear whether or not the Charter had already been referred to by the parties.

12 Czech Republic, Nejvyšší soud, Case 30 Cdo. 3223/2011, 14 May 2013, www.nsoud.cz/Judikatura/judikatura_ns.nsf/WebSearch/BDA2B059E16E4F1EC1257B97002EB949?openDocument&Highlight=0; see, similarly, Poland, *Sąd Apelacyjny w Białymstoku*, Case I SA/Wa 1012/13, 17 April 2013, http://orzeczenia.bialystok.sa.gov.pl/content/$N/150500000001006_II_AKzw_000665_2013_Uz_2013-04-17_001.

13 Poland, Wojewódzki Sąd Administracyjny w Warszawie, Case I SA/Wa 1012/13, 6 May 2013, http://orzeczenia.nsa.gov.pl/doc/020019FFCB.

14 Portugal, Tribunal Constitucional, Case 754/13, 29 August 2013, www.tribunalconstitucional.pt/tc/acordaos/20130474.html.

15 Italy, Tribunale regionale amministrativo (TAR) – Rome (second section), Case 633, 21 January 2013.

16 Italy, Corte Suprema di Cassazione, Case 41, 3 January 2013.

17 Portugal, Tribunal Constitucional, Case 117/12, 15 July 2013, http://www.tribunalconstitucional.pt/tc/acordaos/20130404.html; for a similar emphasis on autonomy, see Portugal, Tribunal Constitucional, Case 274/2013, 23 May 2013, www.tribunalconstitucional.pt/tc/acordaos/20130274.html.

18 Austria, Verwaltungsgerichtshof, judgment 2012/15/0021, 19 March 2013, www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_2012150021_20130319X00.

19 CJEU, Case C-617/10, 26 February 2013.

20 Denmark, Landsskatteretten, Case 04-0002640, judgment of 4 June 2013, www.afgoerelsesdatabasen.dk/ShowDoc.aspx?q=04-0002640&docId=dom-lsr-04-0002640-full.

21 CJEU, C-446/03, *Marks & Spencer*, 13 December 2005.

22 See Ireland, High Court (2013), Case IEHC 246s, judgment of 30 April 2013, especially para. 50, www.courts.ie/judgments.nsf/6681dee4565ecf2c80256e7e0052005b/917c1eda50f25d3d80257b8f002fbcb7?OpenDocument.

23 See Austria, Oberster Gerichtshof, judgment 8 Ob 7/139, 4 March 2013, at 2.3, www.ris.bka.gv.at/Dokumente/Justiz/JJT_20130304_OGH0002_00800B00007_13G0000_000/JJT_20130304_OGH0002_00800B00007_13G0000_000.pdf.

24 See Slovakia, Okresný súd Piešťany, Case 7C/127/2012, judgment of 1 August 2013, www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutie-detail.aspx?PorCis=3622CDA6-5E78-47D8-9B3C-B6962D4019EA&PojCislo=169769.

25 Examples of judgments explicitly denying that the scope of the Charter is activated are Hungary, Alkotmánybírósága, Case 3140/2013, judgment of 24 June 2013; Netherlands, Centrale Raad van Beroep, Case BZ2161, judgment of 22 February 2013, http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:CRVB:2013:BZ2161; Netherlands, *Centrale Raad van Beroep*,Case 1090, judgment of 12 July 2012, http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:CRVB:2013:1090.

26 Malta, Criminal Court of Appeal, Case 98/2011, judgment of 15 July 2013.

27 Spain, Tribunal Constitucional, Case 61/2013, judgment of 14 March 2013, http://hj.tribunalconstitucional.es/HJ/docs/BOE/BOE-A-2013-3797.pdf.

28 See Spain, Tribunal Constitucional, Case 167/2013, judgment of 7 November 2013, http://hj.tribunalconstitucional.es/HJ/docs/BOE/BOE-A-2013-11678.pdf.

29 Germany, Hessischer Verwaltungsgerichtshof, Case 7 C 897/13.N, judgment of 7 August 2013, http://openjur.de/u/642867.html.

30 CJEU, Case C-411/10, *N.S. v. Secretary of State for the Home Department*, judgment of 21 December 2011.

31 United Kingdom, High Court (Queen's Bench Division – Administrative Court), Case EWHC 3453 (Admin), judgment of 7 November 2013.

32 United Kingdom, Employment Appeal Tribunal, Case UKEAT 0401_12_0410, judgment of 4 October 2013, www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKEAT/2013/0401_12_3004.html&query=Janah+and+v+and+Libya+and+Benkharbouche+and+v+and+Embassy+and+of+and+the+and+Republic+and+of+and+Sudan%92&method=boolean.

33 Austria, Verfassungsgerichtshof, Case U466/11; U1836/11, judgment of 14 March 2012, www.ris.bka.gv.at/Dokumente/Vfgh/JFT_09879686_11U00466_2_00/JFT_09879686_11U00466_2_00.html.

34 Romania, Curtea Constituțională a României, Case 1021D/2012, judgment of 20 November 2012, www.ccr.ro/files/products/D0967_12.pdf.

35 France, Haute Cour administrative, judge for urgent cases, Case No. 371316, judgment of 23 August 2013, www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000027990506&fastReqId=885337519&fastPos=34.

36 Cyprus, Supreme Court, Civil Appeal No. 77/2012, judgment of 13 February 2013, www.cylaw.org/cgi-bin/open.pl?file=/apofaseis/aad/meros_1/2013/1-201302-77-12PolEf.htm.

37 Romania, Înalta Curte de Casație și Justiție, Case 2001/54/2011, judgment of 22 January 2013.

38 Netherlands, Administrative Jurisdiction Division of the Council of State, Case BZ2265, judgment of 25 February 2013, http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RVS:2013:BZ2265.

39 Germany, Bundesfinanzhof, Case X K 11/12, judgment of 6 February 2013, para. 13, www.bundesfinanzhof.de/entscheidungen/entscheidungen-online.

40 Germany, Verwaltungsgerichtshof Baden-Württemberg, Case A 9 S 1872/12, judgment of 7 March 2013, http://lrbw.juris.de/cgi-bin/laender_rechtsprechung/document.py?Gericht=bw&GerichtAuswahl=VGH+Baden-W%FCrttemberg&Art=en&sid=4f6610e44d88e7782a6911dc4ee61600&nr=16837&pos=0&anz=1.

41 Poland, Naczelny Sąd Administracyjny, Case II OZ 327/13, judgment of 1 August 2013, http://orzeczenia.nsa.gov.pl/doc/46581FD26A.

42 Slovakia, Ústavný súd Slovenskej republiky, Case II. ÚS 499/2012-47, judgment of 10 June 2013, http://portal.concourt.sk/SearchRozhodnutia/rozhod.do?urlpage=dokument&id_spisu=499748.

43 See Spain, Tribunal Constitucional, Case 167/2013, judgment of 7 November 2013, http://hj.tribunalconstitucional.es/HJ/docs/BOE/BOE-A-2013-11678.pdf.

44 Austria, Oberster Gerichtshof, Case 8Ob7/13G, judgment of 4 March 2013, www.ris.bka.gv.at/Dokumente/Justiz/JJT_20130304_OGH0002_0080OB00007_13G0000_000/JJT_20130304_OGH0002_0080OB00007_13G0000_000.pdf.

45 Estonia, Riigikohtu halduskolleegium, Case 3-3-1-2-13, judgment of 21 March 2013, http://www.nc.ee/?id=11&tekst=RK/3-3-1-2-13.

46 Netherlands, Hoge Raad, Case BR0671, decision of 22 February 2013: http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2013:BR0671.

47 Portugal, Supremo Tribunal de Justiça, Case 149/11.4YFLSB, judgment of 26 June 2013, www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/f3a3d72faffbb1c180257b1600053d34b?OpenDocument.

48 Poland, Częstochowa Regional Court, *R. Panczyk v. Ministry of Interior and Administration*, IV U 147/02, 20 December 2013. See also consolidated versions of the TEU and TFEU Protocol No. 30 on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2012:326:TOC.

49 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (*Racial Equality Directive*), OJ 2000 L 180, p. 22, Art. 13; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (*Gender Goods and Services Directive*), OJ 2004 L 373, p. 37, Art. 12; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (*Gender Equality Directive*), OJ 2006 L 204, p. 23, Art. 20.

50 Act No. 553 of 18 June 2012, Art. 2 (6).

Asylum, immigration and integration

Border control and visa policy

Information society, respect for private life and data protection

Freedoms

UN & CoE

January

February

March

April

May

June

23 July – In *Suso Musa v. Malta*, the ECtHR clarifies the concept of detention "to prevent an unauthorised entry" under Article 5 (1) of the ECHR. It considers that, if a state enacts legislation explicitly authorising the entry or stay of immigrants pending an asylum application, an ensuing detention for the purpose of preventing an unauthorised entry may raise an issue about the lawfulness of detention under Article 5 (1) f of the ECHR

July

August

September

October

November

6 December – The UN High Commissioner for Refugees launches an emergency operation to improve conditions for refugees and asylum seekers in Bulgaria

December

EU

January

February

25 March – The European Commission tables proposal to revise the directive on admission of students (COM(2013) 151 final)

March

April

30 May – In *Arslan*, the CJEU confirms that a person who applies for asylum from pre-removal detention can, under certain conditions, continue to be kept in detention

May

4 June – In *ZZ*, the CJEU interprets the provision of the Free Movement Directive (2004/38/EC) on notification of grounds for refusing residence, which allows Member States to refrain from disclosing certain information on grounds of state security

4 June – The European Asylum Support Office (EASO) starts a Special Support Plan in Italy

6 June – In *MA*, the CJEU rules on the application of the Dublin Regulation to unaccompanied minors, placing particular importance on the best interests of the child

17 June – The European Commission publishes the *4th Annual Report on Immigration and Asylum*, calling for forward-looking policies on migration

26 June – Four revised EU asylum instruments are published in the Official Journal

June

4 July – European Parliament adopts a resolution on the impact of the crisis on access to care for vulnerable groups

July

August

10 September – In *M.G. and N.R.*, the CJEU rules on the applicability of Article 41 (2) (a) of the Charter to decisions prolonging pre-removal detention

19 September – The CJEU rules that entry bans should normally not extend beyond five years (*Filev, Osmani*)

24 September – In *Demirkan*, the CJEU rules that the standstill clause in Article 41 of the Additional Protocol to the Ankara Agreement prevents states from imposing new and more stringent procedural or financial requirements on Turkish nationals, other than those that were already in force at the time the agreement came into being. The clause does not apply to Turkish nationals who wish to make use of – rather than provide – services

September

17 October – EASO starts an operation in support of Bulgaria

October

7 November – In *X, Y and Z*, the CJEU provides guidance on homosexual asylum seekers

14 November – In *Kaveh Puid*, the CJEU provides further guidance on the extent of the rights of asylum seekers subject to a transfer under the Dublin Regulation in the light of Article 4 of the Charter

29 November – The European Commission announces a grant of €5.6 million in emergency funding to deal with increased arrivals in Bulgaria

November

4 December – The European Commission adopts the Communication on the work of the Task Force Mediterranean (COM(2013) 869 final)

December

1 Asylum, immigration and integration

Almost 400 migrants died off the Italian island of Lampedusa in October 2013. That underlined how dangerous it can be for those in need of protection to reach the European Union (EU). In response to the tragedy, the European Commission set up the Task Force Mediterranean together with EU Member States. The EU also completed the second phase of the harmonisation of EU asylum laws in 2013, publishing four revised asylum instruments, including two directives on asylum procedures and reception conditions of asylum seekers, and revised Dublin and Eurodac regulations. These new EU laws do not, however, translate immediately into harmonised Member State practices. The chances that an asylum petition will be accepted still vary widely, hinging largely on the Member State in which it is lodged. The challenge is, therefore, to close this gap by identifying and addressing obstacles to common practice. The difficult negotiations that led to the EU asylum framework, for example, have created rules that are often complex, vague or unclear in their relationship to the rights set forth in the EU Charter of Fundamental Rights.

This chapter does not aim to provide a comprehensive overview of the many developments which took place in 2013 in the field of asylum, immigration and integration. For this, references to other sources are provided. After a brief description of the discussions triggered by the tragedy near Lampedusa in October 2013, the chapter focuses on three specific issues that illustrate a broader challenge to fundamental rights relating to the topics of this chapter, namely the gap between theory and practice. Although the introduction of fundamental rights safeguards at the EU level is important, this does not automatically mean that they are applied by EU Member States. Even less does it mean that such application occurs in a harmonised manner. Each of the following sections describes hurdles that need to be overcome to have EU law applied in practice. Section 1.1 describes the role of the judiciary in clarifying how EU law should be applied. Section 1.2 illustrates the slow pace of implementation of EU law safeguards using the example of forced return monitoring. Section 1.3 looks at practical obstacles in implementation, exemplified by fees for residence permits.

On asylum, the forthcoming annual report by the European Asylum Support Office (EASO) will describe major developments in 2013. These will include the

Key developments in the area of asylum, immigration and integration

- In a Task Force Mediterranean communication, the European Commission proposes a set of actions to reduce the death toll in the Mediterranean sea following a tragic incident near Lampedusa.
- The conflict in Syria creates over 2.2 million refugees, mainly in the Middle East; two EU Member States establish ad hoc admission procedures for Syrians.
- The second phase of the harmonisation of EU asylum policies draws to a close in June 2013 with the publication of four revised instruments of EU law.
- The Court of Justice of the European Union issues seven preliminary rulings relating to asylum. In one of these, the court highlights the importance to be given to Article 24 (2) of the EU Charter on Fundamental Rights regarding the rights of the child and in particular to the best interests principle.
- The European Court of Human Rights clarifies that detention "to prevent an unauthorised entry" under Article 5 (1) f of the European Convention on Human Rights is not allowed where an asylum seeker has the right under EU law to enter and stay in a state pending examination of an asylum request.

- A code of conduct for joint return operations coordinated by Frontex is adopted, which also covers forced return monitoring.
- Negotiations on the draft Seasonal Workers Directive come to an end, with the Council of the European Union and the European Parliament reaching political agreement on the text.
- The European Commission publishes a proposal to review the directive on the admission of students, which also covers au pairs.

sudden increase of Western Balkan asylum applicants in Hungary and, more importantly, the situation in Bulgaria, where irregular border crossings and applications for international protection rose substantially in the second half of 2013, triggering an emergency response by EASO and the United Nations High Commissioner for Refugees (UNHCR). For other issues that continued to be concerns in 2013, such as immigration detention and the situation of migrants in an irregular situation, the reader may consult various publications by civil society organisations.[1] For an update on EU anti-trafficking policies, see the EU anti-trafficking website (http://ec.europa.eu/anti-trafficking/). For other developments in the field of legal migration and integration, the reader can consult the regular bulletins by the European Migration Network.

1.1. EU faces challenges managing sea borders

A boat carrying some 500 migrants capsized near the Italian island of Lampedusa on 3 October. The resultant deaths of 366 persons illustrated an alarming and unresolved gap in the EU's protection of individuals' core rights (see also Section 2.1, on border control and visa policy).

Although the EU is taking action to combat smuggling and trafficking in human beings, both within the EU as well as to or from third countries, it has so far done little to offer alternative ways to seek safety for those who flee persecution or serious harm. Two comprehensive reports, the first published by FRA in March 2013[2] and the second by the UN Special Rapporteur on the human rights of migrants in April 2013,[3] describe in detail the fundamental rights challenges linked to the management of sea borders. Both reports note this management's impact on the human rights of migrants and present several suggestions on how to improve the situation.

The Special Rapporteur calls for a human rights-based approach to border management, whereby the rights of migrants should be the first consideration. Repressive measures alone have been shown to be counterproductive, driving migrants further underground and increasing the power of smuggling rings. As suggested in Section 2.1, another consequence is that flows simply move from one part of the EU external border to another.

FRA ACTIVITY

Protecting fundamental rights at Europe's southern sea borders

In March 2013, FRA published the first report from its research on third-country nationals at external borders. The report notes, for example, that fishermen should not face negative consequences, including the risk of criminal proceedings for human smuggling, if they rescue migrants at sea. Cooperation with third countries should not lead to circumventing fundamental rights safeguards: joint operations with third countries must be conditional on full respect for fundamental rights. The report, which offers some 50 opinion to address the gaps FRA identified, says that operational plans and other documents guiding joint operations or patrols with third countries must be drafted in such a way as to mitigate the risk of fundamental rights violations. In particular, guidelines should have clear provisions on the use of force, the prohibition of torture, inhuman or degrading treatment or punishment, and respect for the principle of non-*refoulement*.

Source: FRA (2013), Fundamental rights at Europe's southern sea borders, *Luxembourg, Publications Office of the European Union (Publications Office)*

Following the Lampedusa tragedy in October 2013, European leaders discussed what action to take. In a 10 October press release, the UNHCR called for 10 urgent measures to prevent further tragedies and improve burden sharing. They range from strengthening Mediterranean search and rescue capacity, through setting up a predictable mechanism for disembarkation of migrants in a safe place, to reinforcing protection systems in transit countries from where migrants embark. On 18 October, **Italy** started operation *Mare Nostrum*, deploying military vessels to increase its search and rescue capacity in the central Mediterranean. According to the Italian Ministry of Interior, by the end of 2013 *Mare Nostrum* had assisted 4,323 persons in 34 search and rescue operations.

At the EU level, the Justice and Home Affairs Council asked the European Commission to convene a task force to identify the tools which the EU has at its disposal to prevent such tragedies and which could be used in a more effective way.[4] The European Council gave it the job of identifying priority actions to be taken in the short term based on the principles of prevention, protection and solidarity.[5] The European Parliament stressed that the Lampedusa tragedy should be a turning point for Europe.[6]

As requested, the European Commission established the Task Force Mediterranean with EU Member States and relevant agencies, including FRA. The task force presented its results on 4 December, suggesting 38 actions which either had already begun or could start in the short term. These include measures in five areas: cooperation with third countries; reinforced refugee protection; the fight against trafficking and smuggling; better border surveillance; and enhanced solidarity with Member States dealing with high migration pressure.[7] The actions focus on combating international crime and preventing, in cooperation with third countries, migrants from embarking on perilous crossings. Little reference is made to enhancing rescue at sea (primarily in relation to building capacities in North Africa), although the task force includes actions to strengthen border surveillance. Operational cooperation with third countries must be in full compliance with fundamental rights. On 20 December, the European Council welcomed the task force's proposed actions and called for a full-fledged effort to implement them. It also asked the European Commission to report back to the Council on their implementation.[8]

A number of the task force's actions have the potential to reduce the risk of deaths at sea or otherwise protect migrants' fundamental rights, but the opportunity for a more wide-ranging policy change in external border management was missed. Legal avenues for refugees to reach safety remain very limited, thus keeping them dependent on smugglers in many cases. Similarly, the task force is very cautious in exploring joint asylum processing by EU Member States.

The discussion in the task force raised again the issue of intra-EU solidarity, with Member States at the external borders of the EU calling for more support from other Member States. Mediterranean EU Member States highlighted the particular challenges in dealing with persons who are often traumatised following a perilous sea crossing, stressing that their humanitarian needs differ from those of applicants for international protection arriving by air. According to Eurostat (migr_asyappctza, extracted on 2 May 2014), 70 % of all asylum applications lodged in the EU in 2013 were registered in five EU Member States. In descending order of applications, Germany, France, Sweden, the United Kingdom and Italy received the lion's share of the total number of applications – an argument used to counter the southern EU Member States' calls for more solidarity measures. The issue remained largely unresolved, possibly also because the situation in the Mediterranean would require geographically broader international solidarity.

A joint commitment by all Mediterranean states and with the support of other affected or interested countries, both within and without the EU, seems necessary to address unsafe migration by sea and to reduce the number of tragedies like the one which occurred off Lampedusa in October 2013. With its humanitarian and fundamental rights tradition, the EU would be best placed to initiate a process aiming to achieve this.

1.2. CJEU provides authoritative interpretation of EU asylum law

This section touches upon a first obstacle in implementing EU law. It describes the role of courts, and of the CJEU in particular, in clarifying and developing EU law. In the field of asylum, EU law has been adopted after long and often difficult negotiations, resulting in compromise texts which are difficult to apply, leaving the task of clarifying these provisions to the courts and practitioners. Furthermore, the law's relationship to fundamental rights enshrined in the Charter may be unclear. Despite all harmonisation efforts to date, there are major differences between how Member States adjudicate asylum claims.

The second phase of harmonisation of the EU asylum *acquis* was completed in June 2013. Although they keep the main building blocks of the *acquis* unchanged, the revisions are important from a fundamental rights point of view. The most important changes include the regulation at EU level of the detention of asylum seekers; access by the police and Europol to the Eurodac database containing fingerprints of all international protection applicants; and the strengthening of safeguards for vulnerable persons requesting asylum. In addition, the revised Dublin Regulation introduces an early warning mechanism to prevent the deterioration or collapse of asylum systems, with EASO playing a key role. The agreed legal texts are complex and often difficult to understand, even for specialists. Table 1.1 lists the three most important changes relating to fundamental rights for each of the four revised instruments.

While harmonisation is progressing, overcoming the large differences in practice appears more difficult. Many EU Member States continued to implement training, quality initiatives and other measures, with the support of EASO, the UNHCR and other actors, to

Table 1.1: EU asylum instruments revised in 2013

Revised instrument	Original instrument	Three main changes relating to fundamental rights	Geographical applicability
Dublin Regulation (EU) No. 604/2013 (recast)	Dublin Regulation (EC) No. 343/2003	· Prohibits transfer of asylum seekers to Member States whose asylum system are facing systemic deficiencies; · offers children stronger safeguards; · requires personal interview before transfer decisions taken	All EU Member States and Schengen Associated Countries (SAC)
Eurodac Regulation (EU) No. 603/2013 (recast)	Eurodac Regulation (EC) No. 2725/2000	· Gives police and Europol access to Eurodac as of 2015 to prevent, detect or investigate serious crimes; · strengthens language on the duty to inform data subjects of the purpose of personal data processing; · European Commission's Eurodac evaluation must also address whether law enforcement's Eurodac access has led to indirect discrimination against applicants for international protection	All EU Member States except Ireland, which is not bound by the recast version; all SAC, but further negotiations required with them regarding police access to Eurodac
Reception Conditions Directive 2013/33/EU (recast)	Reception Conditions Directive 2003/9/EC	· Regulates detention of asylum seekers, introducing safeguards, but allowing detention of children under certain circumstances; · requires that asylum seekers be given effective access to the labour market no later than nine months from the date of their application; · introduces new safeguards for vulnerable applicants, including a duty to put in place a system to identify vulnerable persons	All EU Member States, except Denmark. Ireland and the United Kingdom are not bound by the recast version
Asylum Procedures Directive 2013/32/EU (recast)	Asylum Procedures Directive 2005/85/EC	· To enhance the quality of first-instance asylum procedures, makes new provisions on staff training, gender-sensitive procedures, personal interview and special procedural guarantees for applicants with specific needs; · limits application of accelerated asylum procedures; · strengthens the right to an effective remedy against a negative asylum decision, requiring that removal be suspended automatically or, in limited exceptions, upon request	All EU Member States, except Denmark. Ireland and the United Kingdom are not bound by the recast version

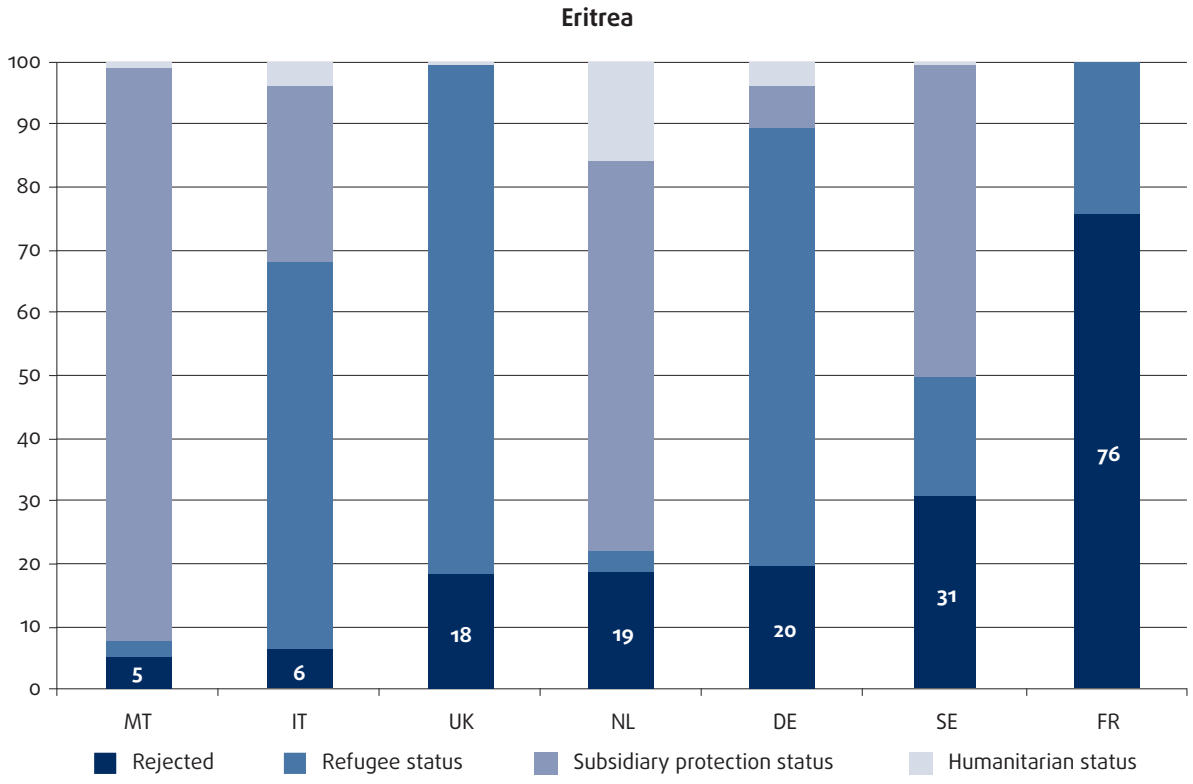
Note: Schengen Associated Countries (SAC) are Iceland, Liechtenstein, Norway and Switzerland.
Source: FRA, 2014

enhance the quality of asylum decisions and to bring Member State practices closer together.[9] Nevertheless, the chances of obtaining asylum still vary considerably depending on the Member State in which an application is submitted.

Figure 1.1 compares EU Member States' national asylum authorities' decisions on three nationalities from which a significant number of persons have been granted protection by Member States. To ensure comparability, the graphs include only Member States with more than 50 decisions for a particular nationality dating from 2013. Figure 1.1 shows not only that there are substantial differences between persons granted protection – refugee status, subsidiary protection status, humanitarian status (i.e. a form of national protection) – and those rejected. It also shows significant differences in applying the definitions of 'refugees' and 'beneficiaries of subsidiary protection', which impact on the rights and prospects of integration of those allowed to stay.

Figure 1.1 must be interpreted with caution, as divergent practices by national asylum authorities are one, but not the only, reason for the differences in the statistics. Other factors include variations in the profile of applicants from a specific country present in EU Member States, the incorrect recording of applicants' nationality

Figure 1.1: National first-instance asylum authorities' decisions on three nationalities (%)



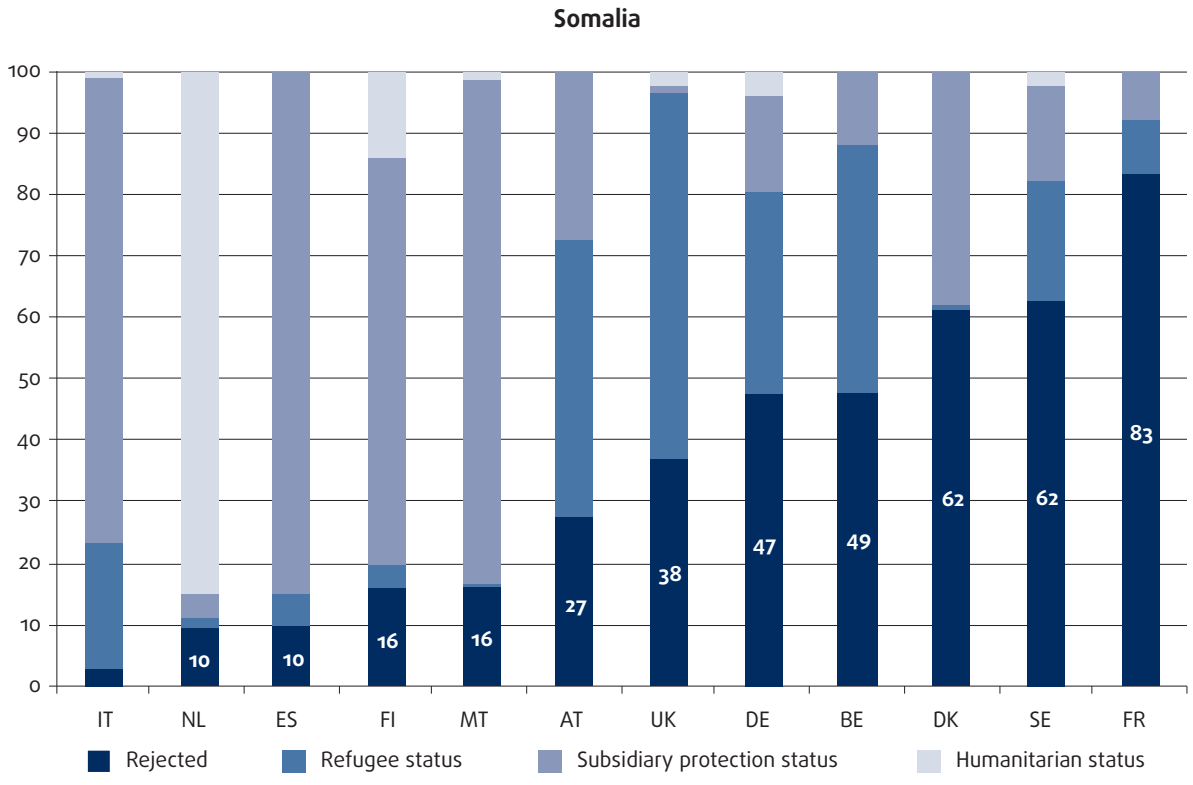
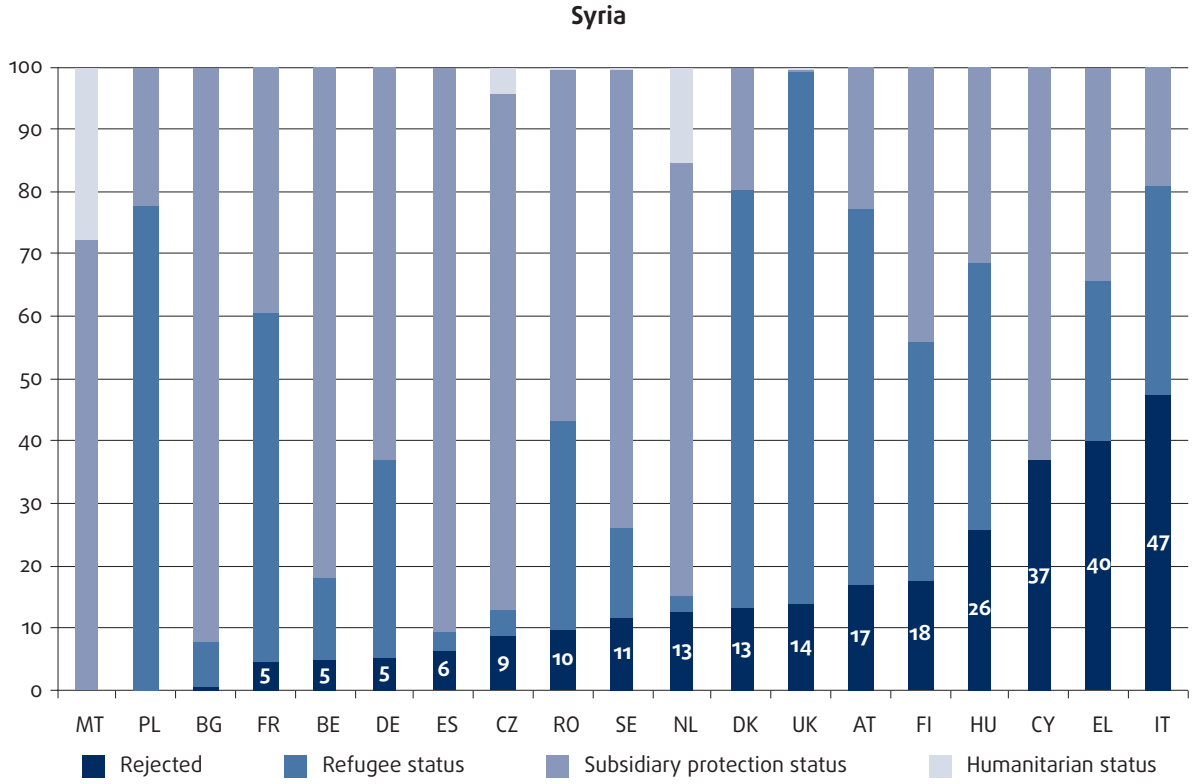


Figure 1.1: (continued)



Notes: *The data cover only three nationalities and include only EU Member States with more than 50 decisions taken on each of these nationalities in 2013. Data on humanitarian status not available for Austria, Belgium, Bulgaria, France and Hungary.*

Source: *Eurostat, migr_asydcfsta, data extracted on 24 March 2014*

and the fact that Dublin transfers may be recorded as negative decisions.

National courts and the CJEU continued to play an important role in clarifying and interpreting EU law. National courts in 2013 submitted eight requests to the CJEU for preliminary rulings relating to the asylum *acquis*.[10] These primarily concern the interpretation of the Qualification Directive. Unlike in previous years, no new case on the interpretation of the Dublin Regulation was submitted to the CJEU in 2013.

At the same time, in 2013, the CJEU issued seven judgments, providing guidance on the application of the Dublin Regulation (four), the Qualification Directive (one), the Asylum Procedures Directive (one) and the possibility of prolonging pre-removal detention under the Return Directive in case a person in return procedures seeks asylum (one). Table 1.2 outlines the main elements of the CJEU rulings.

The increasing role the CJEU plays in interpreting the EU asylum *acquis* indicates that practitioners have many questions on its application. By the end of 2013, the CJEU had ruled on 20 requests for preliminary rulings submitted by national courts. Since its first two rulings on asylum in 2009, there is a clear upward trend over the past five years in the number of CJEU rulings in the field, as Figure 1.2 illustrates.

As Figure 1.2 illustrates, a comparatively large number of judgments (eight) relates to the interpretation of the Dublin Regulation (cases listed in yellow). Persons in Dublin procedures were also the subject of two ECtHR judgments on the return of a Somali from the Netherlands to Italy and of a Sudanese from Austria to Hungary.[11] Although the ECtHR did not object to either of these transfers, the cases illustrate that the application of EU asylum law continues to raise questions concerning its compatibility with basic human rights.

Half of the CJEU judgments listed in Figure 1.2 relate to the Qualification Directive. As described in the FRA 2012 Annual report, the questions referred to the CJEU concern clarifications on the situation of Palestinians, cessation and exclusion from refugee status and the scope of persons entitled to subsidiary protection. In addition, two judgments provide more clarity on the meaning of persecutions on the grounds of religion and sexual orientation.

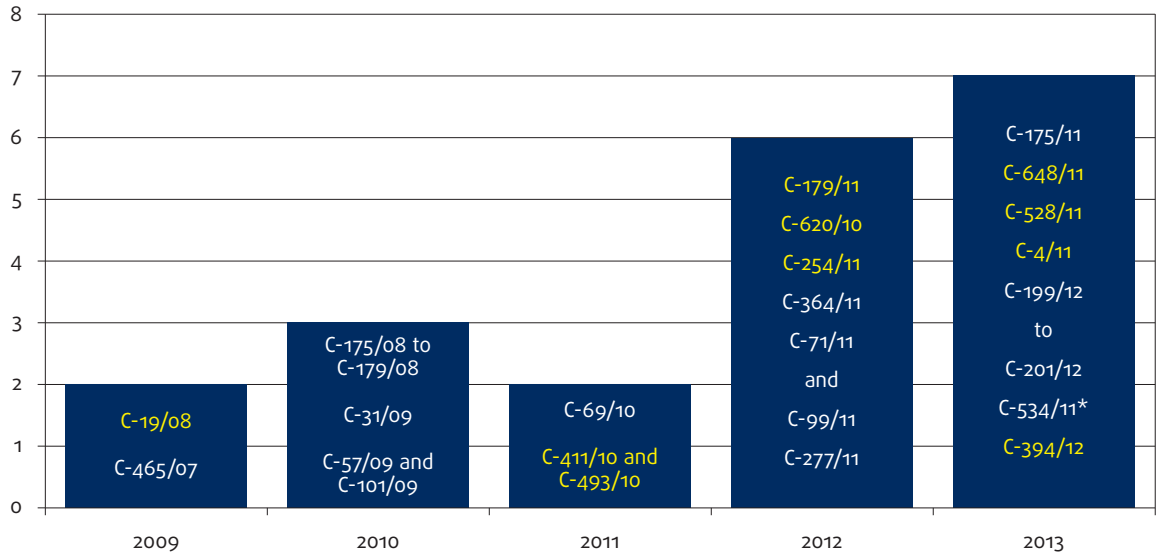
The body of CJEU and ECtHR case law related to asylum is growing. Coupled with very detailed, but often unclear,

Table 1.2: CJEU 2013 preliminary rulings on the EU asylum *acquis*

Case reference	Judgment
H. I. D. and B. A. v. Refugee Applications Commissioner and Others, Case C-175/11, 31 January	Asylum Procedures Directive (2005/85/EC) Article 23 (3) and (4) of the directive allows Member States to prioritise or process applicants from a certain country of origin through accelerated procedures, but the basic principle and guarantees set out in Chapter II of that directive must be complied with
Mehmet Arslan v. Policie ČR, Krajské ředitelství policie Ústeckého kraje, odbor cizinecké policie, Case C-534/11, 30 May	Return Directive (Directive 2008/115/EC) The directive does not apply to persons seeking international protection as long as they are in the asylum procedure If asylum seekers lodge an application from pre-removal detention, EU Member States may keep them in detention if, after an assessment on a case-by-case basis of all the relevant circumstances, the application is found to have been made solely to delay or jeopardise the enforcement of the return decision and it is objectively necessary to prevent the person concerned from permanently evading return
Zuheyr Frayeh Halaf v. Darzhavna agentsia za bezhantsite pri Ministerskia savet, Case C-528/11, 30 May	Dublin Regulation (EC) No. 343/2003 If an EU Member State is not indicated as responsible by the criteria in Chapter III of the regulation, it is allowed to examine an application for asylum even though no circumstances exist which establish that the humanitarian clause in Article 15 of that regulation is applicable. Such possibility is not conditional on the Member State responsible under those criteria having failed to respond to a request to take back the asylum seeker concerned The Member State in which the asylum seeker is present is not obliged, during the process of determining the Member State responsible, to ask the Office of the UNHCR to present its views
MA and Others v. Secretary of State for the Home Department, C-648/11, 6 June	Dublin Regulation (EC) No. 343/2003 Where an unaccompanied minor with no member of his or her family legally present in the territory of an EU Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated the 'Member State responsible' The CJEU noted that the effect of Article 24 (2) of the Charter on the rights of the child, in conjunction with Article 51(1) thereof on the Charter's field of application, is that the child's best interests must also be a primary consideration in all decisions adopted by the Member States relating to the issue at stake in this concrete case
Minister voor Immigratie en Asiel v. X, Y and Z, C-199/12 to C-201/12, 7 November	Qualification Directive (Directive 2004/83/EC) and its application to homosexuals: · homosexuals can be regarded as a particular social group; · the criminalisation of homosexual acts per se does not constitute an act of persecution, unless applied also in practice; · when assessing an application for refugee status, the competent authorities cannot reasonably expect an asylum seeker to return to his or her home country and – to avoid the risk of persecution – conceal his homosexuality there or exercise reserve in the expression of his sexual orientation
Bundesrepublik Deutschland v. Kaveh Puid, Case C-4/11, 14 November	Dublin Regulation (EC) No. 343/2003 Dublin transfers to an EU Member State with systemic deficiencies in the asylum procedure and in the conditions for the reception of asylum seekers are not allowed. In such cases, the Member State in which the applicant is present does not have to take responsibility under Article 3 (2) of the Dublin Regulation, but must examine if other Dublin criteria are applicable
Shamso Abdullahi v. Bundesasylamt, Case C-394/12, 10 December	Dublin Regulation (EC) No. 343/2003 An asylum seeker can call into question the transfer to the Member State of first entry into the EU only by pleading systemic deficiencies in the asylum procedure, and in the conditions for the reception in that Member State, that provide substantial grounds for believing that the applicant for asylum would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the EU Charter of Fundamental Rights

Source: http://curia.europa.eu

Figure 1.2: CJEU preliminary rulings on asylum, by number of cases, 2009–2013



Notes: ** Refers to Directive 2008/115/EC on returns, but also affects detention of persons seeking international protection. Cases in yellow relate to the application of the Dublin Regulation.*

Source: http://curia.europa.eu

EU legislation, that makes this area of law complex. The applicable law must be made known to legal practitioners, to ensure harmonised application throughout the EU, respectful of the safeguards enshrined in the ECHR and the Charter of Fundamental Rights.

Even more often, national courts are asked to interpret and apply the EU asylum *acquis*. Domestic case law in EU Member States clarifies how fundamental rights provisions included in EU legislation are to be applied in practice. Asylum offices and other parts of the national administration dealing with asylum issues usually follow the line taken by domestic higher courts. Hence, their judgments have a direct impact on what happens on the ground. The collection and comparison of national case law in this field is therefore of great value, especially in the asylum area, where EU law plays a crucial role. In 2013, FRA asked its Franet partners to communicate up to five judgments where national courts made use of the Charter of Fundamental Rights. Around a fifth of the judgments communicated concerned asylum and migration issues, making this policy field an area where national courts are most likely to use the Charter in their reasoning ▶ (see Chapter on the EU Charter of Fundamental Rights).

European and national courts play an essential role in clarifying and developing EU law. They can also ensure that due weight is given to fundamental rights. In *MA* (C-648/11), for example, the CJEU clarified that states are to give primary consideration to the child's best interests in all decisions relating to the provision of the Dublin Regulation (Article 6). The guidance courts provide is one important element needed to bridge the gap between the law and the reality on the ground.

Promising practice

Making national case law on asylum more accessible

The Irish Refugee Council, in partnership with the European Council on Refugees and Exiles (ECRE) and the Hungarian Helsinki Committee, set up a database collecting case law on the EU asylum *acquis*. By allowing searches by theme, it helps legal practitioners, including asylum lawyers and judges, identify relevant cases from other jurisdictions pertaining to a particular issue. The high download figures confirm the need for such a tool: from September to December 2013, 11,500 visitors accessed the database 15,071 times, downloading 1,426 files.

The project was funded by the European Commission's European Refugee Fund. Initially launched in 2012, the database was reinvigorated in September 2013. At the end of 2013, it contained 633 domestic cases from 17 EU Member States, in addition to all relevant CJEU cases and selected cases from the ECtHR. National cases are selected in the light of their importance in the application and interpretation of EU asylum law. The database contains English and original-language case summaries as well as the full cases.

Source: www.asylumlawdatabase.eu/en

FRA ACTIVITY

Providing practitioners with guidance on European asylum, borders and immigration law

FRA published its second handbook on European law together with the ECtHR in June 2013. It covers the field of asylum, borders and immigration in English, French, German and Italian. The handbook

is intended to assist practitioners in navigating complex EU legislation and the substantial CJEU and ECtHR case law. For each topic, applicable EU legislation and provisions of the ECHR as well as the body of case law by the two European courts are presented next to each other, helping the reader to see where the two systems converge and where they diverge. In the first six months after its publication, all 3,000 English-language print copies of the handbook were distributed, in addition to over 2,000 copies in French, German and Italian. During the same period, the handbook was accessed on the FRA website 17,000 times. This illustrates the strong interest among lawyers and other legal practitioners in such a tool. A second edition of the handbook, including the recast activities, and other language versions will appear in 2014.

Source: http://fra.europa.eu/en/theme/asylum-migration-borders

1.3. Member States slow to implement EU law safeguards: the example of effective return-monitoring systems

The second section illustrates the slow pace with which Member States apply EU legal safeguards in practice. To do so, it analyses the implementation of a specific provision of the Return Directive (2008/115//EC), namely Article 8 (6) on effective return monitoring. The directive introduced this new fundamental right safeguard; very few Member States had effective return-monitoring systems in place before 2008.[12] Once the directive was adopted in 2008, almost all EU Member States needed to amend their national legislation and adapt their practice to the new rule. These Member State changes are, however, taking much longer than initially envisaged, given that the deadline to transpose the directive expired in December 2010.

Five years after the adoption of the Return Directive and three years after the transposition period expired, one third of EU Member States still need to put in place an effective return-monitoring system. This time lag illustrates the importance of following up and supporting Member States in the implementation of EU rules, particularly when these are new and little experience is available. The European Commission carried out important related work in 2013, through its regular meetings with Member States and bilateral discussions with them. It will, however, need to continue such work in the future.

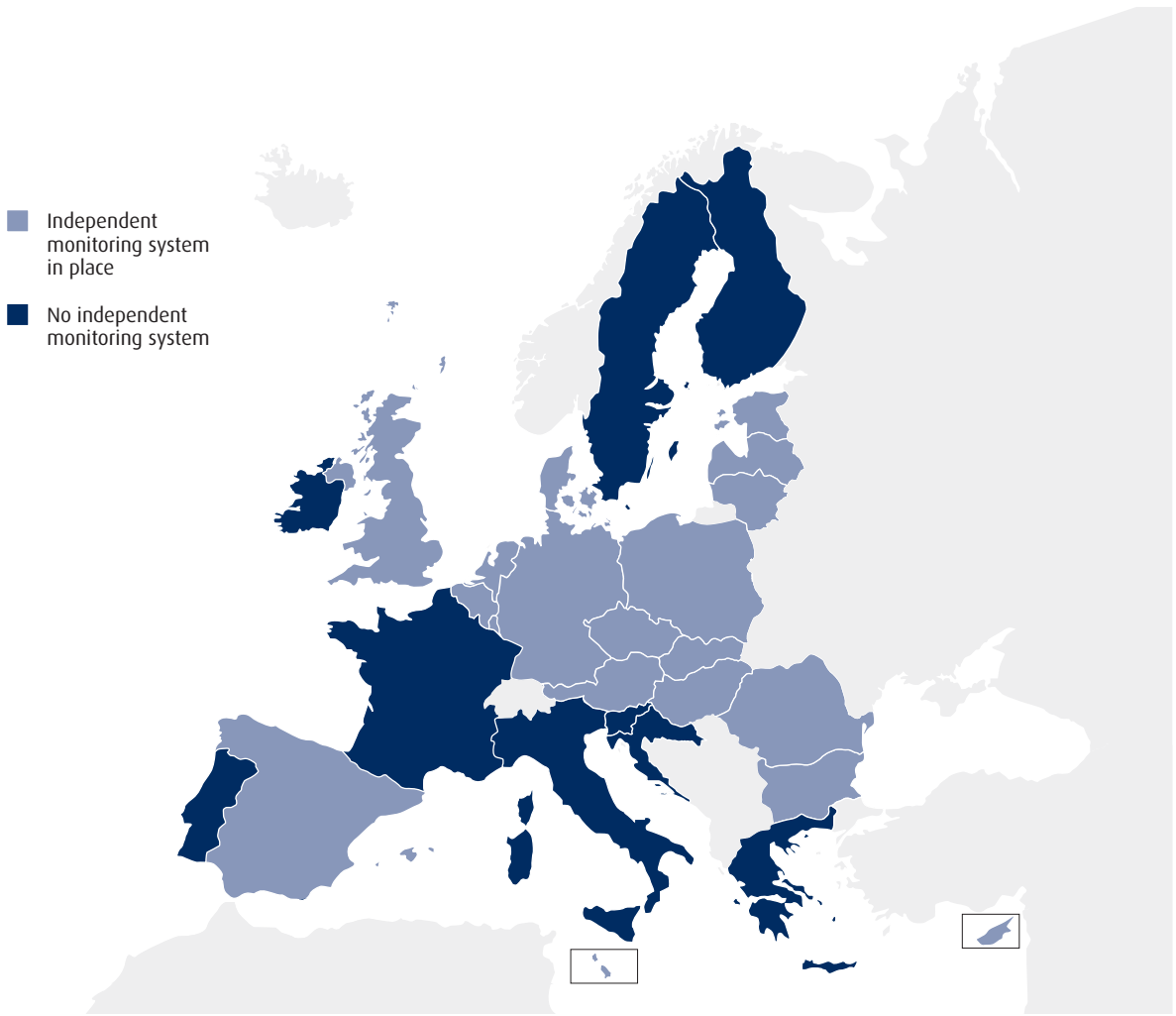
The Parliamentary Assembly of the Council of Europe recommended setting up common rules covering "independent, neutral, transparent and effective monitoring procedures" to extend to the entire removal process.[13] The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published its report on the monitoring of a return flight in 2012, commenting on issues such as escort staff's use of restraints and the need for a 'fit to fly certificate'.[14]

Third-country nationals who do not fulfil the conditions for entering or staying in the EU receive a return decision, which the authorities may enforce if it is not complied with voluntarily. The implementation of a return decision must respect the principle of non-*refoulement* and take due account of the best interests of the child, family life and the third-country national's health status.[15] Depending on individual circumstances, EU Member States should facilitate voluntary return by extending the period for voluntary departure. They may, for example, consider children attending schools or family and social ties.[16] In 2013, Frontex-coordinated operations alone returned 2,159 persons to their home countries. This is only a small portion of the total number of forced removals that Member States carried out directly. Spain, for instance, chartered 153 return flights and coordinated only six through Frontex in 2012.[17]

FRA considers that systems of forced return monitoring are effective if they cover all removal activities, from before departure to arrival and reception in the destination country, and if an organisation – independent from the authorities enforcing return – carries them out on an ongoing basis (in other words excluding pilot projects).[18]

Based on these criteria, the number of EU Member States providing for effective return monitoring, either by legislation or cooperation agreements with third parties, rose from 15 at the end of 2012 to 19 at the end of 2013 (see Figure 1.3). These mechanisms did not include regular on-board observation in all cases in 2013.

Figure 1.3: Independent forced return monitoring systems, by EU Member State



Note: In Germany, return monitoring is in place for departures from some, but not all, airports.
Source: FRA, 2013

In 2013, two EU Member States, **Bulgaria** and **Poland**, established a legal basis for return monitoring. In **Bulgaria**, the Ombudsman as well as representatives of national or international NGOs may be invited to observe.[19] In practice, local NGO monitoring, funded by the European Return Fund, remained limited in 2013 to observing the transport from the detention centre to the airport departure hall. In **Poland**, NGO monitoring is a well-established practice extending also to on-flight observations. A new Act on Foreigners provides a legal basis for return monitoring.[20] **Malta** extended the remit of the Board of Visitors of Detained Persons to monitoring "proceedings relating to the involuntary return" at the very end of 2012, thereby granting the board a wide yet unspecified scope of action.[21] In **Spain**, the Ombudsman has taken an increasing part in monitoring several phases of return flights, including on-board monitoring of a Frontex-coordinated operation for the first time.

The **United Kingdom**, like **Ireland**, is not bound by the Return Directive. Nevertheless, it is among the Member States that provide for effective monitoring. In **Germany**, return monitoring is in place for removals departing from some, but not all, airports. **Slovakia** continues to provide in law for the possibility of independent monitoring by NGOs, but it has yet to use this possibility in practice.

Not included in these 19 EU Member States are those which implement monitoring mainly by an agency belonging to the branch of government responsible for return (**Portugal**,[22] **Sweden**[23]) as well as Member States where monitoring has continued to be carried out on an informal basis (**Finland**[24]). Ombudsmen in **Finland** and **Sweden** are empowered to observe return operations, but they have not yet done so. Five Member States lack effective monitoring systems: **Croatia**, **France**, **Greece**, **Italy** and **Slovenia**.

In two of the EU Member States excluded from these 19, however, the structure and operation of monitoring systems were pending finalisation of legislation. **Finland** proposed a bill amending the Aliens Act, which assigns the Ombudsman the duty of monitoring the removal process. In **Greece**, based on the law providing for a monitoring system to be operated under the Greek Ombudsman,[25] the Ombudsman submitted a recommendation on the functioning of a comprehensive monitoring system; this will be used as a basis for the Common Ministerial Committee of the Minister of the Interior and the Minister of Public Order to regulate the organisation and function of the system. The recommendation provides for monitoring by the Ombudsman, who can cooperate with NGOs acting under his/her supervision. The Return Fund is expected to finance such a mechanism. Amendments to the Aliens Act in **Slovenia** were prepared in 2013, including provisions on the monitoring of forced returns by independent organisations or institutions.[26] In late 2013, **Swedish** media discussed the need to establish an effective forced return monitoring system as a requirement to participate in Frontex operations.

Promising practice

Cooperating with monitoring system in destination country

Return-monitoring mechanisms in Germany and Spain have been able to cover post-return phases by cooperating with the Ombudsman office in Serbia in its function as NPM. For Germany, such post-return monitoring was extended in 2013 to most Frontex-coordinated returns to Serbia.

How often monitors are on the return flights varies among EU Member States. In 2013, not all Member States which had a system in place actually had a return flight accompanied. Only 11 of the 19 EU Member States which FRA considers to have effective return-monitoring systems had monitors on board either systematically or occasionally: **Austria**, the **Czech Republic**, **Denmark**, **Estonia**, **Hungary**, **Lithuania**, **Luxembourg**, the **Netherlands**, **Poland**, **Spain** and the **United Kingdom**. In **Germany**, although no monitors accompanied return flights, the church-led monitoring forum at Düsseldorf Airport continued to cooperate with the National Preventative Mechanism (NPM) established under the Optional Protocol to the Convention against Torture (OPCAT) in Serbia, thereby covering post-return monitoring. The regional interior ministry in North Rhine-Westphalia, including Düsseldorf Airport, issued a new checklist for preparing, carrying out and documenting forced returns in 2013.[27]

Among those EU Member States that have effective monitoring systems in place, eight publish the observers' findings, at least in part (**Bulgaria**, the **Czech Republic**, **Denmark**, **Germany**, the **Netherlands**, **Poland** and the **United Kingdom**). Other Member States share the results internally with the institutions involved. In **Austria**, for example, reports are forwarded to the *Volksanwaltschaft* (Ombudsperson and National Prevention Mechanism under OPCAT).

Promising practice

Using synergies between the National Preventative Mechanism and forced return monitoring

A legal expert from the National Ombudsman in Denmark regularly observes return operations, as part of its role since April 2011 to monitor forced returns. In 2013, it monitored 15 return operations, including in seven cases the actual return flight. The Ombudsman considered that these operations were all handled in line with fundamental rights.

The Ombudsman's monitoring role is linked to its function as the National Preventative Mechanism (NPM) under OPCAT. Synergies with its mandate as NPM consist in the build-up of solid human rights expertise as a common assessment basis, knowledge of police and holding facilities and methodological expertise in inspections. The Ombudsman publishes annual reports on forced return monitoring, which include recommendations to the police relating to, for example, the documentation of work in connection with forced returns or the revision of internal guidelines. The reports are available at: http://en.ombudsmanden.dk/publikationer/summary/.

A similar practice has evolved in Spain, where the Ombudsman office in its capacity as NPM monitors several phases of return operations, including treatment on the plane, and issues recommendations concerning forced returns. Annual reports are available at: www.defensordelpueblo.es/es/Documentacion/Publicaciones/anual/index.html.

Monitors were present on more than half of the joint return operations (JROs) that Frontex coordinated in 2013, including monitoring the flight on board. Over the past three years, however, the number of observers has not increased. This may be partly because the Member States organise the operations to invite observers, which may happen systematically, rarely or not at all depending on the Member State, as well as because of the availability of observers.

Having an effective forced return monitoring system in place is a prerequisite for participating in Frontex-coordinated JROs. The participation of an EU Member State without such a system may ultimately be postponed or cancelled.[28] However, eight Member

Table 1.3: Number of Frontex-coordinated joint return operations (JROs) with monitors present

Year	Number of JROs and total number of returnees	Number of JROs with monitors present on board	Percentage of JROs with monitors present	Percentage of returnees in monitored JROs
2011	39 JROs with 2,059 returnees	23 JROs with 1,147 returnees	59	56
2012	38 JROs with 2,110 returnees	23 JROs with 1,059 returnees	60	50
2013	39 JROs with 2,152 returnees	20 JROs with 937 returnees	51	44

Source: Frontex, 2014

States which lack effective monitoring systems, according to the FRA's assessment, *participated* in 36 of a total of 39 joint return flights in 2013. Four of them (**France**, **Ireland**, **Italy** and **Sweden**) were responsible for *organising* seven of these operations. More than half of the persons returned in JROs in 2013 (1,215 of a total 2,152 returnees) were returned without monitoring on the flight.

In some cases, the organising EU Member State invited observers from other Member States to monitor the return on its behalf, which is possible under the *Code of Conduct for Joint Return Operations coordinated by Frontex*.[29] In 2013, **Germany**, **Sweden**, **France** and **Spain** made use of this possibility. The first two invited observers from **Austria**, and the last two invited observers from the **Netherlands** and **Belgium**, to monitor the return operations they had organised. In addition, **Germany**, **Ireland**, and **Spain** exceptionally assigned monitors to individual Frontex-coordinated flights. They included representatives from the authorities in **Germany** and the Ombudsman in **Spain**.

A European Commission project launched in 2013, implemented by the International Centre for Migration Policy Development, aims to elaborate a training manual and a set of guidelines to be used by all monitors, based on existing best practice, and to design a framework for a European pool of forced return monitors. Frontex and FRA participate as observers in the project.

In 2013, the availability of guidelines and training for effective monitoring continued to differ significantly. Some EU Member States have developed specific guidelines for observers or refer to guidance provided in legal and policy documents.[30] Others rely on the experience of the monitoring organisation, which may not be possible for organisations recently assigned a monitoring function. The NGO that monitors returns in **Bulgaria**, for example, has limited experience in migration issues. The participating organisations in **Poland** each apply their own tools. To date, no specific guidelines or training apply in **Malta**, which currently applies the standards used for monitoring detention conditions. European guidelines and monitoring tools, including from the Committee on the Prevention of Torture, which is increasingly focusing on forced returns, would be useful.[31]

Specific operational criteria for effective return monitoring were set out in the Frontex *Code of Conduct for Joint Return Operations coordinated by Frontex*, adopted on 7 October 2013, which was prepared with the support of the Consultative Forum of Frontex, composed of 15 organisations, including EU agencies (such as FRA and EASO), international organisations and NGOs. These criteria relate to respect for the fundamental rights of returnees, the use of coercive measures, fitness to travel and return monitoring, among others. The code applies only to Frontex-coordinated returns, which amounted to 39 flights with the participation of 20 Member States in 2013. Frontex's Fundamental Rights Officer also started observing forced return operations in her monitoring function.

1.4. Some Member States require excessive or disproportionate fees for residence permits – an example of practical obstacles for migrant integration

Encouraging and improving migrant integration is an important tool to build a stronger and inclusive Europe, but a number of obstacles, which might appear trivial, such as excessive fees, often stand in the way. *Europe 2020: A strategy for smart, sustainable and inclusive growth* underlined the potential benefits of improved migrant integration in the labour markets.[32] This means

closing the gap between migrants and the general population in regard to employment, education, poverty and social inclusion.[33] Integration as part of building social cohesion means not only including immigrant, but also recognising their contributions to social capital and giving them access to it. Migrants should be enabled to take full advantage of their potential. As ever more of the population has an immigrant background, diversity needs to be embraced within social cohesion. This means also tackling discrimination, racism and xenophobia by promoting more equal and diverse societies (see Chapter 5 on equality and non-discrimination).

The CJEU has also pointed out that "excessive and disproportionately" high fees for residence permits, in the context of the Long-Term Residence Directive, hinder the right of residence and create yet another obstacle to integration.[34] The court noted that "[c]harges which have a significant financial impact on third-country nationals who satisfy the conditions laid down by Directive 2003/109 for the grant of those residence permits could prevent them from claiming the rights conferred by that directive [...]". The court also noted that "it is apparent from recitals 4, 6 and 12 that its principal purpose is the integration of third-country nationals who are settled on a long-term basis in the Member States."[35] Excessive and disproportionate fees for residence permits may create obstacles that negatively affect the integration process, which is beneficial both for achieving the mid- and long-term EU social inclusion objectives and for building trust between migrants and Member States in cohesive and inclusive societies.

Because integration is a long-term process, the length of residence of the migrant in the country is an important factor, as is family unity. The Zaragoza integration indicators include long-term residence among those relevant to active citizenship.[36] The proportion of immigrants who have acquired permanent or long-term residence status is relevant against this background, as they mostly enjoy the same socioeconomic rights and responsibilities as nationals.

The European Parliament has also acknowledged that long-term residence entitlement is a key prospect for integration and that entry and residence must be governed by clear, fair and non-discriminatory rules, which must conform to the standards of the rule of law at national and EU levels. When immigrants take up and use equal rights and responsibilities, they send a strong signal to themselves and others about their sense of belonging in the country.[37]

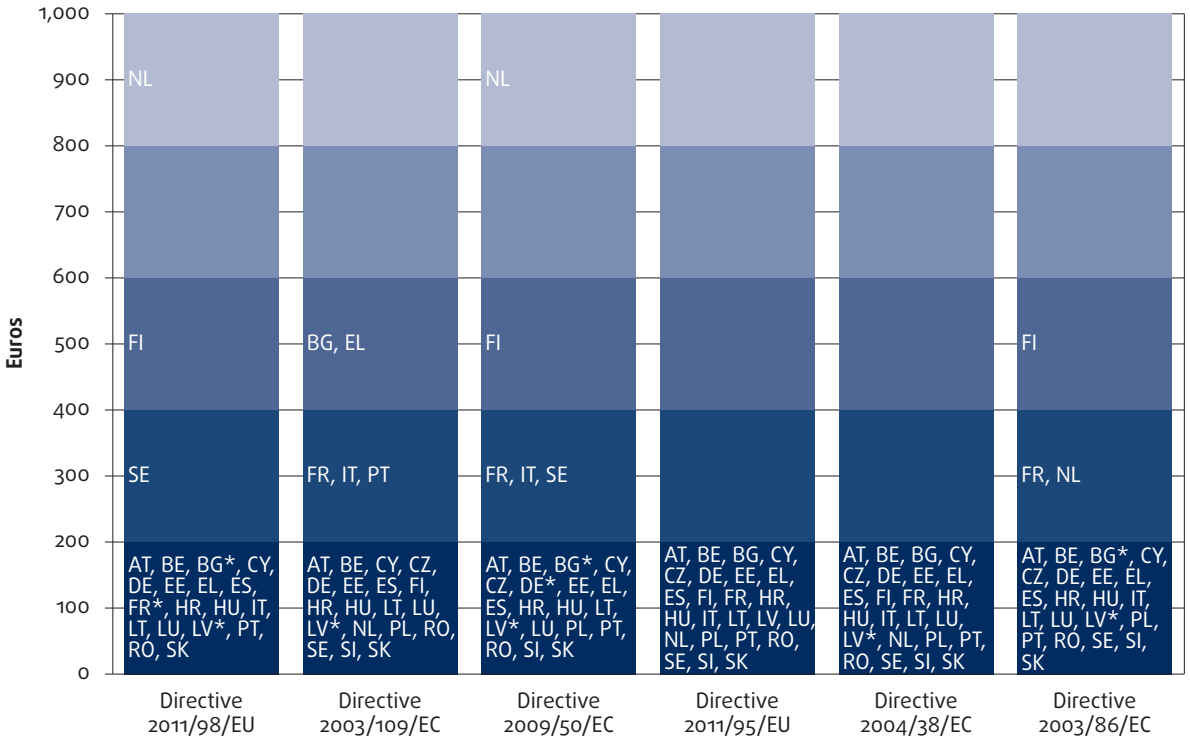
The EU has harmonised its immigration procedure for certain types of immigration through the adoption of a number of instruments, namely the Long-Term Residence Directive (Directive 2003/109/EC),[38] the Single Permit Directive (Directive 2011/98/EU),[39] the 'EU Blue Card' Directive for highly skilled migrants (Directive 2009/50/EC)[40] and the Researcher Directive (Directive 2005/71/EC).[41] Third-country nationals can join their lawfully resident family members, if the conditions laid down in the Family Reunification Directive are fulfilled (Directive 2003/86/EC).[42] Similarly, once granted protection status, refugees and their family members are issued residence permits (Directive 2011/95/EU).[43] Family members of EU nationals, including third-country nationals, enjoy the right to free movement and residence in the EU (Directive 2004/38/EC).[44] Students, school pupils, unremunerated trainees and volunteers[45] also enjoy special admission rules, but their stay is not long-term and their integration is not particularly promoted through access to equal treatment rights.

EU legislation does not determine the fee to be paid for a residence permit, but the Single Permit Directive states that the fee shall be "proportionate" and "based on the services actually provided for the processing of applications and the issuance of permits".[46] In practice, disproportionality high fees may create obstacles to access the rights included in the directive. Disproportionally high fees and frequent renewals may add up to considerable sums for large or low-income families, an important part of the migrant workforce which is either low-skilled or employed in positions not matching the individuals' skills.

EU Member States collect the fees for receiving, processing and issuing a decision on the residence status. They often collect an additional fee when issuing the identity document that proves this residence status. In addition to the permit fee, if subject to visa obligations, the third-country national may be required to pay a visa fee. When the permits expire, renewal fees will have to be paid.

In practice, fees vary substantially depending on the EU Member State and type of permit. As Figure 1.4 shows, the fee for the same permit can be several times higher in one Member State than in another. Member States' fees for a particular permit may also vary from applicant to applicant depending on the length of stay, purpose of residence, processing time and place of application (for instance at an embassy or in the Member State, or in a decentralised authority, such as a state or municipality). Needless to say, the general price level varies between the Member States. In the CJEU case referred to above, the court was of the opinion that the fee may vary depending "on the type of residence applied for and the verifications which the Member State is required to carry out in that respect", but that they cannot be "excessive in the light of their significant financial impact" on the nationals applying for the permit.[47] To illustrate the disproportionate nature of fees, it compared the lowest fee for a long-term residence permit, which was about seven times as high as the cost of a national identity card.

Figure 1.4: Overview of fees collected for permits issued to main applicants under six directives, EU-24 (€)



Notes: *The directives covered are the Single Permit Directive (Directive 2011/98/EU), the Long-Term Residence Directive (Directive 2003/109/EC), the Directive for Highly Qualified Third-Country Nationals (Directive 2009/50/EC) and those for issuing permits to refugees (Directive 2011/95/EU), family members of EU nationals (Directive 2004/38/EC) and of third-country nationals (Directive 2003/86/EC).*

The Single Permit Directive (Directive 2011/98/EU) does not apply in the Czech Republic, Poland and Slovenia.

The United Kingdom is not included in the table, as it is not bound by any of the directives listed. Ireland is bound only by Directive 2005/71/EC and Denmark by Directive 2004/38/EC; they are also not included in the table. Malta is not included in the table.

*The fees in EU Member States marked with * extend beyond one unit of the scale: in **Bulgaria**, the fee varies between €107 and €230, in **Germany** between €100 and €250, in **France** between €19 and €260, in **Latvia** between €114 and €359 for Directives 2011/98/EU, 2003/109/EU and 2004/38/EU, and between €85 and €313 for Directives 2009/50/EC and 2003/86/EC.*

Source: *See Annex 'Fees (€) for residence permit issued under respective directive, 25 EU Member States, end 2013'*

In **Hungary**, for instance, the fee for the main permit holder is €60 for a single permit and for highly qualified third-country nationals, and €33 for a long-term residence permit. In **Spain**, the main permit holder need pay only €26 for a single permit, or for permits for researchers or highly qualified third-country nationals, whereas employers contribute €194–€388 to these permits, depending on the third-country national's salary.

In other EU Member States, the fees could be 10 times as high. In **Bulgaria**, the fee for a long-term residence permit is €511 and €107–€230 for a single permit and for highly qualified third-country nationals. In **Finland**, the fee for a single permit is €500, and for a highly qualified third-country national it is €425. In the **Netherlands**, the fee for these permits is €861.

The fees under the Free Movement Directive[48] are lowest in **Hungary** (€3–€32), **Romania** (€3) and **Slovakia** (€5) and highest in **Finland** (€114) and **Latvia** (€114–€359). Under the Family Reunification Directive,[49] they are lowest in **Spain** (€10) and highest in **Finland** (€425).

Slightly more than half of the EU Member States do not collect fees for issuing residence permits to refugees or beneficiaries of subsidiary protection.

As Figure 1.4 illustrates, most Member States collect not more than €200 for these permits, whereas Finland, Greece and the Netherlands collect considerably higher amounts for some permits.

Outlook

The risk that migrants including children may die in their quest for a better life in the EU has yet to be allayed. The prevention of such tragedies in future is an absolute priority. The Task Force Mediterranean has prepared actions to guarantee rescue obligations as part of surveillance operations; 2014 will show how far they are successful or if more comprehensive steps need to be taken. If more far-reaching decisions are needed, the year will also make clear whether or not there is a political will to take them, such as opening up legal channels for protected entries.

Changes to most pieces of EU legislation in this field are to be finalised. This is only a first step to introducing changes on the ground. The same is true of fundamental rights safeguards, which have often been adopted after difficult negotiations. In its submission on the future of Home Affairs policies, FRA highlights the need to focus on ensuring that legislation is effective and functions well. EU and Council of Europe standards on fundamental and human rights, which are woven into the fabric of EU law, need to be applied in practice. Border guards, consular officials, immigration officers and asylum officers, as well as other persons taking decisions affecting individuals on a daily basis, need simple and practical tools to help them in their roles.

In the year to come, the different EU bodies and agencies will be called on to contribute to the realisation of EU laws according to their mandate and capacity. It is essential that all those concerned give fundamental rights safeguards a central role: the European Commission when it supervises and assists Member States with the transposition and implementation of EU law; the Council of the European Union when it discusses, for example, the follow-up actions taken by the Task Force Mediterranean; and the European Parliament when exercising its mandate. Similarly, EU agencies, including Frontex and EASO in particular, will be requested to embed fundamental rights ever more deeply into their daily work with Member States. FRA's expertise will continue to be required. The concerted support of all relevant actors is needed to bridge the yawning gap between law and practice. This must be the focus of work in 2014.

Annex

Table A: Fees for residence permits issued under respective directive, 24 EU Member States, 2013 (€)

EU Member State	Directive 2011/98/EU	Directive 2003/109/EC		Directive 2009/50/EC		Directive 2011/95/EU	
	Single permit	Long-term resident third-country nationals	... and their family members	Highly qualified third-country nationals	... and their family members	Refugees	... and their family members
AT	120 (120)	170	120 (120)	120	120 (120)	0	0
BE	12	12	12	12	12	12	12
BG	107–230	511	107–230	107–230	107–230	23	107–230
CY	120	200	n/a	50	n/a	–	–
CZ	n/a	93 (37)	93 (37)	130	130 (37)	0	112
DE	100–110	135 (55)	100–135 (50–67)	100–250	100–135 (55)	100–135 (55)	100–135 (55)
EE	24–160	64 (24)	64 (24)	86–100	64–65 (24–25)	0	0
EL	150	600	150	150	150	0	0
ES	26	42	42	26	26	10	0
FI	500	156	425 (200)	425	425 (200)	0	0
FR	19–260	260	260	260	260	19	19
HR	98–150	98–150	98–150	98–150	98–150	0	98–150
HU	60	33	33	60	60	0	60
IT	153–173	273 (74)	153–173 (74)	273	153–173 (74)	43	153–173
LT	116	71	116	116	116	0	116
LV	114–359	114–359	114–359 (28–171)	85–313	114–359	78–199	78–199
LU	50	50	50	50	50	0	0
NL	861	152	152	861	228	0	0
PL	n/a	165	93	93	93	12	93
PT	149	321	149	199	149	0	0
RO	180	60	179	180	120	0	179
SE	224	112	112 (56)	224	112 (56)	0	0
SI	n/a	107	12	66	66	0	0
SK	170 (0)	170 (0)	137 (0)	170 (0)	170 (0)	0	0

Notes: *Amounts are expressed in euros. Other currencies have been converted to euros according to exchange rates at end 2013. Figures in brackets are fees for children (normally, but not always, applying to person younger than 18 years).*

Fees reflected in the table include the total fees for the first application. The total fee includes fees for application, processing, granting and issuing the permit (identification card) and for Italy also revenue stamps. It does not include visa fees. Fees for renewals are not covered.

In Belgium, an administrative fee is added, which varies according to the municipality. Reduced fees may apply to certain nationalities, for example in Portugal for nationals of countries belonging to the Community of Portuguese Language Countries (except for East Timor) or in the Netherlands for Turkish nationals. In Spain, the employers contribute €194 to €388 to the total residence fee, in addition to the fee paid by the applicant, for a single permit, and for permits for researchers and highly qualified third country nationals.

Table A1: (continued)

Directive 2004/114/EC				Directive 2005/71/EC		Directive 2004/38/EC	Directive 2003/86/EC
Students	School pupils	Unremuner-ated trainees	Volunteers	Researchers	... and their family members	Family members of EU nationals	Family members of third-country nationals
120 (120)	120 (120)	120 (120)	120 (120)	120	120 (120)	56	120 (120)
12	12	0	0	12	12	12	12
107–230	107–230	107–230	n/a	107–230	107–230	9	107–230
34	34	34	34	100	n/a	20	200
93	93 (37)	93 (37)	93 (37)	93	93 (37)	0	93 (37)
80–110	80–110 (40–65)	80–110	80–110	80–250	100–135 (55)	23-29	135 (55)
64–65	64–65	64–65	64–65	96–100	64–65 (24–25)	31–35	64–65 (24–25)
n/a	n/a	n/a	n/a	150	150	0	150 (0)
15	15	15	15	26	26	10	10
300	200	425	425	425	425	114	425 (200)
77	77	77	0	260	260	0	260 (135)
150–98	98–150	98–150	98–150	98–150	98–150	98–150	98–150
60	60	60	60	60	60	3–32	60
153	153	153–173	153	153–173	153–173 (74)	32	153–173 (74)
0	0	0	0	116	116	29	116
85–313	85–313	85–313	114–359	114–359	114–359 (0)	114–359 (28–171)	85–313
50	50	50	50	50	50	0	50
304	304	760	42–604	304	228	42	228
93	93	n/a	n/a	93	93	0	93
149	149	149	149	149	149	15	149
120	120	120	120	120	120	3	179
112	56	112	112	112	112 (56)	0	168 (84)
66	13	66	13	66	66	12	12
40	5	5	5	5	5	5	137 (0)

The United Kingdom is not included in the table, as it is not bound by any of the directives listed. Ireland is bound only by Directive 2005/71/EC and Denmark by Directive 2004/38/EC; they are also not included in the table. Malta is not included in the table. In Sweden, Directive 2004/114/EC is not fully implemented, as only students are included, whereas school pupils, unremunerated trainees and volunteers are excluded categories.

Member States' fees for a particular permit may vary depending on the length of stay, purpose of residence, processing time and place of application (for instance at an embassy or in the Member State).

n/a not applicable.

Sources: ***Austria**, Fee Act (*Gebührengesetz*), BGBl 267/1975 as amended by BGBl I 70/2013, Sections 6 and 8; **Belgium,** Fees for electronic residence cards (*Prijs van de elektronische vreemdelengenkaarten*); **Bulgaria,** Tariff No. 4 for fees collected in the system of the Ministry of the Interior under the State Fees Act (*Тарифа 4 за таксите, които се събират в системата на Министерство на вътрешните работи по Закона за държавните такси*), 10 March 1998; **Croatia**, Act on Amendments to the Administrative Fees Act (Zakon o izmjenama i dopunama Zakona o upravnim pristojbama) (2010), Official Gazette (Narodne novine) No. 60/2010; **Czech Republic**, Act No. 634/2004 Coll., on administrative fees, as amended, Items 116–118 (Zákon č. 634/2004 Sb., o správních poplatcích, ve znění pozdějších předpisů, položky 116–118); **Cyprus**, Aliens and Immigration Law Cap. 105 (Ο περί Αλλοδαπών και Μεταναστεύσεως Νόμος Κεφ. 105); **Estonia**, State Fees Act (Riigilõivuseadus), 22 April 2010; **Finland**, Decree by the Ministry of the Interior on payments for services by the Immigration Service (Sisäasiainministeriön asetus Maahanmuuttoviraston suoritteiden maksullisuudesta/ Inrikesministeriets förordning om Migrationsverkets avgiftsbelagda prestationer, No. 1038/2012) and Decree by the Ministry for the Interior on the grounds of payment for services by the police in 2013 (Sisäasiainministeriön asetus poliisin suoritteiden maksullisuudesta vuonna 2013/Inrikesministeriets förordning om polisens avgiftsbelagda prestationer år 2013, No. 850/2012); **France**, Code of entry and stay of foreigners and asylum rights (CESEDA – Code de l'entrée et du séjour des étrangers et du droit d'asile), Art. L512-1, L552-1, L522-2; **Germany**, Residence regulation (Aufenthaltsverordnung, Kapitel 3 –Gebühren (§§ 44–54); **Greece**, Law 3386/2005, Codification of Legislation on the Entry, Residence, and Social Integration of Third Country Nationals in Greek Territory (Κωδικοποίηση νομοθεσίας για την είσοδο, διαμονή και κοινωνική ένταξη υπηκόων τρίτων χωρών στην Ελληνική Επικράτεια) (OG A' 212/23 August 2005; **Hungary**, Decree of the Minister of Justice and Law Enforcement No. 28/2007 (V. 31.) IRM on the fees of procedures relating to the entry and stay of persons enjoying free movement and residence and third-country nationals (28/2007. (V. 31.) IRM rendelet a szabad mozgás és tartózkodás jogával rendelkező személyek, valamint a harmadik országbeli állampolgárok beutazásával és tartózkodásával kapcsolatos eljárások díjáról); **Italy**, Decree of the Ministry of Economics and Finance of 6 October 2011 on issue and renewal of stay permits (Decreto 6n ottobre 2011 contributo per il rilascio ed il rinnovo del permesso di soggiorno (11A16810), GU n. 304 del 31-12-2011; **Latvia**, Regulation No. 1034 on the State fee for examination of the documents necessary for the requesting a visa, residence permit or the status of a long-term resident of the European Community in the Republic of Latvia and the services related thereto (Noteikumi Nr. 1034 'Noteikumi par valsts nodevu par vīzas, uzturēšanās atļaujas vai Eiropas Kopienas pastāvīgā iedzīvotāja statusa Latvijas Republikā pieprasīšanai nepieciešamo dokumentu izskatīšanu un ar to saistītajiem pakalpojumiem'); **Lithuania**, Act on specific amount of fees and charges and rules on payment and repayment of these fees and charges (Lietuvos Respublikos Vyriausybės nutarimas Dėl konkrečių valstybės rinkliavos dydžių ir šios rinkliavos mokėjimo ir grąžinimo taisyklių patvirtinimo), No. 1458, 15 December 2000 (as last amended on 30 October 2013), Art. 2(27); Law on fees and charges (Lietuvos Respublikos rinkliavų įstatymas), No. VIII-1725, 13 June 2000 (as last amended on 14 May 2013), Art. 6(7); **Luxembourg**, Ministry of Foreign Affairs, Grand-Ducal Regulation of 19 June 2013 amending: 1. the Grand Ducal regulation amended on 5 September 2008 to implement certain provisions concerning administrative formalities required by the law of 29 August 2008 on the free movement of persons and immigration; 2. The Grand-Ducal regulation amended on 5 September 2008 laying down the terms and conditions for the issuance of a residence permit as an employee (Règlement grand-ducal du 19 juin 2013 modifiant 1. le règlement grand-ducal modifié du 5 septembre 2008 portant exécution de certaines dispositions relatives aux formalités administratives prévues par la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration; 2. le règlement grand-ducal modifié du 5 septembre 2008 fixant les conditions et modalités relatives à la délivrance d'une autorisation de séjour en tant que travailleur salarié. Note to the public: fee for granting residence permits issued to third-country nationals Note au public : Taxe de délivrance pour les titres de séjour délivrés aux ressortissants de pays tiers; **Netherlands**, Passport Fee Decree (Besluit paspoortgelden), 8 November 1991, Art. 6.1.a; Aliens regulation 2000 (sregeling Voorschrift Vreemdelingen) Art. 3.34–3.34k); **Poland**, Ordinance of Ministry of Interior and Administration on fees paid by foreigners for issuance and replacement of the cards and other documents in foreigners' cases (Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 18 sierpnia 2003 r. w sprawie opłat pobieranych od cudzoziemców za wydanie i wymianę karty pobytu i innych dokumentów w sprawach cudzoziemców), 18 August 2003; Act on stamp duty (Ustawa z dnia 16 listopada 2006 r. o opłacie skarbowej), 16 November 2006; **Portugal**, Order 1334-E/2010, establishing the schedule of fees and other extra charges to be levied by the administrative procedures provided for by Law 23/2007 of 4 July (Portaria n.º 1334-E/2010, que estabelece a tabela de taxas e demais encargos a cobrar pelos procedimentos administrativos previstos na Lei n.º 23/2007, de 4 de julho), 31 December 2010; Government Emergency Ordinance No. 194/2002 regarding the aliens' regime in Romania (Ordonanța de urgență a Guvernului nr. 194 din 12 decembrie 2002 privind regimul străinilor în România), 12 December 2002; **Slovakia**, Act No. 145/1995 Coll. on administrative fees as amended (Zákon č. 145/1995 Z.z. o správnych poplatkoch), 22 June 1995; **Slovenia**, Administrative fees act (Zakon o upravnih taksah), 26 January 2000, and subsequent modifications; **Spain**, Organic Law 4/2000, 11 January, on foreigners' rights and freedoms in Spain and their social integration; **Sweden**, Regulation (1997:691) on fees at missions abroad (Förordning (1997:691) om avgifter vid utlandsmyndigheterna)*

Index of Member State references

Endnotes

All hyperlinks accessed on 30 April 2014.

1 Platform for International Cooperation on Undocumented Migrants (PICUM) (2013), *Children first and foremost*, February 2013; Vanderbruggen, M., Flemish Refugee Action, Phelps, J., Detention Action, Sebtaoui, N., France terre d'asile, Kovats, A., Menedék and Pollet, K., ECRE (2014), *Point of no return: The futile detention of unreturnable migrants*, January 2014, http://pointofnoreturn.eu/wp-content/uploads/2014/01/PONR_report.pdf; Human Rights Watch (2013), *World Report 2013*. See also the PICUM Bulletin, providing news on the situation of undocumented migrants in Europe every two months; the International Detention Monitor for monthly immigration detention news; and Refugees and Migrants, Amnesty International.

2 FRA (2013), *Fundamental rights at Europe's southern sea borders,* Luxembourg, Publications Office of the European Union (Publications Office).

3 United Nations (UN) (2013), *Regional study: Management of the external borders of the European Union and its impact on the human rights of migrants*, Report of the Special Rapporteur on the human rights of migrants, François Crépeau, UN Doc A/HRC/23/46, 24 April 2013.

4 Council of the European Union, 3260th Council meeting, Justice and Home Affairs, Luxembourg, 7–8 October 2013.

5 European Council (2013), Conclusions, 24/25 October 2013, para. 48.

6 European Parliament (2013), Resolution on migratory flows in the Mediterranean, with particular attention to the tragic events of Lampedusa, 2013/2827(RSP), 23 October 2013.

7 European Commission (2013), *Communication on the work of the Task Force Mediterranean*, COM(2013) 869 final, 4 December 2013.

8 European Council (2013), *Conclusions*, 20 December 2013.

9 See: EASO (2014 forthcoming), *Annual report on the situation of asylum in the EU 2013*; and, for Central Europe, the UNHCR overview of quality initiatives listed on its website, www.unhcr-centraleurope.org/pdf/what-we-do/ensuring-legal-protection/refugee-status-determination/quality-initiatives-in-europe.html.

10 Ireland, Supreme Court, *HN*, C-604/12, 8 March 2013; Belgium, Cour du travail de Bruxelles, *Saciri and Others*, C-79/13, 5 April; Netherlands, Dutch Council of State, *A.,* C-148/13 to C-150/13, 31 May; Germany, Verwaltungsgerichtshof Baden-Württemberg, *T.*, C-373/13, 18 October 2013; Germany, Bayerisches Verwaltungsgericht München, *Shepard*, C-472/13, 25 October 2013; Germany, Oberlandesgericht Bamberg, *Qurbani*, C-481/13, 15 November 2013; Belgium, Constitutional Court, *M'Bodj,* C-542/13, 29 November; Belgium, Cour du travail de Bruxelles*, Abdida*, C-562/13, 13 December.

11 ECtHR, *Mohamed Hussein and Others v. the Netherlands and Italy* (dec), No. 27725/10, 2 April 2013; ECtHR, *Mohamed v. Austria*, No. 2283/12, 6 June 2013.

12 FRA (2013), *Fundamental rights: Challenges and achievements in 2012*, Annual report, Luxembourg, Publications Office; FRA (2012), *Fundamental rights: Challenges and achievements in 2011*, Annual report, Luxembourg, Publications Office.

13 Council of Europe, Parliamentary Assembly, Recommendation 2028, 22 November 2013, point 7.1.6.

14 Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2013), *Report to the Government of the United Kingdom on the visit to the United Kingdom*, Strasbourg, Council of Europe, 18 July 2013.

15 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ 2008 L348/98, Art. 5.

16 *Ibid.*, Art. 7 (2).

17 Spain, Defensor del Pueblo (2012), *Informe Anual 2012 – Mecanismo Nacional de Prevención de la Tortura*, www.defensordelpueblo.es/es/Mnp/InformesAnuales/InformeAnual_MNP_2012.pdf.

18 FRA (2012), *Fundamental rights: Challenges and achievements in 2012*, Annual report, Luxembourg, Publications Office, p. 55.

19 Foreigners in the Republic of Bulgaria Act, Article 39a (2) (amended, State Gazette 23/08 March 2013), http://lex.bg/bg/laws/ldoc/2134455296.

20 *Ibid.*, adopted on 12 December 2013, expected to enter into force on 1 May 2014.

21 Malta, L.N. 251 of 2012, Immigration Act (CAP.217), Board of Visitors for Detained Persons (Amendment) Regulations, 2012, http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=23503&l=1.

22 Portugal, Law 29/2012 of 9 August, http://dre.pt/pdf1sdip/2012/08/15400/0419104256.pdf.

23 Sweden, Aliens Act 2005:716, http://sweden.gov.se/content/1/c6/06/61/22/bfb61014.pdf.

24 In Finland, there has been an ad hoc monitoring system, based on an oral agreement between the Municipal Police of Helsinki and the District Court of Helsinki, whereby a person working at the District Court may on some occasions join a return flight.

25 Law 3907/2011, Art. 23 (6).

26 Information provided by the Uniformed Police Directorate at the General Police Directorate (*Generalna Policijska uprava, Uprava uniformirane policije*) at the end of 2013.

27 Germany, Ministerium für Inneres und Kommunales des Landes Nordrhein-Westfalen, *Checkliste zur Vorbereitung, Durchführung und Dokumentation von Rückführungsmaßnahmen auf dem Luftweg*, www.mik.nrw.de/themen-aufgaben/auslaenderfragen/erlasse/aufenthaltsbeendigung.html.

28 Frontex, *Code of Conduct for Joint Return Operations coordinated by Frontex*, Art. 13(2), http://frontex.europa.eu/assets/Publications/General/Code_of_Conduct_for_Joint_Return_Operations.pdf.

29 *Ibid.*, Art. 14(5).

30 See: FRA (2013), *Fundamental rights: Challenges and achievements in 2012*, Annual report, Luxembourg, Publications Office, p. 58.

31 See: Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2013), *Report to the Government of the United Kingdom on the visit to the United Kingdom from 22 to 24 October 2012*, Strasbourg, Council of Europe, 18 July 2013. The CPT also monitored a return flight from the Netherlands to Lagos from 16 to 18 October 2013.

32 European Commission (2010), Communication from the Commission, Europe 2020: A strategy for smart, sustainable and inclusive growth, COM(2010) 2020 final, 3 March 2010.

33 Huddleston, T., Niessen, J., and Tjaden, J.D. (2013), *Using EU indicators of immigrant integration*, Migration Policy Group/European Services Network, European Commission DG Home Affairs, http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/general/docs/final_report_on_using_eu_indicators_of_immigrant_integration_june_2013_en.pdf.

34 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Art. 4, applicable to those who have resided in an EU Member State for more than five years, http://eur-lex.europa.eu/legal-content/en/ALL/;jsessionid=JFtBTC5YkWlBjwvcT3vG6qC2BSFs5hYCBhY9hJVLyVQVnS98vFk2!359963063?uri=CELEX:32003L0109.

35 CJEU, *European Commission v. Kingdom of the Netherlands*, C-508/10, 26 April 2012.

36 The 2010 Zaragoza meeting of the ministers responsible for integration agreed on these EU indicators, and on 3–4 June 2010 the Justice and Home Affairs Council called on the Commission to launch a pilot project to evaluate integration policies. Currently, naturalisation rates, long-term residence rates and immigrants among elected representatives have been proposed as relevant indicators of active citizenship in the EU.

37 European Parliament, Resolution 2012/2131(INI) of 14 March 2013 on the integration of migrants, its effects on the labour market and the external dimension of social security coordination.

38 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Art. 4. This applies to those who reside in an EU Member State for more than five years.

39 Council Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, Art. 1. It had to be transposed by 25 December 2013 (Art. 16).

40 Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, Art. 14.

41 Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.

42 Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

43 Council Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

44 Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, Art. 24.

45 Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

46 Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, Art. 10.

47 CJEU, *European Commission v. Kingdom of the Netherlands*, C-508/10, 26 April 2012.

48 Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

49 Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

UN & CoE

January

February

March

24 April – The UN Special Rapporteur on the human rights of migrants publishes his findings on the management of the external borders of the EU and its impact on human rights of migrants

25 April – In *Savriddin Dzhurayev v. Russia*, the ECtHR reiterates the obligation to comply with interim measures issued by the court under Rule 39 of the Rules of the Court

April

May

June

July

August

5 September – In *I. v. Sweden*, the ECtHR clarifies that the right of a state to intervene in cases lodged by one of its nationals against another state set forth in Article 36 of the ECHR does not apply to cases where the applicant raises fear of being returned to his or her country of nationality

September

October

November

December

EU

17 January – In *Mohamad Zakaria*, the CJEU confirms that border checks have to be carried out with full respect for human dignity

January

28 February – The European Commission proposes the Smart Borders package

February

14 March – Visa Information System (VIS) becomes operational in west and central African countries, 2013/122/EU

21 March – In *Shomadi*, the CJEU clarifies that a holder of a local border traffic permit pursuant to Regulation (EC) No. 1931/2006 has a right to move freely within the border area for a period of three months and to have a new right to a three-month stay each time that his or her stay is interrupted (this duration of stay differs from the normal Schengen rules)

March

9 April – The second-generation Schengen Information System (SIS II) becomes operational

12 April – The European Commission proposes new rules for Frontex-coordinated sea operations

April

May

6 June – VIS becomes operational in east and southern Africa, 2013/266/EU

26 June – Regulation (EU) No. 610/2013 amends parts of the Schengen Borders Code, strengthening its fundamental rights provisions

June

July

August

5 September – VIS becomes operational in South America, 2013/441/EU

30 September – The last set of regions for introducing VIS are determined

September

7 October – Regulation (EU) No. 1053/2013 establishing a new evaluation and monitoring mechanism to verify the application of the Schengen *acquis* is published

17 October – Through its ruling in *Michael Schwarz v. Stadt Bochum*, the CJEU endorses storage of biometric data in passports

22 October – Regulation (EU) No. 1052/2013 establishing Eurosur is published

22 October – Regulation (EU) No. 1051/2013 on temporary reintroduction of border control at internal borders in exceptional circumstances is published

October

14 November – VIS becomes operational in southeast and central Asia, as well as in the occupied Palestinian territories

November

4 December – European Commission *Communication on the work of the Task Force Mediterranean*

19 December – In *Koushkaki*, the CJEU provides guidance on the refusal of Schengen visas

December

2 Border control and visa policy

In 2013, there was a jump in irregular arrivals of third-country nationals at the European Union's (EU) southern sea borders, as well as pressure on the Greek and Bulgarian land borders from Syrians fleeing civil war. These made it all the more urgent for the EU to modernise its border control, also in the light of fundamental rights. As part of the overhaul of its legal framework, the EU adopted important pieces of border control and visa policy legislation and began deliberations on another five proposals. Although these instruments primarily seek to manage access to the EU, they all affect fundamental rights. The EU also continued to deploy modern technologies in the border and visa areas. The risks and benefits, however, that these modern technologies pose for the upholding of fundamental rights remain largely unexplored. The European border surveillance system, originally intended for fighting irregular migration, has the potential, if properly implemented, to save the lives of migrants at sea. The smart borders proposals triggered, for example, fundamental rights concerns over the possibility that the technology might contribute to mislabelling some third-country nationals as overstaying their visas.

2.1. EU adopts and proposes new legislation

The EU reshaped its legislation in this field in 2013. It adopted new regulations and the European Commission proposed another five. In addition, the second generation of the Schengen Information System (SIS II), which holds information on persons and objects wanted or missing in the Schengen area, started operations on 9 April 2013.[1] The application of the Visa Information System (VIS), which stores data on third-country nationals applying for short-term visas, continued to be expanded in Africa,[2] South America,[3] Central Asia[4] and South-East Asia[5] and was extended to the occupied Palestinian territories. The remaining regions for VIS roll-out have now also been determined.[6] By the end of 2013, one quarter of all visa applications, and two thirds of refused visas, were registered in VIS.[7]

Key developments in the area of border control and visa policy

- The EU adopts a regulation on the European border surveillance system, Eurosur, set up to fight irregular immigration, prevent cross-border crime and contribute to the protection of migrants' lives at sea.
- The European Commission tables the smart border package, which suggests the fingerprinting of all short-term visitors to the EU (entry/exit system) and the creation of a programme to facilitate border checks for frequent travellers (Registered Travellers Programme).
- SIS II, an upgraded version of the Schengen Information System which stores biometric data, becomes operational after years of delay.
- The gradual regional roll-out of the Visa Information System (VIS) continues.
- The Schengen rules are amended, introducing a new evaluation and monitoring system, revising rules for the reintroduction of intra-Schengen border controls and strengthening fundamental rights.
- Frontex's Fundamental Rights Officer and Consultative Forum are operational and advise Frontex on fundamental rights issues.
- The European Commission presents a proposal for a regulation establishing rules for Frontex-coordinated sea operations.

The adopted instruments are listed in Table 2.1. Although fundamental rights are normally not at the core of these instruments, they are relevant to fundamental rights.

Table 2.2 lists the new regulations the European Commission proposed in 2013. They include new rules for Frontex-coordinated sea operations, which

Table 2.1: Overview of adopted legislation in 2013

Instrument and subject	Date of adoption	Main issue(s) relating to fundamental rights
Regulations		
Amendments to the Schengen Borders Code Regulation (EU) No. 610/2013	26 June	A new article on fundamental rights is added – Article 3(a); the provision on the need to respect human dignity during border checks now includes an express reference to vulnerable persons – Article 6(1); clear rules have been introduced in the annex to the code on how to deal with asylum applications submitted at border-crossing points shared with third countries
Creation of a European border surveillance system (Eurosur) Regulation (EU) No. 1052/2013	22 October	The purpose of Eurosur is also to contribute to ensuring the protection and saving the lives of migrants, which must be monitored and evaluated; it includes strong data protection safeguards; it is prohibited to share information with third countries which could use them to violate migrants' fundamental rights
Revised system to monitor and evaluate application of the Schengen *acquis* Regulation (EU) No. 1053/2013	7 October	The system covers the entire Schengen *acquis*, thus including its fundamental rights provisions, and, although these are not explicitly referred to in the regulation, they will also be assessed during Schengen evaluations
Temporary introduction of controls at internal EU borders in case of serious deficiencies of external border controls Regulation (EU) No. 1051/2013	22 October	The reintroduction of internal border controls is exceptionally allowed if there is a serious threat to public policy or to internal security, circumscribing limitations to the free movement of persons within the Schengen zone
Amendments to visa requirements Regulation (EC) No. 1289/2013	11 December	A mechanism for suspending the visa waiver in emergency situations is introduced. It may make it more difficult for persons in need of protection to leave their countries
Other instruments		
SIS II becomes operational on 9 April Council Decision 2013/158/EU and 2013/157/EU	7 March	SIS II introduced the possibility of storing fingerprints and facial images and exchanging such data. It includes data protection safeguards
Commission implementing decisions on the roll-out of VIS: 2013/122/EU 2013/266/EU 2013/441/EU 2013/642/EU	7 March 5 June 20 August 8 November	Third-country nationals applying for visas will be fingerprinted and information on applicants included in the VIS database. VIS includes data protection safeguards
Commission implementing decision determining the remaining regions for the VIS roll-out: 2013/493/EU	30 September	When VIS becomes operational, third-country nationals applying for visas will be fingerprinted and information on applicants included in the VIS database

Source: *http://eur-lex.europa.eu*

have a substantial bearing on the rights of migrants and refugees intercepted or rescued at sea. The other three legislative proposals are usually referred to as the smart border package, consisting of the entry/exit system, for the electronic recording of the dates of entry and exit of third-country nationals, and the Registered Travellers Programme, facilitating border crossing for bona fide travellers. (For more information on these proposals and their fundamental rights implications, see Section 2.2.)

The new legislation adopted in 2013 and the proposed legislation have a particular impact on the work of Frontex as well as on the EU Agency for Large-Scale IT [information technology] Systems (eu-LISA), which manages VIS and the SIS II central databases, in addition to Eurodac (see Chapter 1 on asylum, immigration and integration). Under the Eurosur Regulation, Frontex is jointly responsible with Member States for maintaining and updating the European Situational Picture and Situational Picture on the area beyond EU frontiers and ensuring the smooth running of the Eurosur coordination network.

Frontex continued its efforts to incorporate fundamental rights into its activities. The Frontex Fundamental Rights Officer and its Consultative Forum – a body of 15 organisations with fundamental rights expertise – contributed substantially to the mainstreaming of fundamental rights into Frontex activities. The Fundamental Rights Officer reviewed and commented on the operational plans of Frontex-coordinated operations. Frontex adopted a Code of Conduct for Joint Return Operations coordinated by Frontex on 7 October 2013 and published it in November 2013, drawing on input from the Consultative Forum and the Fundamental Rights Officer. The Consultative Forum visited the Frontex operation Poseidon in Greece and Bulgaria to gain a better understanding of the challenges in operationalising fundamental rights. The European Ombudsman issued a report in November 2013 following an inquiry launched on its own initiative seeking to clarify how Frontex implements fundamental rights.[8] Whereas the European Ombudsman acknowledged that Frontex adequately addressed 12 out of 13 recommendations submitted by her,[9] little progress was made on introducing a complaints mechanism for fundamental rights infringements in all Frontex-labelled joint operations. By the end of the year, Frontex and its Fundamental Rights Officer were working to establish an effective monitoring mechanism.

2.2. Number of arrivals in southern Europe rises

In 2013, an increasing number of persons undertook a perilous journey by sea, seeking safety from persecution and violence or poverty, or to join their families in Europe. As Figure 2.1 shows, the total number of third-country nationals arriving on Europe's shores increased substantially in 2013, reaching some 57,000 persons. Increases were particularly visible in **Greece** and **Italy**. Arrivals by sea in the eastern and central Mediterranean increasingly include Syrians fleeing domestic conflict. In **Italy** in 2013, the number

Table 2.2: Overview of EU legislation proposed in 2013

Instrument	Status at year end	Commission proposal
New rules for Frontex-coordinated sea operations, dealing with sensitive issues such as where to disembark migrants rescued at sea	Council and European Parliament finalised their position and started negotiations in December 2013	COM(2013) 197 final, 12 April 2013
Regulation to register entry and exit data of third-country nationals (*entry/exit system*)	Council and European Parliament are still defining their positions	COM(2013) 95 final, 28 February 2013
Amendments to the Schengen Borders Code necessary to introduce an *entry/exit system* and a *registered traveller programme*		COM(2013) 96 final, 28 February 2013
Regulation to establish a *registered traveller programme* allowing simplified border crossing for screened passengers		COM(2013) 97 final, 28 February 2013
Abolishing visa requirements for Moldovans	Proposal tabled	COM(2013) 853 final, 27 November 2013

Source: http://eur-lex.europa.eu

of arrivals by sea was the second-highest in the last 10 years, after the 2011 events in Tunisia and the civil war in Libya persuaded over 60,000 persons to make the journey. In 2013, 43,000 persons arrived at Italian coasts. The authorities continued to collaborate with international organisations and NGOs which were part of the Praesidium project, a promising practice identified by the FRA report on Europe's sea borders.

As indicated in last year's Annual report, in **Greece**, increased arrivals by sea mirror a substantial reduction of irregular crossings at the Greek land border in the Evros region, after the deployment of some 1,800 additional police officers at the border and the December 2012 construction of a 12-kilometre-long fence along the land border with Turkey. Amnesty International and ProAsyl reported collective expulsions of refugees and migrants in the Aegean Sea.[10] Many of those who cross come from refugee-producing countries, such as Eritrea, Somalia and Syria.[11]

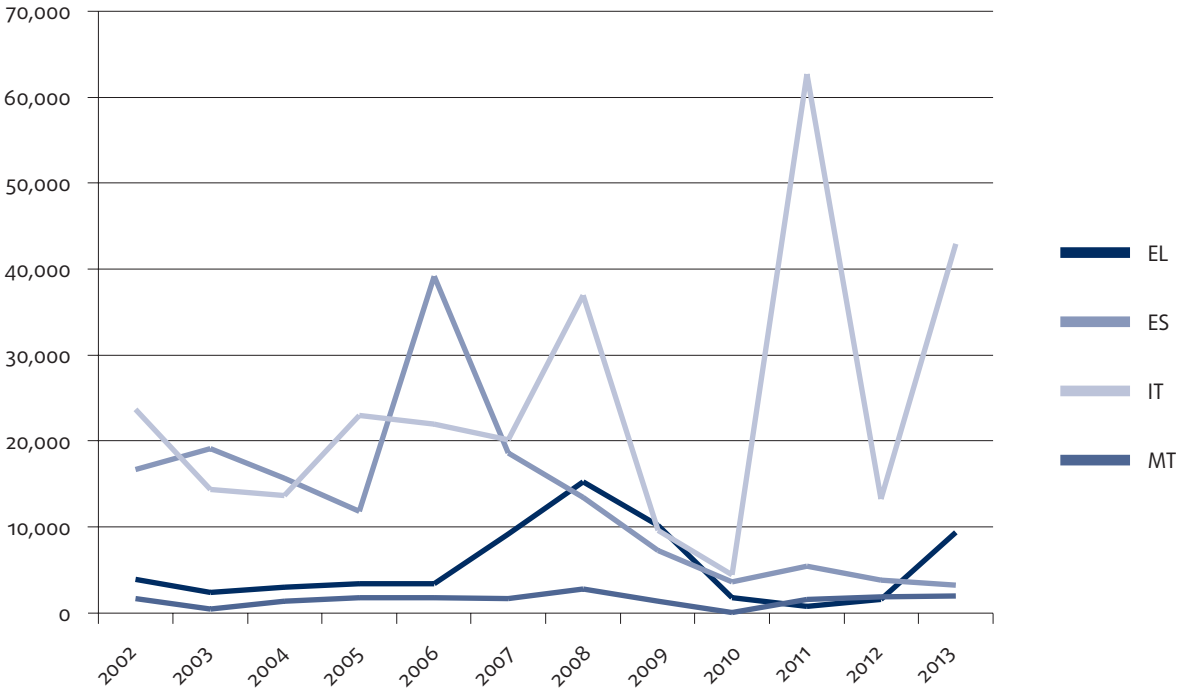
Irregular land crossings shifted from **Greece** to **Bulgaria**.[12] In addition, in 2013 the number of irregular migrants increased substantially, including in **Hungary** (25,000 persons). Bulgaria followed Greece's example by deploying an additional 1,500 police officers on the border and debated the construction of a 30-kilometre-long border fence,[13] covering some 12 % of its land border with Turkey. As a result of the actions taken, in December 2013 the number of irregular arrivals fell dramatically. Given that a significant number of persons crossing the Turkish–Bulgarian land border were Syrians, the question arises whether people who could be in need of international protection are at risk of being denied entry.

In 2013, in line with the five-year trend, **Spain** saw another decrease in sea arrivals, while the borders between Spain and Morocco at the cities of Ceuta and Melilla – the only land borders between Europe and Africa – experienced a considerable increase in pressure by both land and sea. As a result, Spanish authorities introduced additional measures to stop entries over the fences by adding a razor-wire barrier to the Melilla fence and reinforcing surveillance.

According to information provided to FRA by the Spanish NGO CEAR (*Comisión Español de Ayuda al Refugiado*), those who manage to reach Ceuta and Melilla include persons from Syria, Somalia or Mali who may be in need of international protection. Only very few applied for international protection, however, and, of these, citizens of Syria, Côte d'Ivoire, Cameroon and Mali are said to have withdrawn their applications.[14] Institutions such as the Ombudsman and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recommended a policy review to ensure access to asylum and fair and efficient asylum procedures in the enclaves.[15]

Border surveillance policies must be implemented with full respect for fundamental rights, including the principle of non-*refoulement* and the prohibition of collective

Figure 2.1: Arrivals of third-country nationals by sea in four EU Member States, 2003–2013



Source: National police data, 2013

expulsion set forth in Articles 18 and 19 of the Charter of Fundamental Rights. In 2013, the EU strengthened fundamental rights safeguards by introducing a new Article 3a into the Schengen Borders Code. It obliges Member States to apply the code in full compliance with the EU Charter of Fundamental Rights and with "obligations related to access to international protection". This creates an enhanced opportunity for the EU to monitor and evaluate, through the new Schengen governance system, whether such fundamental rights safeguards are put into practice. It should help to ensure that no EU funds are allocated to policies which undermine such standards. The construction of fences, as undertaken or planned at sections of land borders in Bulgaria, Greece and Spain, limits the ability of persons in need of international protection to seek safety. Many undocumented asylum seekers who would try to use official border-crossing points would be intercepted by third-country authorities before reaching the external EU border.

2.3. Large-scale IT systems in the areas of borders and visas

Important steps were taken in 2013 towards the increased use of modern technologies in the field of asylum (for more information on Eurodac, see also ▶ Chapter 1 on asylum, immigration and integration), visa and border management, making it possible to collect and store information not only on third-country nationals but also on EU citizens.

The new version of the Schengen Information System, SIS II, which contains information on entry bans, became operational on 9 April. The application of the Visa Information System (VIS), storing personal data and biometric identifiers (fingerprints) of visa applicants, was extended to more than 70 states in Africa, Latin America and Asia. It also includes information on the invitees (sponsors of the visa applicant, often EU citizens) but not their biometric information. The worldwide VIS roll-out will continue in 2014.

At the end of 2013, three existing IT systems were operational.

- SIS II holds data on persons and objects (such as banknotes, cars, vans, firearms and identity documents) wanted or missing in the Schengen area, as well as on persons to be denied entry into Schengen.

- VIS collects data on third-country nationals applying for short-term visas.

- Eurodac primarily tracks persons lodging asylum requests.

Fingerprints can be stored in all three databases. Through the Automated Fingerprint Identification System (AFIS),[16] fingerprints can later be compared with those stored in VIS and Eurodac. The EU Member States will also use SIS II in the same way, once this is possible technically.[17]

In addition, the creation of two further IT systems was proposed in 2013 as part of a package on 'smart borders'. These are:

- an entry/exit system to record entry and exit data of each third-country national at the external border and to record who are entitled to stay in the EU for a period not exceeding three months (short stay) regardless of whether they are exempted from a visa or not;

- a registered travellers programme to allow pre-vetted third-country nationals who are at least 12 years old and travel frequently to pass through a simplified border check with the use of a token.

In spite of the speed of technological and policy developments, risks and benefits for fundamental rights that modern technologies create are not fully known, particularly in the context of VIS and SIS II. FRA recently reported on the difficulties EU citizens face when accessing remedies for data protection violations. One reason is that only a few civil society organisations are available to support victims of data protection violations in complaints procedures.[18] Because most of the data subjects referred to in this chapter are third-country nationals, they can be expected to have even less access to support organisations.

New technologies may also bring with them opportunities for improved fundamental rights protection. Using biometrics minimises mistakes in identification, which may be an advantage for the person concerned. The risk of being mistakenly identified as a wanted criminal should be close to non-existent. Perhaps there are possibilities to optimise SIS II for identification of missing children, for instance.[19] These are topics which are as yet largely unexplored and affect fundamental rights.

The 'smart borders' proposal prompted a discussion on its fundamental rights impact. The concerns raised relate to data protection, the right to privacy and whether the proposal meets its objective of counteracting irregular migration, since the EU does not have a clear policy on managing over-stayers.[20] Such a policy should not only include the removal option. It should also include measures to ensure that persons who cannot be removed are not left in legal limbo but receive, at a minimum, a certification of postponed removal.[21] The European Data Protection Supervisor, for example, noted in its opinion that the 'smart borders' proposal is costly, unproven and intrusive.[22] NGOs have also pointed to

the high costs, and have raised concerns in relation to data protection issues[23] and on the proportionality of collecting large amounts of personal data, including fingerprints. The entry/exit system would collect the fingerprints of third-country nationals who are not required to hold visas, whereas those required to hold a visa are already included in VIS. As the database will provide information only on whether a person has left the EU on time but not on the location of over-stayers, the question arises whether the entry/exit system can contribute to combating irregular migration.[24] However, VIS includes information on the inviters, which can be relevant when trying to locate over-stayers.

A few governments have actively consulted civil society on the 'smart borders' proposals. When requested to present its views, the **Danish** Institute for Human Rights (*Institut for Menneskerettigheder*) expressed concern about the necessity of establishing these systems and recommended assessing how the fundamental rights of third-country citizens would be affected. The institute also highlighted the importance of the right to information about the proposal and recommended that this information be made available in the relevant languages.[25] In **Finland,** the government invited civil society representatives to its meetings on the smart borders proposal. The representatives expressed concerns about the threshold for access to the database by law enforcement and sought safeguards to ensure that persons granted a right to stay (such as asylum seekers) do not appear as over-stayers.[26]

Fundamental rights concerns in the context of large systems and biometrics relate to the necessity and proportionality of the information and data protection safeguards in place. Other relevant fundamental rights are non-discrimination, the right to asylum, the right to leave your country, the protection of persons with disabilities, older persons and children, and the right to liberty and security of person (if the person is detained as a consequence of being wrongly entered in SIS II or the entry/exit system, or not entered, in which case the departure of the person from the territory of the EU Member States will not have been registered).[27]

Table 2.3 illustrates these information technology systems, the categories of persons they cover, the type of biometric data stored and the number of persons they cover.

In addition, VIS (Article 9) and the proposed Registered Travellers Programme (Article 25) include provisions on storing the personal data of the person liable to pay the applicant's subsistence costs during the stay. The inviting personcould be either an EU citizen or a third-country national. These articles also provide for storage of information on the main purpose and destination, duration of travel, intended date of arrival and departure, border of first entry, place of residence, current occupation and employer, and for students the name of the educational establishment.

The processes for taking fingerprints need to respect the dignity of the person. Responding to proposals by civil society, the **Netherlands** also plans to introduce fingerprint-free identity documents.[28] Persons whose fingertips are burnt or worn down, or who have been working manually, may be unable to provide fingerprints. In this case, the legitimate fundamental rights concern is if this person will be discriminated against in the context of decisions such as the granting of a visa. In the context of VIS, the principle of non-discrimination is respected, because, according to the Visa Code, "The fact that fingerprinting is physically impossible [...] shall not influence the issuing or refusal of a visa".[29] Alternatives for persons unable to register biometric data should not be stigmatising or profiling. It is also possible that technical or human errors cause failures in registering fingerprints. The **German** Federal Commissioner for Data Protection (*Datenschutzbeauftragter*) has raised the concern that travellers could appear in wanted lists by mistake because of technical shortcomings.[30] Therefore, data subjects need to be able to challenge a wrong data entry and to access an effective remedy (Article 47 of the Charter of Fundamental Rights of the European Union).

To facilitate return in line with the objective of counteracting irregular migration, the VIS Regulation (Article 31) and the proposed entry/exit system allow for data to be shared for return purposes, if protection safeguards are respected, with countries of origin and three international organisations (the International Organization for Migration, the United Nations High Commissioner for Refugees and the Red Cross). The Article 29 Data Protection Working Party pointed to the need for strong safeguards when data are transferred to third countries where data protection standards are inadequate.[31] Strong safeguards are indeed necessary, as such data transfers entail risks for the data subject and their family members if, for example, information is passed on to the country of origin that the data subject has applied for asylum in Europe.

EU Member States may outsource the registration of fingerprints to external service providers selected on the private market. The Visa Code makes Member States accountable for ensuring respect of human dignity and non-discrimination against applicants, including in case of outsourcing, and the Member States need to determine how they effectively ensure such accountability.

Large EU IT systems are managed by eu-LISA. Various authorities are allowed to search existing and planned databases. Europol and Eurojust may access certain categories of alerts in SIS, and Europol may also access VIS and Eurodac. At a national level, as illustrated in Table 2.3, such authorities may include law enforcement,

Table 2.3: Current and planned large EU IT databases including biometric data

	SIS II	VIS	Eurodac	Entry/exit system	Registered Travellers Programme (RTP)
Persons included	Third-country nationals to be refused entry; missing children; witnesses and persons required to appear before a judge (Convention implementing the Schengen Agreement, Articles 96–98)	Third-country nationals who apply for a short-stay visa, valid up to three months (VIS Regulation, Article 9; Visa Code, Article 13)	Asylum seekers and apprehended irregular migrants and refugees (Eurodac Regulation, Articles 9 and 14)	Third-country nationals who stay a maximum of three months, visa free or as visa holders (Entry-exit proposal, Articles 11 and 12)	Frequent travellers who benefit from simplified border checks (RTP proposal, Article 13)
Biometric identifier	Fingerprints (SIS II Regulation, Articles 20 and 22)	10 fingerprints if the applicant is at least 12 years old (VIS Regulation, Articles 5 and 9; Visa Code, Article 13)	10 fingerprints of persons who are at least 14 years old (Eurodac Regulation, Articles 9 and 14)	10 fingerprints of third-country nationals who are at least 12 years old (entry/exit proposal, Article 12)	Four fingerprints of persons who are at least 12 years old (RTP proposal, Articles 5 and 8)
Authorities having access	Law enforcement, judicial authorities and authorities responsible for border controls, customs checks and visas (SIS II Regulation, Article 27)	Visa authorities, authorities responsible for border controls and immigration law enforcement, and authorities responsible for investigating serious criminal offences (VIS Regulation, Articles 3, 6 and 15–22)	Asylum authorities, law enforcement authorities after 2015 (Eurodac Regulation, Articles 5 and 46)	Border, visa and immigration authorities (Entry-exit proposal, Article 7). Law enforcement authorities (following an evaluation two years after entry into force, Entry-exit proposal, Article 46)	Visa and border authorities of any Member State (RTP proposal, Articles 3(8) and 23)
Data retention	Depends on the type of alert, maximum three years and possibility to prolong (SIS II Regulation, Article 29)	Maximum five years (VIS Regulation, Article 23)	Asylum seekers maximum 10 years; irregular immigrants maximum 18 months (Eurodac, Articles 12 and 16)	181 days for exiting persons and five years for over-stayers (Entry-exit proposal, Article 20)	Maximum five years (RTP proposal, Article 34)

Source: FRA, 2014

judicial authorities, asylum authorities and authorities responsible for border controls, customs checks and visas. EU Member States are required to specify the individual authorities that have permission to search data and for what purpose.[32] Nevertheless, access by law enforcement authorities to Eurodac and to the planned entry/exit system has been contentious, because of possible indirect discrimination against asylum seekers among other reasons. The police have access to fingerprints of all asylum seekers and refugees, but usually not of all EU citizens or third-country nationals staying in their territory, so asylum seekers and refugees are more likely than other segments of the population to appear in criminal statistics.[33] In the context of the Data Retention Directive, a request for a preliminary ruling has been forwarded to the CJEU. The Advocate General has issued an opinion, saying that the directive itself, not the Member States, needs to define minimum guarantees for accessing data and their use. He also questions the justifications given for keeping the data

▶ for up to two years (see also Chapter 3 on information society, respect for private life and data protection).

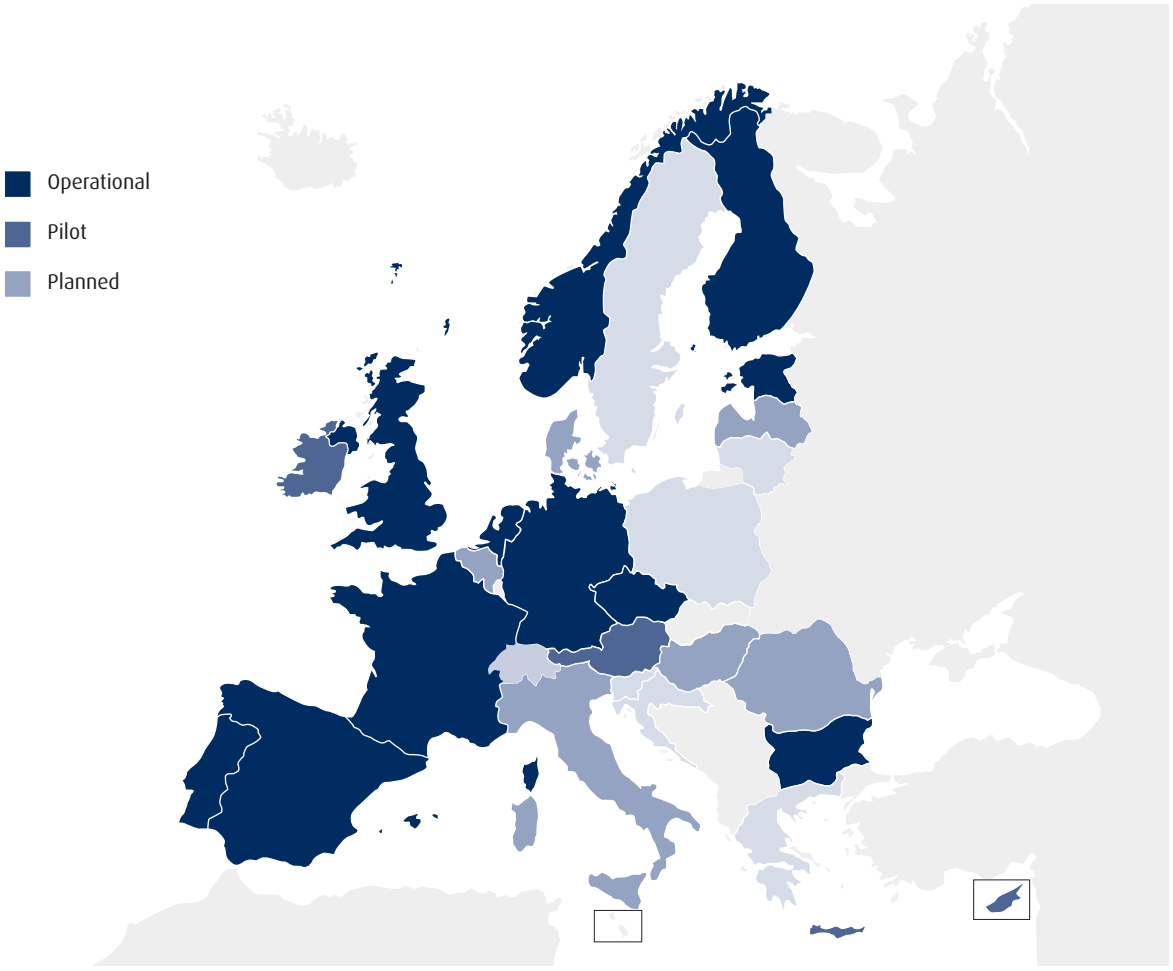
Critical points relating to large-scale databases include:

- Collecting and including information on the data subject – the data subject must have access to information on the biometric enrolment process, including measures in place to control the quality, purpose and content of the personal data stored in addition to fingerprints and how long the information will be kept.
- Storing information on the data subject – it is vital to ensure the lawfulness of data operations and access to information stored, and that information is not kept longer than allowed.
- Authorities' access to information on the data subject – the access to the databases to undertake searches should be well defined to limit users' discretion.

The entry/exit system and the Registered Travellers Programme are planned to operate also through automated border controls, usually referred to as ABC-gates. This would speed up the entry process. At the end of 2013, 10 EU Member States had introduced automatic border controls, at least at some of their border crossing points. Another six Member States were piloting these, as Figure 2.2 illustrates. Most ABC systems currently use facial recognition as the main biometric authentication method. ABC-gates are normally available only for EU citizens, with minor exceptions: the Flux programmes in the **Netherlands** and ABG+ GE in **Germany** can be used by United States (US) citizens, and the **United Kingdom** is piloting a Registered Traveller Scheme for selected non-EU citizens (Australia, Canada, Japan, New Zealand and the USA). **Finland** has also piloted the use of e-gates by citizens from Japan, South Korea and the United States.

The automation of border checks affects fundamental rights, both putting them at risk and offering enhanced opportunities to safeguard them. EU citizens who enter

Figure 2.2: Deployment of automated border control gates, by EU Member State



Source: Frontex, 2013

the Schengen area, for example, ought not to be exposed to systematic data checks.[34] **Germany** therefore plans to introduce a mechanism that is intended to ensure that passengers are only randomly singled out for further checks, to prevent systematic checks of travellers. Persons whose fingerprints or faces are not recognised by the machine are directed to manual checks, but any assumption that such persons are high-risk migrants should be avoided. The gates may also make it more difficult to identify abducted children, at least if children can use the gates without border guard intervention, or to identify victims of trafficking in human beings, as FRA pointed out in its 2012 Annual report. Substituting machines for human judgment may, however, also reduce the risk that individual border guards discriminate on the basis of ethnic profiling when carrying out manual checks. Civil society is rarely consulted in the planning of ABC gates, but the United Kingdom, for instance, consults disability groups, which was reported as a promising practice in the FRA Annual report 2012.

FRA ACTIVITY

Analysing the fundamental rights aspects of biometric data

FRA will carry out a project analysing the fundamental rights implications of collecting, storing and using biometric data in large databases in the areas of visas, borders and asylum (Eurodac, VIS and SIS II). The project will contribute to the discussions on the effectiveness and weaknesses of these databases from a fundamental rights perspective. The findings will inform the debate on the smart borders proposals.

2.4. Towards a focus that includes the fundamental right aspects of EU visa policy

The European Commission has assessed the compatibility of Member States' legislation on the right to appeal with the EU Charter on Fundamental Rights, its public consultation on the treatment of visa applicants, and the suggestion of exploring possibilities for protected entry, such as guidelines on a common approach to humanitarian permits or visas. The results indicate an increasing trend towards viewing visa policies in a fundamental rights context.

Regulation 539/2001/EC, listing third countries whose nationals need a visa to enter the Schengen countries and those whose nationals are exempted from the visa requirement, was amended in 2013. Among other objectives, the amendment allowed for the temporary reintroduction of visa requirements in emergency situations. This is when a Member State is faced with a major increase in the number of irregular immigrants and unfounded asylum requests originating from a particular country. The Member State may then ask the European Commission to suspend the visa waiver for that country. When a visa-exempt third country does not reciprocally respect the visa-free regime for the citizens of all Member States, the amendment also introduces a revised reciprocity mechanism with a view to enhancing the credibility of the EU visa policy and to enhance solidarity among Member States.[35]

The arguments for introducing such an emergency clause have been irregular immigration and the submission of asylum requests by nationals of Western Balkan countries with low recognition rates for asylum or protection claims.[36] The Council of Europe Commissioner for Human Rights noted that the authorities of some Western Balkan states are restricting the departure of individuals whom they consider at risk of applying for asylum in an EU Member State. He noted that between 2009 and 2012, in the former Yugoslav Republic of Macedonia (FYROM) alone, about 7,000 citizens were not allowed to leave the country, because authorities confiscated the passports of those returned by an EU Member State.[37]

Humanitarian visas

The idea of creating a 'humanitarian' visa for persons in need of protection has emerged as a consequence of the Syrian civil war. In principle, such a visa could be a long-term national visa or a short-term entry visa, governed by the EU common visa policy, followed by a permit once the person is in the EU. The Task Force Mediterranean indicates that the European Commission will explore possibilities for protected entry in the EU, possibly including guidelines on a common approach to humanitarian permits or visas.[38] Syrian nationals are subject to the short-stay visa requirement to enter the EU. In addition, 10 EU Member States (**Austria**, **Belgium**, the **Czech Republic**, **France**, **Germany**, **Greece**, **Italy**, **Luxembourg**, the **Netherlands** and **Spain**) require Syrian nationals to hold an airport transit visa when passing through the international transit areas of airports situated on their territory.[39] In a completely different context, the Visa Code[40] has developed a specific scheme facilitating the issuing of visas, for instance for members of the Olympic family[41] (Article 49, Annex XI), responding to the particular, exceptional and temporary needs faced by the Schengen countries hosting Olympic Games. In its communication on Syria, the EU High Representative for Foreign Affairs called on Member States to adopt a generous attitude towards the granting of humanitarian visas, or entry permits, to persons displaced by the Syrian crisis who have family

members in the EU. However, some Member States have in contrast tightened their practices; for instance, as of 1 December 2013 **Denmark** will grant Syrians a Schengen visa only in extraordinary situations, for example the life-threatening illness or death of a family member resident in Denmark.[42]

Treatment of visa applicants

EU Member States' consulates have an obligation to ensure that applicants are received courteously and their dignity is respected, according to Article 39 of the Visa Code. DG Home Affairs of the European Commission launched a public consultation between 25 March 2013 and 17 June 2013 to gather the views and experiences of the "main users" of the common visa policy.[43] A third of the 1,084 respondents, representing 17 nationalities, rated consular staff as not friendly. In general, most of the respondents complained that the employees of visa application centres, who are typically external service providers, were poorly informed and that they refused to accept applications for multiple entry visas. The respondents criticised that centres' services did not justify the high service charges, as, for instance, the staff did not take responsibility for the safety of passports entrusted to them. Embassies must ensure that external service providers, just like the embassies themselves, respect human dignity and the principle of non-discrimination.[44]

More than half of the respondents (57 %) said that obtaining all the necessary supporting documents required for a visa is difficult. The aim of the EU visa policy is to facilitate legitimate travel and tackle illegal immigration. Almost half of the respondents said that they would avoid travelling to the Schengen area based upon their experiences with the visa process (46 %), whereas a slight majority (54 %) said that they would not be deterred.

The right to appeal a negative visa decision

From a fundamental rights point of view, a particularly important EU visa *acquis* safeguard is the right to appeal against a visa decision. The following paragraphs describe developments on this matter, building on the overview that FRA provided in its 2012 Annual report.[45]

A visa applicant has the right to appeal if a visa has been refused, revoked or annulled.[46] After careful analysis of the information provided by EU Member States on the right to appeal against a visa refusal/annulment/revocation, the European Commission concluded that the right to an effective remedy and to a fair trial enshrined in Article 47 of the EU Charter of Fundamental Rights requires that the appeal against a visa refusal, annulment or revocation includes, at least or as the last instance of appeal, access to a judicial body. The Commission considered that the Czech Republic, Estonia, Finland, Hungary, Poland and Slovakia are not compliant with Article 47 of the Charter combined with the relevant articles of the Visa Code, as these Member States do not provide access to a judicial body. Letters of Formal Notice were sent to these Member States in early 2013. The amending act introducing into Hungarian law the possibility for judicial review as a last instance of appeal against decisions to refuse, revoke or annul a Schengen visa entered into force on 1 July 2013.[47] The initial replies from the other Member States concerned stated their disagreement with the analysis made by the Commission.

To make the appeal effective, the applicant needs to have sufficient information on the grounds for refusal and the procedures to follow. The timelines, language and other formal requirements for submitting an appeal should not pose unsurmountable obstacles.

Table 2.4 illustrates how a few EU Member States address the right to appeal against a visa decision in practice. It gives examples of timelines for submitting an appeal and related language requirements, two important factors in deciding whether or not the right to appeal can be considered to constitute an effective remedy.

The reason for refusing a visa is often that the EU Member State doubts the applicant's intention to leave the Schengen territory before the visa expires. This was the subject in the *Koushkaki* case,[50] for which the Administrative Court in Berlin requested a preliminary ruling from the CJEU. The CJEU concluded that the Member State cannot refuse to issue the applicant a Schengen visa unless one of the grounds for refusal of a visa listed in the Visa Code is met.[51] Refusal on other grounds based on national legislation is not allowed. The authorities have wide discretion in the examination of that application within the provision of the Visa Code, with a view to ascertaining if one of those grounds for refusal can be applied to the applicant. When deciding on the application, the authorities must be satisfied that there is no reasonable doubt that the applicant intends to leave the territory of the Member States before the visa expires. This must be determined in the light of the general situation in the applicant's country of residence and of the applicant's individual characteristics.

The Highest Administrative Court in **Austria** has, in three cases,[52] said that consular staff must explain the concrete reasons why they doubt an applicant intends to return. Specifying the reasons enables applicants to submit counter-evidence, allowing them to benefit from an effective remedy.

The Supreme Administrative Court of **Lithuania** ruled that the conditions for issuing a visa under the Visa Code must be met.[53] According to Lithuanian national law, multiple-entry short stay visas may be issued to a foreigner if he or she owns property in the country.

Table 2.4: Schengen short-stay visa data, by EU Member State

EU Member State	Short-term Schengen visas issued	Short-term Schengen visas refused, revoked or annulled	Appeals against refusal, revocation or annulment	Decision reversed/to be re-examined	Language in which the appeal has to be submitted	Timeline for submitting the appeal
DE	1,900,738	162,241	520 judicial appeals[48]	3, and 30 out-of-court settlements	German	One month
DK[49]	99,894	6,279	787	82	Any language	No deadline
FR	2,337,231	249,018	2,295	786	French	Two months

Sources: Denmark, Justitsministeriet; France, Ministère de la Justice; Germany, Bundesministerium der Justiz und für Verbraucherschutz

In this case, a visa had been issued on this ground, but the Border Guards later revoked it because they were of the view that the uninhabitable property was being sold by one foreigner to another to abuse the right to enter Lithuania. The court was of the opinion that, under Article 34 (2) of the Visa Code, a visa shall be revoked where it becomes evident that the conditions for issuing it are no longer met. The court therefore considered that the sale of the property registered in Lithuania was sufficient ground to revoke the Schengen visa, because the purpose of the visa had disappeared.

Outlook

The purpose of Eurosur, the European border surveillance system, includes protecting and saving the lives of migrants. The implementation of the Eurosur Regulation, begun in December 2013, will show whether it will serve only to control immigration or operational, technical and financial aspects will be put in place so that it can live up to its life-saving commitments. These would include concrete guidance comprised in the Eurosur handbook, to be adopted by the European Commission. Statistics on persons rescued at sea will help monitor Eurosur's life-saving commitments.

An additional challenge for the upcoming years is developing ways for assessing how the use of modern technologies in border management affects fundamental rights. Victims of data protection violations generally face difficulties in accessing remedies, as the FRA report on *Access to data protection remedies in EU Member States* referred to in this chapter shows. Because third-country nationals have even less access to legal assistance in complaint processes than EU citizens, they are in a particularly vulnerable situation. Provided they can raise the necessary resources, civil society organisations could be expected to focus increasingly on the implementation of fundamental rights safeguards in VIS and SIS II. They might also be expected to act as intermediaries so that victims of fundamental rights violations can make effective use of complaint mechanisms.

Discussions on the smart border proposals will continue, most likely accompanied by calls for an adequate assessment of their impact on fundamental rights in terms of opportunities and risks. Adequate safeguards to ensure fundamental rights are needed, since all third-country nationals coming for a short-stay visit will be included in the EU's large-scale databases. Through 'privacy by design', improved technologies may address some concerns. To reduce the risk of wrongly labelling somebody in the entry/exit system as an over-stayer, it will be increasingly important that exit registration can function not only at air borders but also at land and sea borders. Safeguards should also ensure that, if the third-country national has legal permission to stay, the system is updated.

EU Member States will increasingly have to consider fundamental rights implications when implementing visa policies. For example, applicants may more and more demand better explanations of why their visas have been refused, so that they can exercise their right to appeal.

Index of Member State references

Endnotes

All hyperlinks accessed on 30 April 2014.

1 Council Decision 2013/158/EU of 7 March 2013 fixing the date of application of Regulation (EC) No. 1987/2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II), OJ 2013 L87, p. 10, http://eur-lex.europa.eu/legal-content/EN/ALL/;jsessionid=jkLmT2SVtjs3pjBvJJs2jyfwwGhKtCsLpvTZJBzLWzRTvPKJydXT!864384702?uri=CELEX:32013D0158; Council Decision 2013/157/EU of 7 March fixing the date of application of Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II), OJ 2013 L87, p. 8, http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013D0157.

2 European Commission, Commission Implementing Decision 2013/122/EU of 7 March 2013 determining the date from which the Visa Information System (VIS) is to start operations in a fourth and a fifth region, OJ L 2013 65, p. 35, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system/index_en.htm; European Commission, Commission Implementing Decision 2013/266/EU of 5 June 2013 determining the date from which the Visa Information System (VIS) is to start operations in a sixth and a seventh region, OJ L 2013 154, p. 8, www.esteri.it/mae/normative/Normativa_Consolare/Visti/2013/20130606_Commission_Implementig_Decision_2013_266_EU.pdf.

3 European Commission, Commission Implementing Decision 2013/441/EU of 20 August 2013 determining the date from which the Visa Information System (VIS) is to start operations in an eighth region, OJ L 223, p. 15, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:223:0015:0016:EN:PDF.

4 European Commission, Commission Implementing Decision 2013/642/EU of 8 November 2013 determining the date from which the Visa Information System (VIS) is to start operations in a ninth, a tenth and an eleventh region, OJ L 299, p. 52, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:299:0052:0053:EN:PDF.

5 *Ibid*.

6 European Commission, Commission Implementing Decision 2013/493/EU of 30 September 2013 determining the third and last set of regions for the start of operations of the Visa Information System (VIS), OJ L 268, p. 13, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:268:0013:0016:EN:PDF.

7 European Commission, Directorate General Home Affairs (2013), Overview of Schengen Visa Statistics *2009-2012*, p. 39, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/docs/overview_of_schengen_visa_statistics_en.pdf.

8 European Ombudsman (2013), *Special Report of the European Ombudsman in own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex*, 7 November 2013, www.ombudsman.europa.eu/en/cases/specialreport.faces/en/52465/html.bookmark#hlo.

9 European Ombudsman (2013), Decision of the European Ombudsman closing own-initiative inquiry OI/5/2012/BEH-MHZ concerning the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), 12 November 2013, www.ombudsman.europa.eu/en/cases/decision.faces/en/52477/html.bookmark#hl12.

10 Amnesty International (2013), *Frontier Europe: Human rights abuses on Greece's border with Turkey*, available at: www.amnesty.org/en/library/asset/EUR25/008/2013/en/d93b63ac-6c5d-4d0d-bd9f-ce2774c84ce7/eur250082013en.pdf; Pro Asyl (2013), *Pushed back: Systematic human rights violations against refugees in the Aegean Sea and at the Greek–Turkish land border*, www.proasyl.de/fileadmin/fm-dam/l_EU_Fluechtlingspolitik/proasyl_pushed_back_24.01.14_a4.pdf.

11 Frontex (2013), *FRAN Quarterly, Quarter 1, January–March 2013*, July 2013, pp. 19 and 22; Frontex (2013), *FRAN Quarterly, Quarter 2, April–June 2013*, September 2013, pp. 20–21, 23 and 26.

12 Frontex (2013), *FRAN Quarterly, Quarter 1, January–March 2013*, July 2013, p. 5.

13 See United Nations High Commissioner for Refugees (UNHCR) (2014), *UNHCR observations on the current asylum system in Bulgaria*, 2 January 2014, p. 32, www.refworld.org/docid/52c598354.html.

14 Preliminary figures from the Spanish Ministry of the Interior (Office for Asylum) provided to FRA by UNHCR Madrid.

15 United Nations (UN), General Assembly (2013), Human Rights Council, *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, Mutuma Ruteere, UN Doc. A/HRC/23/56/Add.2, 6 June 2013, paras. 44–48; Spain, Defensor del Pueblo (2013), 'La Defensora del Pueblo pide el traslado a la península de los solicitantes de asilo de Ceuta y Melilla en situación de vulnerabilidad', statement, 26 December 2013, www.defensordelpueblo.es/es/Prensa/Notas/contenido_1388063458872.html.

16 European Commission (2011), 'Frequently asked questions: The Visa Information System goes live', Press release, Brussels, 11 October 2011, http://europa.eu/rapid/press-release_MEMO-11-682_en.htm?locale=en.

17 Regulation (EC) No 1987/2006 of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II), Art. 22(c), http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32006R1987.

18 FRA (European Union Agency for Fundamental Rights) (2014), *Access to data protection remedies in EU Member States*, Luxembourg, Publications Office of the European Union (Publications Office).

19 European Commission (2013), *Missing children in the European Union: Mapping, data collection and statistics*, prepared by ECORYS Nederland BV for the European Commission, DG Justice, pp. 59-60, http://ec.europa.eu/justice/fundamental-rights/files/missing_children_study_2013_en.pdf; *Fight against invisibility: To search and protect unaccompanied minors through the SIS II*, project implemented by Italy under the European Crime Prevention Network.

20 European Data Protection Supervisor (EDPS) (2013), Opinion of the European Data Protection Supervisor on the proposals for a regulation establishing an entry/exit system (EES) and a regulation establishing a registered traveller programme (RTP), 18 July 2013; Article 29 Data Protection Working Party (2013), *Opinion 05/2013 on smart borders, 00952/13/EN*, WP206, pp. 11–12, http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2013/wp206_en.pdf; Initial appraisal of a European Commission Impact Assessment Smart Borders Package: European Commission proposal on the entry/exit data of third-country nationals crossing the external borders of the EU, September 2013.

21 FRA (2011), *Fundamental rights of irregular migrants in the European Union*, Luxembourg, Publications Office, pp. 27–38.

22 European Data Protection Supervisor (EDPS) (2013), *Opinion of the European Data Protection Supervisor on the proposals for a regulation establishing an entry/exit system (EES) and a regulation establishing a registered traveller programme (RTP)*, 18 July 2013.

23 France, Cimade (2013), '"Frontières intelligentes": une nouvelle "invention" de l'Union européenne pour le

contrôle de ses frontières', 1 August 2013, www.lacimade.org/nouvelles/4557---Fronti-res-intelligentes-----une-nouvelle---invention---de-l-Union-Europ-enne-pour-le-contr-le-de-ses-fronti-res.

24 Meijers Committee, Standing committee of experts on international immigration, refugee and criminal law (2013), *Note Meijers Committee on the Smart Borders proposals COM(2013) 95 final, COM (2013) 96 final and COM (2013) 97 final)*, 3 May 2013, www.commissie-meijers.nl/assets/commissiemeijers/CM1307%20Note%20Meijers%20Committee%20on%20the%20Smart%20Borders%20proposals.pdf.

25 Denmark, Institut for Menneskerettigheder (2013), *Høring over forslag til forordninger om intelligente grænser,* 22 April 2013, J. No. 540. 10/289 69 /HSC/ LUJ J /RF J,http://menneskeret.dk/files/pdf/Hoeringssvar/2013/50_B_Forordninger_om_intelligente_gr%E6nser_(smart_borders)%2022.04.2013.pdf.

26 Finland, Government, EU committee, Division 6, Minutes of meetings on 4 November 2011 and 21 March 2013.

27 EDPS (2005), *Opinion of the European Data Protection Supervisor of 19 October 2005 of the three proposals regarding the Second Generation Schengen Information System (SIS II)*, OJ 2005 C 91, p. 38, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:091:0038:0056:EN:PDF; EDPS (2012), Executive summary of the Opinion of the European Data Protection Supervisor on the proposal for a Council regulation on migration from the Schengen Information System (SIS) to the second generation Schengen Information System (SIS II) (recast), 2012/C 336/06, OJ 2012 C 336, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:336:0010:0012:EN:PDF; EDPS (2006), *Opinion of the European Data Protection Supervisor on the Proposal for a Council Decision concerning access for consultation of the Visa Information System (VIS) by the authorities of Member States responsible for internal security and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences*, COM(2005) 600 final, OJ 2006 C 97, p. 6, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:097:0006:0010:EN:PDF; Meijers Committee, Standing committee of experts on international immigration, refugee and criminal law (2013), *Note on the Smart Borders proposals (COM(2013) 95 final, COM(2013) 96 final and COM(2013) 97 final*), 3 May 2013, www.commissie-meijers.nl/assets/commissiemeijers/CM1307%20Note%20Meijers%20Committee%20on%20the%20Smart%20Borders%20proposals.pdf.

28 Netherlands, Vrijbit (2013), 'Vingerafdrukweigeraars' verzoeken met actie "Hoge Hoed" ingrijpen minister', 15 July 2013, www.vrijbit.nl/dossiers/dossier-paspoortwet/item/940-vingerafdrukweigeraars-verzoeken-met-actie-hoge-hoed-ingrijpen-minister.html; De Nationale Ombudsman (2013), 'Principiële weigeraars biometrische gegevens paspoort', letter to the Minister of the Interior and Kingdom Relations, 4 September 2013, www.nationaleombudsman-nieuws.nl/sites/default/files/130904_minbzk_plasterk_weigeraars_biometrische_gegevens_in_paspoort.pdf; Platform Bescherming Burgerrechten (2013), 'Platform Overleg 27 Augustus 2013', 7 October 2013, http://platformburgerrechten.nl/2013/10/07/platform-overleg-27-augustus-2013.

29 Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code of Visas (*Visa Code*), Art. 23(4), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:243:0001:0058:EN:PDF.

30 Bergmann, K. (2013) 'Smart Border: EU-Pläne zur Grenzüberwachung „verletzen Grundrechte"', *Zeit Online*, 5 March 2013, www.zeit.de/digital/datenschutz/2013-03/schaar-smart-border.

31 Article 29 Data Protection Working Party (2013), *Opinion 05/2013 on smart borders, 00952/13/EN*, WP206, pp. 11–12, http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2013/wp206_en.pdf.

32 List of competent authorities which are authorised to search directly the data contained in the second generation Schengen Information System pursuant to Article 31(8) of Regulation (EC) No 1987/2006 and Article 46(8) of Council Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System, OJ C 103, p. 3, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2013.103.01.0001.01.ENG; List of competent authorities the duly authorised staff of which shall have access to enter, amend, delete or consult data in the Visa Information System (VIS), OJ 2012 C 79/5, 17 March 2012, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2013.103.01.0001.01.ENG; Regulation (EU) No. 603/2013 of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No. 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No. 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast), Art. 5, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0001:0030:EN:PDF.

33 UNHCR (2012), *An efficient and protective Eurodac*, November 2012, www.unhcr.org/50adf9749.pdf; Meijers Committee (2012), *Note Meijers Committee on the EURODAC proposal,* 10 October 2012.

34 Regulation 562/2006 of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (*Schengen Borders Code*), Art. 7(2), available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0001:0032:EN:PDF.

35 Regulation (EC) No. 1289/2013 of 11 December 2013 amending Regulation 539/2001 listing third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0074:0080:EN:PDF.

36 European Asylum Support Office (EASO) (2013), *Asylum applicants from the Western Balkans: Comparative analysis of trends, push–pull factors and responses*, December 2013, www.refworld.org/docid/53218ead4.html.

37 Council of Europe, Commissioner for Human Rights (2013), 'EU border control policies negatively affect human rights', press release, 6 November 2013, issued in conjunction with the launch of Council of Europe, Commissioner for Human Rights (2013), *The right to leave a country,* issue paper, October 2013, p. 48, www.coe.int/t/commissioner/source/prems/prems150813_GBR_1700_TheRightToLeaveACountry_web.pdf.

38 European Commission (2013), *Communication, on the work of the Task Force Mediterranean*, COM(2013) 869 final, 4 December 2013, http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131204_communication_on_the_work_of_the_task_force_mediterranean_en.pdf.

39 European Commission, DG Home Affairs (2013), *List of third countries whose nationals are required to be in possession of an airport transit visa when passing through the international transit area of airports situated on the territory*

of one/some Member States, 10 June 2013, http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/borders-and-visas/visa-policy/docs/annex_7b_atv-national_lists.en.pdf.

40 Regulation (EC) No. 810/2009 of 13 July 2009 establishing a Community Code on Visas (*Visa Code*), Annex 5, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:243:0001:0058:EN:PDF.

41 Regulation (EC) No. 810/2009 of The European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (*Visa Code*), Annex XI, 'Specific procedures and conditions facilitating the issuing of visas to members of the Olympic family participating in the Olympic Games and Paralympic Games', Art. 2(2), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:243:0001:0058:EN:PDF.

42 Denmark, Udlændingestyrelsen (2013), 'Ny visumpraksis for personer fra Syrien og Djibouti', Press release, 29 November 2013, www.nyidanmark.dk/da-dk/nyheder/nyheder/udlaendingestyrelsen/2013/ny_visumpraksis_personer_syrien_djibouti.htm.

43 European Commission, DG Home Affairs (2012), *Public consultation: Improving procedures for obtaining short-stay 'Schengen' visas – summary of responses*, 31 July 2013, http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2013/docs/consultation_025/report_on_the_results_of_the_consultation_en.pdf.

44 Regulation (EC) No. 810/2009 of 13 July 2009 establishing a Community Code on Visas (*Visa Code*), Annex 5, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:243:0001:0058:EN:PDF.

45 FRA (2012), *Fundamental rights: Challenges and achievements in 2012,* Annual report, Luxembourg, Publications Office, pp. 91–95.

46 Regulation (EC) No 810/2009 of 13 July 2009 establishing a Community Code on Visas (*Visa Code*), Art. 3 (3), Art. 34 (7), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:243:0001:0058:EN:PDF.

47 Hungary, Act No XCIII of 2013 amending certain law enforcement related acts, Official Gazette No. 2013/101 of 20 June 2013, pp. 55270–55317.

48 For administrative appeals, there are no separate statistics for Schengen visas.

49 Preliminary estimates, not official and validated statistics.

50 CJEU, C-84/12, *Koushkaki,* 19 December 2013.

51 Grounds for refusal are not providing justification for the purpose and conditions of the intended stay, or proof of subsistence for the stay; doubts on the supporting documents; an alert having been issued in SIS with the purpose of refusing entry. See the Visa Code, Art. 32(1).

52 Austria, Verwaltungsgerichtshof, 2013/21/0064, Decision, 2 August 2013, www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_2012210158_20130516X00; Austria, Verwaltungsgerichtshof, 2012/21/0158, Decision, 16 May 2013, www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_2013210057_20130802X00; Austria, Verwaltungsgerichtshof, 2013/21/0057, Decision, 2 August 2013, www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_2013210064_20130802X00.

53 Lithuania, Supreme Administrative Court, *A. A. v. Migration department under the Ministry of the Interior of the Republic of Lithuania*, No. A-858-762/2013.

UN & CoE

January

19 February – The European Court of Human Rights (ECtHR) declares inadmissible an application brought by two co-founders of The Pirate Bay, one of the biggest file-sharing websites. The *Neij and Sunde Kolmisoppi v. Sweden* case focuses on the violation of their rights to freedom of expression, because the two were convicted of committing crimes under the Copyright Act. Sharing files online falls under the right to "receive and impart information" enshrined in Article 10 of the European Convention on Human Rights (ECHR), but the domestic courts had correctly balanced the applicants' right against the need to protect copyright

25–27 February – In the recommendations of the first 10-year review event of the World Summit on the Information Society, the United Nations Educational, Scientific and Cultural Organization (UNESCO) reaffirms that the same human rights that apply in the offline world should also be protected online

February

March

17 April – The United Nations (UN) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression publishes his annual report, indicating that state communications surveillance undermines the human rights to privacy and freedom of expression

18 April – The ECtHR rules in *M.K. v. France* that there were insufficient safeguards for the authorities' collection, retention and deletion of the fingerprints of a person suspected, but not convicted. of theft, violating that person's right to respect for private life

April

May

4 June – The ECtHR concludes that the *Peruzzo and Martens v. Germany* case is inadmissible. The court's order to collect cellphone material from people convicted of serious crimes and store it in databases in the form of DNA profiles was necessary and proportionate

11 June – The Council of Europe Committee of Ministers adopts a Declaration on Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies

20–21 June – European stakeholders meet in the regional forum European Dialogue on Internet Governance (EuroDIG) to discuss how to use an open and safe internet to serve the public interest

24 June – The Parliamentary Assembly of the Council of Europe (PACE) Committee on Legal Affairs and Human Rights adopts the report *National security and access to information* and urges governments to align their laws in relation to whistleblowers with a set of global principles

25 June 2013 – The ECtHR finds in *Youth Initiative for Human Rights v. Serbia* that the refusal of the Serbian intelligence agency to provide information on the number of people it had subjected to electronic surveillance violated the right of the applicant non-governmental organisation (NGO) to receive information

June

16 July – The ECtHR finds in *Nagla v. Latvia* that the seizure of data storage devices kept in a journalist's home violated the right to freedom of expression, including journalists' right not to disclose their sources

July

August

September

10 October – The ECtHR rules in *Delfi AS v. Estonia* that finding an internet news portal liable for offensive online comments of its readers is a justified and proportionate restriction on the portal's right to freedom of expression

22–25 October – The first focus session on human rights on the internet in the Internet Governance Forum ends with a call to enhance its role in the field of human rights protection on the internet, as well as for the states to consult stakeholders during the legislative procedure

October

8 November – The ministers responsible for media and information society in the Council of Europe member states adopt a political declaration and three resolutions on internet freedom, the role of media in the digital age and the safety of journalists at the Council of Europe Ministerial Conference in Belgrade

November

18 December – The United Nations General Assembly adopts a resolution on the right to privacy in the digital age

December

EU

11 January – The European Cybercrime Centre (EC3) officially opens at the European Union (EU) law enforcement agency (Europol)

January

7 February – The European Commission publishes a *Joint Communication on Cyber Security Strategy of the European Union: an Open, Safe and Secure Cyberspace*

7 February – The European Commission adopts a proposal for a directive on measures ensuring a high common security level across EU network and information systems

February

19 March – The Court of Justice of the European Union (CJEU) adopts its judgment in the *Sophie in 't Veld MEP v. European Commission* case about the transparency of Anti-Counterfeiting Trade Agreement (ACTA) documents, by annulling the Commission Decision of 4 May 2010, which refused to grant access to documents

27 March – The European Commission proposes a new regulation on Europol, which suggests amending data protection safeguards

March

24 April – The European Commission adopts the green paper *Preparing for a fully converged audiovisual world: Growth, creation and value*

24 April – The European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE) rejects the EU Passenger Name Record (PNR) proposal

April

13 May – The European Commission presents plans for the Global Internet Policy Observatory to monitor internet-related policy and regulatory and technological developments across the world

30 May – In *Commission v. Sweden*, the CJEU orders Sweden to pay a €3,000,000 lump sum for its delay in transposing the Data Retention Directive into national law

May

10 June – Vice-President Viviane Reding sends a letter to the United States (US) Attorney General to enquire about PRISM and other surveillance programmes

13 June – In *Michael Schwarz v. Stadt Bochum*, the CJEU concludes that the interference of security features and biometrics in EU Member State passports and travel documents with personal data protection is proportionate

25 June – The Council of the European Union approves the comprehensive text delivered by the Friends of the Presidency Group on Cyber Issues regarding the implementation of the European Strategy for Cybersecurity

June

4 July – The European Parliament passes a resolution instructing LIBE to conduct an in-depth inquiry into the US surveillance programmes

July

12 August – The Directive on Attacks against Information Systems is adopted; it will strengthen the protection of personal data by reducing the ability of cybercriminals to abuse victims' rights with impunity

August

11 September – The European Commission presents a proposal for a regulation laying down measures concerning the European single market for electronic communications and to achieve a connected continent

September

21 October – LIBE adopts its report on the General Data Protection Regulation and the separate directive for the law enforcement sector

October

November

10 December – The CJEU Advocate General issues his opinion on the *Commission v. Hungary* case, suggesting a breach of the independence of the Hungarian data protection authority (DPA)

12 December – In his opinion, the CJEU Advocate General concludes that the Data Retention Directive is incompatible with the EU Charter of Fundamental Rights

18 December – The rapporteur of the LIBE inquiry committee on mass surveillance suggests, in his preliminary conclusions, suspending the Safe Harbour and the Terrorist Finance Tracking Programme (TFTP) agreements, creating a European data cloud and guaranteeing judicial redress for EU citizens whose data are transferred to the United States of America (USA)

December

3 Information society, respect for private life and data protection

Unprecedented revelations about the United States' and United Kingdom's mass surveillance of global telecommunication and data flows captured international newspaper headlines for weeks in 2013. This put the issue of privacy in the public spotlight and highlighted the gap between rapidly evolving technologies and current laws safeguarding the right to privacy. The revelations occurred while the EU was in the midst of its most important data protection legislation reform in 20 years and, by forcefully underlining the need for a strong data protection framework, marked a turning point in the debate. Disturbed by these revelations, EU and Member State policy makers took immediate steps to shore up data protection rules, while civil society pushed for greater transparency and more effective remedies before data protection authorities and courts. In reaction to the revelations, the EU legislature successfully incorporated significant reforms into the data protection reform package. Despite some progress, the reform had not been finalised by the end of 2013.

3.1. Mass surveillance revelations spark global concern

Beginning in June 2013, United States National Security Agency (NSA) contractor Edward Snowden leaked documents to several media outlets, revealing operational details of global surveillance programmes carried out by the NSA and by the United Kingdom's Government Communications Headquarters (GCHQ). Of particular interest in the EU, the global programmes targets included EU institutions and Member States' embassies.[1]

Just weeks before these revelations sent shockwaves across the EU and the globe, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, noting this gap between rapidly evolving technologies and current laws safeguarding the right to privacy, pointed out specific shortcomings, such as a lack of judicial oversight of surveillance measures (see also Chapter 10 on EU Member States and international obligations).[2] The UN General Assembly, echoing the calls of the UN Special Rapporteur, asked member states to review their legislation on such surveillance to ensure that it was aligned with their international human rights obligations. It adopted a resolution on the right to privacy in the digital age in December 2013.[3]

Key developments in the area of information society, respect for private life and data protection

- Revelations of mass surveillance reverberate across the areas of information society, privacy and data protection. These revelations cause civil society organisations to protest and call for better protection; they also incite EU and EU Member State policy makers and legislators to adopt more robust measures, tighten legislative protection and propose greater data protection safeguards.
- As a result of the revelations, the UN General Assembly adopts an unprecedented text on the protection of privacy.
- The revelations – which are made while the EU is in the midst of its biggest data protection legislation reform in 20 years – make clear that the fundamental rights protection in the digital world needs greater attention.
- The European Parliament adopts its report on the data protection reform package, but the reform is delayed in the Council of the European Union.

As media published the first revelations, the Council of Europe Committee of Ministers adopted a Declaration on Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies. The declaration said: "legislation allowing broad surveillance of citizens can be found contrary to the right to respect of private life. These capabilities and practices can have a chilling effect on citizen participation in social, cultural and political life and, in the longer term, could have damaging effects on democracy."[4] On 24 October 2013, the Council of Europe Commissioner for Human Rights published a human rights comment[5] highlighting the threats to human rights and the right to privacy when secret surveillance spreads. In addition, ministers responsible for media and information society adopted a political declaration in November 2013, underlining that "any [...] surveillance for the purpose of the protection of national security must be done in compliance with existing human rights and rule of law requirements".[6]

Table 3.1 details the most publicised surveillance programmes, but subsequent revelations made clear that these represent just the 'tip of the iceberg'.[7]

3.1.1. European Union takes action in response to mass surveillance news

> *"The surveillance scandals have been a wake-up call, and Europe is responding."*
>
> *Vice-President Viviane Reding, 'A data protection compact for Europe', 28 January 2014, Speech/14/62, available at: http://europa.eu/rapid/press-release_SPEECH-14-62_en.htm*

The European Parliament, European Commission and Council of the European Union reacted promptly to the Snowden revelations, taking a number of steps that expressed concern about the mass surveillance programme, sought clarification and worked to rebuild trust, for example, in data flows. Table 3.2 summarises these measures. The European Parliament instructed LIBE to conduct an inquiry.[8] Its draft report, finalised in January 2014, launches 'a European digital habeas corpus for protecting privacy', based on eight concrete actions. These include the adoption of the EU data protection reform package by 2014 (for more on the data protection reform package, see Section 3.2), the enhanced protection of whistleblowers, the development of

Table 3.1: Main surveillance programmes

Name of the programme	Description of alleged programme
PRISM	Provides the NSA with direct access to the central servers of nine leading United States internet companies, allowing them to collect customer material including search histories, the contents of emails, file transfers and live chats.
XKeyscore	Allows NSA analysts to search, without prior authorisation, through vast databases containing emails, online chats and the browsing histories of millions of internet users, as well as their metadata.
Upstream	Collection programmes operated by the NSA, consisting of warrantless wiretapping of cable-bound internet traffic.
Bullrun	Decryption programme run by the NSA in an effort to break through widely used encryption technologies, allowing the NSA to circumvent encryption used by millions of people in their online transactions and emails.
MUSCULAR	Joint programme operated by the NSA and GCHQ to intercept, from private links, data traffic flowing between major platforms such as Yahoo, Google, Microsoft Hotmail and Windows Live Messenger.
Tempora	Upstream surveillance activity allowing GCHQ to access large fibre optic cables that carry huge amounts of internet users' private communications and then share them with the NSA.
Edgehill	Decryption programme, operated by GCHQ, intended to decode encrypted traffic used by companies to provide remote access to their systems.

Sources: Moraes, C. (2013), Working Document 1 on the US and EU surveillance programmes and their impact on EU citizens' fundamental rights, PE524.799v01-00, Brussels, 11 December 2013; Bowden, C. (2013), The US surveillance programmes and their impact on EU citizens' fundamental rights, study for the European Parliament, PE 474.405, Brussels, September 2013

a European strategy for greater IT independence and the suspension of specific US–EU agreements.

The 2013 draft report, adopted in spring 2014,[9] focuses on Decision 2000/520/EC, the so-called Safe Harbour Decision,[10] which provides the legal basis for the transfer of personal data from the EU to US companies. These transfers rest on the Safe Harbour Privacy Principles, and on the Terrorist Finance Tracking Programme (TFTP), the first of which guarantees that the US companies registered offer the 'adequate' level of privacy protection that EU law requires.

The Council of the European Union set up an ad hoc EU–US working group to establish the facts about the US surveillance programmes and their impact on fundamental rights in the EU and on the personal data of EU citizens. On 27 November 2013, the working group published its findings.[11] As well as describing the data protection guarantees in place, the report highlights the discrepancies between the US and the EU data protection legal regimes.

On 27 November 2013, based on the working group's report, the European Commission published two communications on the consequences of the revelations.[12]

The first, the *Communication on the Functioning of the Safe Harbour*, assesses the implementation of the Safe Harbour Decision and recommends a number of improvements.[13] The communication suggests, for example, that companies inform their customers when US public authorities are allowed to collect and process data for reasons of national security, public interest or law enforcement.

The second, the *Communication on Rebuilding Trust in EU–US Data Flows*,[14] assesses the large-scale surveillance's impact on various EU–US agreements. It questions the necessity and proportionality of the US surveillance programmes in the context of national security. The communication highlights the relevance of the data protection reform package in this context. Once adopted, the reform will enhance EU citizens' data

Table 3.2: Key EU documents adopted in the aftermath of the mass-surveillance revelations

Body	Title	Reference
European Commission	10 June 2013 – Vice-President Viviane Reding requests explanations of and clarifications on the PRISM programme	
European Commission	19 June 2013 – Vice-President Reding and Commissioner Cecilia Malmström send a letter to US authorities expressing their concerns about the consequences of US surveillance programmes for the fundamental rights protection of Europeans	
European Parliament	Resolution of 4 July 2013 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' privacy	P7_TA(2013)0322
European Parliament	Resolution of 23 October 2013 on the suspension of the TFTP agreement as a result of US NSA surveillance	P7_TA(2013)0449
Council of the European Union	*Report of 27 November 2013 on the findings by the EU Co-chairs of the ad hoc EU–US Working Group on Data Protection*	16987/13
European Commission	*Communication from the Commission to the European Parliament and the Council: Rebuilding trust in EU–US data flows*	COM(2013) 846 final of 27 November 2013
European Commission	*Communication from the Commission to the European Parliament and the Council on the functioning of the Safe Harbour from the perspective of EU citizens and companies established in the EU*	COM(2013) 847 final of 27 November 2013
European Commission	*Communication from the Commission to the European Parliament and the Council on the joint report from the Commission and the US Treasury Department regarding the value of TFTP provided data*	COM(2013) 843 final of 27 November 2013
European Parliament	*Draft report of 8 January 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in justice and home affairs*	PE526.085v02-00

Source: FRA, 2013

protection guarantees (for more on data protection reform, see Section 3.2). It also suggests improving the Safe Harbour Decision and enhancing the safeguards it provides in the context of law enforcement cooperation. It calls for the strengthening of privacy on the internet, which should not undermine the freedom, openness and security of cyberspace (for more on the information society, see Section 3.3).

3.1.2. EU Member States respond to mass surveillance

In EU Member States, reactions to the revelations varied from a complete lack of response to popular protest. In **Finland**, for example, citizens submitted an initiative to reform data protection legislation. Entitled 'Yes we can: The law for safeguarding of freedom of expression and privacy internationally', the proposal was submitted to the Ministry of Justice online service on 8 July 2013, but it has not yet brought about concrete legislative changes.[15] The initiative proposes criminalising disproportionate citizen surveillance and making it a universal crime, whose perpetrators could be prosecuted in Finland even if the act has been committed elsewhere. It also proposes to extend the authorities' and telecommunication operators' liability to report mass personal data collection, storage and use. At the moment, the Finnish Ministry of the Interior alone reports to the European Commission on data retention practices; companies are not obliged to report on their data protection practices at all. The initiative also includes provisions aiming to protecting the legal status of whistleblowers, forbidding their extradition or the rejection of their applications for entry or residence permits.

In **Germany**, the Conference of Data Protection Commissioners sharply criticised the lack of clarification by the US authorities on the scope of the mass surveillance programmes and called on the governments of the Federation and the states (*Länder*) to protect fundamental rights, strengthen the oversight of intelligence services, and stop and prevent any unconstitutional cooperation of intelligence services.[16] Civil society reacted strongly. On 7 September 2013, several thousand people protested in Berlin against surveillance. The rally, organised and supported by a broad coalition of 85 civil liberties organisations, privacy advocacy groups, journalists' federations, political parties and their youth organisations,[17] attracted around 15,000 protestors.[18] Under the banner of 'Freedom Not Fear – Stop Surveillance Mania!' (*Freiheit statt Angst. Stoppt den Überwachungswahn!*), the protestors objected to telecommunications surveillance by secret services, data retention, body scanners, biometrics, passenger name record registration and video surveillance. They called for a strong European data protection regime, an independent evaluation of existing surveillance powers and a moratorium on planned surveillance measures.[19] In addition, new types of group protests boomed: 'walk-ins' near the offices of domestic and US intelligence agencies attracted media attention;[20] and at 'cryptoparties' information technology experts trained people in how to protect and encrypt their data and electronic communications.[21]

Some EU Member States assessed reform of intelligence service legislation in the light of the Snowden revelations. In **France**[22] and **Hungary**,[23] for example, amendments regulating intelligence services' access to personal data prompted criticisms from civil society organisations, politicians[24] and specialist bodies such as the French National Digital Council[25] and the Hungarian DPA,[26] respectively. In November 2013, the Hungarian Constitutional Court validated the related law's constitutionality. The court ruled that a counter-terrorism organisation was not violating the right to privacy by collecting covert intelligence on citizens based on ministerial permission rather than on a court warrant.[27]

On 19 July 2013, the **German** Federal Government presented an eight-point programme to help clarify the facts on mass surveillance and ensure more robust protection of privacy and data. Entitled 'Germany is a country of freedom', the programme suggests the following steps:

1) suspend the administrative agreements on communication surveillance with France, the United Kingdom and the US as quickly as possible;

2) hold expert talks with the US to examine the topic;

3) push for an international data protection agreement (in the form of an additional protocol to Article 17 of the International Covenant for Civil and Political Rights);

4) promote the implementation of the EU Data Protection Regulation, including the obligation for private companies to report data transfers to third countries (see Section 3.2);

5) develop standards under which EU Member States' intelligence agencies may cooperate;

6) develop and implement a European information technology strategy in collaboration with the European Commission;

7) establish a roundtable discussion on the subject of 'security technology for information technology', in public–private partnership with research institutes and private companies;

8) strengthen citizens' information technology security education through an internet safety awareness initiative ('*Deutschland sicher im Netz*').[28]

The German government suspended the administrative agreements with the US in August. It also held talks with France and the United Kingdom. Many questions remain unanswered, however, and it is impossible to know which direction the talks on a so-called 'No Spy Agreement' will take.

In the **Netherlands**, the revelations triggered parliamentary questions. On 2 December 2013, the government established a commission to assess the Act on the Information and Security Agencies 2002 (*Wet op de inlichtingen- en veiligheidsdiensten 2002*). It found that the agencies' powers should be extended, given the new threats to national security from cyberattacks and digital espionage.[29]

In **Slovenia**, the revelations also prompted a parliamentary question. The government responded on 28 November 2013, saying that overarching large-scale surveillance is not permissible, due to human rights protection standards, including data privacy rights, and the rule of law.[30]

3.1.3. Requests for information and remedies

The Snowden revelations also prompted calls for more transparency and prompted some to seek remedies for alleged rights violations before data protection authorities and the ECtHR.

In October 2013, Polish NGOs requested information from various state agencies and institutions on the surveillance programmes.[31] Some, such as the DPA, provided comprehensive answers about their PRISM-related activity. Others responded only in part and in general terms. The Polish Parliament's secret services committee confirmed, for example, that there was neither a meeting on PRISM nor did any individual committee member motion to discuss that mass surveillance programme. Finally, some entities, such as the intelligence services, replied that they could not answer any of the questions because of national security concerns or other confidentiality reasons.[32] All the answers are published online.[33]

The Polish Human Rights Defender called for an investigation into PRISM.[34] The Prosecutor General informed the Human Rights Defender on 19 November 2013 that he had not found any grounds to launch such an investigation.[35]

The Irish data protection authority assessed Facebook's compliance with data protection law in the light of the Snowden revelations. The Irish authority dismissed Europe-v-Facebook.org's complaint as frivolous and vexatious, given that Facebook had acted within the terms of the EU–US Safe Harbour data-sharing agreement.[36] On 21 October 2013, the High Court granted permission to seek judicial review of the Data Protection Commissioner's decision. A hearing on the case is likely to take place in 2014.

The National Commission for Data Protection of Luxembourg said in the summer of2013 that it was looking into data transfers to the NSA by Skype, a voice-over-internet protocol and instant messaging service belonging to US-based information technology company Microsoft. In November 2013, it announced that the transfer of certain types of data to affiliated companies in the United States, as established in the privacy policies of both companies, is operating legally, in accordance with the rules of the adequacy Decision 2000/520/EC of the European Commission to implement the Safe Harbour agreement. Therefore, the DPA found no violation of the legislation's provisions on personal data protection by either Skype or Microsoft. The DPA emphasised that its decision could not be seen as confirming the existence or otherwise of surveillance programmes such as PRISM, since its competence was limited to the two companies' Luxembourg activities.[37]

In September 2013, three civil society organisations and one individual complained before the ECtHR that the United Kingdom's GCHQ surveillance programmes violated their right to privacy under Article 8 of the ECHR. The ECtHR communicated the complaint to the government of the United Kingdom.[38]

3.2. EU recognises need for robust data protection regime

The Snowden revelations in the spring of 2013 marked a turning point in discussions on the EU data protection reform, forcefully underlining the need for a strong data protection framework.

European Commission Vice-President Viviane Reding, who categorised the revelations of mass surveillance as a wake-up call for the EU legislature, emphasised the need for a robust, clear and enforceable data protection legal framework to ensure the protection of the fundamental rights of those living in the EU.

> *"A strong legislative framework with clear rules that are enforceable also in situations when data is transferred and processed abroad is, more than ever, a necessity. It would provide legal certainty and protection for European data subjects and companies."*
>
> *Vice-President Viviane Reding, 'Mass surveillance is unacceptable – US action to restore trust is needed now', 9 December 2013, Speech/13/1048, available at: http://europa.eu/rapid/press-release_SPEECH-13-1048_en.htm*

3.2.1. Reform of the EU data protection regime

Globalisation and the rapid growth of information technology have fundamentally reshaped the way personal data are collected and processed since the 1995 adoption of Directive 95/46/EC.[39] Even before the Snowden revelations, there was a need to strengthen individuals' fundamental rights to data protection and to boost the digital economy in the EU, which led the European Commission, in January 2012, to propose a comprehensive reform of this directive (see Table 3.3).

The new General Data Protection Regulation[40] aims to create a single set of binding EU data protection rules. Once adopted, it will replace Directive 95/46/EC. The Data Protection Directive,[41] which would replace the Data Protection Framework Decision,[42] covers law enforcement authorities' processing of personal data.

In 2013, the European Data Protection Supervisor (EDPS) published additional comments[43] on the reform to ensure that the new data protection regime is effective in practice. Its comments responded to amendments proposed by various European Parliament committees. The Article 29 Working Party also discussed the reform and issued an opinion[44] on the draft directive and a working document[45] on the implementing acts of the draft regulation.

Unprecedented lobbying from partisan US companies and civil society organisations dogged the European legislature as the Parliament worked out the details of the new data reform package. The Chair of the Article 29 Working Party spoke plainly when summarising the intense pressure, stating that European lawmakers were "fed up" with US lobbying.[46] While the lobby groups generally supported the single set of data protection rules that the regulation would set up in the EU, they opposed the supposed administrative burden, increased accountability and heavier fines – to name just a few of the contentious elements.

> *"The scandal has an impact. But MEPs [Members of the European Parliament] are aware that we're also discussing the broader issue: fundamental rights and privacy in general, especially when it concerns the issue of governmental intelligence. […] Another important impact on the debate is that all MEPs, politicians but also individuals now see the importance of having a common European legal framework. This protects our personal rights, also in the internet environment."*
>
> *Jan Philipp Albrecht, Member of the European Parliament, LIBE rapporteur on the draft regulation, Brussels, 26 September 2013*

The LIBE rapporteurs adopted their draft reports on the draft regulation[47] and directive[48] in January, and four other European Parliament committees also released opinions proposing amendments. After months of negotiations on the proposed amendments, LIBE voted on 21 October 2013 by an overwhelming majority in favour of several compromise amendments that would, in broad terms, strengthen the reform package's data protection safeguards. The plenary is to adopt the package in spring 2014.

The LIBE amendments incorporated into the draft strengthen various protections. These include, for example, reinforcing the role to be given to the future European Data Protection Board. They also tighten the rules on consent needed before an individual's data

Table 3.3: Data protection reform package proposals

EU instrument	Title	Reference	European Parliament report
Draft regulation	Proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)	COM(2012) 11 final, Brussels, 25 January 2012	Draft European Parliament Report voted in LIBE on 21 October 2013: C70025/2012 – 2012/0011(COD)
Draft directive	Proposal for a directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data	COM(2012) 10 final, Brussels, 25 January 2012	Draft European Parliament Report voted in LIBE on 21 October 2013: C70024/2012 – 2012/0010(COD)

Source: FRA, 2013

are processed. They merge the right to data portability with the right of access, allowing individuals to request that their data be moved from one service provider to another. They also subsume the 'right to be forgotten and to erasure' under the 'right to erasure'. Together, these changes make it possible for individuals to request that their personal data be erased from a website. The LIBE amendments also make mandatory the appointment of a data protection officer for any company which processes the data of 5,000 data subjects in any given consecutive 12-month period. They also restrict the grounds for transfer of personal data to countries outside the European Economic Area.

The LIBE amendments focused particularly on strengthening national DPAs, which are required by EU law and function as the first line of defence against data protection violations.

LIBE secured, for example, enhanced DPA independence, the lack of which has been a focus of pointed criticism in recent years. The committee's input ensured that DPAs will be given adequate financial resources and staff to carry out their obligations. These encouraging developments are in line with previous FRA opinions,[49] which expressed concern at the lack of independence of DPAs. LIBE also improved access to remedies by strengthening the DPAs' sanctioning power: sanctions can now include the obligation to perform periodic audits, and fines could be as high as €100 million or 5 % of annual global turnover. These powers are to be exercised "in an effective, proportionate and dissuasive manner". These amendments were supported by FRA findings published in *Access to data protection remedies in EU Member States*.

The Snowden revelations did not lead the Council of the EU to finalise the data protection reform by the end of 2013. EU Ministers of Justice, meeting both informally in January 2013 in Dublin and in July 2013 in Vilnius and at formal Justice and Home Affairs meetings of the Council of the EU, discussed data reform intensively. The main topics of discussion were controllers' obligations, risk-based approaches, specific rules for small- and medium-sized enterprises, 'one-stop-shop' mechanisms enabling complainants to access remedies before a single DPA, the consistency mechanism and questions relating to judicial review and judicial redress.

3.2.2. Key reforms affect data protection authorities

The role data protection authorities play in enforcing data protection guarantees is pivotal. Like other non-judicial bodies protecting fundamental rights, their independence is crucial (see Chapters 8 on access to justice and judicial cooperation, and 10 on EU Member States and international obligations).

FRA ACTIVITY

Researching access to data protection remedies in EU Member States

The FRA conducted research on how data protection violations are remedied in practice in order to identify the main challenges faced by different actors and ways to improve access to such remedies. The research shows that the bodies most commonly turned to when seeking remedies in this field are DPAs, while judicial procedures are rarely used. However, the research, based on an analysis of legal frameworks in the 28 EU Member States complemented by fieldwork research with over 700 people in 16 EU Member States, found great variations in the national DPAs' powers to remedy data protection violations. While some non-judicial bodies have sufficient powers to offer effective remedies, there is minimal coordination between DPAs and other non-judicial bodies. The project identifies other areas where work remains to be done, suggesting, for example, the need for measures raising awareness about EU legislation. The findings of the FRA project *Access to data protection remedies in EU Member States* are feeding into the European Commission's work on the data protection reform package.

For more information, see: Access to data protection remedies in EU Member States, *available at:* http://fra.europa.eu/sites/default/files/fra-2014-access-data-protection-remedies_en.pdf

As the FRA stated in its previous annual reports and discussed in the joint Council of Europe–FRA *Handbook on European data protection law*,[50] the CJEU has addressed concerns about the independence of the DPAs. The CJEU interpreted Directive 95/46/EC in terms of independence in two landmark decisions regarding Austria and Hungary.[51] In response to the CJEU judgment of 16 October 2012, which considered that the Austrian DPA lacked independence, **Austria** passed legislation in 2013 amending its legal framework. As of 1 January 2014, a new data protection authority will replace the previous data protection commission.[52] In *European Commission v. Hungary*, a case which also relates to requirements for DPAs' independence, the CJEU is expected to deliver a judgment in 2014. The CJEU Advocate General concluded on 10 December 2013 that **Hungary** had violated EU law by terminating the Data Protection Commissioner's mandate ahead of its stipulated term and recommended that the CJEU declare Hungary in violation of DPA independence requirements.[53]

The consequences of the CJEU case law for DPAs' independence triggered national legislation reform in other EU Member States as well. The **Latvian** Parliament worked on amendments to the Personal Data Protection Law[54] at the end of 2013. The amendments specify the duties and competences of the State Data Inspectorate,

in particular in the area of complaints related to data protection violations. In **Lithuania**, on 27 November 2013, the new regulation strengthening the independence of the Data Protection Inspectorate[55] was approved. Under this regulation, the director is now in charge of the DPA's administrative structure, whereas this was previously a governmental responsibility. The director acts in this context in total independence. The **Slovakian Parliament** passed a data protection law on 30 April 2013, enhancing the transposition of the Data Protection Directive.[56] In **Poland,** the key change discussed was the establishment of local branches of the DPA in order to decentralise the institution and make it more accessible to individuals living outside Warsaw, where it currently has its headquarters, but a lack of funds has so far kept this from happening.

The 2010 FRA report *Data Protection in the European Union: The role of national data protection authorities* considered the appointment procedure for the Greek DPA a promising practice.[57] The Greek constitution requires a four-fifths majority of the Conference of the Presidents, a parliamentary instrument, to approve the appointment of all independent authority members, including of the Greek DPA. This practice still exists. Owing to a lack of broad consensus among current parliamentary political forces, however, it is not always possible to reach the consensus necessary for these appointments. This issue has affected other independent authorities, but not the Greek DPA.

3.2.3. Raising awareness of data protection

That there is a lack of awareness about data protection safeguards is the overarching finding of the FRA report *Access to data protection remedies in EU Member States*. To address this, the FRA and the Council of Europe finalised the publication of an easy-to-use handbook, and DPAs in several EU Member States launched projects, for example creating booklets intended to raise young people's awareness of data protection and ensure that they are better informed of their rights.

FRA ACTIVITY

Presenting EU and Council of Europe law on data protection

FRA, the Council of Europe and the ECtHR drafted a *Handbook on European data protection law* to provide an overview of EU and Council of Europe law on data protection. Designed for legal practitioners who are not specialists in the field of data protection, the handbook examines the relevant law in this field stemming from both European systems, including important selected case law.

For more information, see: Handbook on European data protection law, *available at: http://fra.europa.eu/sites/default/files/fra-2014-handbook-data-protection-law_en.pdf*

Promising practice

Fighting misuse of children's personal data and raising awareness

In several Member States, DPAs implemented various activities targeted specifically at protecting children (see Chapter 4 on the rights of the child and the protection of children).

The German State Commissioner for Data Protection and Freedom of Information in Rhineland-Palatinate launched the first German DPA website to specifically target young people. It raises awareness of data protection issues and disseminates knowledge on how to protect personal data in general and on the internet in particular. It provides concrete suggestions about how to protect personal data when using social media or games consoles.

For more information, see: www.youngdata.de

The Hungarian National Authority for Data Protection and Freedom of Information issued a booklet on data protection for children.[58] Its purpose is to draw attention to the risks of children's internet use, specifically of those aged 10–16, to identify future challenges and to promote the conscious use of the internet and the exercise of privacy rights.

For more information, see: Hungarian National Authority for Data Protection and Freedom of Information (2013), Key to the World of the Internet!, available at: www.naih.hu/files/2013-projektfuzet-internet.pdf

3.2.4. Reform and implementation of the Data Retention Directive

The EU continues its work on revising the Data Retention Directive,[59] which supports the fight against crime and terrorism by requiring telecommunications service providers to retain traffic and location data for between six months and two years from the date of the communication.

Several EU Member States amended their legislation, while others questioned the legality of the adopted laws transposing the Data Retention Directive into national law. The **Belgian** Government for example, adopted a royal decree transposing the Data Retention Directive into Belgian law.[60] In **Poland**, a legislative amendment to the telecommunications law reduced the data retention period to 12 from 24 months and prohibited the use of data retention in civil proceedings.[61] The **Danish** Parliament decided to postpone its review of data retention rules until the parliamentary year 2014–2015, in order to await the revision of the Data Retention Directive.[62] The **Slovenian** Information Commissioner requested a constitutional review of the new Electronic Communications Act governing data

retention, which entered into force in January 2013.[63] According to the Constitutional Court, this task falls under the exclusive competence of the CJEU, so it delayed a review until the CJEU delivers its decisions on the related joined cases of Ireland and Austria, C-293/12 and C-594/12 respectively.[64]

On 12 December 2013, a CJEU Advocate General issued his opinion on the joined cases of Ireland[65] and Austria[66] in relation to the Data Retention Directive. The preliminary rulings concerned the compatibility of the Data Retention Directive with key fundamental rights. For the Advocate General, "The Data Retention Directive is as a whole incompatible with Article 52 (1) of the Charter of Fundamental Rights of the European Union, since the limitations on the exercise of fundamental rights which that directive contains because of the obligation to retain data which it imposes are not accompanied by the necessary principles for governing the guarantees needed to regulate access to the data and their use."

3.2.5. Google

Google privacy policy

The **French** DPA ordered Google on 20 June 2013 to comply with French data protection law within three months. When Google did not comply, the French DPA initiated a formal procedure for imposing sanctions, fining Google €150,000 on 3 January 2014.[67]

The **United Kingdom**'s DPA said in July 2013 that Google's privacy policy raised serious concerns about its compliance with the Data Protection Act and that it was investigating.[68] The Information Commissioner's Office (ICO) instructed Google to revise its privacy policy by 20 September to make it more informative.[69] In the absence of any changes, the ICO could initiate formal enforcement actions, but by the end of the reporting period the DPA had not taken any action.

The **Spanish** DPA fined Google €300,000 on 19 December 2013 for violating Spanish data protection law, saying that Google had carried out illegal processing linked to its new privacy policy.[70]

Google search engines

In **Germany**, the Federal Court of Justice decided in favour of complainants who demanded that Google stop a search engine function that resulted in the automated display of compromising terms when the complainants' names were typed into the Google search field. The court did not expect Google to take precautionary measures to prevent this function's unintended effects from ever occurring. The judges ruled, however, that the company must examine affected people's claims and stop the automated display of terms, called 'predictions', shown when searching a person's name if this is necessary to protect complainants' privacy.[71]

In another case, an individual who wanted material erased from a newspaper internet page lodged a complaint with the Spanish Data Protection Authority (AEPD). In this case, the Spanish DPA held that the material was lawfully published and declined to order removal. The case went to the Spanish National High Court (*Audiencia Nacional*), which proceeded to refer a series of preliminary questions to the CJEU. In *Google v. AEPD*, the CJEU Advocate General issued his opinion on 25 June 2013.[72] The Advocate General concluded that Google was not responsible for the information or the dissemination of search result data. The Advocate General declined to classify Google as a 'controller' of personal data within the meaning of the Data Protection Directive and, finally, considered that the directive does not provide for a general 'right to be forgotten'. The CJEU will deliver its judgment in 2014.

Google Street View

In July 2013, Google started photographing **Slovenian** streets for its Google Street View application. The Information Commissioner reported that Google had committed to adopting measures aimed at reducing the interference with privacy, which inevitably occurs in such cases. These measures include: informing the public regularly on the locations of Google cars; providing more information on the street view application; blurring faces and number plates in photographs before publication; installing a 'report error' button on each image; introducing security procedures and measures for the protection of collected data; training drivers; and adapting shooting schedules and locations.[73]

3.3. Information society: EU moves to protect and codify fundamental rights online

Modern technologies have a considerable impact on the protection of fundamental rights, since they present fresh ways to fully realise these rights while also posing new challenges to their protection. The Snowden revelations on mass surveillance provided a prominent example. For the first time in 2013, the Internet Governance Forum[74] organised a plenary session on human rights on the internet. Access to and use of the internet from a human rights perspective were at the forefront of discussions. It was unanimously accepted that human rights and freedom of expression online should remain a priority of the Governance Forum's agenda.[75]

3.3.1. The protection of fundamental rights online

The protection of fundamental rights in the digital environment is a much discussed issue. It is now universally accepted that human rights online are protected to the same extent as they are in the physical world.[76] At regional level, the Council of Europe adheres to this view, affirming in its Internet Governance Strategy that human rights law applies equally online and offline.[77] The EU has also accepted in its Cybersecurity Strategy that core EU values apply both in the physical and in the digital world and that fundamental rights, as enshrined in the EU Charter of Fundamental Rights, should be promoted in cyberspace.[78]

> *"For cyberspace to remain open and free, the same norms, principles and values that the EU upholds offline should also apply online."*
>
> *Cecilia Malmström, EU Commissioner for Home Affairs, 'Delivering a cybersecurity strategy to protect an interconnected Europe', 16 May 2013, Speech/13/423, available at: http://europa.eu/rapid/press-release_SPEECH-13-423_en.htm?locale=en*

The European Commission Cybersecurity Strategy emphasises the respective tasks of key government and private sector players: governments need to safeguard access and openness, respect and protect fundamental rights online and maintain the reliability and interoperability of the internet. The private sector owns and operates significant parts of cyberspace, and so any initiative in this area must recognise its leading role if it is to succeed.[79]

3.3.2. Codifying fundamental rights online

The private sector's contribution is essential when it comes to the implementation of fundamental rights online. In fact, representatives of the private sector, individuals, NGOs and government actors are working together on all matters related to the internet's development. In 2013, the multi-stakeholder approach achieved concrete results in the codification of online fundamental rights. Both the draft Council of Europe guide to human rights for internet users and the Charter of Human Rights and Principles for the Internet were made available. In addition, the EU published the Code of EU Online Rights. Table 3.4 shows the similarities and differences between these texts.

The European Commission's proposal for a regulation laying down measures concerning the European single market for electronic communications and to achieve a connected continent[80] establishes the freedom of end-users to access and distribute information and content, run applications and use services of their choice via their internet access service. It aims to guarantee a truly free and open internet; operators are prohibited from blocking, slowing down, degrading or discriminating against specific content, applications and services, or specific classes thereof, except in a very limited number of cases when reasonable traffic management can be applied. These measures must be transparent, non-discriminatory and proportionate.

The Code of EU Online Rights,[81] published on 21 December 2012, does not establish new rights, nor is it directly enforceable. It summarises and consolidates the minimum existing rights deriving from EU legislation on electronic communications, electronic commerce, data protection and consumer protection. According to the code, the fundamental rights enshrined in the EU Charter of Fundamental Rights should be respected and the open and neutral character of the internet should be preserved.

The Charter of Human Rights and Principles for the Internet is the flagship document of the Internet Rights and Principles Dynamic Coalition.[82] This coalition is part of the Internet Governance Forum, which provides a neutral space for all stakeholders to discuss issues related to internet governance.[83] The coalition consists of researchers, lawyers, activists, NGOs, intergovernmental organisations, government representatives and internet service providers. The Charter is based on existing human rights standards, notably the Universal Declaration of Human Rights. It should serve as a policy document for all stakeholders. It is underpinned by the idea that everyone has the right to access and make use of the internet. Based on the consultations for the Charter, the Coalition also compiled 'Ten Internet Rights and Principles' which must form the basis of internet governance.[84] Some of these principles draw directly on fundamental rights such as free expression, privacy, life, liberty and security.

In line with the its Internet Governance Strategy for the years 2012–2015,[85] the Council of Europe finalised a draft guide to human rights for internet users.[86] The guide raises awareness and helps internet users understand, exercise and enjoy the rights they have online. It does not create new rights but builds on the rights enshrined in the ECHR and other Council of Europe documents, as interpreted by the ECtHR. The guide provides information about their application to online environments. It should be adopted by the Council of Europe Committee of Ministers in 2014.

3.3.3. Corporate social responsibility

As a result of the multi-stakeholder model underpinning internet governance, private sector actors play an important role in safeguarding fundamental rights in the digital environment. The UN Guiding Principles on Business and Human Rights have gained broad acceptance and are the global reference point for business and human rights. They are based on the three pillars of the UN 'Protect, Respect and Remedy' Framework, which are:

Table 3.4: Codification of fundamental rights online

Name	Created by	Legal basis	Legal standing	Purpose	Rights covered
Code of EU Online Rights	European Commission (Digital Agenda, Action 16)	EU legislation on electronic communication, electronic commerce, data protection and consumer protection	It does not establish new rights nor is it directly enforceable. It consolidates minimum existing rights	To increase consumer awareness and confidence, in order to promote the use of online services	Rights and principles applicable when accessing and using online services Rights and principles applicable when buying goods or services online Rights and principles protecting consumers in case of conflict
Charter of Human Rights and Principles for the Internet	Internet Rights and Principles Dynamic Coalition	The Universal Declaration of Human Rights and other covenants that make up the International Bill of Human Rights at the United Nations	Not binding	To provide: a reference point for dialogue and cooperation between different stakeholders, a document that can frame policy decisions for the local, national and global dimensions of internet governance and an advocacy tool for governments, businesses and civil society	Right to access the internet, right to non-discrimination in internet access, use and governance, liberty and security, development through the internet, freedom of expression and information, freedom of religion and belief, freedom of online assembly, privacy, digital data protection, access to knowledge, rights of the child, rights of people with disabilities, right to work, online participation in public affairs, consumer protection, health and social services, legal remedy and fair trial for actions involving the internet, appropriate social and international order for the internet, duties and responsibilities on the internet, general clauses
Guide on human rights for internet users	Council of Europe Committee of Ministers	The European Convention on Human Rights and other Council of Europe conventions and instruments as interpreted by the European Court of Human Rights	Not binding. It does not create new rights. It is neither an exhaustive nor a prescriptive explanation of human rights standards	To raise awareness and serve as a tool to help every internet user without specialised knowledge to understand and take advantage of their online rights	Access and non-discrimination, freedom of expression and information, assembly, association and participation, privacy and data protection, education and literacy, children and young people, effective remedies

Source: FRA, 2013

- the state duty to protect against human rights abuses by third parties, including businesses;
- the corporate responsibility to respect human rights, meaning both to avoid human rights violations and to address the negative consequences if companies are involved in such violations;
- the need for greater access to effective remedies for victims of business-related human rights violations, through both judicial and non-judicial means (see Chapter 10 on Member States and international obligations).[87]

As part of its policy on corporate social responsibility,[88] the European Commission issued in June 2013 three guides applying the UN Guiding Principles in the following business sectors: employment and recruitment agencies, ICT, and oil and gas. The *ICT sector guide*[89] is not a legally binding instrument, but it is designed to help all ICT companies effectively implement the principles into their policies. In particular, the guide sets out the key elements of corporate social responsibility to respect human rights, which are: developing a human rights policy commitment; carrying out a human rights impacts assessment, whose findings should then be integrated; tracking and communicating how effectively the impacts are addressed; and putting in place remedy mechanisms. For each of these elements, the guide summarises the standards set out in the UN Guiding Principles, explains why they is important and offers guidance, indicating possible approaches the company could use to tackle the issues. It also offers a list of resources for further information and provides examples from everyday business life, such as how an ICT company uses icons to inform users on privacy issues or how a telecommunications company has developed a global framework agreement.

3.3.4. Intermediary liability

The extent to which an internet portal can be held accountable for content uploaded by users of blogs or news portals is a topic of debate. It raises the question of the scope of intermediary liability, particularly in cases where defamatory comments are posted by such readers. The ECtHR judgment in the *Delfi AS v. Estonia* case[90] raised considerable concern among internet actors. The ECtHR held that finding a portal liable for offensive comments posted by readers below one of the online articles was a justified and proportionate restriction to the portal's right to freedom of expression.

In **Poland**, the Supreme Administrative Court[91] held that an individual has the right to ask an internet service provider to disclose email and internet protocol addresses associated with offensive online communications, because such data are necessary for the victims of an online privacy breach to claim their rights effectively before the court. Most internet service providers had claimed that, according to e-commerce law,[92] these data could be accessed only by enforcement agencies, and courts had usually accepted this argument. The Supreme Administrative Court, however, ruled that internet service providers should allow individuals to access the data if this serves a legitimate aim and is proportionate to the circumstances of a particular case.

In the **United Kingdom**, the Court of Appeal issued its decision in the *Tamiz v. Google* case,[93] which concerned Google's liability for defamatory comments posted on a blog hosted by Google's blog service. The High Court had held that Google cannot be considered a publisher due to its passive role in relation to individual blog posts and comments. The Court of Appeal generally supported these findings. It considered separately, however, the period after the notification of the complaint, concluding that Google might as well have become a publisher, since it allowed the defamatory comments to remain on the blog after the notification. The appeal was dismissed, nonetheless, since the court found that the damage to the applicant's reputation was trivial.

Many consider the Google–Vividown case the most significant **Italian** case on internet rights. In February 2013, the Court of Appeal overturned the first instance ruling, which had sentenced three Google managers to six months in prison because Google's search engine broadcast a video showing a boy with disabilities being bullied. The Court of Appeal held that the uploader of the video was responsible, not the hosting site.

3.3.5. Right to an effective remedy

FRA ACTIVITY

Securing remedies for online data protection violations

The FRA report *Access to data protection remedies in EU Member States,* drafted in 2013 and published in 2014, examines the availability of EU remedy mechanisms to address data protection violations. It identifies challenges faced by individuals and suggests improvements. The data protection violations most frequently mentioned during the fieldwork research in 16 EU Member States relate to internet-based activities. This includes social media, online shopping, leakage of personal data from e-shops, email account and database hacking, identity theft, security breaches and misuse of personal data by global internet companies. It is for this reason that effective remedies on the internet need to be put in place. (see also Section 3.2.3)

For more information, see: FRA (European Union Agency for Fundamental Rights) (2014), Access to data protection remedies in EU Member States*, Luxembourg, Publications Office of the European Union (Publications Office)*

The internet's uniqueness does not alter the principle that victims of fundamental rights violations need access to remedies. The right to an effective remedy is enshrined in all the main documents mentioned that set out internet users' fundamental rights. The frequent violation of rights online makes the existence of proper remedy mechanisms in the information society field indispensable. At the same time, the crucial role the private sector plays in internet governance creates challenges for the proper implementation of remedial avenues.

Promising practice

In France, the DPA created an online document, available on its website, entitled "How do I remove personal information from a search engine?" This tip sheet gives instructions about the procedure to be followed, including a template for a letter to be sent to the webmaster of the site and information about the procedure for voluntary deindexation of the website.

For more information, see: www.cnil.fr/documentation/fiches-pratiques/fiche/article/comment-effacer-des-informations-me-concernant-sur-un-moteur-de-recherche/

3.3.6. Fighting cybercrime

The EU adopted a number of policy initiatives in 2013 aimed at strengthening the fight against cybercrime. In a majority of cases, criminal activities conducted online result in infringements of human rights and fundamental freedoms. The EU cybersecurity strategy, adopted on 7 February 2013, sets out as one of its main principles the protection of fundamental rights, freedom of expression, personal data and privacy, and it expresses the view that 'individuals' rights cannot be secured without safe networks and systems'. At the same time, the strategy states that 'cybersecurity can only be sound and effective if it is based on fundamental rights and freedoms as enshrined in the Charter of Fundamental Rights of the European Union and the EU core values'.

Some clear examples of violations of human rights and fundamental freedoms by criminal activities carried out online are the production and dissemination of child sexual abuse content, which is a gross violation of the children's rights, and also intrusions into IT systems, which in most cases has a direct impact on users' privacy and/or result in data breaches.

To step up the fight against cybercrime, with the objective of better protecting citizens' fundamental rights, the EU legislature adopted, on 12 August 2013, a directive on attacks against information systems. This directive complements the already adopted Directive 2011/93/EU of 13 December 2011, which introduced common measures against the sexual abuse and sexual exploitation of children and child pornography.

Furthermore, the European Cybercrime Centre (EC3) was created in January 2013 within Europol, becoming the European focal point in the fight against cybercrime, with the main task of assisting in and coordinating cross-border cybercrime investigations in the following three priority areas: intrusion, child sexual abuse online and payment card fraud.

The findings of three wide-scale FRA surveys on lesbian, gay, bisexual and transgender (LGBT) people, violence against women and antisemitism reveal that online manifestations of hate crime are an increasingly serious problem, as the internet can be used as a platform for hate and harassment. The anonymity the internet affords may lead some users to publish offensive material online.

The findings of the FRA EU LGBT survey[94] showed that, in the 12 months prior to the survey, one in five (19 %) of all respondents were victims of harassment, which they thought happened in part or completely because they were perceived to be LGBT.[95] Almost one in 10 (9 %) of the most recent incidents of hate-motivated harassment and 6 % of the most serious experiences of discrimination happened online.[96]

Data from the FRA survey on gender-based violence against women[97] show that one in 10 (11 %) women in the EU has been a victim of cyberharassment at least once since the age of 15, and 5 % were victims of cyberharassment in the 12 months before the survey. The risk of women aged 18–29 becoming the target of threatening or offensive advances on the internet is twice as high as it is for women aged 40–49 and more than three times higher than it is for women aged 50–59. Based on the FRA survey, 5 % of women in the EU have experienced one or more forms of cyberstalking[98] since the age of 15, and 2 % did so in the 12 months preceding the survey. Taking the victim's age into consideration, the 12-month rates vary from 4 % among 18–29 year olds to 0.3 % among women aged 60 and over.

The FRA survey on discrimination and hate crimes against Jews[99] indicates, similarly, that victims see online antisemitism as a serious problem. Three quarters of all respondents (75 %) view it as either 'a very big' or a 'fairly big problem', and almost as many (73 %) believe it has increased over the past five years. Overall, 10 % of respondents have experienced offensive or threatening antisemitic comments made about them on the internet.

In the **United Kingdom**, two people who made abusive and menacing comments to a feminist campaigner on Twitter were sentenced to 12 and eight weeks in

prison.[100] The recipient of the menacing tweets characterised this case, however, as a "small drop in the ocean" compared with the hate speech she and other women had been subjected to online. The case exemplifies the major problems faced and the challenge of finding solutions using traditional legal means.

Action is needed to prevent the misuse of the internet as a zone where hate crime can be committed with impunity. The EU and its Member States should identify effective methods and promising practices to address growing concerns about online hate. This is particularly true because the nature of online hate crime implies an issue that is not confined within the borders of individual Member States but a cross-border problem that must be tackled jointly (see Chapter 6 on racism, xenophobia and related intolerance).

FRA ACTIVITY

Tackling cyberhate

The FRA organised its annual fundamental rights conference for 2013 on the subject of hate crime, including a workshop dedicated to cyberhate. The conference workshop, held in Vilnius on 12–13 November 2013, discussed problems related to the rise of cyberhate, the challenges in combating it, good practices and possible solutions. Key points raised include the need to strengthen education, training and cyberliteracy for all actors, including law enforcement, users, companies and governments, as well as enhancing transparency and reporting in order to raise awareness. This could be achieved by reducing the anonymity of users while ensuring data protection. As online hate speech is a global problem, a common approach is needed. The differences in legislation and the criminal codes' definitions should be harmonised, so that victims are all treated on equal terms. Minimum standards on what is absolutely not allowed should also be set. Other suggestions concerned the development of mechanisms to report unwanted content that go beyond the legal prosecution of hate speech. To raise young people's awareness and respond to the challenge of impunity, participants strongly suggested establishing cyber-actors in law enforcement within private services and content and platform providers, such as an ombudsman for Facebook. Good practices reported include child helplines in the **United Kingdom**, dedicated police officers for cyberhate in **Finland**, awareness-raising campaigns in **Denmark** and a **Belgian** Federal Police unit working in schools and engaging with potential victims.

At national level, EU Member States have also become active in ensuring respect for human rights in the digital environment and promoting awareness-raising campaigns. In **Austria**, the Advisory Board on the Information Society at the Federal Chancellery met four times in 2013[101] to discuss relevant developments at European and global level – such as the European Commission's Digital Agenda for Europe,[102] the telecommunications package,[103] the Internet Governance Forum and the European Dialogue on Internet Governance (EuroDIG)[104] – and at national level, such as strengthening information security in Austria and providing a safer internet. In this context, Safer Internet Day, on 5 February 2013, dealt with online rights and responsibilities. The **French** government announced its roadmap for digital issues at the end of February.[105] As well as increasing the use of information and communications technologies among young people and enhancing the competitiveness of companies through digital technologies, the roadmap also aims to ensure the protection of civil liberties on the internet.

Promising practice

Discouraging children's risky online behaviour

The **Spanish** initiative 'You choose', aimed at 10–15 year olds, uses worksheets and a comic to make students think about the possible consequences of their online actions. There is a focus on social networks and risk situations such as cyberbullying and online sexual harassment.

For more information, see: www.agpd.es/portalwebAGPD/index-ides-idphp.php

FRA ACTIVITY

Putting numbers to gender-based violence against women

The FRA EU-wide survey on gender-based violence against women shows that 5 % of women in the EU have experienced one or more forms of cyberstalking since the age of 15, and 2 % experienced it in the 12 months preceding the survey. Compared with an average 2 % prevalence of experiences of cyberstalking for all women, those in the youngest age group in the survey, 18–29, were most affected. For these women, cyberstalking accounted for the majority of their experiences of stalking in the 12 months before the survey.

The survey defined three specific behaviours as cyberstalking: sending emails, text messages (SMS) or instant messages that were offensive or threatening; posting offensive comments about the respondent on the internet; and sharing intimate photos or videos of the respondent on the internet or by mobile phone. To be considered stalking, these incidents had to take place repeatedly and the same person had to perpetrate them.

Outlook

The mass surveillance scandal that affected users' confidence in the internet and violated their privacy will influence policy development in 2014. How users' trust in information technologies and communications will be restored will dominate the debates linked to the information society, privacy and data protection. The Snowden revelations will necessarily result in calls for enhanced fundamental rights compliance in any discussions linked to internet governance. Follow-up initiatives, launched in 2013, will necessitate increased involvement of policy makers and the private sector, with private sector actors needing to engage more in fundamental rights enforcement.

At EU level, the data protection reform package will remain high on the EU legislature's agenda. The Council of the European Union and the post-election European Parliament will need to enter negotiations quickly to make it possible to adopt the reform by the end of 2014. CJEU judgments will also continue to provide guidance on how to amend legislation; those issued on the Data Retention Directive directly affected data protection safeguards and also clarified the independence required of data protection authorities.

Index of Member State references

Endnotes

All hyperlinks accessed on 30 April 2014.

1 Bigo, D., Carrera, S., Hernanz, N. Jeandesboz, J., Parkin, J., Ragazzi, F. and Scherrer, A. (2013), *Mass surveillance of personal data by EU Member States and its compatibility with EU law*, Centre for European Policy Study (CEPS) paper in *Liberty and Security in Europe*, No. 61, p. 2.

2 United Nations (UN), Human Rights Council (2013), *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 17 April 2013, para. 50 and 51, www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf.

3 UN, General Assembly (2013), Resolution 68/167 on the right to privacy in the digital age, 18 December 2013, www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/167.

4 Council of Europe, Committee of Ministers (2013), Declaration of the Committee of Ministers on risks to fundamental rights stemming from digital tracking and other surveillance technologies, 11 June 2013, wcd.coe.int/ViewDoc.jsp?id=2074317&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.

5 Council of Europe, The Council of Europe Commissioner's human rights comment (2013), *Human rights at risk when secret surveillance spreads*, http://humanrightscomment.org/2013/10/24/human-rights-at-risk-when-secret-surveillance-spreads/.

6 Council of Europe, Conference of Ministers responsible for Media and Information Society (2013), *Political declaration: Freedom of expression and democracy in the digital age, opportunities, rights, responsibilities*, 8 November 2013, www.coe.int/t/dghl/standardsetting/media/belgrade2013/Belgrade%20Ministerial%20Conference%20Texts%20Adopted_en.pdf.

7 *Ibid.*, p. 1.

8 European Parliament (2013), Resolution on the US National Security Agency surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' privacy, 4 July 2013, Brussels, www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0322&language=EN.

9 European Parliament, Committee on Civil Liberties, Justice and Home Affairs (2014), Draft Report on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs, www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-526.085%2b02%2bDOC%2bPDF%2bV0%2f%2fEN.

10 European Commission (2000), Decision 2000/520/EC on the adequacy of the protection provided by the safe harbour privacy principles and related frequently asked questions issued by the US Department of Commerce, Brussels, 26 July 2000, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000D0520:EN:HTML.

11 Council of the European Union (2013), Report on the findings by the EU Co-chairs of the ad hoc EU–US Working Group on Data Protection, Doc. 16987/13, Brussels, 27 November 2013.

12 European Commission (2013), Communication to the European Parliament and the Council: Rebuilding trust in EU–US data flows, COM(2013) 846 final, Brussels, 27 November 2013; European Commission (2013), Communication to the European Parliament and the Council on the functioning of the Safe Harbour from the perspective of EU citizens and companies established in the EU, COM(2013) 847 final, Brussels, 27 November 2013.

13 European Commission (2013), Communication to the European Parliament and the Council on the functioning of the Safe Harbour from the perspective of EU citizens and companies established in the EU, COM(2013) 847 final, Brussels, 27 November 2013.

14 European Commission (2013), Communication to the European Parliament and the Council: Rebuilding trust in EU–US Data Flows, COM(2013) 846 final, Brussels, 27 November 2013.

15 Finland, 'Kyllä me voimme: Laki sananvapauden ja yksityisyydensuojan kansainvälisestä turvaamisesta (Lex Snowden)'https://www.kansalaisaloite.fi/fi/aloite/442, www.kansalaisaloite.fi/fi/aloite/442.

16 Germany, Konferenz der Datenschutzbeauftragten des Bundes und der Länder (2013), 'Entschließung: Keine umfassende und anlasslose Überwachung durch Nachrichtendienste! Zeit für Konsequenzen', Resolution, 5 September 2013, www.datenschutz.bremen.de/sixcms/detail.php?gsid=bremen236.c.9292.de.

17 Demonstration ‚Freiheit statt Angst' (2013), *Bündnispartner 2013*. See: http://blog.freiheitstattangst.de/bundnispartner-2013/.

18 Spiegel Online (2013), 'NSA-Protest in Berlin. Freiheit unterm Alu-Hut', 7 September 2013, www.spiegel.de/netzwelt/netzpolitik/freiheit-statt-angst-2013-demonstration-gegen-nsa-ueberwachung-a-920927.html.

19 Demonstration 'Freiheit statt Angst' (2013), 'Unsere Forderungen', http://blog.freiheitstattangst.de/unsere-forderungen/.

20 Spiegel Online (2013), 'Proteste am Dagger Complex. Mit Lampions gegen die NSA', 1 September 2013; Deutsche Welle, 'Verhaltener Protest gegen NSA-Überwachung', 30 July 2013, www.dw.de/verhaltener-protest-gegen-nsa-%C3%BCberwachung/a-16986575.

21 Deutsche Welle (2013), 'Cryptoparties boom following NSA scandal', 20 July 2013, www.dw.de/cryptoparties-boom-following-nsa-scandal/a-16964049.

22 France, Loi n° 2013-1168 relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale, 18 December 2013, www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&dateTexte=&categorieLien=id.

23 Hungary, *Egyes törvényeknek a nemzetbiztonsági ellenőrzés új szabályainak megállapítása érdekében szükséges módosításáról szóló 2013. évi LXXII. törvény.*

24 Untersinger, M. (2013) 'Surveillance d'Internet: Inquiétudes autour de la loi de programmation militaire', *Le Monde*, 26 November 2013, www.lemonde.fr/technologies/article/2013/11/26/surveillance-d-internet-inquietudes-autour-de-la-loi-de-programmation-militaire_3518974_651865.html. See also: Hungary, *Társaság a Szabadságjogokért*, http://tasz.hu/adatvedelem/megfigyelessel-korrupcio-ellen.

25 France, Conseil National du Numérique (2013), *Avis sur les libertés numériques n° 2013-5*, 6 December 2013, www.cnnumerique.fr/libertes-numeriques/.

26 Hungary, Nemzeti Adatvédelmi és Információszabadság Hatóság, NAIH-4867-4/2012/J, response letter provided for the purposes of the present report by the National Authority for Data Protection and Freedom of Information to data request, 24 November 2013.

27 Hungary, Alkotmánybíróság, *32/2013. (XI. 22.) AB határozat*, 22 November 2013.

28 Germany, Bundesregierung (2013), 'NSA-Aufklärung. Deutschland ist ein Land der Freiheit', Press release, 19 July 2013, www.bundesregierung.de/ContentArchiv/DE/Archiv17/Artikel/2013/07/2013-07-19-bkin-nsa-sommerpk.html.

29 The Netherlands, Commissie evaluatie Wiv 2002 (2013), *Evaluatie Wet op de inlichtingen- en veiligheidsdiensten 2002*, www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2013/12/02/rapport-evaluatie-wiv-2002.html.

30 Slovenia, Ministrstvo za pravosodje, 'Sporočila za javnost po 35. redni seji Vlade RS', Press release, 28 November 2013, www.mp.gov.si/si/novinarsko_sredisce/novica/select/sporocilo_za_javnost/article/12447/6713/592f3cdc597266ddb17c10a531c7e0e6/?tx_ttnews%5Byear%5D=2013&tx_ttnews%5Bmonth%5D=11.

31 Finland, Helsińska Fundacja Praw Człowieka (2013), '100 pytań o inwigilację do polskich władz', Press release, 16 October 2013, www.hfhr.pl/100-pytan-o-inwigilacje-do-polskich-wladz.

32 The Helsinki Foundation for Human Rights (HFHR) complained against the Central Anti-Corruption Bureau's refusal to provide some of the requested information and asked the other intelligence agencies which refused to provide information to reconsider this request.

33 Finland, Helsińska Fundacja Praw Człowieka (2013), 'Amerykański program PRISM – odpowiedzi na wnioski o informację publiczną', Press release, 6 December 2013, www.hfhrpol.waw.pl/precedens/aktualnosci/amerykanski-program-prism-odpowiedzi-na-wnioski-o-informacje-publiczna.html.

34 Poland, Rzecznik Praw Obywatelskich, 'Wystąpienie do Prokuratora Generalnego w sprawie zapobiegania sytuacjom nieautoryzowanego przetwarzania danych osobowych polskich internautów', RPO/738662/13/I/115.2 RZ, Press release, 23 September 2013.

35 Poland, Prokurator Generalny (2013), PG Ko$_1$ 2353/13, 19 November 2011.

36 Irish Times (2013), 'Facebook decision can be reviewed', 24 October 2013, www.irishtimes.com/business/sectors/technology/facebook-decision-can-be-reviewed-1.1571049.

37 Luxembourg, Commission nationale pour la protection des données (2013), 'Pas de violation constatée en matière de protection des données de la part de Skype et Microsoft au Luxembourg', Press release, 18 November 2013, www.cnpd.public.lu/fr/actualites/national/2013/11/skype-microsoft/index.html.

38 European Court of Human Rights (ECtHR), *Big Brother Watch and others v. the United Kingdom*, No. 58170/13, communicated on 9 January 2014; see also European Court of Human Rights (ECtHR), *Centrum för Rättvisa v. Sweden*, No. 35252/08.

39 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ 1995 L 281.

40 European Commission (2012), Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), COM(2012) 11 final, Brussels, 25 January 2012.

41 European Commission (2012), Proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, COM(2012) 10 final, Brussels, 25 January 2012.

42 Council of the European Union (2008), Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (Data Protection Framework Decision), OJ 2008 L 350.

43 European Data Protection Supervisor (2013), *Additional EDPS comments on the data protection reform package*, 15 March 2013, https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Comments/2013/13-03-15_Comments_dp_package_EN.pdf.

44 Article 29 Working Party (2013), *Opinion 01/2013 providing further input into the discussions on the draft Police and Criminal Justice Data Protection Directive*, WP 201, 26 February 2013, http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2013/wp201_en.pdf.

45 Article 29 Working Party (2013), *Working Document 01/2013: Input on the proposed implementing acts*, WP 200, 22 January 2013, http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2013/wp200_en.pdf.

46 Financial Times, 4 February 2013.

47 European Parliament, Committee on Civil Liberties, Justice and Home Affairs (2013), Draft report on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), Brussels, 16 January 2013.

48 European Parliament, Committee on Civil Liberties, Justice and Home Affairs (2012), Draft report on the proposal for a directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, Brussels, 20 December 2012.

49 FRA (European Union Agency for Fundamental Rights) (2010), *Data Protection in the European Union: The role of national data protection authorities (Strengthening the fundamental rights architecture in the EU II)*, Luxembourg, Publications Office of the European Union (Publications Office); see also FRA (2012), *FRA opinion on the proposed data protection reform package*, Vienna, 1 October 2012; and FRA (2014), *Access to data protection remedies in EU Member States*, Luxembourg, Publications Office.

50 FRA and Council of Europe, European Court of Human Rights (2014), *Handbook on European data protection law*, Luxembourg, Publications Office.

51 Court of Justice of the European Union (CJEU), C518/07, *European Commission v. Federal Republic of Germany*, 9 March 2010; CJEU, C614/10, *European Commission v. Republic of Austria*, 16 October 2012.

52 Austria, *83. Bundesgesetz, mit dem das Datenschutzgesetz 2000 geändert wird (DSG-Novelle 2014)*, 23 May 2013, www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2013_I_83/BGBLA_2013_I_83.html.

53 CJEU, C288/12, *European Commission v. Hungary*, Advocate General's Opinion, 10 December 2013.

54 Latvia, *Likumprojekts 'Grozījumi Fizisko personu datu aizsardzības likumā'*, http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/B0CA8FC1A876870BC2257C310050C997?OpenDocument.

55 Lithuania, LR Vyriausybė (2013), *Nutarimas dėl Valstybinės duomenų apsaugos inspekcijos administracijos struktūros tvirtinimo*, No. 1082, 27 November 2013.

56 Slovakia, *Zákon č. 122/2013 Z.z. o ochrane osobných údajov*, 30 April 2013.

57 FRA (2010), *Data Protection in the European Union: The role of national data protection authorities (Strengthening the fundamental rights architecture in the EU II)*, Luxembourg, Publications Office.

58 Hungary, National Authority for Data Protection and Freedom of Information (2013), *Key to the World of the Internet!*, www.naih.hu/files/2013-projektfuzet-internet.pdf.

59 Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, OJ 2006 L 105.

60 Belgium, *Koninklijk besluit tot uitvoering van artikel 126 van de wet van 13 juni 2005 betreffende de elektronische communicatie/Arrêté royal portant exécution de l'article 126 de la loi du 13 juin 2005 relative aux communications électroniques*, 19 September 2013, www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2013091920&table_name=loi.

61 Poland, *Ustawa o zmianie ustawy – Prawo telekomunikacyjne oraz niektórych innych ustaw*, 16 November 2012.

62 Denmark, Politi og Strafferetsafdelingen, *Report on various questions regarding the Danish data retention regulations*, case no. 2012-187-0020, document no. 549331, www.ft.dk/samling/20121/almdel/reu/bilag/125/1200765.pdf.

63 Slovenia, *Zakon o elektronskih komunikacijah*, ZEKom-1, 20 December 2012.

64 Slovenia, *Ustavno sodišča Republike Slovenije*, Ul65/1316, 26 September 2013,.

65 CJEU, C293/12, Reference for a preliminary ruling from the High Court of Ireland, lodged on 11 June 2012, *Digital Rights Ireland Ltd v. Minister for Communications, Marine and Natural Resources, Minister for Justice, Equality and Law Reform, The Commissioner of the Garda Síochána, Ireland and the Attorney General*, 25 August 2012.

66 CJEU, C594/12, Reference for a preliminary ruling from the Austrian Constitutional Court, lodged on 19 December 2012.

67 France, Commission nationale de l'informatique et des libertés (CNIL) (2014), *Délibération n° 2013420*, 3 January 2014, www.legifrance.gouv.fr/affichCnil.do?oldAction=rechExpCnil&id=CNILTEXT000028450267&fastReqId=2000051504&fastPos=1.

68 United Kingdom, Information Commissioner's Office (ICO) (2013), 'ICO statement regarding investigation into Google privacy policy', 2 April 2013, www.ico.org.uk/news/latest_news/2013/ico-statement-investigation-google-privacy-policy-02042013.

69 United Kingdom, ICO (2013), 'ICO update on Google privacy policy', 4 July 2013, www.ico.org.uk/news/latest_news/2013/ico-update-on-google-privacy-policy-04072013.

70 Spain, Agencia Española de Protección de Datos (AEPD) (2013), 'The AEPD sanctions Google for serious violation of the rights of the citizens', Press release, 19 December 2013.

71 Germany, Bundesgerichtshof (2013), 'Bundesgerichtshof entscheidet über die Zulässigkeit persönlichkeitsrechtsverletzender Suchergänzungsvorschläge bei "Google"', Press release No. 87/2013, 14 May 2013, http://juris.bundesgerichtshof.de/cgibin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&nr=64071&linked=pm.

72 CJEU, C131/12, *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González,* 25 June 2013, http://curia.europa.eu/juris/document/document.jsf?text=&docid=138782&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1090622.

73 Slovenia, Informacijski pooblaščenec (2013), 'Snemanje ulic za storitev Google Street View', Press release, 2 July 2013, www.ip-rs.si/novice/detajl/snemanje-ulic-za-storitev-google-street-view/?cHash=2113761ece703e0badf20352fa2faa35.

74 See: Internet Governance Forum, www.intgovforum.org/cms/.

75 Internet Governance Forum (2013), 8th meeting of the Internet Governance Forum: Chair's summary, p. 16, www.intgovforum.org/cms/Chair's%20Summary%20IGF%202013%20Final.Nov1v1.pdf.

76 UN, Human Rights Council (2012), Resolution 20/8 on the promotion, protection and enjoyment of human rights on the Internet, http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G12/153/25/PDF/G1215325.pdf?OpenElement; UNESCO (2013), First WSIS+10 Review Event, Final Recommendations, 27 February 2013, p. 3, www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/wsis/WSIS_10_Event/wsis10_recommendations_en.pdf. In November 2013 (195 UNESCO states endorsed the Final Recommendations). See also: UN, General Assembly (2013), Resolution 68/167 on the right to privacy in the digital age, 18 December 2013, www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/167.

77 Council of Europe, Committee of Ministers (2011), Internet Governance Strategy 2012–2015, CM(2011) 175 final, 15 March 2012.

78 European Commission (2013), *Cybersecurity strategy of the European Union: an open, safe and secure cyberspace*, Joint COM(2013) 1 final, Brussels, 7 February 2013, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=JOIN:2013:0001:FIN:EN:PDF.

79 *Ibid.*

80 Proposal for a Regulation of the European parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012, COM(2013) 0627 final, https://ec.europa.eu/digital-agenda/en/news/regulation-european-parliament-and-council-laying-down-measures-concerning-european-single.

81 European Commission (2012), Code of EU Online Rights, Brussels, https://ec.europa.eu/digitalagenda/sites/digitalagenda/files/Code%20EU%20online%20rights%20EN%20final%202.pdf.

82 Internet Rights and Principles Coalition (2013), Charter for Human Rights and Principles for the internet, (version 2.0), http://internetrightsandprinciples.org/site/wpcontent/uploads/2013/10/IRP_booklet_final1.pdf.

83 See: Internet Governance Forum, www.intgovforum.org/cms/.

84 Internet Rights and Principles Coalition (2011), 'Ten internet rights and principles', http://internetrightsandprinciples.org/images/IRPflyer.pdf.

85 Council of Europe, Committee of Ministers (2011), Internet Governance Strategy 2012–2015, CM(2011) 175 final, 15 March 2012.

86 Council of Europe, Committee of Experts on Rights of Internet Users (2013), *Draft recommendation of the Committee of Ministers to member states on a guide on human rights for Internet users*, MSI DUI (2013)07Rev7, 6 December 2013.

87 UN, Office of the High Commissioner for Human Rights (2011), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, New York and Geneva.

88 European Commission (2011), Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A renewed EU strategy 2011–14 for corporate social responsibility, COM(2011) 681 final, Brussels, 25 October 2011.

89 European Commission (2013), *ICT sector guide on implementing the UN Guiding Principles on Business and Human Rights*, June 2013, www.ihrb.org/pdf/eu-sector-guidance/EC-Guides/ICT/EC-Guide_ICT.pdf.

90 European Court of Human Rights (ECtHR), *Delfi AS v. Estonia*, No. 64569/09, 10 October 2013, pending before a Grand Chamber of the ECtHR.

91 Poland, *Naczelny Sąd Administracyjny, I OSK 1666/12*, 21 August 2013.

92 Poland, *Ustawa* o *świadczeniu usług drogą elektroniczną,* 18 July 2012.

93 United Kingdom, Court of Appeal (2013), *Tamiz v. Google*, EWCA Civ 68, www.bailii.org/ew/cases/EWCA/Civ/2013/68.html.

94 The FRA EU LGBT survey was conducted online in the 27 EU Member States and Croatia between April and July 2012. The survey collected information from 93,079 people aged 18 and above who identified as lesbian, gay, bisexual or transgender, and who lived in the EU or Croatia.

95 FRA (2013), *EU LGBT survey: Results at a glance,* Luxembourg, Publications Office, p. 23, http://fra.europa.eu/en/publication/2013/eu-lgbt-survey-european-union-lesbian-gay-bisexual-and-transgender-survey-results.

96 FRA (2014 forthcoming), *EU LGBT survey: Main results*, Luxembourg, Publications Office.

97 The FRA survey on violence against women interviewed 42,000 women (face-to-face interviews), who were between 18 and 74 years old and lived in any of the 28 EU Member States (approximately 1,500 per country). The respondents were selected based on random sampling. The data were collected between April and July 2012. FRA (2014), *Violence against women: An EU-wide survey – main results,* Luxembourg, Publications Office, http://fra.europa.eu/en/publication/2014/vaw-survey-main-results.

98 The survey defined three specific behaviours as cyberstalking: sending emails, text messages (SMS) or instant messages that were offensive or threatening; posting offensive comments about the respondent on the internet; and sharing intimate photos or videos of the respondent on the internet or by mobile phone. To be considered stalking, these incidents had to take place repeatedly and the same person had to perpetrate them.

99 The FRA survey on discrimination and hate crimes against Jews was conducted online in eight EU Member States – Belgium, France, Germany, Hungary, Italy, Latvia, Sweden and the United Kingdom – in September and October 2012. The survey covered 5,847 self-identified Jews aged 16 and over. FRA (2013), *Discrimination and hate crime against Jews in EU Member States: Experience and perceptions of antisemitism*, Luxembourg, Publications Office, http://fra.europa.eu/sites/default/files/fra-2013-discrimination-hate-crime-against-jews-eu-member-states_en.pdf.

100 United Kingdom, BBC News, 'Two guilty over abusive tweets to Caroline Criado-Perez', 7 January 2014, www.bbc.com/news/uk-25641941.

101 See: Beirat für Informationsgesellschaft, www.bka.gv.at/site/4293/default.aspx.

102 European Commission (2010), *A digital agenda for Europe*, COM(2010) 245 final, Brussels, 26 August 2010, http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0245:EN:NOT.

103 European Commission (2013), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Telecommunications Single Market, COM(2013) 634, Brussels, 11 September 2013, https://ec.europa.eu/digital-agenda/en/news/communication-commission-european-parliament-council-european-economic-and-social-committee-a-o.

104 See: European Dialogue on Internet Governance, www.eurodig.org/.

105 See: www.gouvernement.fr/premier-ministre/le-gouvernement-presente-la-feuille-de-route-pour-le-numerique.

The rights of the child and the protection of children

Equality and non-discrimination

Racism, xenophobia and related intolerance

Roma integration

Equality

UN & CoE

January

February

27 March – The Council of Europe Commissioner for Human Rights issues a statement, with reference to his visit to Estonia, according to which all children should be granted citizenship automatically at birth even when their parents are stateless

March

17 April – The United Nations Committee on the Rights of the Child (UNCRC) issues General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health and General comment No. 16 on State obligations regarding the impact of the business sector on children's rights

23 April – The Parliamentary Assembly of the Council of Europe adopts a Resolution on fighting child sex tourism and a Resolution on ending discrimination against Roma children

April

29 May – The UNCRC issues General comment No. 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts and General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration

May

June

8 July – The UNCRC issues its Concluding observations on the combined third and fourth periodic reports of Slovenia

July

20 August – The CoE Commissioner for Human Rights warns that child labour remains a serious concern in Europe

August

September

1 October – The Parliamentary Assembly of the CoE adopts a Resolution on violations of the physical integrity of children

9 October – The CoE Commissioner for Human Rights warns that austerity measures weaken children's rights protection

16 October – The Committee of Ministers of the CoE adopts a Recommendation on ensuring full inclusion of children and young persons with disabilities in society

29 October – The UNCRC issues its Concluding observations on the combined third and fourth periodic reports of Luxembourg and of Lithuania

October

22 November – The CoE Commissioner for Human Rights warns that more systematic consideration should be given to the best interests of the child in migration and asylum policies and procedures

November

December

EU

January

20 February – The European Commission adopts a recommendation on *Investing in children: Breaking the cycle of disadvantage*

February

12 March – The European Commission adopts a *Communication on enhancing maternal and child nutrition in external assistance*

March

6 April – The deadline passes for transposing into national law the Directive on preventing and combating trafficking in human beings and protecting its victims, which also includes child victims

24 April – The European Commission adopts the green paper *Preparing for a fully converged audiovisual world: Growth, creation and values, covering also the protection of children*

April

May

12 June – The European Parliament and the Council of the European Union adopt a regulation on mutual recognition of protection measures in civil matters, also covering children with protection measures

12 June – The European Parliament adopts a resolution on the European Commission Communication *Towards social investment for growth and cohesion – including implementing the European Social Fund 2014–2020*, urging the Commission and the Member States to take immediate action to fight child poverty

13 June – The Council of the EU adopts Conclusions on an EU Framework for the provision of information on the rights of victims of trafficking in human beings

26 June – The European Parliament and the Council of the EU adopt the recast Asylum Procedures Directive, Reception Conditions Directive, Dublin Regulation and Eurodac Regulation including child-specific provisions on access to child-friendly asylum procedures and reception conditions

26 June – Regulation (EU) No. 610/2013 amending parts of the Schengen Borders Code is published, requiring that training curricula for border guards shall include specialised training for detecting and dealing with situations involving vulnerable persons, such as unaccompanied minors and victims of trafficking

27–28 June – EU leaders at the European Council meeting in Brussels endorse a comprehensive plan to combat youth unemployment

June

July

August

12 September – The European Parliament adopts a resolution on the situation of unaccompanied minors in the EU, identifying the areas in which further efforts are to be made at national and EU levels to strengthen the protection of this group of particularly vulnerable children

September

October

27 November – The European Commission adopts a proposal for a directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings

25 November – The European Commission adopts a Communication to the European Parliament and the Council, *Towards the elimination of female genital mutilation*

November

17–18 December – The European Commission organises the eighth European Forum on the Rights of the Child on the role of child protection systems

18 December – The deadline passes for transposing the Directive on combating the sexual abuse and sexual exploitation of children and child pornography

December

4

The rights of the child and the protection of children

Poverty and violence harm the lives of too many children across the European Union (EU). To tackle the pressing and persistent problem of child poverty, the European Commission issued a recommendation setting forth a common approach. EU Member States will need to put this framework into practice. Yet, across many Member States, education budgets that contribute to children's well-being have fallen prey to crisis-driven cuts. Similarly, budget cuts to child protection services may put at risk safety nets needed by children afflicted by violence, even as new technologies, especially the internet, increase the risk of some types of violence. The EU and a number of Member States have taken steps to combat violence and child sexual abuse, as well as other forms of violence affecting children; 2013 marked the deadline for Member States to transpose two related directives. In another high-priority field, the treatment of children was often inappropriate in judicial proceedings, as crime victims or witnesses, and in civil proceedings, although recent legal reforms are expected to improve the situation.

At the international level, the UN Committee on the Rights of the Child was particularly active during 2013, releasing four general comments. One of the most relevant is the comment dealing with the 'best interests of the child', which is one of the principles included in Article 24 of the EU Charter of Fundamental Rights. The committee noted that this is a dynamic concept encompassing various issues that continuously change, so the general comment does not prescribe what is 'best' for the child in any given situation, but rather aims to provide a framework for assessing and determining a child's best interests in each case. The other general comments relate to child rights and business, the right to health and the right to play.

The Optional Protocol to the Convention on the Rights of the Child on a communications procedure,[1] which allows individual children to file complaints about violation of their rights directly to the committee, was opened for signature in February 2012. By the end of 2013, only four EU Member States had ratified the protocol: **Germany**, **Portugal**, **Slovakia** and **Spain**. The protocol will enter into force in April 2014, after reaching a total of 10 ratifications worldwide.

4.1. Europe takes steps to improve access to child-friendly justice

Europe aims to ensure the rights of children in the justice system and provide for their needs, given that responses are often inappropriate

Key developments in the area of children's rights

- The European Commission adopts a recommendation providing EU Member States with a common framework to act against child poverty.
- The deadlines for transposing the Human Trafficking Directive and the Directive on sexual abuse, sexual exploitation and child pornography are reached in 2013. During 2012 and 2013, a majority of EU Member States reform civil and criminal law, thereby affecting the way children access justice.
- The EU continues to adopt measures against violence against women and girls, such as the Regulation on mutual recognition of protection measures and the Communication on the elimination of female genital mutilation.
- Justice systems in EU Member States are not properly responding to the specific needs and rights of children in criminal and civil proceedings.

and lacking sensitivity to childrens' specific needs. Ensuring child-friendly justice and the implementation of the Council of Europe Guidelines on child-friendly justice[2] are among the objectives of the *EU agenda for the rights of the child*.[3]

The rights of children involved as victims or witnesses in criminal proceedings have thus been strengthened through the victims package, mainly the 2012 Directive on establishing minimum standards on the rights, support and protection of victims of crime[4] and the Directive on sexual abuse and exploitation of children and child pornography, which established a number of procedural guarantees.[5]

December 2013 was the deadline for EU Member States to transpose the Directive on sexual abuse and exploitation and child pornography to national law. Member States should ensure that child victims of crimes covered by this directive receive appropriate assistance before, during and after the criminal proceedings; they should avoid unjustified delay; they should train professionals responsible for interviewing children; and they should organise hearings without the presence of the public. Under the EU Victims' Directive, Member States will have to ensure that special protection measures are available for all child victims participating in criminal proceedings. Such protection measures include, for example, the possibility of recording all interviews audiovisually and that interviews must be carried out by trained professionals and in premises designed or adapted for that purpose. Member States have to transpose this directive by 16 November 2015.

> *"[...] I could never give my full testimony, I could never say everything about how I feel, what is on my mind or what bothers me and other things. And then they interrupted me constantly [...]"*
>
> *Croatia, 14-year-old boy, involved in a child custody proceeding (FRA, 2013, Research on child-friendly justice)*

The EU promotes child-friendly justice for children victims of crime but also for children suspected or accused of crimes. The European Commission has adopted a proposal for a Directive on procedural safeguards for children suspected or accused in criminal proceedings.[6] The proposal includes several measures to protect children's rights, the core measure being mandatory access to a lawyer at all stages of the proceedings with the exception of certain minor offences. Children shall also benefit from other safeguards, such as being promptly informed about their rights, being assisted by their parents (or other appropriate persons), the right to an individual assessment, the right to receive medical examination and being kept separately from adult inmates if deprived of liberty. Moreover, deprivation of liberty should be considered as a measure of last resort and recourse to alternative measures that should be ensured wherever possible. Furthermore, it lays down that professionals such as law enforcement and judicial authorities should receive specific training on the needs of children.

In line with the above legislative measures, the European Commission in close cooperation with FRA has embarked on a project gathering data on children and justice in all EU Member States. The project analyses the legal safeguards provided to children in the different national systems, determines justice indicators, and provides statistical data on children's involvement in justice proceedings. Different findings will be available throughout 2014 and 2015. In parallel, FRA examines children's actual treatment in justice procedures through fieldwork research complementing the Commission's research and assessing how the Council of Europe Guidelines on child-friendly justice are applied.

During the project's first stage, FRA interviewed 574 professionals in 10 EU Member States about their experiences regarding court hearings on issues of domestic violence, sexual abuse and custody, as well as visiting rights within divorce procedures. The professionals were asked about the extent and quality of these hearings, as well as their impact on the child.

> *"Ideally, the child won't leave the hearing burdened by any more negative emotions or with a bad impression. This is what we are aiming for."*
>
> *Estonia, child protection specialist, female (FRA, Research on child-friendly justice)*

The main findings of the 2013 FRA research point to very different practices in treating children in judicial proceedings, depending on the severity and type of cases, and the approach adopted by individual judges or other professionals involved in the case. In some EU Member States, children's participation in judicial proceedings is more formalised, standardised and adapted to children needs than in others. Many professionals, such as judges, police or social workers, were not aware of the Council of Europe guidelines and relied mainly on national regulation and/or on their own understanding and judgement. The majority of respondents said that information provided to children can be improved in terms of consistency, amount, clarity and child-appropriateness. Many also highlighted a need for multi-agency cooperation and better training for judges on child-related issues and for social professionals on legal issues.

During 2013, half of the EU Member States have discussed proposals or have approved legal reforms that affect the way children, particularly victims and witnesses, access the justice system, how they are heard during proceedings and the type of assistance provided to them (for more information on access to justice, see Chapter 8).

FRA ACTIVITY

Listening to children's voices

After having interviewed 574 professionals about the treatment of children in justice proceedings, FRA is now interviewing children themselves about their experiences with the justice system.

Interviews with children are being carried out during 2014 in 10 EU Member States. Children are asked questions about the way that they were treated by justice officials; who heard them, how and where; how they were supported; what effect this treatment had on them; and how they would have liked to be treated, or how to make justice a better experience for children.

A preparatory phase was implemented in 2013 to identify appropriate channels to reach children, implement protection mechanisms and develop and test the research instruments.

This research will lead to a broader assessment of the impact on various practices of involving children in judicial proceedings. It also will help to identify promising practices as well as areas for improvement. Publication of the research findings is planned for 2015.

The Criminal Code and the Code of Criminal Procedure[7] in **Poland** have been reviewed. Now a hearing with a child may take place in a specially adapted room either on or outside the premises of the court. Additionally, such hearings will have to be recorded. A hearing with a victim will be allowed only if the testimony is relevant to the proceedings; the hearing shall be conducted only once, unless there is evidence of relevant circumstances that need to be explained in a second hearing, or it is requested by the accused if he or she had no counsel at the time of the first interview with the victim. This protection covers children who, at the time of a hearing, are under 15 years of age. Children aged over 15 years are obligatorily heard in the conditions mentioned above only if there is a reasonable risk that hearing them in other conditions could have a negative impact on their mental state. Additionally, the application of these procedures has been extended to witnesses.

The **Czech Republic** has also adopted new legislation affecting proceedings with child victims, through the adoption of the Victims Rights Act,[8] in force since August 2013. It considers a child a particularly vulnerable victim, so it provides for special rights such as the right to specialised aid free of charge (such as psychological or social aid) or the right to have testimony translated by an interpreter of the same or the opposite gender. The questioning of a child is also regulated differently from that of an adult: a child has to be treated in a sensitive way and audiovisual devices might be used to record the testimony.

With the new Act strengthening the rights of victims of sexual abuse, **Germany** prescribes standards for the qualification of judges who hear child victims of sexual abuse, strengthens the efforts to avoid multiple hearings and guarantees that hearings are conducted by experienced youth public prosecutors.[9]

The **Slovak** parliament passed an amendment to the Code of Criminal Procedure[10] to ensure that child witnesses up to the age of 18 are entitled to a number of protections. The previous code offered special protection only to children up to 15 years of age. The protection measures relate to the examination of child witnesses and the need to avoid questions about issues that might negatively affect their mental and moral integrity. The examination should be conducted so that there is no further need to repeat it; follow-up examinations are allowed only in specifically justified cases and require a prosecutor's consent.

In the **United Kingdom**, the Ministry of Justice launched a consultation aimed at improving the Code of Practice for Victims of Crime.[11] The revised code in force since December 2013 provides victims with an entitlement to receive a needs assessment from the police to ascertain the help and support the victim may need. The code also includes a dedicated section written in child-accessible language for child victims under 18 years of age. All children under the age of 18 at the time of the offence will qualify for enhanced entitlements, which include timely referral to support services; access to therapy or counselling throughout the investigation and prosecution where appropriate and available; and the provision of advice and information regarding special measures available for vulnerable witnesses. All service providers are also placed under a duty to give primary consideration to the child's best interests.

> *"Well, now and then I felt very sad. I felt very angry. And I felt frightened, because I had not realised that they [stepfather and mother] were able to listen to everything I said. Well, sometimes I felt easy. And sometimes I felt happy that all this was over. I liked that the family assistant was with me. Actually, all in all, the proceeding gets the mark 'good'."*
>
> *Germany, 15-year-old girl, victim of domestic violence, involved in a criminal proceeding (FRA, Research on child-friendly justice)*

Countries have made reforms to the way the justice system responds not only to child victims or witnesses of crimes but also to children accused of breaking the law.

In **Poland**, the amendment to the Act on juvenile justice[12] introduces a maximum time for which a child may be detained in a juvenile police shelter following a decision to place him or her in a shelter or with a foster family. The act also clarifies and enumerates the rights

of children detained in juvenile police shelters and rules on the obligation to inform a minor about his or her procedural rights.

Luxembourg finished the construction of a juvenile 'secure unit' in one of the two socio-educational centres (one centre for females, one for males) in response to criticism by the UN Committee for the Prevention of Torture. The committee has censured Luxembourg for imprisoning young persons in the regular penitentiary centre together with adult criminals.[13] In July 2013, the Ministry of Family and Integration proposed a bill about this secure unit, as well as a draft decree on the organisation of this unit.[14] The draft defines rights and obligations of child offenders. It includes precise guidelines for body search (for example, intimate search has to be done by a medical doctor), ensuring respect for fundamental rights and defining disciplinary measures and procedures within the closed facility.

In the **Netherlands**, a criminal justice bill for juvenile offenders was passed. It allows judges to choose between juvenile and adult criminal law in cases of serious felonies committed by juveniles from the age of 16 to 23 years. The Ombudsman for Children has called on the government to amend the new bill so that the UN Convention on the Rights of the Child (CRC) will not be breached.[15] The new bill means a deterioration of the situation for 16- to 17-year-olds, since they are presently judged according to juvenile criminal law only.

The Department of Justice in **Northern Ireland**, the **United Kingdom**, has initiated a public consultation on the current policy, legislation and operational matters around children in custody, the potential for change and the impact any such changes may have.[16] Input received will feed into the ongoing legislative discussion.

Children with special needs are also taken into consideration when reforming access to justice. **Latvia**, for example, is discussing draft regulations for the police to support children with special needs.[17] The draft regulations determine the procedure whereby the police evaluate if the child has special needs and if specialist support is required. A child with hearing impairments will have to be provided with a sign language interpreter, and a child with communication difficulties will have to be provided with a psychologist. A child brought to the police will have to be provided with a secure environment, movement opportunities and opportunities to visit an accessible toilet.

The European Court of Human Rights (ECtHR) has dealt with the issue of procedural guarantees and child-friendly justice in the case *Vronchenko v. Estonia*. The court recognised the violation of the applicant's right to defence, as he was never given the opportunity to have questions put to the victim, a girl victim of sexual abuse. The court points out, however, that this recognition should not be interpreted as an obligation to have a cross-examination. The authorities should rather have examined if it was possible to put questions to the witness, for example through the defendant's lawyer, police investigator or psychologist, in an environment under the control of the investigating authorities to prevent any harm and repeat victimisation to the child.[18]

Reforms have also affected the way that children are treated in civil proceedings. In **Belgium**, for example, a new act establishes the Family and Youth Tribunal.[19] It also introduces the principle of "one family, one case, one judge", which means that all substantive decisions and decisions on interim measures of any familial nature (including marriage, divorce, child support, adoption, filiation, housing and liquidation of estates) will be grouped together and decided on by a single judge. Previously, the competences related to family disputes were spread among several jurisdictions, which led to a multiplication of court proceedings and increased costs for citizens and the Department of Justice. The law also means that children over 12 years of age must be informed of their right to be heard by the judge in family civil litigations. Children under 12 years of age will be heard only at their request or at the request of the parties, the Public Prosecutor or the judge.

In **Italy**, Law 219/2012 entered into force in January 2013, introducing a new provision in the Civil Code that establishes the right of a child who is 12 years or younger to be heard in all matters that affect him or her, if the child is capable of forming his or her own views.[20] At the same time, national case law has reaffirmed the need to comply with international standards on child-friendly justice on different occasions. The Supreme Court has stressed in Judgment No. 11687 the right of the child to be effectively heard, in compliance with the UN Convention on the Rights of the Child and Article 24 of the EU Charter of Fundamental Rights. The judgment annulled the decision of the appeal court on the conditions of separation of the parents, because the child had not been heard.[21]

4.2. Europe tackles violence against children

Violence still affects the lives of too many children in Europe. The EU and a number of EU Member States have taken steps to combat domestic violence and child sexual abuse, bullying, corporal punishment and other forms of violence affecting children, such as forced marriages. Budget cuts to child protection services, and the risks associated with the misuse of new technologies are some of the factors which exacerbate

problems. Various initiatives have been taken in 2013 at both international and European levels to address the problem.

Violence has been identified as a significant cause of mortality and morbidity in children, particularly adolescents, by the Committee on the Rights of the Child in its General comment No. 15.[22] In line with it, the Special Representative of the Secretary-General on Violence against Children has underlined in its annual report[23] that the urgency of protecting children from violence has not diminished. While progress in child protection remains patchy across the world, children continue to be subject to violent practices in schools, care, justice institutions and the home.

As pointed out in a 2013 World Health Organization (WHO) report,[24] every year at least 850 children aged under 15 years die from maltreatment in Europe. In addition, it is estimated that 18 million children in Europe suffer from sexual abuse, and 44 million from physical abuse.

4.2.1. Domestic violence and sexual abuse

The EU has taken a step towards better protection of domestic violence victims, including children, by guaranteeing that from January 2015 restraining measures against perpetrators are effective across the EU and not just in the Member State in which they are issued. This new order[25] will complement the 'European protection order', adopted in December 2011, extending its application from criminal to civil matters (see Chapter 9 on the rights of crime victims).

A wider ratification of the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, known as the Lanzarote Convention,[26] represents another accomplishment. So far, 18 EU Member States have ratified it: **Austria**, **Belgium**, **Bulgaria**, **Croatia**, **Denmark**, **Finland**, **France**, **Greece**, **Luxembourg**, **Malta**, the **Netherlands**, **Portugal**, **Romania** and **Spain** before 2013, as well as **Italy**, **Lithuania**, **Slovenia** and **Sweden** during the year.

The Council of Europe Convention on preventing and combating violence against women and domestic violence, known as the Istanbul Convention,[27] has not yet reached the minimum number of ratifications to enter into force. Only three EU Member States have ratified the convention, **Austria**, **Italy** and **Portugal**, all during 2013.

The FRA survey, which is based on interviews with 42,000 women across the EU, also highlights children's direct exposure to domestic violence and their risk of victimisation later in life. In connection with this, 41 % of violent incidences against mothers are witnessed by at least one child. Moreover, 7 % of women who had a current or previous partnership and had experienced violence in their partnership reported threats by a partner that they would take the children away. In 3 % of the cases, the partner threatened to hurt the children, and 3 % of the women state that the partner actually did so.

FRA ACTIVITY

Asking women about their experiences of violence during childhood

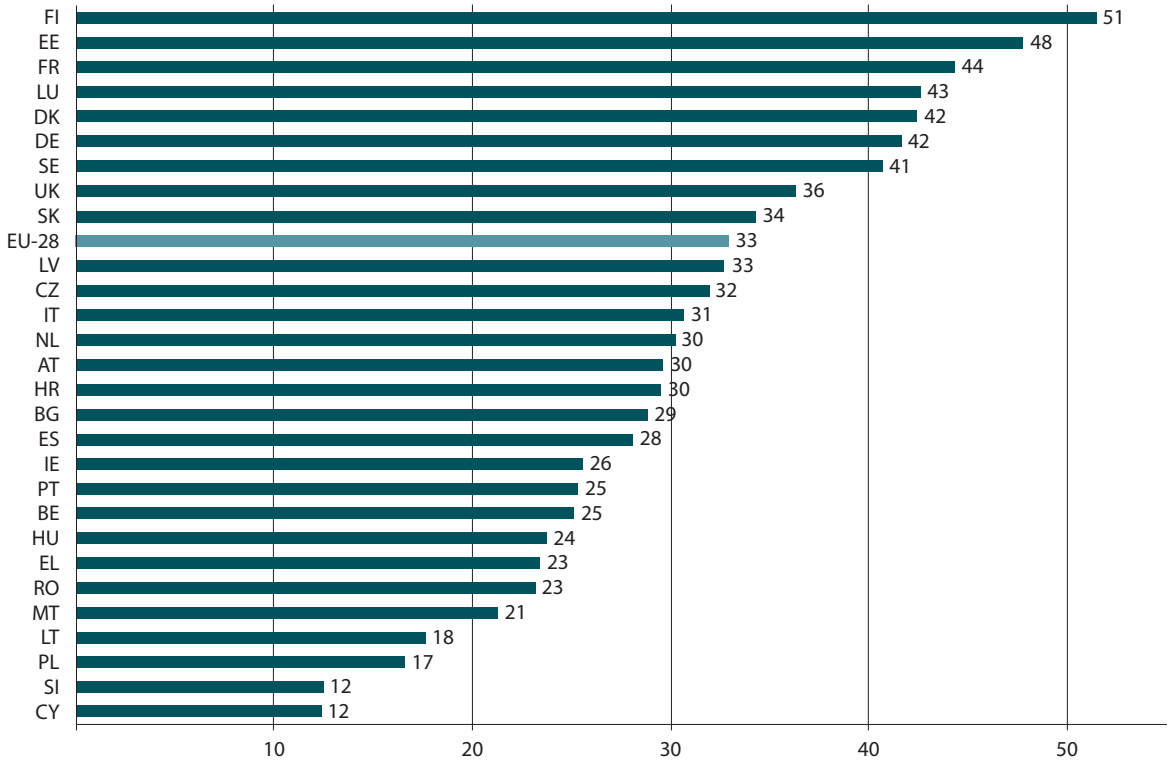
Women in all EU Member States were asked about their experiences of violence during childhood in a FRA survey. The results show that 27 % of women have experienced some form of physical abuse in childhood at the hands of an adult, and just over one in 10 women (12 %) has experienced some form of sexual abuse by an adult before she was 15 years old. This corresponds to 21 million women in the European Union.

Women's perception of whether violence against women is common in their country is closely connected to their personal experiences of domestic or non-partner violence, their awareness of other women who are victims of violence, and their awareness of campaigns addressing violence against women. The interplay between these factors needs to be taken into account when interpreting data from the different EU Member States.

December 2013 was the deadline for EU Member States to transpose the Directive on sexual abuse and exploitation and child pornography into national law.[28] Thus, 2013 continued to witness criminal law reforms in the area of sexual abuse, domestic violence, child pornography and sex tourism in Member States such as **Austria**, **Germany**, **Hungary**, **Italy**, **Latvia** and **the Netherlands.** Other Member States, such as **Lithuania**, **Poland** and **Spain**, are still discussing draft proposals.

Austria introduced a new law in July 2013 altering the Criminal Code and Code of Criminal Procedure[29] to introduce changes to sexual crime legislation. The law defines child prostitution and the crime of human trafficking. It increases the minimum punishment for the crime of rape from six months to one year, and the punishment for sexual coercion with severe consequences for the victim (e.g. severe bodily harm or

Figure 4.1: Childhood experience of any physical or sexual violence before the age of 15 (%)



Source: FRA (2012), Gender-based violence against women survey data set

pregnancy) from one year to a minimum of five years. Victims under 14 years shall be granted psychosocial aid. The ban on working with children if convicted of a sexual crime against children has been modified in conformity with Directive 2011/93 to include professional activities involving intensive contacts with children.

Austria also has a new law on child protection.[30] Among other changes, it structures the process regulating the assessment of when the child's best interests are endangered, and unifies it for all Austrian provinces. Two well-trained specialists must assess if there is an imminent danger to the child's best interests. It also explicitly lists the persons and institutions that are obliged to notify the Child and Youth Welfare Office when they have reason to believe that the child's welfare is in danger.

In **Hungary**, the Commissioner for Fundamental Rights released a report on child prostitution. It highlights that the most serious obstacles to effectively tackling child prostitution are the lack of cooperation between authorities and institutions, the lack of knowledge, professional guidelines and protocols, and the fact that the police treats children in prostitution as offenders and not as victims.[31] Hungary had reformed its criminal code in 2012, making some changes to its treatment ofsexual violence; the 2012 reform further defined child prostitution and increased the time within which legal proceedings may be brought for certain crimes up to the age of 23 years.

FRA ACTIVITY

Researching European guardians for children victims of trafficking

During 2013, FRA reviewed guardianship systems in the 28 EU Member States to identify promising practices. The review covered issues such as the role of the guardians, their qualification and training, and the procedure for appointing a guardian. The research also explored how specific guardianship mechanisms used for child victims of trafficking relate to guardianship arrangements for other children who are temporarily or permanently deprived of their family environment.

FRA was requested to support the European Commission to develop a best practice model on the role of guardians and/or representatives of child victims of trafficking, as suggested in the EU Anti-Trafficking Strategy 2012–2014. To do so, it updated parts of the report on *Child trafficking in the European Union: Challenges, perspectives and good practices*, published by FRA in July 2009.

As a result of this research, FRA will publish two reports in 2014: a good practice model on guardianship and legal representation of children victims of trafficking and a comparative report on the guardianship systems in the 28 Member States.

A number of EU Member States have reformed laws regulating domestic violence against women and children. In **Latvia**, for example, the notion of emotional abuse has been widened; now the violent treatment of a person close to a child in the child's presence shall also be recognised as emotional abuse.[32] **Italy** adopted a new law decree introducing an aggravating sanction for the perpetrator if the domestic violence has taken place in presence of a child and introducing the possibility of granting a permit to stay for victims of domestic violence who are third-country nationals.[33] The law decree promotes prevention programmes in schools and the reinforcement of support programmes for women victims of violence and their children.

Promising practice

Compensating victims of family sexual abuse

To compensate victims of family sexual abuse, **Germany** has established a €50 million sexual abuse fund (*Fonds Sexueller Missbrauch*). The *Länder* should add another €50 million to the fund. The establishment of a fund for victims of sexual abuse in institutional settings and outside family context is under discussion.[38]

People who were sexually abused in their families as a child and still suffer from the effects today may apply for benefits in kind up to a value of €10,000. This provision covers cases of violence that occurred between the founding of the German Republic in May 1949 and June 2013. Requests for such benefits can be submitted until 30 April 2016. The offer of assistance ranges from cost transfers for psychotherapeutic care to training and qualification measures or other tailored support in special cases.[39]

For more information, see: www.fonds-missbrauch.de/

In the **Netherlands**, the Act for a Mandatory Reporting Code on Domestic Violence and Child Abuse entered into effect on 1 July 2013,[34] making it compulsory for organisations and independent professionals to adhere to a reporting code. The code targets domestic violence and child abuse, including sexual violence, female genital mutilation, honour-based violence, senior abuse and forced marriage. It applies to organisations and independent professionals in education, healthcare, childcare, youth care, social work and the criminal justice system, who are obliged to report cases of suspected child abuse. Organisations and independent professionals have to draw up their own systems on how to report, tailored to their specific situation. The Ministry of Health, Welfare and Sport has published a model reporting code that can be used for this purpose.[35] The Dutch Healthcare Inspectorate held a survey before the act entered into force and concluded that reporting codes for domestic violence and child abuse have not been adequately used in the healthcare sector, with its subsectors varying in the extent to which they had adopted such codes.[36]

At the policy level, the **Netherlands** is also discussing an action plan against child sex tourism.[37] It contains measures to address child sex tourism, including confiscating the passports of repeat offenders and closer cooperation between Dutch officials and officials from countries where child sex tourism is common, such as Brazil, Thailand, the Philippines and India. This will include deploying police experts to help track down offenders, improving the international registration of offenders and information exchange between countries.

4.2.2. Violence on the internet rises

The safety of children is particularly at risk on the internet both from adult predators and from young people themselves uploading sexually explicit material. The threat of online child sexual exploitation is increasing as technology develops and offenders find more secure methods to distribute abusive material, as reported by Europol.[40] The amount of video material depicting child sexual abuse available online has grown substantially. It is estimated that only between 6 % and 18 % of child abusive material is currently traded for money, given the wide availability of free material, especially using peer-to-peer technology, by which individuals exchange files. An increase in the distribution of sexual images and videos by young people themselves – known as 'sexting' – is equally alarming. According to the Virtual Global Taskforce, a network of law enforcement agencies, NGOs and industry, 15 % of 11- to 16-year-olds in Europe say that they have received sexual messages from peers.[41]

European stakeholders have taken several initiatives to promote child safety on the internet. The European Commission has adopted a green paper[42] to regulate reporting tools for users, age-appropriate privacy settings, use of parental control and effective removal of child abuse material. In addition, a new European Cybercrime Centre, focusing on online child sexual exploitation, among other activities, was opened in January 2013.[43] Under the Daphne III Programme, a European awareness-raising campaign on cyberbullying called Delete Cyberbullying[44] was launched in February 2013. The project contributes to developing a common approach to risk prevention by setting guidelines to children, families and parents (see also Chapter 3 on information society, respect for private life and data protection).

Member States have adopted a number of legislative and policy actions. In **Luxembourg**, a bill[45] is being discussed to address cyberharassment. The bill is expected to empower victims, especially students, to go to court. In **Italy**, the National Authority for Children has signed

an agreement with the Head of Police to disseminate promising practices in relation to the correct use of web technologies by children. The Observatory against Paedophilia and Child Pornography has launched its own website with the aim of spreading the knowledge of this phenomenon, including laws and practical information for victims[46] (see promising practice on web technologies in Chapter 3).

A 2013 report by the **Dutch** Ombudsman for Children[47] noted a 158 % increase in notifications of child pornography between 2011 and 2012. Online grooming (an adult approaching a minor with the aim of sexual abuse) has been punishable since 2010. There have been several cases, including a 2013 case before the Supreme Court[48] and a case before the District Court of Assen, where a man was accused of grooming 300 girls through the internet between 2005 and 2013. The prosecution's focus is shifting from the downloading of child pornography to the sexual abuse of children and the production and distribution of child pornography. Spain approved the Second Strategic Plan on childhood and adolescence 2013–2016; one of its eight objectives is the prevention of online abuse and grooming, and it also plans criminal law reform on the issue.[49]

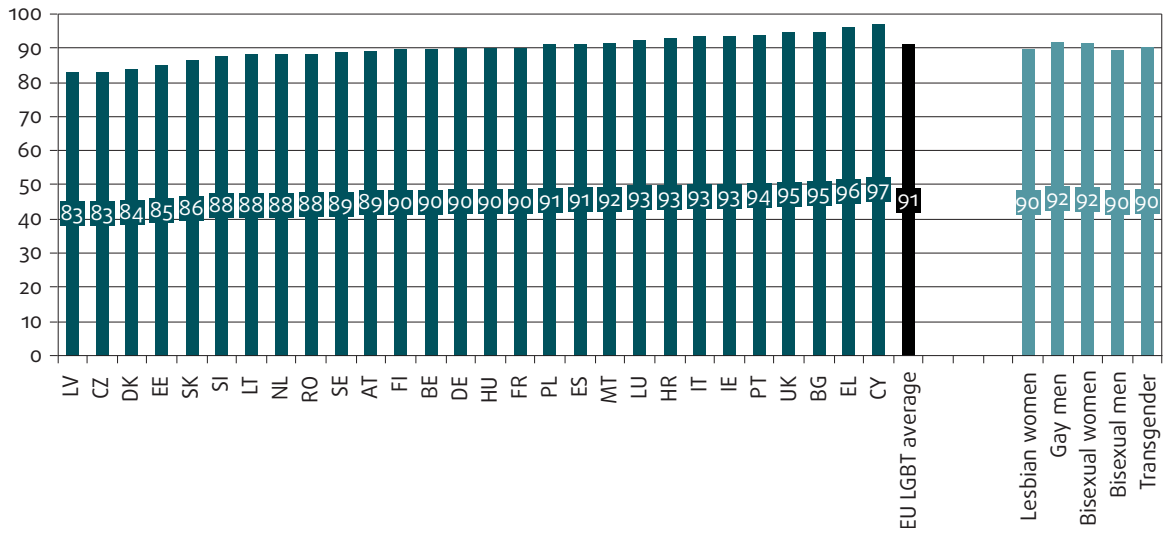
An innovative and controversial program to detect men looking for webcam sex with children coming from developing countries was also developed by a Dutch organisation, Terres des Hommes.[50] With the aid of a computer-generated 10-year-old girl, 'Sweetie', the organisation was able to identify more than 1,000 sex predators from more than 65 countries in less than two and a half months. The video footage and all information obtained on predators have been transferred to police authorities.

4.2.3. Bullying

Cyberbullying is another common threat to children's well-being, with severe effects that can lead to self-harm. Cyberbullying is understood as a form of bullying that takes place using electronic technology. Examples of cyberbullying include mean text messages or emails, rumours sent by email or posted on social networking sites, and embarrassing pictures, videos, websites or fake profiles. During 2013, a few cases of suicide appeared in the media in several EU Member States, such as in **Italy**, where in May 2013 a 14-year-old girl from Novara committed suicide after some offensive videos were posted online. Bullying is not limited to the internet, being widespread also in schools. To raise awareness of the very serious effects of this phenomenon, members of the European Parliament called for the establishment of a European Day against Bullying and School Violence in January 2013.[51]

FRA conducted the first ever online EU-wide survey to establish an accurate picture of the lives of lesbian, gay, bisexual and transgender (LGBT) people and their experiences with regard to fundamental rights.[52] A total of 93,079 LGBT persons took part in the survey. Asked about their experiences during childhood, more than eight in 10 respondents in each LGBT subgroup and in each EU Member State have witnessed negative comments or conduct during their schooling because a schoolmate was perceived to be LGBT; in other words, in all EU Member States more than 80 % of LBGT people

Figure 4.2: Heard or seen negative comments or conduct because a schoolmate/peer was perceived to be L, G, B or T at school before the age of 18, by EU Member State and by LGBT group (%)



Note: Answers include 'rarely', 'often' and 'always'.
Source: FRA (2012), EU LGBT survey

surveyed have heard or seen negative comments or conduct towards a peer perceived to be lesbian, gay, bisexual or transgender (Figure 4.2).

Two thirds (68 %) of all respondents who answered the question say these comments or this conduct has occurred often or always during their schooling before the age of 18. The highest rates are in **Bulgaria**, **Cyprus**, **Greece**, **Ireland**, **Malta**, **Spain** and the **United Kingdom**.[53] Two thirds (67 %) of all respondents say they often or always hid or disguised the fact that they were LGBT during their schooling.

Bullying and violence in schools remains an important concern in the EU. Many Member States have taken up the matter to address issues of school violence and bullying. A government bill was tabled in **Finland**'s Parliament on 6 June 2013 aiming to reduce bullying by shifting emphasis from individual measures and reparation to collective measures and prevention. The legislative proposal includes an obligation to offer services by school welfare officers and psychologists to pupils at the secondary level of schooling, not only to primary pupils as in the present legislation.[54] **Bulgaria** has set up an expert working group at the Ministry of Education, which developed a mechanism for combating school bullying.[55] In **Greece**, the Centre for the Prevention of School Violence established by the Ministry of Education in 2012[56] presented, according to reports, the findings of a major survey based on a sample of 41,422 school children showing that 33 % were victims of violence because of their place of origin and 11 % because they belonged to a minority group.[57]

The Action Plan Against Bullying in schools in the **Netherlands**[58] contains a proposal for an act that will oblige all primary and secondary schools to employ effective measures against bullying, ensure its monitoring and appoint a person who coordinates actions tackling bullying. In 2013, the State Secretary for Education, Culture and Science appointed a committee of independent experts that will review the effectiveness of anti-bullying programmes.[59] It is expected that a legislative proposal will be sent to the House of Representatives in 2014.[60]

Research shows that children are significantly more vulnerable to school violence if they belong or are perceived to belong to a minority group, such as migrant, Roma or LGBT children.

There were numerous racist incidents involving students but also parents and even teachers against students, as reported by the Greek Ombudsman in September 2013. The majority are related to the ethnic and racial background of the students. Teachers are often seen as tolerating this type of violence.[61]

The **United Kingdom's** main child helpline reported a 65 % increase in young people experiencing racist bullying. A common theme was for young people to be called a 'terrorist' or a 'bomber', and told to 'go back to where they came from'. These constant insults left many young people feeling upset, insecure and frustrated[62] (for more information on racism and ethnic discrimination, see Chapter 6).

4.2.4. Other forms of violence

Other forms of violence also afflict children, such as genital mutilation, forced marriages and corporal punishment. EU Member States are increasingly moving to criminalise forced marriages and corporal punishment and the EU has taken aim at female genital mutilation. The European Commission adopted a Communication to the European Parliament and the Council: *Towards the elimination of female genital mutilation*.[63] The Communication aims at supporting Member States in the protection of girls, the prosecution of parents and cutters, and especially prevention through education and awareness raising. Female genital mutilation can be prosecuted in all Member States, either through general criminal legislation or through specific criminal law provisions, such as those existing in **Austria**, **Belgium**, **Croatia**, **Cyprus**, **Denmark**, **Germany**, **Ireland**, **Italy**, **Spain**, **Sweden** and the **United Kingdom**. However, very few cases are actually prosecuted and sentenced.

Germany is one of the Member States that changed their penal codes recently to penalise the mutilation of female genitalia. The new act clearly classifies female genital mutilation as a crime, punishable with imprisonment of at least one year. Moreover, the procedural rights of victims have been strengthened and the limitation period is set to begin only when victims attain their majority.[64]

After a controversial 2012 court case in Germany (for more information, see Chapter 5 of the 2012 Annual report, on equality and non-discrimination) the issue of male circumcision has continued to be high on the European agenda. Despite the objections of those who see circumcision as an issue of religious freedom, the Council of Europe's Parliamentary Assembly approved a resolution on children's right to physical integrity in October 2013.[65] This initiative aims to include medically unjustified violations of children's physical integrity within the body of human rights standards. Governments are recommended to restrict certain practices, such as the circumcision of young boys for religious reasons and surgery to 'normalise' the genitalia of intersex children, until a child is old enough to consent or refuse consent. The resolution also calls on states to define the medical and sanitary conditions for these practices as well as adopt legal provisions to ensure that certain operations will not be undertaken before a child reaches the age of consent.

Children's ombudspersons from five Nordic countries (the EU Member States **Denmark, Finland** and **Sweden**,

as well as Iceland and Norway) agreed in September to work with their respective governments to restrict male circumcision so that it is no longer performed on non-consenting, underage boys for non-medical reasons.[66] In addition, medical associations from 17 European countries also voiced their opposition to routine male circumcision of infants and boys as a medically unnecessary procedure which goes against medical ethics. In a 2013 edition of the medical journal *Pediatrics*, paediatricians and medical associations agreed that "[c]ircumcision fails to meet the commonly accepted criteria for the justification of preventive medical procedures in children," and that existing research does not justify "surgery before boys are old enough to decide for themselves."[67]

The issue of forced marriage has been analysed in a FRA study to be published in 2014. Seven out of 28 EU Member States define forcing a person to marry against his or her will as a specific criminal offence. These states are **Austria**, **Belgium**, **Croatia**, **Cyprus**, **Denmark**, **France** and **Germany**. There is a trend towards criminalising forced marriage across Europe. Three Member States passed specific legislation to combat forced marriage in 2013 (**Croatia**, **France** and the **Netherlands**), and three others (**Luxembourg**, **Malta** and the **United Kingdom**) are currently addressing forced marriage in legislative proposals. Certain countries have legal age limits against child marriage, requiring both spouses to be at least 18 years old, such as **France**, **Germany**, the **Netherlands** and **Sweden**. In others, the marrying of persons under 18 would require parental approval. In yet others, the limit is set at 16 years or below, in cases where the law of the country of origin (for non-citizens) is applied.

In recent years, the number of EU Member States enacting laws to prohibit the corporal punishment of children has increased. In particular, 16 Member States have prohibited corporal punishment of children in all settings: the home, schools, penal system and care settings.[68] During the last five years, nine Member States have received recommendations to prohibit corporal punishment in the Universal Periodic Review carried out by the UN Human Rights Council: **Belgium**,[69] **Estonia**,[70] **Ireland**,[71] **Italy**,[72] **Lithuania**,[73] **Malta**,[74] **Slovakia**,[75] **Slovenia**[76] and the **United Kingdom**.[77]

Regional mechanisms were used in 2013 to challenge the legality of physical punishment of children. In July, the European Committee on Social Rights declared a series of complaints admissible under its collective complaints procedure; they claim that **Belgium**, **Cyprus**, **Czech Republic**, **France**, **Ireland**, **Italy** and **Slovenia** are not complying with their obligations under the European Social Charter, which requires EU Member States to protect children from violence in all settings.[78] Several of the Member States have since made commitments to abolish all corporal punishment of children.

The fact that young people within the justice system are particularly vulnerable to violence is also confirmed by a recent study about the experiences of young people in custody in five EU Member States, namely **Austria**, **Cyprus**, the **United Kingdom** (only **England**), the **Netherlands** and **Romania**.[79] According to the views of over 120 children, violence appears to be a relatively common practice in custody, with staff using violent methods to assert their positions or to stop incidents among youth. Similar results came up in a research published by the Ombudsman for Children (*Barnombudsmannen*) in **Sweden** about the situation of children in police cells and in remand prisons.[80] Children met by the researchers described police cell staff who are tyrannical and use various means to break the child's spirit. These might be threats, fear of physical violence, put-downs and various power games. More positively, the findings also show that, in the context of investigative custody, prison staff only rarely use their power to put the young inmates down. No child reported that he or she was afraid of the staff at the remand prison, or had experienced threats or fear of physical violence.

4.3. Europe takes aim at child poverty

Child poverty continued to afflict the lives of many children in Europe. Addressing child poverty was a prominent feature in the European and national policy agendas, as well as in the national media. Some of the main issues were education budget cuts and the impact of child poverty on specially vulnerable groups. The European Commission's adoption of a child poverty recommendation was a step forward in 2013.

Eurostat published in 2013 a study analysing existing data on child poverty. According to Eurostat, in 2011, 27 % of children (aged 0–17) in the EU-27 were at risk of poverty or social exclusion, compared with 24 % of adults (18–64) and 20 % of the elderly (65 or over). Moreover, 49 % of children whose parents' level of education was low were at risk of poverty, compared with 7.5 % of children whose parents' level of education was high. Children with a migrant background were at a greater risk of poverty than children whose parents were native born (13 points higher). As regards living conditions, 18 % of single-parent households were severely materially deprived, compared with 9.6 % of two-parent households with dependent children.[81]

4.3.1. European Commission offers guidance on promoting children's well-being

Following the conclusions on child poverty and social exclusion agreed by the Council of the European Union

in 2012, the European Commission adopted in February 2013 the recommendation *Investing in children: Breaking the cycle of disadvantage*.[82] The recommendation provides guidance to Member States on how to tackle child poverty and promote children's well-being, and sets up a common European framework, based on recognition of children as rights holders. By doing so, it takes a step away from the dominant paradigm of seeing children solely as dependents, towards an emphasis on children's independence.

"While policies addressing child poverty are primarily the competence of Member States, a common European framework can strengthen synergies across relevant policy areas, help Member States review their policies and learn from each other's experiences in improving policy efficiency and effectiveness through innovative approaches, whilst taking into account the different situations and needs at local, regional and national level".

European Commission (2013), Commission Recommendation of 20 February 2013, Investing in children: Breaking the cycle of disadvantage, Brussels, 20 February 2013

The European Commission recommends that Member States organise and implement policies to address child poverty and social exclusion, promoting children's well-being, through strategies based on three pillars:

- access to adequate resources – support parent's participation in the labour market and provide for adequate living standards through a combination of benefits;
- access to affordable quality services – reduce inequality at a young age by investing in early childhood education and care, improve education systems' impact on equal opportunities, improve the responsiveness of health systems to address the needs of disadvantaged children, provide children with safe, adequate housing and living environment, and enhance family support and the quality of alternative care settings;
- children's right to participate – support the participation of all children in play, recreation, sport and cultural activities and put in place mechanisms that promote children's participation in decision making that affects their lives.

The Commission also recommends developing implementation and monitoring mechanisms, and strengthening the use of research. The recommendation includes a set of indicators to monitor child well-being. The Member States should make full use of relevant EU instruments, by addressing child poverty and social exclusion as a key issue within the Europe 2020 Strategy and by mobilising the relevant EU financial instruments.

Following from the European Commission's recommendation, the European Platform for Investing in Children was launched in early 2013. It is an online platform managed by the European Commission's Directorate-General for Employment, Social Affairs and Inclusion. The platform is a tool to share the best of policy making for children and their families, and foster cooperation and mutual learning in the field.[83]

Provision of childcare services is essential to ensure parents can work. There are clear linkages between child poverty and parental unemployment. To reach the EU's employment targets and improve the overall economic situation, it is essential that more parents work, especially women. The European Commission in a 2013 report addressed recommendations to 11 Member States on female employment, childcare availability and quality, full-day school places and care services. The report finds that just eight Member States, **Belgium**, **Denmark**, **France,** the **Netherlands, Slovenia, Spain, Sweden** and the **United Kingdom**, have met the targets agreed by the European Council on availability and accessibility of childcare services.[84]

4.3.2. Member States seek solution to child poverty

UNICEF published a study of child well-being in the world's 29 most advanced economies.[85] Five dimensions of children's lives have been considered: material well-being, health and safety, education, behaviours and risks, and housing and environment. In total, 26 internationally comparable indicators have been included in the overview. The key findings show the **Netherlands** as the clear leader and as the only country ranked among the top five countries in all dimensions of child well-being. Nordic EU Member States – **Finland** and **Sweden** – sit just below the Netherlands at the top of the child well-being table. Three southern Member States – **Italy**, **Portugal** and **Spain** – are in the bottom half of the table. The three poorest countries surveyed, **Latvia**, **Lithuania** and **Romania**, together with crisis-struck **Greece** and one of the richest, the United States of America, occupy the bottom five places. The EU as a whole (except for Bulgaria, Croatia, Cyprus and Malta, which were not included in the survey) is ranked worse (15.6) than some non-EU countries at 12.12 (Canada, Iceland, Norway, Switzerland and the USA).

EU Member States have also produced their own data or studies on child well-being and child poverty. Despite the favourable results for the **Netherlands** in the UNICEF research, the Dutch Ombudsman for Children produced in June a report on poverty among children, which concluded that one in nine Dutch children are growing up in poverty.[86] The report examined the policies of 198 out of 408 municipalities to combat child poverty, given their key role in fighting poverty. Only three municipalities have policies specifically targeting children living in poverty. The Ombudsman for Children advised municipalities to provide a Children's Package to households with

incomes below a certain threshold. Within a week after the report was released, 26 municipalities announced that they would provide such a Children's Package.[87]

In 2013, the Central Statistical Office in **Poland** published a report on poverty showing that young people, including children, are the social groups at the greatest risk of poverty. In 2012, 10 % of people aged under 18 experienced extreme poverty.[88] The Statistics Office of **Estonia** published, in its blog, data on relative poverty to show that every sixth child in Estonia was living below the relative poverty line and one child in 11 was below the absolute poverty line or in deep material deprivation in 2011. According to this information, there have been no significant changes in the percentages since 2007.[89]

In the **United Kingdom**, the Office of the Children's Commissioner published a child rights impact assessment of budget decisions made between 2010 and 2015. The findings were worrying.[90] The assessment concludes that, despite some progressive policies and the apparent commitment of the United Kingdom government, "families with children have lost more as a result of the economic policies modelled than those without children, and some of the most vulnerable groups have lost the most."[91]

The impact of the financial crisis on women with children is also affecting children's standard of living. In **Slovakia**, a report on gender equality concludes that the crisis has significantly worsened the financial situation of mothers with small children, which may have deepened the poverty of families.[92] The crisis has provoked a massive transfer of women into the sphere of unpaid jobs; according to the report's authors, this has been caused by the steep increase in childcare fees.

National committees of UNICEF have also produced studies on child poverty in **Germany**, **Greece**[93] and **Spain**.[94] The survey in Germany found that, between 2000 and 2010, 8.6 % of children in Germany experienced long-term poverty because they lived in households earning less than 60 % of the average income.[95]

Several EU Member States have policies that address poverty in general, or which target families specifically. In addition, other Member States have action plans or other policies to target child poverty directly. In June 2013, **Belgium** adopted a national action plan to fight child poverty. It aims to implement the European Commission Recommendation *Investing in children: Breaking the cycle of disadvantage*. The plan is a result of collaborative work between the federal government, the communities, the regions and other stakeholders, and includes a total of 140 actions across the three pillars. The plan stresses, among other things, the importance of improved access to work and financial support for families with children, helping parents to combine work and family, and the promotion of children's participation in social activities, leisure time and cultural and sporting events.[96]

Promising practice

Researching the lives of children

Growing Up in Ireland is a national study of children, the results of which will feed into different governmental policy areas. The study seeks to examine the factors that contribute to or undermine the well-being of children in contemporary Irish families. It was launched in 2006 as part of the National Children's Strategy. The research will take place over a number of years and involves examining the progress and well-being of the same group of children (about 20,000 individuals) on a number of occasions at important points throughout their childhood. It includes qualitative and quantitative research methods.

The most recent report, published in September 2013, noted that the impact of poverty on children was already apparent by three years of age. Other areas covered by the reports are well-being, education, health, family situation and other social issues.

The project has set up a Children's Advisory Forum formed of 84 children to make sure the voices of children are heard within the study. Their role is to advise the researchers on how best to run the study and to make sure views and opinions of children and young people are taken into consideration when making decisions.

Growing Up in Ireland is a government study funded by the Department of Children and Youth Affairs, in association with the Department of Social Protection and the Central Statistics Office.

For more information, see: www.growingup.ie

The **Spanish** National Action Plan for Social Inclusion 2013–2016[97] integrates all the Spanish policies against poverty and social exclusion and includes 240 measures intended to rescue 1.5 million people from poverty, in accordance with the Europe 2020 Strategy. The plan is the first to include the fight against child poverty as a top priority and a cross-cutting objective, as well as a Special Fund intended to cover children's basic needs (€17 million). The total funds assigned to the plan amount to €136,600 million.

> *"During the past few years, some of our member institutions have seen their areas of action reduced, human and material resources cut and even their very existence called into question."*
>
> *European Network of Ombudspersons for Children (2012),* Position paper on the consequences of the economic crisis on independent children's rights institutions*, October 2012*

Bulgaria included a child objective within its newly adopted National Strategy for Reduction of Poverty and Social Inclusion 2020. One of its main aims is

to reduce the current number of children living in poverty by 78,000.[98] **Germany's** Federal Council passed in July 2013 the Act Easing Administration in the Area of Child and Youth Welfare Services, which should improve access to childcare and youth care for low-income parents and simplify procedures with youth welfare offices.[99]

Child poverty and education

The financial crisis has produced a number of cuts in education expenditure in EU Member States. According to a 2013 report published by the European Commission,[100] 20 EU Member States cut their national education budgets in 2011–2012. Cuts of more than 5 % were observed in **Croatia**, **Cyprus**, **Greece**, **Hungary**, **Italy**, **Latvia**, **Lithuania**, **Portugal**, **Romania** and the **United Kingdom (Wales)**, whereas decreases between 1 % and 5 % were seen in **Belgium (French Community)**, **Bulgaria**, the **Czech Republic**, **Estonia**, **France**, **Ireland**, **Poland**, **Slovakia**, **Slovenia**, **Spain** and the **United Kingdom (Scotland)**.

Some EU Member States took several initiatives to address specifically the issue of poverty and access to education. School drop-out rates remain a problem that has to be countered in some Member States. Often the reasons are family poverty, remoteness of small villages from school, low level of education of the parents, healthcare problems, poor language skills and discriminatory attitudes. According to UNICEF research, **Bulgaria** has the lowest average drop-out age (14.3 years) among the EU Member States.[101] The government adopted a strategy for the prevention and reduction of the proportion of children dropping out of school 2013–2020, to ensure equal access to students and to support their families by offering textbooks and assistance for the purchase of compulsory books.[102]

Finland, which is one of the countries ranked highest by the Programme for International Students Assessment (PISA), is considering increasing the age of compulsory education. The government introduced in August 2013 a structural policy programme on boosting economic growth. It aims to ensure that young people are trained and enter working life. To achieve this, pre-school will be made obligatory, secondary school attendance increased and the age of compulsory schooling raised from 16 to 17 years.[103]

Austria modified its School Allowance Act,[104] introducing a significant change to the way school allowance is assigned to children in need (e.g. covering costs for studying in specialised schools away from the family home, or transport costs). The granting or the amount of a school allowance is dependent not on good grades any more, but only on the financial and social situation of the family. The former system also required children to be good students.

When it comes to poverty and access to education, a number of groups are particularly affected by lack of resources or by high drop-out rates. Among those are migrant children, Roma children and children with disabilities.

The European Commission acknowledged the case of migrant children and the difficulties in accessing school in a report presented in April 2013.[105] The report says that newly arrived migrant children are more likely to face segregation and end up in schools with fewer resources. This leads to underperformance and a high probability that the children will drop out of school early. The study suggests that EU Member States should provide targeted educational support for migrant children, such as specialist teachers, and systematic involvement of parents and communities to improve their integration. The study examines national policies in support of newly arrived migrant children in 15 Member States. It finds that **Denmark** and **Sweden** have the best models, based on offering targeted support and a reasonable level of autonomy for schools (for more information on asylum and migration, see Chapter 1).

In the **United Kingdom**, the Office of the Children's Commissioner for England published a study on the experiences of disabled children living in poverty.[106] It found that some disabled and young people were living without adequate heat, food and housing, and that they faced clear barriers in accessing a range of services (health, education, play and leisure activities) in comparison with other children. Although there were positive stories of local authority and school support, there were also cases of parents experiencing difficulties in accessing appropriate and stimulating learning opportunities, families having to travel long distances to receive appropriate education services, and insufficient personal assistance and support being provided in some areas.

> *"I am deeply concerned that limited attention is being paid to the risks of child labour in Europe. In most countries officials are aware of the problem, but few are willing to tackle it. That data and figures are almost non-existent or highly approximate is a point of worry in itself. One cannot fight a problem without information about its extent, character and effects."*
>
> *Muižnieks, N., Council of Europe Commissioner for Human Rights (2013),* Child labour in Europe: A persisting challenge*, Human Rights Comment, 20 August 2013*

FRA research in 11 EU Member States shows that one out of 10 Roma children of compulsory school age in **Greece** and **Romania** are working outside their home. Working conditions are generally unsafe, as their occupation mostly consists of collecting objects for reselling or recycling, or begging on the street for money[107] (see also Chapter 7 for more information on Roma children).

FRA ACTIVITY

Mapping child protection in Europe

The European Commission plans to develop EU guidelines on child protection systems. This is envisaged in the EU Strategy towards the Eradication of Trafficking in Human Beings[108] and in line with the EU Agenda for the Rights of the Child and the identified need to gather data to fill the gaps in knowledge about the situations and needs of the most vulnerable groups of children.

To develop the guidelines, the Commission has asked FRA to analyse the child protection systems in the 28 Member States. The mapping will focus in particular on the national legal framework, the structure and functions of the current national system, care by state and non-state actors, inter-agency cooperation, cross-border cooperation, data collection and monitoring.

The results will be published at the end of 2014.

Outlook

Translating the European Commission's recommendation on child poverty into reality at national level will be a challenge, especially in EU Member States that are still struggling with the impact of the economic crisis. Member States will need to reassess their policies addressing child welfare in all its aspects – material deprivation and access to education, health and social services – to ensure that they are in the best interests of the child, in line with the United Nations Convention of the Rights of the Child and the EU Charter on Fundamental Rights. The economic upturn that may be reaching some Member States should allow policies that improve child welfare provisions, especially for those children in vulnerable situations, such as asylum seekers, irregular migrants and Roma.

EU Member States had to transpose two important directives into national law in 2013, one on trafficking, sexual abuse and exploitation and one on child pornography. These directives improve the way that justice systems respond to child victims of or witnesses to crimes. The implementation of this new legal framework will require policy and skills training in 2014 and beyond.

The EU Victims' Directive, the eventual adoption of a directive dealing with the protection of children suspected or accused in criminal proceedings and a common framework for child protection will also spark developments at national level. EU Member States will be required to adapt their criminal law provisions and child protection systems while also ensuring that the Council of Europe Guidelines on child-friendly justice are fully taken into account. Several upcoming European Commission and FRA studies on children and justice will help identify challenges and promising practices and will further guide national-level improvements. Collecting data regarding children and justice, as well as in other child rights' fields, remains fundamental to effectively address violations of children's rights.

More EU Member States should ratify the third protocol to the Convention on the Rights of the Child, which entered into force in April 2014, to allow children to bring individual claims of human rights violations against their countries.

Index of Member State references

Endnotes

All hyperlinks accessed on 30 April 2014.

1 United Nations (UN), Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, 9 June 2011, https://treaties.un.org/doc/source/signature/2012/ctc_4-11d.pdf.

2 Council of Europe, Committee of Ministers (2010), Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly justice, 17 November 2010, www.coe.int/t/dghl/standardsetting/childjustice/Guidelines%20on%20child-friendly%20justice%20and%20their%20explanatory%20memorandum%20_4_.pdf.

3 European Commission, *An EU agenda for the rights of the child*, COM(2011) 60 final, Brussels, 15 February 2011, http://ec.europa.eu/justice/policies/children/docs/com_2011_60_en.pdf.

4 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime in the EU OJ 2012 L 315/55, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF.

5 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, OJ 2011 L 335/1, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF.

6 European Commission (2013), *Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings*, 27 November 2013, COM(2013) 822 final, Brussels.

7 Poland, *Kodeks Karny i Kodeks Postępowania Karnego*.

8 Czech Republic, *Zákon o obětech trestných činů*, 30 January 2013, www.zakonyprolidi.cz/cs/2013-45.

9 Germany, *Gesetz zur Stärkung der Rechte von Opfern sexuellen Missbrauchs*, BGBl. 2013 I No. 32, 29 June 2013.

10 Slovakia, *Zákon č. 301/2005 Z.z. (Trestný poriadok)*, which took effect on 1 August 2013.

11 United Kingdom, Ministry of Justice (2013), *Code of practice for victims of crime*, Chapter 3, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254459/code-of-practice-victims-of-crime.pdf.

12 Poland, *Ustawa z dnia 30 sierpnia 2013 o zmianie ustawy o postępowaniu w sprawach nieletnich oraz niektórych innych ustaw*, 30 August 2013.

13 Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report on Luxembourg*, Strasbourg, 29 April 2004, www.cpt.coe.int/documents/lux/2004-12-inf-fra.htm#_Toc48357642.

14 Luxembourg, Chambre des Deputés (2013), Draft bill No. 6593 on the security unit of the socio-educational centre of the State, www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2013/06-juin/14-conseil/.

15 Netherlands, *Kinderombudsman* (2013), *Kinderrechtenmonitor 2013*, The Hague, www.dekinderombudsman.nl/ul/cms/fck-uploaded/Kinderrechtenmonitor2013-drukproef.pdf.

16 UK, Northern Ireland, Department of Justice (2013), *Consultation: Custodial arrangements for children in Northern Ireland*, www.dojni.gov.uk/index/public-consultations/current-consultations/consultation-custodial-arrangements-for-children-in-northern_ireland.pdf.

17 Latvia, Noteikumu projekts 'Kārtība, kādā policijas noskaidro, vai bērnam ir īpašas vajadzības, pieaicina kompetentu speciālistu un nodrošina apstākļus bērna īpašo vajadzību apmierināšanai', www.mk.gov.lv/doc/2005/IEMNot_231013_ipas_vajadz-1.1935.doc.

18 European Court of Human Rights, *Vronchenko v. Estonia*, No. 59632/09, 18 July 2013, http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122431.

19 Belgium, *Wet betreffende de invoering van een familie- en Jeugdrechtbank/Loi portant création d'un tribunal de la famille et de la jeunesse*, 30 July 2013, www.ejustice.just.fgov.be/mopdf/2013/09/27_2.pdf.

20 Italy, *Disposizioni in materia di riconoscimento dei figli naturali*, 17 December 2012.

21 Italy, Corte Suprema di Cassazione, Sezione Prima Civile, Judgment No. 11687 (1115), 15 May 2013, www.marinacastellaneta.it/blog/wp-content/uploads/2013/06/11687.pdf.

22 UN, Committee on the Rights of the Child, General Comment No 15 on the right of the child to the enjoyment of the highest attainable standard of health (Art. 24), CRC/C/GC/15, www2.ohchr.org/english/bodies/crc/docs/GC/CRC-C-GC-15_en.doc.

23 UN, *Annual report of the Special Representative of the Secretary-General on Violence against Children*, A/68/274, 6 August 2013, http://srsg.violenceagainstchildren.org/sites/default/files/documents/docs/A-68-274_EN_0.pdf.

24 World Health Organization (WHO), World Health Organization Regional Office for Europe (2013), *European report on preventing child maltreatment*, www.euro.who.int/__data/assets/pdf_file/0019/217018/European-Report-on-Preventing-Child-Maltreatment.pdf.

25 Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:181:0004:0012:en:PDF.

26 Council of Europe, Convention on the protection of children against sexual exploitation and sexual abuse, CETS No. 201, 2007, http://conventions.coe.int/Treaty/EN/treaties/html/201.htm.

27 Council of Europe, Convention on preventing and combating violence against women and domestic violence, CETS No. 210, 2011, www.conventions.coe.int/Treaty/EN/treaties/html/210.htm.

28 Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ 2011 L 335/1, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF.

29 Austria, *Sexualstrafrechtsänderungsgesetz*, BGBl I Nr. 116/2013, www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2013_I_116/BGBLA_2013_I_116.html.

30 Austria, *Bundesgesetz über die Grundsätze für Hilfen für Familien und Erziehungshilfen für Kinder und Jugendliche, Bundes- Kinder- und Jugendhilfegesetz*, BGBl I Nr. 69/2013, www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2013_I_69/BGBLA_2013_I_69.pdf.

31 Hungary, Alapvető Jogok Biztosának Hivatala (2011), *Report No. AJB-1472/2011 about tackling child prostitution*, www.obh.hu/allam/aktualis/htm/kozlemeny20111205.htm.

32 Latvia, Grozījumi Bērnu tiesību aizsardzības likumā, 30 May 2013.

33 Italy, *Ratifica ed esecuzione della Convenzione del Consiglio d'Europa sulla prevenzione e la lotta contro la violenza nei confronti delle donne e la violenza domestica*, 1 July 2013.

34 Netherlands (2013), ‚Verplichte meldcode huiselijk geweld en kindermishandeling', *Staatsblad van het Koninkrijk der Nederlanden*, Vol. 2013, No. 247, https://zoek.officielebekendmakingen.nl/stb-2013-247.pdf.

35 Netherlands, Ministerie van Volksgezondheid, Welzijn en Sport (2013), Model reporting code: Domestic violence and child abuse. Action plan for responding to signs of domestic violence and child abuse, www.government.nl/documents-and-publications/reports/2013/03/14/model-reporting-code-domestic-violence-and-child-abuse.html.

36 Netherlands, Inspectie voor de Gezondheidszorg (2013), *Invoering van meldcode(s) huiselijk geweld en kindermishandeling binnen een aantal gezondheidszorgsectoren nog onvoldoende*, Utrecht, www.igz.nl/zoeken/download.aspx?download=Invoering+van+meldcode(s)+huiselijk+geweld+en+kindermishandeling+binnen+een+aantal+gezondheidszorgsectoren+nog+onvoldoende.pdf.

37 Netherlands, Ministerie van Veiligheid en Justitie (2013), *Plan van Aanpak Kindersekstoerisme*, www.rijksoverheid.nl/bestanden/documenten-en-publicaties/rapporten/2013/10/10/bijlage-plan-van-aanpak-kindersekstoerisme/lp-v-j-0000004187.pdf.

38 Germany (2013), *Fonds sexueller Missbrauch im familiaren Bereich*, www.fonds-missbrauch.de/fileadmin/content/Flyer_FSM_2.pdf.

39 Germany, Bundesministerium für Familie, Senioren, Frauen und Jugend (2013), 'Bundesregierung errichtet Fonds Sexueller Missbrauch zur Hilfe von Betroffenen', press release, 29 April 2013.www.bmfsfj.de/BMFSFJ/aktuelles,did=197690.html

40 Europol (2013), *Socta 2013 public version EU serious and organised crime threat assessment*, Europol, The Hague, www.europol.europa.eu/content/eu-serious-and-organised-crime-threat-assessment-socta.

41 Europol, European Cybercrime Centre (2013), *Virtual Global Taskforce environmental scan 2012*, www.virtualglobaltaskforce.com/wp-content/uploads/2013/05/VGT-Environmental-Scan.pdf.

42 European Commission (2013), *Preparing for a fully converged audiovisual world: Growth, creation and values*, COM/2013/0231 final, Brussels, 24 April 2013, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0231:FIN:EN:HTML.

43 Europol, *A collective EU response to cybercrime*, www.europol.europa.eu/ec3.

44 Coface, *Delete cyberbullying*, http://deletecyberbullying.eu/about/.

45 Luxembourg, Chambre des Députés (2012), *1) approbation de la Convention du Conseil de l'Europe sur la cybercriminalité ouverte à la signature à Budapest le 23 novembre 2001, 2) approbation du Protocole additionnel à la Convention sur la cybercriminalité, relative à l'incrimination d'actes de nature raciste et xénophobe*.

46 Italy, *Osservatorio per il contrasto della pedofilia e della pornograia minorile*, www.osservatoriopedofilia.gov.it/.

47 Netherlands, Kinderombudsman (2013), *Kinderrechtenmonitor 2013*, The Hague, www.dekinderombudsman.nl/ul/cms/fck-uploaded/Kinderrechtenmonitor2013-drukproef.pdf.

48 Netherlands, Hoge Raad (2013), Case No. S12/01819, ECLI:NL:HR:2013:BZ9941, 14 May 2013, http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2013:BZ9941.

49 Spain (2013), *Plan stratégico de infancia y adolescencia 2013–2016,* 5 April 2013, www.observatoriodelainfancia.msssi.gob.es/documentos/PENIA_2013-2016.pdf.

50 Terre des Hommes (2013), *Stop webcam child sex tourism*, www.terredeshommes.org/webcam-child-sex-tourism/.

51 EPP Group (2013), *Bullying: Towards the establishment of a European Day against bullying and school violence*, 17 January 2013, www.eppgroup.eu/press-release/Towards-a-European-Day-against-bullying-%26-school-violence.

52 FRA (2013), *EU LGBT survey: Results at a glance,* Luxembourg, Publications Office, http://fra.europa.eu/en/survey/2012/eu-lgbt-survey.

53 See FRA (2013), *Survey data explorer: EU LGBT survey 2012*, http://fra.europa.eu/DVS/DVT/lgbt.php.

54 Finland (2013), *Hallituksen esitys eduskunnalle oppilas- ja opiskelijahuoltolaiksi ja eräiksi siihen liittyviksi laeiksi.*

55 Bulgaria, Министерски съвет (2013), *Доклад за изпълнението на „Национална програма за закрила на детето за 2012 г.“*, Sofia.

56 Greece, Ministry Circular 159704/Γ7/17-12-2012, http://users.sch.gr/skontax/autosch/joomla15/egkyklioi/idrysh.pdf.

57 Greece, information not publicly available but widely accessible through several media sources, available at: www.tanea.gr/news/greece/article/5094019/parathrhthrio-kata-ths-bias-treis-stoys-deka-mathhtes-einai-thymata-endosxolikhs-bias/.

58 Netherlands, Ministerie van Onderwijs, Cultuur en Wetenschappen (2013), *Plan van aanpak tegen pesten*, www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2013/03/25/plan-van-aanpak-tegen-pesten.html.

59 Netherlands, Ministerie van Onderwijs, Cultuur en Wetenschappen (2013), 'Onderzoek naar effectieve anti-pestprogramma's', Press release, 2 December 2013, www.rijksoverheid.nl/nieuws/2013/12/02/onderzoek-naar-effectieve-antipestprogramma-s.html.

60 Netherlands, Inspectie Jeugdzorg (2013), 'Onderzoek naar aanwezigheid Meldcode en verklaring Omtrent het Gedrag', press release, 21 November 2013, www.inspectiejeugdzorg.nl/actueel/nw_detail.asp?id=0354.

61 Greece, Συνήγορος του Πολίτη (2013), *Ειδική Έκθεση «Το φαινόμενο της ρατσιστικής βίας στην Ελλάδα και η αντιμετώπισή του»,* September 2013, www.synigoros.gr/resources/docs/eidikiekthesiratsistikivia.pdf.

62 United Kingdom, ChildLine (2013), *Can I tell you something? What's affecting children in 2013*, www.nspcc.org.uk/news-and-views/media-centre/press-releases/2014/childline-report/childline-report_can-i-tell-you-something_wdf100354.pdf.

63 European Commission (2013), *Communication form the Commission to the European Parliament and the Council: Towards the elimination of female genital mutilation*, COM(2013) 833 final, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0833:FIN:EN:PDF.

64 Germany, *Gesetz zur Änderung des Strafgesetzbuches: Strafbarkeit der Verstümmelung weiblicher Genitalien*, BGBl I 2013 No. 58, 27 September 2013, p. 3671, www.bgbl.de/Xaver/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl113s3671.pdf.

65 Council of Europe, Parliamentary Assembly (2013), *Children's right to physical integrity*, Resolution 1952, 1 October 2013, http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=20174&Language=EN.

66 Nordic Ombudsmen for Children and Pediatric Experts (2013), *Resolution: Let boys decide for themselves whether or not they want to be circumcised*, 30 September 2013, www.crin.org/en/library/news-archive/male-circumcision-nordic-ombudspersons-seek-ban-non-therapeutic-male.

67 Frisch, M. *et al.* (2013), 'Cultural Bias in the AAP's 2012 Technical report and policy statement on Male circumcision', *Pediatrics*, Volume 131, No. 4, April 2013, abstract available at: http://pediatrics.aappublications.org/content/131/4/796.full.pdf.

68 Global Initiative to End All Corporal Punishment of Children (2013), *Prohibiting corporal punishment: Achieving equal protection for children in EU Member States, progress report*, www.endcorporalpunishment.org/pages/pdfs/reports/Europe%20Report%20web.pdf.

69 UN, Human Rights Council (2011), *Report of the Working Group on the Universal Periodic Review, Belgium*, A/HRC/18/3, 11 July 2011.

70 UN, Human Rights Council (2011), *Report of the Working Group on the Universal Periodic Review, Estonia*, A/HRC/17/17, 28 March 2011.

71 UN, Human Rights Council (2011), *Report of the Working Group on the Universal Periodic Review, Ireland*, A/HRC/19/9, 21 December 2011.

72 UN, Human Rights Council (2010), *Report of the Working Group on the Universal Periodic Review, Italy*, A/HRC/14/L.10, 18 June 2010.

73 UN, Human Rights Council (2011), *Report of the Working Group on the Universal Periodic Review, Lithuania*, A/HRC/19/15, 19 December 2011.

74 UN, Human Rights Council (2009), *Report of the Working Group on the Universal Periodic Review, Malta*, A/HRC/12/7, 4 June 2009.

75 UN, Human Rights Council (2009), *Report of the Working Group on the Universal Periodic Review, Slovakia*, A/HRC/12/7, 5 June 2009.

76 UN, Human Rights Council (2010), *Report of the Working Group on the Universal Periodic Review, Slovenia*, A/HRC/14/L.10, 18 June 2010.

77 UN, Human Rights Council (2012), Outcome of the Universal Periodic Review: United Kingdom of Great Britain and Northern Ireland, A/HRC/DEC/21/107, 12 October 2012.

78 Council of Europe, European Committee of Social Rights (2013), Decisions on admissibility of cases No. 92 to 98/2013, 2 July 2013, www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp.

79 Children's Rights Alliance for England (CRAE) (2013), *Ending violence against children in custody*, London, CRAE, www.crae.org.uk/media/29853/speaking_freely_ending_violence_against_children_in_custody_european_research_report_condensed.pdf.

80 Sweden, Barnombudsmannen (2013), *Från insidan. Barn och unga berättar om tillvaron i arrest och häkte. Barnombudsmannens årsrapportering 2013*, Barnombudsmannen, Stockholm.

81 Eurostat (2013), *Children were the age group at the highest risk of poverty or social exclusion in 2011*, Statistics in Focus Vol. 4, Brussels, European Commission, available at: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-13-004/EN/KS-SF-13-004-EN.PDF.

82 European Commission (2013), *Commission Recommendation of 20 February 2013, Investing in children: Breaking the cycle of disadvantage*, Brussels, http://ec.europa.eu/justice/fundamental-rights/files/c_2013_778_en.pdf.

83 European Platform for Investing in Children (EPIC) (2013), http://europa.eu/epic.

84 European Commission (2013), *Barcelona objectives*, Luxembourg, Publications Office, http://ec.europa.eu/justice/gender-equality/files/documents/130531_barcelona_en.pdf.

85 UNICEF Research Office (2013), *Child well-being in rich countries: A comparative overview,* Florence, www.unicef-irc.org/publications/pdf/rc11_eng.pdf.

86 Netherlands, Kinderombudsman (2013), *Kinderrechtenmonitor 2013*, The Hague, www.dekinderombudsman.nl/ul/cms/fck-uploaded/Kinderrechtenmonitor2013-drukproef.pdf.

87 Netherlands, Ministerie van Sociale Zaken en Werkgelegenheid (2013), 'Intensivering armoede- en schuldenbeleid', letter sent to House of Representatives (*Tweede Kamer der Staten-Generaal*), No. 2013-0000090830, 3 July 2013, www.rijksoverheid.nl/ministeries/szw/documenten-en-publicaties/kamerstukken/2013/07/03/intensivering-armoede-en-schuldenbeleid.html.

88 Poland, Główny Urząd Statystyczny (2013), *Ubóstwo w Polsce w świetle badań GUS*, report, Warsaw, Główny Urząd Statystyczny.

89 Estonia, Statistikaamet (2013), 'Iga kuues Eesti laps elab suhtelises vaesuses', Statistikablogi, 30 May 2013, http://statistikaamet.wordpress.com/tag/suhteline-vaesus/.

90 United Kingdom, Office of the Children's Commissioner (2013), *A child rights impact assessment of budget decisions: Including the 2013 Budget, and the cumulative impact of tax-benefit reforms and reductions in spending on public services 2010–2015*, http://dera.ioe.ac.uk/18034/1/A_Child_Rights_Impact_Assessment_of_Budget_Decisions.pdf.

91 *Ibid.*, p. 5.

92 Slovakia, Ministerstvo práce, sociálnych vecí a rodiny SR (2013), *Správa o rodovej rovnosti za rok 2012,* May 2013.

93 UNICEF, Greek National Committee (2013), *Η κατάσταση των παιδιών στην Ελλάδα 2013*, www.unicef.gr/pdfs/Children-in-Greece-2013.pdf.

94 UNICEF, Spanish National Committee (2012), *La infancia en España 2012–2013: El impacto de la crisis en los niños*, www.unicef.es/sites/www.unicef.es/files/Infancia_2012_2013_final.pdf.

95 UNICEF, German National Committee (2013), 'UNICEF-Bericht zur Lage von Kindern in Deutschland 2013', press release, 24 October 2013, www.unicef.de/kinderbeiuns.

96 Belgium (2013), Plan national de lutte contre la pauvreté infantile, *Lutter contre la pauvreté infantile et favoriser le bien-être des enfants*, Brussels, www.mi-is.be/sites/default/files/doc/nationaal_kinderamoedebestrijdingsplan_fr.pdf.

97 Spain, Ministerio de Sanidad, Servicios Sociales e Igualdad (2013), *Plan Nacional de Acción para la Inclusión Social del Reino de España 2013–2016*, www.msssi.gob.es/ssi/familiasInfancia/inclusionSocial/docs/PlanNacionalAccionInclusionSocial_2013_2016.pdf.

98 Bulgaria, Министерски съвет, *Национална стратегия за намаляване на бедността и насърчаване на социалното включване 2020*, www.strategy.bg/FileHandler.ashx?fileId=3303.

99 Germany, *Gesetz zur Verwaltungsvereindachung in der Kinder- und Jugendhilfe*, 29 August 2013, http://dipbt.bundestag.de/extrakt/ba/WP17/508/50808.html.

100 European Commission (2013), *Funding of education in Europe 2000–2010: The impact of the economic crisis,* Euridice Report, Luxembourg, Publications Office, http://eacea.ec.europa.eu/education/eurydice/documents/thematic_reports/147EN.pdf.

101 UNICEF, Bulgaria (2013), *Изгубено бъдеще? Изследване на феномените на необхващане в училище*, www.unicef.bg/assets/RSN_Fianl_BUL_FINAL06n.pdf.

102 Bulgaria, Министерски съвет (2013), *Стратегия за превенция и намаляване дела на отпадащите и преждевременно напуснали образователната система* 2013–2020, www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=870.

103 Finland, Ministry of Finance (2013), 'A structural policy programme to strengthen conditions for economic growth and bridge the sustainability gap in general government finances', Press release 350/2013, 29 August 2013.

104 Austria, *Schülerbeihilfengesetz*, BGBl. Nr. 455/1983, last modified by BGBl. I Nr. 75/2013, www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10009531/Sch%c3%bclerbeihilfengesetz%201983%2c%20Fassung%20vom%2012.11.2013.pdf.

105 European Commission (2013) *Study on educational support for newly arrived migrant children,* Luxembourg, Publications Office, http://ec.europa.eu/education/library/study/2013/migrants_en.pdf.

106 Larkins, C., Thomas, N., Judd, D., Lloyd, J., Carter, B. and Farrelly, N. (2013), 'We want to help people see things our way': A rights-based analysis of disabled children's experience of living with low income. London, Office of the Children's Commissioner, www.plymouth.gov.uk/pscbseethingsourway.pdf.

107 FRA (2012), *The situation of Roma in 11 EU Member States: Survey results at a glance*, Luxembourg, Publications Office, http://fra.europa.eu/en/publication/2012/situation-roma-11-eu-member-states-survey-results-glance.

108 European Commission (2012), *The EU strategy towards the eradication of trafficking in human beings 2012–2016*, COM(2012) 286 final, Brussels, 19 June 2012, http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf.

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15 January – European Court of Human Rights (ECtHR) rules in *Eweida and Others v. United Kingdom* that it is unlawful to prohibit wearing a religious symbol at work where it poses no health and safety hazard and to refuse services – including in the exercise of public authority – to homosexual couples on grounds of religious beliefs

29 January – European Committee of Social Rights finds 22 states in breach of the prohibition of discrimination in employment (Article 1.2 of the European Social Charter, ESC) and 12 states in violation of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on grounds of sex (Article 20)

January

12 February – ECtHR rules in *Vojnity v. Hungary* that the complete removal of a father's access rights on the grounds that his religious convictions were detrimental to his son's upbringing, without any evidence that those practices exposed his son to a risk of actual harm, amounts to a violation of the prohibition of discrimination (Article 14 of the European Convention on Human Rights, ECHR), read in conjunction with the right to respect for private and family life (Article 8)

19 February – In *X and Others v. Austria*, the ECtHR finds that not allowing same-sex partners to adopt their partner's child is discriminatory when national law allows unmarried different-sex partners to do so

February

1 March – United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) issues observations on Austria, Cyprus, Greece and Hungary

15 March – Parliamentary Assembly of the Council of Europe (PACE) Committee on Equality and Non-discrimination issues a report on discrimination on the grounds of sexual orientation and gender identity

March

24 April – PACE issues a resolution on safeguarding human rights in relation to religion and belief, and protecting religious communities from violence

April

May

26 June – PACE adopts resolution 1945 (2013) *Putting an end to coerced sterilisations and castrations*, as it considers that these acts constitute grave violations of human rights

June

10 July – Committee of Ministers of the Council of Europe adopts a recommendation on gender equality and media

26 July – CEDAW issues observations on the United Kingdom

July

August

4 September – Council of Europe Commissioner for Human Rights intervenes on his own initiative in *Valentin Câmpeanu v. Romania* concerning access to justice for persons with disabilities

13 September 2013 – UN Committee on the Rights of Persons with Disabilities issues *Concluding observations on Austria*

September

16 October – Committee of Ministers of the Council of Europe issues a recommendation on ensuring full inclusion of children and young persons with disabilities into society

October

7 November – ECtHR rules in *Vallianatos and Others v. Greece* that by excluding same-sex couples living in Greece from registering a civil union, without giving any convincing and weighty reasons capable of justifying the exclusion, the Greek State violates rights protected by the prohibition of discrimination (Article 14) in conjunction with the right to respect for private and family life (Article 8) of the ECHR

7 November – In *E.B. and Others v. Austria*, the ECtHR rules that Austria discriminated against four gay men when it refused to delete from their criminal record convictions under its discriminatory age of consent law

November

6 December – European Committee of Social Rights finds eight EU Member States in breach of the rights of elderly persons (Article 23 of the ESC) on the grounds that they failed to have sufficiently comprehensive legislation prohibiting discrimination on the ground of age

11 December – Committee of Ministers of the Council of Europe issues a recommendation on ensuring full, equal and effective participation of persons with disabilities in culture, sports, tourism and leisure activities

December

EU

January

February

March

11 April – In *HK Danmark, acting on behalf of Jette Ring v. Dansk Almennyttigt Boligselskab DAB* and *HK Danmark acting on behalf of di Lone Skouboe Werge v. Pro Display A/S16*, the CJEU interprets and clarifies the concept of disability under the Employment Equality Directive in line with Article 1 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD)

16 April – European Commission issues a proposal on disclosure of non-financial and diversity information by certain large companies and groups

16 April – European Parliament adopts a Resolution on transposition and application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women

24 April – European Commission issues a proposal on promoting free movement of citizens and businesses by simplifying the acceptance of certain public documents in the EU

25 April – CJEU rules in *Asociația ACCEPT v. Consiliul Național pentru Combaterea Discriminării* that homophobic statements by a shareholder of a football club may put a burden on the club to prove that it does not have a discriminatory employment policy

April

30 May – European Commission refers Slovakia to the CJEU for not paying disability benefits to severely disabled persons living in other EU Member States, as well as in Iceland, Liechtenstein, Norway and Switzerland

May

24 June – Council of the European Union issues guidelines to promote and protect the enjoyment of all human rights by LGBT and intersex persons in the foreign policy of the EU

June

4 July – European Parliament adopts a resolution on the impact of the crisis on access to care for vulnerable groups

4 July – CJEU rules in *Commission v. Italy* that Italy failed to fulfil its obligations under the Employment Equality Directive by not implementing Article 5 on the duty to provide for reasonable accommodation of persons with disabilities

July

August

11 September – European Parliament issues a resolution on endangered languages and linguistic diversity in the European Union

26 September – CJEU rules in *HK Danmark v. Experian A/S* that the practice of age-related contribution levels in an occupational pension scheme could be objectively justified, but national courts have to decide if they are an appropriate and necessary measure to achieve the legitimate aim

26 September – CJEU rules in *Dansk Jurist-og Økonomforbund v. Indenrigs-og Sundhedsministeriet* that Article 6 (2) of the Employment Equality Directive is applicable only to retirement or invalidity benefits under an occupational social security scheme. It also rules that Articles 2 and 6 (1) of the directive must be interpreted as precluding a national provision under which a civil servant who has reached the age at which he is able to receive a retirement pension is denied, solely for that reason, entitlement to availability pay intended for civil servants dismissed on grounds of redundancy

September

October

7 November – CJEU rules that lesbian, gay, bisexual and transgender (LGBT) persons may be perceived as a particular social group for the purpose of the Qualification Directive, making them eligible for asylum in the EU if punishment for homosexual acts is applied in their home countries

November

10 December – European Parliament adopts the EU financial package on rights and equality for 2014–2020

11 December – European Parliament adopts a resolution on women with disabilities, focusing on the discrimination generated by the intersection of gender and disability

12 December – CJEU rules in *Frédéric Hay v. Crédit agricole mutuel de Charente-Maritime et des Deux-Sèvres* that employees entering into a civil partnership with a same-sex partner in a Member State where homosexual marriage is not possible must be granted the same benefits as those granted to their colleagues upon marriage

17 December – European Parliament adopts general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund

December

5 Equality and non-discrimination

The EU benefits from a solid legal framework with which to counter discrimination, especially on grounds of racial or ethnic origin. The European Commission's proposal for a Horizontal Directive, designed to provide comprehensive protection against discrimination on all grounds equally, remains stalled. Discrimination often excludes those affected, erecting barriers that prevent some from participating in society on an equal and non-discriminatory footing. FRA survey results have shown, for example, that many lesbian, gay, bisexual and transgender (LGBT) persons fear holding hands with a partner in public; one in five Jews face discrimination or harassment; and women in the EU regularly experience harassment at work. EU Member States and EU institutions recognise that barriers to full participation exist. Some are adopting measures to tackle the issue, also drawing on EU funds to address discrimination and unequal treatment.

5.1 EU legislation on equal treatment between persons stalls

The EU enjoys a solid legal framework with which to combat discrimination,[1] but the principle of equal treatment does not yet cover European society in all its diversity.[2] To rectify this, the European Commission proposed, in 2008, a directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, known as the Horizontal Directive.[3] Five years have passed since this proposal was made, with little progress to report in the intervening period. The year 2013 was no different. The Council of the European Union continued to examine the proposal in the framework of the Working Party on Social Questions. The Council says "there is still a need for further work on the proposal",[4] although work done under the Irish Presidency clarified the scope of the proposal in the fields of education and social protection, and elaborated some of its provisions.[5]

The European Commission is also continuing to work on the European Accessibility Act. The initiative was originally intended for adoption in September 2012.[6] Preparatory work continued in 2013 for the act, which aims at improving access for persons with disabilities and elderly persons to the market

Key developments in the area of equality and non-discrimination

- The legislative package for the EU Structural Funds is adopted. It includes thematic ex ante conditionality on Roma inclusion and general ex ante conditionality on Member States' administrative capacity for the implementation and application of Union anti-discrimination law and policy.
- The new EU programme for Rights, Equality and Citizenship was adopted in December 2013 for the period 2014–2020. The programme will promote fundamental rights, combating all forms of discrimination and fighting racism. It will also continue to provide funding for Roma inclusion.
- Discussions on the proposed Horizontal Directive continue to stall.
- The European Accessibility Act, covering access to goods and services for persons with disabilities and elderly persons, is still under preparation.
- The European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) argues that the EU lacks a comprehensive policy to protect fully the fundamental rights of LGBT and intersex persons.

in goods and services. It intends to harmonise accessibility requirements across the EU Member States.

Civil society organisations continued to engage closely in developing the Accessibility Act. In January, the European Disability Forum published a position paper calling for a wider legal basis for the act, which takes into account the potential benefits for social inclusion and equality of viewing persons with disabilities as consumers.[7] There were several consultations with stakeholders, including users and industry. Contributions were received from EU-level non-governmental organisations (NGOs) and industry organisations.

A coalition of organisations acting on behalf of the railway sector and passengers also issued a joint statement highlighting the relevance of EU funding for projects enhancing transport accessibility[8] (for more information on the role of EU funding in countering discrimination, see Section 5.5) The Accessibility Act is included in the European Commission's work programme for 2014, with March 2014 as a target adoption date.[9]

The EU lacks a comprehensive policy to protect fully the fundamental rights of lesbian, gay, bisexual, transgender and intersex (LBGTI) persons, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) argues. The LIBE Committee called on the European Commission, EU Member States and relevant agencies to work jointly on a comprehensive policy to protect fully the fundamental rights of LGBTI persons, the so-called EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity.[10] Ministers of 11 EU Member States also signed a joint statement on the occasion of the 2013 international day against homophobia, calling for a comprehensive EU-wide approach to LGBT issues.

According to the European Commission, adopting a targeted approach would be more efficient than developing a comprehensive approach in the fight against homophobia. Fully implementing the Employment Equality Directive and the Victims' Directive, as well as adopting the Horizontal Directive, would offer legal protection against homophobic and transphobic discrimination, the Commission argues. In terms of concrete action, following the publication of the FRA survey on LGBT discrimination, the European Commission brought together 14 interested Member States to discuss and exchange existing best practices in those areas the survey identified as displaying the greatest problems.

A significant step in strengthening protection against discrimination on the grounds of disability was taken in jurisprudence relating to the Employment Equality Directive. In *HK Danmark, acting on behalf of Jette Ring v. Dansk Almennyttigt Boligselskab DAB* and *HK Danmark acting on behalf of di Lone Skouboe Werge v. Pro Display A/S*, the Court of Justice of the European Union (CJEU) updated its interpretation of the concept of disability as a limitation, which results in particular from physical, mental or psychological impairments that, in interaction with various barriers, may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers.[11]

FRA ACTIVITY

Assessing equality and non-discrimination in the European Union: a patchwork of standards

The European Commission requested that FRA provide an opinion on the situation of equality in the EU 10 years on from initial implementation of the equality directives. The Commission, under Article 17 of the Racial Equality Directive, is required to report to the European Parliament and the Council on the implementation of both the Racial Equality Directive and the Employment Equality Directive, taking into account FRA's views.

Published in October, the FRA opinion argues that people continue to face discrimination in their daily lives, despite considerable progress nationally and EU-wide in policies and laws beyond the area of employment.

The opinion also shows that, although the EU made no discernible progress on adopting the Horizontal Directive on non-discrimination, this did not, however, prevent national systems from broadening the scope of their protection. A number of Member States adopted legal measures to extend protection across a range of grounds, leading to a patchwork of standards across the EU.

Another important aspect of equality and non-discrimination is the awareness people have of their rights. A large body of FRA evidence shows that people lack rights awareness. The opinion therefore emphasises the need for national and local authorities to intensify rights awareness activities. These should bring EU antidiscrimination legislation to the public's attention and focus on targeting persons most at risk of discrimination.

The opinion also argues that Member States should ease access to justice to ensure equality in practice, by broadening the mandate of equality bodies to deal with complaints where this is not already the case. In addition, the rules should be relaxed to enable civil society organisations to take cases forward on behalf of those who have been discriminated against.

For more information, see FRA (2013), Opinion of the European Union Agency for Fundamental Rights on the situation of equality in the European Union 10 years on from initial implementation of the equality directives*, available at: http://fra.europa.eu/sites/default/files/fra-2013-opinion-eu-equality-directives_en.pdf*

By aligning the Employment Equality Directive with Article 1 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), the CJEU distanced itself from its previous jurisprudence, which relied on a medical approach to disability.[12] It adopted instead a social model approach that more closely mirrors that of the CRPD. Moreover, the decision exemplifies the move within the CJEU to interpret existing EU law in line with the Union's international legal obligations.

5.2 Discrimination on all grounds persists in the EU

The Horizontal Directive's lack of progress makes it clear that policy makers are failing to acknowledge fully the extent and gravity of discrimination in the EU. FRA evidence and national human rights bodies' data testify to persistent and widespread discrimination. (See ▶ Chapter 6 on racism, xenophobia and related intolerance ▶ and Chapter 7 on discrimination against Roma.)

The FRA survey on minorities and discrimination[13] confirms that migrants and members of minority groups regularly face discrimination. The findings show that in the 12 months preceding the survey half the Roma respondents suffered discrimination because they are Roma. Sub-Saharan Africans (41 %) experienced the second-highest rate of overall discrimination, and a third of North Africans report being discriminated against. Eight in 10 of those who experienced discrimination did not report their most recent experience to any organisation, mainly because they believed that nothing would happen even if they were to report the incident.

"The EU was founded after Europe […] lived through the atrocities during World War II. All of us have a duty in ensuring that no one is discriminated against, or being subject to violence because of their ethnicity, religious beliefs, gender or sexual orientation. Too few are standing up against intolerance today. We need political leaders who do not flirt with populism and xenophobia."

Cecilia Malmström, 'Crimes against the foundation of society', 12 November 2013, available at: http://blogs.ec.europa.eu/malmstrom/

Jewish persons in the EU still experience discrimination on various grounds, as FRA's survey on antisemitism ▶ shows (see Chapter 6 on racism, xenophobia and related intolerance).[14] Over one third of Jewish persons experienced discrimination in the 12 months preceding the survey, whether on the grounds of their ethnic background, gender, sexual orientation, age, religion or belief, disability or any other reason. About one in five respondents felt they were discriminated against or harassed on the grounds of their religion or beliefs. In addition, about one in 10 respondents indicated that they felt discriminated against or harassed on the grounds of both ethnicity and religion, which is the most common combination of grounds. The most common settings where discrimination was felt were the workplace and when looking for work.

About two thirds of those who experienced physical violence or threats of violence did not report the most serious incident to the police or to any other organisation. Of those who said that they felt discriminated against in the 12 months before the survey because they were Jewish, more than eight in 10 did not report the most serious incident to any organisation. The main reason for not reporting was a lack of confidence that reporting the incident would improve the situation.

Women in the EU also regularly face sexual harassment at work, as the findings of FRA's survey on violence against women show (for more information on this ▶ survey, see Chapter 9 on rights of crime victims). Of those women who have experienced sexual harassment at least once since the age of 15, 32 % indicated a colleague, a boss or a customer as the perpetrator(s). This shows the need for employers' organisations and trade unions to promote awareness of sexual harassment at work. Under-reporting is again a characteristic of the experience of discrimination, with only 13 % of women reporting to police the most serious incident of non-partner violence.

Despite low reporting levels, evidence from equality bodies and research institutes can give an idea of the prevalence of given types of discrimination. Evidence from **Belgium**,[15] **Bulgaria**,[16] **Croatia**,[17] **France**,[18] **Germany**,[19] **Greece**,[20] **Italy**,[21] **Ireland**[22] and **Sweden**[23] shows that ethnic and/or racial discrimination was the most frequently reported type in 2012, particularly in the area of employment. In **Germany**, research conducted by experts on migration and integration[24] shows that visible minorities such as persons with a Turkish migrant background and persons of African, Asian or Latin American origin, as well as Muslims, are especially vulnerable to discrimination on the labour market, at public offices and authorities or while seeking accommodation.

Relatively high levels of discrimination on the ground of age were identified in **Belgium**,[25] **Denmark**[26] and **France**.[27] Age and disability were the most commonly reported grounds of discrimination in the **Czech Republic**.[28] Equality bodies in **Poland**[29] ranked disability and gender discrimination as the most frequent grounds of discrimination.

Most complaints reported to the equality body in **Estonia** related to discrimination on the ground of sex.[30] In addition, discrimination against pregnant women and parents is considered direct discrimination on the grounds of sex in Estonia.[31] Evidence of discrimination against pregnant women on the labour market was

FRA ACTIVITY

Highlighting discrimination and hate crime against lesbian, gay, bisexual and transgender (LGBT) persons

Recognising the lack of robust and comparable data on respect for, protection of and fulfilment of the fundamental rights of LGBT persons, in 2010 the European Commission, following calls from the European Parliament, asked FRA to collect comparable survey data on hate crime and discrimination against LGBT persons in all EU Member States. In response, FRA developed the EU survey of discrimination against and victimisation of lesbian, gay, bisexual and transgender persons (EU LGBT survey).

The online survey of over 93,000 LGBT people across the EU reveals widespread bullying and harassment that start early on in school and carry over into work, housing, social services and access to other goods and services. Without proper intervention, such behaviour may turn into hate crime. About 80 % of the respondents recalled negative comments or bullying at school and close to 50 % said they had felt personally discriminated against or harassed because of being LGBT.

The results show that LGBT persons in the EU suffer from not being able to be themselves at school, at work or in public. Many, therefore, cover up their identity, guarding their actions and living in isolation and even fear. Others, choosing to act as themselves, may experience discrimination and even violence. Member States differ in how LGBT persons perceive and experience violence, harassment and discrimination. This also holds for the perception of widespread negative attitudes towards LGBT persons, and whether LGBT persons avoid certain locations or behaviours for fear of being assaulted, threatened or harassed because of being LGBT. The survey's headline findings are:

- Almost half (47 %) of the respondents said that they felt personally discriminated against or harassed on the grounds of sexual orientation in the year preceding the survey.
- Over 80 % of respondents in every Member State recall negative comments or bullying of LGBT youth at school.
- Two thirds (67 %) of all respondents said they often or always hid or disguised that they were LGBT during their schooling before the age of 18.
- Two thirds of respondents across all Member States are scared of holding hands in public with a same-sex partner. For gay and bisexual male respondents, this figure reached 74 % and 78 %, respectively.
- One in five of those respondents who were employed and/or looking for a job in the 12 months preceding the survey felt discriminated against in these situations in the past year. This figure rises to one in three for transgender respondents.
- Of those respondents who had a paid job during the past five years, nearly half (43 %) experienced negative comments or conduct at work because of being LGBT. More than half (55 %) of transgender respondents had experienced such hostility and one in five (18 %) said this behaviour happened often or always.
- Of the respondents who had visited a café, restaurant, bar or nightclub in the year preceding the survey, one in five (18 %) felt personally discriminated against at that location because of being LGBT.
- A quarter (26 %) of all EU LGBT survey respondents had been attacked or threatened with violence in the previous five years.
- About three in 10 of all transgender respondents said they were victims of violence or threats of violence more than three times in the past year.
- A majority of respondents who had experienced violence (59 %) in the past year said that the last attack or threat of violence happened partly or entirely because they were perceived to be LGBT.
- Fewer than one in five (17 %) reported the most recent incident of hate-motivated violence to the police.
- More than four in five respondents said that casual jokes about LGBT persons in everyday life were widespread.
- Almost half of the respondents believe that offensive language about LGBT persons by politicians was widespread in the Member State where they live.

For more information, see FRA (2013), EU LGBT survey – European Union lesbian, gay, bisexual and transgender survey: Results at a glance*, available at: http://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance_en.pdf; data available through data explorer tool at: http://fra.europa.eu/DVS/DVT/lgbt.php*

identified in research conducted by the Equal Treatment Commission in the **Netherlands**[32] and the Equality Ombudsman in **Sweden**.[33]

Rulings by the European Court of Human Rights (ECtHR) in 2013 also emphasise the reality of discrimination in the EU. In January, the ECtHR handed down judgments relating to the expression of religious belief in the workplace and discrimination. In *Eweida and Others v. the United Kingdom*,[34] the issue related to wearing visible symbols of religion at the workplace. The case related to four applicants.

Concerning the first applicant, the court held that the plaintiff's right to manifest her religious beliefs by visibly wearing a cross at work had been infringed by her employer, as there was no evidence that the wearing of the small cross would encroach on the interests of others. Concerning the second applicant, the court ruled that there had been no violation of the right to freedom of religion, as forbidding the visible wearing of a cross was justified for health and safety reasons for those working on hospital wards.

With respect to the third and fourth applicants, the issue related to the conflict between a person's religious beliefs and their refusal to provide a service to someone because of their sexual orientation. Here, the ECtHR ruled that the right to manifest religious beliefs cannot be to the detriment of other groups, particularly if it results in discrimination. The plaintiffs' employers had equal opportunity policies in place that required employees to act in a way that did not discriminate against others. The court ruled that, even though the right to manifest religious belief at work is protected, that right must be balanced against the rights of others.

In November, the ECtHR ruled in *Vallianatos and Others v. Greece*[35] that by excluding same-sex couples living in Greece from registering a civil union – a legal form of partnership available to opposite-sex couples – the Greek State violated rights protected by the prohibition of discrimination (Article 14) in conjunction with the right to respect for private and family life (Article 8) of the European Convention on Human Rights (ECHR).

At the end of 2013, the court had pending six conjoined cases regarding the refusal of the Italian authorities to register homosexual marriages contracted abroad and the inability of same-sex couples to contract marriage or any other type of civil union in Italy.[36]

S. A. S. v. France,[37] another pending case, relates to a complaint made by a practising Muslim woman who argued that, by forbidding her to wear a full-face veil in public, her employers had breached ECHR articles on the prohibition of torture and inhuman and degrading treatment (Article 3); the right to respect for private and family life (Article 8); freedom of thought, conscience and religion (Article 9); freedom of expression (Article 10); freedom of assembly and association (Article 11); and the prohibition of discrimination (Article 14).

Case law at the national level also dealt with the issue of discrimination; a number of rulings clarified an important Racial Equality Directive concept on genuine and determining occupational requirements.[38] These requirements allow for differences in treatment based on a characteristic related to racial or ethnic origin, which do not constitute discrimination by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out. As in the case of other such specific measures, genuine and determining occupational requirements are subject to the requirements of objectivity, legitimacy and proportionality.

The Labour Court in **Belgium**, for example, ruled in January that a general requirement made by an employer for employees not to wear religious symbols does not constitute a genuine occupational requirement as defined by the Anti-Discrimination Act.[39]

In **Germany**, the Federal Labour Court decided in a case where the complainant challenged his dismissal after his employer had learned that he was infected with HIV. The court ruled that dismissal solely on the grounds of HIV infection violates the General Equal Treatment Act. The court reasoned that HIV must be considered a disability in the sense of the act and of the CRPD.

In **Romania**, the national equality body published a decision in the case of *R. S. I. v. S. C. CDI Oilfield Service SRL and S. C. Adecco Resurse Umane SRL*.[40] The claimant was a mechanic with a hearing disability dismissed for failing an evaluation test carried out by a human resources company hired by his employer. The claimant complained that his employer did not inform the human resources company about his hearing impairment and that, since he was not informed about the test, he did not ask for an interpreter. The equality body established direct discrimination on the grounds of disability with regards to dismissal, as the employer did not accommodate the first evaluation test to the disability of the complainant.

5.3 Discrimination hinders full participation in society

Discrimination often results in exclusion from active participation in many areas of life, erecting barriers that prevent many people from participating in society on an equal and non-discriminatory footing. This happens to ethnic, religious, national or sexual minorities or migrants, for instance, in the areas of healthcare, education, employment and housing, as FRA evidence consistently shows.[41]

Examples include transgender persons in some EU Member States, who often have to meet a complex and lengthy set of legally prescribed criteria before gender markers in official documents can be changed, as FRA has documented.[42] Such criteria include proof of a medical or psychological diagnosis of transsexuality or gender dysphoria/transgenderism. Without such documentation, transgender persons may face difficulties when they want to participate in simple daily activities that require identity documents.

Other barriers to participation stem from stigmatisation and negative stereotyping, leading to fear of verbal or physical attack. Nearly half of all respondents in the EU LGBT survey considered offensive language about LGBT people by politicians to be fairly or very widespread in the country where they live.[43] Similarly, FRA's survey of Jewish persons in the EU shows that, on average, more than half the respondents consider antisemitic comments made in the media and by politicians to be a problem in the country where they live.[44]

The survey data also show that many people avoid certain events, places or locations in their local area or neighbourhood because they fear being harassed or attacked. Nearly half of Jewish respondents who have been a victim of an antisemitic incident in the past 12 months say they avoid certain places because they do not feel safe there as a Jew. Similarly, half the LGBT survey respondents said they avoid certain places or locations for fear of assault, threat or harassment because they are LGBT.

> *"Systematic barriers such as negative cultural attitudes, insufficient capacity-building for potential candidates and limited financial resources impede women's equal participation in public life."*
>
> *United Nations, Committee on the Elimination of Discrimination Against Women (2013),* Concluding observations on the seventh periodic report of Greece adopted by the Committee at its fifty fourth session, *11 February–1 March 2013, paragraph 24, available at: www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW.C.GRC.CO.7.doc*

The European Institute for Gender Equality launched its report on the state of gender equality in the EU (excluding Croatia) in June.[45] Using the Gender Equality Index, a statistical tool to measure achievements in the area of gender equality over time, the key finding shows that Member States have not managed to overcome gender gaps. On a scale where 1 stands for no gender equality and 100 for full equality, EU Member States scored 54 on average. The EU is still far from being a gender-equal society.

The biggest gender gap is within the area of power, where the EU scores a mere 38, the results show. This means that women are greatly under-represented in decision-making positions, despite the fact that they make up nearly half the workforce and account for more than half of tertiary-level graduates. The second-largest gap identified is in time spent on unpaid caring and domestic activities, where the average score is 38.8, meaning that women spend considerably more time on such activities than men.[46]

For persons with disabilities, evidence collected by FRA in 2013 highlights that the lack of accessible information, the absence of training for public authorities, physical barriers preventing access to and effective use of buildings and services, and the absence of mechanisms through which the voices of persons with disabilities can reach decision makers all serve to create obstacles to participation.[47]

Promising practices

Addressing the under-representation of women in decision-making posts

Acknowledging the under-representation of women in decision-making posts, an Italian project aims to increase knowledge and understanding of the gender dimension in business leadership and economic growth. The two-year project, run by the Department for Equal Opportunities at the **Italian** Ministry of Labour and Social Affairs (*Ministero del Lavoro e delle Politiche Sociali*) and Bocconi University, will examine the gender balance on the boards of directors and audit committees of publicly owned Italian companies.

The project, which is supported by the European Commission, will further analyse the consequences of the presence of women on the board of directors of public and private companies. Entitled Women Mean Business and Economic Growth – Promoting Gender Balance on Company Boards, the project will suggest ways to increase the number of women employed in high-level positions.

The project will also promote the exchange of good practices and the beneficial effects of female leadership on economic growth and business.

For more information, see: www.pariopportunita.gov.it/index.php/primo-piano/2396-qwomen-mean-business-and-economic-growthq

The Promociona project aims to increase the number of women executives in steering committees and management boards of businesses in **Spain**, helping them break through the glass ceiling that women often face at work. To do so, training and development programmes will focus on nurturing and retaining female talent within companies, thereby enabling businesses to recruit and groom women to occupy senior management jobs. Starting in 2013, the project will run until the end of 2015, with funding from the European Economic Area Financial Mechanism.

For more information, see: www.eeagrants.spain.msssi.gob.es/docsRelevantes/pdf/folleto_programa_igualdad.pdf

Persons with disabilities also face legal hurdles that prevent them from participating in political and social life. This is particularly the case for those with psychosocial or intellectual disabilities who have been deprived of legal capacity, that is the law's recognition of a person's right to make decisions for him- or herself. This happens despite the CRPD Committee's insistence that State Parties to the Convention "ensure that persons

Table 5.1: Right to political participation of persons with psychosocial disabilities and persons with intellectual disabilities, by EU Member State

EU Member State	Exclusion	Limited participation	Full participation
AT			X
BE	X		
BG	X		
CY		X	
CZ		X	
DE	X		
DK	X	X	
EE	X	X	
EL	X		
ES		X	X
FI		X	X
FR		X	X
HR			X
HU		X	
IE	X		X
IT			X
LT	X		
LU	X		
LV			X
MT	X	X	
NL			X
PL	X		
PT	X		
RO	X		
SE			X
SI		X	
SK	X		
UK			X

Notes: *Data as of December, 2013.*

An EU Member State can be represented in more than one column, as persons with psychosocial disabilities and persons with intellectual disabilities may be treated differently according to the national law of the respective Member State, or because different laws specify different restrictions on the right to political participation.

Source: *FRA, 2013*

with disabilities, including persons who are currently under guardianship or trusteeship, can exercise their right to vote and participate in public life."[48]

FRA ACTIVITY

Increasing the participation of persons with disabilities in political and social life – legal capacity and participation in elections

In July 2013, FRA published a report that underlines the gap between the promise of Article 12 of the CRPD, on equal recognition of persons with disabilities before the law, and the reality that persons with disabilities currently face in the EU. The report, *Legal capacity of persons with mental health problems and persons with intellectual disabilities,* shows that, in a majority of EU Member States, legal frameworks allow some persons with disabilities to be deprived of their legal capacity in certain circumstances, despite the shift outlined in the CRPD from substituted to supported decision making. These national legal frameworks are, however, undergoing a transformation, as legal capacity is reframed in terms of the support that persons with disabilities may need to make decisions.

To support reform processes at the national level, FRA brought together legal experts from government ministries across the EU Member States in October to discuss how to give supported decision making a clear and effective legislative basis. The seminar, organised by FRA in partnership with the Irish Department of Justice and Equality, the Irish Human Rights Commission and the Irish Equality Authority, focused on the steps that must be taken to build a coherent legislative agenda to move successfully to supported decision making.

FRA's preliminary findings on the political participation of persons with disabilities indicate that many of them confront legal and practical barriers to exercising the right to vote. This can deprive them of the opportunity to participate in an essential component of democratic societies. FRA's work in this area consists of developing indicators on the political participation of people with disabilities to measure the extent to which they are enabled to participate in political life, particularly through voting and standing for elections.

For more information, see: FRA (2013), Legal capacity of persons with intellectual disabilities and persons with mental health problems, *available at: http://fra.europa.eu/en/publication/2013/legal-capacity-persons-intellectual-disabilities-and-persons-mental-health-problems; and FRA (2013),* Political participation of persons with disabilities, *available at: http://fra.europa.eu/en/project/2013/political-participation-persons-disabilities*

Only a minority of EU Member States have lifted all restrictions on the right to vote of people deprived of legal capacity. Table 5.1 indicates that laws in the large majority of Member States continue to tie the right to vote to legal capacity. Half of the EU-28 automatically exclude persons deprived of their legal capacity from the right to vote (exclusion). Legislation in several other Member States provides for a case-by-case assessment of the ability of a person to vote (limited participation).

> *"It is important to recognise the legal capacity of persons with disabilities in public and political life. This means that the person's decision-making ability cannot be used to justify any exclusion of persons with disabilities from exercising their political rights."*
>
> *CRPD Committee (2013), Draft General Comment on Article 12 of the Convention: Equal recognition before the law, 25 November 2013, paragraph 44, available at: www.ohchr.org/EN/HRBodies/CRPD/Pages/DGCArticles12And9.aspx*

5.4 Member States adopt measures to counter discrimination

EU Member States adopted measures in 2013 to enable them to counter discrimination more effectively. **Poland**, for example, adopted a national action plan for equal treatment covering 2013–2016.[49] In the **United Kingdom**, the Department for Culture, Media and Sport and the Government Equalities Office published a policy on *Creating a fairer and more equal society*.[50] The policy aims at preventing discrimination, including discrimination based on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. **Croatia**[51] and **Greece**[52] adopted similar action plans, with that of Greece covering human rights globally. **Estonia**[53] and **Finland**[54] organised campaigns promoting diversity and equality. In **Spain**,[55] the Ministry of Health, Social Services and Equality (*Ministerio de Sanidad, Servicios Sociales e Igualdad*) began mapping how discrimination is perceived and enacted, with a view to enabling the authorities to draft more effective antidiscrimination policies. In Spain as well, legislation relating to improving the quality of education irrespective of a person's background came into force in December.[56]

EU Member States also adopted measures targeting specific grounds of discrimination in 2013, particularly regarding age, disability, sexual orientation and gender identity.

5.4.1 Countering discrimination on the ground of age

Recognising that all human rights and fundamental freedoms apply to older persons, the draft recommendation by the Steering Committee for Human Rights of the Council of Europe on the promotion of the human

rights of older persons calls for increasing respect for older persons' autonomy and legal capacity in daily life. It also called for promoting the protection of older persons in societies where ageism is rising or in situations where they may be vulnerable.[57]

Member States adopted measures to encourage employers to hire young or older people to counter high youth unemployment rates and discrimination on the ground of age. In the **Czech Republic**, the national action plan supporting positive ageing for the period 2013–2017,[58] prepared by the Ministry of Labour and Social Affairs, envisages the implementation of tools to support older workers. It introduces concepts of age management and increases the employment of older workers by creating job-share positions between older and younger workers.

Promising practice

Providing the police with guidance on antidiscrimination

The National Union of Local Police Chiefs (*Unión Nacional de Jefes y Directivos de Policía Local*) and several NGOs working with migrants, Roma, LGBT people and those with intellectual disabilities in **Spain** published an antidiscrimination and equality guide for the police. The guide addresses discrimination on specific grounds, multiple discrimination and hate crime. It also explains where discrimination usually takes place, while providing statistical and sociological data on populations vulnerable to discrimination. The guide further describes specific cases of discrimination involving the police in Spain and provides information on the legal framework on non-discrimination at the international, European and national levels.

The aim of the guide is to raise awareness among the police by providing examples of good practices in the areas of police adjustment to diversity; countering hate crimes; participation of a diverse society in public security policies; and avoidance of ethnic profiling.

For more information, see: Spain, Programa de colaboración de la Open Society Foundations con la Plataforma por la Gestión policial de la Diversidad (2013), Guía para la Gestión Policial de la Diversidad*, available at: http://gestionpolicialdiversidad.org/PDFactividades/guia_gestion_policial_diversidad.pdf*

Bulgaria introduced subsidies for hiring those under 29 years of age.[59] In **Denmark**, the government adopted similar measures, setting up programmes aimed at integrating young people into the job market.[60] **Finland** launched the Youth Guarantee programme to ensure young people's access to education, training and employment and to prevent them from being excluded from society.[61]

The 'generation contract' in **France** guarantees that companies with fewer than 300 employees receive financial support when they recruit persons under 26 or workers with disabilities under 30 or keep in a post employees over 57 years of age.[62] In **Spain**, the government introduced a requirement for profit-making enterprises with more than 100 staff members to pay compensation to the state's social benefits scheme if they collectively dismiss workers over 50 years of age.[63]

Belgium and **Germany** built upon 2012 campaigns as part of the European Year for Active Ageing and Solidarity between Generations, adopting measures to ensure the non-discriminatory treatment of young and older people in employment. Measures included awareness-raising campaigns, such as the **Belgian** *Fifty-plus employees are a plus for every company*.[64] The **German** *Perspektive 50plus*[65] campaign aimed at raising awareness of demographic issues, activating older long-term unemployed people and integrating them into the job market.

Finally, the European Commission closed the infringement procedure on the forced retirement of judges in **Hungary**, which had lowered their mandatory retirement age from 70 to 62.[66] Hungary amended the relevant legal act.

5.4.2 Countering discrimination on the ground of disability

EU Member States continued to bring their legislation and policy frameworks in line with their legal obligations under the CRPD. New legislation was either adopted or presented in draft in **Austria**,[67] **Belgium**,[68] **Estonia**,[69] **Hungary**,[70] **Italy**,[71] **Latvia**,[72] the **Netherlands**,[73] **Portugal**[74] and the **United Kingdom**.[75]

Croatia,[76] the **Czech Republic**,[77] **Hungary**[78] and **Latvia**[79] adopted reforms to remove or reduce restrictions for persons with psychosocial or intellectual disabilities who have been deprived of legal capacity. In the **Czech Republic**, the Civil Code that came into force on 1 January 2014 stipulates that a person's legal capacity may be partially limited, with courts deciding the scope of the legal capacity limitation, including whether or not the individual retains the right to vote.[80]

Amendments to the **Latvian** Civil Law in force since 1 January 2013 envisage that "the person shall not be deprived of personal non-material rights", including the right to vote.[81] Moreover, a draft Assisted Decision-Making Bill setting out a legal framework for supported decision-making was presented in **Ireland** (see Chapter 10 on EU Member States and international obligations).[82]

Hungary initiated reforms linked to the Concluding observations of the CRPD Committee.[83] The committee expressed concern that the definition of disability in the

Disability Act[84] excludes persons with psychosocial disabilities. Hungary subsequently amended the Disability Act, which as of 1 January 2014 covers persons with psychosocial disabilities.[85] In addition, the committee specifically called upon Hungary to "re-examine the allocation of funds, including regional funds obtained from the European Union", to ensure that they are in full compliance with Article 19 of the CRPD.[86] This has ramifications for the use of the new Structural Funds to support the transition from institutional to community-based care, particularly in the light of the newly adopted ex ante conditionalities (for more on ex ante conditionalities, see Section 5.5).

Promising practice

Involving NGOs in improving accessibility of buildings for persons with disabilities

In the **Croatian** city of Vinkovci, the Committee for the Technical Examination of Buildings includes a member representing Bubamara, an NGO that works to protect persons with disabilities. The committee runs fieldwork tests of the accessibility of new buildings, a prerequisite for these to gain use permits. The test results feed back into the engineering works, allowing the removal of any obstacles encountered and preventing these in future construction projects. The committee also raises awareness within the construction industry of how to ensure that buildings are accessible for all. Several Croatian cities have now included NGO representatives on their technical building committees, a practice recommended by the Persons with Disabilities Ombudsman.

For more information, see: www.bubamara.hr/ and www.bd.undp.org/content/croatia/hr/home/presscenter/articles/2013/10/15/osobe-s-invaliditetom-i-lokalna-uprava-o-ne-pristupa-nosti-objekata/

Cyprus,[87] **Denmark**,[88] **Italy**,[89] **Latvia**,[90] **Lithuania**,[91] **Slovakia**[92] and the **United Kingdom**[93] introduced action plans in the area of disability. The **Italian** Ministry of Labour and Social Policy, for example, approved in February the country's first National Action Programme for the promotion of the rights and integration of people with disabilities.[94] The plan identifies seven priority areas for the implementation of the CRPD and defines concrete measures to be implemented by national, regional and local authorities.

Other initiatives to enhance the participation of persons with disabilities focused on the accessibility of public buildings and information, as well as on assistance during the voting process. **France**, for example, requires an assessment of the accessibility of state and municipal buildings for persons with disabilities, following an interdepartmental circular sent out in January.[95] As of 2013, the **Austrian** Federal Parliament has a tool that reads its website's contents aloud.[96]

To help guarantee the secrecy of the ballot for persons with disabilities who require assistance to vote, the **Swedish** Parliamentary Electoral Committee proposed introducing a new provision to the Election Act that would include an explicit duty of confidentiality for individuals who assist voters.[97] In the **United Kingdom**, the parliamentary outreach service in conjunction with a not-for-profit organisation launched a campaign, Love Your Vote, to explain to persons with intellectual disabilities the parliamentary process, the electoral system, the voting process and how to lobby local representatives.

The Employment Equality Directive incorporates the duty of 'reasonable accommodation' for persons with disabilities. This is the employer's duty to take appropriate measures, where needed, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.[98]

Croatian lawmakers amended the new Act on Professional Rehabilitation and Employment of Persons with Disabilities. Reasonable accommodation at the workplace is newly defined as "necessary and adequate accommodation and adjustments, which are not disproportionate or inadequate, so as to ensure the employment and work of persons with disabilities on an equal basis to others in each individual case, where necessary".[99]

In some countries, measures of reasonable accommodation have been applied to fields other than employment, such as education. In **Bulgaria**, for instance, the national programme for accessible schooling *Creating an accessible architectural environment 2013* aims to create a supportive environment for 400 children with intellectual disabilities who have been living in institutions that are now scheduled for closure. It also aims to give them easier access to 64 pilot kindergartens and elementary schools near their new accommodation, which consists of small, family-type centres and sheltered housing. This also relates to the inclusive education programme, under which 1,331 pupils with special educational needs received support to study in 84 pilot secondary schools.[100]

The Flemish Government in **Belgium** approved a proposal for a decree on measures for students with specific education needs, which it submitted to the Flemish Parliament in November 2013.[101] The proposal provides that children who are able to continue in regular education with the help of reasonable adjustments have the right to enrol or remain enrolled in regular schools. Those who are not able to follow regular education, because of what is required to obtain a degree, or for

whom the adjustments to attend regular school would be unreasonable, have access to special education.[102]

5.4.3 Countering discrimination on the grounds of sexual orientation and gender identity

Several EU Member States addressed the legal situation of LBGT persons in 2013. **Malta**, for example, removed from its Civil Code obstacles relating to the civil status of persons who change their assigned sex.[103] **Poland** began parliamentary discussions on adopting a formal procedure of gender recognition.[104] In **Ireland**, the Department of Social Protection proposed a Gender Recognition Bill to recognise legally the acquired gender of transgender persons for all purposes, including dealings with the state, public bodies and civil and commercial entities.[105]

Latvia adopted new Regulations on Civil Status, allowing, among other amendments, for legal change of gender.[106] According to the new law, the registry record shall be supplemented if the person has undergone partial or complete gender reassignment and the persons' gender record shall be changed according to the certificate issued by the healthcare institution or healthcare practitioner, which confirms the change of the gender.

Similarly, **Lithuania** simplified the procedure of legal gender recognition by obliging registry offices to change identity documents upon the submission of medical proof of gender-reassignment surgery.[107] The Lithuanian Gay League points out, however, that in 2013 a proposal was put forward envisaging fines for those organising protests that would seemingly contradict "constitutional moral values and Constitution established principles of family". If adopted, the proposal would apply to situations where LGBT persons would be seen to contradict the "morality of society."[108]

The Senate in the **Netherlands** voted in favour of a law enabling transgender persons to change their legal sex without requirements such as sterilisation or genital surgery.[109]

Civil society organisations acknowledged the limited progress made with regard to the legal recognition of a trans person's gender in some EU Member States. Still, they remained critical of legislative proposals that would necessitate sterilisation, divorcing or compulsory medical treatment.[110]

In **Belgium**,[111] **Denmark**,[112] **Finland**[113] and **France**,[114] national equality bodies and expert working groups focused on legislation concerning LBGT persons. The attention here is on gender recognition in civil matters, conditions for gender reassignment and developing proposals for legal reforms to better accommodate the needs of LBGT persons. In **Cyprus**, the Ministry of Justice and Public Order not only submitted legislation penalising discrimination on the grounds of race, colour, religion, national or ethnic origin; it also submitted a bill amending the Criminal Code to the Parliament. The bill would penalise the public incitement of discriminatory acts or acts of hatred or violence against persons because of their sexual orientation or gender identity.[115]

Action plans and policy measures on countering discrimination grounded on sexual orientation and gender identity were also introduced or updated in **Belgium**, the **Netherlands**[116] and **Portugal**.[117]

5.5 EU deploys EU structural funds in countering discrimination

The legislative package for the European Union Structural Funds for the period 2014–2020 was adopted in December 2013.[118] These funds, totalling €325 billion, are the EU's principal investment tool for delivering Europe 2020 goals, including the reduction of social exclusion and creating economic growth and jobs.[119]

The regulations governing several specific funds make specific reference to furthering equality and non-discrimination. For the first time, the European Social Fund (ESF), which accounts for 23 % of the total Structural Funds budget, will include a specific focus on fighting discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, or those covered by Article 10 of the Treaty on the Functioning of the European Union, in addition to promoting employment and inclusion.[120]

Of the more than €74 billion of ESF funds to be distributed over the seven-year financing period, at least 20 % will be allocated to social inclusion and €3 billion to the Youth Employment Initiative in regions with youth unemployment rates exceeding 25 %.[121]

Particularly important to the area of equality and non-discrimination is the inclusion of the requirement for EU Member States to show that they have the relevant legal and policy instruments and measures in place before they can apply for funding, including on antidiscrimination, gender and disability. The move to require such 'ex ante conditionalities' in these three areas reverses a previous Council of the European Union decision removing them.[122]

Before funds can be allocated, the European Commission must assess that a number of criteria attached to each conditionality have been fulfilled. Regarding antidiscrimination, for example, EU Member States must meet certain criteria, including arranging that the bodies

that promote equal treatment shall be involved in programme preparation and implementation.[123] Particularly important in the context of disability, children and older people are the criteria for fulfilment attached to the objective of promoting social inclusion, combating poverty and any discrimination, which include "measures for the shift from institutional to community based care". Table 5.2 presents a summary of the relevant *ex ante* conditionalities.

> *"The implementation of the priorities financed by the ESF should contribute to countering discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation by paying particular attention to those facing multiple discriminations; discrimination on the grounds of sex should be interpreted in a broad sense so as to cover other gender-related aspects in line with the jurisprudence of the Court of Justice of the European Union. The ESF should support the fulfilment of the obligation under the UN [CRPD] with regard inter alia to education, work and employment and accessibility. The ESF should also promote the transition from institutional to community-based care. The ESF should not support any action that contributes to segregation or to social exclusion."*
>
> *European Parliament (2013), Resolution of 20 November 2013 on the proposal for a regulation of the European Parliament and of the Council on the European Social Fund and repealing Regulation (EC) No 1081/2006, P7_TA(2013)0483, Strasbourg, 20 November 2013.*

In addition, the Rights, Equality and Citizenship Programme was adopted in December for the period 2014–2020.[124] The programme will contribute to fighting discrimination on all the grounds listed in Article 21 of the Charter of Fundamental Rights, namely sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. The funds available amount to €439,473,000, merging three programmes: Fundamental Rights and EU Citizenship;[125] Daphne III;[126] and two chapters of the Progress programme.[127]

Table 5.2: Common provisions on European funds: selected general and thematic ex ante conditionalities

Area	Ex ante conditionality
Antidiscrimination	Administrative capacity to implement and apply EU antidiscrimination law and policy in the field of European Structural and Investment (ESI) funds
Gender	Administrative capacity to implement and apply EU gender equality law and policy in the field of ESI funds
Disability	Administrative capacity to implement and apply the United Nations Convention on the Rights of Persons with Disabilities in the field of ESI funds in accordance with Council Decision 2010/48/EC
Thematic objective	**Ex ante conditionality**
Promoting social inclusion, countering poverty and any discrimination	The existence and implementation of a national strategic policy framework for poverty reduction aiming at the active inclusion of persons excluded from the labour market in the light of the employment guidelines
Promoting sustainable and quality employment and supporting labour mobility ESF: Active and healthy ageing	Active ageing policies designed in the light of the employment guidelines

Source: Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No. 1083/2006, OJ L 347, 20/12/2013, pp. 320–469, Article 19 and Annex XI

Outlook

The European Commission's report on the implementation of the Employment Equality Directive and the Racial Equality Directive will give new impetus to EU Member States to ensure that they offer adequate protection against discrimination and unequal treatment. This could lead to a revision of national policies and instruments pertaining to equality and non-discrimination.

The impact of the economic crisis will continue to affect the ability of persons in vulnerable situations to participate fully in social life in a number of Member States. The reformed cohesion policy will make available up to €351.8 billion for delivering on Europe 2020 goals, which include reducing poverty and social exclusion.

However, the ability of all those living in the EU to participate fully and equally is also likely to be affected by the pace of progress on key legislative and policy developments, such as the Horizontal Directive and the Accessibility Act.

After meeting for the first time in 2013, the EU-level CRPD monitoring framework set up under the Convention's Article 33 (2) will build up its activities in 2014. In particular, it will prepare a work programme and take steps to ensure public access to key documents and information about the work of the framework, which is composed of the European Parliament, the European Commission, the European Ombudsman, FRA and the European Disability Forum representing civil society.

Index of Member State references

Endnotes

All hyperlinks accessed on 30 April 2014.

1 See: Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19 July 2000, pp. 22–26; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2 December 2000, pp. 16–22; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21 December 2004, pp. 37–43.

2 European Commission (2011), *The principle of equal treatment between persons*, http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c10935_en.htm.

3 European Commission (2008), *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*, COM(2008) 426 final, Brussels, 2 July 2008.

4 See: Council of the European Union (2013), *Progress report 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*, Irish Presidency of the Council of the EU, 7 June 2013, http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST %2010039 %202013 %20INIT; Council of the European Union (2013), *Progress report 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*, Lithuanian Presidency of the Council of the EU, 22 November 2013, http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST %2016438 %202013 %20INIT.

5 See: Council of the European Union (2013), *Progress report 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*, Irish Presidency of the Council of the EU, 7 June 2013.

6 European Commission (2011), *Roadmap, European Accessibility Act: Legislative initiative to improve accessibility of goods and services in the Internal Market*, Brussels, June 2011, http://ec.europa.eu/governance/impact/planned_ia/docs/2012_just_025_european_accessibiliy_act_en.pdf.

7 European Disability Forum (EDF) (2013), *EDF position paper: Towards a European Accessibility Act*, Brussels, January 2013, p. 15, www.edf-feph.org/Page_Generale.asp?DocID=13854&thebloc=31902.

8 Age Platform Europe, Community of European Railway and Infrastructure Companies, European Disability Forum and European Passengers' Federation (2013), *Towards better accessibility of transport services*, joint statement, January 2013, www.age-platform.eu/images/stories/Joint_statement_on_European_Accessibility_Act.pdf.

9 European Commission (2014), *Commission actions expected to be adopted in 2014,* http://ec.europa.eu/atwork/pdf/forward_programming_2014.pdf.

10 European Parliament (2013), *Draft report on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity*, (2013/2183(INI)), 14 October 2013.

11 CJEU (2013), joined cases C-335/11 and C-337/11.

12 CJEU (2006), *Chacon Navas v. Eurest Colectividades SA*, 11 July 2006. See also FRA (European Union Agency for Fundamental Rights) (2011), *The legal protection of persons with mental health problems under non-discrimination law: Understanding disability as defined by law and the duty to provide reasonable accommodation in EU Member States,* Luxembourg, Publications Office of the European Union (Publications Office).

13 FRA (2010), *EU-MIDIS: European Union Minorities and Discrimination Survey 2009*, Luxembourg, Publications Office.

14 FRA (2013), *Discrimination and hate crime against Jews in EU Member States: Experiences and perceptions of antisemitism*, Luxembourg, Publications Office.

15 Belgium, Centre for Equal Opportunities and Opposition to Racism (CEOOR) (2013), *Jaarverslag Discriminatie/Diversiteit 2012 / Rapport annuel Discrimination/Diversité 2012*, www.diversite.be/?action=publicatie_detail&id=161&thema=2&select_page=216.

16 Daskalova, N., Zhelyazkova, A. and Angelova, V., International Centre for Minority Studies and Intercultural Relations (2013), *Challenging racism at work*, www.imir-bg.org/imir/reports/CHALLENGING%20RACISM%20AT%20WORK.pdf.

17 Croatia, Office of the People's Ombudsman (2013), *Report on the occurrences of discrimination for 2012*, Zagreb, June 2013, www.ombudsman.hr/dodaci/Izvje%C5%A1%C4%87e%200%20pojavama%20diskriminacije.pdf.

18 France, Défenseur des droits (2013), *Annual activity report 2012*, www.defenseurdesdroits.fr/sites/default/files/upload/raa-Defender of Rights-2012_press02.pdf.

19 Germany, Antidiskriminierungsstelle des Bundes (2013), *Diskriminierung im Bildungsbereich und im Arbeitsleben: Zweiter Gemeinsamer Bericht der Antidiskriminierungsstelle des Bundes und der in ihrem Zuständigkeitsbereich betroffenen Beauftragten der Bundesregierung und des Deutschen Bundestages*, Berlin, www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Gemeinsamer_Bericht_2013.pdf?__blob=publicationFile.

20 Greece, Συνήγορος του Πολίτη, *Annual report 2012*, www.synigoros.gr/resources/docs/stp_ethsia_2012.pdf.

21 Italy, Ufficio Nazionale Antidiscriminazioni Razziali (2013), www.unar.it.

22 Ireland, Equality Authority (2013), *Equality Authority annual report 2012*, www.equality.ie/en/Publications/Annual-Reports/Annual-Report-2012-Final-onlin e-web-version-pdf.pdf.

23 Sweden, Diskrimineringsombudsmannen, *Annual report 2012*, www.do.se/sv/Material/Arsredovisning-2012/.

24 Germany, Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR) (2013), *Migrants' experiences of discrimination,* Factsheet of the expert opinion: Discrimination experiences of persons with and without a migrant background including an East/West comparison, www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/factsheet_engl_Diskriminierungserfahrungen_Migrant_innen_Ost_West_Vergleich.pdf?__blob=publicationFile.

25 Belgium, (CEOOR) (2013), *Jaarverslag Discriminatie/Diversiteit 2012 / Rapport annuel Discrimination/Diversité 2012*, www.diversite.be/?action=publicatie_detail&id=161&thema=2&select_page=216.

26 Denmark, *Ligebehandlingsnævnet* (2013).

27 France, Défenseur des droits (2013), *Survey on the perception of discrimination by job seekers: Executive summary*, October 2013, www.defenseurdesdroits.fr/sites/default/files/upload/oit-synthese.pdf.

28 Czech Republic, Veřejný ochránce práv (2013), *Annual report 2012*, www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnna_zprava_VOP_2012-web.pdf.

29 Poland, Human Rights Defender (2013), *Response to the request upon access to public information from 28 October 2013*; Poland, *Pełnomocnik Rządu do spraw Równego Traktowania, Response to the request upon access to public information from 28 October 2013*.

30 Estonia, Soolise võrdõiguslikkuse ja võrdse kohtlemise volinik (2013), *Soolise võrdõiguslikkuse ja võrdse kohtlemise volinik: 2012. aasta tegevuse aruanne*, www.svv.ee/failid/Voliniku%202012.%20aasta%20tegevuse%20%C3%BClevaade.%20Kokkuv%C3%B5te.pdf.

31 Estonia, *Soolise võrdõiguslikkuse seadus*, Section 3, para. 1, www.riigiteataja.ee/en/eli/530102013038/consolide.

32 Netherlands, Commissie Gelijke Behandeling (2012), *Hoe is het bevallen? Onderzoek naar discriminatie van zwangere vrouwen en moeders met jonge kinderen op het werk*, Utrecht.

33 Sweden, Diskrimineringsombudsmannen (2013), *Annual report 2012*, www.do.se/sv/Material/Arsredovisning-2012/.

34 ECtHR, *Eweida and Others v. The United Kingdom*, Nos. 48420/10, 59842/10, 51671/10 and 36516/10, judgment, Strasbourg, 15 January 2013.

35 ECtHR, *Vallianatos and Others v. Greece*, No. 29381/09 and 32684/09, judgment, 7 November 2013, http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-128294#{"itemid":["001-128294"]}.

36 ECtHR, *Orlandi and Others v. Italy*, No. 26431/12; *Isita and Bray v. Italy*, No. 26742/12; *Goretti and Others v. Italy*, No. 44057/12; *Garullo and Ottocento v. Italy*, No. 60088/12; *Oliari and Longhi v. Italy*, No. 18766/11; and *Felicetti and Others v. Italy*, No. 36030/11.

37 ECtHR, *S.A.S. v. France*, No. 43835/11, public hearing.

38 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ 2000 L 180, Art. 4.

39 Belgium, *Arbeidsrechtbank Tongeren, Joyce V. O. D. B v. R. B. NV*, No. 11/2142/A, 2 January 2013.

40 Romania, *Consiliului Național pentru Combaterea Discriminării* (2013), *Hotărârea* No. 348/29 05 2013.

41 See, for example, Chapters 5 and 6 in FRA's previous Annual reports.

42 FRA (2010), *Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity*, Luxembourg, Publications Office; see also FRA (2014 forthcoming), *EU LGBT survey: Main results*, Luxembourg, Publications Office.

43 FRA (2013), *EU LGBT survey: Results at a glance*, Luxembourg, Publications Office.

44 FRA (2013) *Discrimination and hate crime against Jews in Member States: Experiences and perceptions of antisemitism*, Luxembourg, Publications Office, p. 21.

45 European Institute for Gender Equality (2013), *Report on Gender Equality Index: Main findings*, http://eige.europa.eu/sites/default/files/Gender-Equality-Index-Main-findings.pdf.

46 More detailed information on gender equality is on the European Institute of Gender Equality website, http://eige.europa.eu.

47 FRA (2014 forthcoming), *Indicators on political participation of persons with disabilities*, Luxembourg, Publications Office.

48 Committee on the Rights of Persons with Disabilities (2013), *Concluding observations on Tunisia*, CRPD/C/TUN/CO/1, 13 May 2011, para. 35.

49 Poland, Pełnomocnik Rządu do spraw Równego Traktowania (2013), *Krajowy Program Działań na Rzecz Równego Traktowania na lata 2013–2016*, Warsaw, 10 December 2013.

50 United Kingdom, Department for Culture, Media and Sport and Government Equalities Office (2013), *Creating a fairer and more equal society,* www.gov.uk/government/policies/creating-a-fairer-and-more-equal-society.

51 Croatia, Ured za ljudska prava i prava nacionalnih manjina Vlade Republike Hrvatske (2013), *Nacionalni program zaštite i promicanja ljudskih prava za razdoblje od* 2013. *do* 2016. *godine*, www.uljppnm.vlada.hr/index.php?option=com_content&view=article&id=113&Itemid=83.

52 Greece, Υπουργείο Δικαιοσύνης (2013), *Εθνικό Σχέδιο Δράσης για τα Ανθρώπινα Δικαιώματα*, www.opengov.gr/ministryofjustice/?p=5239.

53 Estonia, *Erinevus rikastab*, campaign 2010–2014.

54 Finland (2013), *Yhdenvertaisuus Etusijalle*, www.yhdenvertaisuus.fi/kampanjat/yes-yhdenvertaisuus_etusijalle.

55 Spain, Ministerio de Sanidad, Servicios Sociales e Igualdad (2013), *No discriminación*, www.msssi.gob.es/ssi/igualdadOportunidades/noDiscriminacion.

56 Spain, Boletín Oficial del Estado (2013), *Ley Orgánica 8/2013, de 9 de diciembre, para la mejora de la calidad educativa*, www.boe.es/boe/dias/2013/12/10/pdfs/BOE-A-2013-12886.pdf.

57 Council of Europe, Steering Committee for Human Rights (2013), Draft Recommendation CM/Rec(2014)2 of the Committee of Ministers to member states on the promotion of the human rights of older persons, Strasbourg, Council of Europe, CDDH-AGE(2013)13 final, 30 October 2013, www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/cddh-age/default_EN.asp?.

58 Czech Republic, Ministerstvo práce a sociálních věcí (2013), *Národní akční plán podporující pozitivní stárnutí pro období let 2013 až 2017,* Prague, Ministerstvo práce a sociálních věcí, www.mpsv.cz/files/clanky/14540/III_vlada__Akcni_plan_staruti_.pdf.

59 Bulgaria, Parliament, *Закон за насърчаване на заетостта*, Art. 36, paras. 1 and 2, www.mlsp.government.bg/BG/law/law/ZAKON_za_nasyrcavane_na_zaetostta.doc.

60 Denmark, Parliament (2012), *Forslag til Finanslov for finansåret 2013*, 19 December 2012, www.ft.dk/RIpdf/samling/20121/lovforslag/L1/20121_L1_som_vedtaget.pdf.

61 Finland, Government (2013), information about the initiative, www.nuorisotakuu.fi/en/youth_guarantee.

62 France, Parlement (2013), *Loi n. 2013-185 du 1er mars 2013 portant création du contrat de génération*, 4 March 2013.

63 Spain, Government (2013), *Real Decreto Ley 5/2013, de 15 de marzo, de medidas para favorecer la continuidad de la vida laboral de los trabajadores de mayor edad y promover el envejecimiento activo*, 15 March 2013.

64 Belgium, Socialistische Partij Anders (2013), 'Vijftifplussers zijn een plus voor elk bedrijf', Press release, 25 October 2013, www.s-p-a.be/artikel/vijftigplussers-zijn-een-plus-voor-elk-bedrijf/.

65 Germany, Deutscher Bundestag (2013), 'Entwicklung und Kosten des Bundesprogramms 50 plus seit dem Jahr 2011: Antwort des Staatssekretärs Gerd Hoofe vom 6. Februar 2013 auf eine Schriftliche Frage der MdB Jutta Krellmann (DIE LINKE)', BT-Drs. 17/12304, 8 February 2013, http://dipbt.bundestag.de/dip21/btd/17/123/1712304.pdf.

66 European Commission (2013), 'European Commission closes infringement procedure on forced retirement of Hungarian judges', Press release, IP/13/1112, 20 November 2013.

67 Austria, Parliament (2013), *Beschluss des Nationalrats vom 13. Juni 2013*, www.parlament.gv.at/PAKT/VHG/XXIV/BNR/BNR_00767/fname_310150.pdf.

68 Belgium, Residence Palace International Press Centre (2013), 'Diverse bepalingen inzake verkiezingen', Press release, 5 July 2013, www.presscenter.org/nl/pressrelease/20130705/diverse-bepalingen-inzake-verkiezingen.

69 Estonia, Sotsiaalministeerium (2013), email correspondence, 20 November 2013.

70 Hungary (2013), *A választási eljárásról szóló 2013.* évi *XXXVI. törvény*, Magyar Közlöny, No. 66/2013, http://njt.hu/cgi_bin/njt_doc.cgi?docid=159995.243493#foot1.

71 Italy (2003), *Decreto legislativo*, 9 July 2003, No. 216.

72 Latvia (2013), *Grozījumi Eiropas Parlamenta vēlēšanu likumā*, 31 October 2013.

73 Netherlands, Minister van Binnenlandse Zaken en Koninkrijkrelaties (2013), Letter sent to the House of Representatives No. 33829-1, 18 December 2013.

74 Portugal (2013), *Resolução da Assembleia da República 47/2013 pelo combate ao empobrecimento e à agudização da pobreza entre as mulheres,* 4 April 2013, http://dre.pt/pdf1sdip/2013/04/06600/0197201973.pdf.

75 United Kingdom (2013), Electoral Registration and Administration Act 2013, c. 6, http://services.parliament.uk/bills/2012-13/electoralregistrationandadministration.html.

76 Croatia, Parliament (2012), *Zakon o registru birača*, Narodne novine, No. 144/12, 14 December 2012.

77 Czech Republic, Parliament (2013), *Nový občanský zákoník*, February 2012, Section 55–65, http://aplikace.mvcr.cz/sbirka-zakonu/ViewFile.aspx?type=c&id=6144.

78 Hungary (2011), *Magyarország Alaptörvénye,* 25 April 2011.

79 Latvia (2012), *Grozījumi Civillikumā*, 29 November 2012.

80 Czech Republic, Parliament (2013), *Nový občanský zákoník*, 3 February 2012, Section 55–65, http://aplikace.mvcr.cz/sbirka-zakonu/ViewFile.aspx?type=c&id=6144.

81 Latvia (2012), *Grozījumi Civillikumā*, 29 November 2012.

82 Ireland (2013), Assisted Decision-Making (Capacity) Bill 2013 and Explanatory Memorandum, www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2013/8313/b8313d.pdf.

83 United Nations (UN), Committee on the Rights of Persons with Disabilities (2012), *Concluding observations on the initial periodic report of Hungary*, CRPD/C/HUN/CO/1, 22 October 2012.

84 Hungary, Parliament (1998), *A fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról szóló 1998.* évi *XXVI. törvény.*

85 Hungary, Parliament (2013), *2013.* évi *LXII. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról szóló 1998.* évi *XXVI. törvény* módosításáról.

86 UN, Committee on the Rights of Persons with Disabilities (2012), *Concluding observations on the initial periodic report of Hungary*, CRPD/C/HUN/CO/1, 22 October 2012, para. 35.

87 Cyprus, Department for Social Inclusion of Persons with Disabilities (2013), *Εθνικό Σχέδιο Δράσης για την Αναπηρία. Για την εφαρμογή της Σύμβασης του ΟΗΕ για τα δικαιώματα των ατόμων με αναπηρίες 2013–2015*, Nicosia, Ministry of Labour and Social Insurance, Republic of Cyprus, July 2013.

88 Denmark, Kirke- og Ligestillingsministeriet (2013), *Handicappolitisk handlingsplan 2013: Et samfund for alle*, October 2013, www.sm.dk/data/Dokumentertilnyheder/2013/Handicappolitisk %20handlingsplan %202013_ACC.pdf.

89 Italy, Ministero del Lavoro e delle Politiche Sociale (2013), *Proposta di programma di azione biennale per la promozione dei Diritti e l'integrazione delle persone con disabilità*, www.lavoro.gov.it/AreaSociale/Disabilita/Documents/Programma_azione_disabilita.pdf.

90 Latvia, Ministru kabinets (2013), *Apvienoto Nāciju Organizācijas Konvencijas par personu ar invaliditāti tiesībām īstenošanas pamatnostādnes 2014.–2020.gadam*, 19 November 2013.

91 Lithuania, Socialinės apsaugos ir darbo ministerija (2013), *Dėl Nacionalinės neįgaliųjų socialinės integracijos 2013–2019 metų programos įgyvendinimo 2013–2015 metais priemonių plano patvirtinimo*, No. A1-43, 5 February 2013.

92 Slovakia (2013), *Národný program rozvoja životných podmienok osôb so zdravotným postihnutím na roky 2014–2020.*

93 United Kingdom, Department for Business Innovation and Skills and Department for Education (2013), 'Government announces two new programmes for employers to take on young disabled people', Press release, 18 July 2013, www.gov.uk/government/news/government-announces-two-new-programmes-for-employers-to-take-on-young-disabled-people.

94 Italy, Ministero del Lavoro e delle Politiche Sociale (2013), *Proposta di programma di azione biennale per la promozione dei Diritti e l'integrazione delle persone con disabilità*, www.lavoro.gov.it/AreaSociale/Disabilita/Documents/Programma_azione_disabilita.pdf.

95 France (2013), *Circulaire relative à l'accessibilité aux personnes handicapées*, 3 January 2013, http://circulaires.legifrance.gouv.fr/pdf/2013/01/cir_36392.pdf.

96 Austria, Parlament (2013), *Barrierefreiheit: 'Leopold' liest Texte auf der Website*, www.parlament.gv.at/PAKT/AKT/SCHLTHEM/THEMA/J2013/2013_08_19_Barrierefreiheit_Leopold.shtml.

97 Sweden, 2011 års vallagskommitté (2013), *E-röstning och andra valfrågor, SOU 2013:24*, p. 154,: www.regeringen.se/content/1/c6/21/48/78/89002b33.pdf.

98 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ 2007 L 303, Art. 5.

99 Croatia (2013), *Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba s invaliditetom*, Narodne novine, No. 157/13, http://narodne-novine.nn.hr/default.aspx.

100 Bulgaria, *Министерство на труда и социалната политика*, Letter No. 05-10 from 10 October 2013.

101 Belgium, Flemish Government (2013), *Ontwerp van Decreet betreffende maatregelen voor leerlingen met specifieke onderwijsbehoeften*, 21 November 2013, www.vlaamsparlement.be/Proteus5/showParlInitiatief.action?id=901710.

102 *Ibid.*; Belgium, Vlaams Minister van Onderwijs, Jeugd, Gelijke Kansen en Brussel (2013), 'Na 15 jaar discussie keurt Vlaamse regering het ontwerpdecreet rond inclusief onderwijs goed', Press release, 8 November 2013, www.vcov.be/vcov/Onderwijsflash/tabid/177/language/nl-NL/Default.aspx.

103 Malta, House of Representatives (2013), Act VII of 2013, the Civil Code (Amendment) Act, 14 June 2013.

104 Poland, Sejm (2013), *Results of voting on the draft proposal,* http://sejm.gov.pl/sejm7.nsf/PrzebiegProc.xsp?nr=1469.

105 Ireland, Department of Social Protection, (2013), *Gender Recognition Bill 2013*, www.welfare.ie/en/Pages/Gender-Recognition-Bill-2013.aspx.

106 Latvia, Ministru Kabineta (2013), *Noteikumi Nr. 761 'Noteikumi par civilstāvokļa aktu reģistriem'*, 3 September 2013.

107 Council of Europe (2013), Comments on the 10th report by Lithuania on the implementation of the European Social Charter (RAP/RCha/LTU/10(2013), 11 April 2013.

108 Lithuania, LGL – National LGBT Rights Organization (2013), *For the recognition of family diversities: Fines for thousands*, www.lgl.lt/en/news/for-defiance-of-family-fines-for-thousands-are-suggested.

109 Netherlands, Eerste Kamer der Staten-Generaal (2013), *Wijziging vermelding van geslacht in de geboorteakte*, www.eerstekamer.nl/wetsvoorstel/33351_wijziging_vermelding_van.

110 Ilga Europe (2013), *Annual review of the human rights situation of lesbian, gay, bisexual, trans and intersex people in Europe 2013*, pp. 18, 37, 125, https://dl.dropboxusercontent.com/u/15245131/2013.pdf.

111 Belgium (2013), *Interfederaal actieplan tegen homofobe en transfobe discriminatie*, 10 June 2013, http://igvm-iefh.belgium.be/nl/actiedomeinen/transgender/beleid/.

112 Denmark, Justitsministeriet (2013), 'Information outlining the purpose and goals of the workgroup', press release, www.justitsministeriet.dk/sites/default/files/media/Arbejdsomraader/Ministeriet/Raad/K %C3 %B8nsskifte %20Kommissorium %20- %20JM.pdf.

113 Information provided by the Finnish *Sosiaali- ja Terveysministeriö*.

114 France, Commission Nationale Consultative des Droits de l'Homme (2013), *Opinion on gender identity and rectification of gender in civil status*, 27 June 2013, www.cncdh.fr/sites/default/files/avis_cncdh_identite_de_genre_27_juin_2013_1.pdf.

115 Cyprus (2011), *ο περί της Καταπολέμησης Ορισμένων Μορφών και Εκδηλώσεων Ρατσισμού και Ξενοφοβίας μέσω του Ποινικού Δικαίου Νόμος του 2011[134(I)/2011]*, 21 October 2011.

116 Netherlands, *Tweede Kamer der Staten-Generaal* (2013), *Emancipatiebeleid: Brief van de minister van onderwijs, cultuur en wetenschap aan de voorzitter van de Tweede Kamer der Staten-Generaal*, https://zoek.officielebekendmakingen.nl/kst-30420-180.html.

117 Portugal, CIG (2013), Awareness-Raising Campaign, *Dislike bullying homofóbico*, www.dislikebullyinghomofobico.pt/.

118 Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No. 1083/2006, OJ L 347, 20 December 2013, pp. 320–469.

119 European Commission (2014), *Cohesion policy 2014–2020*, http://ec.europa.eu/regional_policy/what/future/index_en.cfm.

120 Regulation (EU) No. 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repeating Council Regulation (EC) No. 1081/2006, OJ 2013 L 347, 20 December 2013, para. 19.

121 Regulation (EU) No. 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repeating Council Regulation (EC) No. 1081/2006, OJ 2013 L 347, 20 December 2013.

122 Council of the European Union (2012), 2011/0276 (COD), Addendum 2 to Note 8207/12 ADD 2 Rev 1, Brussels, 20 April 2012; see also FRA Annual report 2012.

123 Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No. 1083/2006, OJ 2013 L 347, 20 December 2013, pp. 320–469, Art. 19 and Annex XI.

124 Regulation (EU) No. 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020; Text with EEA relevance, OJ 2013 L 354, 28 December 2013, pp. 62–72.

125 European Commission, DG Justice, *Fundamental Rights and Citizenship funding programme*, http://ec.europa.eu/justice/grants/programmes/fundamental-citizenship/.

126 European Commission, DG Justice, *Daphne III funding programme*, http://ec.europa.eu/justice/grants/programmes/daphne/index_en.htm.

127 European Commission, DG Employment, Social Affairs & Inclusion, *Progress programme (2007–2013)*, http://ec.europa.eu/social/main.jsp?catId=327.

UN & CoE

January

19 February – Council of Europe European Commission against Racism and Intolerance (ECRI) publishes conclusions on the implementation of a number of priority recommendations made in its country reports on Austria, Estonia and the United Kingdom, which were released in 2010

19 February – ECRI issues its fourth report on Ireland

February

March

4 April – United Nations Committee on the Elimination of Racial Discrimination (CERD) concludes that the absence of an effective investigation by Germany into statements made by Thilo Sarrazin about migrants of Turkish and Arab background amounted to a violation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

16 April – Council of Europe Commissioner for Human Rights issues his report following his visit to Greece, with a particular focus on intolerance and hate crimes

17 April – CERD issues its Concluding observations on Slovakia

April

26 May – UN Office for the High Commissioner for Human Rights, Special Rapporteur on freedom of religion or belief, issues a report on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on the implementation of General Assembly resolution 67/154 on glorification of Nazism

May

6 June – Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance issues his report on his visit to Spain

June

9 July – ECRI issues its fourth reports on Finland and Portugal, and publishes conclusions on the implementation of a number of priority recommendations made in its country reports on Poland and France, which were released in 2010

9 July – The European Court of Human Rights (ECtHR) rules in the case *Vona v. Hungary* that disbanding the Hungarian Guard Association (*Magyar Gárda*), which had been involved in anti-Roma rallies and paramilitary parading, does not violate the European Convention of Human Rights (ECHR)

July

23 August – CERD adopts General Recommendation on combating racist hate speech

August

23 September – CERD issues its Concluding observations on Cyprus and Sweden

September

15 October – ECRI issues its fourth reports on Malta and the Netherlands

October

November

December

EU

17–18 January – Informal meeting of Justice and Home Affairs Ministers on EU action in countering hate crime, racism, antisemitism and xenophobia

January

February

14 March – European Parliament adopts a resolution on strengthening the fight against racism, xenophobia and hate crime

March

April

May

6-7 June – Council of the European Union adopts conclusions calling for an update of the EU Strategy for combating radicalisation and recruitment to terrorism

June

July

August

23 September – Ministers of 17 EU Member States meet in Italy to sign the Rome Declaration on diversity and the fight against racism

September

October

12–13 November – Fundamental Rights Conference on hate crime is organised by the European Union Agency for Fundamental Rights (FRA) and hosted in cooperation with the Lithuanian Presidency of the Council of the European Union

November

6 December – Council of the European Union issues conclusions on combating hate crime in the European Union

December

6 Racism, xenophobia and related intolerance

The impact of the economic crisis, high unemployment rates, fears relating to the arrival of migrants and a gradual loss of trust in democratic processes fuel racism, xenophobia and related intolerance in the European Union (EU). Some political rhetoric at local, national and European levels exacerbates an aggressive tone, not least because the media pick up on these messages, which then echo across social media. The EU institutions and Member States must therefore remain vigilant and reinvigorate their efforts to counter the expression of racism, xenophobia and related intolerance in all their forms.

6.1 Racism, xenophobia and related intolerance again top political agenda

Black ministers of state compared to apes; a centrist mayor saying in public that maybe Hitler did not kill enough *gens du voyage*; Members of Parliament claiming that Zionists financed and organised the Holocaust; the scapegoating of Roma, asylum seekers, refugees, migrants and members of ethnic and religious minorities for the ills of society; murders motivated by racist and extremist considerations: all these elements contributed to putting racism, xenophobia and related intolerance back on the political agenda of the EU and its Member States in 2013. These issues are increasingly discussed within a broader context of ▶▶▶ 'hate crime' (see also Chapters 5, 7 and 9).

The fight against racism, xenophobia and related intolerance gained political attention at the highest level in January. The Irish Presidency of the Council of the European Union then hosted an informal meeting of Justice and Home Affairs Ministers on EU action to counter hate crime, racism, antisemitism and xenophobia, drawing on FRA evidence presented by FRA's director. This meeting set the stage for the year to come, focusing the attention of political leaders on their duty to counter these phenomena.

The European Parliament further called on "Member States to take all appropriate measures to encourage

Key developments in the area of racism, xenophobia and related intolerance

- Racism, xenophobia and related intolerance return to the top of the political agendas of the EU, its institutions and its Member States.
- Murders motivated by racism and extremism are committed in a number of Member States.
- Elements of racist and extremist ideology are openly expressed in the public sphere in some Member States.
- Member States take steps to ban extremist parties or groups.
- All 28 Member States sign the Rome Declaration on diversity and the fight against racism.
- Discriminatory ethnic profiling continues in some Member States, including in the context of immigration checks.
- Few changes take place in the status of official mechanisms of data collection on racist and related crime.
- The Council of the European Union urges Member States and the European Commission to take more effective action to counter hate crime, including that motivated by racism.

the reporting of hate crimes and of every racist and xenophobic crime and to ensure adequate protection for people who report crimes and for the victims of racist and xenophobic crime" in March[1] (see Chapter 9 for more information on the rights of victims of hate crime).

The Council of the European Union focused attention on the need for more concrete actions to be developed to "counter extreme forms of intolerance, such as racism, anti-Semitism, xenophobia and homophobia"[2] in its June conclusions on fundamental rights and the rule of law.

FRA ACTIVITY

Assessing the impact of the Framework Decision on Racism and Xenophobia, with special attention to victims' rights

Hate crime can vary from everyday acts committed by individuals on the street or over the internet to crimes carried out systematically by extremist groups. In this opinion, FRA assesses the impact of the Framework Decision on Racism and Xenophobia on the rights of victims of crimes motivated by hatred and prejudice, including racism and xenophobia.

Building on evidence collected and analysed by FRA, including its large-scale surveys and its thematic and Annual reports, the opinion forms part of FRA's work on supporting efforts by EU institutions and Member States to combat hate crime in the EU. It was developed in response to a request from the Council of the European Union's Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons.

The opinion encourages the EU and its Member States to address hate crime with targeted action in a number of areas, including awareness raising, building trust in law enforcement, enhanced penalties and judicial review, as well as data collection.

FRA (2013), Opinion of the European Union Agency for Fundamental Rights on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime, *available at: http://fra.europa.eu/sites/default/files/fra-opinion-2-2013-framework-decision-racism-xenophobia_en.pdf*

In July, the European Court of Human Rights (ECtHR) issued a factsheet citing a number of cases where it ruled speech of a racist, xenophobic, antisemitic or aggressively nationalist nature and speech discriminating against minorities and immigrants to be "offensive and contrary" to the European Convention on Human Rights (ECHR).[3] The court is careful to distinguish in its findings between, on the one hand, genuine and serious incitement to extremism and, on the other hand, the right of individuals (including journalists and politicians) to express their views freely even if they offend, shock or disturb others.

The United Nations Committee on the Elimination of Racial Discrimination (CERD) called upon states to give due attention to all manifestations of racist hate speech and take effective measures to combat them, in its general recommendation on combating racist hate speech issued in September.[4]

In a similar development, ministers of 17 EU Member States met in Rome in September to condemn the stream of racist abuse directed at Cécile Kyenge, Italy's first minister of African origin. Highlighting the special responsibilities of political leaders, they called for pan-European action to fight racism by promoting diversity. All 28 Member States had signed the so-called Rome Declaration on the matter by November,[5] by which time France's Minister for Justice, Christiane Taubira, also of African descent, had been the subject of similar racist abuse.

The EU Commissioner for Home Affairs highlighted the dangers of extremism, speaking at the Fundamental Rights Conference on hate crime jointly organised by FRA and the Lithuanian Presidency in November.[6] She stressed that:

> *"We have seen the development of Islamophobic, anti-Semitic and white supremacist ideology in far-right groups. These groups are also anti-democratic, intolerant, and violent. They are divisive, using one another to create suspicion and hatred between communities. These groups are behind a mounting wave of harassment and violence targeting asylum seekers, immigrants, ethnic minorities and sexual minorities in many European countries."*[7]

Finally, the Council of the European Union, in its conclusions on combating hate crime issued in December, called on

> *"the Fundamental Rights Agency to continue assessing in an objective, reliable and comparable manner the extent of racism, xenophobia, anti-Semitism and other forms of hate crime through EU-wide surveys and to work together with Member States to facilitate exchange of good practices and assist the Member States at their request in their effort to develop effective methods to encourage reporting and ensure proper recording of hate crimes."*[8]

(See the FRA activity box on FRA's antisemitism survey on the next page.)

FRA ACTIVITY

Responding to antisemitism in the European Union

Antisemitism is still a reality in the European Union. Little is known, however, of how it affects Jewish communities. That is why FRA conducted a survey asking self-identified Jews their opinions about trends in antisemitism; how antisemitism affects their everyday life; their personal experiences as victims or witnesses of antisemitic incidents; their worries about becoming a victim of an antisemitic attack; and their actual experiences of discrimination because they are Jewish.

- Two thirds of respondents (66 %) consider antisemitism to be a problem across the EU Member States surveyed. Three quarters of respondents (76 %) indicate that antisemitism has worsened over the past five years in the country where they live.
- Three quarters (75 %) of respondents consider online antisemitism to be a problem. Almost three quarters of respondents (73 %) said that antisemitism online has increased over the last five years.
- In the 12 months preceding the survey, 26 % of all respondents experienced an incident or incidents involving verbal insult or harassment because they are Jewish; 4 % experienced physical violence or threats of violence.
- Almost half (46 %) of the respondents worry about becoming the victim of an antisemitic verbal insult or harassment in the next 12 months, and one third (33 %) fear a physical attack in the same period.
- Almost two thirds (64 %) of those who experienced physical violence or threats of violence did not report the most serious incident to the police or to any other organisation. Three quarters (76 %) of the respondents who experienced antisemitic harassment in the five years preceding the survey did not report the most serious incident. More than four in five (82 %) of those who said that they felt discriminated against in the 12 months preceding the survey because they are Jewish did not report the most serious incident to any organisation.
- Close to one quarter (23 %) of the respondents said that they at least occasionally avoid visiting Jewish events or sites because they would not feel safe there, or on the way there, as a Jew. Over one quarter of all respondents (27 %) avoid certain places in their local area or neighbourhood at least occasionally because they would not feel safe there as a Jew.
- One in 10 respondents experienced discrimination when looking for work or at work in the 12 months preceding the survey.
- Over half of all survey respondents (57 %) heard or saw someone claiming that the Holocaust was a myth, or that it had been exaggerated, in the 12 months preceding the survey.
- Large proportions of respondents said they considered emigrating from the Member State they live in because they do not feel safe there as Jews.

FRA's survey on antisemitism collected data from 5,847 self-identified Jewish respondents (aged 16 or over) in eight EU Member States: **Belgium**, **France**, **Germany**, **Hungary**, **Italy**, **Latvia**, **Sweden** and the **United Kingdom**. These countries cover over 90 % of the estimated Jewish population in the EU. It is the first EU survey to collect comparable data on Jewish people's experiences and perceptions of hate motivated crime, discrimination and antisemitism.

FRA (2013), Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism, *available at: http://fra.europa.eu/sites/default/files/fra-2013-discrimination-hatecrimeagainst-jews-eu-member-states_en.pdf; data available through data explorer tool at: http://fra.europa.eu/DVS/DVT/as2013.php*

6.2 Racism, xenophobia and related intolerance fuel incidents and brutal crimes

Racism, xenophobia and related intolerance manifested themselves in the most brutal form in several EU Member States in 2013: murder motivated by racism and extremism.

FRA fieldwork in **Greece** found that Greece has witnessed a steep increase in phenomena of racist violence, discrimination and intolerance, as well as extremism, despite the notable decrease in the overall violent crime rate in the country.[9] Shehzad Luqman, 26, a Pakistani migrant worker, was stabbed to death in Athens, **Greece**, in January, allegedly by two young Golden Dawn supporters, whose trial started in December. Mohammed Saleem, 82, was killed on his way back home from mosque in Birmingham, **United Kingdom**, by a man who proclaimed that he wanted to

initiate a 'race war'. Lee Rigby, 25, was murdered in broad daylight in the streets of London in May by two radicalised Muslim youths. Clément Méric, 18, an anti-fascist activist, died from the consequences of a fight with skinheads in Paris, **France**, in June. Pavlos Fyssas, 32, a Greek hip-hop artist, was stabbed to death by a Golden Dawn party member in September in Athens. This was followed by a retaliatory attack, in which two Golden Dawn sympathisers (Manos Kapelonis, 22, and Georgios Fountoulis, 27) were murdered in front of the party's headquarters in November.

These murders are at the sharp end of a societal climate where intolerant views come to be more openly and violently expressed in the EU. Political actors share responsibility for enabling such a climate. This is shown in the cases of the politicians Cécile Kyenge in **Italy** and Christiane Taubira in **France**, who were the targets of racist abuse by other politicians, with the media often serving as an echo chamber and the internet providing a further outlet for the expression of such abuse.

6.2.1 Racism, xenophobia and related intolerance in politics

Racism and discrimination against foreigners and migrants is often fuelled by the discourse of politicians, as the Commissioner for Human Rights of the Council of Europe points out.[10] In addition, CERD highlights that "the use of racist discourse by some politicians and in the media [...] vilifies and promotes prejudices against persons of foreign origin".[11] FRA evidence also shows that Jews often heard antisemitic statements being made in the context of political events or speeches.[12]

> *"Europe has been experiencing a worrying intensification of activities of racist extremist organisations, including political parties. [...] It worries me deeply that the European community and national political leaders appear not to be fully aware of the serious threat that these organisations pose to the rule of law and human rights. [...] National authorities need to be vigilant and combat racism and extremism at all levels of society."*
>
> *Council of Europe Commissioner for Human Rights (2013),* Europe must combat racist extremism and uphold human rights, Human Rights Comment*, 13 May 2013, available at: http://humanrightscomment.org/2013/05/13/racist-extremism/*

The year 2013 was marked by steady support for political parties with largely xenophobic anti-foreigner, anti-migrant and anti-Muslim agendas in a number of EU Member States including **Austria**, **Bulgaria**, the **Czech Republic**, **France**, **Greece**, **Hungary** and the **Netherlands**.

Groups campaigning on ultra-nationalist and xenophobic platforms initiated steps to be recognised as political parties in their own right, sometimes with success. The rhetoric of these groups and parties often accuses European integration of further eroding national sovereignty; highlights what they consider as the negative impact of social integration on national identity, particularly as regards accommodating the needs of religious minorities, such as Muslims; and makes a case for national preference, including when it comes to access to the social welfare system.

FRA ACTIVITY

Assessing the effectiveness of responses to racism, discrimination, intolerance and extremism

Crimes motivated by racism, xenophobia and related intolerances persist throughout the European Union, as do the mainstreaming of elements of extremist ideology in political and public discourse, and ethnic discrimination. Growing alarm was expressed at the national, EU and international levels concerning violent manifestations of racism and intolerance. An additional important concern is the substantial parliamentary representation of parties that use paramilitary tactics or are closely associated with paramilitary groups and use that extremist rhetoric to target irregular migrants in Greece, and the Roma and Jews in Hungary.

In this context, FRA took the initiative to collect data and compile a thematic situation report that examines the effectiveness of responses by public authorities, statutory human rights bodies, civil society organisations and others to counter racism, discrimination, intolerance and extremism. The report takes Greece and Hungary as case studies to develop concrete and practical proposals for action.

The identification of barriers to counter such phenomena is, however, relevant to the EU as a whole. The proposals contained in the report on issues such as tackling racist and related crime, increasing trust in the police and countering extremism are, therefore, useful in all EU Member States.

FRA (2013), Thematic situation report: Racism, discrimination, intolerance and extremism. Learning from experiences in Greece and Hungary*, available at: http://fra.europa.eu/sites/default/files/fra-2013-thematic-situation-report-3_en_1.pdf*

One example is the application, in November, by the newly formed Nationalist Party of **Bulgaria** to be officially recognised as a party, which would allow it to benefit from public funding. Stated aims of this party are to "smash the Gypsy terror with an iron hand" and to "demolish social policies that stimulate the birth rate of minorities and parasitism".[13]

In a development reminiscent of the events in Gyöngöspata in **Hungary** in 2011 (see FRA Annual report 2011, p. 156), the Nationalist Party in **Bulgaria** formed civil groups with the cooperation of the

Bulgarian National Union to patrol areas with large migrant populations and where refugee camps are located.[14] In response, the National Centre for Roma Development announced that it would establish its own groups to protect Roma from such patrols.[15]

The reach of ultra-nationalistic and xenophobic ideology in the EU is also illustrated by the efforts of the newly formed **Hungarian** Dawn (*Magyar Hajnal*) group to be recognised as a political party. 'Dawn', here, is a direct reference to **Greece**'s Golden Dawn party. Golden Dawn claimed 7 % of the vote in the 2012 elections, is the fourth-largest party in the Hellenic Parliament and has an extreme nationalist agenda, from which *Magyar Hajnal* takes inspiration. *Magyar Hajnal's* mission is to "revive the White and ethnic Hungarian identity"[16] and its members are screened to establish the ethnic roots and religious background of their families, effectively checking their 'racial purity'. The court rejected the application on the grounds that it was incomplete, but *Magyar Hajnal* continued its efforts to be recognised as a political party, including through seeking to rename an existing party.

6.2.2 Responding to political intolerance

Political actors have a particular role to play in countering hate speech. The responsibility of political actors in that regard was the subject of a conference organised by the Council of Europe and the **Polish** Ministry of Digitisation (*Ministerstwo Administracji i Cyfryzacji*) in September, at which FRA's director gave a speech. Next to setting out the roles and responsibilities of political actors and the media in fighting hate speech, the conference highlighted the potential of education and training on the values of diversity and living together in this fight.[17]

EU Member States have other means at their disposal to address racist, xenophobic and extremist actions of parties, groups and their membership. They could, for example, consider adopting or strengthening existing legal provisions to suppress public funding for political parties whose members are responsible for racist or discriminatory acts, as recommended by ECRI.[18] Another means would be to forbid and prevent the activities of extremist organisations that promote and incite racial hatred by disbanding them and declaring them illegal, as recommended by CERD.[19]

The European Court of Human Rights (ECtHR), in its decision of 9 July 2013, confirmed the disbanding of the Hungarian Guard Association (*Magyar Gárda*) because of the activities of its Hungarian Guard Movement. These activities included paramilitary rallies in villages with Roma populations across **Hungary** and advocacy for racially motivated policies. The court found that the Hungarian authorities were entitled to take preventative measures to protect democracy and ban the *Magyar Gárda*.[20] It ruled that, if the activities of an association amount to widespread racist intimidation of a group, then banning it does not contravene the European Convention of Human Rights.

Members of Parliament can also be called to account by lifting their parliamentary immunity to answer to charges levelled against them in court. This was the case for Marine Le Pen, leader of the National Front (*Front National*). Her immunity was lifted by the European Parliament in July at the request of the Ministry of Justice in **France** so that she could answer charges of "incitement to hatred, discrimination or violence against a group of persons on grounds of their religious affiliation".[21]

The **Greek** Parliament lifted the immunity of six leading Members of Parliament representing Golden Dawn in October to enable a deeper investigation into their alleged involvement in serious criminal offences. Charges ranged from establishment and participation in a criminal organisation, murder and grievous bodily harm to money laundering and bribery.[22] In addition, the parliament voted to suspend state funding for Golden Dawn. Furthermore, in December a Joint Ministerial Decision was issued, suspending any kind of state funding for Golden Dawn.[23]

The initiative taken in December by 16 state governments in **Germany** to attempt to ban the far-right National Democratic Party must also be noted. The proposed ban rested on the notion that this party actively seeks to undermine or overthrow the free democratic order.[24]

6.2.3 Racism and xenophobia persist in the European Union

Roma, persons of African descent, migrants and asylum seekers continue to face racism and xenophobia in the European Union, as evidence from **Austria**,[25] **Bulgaria**,[26] **Finland**,[27] **Germany**,[28] **Greece**,[29] **Hungary**,[30] **Ireland**,[31] the **Netherlands**,[32] **Slovakia**[33] and **Sweden**[34] shows (see also ▶ Chapter 7 for more information on Roma).

The arrival of asylum seekers and refugees in **Bulgaria** and **Hungary** in larger numbers than usual fuelled the expression of xenophobic sentiments and attitudes in these countries. This raises the question of what effect the arrival of asylum seekers from Syria and other conflict zones in large numbers could have in EU Member States not usually considered traditional destination countries.[35]

In **Bulgaria**, opinion polls showed that feelings of hostility, resentment and fear towards asylum seekers and refugees are widespread.[36] The Council for Electronic Media (*Съвет за Електронни Медии*) criticised media for the way they reported immigration and refugee

issues,[37] and the United Nations High Commissioner for Refugees urged Bulgarian authorities to take steps to stem the expression of xenophobia against asylum seekers and refugees in the country.[38]

Promising practice

Acknowledging racist crime: mapping Afrophobia in Sweden

The authorities in Sweden refer to racism and discrimination against black persons as Afrophobia. Little is known yet about the phenomenon, but the Swedish National Council for Crime Prevention (*Brottsförebyggande rådet*) shows that the number of recorded Afrophobic crimes in the country is increasing steadily, with about one in five of such crimes recorded in 2012 being of a violent nature.

Acknowledging the issue, the Swedish government commissioned an NGO (*Mångkulturellt Centrum*) to map racism and discrimination against persons of African descent in Sweden. This mapping will review official hate crime data and highlight examples of good practice to counter Afrophobia, with a particular focus on awareness-raising activities for children and youth. The results are expected to be published in January 2014.

For more information, see Arbetsmarknadsdepartementet (2013), Mångkulturellt centrum ska kartlägga afrofobi, *available at: www.regeringen.se/sb/d/17988/a/229303*

In **Hungary**, xenophobic sentiments were expressed in towns hosting reception and detention centres, such as Balassagyarmat, Bicske, Debrecen and Vámosszabadi. Incidents involving asylum seekers, related to the overcrowding of a refugee reception centre, contributed to an increase of xenophobic sentiments among the public.[39] The 2013 results of a yearly survey of a representative sample of the Hungarian population show that 36 % of respondents would reject all asylum applications.[40]

CERD concluded in April that the absence of an effective investigation by **Germany** into statements made by Thilo Sarrazin in 2009 about migrants of Turkish and Arab background amounted to a violation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).[41] Mr Sarrazin was a member of the executive board of the German national bank at the time.

While CERD acknowledged the importance of freedom of speech, it concluded that:

> *"Mr. Sarrazin's statements amounted to dissemination of ideas based upon racial superiority or hatred and contained elements of incitement to racial discrimination. By concentrating on the fact that Mr. Sarrazin's statements did not amount to incitement of racial hatred and were not capable of disturbing public peace, the State party failed its duty to carry out an effective investigation whether or not Mr. Sarrazin's statements amounted to dissemination of ideas based upon racial superiority or hatred".*

The German government was given 90 days to react to the complaint and to decide on measures that needed to be undertaken. It informed CERD of its willingness to review whether or not existing legislation is sufficient.[42]

The UN also urged **Germany** to develop a comprehensive strategy to combat racial discrimination.[43] The Human Rights Council found deficits in the protection of human rights of migrants in the framework of the Universal Periodic Review (UPR). The UPR criticised, among other matters, the German state's handling of the 10 murders allegedly perpetrated by members of the right-wing extremist group National Socialist Underground (NSU). In response, Germany promised to enhance how it tackles discrimination against migrants.[44]

The internet and social networking sites increasingly offer platforms for the expression of racist, xenophobic and intolerant sentiments. This is confirmed by FRA surveys, such as the EU LGBT survey, the survey on antisemitism and the EU-wide survey on violence against women.[45] Europol has also highlighted that social networking sites are increasingly used by extremists to disseminate their ideologies and to radicalise, recruit and mobilise their followers.[46]

> *"Racist hate speech can take many forms and is not confined to explicitly racial remarks. As is the case with discrimination [...] speech attacking particular racial or ethnic groups may employ indirect language in order to disguise its targets and objectives [...] States parties should give due attention to all manifestations of racist hate speech and take effective measures to combat them [...] whether emanating from individuals or groups, in whatever forms it manifests itself, orally or in print, or disseminated through electronic media, including the Internet and social networking sites, as well as non-verbal forms of expression such as the display of racist symbols, images and behaviour at public gatherings, including sporting events."*
>
> *Committee on the Elimination of Racial Discrimination (2013), General Recommendation No. 35: combating racist hate speech, Geneva, United Nations*

The privacy afforded to internet users does not mean that they can post racist and xenophobic abuse with impunity (see also Chapter 3). For instance, the Supreme Court in **Italy** found in August that managing a blog inciting racial hatred is the same as participating in a criminal association.[47]

Still in **Italy**, a representative of the *Lega Nord* political party was served with a 13-month sentence, a €10,000 fine and a three-year ban on holding public office by the Court of First Instance of Padua in July.[48]

The representative was found guilty of incitement to commit acts of sexual violence motivated by racism, having posted the following comment on Facebook, targeting Cécile Kyenge, Italy's first black minister: "But is there no one there who could rape her, just to let her understand how a victim of such a ferocious crime could feel? Shame!"

In January, the Court of First Instance in Paris, **France**, held that Twitter should provide information to the plaintiffs enabling them to identify the authors of tweets posted under antisemitic hashtags (*#unbonjuif* – a good Jew; *#unjuifmort* – a dead Jew). The court's judgment also required Twitter to make available a system on its French platform which enables users to report content that falls under the category of crimes against humanity and incitement to racial hatred.[49]

Still in relation to antisemitic content posted online, an offender in **Latvia** received a six-month suspended sentence in January on the grounds of incitement to hatred.[50]

Prosecutors in **Belgium**[51] and the **United Kingdom**[52] can also call upon specific guidelines relating to how to prosecute online content of a racist nature. *The Guidelines on prosecuting cases involving communications sent via social media* drafted by the Crown Prosecution Office for England and Wales describe action it is necessary to take before initiating a prosecution. The first stage requires sufficient evidence and the second involves considering the public interest. The guidelines also provide principles for initially assessing the communication's content. Before bringing charges, the prosecutors are further encouraged to take into account the context in which the interactive social media dialogue takes place and to carefully consider if the prosecution would not constitute a breach of the right to free speech as protected by the ECHR.

In **Belgium**, the *Circular regarding the investigation and prosecution policy on discrimination and hate crimes (including discrimination on the basis of gender)*[53] aims to standardise research policies and prosecution for offences, laws and decrees on 'anti-discrimination', 'gender' and 'racism', including the phenomenon of Holocaust denial. Its specific objectives are identification and more efficient recording of the facts of discrimination and hate crimes; raising awareness among prosecutors, labour auditors and police; providing guidance in the investigation and prosecution of the offences concerned for judges and police officers on the ground; improving collaboration and mutual exchange between police and judicial actors and other stakeholders. The circular also notes that special attention needs to be paid to investigating offences committed over the internet.

Evidence from **Cyprus**,[54] **Finland**[55] and the **United Kingdom**[56] shows that schools can be the theatre of racist abuse. Education should, however, offer effective means to counter racism. The OSCE Parliamentary Assembly acknowledged this in June, when it called upon participating States to

> *"increase efforts to counter racism, xenophobia, intolerance and discrimination, also through education, inter alia, by reviewing, as appropriate, educational curricula and textbooks in order to ensure that that they are free from prejudice and negative stereotypes and by introducing or further elaborating sections on tolerance and non-discrimination."*[57]

Promising practice

Keeping racism out of the classroom and off the playground

The Immigrant Council of Ireland, an NGO advocating for and providing legal advice to migrants, published an anti-racism policy guide to assist schools in ensuring that their anti-bullying policies respond adequately to racist incidents. The guide sets out procedures for identifying, reporting and dealing with racist incidents. It also provides tools and management support for school staff to directly intervene in racist incidents and means of sanctioning offenders.

The guide further stresses the importance of preventative measures, such as running awareness-raising activities during European anti-racism week, organising intercultural days or inviting guest speakers from diverse ethnic backgrounds to serve as positive role models.

For more information, see: www.immigrantcouncil.ie/images/stories/pdfs/Anti-Racism_policy_2.pdf

6.3 Discriminatory ethnic profiling persists

Discriminatory ethnic profiling is unlawful, yet it persists, thereby contributing to the deterioration of social cohesion and to loss of trust in law enforcement. Evidence of such profiling was found in **Austria**,[58] **Finland**, **Germany**, **Greece**, **Ireland**, the **Netherlands**, **Sweden**, **Spain** and **the United Kingdom** (see below). The practice involves treating an individual less favourably than others who are in a similar situation, for example by exercising police powers such as stop and search solely on the basis of a person's skin colour, ethnicity or religion.[59]

Persons with an ethnic minority background were found to be much more likely to be stopped and searched than

members of the majority population in the **Netherlands**,[60] **Spain**[61] and the **United Kingdom**.[62]

The German Institute for Human Rights called for the elimination of racial profiling by the **German** federal police and recommended that identity checks should not be carried out on the basis of criteria such as a person's skin colour.[63]

The police in **Greece** continued its large-scale operation (*Xenios Zeus*) to remove what it referred to as 'illegal immigrants' in regions bordering Turkey and in Athens.[64] The operation ran from August 2012 to June 2013. It involved about 4,500 police officers and led to the apprehension of nearly 124,000 third-country nationals, of whom fewer than 7,000 were found to be in the country irregularly. The Greek Ombudsman highlighted the abusive character of transferring people who were not suspected in any way to police stations during the operation for the purpose of identity checks,[65] as evidenced by the low percentage of those who were actually found to be in the country irregularly (5.6 %).[66]

International monitoring bodies stress the importance of protecting the foundations of democratic system and the rule of law, and tackling misconduct by law enforcement officials.[67] The Council of Europe Commissioner for Human Rights, following his visit to **Greece**, raised concerns about ill-treatment, including torture, committed by law enforcement officials, notably against migrants and Roma.[68]

The Greek police launched internal investigations on law enforcement officials, resulting in arrests of police officers, including senior officers, and others on various charges, including illegal weapons possession, reportedly related to Golden Dawn.[69] The special report of the Greek Ombudsman includes 47 racist incidents in which members of the security forces are alleged to have participated.[70]

ECRI recommended that the authorities in **Ireland**, **Finland** and the **Netherlands** should take steps to prevent ethnic profiling, whether through adopting legislation on the issue (Ireland), ensuring that visible minorities are not profiled (Finland) or training police officers about it (Netherlands).[71]

Similar recommendations were made to **Spain** by the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.[72] CERD recommended that **Sweden** "take measures to evaluate the effects of the application of the Terrorism Act, including on minority communities, and ensure the application of relevant guarantees to prevent possible police profiling and any discrimination in the administration of justice."[73]

Noting that "figures show that people from a black or ethnic minority background are up to seven times more likely to be stopped and searched by the police than those from white backgrounds,"[74] the **UK** government launched a consultation on the police's stop and search powers in July, to establish if they are used fairly and appropriately.[75] The consultation shows that a quarter of people surveyed believe that stop and search powers are used in a way that discriminates against certain groups, with more than half of respondents from black and minority ethnic groups believing this to be the case.

The report recommends that the police use stop and search powers in compliance with the relevant code of practice and equality legislation, as well as establishing ways of monitoring the extent to which this is the case. In 2010, the Equality and Human Rights Commission found that Asian people were stopped and searched about twice as white people and black people about six times as often.[76] Five separate police forces took action to remedy the situation, which was the subject of a publication by the commission in May 2013.

The Equality and Human Rights Commission "concluded that where firm action had been taken to reduce race disproportionality, and/or overall usage of the [stop and search] power, it had succeeded, without prejudice to the drop of crime levels."[77] In November, the commission published a further report, which reveals that, while the use of stop and search by police forces in **England** and **Wales** has decreased, black and Asian people are still disproportionately targeted.[78]

6.4 Responses to manifestations of racism, xenophobia and related intolerance

EU Member States can address manifestations of racism, xenophobia and related intolerance through policy responses, by appointing specialised authorities or by making changes to anti-racism strategies and action plans.

ECRI recommended to the **Netherlands** and **Portugal** that they should introduce provisions in their criminal codes that would make racist motivation an aggravating circumstance.[79] Similarly, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recommended that **Spain** "ensure that racial motivations are harmonized throughout the Penal Code in conformity with Article 1 of the ICERD, and ensure a better implementation of the provisions relating to racial motivation as an aggravating circumstance".[80]

In November, the **Greek** government submitted to parliament another bill seeking to transpose the Framework Decision on Racism and Xenophobia into national law. This was the third bill of this type set before Greek lawmakers in 2013, each being the subject of intense political controversy.[81] The last draft provides for increased sanctions and penalties for those who publicly encourage or cause hate or violence against individuals or a group of individuals on the basis of their race, skin colour, religion, genetic origin, ethnic or national origin and disability, posing a danger for public order or a threat to life, freedom or physical integrity of these persons.[82] Law 4139/2013 on addictive substances and other provisions amended the Greek Criminal Code, which now provides that committing an act motivated by a racist motive constitutes an aggravating circumstance, and the sentence for such a crime cannot be suspended.[83]

In **Germany**, the State Parliament of Brandenburg (*Landtag Brandenburg*) voted unanimously in November for the integration of an anti-racism clause into the State Constitution. The text prohibits discrimination based on ethnicity but also obliges the *Land* to protect peaceful coexistence and to fight the dissemination of racist and xenophobic ideas.[84]

Promising practice

Addressing institutional racism

In its report on **Finland**, ECRI recommends that law enforcement officers, prosecutors and judges undergo systematic training and awareness raising on antidiscrimination legislation, racism and tolerance. It also suggests to the authorities that they monitor and record racist acts and hate speech committed by the police.

The Court of Appeal of Helsinki (*Helsingin hovioikeus*) conducted an internal study on discrimination and racism. It found instances of intolerant and racist behaviour among judges and the court staff, including racist jokes and degrading language used about minorities in work-related situations and prominent use of derogatory expressions. The study concludes that such conduct can be considered as harassment as stipulated in the antidiscrimination legislation.

See: Council of Europe, European Commission against Racism and Intolerance (ECRI) (2013), ECRI report on Finland (fourth monitoring cycle), Strasbourg, Council of Europe, available at: www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Finland/FIN-CbC-IV-2013-019-ENG.pdf; Tuohino, T. and Ojala, T. (2013), Yhdenvertaisuus-.ja tasa arvoselvitys, yhteenveto, Helsinki, Helsinki Court of Appeal

A number of EU Member States undertook initiatives to improve and enhance their institutional responses to combat racism and related intolerance. In **Spain**, a prosecutor's office was set up in each of the 50 provinces to investigate offences with discriminatory or racist motivations. The activities of these offices are coordinated by a national delegate appointed by the state's general attorney.

The **Cyprus** police, in cooperation with the Office of the Commissioner for Administration, issued a circular outlining the police's official policy in tackling racist violence, xenophobia and discrimination.[85]

FRA ACTIVITY

Fighting hate crime in the European Union

A conference on combating hate crime in the EU, hosted by FRA in cooperation with the Presidency of the Council of the European Union and held in Vilnius on 12–13 November 2013, brought together more than 400 policy makers and practitioners from national governments, international organisations, civil society, EU institutions and bodies. The conference objectives, apart from an exchange of ideas and best practices on how to combat hate crime, were in particular to develop concrete proposals for a follow-up to FRA's opinions pertaining to hate crime and to explore effective practical solutions for combating hate crime at the EU and Member State levels.

The conclusions of the conference fed directly into the Council Conclusions on combating hate crime in the European Union issued in December.

For more information, see FRA (2013), Fundamental rights conference: Combating hate crime in the EU – giving victims a face and a voice, *available at: http://fra.europa.eu/en/event/2013/fundamental-rights-conference-2013*

Council of the European Union (2013), Council conclusions on combating hate crime in the European Union, available at: *www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/139949.pdf*

The **Greek** police set up a direct telephone help line (11414) for victims of racist violence in January, together with an online form for reporting racist crime.[86] By September, 214 complaints were registered through the hotline, according to information FRA obtained from the Ombudsperson.[87]

The Inter-Ministerial Committee on the Fight against Racism and Antisemitism in **France** adopted a new programme in February. The programme aims to prevent racist violence in schools; fight racism and antisemitism through education at schools, in public offices and in sport; and enhance victim support services, including through conducting annual victimisation surveys and strengthening the reporting and investigation of hate crime.[88]

A coalition of parliamentary groups in **Germany** submitted a request to the government in June calling on the government to step up its fight against antisemitism and support the life of Jews in the country. One aspect would be to establish a permanent expert group tasked with analysing and evaluating the situation of antisemitism in Germany and detailing measures taken to counter the phenomenon. Remembrance also figures as a task; the group would need to implement educational measures for teachers as well as young people, in cooperation with foundations, institutions and memorial places.[89]

The Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance was established in **Poland** in February.[90] It is responsible for monitoring and analysing the occurrence of racist and xenophobic incidents and promoting activities to counter racial discrimination, xenophobia and related intolerance.

Still in Poland, the Police strategy for the development of the system of human rights protection for the years 2013–2015 was adopted. One of its main aims is to enhance actions towards the prevention of hate crimes on the grounds of national, racial or ethnic origin and on other grounds.[91]

6.5 EU Member States need better official data collection to address racist crime effectively

Reports published by law enforcement agencies and criminal justice systems in EU Member States show great fluctuation in officially recorded crime with racist, xenophobic, anti-Roma, antisemitic or Islamophobic/anti-Muslim motives in the EU between 2011 and 2012.[92]

These reports show decreases in recorded racist crime in **Belgium**, **Cyprus**, **Finland**, **Ireland**, **Luxembourg** and **Scotland (UK)**. They show increases in recorded racist crime in **Austria**, **Denmark**, **France**, **Germany**, **Greece**, **Lithuania**, **Latvia**, the **Netherlands**, **Poland**, **Slovakia**, **Spain** and **Sweden**, as well as in **England**, **Northern Ireland** and **Wales** (all **UK**).

Data on racist incidents are available for **Austria**, **Belgium**, **Finland**, **Germany**, **Greece**, **Hungary**, **Ireland**, **Latvia**, **Lithuania**, **Poland**, **Spain**, **Sweden** and the **United Kingdom** in the Annual report on hate crime published by the Office for Democratic Institutions and Human Rights (ODIHR).[93]

The **Netherlands** and **Sweden** report a rise in recorded anti-Roma crime, whereas the **Czech Republic** reports a decrease in such crime. The Prosecutor General's Office in **Poland** began collecting data on anti-Roma crime in 2012. ODIHR reports recorded anti-Roma data from the **Czech Republic** and **Sweden**.[94]

> *"The Council of the European Union invites Member States to collect and publish comprehensive and comparable data on hate crimes, as far as possible including the number of such incidents reported by the public and recorded by law enforcement authorities; the number of convictions; the bias motives behind these crimes; and the punishments handed down to offenders.*
>
> *[...]*
>
> *"The Fundamental Rights Agency [should] work together with Member States to facilitate exchange of good practices and assist the Member States at their request in their effort to develop effective methods to encourage reporting and ensure proper recording of hate crimes."*
>
> *Council of the European Union (2013),* Council Conclusions on combating hate crime in the European Union*, available at:* www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/139949.pdf

In recorded antisemitic crime, the authorities in **Austria**, **Belgium**, **Finland**, **France**, **Germany**, the **Netherlands** and **Sweden** report increases, with a decrease reported in the **Czech Republic**. The Prosecutor General's Office (*Prokuratury Generalnej*) in **Poland** began collecting data on antisemitic crime in 2012. ODIHR reports recorded antisemitic data from **Germany, Ireland**, **Sweden** and the **United Kingdom**.[95]

Whereas the authorities in **Finland** report a decrease in recorded Islamophobic/anti-Muslim crime, those in **France**, the **Netherlands** and **Sweden** report increases. The **Austrian** authorities reported no change in the recorded number of crimes. The Prosecutor General's Office in **Poland** began collecting data on anti-Muslim crime in 2012. ODIHR provides recorded Islamophobic/anti-Muslim data for **Austria** and **Sweden**.[96]

On the basis of the data obtained by FRA, official data collection mechanisms on crimes with racist, anti-Roma, antisemitic and Islamophobic/anti-Muslim motivations in EU Member States can be classified into three broad categories (Table 6.1), which relate to the scope and transparency of the data that are recorded:

- limited data available – data collection is limited to a few incidents, and data are, in general, not published;
- good data available – different bias motivations are recorded, and data are, in general, published;
- comprehensive data available – different bias motivations are recorded, as are characteristics of victims and perpetrators, where criminal victimisation has occurred, and the types of crimes that were committed, such as murder, assault or threats, and data are always published.

Table 6.1: Status of official data collection on racist, anti-Roma, antisemitic and Islamophobic/anti-Muslim crime in EU Member States, December 2013

Limited data	Good data	Comprehensive data
Few incidents and a narrow range of bias motivations are recorded *Data are usually not published*	*A range of bias motivations are recorded* *Data are generally published*	*A range of bias motivations, types of crimes and characteristics of incidents are recorded* *Data are always published*
Bulgaria Cyprus Estonia Greece Hungary Italy Latvia Luxembourg Malta Portugal Romania Slovenia	Austria Belgium Croatia Czech Republic Denmark France Germany Ireland Lithuania Poland Slovakia	Finland Netherlands Spain Sweden United Kingdom

Note: Spain is underligned as its official data collection on racist and related crime became comprehensive, see first paragraph below.
Source: FRA, 2013

Data collection on racist and related crime in Spain became comprehensive as a result of changes introduced in relation to what data are collected and training offered to frontline police officers on how to record racist and related crime. Data are now collected on crimes motivated by racism, xenophobia and intolerance of another person's religion or beliefs as well as antisemitism. In addition, about 20,000 law enforcement officials received training in how to identify and record such crimes in 2013.[97]

Outlook

The Stockholm Programme, which aims to deliver on an area of freedom, security and justice for Europe's citizens, draws to a close in 2014. EU institutions and Member States are expected to follow up the Stockholm programme, in particular concerning the fight against all forms of racism, xenophobia and related intolerance within the EU.

The publication of the European Commission's report on the implementation of the Framework Decision on Racism and Xenophobia in 2014 will provide important information about how EU Member States have transposed provisions on incitement to racist and xenophobic violence and hatred, the racist and xenophobic motivation of crimes, the liability of legal persons and jurisdiction across the EU. The full and correct transposition of the existing Framework Decision will constitute a first step towards effectively fighting racism and xenophobia by means of criminal law in a coherent manner across the EU. Bilateral dialogue between the European Commission and Member States will play a key role in this process.

The collection of reliable, comparable and comprehensive data on racist and related crime would contribute to the Framework Decision's effective implementation. Public authorities in Member States will be increasingly called on to collect and publish data on such crime, including details of prosecutions and the sentences handed down. Public authorities in Member States will also look to find ways to provide more effective remedies to combat racist abuse perpetrated online or through social media platforms.

Index of Member State references

Endnotes

All hyperlinks accessed on 30 April 2014.

1 European Parliament (2013), Resolution on strengthening the fight against racism, xenophobia and hate crime 2013/2543(RSP), Brussels, 14 March 2013, www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0090&language=EN&ring=B7-2013-0121.

2 Council of the European Union (2013), Council conclusions on fundamental rights and rule of law and on the Commission 2012, *Report on the Application of the Charter of Fundamental Rights of the European Union*, Justice and Home Affairs Council meeting, Luxembourg, 6-7 June 2013, p. 4, www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/137404.pdf.

3 European Court of Human Rights (ECtHR) (2013), *Hate speech*, factsheet, Strasbourg, July 2013, www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf.

4 United Nations (UN), Committee on the Elimination of Racial Discrimination (CERD) (2013), *Combating racist hate speech*, CERD/C/GC/35, 29 September 2013, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGC%2f35&Lang=en.

5 Rome Declaration (2013), www.milquet.belgium.be/sites/default/files/23092013%20De%CC%81claration%20de%20Rome.pdf.

6 See FRA (European Union Agency for Fundamental Rights) (2013), Fundamental Rights Conference, *Combating hate crime in the EU: Giving victims a face and a voice*, Vilnius, 12–13 November 2013, http://fra.europa.eu/en/event/2013/fundamental-rights-conference-2013.

7 Cecilia Malmström (2013), *Combating hate crime in the EU*, http://europa.eu/rapid/press-release_SPEECH-13-909_en.htm.

8 Council of the European Union (2013), Council conclusions on combating hate crime in the European Union, Justice and Home Affairs Council meeting, Brussels, 5–6 December 2013, www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/139949.pdf.

9 FRA (2013), *Thematic situation report: Racism, discrimination, intolerance and extremism. Learning from experiences in Greece and Hungary*, Luxembourg, Publications Office of the European Union (Publications Office), http://fra.europa.eu/sites/default/files/fra-2013-thematic-situation-report-3_en_1.pdf.

10 Council of Europe, Commissioner for Human Rights (2013), *Safeguarding human rights in times of economic crises*, CommDH/IssuePaper(2013)2, Strasbourg, Council of Europe, https://wcd.coe.int/ViewDoc.jsp?id=2130915.

11 United Nations (UN), CERD (2013), *Concluding observations on the seventeenth to twenty-second periodic reports of Cyprus, adopted by the Committee at its eighty-third session (12-30 August 2013)*, CERD/C/CYP/CO 17-22, p. 5, 23 September 2013, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fCYP%2fCO%2f17-22&Lang=en.

12 FRA (2013), *Discrimination and hate crime against Jews in EU Member States: Experiences and perceptions of antisemitism*, Luxembourg, Publications Office, http://fra.europa.eu/sites/default/files/fra-2013-discrimination-hate-crime-against-jews-eu-memberstates_en.pdf.

13 The programme of the Nationalist Party of Bulgaria is available at: www.dnevnik.bg/getatt.php?filename=o_2133887.pdf.

14 Bulgaria, *24 Chasa Newspaper* (2013), 'Боян Расате: Получихме разрешение от СДВР да организираме граждански патрули', www.24chasa.bg/Article.asp?ArticleId=2445484.

15 Bulgaria, Национален център за развитие на ромите в България (2013), *Ромски командоси създават организация за отбрана от насилие*, 20 November 2013, http://romacenter.blog.bg/novini/2013/11/20/romski-komandosi-syzdavat-organizaciia-za-otbrana-ot-nasilie.1208989.

16 Magyar Hajna (2013), *A Magyar Hajnal rövid programja*, http://magyarhajnal.com/a-magyar-hajnal-rovid-program.

17 Tulkens, F. (2013), *The hate factor in political speech: Where do responsibilities lie?,* Report of the Council of Europe Conference, www.coe.int/t/dghl/standardsetting/media/belgrade2013/MCM(2013)002_en_Report_F%20Tulken.pdf.

18 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2013), *ECRI report on Finland (fourth monitoring cycle),* Strasbourg, Council of Europe, 9 July 2013, www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Finland/FIN-CbC-IV-2013-019-ENG.pdf;http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Finland/FIN-CbC-IV-2013-019-ENG.pdf Council of Europe, ECRI (2013), *ECRI report on Malta (fourth monitoring cycle),* Strasbourg, Council of Europe, 15 October 2013, www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Malta/MLT-CbC-IV-2013-037-ENG.pdf.

19 UN, CERD (2013), *Concluding observations on the ninth to the tenth periodic reports of Slovakia, adopted by the Committee at its eighty-second session (11 February–1 March 2013)*, CERD/C/SVK/CO/9-10, 17 April 2013, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/427/96/PDF/G1342796.pdf?OpenElement; UN, CERD (2013), *Concluding observations on the seventeenth to twenty-second periodic reports of Cyprus, adopted by the Committee at its eighty-third session (12–30 August 2013)*, CERD/C/CYP/CO 17-22, 23 September 2013, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fCYP%2fCO%2f17-22&Lang=en.

20 ECtHR, *Vona v. Hungary*, application No. 35943/10, 2013, http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122183.

21 European Parliament (2013), Request for the waiver of the parliamentary immunity of Marine Le Pen, P7_TA(2013)0292, Strasbourg, 2 July 2013, www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0292&format=XML&language=EN.

22 Greece, Ελληνική Αστυνομία (2013), Notice of Greek Police Headquarters about the items found during the current investigations of Counterterrorism Office in houses of three MPs of the political party 'Golden Dawn', 5 December 2013, www.astynomia.gr/index.php?option=ozo_content&lang='..'&perform=view&id=35075&Itemid=1220&lang=.

23 Greece, Ministry of Interior (2013), Joint Ministerial Decision, No. 51776, *Αναστολή κάθε είδους κρατικής χρηματοδότησης στο Πολιτικό Κόμμα «ΛΑΪΚΟΣ ΣΥΝΔΕΣΜΟΣ – ΧΡΥΣΗ ΑΥΓΗ»* (OG B 3275/23.12.2013), http://static.diavgeia.gov.gr/doc/ΒΛΓΥΝ-ΜΞΚ.

24 Germany, *Bundesrat* (2013), 'Bundesrat reicht NPD-Verbotsantrag beim Bundesverfassungsgericht ein', Press release, 4 December 2013, www.bundesrat.de/cln_330/nn_8396/DE/presse/pm/2013/253-2013.html.

25 Philipp, S. and Starl, K. (2013), *Living conditions of black people in Austrian urban areas in the fields of justice, health, work and public space*, Graz, www.etc-graz.at.

26 Bulgaria, *Агенция „Алфа Рисръч"* (2013), *Обществени нагласи – септември 2013 г.*, http://alpharesearch.bg/userfiles/file/1013-Public%20Opinion-Alpha%20Research.pdf.

27 Finland, *Ihmisoikeuskeskus, Human Rights Centre annual report 2012*, http://ihmisoikeuskeskus-fi-bin.directo.fi/@Bin/b50582aed37e1d3c255f6dbfbf177ff6/1390910327/application/pdf/206665/IOK_toimintakertomus_ENG_N%C3%84YTT%C3%96.pdf.

28 UN, CERD, CERD/C/82/D/48/2010, 3 April 2013, www2.ohchr.org/English/bodies/cerd/docs/CERD-C-82-D-48-2010-English.pdf.

29 FRA (2013), *Thematic situation report: Racism, discrimination, intolerance and extremism. Learning from experiences in Greece and Hungary*, Luxembourg, Publications Office, http://fra.europa.eu/sites/default/files/fra-2013-thematic-situation-report-3_en_1.pdf.

30 *Ibid*.

31 European Network Against Racism Ireland (ENAR Ireland) (2013), *Reports of racism in Ireland*, http://enarireland.org/wp-content/uploads/2013/12/iReport_QR_2013_3mb.pdf.

32 UN, Office of the High Commissioner for Human Rights (2013), *Letter of the Chair-Rapporteur of the Working Group on people of African descent, the Special Rapporteur in the field of cultural rights, the Independent Expert on minority issues, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 17 January 2013, https://spdb.ohchr.org/hrdb/23rd/public_-_AL_Netherlands_17.01.13_(1.2013).pdf; Netherlands (2013), Letter of the Dutch government, www.scribd.com/doc/177304035/Het-Nederlandse-antwoord-op-de-VN-brief; Netherlands, *Burgemeester van Amsterdam* (2013), *Uitspraak bezwaarschriftencommissie intocht Sinterklaas*, 30 October 2013; UN, Office of the High Commissioner for Human Rights (2013), Black Pete & Sinterklaas: UN experts encourage respectful national debate on Dutch tradition, web page, 21 November 2013, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14013&LangID=E.

33 Slovakia, *Generálna prokuratúra SR* (2013), *Správa o činnosti Generálnej prokuratúry SR za rok 2012*, p. 54.

34 Sweden, *Brottsförebyggande rådet* (2013), *Hatbrott 2012: statistik över polisanmälningar med identifierade hatbrottsmotiv*, www.bra.se/download/18.6b82726313f7b234a5839/1372231125966/2013_16_Hatbrott_2012.pdf.

35 See also European Network Against Racism (2013), *Racism in Europe: ENAR shadow report 2011–2012*, http://cms.horus.be/files/99935/MediaArchive/publications/shadow%20report%202011-12/shadowReport_EN_LR%20(3).pdf.

36 Bulgaria, *Агенция „Алфа Рисръч“* (2013), *Обществени нагласи – септември 2013 г.*, http://alpharesearch.bg/userfiles/file/1013-Public%20Opinion-Alpha%20Research.pdf; Bulgaria, Dnes.bg (2013), *„Роми и пенсионери: За бежанците пари има, за нас – не!“*, 18 December 2013, www.dnes.bg/obshtestvo/2013/12/18/romi-i-pensioneri-za-bejancite-pari-ima-za-nas-ne.209975; Bulgaria, Group of the Progressive Alliance of Socialists & Democrats in the European Parliament (2013), *„Бежанската вълна – нараства ли ксенофобията? Може ли ЕС да помогне за намаляването на напрежението? – Доклад*, www.mediana.bg/download-analysis/Report_refugees.doc.

37 Bulgaria, *Съвет за електронни медии* (2013), *Declaration*, 5 November 2013, www.cem.bg/download.php?id=4908.

38 UN, High Commissioner for Refugees (UNHCR), *UNHCR launches emergency operation to improve conditions for refugees and asylum seekers in Bulgaria,* 6 December 2013, www.unhcr.org/52a1bad09.html.

39 Hungary (2008–2012), Eurostat, *Asylum and new asylum applicants by citizenship, age and sex annual aggregated data*, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en; Hungarian Helsinki Committee (2013), *Brief information note on the main asylum-related legal changes in Hungary as of 1 July 2013*, p. 3, http://helsinki.hu/wp-content/uploads/HHC-update-hungary-asylum-1-July-2013.pdf; FRA (2013), *Thematic situation report: Racism, discrimination, intolerance and extremism. Learning from experiences in Greece and Hungary,* Luxembourg, Publications Office, http://fra.europa.eu/sites/default/files/fra-2013-thematic-situation-report-3_en_1.pdf.

40 Hungary, Tárki (2013), *Szolid átrendeződés a lakosság idegenekkel szembeni véleményében*, www.tarki.hu/hu/news/2013/kitekint/20130205_idegenellenesseg.html.

41 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), CERD/C/82/D/48/2010, 4 April 2013, http://www2.ohchr.org/English/bodies/cerd/docs/CERD-C-82-D-48-2010-English.pdf.

42 Germany, *Bundestag* (2013), 'Entscheidung des UN-Antirassismus Ausschusses im Fall Thilo Sarazzin', BT-Drs. 18/60, 18 November 2013, p. 4, http://dip21.bundestag.de/dip21/btd/18/000/1800060.pdf.

43 Office for the High Commissioner for Human Rights, *Universal Periodic Review second cycle: Germany*, www.ohchr.org/EN/HRBodies/UPR/Pages/DESession16.aspx.

44 Germany, Bundesregierung (2013), The Federal Republic of Germany's response to the recommendations set out by the UN Human Rights Council in the Universal Periodic Review on 25 April 2013, www.institut-fuer-menschenrechte.de/aktuell/news/meldung/article/antwort-der-bundesregierung-auf-die-empfehlungen-aus-der-upr-ueberpruefung-liegt-vor.html.

45 FRA (2013), *Discrimination and hate crime against Jews in EU Member States: Experiences and perceptions of antisemitism*, Luxembourg, Publications Office, http://fra.europa.eu/sites/default/files/fra-2013-discrimination-hate-crime-against-jews-eu-memberstates_en.pdf; FRA (2013), *EU LGBT survey European Union lesbian, gay, bisexual and transgender survey: Results at a glance*, Luxembourg, Publications Office, http://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance_en.pdf. More on the FRA survey on gender-based violence is available at: http://fra.europa.eu/en/project/2012/fra-survey-gender-based-violence-against-women.

46 Europol (2013), *TE SAT 2013: EU terrorism situation and trend report*, www.europol.europa.eu/sites/default/files/publications/europol_te-sat2013_lr_0.pdf; see also Jugenschutz.net (2013), *Rechtsextremismus online beobachten und nachhaltig bekämpfen*, Mainz, www.netz-gegen-nazis.de/files/bericht2012.pdf.

47 Italy, *Corte Suprema di Cassazione*, judgment of 24 April 2013, No. 33179, www.asgi.it/public/parser_download/save/cassaz_33179_2013.pdf.

48 Italy, *Tribunale di Padova*, judgment of 17 July 2013, no. 1615.

49 France, *Tribunal de grande instance de Paris*, 24 January 2013, www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3594.

50 Latvia, *Rīgas pilsētas Ziemeļu rajona tiesa*), No. 11840000612/K32-0202-13/6, 3 January 2013.

51 Belgium, Minister of Justice, Minister of Internal Affairs and the College of Prosecutors General (2013), *Omzendbrief betreffende het opsporings- en vervolgingsbeleid inzake discriminatie en haatmisdrijven (met inbegrip van discriminaties op grond van het geslacht)/Circulaire relative a la politique de recherche et de poursuite en matière de discriminations et de délits de haine (en ce compris les discriminations fondées sur le sexe)*, 17 June 2013, www.om-mp.be/omzendbrief/5198967/omzendbrief.html.

52 United Kingdom, Crown Prosecution Service (CPS) (2013), *Guidelines on prosecuting cases involving communications sent via social media,* www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/.

53 Belgium, Minister of Justice, Minister of Internal Affairs and the College of Prosecutors General (2013), *Omzendbrief betreffende het opsporings- en vervolgingsbeleid inzake discriminatie en haatmisdrijven (met inbegrip van discriminaties op grond van het geslacht)/Circulaire relative a la politique de recherche et de poursuite en matière de discriminations et de délits de haine (en ce compris les discriminations fondées sur le sexe)*, 17 June 2013, www.om-mp.be/omzendbrief/5198967/omzendbrief.html.

54 Cyprus (2013), *Αυτεπάγγελτη Παρέμβαση της Αρχής Κατά των Διακρίσεων Αναφορικά με την Ανταπόκριση των Σχολείων σε Ρατσιστικά Περιστατικά*, 11 March 2013, report and data provided by the Cypriot Office of the Commissioner for Administration.

55 Council of Europe, ECRI (2013), *ECRI report on Finland (fourth monitoring cycle),* Strasbourg, Council of Europe, 9 July 2013, www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Finland/FIN-CbC-IV-2013-019-ENG.pdf.

56 United Kingdom, ChildLine (2013), *Can I tell you something?*, www.nspcc.org.uk/news-and-views/media-centre/press-releases/2014/childline-report/childline-report_can-i-tell-you-something_wdf100354.pdf.

57 Organization for Security and Co-operation in Europe, Parliamentary Assembly (2013), *Istanbul declaration*, Istanbul, 29 June to 3 July 2013, www.oscepa.org/meetings/annual-sessions/1375-ist-dec#.

58 Philipp, S. and Starl, K. (2013), *Living conditions of black people in Austrian urban areas in the fields of justice, health, work and public space*, Graz, www.etc-graz.at.

59 FRA (2010), *Towards more effective policing. Understanding and preventing discriminatory ethnic profiling: A guide*, Luxembourg, Publications Office, http://fra.europa.eu/sites/default/files/fra_uploads/1133-Guide-ethnic-profiling_EN.pdf.http://fra.europa.eu/sites/default/files/fra_uploads/1133-Guide-ethnic-profiling_EN.pdf

60 Netherlands, Amnesty International (2013), *Proactief politieoptreden vormt risico voor mensenrechten: Etnisch profilieren onderkennen en aanpakken*, Amsterdam, Amnesty International, www.amnesty.nl/sites/default/files/public/rapport_etnisch_profileren_ainl_28_okt_2013.pdf.

61 Bradford, B., García Añon, J., García Sáez J. A., Gascón Cuenca, A. and Llorente Ferrerez, A. (2013), *Identificación policial por perfil étnico en España: Informe sobre experiencias y actitudes en relación con las actuaciones policiales*, Valencia, Universitat de València, Institut de Drets Humans; Tirant lo Blanch, www.uv.es/garciaj/pub/2013_perfil_etnico.pdf; Metroscopia (2013), Encuesta sobre experiencias y actitudes en relación con las actuaciones policiales.

62 UN, CERD, 82nd session, 11 February–1 March 2013, *Report submitted by the EHRC in response to CERD/C/GBR/CO/18-20/Add.1,* http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/403/56/PDF/G1340356.pdf?OpenElement.

63 Cremer, H. (2013), *'Racial Profiling': Menschenrechtswidrige Personenkontrollen nach § 22 Abs. 1 a Bundespolizeigesetz*, Berlin, Deutsches Institut für Menschenrechte, p. 31, www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Studie_Racial_Profiling_Menschenrechtswidrige_Personenkontrollen_nach_Bundespolizeigesetz.pdf.

64 Greece, Police Headquarters (2012), 'Police Operation "XENIOS ZEUS" in Athens and Evros to tackle illegal immigration', statement of the spokesman of the Greek Police, press release, 4 August 2012, www.astynomia.gr/index.php?option=ozo_content&perform=view&id=34&Itemid=13&lang=.

65 Greece, Συνήγορος του Πολίτη (2013), *Special report: The phenomenon of racist violence in Greece and how to it is combated*, September 2013, www.synigoros.gr/resources/docs/sronracistviolencesummary2013.pdf.

66 FRA (2013), *Thematic situation report: Racism, discrimination, intolerance and extremism. Learning from experiences in Greece and Hungary,* http://fra.europa.eu/sites/default/files/fra-2013-thematic-situation-report-3_en_1.pdf.

67 Council of Europe, Commissioner for Human Rights (2013), *Report by the Council of Europe Commissioner for Human Rights following his visit to Greece, 28 January to 1 February 2013*, Comm DH(2013), 16 April 2013, https://wcd.coe.int/ViewDoc.jsp?id=2053611; Council of Europe, ECRI (2103), *Annual report on ECRI activities,* www.coe.int/t/dghl/monitoring/ecri/activities/Annual_Reports/Annual%20report%202012.pdf; United States Department of State (2013), *Country reports on human rights practices on Greece 2012*, www.state.gov/documents/organization/204503.pdf.

68 Council of Europe, Commissioner for Human Rights, *Report by the Council of Europe Commissioner for Human Rights following his visit to Greece, 28 January to 1 February 2013*, Comm DH(2013), 16 April 2013, https://wcd.coe.int/ViewDoc.jsp?id=2053611.

69 Greece, Ministry of Public Order and Citizen Protection, Hellenic Police, 1 October 2013, www.astynomia.gr/index.php?option=ozo_content&lang='..'&perform=view&id=32569&Itemid=1179&lang=; Greece, Ministry of Public Order and Citizen Protection, Hellenic Police, 4 October 2013, www.astynomia.gr/index.php?option=ozo_content&lang='..'&perform=view&id=32725&Itemid=1179&lang=.

70 Greece, Συνήγορος του Πολίτη (2013), *Ειδική Έκθεση*, www.synigoros.gr/resources/docs/sronracistviolencesummary2013.pdf.

71 Council of Europe, ECRI (2013), *ECRI report on Ireland (fourth monitoring cycle)*, Strasbourg, Council of Europe, 19 February 2013, www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ireland/IRL-CbC-IV-2013-001-ENG.pdf; Council of Europe, ECRI (2013), *ECRI report on Finland (fourth monitoring cycle)*, Strasbourg, Council of Europe, 9 July 2013, www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Finland/FIN-CbC-IV-2013-019-ENG.pdf; Council of Europe, ECRI (2013), *ECRI report on Netherlands (fourth monitoring cycle)*, Strasbourg, Council of Europe, 15 October 2013, www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Netherlands/NLD-CbC-IV-2013-039-ENG.pdf.

72 UN, Human Rights Council (2013), *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 6 June 2013.

73 UN, CERD (2013), *Concluding observations on the combined nineteenth to twenty-first periodic reports of Sweden, adopted by the Committee at its eighty-third session (12–30 August 2013)*, CERD/C/SWE/CO 19-21, 23 September 2013, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fSWE%2fCO%2f19-21&Lang=en.

74 United Kingdom, Home Office (2013), *A consultation on how police use stop and search powers has been launched today (2 July) by Home Secretary Theresa May*, www.gov.uk/government/news/home-secretary-launches-consultation-into-stop-and-search.

75 United Kingdom, Her Majesty's Inspectorate of Constabulary (2013), *Stop and search powers: Are the police using them effectively and fairly?,* www.hmic.gov.uk/media/stop-and-search-powers-20130709.pdf.

76 United Kingdom, Equality and Human Rights Commission (2012), *Race disproportionality in stops and searches under Section 60 of the Criminal Justice and Public Order Act 1994,* Briefing paper 5, www.equalityhumanrights.com/uploaded_files/ehrc_-_briefing_paper_no.5_-_s60_stop_and_search.pdf.

77 United Kingdom, Equality and Human Rights Commission (2013), *Stop and think again: Towards race equality in police PACE stop and search,* May 2013, p. 7, www.equalityhumanrights.com/uploaded_files/raceinbritain/stop_and_think_again.pdf.

78 United Kingdom, Equality and Human Rights Commission (2013), *New research shows slow improvement in police use of stop and search*, November 2013, www.equalityhumanrights.com/news/2013/november/new-research-shows-slow-improvement-in-police-use-of-stop-and-search/; Equality and Human Rights Commission (2013), *Race disproportionality in stops and searches, 2011–2012,* November 2013, www.equalityhumanrights.com/uploaded_files/research/Briefing_papers/briefing_paper_7_final.pdf.

79 Council of Europe, ECRI (2013), *ECRI report on Netherlands (fourth monitoring cycle),* Strasbourg, Council of Europe, 15 October 2013, www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Netherlands/NLD-CbC-IV-2013-039-ENG.pdf; Council of Europe, ECRI (2013), *ECRI report on Portugal (fourth monitoring cycle),* Strasbourg, Council of Europe, 9 July 2013, www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Portugal/PRT-CbC-IV-2013-020-ENG.pdf.

80 UN, Human Rights Council (2013), *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 6 June 2013, www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-56-Add-2_en.pdf.

81 FRA (2013), *Thematic situation report: Racism, discrimination, intolerance and extremism. Learning from experiences in Greece and Hungary,* Luxembourg, Publications Office, http://fra.europa.eu/sites/default/files/fra-2013-thematic-situation-report-3_en_1.pdf.

82 Greece, Βουλή των Ελλήνων (2013), *Τροποποίηση του ν. 927/1979 (Α΄139) και προσαρμογή του στην απόφαση πλαίσιο 2008/913/ΔΕ της 28ης Νοεμβρίου 2008, για την καταπολέμηση ορισμένων μορφών και εκδηλώσεων ρατσισμού και ξενοφοβίας μέσω του ποινικού δικαίου (L 328),* 20 November 2013, www.hellenicparliament.gr/Nomothetiko-Ergo/Epexergasia-stis-Epitropes?law_id=1fddd6cf-874b-4b4a-b01d-05f37f9c598d.

83 Greece, Βουλή των Ελλήνων (2013), *Νόμος περί εξαρτησιογόνων ουσιών και άλλες διατάξεις* (OG A 74/20.3.2013), amended Art. 79, para. 3 of the Criminal Code, www.et.gr/index.php/2013-01-28-14-06-23/2013-01-29-08-13-13.

84 Germany, *Landtag Brandenburg* (2013), 'Landtag Brandenburg beschließt Antirassismus Klausel in der Landesverfassung', press release, 22 November 2013, www.landtag.brandenburg.de/de/aktuelles/landtag_brandenburg_beschlieszt_antirassismus-klausel_in_der_landesverfassung/629581?_referer=397203.

85 Cyprus Police (2013), Πολιτική για την Αντιμετώπιση και Καταπολέμηση της Ρατσιστικής Βίας, *της Ξενοφοβίας και των Διακρίσεων*, 7 August 2013. Data derive from the Office of the Commissioner for Administration and from the police.

86 Greece, Ελληνική Αστυνομία (2013), www.astynomia.gr/index.php?option=ozo_content&perform=view&id=23698&Itemid=0&lang=.

87 FRA (2013), *Thematic situation report: Racism, discrimination, intolerance and extremism. Learning from experiences in Greece and Hungary,* Luxembourg, Publications Office, http://fra.europa.eu/sites/default/files/fra-2013-thematic-situation-report-3_en_1.pdf.

88 France, Premier ministre (2013), *Comité interministériel de lutte contre le racisme et l'antisémitisme*, Infosheet, www.interieur.gouv.fr/Le-ministere/Organisation/Delegue-Interministeriel-a-la-Lutte-contre-le-Racisme-et-l-Antisemitisme/Comite-interministeriel-de-lutte-contre-le-racisme-et-l-antisemitisme.

89 Germany, *Bundestag* (2013) 'Antisemitismus entschlossen bekämpfen, jüdisches Leben in Deutschland nachhaltig fördern', BT-Drs. 17/13885, 11 June 2013, p. 3, http://dip21.bundestag.de/dip21/btd/17/138/1713885.pdf.

90 Poland, *Zarządzenie nr 6 Prezesa Rady Ministrów*, 13 February 2013.

91 Poland, *Komenda Główna Policji, Kierunkowa strategia policji w zakresie systemowej ochrony praw człowieka*, www.policja.pl/pol/prawa-czlowieka/aktualnosci/83431,Kierunkowa-streategia-Policji-w-zakresie-systemowej-ochrony-praw-czlowieka-na-la.html.

92 Austria, *Bundesministerium für Inneres, Bundesamt für Verfassungsschutz und Terrorismusbekämpfung* (2013), *Verfassungsschutzbericht 2013*, www.bmi.gv.at/cms/BMI_Verfassungsschutz/Verfassungsschutzbericht_2013.pdf; Belgium, Federal Police (2013), *Statistiques policières de criminalité, Belgique: 2000–2013/Politiële criminaliteitsstatistieken, België: 2000–2012*, www.polfed-fedpol.be/crim/crim_statistieken/2013_trim2/pdf/nationaal/rapport_2013_trim2_nat_belgique_fr.pdf; Croatia, *Ministarstvo unutarnjih poslova* (2013), *Pregled temeljnih sigurnosnih pokazatelja i rezultata rada u 2012. godini*, www.mup.hr/UserDocsImages/statistika/2013/statistika2012.pdf; Czech Republic, Ministry of Interior, Security Policy Department, *Annual report: Zpráva o problematice extremismu na území České republiky v roce 2012*, www.mvcr.cz/clanek/extremismus-vyrocni-zpravy-o-extremismu-a-strategie-boje-proti-extremismu.aspx; Cyprus, Cyprus Police, *Archived statistical data, incidents and/or cases of racial nature and/or with racial motive 2005–2012*, www.police.gov.cy/police/police.nsf/All/951F52E21604E9DFC2257BD00017AF04?OpenDocument; Denmark, *Politiets Efterretningstjeneste* (2013), *Kriminelle forhold I 2012 med mulig ekstremistisk baggrund*, www.pet.dk/Nyheder/2013/~/media/Forebyggende%20sikkerhed/RACI-rapporter/2012RACIrapportendeligversionpdf.ashx; Finland, *Poliisiammattikorkeakoulu* (2013), *Poliisin tietoon tullut viharikollisuus Suomessa 2012*, www.polamk.fi/poliisi/poliisioppilaitos/home.nsf/files/9CE3DF593F0561CDC2257C14002DF16B/$file/Katsauksia2_web.pdf; France, *Ministère de l'Intérieur, Annual report of the National Consultative Commission on Human Rights 2012: La lutte contre le racisme, l'antisémitisme et la xénophobie*, www.cncdh.fr/sites/default/files/cncdh_racisme_02_basse_def.pdf; Germany, *Bundesministerium des Innern* (2013), *Verfassungsschutzbericht 2012*, www.verfassungsschutz.de/embed/vsbericht-2012.pdf; UNHCR, Racist Violence Recording Network (2013), *Annual report*, www.unhcr.gr/1againstracism/11940/?doing_wp_cron=1379691703.1676959991455078125000; Ireland, Office for the Promotion of Migrant Integration (2013), *Reported racist crime*, www.integration.ie/website/omi/omiwebv6.nsf/page/statistics-RacistIncidentsstatisticscrime-en; Lithuania, Ministry of the Interior (2013), *Informatikos ir ryšių departamentas prie Lietuvos Respublikos teisingumo ministerijos* (2013), *Nusikalstamumo ir ikiteisminių tyrimų statistika*, www.ird.lt/infusions/report_manager/reports/html_file.php?metai=2012&menuo=12&ff=1G_EN&fnr=6&rt=1&oldYear=2012; Luxembourg, *Police Grand-Ducale* (2013), *Rapport d'activité 2012 de la Police Grand-Ducale*, www.police.public.lu/actualites/statistique/rapport_stat_2012/rapport-statistique-2012.pdf; Netherlands, Tierolf, B., Hermens, N., Drost, L. and Van der Vos, L. (2013), *POLDIS rapportage 2012, met themarapportage antisemitisme*, Utrecht, Verwey-Jonker Instituut, www.verwey-jonker.nl/doc/vitaliteit/Poldis_rapportage_2012_7371_web.pdf; Poland, *Prokuratura Generalna* (2013), *Sprawozdania i statystyka*, www.pg.gov.pl/sprawozdania-i-statystyki/sprawy-z-pobudek-rasistowskich-lub-ksenofobicznych-w-

2012-r--2-627.html; Slovakia, *Ministerstvo vnútra* (2013), Štatistika kriminality v Slovenskej republike, www.minv.sk/?statistika-kriminality-v-slovenskej-republike-za-rok-2012; Spain, *Ministerio del Interior* (2013), *Anuario Estadístico del Ministerio del Interior 2012*, www.interior.gob.es/file/63/63661/63661.pdf; Sweden, *Brottsförebyggande rådet* (2013), *Hatbrott 2012: Statistik över polisanmälningar med identifierade hatbrottsmotiv*, www.bra.se/download/18.6b82726313f7b234a5839/1372231125966/2013_16_Hatbrott_2012.pdf; United Kingdom, Office for National Statistics, Ministry of Justice and Home office, *An overview of hate crime in England and Wales*, www.report-it.org.uk/files/ons_hate-crime-report_2013.pdf; United Kingdom, Scottish Government (2013), *Statistical bulletin: Crime and justice series: racist incidents recorded by the police in Scotland 2012–13*, www.scotland.gov.uk/Resource/0043/00439845.pdf.

93 OSCE, ODIHR (2013), *Hate crimes in the OSCE region, incidents and responses 2012*, Warsaw, ODIHR, pp. 44–50, http://tandis.odihr.pl/hcr2012/pdf/Hate_Crime_Report_full_version.pdf.

94 *Ibid.,* pp. 54–59.

95 *Ibid.,* pp. 60–66.

96 *Ibid.,* pp. 67–71.

97 Spain, *Ministerio de Empleo y Seguridad Social, Ministerio del Interior* (2013), Handbook for training security forces in identifying and recording racist or xenophobic incidents, http://explotacion.mtin.gob.es/oberaxe/inicio_descargaFichero.action?bibliotecaDatoId=218.

UN & CoE

15 January – European Economic and Social Committee issues opinion on the *Societal empowerment and integration of Roma citizens in Europe*

29 January – European Court of Human Rights (ECtHR) rules in *Horváth and Kiss v. Hungary* that placing Roma children in remedial schools for children with disabilities amounts to discrimination

January

19 February – Council of Europe European Commission against Racism and Intolerance (ECRI) issues its fourth report on Ireland

February

20 March – Council of Europe launches the European Alliance of Cities and Regions for Roma Inclusion

March

23 April – Parliamentary Assembly of the Council of Europe adopts Resolution 1927 (2013) on Ending discrimination against Roma children

April

30 May – ECtHR rules in *Lavida and Others v. Greece* that continuing the education of Roma children in a state school attended exclusively by Roma children without implementing effective anti-segregation measures can not be justified. Municipalities and educational authorities must reconsider informal tactics that permit segregation

May

27 June – Eighth European Platform for Roma Inclusion takes place in Brussels

June

9 July – ECtHR *Vona v. Hungary* sentence upholds the decision of the Hungarian Supreme Court to dissolve the Hungarian Guard Association, which had held rallies targeting Roma and using anti-Gypsy rhetoric

9 July – ECRI issues its fourth report on Finland

9 July – ECRI issues its fourth report on Portugal

July

August

September

15 October – ECRI issues its fourth report on the Netherlands

17 October – ECtHR rules in *Winterstein and Others v. France* that the eviction of traveller families from a caravan site where they had been living for a long time, without providing alternative accommodation or social housing, is a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights

October

November

December

EU

January

February

March

April

May

26 June – European Commission issues a Communication on *Steps forward in implementing national Roma integration strategies*

26 June – European Commission issues a Proposal for a Council Recommendation on effective Roma integration measures in the Member States

June

July

August

September

October

28–29 November – The Plenary Session of the Committee of the Regions adopts an explanatory opinion on Roma integration strategies

November

9 December – Council of the European Union adopts a *Recommendation on effective Roma integration measures in the Member States*

12 December – European Parliament adopts a *Resolution on the progress made in the implementation of the national Roma integration strategies*

December

7 Roma integration

Major European Union (EU) institutions and the Council of Europe renewed in 2013 their political resolve and launched initiatives to fight the exclusion of and discrimination against Roma, the EU's largest ethnic minority. EU Member States have pledged to improve the situation of Roma in education, employment, health and housing, developing concrete national strategies on Roma integration. There is, however, evidence of ongoing fundamental rights violations, while for many Roma social exclusion and extreme deprivation remain a daily reality. To accelerate progress, the Council of the European Union issued in December 2013 a 'Recommendation on effective Roma integration measures to Member States', which highlights the need for effective monitoring of the implementation of national integration strategies.

7.1. European institutions renew political commitment to Roma inclusion and integration

In the face of incidents illustrating the discrimination and exclusion Roma[1] people face, the European Commission, the Council of the European Union, the European Parliament and the Council of Europe renewed their political resolve to fully integrate and include Roma in European society. Nonetheless, in some EU Member States Roma settlements were destroyed and Roma EU citizens forcibly evicted from their homes or returned to their countries of origin. In others, political parties and extremist groups openly expressed anti-Roma feelings, while media attention on alleged child abductions stoked negative Roma stereotypes. With the Member States' action plans in place, EU institutions turned their attention to effective implementation and monitoring.

Key developments

- The Council of the European Union issues a Recommendation on Roma integration, providing guidance to EU Member States on enhancing the effectiveness of their national Roma integration strategies and policies.
- The Council Regulation on Structural Funds is adopted including the ex ante conditionality concerning national Roma integration strategies. It is the first time that one specific investment priority focusing on the inclusion of Roma and other marginalised communities is included as a requirement in the Structural Funds.
- Forced evictions and segregation in education remain major concerns.
- In the run-up to the European Parliament elections, some political parties and extremist groups in a number of EU Member States express anti-Roma feelings that can endanger Roma integration efforts.
- Spikes in media attention are related to reports of alleged child abductions, reinforcing negative stereotypes of Roma.

The European Commission focused in a June Communication on the structural preconditions for more effective implementation of integration strategies. It called on Member States "to adopt or further develop a comprehensive approach to Roma integration and endorse a number of common goals", covering the areas of education, employment, health and housing.[2] It also concluded that more effort should be made to develop robust monitoring and evaluation frameworks.

This includes comparing data and impact indicators to measure progress on the ground and ensuring that necessary funds are allocated to Roma inclusion efforts.

The European Commission also issued a proposal for a Council Recommendation aimed at reinforcing the EU Framework "with a non-binding legal instrument in order to make it easier for Member States to turn their commitments into reality".[3]

The Council of the European Union adopted a recommendation[4] that provides guidance to Member States on enhancing the implementation of their measures to achieve Roma integration. The recommendation, adopted on 9 December 2013, establishes the first EU legal instrument for Roma integration.

The European Parliament called on the European Commission and Member States to ensure sufficient funding for Roma integration. The resolution, adopted on 12 December, also focused on EU-wide monitoring of the fundamental rights of Roma, anti-Roma actions and hate crime against Roma. It called for an end to segregation in education and aimed at tackling discrimination, particularly that faced by Roma women.

The Council of Europe has also taken positive measures. Romed, which ran for two years in 22 countries, with more than 1,000 trained mediators, entered its second phase in 2013.[5] The Council of Europe and the European Commission's DG Employment launched a new project in **Bulgaria**, **Hungary**, **Italy**, **Romania** and **Slovakia** to strengthen political will and build local authorities' ability to draft and implement Roma inclusion plans and projects.[6] The initiative is supported by the European Alliance of Cities and Regions for Roma Inclusion and draws on the four thematic reports that were produced by the Council of Europe Ad hoc Committee of Experts on Roma Issues (CAHROM) in 2013 (on education,[7] housing[8] and anti-Gypsyism[9] and on Roma policy implementation (latter report from 2012).

With positive political commitments in place and measures taken by the European institutions, a powerful framework has been established to encourage and support EU Member States in improving the situation of the Roma in education, employment, health and housing and in respecting human rights and non-discrimination.

7.2. Member States begin implementation of national Roma integration strategies

Each EU Member State developed a national Roma integration strategy or corresponding set of policy measures within its broader social inclusion policies in response to the European Commission's Communication for an EU Framework for national Roma Integration Strategies from May 2011. Many built upon previous or existing Roma integration policies or action plans. By 2013, nearly all Member States had developed and approved their national Roma integration strategies and national action plans; however, progress on implementation of the strategies varied. Many Member States are still working on developing institutional infrastructure and monitoring and evaluation mechanisms for implementing the strategies. In most cases, the Member States implemented few actions in 2013, often hindered by budgetary cuts and limited financial resources.

Poland, for example, continued implementing its Programme for the Roma community for 2004–2013[10] covering education, Roma and civil society, employment, health, housing, security and hate crimes, culture and preservation of Roma ethnic identity, and knowledge about Roma. Legislation was in progress on a multi-annual programme for 2014–2020.[11]

In December, the **Czech Republic** approved seven measures aimed at preventing social tension and strengthening social cohesion between majority society and the Roma minority, including revised housing benefits, a network of social services in excluded areas and the reintroduction of community work. The government did not, however, introduce social measures targeting Roma specifically, because the delivery of aid based on ethnic criteria is unconstitutional.[12]

Slovakia shifted responsibility for the national strategy's coordination and implementation to the Ministry of the Interior from the Government's Office and the Prime Minister's authority. NGOs criticised this move sharply, claiming that it contributed to inflexibility in implementing the strategy and left those in charge with less time to devote to the issue at hand.[13]

7.2.1. To make a difference, Member States involve local authorities

The European Commission's 26 June Communication stressed that "most Member States need to make further efforts and involve local authorities more closely and systematically in developing, implementing, monitoring, evaluating and reviewing policy" and asserted that Roma integration plans and efforts to implement the national Roma implementation strategies should also be an integral part of regional and local level public agendas.[14]

Bulgaria's national strategy for Roma integration required all municipalities to prepare and adopt municipal Roma integration annual plans. Municipal plans for 2013–2014 were approved by the end of March for 220 of 264 municipalities,[15] and plans for 2014–2020

will be adopted in 2014. In the **United Kingdom**, local authorities established a National Roma Network as a forum for dialogue between central government, local authorities and civil society.[16]

Some EU Member States also began developing regional and local action plans to implement their national strategies. **Germany's** Berlin Action Plan for the Inclusion of Foreign Roma, the country's first regional action plan, was adopted on 16 July.[17] **Sweden** launched several pilot programmes for Roma integration.[18]

FRA ACTIVITY

Collecting data through local engagement

The Local Engagement for Roma Inclusion (LERI) research project aims to examine and develop ways of improving the design, implementation and monitoring of Roma integration policies and actions at local level. This objective corresponds to the issues and needs identified by the European Commission's Roma Task Force, namely lack of know-how and administrative capacity at local level, ineffective monitoring tools to measure progress, and weak involvement of Roma and of civil society actors in the design and implementation of Roma-targeted interventions, particularly at the local level.

LERI aims to address those deficits through local-level pilot research that will help understand better the barriers and drivers affecting local-level implementation and how those barriers might be overcome.

The LERI project will be carried out in 2014–2016 in 22 localities in 11 Member States: Bulgaria, the Czech Republic, Finland, France, Greece, Hungary, Italy, Romania, Slovakia, Spain and the United Kingdom.

FRA (2013), FRA Multi-annual Roma Programme, primary qualitative data: Participatory action research, *available at: http://fra.europa.eu/en/project/2013/multi-annual-roma-programme?tab=local-engagement*

Several Member States set up working groups or advisory councils comprising representatives of ministries, local authorities, independent experts, Roma associations and other civil society organisations. **Croatia**, **Finland**, **France**, **Latvia**,[19] **Romania**, **Slovenia**[20] and **Spain** established working groups and platforms to develop and consult on national Roma integration strategies. **Spain** developed an operational plan for the 2012–2020 national strategy to strengthen coordination between different administrative levels.[21] **Italy** also established discussion tables at various government levels,[22] including an interministerial political round table to discuss local issues. Roma associations criticised the roundtable, however, for not requiring the inclusion of Roma community representatives.[23] In **Slovenia**,[24] Roma representatives, including those from each municipal council, will set up a working body to monitor the Roma's local situation and to report yearly to a commission set up for the protection of the Roma community.

Belgium uses multiple stakeholder cooperation to address Roma integration. One example is the regional integration centre Foyer in Brussels, which cooperates with social services, schools and local governments to better address Roma issues.[25]

At the eighth European Platform for Roma Inclusion in June, the **Netherlands** announced an initiative to create a working group on child rights issues as an extension of its programme to combat crime and the exploitation of Roma children.[26]

7.2.2. Engaging with civil society

In its June Communication, the European Commission stressed again that "civil society needs to play an active role in implementing and monitoring national strategies."[27] Simple consultation is not enough. To this end, many of the EU Member State working groups set up to advise on the development and implementation of the national Roma integration strategies include civil society organisations, NGOs and representatives of Roma associations. Nonethless, questions remained on how exactly to define civil society's role in implementing monitoring national strategies and how to consult civil society in practice.

Austria[28] and **Spain** consulted Roma civil society on how to implement their national strategies, and Roma civil society organisations took part in a consultative council and the National Agency for Roma in **Romania**. In **Belgium**, Roma took direct part in consultations on social services through a new project initiated in 2013.[29]

Hungary set up several consultative bodies, which involve representatives of Roma minority self-governments and representatives of civil society organisations. The civil society report, coordinated by the Decade of Roma Inclusion Secretariat, criticised the Roma action plans,[30] saying that some new government policies undermined rather than supported Roma integration.

In **Lithuania**, civil society organisations, including Roma NGOs, criticised the government for failing to make the consultative process genuinely inclusive while preparing the 2012–2014 Roma Action Plan.[31]

Two NGOs prepared an external evaluation report on the national Roma integration strategy after the **Slovak** government failed to involve civil society, formally or informally, in the strategy's implementation and after the government's Office of the Plenipotentiary for

Roma Communities delayed delivery of its own monitoring report in early 2013.[32]

Ireland established a steering group including Roma representatives. In **Bulgaria**, nine Roma organisations withdrew from the National Council for Cooperation on Ethnic and Integration Issues in April, after it failed to react to ethnically motivated Roma murders.[33] In response, to implement the national strategy, the council formed a commission with the participation of Roma NGOs and other civil society organistations working in the field of Roma integration.

Every year in **Finland**, the Regional Advisory Boards of Romani Affairs organise consultation days for local actors to present their work and provide views on the national Roma strategy and its implementation. Similarly, **Portugal** established a consultative group in June to monitor the national strategy's implementation and Roma communities' integration.

In **France**, national consultative panels on illegal settlements and on *Gens du voyage* bring together civil society organisations and national authorities to advise on the national strategy.

7.2.3. Monitoring progress

The European Commission communication and the Council of the European Union recommendation highlighted the need for monitoring Roma-targeted interventions. Additionally, the European Parliament urged EU Member States:

> *"to produce disaggregated data with the assistance of FRA, the UNDP and the World Bank on the socio-economic situation of Roma, the degree to which Roma experience discrimination on the grounds of ethnic origin, and hate crimes committed against them, while fully respecting data protection standards and the right to privacy, and to develop, in cooperation with the Commission, the baseline indicators and measurable targets that are essential for a robust monitoring system [...]."*[34]

The challenge remains the limited progress in monitoring. With many action plans still under development, few have been monitored or evaluated to date. Data collection on Roma is fragmented in many EU Member States, making it even more difficult to monitor the progress of implementation. Fundamental questions – such as how to statistically define the population collectively labelled as 'Roma' – remain open. With incomplete official data on Roma, and with some Member States prohibiting data collection by ethnicity, progress reports often rely on unofficial sources, such as the media, academic studies and NGO reports. FRA's work on Roma integration in 2014 will focus on developing more robust and effective approaches to data collection.

Several EU Member States established special steering groups or committees to monitor the implementation of their national strategies, for example in **Croatia**[35] and **Finland**.[36] In **Estonia**, an informal working group was established to collect data and information on Roma and to raise public awareness of Roma culture.[37] **Finland's** steering group on Roma policy implementation published its first monitoring report at the end of 2013, as did that of the **Netherlands,** whose report will serve as a baseline qualitative study to be conducted every two years.[38] In **Hungary**, a set of indicators developed by the Department of Strategic Planning of the State Secretariat for Social Inclusion together with independent experts were piloted and were fed into the first government monitoring report on the Government Action Plan for Social Inclusion.[39] **France** developed a set of indicators to monitor implemented actions. **Austria** is carrying out several studies to monitor the inclusion of Roma in education, employment, housing and access to healthcare. **Bulgaria** implemented a project on the integration of marginalised communities with a focus on Roma, including two nationally representative surveys to support data collection and monitoring.[40]

To address the particular situation of Roma women, the **Finnish** Ministry of Social Affairs and Health published a study[41] on domestic violence against Roma women, which found that women under-report these crimes, often leaving such violence hidden. FRA's new study on violence against women shows, unfortunately, that Roma women share this experience of violence and related fears with many other women in the EU.

FRA ACTIVITY

Ad-hoc Working Party on Roma Integration

In 2013, FRA held the third meeting of its ad-hoc working party on 26 June in Brussels. It discussed EU Member States' progress and experiences in setting up monitoring mechanisms. Working party members saw the local level as an area of potential improvement.

FRA also introduced plans to pilot an indicator framework that will help chart progress in Roma integration across the EU.

Furthermore, data collection broken down by ethnicity may verge on illegality if data protection standards are not rigorously adhered to. In September, it was discovered that police in southern **Sweden** had kept a register with the names of thousands of Roma Swedes, including children and some deceased persons. An investigation

determined that the register had several illegal aspects, even though it was not based on ethnicity.[42]

7.2.4. EU Structural Funds and national-level funding for Roma integration

In 2010, the European Commission's Roma Task Force identified limited funding from national budgets and EU Structural Funds as a major challenge to the implementation of national strategies on Roma integration. With this in mind, the Commission revised the Regulation on Structural Funds, integrating requirements that must be complied with before funds are allocated; these are termed ex ante conditionalities (see also Section 5.5 of Chapter 5).[43] These requirements ensure that socio-economic integration of marginalised communities such as the Roma is achieved through the allocation of directly managed EU funds.

The development and adoption of the national Roma integration strategies has not implied substantial changes in the use of EU structural funds,[44] but many governments, including local authorities, put new or planned activities on Roma integration on hold, often referring to austerity measures as the reason for funding cuts. Municipalities in **Bulgaria**, for example, were required to develop local action plans, but were expected to fund them from existing annual budgets. In **Ireland**, the government reduced spending on programmes for Travellers by 4.3 % for 2008–2013, hindering the full implementation of action plans.[45]

Additionally, some projects, conceived within the national action plans and strategies, requested funding but received none. This occurred in **Romania**.[46] In **Hungary**, municipalities are required to prepare equal opportunity programmes as of 1 July 2013 to participate in tenders financed by either the national budget or EU funds.

7.3. Member States target integration in four priority areas

Education, employment, housing and health are key priority areas for Roma integration. Discrimination in these areas violates fundamental rights. Roma integration efforts are not, however, limited to these areas; such challenges as political participation or gender equality are no less important.

7.3.1. Education

A wide gap persists between Roma and non-Roma children in education. Roma children across the EU fare worse in terms of enrolment, participation, educational attainment and completion. On average, 89 % of Roma surveyed in a FRA Roma pilot survey had not acquired any upper secondary education, compared with 38 % of the non-Roma living nearby.[47] Roma girls in particular drop out from school early.[48]

Most individual EU Member States have concentrated their efforts on education, particularly in projects and activities to improve early childhood education and care and in promoting measures to support Roma children in completing primary education. Although such steps do not always explicitly target Roma, several Member States, including **Austria**,[49] **Bulgaria**, the **Czech Republic**,[50] **Finland**,[51] **Luxembourg** and **Poland**, recently introduced free compulsory pre-school or last year of kindergarten. They often also provided financial support for Roma and families belonging to disadvantaged or vulnerable groups and ensured that special places were reserved for children from such backgrounds.

Other forms of educational support for Roma were initiated to promote primary school completion. **Poland** introduced financial support for books and school materials, while **Cyprus**, **Romania** and **Slovakia** provided free school meals. The **Netherlands** allocated additional state budget funds to primary schools with Roma children, as has the Flanders region in **Belgium** since 2012.

Croatia supported Roma families with pre-school and kindergarten expenses, and **Romania** provided disadvantaged students, including Roma, with milk and bread, financial aid and financial grants for computers.

Croatia, **Hungary**,[52] **Italy**[53] and **Poland**[54] supported scholarship programmes for Roma students in primary, secondary and tertiary education.

France provided Roma children with free transport to school as part of mainstreamed free transport programmes. **Italy**, in contrast, cut public spending, which meant discontinuing similar programmes in many municipalities, including Milan and Naples.[55]

Portugal implemented awareness-raising activities on the importance of school, with successful Roma participating as ambassadors to share their experiences.[56] In four **Belgian** cities, neighbourhood stewards promoted awareness of the importance of schooling. In **Spain**, a nationwide campaign encourages Roma to complete high school.

In **Bulgaria**, the Ministry of Labour and Social initiated three calls for projects[57] to improve the integration of children from ethnic minorities in primary education and to reintegrate dropouts. **Portugal** piloted alternative schooling or vocational paths for students who had repeatedly failed the same course, aiming to encourage students to continue in secondary education.[58] **Greece**

also targeted Roma school attendance, with programmes including summer classes to help ease the transition to secondary school.

Croatia, **Finland**,[59] **France** and **Luxembourg** provide language support to help non-native speakers integrate and achieve. **Austrian** primary schools may provide special language support for children who do not have German as a mother tongue.[60] Similarly, some **Danish** municipalities launched 'phasing-in' classes for students whose first language was not Danish, to help them transition into regular classes. In **Cyprus**,[61] bilingual teachers helped to facilitate communication among students, teachers and parents.

Finland introduced Romani language courses in upper secondary schools and at the University of Helsinki.[62] **Latvia** offered support classes on Latvian, sciences and foreign languages, and Roma teachers and assistants were hired in various municipalities.[63] A new **Swedish** initiative enables students from five national minorities – including Roma – to study their minority language as a native language.[64] It is also developing new material on Roma language, culture and traditions to improve staff and student awareness.[65]

Several EU Member States continued to deploy Roma school mediators and assistants. **Greece** and **Portugal**,[66] for example, use such mediators; **Germany** has a project[67] that uses mediators and social education assistants to help Roma children in primary and secondary school with homework. They also intervene in cases of conflict and advise parents. In some **Austrian** schools with a high percentage of Roma pupils, Roma school assistants provided learning support, helped teachers and motivated children in class.[68] In **France**, a project on school mediators was launched to encourage school participation of children from illegal settlements. In **Luxembourg**, teachers received specific training on instructing Roma students, with mediation offered in several languages. The **Netherlands** has mediators and counsellors for Sinti, Roma and Travellers. **Poland** provides Roma assistants and tutors to help Roma children,[69] and there are assistants for the entire Roma community. Teachers and students attend courses on Roma culture, and teachers learn how to prevent discrimination.[70] In **Romania**, school principals were instructed on the rights of the child,[71] and some teachers received education in the Romani language and Roma history. In **Slovakia**, 110 Roma teaching assistants were involved in the national programme of school inclusion at pre-school level, which targets marginalised Roma communities.[72]

A **Slovenian** project focuses on facilitating the inclusion of Roma children in pre-school; it provided training courses for teachers and awareness-raising campaigns for parents.[73] Similarly, a website in **Finland**[74] was set up to provide information on Finnish Roma history and culture, including teaching materials for schools.

To increase the proportion of Roma students in universities, **Romania** allocated a quota of places for them, benefiting some 3,000 secondary school students.[75]

Discrimination in education

EU Member States took measures to combat discrimination in education. The Council Recommendation on effective Roma integration also explicitly called on Member States to eliminate any school segregation and to put an end to "any inappropriate placement of Roma pupils in special needs schools."

Despite Member States' commitments to non-discrimination, the segregation of Roma children in education remains a widespread problem in Member States including the **Czech Republic**, **Hungary, Romania** and **Slovakia.** Small steps forward were made, but challenges remain. **Latvia**, for example, closed ethnic classes following a request by the Ombudsman.[76] In nearly a quarter of its schools, **Hungary** has established an integrated pedagogical system designed to bridge the gap between educationally disadvantaged and non-disadvantaged children.

Research studies and reports confirm evidence of segregation in education, highlighting the severity of the issue and underlining the findings of surveys conducted by FRA, the UNDP and the World Bank. The European Commission against Racism and Intolerance (ECRI) expressed concern about racist acts in **Finnish** schools against Roma children, especially in primary schools, the most serious problem being racist insults.[77]

The United Nations' Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance[78] also highlighted, after his visit to **Spain** in January, that Roma pupils continue to suffer from school discrimination and segregation, high dropout rates in secondary education and limited access to university.

In the **Czech Republic**, the School Inspectorate launched in September an investigation of Romani school children at schools for children with mild intellectual disabilities. The research was in response to a judgment by the European Court of Human Rights (ECtHR), which found that 18 Romani children had been unjustifiably reassigned to such special schools. The research found that 28 % of pupils attending 'practical schools' are of Roma origin.[79]

According to a 2013 survey on segregation in **Hungary** published by the Roma Education Fund,[80] "educational policy is more segregationist when the Romani population is concentrated in segregated areas of town." The survey compared the impacts of the three factors leading to school segregation: segregationist local policies, residential segregation and the high number of Roma.

Some legal developments highlighted the continued wrongful discrimination and segregation of Roma children in schooling. The **Hungarian** Equal Treatment Authority (*Egyenlő Bánásmód Hatóság*) imposed a sanction on a teacher for making an offensive statement towards a child of Roma ethnicity during a study hall session.[81]

Two significant ECtHR judgments in the field of Roma and education in 2013 considered it discriminatory that Roma pupils attended schools in which there were no non-Roma students. In the *Horváth and Kiss v. **Hungary*** case, which became final on 29 April, the ECtHR considered discriminatory the placing of two young Roma men in schools for people with intellectual disabilities, and raised the question of whether this might have compromised their integration.[82] The ECtHR found that the Hungarian government had failed to prove that the difference in treatment had not had disproportionately prejudicial effects on the applicants. Therefore, the treatment violated the European Convention on Human Rights' right to education (Article 2 of Protocol No. 1) in conjunction with the prohibition on discrimination (Article 14).

The importance of this case lies in the long history of school segregation of Roma: placing Roma children in special remedial schools for children with intellectual disabilities, in segregated all-Roma schools or in all-Roma classes in nominally 'integrated' mainstream schools. This is a long-standing practice in the **Czech Republic**,[83] **Latvia**,[84] **Romania**[85] and **Slovakia**.[86] In this regard, the Czech Committee of Ministers on Human Rights, on its supervision of the *D. H. and Others v. Czech Republic* case, pointed out that a decreasing number of Roma children were educated in 'special schools', although their overall percentage remains disproportionately high. According to the European Roma Rights Centre (ERRC), little has changed since the judgment. Such Roma-dominated schools continue to provide an inferior education "without qualifications for any job beyond the most menial and with no hope for the future."[87]

The *Lavida and Others v. **Greece*** case,[88] final since 30 August, addressed a similar problem to 2012's *Sampani and Others v. **Greece***,[89] which became final on 29 April 2013, of placing Roma children in schools with no non-Roma students. The Greek authorities' failure to take antisegregation measures was considered discriminatory and a violation of the right to education. This practice, like that of placing Roma in schools for persons with mental disabilities, was common in other countries such as **France** and **Romania**.

7.3.2. Employment

Roma face a disproportionate risk of unemployment. When employed, they occupy mostly low-skilled, insecure and low-paid jobs. Data from the FRA survey reveal that on average only 28 % of Roma aged 16 years and older indicated 'paid work' as a main activity, compared with 45 % for non-Roma living nearby. Of those employed, 23 % held ad hoc irregular jobs, often informally, 21 % were self-employed and 9 % had part-time work.[90] These findings are also reflected in other studies and research.[91]

The Council Recommendation on effective Roma integration, from December, recommended that EU Member States "take effective measures to ensure equal treatment of Roma in access to the labour market and to employment opportunities."[92] The majority of 2013 initiatives focused on improving workplace integration and supporting Roma employment services. Many Member States set up or continued projects supporting Roma job seekers, assisting with such skills as training for active job seeking, language courses, guidance in writing CVs and developing individual employment plans. **Belgium**, **Croatia**, **France**, **Lithuania**, **Poland**, **Portugal** and **Slovenia**, for example, carried out such initiatives.

An **Austrian** project offered job and career counselling to Roma job seekers.[93] **Germany** implemented vocational guidance programmes for young Roma.[94]

In **Belgium**, intercultural mediators began providing individualised support to facilitate dialogue between local Roma communities and public institutions, and to support integration into the workforce for vulnerable groups, funded under the ESF.[95] **Portugal** organised labour mediators to encourage unemployed Roma to sign up at the labour office, and **Bulgaria**[96] established an NGO network of Roma labour mediators in June.

Cyprus, whose Roma job seekers often cannot speak English or Greek, introduced national and local language programmes,[97] but Roma participation was minimal. Job centres in **Denmark** also provided language courses.

Portugal offered basic skills adult training programmes for adults, to enable Roma, among others, to gain entry to other training leading to qualifications.[98] **Hungary** also offered adult vocational education and training courses, providing special support for training courses connected to public work. At least 15 % of individuals benefiting from labour market programmes must be of Roma origin.

Childcare services and facilities can support integration in employment. The **Czech Republic** and **Germany**,[99] therefore, took measures to increase their availability.

Some EU Member States have taken measures to address Roma women's employment challenges. In a pilot project, **Slovenia** trained 23 Roma as cooks and waiters, and then set up a restaurant employing four of them. The project promotes Roma inclusion and

the preservation of their traditional cuisine.[100] **Belgium** launched projects to support pathways to employment for Roma women, and **Hungary** developed such a project for 1,000 Roma women.[101] **Lithuania** initiated a project to foster Roma women's entrepreneurship through traditional crafts such as sewing and embroidery. The participants managed all project activities themselves. The products are all available for sale, with the proceeds reinvested in new empowerment projects for Roma women. A new **Swedish** programme intends to further the education of marginalised Roma women to increase their opportunities to find employment.

Promising practice

Promoting Roma women's education and employment

The Türr István Training and Research Institute and the National Roma Self-Government of Hungary implemented a project to enhance the education and employability of Roma women. The programme, Women Are the Opportunity!, provides Roma women with theoretical and practical vocational training. Participants are then provided with employment in social and child welfare services, including as social workers or nurses. The programme combines skills and mentoring.

The programme is targeted at women job hunters disadvantaged by a lack of education. Participants must have completed primary education.

For more information, see www.tkki.hu/page.php?mid=122

Discrimination in employment

Despite measures to improve access to the labour market and professional qualifications, Roma continue to face discrimination both in access to employment and in the workplace. The data from surveys conducted by FRA, the UNDP and the World Bank reflect this reality: a significant part of the gap in employment between Roma and non-Roma cannot be explained by education or qualification level.[102]

A research study in **Hungary** by the Equal Treatment Authority,on employee selection practices, revealed that Roma job seekers, or those who were perceived to be Roma, faced 10 times as high as those for non-Roma.[103] A study published in 2013 confirmed such discrimination, showing similar results for those participating in public employment schemes.[104] The **Finnish** Ombudsman for Minorities[105] also confirmed discrimination against Roma in employment and housing.

Only a few EU Member States took action to eliminate discrimination in employment. **Greece** developed a project to combat discrimination in entrepreneurship, with a focus on women and young Roma and Muslim migrants.[106] The **Czech Republic** finished training employment office staff on antidiscrimination measures.[107]

Several legal developments also reflected the extent of discrimination against Roma in employment. The **Croatian** County Court of Varaždin upheld a 2012 Municipal Court verdict, which considered a shop owner's rejection of Roma applications on account of their ethnicity as discriminatory.[108]

The **Hungarian** EBH determined that a difference in the sanctions applied to two public employees for the same petty offence was due to the Roma ethnicity of one of them, and was therefore discriminatory.[109]

7.3.3. Housing

The European Commission, in its first assessment of national strategies in 2012, called on EU Member States to close the gap between Roma and non-Roma in access to housing and to public utilities, including the promotion of non-discriminatory access to housing.[110] The December Council Recommendation on effective Roma integration further recommended that Member States take effective measures to ensure equal treatment of Roma in access to housing through "eliminating any spatial segregation and promoting desegregation, promoting non-discriminatory access to social housing"[111] and ensuring access to public utilities and infrastructure. However, few Member States took action in the housing area in 2013. Housing segregation and forced evictions remained a serious concern and a huge challenge to their successful integration in many Member States.

The availability and affordability of social housing and promoting non-discrimination in access to housing are particularly important. Criteria designed for social housing for vulnerable groups often exclude Roma families.[112]

In **Portugal**, the Institute of Housing and Urban Renewal (*Instituto da Habitação e Reabilitação Urbana*) collected data on Roma community housing conditions and on municipal projects, whether finished, under way or planned. The survey findings identified 54 municipal projects, 11 of which related to housing management.

Cyprus implemented projects to repair houses and build prefabricated houses with basic amenities.[113] **Poland**, **Portugal** and **Romania** also renovated housing or improved social housing conditions. **Slovakia** is building new houses in three marginalised Roma municipalities.[114] **Greece** and **Slovenia** also undertook infrastructural improvements, building access roads and providing electricity and sewerage to Roma settlements.

The **United Kingdom** is allocating GBP 60 million up to the end of 2015 to build over 600 new, and refurbish

400 existing, pitches for Travellers.[115] **French** law requires cities with more than 5,000 inhabitants to have reception areas for *Gens du voyage*, and it allocates funding to support housing and integration projects in illegal settlements.

Promising practice

Building hope

ETP Slovakia – Centre for Sustainable Development continued to provide housing-deprived Roma in Slovakia with the opportunity to secure simple, decent and affordable homes.

'Building Hope' enables clients to build their own houses. The project uses a light construction system with less expensive recycled and ecological materials. The programme provides professional supervision, assistance with administrative requirements, and microloans to finance construction.

The basic 25 m² model includes a bathroom with toilet, washbasin and bathtub, a kitchen sink, a room for daily use and a sleeping area on an elevated floor. It is possible to enlarge the house to 37.5 m² by enclosing the porch, gaining an additional room to serve as a bedroom.

Construction takes about 12 months. Loans of up to €6,000 are to be repaid in 10 years. Participating families must take part in ETP educational and financial savings programmes, demonstrating a strong commitment to changing their lives.

The project tackles generational poverty and the social exclusion of marginalised Roma. It also allows unemployed Roma to earn wages while learning vocational, life and personal skills.

For more information, see www.etp.sk/en/category/budujeme-nadej/

Croatia, **Portugal** and **Denmark** prioritised the allocation of 25 % of social housing to those with special concerns. In **Luxembourg**, home ownership is subsidised for residents and social housing is accessible for all by priority. **Slovakia** provided a state housing allowance, although it was not specific to Roma. Three municipalities in **Bulgaria**[116] prepared a pilot scheme on modern social housing.

Czech law requires equal access to all types of housing, including social housing, but a civil society monitoring report pointed to a lack of social housing as a severe problem.[117]

Some EU Member States, including **Croatia**, provide legal support for housing, concretely financial support to enable Roma to obtain the documentation needed to legalise housing. The **Czech Republic** distributes grants to NGOs that provide housing advice.

Roma civil society has also launched housing initiatives. In the **Netherlands,** the Association of Dutch Sinti, Roma and Caravan Dwellers advocates for a continued caravan lifestyle. It also wants to serve as a partner for dialogue with public authorities in the field of housing.

Discrimination in housing

Despite efforts to improve the Roma housing situation, negative developments also took place. In **Hungary**, a programme to reduce segregated neighbourhoods faced funding-related delays.[118] Many forced evictions were reported in **Italy**, and housing loan repayment problems continued to dog Roma in **Greece**.[119]

More than half the Roma population in **Slovakia** lived in 804 marginalised concentrations. Of those Roma, 12.9 % lived in urban concentrations or ghettos within municipalities, 23.8 % lived on the outskirts of municipalities and 17 % lived in segregated areas.[120]

ECRI noted in its report on **Portugal**[121] that housing is the single greatest problem facing the Roma population. Many Roma continue to live in precarious conditions, often in shanties or tents. Many Roma rehousing programmes result in spatial and social segregation and discriminatory practices, it noted.

The **Swedish** Equality Ombudsman noted that, among Swedish national minorities, only Roma report cases of discrimination. The reports mostly concern housing, social services and the provision of goods and services.[122]

Forced evictions remain a deep-seated problem, with cases reported in 2013 in **France**, **Greece**, **Ireland**, **Italy** and **Romania**.

According to figures gathered by the Human Rights League (LDH) and the ERRC, more than 21,537 Roma were forcibly evicted from a total of 187 sites in **France** in 2013, more than double the 2012 figure. Law enforcement officers carried out 165 evictions affecting almost 19,380 people, and another 22 evictions due to fire, floods or attack, affecting 2,157 Roma.[123]

In response to repeated reports of forced evictions in **Italy** and the segregation of Roma and Sinti in various cities, the Council of Europe Commissioner for Human Rights wrote to the Mayor of Rome in December, saying that "the situation of Roma and refugees in Italy is a long-standing concern. Local authorities, including in Rome, have an important role to play in improving the living conditions of these people."

After a six-day notice period, a **Romania** municipality razed a Roma community in Eforie Sud, leaving 100 people without housing. Some families sought shelter in a dilapidated building without facilities or

made makeshift huts out of the ruins, only to see them bulldozed again two weeks later.[124]

The Public Defender of Rights[125] was asked to review the implementation and procedures used in 20 cases of forced eviction, mostly involving Roma EU citizens of Romanian or Bulgarian origin, in **France**.

The ERRC lodged a complaint against **Ireland** before the European Committee of Social Rights (ECSR). The complaint, lodged on 19 April 2013, alleged that the government had violated a number of rights in the Revised European Social Charter through evictions and substandard housing conditions for Travellers.[126] The complaint named 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) and the right to protection against poverty and social exclusion (Article 30).

In its judgment in *Winterstein and Others v. France*, not yet final, the ECtHR held that the eviction of Roma families violated the ECHR's right to respect for private and family life and home (Article 8).[127] The court noted that the claimants had been living on the same site for a long time, other housing was not provided to all of them, and the domestic authorities failed to assess the measure's proportionality. The ECtHR linked *Winterstein* to its 2012 ruling in the *Yordanova* case,[128] in which it found **Bulgaria** in violation of Article 8,[129] and reaffirmed that Roma as a minority, and one in a vulnerable situation, require states to pay special attention to their needs.

In a related case, the Administrative Tribunal of Lyon, dealing with social housing for an evicted Roma family, also determined that the municipality should provide them with emergency accommodation. A court in Aix-in-Provence also ruled that the municipality did not have the right to evict families from private property.[130] The **Greek** Ombudsman also intervened in a case relating to the eviction of Roma from a camp in Halandri, noting that the state should ensure appropriate alternative accommodation before demolishing a camp.[131] In **Romania**, the Cluj-Napoca County Court determined that the eviction of more than 300 Roma from the Pata-Rât settlement in 2010 was illegal.[132] A similar case is under way at the Regional Court of Wroclaw, **Poland**, where the municipality requested the eviction of 20 persons from an illegal camp in March.

The **Slovenian** Advocate of the Principle of Equality asked Novo Mesto municipality to reconsider social housing criteria to ensure that such housing is equally accessible to the most disadvantaged groups, including Roma.[133] In the **United Kingdom**, the High Court of Justice of England and Wales ruled, in a case concerning housing benefit for two Roma Gypsies who had moved from a public to a private caravan site, that the benefit calculation should not consider the fact they were Roma.[134] In **Sweden**, compensation was awarded to a Roma woman whose landlord had cancelled her contract, arguing that neighbours would not want to live in the same building as a "gypsy".[135]

7.3.4. Health

Poor living standards and housing conditions, exacerbated by limited access to healthcare services, mean poor health for many Roma. Data from FRA, UNDP and World Bank surveys show that a significant proportion of Roma do not have, or are not aware that they have, health insurance; in practice, this deprives them of medical services.

The Council Recommendation on effective Roma integration acknowledged the need to ensure equal treatment of Roma in access to healthcare services. It recommended that EU Member States remove barriers to accessing healthcare. It called specifically for improved access to regular preventative medical check-ups and other medical services generally provided by national healthcare services, such as free vaccination programmes, especially for children and Roma in remote areas. Still, few such measures were initiated in 2013.

Several Member States worked to improve Roma access to public health services. **Austria** launched a project to promote Roma access to the public health service, beginning interviews with health service providers and Roma community representatives in 2013.

Health mediators continued their work in **Bulgaria**,[136] **France**, **Italy**, **Romania**, **Slovakia** and **Sweden**.[137] In **Slovakia**, for example, health mediators provided information on basic hygiene, early child care, reproductive and sexual health and food and environmental safety. They also ensure access to health insurance cards and vaccinations.[138]

Several Member States deployed medical social assistants or counsellors. The **Czech Republic** uses them but, to date, only a handful have been trained.[139] **Cyprus** and **Hungary** have health guard assistants, based on a health service model launched in July for disadvantaged micro-regions. **Ireland**[140] and **Portugal** make mobile health units available, while Roma in some **Bulgarian** could use the mobile units for free gynaecological and paediatric exams and lab analyses. **Croatia, Ireland, Italy** and **Greece**[141] carried out free vaccination campaigns for Roma, particularly for Roma children.

Some Member States implemented outreach programmes and workshops on medical topics. **Finland** established such programmes on hygiene and health and the importance of regular health screening for

Roma. **Bulgaria**[142] provided HIV prevention workshops and **Hungary** delivered healthcare communication campaigns. Hungary also launched a professional educational programme in 2013, under which low-skilled persons in the most disadvantaged regions received an education on basic health-related issues. Following the training, they can pass on basic preventative information and advocate healthier lifestyles in their local communities. **Lithuanian** services ran children's courses on healthy lifestyle, hygiene and sanitation. **Poland** provided first-aid courses and continued a prevention project.

Other initiatives, involving financial support, aimed to boost the numbers of Roma health professionals. **Romania** introduced a Roma health scholarship programme in 2008 and **Bulgaria** added a programme in 2009 for Roma students to attend medical university, both of which continued implementation in 2013.

Promising practice

Providing Roma health scholarships

The Open Society Institute in Sofia and the Amalipe Centre run the Roma Health Scholarship Project, which supports Roma students who study medicine, to increase the number of Roma health professionals in the healthcare system.

The programme includes preparatory courses. In addition, every student has a university professor as a mentor. For students enrolled over the summer, Amalipe organises an advocacy camp. The camp teaches students about Roma history and specific Roma community health problems as well as soft skills, including conflict resolution and leadership and advocacy skills.

The programme started as an Open Society Institute and Amalipe NGO initiative, but the Bulgarian Ministry of Health, having recognised it as one of the three leading practices for Roma health integration, will manage it from 2014.

For more information, see http://amalipe.com/index.php?nav=projects&id=38&lang=2

Greek efforts to improve healthcare access, an important development for Roma, encountered financial difficulties in 2013. The socio-medical centres, which were operating in municipalities with a high Roma population, ran out of financing because of the country's economic crisis.

Slovakia introduced consent forms in minority languages, including in Romani, after several ECtHR sentences condemned forced sterilisations. However, several NGOs have reported that these forms have had only limited effect, because most Roma women are illiterate and understand only the spoken language.[143]

Slovenia amended its legislation to provide non-compulsory health insurance to socially disadvantaged groups, including Roma.[144] **Sweden** is developing a hotline for Roma girls on sexual and reproductive health.[145]

A paper on Roma and health mediation in **Romania**, published in late 2013,[146] promotes health equity with a particular focus on Roma.

The **Finnish** National Institute for Health and Welfare began a research project on the health situation of Roma.[147] The institute conducted a pilot study on a sample of 30 individuals at the end of 2013 and will carry out the main research from 2014 to 2016.

A **Bulgarian** programme trained teachers, doctors and social workers to cooperate with the Roma community and raised awareness on racism and anti-Roma attitudes.[148] The **Czech Republic** and **Romania** also have compulsory educational components on ethics, non-discrimination and communication in medicine, dentistry and pharmacy.[149] In **Italy**, a health mediation project was initiated in 2013 in Rome.[150]

Discrimination in access to health

Few EU Member States made progress in implementing measures to reduce discrimination in healthcare. Most of those efforts focused on training and awareness raising among healthcare professionals regarding Roma.

In addition to the few targeted measures developed in some Member States, other legal developments also highlighted the issue of Roma and health. The Chamber of the ECtHR requested observations on the case *Z. K. v. **Slovakia***[151] from the government in 2013. The applicant is a woman of Roma origin who was sterilised, allegedly without informed consent, during the delivery of her second child, when she was still underage. The case is similar to others in which Slovakia was found responsible for forcibly sterilising women of Roma origin without their consent: *V. C. v. **Slovakia***,[152] *N. B. v. **Slovakia***[153] and *I. G. and Others v. **Slovakia***,[154] the last becoming final on 29 April. However, the ECtHR did not find a violation of the prohibition of discrimination (Article 14 of the ECHR) on account of their ethnicity in any of the cases.

7.4. Anti-Gypsyism, hate speech and hate crime against Roma

A number of reports by European and international bodies such as ECRI and CAHROM, and studies carried out by NGOs, have documented the prevalence of anti-Gypsism. In July, ECRI published a report on **Portugal**[155] revealing that, according to NGO reports,

"more than half of Roma people have felt discriminated against or badly treated by the police" and criticising the national strategy for failing to address anti-Gypsyism as a specific form of racism. In late 2013, CAHROM endorsed a thematic report on combating anti-Gypsyism, hate speech and hate crime against Roma.[156]

The Research Centre for Culture, Education and anti-Gypsyism in Mannheim, RomnoKher, commissioned a report in July on anti-Gypsyism and discrimination against Sinti and Roma, which found widespread racism in all areas of **German** social life, including in access to education, employment and housing and when dealing with public authorities.[157] Right-wing political parties' use of anti-Gypsy speech in the 2013 federal election campaign further reflected racial tensions.[158]

A study in **Luxembourg**[159] also found negative attitudes towards Roma and anti-Gypsyism, with 26 % of residents not wanting a Roma neighbour. In the **Czech Republic**, a survey carried out in November 2012 found that 71 % of respondents had a negative attitude towards Roma, 10 % said that they were disgusted by Roma and 43 % were afraid of Roma.[160]

Various incidents across Europe provide further evidence of racism against Roma. In January, supporters of the extremist party Golden Dawn allegedly attacked the Roma settlement in Aitoliko, **Greece**, burning down six unoccupied makeshift homes and destroying four vehicles.[161] At the end of May, posters bearing the words "Gypsies out of the town forever"[162] appeared in the town. Other incidents included Golden Dawn members' verbal attacks against Roma outside the Kalamata Messinia hospital,[163] and incidents in the Ari Messinia village.[164]

In the **Czech Republic**, the Municipal Court of Prague recognised secondary victimisation in the existence of damages beyond material ones, in the case of Roma who suffered an attack by right-wing extremists. It overruled the sentence of the Court of First Instance. In **Hungary**, the equality body punished an entertainment establishment for refusing entrance to six Roma people on account of their ethnicity.[165]

The Vilnius Regional Court in **Lithuania** sentenced three people for a physical attack on a Roma community member, as well as two verbal attacks, including threats.[166] An ongoing case in Łódź, **Poland**, deals with an attack and threats to a Roma family in October.[167]

In **Hungary,** the Budapest Court of Justice convicted three men of premeditated homicide, with the aggravating circumstance of cruelty, for the murders of six members of the Roma community and the injury of others in a series of nine attacks committed in 2008 and 2009. A fourth man was convicted of being an accessory to multiple homicide. The court recognised a racial motivation behind the crimes.[168]

A **Hungarian** parliamentary inquiry into this case established that the National Security Office repeatedly failed to prioritise the six murders and to pass relevant information to police investigators. The Chair of the Parliament's National Security Committee announced in August that the Committee would initiate an inquiry into the investigation of the 2008–2009 Roma murders.[169]

Roma have also been subject to police abuse. In **Slovakia**, a Roma man with an intellectual disability was wrongly left in police custody for over two months following an incident in Moldava nad Bodvou.[170]

Similarly, the ECRI noted that in **Finland** "Roma are victims of racial profiling and that there are cases of police violence when members of this community are arrested, but that not much information is available on the subject."[171]

Several incidents of racist hate speech directed at Roma were reported in 2013. In **Hungary**, a founding member of the ruling Fidesz party wrote an opinion column for a newspaper in January which used highly offensive language,[172] comparing Roma to animals.[173] Some NGOs asked companies to pull their advertising from the newspaper, the *Magyar Hírlap*, until it stopped publishing racist, antisemitic or homophobic articles.

In **France**, in an interview published on 15 March in the French daily paper *Le Figaro*, the Interior Minister said that Roma migrants from Bulgaria and Romania living in camps in France had no interest in integrating into French society, "for cultural reasons or because they are in the hands of begging or prostitution networks".[174]

In **Slovakia**, the Supreme Court acquitted a politician (who was later elected regional governor of Banska Bystrica) of promoting racial hatred. The court considered there was no intention to promote hatred towards Roma. A **Slovenian** court sentenced a person for inciting hatred, violence and intolerance in a comment under a Roma-related article in a news portal. In **Spain**, a local Barcelona court acquitted the mayor of Badalona of inciting discrimination, hatred and violence for distributing flyers linking Romanian Roma to criminality.

In **Romania**, the National Council for Combating Discrimination investigated three cases regarding alleged hate speech. The Mayor of Târgu Mureş was fined for offensive remarks regarding Roma. A councillor of Alba Iulia was fined for inciting racial hatred for a statement made on a Facebook page, where he supported the sterilisation of Roma women and made derogatory remarks towards Roma. In the third case, however, the national council considered the Prime Minister's statements on a BBC show, linking criminality and Roma, acceptable under freedom of expression.

In **Italy**, the Civil Court of Pescara declared that posters and public statements by the *Popolo della Libertà* (PdL) and the *Lega Nord* in Abruzzo linking Roma to criminals were discriminatory.[175]

In **Poland**, an ongoing case is examining the possible discriminatory nature of a Facebook page on which there was incitement to use force against Roma in Andrychów.[176]

In **Italy**, the Civil Court of Rome ordered the Ministry of the Interior to destroy sensitive information on Italian Roma. Police obtained these data, including fingerprints, in accordance with nomad emergency legislation adopted in 2008, which the Council of State declared unlawful in November 2011. The Supreme Court of Cassation upheld the Council of State's decision on 26 June. In **Slovenia**, it was reported that police officers, judges and other public servants with frequent contact with Roma received training to overcome prejudices towards Roma population.[177]

Outlook

EU institutions and the Council of Europe will continue to support Member States' efforts to improve the socio-economic situation of Roma and to protect them from fundamental rights violations. This will be particularly important in view of the ongoing economic crisis, which affects social solidarity and adds 'austerity' arguments to anti-Gypsy rhetoric.

Evidence has shown that the successful implementation and sustainability of Roma integration actions depend on the political will and commitment of local and regional authorities, because they are responsible for translating national strategies into specific actions. Learning from past experience, these authorities are expected to rely less on one-off projects and rather target Roma explicitly in their mainstream activities against poverty and social exclusion, one of the seven flagship initiatives of Europe's 2020 strategy. They should also focus on gaining the trust of Roma communities through systematic efforts to ensure that they can participate actively in an equitable and meaningful way in actions that concern them. Successes on the ground would, in turn, help win over greater public support for Roma integration.

The social and economic integration of Roma, who for centuries have been socially excluded and marginalised, will be a gradual process. It is, nevertheless, important to show positive achievements and gradual progress over time. In this regard, it is expected that EU institutions and Member States will focus on developing and implementing more effective monitoring and evaluation processes.

Regular monitoring and evaluation of individual interventions and of the broader national Roma integration strategies is needed. To this end, FRA will support the Member States through its working party on Roma integration developing and testing appropriate tools and methods, and a common indicator framework to measure progress in guaranteeing the fundamental rights of Roma.

Index of Member State references

Endnotes

All hyperlinks accessed on 30 April 2014.

1 The use of the term 'Roma' in this FRA Annual report follows the approach of the Council of Europe, which uses the term to refer to "Roma, Sinti, Kale and related groups in Europe, including Travellers and the Eastern groups (Dom and Lom), and covers the wide diversity of the groups concerned, including persons who identify themselves as Gypsies." Council of Europe (2012), *Descriptive glossary of terms relating to Roma issues,* version dated 12 May 2012, Strasbourg, http://hub.coe.int/c/document_library/get_file?uuid=83de8f0d-ee32-40c9-b92e-e77edec46388&groupId=10227.

2 European Commission (2013), *Communication from the Commission to the European Economic and Social Committee and the Committee of the Regions: Steps forward in implementing National Roma Integration Strategies*, COM(2013) 454 final, Brussels, 26 June 2013, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0454:FIN:EN:HTML.

3 European Commission (2013), *Proposal for a Council Recommendation on effective Roma integration measures in the Member States*, COM(2013) 460 final, Brussels, 26 June 2013, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0460:FIN:EN:HTML.

4 Council of the European Union (2013), Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States, OJ 2013 C 278, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:378:0001:0007:EN:PDF.

5 ROMED (2013), *About ROMED*, http://coe-romed.org/about.

6 Council of Europe (2013), 'ROMACT programme launches in Bulgaria and Romania', Press release, 11 October 2013.

7 Council of Europe, Ad hoc committee of experts on Roma issues (CAHROM) (2013), *Thematic report on school attendance of Roma children, in particular Roma girls*, CAHROM(2013)5, Strasbourg, 22 April 2013, http://hub.coe.int/cahrom1.

8 CAHROM (2013), *Thematic report on social housing for Roma and legalisation of Roma settlements and houses*, CAHROM (2013)18, Strasbourg, 29 October 2013; CAHROM (2013), *Thematic report on encampment areas and other issues relating to Travellers*, CAHROM (2013)6, Strasbourg, 30 April 2013, http://hub.coe.int/cahrom1.

9 CAHROM (2013), *Thematic report on combating anti-Gypsyism, hate speech and hate crime against Roma*, CAHROM (2013)21, Strasbourg, 9 December 2013, http://hub.coe.int/cahrom1.

10 Poland, Ministerstwo Spraw Wewnętrznych i Administracji (2003), *Program na rzecz społeczności romskiej w Polsce na lata 2004–2013*.

11 Poland, Rada Ministrów(2013), *Projekt Programu Integracji Społeczności Romskiej w Polsce na Lata 2014–2020*, 30 October 2013.

12 Romea (2013), 'Czech Senate rejects EU efforts to improve Romani integration', 3 December 2013, http://www.romea.cz/en/news/czech/czech-senate-rejects-eu-efforts-to-improve-romani-integration.

13 Decade of Roma Inclusion (2013), *Civil society monitoring report on the implementation of the national Roma integration strategy and decade action plan in 2012 in Slovakia*, Budapest, pp. 21–22, http://www.romadecade.org/cms/upload/file/9270_file14_sk_civil-society-monitoring-report_en.pdf.

14 European Commission (2013), *Communication from the Commission to the European Economic and Social Committee and the Committee of the Regions: Steps forward in implementing national Roma integration strategies*, COM(2013) 454 final, Brussels, 26 June 2013, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0454:FIN:EN:HTML.

15 Bulgaria, Национален съвет за сътрудничество по етническите и интеграционните въпроси (2012), *Документи в помощ на областното планиране в съответствие с Националната стратегия на Република България за интегриране на ромите (2012–2020 г.)*, 20 December 2012.

16 EUBusiness (2013), 'Roma integration: Progress report and recommendation', 26 June 2013, http://www.eubusiness.com/topics/living-in-eu/roma-2.

17 Germany, Abgeordnetenhaus Berlin (2013), *Berliner Aktionsplan zur Einbeziehung ausländischer Roma*, 19 July 2013.

18 Sweden, Länsstyrelsen i Stockholm (2013), *Romsk inkludering*, Stockholm.

19 Latvia (2012), *Romu integrācijas politikas īstenošanas un koordinācijas konsultatīvās padomes nolikums*, 6 July 2012.

20 Slovenia, Zakon o romski skupnosti v Republiki Sloveniji, ZRomS-1, 30 March 2007.

21 Spain, Ministerio de Sanidad, Servicios Sociales e Igualdad (2012), *Estrategia Nacional para la inclusión Social de la Población Gitana 2012–2020*, www.msssi.gob.es/ssi/familiasInfancia/inclusionSocial/poblacionGitana/estrategiaNacional.htm.

22 Italy, Giunta Regionale (2013), *Istituzione del Tavolo regionale per l'inclusione e l'integrazione sociale delle persone Rom, Sinte e Camminanti e approvazione avviso pubblico*, 31 October 2013.

23 Associazione Nazione Rom (2013), 'Rom Firenze: Richiesta interrogazione parlamentare su omissioni della regione Toscana', *Firenze Today*, 24 May 2013.

24 Slovenia, *Zakon o romski skupnosti v Republiki Sloveniji*, ZRomS-1, 30 March 2007.

25 Foyer (2013), *Dienst Roma & Woonwagenbewoners Werkjaar 2012: Het overzicht*, Brussels, Foyer.

26 Netherlands, Minister van Buitenlandse Zaken (2013), 'Nieuwe Commissievoorstellen en initiatieven van de lidstaten van de Europese Unie', *Kamerstuk* 22 112-1675, 30 August 2013, p. 5.

27 European Commission (2013), *Communication from the Commission to the European Economic and Social Committee and the Committee of the Regions: Steps forward in implementing national Roma integration strategies*, COM(2013) 454 final, Brussels, 26 June 2013.

28 Austria, Bundeskanzleramt, *Dialogplattform zur Integration der Roma bis 2020*, www.bka.gv.at/site/7660/default.aspx.

29 Belgium, *Oost-Vlaams Diversiteitscentrum* (OdiCE) (2013), 'Interview with Stijn De Reu', 18 October 2013.

30 Balogh, L., Daróczi, G., Iványi, B., Moldova, Z., Novoszádek, N., Kelemen, Á., Koltai, L., Somogyi, E., Szendrey, O. and Teller, N. (2013), *Updated civil society monitoring report on the implementation of the national Roma integration strategy and decade action plan in 2012 and 2013 in Hungary*, Budapest, Decade of Roma Inclusion Secretariat Foundation.

31 Jungtinių Tautų Vystymo Programos Lietuvoje, Lietuvos čigonų bendrijos "Čigonų laužas", Lietuvos sakaliukų sąjungos, Lietuvos žmogaus teisių centro l.e.p. Lietuvos vaikų fondo, Nacionalinio socialinės integracijos instituto, Romų integracijos namų l.e., Romų visuomenės centro, Socialinio įdarbinimo centro "SOPA" (2012), *Romų ir su romais dirbančių organizacijų rezoliucija dėl romų integracijos strategijos Lietuvoje*, 15 March 2012.

32 Slovakia, Vláda SR (2013), *Stratégia SR v integrácii rómskych komunít*, Task C 4, adopted by Government Resolution No. 1/2012, 11 January 2012.

33 Център за междуетнически диалог и толерантност "Амалипе" (2013), 'Roma organizations left NCCEII', 10 April 2013.

34 European Parliament (2013), Resolution of 12 December 2013 on the progress made in the implementation of the National Roma Integration Strategies (2013/2924(RSP)), Strasbourg, www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0594+0+DOC+XML+V0//EN.

35 Croatia, Government (2013), *Odluka o osnivanju Povjerenstva za praćenje provedbe Nacionalne strategije za uključivanje Roma, za razdoblje od 2013. do 2020.*, 4 July 2013.

36 Finland, Sosiaali- ja terveysministeriö (STM)/Social- och hälsovårdsministeriet (SHM) (2009), *Suomen romanipoliittinen ohjelma: Työryhmän esitys/Politisk program för romerna i Finland: Arbetsgruppens promemoria*.

37 Information provided by the Estonian Kultuuriministeerium.

38 Movisie (2013), *Nulmeting: Ervaringen en meningen van Roma, Sinti en professionals over de sociale inclusie van Roma en Sinti in de domeinen van onderwijs, werk, wonen, gezondheid en veiligheid*, Utrecht, Movisie.

39 Hungary, Szociális Ágazati Információs Rendszer (2012), *Nemzeti Társadalmi Felzárkóztatási Stratégia indikátor rendszer*, Budapest.

40 Bulgaria, Project BG051PO001-6.2.11, 'Development of comprehensive measures for the integration of the most marginalized communities among the ethnic minorities, with a focus on the Roma', http://www.mlsp.government.bg/bg/projects/Publication_6.rar.

41 Törmä, S., Tuokkola, K. and Hurtig, J. (2013), *Lähisuhde- ja perheväkivalta romaninaisten kokemana: Avun tarpeet yhteisössä ja palvelujärjestelmässä, Helsinki*, Sosiaali- ja terveysministeriö (STM).

42 The Local (2013), 'Swedish police's Roma register ruled illegal', 15 November 2013.

43 Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No. 1083/2006, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0320:0469:EN:PDF.

44 European Social Fund (ESF) Learning Network (2014), *Reinforcing Policy Learning for Roma Inclusion, Joint report on the use of Structural Funds for Roma inclusion based on country-by-country meetings – Key Findings and Proposals*.

45 Pavee Point (2013), *Travelling with austerity: Impacts of cuts on Traveller projects and service, Dublin*, Pavee Point.

46 Romania, Ministerul Fondurilor Europene (MFE) (2013), Letter to the Centre for Legal Resources No. 35/L544, 11 November 2013.

47 FRA (European Union Agency for Fundamental Rights) (2014 forthcoming), *Education: The situation of Roma in 11 EU Member States. Roma survey – Data in focus*, Luxembourg, Publications Office of the European Union (Publications Office).

48 Council of Europe, CAHROM (2013), *Thematic report on school attendance for Roma children, in particular Roma girls*, Strasbourg, Council of Europe, CAHROM (2013)5, 22 April 2013, http://hub.coe.int/web/coe-portal/cahrom1.

49 Austria, *Vereinbarung gemäß Art. 15a B-VG über die Einführung der halbtägig kostenlosen und verpflichtenden frühen Förderung in institutionellen Kinderbetreuungseinrichtungen*, BGBl. I Nr. 99/2009, last amended by BGBl I Nr. 196/2013.

50 Czech Republic, Vláda České republiky (2013), *Informace o naplňování dekády romské integrace 2005–2015*, Prague.

51 Rajala, S., Salonen, M., Blomerus, S. and Nissilä, L. (2011), *Romanioppilaiden perusopetuksen tilannekatsaus 2010–2011 ja toimenpide-ehdotukset*, Helsinki, Opetushallitus.

52 See: www.emet.gov.hu/hatter_1/utravalo_macika.

53 Velto, U. (2013), 'Mantova, le borse di studio per studenti sinti e rom', 24 January 2013.

54 Poland, Ministerstwo Administracji i Cyfryzacji (MAC) (2013), *Konkurs stypendialny dla uczniów romskich szczególnie uzdolnionych w 2013 r., realizowany dzięki dotacji Ministra Administracji i Cyfryzacji*.

55 Lesnevskaya, A. (2013), 'Milano, il comune sospende scuolabus per bimbi rom: "A rischio presenza in classe"', *Il Fatto Quotidiano*, 10 November 2013.

56 Portugal, Programa Escolhas (2013), 'Lançamento da campanha "Boas Notas"', 2 September 2013.

57 Bulgaria, Министерство на труда и социалната политика (2009), *BG051PO001- 4.1.03 – Интеграция на децата и учениците от етническите малцинства в образователната система*, 19 October 2009.

58 Portugal (2013), *Portaria n. 292-A/2012 que cria, no âmbito da oferta formativa de cursos vocacionais no ensino básico, uma experiência-piloto de oferta destes cursos, no ano letivo de 2012–2013 e regulamenta os termos e as condições para o seu funcionamento*, 26 September 2012.

59 Information provided by the Ministry of Education and Culture.

60 Austria, Expertenrat für Integration (2013), *Integrationsbericht 2013,* Vienna.

61 Cyprus (2012), Policy measures of Cyprus for the social inclusion of Roma, January 2012.

62 Information provided by the Ministry of the Environment.

63 See: www.jelgava-soclp.lv/?sid=160.

64 Sweden, Arbetsmarknadsdepartementet (2013), 'Fler ska få läsa nationella minoritetsspråk', Press release, 10 September 2013.

65 Sweden, Regeringen (2012), *Regeringens strategi för romsk inkludering 2012–2032*, 16 February 2012.

66 Portugal (2012), *Resolução do Conselho de Ministros 68/2012 que procede à renovação, para o período de 2013 a 2015, do Programa Escolhas*, 9 August 2012.

67 See: Germany, Verband Deutscher Sinti und Roma e.V., Landesverband Schlesswig-Holstein, www.sinti-roma-sh.de/index.php/14-sample-data-articles?start=3.

68 See: Austria, Romano Centro, *Lernhilfe und Elternarbeit*, www.romano-centro.org/index.php?option=com_content&view=article&id=3%3Alernhilfe&catid=12%3Aprojekte&Itemid=4&lang=de.

69 See: Poland, Fundacja Edukacja dla Demokracji, Mniejszości aktywne lokalnie, available at: http://mniejszosci.edudemo.org.pl/dobre-praktyki/73-dzialaniamniejszosci/262-zawod-asystent-edukacji-romskiej.

70 Poland, Kultura Polskich Romów (2013), 'Poznajmy się: Edukacja dla integracji – materiały edukacyjne dla uczniów romskich', 8 October 2013.

71 Information provided by the Romanian Ministry of National Education, Press Office.

72 See: Slovakia, *Vzdelávanie pedagogických a odborných zamestnancov, Vzdelávaním pedagogických zamestnancov k inklúzii marginalizovaných rómskych komunít*, http://web.eduk.sk/?q=node/33.

73 Information provided upon request by the Slovenian Ministry of Education, Science and Sport.

74 See: Sweden, Romanit.fi, available at: www.romanit.fi/.

75 Romania, Ministerul Educației Naționale, Biroul de Presă (2013), Letter No. 170/BP/18.11.2013 sent by email to the Centre for Legal Resources, on file with the national focal point.

76 Latvia, Ventspils pilsētas dome (2013), Letter No 1-81/1383 to the Ombudsperson's Office, 9 May 2013.

77 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2013), *ECRI report on Finland (fourth monitoring cycle)*, Strasbourg, Council of Europe, 9 July 2013, www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Finland/FIN-CbC-IV-2013-019-ENG.pdf.

78 United Nations (UN), General Assembly (2013), *Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance Mutuma Ruteere. Addendum: Visit to Spain*, 6 June 2013, A/HRC/23/56/Add.2, www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-56-Add-2_en.pdf.

79 Romea (2013), *Czech School Inspectorate: One-third of "practical school" pupils are Romani*, 3 December 2013.

80 Kertesi, G. and Kézdi, G. (2013), *School segregation: School choice and educational policies in 100 Hungarian Towns*, Budapest, Roma Education Fund, Section 5, http://www.romaeducationfund.hu/news/ref/news-and-events/school-segregation-school-choice-and-educational-policies-100-hungarian-tow.

81 Hungary, Egyenlő Bánásmód Hatóság (EBH) (2013), 'Case 340/2013', Press release.

82 European Court of Human Rights (ECtHR), *Horváth and Kiss v. Hungary*, No. 11146/11, 29 January 2013.

83 Romea (2013), 'Czech School Inspectorate: One-third of "practical school" pupils are Romani', 3 December 2013.

84 Council of Europe, Advisory committee on the FCNM (2013), *Second opinion on Latvia*, Strasbourg, Council of Europe, 18 June 2013.

85 Council of Europe, Committee of Ministers (2013), Resolution CM/ResCMN(2013)7 on the implementation of the Framework Convention for the Protection of National Minorities by Romania, 18 December 2013, https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCMN(2013)7&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864.

86 Agence France-Presse (2013), 'Slovaks take first step to integrating Roma in schools', 27 September 2013.

87 European Roma Rights Centre (ERRC) (2013), *Written comments by the European Roma Rights Centre concerning the Czech Republic for consideration by the European Commission on the transposition and application of the Race Directive and on the legal issues relevant to Roma integration*, ERRC, April 2013, p. 9, www.errc.org/cms/upload/file/czech-republic-red-written-comments-5-april-2013.pdf.

88 ECtHR, *Lavida and Others v. Greece*, No. 7973/10, 30 May 2013.

89 ECtHR, *Sampani and Others v. Greece*, No. 59608/09, 11 December 2012.

90 FRA (2014 forthcoming), *Poverty and employment: The situation of Roma in 11 EU Member States. Roma survey – Data in focus*, Luxembourg, Publications Office.

91 Messing, V. (ed), Beremányi, B. Kureková, L. Konsteková, J. Pamporov, A. and Pop, F. (2013), *'From benefits to brooms', Case studies report on the implementation of active labour market policies for Roma at local level*, Neujobs Working Paper No. 19.3, Neujobs.

92 Council of the European Union (2013), Council recommendation of 9 December 2013 on effective Roma integration measures in the Member States, OJ 2013 C 378/01, Point 1.4.

93 See: Austria, Volkshilfe Österreich, *Roma-Initiative THARA*, www.volkshilfe.at/thara.

94 See: Germany, Xenos Integration und Vielfalt, *Junge Roma in Berlin: Berufliche Orientierung zur besseren Integration in den Arbeitsmarkt*, www.xenos-panorama-bund.de/index.php/projektlandkarte/projektprofile-lernort-1/333-junge-roma-in-berlin.

95 For more information, see : Belgium, SPP Intégration Sociale, Lutte contre la Pauvreté, Economie Sociale et Politique des Grandes Villes/POD Maatschappelijke Integratie, Armoedebestrijding, Sociale Economie en Grootstedenbeleid (2013), 'Appel 2014 (année de transition) pour les promoteurs du Programme opérationnel objectif Compétitivité régionale et Emploi de l'Etat fédéral FSE 2007–2013, objectif 2, axe 1: Projet Pilote Rom', www.mi-is.be/sites/default/files/doc/appel_a_projets_rom_2014_valide.doc.

96 Bulgaria, Министерство на труда и социалната политика (2012), *Национална програма „Активиране на неактивни лица"*, 18 October 2012.

97 Cyprus (2012), *Policy measures of Cyprus for the social inclusion of Roma*, January 2012.

98 Portugal (2013), *Portaria n.º 216-C/2012, primeira alteração à Portaria n.º 1100/2010, de 22 de outubro, que aprova o programa de formação em competências básicas e visa a aquisição, por parte dos adultos, de competências básicas de leitura, escrita, cálculo e uso de tecnologias de informação e comunicação*, 18 July 2013.

99 Germany, Romano Bündnis Berlin (2013), 'Position des Romano Bündnis (Berlin) zum „Berliner Aktionsplan zur (gegen die) Einbeziehung ausländischer Roma"'.

100 Information provided by the Slovenian Ministry of Labour, Family, Social Affairs and Equal Opportunities.

101 See: Hungary, *Türr István Képző és Kutató Intézet* (TKKI), www.tkki.hu/page.php?mid=122.

102 O'Higgins, N. (2012), 'Roma and non-Roma in the labour market in central and south eastern Europe', *Roma Inclusion Working Papers*, Bratislava, UNDP, p. 35.

103 Hungary, EBH (2011), Employee selection practice in the mirror of discrimination, Budapest, EBH.

104 Koltai, L. (2013), *A közfoglalkoztatottak jellemzői*, Budapest, Esély Labor Egyesület, pp. 32–33.

105 Finland, Vähemmistövaltuutettu (2013), 'Vähemmistövaltuutetun romaniselvityksen tutkimushaastattelut sujuivat onnistuneesti', Press release, 22 August 2013.

106 Information provided upon request by the Greek Government.

107 Czech Republic, Vláda České republiky (2013), *Informace o naplňování dekády romské integrace 2005–2015*, Prague.

108 Croatia, Županijskog suda u Varaždinu, Gž-3684/12, 2 April 2013.

109 *Ibid*.

110 European Commission (2012), *Social Committee and the Committee of the Regions national Roma integration strategies: A first step in the implementation of the EU Framework*, COM(2012) 226 final, Brussels, 21 May 2012.

111 Council of the European Union (2013), Council recommendation of 9 December 2013 on effective Roma integration measures in the Member States, OJ 2013 C 378/01, Point 1.6.

112 See: Council of Europe, CAHROM (2013), *Thematic report on social housing for Roma and legalisation of Roma settlements and houses*, Strasbourg, Council of Europe, 29 October 2013, CAHROM (2013)18, http://hub.coe.int/web/coe-portal/cahrom1.

113 Cyprus (2012), 'Policy measures of Cyprus for the social inclusion of Roma', January 2012.

114 Slovakia, Ministerstvo vnútra (2013), *Zoznam schválených žiadostí o dotácie*, 23 October 2013.

115 United Kingdom, Department for Communities and Local Government (2012), 'New site funding offers fairer deal for Travellers and the settled community', 7 January 2012.

116 Bulgaria, Министерство на труда и социалната политика (2012), BG051PO001-1/4/5/6.0.01 'Интегра', 12 November 2012.

117 Decade of Roma Inclusion Secretariat Foundation (2013), *Civil society monitoring report on the implementation of the national Roma integration strategy and decade action plan in 2012 in the Czech Republic*, Budapest, Decade of Roma Inclusion Secretariat Foundation.

118 Hungary, Társadalmi Felzárkózásért Felelős Államtitkárság (2013), *Felzárkózási Stratégia – Nyomonkövetési Beszámoló – 2013. Június,* pp. 45–47.

119 Greece, Βουλή των Ελλήνων (2013), 'Απάντηση σε ερώτηση', α.π. 2/78194/025/17, Press release, September 2013.

120 Slovakia, Ministerstvo vnútra SR (2013), 'Atlas rómskych komunít'.

121 ECRI (2013), *ECRI report on Portugal (fourth monitoring cycle)*, Strasbourg, Council of Europe, 9 July 2013, para. 92, www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Portugal/PRT-CbC-IV-2013-020-ENG.pdf.

122 Sweden, Diskrimineringsombudsmannen (2013), *Årsrapport 2012*, Stockholm.

123 ERRC (2014), 'Census: Forced evictions of migrant Roma in France', 14 January 2014.

124 Amnesty International (2013) *Public statement: Romanian Government is failing homeless Roma in Eforie Sud*, EUR 39/021/2013, 22 October 2013.

125 France, Défenseur des Droits (2013), *Bilan d'application de la Circulaire Interministerielle du 26 août 2012 relative à l'anticipation et à l'accompagnement des opérations d'évacuation des campements illicites*, 25 June 2013.

126 Council of Europe, European Committee of Social Rights (ECSR) (2013), *European Roma Rights Centre v. Ireland*, Complaint No. 100/2013, 19 April 2013.

127 ECtHR, *Winterstein and Others v. France*, No. 27013/07, 17 October 2013.

128 ECtHR, *Yordanova and Others v. Bulgaria*, No. 25446/06, 24 April 2012.

129 FRA (2013), *Fundamental rights: Challenges and achievements in 2012*, Annual report, Luxembourg, Publications Office, p. 198.

130 France, *Tribunal administratif de Lyon*, Ordonnance de référé (2013) 1302169, 4 April 2013.

131 Greece, Συνήγορος του Πολίτη (2013), 'Προσωρινή αναβολή της κατεδάφισης του καταυλισμού στο Χαλάνδρι και συνεργασία για την ολοκλήρωση της μετεγκατάστασης των Ρομά, ζητά ο Συνήγορος του Πολίτη', Press release, 13 May 2013.

132 ERRC (2014), 'Romanian court victory: Forced eviction of Roma to Pata-Rât was illegal', 7 January 2014.

133 Slovenia, *Zagovornik načela enakosti*, Case 0700-19/2013/1 before 0921-87/2011-UEM, 28 March 2013.

134 United Kingdom, High Court of England and Wales (2013), *R. (Knowles) v. the Secretary of State for Work and Pensions Marc Willers and Desmond Rutledge Cottle*, EWHC 19 (Admin), 17 January 2013.

135 Sweden, Värmland Nacka tingsrätt (2013), Case No. ANM 2011/981, 13 May 2013.

136 See Bulgaria, *Сдружение Национална мрежа на здравните медиатори*, www.zdravenmediator.net/index.php?pagetype=text&page_id=37.

137 Sweden, Regeringen (2012), *Regeringens strategi för romsk inkludering 2012–2032*, 16 February 2012.

138 Slovakia, Úrad verejného zdravotníctva (2011), *Informatívna správa o efektívnosti výsledkov získaných plnením 2. Etapy Programu podpory zdravia znevýhodnených rómskych komunít na Slovensku na roky 2009–2015*, pp. 10–12.

139 Czech Republic, Vláda České republiky (2013), *Informace o naplňování dekády romské integrace 2005–2015*, Prague.

140 Hunter, N. (2013), 'Mobile GP clinic for Roma community', *Irish Health*, 6 March 2013.

141 Greece, Δίκτυο Ιατροκοινωνικών Κέντρων (2013) 'Αλεξάνδρειας: Δωρεάν εμβολιασμός σε Τσιγγάνους μαθητές σε Κορυφή και Παλαιοχώρα', 28 March 2013.

142 Bulgaria, Министерство на здравеопазването (2006), *Министерството на здравеопазването получава пет мобилни медицински кабинети и два флуорографа за обслужване на уязвимите малцинствени групи*, 12 December 2006.

143 Ženské Kruhy (2013), 'Naše aktivity´, 24 April 2013.

144 Slovenia, *Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju* (ZZVZZ), 12 February 1992 and subsequent modifications.

145 Sweden, Regeringen (2012), *Regeringens strategi för romsk inkludering 2012–2032*, 16 February 2012.

146 World Health Organization (WHO), Regional Office for Europe (2013), *Roma health mediation in Romania: Case study*, Roma Health Case Study Series no. 1, Copenhagen, WHO.

147 Finland, Tilastokeskus (2013), *Hyvinvointikatsaus*, 9 December 2013.

148 See: Amalipe, Centre for Interethnic Dialogue and Tolerance, available at: www.totouchtheuntouchable.com.

149 Czech Republic, Vláda České republiky (2013), *Informace o naplňování dekády romské integrace 2005–2015*, Prague.

150 See: Caritas Roma, www.caritasroma.it.

151 ECtHR, *Z. K. v. Slovakia*, No. 13606/11, lodged on 28 February 2011.

152 ECtHR, *V. C. v. Slovakia*, No. 18968/07, 8 November 2011.

153 ECtHR, *N. B. v. Slovakia*, No. 29518/10, 12 June 2012.

154 ECtHR, *I. G. and Others v. Slovakia*, No. 15966/04, 13 November 2012.

155 ECRI (2013), *ECRI report on Portugal (fourth monitoring cycle)*, Strasbourg, Council of Europe, 9 July 2013, www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Portugal/PRT-CbC-IV-2013-020-ENG.pdf.

156 See: Council of Europe, CAHROM (2013), *Thematic report on combating anti-Gypsyism, hate speech and hate crime against Roma following a thematic visit to Hungary on 4–6 September 2013*, CAHROM (2013)21, Strasbourg, Council of Europe.

157 End, M. (2012), *Antiziganismus, zum Stand der Forschung und der Gegenstrategien*, RomnoKher- Haus für Kultur, Bildung und Antiziganismusforschung, Marburg.

158 Endstation Rechts (2013), 'Strafanzeigenflut gegen NPD-Wahlplakate', 23 August 2013.

159 CEFIS, 'L'intégration au Luxembourg, indicateurs et dynamiques sociales, Parcours de personnes originaires du Cap-Vert et de l'ex-Yougoslavie', *RED,* No. 14.

160 Hurrle, J. (2013), *Monitorovací zpráva občanské společnosti o plnění národní strategie integrace Romů a akčního plánu dekády v České republice v roce 2012*, Budapest, Decade of Roma Inclusion Secretariat Foundation, p. 35.

161 *Ta Nea* (2013), 'Νέα επεισόδια ξέσπασαν σε καταυλισμό Ρομά στο Αιτωλικό', 5 January 2013. According to the media, the majority of those who attacked the Roma were members of Golden Dawn; *Kathimerini* (2013), 'Χρυσαυγίτες κατά Ρομά στο Αιτωλικό', 12 October 2013.

162 Planet Greece (2013), 'Αφίσες κατά των τσιγγάνων στο Αιτωλικόο', 31 May 2013.

163 Ελευθερια (2013), 'Επεισόδια Χρυσής Αυγής-Τσιγγάνων στο νοσοκομείο Καλαμάτας', 9 April 2013.

164 Ελευθερια (2013), 'Νύχτα τρόμου και επεισοδίων με... Χρυσή Αυγή', 10 August 2013.

165 Hungary, EBH (2013), 'Case 143/2013', press release.

166 Lithuania, *Vilniaus apygardos teismas*, Decision No. 1A-755-195/2013, 18 December 2013.

167 Poland, Sąd Rejonowy Łódź- Śródmieście.

168 Hungary, *Budapest Környéki Törvényszék* (2013), 'A Budapest Környéki Törvényszék sajtóközleménye a 2013. aug. 6-án hozott elsőfokú ítéletről', press release, 7 August 2013.

169 Magyar Távirati Iroda (MTI) (2013), 'A nemzetbiztonsági bizottság is előveszi a romagyilkosságok ügyét', HVG, 10 August 2013.

170 ERRC (2013), 'Slovak investigation bodies disciplined after mentally disabled Romani man "forgotten" in custody', 14 October 2013.

171 ECRI (2013), *ECRI report on Finland (fourth monitoring cycle)*, Strasbourg, Council of Europe, 9 July 2013, p. 33, www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Finland/FIN-CbC-IV-2013-019-ENG.pdf.

172 FRA (2013), *Racism, discrimination, intolerance and extremism: Learning from experiences in Greece and Hungary*, Luxembourg, Publications Office, p. 26.

173 World Jewish Congress (2013), 'Leading Hungarian journalist says Gypsies are "animals" and should be "cast out of society"', 10 January 2013.

174 EurActiv.com (2013), 'French minister accused of racism following Roma comment', 18 March 2013.

175 Cronache di ordinario razzismo (2013), 'Pescara: Pdl e Lega Nord condannati per discriminazione', 1 July 2013.

176 Zarząd Główny Stowarzyszenia Romów w Polsce (2013), 'Oświadczenie Zarządu Głównego Stowarzyszenia Romów w Polsce w sprawie artykułu „Gazety Wyborczej" z dnia 3 i 4 września br. pt. 1,5 tys. internautów zażądało wypędzenia Romów z Andrychowa', 4 September 2013.

177 Slovenia, Republike Slovenije (2012), 'Drugo poročilo Vlade Republike Slovenije o položaju romske skupnosti v Sloveniji: Poročilo o izvajanju Zakona o romski skupnosti v Republiki Sloveniji (Uradni list RS, št. 33/2007) in Nacionalnega programa ukrepov za Rome Vlade republike Slovenije za obdobje 2010–2015', Ljubljana, 21 November 2012.

Access to efficient and judicial cooperation

Rights of crime victims

UN & CoE

January

February

28 March – United Nations (UN) General Assembly adopts Resolution 67/187 on the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

March

April

May

14–15 June – Council of Europe's Venice Commission issues an opinion on the Fourth Amendment to the Fundamental Law of Hungary

24 June – UN Human Rights Council adopts a resolution on national institutions for the promotion and protection of human rights

June

July

August

September

21 October – In *Del Río Prada v. Spain*, the European Court of Human Rights (ECtHR) finds it unlawful to extend detention retroactively because of a change in case law

October

4 November – In *Anghel v. Italy*, the ECtHR finds a violation of the right to a fair trial when a legal representative is not appointed in a concrete and effective manner

21 November – UN General Assembly Third Committee adopts a resolution on national human rights institutions

November

4 December – Council of Europe Commissioner for Human Rights releases a research paper on the economic crisis's impact on human rights protection

December

EU

17 January – Court of Justice of the European Union (CJEU) provides further guidelines on legal standing of individuals in direct actions for annulment of EU legislative acts in *Inuit Tapiriit Kanatami and Others*

29 January – In *Ciprian Vasile Radu*, the CJEU addresses the role of fundamental rights in the execution of the European arrest warrant

30 January – The European Commission issues a report on Romania under the Cooperation and Verification Mechanism

January

26 February – In *Stefano Melloni v. Ministerion Fiscal*, the CJEU elaborates on the role of fundamental rights in the execution of the European arrest warrant

26 February – In *Åklagaren v. Hans Åkerberg Fransson*, the CJEU confirms that imposing a combination of non-criminal tax penalties and criminal penalties is not contrary to the principle that no one shall be tried twice for the same offence

February

27 March – European Commission publishes the Justice Scoreboard

March

April

9–10 May – Irish Presidency of the Council of the European Union hosts a conference on 'A Europe of equal citizens: Equality, fundamental rights and the rule of law'

May

7 June – Justice and Home Affairs Council issues *Conclusions on fundamental rights and the rule of law*

June

17 July – European Commission submits a proposal for a regulation on the establishment of the European Public Prosecutor's Office (EPPO)

July

August

September

22 October – Measures D and C1 of the EU Criminal Procedure Roadmap – the right of access to a lawyer – are adopted

October

7 November – In *DAS Nederlandse Rechtsbijstand Verzekeringsmaatschappij NV*, the CJEU provides guidance on how to interpret the insured's right to choose a lawyer

21 November – European Commission publishes the Flash Eurobarometer Survey on Justice in the EU

27 November – European Commission adopts the 'Procedural Rights Package' including five legal measures to strengthen procedural safeguards for citizens in criminal proceedings (including part of Measure C2 of the EU Criminal Procedure Roadmap)

November

December

8 Access to justice and judicial cooperation

The need to improve the efficiency and transparency of national justice systems and enhance the implementation of existing fundamental rights instruments, the search for an effective rule of law mechanism, and further budget cuts extending beyond courts to non-judicial mechanisms – these were some of the main challenges in the area of access to justice and judicial cooperation in 2013. Positively, several EU Member States acted to modernise and further develop e-justice to tackle overly long proceedings. They also continued to reform non-judicial bodies with a human rights remit to strengthen their fundamental rights role. At the EU level, a specific tool – a 'Justice Scoreboard' – was introduced to boost the efficiency of national judicial systems, and the European Commission opened the debate on improvements in the area of justice needed in the next five years after the Stockholm Programme.

8.1. EU and other international actors take steps to strengthen the rule of law and justice systems

International and European actors focused in 2013 on strengthening the rule of law, specifically on the quality, independence and efficiency of judicial systems (see also the Focus and Chapter 10 on EU Member States and international obligations).

The EU's Justice and Home Affairs Council adopted specific conclusions on fundamental rights and the rule of law on 7 June 2013. Drawing upon the related discussion at the Ireland's EU Presidency conference 'A Europe of equal citizens: Equality, fundamental rights and the rule of law', jointly organised with FRA, the Irish Equality Authority and the Human Rights Commission,[1] the council emphasised that respecting the rule of law is a prerequisite for the protection of fundamental rights and that any work in this context shall "make full use of existing mechanisms and cooperate with other relevant EU and international bodies, particularly with the Council of Europe, in view of its

Key developments in the area of access to justice and judicial cooperation

- The rule of law and the issue of overall accessibility of justice for all persons in the EU, including a full understanding of one's rights and the means to realise them in times of ongoing austerity measures, remain high on the EU agenda in 2013.
- The European Commission starts a debate on the shape of the EU's justice policy after the Stockholm Programme in the area of justice and home affairs, which comes to a close at the end of 2014.
- The evolving 'Justice Scoreboard' tool, which aims to enhance the effective functioning of national justice systems across the EU, is introduced.
- The criminal procedure roadmap of the EU takes another step forward with the adoption of the Directive on the right of access to a lawyer.
- EU Member States continue to introduce initiatives to restructure national justice systems, including through the use of e-justice tools.
- The UN General Assembly takes a landmark step, issuing a resolution calling for a strengthened role for national human rights institutions within the UN system.

key role in relation to promotion and protection of human rights, democracy and the rule of law."

FRA ACTIVITY

Promoting the rule of law

The 2013 FRA Symposium, which focused on promoting the rule of law, found that any potential assessment should look not only at available laws and institutions (structures) or policies (processes) but also, and especially, at the situation on the ground (outcome). Participants considered that the rule of law should be measured not only in EU Member States but also in the EU and its institutions. These and other conclusions from the symposium were also issued as a Council document to further inform the discussions of the Council of the European Union on the rule of law.

Source: http://fra.europa.eu/sites/default/files/fra-2013-4th-annual-symposium-report.pdf

In the follow-up report on the rule of law recommendations made to Romania under the Co-operation and Verification Mechanism in 2012,[2] the European Commission welcomed steps taken to restore respect for the constitution and the decisions of the Constitutional Court, yet noted that the "lack of respect for the independence of the judiciary and the instability faced by judicial institutions remain a source of concern".[3]

In June 2013, the Council of Europe expert body, the Venice Commission, issued an opinion on **Hungary** on the compatibility of constitutional amendments with the principle of the rule of law. The Venice Commission examined the Fourth Amendment to the Fundamental Law of Hungary, adopted in March 2013[4] – an adoption preceded by a critical statement issued jointly by the President of the European Commission and the Secretary General of the Council of Europe, raising concerns about just that compatibility. The Venice Commission opinion raises new concerns with respect to the rule of law and independence of the judiciary.[5] It pointed in particular to the dominant position of the President of the National Judicial Office compared with the National Judicial Council, to the court case transfer system and to the limitations imposed on the role of the Constitutional Court. The European Parliament[6] and the UN High Commissioner for Human Rights,[7] among others, subsequently reiterated these concerns and urged the Hungarian government to address all of the issues the Venice Commission had raised over the last few years. The Hungarian Parliament responded by adopting the Fifth Amendment to the Fundamental Law of Hungary on 16 September 2013 to address some of the controversial elements of the previous amendment. It repealed, for example, the rules on court case transfers.[8]

According to the European Commission 2013 Flash Eurobarometer Survey on Justice in the EU,[9] public perceptions about justice and the rule of law across the EU are consistently low in the **Czech Republic**, **Greece**, **Italy** and **Spain**. Most respondents think there are large differences between national judicial systems in terms of quality (58 %), efficiency (58 %) and independence (52 %). Majorities in **Bulgaria** (71 %), **Slovenia** (70 %) and **Romania** (69 %) think their justice system is worse than others in the EU.

In addition to the rule of law discussion, the issue of overall accessibility of justice for all persons in the EU, including a full understanding of one's rights and the means to realise them in times of ongoing austerity measures, also continued to be high on the agenda in 2013. A trend of cutting legal aid or justice budgets in general continued across the EU Member States, including **Ireland**,[10] **Portugal**[11] and the **United Kingdom**.[12]

> *"[Calls] on governments to pursue all the necessary measures to ensure access to justice for all, with a particular focus on people living in poverty, who need to have a full understanding of their rights and the means to realise them."*
>
> *European Parliament (2013), Resolution on the impact of the financial and economic crisis on human rights, 18 April 2013*

On 4 December 2013, the Council of Europe Commissioner for Human Rights pointed out that national decisions on austerity measures should not have a disproportionate impact on the human rights protection system. The commissioner stressed the need to grant effective access to justice to all during economic downturns by maintaining an effective and independent judiciary and a legal aid system.[13]

'Justice for growth' issues aim to support the economy and its growth. They include the effectiveness of justice systems, the independence of justice and the European area of justice based on mutual trust. Such issues and the rule of law were at the heart of discussions on the future of EU justice policy. These discussions, held at the 'Assises de la Justice'[14] hosted by the European Commission in November 2013, are meant to feed into the European Commission's new plan for EU justice policy, after the present EU programme for justice and home affairs, the Stockholm Programme, concludes. FRA contributed to the discussions by submitting a paper and following up the ensuing consultation process with a more detailed document on the future role of fundamental rights in EU justice and home affairs policies.

EU and Member States move to enhance effectiveness of national justice systems

In the context of its 'justice for growth' agenda, the European Commission – drawing mainly on the expertise

of the Council of Europe Commission for the Efficiency of Justice[15] – also introduced its new tool, the 'Justice Scoreboard' (see also the Focus). Through this tool, the European Commission aims to enhance the effective functioning of EU national justice systems. It will do so by regularly bringing together a variety of data – in particular, data available about civil and commercial cases – to identify any shortcomings and hence support reforms in national justice systems.[16] The 2013 Justice Scoreboard's data include the business-friendliness of each country's justice system; justice resources, including budget allocation, human resources, workload, use and accessibility of justice such as length and cost of proceedings; and the use of simplified and alternative dispute resolution procedures. The EU Justice Scoreboard is intended to be a tool that will gradually extend over more areas.

8.1.1. EU adopts new laws to facilitate access to justice and judicial cooperation

Progress on the criminal procedures roadmap continued, with new instruments adopted or proposed.[17] In 2013, the Council of the EU adopted a directive on the right of access to a lawyer (originally intended as Measure D and a part of Measure C (C1) of the roadmap).[18] The directive sets out minimum rules on the rights: to access a lawyer in criminal proceedings and in European arrest warrant (EAW) proceedings from the earliest stage until proceedings conclude; to have a third party informed upon deprivation of liberty; and to communicate with third persons and with consular authorities while deprived of liberty. Member States have three years to implement this instrument.

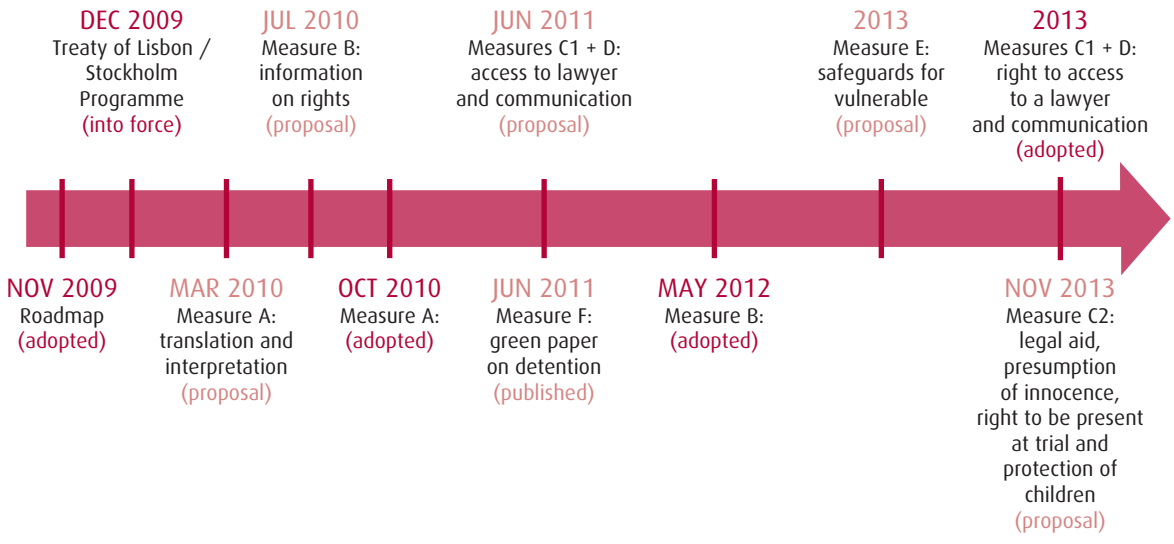
In November 2013, the Commission presented a package of five legal measures to strengthen the procedural safeguards for citizens in criminal proceedings, including part of Measure C2 on legal aid. It consists of three proposals for directives on:

- strengthening certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings;[19]
- special safeguards for children suspected or accused in criminal proceedings (see Chapter 4 on the rights of the child and the protection of children);[20]
- provisional legal aid (at the early stages of the proceedings and until the competent authority has made a final decision on the application for legal aid) for suspects or accused persons deprived of liberty and legal aid in EAW proceedings.[21]

These directives would apply both to domestic and cross-border proceedings. Two European Commission recommendations accompany the three proposals for directives and focus on:

- procedural safeguards for vulnerable persons suspected or accused in criminal proceedings,[22] aiming to contribute to raising standards on the procedural rights of vulnerable adults and to enhancing mutual trust;
- the right to legal aid for suspects or accused persons in criminal proceedings, aiming to provide common objective criteria to be taken into account when assessing eligibility for legal aid.[23]

Figure 8.1: Criminal procedures roadmap



Source: FRA, 2013

The proposal for a regulation on the establishment of the European Public Prosecutor's Office (EPPO) presented a novel development in the area of criminal law in 2013. The proposal envisages a decentralised EU prosecution office with exclusive competence to investigate, prosecute and bring to judgment crimes against the EU's financial interests.[24] European Parliament discussions focused on the proposal's safeguards to guarantee the rights of individuals involved in EPPO's investigations as laid down in national law, Union law and the Charter of Fundamental Rights of the European Union.

FRA ACTIVITY

Establishing the European Public Prosecutors' Office – fundamental rights concerns

In response to a European Parliament request of 20 December 2013, FRA examined the European Commission's proposal for a regulation to establish a European Public Prosecutor's Office. FRA looked at the proposal's compatibility with the EU Charter of Fundamental Rights, in particular with the rights to an effective remedy and to a fair trial (Article 47); presumption of innocence and right to defence (Article 48); legality and proportionality (Article 49); and the provision that no one shall be tried twice for the same offence, or double jeopardy (Article 50). FRA's opinion analysed the substantive provisions of the proposal, focusing on five main issues:

1. judicial review and other safeguards;
2. defence rights;
3. victims' rights;
4. legal clarity;
5. regular assessment and trust.

It raised a number of fundamental rights concerns, particularly with regard to the complex and at times unclear interaction between the national and EU levels. The opinion underlined the importance of judicial review of EPPO activities, and raised the question of where the responsibility for such reviews should lie.

Source: *FRA (2014),* Opinion of the European Union Agency for Fundamental Rights on a proposal to establish a European Public Prosecutor's Office, *FRA Opinion – 1/2014, Vienna, available at: http://fra.europa.eu/en/opinion/2014/fra-opinion-proposal-establish-european-public-prosecutors-office*

Another 2013 development aimed to improve access to justice in civil proceedings by expanding the scope of those who are allowed to bring a claim before a court or other redress mechanisms, known as broadening legal standing. The European Commission adopted on 11 June 2013 a series of common, non-binding principles for a collective redress mechanism, under which a single court action in an EU Member State addresses many individual claims relating to the same case collectively.[25] National redress mechanisms should be available in different areas where EU law grants rights to citizens and companies, notably in consumer protection, competition, environmental protection and financial services.

In addition, on 21 May 2013 the Council adopted two new binding EU instruments allowing disputes over online transactions to be settled faster and at less cost than through the courts: a Directive on alternative dispute resolution for consumer disputes (ADR)[26] and a Regulation on online dispute resolution for consumer disputes (ODR).[27] The directive is expected to give all EU consumers the chance to resolve domestic and cross-border disputes without going to court, regardless of product or service type or place of purchase. To address the particular needs of online consumers, the regulation will create an EU-monitored online platform which will allow disputes to be resolved online and within a set period of time. Member States are required to implement the new rules by July 2015, after which the ODR platform is expected to be introduced within six months by January 2016.

The European Commission proposed a regulation to make individuals' access to justice easier, by harmonising and simplifying procedure for small civil and commercial claims disputes. The proposed regulation would also raise the claim threshold to €10,000 from €2,000, enabling a greater number of cases to be handled under the procedure.[28] The procedure would predominantly apply to cross-border cases and not to those where a single Member State covers several elements of the case, such as when the court's jurisdiction and the parties' domicile are in the same Member State. In addition, the European Commission held a public consultation on options for improving access to justice at Member States level in environmental matters.[29]

Table 8.1 summarises the main features of EU secondary legal instruments discussed in this section that aim to improve access to justice.

8.1.2. ECtHR and CJEU provide guidance on effective access to justice

Both the CJEU and the ECtHR delivered rulings on numerous access to justice-related cases in 2013. The rulings included cases, as in 2012, addressing various fair trial aspects and defence rights in relation to criminal proceedings. The courts also provided important guidance on safeguarding the right of

Table 8.1: EU secondary law proposed, adopted or revised in 2013, aiming to facilitate access to justice

Instrument	Status	Main issues facilitating access to justice
Directive on alternative dispute resolution (ADR) for consumer disputes (2013/11/EU)	Adopted on 21 May 2013	• Make flexible and less costly out-of-court settlement procedure, ADR, available for all contractual disputes in every market sector (except for health and education) and in every Member State • Introduce quality criteria for all ADR entities to guarantee that they operate in an effective, fair, independent and transparent way • Require traders to inform consumers about ADR and require Member States to ensure that consumers can obtain assistance when they are involved in a cross-border dispute
Regulation on online dispute resolution (ODR) for consumer disputes (No. 524/2013)	Adopted on 21 May 2013	• Establish EU-wide dispute resolution platform (ODR platform) as a single entry point free of charge and in all EU official languages, enabling ADR online in relation to disputes arising from online purchases • Require a network of online dispute resolution facilitators consisting of one contact point in each Member State to provide support to the resolution of disputes submitted via the ODR platform • Require traders to inform consumers about the ODR platform
Commission Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union law (2013/396/EU)	Adopted 11 June 2013	• Require collective redress mechanism in place for injunctive and compensatory relief in a case of infringement of rights granted under Union law, which would be fair, equitable, timely and not prohibitively expensive • Determine requirements that entities representing claimants should meet to ensure appropriate representation of claimants • Recommend establishment of publicly available registers, which would set information dissemination rules and allow potential claimants to join collective actions
Directive on the right of access to a lawyer (2013/48/EU)	Adopted on 6 November 2013	• Provide for minimum rules on the right of access to a lawyer in criminal proceedings from the first stage of police questioning and throughout criminal proceedings • Provide for the right of an individual subject to a EAW to legal advice in both the country where the arrest is carried out and the one where it was issued (dual legal representation) • Provide for the right to have a third party (such as a family member) informed upon deprivation of liberty as well as to communicate with consular authorities while deprived of liberty
Proposal for a regulation amending regulation establishing a European Small Claims Procedure and regulation creating a European order for payment procedure	Proposed on 19 November 2013	• Raise threshold of cases defined as 'small claims' from €2,000 to €10,000, allowing a much wider range of disputes to be resolved through a small claims procedure • Widen definition of 'cross-border' cases to enable a greater number of cases with a cross-border dimension to be solved through a small claims procedure • Require better information for individuals on court fees related to the small claims procedure, on where to obtain assistance in filling in the application and on how to apply for a review of the judgment in special circumstances
Proposal for a directive on the strengthening of the presumption of innocence and of the right to be present at trial in criminal proceedings	Proposed on 27 November 2013	• Guarantee that guilt cannot be inferred by any official decisions or statements before a final conviction • Guarantee that the burden of proof is placed on the prosecution and any doubt benefits the suspect or accused person • Guarantee that the right to remain silent is maintained and not used against suspects to secure conviction and that the accused has the right to be present at the trial

Table 8.1: (continued)

Instrument	Status	Main issues facilitating access to justice
Proposal for a directive on procedural safeguards for children suspected or accused in criminal proceedings	Proposed on 27 November 2013	• Guarantee mandatory access by children to a lawyer at all stages • Guarantee that children cannot waive their right to be assisted by a lawyer • Introduce special procedural safeguards, such as the right of children to be promptly informed about their rights, to be assisted by their parents (or other appropriate persons), not to be questioned in public hearings, to receive medical examination and, if deprived of liberty, to be kept apart from adult inmates
Proposal for a directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings	Proposed on 27 November 2013	• Guarantee access to a lawyer from the very beginning through the form of 'provisional legal aid', until the competent authority has made a final decision on the application for legal aid • Guarantee access to legal aid by suspects at the early stages of criminal proceedings (when accused citizens are particularly vulnerable, especially if deprived of liberty in police custody or pretrial detention) • Guarantee legal aid for people arrested under a European arrest warrant in the light of the need to guarantee dual legal representation

Source: FRA, 2013

access to courts through effective access to legal aid and legal representation.

In the *Radu* judgment,[30] the CJEU provided further guidance in the area of judicial cooperation in criminal matters under the EAW procedure, specifically on the person's right to be heard in line with the standards of the Charter of Fundamental Rights on judicial remedy and fair trial. The CJEU confirmed that a violation of the requested person's right to be heard is not among the grounds available to Member States to refuse to execute an EAW. This does not render the Framework Decision incompatible with the fundamental rights as set out in the Charter, in particular the right to an effective judicial remedy and to a fair trial. Articles 47 and 48 of the Charter do not *require* "that a judicial authority of a Member State should be able to refuse to execute a European arrest warrant issued for the purposes of conducting a criminal prosecution on the ground that the requested person was not heard by the issuing judicial authorities before that arrest warrant was issued". According to the CJEU, such a conclusion would run counter to the objective of the EAW system to simplify and speed up extradition proceedings between EU Member States. In any case, executing Member States observe the right to be heard.

The CJEU maintained the same line of thought in its *Melloni* judgment.[31] According to the CJEU, the judicial authorities cannot make the execution of an EAW conditional upon a fresh hearing just because the warrant was issued without the accused's presence at court. Although the right of the accused to appear in person at the trial is an essential component of the right to a fair trial, this right is not absolute. The accused may waive this right, provided such waiver meets required safeguards and does not run counter to any important public interest. The EAW framework decision therefore disregards neither the right to an effective judicial remedy and to a fair trial nor the rights of the defence guaranteed by Articles 47 and 48 (2) of the Charter, respectively.

In the *Åklagaren v. Hans Åkerberg Fransson* case, Swedish tax authorities accused Mr Åkerberg Fransson of breaching his tax declaration obligations, which resulted in a loss of state revenue from various taxes.[32] The CJEU was asked if criminal charges must be dismissed on the ground that the accused had already faced tax penalties for the same acts. The CJEU concluded that the principle preventing a person from being punished twice under the Charter does not preclude an EU Member State from imposing, for the same acts of evading declaration obligations in the field of value-added tax, a combination of criminal penalties and non-criminal penalties.

In *DAS Nederlandse Rechtsbijstand Verzekeringsmaatschappij NV*, the CJEU provided guidance on how to interpret an insured person's right to choose a lawyer on legal expenses insurance under Article 4(1) of Directive 87/344. In this case, Jan Sneller was dismissed from his job. He wanted

to bring an unfair dismissal claim in the Netherlands against his employer using his DAS legal expenses insurance. The CJEU held that the insured's freedom to choose legal representation took precedence over the insurance contract's restrictions, which attempted to impose the use of the insurance company's own staff lawyers over that of an outside lawyer chosen by the insured person.[33]

The ECtHR also provided guidance on states' obligations regarding access to justice under the ECHR. In *Anghel v. Italy*, the applicant complained that delays in granting him legal aid had infringed his right to appeal against the decision of the national court, denying him an effective remedy as required by the ECHR.[34] The ECtHR held that the deficient and contradictory information given by the Council of the Bar Association and the Ministry of Justice about which remedy was available and which time limit was applicable contributed substantially to the applicant's unsuccessful attempt to appeal. As for the errors made by the appointed legal aid lawyers in respect of procedural formalities, the ECtHR held that "such errors may, when critical to a person's access to court, and when incurable in so far as they are not made good by actions of the authorities or the courts themselves, result in a lack of practical and effective representation which incurs the State's liability under the Convention". The ECtHR concluded that the applicant was effectively prevented from exercising his right of access to a court through a legal representative appointed under the national legal aid system. There was accordingly a violation of Article 6 of the ECHR.

Another case brought before the ECtHR, *Del Río Prada v. Spain*, concerned the postponed release of a prisoner convicted of terrorist offences. Based on a new approach adopted by the Spanish Supreme Court (*Tribunal Supremo*), under which reductions in sentences were applied to individual offences rather than to the entire time served,[35] the applicant's release was postponed by nine years. The ECtHR (Grand Chamber) considered that the applicant could not have foreseen either that the Supreme Court would depart from its previous case law in February 2006, or that this change in approach would be applied to her and would result in the postponement of her release by almost nine years. Accordingly, there was a violation of the right to no punishment without law (Article 7 of the ECHR) as well as a violation of unlawful detention (Article 5 of the ECHR).

In addition to these case law developments, the ECtHR amended the Rules of Court on 6 May 2013 to help the court deal with its workload as efficiently as possible, thus enhancing access to justice at a procedural level.[36] The new Rule 47 introduces more stringent admissibility criteria on the form and content of initial complaints and requires that a complaint be lodged within a maximum of six months after the national court's final decision. Rule 47 will come into force as of 1 January 2014, that is, before Protocol 15 to the ECHR, which will further amend the ECtHR's admissibility criteria, enters into force (see Chapter 10 on EU Member States and international obligations).

8.2. Member States reform court procedures to facilitate access to justice

8.2.1. Member States tackle length of proceedings

EU Member States took steps to improve court procedures, focusing in particular on overly long procedures, an issue of long standing which bedevils many national systems. They pursued a variety of methods to address the problem, turning to legislation and non-legislative solutions as well as improving the implementation of previously introduced measures. They also innovated court procedures through developing e-tools, in part to streamline procedures as well as to cut costs.

Article 47 of the Charter of Fundamental Rights of the European Union provides for the right to a hearing within a reasonable time. The reasonable time guarantee underlines the importance of rendering justice without delay. Although EU Member States adopted several measures to speed up trials in previous years (see, for example, the FRA Annual report 2012), the relevant data from 2013 (Tables 8.2 and 8.3) confirm that much more time and effort will be needed, with all justice sector actors working in synergy, to overcome this structural problem.

Table 8.2 provides information on the number of judgments related to the length of proceedings as well as to fair trial (Article 6 of the ECHR) in general. Table 8.3 provides more specific data on the number of cases under Article 6 of the ECHR concluded by friendly settlements between the government and the applicant or government declarations unilaterally acknowledging the actual violation.

Several EU Member States continued to experience excessive delays of over five years in executing the ECtHR's judgments (Table 8.4). In 2013, as in 2012, Bulgaria, Greece, Italy, Poland and Romania had the largest numbers of pending leading cases, or non-repetitive cases that relate to general or structural problems that only legislation can address (see FRA Annual report 2012, Table 8.2 and 10.7).

Table 8.2: Number of ECtHR judgments in 2013 and fair-trial-related violations, by EU Member State

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR
ECtHR judgments finding at least one violation	10 (10)	6 (6)	25 (58)	1 (0)	8 (10)	3 (11)	0 (0)	5 (2)	32 (52)	7 (8)	3 (2)	28 (19)	22 (19)
Violations of the right to a fair trial	4 (0)	1 (1)	9 (8)	0 (0)	4 (2)	0 (1)	0 (0)	3 (1)	2 (1)	5 (3)	0 (0)	5 (3)	10 (2)
Violations of length of proceedings	2 (3)	0 (1)	3 (17)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	12 (35)	0 (1)	0 (0)	0 (0)	3 (5)

Notes: The numbers in the first row correspond to the number of judgments in which the ECtHR found at least one violation of the ECHR. The second row shows how many of these judgments concerned violations of Article 6 of the ECHR in general and the third row shows the number of violations of Article 6 of the ECHR due to excessive length of proceedings in particular.

The number of judgments in 2013 can be compared with the number of judgments from 2012, which are in parentheses.

"A related problem is the excessively slow implementation of the judgments of the European Court of Human Rights. This is a phenomenon in several countries where some judgments of the Court are still not implemented several years later. 'Cherry-picking' and disregarding judgments of the European Court of Human Rights have a disruptive effect not only on our system of human rights protection, but on the very essence of those European values on which our Organisation is built."

Nils Muižnieks, Council of Europe Commissioner for Human Rights (2013), Annual activity report 2012, 10 April 2013, CommDH(2013)5, p. 4, available at: https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2307313&SecMode=1&DocId=2026500&Usage=2

EU Member States took three main approaches in 2013 to reduce the length of proceedings, opting to pursue legislative and non-legislative solutions and enhance the implementation of previously introduced measures:

- **Croatia**,[37] **Hungary**,[38] **Latvia**,[39] **Lithuania**,[40] the **Netherlands**,[41] **Portugal**[42] and **Slovakia**,[43] for example, introduced new legislative regimes or amended existing laws to tackle undue delays.
- The second group turned to a variety of non-legislative solutions: **Malta** launched public consultations[44] while **Bulgaria** created a specific methodology to regulate courts' workloads.[45] In **Poland**, new jurisprudence clarified a period that courts will have to look at when assessing the overall length of proceedings at a particular stage of the case.[46] In **Slovenia**, different justice sectors committed to working jointly to reduce the length of proceedings.[47]
- Finally, **Finland**,[48] **Greece**,[49] **Ireland**,[50] **Italy**[51] and the **United Kingdom**,[52] for example, mainly continued to pursue measures, which they had introduced in 2012, aimed at shortening the length of judicial proceedings (FRA Annual report 2012). In **Denmark**, some criticised a suggestion to shorten the length of proceedings by limiting access to appellate courts in civil cases, arguing that this would disproportionately impede individuals' access to justice.[53]

Table 8.3: Number of friendly settlements and unilateral declarations concerning length of proceedings under Article 6 of the ECHR in 2013, by EU Member State

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR
Friendly settlements in total (in relation to length of proceedings)	1 (1)	3 (0)	8 (5)	0 (0)	9 (5)	1 (0)	1 (1)	1 (0)	14 (14)	0 (0)	3 (0)	1 (0)	30 (25)
Unilateral declarations in total (in relation to length of proceedings)	0 (0)	0 (0)	6 (4)	0 (0)	8 (7)	3 (0)	0 (0)	1 (1)	0 (0)	1 (1)	1 (1)	0 (0)	3 (3)

Notes: The first row shows the number of friendly settlements and the second row shows the number of unilateral declarations in relation to complaints concerning excessive length of proceedings under Article 6 of the ECHR.

The four highest numbers in each row are highlighted in blue.

Table 8.2: (continued)

HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	Total
40 (24)	1 (2)	34 (36)	10 (7)	1 (1)	10 (10)	5 (1)	0 (5)	14 (56)	11 (22)	83 (70)	3 (4)	24 (20)	16 (21)	8 (10)	410 (486)
1 (0)	0 (0)	7 (3)	2 (2)	1 (0)	2 (1)	0 (0)	0 (2)	2 (1)	0 (5)	19 (13)	0 (0)	2 (0)	1 (1)	0 (0)	80 (50)
25 (9)	1 (2)	16 (16)	2 (1)	0 (1)	1 (2)	1 (0)	0 (0)	3 (6)	6 (17)	11 (10)	0 (0)	20 (13)	12 (11)	0 (1)	118 (151)

The five highest numbers of violations in each row are highlighted in blue.

(For a full EU Member State list, see Table 10.5 in Chapter 10 on EU Member States and international obligations.)

Sources: Data extracted from ECtHR Annual report 2013 (as well as from earlier Annual reports)

Promising practice

Supporting access to justice through guidelines on the creation of judicial maps

The Council of Europe Commission for the Efficiency of Justice published guidelines in June 2013 designed to maximise the service level of justice while optimising operational costs and investments. Policy makers can use the guidelines to undertake reforms and take operational decisions to redesign the judicial map of an entire country or a part of it. The document, *Guidelines on the creation of judicial maps to support access to justice within a quality judicial system*, includes factors that should be taken into account when deciding the size and location of a particular court to achieve the optimum level of efficiency and quality.

Source: www.coe.int/t/dghl/cooperation/cepej/quality/2013_7_cepej_Judicial_maps_guidelines_en.pdf

As reported last year, various e-justice tools are expected to help reduce procedure length and facilitate access to justice, including those introduced for the first time in 2012 in **Belgium**, **Croatia**, **Germany** and **Sweden** (for more on e-justice, see Section 8.2.2).

8.2.2. Member States innovate with e-justice tools

The use of information and communication technology (ICT) can help to facilitate access to justice, but ICT should supplement, not replace, traditional systems, to avoid alienating those who cannot or do not wish to access such technology.

In 2013, e-justice developments continued to expand, by making:

- electronic communication and information exchange possible between the courts and the parties (individuals and their legal representatives) and

Table 8.3: (continued)

HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	Total
73 (64)	3 (3)	2 (1)	0 (0)	0 (0)	0 (0)	0 (0)	2 (0)	92 (14)	4 (4)	17 (4)	0 (0)	0 (0)	21 (21)	2 (0)	288 (162)
3 (2)	0 (0)	0 (0)	1 (0)	0 (0)	0 (0)	0 (0)	1 (1)	36 (8)	4 (4)	13 (10)	0 (0)	0 (0)	4 (4)	4 (2)	89 (48)

The numbers of friendly settlements and unilateral declaration in 2013 can be compared with the number of judgments in 2012, which are in parentheses.

Source: www.hudoc.echr.coe.int

Table 8.4: Leading cases pending execution in 2012 and 2013 for those five EU Member States with the most cases pending execution for more than five years

EU Member State	Average execution time			
	Leading cases pending > 5 years			
	2012		2013	
	Number of cases	Per 10 million inhabitants	Number of cases	Per 10 million inhabitants
IT	33	5.43	34	5.70
BG	32	43.67	32	43.93
RO	28	13.11	26	12.96
EL	20	17.71	26	23.50
PL	27	7.01	17	4.41

Note: *The table includes data only on the top five EU Member States where implementation is delayed by more than five years. (For a full EU Member State list, see Table 10.6 in Chapter 10 on EU Member States and international obligations.)*

Source: *Data extracted from 'Supervision of the execution of judgments and decisions of the European Court of Human Rights', draft of the Annual report 2013, Council of Europe, April 2014 (as well as from earlier Annual reports)*

- judges' work more efficient through the use of computerised databases for registration and management of cases.

Promising practice

Using Twitter to raise awareness about case law and existing standards

In April 2013, the CJEU started sharing information concerning its decisions as well as certain institutional events through the social network Twitter.

Source: *http://curia.europa.eu/jcms/upload/docs/application/pdf/2013-04/cp130045en.pdf*

The Supreme Administrative Court of **Lithuania** likewise opened its Twitter account in 2013, using it to inform the public on its latest decisions and activities.

Source: *https://twitter.com/LVAT_info*

EU Member State are increasingly deploying electronic communication and information exchange between the courts and the parties; this trend continued in 2013. In **Austria**, since January 2013, electronic entries may be filed at courts and the public prosecutor's office, using the citizen card (*Bürgerkarte*) and online forms, through the website www.eingaben.justiz.gv.at. In **Croatia**, a new amendment to the Civil Procedural Act provides for the possibility of electronic communication between the court and parties in proceedings before commercial courts. Electronic communication is bilateral, allowing both the parties and the court to send documents by electronic means.[54] Similarly, in **Lithuania**, since January 2013, parties to civil judicial proceedings are able to submit procedural documents to the courts electronically.[55] In **Estonia**, individuals increasingly made use in 2013 of the existing online tool 'public e-file' to initiate court proceedings. One of the system's advantages was the lower court fees for civil court proceedings initiated through the e-file system. The Supreme Court, however, held this to be discriminatory and declared the relevant parts of the law on court fees unconstitutional.[56] In **Slovakia**, a newly adopted law introduced electronic mailboxes as the means of communication among public administration organs as well as between them and citizens.[57] Every person in possession of an electronic mailbox will be able to file legal actions, complaints and other court motions electronically.

Promising practice

Enhancing accessibility: the European e-Justice Portal goes mobile

From 19 December 2013, mobile devices can be used to consult the European e-Justice Portal. The portal dynamically adapts to the resolution of the given device whether it is a smartphone, a tablet or a phablet, which is essentially a combination of the first two.

Source: *https://e-justice.europa.eu/sitenewsshow.do?plang=en&newsId=87*

As for the e-registration and management of cases, on 4 September 2013, the **Cypriot** government decided

to create an electronic platform to facilitate the courts' work. Through this platform, the government aspires to implement the e-justice approach and make court processes more accessible and efficient.[58] **Sweden** initiated an electronic information flow in criminal procedures to shorten the length of criminal proceedings. It also improved citizen's e-services, making it possible, for example, for parties to litigation to follow their cases through the proceedings more effectively.

Promising practices

Accessing services of non-judicial bodies online

Online reporting seems not uncommon when approaching non-judicial bodies to provide testimony, lodge a complaint or request assistance. Complaints to the **Hungarian** Commissioner for Fundamental Rights (*Alapvető jogok biztosa*) can, for example, be submitted online, by filling out an interactive online questionnaire on the website. They can also be submitted via the central state website for online administrative case management (*Ügyfélkapu*), which requires users either to register or to provide an e-signature.

Source: www.ajbh.hu/forduljon-a-biztoshoz_intelligens_form, www.ajbh.hu/forduljon-a-biztoshoz_ugyfelkapu_nelkul and https://ugyfelkapu.magyarorszag.hu/

In **Portugal**, the Ombudsperson (*Provedor de Justiça*) website provides an electronic tool for the presentation of complaints within the realm of its competence and responsibilities.[60] The Portuguese Commission for Equality and against Racial Discrimination (*Comissão para a Igualdade e contra a Discriminação Racial*) also provides an electronic tool on its website for the presentation of complaints pertaining to racial discrimination.

Source: www.acidi.gov.pt/_cfn/51b1d0c36f0d9/live/Formul%C3%A1rio+Queixa

Overall, by 2013 more than half of the EU Member States had made it possible to initiate judicial proceedings through online tools, be it through email or a special portal using electronic signature or e-ID. Yet, in the majority of cases, this possibility is still limited to specific types of proceedings, mostly in the area of civil and/or administrative law. For criminal proceedings, police in fewer than half the Member States accept online reports from individuals during the investigation phase. These online filings are possible only when they relate to certain types of criminal activity, usually those linked to property damage. In **France**, it has been possible to file complaints online about police misconduct since 2 September 2013. The statement cannot be anonymous, and the internet user is notified that false allegations can be prosecuted. During the first half of 2013, France extended the existing system of online pre-reporting to all of France from a few regions. Online pre-reporting enables individuals who are victims of theft or fraud, and who do not know the offender, to make an initial report online. They can then make an appointment with the police or gendarmerie station of their choice, where the online pre-report must be signed in order to be official.[59]

FRA ACTIVITY

Developing an online tool to enhance access to justice by means of non-judicial bodies: CLARITY project

A major obstacle to efficient remedies, according to FRA research, is the difficulty victims of fundamental rights violations face in finding the correct path to have their grievance addressed effectively. Many such victims favour non-judicial paths, whose proceedings are seen as less expensive, swifter and more expert, the research shows. In 2013, FRA, together with a group of national human rights bodies, started developing a pilot online tool to help victims of fundamental rights violations gain better access to non-judicial remedies. The pilot online tool is designed to help identify the most appropriate non-judicial EU Member State body with a human rights remit for a particular fundamental rights issue. The tool will cover different fundamental rights areas, including the area of non-discrimination. It will principally target intermediaries, such as NGOs guiding victims of fundamental rights violations to a relevant body, as well as the victims themselves. The launch of the first prototype of this tool is planned for 2014.

Source: http://fra.europa.eu/en/project/2013/clarity-complaints-legal-assistance-and-rights-information-tool-you

8.3. Member States turn attention to non-judicial mechanisms

It is well established that independent and strong non-judicial bodies with a human rights remit have a role in facilitating access to justice, and hence an important place within the fundamental rights landscape (see FRA Annual report 2012, Section 8.6., as well as the FRA Annual report 2011 Focus). These bodies include national human rights institutions (NHRIs), equality bodies, ombudsperson institutions, data protection authorities (see Chapter 3 on information society, respect for private life and data protection) and international treaty-monitoring bodies (see Chapter 10 on EU Member States and international obligations). The UN General Assembly reiterated the role of these institutions in strengthening the rule of

law in its resolution adopted on a German initiative in December 2013.[61]

Promising practice

Safeguarding pluralism in a non-judicial body's composition

The **Dutch** national human rights institution safeguards pluralism in its composition, in line with the Principles relating to the Status of National Institutions (the Paris Principles), by engaging with other non-judicial bodies. An advisory council supports the work of the Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*), which opened its doors in October 2012 (see FRA Annual report 2012). Standing members of this council include the National Ombudsman (*Nationale Ombudsman*), and the chairpersons of the Dutch Data Protection Agency (*College bescherming persoonsgegevens*) and the Justice Administration Council. The advisory council issues annual policies and submits recommendations to the Minister of Security and Justice on the appointment of commissioners and deputy commissioners to the institute. Between four and eight advisory council members are also drawn from civil society organisations concerned with the protection of human rights, organisations of employers and employees, and academia.

Source: Netherlands, Netherlands Institute for Human Rights (2013), Annual Report 1 October 2012 – 1 October 2013, *available at: https://mensenrechten.nl/publicaties/detail/18902*

FRA ACTIVITY

Cooperating to strengthen fundamental rights protection in an evolving human rights landscape

National and international human rights bodies met for the first time in 2013, reiterating their commitment to work together to strengthen human rights protection in Europe. The October 2013 meeting brought together national human rights institutions, equality bodies and ombudsperson institutions from across Europe with the Council of Europe, FRA, the UN and the OSCE's Office for Democratic Institutions and Human Rights. The meeting was therefore an important step in strengthening the European human rights and equality architecture and promoting concerted action for individuals' human rights throughout the region. It will also help ensure that the EU's decision makers receive coordinated input to help shape the EU's fundamental rights in Europe.

Source: www.fra.europa.eu/sites/default/files/meeting_report_7-8_oct_2013_en.pdf

Some EU Member States cut non-judicial bodies' budgets, a reflection of the continuing austerity trend (see also FRA Annual report 2012).[62] Budget cuts, which may force non-judicial bodies to provide reduced services and hence undercut their ability to adhere to their mandate, were reported in 2013 in, for example, **Bulgaria**,[63] **Ireland**,[64] **Slovakia**[65] and **Spain**.[66]

Merging various non-judicial bodies represents another trend. **Ireland** took further steps in 2013 towards merging the Equality Authority and the Human Rights Commission (see FRA Annual report 2012).[67] In **Finland**, a new draft proposal was made in 2013 to merge two distinct national equality bodies into one with a mandate covering all forms of discrimination.[68] The general aim of the reform is to address all forms of discrimination with a coherent set of remedies and sanctions.

Promising practice

Launching an online case digest: European Ombudsman

To inform the public regularly and more effectively about its inquiries into possible maladministration by EU institutions, bodies, offices and agencies, the European Ombudsman launched a digest of case law on its website in September 2013. The digest contains the key findings of the Ombudsman's inquiries, searchable through a variety of categories, with links to the texts of the full decisions, and other documents where relevant.

Source: www.ombudsman.europa.eu/cases/digests.faces

Finally, some EU Member States continued to restructure their non-judicial bodies in 2013, as reported in the FRA Annual report 2012. The **Belgian** central government, regions and communities took the first step in their agreement to convert the current equality body into an interfederal Centre for Equal Opportunities and Opposition to Racism (*interfederaal Centrum voor gelijke kansen en bestrijding van discriminatie en racisme/Centre interfédéral pour l'égalité des chances et la lutte contre le racisme*) with a mandate to address issues in the area of racism at those three levels.[69] This agreement, reached on 23 July 2013, entered into force on 15 March 2014. Initiatives in **Lithuania**[70] to transform the Ombudsman office into an NHRI continued in 2013 (see FRA Annual report 2012).

Outlook

Many new legislative and standard setting measures in the area of access to justice and judicial cooperation are expected to be adopted in 2014 at both the EU and national levels, including measures to finalise the criminal procedures roadmap or the currently pending proposal for a creation of the European Public Prosecutor's Office. The main focus of EU policy, however, will undoubtedly be on the implementation of existing measures.

This implementation problem, that is how to ensure that existing legislation and case law in the area of justice are effective and function well in practice, will represent one of the biggest challenges for the EU in the post-Stockholm period. Another challenge will be to develop an effective rule of law mechanism for the EU in close collaboration with national, European and international actors.

EU Member States will continue searching for the right balance between the need to restructure national justice systems and cut unnecessary costs and ensuring that remedies are accessible in practice to everyone, including through effective and independent non-judicial structures or innovative e-tools. The overall role of national human rights structures is expected to be further enhanced beyond the national level by their increased integration in the work of all UN organs.

Index of Member State references

Endnotes

All hyperlinks accessed on 30 April 2014.

1 Council of the European Union (2013), *Council conclusions on fundamental rights and rule of law and on the Commission 2012 Report on the Application of the Charter of Fundamental Rights of the European Union*, www.consilium.eu.int/uedocs/cms_data/docs/pressdata/en/jha/137404.pdf.

2 FRA (European Union Agency for Fundamental Rights) (2013), *Fundamental rights: challenges and achievements in 2012*, Annual report, Luxembourg, Publications Office of the European Union (Publications Office), Chapter 8.

3 European Commission (2013), *Report from the Commission to the European Parliament and the Council on progress in Romania under the Cooperation and Verification Mechanism*, COM(2013) 47 final, Brussels, 30 January 2013, http://ec.europa.eu/cvm/docs/com_2013_47_en.pdf.

4 Council of Europe, Venice Commission (2013), *Opinion on the Fourth Amendment to the Fundamental Law of Hungary*, adopted by the Venice Commission at its 95th Plenary Session, Venice, 14–15 June 2013, CDL-AD(2013)012), www.venice.coe.int/webforms/documents/?country=17&year=all.

5 For the previous opinions of the Venice Commission on Hungary from 2012, see FRA (2013), *Fundamental rights: challenges and achievements in 2012*, Annual report, Luxembourg, Publications Office, Chapter 8.

6 European Parliament (2012), Resolution on the situation of fundamental rights: Standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012), P7_TA-PROV(2013)0315, Brussels, 3 July 2013, www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0315&language=EN&ring=A7-2013-0229.

7 United Nations (UN), Office of the United Nations High Commissioner for Human Rights (2013), 'Hungary must revoke worrying constitutional changes – Pillay', Press release, 18 June 2013, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13464&LangID=E.

8 Hungary (2013), Magyarország Alaptörvényének ötödik módosítása.

9 European Commission (2013), *Flash Eurobarometer 385: Justice in the EU*, report, 21 November 2013, http://ec.europa.eu/public_opinion/flash/fl_385_en.pdf.

10 Ireland (2013), Civil Legal Aid Regulations 2013 (SI No. 346 of 2013), http://irishstatutebook.ie/2013/en/si/0346.html.

11 Portugal (2013), *Lei 83-C/2013 que aprova o Orçamento de Estado para 2014*, 31 December 2013, https://dre.pt/pdf1sdip/2013/12/25301/0005800295.pdf.

12 United Kingdom, Ministry of Justice, Legal Services Commission (2014), *Legal Aid statistics in England and Wales 2012–2013*, 25 June 2013, http://justice.gov.uk/downloads/publications/corporate-reports/lsc/legal-aid-stats-12-13.pdf.

13 Council of Europe, Commissioner for Human Rights (2013), 'Austerity measures across Europe have undermined human rights: Safeguarding human rights in times of economic crisis', issue paper, 4 December 2013, https://wcd.coe.int/ViewDoc.jsp?id=2130915; Council of Europe, Commissioner for Human Rights (2013), *Safeguarding human rights in times of economic crises*, CommDH/IssuePaper(2013)2, November 2013.

14 European Commission (2013), *Assises de la Justice 2013*, http://ec.europa.eu/justice/events/assises-justice-2013/index_en.htm.

15 Council of Europe, Commission for the Evaluation of the Efficiency of Justice (2013), *The functioning of judicial systems and the situation of the economy in the European Union Member States: Compiled report*, 15 January 2013, http://ec.europa.eu/justice/effective-justice/files/cepej_study_justice_scoreboard_en.pdf.

16 European Commission (2013), *The EU Justice Scoreboard: A tool to promote effective justice and growth*, 27 March 2013, http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_communication_en.pdf.

17 See FRA (2013), *Fundamental rights: challenges and achievements in 2012*, Annual report, Luxembourg, Publications Office.

18 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ 2013 L 294/1, 6 November 2013.

19 European Commission (2013), *Proposal for a directive of the European Parliament and of the Council (2013) on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings*, COM(2013) 821/2, 27 November 2013.

20 European Commission (2013), *Proposal for a directive of the European Parliament and of the Council (2013) on procedural safeguards for children suspected or accused in criminal proceedings*, COM(2013) 822/2, 27 November 2013.

21 European Commission (2013), *Proposal for a directive of the European Parliament and of the Council (2013) on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings*, COM(2013) 824, 27 November 2013.

22 European Commission (2013), *Commission Recommendation (2013) on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings*, C(2013) 8178/2, 27 November 2013.

23 European Commission (2013), *Recommendation (2013) on the right to legal aid for suspects or accused persons in criminal proceedings*, C(2013) 8179/2, 27 November 2013.

24 European Commission (2013), *Proposal for a Council regulation (2013) on the establishment of the European Public Prosecutor's Office*, COM(2013) 534 final, 17 July 2013.

25 European Commission (2013), *Recommendation 2013/396/EU of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law*, OJ L 201/60.

26 Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), OJ L 165/63.

27 Regulation (EU) No. 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR), OJ L 165/1.

28 European Commission (2007), *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure and Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure*, COM(2013) 794 final, 19 November 2013.

29 European Commission, *Consultation on Access to justice in environmental matters – options for improving access to justice at Member State level*, http://ec.europa.eu/environment/consultations/access_justice_en.htm.

30 CJEU, C-396/11, *Ciprian Vasile Radu*, 29 January 2013.

31 CJEU, C-399/11, *Criminal proceedings against Stefano Melloni*, 26 February 2013. See also the Opinion of the Advocate General in this case analysed by FRA (2013), *Fundamental rights: Challenges and achievements in 2012,* Annual report, Luxembourg, Publications Office, p. 236.

32 CJEU, C-617/10, *Åklagaren v. Hans Åkerberg Fransson*, 26 February 2013.

33 CJEU, C-442/12, *Jan Sneller v. DAS Nederlandse Rechtsbijstand Verzekeringsmaatschappij NV*, 7 November 2013.

34 ECtHR, *Anghel v. Italy*, No. 5968/09, 4 November 2013.

35 ECtHR, *Del Río Prada v. Spain*, No. 42750/09, 21 October 2013.

36 Council of Europe, ECtHR (2014), Rules of Court, 1 January 2014, www.echr.coe.int/Documents/Rules_Court_ENG.pdf.

37 Croatia (2013), *Zakon o izmjenama i dopunama Zakona o parničnom postupku*, Narodne novine 25/13, 21 February 2013, http://narodne-novine.nn.hr/clanci/sluzbeni/2013_02_25_405.html; see also: Croatia, *Konačni prijedlog zakona o izmjenama i dopunama Zakona o kaznenom postupku, drugo čitanje No. 488*, unpublished, www.sabor.hr/konacni-prijedlog-zakona-o-izmjenama-i-dopunama-02.

38 Hungary (2011), *2011. évi CLXII. törvény a bírák jogállásáról és javadalmazásáról*, 2 December 2011.

39 Latvia (2013), *Grozījumi likumā par tiesu varu*, 13 June 2013.

40 Lithuania (2013), *Lietuvos Respublikos baudžiamojo proceso kodekso* 71, 75, 120, 121, 126, 132, 139, 179, 183, 218, 219, 233, 236, 261, 273, 279, 285, 286, 317, 319, 426, 427, 428, 429, 432 *straipsnių pakeitimo ir papildymo ir Kodekso papildymo* 131 (1), 430 (1) *straipsniais įstatymas*, No. XII-498, 2 July 2013.

41 Netherlands, De Rechtspraak (2013), 'Wetswijziging geeft bestuursrechter meer armslag', Press release, 7 January 2013, www.rechtspraak.nl/Actualiteiten/Nieuws/Pages/Wetswijziging-geeft-bestuursrechter-meer-armslag.aspx.

42 Portugal (2013), *Lei 41/2013 aprova o Código do Processo Civil*, 26 June 2013, http://dre.pt/pdf1sdip/2013/06/12100/0351803665.pdf.

43 Slovakia, Ministerstvo spravodlivosti SR (2013), 'Legislatívna rada vlády schválila návrh reformy súdnych pravidiel', 16 April 2013, www.justice.gov.sk/Stranky/aktualitadetail.aspx?announcementID=1731.

44 Malta, Commission for the Holistic Reform of the Justice System (2013), *The first document for public consultation prepared by The Commission for the Holistic Reform of the Justice System*, 31 May 2013, http://mhas.gov.mt/en/MHAS-Information/KRHG/Documents/Document%20for%20Public%20Consultation%20by%20the%20Commission%20for%20the%20Holistic%20Reform%20of%20the%20Justice%20System.pdf; Malta, Commission for the Holistic Reform of the Justice System (2013), *The second document for public consultation prepared by The Commission for the Holistic Reform of the Justice System*, 29 July 2013, https://opm.gov.mt/en/krhg/Documents/Consultation%20Document%2029%2007%2013%20Final%20Version%20English.pdf.

45 See its latest report: Bulgaria, Committee on Analysis and Accounting of the Degree of Workload in the Institutions of the Judicial Branch (2013), *Activities of [Committee on Analysis and Accounting of the Degree of Workload in the Institutions of the Judicial Branch] aimed at devising a sustainable model for regulating the workload in the institutions of the judicial branch*, 24 October 2013.

46 Poland, Sąd Najwyższy (2013), Resolution No. III SPZP 1/13, 28 March 2013.

47 Slovenia (2013), *Zaveza za izboljšanje stanja v sodstvu*, 4 June 2013, www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/PDF/130604_Zaveza.pdf.

48 FRA (2013), *Fundamental rights: Challenges and achievements in 2012,* Annual report, Luxembourg, Publications Office, p. 240.

49 *Ibid.*, p. 238.

50 Legislation is required to give effect to the referendum; the government has introduced the Thirty Third Amendment of the Constitution (Court of Appeal) Bill 2013, which is likely to be passed in 2014: Ireland, Thirty Third Amendment of the Constitution (Court of Appeal) Bill 2013, www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2013/7913/b7913d.pdf.

51 Council of Europe, Parliamentary Assembly (PACE) (2013), Committee on Legal Affairs and Human Rights, *Implementation of judgments of the European Court of Human Rights: Preparation of the 8th report*, AS/Jur (2013) 14 Addendum, 10 May 2013, p. 4, www.assembly.coe.int/CommitteeDocs/2013/ajdoc142013add.pdf.

52 United Kingdom, Crime and Courts Act 2013, www.legislation.gov.uk/ukpga/2013/22/contents. See also the promising practice: United Kingdom, *Open justice: Making sense of justice*, http://open.justice.gov.uk/courts/.

53 Denmark, Institut for Menneske Rettigheder (2013), *Statement on memorandum on access to appeal in civil cases and memorandum on access to the Supreme Court*, 21 August 2013, www.menneskeret.dk/files/media/hoeringssvar/86_b_appel20_i20_civile20_sager_delnotater.pdf and www.menneskeret.dk/files/media/hoeringssvar/høringsvar_afgivet_i_2013/august_2013/86_b_appel_i_civile_sager_delnotater.pdf.

54 Croatia (2013), *Konačni prijedlog Zakona o izmjenama i dopunama Zakona o parničnom postupku*, second reading, Proposal No. 216, p. 22, www.sabor.hr/Default.aspx?art=52698.

55 Lithuania, Seimas (2013), *Civilinio proceso kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas: Civilinio proceso kodeksas*, No. IX-743, 3 December 2013, www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=462215&p_tr2=2.

56 Estonia, Riigikohtu põhiseaduslikkuse järelevalve kolleegium, Case No. 3-4-1-20-13.

57 Slovakia (2013), *Zákon č. 305/2013 Z.z. o elektronickej podobe výkonu pôsobnosti orgánov verejnej moci, Zákon o eGovernmente*, 4 September 2013, www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=4500; Slovakia, Ministerstvo spravodlivosti SR (2013), *Projekty eJustice zrýchlia súdne konania a priblížia súdy občanom*, 10 October 2013, www.justice.gov.sk/Stranky/aktualitadetail.aspx?announcementID=1781.

58 Some of the information supplied in this chapter is based on data deriving from the Chief Registrar of the Supreme Court.

59 France, Ministère de l'Intérieur, *Pré-plainte en ligne*, www.pre-plainte-en-ligne.gouv.fr/.

60 Portugal, Provedor de Justiça, *Formulário de queixa*, http://queixa.provedor-jus.pt/Queixas/Step1.aspx.

61 UN, General Assembly (2013), A/RES/68/171, 18 December 2013. See also UN, Human Rights Council (2013), Resolution National institutions for the promotion and protection of human rights, A/HRC/RES/23/17, 24 June 2013.

62 Council of Europe, Commissioner for Human Rights (2013), *Safeguarding human rights in times of economic crises*, November 2013, https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2407768&SecMode=1&DocId=2088892&Usage=.

63 Bulgaria, Ombudsman, www.ombudsman.bg/news/2816#middleWrapper.

64 Mcquinn, C. (2013), 'Cuts decimating services, equality groups complain', *Independent.ie*, www.independent.ie/irish-news/cuts-decimating-services-equality-groups-complain-29726492.html.

65 Slovakia, Kancelária Verejného Ochrancu Práv (2014), *Správa Kancelárie verejného ochrancu práv o výsledkoch jej činnosti, hospodárení a podmienkach pre jej činnosť v roku 2013*, www.vop.gov.sk/files/Priloha-2013.pdf.

66 International Ombudsman Institute (2013), 'Spain: Latest development regarding two regional Ombudsman institutions', Press release, www.theioi.org/news/spain-latest-development-regarding-two-regional-ombudsman-institutions.

67 Ireland (2013), 'Appointment of members designate of new Irish Human Rights and Equality Commission', Press release, 14 April 2013, www.merrionstreet.ie/index.php/2013/04/appointment-of-members-designate-of-new-irish-human-rights-and-equality-commission.

68 Finland (2013), Draft proposal for the government proposition for a Non-Discrimination Act, 12 April 2013.

69 Belgium (2012), *Samenwerkingsakkoord tussen de federale overheid, de gewesten en de Gemeenschappen voor de oprichting van het interfederaal Centrum voor gelijke kansen en bestrijding van discriminatie en racisme onder de vorm van een gemeenschappelijke instelling zoals bedoeld in artikel 92bis van de bijzondere wet van 8 augustus 1980/ Accord de Coopération entre l'autorité fédérale, les Régions et les Communautés visant à créer un Centre interfédéral pour l'égalité des chances et la lutte contre le racisme et les discriminations sous la forme d'une institution commune, au sens de l'article 92bis de la loi spéciale de réformes institutionnelles du 8 août 1980*, 23 July 2012.

70 Lithuania, *Lietuvos Respublikos teisingumo ministerija* (2013), Communication of NFP-Lithuania, 15 November 2013.

UN & CoE

January

5 February – Portugal becomes the first European Union (EU) Member State to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

February

March

April

May

June

July

August

5 September – International Labour Organization (ILO) Convention concerning decent work for domestic workers enters into force

September

17 October – Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) publishes the Third General Report on its activities

October

November

9 December – Council of Europe and the French government organise a hearing on 'Access to Justice for Women Victims of Violence'

December

EU

January

February

March

6 April – Deadline for transposition into national law of the Directive on preventing and combating trafficking in human beings and protecting its victims

15 April – Eurostat publishes its report *Trafficking in human beings in the European Union*

April

May

12 June – European Parliament and Council of the European Union adopt the Regulation on mutual recognition of protection measures taken in civil matters

13 June – Council of the European Union adopts conclusions on an EU framework for the provision of information on the rights of victims of trafficking in human beings

June

July

August

September

15 October – FRA (European Union Agency for Fundamental Rights) issues an *Opinion on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime*

October

12–13 November – FRA holds its annual Fundamental Rights Conference on 'Combating hate crime in the EU: Giving victims a face and a voice'

November

6 December – Justice and Home Affairs (JHA) Council adopts conclusions on combating hate crime in the EU, proposing concrete actions to improve efforts to combat hate crime at EU and national level

December

9 Rights of crime victims

In 2013, EU Member States worked to transpose the EU Victims' Directive, which was adopted in October 2012, into national law with a view to implementation by the 16 November 2015 deadline. Some Member States made considerable progress in strengthening procedural rights and support provisions for victims in line with the directive. The Czech Republic, for example, guaranteed many of the rights set out in the directive at the legal level, while France stands out as having established a comprehensive victim support service structure across the country. Other Member States, however, need to make a significant effort in the coming months if the targets outlined in the directive, including the provision of victim support services, are to be met on time. The Regulation on mutual recognition of protection measures taken in civil matters upon request of the person at risk, adopted on 12 June 2013, aims to ensure that protection measures in civil matters issued by one Member State will be easily recognised by and applied in other Member States. A number of Member States reformed laws and enhanced victims' rights.

9.1. EU Member States take steps to enhance victims' rights

Some EU Member States overhauled victims' rights legislation in 2013, driven by the obligation to transpose the EU Victims' Directive into national legislation by November 2015. Some governments also enforced their responsibility to make victims' access to justice effective in practice, in particular by initiating, coordinating and funding the establishment of support services by state and non-state actors. Despite progress in enforcing victims' rights, gaps remain across various Member States, including continuing low numbers of victims granted compensation, lack of coordination of support services and the insufficient funding of and coverage provided by such services.

In the **Czech Republic**, a comprehensive Victims' Rights Act came into force on 1 August.[1] The

Key developments in the rights of crime victims

- The European Parliament and the Council of the European Union adopt a Regulation on mutual recognition of protection measures taken in civil matters upon request of the person at risk, aiming to ensure that all protection measures taken in civil matters in one Member State can be applied throughout the European Union.
- Member States continue efforts to implement Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (EU Victims' Directive) by amending criminal legislation to include measures that protect and empower victims and by strengthening victim support structures. Many gaps remain, however, such as a lack of coordinated support structures and inadequate funding of support organisations.
- The deadline for transposing Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (Trafficking Directive) is reached on 6 April 2013.
- Three EU Member States ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). A further three Member States signed the Convention in 2013, bringing the total number of EU signatories to 17.

- The JHA Council adopts conclusions on combating hate crime in the EU, inviting Member States to ensure that bias motives are taken into consideration throughout criminal proceedings; to take appropriate measures to facilitate victims' reporting of hate crimes; to look at measures to build trust in police and other state institutions; and to collect and publish comprehensive and comparable data on hate crime.

act regulates the position of victims of crime, making special provision for "particularly vulnerable victims", for example victims of crimes involving racial hatred or prejudice. All victims have the right to access to information concerning their rights and obligations, will have the chance to file a criminal complaint and are to be informed about where they can seek assistance. There are also measures ensuring that particularly vulnerable victims will be interviewed by someone who is specially trained and that the same person will conduct hearings.

Poland amended its Criminal Code of Procedure to bring it in line with the Victims' Directive.[2] Crucially, the new law introduces the formal obligation to inform victims about their specific rights in preparatory proceedings. The amendment also gives victims and suspects equal rights to access case files in pre-trial proceedings. Victims must be informed about this right at the beginning of the investigation. The new law also introduces the right to interpretation for non-Polish-speaking victims.[3]

In the **United Kingdom** (England and Wales), the Criminal Procedure Rules were restated in October 2013. The resulting revised Criminal Practice Directions were amended in line with the Code of Practice for Victims of Crime, requiring, for the first time, that Victim Personal Statements be read to the court if the victim so requests, subject to judicial discretion.[4]

While not all countries took concrete steps to transpose the Directive in 2013, some Member States paved the way for progress. The **Lithuanian** Ministry of Justice, for example, adopted a framework plan of implementation, which sets out plans to amend the Criminal Procedure Code and introduce other measures to improve the protection of rights of all victims of crimes in accordance with the directive.[5] **Ireland** also announced plans for a Criminal Justice (Victims' Rights) Bill.[6]

9.1.1. Governments take greater responsibility towards victims

Governments are becoming increasingly aware of their responsibility to make victims' access to justice effective in practice, in particular by initiating, coordinating and funding the establishment of support services by state and non-state actors in line with Articles 8 and 9 of the EU Victims' Directive on the provision of victim support services (see the FRA 2012 Annual report). Governments are thus increasing their influence on the provision of services by non-governmental organisations (NGOs). The following trends can be identified across Member States in 2013:

- the adoption of joint government strategies ensuring a comprehensive and coordinated approach to the implementation of victims' rights (for example, in **Finland**, **Ireland** and the **Netherlands**);
- the creation or strengthening of organisations tasked with coordinating efforts to support victims (for example, in **Denmark** and **France**);
- the introduction of mechanisms to recognise, certify or accredit generic or specialised support services on the basis of explicit standards and criteria (for example, in **Austria, Belgium** and the **Czech Republic**).

In **Finland**, the government took steps to ensure adequate implementation of the EU Victims' Directive by setting up a commission to prepare a Victims Strategy to cover all victim-related activities.[7] A new policy document, *To do justice to victims*, presented to the **Dutch** parliament in 2013 sets out proposals to increase training on victims' rights for various actors; improve information supply and adapt it to the differing needs of victims; secure rights of victims in cross-border cases; simplify compensation claims; and further the professionalisation of victim support and the mandatory contribution of perpetrators to victim support.[8]

The **Irish** government established the Victims' Rights Alliance, an association of victim support and human rights organisations. The alliance aims to ensure that the EU Victims' Directive is implemented within the proposed time frame, covering all victims of crime. The alliance provides a platform for victims' rights NGOs in Ireland to engage with relevant interest groups, including the government, on the implementation of the directive. In late 2013, the **Croatian** government announced plans to adopt a new national strategy for victim and witness support for the period 2014–2017.[9]

In **Denmark**, a new law establishes a Victims' Fund for the benefit of victims of crime and traffic accidents, funded by fines imposed on convicted offenders. Through grants to victim support services, research, projects on education, information and development, the fund will support activities in the area of victim support.[10]

France set up general victim support offices, as stipulated by a 2012 decree[11] and a 2013 circular.[12] These NGO-run services are conceived as 'one-stop' offices for victim information, guidance and support throughout the criminal procedure. Since piloting 12 such offices

in 2009, France opened another 50 between 2010 and 2012 and established a further 90 in 2013.[13] Furthermore, the Victim Support Service of the Ministry of Justice is conducting two pilot projects concerning the implementation of Article 22 of the Victims' Directive, which obliges Member States to ensure that victims receive "a timely and individual assessment [...] to identify specific protection needs".[14]

In the **United Kingdom** (England and Wales), since 2012 Police and Crime Commissioners have been responsible for deciding and allocating the budget for most victim support. In October 2013, the Ministry of Justice published the government's response to the consultation Improving the Code of Practice for Victims of Crime. The code introduces the notion of an enhanced service for victims in most need.

The **Czech Republic's** newly adopted Victims' Rights Act creates a requirement for the Ministry of Justice to accredit support services. State grants then support and finance such organisations. Victim support is granted to any natural person who is a victim of crime. It comprises social, psychological and legal services provided by qualified people.

In **Austria**, since January NGOs providing support and protection in cases of domestic violence have performed their work on the basis of service contracts, the result of the first EU-wide public procurement procedure. This procedure has not resulted in a change in the NGOs selected; the organisations providing the service have been operating on the basis of public grants since the late 1990s. It has, however, necessitated the definition of performance criteria and performance indicators. It has also strengthened the link between the government and NGOs providing support to victims of domestic violence and it has enhanced the transparency of that cooperation.

Belgium adopted criteria that organisations need to fulfil to be recognised as specialised organisations in the area of reception and accompaniment of victims of human trafficking and several severe forms of smuggling of human beings (see Chapter 2 on border control and visa policy). Only Belgian-based non-profit organisations that have as their main purpose offering care, guidance and housing to victims of trafficking and aggravated forms of trafficking can be recognised as specialised centres. Centres must provide administrative and legal follow-up support for victims, and they must have a strategic and operational plan explaining the administrative, psychosocial, legal and medical support available. In addition, each centre must issue an annual report with comparable statistical data on the care of victims of trafficking, including the number of victims, their age and gender, and the form of exploitation that they experienced. Recognised centres obtain the right to act as a civil party in defence of victims of human trafficking. Three centres were recognised as specialised centres after the entry into force of the royal decree in April 2013: PAG-ASA (Brussels), Payoke (Antwerp) and Sürya (Liège).[15] These centres, however, do not benefit from structural funding.

9.1.2. Many gaps remain, including a lack of coordination of support services and insufficient funding

Despite progress, many EU Member States still lack a coordinated approach to implementing measures to safeguard the rights of victims, and in more than half of Member States the coverage provided by support services is far from satisfactory. The European Institute for Gender Equality issued a report recently that supports this finding. The report, which focuses on specialised support services for women victims of intimate partner violence, finds that the level of provision of support services to such victims varies substantially within the EU in approach, capacity, quality and geographical distribution.[16] Many Member States need to make a significant effort if they are to meet the November 2015 target date for implementation of the EU Victims' Directive. In **Slovakia**, for example, the government has not yet begun any of the necessary preparatory activities.[17] **Cyprus** lacks a holistic approach to victim support, with victims' rights and measures to support them laid out in various laws and no specific body in charge of victim support coordination.

9.1.3. The role of victims in the sentencing phase

Several EU Member States reformed laws to strengthen the role of victims in sentencing after an offender's conviction. For example, **Austria** amended its Penal Procedure Code so that victims of sexual offences and sexually motivated violent offences have the right to express their views on the electronically monitored house arrests of offenders.[18] In **Belgium**, a bill has been introduced to give victims more rights in debates about the release of offenders. These rights include permission to attend and express their views at the special court sessions that decide on the execution of sentences that concern them.[19] The Bill stops short, however, of granting victims the right to appeal against a sentence they consider too lenient, an omission which some have criticised.

In the **United Kingdom** (England and Wales), the independent Victims' Commissioner reviewed the statutory Victim Contact Scheme covering victims of offenders convicted of certain sexual and violent offences.

The Victims' Commissioner, in her review of the scheme (the responsibility of probation services, using victim liaison officers), argued for better victim-oriented training for liaison officers and parole board members, more information for victims about parole board decisions and a more open and transparent parole board.[20] Since 2007, victims have had the right to make a Victim Personal Statement for the parole board, but the new Code of Practice for Victims of Crime granted victims for the first time a statutory right to make such a statement and apply to read it to the board in person.

9.1.4. Funding cuts hit support services

Cuts in funding and other austerity measures driven by the economic crisis are affecting victim support organisations across many Member States, including both generic and specialised victim support providers. In 2013, for example, the NGO Victim Support Slovakia, the only organisation in **Slovakia** providing services to all victims of crime, did not receive any public funds. As a result, the organisation drastically curtailed its services, suspending its official website and cutting its helpline operating hours to four per day. **Italy** decreased funding for victim support services by 300 % between 2011 and 2013. In 2011, specific support services were allocated €11.3 million; this fell to €9.3 million in 2012 and €3.5 million in 2013.[21]

FRA ACTIVITY

Mapping EU victim support services

In 2013, FRA completed research on victim support services across the EU, and in 2014 it will publish comparative findings, including:

- a comparative overview of the 28 Member States, concerning the extent, nature and context of victim support service provision;
- information on different models of victim support service provision, analysing Member State similarities and differences;
- promising practices that could offer models for adoption in different settings/Member States.

For further information on the project, see http://fra.europa.eu/en/project/2012/victim-support-services-eu-overview-and-assessment-victims-rights-practice

In contrast, the **Dutch** government increased funding to Victim Support Netherlands, from €22 million in 2012 to over €23.2 million in 2013, with a structural subsidy for the specialised care of victims of severe violent crimes and sexual offences.[22]

9.2. Member States enhance victims' access to compensation

The numbers of victims' compensation claims continue to be low and are even declining across the EU. The EU Victims' Directive obliges states to ensure that competent authorities provide victims (at first contact) with information on how and under what conditions they can access compensation.[23] Victims are also entitled to obtain a decision on compensation by the offender within a reasonable time during criminal proceedings, and Member States should also promote measures to encourage offenders to provide adequate compensation to victims.[24]

While some Member States have taken steps to help improve victims' access to compensation, the low numbers of applications and awards are a matter of concern in many EU countries, indicating that much needs to be done to assist and encourage victims to exercise their right to access compensation. According to **German** statistics, for example, only about 10 % of victims of violent crime apply for compensation under the Crime Victim's Compensation Act, and less than two in five of these victims (3.7 %) receive compensation.[25] This figure remained stable in 2011 and 2012. In the first nine months of 2013, only 22 crime victims in **Romania** received compensation.[26]

In **Slovenia**, the number was even lower, with only 19 compensation awards (resulting from 72 claims), totalling €42,183, being granted to crime victims in 2013. Thirteen of the 72 claims remain unresolved. In **Cyprus**, from 2012 to November 2013, 19 applications for compensation were received, nine of which were rejected while the rest remain under examination. In the **Czech Republic**, only one application had been received and acted upon by November 2013.[27] One of the reasons for the low numbers of claims, in addition to reasons reported in the FRA 2012 Annual report, is the short time frame many Member States apply for victims to claim compensation. The FRA 2012 Annual report also referred to the possibility that either many victims do not consider compensation a main concern or they have insurance. In some cases, victims must first exhaust the possibility of receiving compensation from the offender before they can apply for state compensation.[28]

The numbers of claims and awards are also extremely low in **Bulgaria**, prompting discussions in the National Council for Assistance and Compensation of Victims of Crimes about the legal amendments to the Assistance and Financial Compensation of Victims of Crime Act necessary to make it effective in protecting victims of crime.

Although the system of compensation for crime victims in the **United Kingdom** is considered to be one of the most advanced in the EU, there was an almost 15 % reduction in applications, to 47,889, received by the Criminal Injuries Compensation Authority in 2012–2013. The decline is attributed in part to a new scheme, introduced in 2012, which tightened the eligibility criteria.[29] The 10 % decrease in recorded crime between 2012 and 2013, indicating fewer crime victims in 2013 than in 2012,[30] could also help explain the decline in compensation applications.

Finland, the **Netherlands** (see the Promising practice box on advancing compensation payments to all victims of crime) and **Sweden** took steps in 2013 to better compensate crime victims. **Finland** introduced an amendment to its criminal code concerning forfeiture, making it easier for victims to receive compensation. After the proceeds of a crime have been ordered forfeit to the state, the victim may turn directly to the State Treasury and apply for compensation without being forced to take the issue to court. This procedure is considered much less complicated than a normal civil case.[31] **Sweden** simplified the application procedure for criminal injuries compensation by producing a simplified, electronic form.[32]

Promising practice

Advancing compensation payments to all victims of crime

The Netherlands announced in 2013 that it would expand the current advance payment provision for compensation of victims to victims of all crimes in 2016 and that it would also prolong the current three-year request submission period. One way the Netherlands provides for advance payment is through the Central Judicial Collection Agency, which is responsible for seizing perpetrators' property and using it to compensate victims. A further promising practice is that victims can apply for compensation with help from Victim Support Netherlands, which recently made it possible to apply for such compensation online.

For more information, see www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2013/07/23/beleidsreactie-pamflet-vvd-fractie-inzake-slachtofferbeleid.html

Criminal courts continue to refuse to take decisions on victims' civil law claims in several Member States. In **Slovakia**, for example, victims can lodge indemnification claims with the civil court only after the court or other entitled authority reaches judgment in the criminal proceeding.[33]

9.3. Member States move to strengthen rights of victims of domestic violence and violence against women

9.3.1. Istanbul Convention and related developments at EU Member State level

Three EU Member States (**Austria**, **Italy** and **Portugal**) ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention, CETS No. 210) in 2013. A further three signed the convention in 2013, bringing the total number of EU Member States that have signed but not yet ratified the convention to 17 (for the full list, see Chapter 10 on EU Member States and international obligations).[34] Efforts to ratify the convention prompted legal reforms in several Member States in 2013, including **Croatia**, **Denmark**, **Finland**, **France**, **Italy**, **Luxembourg** and the **United Kingdom**.

In **Croatia**, the amendments are extensive and include the introduction into Croatian law of definitions of female genital mutilation, forced marriage and many aggravated offences committed against a 'close' person. The criminalisation of non-consensual sexual intercourse was extended beyond crimes involving the use of violence or threat.[35] **Finland** included a definition of stalking in its criminal code.[36] **France** added to its criminal law definitions relating to forced marriage and inciting female genital mutilation.[37] **Denmark** amended its law, extending the statute of limitations in cases of child victimisation.[38]

In **Italy**, 2013 reforms to the Code of Criminal Procedure introduced a number of important measures for victims of domestic violence, sexual abuse, sexual exploitation and stalking, focusing on victims' procedural rights. Under the new provisions, the public prosecutor and police are legally obliged to inform victims that a lawyer may represent them during criminal proceedings and that victims or their lawyers may ask for a protected hearing.[39] They are also required to inform victims about the possibility of accessing legal aid and the conditions under which such aid is granted. In addition, the law provides that investigations into alleged crimes must be concluded within one year after they are reported to the police, and residence permits are to be extended to foreign nationals who are victims of violence, including undocumented migrants.

In addition, **Croatian** substantive criminal law now takes into account the long-term nature of relations of domestic violence. The fact that a violent offence has been committed against a 'close person', including an intimate partner, is now considered an aggravating factor. Similarly, the **Hungarian** parliament adopted a definition (Article 212a of the Hungarian Criminal Code) specifically covering violence in relationships; it entered into force on 1 July 2013.

These definitions are in line with the recent case law of the European Court of Human Rights (ECtHR). Until 2009, the court had dealt with non-lethal cases of domestic violence mainly as violations of the right to privacy under Article 8 of the European Convention on Human Rights (ECHR), with the notable exception of *Opuz v. Turkey*, which concerned a case of lethal domestic violence and where the court found violations of Articles 2, 3 and 14.[40] In a series of decisions taken in 2013, the court re-evaluated domestic violence cases, stressing the particularly degrading aspects of intimate violent relationships.

In a case against **Lithuania**,[41] an applicant alleged that in one month alone her live-in partner had beaten her up on five occasions, and she argued that her complaints should be examined under Article 3 of the convention, which provides that no one shall be subjected to torture or to inhuman or degrading treatment. The government objected that the injuries sustained by the victim were of a "trivial nature". However, the court pointed out that in previous cases treatment had been considered inhuman and degrading when it was such as to arouse in its victims feelings of fear, anguish and inferiority, capable of humiliating and debasing them and possibly breaking their physical or moral resistance. Accordingly, the court now stressed that over a certain period of time the applicant had been exposed to threats to her physical integrity and that this psychological impact is an important aspect of domestic violence. On this basis, the court concluded that the applicant's ill-treatment, which on five occasions caused her physical injuries, combined with her feelings of fear and helplessness, was sufficiently serious to reach the minimum level of severity under Article 3 of the convention on prohibition of torture and thus triggered the government's positive obligation under this provision. The court upheld this assessment in the later *Eremia v. the Republic of Moldova* case.[42] In the *D. P. v. Lithuania* case, the government acknowledged a violation of the Article 3 of the convention, and the court, taking note of the government's declaration under Article 3, decided to strike the complaint from its case list.[43]

Given the particular significance of Member States' obligations under the ECHR to prohibit torture or inhuman or degrading treatment and to redress violations, the ECtHR's view that relationships of domestic violence can amount to inhuman or degrading treatment places additional emphasis on states' obligations to acknowledge fully the severe rights violations that victims of domestic violence experience, sometimes over long periods.

9.3.2. Sexual violence

The Istanbul Convention defines sexual violence, including rape, as "non-consensual acts of a sexual nature", where consent must be given voluntarily "as the person's free will assessed in the context of the surrounding circumstances".[44] This is in line with ECtHR case law, according to which Member States have an obligation to "enact criminal-law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution".[45] The ECtHR highlighted this view in the *M. C. v. Bulgaria* case in 2003, which concluded that by requiring proof of resistance by the victim against the offender the criminal justice system fell short of punishing all forms of rape and sexual abuse. The obligations deriving from the ECHR prohibition on torture and inhuman or degrading treatment (Article 3) and from the right to respect for private and family life (Article 8) must be seen as "requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim".[46]

Some EU Member States, such as **Belgium**, **Croatia**, **Ireland** and the **United Kingdom**, have introduced reforms to extend definitions of sexual violence to include all forms of non-consensual sexual acts. The criminal codes of most Member States, however, contain definitions of sexual violence that afford protection not on the basis of lack of consent to sexual acts but only if certain additional requirements are met, including specific means of coercion or the victim's particular state of dependency or defencelessness. **Portugal**, the first EU Member State to ratify the Istanbul Convention, is taking steps to strengthen support for victims of sexual violence by establishing its first rape crisis centres.

The FRA survey on violence against women sheds light on the importance of criminalising marital rape. Member States must afford married women the same protection through criminal law provisions as unmarried women. Currently, the **Bulgarian** criminal code does not meet this standard.

9.3.3. Measures to enhance protection of women from domestic violence

Some EU Member States have focused reforms on further improving the protection of women against

domestic violence. The **Luxembourg** Act on Domestic Violence of 30 July 2013 extended the powers of the police, public prosecutors and courts to ban an offender from the victim's home and extended the time frames of protection measures.[47]

The **United Kingdom** rolled out Domestic Violence Protection Orders and the Domestic Violence Disclosure Scheme nationally in June 2013, following a successful 2012 pilot.[48] In July, the **French** government brought forward draft legislation aimed at furthering gender equality and including improvements to protection orders, mainly by speeding up proceedings, extending the time frame from four to six months and making it a rule that it is the victim who is allowed to stay in the home previously shared with the offender.[49]

A new **Italian** law gives the local police commissioner the power to issue an official restraining injunction and to temporarily revoke a perpetrator's driving licence in cases of severe aggression or verbal threats. It also makes it possible for police, subject to a public prosecutor's authorisation, to remove the perpetrator from the home as a precautionary measure in cases of severe forms of aggression.[50] The law also introduces a legal obligation, in cases of violent crime, to inform social services and the victim's lawyer, or the victim personally if they are not represented by a lawyer, about a judge's decision to withdraw or revise restrictive measures applied to the offender.[51] In addition, judicial police can order the offender to leave the family home immediately in cases of sexual exploitation, sexual abuse, personal injury, domestic violence and stalking. Electronic devices can be used to monitor whether the perpetrator adheres to the injunction to leave the house.[52]

In a second reading in June, the **Latvian** parliament adopted amendments to the law on the police, allowing police to ban a presumed offender from the victim's home for up to eight days. This power is, however, dependent on the victim's written application.[53]

Given the rapid legislative developments in protection measures against domestic violence in many Member States, a thorough assessment of the practical effectiveness of such measures is good practice. An evaluation in the **Netherlands** found that restraining orders correlate with a lower rate of recidivism in domestic violence cases, in part at least because victims are provided with better support following the issuing of a restraining order.[54]

In **Poland** in July, the Supreme Audit Office published the results of an audit assessing the steps taken by public

FRA ACTIVITY

Surveying violence against women

In March 2014, the FRA launched the results of its survey on violence against women, covering all 28 EU Member States. The survey is based on face-to-face interviews with a representative sample of 42,000 women. The interviews were carried out in 2012 by trained interviewers, who asked respondents questions concerning their personal experiences of violence, including physical and sexual violence, psychological violence by a partner, stalking, sexual harassment and violence in childhood. To ensure comparability, the same questions were asked in all Member States, using a structured questionnaire developed by the FRA and translated into the national languages.

The FRA report on the survey results presents a comprehensive overview of women's experiences of violence from the age of 15 and in the 12 months before the interview. Overall, the survey found that one woman in three (33 %) surveyed had experienced physical and/or sexual violence by a (current or previous) partner or non-partner since the age of 15. The survey also showed that 8 % had experienced this type of violence in the 12 months before the survey.

The results highlight the vulnerability and special needs of victims of sexual violence. Women who have experienced sexual violence indicate a number of psychological consequences. They were also more likely to say – compared with victims of physical violence – that they felt ashamed, embarrassed or guilty about what had happened, which can result in victims of sexual violence not reporting these incidents to the authorities. Depending on the type of violence and perpetrator, some 61 % to 76 % of women did not report the most serious incident of physical and/or sexual violence to the police or contact any other support services. The survey compared the experiences of victims who contacted some service or organisation for support. Victims were least satisfied with the assistance they received from the police, compared with other services such as healthcare, social support or victim support services, particularly in relation to crimes of sexual violence. The FRA opinions refer to the need for multi-agency cooperation, involving police and other services providers, to address violence against women, as well as further specialised victim support services in line with the EU Victims' Directive and the Council of Europe Istanbul Convention.

See: http://fra.europa.eu/en/publication/2014/vaw-survey-main-results

authorities to address domestic violence. According to the findings, the legal reform enacted in 2010 and 2011, which introduced the so-called 'Blue Card' procedure, failed to significantly improve the situation of domestic violence victims, in part because the procedure was overly bureaucratic.[55] A monitoring report published in **Romania**, assessing the initial implementation of its 2012 legal reform, revealed certain shortcomings, including lengthy proceedings and a lack of public awareness of the protection orders available to domestic violence victims.

In **Lithuania**, some particularly disturbing homicides sparked debates on the effectiveness of protection measures. In March, a woman called the police's emergency response centre for help, saying that her violent husband had returned in violation of a restraining order. Six hours later, the victim's brother called again to inform the police that his sister was dead. A number of similar cases occurred. NGOs held a press conference stressing that protection does not work in practice.[56] On a similar note, NGOs in **Hungary** voiced frustration that, despite legislative reforms, little progress has been achieved. They pointed out that victims often complain that police officers' attitudes fail to live up to the police service's brief, and that this discourages victims from seeking their help.[57]

In **Slovenia**, recent legislative changes resulted in the criminal offence of threatening another person in cases of domestic violence being prosecuted only on the basis of a motion made by the victim. Victims must also pay for legal representation if they wish to prosecute offenders for such offences.[58] **Bulgaria**, **Latvia** and **Slovenia** also stipulate, in certain cases, that protection measures, investigation or prosecution depend on the initiative of the violent crime victim. In contrast, an amendment to the **Lithuanian** criminal code ensures that domestic violence offences can be investigated and prosecuted even without the victim's consent.[59]

Following the institution of legislative reforms relating to the EU Victims' Directive, Member States have an obligation to assess whether the victims' situation has improved, by monitoring the reforms' impact and looking at how victims have accessed the rights set out in the directive.[60] The conclusions of the Council of Europe hearing on 'Access to Justice for Women Victims of Violence' on 9 December 2013 emphasised that lengthy criminal proceedings, high levels of attrition, corruption, low conviction rates and discriminatory practices constitute serious barriers to women victims of violence seeking justice and that Council of Europe member states should continue to address these issues.

9.4. EU focuses on enhancing rights of hate crime victims

Starting with the informal meeting of JHA ministers on 17–18 January 2013 in Dublin, EU action countering hate crime, racism, antisemitism, xenophobia and homophobia was in focus throughout 2013 (see also ▶ Chapter 6 on racism, xenophobia and related intolerance). In March, the European Parliament called on the European Commission, the Council of the European Union and the Member States to strengthen the fight against hate crime and discriminatory attitudes and behaviour, and called for a comprehensive strategy for fighting hate crime, bias violence and discrimination.[61] Similarly, the European Parliament urged Member States to act against hate crime and to promote anti-discrimination policies, if necessary by strengthening their national antidiscrimination bodies and promoting training within public authorities.[62]

On 6 June, the JHA Council adopted conclusions on fundamental rights, the rule of law and the European Commission's 2012 *Report on the application of the Charter of Fundamental Rights of the European Union*, which refers to hate crimes and the need to assess the effectiveness of the EU legal norms in fighting hate crimes.[63]

In October 2013, at the request of the Council of the European Union, FRA submitted an *Opinion on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime*. The following month, following discussions on the legal and policy framework and in view of the decision's revision, scheduled for the end of 2013, FRA used its Fundamental Rights Conference in November 2013 to explore effective strategies to combat hate crime. The conference, organised in cooperation with the Lithuanian Presidency, brought together over 400 decision makers and practitioners from across the EU. In December 2013, acknowledging the important role of FRA in providing expert independent analysis, the Council of the European Union adopted its conclusions on combating hate crime in the EU, inviting Member States to ensure that bias motives are taken into consideration throughout criminal proceedings; take appropriate measures to facilitate the reporting of hate crimes by victims, including looking at measures to build trust in police and other state institutions; and collect and publish comprehensive and comparable data on hate crime.[64] The Council conclusions call on FRA to facilitate the exchange of good practices amongst Member States (Action 19). FRA will hold a seminar on hate crime in 2014, designed to set up a community of practice. The seminar, which will take

place on 28–29 April 2014 in Thessaloniki in cooperation with the Greek Presidency, will aim at promoting continuous engagement with Member State authorities, mandated national human rights institutions and civil society organisations.

FRA ACTIVITY

Going further in combating hate crime

At the request of the Council of the European Union, FRA submitted, in October, an *Opinion on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime*.

In its opinion, FRA suggested that:

- legislation adopted at Member State level should deal with all forms of discrimination on an equal footing;
- due attention should be paid to making the bias motivation underlying hate crimes visible throughout criminal proceedings, including to the public;
- legislation allowing courts to deal with bias-motivated offences on the basis of increased penalties is a particularly reliable means of ensuring that discriminatory motives are taken into account;
- Member States are encouraged to facilitate the reporting of hate crimes and to encourage victims and witnesses to report such crime, such as by looking into measures that could simplify bureaucratic procedures and reporting;
- on the basis of clear and comprehensive guidelines, Member States together with Eurostat should, on an annual basis, collect and publish data pertaining to crimes committed with a discriminatory motive.

The FRA opinion is available at: http://fra.europa.eu/en/opinion/2013/fra-opinion-framework-decision-racism-and-xenophobia-special-attention-rights-victims

With regard to the recognition of different forms of hate crime, Member States shifted focus in 2013 from racism to include sexual orientation, gender identity and transgender expressions. As part of this trend, the **Portuguese** parliament, for example, unanimously approved a revision of the criminal code that will ban discrimination and hate crime against transgender people. The parliament also added 'gender identity' alongside 'sexual orientation' to the list of discriminatory motives leading to an increased penalty for murder.[65] The parliament also stressed the reprehensibility of crimes motivated by the perceived sexual orientation or gender identity of a victim. It is therefore looking at making penalties more severe.[66]

In **Belgium**, the Minister of Justice, the Minister of Internal Affairs and the College of Prosecutors General issued a joint circular in June with the aim of establishing a unified investigation and prosecution policy for discrimination and hate crimes, including discrimination on the basis of gender.[67] In addition, the criminal code was amended, introducing increased penalties for manslaughter and intentional personal injury motivated by hate and introducing the new criterion of hatred of 'sex reassignment as an aggravating motivation for these offences.'[68]

Croatia also introduced changes to its criminal code in 2013, adding provisions on acts committed out of hatred and incitement to violence against groups or their members based on racial, religious, national or ethnic affiliation, skin colour, sex, sexual orientation, gender identity, disability or other traits.[69] **Slovakia** amended its Criminal Statute and Code of Criminal Procedure to introduce stricter punishments for all criminal offences motivated by national, ethnic or racial hatred as well as hatred based on victims' complexion and hatred based on victims' sexual orientation.[70] **Hungary** also amended its criminal code to include an increased penalty, ranging from two to eight years' imprisonment, in cases of violence against a member of a community, national, ethnic or racial group, or against "other social groups", particularly based on disability, gender identity or sexual orientation (see Section 6.2.1 for information on the FRA Thematic situation report *Racism, discrimination, intolerance and extremism: Learning from experiences in Greece and Hungary*).[71]

The **Italian** legislature also focused on the regulation of repression and prevention of gender violence and homophobic crimes through criminal law in 2013, with parliament passing a bill to protect against homophobia and transphobia. The bill extends to the grounds of homophobia or transphobia the crimes of: discrimination or incitement to discrimination (the Reale Law) and violence or incitement to violence. It also considers as aggravating circumstances those crimes committed for purposes of discrimination or hatred (the Mancino Law).

In **France**, a proposal to extend the limitation period from three months to one year for prosecution of offences concerning sexual orientation, sex, gender identity or disability reached the parliament in 2013.[72]

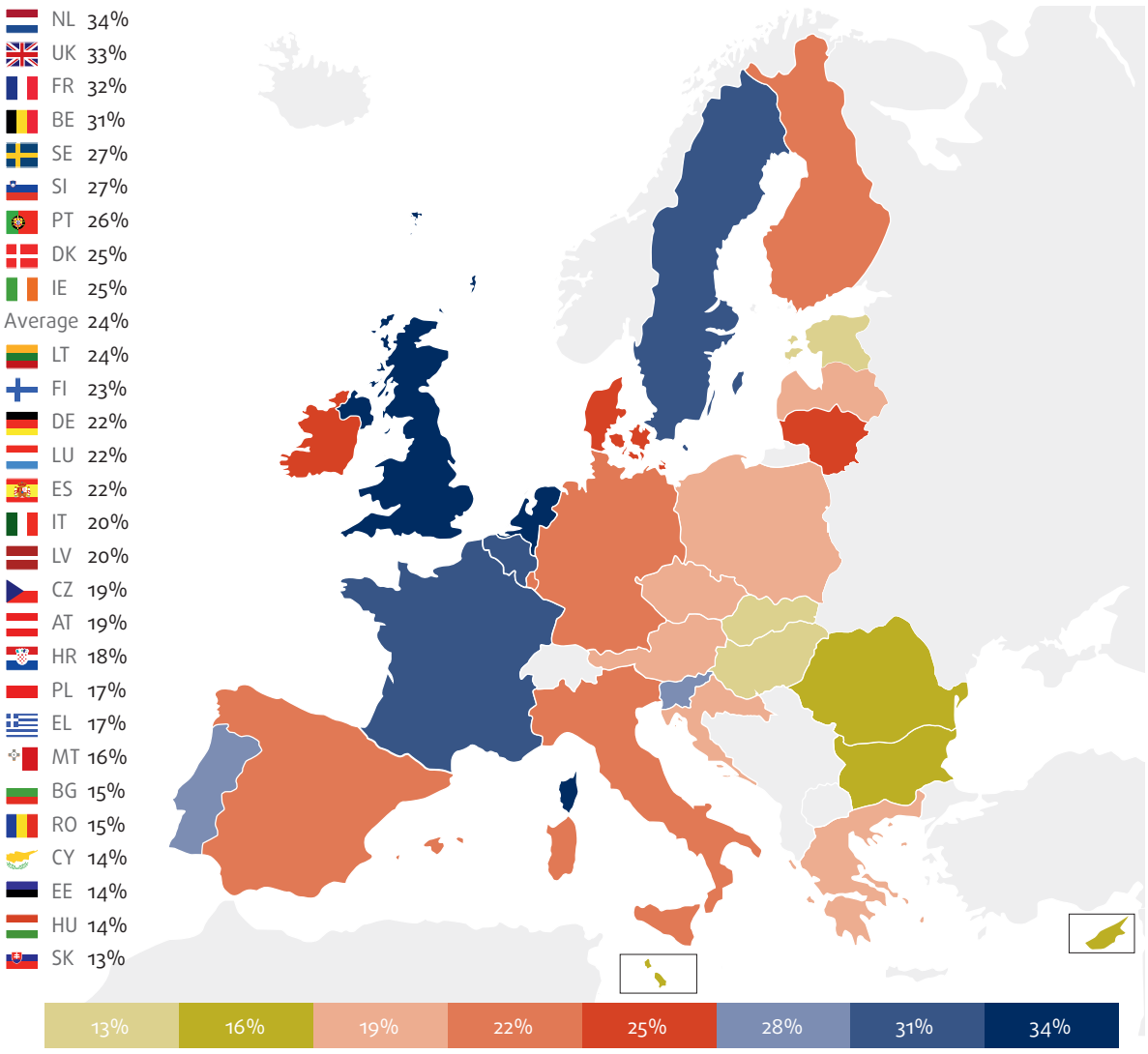
In the **United Kingdom** (England and Wales), the government asked the Law Commission to look into the possible extension of hate crime to offences committed on grounds of discrimination including disability, sexual orientation and gender identity. The Law Commission launched a public consultation, which ran from June to September 2013, to analyse the case for reforming the existing statutory offences.[73]

Greece amended its criminal code in March, transposing Article 4 of the Framework Decision on Racism and Xenophobia which requires that a racist motive for a crime be considered an aggravating circumstance. The amendment provides that, for judicial sentencing, "the commission of an act of hatred caused due to race, colour, religion, descent, national or ethnic origin or sexual orientation or gender identity of the victim constitutes an aggravating circumstance and the sentence is not suspended".[74] In November, the Ministry of Justice submitted a bill intended to implement Article 1 of the same Framework Decision concerning public incitement to bias crimes. Sexual orientation and gender identity are not included as protected grounds, although all the other grounds covered by the previous amendment of the criminal code are included in the draft bill.

9.4.1. The need to tackle under-reporting by victims

FRA research has consistently pointed to victims' systemic under-reporting to police and to the need to facilitate victims' effective access to criminal justice. As victims of hate crime are often unable or unwilling to seek redress against perpetrators, many crimes remain unreported, unprosecuted and therefore invisible. In such cases, the rights of victims of crime may not be fully respected or protected and EU Member States may not be upholding their duty to protect fundamental rights, including their legal obligations to protect and support crime victims as set out in the EU Victims' Directive.

Figure 9.1: Violence and harassment: most serious physical/sexual attack or threat of violence – did you or anyone else report it to the police?



Source: FRA, 2013; EU-LGBT survey data are available at: http://fra.europa.eu/DVS/DVT/lgbt.php?locale=EN&dataSource=LGBT&media=png&width=740&plot=heatMap&topic=3.+Violence+and+harassment&question=fa2_11&superSubset=1&subset=AllSubset&subsetValue=01--All&answer=01--Yes

FRA survey findings show that victims of crime often do not report crimes, whether to law enforcement agencies, the criminal justice system, NGOs or victim support groups.[75] Three quarters (76 %) of the Jewish people who say they were victims of antisemitic harassment in the past five years, for example, did not report the most serious incident to the police or to any other organisation.[76] The FRA LGBT survey found that just one in five (22 %) of the most serious incidents of violence which had happened to respondents in the same time period because they were LGBT were brought to the police's attention (see Figure 9.1).[77]

Victims' trust in the police and in their ability to react to reports of victimisation in a manner sensitive to victims' rights and needs is crucial. In **Bulgaria**, a three-year programme, 'European police and human rights', focuses on discrimination prevention as well as on police performance in the light of international human rights standards. One specific focus of the project's training courses is on victims of bias-motivated crime and preventing their secondary victimisation.[78] Another measure to improve a police service's responsiveness and sensitivity is the creation of specialised units or contact officers.[79]

In **Belgium**, the police must appoint 'reference officers' to support their work on discrimination and hate crimes, on the basis of a June 2013 circular. These officers are tasked with raising public awareness, providing training and information to their colleagues and monitoring the police service's performance in discrimination and hate crime cases.[80] Enabling victims to report crimes to the police online is another way to increase reporting.

Promising practice

Reporting hate crime online

The police in the Netherlands developed an online tool in 2013 to enable victims of hate crime to report the incident to the police anonymously. The website explains the concept of hate crimes and encourages reporting. Victims are invited to see a police office and are informed about their rights and legal proceedings.

This tool was inspired by True Vision, a web facility providing information for victims and facilitating the reporting of hate crimes, implemented by the Association of Chief Police Officers in the United Kingdom (England and Wales).

For more information, see www.hatecrimes.nl/info-en-links/achtergrond and www.report-it.org.uk/home

Increasing the public visibility of hate crime and holding perpetrators accountable is another area in which Member States must make progress if they are to combat hate crime successfully.[81] The objectives of acknowledging victims and increasing the visibility of hate crimes lie at the heart of a royal decree the **Spanish** government adopted in September, on the recognition and comprehensive protection of victims of terrorism. The decree also aims to improve victim support and public administration coordination in relation to victims of terrorism.[82] **Belgium** increased the maximum penalty for all crimes motivated by discriminatory attitudes through legislation that entered into force in February 2013.[83]

Promising practice

Tackling discrimination and hate crime – a police manual

In Poland, a practical guide to antidiscrimination measures for the police defines and describes various forms of discrimination. The manual of good antidiscrimination practices advises on how to deal with hate crime and discrimination cases in a sensitive manner. The manual, published by the National Network of Police Plenipotentiaries for Human Rights Protection and funded by the Polish police, benefited from the input of a number of stakeholders, including the Polish Human Rights Defender, the Government Plenipotentiary for Equal Treatment and several civil society organisations representing LGBT people, religious minorities, people with disabilities and the elderly.

*For more information, see: Poland, Plenipotentiary of the Commander Chief of Police for the Protection of Human Rights (*Pełnomocnik Komendanta Głównego Policji ds. Ochrony Praw Człowieka*) (2013), Human first (*Po pierwsze człowiek*), Warsaw 2013, available at: http://isp.policja.pl/isp/prawa-czlowieka-w-poli/aktualnosci/4344,dok.html*

9.5. Member States address rights of victims of trafficking and severe forms of labour exploitation

In 2013, EU Member States continued to implement measures outlined in EU legislation tackling human trafficking and labour exploitation, including: Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (Trafficking Directive); the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016; the EU Victims' Directive; Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (Employers' Sanctions Directive); and the draft Seasonal Workers Directive (see also Chapter 2 on border control and visa policy, and Chapter 4 on the rights of the child and the protection of children).

At the international level, the entry into force of the Convention concerning decent work for domestic workers in September 2013 marked a major milestone in the domestic work sector. Adopted in 2011 by the ILO, the convention sets standards to protect domestic workers, covering the right to claim rest days, the right to clear terms and conditions of employment, the right to a minimum wage and the right to social security coverage. The convention also lays out measures concerning children's rights, including the abolishment of child labour.[84]

At the EU level, the JHA Council, at its 6–7 June 2013 meeting, prioritised for 2014–2017 the tackling of organised criminal groups involved in trafficking for labour exploitation and sexual exploitation, including those groups using legal business structures to facilitate or disguise their criminal activities.[85] The deadline for Member States to transpose the Trafficking Directive into national law was reached in April. Negotiations on the draft Seasonal Workers Directive come to an end, with the Council of the EU and the European Parliament reaching a political agreement on the text. The directive was adopted in February 2014 (see also Chapter 1 on asylum, immigration and integration). It should harmonise the conditions of entry and residence and the rights of migrant workers coming to the EU for seasonal work, protecting them from labour exploitation.

The EU Anti-Trafficking Coordinator continued to monitor the implementation of the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016. Closely linked to the strategy, the EU Civil Society Platform against Trafficking in Human Beings was launched in May 2013. The Europe-wide platform, set up by the European Commission, will serve as a forum for the exchange of experiences and concrete ideas on how best to assist victims, expand their networks and prevent others from falling victim to this crime. The platform comprises over 100 civil society organisations working at European, national and local levels in the field of human rights, children's rights, women's rights and gender equality, migrants' rights and shelters.

Eurostat published a report, *Trafficking in Human Beings in the European Union*, that reveals that 62 % of victims are trafficked for sexual exploitation and 15 % of victims are children. The report, issued in April, is based on statistical data from all EU Member States.

9.5.1. Most Member States increase efforts to tackle human trafficking

The majority of Member States took positive steps in 2013 to strengthen national legislation to tackle human trafficking and labour exploitation and provide support to those who are victimised, in line with EU legislation.[86]

Compensation was extended to victims of trafficking in several Member States, in line with Directive 2011/36/EU, including **Austria**, **Estonia**, **Greece**, **Latvia**[87] and **Luxembourg**.

As a result of amendments to the **Austrian** Crime Victim Act in 2013, third-country nationals who are victims of human trafficking now have access to compensation and a right of residence for special protection.[88] The state is now also obliged to pay for psychological treatment for victims and surviving dependents up to a certain maximum amount in cases of crisis intervention.[89] Amendments to **Estonia's** Victim Support Act also provide for victims' – and on some occasions their relatives' – access to victim support, social services and state compensation, in addition to creating a preliminary measure allowing victims of trafficking to stay and settle in Estonia.[90]

Belgium amended its criminal code in 2013, significantly extending the definition of human trafficking.[91] As the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) observed in its recent report on Belgium, the 'means' element of trafficking – coercion, threat, deception – no longer forms part of the definition of trafficking under Belgian law; rather, such methods are considered aggravating circumstances. While acknowledging that this may contribute to making the prosecution of traffickers easier in terms of evidential requirements, GRETA stressed that this extension may lead to confusion with other criminal offences, or to difficulties regarding mutual assistance with other countries in the anti-trafficking field.[92]

In **France**, a law enacted in August 2013 provides a new definition of human trafficking and modifies the criminal code,[93] defining organ retrieval, forced labour or services and slavery as forms of exploitation that can characterise human trafficking.

In July 2013, **Ireland** passed criminal law legislation that extended the scope of exploitative activities to comply fully with the provisions of Directive 2011/36/EU.[94] Other key provisions include: the commission of a human trafficking offence by a public official shall be treated as an aggravating circumstance for sentencing purposes; and the adoption of the definition of the term 'forced labour' to match the definition contained in ILO Convention No. 29 of 1930 on Forced or Compulsory Labour, in other words "all work or service which is exacted from any person under the menace of any penalty and for which the person has not offered

himself voluntarily". The 2008 Criminal Law (Human Trafficking) Act did not define the term.

In **Italy**, the parliament passed a law empowering the government to transpose the Trafficking Directive in August 2013. The law provides measures to facilitate coordination between the institutions responsible for the protection and assistance of victims of trafficking and those who have expertise on asylum, resulting in improved referral mechanisms.

Portugal also transposed Directive 2011/36/EU into the national legal system in 2013.[95] The 2013 GRETA report[96] notes, however, that room for improvement remains. GRETA said that Portugal could do more to ensure the effective identification of victims; take a more proactive approach to support through, for example, proactive labour inspections and the training of inspectors in this area; and strengthen its focus on supporting male victims of labour exploitation and child victims of trafficking. As a positive step in that direction, in May 2013, the NGO Health in Portuguese opened the first refuge in Portugal for the support and protection of male victims of trafficking.

In the **United Kingdom** in December 2013, new draft legislation proposed tackling human trafficking and severe forms of labour exploitation by, for example, increasing prison sentences for convicted slavery and trafficking offenders. It also suggested introducing Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders to restrict the activity of those who pose a risk and those convicted of slavery and trafficking offences, so that they cannot cause further harm. It proposed establishing a legal duty for police, immigration authorities and other public sector staff to report potential victims of trafficking to the National Crime Agency.[97]

In **Malta**, amendments to the criminal code increased fines and prison terms with the aim of deterring potential trafficking offenders.[98] Any person who engages in or makes use of the services or labour of a trafficked person shall be liable to punishment by imprisonment. Moreover, when an offence is committed for the benefit, in part or in whole, of a body corporate, the legal person responsible will be subject to punishment in addition to the judicial winding up and/or temporary or permanent closure of the establishment concerned.[99]

9.5.2. Member States still bring few prosecutions

Despite considerable efforts to identify and investigate cases of human trafficking, few victims are identified and prosecution and conviction rates are low, raising concern across Member States.

GRETA, in its latest country reports (2013), has highlighted the problem of low numbers of cases prosecuted and offenders convicted in several EU Member States, including Ireland, Latvia, Malta, Poland, Portugal and Spain.[100]

Low success rates in identifying victims and convicting offenders show that measures to reach out to victims in many Member States are simply ineffective. National statistics on numbers of victims seeking support or advice reinforce this view. In **Romania**, for example, in 2013, only three calls concerning possible cases of human trafficking were placed to the national hotline, and not a single non-national contacted the hotline, according to information provided by the National Agency against Trafficking in Persons.[101]

For only the third time, the **Czech Republic's** High Court ruled in 2013 on a case related to labour exploitation.[102] An important aspect of this judgment is the clarification of the term 'abuse of situation of dire straits'. The perpetrators in this case knew that the victims faced child custody issues and were therefore particularly vulnerable. They offered the victims travel to the United Kingdom and promised paid employment. Upon arrival, however, the victims were required to work 12-hour shifts in a bakery, endured poor living conditions and were forced to give the perpetrators a significant part of their income. The victims eventually escaped and asked for help at the Czech embassy, which assisted in their return to the Czech Republic. A Czech Republic regional court described this situation as "trafficking in human beings". Although past judgments have dealt with poor living conditions, this was the first court ruling in the Czech Republic to consider that such conditions infringed fundamental human rights.[103] The four perpetrators received unconditional sentences of up to nine years in prison.

9.5.3. Concern that victims may be prosecuted for 'crimes'

Discussions in several Member States in 2013 focused on the risk that victims of trafficking could be prosecuted for public order offences which they have committed under duress. This issue was also raised in a 2013 report by the Organization for Security and Co-operation in Europe (OSCE) Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, entitled *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking*.[104]

In its annual report on human trafficking and smuggling of human beings, the Centre for Equal Opportunities and Opposition to Racism in **Belgium**, for example, criticised the Belgian police and judicial authorities

over their handling of human trafficking. According to the centre, victims of human trafficking who have committed crimes under coercion are often prosecuted, but the wider phenomenon of human trafficking is not tackled and the crimes committed by people who bear the greatest responsibility go unpunished. This can, in part, be explained by victims' fear of making incriminating statements and the fact that some victims do not perceive themselves as such.

Several EU Member States altered their legislation to prevent the criminalisation of victims of trafficking and introduced measures for their empowerment and protection, thus bringing national law in line with the Trafficking Directive.

Bulgaria, for example, amended its criminal code in 2013 by adding a new provision stating that when a person who is a victim of trafficking is forced, as a victim, to commit a crime, the crime is not intentional.[105] The amended Combating Trafficking in Human Beings Act also affords special protection to victims, and it expands on the definition of exploitation. It is now defined as "the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs".[106] An important change was also made to **Slovakia's** Code of Criminal Procedure, allowing attorneys to abandon criminal prosecution of victims of human trafficking, sexual abuse or sexual exploitation, provided that the victims have been forced to participate in the criminal activity as a direct result of said crimes.[107] Similar amendments to the **Latvian** criminal law entered into force in April 2013, providing that a person may be released from criminal liability if the offence was committed at a time when the person was subjected to human trafficking and the person was forced to commit the offence.[108]

FRA ACTIVITY

Addressing severe forms of labour exploitation

FRA began research in 2013 into criminal forms of work exploitation of migrants across the EU, involving fieldwork in 21 EU Member States.

The project focuses on:

- Access to justice for migrants who have become victims of labour exploitation, including the punishment of offenders and victims' claims under civil and labour law. In this respect, the objective is to identify factors which support or hinder victims of labour exploitation in accessing justice.
- Risk factors contributing to labour exploitation of migrants, and preventative measures as a means of reducing risk.
- The type and frequency of incidents of labour exploitation and the framework in place to tackle it.

The project is linked to other FRA research, in particular to work on migrants in an irregular situation employed in domestic work and on child victims of trafficking, as well as the victim support services project.

The first phase of the project, which was completed in 2013, aimed to obtain a general overview of the situation of victims of labour exploitation in all Member States, including the general preconditions that enable victims of labour exploitation to access justice.

The second phase of the project (to be completed in 2014) aims to explore further the situation in selected Member States through social fieldwork research with representatives from professions such as labour inspectors, health and safety officers and recruitment and employment officers. Fieldwork in the first round of countries (Austria, Belgium, Bulgaria, the Czech Republic, Finland, Ireland, Italy, Poland, Portugal and the United Kingdom) began in the second half of 2013, and a further 11 countries (Croatia, Cyprus, France, Germany, Greece, Hungary, Lithuania, Malta, the Netherlands, Slovakia and Spain) were selected in late 2013.

Desk research in all 28 Member States in 2014 will further elaborate on legal and institutional questions relating to severe forms of labour exploitation. The project aims to shed more light on Member States' implementation of the Employers' Sanctions Directive, addressing issues such as the liability and sanctioning of legal persons, back payments to exploited migrant workers and the facilitation of complaints.

Using the information and evidence collected in 2014 by the FRA research network, Franet, the FRA will prepare a comparative report based on the research findings.

For more information, see: FRA (2009), Child Trafficking in the European Union Challenges, perspectives and good practices, *Luxembourg, Publications Office, FRA (2011),* Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States, *Luxembourg, Publications Office. and FRA (2012),* Fundamental rights: challenges and achievements in 2012, *FRA Annual report, Luxembourg, Publications Office, Section 9.3*

9.5.4. Labour exploitation – action needs to be stepped up

GRETA, which is responsible for monitoring the implementation of obligations under the Council of Europe's Convention on Action against Trafficking in Human Beings, recommended in 2013 that action against trafficking for labour exploitation be stepped up. GRETA evaluated the following eight EU Member States in 2012–2013: **Belgium**, **France**, **Ireland**, **Latvia**, **Malta**, **Poland**, **Portugal** and **Spain**. Key findings include:

- At the moment, the key focus in most Member States is on trafficking for sexual exploitation. This should shift to clearly include trafficking for labour exploitation (France, Latvia, Spain) and existing policies should be adapted accordingly (Poland, Portugal).
- A more proactive approach towards combating trafficking for labour exploitation is needed (Ireland, Latvia, Malta, Poland, Portugal, Spain).
- More awareness raising is needed regarding trafficking for labour exploitation (Ireland, Poland, Portugal, Spain).
- More research into trafficking for labour exploitation is needed (France, Portugal, Spain).

A FRA project on severe forms of labour exploitation aims to address this gap in both policy and research, increase awareness about criminal forms of labour exploitation beyond trafficking and provide concrete suggestions on preventative measures and steps to support victims.

"In some countries evaluated by GRETA, victims of trafficking appear to be treated first and foremost as irregular migrants rather than victims in need of specific assistance and protection as guaranteed by the Convention."

"The absence of effective regulation of certain labour market segments is one of the factors that help to create an environment in which it is possible and profitable to use trafficked labour."

International Organization for Migration, Anderson, B. and O'Connell Davidson, J. (2003), Is trafficking in human beings demand driven? A multi-country pilot study, *Migration Research Series No. 15, quoted in: Council of Europe, 3rd General Report on GRETA's activities, Strasbourg, CoE, p. 48*

Outlook

Member States have an obligation to victims of crime to ensure that the EU Victims' Directive is implemented in practice by November 2015. Developments in 2013 have been positive, but much remains to be done if fundamental rights are to become a reality for victims of crime. The true test of the effectiveness of this legislation will be whether victims and legal professionals are aware of it and can apply it in practice.

The Istanbul Convention is set to enter into force in 2014, with, as of the end of 2013, just two further ratifications needed. Its entry into force will have a positive effect on the enforcement of the rights and protection of women across those Council of Europe member states that ratify the convention. The publication of findings from the FRA survey on violence against women on 5 March 2014 sheds light on women's experiences of physical, sexual and psychological violence across Europe. It provides valuable comparable data on violence against women as a basis for developing evidence-based policy responses at national and EU level.

The 2013 Council of the European Union conclusions on combating hate crime provide a new impetus to the EU, its institutions and Member States to ensure that the values enshrined in Article 2 of the Treaty on European Union are fully respected in line with the EU Charter of Fundamental Rights. As a follow-up, a seminar organised under the aegis of the Greek Presidency, will look to identify actions and exchange good practices that EU institutions and Member States can implement to combat hate crime in policy and practice. The onus will be on increasing acknowledgement and recognition of hate crime among law enforcement agencies, public authorities and local authorities, and ensuring that victims can access justice and seek redress. In view of the upcoming European Parliament elections in May 2014, the seminar, together with other initiatives, offers an opportunity to engage directly with political actors in relation to their roles and responsibilities in combating hate crime in the EU.

Index of Member State references

Endnotes

All hyperlinks accessed on 30 April 2014.

1 Czech Republic, *Zákon o obětech trestých činů*, 30 January 2013, www.zakonyprolidi.cz/cs/2013-45.

2 Poland, *Ustawa z dnia 27 września 20130 zmianie ustawy Kodeks Postępowania Karnego*, 27 September 2013.

3 *Ibid.*

4 United Kingdom, Judiciary (2013), Criminal Practice Directions (Amendment No. 1) EWCA Crim 2328, 10 December 2013, paras. F1–F3, www.bailii.org/ew/cases/EWCA/Crim/2013/2328.html.

5 Lithuania, *Teisingumo ministerija* (2014), Communication from the FRA's Lithuanian National Focal Point, 9 January 2014.

6 Ireland, Department of the Taoiseach, Legislation programme for Autumn Session 2013, www.taoiseach.gov.ie/eng/Publications/Publications_2013/LEGISLATION_PROGRAMME_FOR_AUTUMN_SESSION_2013.html; Ireland (2013), Speech by Alan Shatter TD, Minister for Justice, Equality and Defence at the launch of the Victims' Rights Alliance, 15 November 2013, www.merrionstreet.ie/index.php/2013/11/speech-by-alan-shatter-t-d-minister-for-justice-equality-and-defence-at-the-launch-of-the-victims-rights-alliance-on-friday-15-november-2013-at-the-mansion-house-dublin/?cat=66.

7 Finland, *Kansallinen rikosuhripolitiikka ja uhrien tukipalvelut -hanke*, information retrieved from the Ministry of Justice website. The proposal is due by the end of 2014.

8 Netherlands, Staatssecretaris voor Veligheid en Justitie (2013), 'Visie op slachtoffers', letter to the House of Representatives, No. 348461, 22 February 2013, www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2013/02/23/visie-op-slachtoffers.html.

9 Croatia, Ministarstvo pravosuđa (2013), written response to request for information during the preparation of the FRA Annual report, 21 November 2013.

10 Denmark, Act No. 603 of 12 June 2013 on the Victim Fund, www.retsinformation.dk/Forms/R0710.aspx?id=152108; Denmark, *Bekendtgørelse nr. 1588 af 19. December 2013 om forretningsorden for Rådet for Offerfonden, indgivelse af ansøgning om tilskud og behandling af sager om tilskud*, www.retsinformation.dk/Forms/R0710.aspx?id=161042. The fund was officially established on 1 January 2014.

11 France, *Décret n° 2012-681 du 7 mai 2012 relatif aux bureaux d'aide aux victimes*, www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000025822780&dateTexte=&categorieLien=id.

12 France, Ministère de la Justice (2013), *Circulaire du 9 janvier 2013 relative à la présentation des bureaux d'aide aux victimes et des conditions de mise en oeuvre de leur généralisation*, www.textes.justice.gouv.fr/art_pix/JUST1301453C.pdf.

13 France, *Code de procédure pénale*, Art. D. 47-6-15, www.legifrance.gouv.fr/affichCode.do;jsessionid=2D521C125FF4644282401CB98FBEE620.tpdjo05v_1?idSectionTA=LEGISCTA000006150959&cidTexte=LEGITEXT000006071154&dateTexte=20130511.

14 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ 2012 L 315, Art. 22(1).

15 Belgium, *Koninklijk besluit inzake de erkenning van de centra gespecialiseerd in de opvang en begeleiding van slachtoffers van mensenhandel en van bepaalde zwaardere vormen van mensensmokkel en inzake de erkenning om in rechte op te treden/Arrêté royal relatif à la reconnaissance des centres spécialisés dans l'accueil et l'accompagnement des victimes de traite et de certaines formes aggravées de trafic des êtres humains et à l'agrément pour ester en justice*, 18 April 2013, www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2013041814&table_name=loi.

16 European Institute for Gender Equality (2012), *Review of the implementation of the Beijing platform for action by the EU Member States: Violence against women victim support*, Luxembourg, Publications Office of the European Union (Publications Office).

17 Information provided by the Slovakian Ministry of Justice (*Ministerstvo spravodlivosti SR*) on 6 November 2013.

18 The right to be informed about the upcoming release is restricted to victims who filed the petition. Austria (2013), *2. Bundesgesetz: Änderung des Strafvollzugsgesetzes, der Strafprozessordnung 1975, des Jugendgerichtsgesetzes 1988 und des Bewährungshilfegesetzes*, BGBl. 2/2013, 10 January 2013, www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2013_I_2/BGBLA_2013_I_2.pdf.

19 Belgium, no official legislation available yet; Gazet van Antwerpen (2013), 'Kamer geeft slachtoffers meer rechten', press release, 7 November 2013.

20 United Kingdom, Ministry of Justice (2013), 'Victims' Commissioner calls for more "open and transparent" parole board hearings', www.justice.gov.uk/news/press-releases/victims-com/victims-commissioner-calls-for-more-open-and-transparent-parole-board-hearings; United Kingdom Victims' Commissioner (2013), *How the Victim Contact Scheme is operational in practice: Initial findings,* May, www.justice.gov.uk/downloads/about/victims-commissioner/letter-vc.pdf.

21 Italy, 2013 preliminary budget of the Presidency of the Council of Ministers, www.governo.it/trasparenza_valutazione_merito/bilancio/bilancio_2013/nota_preliminare_2013.pdf.

22 Netherlands, Slachtofferhulp Nederland (2013), 'Meer geld voor slachtoffers van ernstige geweldsmisdrijven', Press release, 20 February 2013, www.slachtofferhulp.nl/actueel/meer-geld-voor-slachtoffers-van-ernstige-geweldsmisdrijven-/.

23 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ 2012 L 315, Art. 3(e).

24 *Ibid.*, Art. 16.

25 Germany, Weißer Ring (2013), *Staatliche Opferentschädigung in Deutschland im Jahr 2012*, www.weisser-ring.de/fileadmin/content/Intranet/NEUDZF/OEG_Statistik_2012_neu.pdf.

26 Romania, Ministerul Justiției (2013), Annex to letter No. 94148 of 3 December 2013 of the Ministry of Justice.

27 Some of the information in this chapter is based on FRA desk research for this Annual report.

28 See Chapter 9 of the FRA 2012 Annual report: FRA (2013), Luxembourg, Publications Office, pp. 257–274.

29 United Kingdom, Criminal Injuries Compensation Authority (2013), *Annual report and accounts 2012–13,* June, www.justice.gov.uk/downloads/publications/corporate-reports/cica/cica-annual-report-2012-13.pdf.

30 Most recent statistics show that recorded crime has fallen by 10 % (September 2012–September 2013). United Kingdom, Office for National Statistics/TNS BMRB, Crime Survey for England and Wales, www.crimesurvey.co.uk/.

31 Finland, *Hallituksen esitys eduskunnalle laeiksi rikoslain 10 ja 44 luvun sekä sakon täytäntöönpanosta annetun lain muuttamisesta*.

32 Sweden, *Enklare för brottsoffer*, www.brottsoffermyndigheten.se/pressmeddelande/enklare-for-brottsoffer.

33 Slovakia (2013), 'Odškodňovanie osôb postihnutých násilnými trestnými činmi', Pro Bono, July 2013.

34 The 17 countries are Belgium, Croatia, Denmark, Finland, France, Germany, Greece, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

35 Croatia, *Kazneni zakon*, Art. 152, *Narodne novine*, Nos. 125/11 and 144/12, 2011.

36 Finland, *Hallituksen esitys eduskunnalle laeiksi rikoslain, pakkokeinolain 10 luvun 7 §:n ja poliisilain 5 luvun 9 §:n muuttamisesta*, 2013.

37 France, *Code pénal*, Art. 222-14-4, stipulates that "forcing a person into a marriage contract or a union abroad, using fraudulent tactics in order to convince them to leave French territory is punished by three years imprisonment and a €45,000 fine", www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI000027809362&dateTexte=&categorieLien=cid; France, Code pénal, Art. 227-24-1.

38 Denmark, *Forslag L 76 af 20. November 2013 til lov om ændring af straffeloven (Gennemførelse af Europarådets konvention til forebyggelse og bekæmpelse af vold mod kvinder og vold i hjemmet)*, www.ft.dk/RIpdf/samling/20131/lovforslag/L76/20131_L76_som_fremsat.pdf.

39 Italy, Law 119/2013 of 15 October 2013, *Misure urgenti in materia di sicurezza e per contrastrare la violenza di genere*, www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2013-10-15;119.

40 European Court of Human Rights (ECtHR), *A. v. Croatia*, No. 57164/08, 14 October 2010; ECtHR, *Hajduova v. Slovakia*, No. 2660/03, 30 November 2010; ECtHR, *Kalucza v. Hungary*, No. 57693/10, 24 April 2012; and ECtHR, *Opuz v. Turkey*, No. 33401/02, 9 June 2009.

41 ECtHR, *Valiulienė v. Lithuania*, No. 33234/07, 26 March 2013.

42 ECtHR, *Eremia v. the Republic of Moldova*, No. 3564/11, 28 May 2013; ECtHR, *B. v. the Republic of Moldova*, No. 61382/09, 16 July 2013; ECtHR, *Mudric v. the Republic of Moldova*, No. 74839/10, 16 July 2013; and ECtHR, *N. A. v. the Republic of Moldova*, No. 13424/06, 24 September 2013.

43 ECtHR, *D. P. v. Lithuania*, No. 27920/08, 22 October 2013 (Decision).

44 Council of Europe, Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), CETS No. 210, 2011, Art. 36.

45 ECtHR, *M. C. v. Bulgaria*, No. 39272/98, 4 December 2003, paras. 150 and 153.

46 *Ibid.*, para. 166.

47 Luxembourg, *Code de procédure civile*, 30 July 2013.

48 Regioplan (2013), *Effectief uit huis geplaatsts? Effect evaluatie van de Wet tijdelijk huisverbod,* Amsterdam, Regioplan, www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2013/11/16/effectevaluatie-van-de-wet-tijdelijk-huisverbod.html.

49 France, Ministère des Droits des femmes (2014), *Projet de loi pour l'égalité entre les femmes et les hommes*, Press file, http://femmes.gouv.fr/wp-content/uploads/2014/01/Dossier-de-presse-Projet-de-loi-pour-l%C3%A9galit%C3%A9-entre-les-femmes-et-les-hommes.pdf.

50 Italy, Law 119/2013, of 15 October 2013, *Misure urgenti in materia di sicurezza e per contrastrare la violenza di genere*, www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2013-10-15;119. www.gazzettaufficiale.it/eli/id/2013/10/15/13G00163/sg.

51 *Ibid.*, Art. 299.

52 *Ibid.*, Art. 384.

53 Latvia, *Likumprojekts 'Grozījumi Likumā par policiju'*, http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/0/40c2d9d4c086389dc2257b82002c2bb6/$FILE/613_prez.pdf.

54 Regioplan (2013), *Effectief uit huis geplaatsts? Effect evaluatie van de Wet tijdelijk huisverbod,* Amsterdam, Regioplan, www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2013/11/16/effectevaluatie-van-de-wet-tijdelijk-huisverbod.html.

55 Poland, Najwyższa Izba Kontroli (2013), *Przeciwdziałanie przemocy w rodzinie przez administrację publiczną*, www.nik.gov.pl/plik/id,5094,vp,6609.pdf.

56 Lithuania, Lietuvos rytas (2013), 'Visuomenininkai niršta – moterys namuose užmušamos dėl valstybės vangumo', press release, 25 March 2013, www.lrytas.lt/lietuvos-diena/aktualijos/visuomenininkai-nirsta-moterys-namuose-uzmusamos-del-valstybes-vangumo.htm.

57 The NGO statement is available at: http://noierdek.hu/?p=10579.

58 Slovenia, Act amending the Criminal Code of 10 November 2011.

59 Lithuania, Seimas (2013), *Baudžiamojo kodekso 140, 145, 148, 149, 150, 151, 165 straipsnių pakeitimo ir papildymo įstatymas*, No. XII-501, 2 July 2013.

60 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ 2012 L 315, Art. 28.

61 European Parliament, Resolution of 14 March 2013 on strengthening the fight against racism, xenophobia and hate crime, www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0090&language=EN&ring=B7-2013-0121.

62 European Parliament, Resolution of 4 July 2013 on the impact of the crisis on access to care for vulnerable groups, www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0221&language=EN.

63 Council of the European Union, Council conclusions on fundamental rights and rule of law on the Commission 2012 Report on the application of the Charter of Fundamental Rights of the European Union, Justice and Home Affairs Council meeting, Luxembourg, 6 and 7 June 2013, www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/137404.pdf.

64 Council of the European Union, Council conclusions on combating hate crime in the European Union, Justice and Home Affairs Council meeting, Brussels, 5 and 6 December 2013, www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/139949.pdf.

65 Portugal, *Lei 19/2013, 29.ª alteração ao Código Penal*, 21 February 2013, http://dre.pt/pdf1s/2013/02/03700/0109601098.pdf.

66 Littauer, D. (2013), 'Portugal passes trans hate crime law', 21 January 2013, www.gaystarnews.com/article/portugal-passes-trans-hate-crime-law210113.

67 Belgium, *Omzendbrief betreffende het opsporings- en vervolgingsbeleid inzake discriminatie en haatmisdrijven (met inbegrip van discriminaties op grond van het geslacht)/Circulaire relative a la politique de recherche et de*

poursuite en matière de discriminations et de délits de haine (en ce compris les discriminations fondées sur le sexe), 17 June 2013, www.om-mp.be/omzendbrief/5198967/omzendbrief.html.

68 Belgium, *Wet tot wijziging van artikel 405quater van het Strafwetboek en artikel 2 van de wet van 4 oktober 1867 op de verzachtende omstandigheden/Loi modifiant l'article 405quater du Code pénal et l'article 2 de la loi du 4 octobre 1867 sur les circonstances atténuantes, 14 January 2013*, www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2013011406&table_name=loi.

69 Croatia, *Zakon o izmjenama i dopunama Kazenog zakona*, *Narodne novine* No. 144/12, 2012, http://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3076.html; Croatia, *Kazeni zakon*, *Narodne novine* No. 125/11 and 144/12, 2011, Art. 117 and 325, http://narodne-novine.nn.hr/clanci/sluzbeni/2011_11_125_2498.html and http://narodne-novine.nn.hr/clanci/sluzbeni/2012_12_144_3076.html.

70 Slovakia, Ministerstvo vnútra SR (2013), *Dôvodová správa k návrhu zákona, ktorým sa mení a dopĺňa zákon č. 300/2005 Z.z. Trestný zákon v znení neskorších predpisov a ktorým sa menia a dopĺňajú niektoré zákony.*

71 Hungary, *2012 évi C törvény a Büntető törvénykönyvről*, Art. 216.

72 France, *Loi du 29 juillet 1881 sur la liberté de la presse*, Art. 65-3, www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722&dateTexte=20080312.

73 United Kingdom, Law Commission (2013), *Hate crimes: The case for extending the existing offences – a consultation paper,* http://lawcommission.justice.gov.uk/docs/cp213_hate_crime_amended.pdf.

74 Greece, Art. 66 of Law 4139/2013 (Gazette A 74/20.3.2013), amended Art. 79 para. 3 of the Criminal Code.

75 FRA (European Union Agency for Fundamental Rights) (2013), *Opinion of the European Union Agency for Fundamental Rights on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime*, Luxembourg, Publications Office, p. 12.

76 FRA (2013), *Discrimination and hate crime against Jews in EU Member States: Experiences and perceptions of antisemitism*, Luxembourg, Publications Office.

77 FRA (2013), *EU LGBT survey: Results at a glance*, Luxembourg, Publications Office, p. 24.

78 Bulgaria, Ministry of Interior (Министерство на вътрешните работи) (2010), 'European police and human rights', Press release, www.psychology.mvr.bg/EU_Programi_Proekti/Proekti/GDOP.htm.

79 *Ibid.*

80 Belgium, Circular of 17 June 2013 COL 13/2013 of the Minister of Justice, the Minister of Internal Affairs, and the Assembly of Attorney-Generals at the Court of Appeal, www.om-mp.be/extern/getfile.php?p_name=4499864.PDF.

81 FRA (2012), *Making hate crime visible in the European Union: Acknowledging victims' rights*, Luxembourg, Publications Office.

82 Spain, Act 29/2011 of 22 September on the Recognition and Comprehensive Protection of the Victims of Terrorism, www.poderjudicial.es/cgpj/es/Poder_Judicial/Audiencia_Nacional/Actividad_de_la_AN/Victimas_del_terrorismo/Informacion_basica.

83 Belgium, *Wet tot wijziging van artikel 405quater van het Strafwetboek en artikel 2 van de wet van 4 oktober 1867 op de verzachtende omstandigheden/Loi modifiant l'article 405quater du Code pénal et l'article 2 de la loi du 4 octobre 1867 sur les circonstances atténuantes,* 14 January 2013, www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2013011406&table_name=loi.

84 United Nations (UN), Non-Governmental Liaison Service (2013), *Domestic workers´ movement gains momentum*, www.un-ngls.org/spip.php?article4366.

85 European Criminal Law Associations' Forum (Eucrim) (2013), p. 82, www.mpicc.de/eucrim/archiv/eucrim_13-03.pdf.

86 Including Austria, Belgium, Bulgaria, Denmark, Estonia, France, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovakia and the United Kingdom, all of which instituted legal reforms in 2013.

87 Latvia, Grozījumi likumā '*Par valsts kompensāciju cietušajiem*', 15 November 2012; Latvia, Likumprojekta '*Grozījumi likumā Par valsts kompensāciju cietušanjiem" sākotnējās ietekmes novērtējuma ziņojums (anotācija)*', http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/0/E84E7920FF27DC2DC2257A87003AB03C?OpenDocument.

88 Austria, *Aufenthaltsrecht für besonderen Schutz*, § 69a (*Niederlassungs- und Aufenthaltsgesetz*).

89 Austria (2013), *58. Bundesgesetz: Änderung des Verbrechensopfergesetzes*, BGBl 58/2013, 17 April 2013, www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2013_I_58/BGBLA_2013_I_58.pdf.

90 Estonia, Riigikogu (2013), 'Riigikogu võttis vastu ohvriabi seaduse muudatused', Press release, 28 March 2013.

91 Belgium, Art. 2 of the Act amending Article 433 *quinquies* of the Penal Code with a view to clarifying and expanding the definition of human trafficking, 29 April 2013, www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2013042915&table_name=loi.

92 Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA) (2013), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium (first evaluation round)*, Strasbourg, Council of Europe, 25 September 2013, para. 53, p. 20.

93 France, Law No. 2013-711 bringing a number of provisions into line with the community in the field of justice, 5 August 2013, www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027805521&dateTexte=&categorieLien=id.

94 Ireland, Criminal Law (Human Trafficking) (Amendment) Act 2013, www.irishstatutebook.ie/2013/en/act/pub/0024/print.html.

95 Portugal, *Lei nº 60/2013, transpondo para a ordem jurídica interna a Directiva nº 2011/36/UE, do Parlamento Europeu e do Conselho, de 5 de Abril, relativa à prevenção e luta contra o tráfico de seres humanos e à protecção das vítimas*, 23 August 2013, http://dre.pt/pdf1s%5C2013%5C08%5C16200%5C0508805090.pdf.

96 Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA) (2013), *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal (first evaluation round)*, Strasbourg, Council of Europe, 12 February 2013.

97 United Kingdom, Home Office (2013), Draft Modern Slavery Bill, www.gov.uk/government/news/modern-slavery-white-paper-published.

98 Malta, House of Representatives (2013), Bill 16 of 2013, the Criminal Code (Amendment No. 2) Act, http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25493&l=1. The bill passed its second reading in Parliament and is currently with the Committee for the Consideration of Bills.

99 Some of the information in this chapter is based on FRA desk research for this Annual report.

100 Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA) (2013), Country Evaluation Reports concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, www.coe.int/t/dghl/monitoring/trafficking/Docs/Publications/Evaluations_en.asp#TopOfPage.

101 Some of the information in this chapter is based on FRA desk research for this Annual report.

102 Czech Republic, Decision of the High Court in Prague of 5 March 2013, ref. 10 To 4/2013.

103 La Strada International (2013), *Newsletter*, Issue 28, March 2013.

104 Organization for Security and Co-operation in Europe (OSCE), Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2013), *Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking*, www.osce.org/secretariat/101002.

105 Bulgaria, *Наказателен кодекс*, 1 May 1968, Art. 16a, Art. 116a (1), item 8a, Art. 131 (1), item 8a, Art. 159a, Art. 159c, amendments http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=79027.

106 Bulgaria, *Закон за борба с трафика на хора*, adopted on 20 June 2003, Art. 23, Art. 31, and para. 1 of the additional norms, items 1 and 2, amendments http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=79027.

107 Slovakia, *Ministerstvo vnútra SR*, information on amending the Criminal Statute and the Code of Criminal Procedure, 5 August 2013.

108 Latvia, *Grozījumi Kriminālprocesa likumā*, 20 December 2012, Section 13; Latvia, *Grozījumi Krimināllikumā*, 13 December 2012, Section 13.

EU Member States and
international obligations

Human rights instruments

UN & CoE

January

February

March

17 April –UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression submits a report on the implications of states' surveillance of communications for the exercise of the human rights to privacy and to freedom of opinion and expression

April

5 May – The 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights enters into force after 10 required ratifications

28 May – At the 23rd session of the UN Human Rights Council, the Special Rapporteur on the human rights of migrants presents a study on the rights of migrants in the Euro-Mediterranean region focusing in particular on the management of the external borders of the EU

May

24 June – Protocol 15 to the European Convention on Human Rights opens for signature

June

July

August

5 September – ILO Convention 189 (2011) on Domestic Workers enters into force

September

2 October – Protocol 16 to the ECHR opens for signature

October

26–29 November –Council of Europe, Steering Committee for Human Rights, Draft Declaration of the Committee of Ministers on the United Nations Guiding Principles on Business and Human Rights adopted

November

December

EU

January

February

March

5 April – Negotiations between the EU and the 47 Council of Europe member states are concluded at negotiators' level with a draft agreement setting out the modalities of EU accession to the European Convention on Human Rights (ECHR)

April

13 May – *EU Annual report on human rights and democracy in the world in 2012* published with a strong commitment to the rule of law

May

June

July

August

September

October

November

December

10 EU Member States and international obligations

The EU, underlining its desire to put Europe at the heart of the international human rights framework, pursued its accession in 2013 to such key instruments as the European Convention on Human Rights. At the same time, it encouraged its Member States as well as third countries to engage more with the international human rights machinery. EU Member States assumed a large number of new Council of Europe and United Nations human rights commitments in 2013 through signatures, ratifications and accessions. Although reluctant to join certain conventions, such as those on access to official documents or on migrant work, a number of Member States took decisive action on more recent instruments, such as those related to violence against women or to the rights of the child. These new commitments offer testimony to the EU's and its Member States' determination to lead the field of fundamental rights from the front, while they also contribute to the ongoing evolution, and ever more tightly interwoven fabric, of international human rights protection.

10.1 Fundamental rights landscape grows ever more intricate

The standards, procedures and institutions that ensure human and fundamental rights in the EU, or what could be called the EU's fundamental rights landscape, is a multi-layered system, covering local, national and international organisations, the last of which include the EU itself, the Council of Europe, the Organization for Security and Co-operation in Europe (OSCE) and the United Nations (UN). In this intricate and networked system, all levels contribute to the overall improvement of fundamental rights.[1] This chapter focuses on the core international obligations the EU and its Member States have taken on, by looking at their formal acceptance of international human rights instruments, as well as the results of the international- and national-level monitoring linked to these instruments. For the first time, a number of chapter tables and figures have been moved online to ensure they can be updated in a timely fashion. They are available on the FRA website under

Key developments

- The 2012 EU Strategic Framework and Action Plan on Human Rights and Democracy, which runs until 2014, pays increased attention to the ratification of human rights instruments in the EU.
- The EU and Council of Europe member states reach in April 2013 an agreement on the negotiations of the Union's accession to the European Convention of Human Rights.
- The individual complaints mechanism under the third optional protocol to the United Nations Convention on the Rights of the Child is set to enter into force, with just one ratification outstanding at the end of 2013.
- The European Court of Human Rights finds violations regarding the length of court proceedings in a large number of EU Member State cases.
- The European Committee on Social Rights delivers decisions on five cases initiated by Greek pensioners' organisations regarding pension cuts driven by austerity measures. The committee finds violations. Of the 16 cases the committee considers in 2013, nine centre on corporal punishment of children and children's social rights.
- No EU Member States sign or ratify the core United Nations Convention on the Rights of Migrant Workers, nor are there any changes in the accreditation of national human rights institutions under the Paris Principles in 2013.

'International obligations' at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations.

> *"[F]ormulaic references to fundamental rights do not make for better [...] policies. [...] A first step could be to establish an internal EU fundamental rights strategy to complement the external strategy."*
>
> *Morten Kjaerum, FRA Director, commenting on the future of the EU's Justice and Home Affairs strategy, available at: http://fra.europa.eu/en/speech/2014/open-and-safe-europe-what-next, and in response to Amnesty International's call in 2013 for an internal EU action plan for human rights, mirroring the EU's external strategic framework on human rights, available at: http://ec.europa.eu/justice/events/assises-justice-2013/files/contributions/02.amnestyinzernationalassisesdelajustice_amnesty_international_en.pdf*

States formally express their commitment to international human rights law by becoming parties to treaties. The EU increased and underlined its collective commitment to international human rights law in 2013. In the *EU Annual report on human rights and democracy in the world in 2012*,[2] the EU and its Member States reiterated pledges undertaken at the 2012 UN High-Level Conference on the Rule of Law to strengthen the rule of law at the international level, by considering their accession to a number of human rights instruments. This commitment to the rule of law at a more global level is parallel to the increased efforts in 2013 to ensure the rule of law in the EU (see Chapter 8 on access to justice and judicial cooperation). The list of instruments considered includes the Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the UN Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict, as well as the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT). The pledge also extends to considering the acceptance of the individual complaints mechanisms established under the Convention against Torture, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Rights of Persons with Disabilities (CRDP).

The collective call for EU Member States to become parties to key instruments also follows from the 2012 *EU strategic framework and action plan on human rights and democracy*.[3] This document, which covers 2013 and stretches until the end of 2014, calls on Member States, as well as the EU, to "[i]ntensify the promotion of ratification and effective implementation of key international human rights treaties, including regional [instruments]".[4] More specific language calls on Member States to push for "ratification and effective implementation" of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), including its Optional Protocol, which requires the establishment of independent monitoring bodies (see Section 10.5.2 below).[5] Another example where the EU-internal aspect is clear is the development of action plans on the implementation of the UN guiding principles on business and human rights (see Section 10.5.3).[6]

The EU also encouraged Member States in 2013 to become parties to international human rights instruments related to areas of EU competence. In particular, the European Commission proposed a Council Decision 'authorising' Member States to become parties to the International Labour Organization's 2011 Convention (No. 189) on domestic workers; the convention also entered into force in 2013. The EU would hold the power to authorise, since some elements of the convention fall within EU competence.[7]

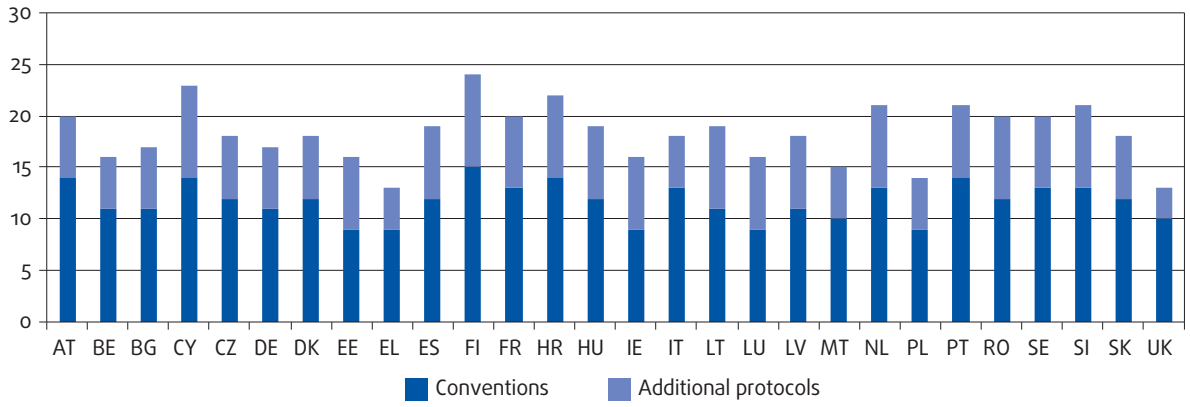
The EU itself may also become party to Council of Europe Convention 108 on the Protection of Individuals with regard to Automatic Processing of Personal Data. The convention is currently restricted to states, but its ongoing modernisation – in which the European Commission is participating – should also allow for the accession of regional organisations, including the EU.[8] Another possible development concerns refugee law. The Stockholm Programme encourages the EU to become party to the 1951 Geneva Convention and its 1967 Protocol.[9] As can be seen from these examples, the EU and its Member States are picking up the pace at which they accept international monitoring. The speed and the scope of this development could, nonetheless, be further improved.

10.2 Member States accept new Council of Europe instruments

States demonstrate their commitment to human rights by, for instance, signing and ratifying human rights treaties – making it publicly clear to which standards they want to be held accountable and to which monitoring mechanisms they choose to submit. Figure 10.1 provides an overview of EU Member States' acceptance of key Council of Europe instruments, including additional protocols. For more details on Member State acceptance of Council of Europe instruments, see also the table on acceptance of selected Council of Europe instruments, at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations. For the corresponding information on UN instruments, see Figure 10.3 and the table on the acceptance of selected UN instruments, available at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations.

In 2013, 60 years after the European Convention on Human Rights (ECHR) entered into force, several developments occurred in relation to Council of Europe conventions and protocols. Notably, many EU Member

Figure 10.1: Acceptance of key Council of Europe human rights instruments, by EU Member State



Source: *Council of Europe, information, available at: http://conventions.coe.int/?pg=/Treaty/MenuTraites_en.asp*

States signed the ECHR Additional Protocols 15 and 16 (see the table on acceptance of selected Council of Europe instruments, available at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations). These instruments have been adopted as a result of the work carried out on the reform of the European Court of Human Rights (ECtHR), which was initiated at the third summit of heads of state and government of the Council of Europe in Warsaw in 2005. It was shaped particularly by the high-level conferences in Interlaken (2010), Izmir (2011) and Brighton (2012). The reform process gradually introduces changes to the ECHR that intend to adjust the ECtHR's work to evolving circumstances and reduce its workload. Ireland signed and ratified and 17 additional EU Member States signed ECHR Additional Protocol 15 in 2013, which adds a reference to the subsidiarity principle and the ECHR doctrine of margin of appreciation. It also amends the admissibility criteria (see also Chapter 8 on Access to justice and judicial cooperation). Six EU Member States also signed ECHR Additional Protocol 16, which enables the State Parties' highest courts to request ECtHR advisory opinions on key questions regarding the interpretation and application of the ECHR and its protocols.[10]

Furthermore, a number of EU Member States accepted some key Council of Europe instruments in 2013 (in parentheses are shown the total numbers of ratifications and additional signatures by EU Member States, thereby showing the situation at the close of 2013).

- **Latvia**, which is already a contracting party to the original European Social Charter (1961) (23 ratifications and an additional two signatures by EU Member States), also ratified the European Social Charter (1996) (19 ratifications and an additional nine signatures by EU Member States).

- **Belgium**, **Italy**, **Lithuania**, **Slovenia** and **Sweden** ratified the 2007 Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and it was signed by **Latvia**; this leaves the **Czech Republic** as the last EU Member State that has yet to sign the document (18 ratifications and an additional nine signatures by EU Member States).

- **Austria**, **Italy** and **Portugal** ratified the 2011 Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), and it was signed by **Croatia**, **Denmark** and **Lithuania**. In the 2.5 years since its adoption, 32 of the Council of Europe's 47 member states have signed the convention, with eight of these states also ratifying it (three ratifications and an additional 20 signatures by EU Member States).

- **Hungary** ratified the 2005 Convention on Action against Trafficking in Human Beings; the **Czech Republic** is the last EU Member State that has yet to sign the convention (25 ratifications and an additional two signatures by EU Member States).[11]

- The **Czech Republic** ratified the 2001 Cybercrime Convention (23 ratifications and an additional five signatures by EU Member States).

- The **Czech Republic** and **Spain** signed the 2003 Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, which aims to enhance cross-border police and judicial cooperation (12 ratifications and an additional 11 signatures by EU Member States).

- The **United Kingdom** accepted the applicability of the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as amended by its two 1993 protocols,

to its sovereign base areas in Cyprus (ratified by all EU Member States).

- All EU Member States except **Poland** are party to Protocol 13 to the ECHR, on "the abolition of the death penalty in all circumstances". Poland signed in 2002 when the instrument was adopted but has yet to ratify it. The Committee of Ministers of the Council of Europe brought up the issue at its meeting on 10 April 2013, where Poland declared that the process of ratification was under way.[12]

The Council of Europe also released a number of human rights monitoring and evaluation reports on EU Member States in 2013 (see Table 10.1) containing information on a range of issues including the rights of minorities, the conditions in prisons and other places of involuntary confinement, and racism and intolerance. In this respect, the Council of Europe has also begun implementing measures for the better coordination of its monitoring activities, which should increase their effectiveness in the future. Among these measures, the Council of Europe plans to develop synergies with the monitoring work of other international organisations, particularly in follow-up activities.[13]

10.2.1 Monitoring

The Council of Europe's Human Rights Commissioner visited a number of member states in 2013, including in the EU. In February, he visited **Greece**, where he focused on the impunity of perpetrators of hate crime as well as asylum- and migration-related problems, such as the prolonged detention of irregular migrants.[14] In March, the commissioner visited **Estonia**, where he tackled in particular the effects of the economic crisis on the enjoyment of human rights, the independence and effectiveness of national human rights structures and the protection of the rights of stateless children.[15] In June, he visited **Spain**, where he addressed the impact of austerity measures on children with disabilities, ill-treatment by and impunity of police officers, detention *incommunicado* and ethnic profiling by law enforcement officials.[16] In November, the commissioner visited **Denmark**, where he focused on children in migration and asylum procedures, rights of persons with disabilities, and the use of coercion in psychiatric institutions.[17]

There are six monitoring bodies of the Council of Europe on central human rights issues with a regular reporting cycle: the European Committee for the Prevention of Torture, the Committee of Independent Experts under the European Charter for Regional and Minority Languages, the Advisory Committee under the Framework Convention on National Minorities, the European Commission against Racism and Intolerance and the Group of Experts on Action against Trafficking in Human Beings (GRETA), and the Committee of the Parties of the Council of Europe on the protection of Children against Sexual Abuse and Sexual Exploitation

Table 10.1: Council of Europe monitoring reports released in 2013, by EU Member State

		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR
CPT	Reports										✓			
	Visits		✓		✓		✓			✓				
ECRML							✓							
FCNM														
ECRI		✓	✓				✓		✓		✓	✓	✓	
GRETA			✓								✓		✓	
Total		1	3	0	1	0	3	0	1	1	3	1	2	0

CPT	(European) Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECRML	Committee of Experts of the European Charter for Regional and Minority Languages
FCNM	Advisory Committee on the Framework Convention for the Protection of National Minorities
ECRI	European Commission against Racism and Intolerance
GRETA	Group of Experts on Action against Trafficking in Human Beings

Note: *For the European Committee for the Prevention of Torture, the visits to EU Member States during 2013 are also included in a separate row.*

Source: *Council of Europe, available at: www.coe.int/t/dgi/default_en.asp*

(Lanzarote Committee) also launched its first monitoring cycle in 2013. Table 10.1 provides an overview of EU Member States that were covered by monitoring reports by these expert bodies in 2013. For economic and social rights, and for civil and political rights, the dedicated Council of Europe monitoring bodies are dealt with in the following subsections.

10.2.2 Economic and social rights: standards and compliance

All EU Member States are among the 43 parties to either the 1961 European Social Charter (ESC) or the 1996 ESC, which guarantee social and economic rights. **Latvia**'s 2013 ratification of the 1996 ESC raised the number of Member States that have ratified the more developed version to 19 (see the table on acceptance of key Council of Europe human rights instruments, available at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations). It is possible to accept some but not all ESC provisions. For an overview of which states have accepted which rights, see the table on acceptance of ESC provisions at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations.

Fourteen EU Member States are bound by the 1995 Additional Protocol to the ESC Providing for a System of Collective Complaints (Collective Complaints Procedure Protocol) and another four have signed but not yet ratified the instrument (see the table on acceptance of selected Council of Europe instruments: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations). No change occurred in 2013 regarding this protocol. **Finland** remains the sole Member State which, in addition to the Collective Complaints Procedure Protocol itself, has accepted the submission of collective complaints not only from international non-governmental organisations (NGOs) and national trade unions (mandated under Article 1 of the collective complaints protocol) but also from national NGOs – a possibility available under Article 2 of the protocol.

Applications under this protocol to the ESC monitoring body, the European Committee of Social Rights (ECSR), help illuminate current issues in the area of economic and social rights. Of the 15 cases filed in 2013, of which 14 were against EU Member States,[18] seven concern the alleged failure to prohibit corporal punishment or other cruel or degrading forms of punishment of children in individual EU Member States, either in a domestic setting or in educational institutions. Two complaints focus on other social rights of children. The remaining cases concern other rights granted under the ESC, such as the right of employees to organise or the right to social security and welfare protection.

The ECSR also delivered 14 decisions, of which 13 related to EU Member States, on the merits of complaints filed in previous years. These included the decisions on

Table 10.1: (continued)

	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	Total
			✓			✓	✓			✓			✓		✓	7
	✓					✓		✓	✓	✓				✓		10
					✓								✓		✓	4
				✓		✓		✓	✓							4
		✓					✓	✓	✓	✓					✓	13
		✓				✓	✓		✓	✓						8
	1	2	1	1	1	4	3	3	4	4	0	0	2	1	3	**46**

five cases initiated by Greek pensioners' organisations regarding pension cuts introduced as austerity measures in response to the economic crisis. The applicants claimed that these cuts were in breach of Article 12 (3) of the ESC, which stipulates the Contracting Parties' obligation to "endeavour to raise progressively the system of social security to a higher level". The ECSR held that, although austerity measures may be necessary in the given situation, the cuts' severity and the state's failure to look for less drastic measures for vulnerable members of society constituted a breach of social rights under the ESC.[19]

Other decisions in 2013 concerned issues such as the rights of migrants to social protection and assistance, or the right to the protection of health in case of serious environmental pollution. In the area of employment and labour rights, the ECSR delivered decisions relating to the right to work or freedom of association and the right to bargain collectively.

The review of the reporting procedure focused in 2013 on health, social security and social protection, relating to Articles 3, 11, 12, 13, 14, 23 and 30 of the ESC and Article 4 of the 1988 Additional Protocol (for the content of these provisions, see the table on acceptance of ESC provisions at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations). They cover rights appearing also under Title IV of the Charter of Fundamental Rights of the EU. During 2013, the ECSR examined the application of the 1961 ESC by eight EU Member States: the **Czech Republic**, **Denmark**, **Germany**, **Greece**, **Latvia**, **Poland**, **Spain** and the **United Kingdom**. During the same time, the ECSR also examined the application of the 1996 ESC by 17 Member States: **Austria**, **Belgium**, **Bulgaria**, **Cyprus**, **Estonia**, **Finland**, **France**, **Hungary**, **Ireland**, **Italy**, **Lithuania**, **Malta**, the **Netherlands**, **Romania**, **Slovakia**, **Slovenia** and **Sweden**. Several Member States submitted their reports too late to be reviewed in 2013, so conclusions will be available only in early 2014: **Luxembourg** and **Croatia** for the 1961 ESC and **Portugal** for the 1996 ESC.

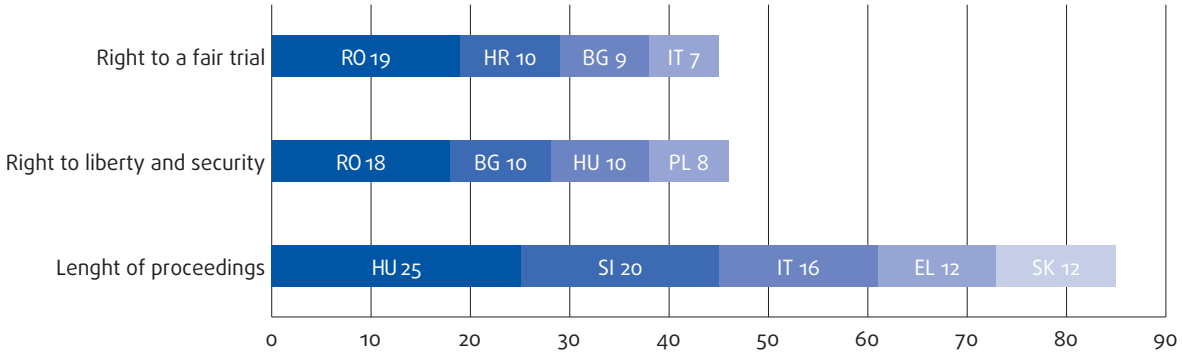
On the conformity of national law and practice with ESC provisions, see the table at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations. **Romania** emerges with the highest level of non-conformity (62 %), followed by **Greece** (56 %) and **Poland** (46 %). Other EU Member States with non-conformity above 40 % are **Latvia** (44 %), **Ireland** (42 %) and **Malta** (41 %). Romania scored poorly in the application of the right to health (high infant and maternal mortality), the right to health and safety at work and the right to social and medical assistance.[20] At the other end of the spectrum, showing strong conformity with the ESC, are the **United Kingdom** (8 %, actually only one conclusion out of 13), **Slovenia** (12 %), **Cyprus** (14 %), **Denmark** (18 %), **Sweden** (12 %), **Estonia** (20 %), the **Netherlands** (21 %), **Austria** (24 %) and **Finland** (24 %).

10.2.3 Civil and political rights: standards and compliance

According to its annual statistics, the ECtHR handed down 497 judgments in 2013 in cases brought against the 28 EU Member States, 410 (82 %) of which proved to be violations, The corresponding numbers in 2012 were 648 and 486 judgments (75 %), respectively.[21] These numbers suggest a downward trend, which could be due to changes in how the ECtHR prioritises cases and the number of actual violations reaching the court.

The most frequent subjects of proceedings related to EU Member States before the ECtHR concerned length of proceedings (118 judgments), the right to liberty and security (89), the right to fair trial (80) and inhuman or degrading treatment (58). For an overview of these

Figure 10.2: Most violated ECHR provisions



Notes: *Table covers ECtHR judgments in 2013.*
The darkest shade of blue is used for the highest number of ECHR violations, medium blue for a medium number of violations and light blue for a lower number of violations.

Source: *ECtHR (2014), Annual report 2013, Strasbourg, ECtHR*

subjects, see the table on the number of ECtHR judgments finding a violation in 2013 at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations. The subjects of proceedings were almost the same as those in 2012; the only difference was that in the third place the right to an effective remedy was replaced with that to a fair trial. A trend to fewer judgments finding EU Member State violations continued in 2013, with the number falling to 410 cases from 509 in 2011 and 486 in 2012, although the percentage of judgments finding a violation rose from 75 % in 2012 to 82 % in 2013. The ECtHR handed down considerably fewer judgments in EU Member States in 2013 on the length of proceedings (from 151 to 118). Similarly, cases concluding a lack of effective investigation fell from 34 to 11, violations of the right to an effective remedy from 74 to 56 and the right to property from 59 to 37. However, the right to a fair trial increased from 50 to 80 and non-enforcement related to a fair trial from 3 to 14.

Figure 10.2 presents the three most violated provisions of the ECHR, and the EU Member States with the highest number of violations by respective right.

The ECtHR also details the number of complaints it allocates to its internal judicial formations per 10,000 population. Applications that are allocated to a judicial formation are those for which the ECtHR has received a correctly completed form, accompanied by copies of relevant documents. (See the figure on applications allocated to a judicial formation at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations). While some EU Member States experienced a relative increase (Malta, Cyprus, Hungary and Slovenia) or decline (Estonia, Romania, Sweden and the United Kingdom) in the number of applications in 2013, in general terms the number of allocated applications by Member State remained stable. The number of EU 28 allocated cases dropped by 1,744 cases, or 6 %, from 29,103 in 2012 to 27,359 in 2013. Romania accounted for the bulk of the decline, followed by the United Kingdom. Member States that still saw larger increases were France, Hungary and the Netherlands.

The 2012 trend of fewer cases pending before the ECtHR continued in 2013. The number fell to 99,000 cases, or by some 22 %, from 128,100 at the beginning of the year. EU Member States together account for 38,303 cases, or some 38 %, a similar share to the previous year. **Italy**, **Romania** and the **United Kingdom** have the largest number of pending cases, at 14,379, 6,173 and 2,519 cases, respectively. (See the figure on the number of cases pending before ECtHR judicial formations at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations.)

In 2013 as in 2012, the highest number of leading pending cases with execution times longer than five years was in Italy, which also had the highest amount of just satisfaction awarded, at over €71,000,000, down from almost €120,000,000 in 2012. For more details on the number of leading cases with an average execution time of more than five years and the total compensation awarded for cases in 2011, 2012 and 2013 by EU Member State, see the table on the number of leading pending cases with average execution time of more than five years at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations.

The Council of Europe Committee of Ministers examined the implementation of ECtHR judgments in a number of member states, including 14 EU Member States: **Belgium**, **Bulgaria**, **Greece**, **France**, **Hungary**, **Ireland**, **Italy**, **Malta**, **Poland**, **Portugal**, **Romania**, **Slovenia**, **Spain** and the **United Kingdom**.[22]

The Committee of Ministers requested more information from **Bulgaria** and **Romania** on certain allegations of ill-treatment by the police. In **Greece**, the focus was on the availability of effective domestic remedies for excessive length of criminal and civil proceedings following pilot judgments rendered by the ECtHR. The length of proceedings was also examined in relation to **Belgium**, **Bulgaria**, **Italy**, **Poland** and **Portugal**. In relation to **Romania**, the committee supervised the introduction of a mechanism of compensation for or restitution of nationalised property. The committee noted with satisfaction that **Ireland** had made significant progress towards adopting a legislative and regulatory framework for a procedure that would help women establish whether or not they qualify for a lawful abortion. The committee welcomed **Malta**'s diligence shown in putting rapidly in place a mechanism to provide access to court in certain childcare cases. The Committee of Ministers examined overcrowding in prisons in **Poland** and **Italy**. The **United Kingdom** authorities were urged to adopt legislation to remove the blanket ban on prisoners' voting rights. In **Slovenia**, the committee welcomed the introduction of the compensation scheme for the 'erased'.[23] Finally, the Committee considered that **Spain** acted in accordance with the ECtHR by ensuring the immediate release of an applicant whose detention had been retrospectively extended.[24]

The process of the accession of the EU to the ECHR, foreseen by the Treaty of Lisbon, reached an important milestone in April 2013 when the negotiators of the 47 Council of Europe member states and the EU finalised a draft accession agreement.[25] The lengthy 12-page document, accompanied by a 20-page explanatory report, reflects the intricacies of the EU legal order. Much discussion surrounded the issue of attribution of responsibility for the implementation of EU law. In the draft, EU Member States are the primary respondents; the EU could become party to any such dispute with equal rights to and joint responsibility with a Member State under the new 'co-respondent' mechanism.

The European Commission subsequently submitted a request to the Court of Justice of the European Union (CJEU) for an opinion on whether or not the draft accession agreement is compatible with the EU Treaties. Among other issues, the CJEU will have to assess the fundamental questions of the autonomy of the EU legal order and the primacy of EU law, therefore pronouncing to what degree the influence of the ECtHR on EU issues is acceptable under the treaties.

10.3 OSCE monitoring provides human rights feedback

The Organization for Security and Co-operation in Europe (OSCE), whose work often focuses on areas outside the EU-28 involving others of its 57 participating states, also looked into the situation in EU Member States during 2013. The OSCE engages directly with EU Member States, including in the often confidential conflict prevention work of the organisation's High Commissioner for National Minorities.[26]

OSCE entities that operate more publicly include the Representative on Freedom of the Media,[27] who issued statements, for example, on 14 EU Member States during 2013. These statements dealt with issues including the intimidation of journalists in **Bulgaria**; the treatment of journalists in **Croatia**; freedom of expression and media freedom in **France**; media access to courtrooms in **Germany**; risks to media diversity in **Greece**; the proposed criminalisation of particular online publications in **Hungary**; criminal defamation legislation in **Italy**; the criminalisation of some speech in **Romania**; freedom of expression and media pluralism in **Lithuania**; judicial pressure on journalists in **Slovakia**; the decriminalisation of defamation in **Slovenia**; draft legislation limiting access to information in **Spain**; and concerns about a planned agency to regulate print media in the **United Kingdom**. The representative also visited **Denmark** in November 2013 to discuss a new public information law.

The OSCE's Special Representative and Co-ordinator for Combating Trafficking in Human Beings visited **Italy** in June and **Romania** in September.[28]

The three Personal Representatives of the OSCE Chairperson-in-Office on tolerance and non-discrimination visited six EU Member States in 2013, recommending improvements. They jointly visited **Belgium** (June) and **Greece** (September). The country visit to **Belgium** led to recommendations on action in relation to Muslim and Jewish communities, concerns with religious dress, and hate crime.[29] The Personal Representative on combating antisemitism undertook four separate visits to France (April), Italy (June–July), Latvia (July) and Romania (October). Following up on the visit to **France**, the representative recommended enhanced data collection on hate crime, police training, security assistance to Jewish communities and steps to combat cyberhate.[30] In **Italy**,[31] the representative recommended preventative educational and awareness-raising efforts and training for police and prosecutors,[32] and in **Latvia** the representative recommended enhancing teaching about antisemitism in schools, training for judges and prosecutors, providing the Ombudsman's office with more resources, and resolving outstanding Second World War property restitution processes, since they provide fodder for antisemitic discourse.[33] In **Romania**, the recommendations focused on hate crime and training of police and prosecutors.[34]

The OSCE levelled sharp criticism at **Spain** in particular in 2013. Against an earlier pledge of full cooperation, Spain denied the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) the right to monitor an anti-monarchy assembly in Madrid. The country had earlier said it would cooperate fully with ODIHR on monitoring freedom of assembly in the country.[35]

10.4 Member States accept UN treaties

As mentioned earlier, one way to assess states' commitment to human rights is the extent of international human rights treaties, and additional features under them, that bind the states. Figure 10.3 provides an overview of EU Member States' acceptance of key UN instruments, including additional protocols and acceptance of additional features such as individual complaints. For a detailed overview, see the table on acceptance of selected UN instruments at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations. For the corresponding information on Council of Europe treaties, see Figure 10.1 and the table on acceptance of selected Council of Europe instruments at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations.

Nine of the UN conventions are labelled core human rights conventions.[36] These nine and their related features, the optional protocols and elective mechanisms built into the actual conventions, are displayed in shades of blue in Figure 10.3. Other UN treaties and their additional protocols are shaded in red.

The following list highlights key developments related to the acceptance of UN human rights instruments in 2013.

- The 2008 Optional Protocol on individual complaints to the International Covenant on Economic, Social and Cultural Rights (ICESCR-OP), which was adopted in 2008, came into force in May 2013.[37] **Portugal** ratified it in 2013, joining **Spain** and **Slovakia**, which had become parties earlier.

Championing human rights

The Council of the European Union emphasises the EU's and its Member States' commitment to set an example in ensuring respect for human rights within their respective areas of competence, according to the EU Annual report on human rights and democracy in the world in 2012. In that report, published in 2013, the council also says the EU and its Member States seek to promote human rights and the rule of law worldwide through their relations with third countries. EU Member States as well as the EU itself made a number of pledges in this field at the UN High-Level Conference on the Rule of Law in 2012, concerning issues ranging from the ratification of various human rights instruments to adopting specific national laws, programmes or action plans.

For more information, see Council of the European Union, 9431/13, 13 May 2013, pp. 174–175, and the UN voluntary pledge site on the rule of law, available at: www.unrol.org/article.aspx?article_id=170

- **Latvia** in 2013 was the second-last of the EU Member States to become a party to the 1989 Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) on the abolition of the death penalty (ICCPR-OP2). **Poland** is the remaining signatory EU Member State yet to ratify it.

- **Lithuania** signed and ratified the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (CPED), including Article 31, which provides for individual complaints. **Poland** signed the convention.[38]

- Two EU Member States, **Italy** and **Portugal**, ratified in 2013 the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), bringing the total number of EU Member States party to this instrument to 21.[39]

- In 2013, the 2011 Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (CRC-OP3) received a large number of acceptances from EU Member States. **Germany**, **Portugal**, **Slovakia** and **Spain** ratified the protocol, while **Croatia** and **Poland** signed it. The protocol was set to come into force in early 2014. There are still 13 EU Member States that have not yet signed the protocol.[40]

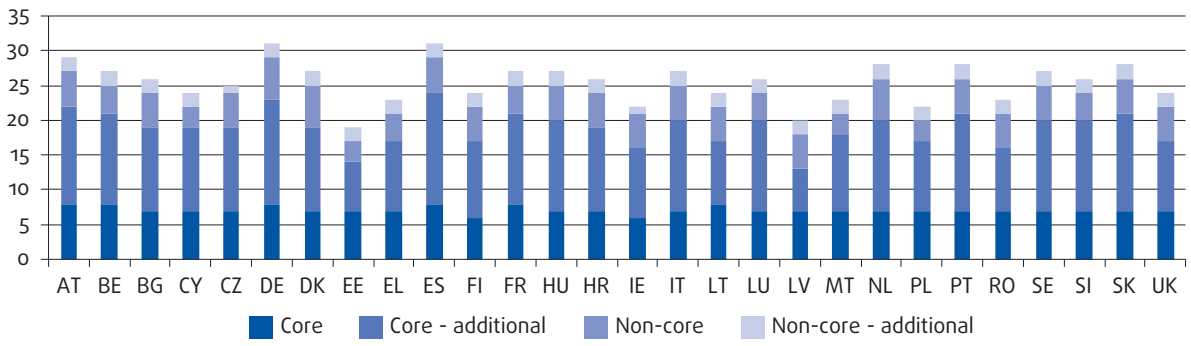
- The **Czech Republic** ratified the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (CRC-OP2) in 2013, leaving **Ireland** as the sole EU Member State yet to ratify it.

- The **Czech Republic** ratified the United Nations 2000 Convention against Transnational Organized Crime (UNTOC) in 2013, meaning that all EU Member States are now parties. The Czech Republic also ratified the 2000 Optional Protocol to UNTOC on the Smuggling of Migrants by Land, Sea and Air, leaving Ireland as the sole EU Member State yet to ratify it.

- **Italy** and **Germany** are the first two EU Member States to become parties to the 2011 ILO convention No. 189 concerning decent work for domestic workers (see earlier in relation to EU action on 'authorising' the Member States in this regard). They join nine others worldwide. ILO conventions cannot be signed in a separate stage indicating commitment before ratification. The convention entered into force on 5 September 2013.

The UN Convention on the Rights of Persons with Disabilities (CRPD) deserves particular attention as a relatively new instrument that already boasts a large number of State Parties, including the EU itself. EU Member States continued to implement the CRPD in 2013. The number of EU Member States

Figure 10.3: Acceptance of key UN human rights instruments, by EU Member State



Note: *For more details, see the table on acceptance of selected UN instruments, available at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations.*

Sources: *United Nations, information available at: https://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en; International Labour Organization, information available at: www.ilo.org/global/standards/lang--en/index.htm*

that have ratified the CRPD remains unchanged at 25, of which 20 have also ratified its Optional Protocol, enabling individual complaints to be made to the CRPD monitoring committee.

The three EU Member States yet to ratify the CRPD – Finland, Ireland and the Netherlands[41] – took further steps towards ratification. In **Ireland**, the major obstacle to ratification remains the reform of legal capacity legislation in line with the supported decision-making model required by Article 12 of the CRPD on equal recognition before the law.[42] On 15 July 2013, the Irish government published the Assisted Decision-Making (Capacity) Bill, which aims to provide a statutory framework that maximises individual autonomy.[43] The bill also provides for the establishment of a new statutory office, the Office of the Public Guardian, which will supervise those who provide support for decision making. The bill is expected to be passed in 2014, paving the way for ratification of the CRPD.[44] In **Finland**, the working group set up to prepare for the convention's ratification was, at the end of 2013, preparing a report outlining the revisions needed to bring existing legislation into line with the CRPD. The report, currently out for consultation, will incorporate the consultation's comments into the legislative proposal for ratification, to be presented to parliament during 2014.[45]

Following impact assessment studies conducted in 2012, the Ministry of Health, Welfare and Sport in the **Netherlands** published two draft bills on the ratification of the CRPD for online consultation: a Ratification Act[46] and an Implementation Act defining the legal reforms necessary to implement the CRPD.[47] Details of the respective monitoring bodies required at national level under the CRPD are provided in Section 10.5.2 and the table on CRPD data at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations.

10.4.1 Monitoring

The UN human rights treaties include international monitoring bodies (UN treaty bodies) that supervise the compliance of State Parties with that convention. Among the means used to do this are periodic reporting procedures as well as an examination of individual complaints (communications). The UN Human Rights Council, the 47-member intergovernmental body serviced by the Office of the High Commissioner for Human Rights (OHCHR), offers two additional main forms of monitoring: the Universal Periodic Review (UPR) and the special procedures. The former is a peer review exercise and the latter is carried out by individual experts or working groups. The UN monitoring system is also supported by, and partly integrated with, a universal system of accredited National Human Rights Institutions (NHRIs) (see Section 10.5).

Universal Periodic Review

Through the UPR, the implementation of human rights by each UN member is reviewed once every 4.5 years, based on sources including a report submitted by the state under review, a report compiled by the OHCHR, which contains information gathered by the treaty bodies and the special procedures, and information received from other relevant stakeholders such as NGOs, NHRIs and regional human rights organisations, including FRA. Since its establishment, the UPR and the recommendations it issues have earned states' respect.

FRA ACTIVITY

Contributing to UN human rights monitoring

Starting in early 2013, at the request of the OHCHR, FRA submits in the formal Universal Periodic Review exercise extracts of relevant reports it has issued in recent years related to the EU Member State under review. This involved the following Member States in 2013: **Cyprus**, **Malta**, **Portugal** and **Slovakia**.

The UPR covered all states between 2006 and 2011. Each EU Member State has therefore undergone the monitoring procedure at least once. Within the second cycle, five EU Member States were reviewed in 2012 and a further five in 2013: **France**, **Germany**, **Luxembourg**, **Malta** and **Romania**.[48]

States generally accept the majority of recommendations received under the UPR, but they can also reject, in part or in full, their implementation. Of the 165 recommendations received in the second review cycle, **France** accepted 124 (75 %), partially accepted 12 (7 %) and noted (rejected) 29 (18 %). Most of the recommendations addressed to France concerned racial discrimination, the rights of minorities and migrants, torture, cruel, inhuman and degrading treatment or punishment and prison conditions. **Germany** received 200 recommendations, accepting 167 (83.5 %), partially accepting two (1 %) and rejecting 31 (15.5 %). The recommendations emphasised issues such as racial discrimination, rights of women and migrants and the ratification or implementation of various human rights instruments. As for **Luxembourg**, of the 121 recommendations received, 112 (93 %) were accepted and nine (7 %) rejected. The recommendations focused on migration, the rights of the child and women's rights, including in connection with combating trafficking in human beings. For **Romania**, of a total of 157 recommendations, 129 (82 %) were accepted, three (2 %) were partially accepted and 25 (16 %) were rejected. The recommendations addressed the rights of the child, migration and stepping

Table 10.2: Universal Periodic Review recommendations in 2013, by EU Member State

	Total	Accepted	% accepted	Partially accepted	% partially accepted	Rejected	% rejected
FR	165	124	75	12	7	29	18
DE	200	167	83.5	2	1	31	15.5
LU	121	112	93	0	0	9	7
MT*							
RO	157	129	82	3	2	25	16

Notes: *Numbers are approximate as reasoning for rejection varies from state to state and the distinction between the two is not always clear.*

** Numbers were not yet available at the time of writing.*

Source: *United Nations, OHCHR, information available at: www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx*

up efforts to ratify or implement various international human rights instruments.[49] Table 10.2 provides an overview of the recommendations from the UPR for the EU Member States reviewed in 2013.

Treaty bodies

UN treaty bodies monitor the implementation of rights guaranteed under the respective treaty, offering more targeted feedback than the UPR. There are currently 10 such bodies, one for each of the nine core UN human rights conventions and the Subcommittee on Prevention of Torture, established under the OP-CAT, which monitors places of detention in State Parties to the Optional Protocol (see the legend of Table 10.3 for an overview of these treaties).

Treaty bodies follow a regular review cycle, during which they review the reports the states submit. These typically range from four to five years, with the exception of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which has in principle a two-year cycle. Efforts have continued in 2013 to synchronise and integrate the reporting under the different regimes.

The treaty bodies reviewed several EU Member States in 2013. Table 10.3 shows those EU Member States for which a treaty body or the UPR working group issued in 2013 a final report on their review. For the UPR, the table includes a separate row for actual reviews during 2013. The table shows that EU Member States are subject to a range of monitoring activities at the UN level and, for instance, that the Committee against Torture reviewed the largest number of EU Member States in 2013.

In addition to states' reporting, most of the human rights treaties also have individual complaints mechanisms. (For more detail, see the table on UN conventions with individual complaint mechanisms and number of cases at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations.) Of the nine core UN human rights conventions, two do not yet allow for individual complaints to the respective treaty body. This includes the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW), which has no EU Member States among the 37 signatories and 47 parties worldwide. Of the State Parties, only two of the required 10 have recognised the Committee on Migrant Workers' competence in respect of the complaint mechanism. The third Optional Protocol to the CRC still fell short, with nine ratifications and an additional 36 signatures at the end of 2013, including four ratifications and 15 signatures by EU Member States, of the 10 ratifications necessary for its entry into force.[50]

On 5 May 2013, the 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights entered into force after obtaining the 10 required ratifications. At the end of 2013, the protocol had 11 ratifications and 34 additional signatures worldwide, including eight signatures and three additional ratifications from EU Member States. With the protocol in force, an individual complaints mechanism similar to those under the first Optional Protocol to the ICCPR and under the CRPD has been established. The protocol also contains an inquiry mechanism; however, only two of the current parties, one of them an EU Member State, **Portugal**, have accepted it. The individual complaints mechanism itself can, nevertheless, attract significant attention from complainants, including those from EU Member States, given the increased strain on the implementation of economic and social rights due to the austerity measures introduced by many states in the face of the economic crisis (see also Section 10.2.1 on Economic and social rights for the cases filed with the ECSR in this area).

Table 10.3: Reports released under UN monitoring procedures in 2013, by EU Member State

		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR
CERD					✓									
CESCR		✓	✓					✓						
HRC (CCPR)						✓						✓		
CEDAW		✓			✓					✓				
CAT									✓					
SPT							✓							
CRC														
CMW														
CRPD		✓												
CED											✓		✓	
UPR	Report					✓	✓						✓	
	Review						✓						✓	
Total		2	0	0	1	2	2	0	1	1	1	1	2	0

Committee	Convention	Committee name in full
CERD	ICERD	Committee on the Elimination of All Forms of Racial Discrimination
CESCR	ICESCR	Committee on Economic, Social and Cultural Rights
HRC (CCPR)	ICCPR	Human Rights Committee
CEDAW	CEDAW	Committee on the Elimination of Discrimination Against Women
CAT	CAT	Committee Against Torture
SPT	OP-CAT	Sub-Committee on prevention of torture (including advisory visits for National Preventive Mechanisms)

Source: Compiled by FRA using data from United Nations, OHCHR, 2014

UN special procedures

The special procedures system is a central element of the UN human rights machinery and covers the full spectrum of human rights. Special procedures undertake country visits, send communications on individual cases, conduct thematic studies and convene expert consultations, contribute to the development of international human rights standards, engage in advocacy, raise public awareness and provide advice for technical cooperation. At the end of 2013, there were 37 thematic and 14 country mandates. None of the country mandates concerned EU Member States.

On various occasions, EU Member States have expressed their support for the system of special procedures and pledged to cooperate fully with them. All EU Member States have extended a standing invitation to all thematic special procedures of the Human Rights Council, thereby announcing that they will always accept 'requests to visit' from all special procedures.

In this context, several special procedures mandate holders visited one or more EU Member States in 2013.

- The Special Rapporteur on trafficking in persons, especially women and children, visited **Italy**. The country also received a visit from the Special Rapporteur on freedom of opinion and expression.
- The Special Rapporteur on the situation of human rights in Eritrea visited **Malta**.
- The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited **Spain**. The country also received a visit from the Working Group on enforced or involuntary disappearances.
- The Special Rapporteur on freedom of peaceful assembly and association visited the **United Kingdom**. The country also received a visit from the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.
- The Independent Expert on foreign debt and other related international financial obligations of States on the full enjoyment of all human rights,

Table 10.3: (continued)

	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	Total
					✓							✓		✓		4
																3
																2
	✓														✓	5
						✓		✓	✓	✓					✓	6
																1
					✓									✓		2
																0
																1
																2
					✓		✓				✓					6
					✓		✓				✓					5
	1	0	0	0	2	1	1	1	1	1	1	0	0	1	2	**25**

Committee	Convention	Committee name in full
CRC	CRC	Committee on the Rights of the Child (including monitoring of the optional protocols)
CMW	ICMW	Committee on Migrant Workers
CRPD	CRPD	Convention on the Rights of Persons with Disabilities
CED	CPED	Committee on Enforced Disappearances
UPR		Universal Periodic Review

particularly economic, social and cultural rights, visited **Greece**.

- **Greece** and **Hungary** received visits from the Working Group on arbitrary detention.

The results of these visits are presented in written reports submitted to the UN Human Rights Council and can be found on the website of each special procedures mandate holder.[51]

Special procedures mandate holders sent 35 communications to several EU Member States in 2013: the **Czech Republic** (3), **Denmark** (1), **Greece** (2), **Hungary** (3), **Ireland** (2), **Italy** (2), **Latvia** (1), **Malta** (1), the **Netherlands** (2), **Portugal** (2), **Romania** (1), **Slovakia** (2), **Spain** (7), **Sweden** (2) and the **United Kingdom** (4).

Special procedures publish reports and undertake studies on issues of particular relevance for the EU. At the 23rd session of the Human Rights Council in May 2013, the Special Rapporteur on the human rights of migrants presented a report on the rights of migrants in the Euro-Mediterranean region. The study was conducted in 2012 and focused in particular on the EU's external border management.[52] (See also Chapter 1 on asylum, immigration and integration.)

In April 2013, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression submitted a report on the implications of states' surveillance of communications for the exercise of the human rights to privacy and to freedom of opinion and expression. The report underlines the urgent need to study further new modalities of surveillance and to revise national laws regulating these practices in line with human rights standards.[53] (See also Chapter 3 on information society, respect for private life and data protection.)

In September 2013, the Special Rapporteur on freedom of religion or belief took part in the first interreligious round table held in Cyprus. In a subsequent press release, he hailed a key breakthrough in inter-faith communication, which allowed Muslim and Greek Orthodox religious leaders to cross the Green Line which still divides the island.[54] These efforts follow

up the recommendations in the Special Rapporteur's report on Cyprus to the 22nd session of the Human Rights Council, in which he stressed the importance of ensuring that there are no human rights protection gaps and that all persons can effectively enjoy their fundamental rights, including freedom of religion or belief, wherever they live.[55]

At the margins of the 68th session of the General Assembly, the Special Rapporteur in the field of cultural rights convened an event about history teaching. The event, which was organised by the OHCHR and sponsored by Germany and Switzerland, also included the participation of the Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence and the Special Rapporteur on freedom of opinion and expression. Whereas many studies and research papers have been devoted to the issue of reconciliation and reconstruction in post-conflict societies, the human rights and, in particular, cultural rights angles have been neglected in the past. It was stressed that issues related to the elaboration of cultural and historical narratives in divided societies, especially through textbooks, need to be carefully considered, given their importance in reconciliation processes.[56]

10.5 National-level monitoring and follow-up supports human rights performance

Several of the international treaties and mechanisms mentioned make use of or even require (CRPD and OP-CAT) the appointment or establishment of national bodies to monitor human rights. The UN is giving increasing weight to the role of NHRIs, enhancing their interaction with UN monitoring of human rights. Many of the bodies under CRPD and OP-CAT are NHRIs.

In 2013, the UN emphasised the importance of NHRIs in a resolution that encouraged "Member States to establish effective, independent and pluralistic national institutions or, where they already exist, to strengthen them for the promotion and protection of all human rights and fundamental freedoms for all". It stressed "the importance of the financial and administrative independence and stability of [NHRIs] for the promotion and protection of human rights, and note[d] with satisfaction the efforts of those States that have provided their national institutions with more autonomy and independence, including by giving them an investigative role or enhancing such a role, and encourages other Governments to consider taking similar steps". NHRIs, "including ombudsman and mediator institutions," were also encouraged "to seek accreditation status through the International Coordinating Committee [of NHRIs]". The resolution also referred to "the strengthening in all regions of regional cooperation among [NHRIs], and noting with appreciation the continuing work of [...] the European Group of [NHRIs]."[57]

As a follow-up to the 1993 Vienna world conference on human rights, a conference was convened in Vienna in 2013. It also called for enhanced interaction between NHRIs and UN mechanisms, including treaty bodies. The conference report also noted "[t]he need for stronger cooperation and integration of human rights mechanisms at national, regional and international level" and called for strengthening of "national and regional mechanisms in order to better enforce human rights obligations and the rule of law."[58]

> *"Establish National Human Rights Institutions in full compliance with the Paris Principles, ensuring they are equipped with the right to investigate human rights complaints and to monitor State compliance with international human rights obligations."*
>
> *"Strengthen the role of National Human Rights Institutions in developing indicators and monitoring compliance, since they are bridging the gap between the national and the international levels and are key partners regarding accountability."*
>
> *Recommendation addressed to states, in UN, Office of the UN High Commissioner for Human Rights (2013), Conference report, Vienna+20:* Advancing the protection of human rights – achievements, challenges and perspectives 20 years after the World Conference*, 27–28 June 2013, available at: www.ohchr.org/Documents/Events/OHCHR20/ConferenceReport.pdf*

10.5.1 National human rights institutions

The UN Human Rights Council in particular has given accredited NHRIs with A-status (see Section on accreditation and international cooperation) an institutionalised role in some of its procedures, for example in the context of the UPR. The accreditation of NHRIs is a peer review process, which is supported by the OHCHR as secretariat. NHRIs play a crucial role in monitoring international obligations. Organisations such as the Council of Europe and FRA similarly work closely with NHRIs and other bodies with a human rights remit, such as equality bodies or ombudsperson institutions. EU legislation requires the existence of equality bodies as well as data protection authorities in each EU Member State. With the accession of the EU to the CRPD in 2010, the EU itself has also had to set up a system of EU-wide monitoring. As reported in earlier FRA Annual reports, the EU has also highlighted the importance of NHRIs.[59]

Accreditation and international cooperation

NHRIs cooperate globally through the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The ICC promotes and supports participation of NHRIs

in the international human rights system and facilitates cooperation among NHRIs at the global level. The ICC, through its Sub-Committee on Accreditation, undertakes accreditation of NHRIs for compliance with the Paris Principles – which require, for instance, that NHRIs be independent, created by law, protected against governmental interference and adequately funded.[60] NHRIs fully compliant with the Paris Principles are awarded A-status; those not fully compliant, B-status; and those with major concerns, C-status. There are also institutions with a human rights remit that have not sought or have lost their accreditation.

The number of accredited NHRIs in EU Member States was unchanged at the end of 2013 from the previous year. The A-status NHRIs in **Croatia** and **France** were both up for re-accreditation, which they gained. The A-status NHRI in **Germany** was up for re-accreditation, but this assessment was deferred until 2014 to await the outcome of a government plan to change the NHRI's legal foundation. The federal government plans to shift the NHRI's legal foundation to legislation, as the Paris Principles require, and away from government decree as is currently the case.[61] Similarly, the review of the B-status NHRI in **Hungary** was also deferred, in this case to see better how the new NHRI, the Commissioner for Fundamental Rights,[62] operates before an assessment is made.[63] Several EU Member States took steps to establish NHRIs; see further in ▶ Chapter 8 on access to justice and judicial cooperation.

A significant development in 2013 was the deepening cooperation between NHRIs in Europe through the establishment of a permanent secretariat for the European Network of NHRIs, previously known as the European Group of NHRIs.[64]

The number of NHRIs worldwide has steadily risen since the accreditation of NHRIs started in the 1990s, with the total reaching 105 at the end of 2013, including 70 with A-status. The picture in the EU is not as impressive, however. Currently, only 11 of the 28 EU Member States have A-status NHRIs, for a total of 13 such institutions EU-wide, as the United Kingdom has three: one for Northern Ireland, one for Scotland alone and one for England and Wales with aspects of Scotland. An additional seven NHRIs have B-status, for a total of eight, as Bulgaria has two B-status accredited institutions (see Table 10.4). EU Member States must make further efforts to establish fully accredited NHRIs. Their success would also chime better with the EU's external policy of pushing for such institutions.

10.5.2 Designation as national mechanisms

The CRPD and OP-CAT require State Parties to establish or appoint an effective mechanism at the national level to monitor implementation of state obligations. Both OP-CAT and the CRPD also instruct states to give due regard to the Paris Principles when establishing this national mechanism. Hence, NHRIs fully compliant with the Paris Principles, in other words holding A-status, are the bodies that are most likely to meet these criteria. (For details on the rights of persons with disabilities, ▶ see Chapter 5 on Equality and non-discrimination.)

As noted earlier, the CRPD is of great significance for the EU. The convention's Article 33 requires from the parties different types of bodies (government focal point, coordination mechanism, and a monitoring framework). Several of the accredited NHRIs (but also other bodies with a human rights remit), as well as equality bodies, serve as Article 33 (2) frameworks for promoting, protecting and monitoring implementation. About a third of EU Member States use accredited, non-accredited or equality bodies for this role. For more detail, see the table on CRPD data, available at: http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations.

A number of structural changes for CRPD implementation and monitoring took place in 2013. In **Portugal**, for example, a Commission for Disability will act as an independent mechanism until the new National Independent Commission becomes operational.[65] After the UN Committee on the Rights of Persons with Disabilities[66] and local NGOs[67] criticised the lack of independence of Hungary's monitoring mechanism under Article 33 (2), **Hungary** enacted a new Government Decision[68] on the National Disability Council (NDC). According to the Government Decision, out of the 15 NDC members, only the chair represents the government, whilst the other 14 members are delegated by organisations for persons with disabilities.[69] Nevertheless, NDC members receive a considerable proportion of their funding from the government, which is subject to negotiation every year.[70]

In addition, the governments of **Romania**[71] and **Slovenia**[72] designated frameworks to promote, protect and monitor CRPD implementation under Article 33 (2). Romania, like several other EU Member States, has not allocated any additional budget to realise the independent monitoring framework.[73]

10.5.3 Human rights and business

Another increasingly strong link between the UN (but also the Council of Europe) and EU Member States is related to business and human rights. In 2011, the UN Human Rights Council endorsed the *Guiding principles on business and human rights: Implementing the United Nations 'Protect, respect and remedy' framework* (UN Guiding Principles).[74] The UN Guiding Principles have three pillars. The first calls upon states

Table 10.4: NHRIs, by accreditation status and EU Member State

	Number of NHRIs (number of EU Member States with NHRI)		Number of Equality Bodies	AT	BE	BG	BG	CY	CZ	DE	DK	EE	EL
A-status	13	(11)	2							✓**	✓*		✓
B-status	8	(7)	4	✓	✓*	✓*	✓						
C-status	1	(1)	0										
No accreditation/ institution	9	(9)	n/a					✓*	✓			✓	

Notes: * Relevant NHRIs also serve as a national equality body under EU law.

** Indicates they have undergone a re-accreditation process but the results have been postponed until 2014.

Bulgaria has two NHRIs, both with B-status: the Ombudsman of the Republic of Bulgaria and the Commission for Protection against Discrimination of the Republic of Bulgaria.

to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation and adjudication. The second pillar invokes the corporate responsibility to respect human rights, according to which business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved. The third pillar concerns the need for greater access by victims to effective remedy, both judicial and non-judicial. The initiative has gained strong support from other relevant actors in the field of human rights, including the Council of Europe Steering Committee for Human Rights. The committee recommends, in a draft declaration from November 2013, recognising the UN Guiding Principles "as the current globally agreed baseline for its own work in the field of business and human rights".[75] The Steering Committee is drawing up a non-binding instrument addressing gaps in the implementation of the UN Guiding Principles at European level, notably as regards access to remedies.

The European Commission reacted to the UN Guiding Principles in its 2011 communication *A renewed EU strategy 2011–2014 for corporate social responsibility*. In it, the Commission invited the EU Member States to develop, by the end of 2012, national plans for the implementation of the UN Guiding Principles.[76] In the 2012 *EU strategic framework and action plan on human rights and democracy* (see Section 10.1), the Council of the EU extended the deadline for this task to 2013.[77] In their replies to a questionnaire distributed by the European Commission in 2013, 10 Member States said that they have or intend to introduce a stand-alone national plan for this purpose, whereas 11 were going to incorporate these issues into existing national plans for promoting the broader concept of corporate social responsibility. The remaining Member States either said that they did not mean to introduce a national plan in this area or did not respond to the questionnaire (see Table 10.5 for an overview of Member States' responses, including whether or not they delivered on their commitment by the end of 2013).

Table 10.5: National action plans on business and human rights, by EU Member State

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR
New for business and human rights							✓			✓	✓	✓
Integrated	✓		✓	✓	✓	✓		✓				
None		?							?			
Delivered												

Source: European Commission, DG Employment, Social Affairs and Inclusion and Members of the High-Level Group of EU Member States representatives on CSR, August 2013

Table 10.4: (continued)

	ES	FI	FR	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SK	SE	SI	UK		
																			GB	NI	SC
	✓		✓	✓		✓			✓				✓	✓					✓*	✓	✓
					✓**							✓*					✓*	✓			
															✓						
		✓					✓	✓		✓	✓					✓					

The United Kingdom has three NHRIs, all with A-status: in Great Britain, the Equality and Human Rights Commission covering human rights issues in England and Wales, and certain human rights issues in Scotland (those not devolved to the Scottish Parliament); in Northern Ireland, the Northern Ireland Human Rights Commission; and in Scotland alone, the Scottish Human Rights Commission. GB stands for Great Britain; NI for Northern Ireland; and SC for Scotland.

Source: United Nations, OHCHR, ICC, available at: http://nhri.ohchr.org

Outlook

Developments in 2013 show that the EU Member States generally – but also the EU itself – continue to accept new commitments stemming from Council of Europe and UN standards and monitoring mechanisms. This is particularly true of some of the more recent instruments, such as the Istanbul Convention related to violence against women or the third optional protocol of the Convention on the Rights of the Child, providing for an individual complaints procedure.

The eagerly awaited accession of the EU to the ECHR lies currently in the hands of the CJEU. It is expected to deliver a comprehensive opinion on the legal elements of this ground-breaking step. Although it is not generally assumed that the CJEU's response will be negative, it is important that it tackle the issues raised by legal professionals on the draft accession agreement, as EU accession will have significant implications for the fundamental rights landscape in Europe.

The EU has the potential to become one of the leading actors in promoting emerging issues, such as the notion of human rights and business. Commitment and follow-up by EU Member States will also be essential. Similarly, Member State action on Paris Principles-compliant NHRIs in the EU will indicate progress. However, the EU itself may also take action on minimum standards for NHRIs and similar entities, such as equality bodies and data protection authorities.

EU action has continued to underline its determination to become a more active player in the field of human rights and one that is fully integrated in the international system. Besides pursuing its own accession to key instruments such as the ECHR or the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, the EU motivates not only its Member States, but also, through various tools, third countries to enhance their participation in the international human rights system, thus fulfilling its role of contributing to the protection of human rights both internally and worldwide. This is projected to increase in intensity.

Table 10.5: (continued)

	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	Total
	✓			✓					✓	✓			✓			✓	10
			✓		✓			✓			✓	✓		✓			12
		✓				?	✓								✓		6
									✓							✓	**2**

Index of Member State references

Endnotes

All hyperlinks accessed on 30 April 2014.

1 European Union Agency for Fundamental Rights (FRA) (2012), *Bringing rights to life: The fundamental rights landscape of the European Union*, Luxembourg, Publications Office of the European Union (Publications Office), http://fra.europa.eu/fraWebsite/attachments/FRA-2012_annual-report-2011-fundamental-rights-landscape_EN.pdf.

2 Council of the European Union (2013), *EU Annual report on human rights and democracy in the world in 2012*, 9431/13, Brussels, 13 May 2013, p. 175, http://register.consilium.europa.eu/pdf/en/13/st09/st09431.en13.pdf.

3 Council of the European Union (2012), *EU strategic framework and action plan on human rights and democracy*, 11855/12, Luxembourg, 25 June 2012, www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf.

4 *Ibid.*, Point 4.

5 *Ibid.*, Point 17 (b).

6 *Ibid.*, Point 25 (c).

7 European Commission (2013), 'Working conditions: Commission urges Member States to implement ILO domestic workers convention', press release, Brussels, 21 March 2013, http://europa.eu/rapid/press-release_IP-13-264_en.htm; Council of the European Union (2014), '3290th Council Meeting, Economic and Financial Affairs', Press release, Brussels, 28 January 2014, p. 19, www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/140836.pdf.

8 Council of Europe, *Modernisation of Convention No. 108*, www.coe.int/t/dghl/standardsetting/dataprotection/modernisation_en.asp.

9 European Council (2010), *The Stockholm Programme: An open and secure Europe serving and protecting citizens*, OJ C 115/1, 4 May 2010, Section 6.2.1, p. 32, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:EN:PDF.

10 Estonia signed on 17 February 2014.

11 Greece passed legislation 4216/2013 on 10 December 2013 as basis for ratification of the treaty.

12 Council of Europe, Committee of Ministers (2013), *1168th Meeting (Item 4.1, Point 3), 10 April 2013*.

13 Council of Europe (2013), SG/Inf(2013)18, Concrete measures for better coordination of monitoring mechanisms and modalities for improved follow-up and assistance, 9 July 2013.

14 Council of Europe, Commissioner for Human Rights (2013), *Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights following his visit to Greece, from 28 January to 1 February 2013*, CommDH(2013)6, Strasbourg, 16 April 2013, https://wcd.coe.int/ViewDoc.jsp?id=2053611&Site=COE&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679.

15 Council of Europe, Commissioner for Human Rights (2013), *Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights following his visit to Estonia, from 25 to 27 March 2013*, CommDH(2013)12, Strasbourg, 20 June 2013, https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2308567&SecMode=1&DocId=2023896&Usage=2.

16 Council of Europe, Commissioner for Human Rights (2013), *Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights following his visit to Spain, from 3 to 7 June 2013*, CommDH(2013)18, Strasbourg, 9 October 2013, https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2389885&SecMode=1&DocId=2077824&Usage=2.

17 At the time of writing, the final report had not been issued. Information is available at: www.coe.int/web/commissioner/country-report/denmark.

18 Council of Europe, European Social Charter, *Organisations entitled to lodge complaints with the Committee*, www.coe.int/t/dghl/monitoring/socialcharter/OrganisationsEntitled/OrgEntitled_en.asp.

19 Council of Europe, European Social Charter, *Five decisions on the merits of the European Committee of Social Rights concerning pension schemes in Greece are public*, www.coe.int/T/DGHL/Monitoring/SocialCharter/NewsCOEPortal/CC76-80Merits_en.asp.

20 Council of Europe, European Committee of Social Rights (ECSR) (2014), *Press briefing elements*, Conclusions 2013/XX-2, 15 January 2014.

21 ECtHR (2014), *Annual report 2013*, provisional version, Strasbourg.

22 The committee met for this purpose four times during the year. The full list of meetings and the corresponding documents is in Council of Europe, *Human rights meeting files*, www.coe.int/t/dghl/monitoring/execution/WCD/DHMeetings_en.asp.

23 On 12 March 2014, the Grand Chamber of the ECtHR rendered its judgment on Art. 41 in *Kurić and Others v. Slovenia* and decided the question of pecuniary damage.

24 The committee met for this purpose four times during the year. The full list of meetings and the corresponding documents is in Council of Europe, *Human rights meeting files*, www.coe.int/t/dghl/monitoring/execution/WCD/DHMeetings_en.asp.

25 Council of Europe (2013), Fifth negotiation meeting between the CDDH and ad hoc negotiation group and the European Commission on the accession of the European Union to the European Convention on Human Rights, Strasbourg, 10 June 2013, www.coe.int/t/dghl/standardsetting/hrpolicy/Accession/Meeting_reports/47_1(2013)008rev2_EN.pdf.

26 Organization for Security and Cooperation in Europe (OSCE), OSCE High Commissioner on National Minorities, www.osce.org/hcnm.

27 OSCE (2013), Regular report to the Permanent Council by Dunja Mijatović, OSCE Representative on freedom of the media, 28 November 2013, www.osce.org/fom/109028; OSCE (2013), *Regular report to the Permanent Council by Dunja Mijatović, OSCE Representative on freedom of the media*, 13 June 2013, www.osce.org/fom/102651.

28 OSCE, *Country visits*, www.osce.org/cthb/88717.

29 OSCE (2013), *Report of the Personal Representatives of the OSCE Chairperson-in-Office on tolerance and non-discrimination issues, Ambassador Adil Akhmetov, Rabbi Andrew Baker and Ambassador Tetiana Izhevska, on the country visit to Belgium*, CIO.GAL/178/13, 13 December 2013, http://tandis.odihr.pl/documents/07843.pdf.

30 OSCE (2013), *Report of the Personal Representative of the OSCE Chairperson-in-Office on combating anti-semitism, Rabbi Andrew Baker, on the country visit to France*, CIO.GAL/147/13, 18 October 2013, http://tandis.odihr.pl/documents/07780.pdf.

31 OSCE (2013), *Regular report to the Permanent Council by Dunja Mijatović, OSCE Representative on freedom of the media*, 28 November 2013, www.osce.org/fom/109028; OSCE (2013), *Regular report to the Permanent Council by Dunja Mijatović, OSCE Representative on freedom of the media*, 13 June 2013, www.osce.org/fom/102651.

32 OSCE (2013), *Report of the Personal Representative of the OSCE Chairperson-in-Office on combating anti-semitism, Rabbi Andrew Baker, on the country visit to Italy*, CIO.GAL/182/13, 23 December 2013, http://tandis.odihr.pl/documents/07842.pdf.

33 OSCE (2013), *Report of the Personal Representative of the OSCE Chairperson-in-Office on combating anti-semitism, Rabbi Andrew Baker, on the country visit to Latvia*, CIO. GAL/183/13, 23 December 2013, http://tandis.odihr.pl/documents/07841.pdf.

34 OSCE (2013), *Report of the Personal Representative of the OSCE Chairperson-in-Office on combating anti-semitism, Rabbi Andrew Baker, on the country visit to Romania*, CIO. GAL/191/13, 30 December 2013, http://tandis.odihr.pl/documents/07840.pdf.

35 OSCE (2013), 'OSCE/ODIHR Director disappointed by Spanish decision against monitoring of Madrid demonstration', 27 September 2013, www.osce.org/odihr/105973.

36 UN, Office of the High Commissioner for Human Rights, *The core international human rights instruments and their monitoring bodies*, www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx.

37 The ICESCR-OP was to enter into force after 10 ratifications. On 5 February 2013, it received the tenth ratification (Uruguay), and it entered into force on 5 May 2013. Finland ratified the ICESCR-OP on 31 January 2014.

38 Portugal ratified the CEPD on 27 January 2014, and accepted Art. 31, which allows for individual complaints.

39 Greece ratified OP-CAT on 11 February 2014.

40 CRC-OP3 received its tenth ratification on 14 January 2014, which led to its entering into force on 14 April 2014.

41 All three have already signed the CRPD and Finland has also signed the Optional Protocol.

42 FRA (2013), *Legal capacity of persons with mental health problems and persons with intellectual disabilities*, Luxembourg, Publications Office.

43 Ireland, Assisted Decision-Making (Capacity) Bill 2013 and Explanatory Memorandum, www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2013/8313/b8313d.pdf.

44 Doyle, S., and Flynn, E. (2013), 'Ireland's ratification of the UN Convention on the Rights of Persons with Disabilities: Challenges and opportunities', *British Journal of Learning Disabilities*, Vol. 41, No. 1, pp. 171–180.

45 Finland, *Ulkoasiainministeriö, Ratification of the Convention on the Rights of Persons with Disabilities proceeding in Finland,* http://formin.finland.fi/public/default.aspx?contentid=297670&nodeid=15630&contentlan=2&culture=en-US.

46 Netherlands, Staatssecretaris van Volksgezondheid, Welzijn en Sport (2013), *Ambtelijk concept: Rijkswet van... tot goedkeuring van het op 13 december 2006 te New York tot stand gekomen Verdrag inzake de rechten van personen met een handicap* (Trb. 2007, 169), http://internetconsultatie.nl/vnverdraghandicap/document/764.

47 Netherlands, Staatssecretaris van Volksgezondheid, Welzijn en Sport (2013), *Ambtelijk concept: Rijkswet van... tot uitvoering van het op 13 december 2006 te New York tot stand gekomen Verdrag inzake de rechten van personen met een handicap* (Trb. 2007, 169), http://internetconsultatie.nl/vnverdraghandicap/document/766.

48 Human Rights Council, *Universal Periodic Review (UPR)*, www.upr-info.org/-Sessions-.html.

49 Human Rights Council, *UPR info's statistics of UPR recommendations*, www.upr-info.org/database/statistics/index_sur.php.

50 The ICESCR-OP was to enter into force after 10 ratifications. On 5 February 2013, it received the tenth ratification (Uruguay), and it entered into force on 5 May 2013.

51 UN, Office of the High Commissioner for Human Rights, *Special procedures of the Human Rights Council*, www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx.

52 UN, Human Rights Council (2013), *Report of the Special Rapporteur on the human rights of migrants*, 24 April 2013, www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.46_en.pdf.

53 UN, Human Rights Council (2013), *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 17 April 2013, www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf.

54 UN, Office for the High Commissioner for Human Rights (2013), *UN experts hails 'key breakthrough for religious freedom reached in Cyprus'*, 22 October 2013, www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13880&LangID=E.

55 UN, Human Rights Council (2012), *Report of the Special Rapporteur on freedom of religion or belief, Mission to Cyprus*, www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC2251Add.1_English.pdf.

56 FRA, Holocaust and human rights education publications, http://fra.europa.eu/en/project/2006/holocaust-and-human-rights-education?tab=publications.

57 UN, General Assembly (2014), Resolution adopted by the General Assembly on 18 December 2013, Resolution A/RES/68/171, National institutions for the promotion and protection of human rights, 23 January 2014, www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/171.

58 UN, Office of the UN High Commissioner for Human Rights (2013), Conference report, Vienna+20: *Advancing the protection of human rights – achievements, challenges and perspectives 20 years after the World Conference*, 27–28 June 2013, www.ohchr.org/Documents/Events/OHCHR20/ConferenceReport.pdf.

59 FRA (2012), *Handbook on the establishment and accreditation of national human rights institutions in the European Union*, Luxembourg, Publications Office, http://fra.europa.eu/sites/default/files/fra-2012_nhri-handbook_en.pdf.

60 UN, General Assembly (1993), The principles relating to the status and functioning of national institutions for protection and promotion of human rights (The Paris Principles), Resolution A/RES/48/134, 20 December 1993.

61 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2013), *Report and recommendations of the session of the Sub-Committee on Accreditation (SCA)*, Geneva, November 2013, pp. 21–22, http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20NOVEMBER%202013%20FINAL%20REPORT%20ENGLISH.pdf.

62 FRA (2013), *Fundamental rights: Challenges and achievements in 2012*, Annual report, p. 246, http://fra.europa.eu/sites/default/files/annual-report-2012-chapter-8_en.pdf.

63 International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (2013), *Report and recommendations of the session of the Sub-Committee on Accreditation (SCA)*, Geneva, November 2013, pp. 21–22, http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20NOVEMBER%202013%20FINAL%20REPORT%20ENGLISH.pdf.

64 While their own website is being set up, some basic information is hosted by the Scottish Human Rights Commission, www.scottishhumanrights.com/international/eurochair.

65 Portugal, *Despacho 2178/2013, Constituição de uma Comissão para a Deficiência*, 28 January 2013, http://dre.pt/pdf2sdip/2013/02/026000000/0566105662.pdf.

66 UN, Committee on the Rights of Persons with Disabilities (2012), *Concluding observations on the initial periodic report of Hungary, adopted by the Committee at its eighth session*

(17–28 September), p. 5, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=5.

67 Hungary, Magyar Fogyatékosügyi Caucus (2012), Additional information about Hungary's compliance with the UN Convention on the Rights of Persons with Disabilities, with respect to the list of issues and replies from the Government of Hungary to the list of issues, 5 September 2012, http://mdac.info/sites/mdac.info/files/commcrpd_hu_september2012.pdf.

68 Hungary, A Kormány 1330/2013. (VI. 13) határozata az Országos Fogyatékosságügyi Tanácsról.

69 *Ibid.*, Art. 6.

70 Hungary, written information provided by the Ministry of Human Resources for the purposes of the present report on 25 November 2013.

71 Romania, Ministerul Muncii, Familiei, Protecției Sociale şi Persoanelor Vârstnice, No. 40370/15.10.2012; Romania, Institutul Român pentru Drepturile Omului, No. 611/12.10.2012.

72 Slovenia (2010), Zakon o izenačevanju možnosti invalidov, ZIMI, 16 November 2010; Slovenia (2013), *Sklep o imenovanju in nalogah članov Sveta za invalide Republike Slovenije*, 28 October 2013.

73 Romania, Ministerul muncii, Familiei, Protecției Sociale şi Persoanelor Vârstnice, Direcția Protecția Persoanelor cu Dizabilități (2013), Letter No. 22.441/DPPH/SPSM/23.10.2013 to the Centre for Legal Resources, on file with the FRA contractor in Romania through Franet.

74 UN, Human Rights Council (2011), *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, guiding principles on business and human rights: Implementing the United Nations 'Protect, respect and remedy' framework*, A/HRC/17/31, 21 March 2011, www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf.

75 Council of Europe, Steering Committee for Human Rights (2013), *Draft declaration of the Committee of Ministers on the United Nations Guiding Principles on business and human rights*, 26–29 November 2013, www.coe.int/t/dghl/standardsetting/cddh/CDDH-DOCUMENTS/CDDH(2013)R79_Addendum%20VI_EN.pdf.

76 European Commission (2011), Communication from the Commission to the European Parliament, the Council, the European Economic and social Committee and the Committee of the Regions. A renewed EU strategy 2011-14 for corporate social responsibility, COM(2011) 681 final, Brussels, 25 October 2011, p. 14, Section 4.8.2, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF.

77 Council of the European Union (2012), *EU strategic framework and action plan on human rights and democracy*, 11855/12, Luxembourg, 25 June 2012, p. 21, Point 25 (c), www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf.

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FRA
EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

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FRA
EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

The EU and its Member States took a variety of important steps in 2013 to protect and promote fundamental rights by assuming new international commitments, revamping legislation and pursuing innovative policies on the ground. Yet, fundamental rights violations seized the spotlight with distressing frequency: would-be migrants drowned off the EU's coast, unprecedented mass surveillance, racist and extremist-motivated murders, child poverty and Roma deprivation.

In response, the EU completed a series of important legal reforms, particularly in asylum, while Member States worked to transpose the EU Victims' Directive into national law and pursued their national Roma integration strategies. Still, new laws on the books do not necessarily transform the situation on the ground. Crisis-driven austerity measures raised some fundamental rights concerns. A persisting gap between law and practice troubled a broad spectrum of human rights observers, particularly in asylum policy, Roma integration and child and victims' rights.

This year's FRA annual report looks at fundamental rights-related developments in asylum, immigration and integration; border control and visa policy; information society, respect for private life and data protection; the rights of the child and the protection of children; equality and non-discrimination; racism, xenophobia and related intolerance; access to justice and judicial cooperation; rights of crime victims; EU Member States and international obligations.

It features two new chapters, one on Roma integration following the drawing up of the national Roma integration strategies and a second looking at the EU Charter of Fundamental Rights and especially its use before national courts as it approaches its fifth anniversary as a binding document.

FOCUS

This year's Focus section examines how the EU and its Member States, as part of their efforts to assume a pole position in the international human rights apparatus, could embed fundamental rights considerations more firmly in their policy making processes. By way of illustration, the Focus outlines for consideration 20 tools that could form part of a future EU strategic framework on fundamental rights.

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