ANNUAL REPORT 2014

Fundamental rights: challenges and achievements in 2014

FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Acronyms

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

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

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

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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.

Europe Direct is a service to help you find answers to your questions about the European Union.

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Fundamental rights: challenges and achievements in 2014

Foreword

For the European Union, the European Parliament elections and the appointment of a new European Commission marked the year 2014. At the end of the year, we celebrated the fifth anniversary of the Treaty of Lisbon, which means the Charter of Fundamental Rights of the European Union (EU) has also been in force for five years. In light of this, the very last chapter of this reshaped FRA Annual report is dedicated to the EU Charter of Fundamental Rights and the use Member States make of it.

As in previous years, the Annual Report begins with a focus section. This year, it hones in on fundamental rights indicators – one of the tools presented in the focus section of the 2013 report that could be used to enhance the fundamental rights commitments of the EU and its Member States. It examines how a rights-based indicator framework could support relevant actors in policy evaluation and design, thus consolidating Europe's fundamental rights culture and helping to guarantee that fundamental rights are upheld in practice.

The other chapters discuss equality and non-discrimination; racism, xenophobia and related intolerance; Roma inclusion; asylum, visas, migration, borders and integration; information society, data protection; rights of the child; and access to justice including the rights of victims of crime.

Looking at this year report, the reader will see several changes: the report has been significantly shortened and streamlined to meet our stakeholders' expectations who, over the past years, have provided such valuable feedback on and recognition of our annual report. The selection and title of the chapters still reflect the thematic areas of the agency's Multiannual Framework – a list of priority areas the Council of the European Union determines. Each chapter focuses on just three key issues related to its topic, contains a timeline of developments during the year, identifies promising practices, and ends with a list of FRA evidence-based conclusions that can thereafter be used to inform the political debate on a given topic.

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.

Frauke Lisa Seidensticker
Chairperson of the FRA Management Board

Constantinos Manolopoulos
Director a.i.

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

EQUALITY

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

FREEDOMS

- Asylum, borders, immigration and integration
- Information society, privacy and data protection

JUSTICE

- Access to justice, including rights of crime victims

Contents

Introduction

For the European Union, the European Parliament elections and the appointment of a new European Commission marked the year 2014. At the end of the year, the Treaty of Lisbon celebrated its fifth anniversary, which means the Charter of Fundamental Rights of the European Union (EU) has also been in force for five years. It is hence time for a first assessment of its benefits and shortcomings. Five years after the Treaty of Lisbon entered into force, the European Commission and the Court of Justice of the EU are now able to exercise their full powers in areas such as judicial cooperation in criminal matters, which are of utmost relevance to the protection of fundamental rights. Given the fifth anniversary of the Charter of being legally binding, the very last chapter of this reshaped FRA Annual report is dedicated to the EU Charter of Fundamental Rights and the use Member States make of it.

The other chapters discuss equality and non-discrimination; racism, xenophobia and related intolerance; Roma inclusion; asylum, visas, migration, borders and integration; information society and data protection; rights of the child; and access to justice including the rights of victims of crime.

As in previous years, the Annual report begins with a Focus. This year, it hones in on fundamental rights indicators – one of the tools presented in the focus section of the 2013 report that could be used to enhance the fundamental rights commitments of the EU and its Member States. It examines how a rights-based indicator framework could support relevant actors in policy evaluation and design, thus consolidating Europe's fundamental rights culture and helping to guarantee that fundamental rights are upheld in practice. Previous focus sections of the annual report looked at the European Union as a community of values in times of crisis and depicted the 'fundamental rights landscape', discussing the different fundamental rights standards and instruments available at the national, European and United Nations levels.

However, 2014 was not just an anniversary year to celebrate. There are many areas in which fundamental rights were challenged over the year, as well as many achievements, and those contained in key areas of FRA's Multiannual Framework are covered in the report. This introduction takes three issues that appear to be of particular policy relevance to discuss in more detail, highlighting victims' rights, the situation of migrants in the EU and shortcomings concerning the rights of the child.

In new strategic guidelines in the area of freedoms, security and justice, EU leaders emphasised the need to strengthen mutual trust and reinforce the protection of victims and the rights of people suspected or accused of crimes. A number of EU Member States adopted new laws or reformed existing legislation and policies in this area, while efforts continued at the international and EU levels to strengthen the rule of law, judicial independence and the efficiency of justice systems, as lynchpins of a strong and healthy democracy.

Ahead of the transposition deadline for the Victims' Directive (2012/29/EU) in November 2015, several Member States improved their legislation on the rights of victims of crime. FRA research into victim support services throughout the EU shows, however, that despite progress many Member States will need to take further legislative and policy steps to ensure appropriate protection. Member States should, for example, set up effective referral systems facilitating victims' access to specialised support services. They should also train police officers and legal practitioners to establish a relationship of trust and confidence with victims and support them throughout criminal proceedings. Data on how and to what extent crime victims have accessed their rights also needs to be regularly collected and effectively used to feed into the relevant policies to combat crime.

One example of crime victims spotlighted by FRA last year is women as victims of violence. It is based on the most comprehensive survey worldwide on violence against women, which finds that one in three women (33 %) across the EU has experienced some form of physical and/or sexual violence since the age of 15. Out of all women who have or had a partner, 22 % have experienced physical and/or sexual violence by that partner, while 33 % have had childhood experiences of physical or sexual violence at the hands of an adult. And 20 % of young women have been victims of cyber harassment, an area of growing concern.

In spite of these worrying figures, FRA's research on gender-based violence against women, as well as its surveys of ethnic and religious minorities and of LGBT people in the EU, also provide evidence of widespread underreporting of crimes, making the need to provide victims with a set of services that enable them to enjoy their rights still more pressing. Increasing trust in the authorities through targeted and practical victim support systems is a crucial element of any strategy to boost reporting rates, thus increasing the likelihood that perpetrators will be brought to justice.

Some people are more vulnerable to becoming victims of crime as well as of discrimination than others. Migrants, asylum seekers and refugees are often at a particular disadvantage when it comes to accessing justice in the EU, partly because they may

have scant knowledge of the language of the country in which they are living, and partly because their awareness of victim support services available as well as of formal procedures may be low. In addition, migrants in an irregular situation are especially likely to decide against reporting crimes committed against them for fear their contact with the authorities may lead to deportation.

Migration itself has become a permanent fixture on the agenda of EU and national policymakers, with the United Nations High Commissioner for Refugees reporting that the number of refugees, asylum seekers and internally displaced people worldwide reached its highest mark since the Second World War. The predicament in the Mediterranean worsened, with more than 3,000 people dying at sea in 2014 as they attempted to reach safety in Europe. The number of people rescued or apprehended at sea quadrupled in 2014 from the year before, the majority of whom were from war-torn Syria. As FRA proposes in this report and further suggests in a focus paper published in early 2015, and as is in line with the outcomes of the discussion during the 1st meeting of the European Migration Forum, EU Member States need to offer people in need of international protection more opportunities to enter the EU legally. This has the potential to save many lives, which must be at the heart of any EU border policy.

While the EU established new legal safeguards for Frontex-coordinated sea operations, there was a deterioration in compliance at the borders of some Member States with the principle of *non-refoulement*, which stipulates that nobody should be returned to a country where their life or freedom is at risk. For people already on EU territory whose applications for international protection or residence permits have been rejected and who are therefore subject to a return procedure, detention too often remains the default solution, while the system of voluntary returns is not used nearly enough.

The fundamental rights challenges do, however, not end with the arrival of migrants in the EU. The EU and its Member States urgently need to develop a comprehensive and sustainable migration policy that reaches from issues of border control and asylum through to migrant integration. The Seasonal Workers Directive (2014/36/EU), adopted in 2014, further protects a particularly vulnerable group at risk of exploitation. The Asylum, Migration and Integration Fund and the Internal Security Fund were furthermore established in 2014 to run until 2020. The two new funding mechanisms aim to assist Member States implement EU migration and asylum law, ensure solidarity between Member States on migration issues and contribute to the fight against cross-border crime. At the same time, it is vital that a new and positive narrative is developed to counter the negative image of migrants and migration which currently remains the predominant narrative in Europe; it needs to stress the benefits of migration for both the social and economic development of the hosting countries.

The equal participation of migrants and their descendants in society, as well as of other persons belonging to minorities, remains a major challenge in many EU countries, while xenophobia and racist violence targeted at migrants and refugees persist across the Union. Many Member States have policies and measures in place to combat this, but there is little evidence that their impact on the ground is in fact monitored. In addition, integration policies tend to target employment and language learning, but rarely address broader issues of social inclusion, community cohesion, and respect for human rights or political participation. These issues need to be addressed more effectively to meet the challenges of developing social inclusion strategies for migrants and their descendants, and simultaneously to combat xenophobia, intolerance, prejudice and discrimination.

Children are another group particularly at risk of social exclusion. While the world celebrated the 25th anniversary of the adoption of the United Nations Convention on the Rights of the Child in 2014, the situation of many children remains precarious. The latest data show that 27.6 % of children in Europe are at risk of poverty or social exclusion, which is equivalent to over 26 million children. Many families with children have difficulties paying their rent, mortgage, or heating costs, school material and even food. To address child poverty, the EU should consider adopting a specific child poverty target at its mid-term review of the EU 2020 goals. The European Semester process could also monitor progress towards achieving this target, recommending evidence-based measures to tackle child poverty.

In the course of the year, the legal protection of child victims of violence or sexual abuse, or children without parental care, was significantly improved and government policy optimised. These measures are, nevertheless, under-resourced in many Member States, making their implementation problematic. For this reason, child victims of crime are more likely to have difficulty in accessing justice. Again, while the EU and its Member States are also establishing judicial safeguards for children involved in justice proceedings, the practical realisation of these children's rights remains a challenge in the day-to-day experiences of children before courts.

In recognition of the seriousness of these challenges, FRA has undertaken a number of research projects on the subject of child rights, which are due to be published in 2015. Evidence collected by FRA in 2014 already shows that while child-friendly justice is

often a well-recognised legal concept, there are still numerous shortfalls in its practical application.

As well as these key issues, this year's report deals with many more challenges, including questions of equality and non-discrimination, and data protection, with two sections reminding us that both the EU's equal treatment directive as well as its data protection reform package are still waiting for adoption.

What is new in this year's report is its structure and length. Where the report was formerly a 'catalogue' of close to 300 pages of developments in the field of fundamental rights, this has now been shortened and streamlined. Each chapter ends with evidence-based conclusions that can thereafter be used to inform the political debate on a given topic. The selection and title of the chapters still reflect the thematic areas of the agency's Multiannual Framework, a list of priority areas defined by the Council of the European Union. In contrast to previous years, however, the issues discussed in this Annual report have been chosen selectively to offer a greater wealth of analysis. Each chapter focuses on just three key issues related to the chapter topic, contains a timeline of developments during the year, identifies promising practices, and ends with a list of FRA conclusions. The reader will no longer find a separate chapter on 'EU Member States and international obligations'. This does not mean, however, that FRA would depart from its long standing conviction to look at fundamental rights and EU law in the international context. The Council of Europe and United Nations developments continue to be covered in the timeline of each chapter. Relevant data concerning international obligations in the area of human rights are offered online in a regularly updated format under http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations. Another new feature of the Annual report is its printed version without references to make it as short and accessible as possible while a fully annotated version is available online including the references in endnotes for all the chapters.

FRA wishes interesting reading and looks forward to your comments (annualreport@fra.europa.eu) on the new-look Annual report.

Mainstreaming fundamental rights: turning words into action

To strengthen the European Union's evidence base on fundamental rights helps to identify how these rights are respected and promoted, not only 'on paper' but 'on the ground'. Fundamental rights are part of the founding values of the European Union (EU) that are minimum standards to which the EU's institutions and Member States are held accountable and which they should respect and promote. Mainstreaming fundamental rights can help turning words into action, especially if linked to relevant indicators. FRA has therefore developed rights-based indicator frameworks in areas of its competence, such as for the rights of the child, Roma and persons with disabilities. This allows to assess the status and outcomes of efforts to implement policy goals and policy cycles such as the European Semester. Using these rights-based indicators to assess whether specific actions or measures have reached their targets could facilitate a better understanding of drivers and barriers in policy implementation. From a fundamental rights perspective, this will allow for better law making and render policymaking more transparent while also holding policymakers accountable for their actions. In the long run, this will strengthen democratic legitimacy and entrench a fundamental rights culture in whatever the EU does.

Fundamental rights at the forefront

In the European Union (EU), the European Parliament elections and the appointment of a new European Commission marked the year 2014. Taking his oath of office on 10 December 2014, the European Commission President, Jean-Claude Juncker, confirmed the Commission's commitment to ensure that the Charter of Fundamental Rights of the EU is respected and complied with in all EU policies.

> *"[I]t is an oath of independence and of respect of our Charter of Fundamental Rights. This is a strong political commitment from the whole College to ensure that the Charter is respected and complied with in all EU policies for which the Commission is responsible. This is no trifling matter – we are nothing if not for our values."*
>
> *European Commission (2014),* 'Juncker Commission takes oath of independence at the European Court of Justice'*, Press release, Luxembourg, 10 December 2014*

These strong words reflect the EU's pledge to continue its efforts to uphold fundamental rights through legal and policy measures.

Fundamental rights have gained in importance within the EU (for details, see Box on 'Mainstreaming fundamental rights in the EU', p. 12). Article 3 of the Treaty on European Union (TEU),[1] taking the EU's internal market as its starting point, notes in paragraph 1 that the Union's aim is to promote its values and in paragraph 3 that it "shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child". This is an invitation to mainstream fundamental rights in all EU policies.

EU institutions are bound to comply with the EU Charter of Fundamental rights in all areas in which they act. EU Member States are also obliged to do so when they take action, for instance, by means of legislation, policies or decisions that are based on EU law or are in an area where EU law applies.[2] Case law from the Court of Justice of the EU (CJEU), particularly the *Åkerberg Fransson* (C-617/10) case, has stressed that this obligation should be interpreted broadly.[3]

This 2014 FRA Annual report Focus examines how compliance with and promotion of the EU's

fundamental rights can be strengthened through the application of robust methodologies that can accurately and systematically assess progress in policy and legislative developments. FRA has already developed a formidable body of evidence in the form of statistical data and qualitative information, as well as rights-based indicator frameworks in areas of its competence. These are used in a compartmentalised way, focusing on specific issues, which limits the possibilities of mainstreaming important fundamental rights issues. Indicators could be developed and applied in a more systematic way to support evidence-based policymaking in key EU policy cycles, at the same time as promoting a 'fundamental rights culture' to raise awareness among both 'duty bearers' and 'rights holders'. One way of achieving this is by using rights-based indicators more systematically and extensively, which reflect the way policy decisions correspond to and fulfil specific fundamental rights standards.

Mainstreaming fundamental rights in the EU

Fundamental rights are a prominent part of the EU's founding values as listed in Article 2 of the TEU. Like the global set of international human rights, they are minimum standards to which the EU and its Member States are held accountable. For states to "respect, protect and fulfil" human and fundamental rights – stemming from the 1993 Vienna Declaration and Programme of Action* – they must abstain from any action that may infringe on these rights, ensuring that rights violations are prevented and remedied, but also drawing attention to them and providing resources.

Human rights were traditionally emphasised in the EU's relations with third countries, and especially vis-à-vis states seeking EU membership. There is an increasing commitment to 'walk the talk' and increase efforts to protect and promote human rights – fundamental rights – within the EU system itself more systematically and effectively. From the early case law of the Court of Justice of the European Union (CJEU) in the 1960s, through the Amsterdam Treaty of 1999, which explicitly placed human rights at the core of EU values, to the Lisbon Treaty becoming law in 2009, the EU steadily expanded its commitment to protect fundamental rights within the EU.**

With the Lisbon Treaty, the Charter of Fundamental Rights of the European Union became legally binding as primary law – on an equal level to the EU treaties – and applicable to EU institutions, as well as EU Member States when they are acting within the scope of EU law. It is important to note that the Charter is more comprehensive than the European Convention on Human Rights. It includes not only civil and political rights, but also economic and social rights, thus spanning the full spectrum and putting all rights on an equal footing in the EU system. The Council of Europe system covers economic and social rights through an additional human rights instrument, the European Social Charter (ESC).

Therefore, today it is possible to say that fundamental rights are at the very heart of EU affairs. With the EU institutions increasingly committed to promoting a culture of fundamental rights in both their internal and external actions, the EU Charter of Fundamental Rights is becoming an essential element in the normative core of all EU action. It is thereby transformed from a fundamental rights "ornament" to a fundamental rights "order".***

The Commission's First Vice-President, responsible for fundamental rights, Frans Timmermans, also raised the importance of mainstreaming fundamental rights – a 'culture' that should influence EU and national action. He stressed, when taking his oath of office, that the European interest

> *"is to make a difference for citizens. That is why we will focus on the big priorities – growth, jobs and investment. And by checking that every one of our proposals matches up to the standards of the Charter, we will carry forward the real fundamental rights culture which has developed in the EU, not to replace but to complement national systems of fundamental rights."*****

* *United Nations, Office of the High Commissioner for Human Rights,* 1993 Vienna Declaration and Programme of Action*, World Conference on Human Rights, Vienna, 25 June 1993; see also International Human Rights Law.*

** *See, for instance, FRA (2012),* Bringing rights to life: The fundamental rights landscape of the European Union*, Luxembourg, Publications Office, p. 11–12.*

*** *Toggenburg, G.N. (2015),* 'The EU Charter: Moving from a European fundamental rights ornament to a European fundamental rights order' *in: Palmisano, G. (ed.), Making the Charter of Fundamental Rights a living instrument, Leiden, Brill.*

**** *European Commission (2014),* 'Juncker Commission takes oath of independence at the European Court of Justice'*, Press release, Luxembourg, 10 December 2014.*

This brief introduction seeks to stress that fundamental rights are at the heart of EU action. The next section presents FRA's experience with the development and testing of rights-based indicators, focusing on two examples, namely indicators that relate to the rights of persons with disabilities and indicators on Roma integration. The third section shows how a system of transparent indicators can be useful for evaluating and designing policy, and can even enhance transparency and citizen engagement.

"What gets measured gets done": experience with fundamental rights indicators

"What gets measured gets done."[4] The preamble to FRA's founding regulation (Regulation (EC) No. 168/2007) notes that greater knowledge and broader awareness of fundamental rights issues in the Union help to ensure full respect of fundamental rights. Indeed, FRA was created to contribute to attaining this objective by providing and communicating information and data on fundamental rights matters. FRA has carried out these tasks by collecting and analysing comparable statistical data, conducting studies, publishing reports and analysis, both policy driven and policy relevant, and communicating these to its main stakeholders, EU institutions and Member State authorities. It thus fulfils the needs of the EU's institutions and Member States, as they are reflected in FRA's multiannual framework, and ad hoc requests.

At the same time, to identify, collect and analyse the relevant data it became necessary to develop guidance in the form of indicators that reflect the status and outcomes of efforts to implement policy goals respecting fundamental rights standards. Therefore, in 2007, following a European Commission request, FRA started to develop an indicator framework to guide its collection and analysis of data in the area of the rights of the child. It followed this up with efforts to develop indicator frameworks for the areas of the rights of persons with disabilities and Roma integration.

The need for indicators in following up the implementation of any process is unquestionable. Organisations – be they private companies or public authorities – steer their strategic decisions on the basis of what are commonly known as key performance indicators (KPIs). Such indicators are selected among a wide range of possible indicators on the basis of what is sought to be achieved. Using well-selected indicators enables organisations to better measure their performance and focus on improvements with a view to reaching strategic goals. Corporations may look at sales or turnover but also much more technical details related to, for instance, finances. The 40-odd EU agencies around Europe, among which FRA numbers, have committed to using KPIs to guide their work.[5]

Indicators guide work in many other contexts serving different purposes. At a global level, there is a wide array of indicator systems broadly related to human rights. Some focus on specific areas, such as the environment or sustainable development, while others create indices with aggregate indicators and league tables ranking states' performance on a range of human rights. Among the more prominent indicator sets are the Millennium Development Goals and their successor, the Sustainable Development Goals.[6] The United Nations' Human Development Index ranks countries by issues such as life expectancy and schooling using gross national income (GNI) converted into purchasing power parity (PPP) terms to eliminate differences in national price levels.[7] The United Nations (UN) also has an Inclusive Wealth Index, which places a monetary value on issues such as education and health. The World Bank covers a range of issues using indicators such as governance and justice.[8] Significant non-governmental initiatives include the World Justice Project, comparing the rule of law across states globally.[9] The World Bank also developed a study looking specifically and in depth at the use of human rights-based indicators in economic and social development. It notes that the importance of these indicators lies both in linking the conceptual discussion about human rights compliance to implementation practices and in this way promoting human rights mainstreaming.

> *"Why are human rights indicators important? First, they link the conceptual discussion about human rights compliance to implementation practices. They link the normative level of international legal obligation with the practical level of empirical data. At a different level, the employment of human rights indicators in development practice implies some form of human rights mainstreaming or some effort to integrate human rights."*
>
> *World Bank, McInerney-Lankford, S. and Sano, H.-O., (2010),* Human rights indicators in development: An introduction*, Washington DC, The World Bank, p. 14*

In the EU, some Member States use indicators to help them make policy choices related to human rights. In the **United Kingdom**, for instance, the Human Rights Measurement Framework published in 2011 by the Equality and Human Rights Commission is an "analytical tool" providing evidence for human rights analysis and assessments to meet the need for a comprehensive evidence base to evaluate compliance with and progress towards the implementation of human rights.[10] In **Portugal**, the National Committee for Human Rights has embarked on a cross-cutting project to establish indicator lists for the right to education, and the right to liberty and security of the person, to assess the implementation of these rights at national level, and to document reports to the human rights treaty-monitoring bodies.[11] Using indicator-based

schemes, the **Swedish** Agency for Participation looks at the situations of persons with disabilities and the Swedish Ombudsperson at those of children.[12] The European Council on Foreign Relations, an international think tank, keeps a scorecard on European foreign policy, showing in which areas the respective EU Member States as well as the EU institutions are taking the lead on foreign policy issues, and where they lag behind.[13]

The EU also uses indicators in a range of areas. This provides accessible, precise overviews based on data, such as the number of infringement proceedings by EU Member State. An example of this is the EU Single Market Scoreboard.[14] In its international development and cooperation policies, it also makes efforts to apply indicators to measure results.[15] Another example is the scoreboard of the Alert Mechanism Report. It provides evidence for the European Commission's Annual Growth Survey (AGS), which informs the deliberations of the European Semester using a number of economic and social indicators, such as the proportion of people who are at risk of poverty and social exclusion. Furthermore, the EU Justice Scoreboard, part of the AGS, has indicators central to fundamental rights – such as access to justice – measuring the efficiency and quality of justice systems, and the independence of the judiciary.

Rights-based indicators linked to a normative framework, for example the EU Charter of Fundamental Rights, can measure more than outcomes. They can be used to assess specific actions or measures that are put in place to reach targets. This could facilitate a better understanding of drivers and barriers in policy implementation, including through the disbursement of national and EU funds. As will be shown below, such an endeavour, although necessary, is complex. Establishing a robust and rights-based indicator framework has, however, several positive effects, in particular it strengthens the accountability and transparency of duty bearers' actions. Such elements can go a long way to bolster democratic legitimacy.

Developing fundamental rights-based indicators: the work of FRA

> *"Human rights indicators are useful tools for both analysing the situation of human rights in a given state and communicating best practices and institutional solutions that can be of interest to local and regional authorities within the state and between member states."*
>
> *Council of Europe, Congress of Local and Regional Authorities, Monitoring Committee (2011),* Developing indicators to raise awareness of human rights at local and regional level*, CG(21)10, 6 October 2011*

FRA is mandated to "develop methods and standards to improve the comparability, objectivity and reliability of data at European level, in cooperation with the European Commission and the Member States".[16] Indicators are a tool that provides guidance about the type of data and methodologies of data collection that would be relevant to policy. FRA started its indicator work in relation to the rights of the child following a European Commission request. It published a report in 2010, which was followed up in 2012 by an additional set of indicators on family justice.[17] FRA's work in this area has continued in response to requests from or collaboration with the Commission. Indicators are at various stages of development in relation to Roma integration[18] and rights of persons with disabilities,[19] and work is starting on migrant integration indicators. In its work, FRA has identified four lessons learned in regard to indicator development.

First, indicators have to be agreed through a deliberative process with the actors who will be assessed through their application. These would be primarily 'duty bearers', namely EU institutions and Member States, but also other stakeholders representing the 'rights holders', such as social partners and civil society, to ensure a wide consensus through informed participatory processes.

Second, they must be based on rigorous methodological criteria and principles, such as those of the Social Protection Committee Indicators Sub-group.[20]

Third, they need to have a clear normative interpretation. Regarding fundamental rights, they should refer to EU law, including the Charter of Fundamental Rights, as well as international standards accepted by EU Member States and, in the case of the UN Convention on the Rights of Persons with Disabilities (CRPD), by the EU.

Fourth, they should be populated promptly and efficiently with relevant data. This can be a complex task involving qualitative evidence – for example analysis of legislation, case law, strategies or action plans – and quantitative data, such as official statistics or results of scientifically validated academic research.

FRA has worked together with one of the early and most authoritative actors when it comes to indicator work in this area, the OHCHR. The OHCHR defines a human rights indicator as specific information on the state or condition of an object, event, activity or outcome.

> *"A human rights indicator is specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights."*
>
> *Office of the High Commissioner for Human Rights (OHCHR) (2012),* Human rights indicators: A guide to measurement and implementation*, p. 16*

Assessing the fulfilment of fundamental rights

The data populating social indicators, for instance those that are already used in the European Semester, can provide useful information on fundamental rights-related aspects, such as gender equality and the impact of age. They cannot, however, measure differences in individual characteristics protected against unequal treatment by EU secondary law, such as racial or ethnic origin, religion or belief, disability or sexual orientation, because such data are not available at EU level. These data are needed to assess the fulfilment of fundamental rights, as well as the need for targeted social protection measures to enhance social inclusion. FRA has collected such data on the socio-economic situation, discrimination experiences and criminal victimisation of specific population groups that are not targeted by the European statistical system, such as Roma and other migrant or national minority ethnic and/or religious groups, as well as lesbian, gay, bisexual and transgender persons.

In the area of Roma integration, FRA collected these data broken down by ethnic origin through its surveys. FRA provided the data to the European Commission for using them broadly in its evaluation of the national Roma integration strategies, thereby informing country-specific recommendations in the European Semester. EU agencies, such as the European Foundation for Living and Working Conditions (Eurofound), the European Centre for Disease Control (ECDC) and the European Environment Agency (EEA), also have data that would be relevant to a broader set of social indicators related to fundamental rights, as proposed by the European Parliament, such as on quality of work, child poverty levels, access to healthcare and homelessness. A range of data, knowledge and expertise relevant to fundamental rights and rule of law issues is also available from diverse sources, such as the Council of Europe monitoring bodies' reports, outcomes of the work of the European Commission for the Efficiency of Justice (CEPEJ), the Venice Commission, UN entities, such as the Office of the High Commissioner for Human Rights (OHCHR), the World Bank, the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF), and the OECD, as well as data collected by civil society, such as by members of the 'Semester Alliance'.

To obtain a coherent and comprehensive view of fundamental rights implementation using such indicators, it is important to have a framework in which these can be placed. The OHCHR developed a framework for assessing human rights compliance as a tool that can assess outcomes as well as efforts made to achieve them.

This framework, now applied by FRA in its work, identifies three categories of indicators, designed to

Figure 0.1: Indicator framework: structural–process–outcome

Structural	Legal, policy and institutional framework	Commitment	Commitment to international human rights law Legislation in place Policies, strategies, action plans, guidelines adopted Institutional framework Complaint and support mechanisms exist	Duty bearers
Process	Policy implementation, effectiveness of complaints and support systems	Effort	Budgetary allocations Implementation of policies, strategies action plans, guidelines Effectiveness of complaint and support mechanisms	Duty bearers
Outcome	Situation on the ground – rights realised in practice	Results	Actual awareness of rights Actual impact of policies and other measures Actual occurrence of violations Comparative data	Duty bearers

Source: FRA, 2015, based on OHCHR (2012), Human rights indicators: A guide to measurement and implementation, Geneva, United Nations

capture duty bearers' commitment, efforts and results towards fundamental rights obligations.[21] These three categories or levels are labelled structural, process and outcome. They capture the legal and policy framework; the implementation of policies and effectiveness of measures, complaint mechanisms and support systems; and the situation on the ground concerning the fulfilment of rights (Figure 0.1).

Structural and process indicators are useful in measuring efforts to achieve results, not least for social and economic rights, some of which may be only progressively realised. These efforts include specific measures and budgetary allocations to implement them. The assessment of national and EU fund allocations on social inclusion and social protection could benefit from including such indicators, which could provide additional information about the implementation of ex ante conditionalities of the European Structural and Investment Fund regulations on equality and non-discrimination.

Example of Roma integration rights-based indicators

Since 2011 and in response to the Commission's Communication on an EU framework for national Roma integration strategies, each Member State has developed a national Roma integration strategy (NRIS) or integrated sets of policy measures.[22] The communication also called on FRA to work with Member States to assist them in developing monitoring methods to measure progress in the EU. In response, FRA set up a working party on Roma integration indicators in 2011 in close collaboration with the European Commission (namely the Directorate-General for Justice and Consumers and the Directorate-General for Employment, Social Affairs and Inclusion), also involving other stakeholders, such as Eurostat, Eurofound, the World Bank, the UNDP, the Organization for Security and Co-operation in Europe, the Council of Europe, EEA and Norway Grants, and Open Society Foundations. Seventeen EU Member States are parties to the working group, which first met in 2012 and has had six meetings since then.

This working party gradually developed a set of common core indicators on Roma integration. In 2014, it started to test populating them with relevant, ethnically disaggregated data, as far as possible. In parallel, statistical offices from some Member States became more involved, to identify ways to generate such data through the use of ethnic identifiers or other means. The indicators are based on the structural–process–outcome (S-P-O) model, described earlier, and show progress in implementing existing policy targets outlined in the EU Framework on national Roma integration strategies and the Council Recommendation on effective Roma integration of 9 December 2013,[23] as well as wider policy goals, including those in Europe's 2020 strategy.[24] The indicators cover the core policy areas for Roma integration, namely employment, education, health and housing, as well as issues such as non-discrimination and rights awareness.

Structural indicators show the extent to which the commitments and policy goals in regard to Roma integration are in line with relevant fundamental rights standards and contribute to respecting and fulfilling them. As an illustration, in the area of education, the Council Recommendation on effective Roma integration measures calls on Member States to take effective measures to ensure that Roma children have equal treatment and full access to quality mainstream education, and that all Roma pupils complete at least compulsory education. Structural indicators address whether or not legal and policy provisions are in place guaranteeing the right to quality education for Roma. Examples are the NRIS and mainstream policies which address equitable access to education for Roma children in reference to specific human rights standards on the right to education, such as the EU Charter of Fundamental Rights, as well as other EU, national and international instruments, such as the ESC. Assessing the extent to which legal and policy provisions fulfil these standards would be the task of competent authorities, for example the European Commission, as guardian of the treaties.

Process indicators inform policymakers about challenges faced at the implementation level. They do this by showing whether the way that strategies and policies are implemented achieves their intended results, and helps to identify possible implementation deficits. Process indicators on Roma integration are linked to measures proposed by the Council recommendation, which are reflected in the targets outlined in NRISs. In most cases, several measures are needed to achieve the targets. Having in place the measures, as required by the recommendation, is a necessary but insufficient precondition for achieving change. The measures should be matched by resources (inputs) that are later absorbed and translated into immediate results (outputs) – the indicator framework also reflects this element. The real results on the ground and the fulfilment of rights are then captured through the outcome indicators. In the example of education, process indicators would examine specific measures and relevant resources in place to: eliminate any school segregation; put an end to the placement of Roma pupils in special schools; reduce early school leaving; increase access to and improve the quality of early childhood education and care; provide inclusive teaching and learning methods; encourage greater involvement of parents; or widen access to second-chance education and adult learning. Assessing the extent to which such specific measures are instrumental in reaching policy targets and fulfilling fundamental rights standards would again

be a task of competent authorities, which in this case can include FRA.

Finally, outcome indicators show the success or failure of efforts made. They capture results concerning the status of the actual fulfilment of fundamental rights, which is the culmination of the entire process, from legal and policy commitments, through the supported measures required, to the end enjoyment of a right. These outcomes consolidate the overall impact of a series of processes over time and cannot always be expected to show change over a short period. Again, in the example of education, outcome indicators could include: enrolment rates of Roma children in early childhood education and care; enrolment rates in primary, secondary and/or tertiary education; attendance and drop-out rates at various levels of education; attainment rates at various levels of education; and proportions of children in segregated schools. Specific measures, such as using buses to reduce school segregation resulting from residential segregation, may show a change over a short period of time, but other measures targeting educational performance or attainment may require considerable time before they are reflected in significant change that is recorded statistically. Assessing the extent to which such specific outcomes are satisfactory and fulfil fundamental rights standards will depend on if and how such policy targets include specific benchmarks. This would be a task to be undertaken by competent authorities, such as the European Commission and Member States themselves.

Example of rights-based indicators for the rights of persons with disabilities

Another area in which FRA is developing rights-based indicators using the same S-P-O framework concerns the rights of persons with disabilities. The EU acceded to the CRPD in 2010; since then, the Union is bound by the convention within the limits of its competences, and EU law must be interpreted in a manner consistent with the CRPD.[25]

FRA has a particular role to play in developing indicators related to the CRPD, as it is part of the EU framework to promote, protect and monitor the implementation of the convention, set up under Article 33 (2) of the CRPD (see Chapter 1). Under the Council decision establishing the framework, FRA's primarily responsibility is to collect and analyse data, and to develop indicators and benchmarks.[26] The 26 specific articles of the CRPD create opportunities for indicators covering many different aspects of life. The framework's activities, however, are limited to areas of EU competence, such as non-discrimination and employment, so the rights covered by these indicators are considerably fewer.

With this in mind, FRA developed indicators on the right to political participation of persons with disabilities. It populated them with data and information, and published them ahead of the European Parliament elections in May 2014.[27] These indicators are linked primarily to Article 29 of the CRPD on participation in political and public life, but they also relate to areas of EU competence. Under EU law, the right of EU citizens to vote and stand for election in European and municipal elections is grounded in Article 20 (2) (b) of the Treaty on the Functioning of the European Union (TFEU), as well as in Articles 39 and 40 of the Charter.

Working in close cooperation with the European Commission and the Commission-funded Academic Network of European Disability Experts (ANED), FRA identified 29 (S-P-O) indicators to measure how the right to political participation is respected, promoted and fulfilled across the EU. To ensure the indicators' applicability and usability, FRA consulted extensively on them with representatives of the Member States, as well as other Article 33 monitoring mechanisms and civil society organisations, including disabled persons' organisations. Responsibility for data collection was divided between FRA and ANED, each employing its network of in-country researchers.

Within the broad scope of political participation, the indicators focus on four key areas which reflect different aspects of Article 29 of the CRPD:

- legal frameworks regarding the right to vote and stand for election;
- accessibility of elections and voting processes;
- opportunities for participation in political and public life;
- awareness of the right to political participation of persons with disabilities.

Within each of these areas, relevant structures, processes and outcomes were identified.[28] For example, one structural indicator looked at the link between being deprived of legal capacity and limits on the right to vote.[29] Data collected by FRA show that Member States fall into three groups (see Table 0.1): those where all persons with disabilities, including all persons with intellectual or psychosocial disabilities, have the right to vote (full participation); those where, for people deprived of legal capacity, retaining the right to vote is contingent on a judicial or medical decision (limited participation); and those where all persons deprived of their legal capacity are automatically deprived of the right to vote (exclusion).

Building on the expertise gained during this process, FRA is expanding its indicator work to another aspect of the CRPD related to EU competence: the right to live independently and be included in the community

Table 0.1: Right to vote of people deprived of legal capacity in the EU, by Member State

	Exclusion	Limited participation	Full participation
AT			✓
BE	✓		
BG	✓		
CY	✓		
CZ		✓	
DE	✓		
DK	✓		
EE	✓	✓	
EL	✓		
ES		✓	✓
FI		✓	✓
FR		✓	✓
HR			✓
HU		✓	
IE	✓		✓
IT			✓
LT	✓		
LU	✓		
LV			✓
MT	✓	✓	
NL			✓
PL	✓		
PT	✓		
RO	✓		
SE			✓
SI		✓	
SK	✓		
UK			✓

Note: An EU Member State can be represented in more than one group, as persons with psychosocial and intellectual disabilities can be treated differently according to the national law of the respective Member State.

Source: FRA, 2014

(Article 19). In 2014, FRA developed draft human rights indicators on Article 19, which will be populated, in part, with data collected in 2015 and 2016.[30]

In summary, rights-based indicators placed in a framework as described and applied in the case of Roma and of persons with disabilities and their rights would ground efforts made and efforts required in a specific normative framework stemming from basic EU and international law; they would allow the measurement of commitment and efforts in addition to results and thus allow the assessment of policy measures on the basis of scientific evidence; and they would reinforce the interrelatedness of EU action with its values, improving the situation on the ground. All this would strengthen the credibility of EU policies where it

is applied and of the EU as whole. More concretely, applying indicators in this way would link legal and policy initiatives better to outcomes, to identify specific 'barriers' and 'drivers'. More importantly, this approach would raise awareness among 'duty bearers' of their obligations and among 'rights holders' about what they should expect for their rights to become reality. Ultimately, it would boost transparency and accountability and ensure the integration of fundamental rights in EU action, reinforcing the credibility of the EU.

Making the fundamental rights culture operational by providing a broader evidence base in EU policy cycles

Strengthening the fundamental rights culture concerns not only the EU's institutions and Member States, as duty bearers, but also the Union's citizens, as rights holders. More than half of the respondents in an EU survey said that their voice "does not count in the EU" – that is an improvement over past results, but it conceals large variations between countries.[31]

Citizens increasingly see the EU as the main arena for decision making on measures that affect their everyday lives. National debates reflected this in 2014, as well as the media attention on discussions and decisions in the different structures and processes coordinating the EU's economic governance. To increase ownership and hence the legitimacy of the relevant processes, two complementary avenues could be considered. One is to improve citizens' participation through their parliamentary representation; another is to support their engagement in civil society initiatives.

Placing fundamental rights at the core

There have been a series of important actions at EU level aimed at operationalising fundamental rights, such as the creation of FRA (2007), the appointment of commissioners responsible for fundamental rights in the European Commission (2009, 2014), the 'fundamental rights check-lists' for Commission services but also for the other main EU institutions (2010), the EU Justice Scoreboard (2013) and others. Despite these, it would be useful to consider a more comprehensive approach in assessing how fundamental rights are respected and fulfilled within and across the Union in important EU policy cycles. Whereas the most all-encompassing approach would be to mirror the EU strategic framework and its action plan on human rights and democracy, as adopted by the Council of the European Union in 2012 for the EU's external relations, and adapt these instruments to the EU's internal life. There are also other, more sectorial or incremental, avenues.

Regardless of the specific avenues selected in future, FRA's experience suggests that an EU fundamental rights indicator framework that reflects the provisions of the EU Charter of Fundamental Rights would be useful to keep

European Semester: the EU's annual policy cycle

The European Semester is an annual policy cycle introduced in 2010 involving all EU institutions, which have distinct roles in its different procedures. It provides guidance to national governments on the basis of Article 121 of the TFEU. The semester has a major impact on decisions concerning national budgets and impacts on fundamental rights guaranteed by the EU's Charter of Fundamental Rights, for example the rights of the child, the elderly and persons with disabilities as well as non-discrimination and equality between men and women. The semester starts with the publication of the Commission's assessment of the national macroeconomic and social situation, the AGS. For assessment, the AGS uses a scoreboard of economic and social indicators populated with data from the Employment Performance Monitor (EPM),[34] the Social Protection Performance Monitor (SPPM),[35] the Joint Assessment Framework (JAF) and other sources.

At the same time, the European Commission publishes the Alert Mechanism Report (AMR), which identifies Member States that would require in-depth review based on a scoreboard of indicators. The scoreboard is composed of 11 economic and social indicators, including unemployment rates, and a set of 'auxiliary indicators' with particular relevance to fundamental rights; these include long-term and youth unemployment, employment and activity rates, at risk of poverty or social exclusion rates, severe material deprivation rates, rates of those not in education, employment or training, and rates of persons living in households with very low work intensity. Based on this evidence, the Commission may provide guidance in the form of country-specific recommendations to the Council of the EU, which discusses the AGS and adopts conclusions, while the European Council provides further policy orientation. The European Parliament discusses the AGS, engages in the 'economic dialogue' process and issues an opinion on employment guidelines; it can also publish a report on its own initiative.

fundamental rights in focus more systemically. Such an indicator-based approach would add value where it can inform decisions of major importance for the daily lives of citizens. It would do this by strengthening the fundamental rights culture and improving accountability, transparency and participation, and thus democratic legitimacy. One example of a policy cycle where such decisions are made is the European Semester (see Box on 'European Semester: the EU's annual policy cycle', p. 19).[32] The European Parliament in its Resolution of 22 October 2014 on the European Semester for economic policy coordination: Implementation of 2014 priorities[33] calls on FRA to thoroughly assess the impact of the European Semester on fundamental rights and to issue alerts in case of breaches of the Charter. The resolution also calls for improved assessment of the fundamental rights impact of fiscal and structural reforms and for the inclusion of additional indicators in the scoreboard, such as quality of work, child poverty levels, access to healthcare and homelessness.

An important dimension of fundamental rights assessment already present in the AGS 2015, as in previous years, is the EU Justice Scoreboard.[36] In 2014, the second edition was released. It continued to draw mainly on data from CEPEJ, the Council of Europe expert body. The scoreboard consists of a number of comparative tables which serve as indicators measuring the efficiency and quality of justice systems, and the independence of the judiciary. The comparative assessment provides for the identification of outliers which may or may not be explained by contextual factors. The AGS argues that enhancing "the efficiency and securing the fairness of independent judicial systems" is an important prerequisite "for a more business- and citizen-friendly environment, which in turn fosters investment". In this regard, the AGS identifies "a clear need to tackle issues such as the length of proceedings, the number of pending cases, the insufficient use of ICT [information and communication technologies], the promotion of alternative dispute resolution mechanisms and the independence of judicial systems."[37]

EU policies and economic and social rights

As seen above, major EU policies relate to civil and political rights, such as fair trial, including reasonable length of proceedings, as well as economic and social rights, such as those exemplified in the European Semester. Mainstreaming fundamental rights in the EU would require emphasising all types of rights. For social and economic rights, rights-based indicators can be particularly useful, since they can measure steps towards the gradual fulfilment of the obligations flowing from these rights and allow follow-up on progress made in structural reforms. The need to ensure respect for fundamental rights through structural reforms of social protection systems was reflected in the European Commission's AGS 2015 of 28 November 2014. It acknowledged that "the economic crisis triggered an ongoing social crisis", and it included "modernising social protection systems" among seven proposed areas for reform aiming for sustainable job creation and economic growth. The AGS notes that "[t]here is a need for simplified and better targeted social policies complemented by affordable quality childcare and education, prevention of early school leaving, training and job assistance, housing support and accessible health care".[38] The findings of the AGS back up the findings of FRA's research, showing that the economic situation affects the way fundamental rights are fulfilled, such as the right to education; the right to engage in work; the right to non-discrimination, including equality between men and women; the rights of the child; the rights of the elderly; the rights of persons with disabilities; the right to health; and the right to an effective remedy and a fair trial.

Compliance with economic and social rights may also raise the issue of the obligations of EU Member States under the ESC. The possible impact of EU action on Member States' social protection systems, for example, cannot justify non-compliance with the Council of Europe treaty.[39] The European Committee of Social Rights has provided guidance in this respect by emphasising that any fiscal consolidation measures necessary to ensure the maintenance and sustainability of social security systems should not undermine the core framework of these systems or deny individuals the opportunity to enjoy protection against serious social and economic risk.[40] The ESC has, however, not been materially incorporated in the EU legal order in the way that the European Convention on Human Rights (ECHR) has been.[41] Whereas the ECtHR accepted a certain presumption of compatibility of EU law with the ECHR, the European Committee of Social Rights considers that it would be premature to presume that the measures adopted under EU law are in conformity with the ESC: "The Committee considers that neither the situation of social rights in the European Union legal order nor the process of elaboration of secondary legislation would justify a similar presumption – even rebuttable – of conformity of legal texts of the European Union with the European Social Charter."[42]

The relevance of social rights was also emphasised in the framework of the Council of Europe's 'Turin Process' for the ESC, aiming to reinforce the ESC's normative system within the Council of Europe and in its relationship with EU law. Those EU Member States that had not yet ratified the ESC were called upon to do so and the others were encouraged to allow collective complaints and to harmonise their commitments. In particular, they were all called upon to ratify the revised charter and accept all the provisions in the charter which are most directly related in substance to the provisions of EU law and the competences of the

EU (such as equal pay for women and men, and reasonable working hours). Another proposal for increasing the synergies between the Council of Europe and the EU in the context of economic and social rights aims to define an EU-relevant 'Community core' within the ESC to be drawn up to indicate to EU Member States which parts of the ESC are especially relevant in the EU context. One of the recommendations coming out of the Turin conference was to "[i]ntegrate social rights in economic recovery plans, adapt social impact indicators and new reference values to measure social well-being".[43] A follow-up conference organised by the Belgian Chairmanship of the Council of Europe Committee of Ministers in February 2015 led to a 'Brussels' document', intended to generate renewed efforts to strengthen social rights in Europe.[44]

In conclusion: from paper to action

Last year, the Annual report Focus discussed a renewed commitment to fundamental rights through an EU strategic framework and presented a variety of tools that could characterise such a framework. This year, the Focus elaborates on the 'how' by concentrating on one of the tools presented last year: the fundamental rights indicators. It examines how a rights-based indicator framework could support relevant actors in policy evaluation and design, thus consolidating a fundamental rights culture and helping turn words into action.

Strengthening the EU's evidence base with a clear focus on fundamental rights would help identify how these rights are respected and promoted, not only 'on paper' but 'on the ground', through concrete measures and reforms. In line with Article 9 of the TFEU, for instance, they could ensure that the Union:

> *"in all its activities [aims 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."*

The Charter of Fundamental Rights of the EU, as was argued in last year's Focus, puts flesh on the bones of all the values that are listed in Article 2 of the TEU and shared between the EU and its Member States. Further operationalising the commitment to the Charter could contribute to resolving the 'Copenhagen dilemma': bridging the artificial separation between the EU's value commitment vis-à-vis third and enlargement countries on the one hand and its Member States on the other. Fundamental rights indicators can help to further entrench a fundamental rights culture in whatever the EU does so that it can lead by example.[45]

Endnotes

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UN & CoE

17 January – CoE Committee of Ministers adopts a decision on the examination of the implementation of its recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity

January

February

March

April

19 May – UN Committee on the Rights of Persons with Disabilities issues General Comment No. 1 on equal recognition before the law (Article 12), setting out its authoritative interpretation of this standard

22 May – UN Committee on the Rights of Persons with Disabilities issues General Comment No. 2 on accessibility (Article 9), setting out its authoritative interpretation of this standard

May

June

1 July – In *S.A.S. v. France* (No. 43835/11), the ECtHR rules that a law prohibiting the concealment of one's face in public places does not violate a practising Muslim's rights, finding no violation of the prohibition of discrimination (Article 14) combined with the right to respect for private and family life (Article 8) and the right to respect for freedom of thought, conscience and religion (Article 9) of the ECHR

16 July – In *Hämäläinen v. Finland* (No. 37359/09), the ECtHR rules that the law according to which a male-to-female transsexual could obtain full official recognition of her new gender only by having her marriage turned into a civil partnership does not constitute discrimination based on gender identity, nor does it violate her right to respect for private and family life (Article 8) or her right to marry (Article 12) of the ECHR

July

August

September

October

November

December

EU

16 January – European Parliament adopts a resolution condemning moves to criminalise lesbian, gay, bisexual, transgender and intersex people (2014/2517(RSP))

17 January – European Commission issues a joint report on the application of the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC)

January

4 February – European Parliament calls on European Commission to adopt a roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity

13 February – Meeting of EU Framework established under Article 33 (2) of the Convention on the Rights of Persons with Disabilities (CRDP) to promote, protect and monitor the implementation of the convention

February

March

April

19 May – European Ombudsman launches an own-initiative investigation concerning respect for fundamental rights in implementation of the EU cohesion policy

May

5 June – European Commission publishes the EU's initial report on CRPD implementation, presenting steps taken to implement the convention in the two years following the EU's accession, as required under Article 35 of the convention

June

July

August

September

29 October – European Commission submits comments on the European Ombudsman's own-initiative inquiry concerning respect for fundamental rights in implementation of the EU cohesion policy

October

11 November – In *Dano v. Jobcenter Leipzig* (C-333/13), the CJEU rules that it does not amount to discrimination based on nationality when the "nationals of other Member States are excluded from entitlement to certain 'special non-contributory cash benefits' [...] although those benefits are granted to nationals of the host Member State who are in the same situation, in so far as those nationals of other Member States do not have a right of residence under the Directive 2004/38/EC [Free Movement Directive] in the host Member State"

November

2 December – In *A B and C v. Staatssecretaris van Veiligheid en Justitie* (Joined cases C-148/13 to C-150/13), the CJEU rules that certain methods of assessing the credibility of the sexual orientation of asylum applicants are not in accordance with human dignity (Article 1) and respect for private and family life (Article 7) of the Charter of Fundamental Rights of the EU

December

1 Equality and non-discrimination

Developments in equality and non-discrimination in 2014 were marked by the EU's efforts to become more inclusive. Working actively to counter discrimination in all its forms and to foster equal treatment requires sustained efforts by all interested parties, so EU institutions worked closely with Member States and FRA to raise awareness on issues of discrimination, including on grounds of sexual orientation and gender identity, or to encourage recourse to redress mechanisms. A new regulation on structural and investment funds also came into force in the EU. If applied fully, this regulation can help greater social inclusion of those most vulnerable to discrimination and unequal treatment. This includes persons with disabilities, who would stand to gain most from the full and correct implementation of the Convention on the Rights of Persons with Disabilities (CRPD), the only core international human rights convention to which the EU itself has acceded. Evidence from 2014 shows that the cross-cutting principles of equality and non-discrimination set out in Articles 3 and 5 of the convention are increasingly driving implementation of the CRPD by both the EU and its Member States.

1.1. Countering discrimination requires strong cooperation between all relevant actors

Limited rights awareness and victims' reluctance to report incidents means discrimination remains largely unaddressed in EU Member States, as evidence collected by FRA consistently shows. This is despite the racial and employment equality directives (2000/43/EC and 2000/78/EC) having been in force for a decade by 2014.[1] FRA has repeatedly highlighted the need to improve trust in public authorities and to build confidence in the state's ability to respond adequately to discrimination (for more information on ethnic discrimination, see Chapter 2; more information on violence against women, see Chapter 7).

Many who face discrimination regard it as normal and lack awareness of either their rights or where and how to seek redress. This calls for urgent action by all relevant actors. FRA, EU institutions, Member States and other national actors, including national equality bodies, human rights institutions and civil society organisations, took concrete steps in that direction in 2014, often working in cooperation, as set out below. Such efforts need to be sustained over time if the EU is to deliver on its duty to become a more inclusive society working actively to counter discrimination and foster equal treatment.

> *"The main challenge now is to increase awareness of the already existing protection and to ensure better practical implementation and application of the [Equality] Directives. The Commission will, together with the Member States and their equality bodies, make a concerted effort to realise the full potential of the Directives in terms of protection of the fundamental right to equal treatment in the EU."*
>
> *European Commission (2014),* Joint Report on the application of 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') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'), *p. 16*

The European Commission's commitment made in November 2014 to establish a high-level group on non-discrimination, diversity and equality in 2015 is

an example of how cooperation in the field could lead to positive results. It would be achieved through the high-level group agreeing

> *"common objectives between Member States and the European Commission in the areas of equality, diversity, and non-discrimination initiatives [and working together] to achieve them. [This] would enable shared commitments agreed at European level to be effectively advanced at national level [and] establish links with the Presidency and the Council of the European Union, with the social partners, equality bodies, civil society, international partners and with the European Commission."*[2]

Like involving all relevant actors, effectively countering discrimination entails implementing equal treatment "irrespective of religion or belief, disability, age or sexual orientation", as suggested in the proposed equal treatment directive.[3] Although discussions on its adoption continued in 2014, the directive had not been adopted by year end, when Member States confirmed that it should be adopted by a unanimous decision.[4]

The Italian Presidency of the Council of the European Union nevertheless made 14 concrete suggestions about how the Council of the European Union, the European Commission and Member States can cooperate better with one another in the area, as set out in the Rome declaration on non-discrimination, diversity and equality. These include adopting measures that would be effective at the national and local levels; taking particular account of the situation of disadvantaged groups; using the work of FRA and of the European Institute for Gender Equality (EIGE); enhancing cooperation with national human rights bodies; more and better involvement of civil society organisations; and effective use of structural funds (for more information, see Section 1.2 on the relevance of these funds in countering discrimination, as well as Chapter 3 on Roma, Chapter 6 on the rights of the child and the Focus).

Awareness of rights in the area of non-discrimination can be raised through bringing relevant actors together to exchange practices on what is done at the international, national and local levels to counter discrimination. The conference hosted in October by the Italian Presidency to find ways to tackle discrimination on the grounds of sexual orientation and gender identity in the EU is an example of how bringing relevant actors together can contribute to fighting discrimination.

The conference drew on FRA evidence[5] and brought together over 250 decision makers and fundamental rights practitioners from across the EU. It concluded that gender identity and gender expression should be explicitly recognised as protected grounds in EU non-discrimination legislation. It also concluded that Member States could consider extending national anti-discrimination legislation on sexual orientation and gender identity

Promising practice

Contributing to building a more inclusive society through raising awareness of discrimination in the classroom

The Irish Human Rights and Equality Commission launched a campaign in February 2014 to increase awareness of equality issues in schools, for example about gender equality, disability or cultural diversity. The main tool is a training manual designed to provide teachers with equality-based teaching resources for use across the curriculum, to encourage pupils to take action on equality, human rights and social justice issues in the classroom, at school or within their wider community. The inclusion of pupils was important in developing the training materials, which also involved the support of the Irish Traveller Movement's Yellow Flag programme, the Young Social Innovators programme and the Irish Human Rights Commission's Express Yourself! programme. As of October 2014, 78 teachers in 72 schools had attended the training programme.

For more information, see: www.ihrec.ie/download/pdf/equality_in_second_level_schools.pdf

The Dutch government is seeking to encourage schools to improve the safety of LGBT pupils. FRA evidence shows that 32 % of LGBT persons in the Netherlands experienced negative comments or conduct at school because of their sexual orientation or gender identity, compared with an EU average of 38 %. The Ministry for Education, Culture and Science ran a pilot project during the 2012/13 and 2013/14 academic years, targeting pupils from late primary and early secondary school. This included holding information sessions with external experts; organising lessons in social interaction for pupils; providing training or guidance for teachers; and increasing awareness of sexual and gender diversity in regular lessons. The Netherland Institute for Social Research found that schools achieved positive results within a short space of time, especially concerning pupils' attitudes. These pupils had less difficulty with LGBT pupils after the pilot, for example, and LGBT pupils themselves also felt safer at school as a result.

For more information, see: Bucx, F. and Van der Sman, F. (2014), Anders in de klas: Evaluatie van de pilot Sociale veiligheid LHBT-jongeren op school, The Hague, Sociaal en Cultureel Planbureau

to all areas covered by the Racial Equality Directive, as the proposed equal treatment directive would. Finally, the conference considered that legislation in the field should be complemented by comprehensive policy frameworks and awareness-raising campaigns to address entrenched prejudices and social practices.[6] FRA is collecting evidence on the role of public authorities in tackling discrimination on the grounds of sexual orientation and gender identity. It will provide a knowledge base from which to continue to fine-tune anti-discrimination strategies, thereby contributing towards building a more inclusive society. This evidence will be available towards the end of 2015.

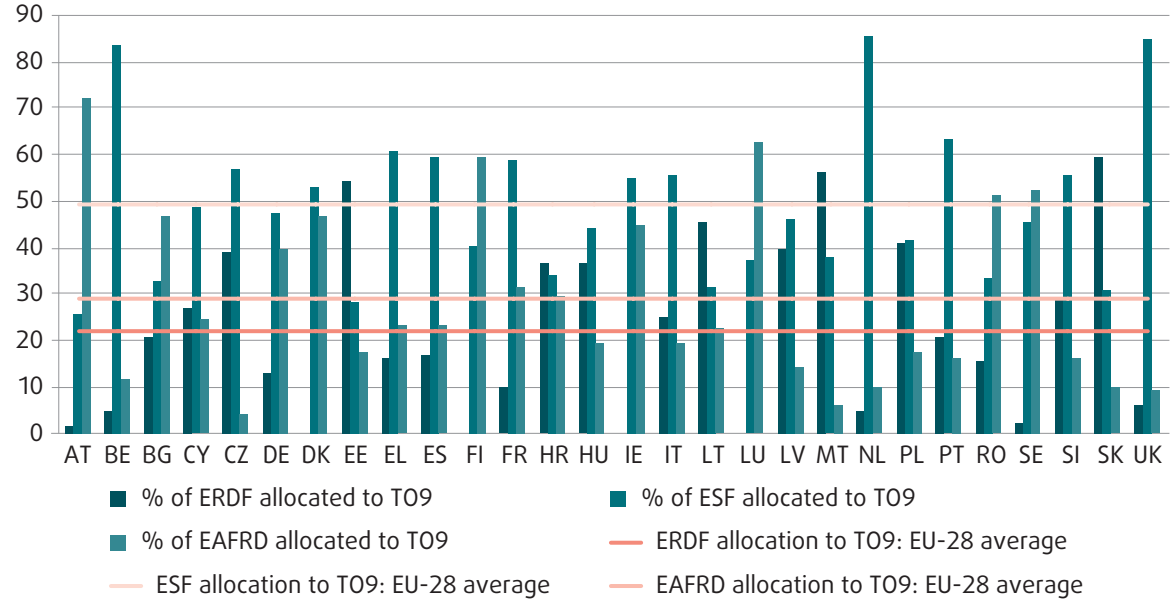
Not knowing where to turn to seek redress in cases of discrimination is, however, often the first barrier to being able to fully exercise the fundamental right to equal treatment. No single organisation or body is responsible for enabling people to seek redress. FRA, together with a group of national human rights bodies, therefore continued working in 2014 on a pilot online tool named 'Clarity' to help victims of discrimination and other fundamental rights violations gain better access to non-judicial remedies.[7] The bodies involved represented **Austria**, **Bulgaria**, **Cyprus**, **Finland**, **France**, **Greece**, **Hungary**, **Italy**, **Malta**, **Portugal**, **Romania**, **Slovakia**, **Spain** and the **United Kingdom** (Northern Ireland).

Clarity is designed to help identify the most appropriate non-judicial body with a human rights remit competent to address a particular fundamental rights issue, including cases of discrimination. Although the tool principally targets intermediaries, such as civil society organisations guiding victims of fundamental rights violations to a relevant body, it can also be used by those who have experienced discrimination themselves. The Council of the European Union's Working Group on e-Law presented and welcomed the beta version of the Clarity tool in November 2014. The launch of the tool is planned for the first half of 2015.

1.2. Using the targeted investment of EU funds to foster social inclusion

Stronger cooperation in the field of anti-discrimination enables stakeholders better to identify initiatives and implement policies that would lead to greater social inclusion. European Structural and Investment Funds (ESIF)[8] play an important role here, as they are "the main source of investment at EU level to help Member States to restore and increase growth and ensure a job rich recovery while ensuring sustainable development".[9] Of the 11 thematic objectives covered by ESIF, thematic objective 9 (TO9) is most relevant to this chapter: promoting social inclusion, combating poverty and discrimination. For information on the Rights, Equality and Citizenship programme, ▶ see Chapter 2.

Figure 1.1: Proportion of budget allocated by EU Member States to promote social inclusion and combat poverty and discrimination (TO9) under ESIF streams, 2014–2020 (%)



Notes: *EAFRD: European Agricultural Fund for Rural Development; ERDF: European Regional Development Fund; ESF: European Social Fund; TO9: thematic objective 9 (promoting social inclusion, combating poverty and discrimination).*

Source: *FRA desk research, 2014*

As Figure 1.1 and Figure 1.2 show, there is a great degree of variation in the budget allocated by EU Member States during the programming period 2014–2020 to meet this objective. This reflects diverse needs and priorities at national level. Most Member States allocated budget under three ESIF instruments: the European Regional Development Fund (ERDF), which "aims to strengthen economic and social cohesion in the European Union by correcting imbalances between its regions";[10] the European Social Fund (ESF), which is the EU's principal tool for job creation; and the European Agricultural Fund for Rural Development (EAFRD). On average, to promote social inclusion and combat poverty and discrimination, Member States allocated most budget to ESF (49 %), followed by EAFRD (29 %) and then ERDF (22 %).

Between them, EU Member States allocated a budget of €43,705,044,741 to promote social inclusion and combat poverty and discrimination for the programming period 2014–2020. This accounted for just under 10 % of the European Structural and Investment Funds. Again, there is a great degree of variation between the budget allocations of Member States, as Figure 1.2 shows. The above-average allocations by **Belgium** (16 %), **Germany** (19 %) and the **Netherlands** (25 %) stand out here.

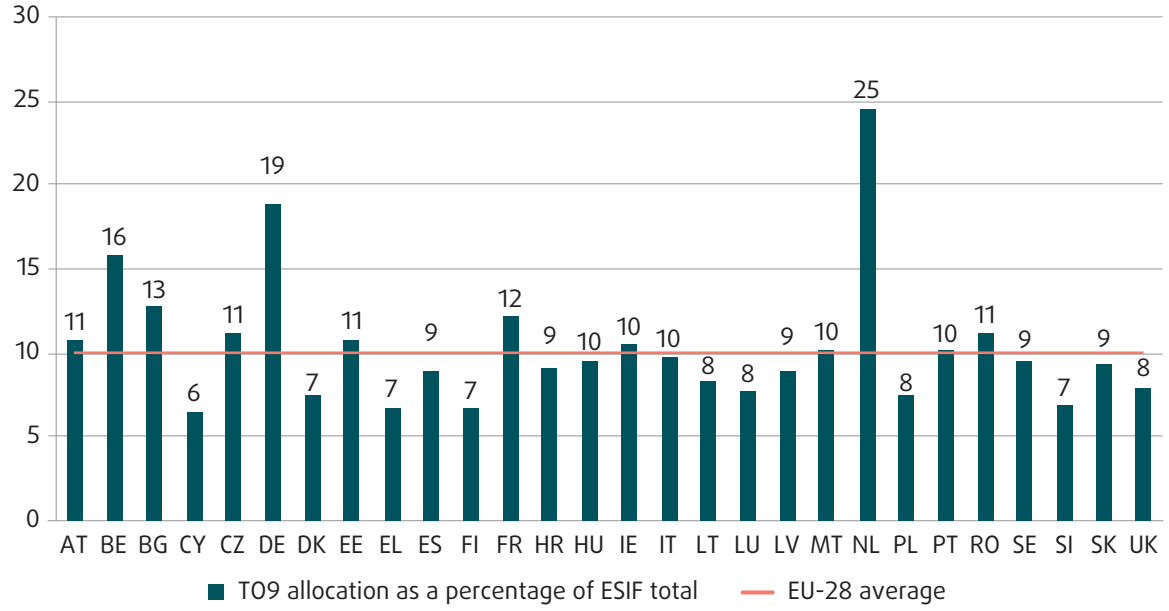
The ESIF cycle requires EU Member States to enter into partnership agreements with the European Commission, which then assesses and agrees on specific operational programmes proposed by the Member States.

> *"Partnership agreements between the European Commission and individual EU countries set out the national authorities' plans on how to use funding from the European Structural and Investment Funds between 2014 and 2020. They outline each country's strategic goals and investment priorities, linking them to the overall aims of the Europe 2020 strategy for smart, sustainable and inclusive growth."*
>
> *European Commission (2014),* European Structural and Investment Funds *(online)*

For Member States to benefit from structural and investment funds from the European Commission during the programming period, they must fulfil ex ante conditionalities – that is, meet a certain number of requirements. Building on last year's FRA annual report, this section focuses on the five general ex ante conditionalities relevant to anti-discrimination and disability and included in the ESIF regulation:[11]

- anti-discrimination: arrangements in accordance with the institutional and legal framework of Member States to involve bodies responsible for the promotion of equal treatment of all persons throughout the preparation and implementation of programmes;
- anti-discrimination: arrangements to train staff of the authorities involved in the management and control of ESIF in the fields of Union anti-discrimination law and policy;
- disability: arrangements in accordance with the institutional and legal framework of Member States to consult and involve bodies in charge of protecting

Figure 1.2: Proportion of total ESIF budget allocated by EU Member States to promote social inclusion and combating poverty and discrimination, 2014–2020 (%)



Note: TO9: thematic objective 9 (promoting social inclusion, combating poverty and any discrimination).
Source: FRA desk research

the rights of persons with disabilities or representative organisations of persons with disabilities and other relevant stakeholders throughout the preparation and implementation of programmes;

- disability: arrangements to train staff of the authorities involved in the management and control of the ESIF in the fields of applicable Union and national disability law and policy, including accessibility and the practical application of the CRPD as reflected in Union and national legislation, as appropriate;

- disability: arrangements to ensure monitoring of the implementation of Article 9 of the CRPD on accessibility in relation to ESIF funds throughout the preparation and the implementation of the programmes.

Given that the new ESIF regulation came into force on 1 January 2014, it was to be expected that Member States would begin implementing measures to fulfil these conditionalities only during 2014; the deadline to fulfil them is 31 December 2016. Member States will need to report to the European Commission in 2017, at the latest, on measures they took to fulfil the conditionalities; this can be either an annual implementation report or a progress report submitted to the Commission. Should they fail to meet them, Member States could see the payment of funds to affected priority programmes suspended.

Evidence collected by FRA shows that most Member States plan to consult with bodies in charge of anti-discrimination to provide advice on equality issues in relation to activities funded by ESIF, including national equality bodies, ombudsperson organisations and relevant governmental offices, in line with the first conditionality. Steps taken to meet each conditionality relate to fulfilling criteria defined by the European Commission.[12] Under the first conditionality, the criteria are the following: a national equality body has been set up; a plan has been set out to consult with and involve bodies in charge of anti-discrimination; the plan indicates steps taken to facilitate active involvement of the national equality body. When national equality bodies are mentioned in partnership agreements and operational programmes, they tend to be given an advisory function within monitoring committees, such as in **Cyprus**, the **Czech Republic**, **Denmark**, **Finland**, **Greece**, the **Netherlands**, **Malta**, **Poland**, **Romania** or **Slovakia**.

Member States also took steps to begin training staff involved in the management and control of ESIF on EU anti-discrimination law and policy, in line with the second conditionality. This happened in **Austria**, **Belgium**, **Bulgaria**, **Croatia**, **Cyprus**, the **Czech Republic**, **Denmark**, **Estonia**, **Finland**, **France**, **Germany**, **Hungary**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Malta**, the **Netherlands**, **Poland**, **Romania**, **Slovakia**, **Slovenia**, **Spain** and **Sweden**. The criteria to be met under this conditionality are having a plan in place, and the plan covering all relevant actors.

Concerning the third conditionality, some Member States have consulted or plan to consult with bodies in charge of protection of rights of persons with disabilities or disabled persons organisations (DPOs). This was the case in **Austria**, **Belgium**, **Bulgaria**, **Cyprus**, **Denmark**, **Estonia**, **France**, **Greece**, **Hungary**, **Ireland**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Malta**, the **Netherlands**, **Poland**, **Portugal**, **Romania**, **Slovakia**, **Spain** and **Sweden**. The criteria to be met under this conditionality include having a plan in place to involve such organisations, identifying relevant actors and their roles and facilitating their active involvement in the process.

For the fourth conditionality, Member States took steps to ensure that relevant staff will be trained on applicable EU and national disability law and policy, including accessibility and the implementation of the CRPD. This happened in **Austria**, **Belgium**, **Bulgaria**, the **Czech Republic**, **Denmark**, **Estonia**, **Finland**, **France**, **Germany**, **Greece**, **Hungary**, **Italy**, **Latvia**, **Luxembourg**, **Malta**, the **Netherlands**, **Portugal**, **Romania**, **Slovenia**, **Slovakia** and **Spain**. The criteria to be met under this conditionality are having a plan in place, and the plan covering all relevant actors.

The other relevant conditionality Member States have to meet relates to arrangements to monitor the implementation of Article 9 of the CRPD on accessibility, in the context of disbursing structural and investment funds. Monitoring here relates to ensuring the suitability of the built environment, transport, information and communication technologies or public services. It also relates to the availability of redress mechanisms to challenge situations where structural funds would be used in a way prejudicial to accessibility. **Austria**, **Belgium**, **Bulgaria**, **Denmark**, **France**, **Hungary**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Malta**, **Poland**, **Romania**, **Slovakia**, **Sweden** and the **United Kingdom** took steps towards meeting this conditionality. The criteria to be met under this conditionality are having in place monitoring, redress and enforcement mechanisms on accessibility in all its forms, and clear technical guidance being available.

All things considered, ESIF has the potential to mark a milestone for fundamental rights protection and fulfilment in the EU. This is particularly true of equality issues, as shown by the substantial budgets allocated by Member States to meet the objective of promoting social inclusion, combating poverty and any discrimination.

The European Ombudsman's investigation in respect for fundamental rights in the EU's cohesion policy

becomes relevant here. The cohesion policy is the EU's instrument to develop Member States and regions; it "aims to strengthen economic and social cohesion by reducing disparities in the level of development between regions".[13] The investigation asked: "What means does the [European] Commission have at its disposal to ensure that fundamental rights enshrined in the Charter are complied with at all stages of the implementation of the cohesion policy in the Member States?"[14]

Responding to the inquiry, the Commission notes "that compliance with the Charter cannot be a precondition for approval of a Member State's Partnership Agreement, and a reference to the Charter is not necessary". What is necessary under the regulation, however, is for "Member States to set out the specific actions to promote equal opportunities and prevent discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation".[15]

In this respect, the implementation of ESIF during the 2014–2020 programming period has the potential to be an agent for change, leading to greater social inclusion. The European Parliament noted and emphasised this potential, and made a direct link between ESIF and the European Semester for economic policy coordination. Seeing European Semester as a tool for the coordination of economic and budgetary policies in Member States, the parliament called "on the Commission to link the European Semester more closely to the Europe 2020 social objectives" (for more information on the European Semester, see the Focus of this Annual report). The European Parliament also called on "Member States to have in place specific social inclusion and anti-discrimination measures with a view to reducing poverty, targeting those groups at greatest risk of social exclusion."[16]

Country-specific recommendations (CSRs) made by the European Commission to Member States on how to boost growth and jobs creation could, where followed, play an important role here. Twelve Member States received recommendations relating to poverty and social inclusion for 2014–2015: **Bulgaria**, **Croatia**, **Ireland**, **Italy**, **Hungary**, **Latvia**, **Lithuania**, **Poland**, **Portugal**, **Romania**, **Spain** and the **United Kingdom**.[17] For more information on CSRs, see Chapter 6 on the rights of the child.

1.3. Fulfilling the promise of the CRPD remains a challenge

The CRPD holds a unique position in the EU's fundamental rights architecture as the only core international human rights convention confirmed by the Union. Following the EU's ratification of the CRPD in 2010, responsibility for implementing the convention is shared between the EU and the Member States, in line with their respective competences. With most policy areas and matters falling primarily under Member State competence, it is at the national level that processes to bring standards and practices in line with the requirements of the convention were most active in 2014. These reforms are continuing apace, as the CRPD Committee reviews more Member States and sets out recommendations for further steps to implement the convention.[18]

Significant steps were taken regarding the implementation of the CRPD by the EU. In June, the European Commission reported, as required, on the actions the EU has taken to implement the CRPD during the two years following the entry into force of the convention in the Union.[19] In parallel, the members of the EU monitoring framework established under Article 33 (2) of the CRPD continued their work to promote, protect and monitor the implementation of the convention.[20] The EU's dialogue with the CRPD Committee on its initial report is scheduled for August 2015.[21] The committee's recommendations are likely to shape future actions by both the European Commission as focal point and the EU monitoring framework.

1.3.1. Bringing non-discrimination principles to bear in implementing the CRPD

The CRPD adoption codified the shift to a human rights-based approach to disability in international law. One indication of this transformation is that, although national reforms in 2014 targeted diverse policy areas, many are linked by a focus on the principles of equality and non-discrimination on the grounds of disability embedded within the convention and consistently highlighted by the CRPD Committee's jurisprudence.[22] Legislating from a human rights perspective requires a shift in traditional approaches to many laws addressing persons with disabilities, to ensure that people with disabilities are treated on an equal basis with others.[23]

Framing CRPD standards as rooted in the principle of non-discrimination, set out in Articles 3 and 5 of the convention, also means that further EU action in the area of equality can play a role in harmonising national legislation with the CRPD. Secondary EU legislation, notably the proposed equal treatment directive, could play a particular role in this process by extending protection against discrimination on the grounds of disability to all the areas of life covered by existing protection against racial or ethnic discrimination.[24]

Three areas in which the non-discrimination principle had a particular impact on steps to bring national legislation in line with the CRPD in 2014 are:

- legal capacity (Article 12);
- involuntary placement and treatment, which is linked to the rights to liberty and security of the person (Article 14), the prohibition of torture or cruel, inhuman or degrading treatment or punishment (Article 15), the protection of the integrity of the person (Article 17) and health (Article 25);
- accessibility (Article 9).

"It did not come as a surprise that Article 12 [on equal recognition before the law] of the Convention [...] was one of the major conflict themes during the negotiations of the treaty. And it is foreseeable that it remains to be the greatest challenge of implementation in all States Parties. [...] In our first five years as a treaty body we have not found one country that fulfils all obligations under Article 12."

Theresia Degener, Member of the CRPD Committee (2014), 'The normative requirements of Article 12 of the CRPD'*, Speech delivered at 2014 Work Forum on the Implementation of the UNCRPD in the EU*

Article 12 of the CRPD on equal recognition before the law has consistently proved a focus of legal reforms in EU Member States, reflecting its status as one of the most challenging articles for State Parties to the convention.[25] In April 2014, the CRPD Committee presented its first authoritative guidance, or general comment, on the scope and meaning of Article 12.[26] The committee reiterated the obligations on State Parties that had emerged from previous concluding observations,[27] namely that they must abolish denials of legal capacity that discriminate on the grounds of disability, and that regimes where a guardian makes decisions on behalf of a person must be replaced by systems which respect the person's "autonomy, will and preferences".[28] The general comment also elaborated on key elements of the mechanisms that should replace previous guardianship regimes. To comply with the convention, these systems must, for example, be available to all, irrespective of support needs and mode of communication, and the support person should be legally recognised.[29]

Article 12, however, remains a point of contention. Some EU Member States took issue with the interpretation of Article 12 set out by the Committee in the general comment, which requires State Parties to "refrain from denying persons with disabilities their legal capacity".[30] In their comments on the draft general comment, **Denmark**, **France** and **Germany**, for example, reasserted their view that the convention allows for restrictions of legal capacity in certain circumstances.[31] This suggests that the "divergence" between the Committee's interpretation of Article 12 and that of the State Parties highlighted in Germany's submission is likely to persist.[32]

The tension between these two perspectives is reflected in reforms to national legal capacity legislation enacted in 2014, which continue to allow capacity to be restricted if specific criteria are met. For example, the Family Act adopted by the **Croatian** parliament in June 2014 abolishes full or plenary guardianship, but retains the possibility for courts to place persons with disabilities under partial guardianship.[33] It also establishes a five-year deadline, from 1 January 2015, for reviews of all previous decisions on deprivation of legal capacity, with the aim of restoring partial or full legal capacity.[34] Moves to replace the full deprivation of legal capacity with partial restrictions and to introduce requirements for periodic review of the incapacitation decision are also at the core of proposals in **Poland** to reform legislation in this area.[35]

Similar tensions exist about implementing the non-discrimination elements of CRPD provisions concerning the involuntary placement of persons with psychosocial disabilities, particularly Article 14 on the right to liberty and security of the person.[36] In its 2014 concluding observations on **Belgium**, **Sweden** and **Denmark**, the CRPD Committee reiterated its position that the deprivation of liberty on the basis of actual or perceived disability is contrary to Article 14.[37] This reflects the view expressed by the chair of the ad hoc committee drafting the CRPD that the article is "essentially a non-discrimination provision".[38]

Council of Europe member states, however, have previously interpreted the CRPD as allowing involuntary placement when a "mental disorder of a serious nature" is combined with other criteria, in particular if the absence of such a placement would be likely to result in serious harm to the individual concerned or a third party.[39] This position is again stated in the draft of the additional protocol to the Convention on human rights and biomedicine (Oviedo Convention)[40] concerning the protection of human rights and dignity of persons with mental disorders with regard to involuntary placement and involuntary treatment, drawn up in 2014.

Discussions during the drafting process indicate that the additional protocol will set out criteria for involuntary placement, including the existence of a "mental disorder".[41] Given the CRPD Committee's interpretation of Article 14 of the CRPD as prohibiting involuntary placement on the basis of disability, FRA highlighted in comments to the Council of Europe Steering Committee for Human Rights that adopting the additional protocol in its current form might raise issues for those EU Member States that have ratified the CRPD.

> *"The duty of States parties to ensure access to the physical environment, transportation, information and communication, and services open to the public for persons with disabilities should be seen from the perspective of equality and non-discrimination."*
>
> *"[D]enial of access should be clearly defined as a prohibited act of discrimination."*
>
> *Committee on the Rights of Persons with Disabilities (2014),* General Comment No. 2 on Article 9: Accessibility, *CRPD/C/GC/2, paragraph 44; paragraph 29*

Legislative actions to implement the provisions of the CRPD linked to accessibility are also increasingly incorporating a non-discrimination perspective. This approach was reinforced in April 2014 by the CRPD Committee's general comment on accessibility, which emphasised that not providing access for people with disabilities to the physical environment, information and services open to the public "constitutes an act of disability-based discrimination".[42]

Sweden offered the most explicit example of such reforms, amending legislation[43] to classify inaccessibility for people with disabilities as a new form of discrimination covered by the existing Discrimination Act.[44] The bill, which enters into force on 1 January 2015, covers many areas of life, including employment, goods and services, healthcare and social services, although the prohibition on inaccessibility does not apply to persons inquiring about employment or to the supply of housing. In addition, with regard to the supply of goods and services, further exemptions apply to private individuals and businesses employing fewer than 10 people.[45]

Other reforms have focused on particular accessibility issues, such as the accessibility of the electoral process. Evidence published in 2014 by FRA and the Academic Network of European Disability Experts (ANED), supported by the European Commission, and presented in Table 1.1, shows that, of those Member States where data were available, only half have legal standards requiring that all polling stations be accessible. This curtails the ability of persons with disabilities to exercise their political rights on an equal basis with others.[46] FRA called on Member States to develop minimum standards and guidelines for the accessibility of facilities open to the public, encompassing the accessibility needs of all persons with disabilities, not just those with physical impairments. Nevertheless, proposed reforms to the **Dutch** electoral code are limited in scope, changing the requirement to ensure that "at least 25 %" of polling stations are accessible to persons with physical disabilities to a stipulation that "as many polling stations as possible, but at least 25 %" should be accessible to persons with physical disabilities.[47]

Another driver of reforms is cases concerning the accessibility of the electoral process brought before national courts (Table 1.2).[48] In **Slovenia**, three persons with disabilities challenged the constitutionality of a legal provision regarding accessible polling stations, arguing that, by requiring each district voting commission to make only one polling station accessible for persons with disabilities, it was inconsistent with both Article 9 of the CRPD and the constitutional prohibition of discrimination.[49] The constitutional court upheld the complaint, and called on the National Assembly to remedy the situation within two years of the court's decision being published.

Table 1.1: Are legal accessibility standards for polling stations in place?

Legal accessibility standards for all polling stations	Legal accessibility standards for some polling stations	No legal standards identified
DE, EE, ES, FR, HR, IE, LT, LU, MT, PT, SE, UK	AT, BE, HU, IT, NL, PL, SI	CY, CZ, DK, LV, SK

Note: The Academic Network of European Disability Experts (ANED) provided no data for BG, EL, FI and RO.
Source: FRA, 2014

Table 1.2: Have national courts considered cases related to the right to political participation of persons with disabilities?

Cases related to the right to political participation of persons with disabilities considered	No cases related to the right to political participation of persons with disabilities identified
CZ, DE, ES, IT, MT, NL, PL, SI	AT, BE, BG, CY, DK, EE, EL, FI, FR, HR, HU, IE, LT, LU, LV, PT, RO, SE, SK, UK

Source: FRA, 2014

Promising practices

Improving accessibility for persons with disabilities

Member States have taken steps to increase the accessibility of tourist areas and facilities. For example, a **Portuguese** programme ensures that beaches comply with accessibility legislation. The programme, 'Accessible beach – beach for all!' (*Praia acessível – Praia para Todos!*), allows beaches meeting certain conditions to fly a flag highlighting their accessibility. The conditions cover accessible pathways, sanitary and first aid facilities, as well as parking spaces. The scheme has been in operation since 2004, and the number of participating beaches has increased from 50 in 2005 to 194 in 2014.

The programme brings together the National Institute for Rehabilitation (*Instituto Nacional para a Reabilitação*, INR), the Water Institute (*Instituto da Água*), the Portuguese Environment Agency (*Agência Portuguesa do Ambiente*) and Portugal Tourism (*Turismo de Portugal*).

For more information, see: www.inr.pt/content/1/17/praia-acessivel-praia-para-todos

A **Polish** National Bank (*Narodowy Bank Polski*, NBP) initiative aims to improve access to financial services for persons with disabilities. As part of the campaign, the NBP has prepared a directory of economic terms translated into sign language, and guidelines for financial institutions on what persons with disabilities need in their contact with banks.

The NBP is cooperating with the Vis Maior Foundation (*Fundacja Vis Maior*) and the Polish Deaf Association (*Polski Związek Głuchych*) in the initiative. Together with the NGO It's Good You're There (*Dobrze, że jesteś*), the NBP has also prepared a handbook to teach persons with intellectual disabilities about money and how to use it.

For more information, see: http://nbpniewyklucza.pl/sluch

"People with disabilities should be able to fully participate in society. Job creation and accessibility are top priority for the European Commission and I am personally committed to taking action in these areas."

Marianne Thyssen, Commissioner for Employment, Social Affairs, Skills and Labour Mobility (2014), European Day for People with Disabilities: The Swedish city of Borås wins the Access City Award 2015 for disabled-friendly cities*, Press release, Brussels, 3 December 2014*

Looking ahead, accessibility is an area where secondary EU legislation could set minimum standards for Member States. The planned European Accessibility Act, which was listed in the European Commission's 2012 and 2014 annual work programmes, was given renewed impetus by the incoming Commission. Although the act is not specifically listed in the 2015 work programme, the Commission highlights that its commitment to equality of opportunity for people with disabilities, in line with the CRPD, "includes accessibility to the physical environment, transportation, information and communications technologies and systems (ICT) and other facilities/services."[50] In addition, the draft equal treatment directive includes a non-discrimination approach to accessibility.

1.3.2. Building institutions for CRPD implementation: work in progress

Although most EU Member States ratified the CRPD before or during 2010, many are still establishing or reconfiguring the bodies responsible for leading and monitoring the implementation of the convention required by Article 33 of the CRPD (see Table 1.3; bodies established or appointed in 2014 are highlighted). The CRPD Committee expressed its frustration at delays in establishing these bodies, noting its concern that **Sweden**, which ratified the convention in 2008, is yet to introduce an Article 33 (2) mechanism to promote, protect and monitor the implementation of the convention.[51]

Although **Portugal** ratified the CRPD in 2009, a national framework to meet its obligations under Article 33 (2) of the convention was not created until November 2014.[52] As well as making recommendations to competent public authorities to promote better implementation of the CRPD, the national mechanism will raise awareness and disseminate information about the rights set out under the convention. The establishment of a new body is in keeping with a trend that has seen around a quarter of EU Member States create new entities to fulfil this role: an additional third of EU Member States have appointed national human rights bodies as Article 33 (2) bodies.[53]

Another source of contention is the lack of involvement of civil society, particularly representative organisations of persons with disabilities (DPOs), in Article 33 bodies, as required by Article 33 (3) of the CRPD. This reflects a broader concern regarding the involvement of persons with disabilities in decisions that affect them, a cross-cutting principle of the CRPD. FRA evidence published in 2014 showed that four EU Member States, **Greece**, **Lithuania**, the **Netherlands** and **Romania**, have neither legislation establishing mechanisms for consultation with DPOs nor systematic practices for ensuring such involvement in the development of laws and policies.[54]

In its concluding observations on **Denmark**, the CRPD Committee criticised the inter-ministerial committee, which acts as the coordination mechanism for implementing the convention under Article 33 (1), for seeking input from DPOs "only occasionally".[55] More encouragingly, of the six new members appointed to the **Croatian** government commission for people with disabilities, the Article 33 (2) body, three are representatives of civil society organisations.[56]

A further area of recurrent concern is the sometimes insufficient resources made available to monitoring frameworks to carry out their functions.[57] Proposals to appoint the **Czech** Public Defender of Rights, the Ombudsperson, as the national body to promote, protect and monitor the implementation of the convention under Article 33 (2)[58] were abandoned in December 2014 after concerns were raised over the additional financial resources the Ombudsperson would require to perform this task.[59] Given this, no institution has yet been designated.

As well as limiting the scope of their possible activities, a reliance on yearly government funding decisions can add to the perception that monitoring bodies lack the necessary independence from government. The CRPD Committee highlighted this issue in its concluding observations on **Austria**, which recommended that the government "allocate a transparent budget for the Independent Monitoring Committee and give it the power to administer said budget autonomously".[60] The **Romanian** Institute for Human Rights (*Institutul Român pentru Drepturile Omului*), the Article 33 (2) body, saw its budget cut by over a third in 2014, from RON 1.6 million (about €360,000) in 2013 to RON 1 million (about €230,000) in 2014.[61]

Table 1.3: Structures set up for the implementation of the CRPD, by EU Member State

EU Member State	Year of accession	Acceded to optional protocol	Focal points within government for matters relating to the implementation of the CRPD – Article 33 (1)	Coordination mechanism – Article 33 (1)	Framework to promote, protect and monitor implementation of the CRPD – Article 33 (2)
AT	2008	Yes	Federal Ministry of Labour, Social Affairs and Consumer Protection (*Sozialministerium*) and regional focal points designated by the nine regional authorities (*Länder*) focused on their competences	Federal Ministry of Labour, Social Affairs and Consumer Protection (*Sozialministerium*) with the involvement of the Federal Disability Advisory Board (*Bundesbehindertenbeirat*)	CRPD monitoring committee (*Monitoringausschuss*)
BE	2009	Yes	Federal Public Service Social Security. Sub-focal points designed by the seven independent entities		Interfederal Centre for Equal Opportunities (*Interfederaal Gelijkekansencentrum/Centre interfédéral pour l'égalité des chances*)
BG	2012	No	Ministry of Labour and Social Policy, Policy for People with Disabilities, Equal Opportunities and Social Benefits Directorate, Integration of People with Disabilities Department (*Министерство на труда и социалната политика, дирекция "Политика за хората с увреждания, равни възможности и социални помощи", отдел "Интеграция на хората с увреждания"*)	Not established/ designated	Not established/ designated

CY	2011	Yes	Department for Social Inclusion of People with Disabilities, Ministry of Labour, Welfare and Social Insurance	Pancyprian Council for Persons with Disabilities	Office of the Commissioner for Administration (Ombudsperson); Commissioner for the Protection of Human Rights
CZ	2009	No	Ministry of Labour and Social Affairs (*Ministerstvo práce a sociálních věcí*)	Ministry of Labour and Social Affairs in cooperation with Ministry of Foreign Affairs, Government Board for People with Disabilities and Czech National Disability Council	Not established/ designated
DE	2009	Yes	Federal Ministry for Labour and Social Affairs (*Bundesministerium für Arbeit und Soziales*) (16 federal states (*Länder*) designated their own sub-focal points)	Federal Government Commissioner for Matters Relating to Persons with Disabilities	German Institute for Human Rights (*Deutsche Institut für Menschenrechte*)
DK*	2009	Yes	Ministry of Children, Gender Equality, Integration and Social Affairs (*Ministeriet for Børn, Ligestilling, Integration og Sociale Forhold*)	Interministerial Committee of Civil Servants on Disability Matters	Danish Institute for Human Rights (*Institut for Menneskerettigheder*); Danish Disability Council (*Det Centrale Handicapråd*); Danish Parliamentary Ombudsperson (*Folketingets Ombudsmand*)
EE	2012	Yes	Ministry of Social Affairs (*Sotsiaalministeerium*)	Cooperation Assembly between ministries (*Puuetega inimeste koostöökogu*), Estonian Chamber of Disabled People and four DPOs	Gender Equality and Equal Treatment Commissioner (*Soolise võrdõiguslikkuse ja võrdse kohtlemise volinik*)
EL	2012	Yes	Directorate of International Relations, Ministry of Labour, Social Security and Welfare (*Υπουργείο Εργασίας, Κοινωνικής Ασφάλειας και Πρόνοιας*)	Not established/ designated	Not established/ designated
ES	2007	Yes	Ministry of Health, Social Services and Equality (*Ministerio de Sanidad, Servicios Sociales e Igualdad*); Ministry of Foreign Affairs and Cooperation (*Ministerio de Asuntos Exteriores y Cooperación*)	National Disabilities Council (*Consejo Nacional de la Discapacidad*)	Spanish Committee of Representatives of People with Disabilities (*Comité Español de Representantes de Personas con Discapacidad*)
FI**			Ministry of Foreign Affairs (*Ulkoasiainministeriö*); Ministry of Social Affairs and Health (*Sosiaali- ja Terveysministeriö*)	Ministry of Social Affairs and Health (*Sosiaali- ja Terveysministeriö*)	Human Rights Centre (*Ihmisoikeuskeskus*); Human Rights Delegation (*Ihmisoikeusvaltuuskunta*); Parliamentary Ombudsperson (*Eduskunnan oikeusasiamies*)

FR	2010	Yes	Ministry of Social Affairs and Health (*Ministère des Affaires sociales et de la santé*); Interministerial Committee for People with a Disability (*Comité interministériel du handicap*)	Interministerial Committee for People with a Disability, which consists of representatives of all ministries concerned	Public Defender of Rights (*Le Défenseur des Droits*); National Advisory Council for Human Rights (*Commission Nationale Consultative des Droits de l'Homme*); National Advisory Council for People with a Disability (*Conseil national consultatif des personnes handicapées*)
HR	2007	Yes	Ministry of Social Policy and Youth (*Ministarstvo socijalne politike i mladih*)		Ombudsperson for Persons with Disabilities (*Pravobranitelj za osobe s invaliditetom*); Commission of the Government of the Republic of Croatia for People with Disabilities (*Povjerenstvo Vlade Republike Hrvatske za osobe s invaliditetom*)
HU	2007	Yes	Department for Disability Affairs (*Fogyatékosságügyi Főosztály*) within the Ministry of Human Capacities (*Emberi Erőforrások Minisztériuma*)	National Disability Council (*Országos Fogyatékosságügyi Tanács*)	
IT	2009	Yes	Ministry of Labour and Social Policies (*Ministero del Lavoro e delle Politiche Sociali*)		National Observatory on the Situation of Persons with Disabilities (*Osservatorio Nazionale sulla condizione delle persone con disabilità*)
LT	2010	Yes	Ministry of Social Security and Labour (*Socialinės apsaugos ir darbo ministerija*)		Council for Disability Affairs (*Neįgaliųjų reikalų taryba*) at the Ministry of Social Security and Labour (*Socialinės apsaugos ir darbo ministerija*); Office of the Equal Opportunities Ombudsperson (*Lygių galimybių kontrolieriaus tarnyba*)
LU	2011	Yes	Ministry of Family, Integration and for the Greater Region (*Ministère de la Famille, de l'Intégration et à la Grande Région*)		Luxembourg Human Rights Consultative Body (*Commission consultative des Droits de l'Homme du Grand-Duché de Luxembourg*); Centre for Equal Treatment (*Centre pour l'égalité de traitement*); Ombudsperson (*Médiateur au service de citoyens*)

LV	2010	Yes	Ministry of Welfare (*Labklājības ministrija*); National Council of Disability Affairs (*Invalīdu lietu nacionālā padome*)		Ombudsperson of the Republic of Latvia (*Latvijas Republikas Tiesībsargs*)
MT	2012	Yes	National Focal Point Office within the Ministry for the Family and Social Solidarity (*Ministeru għall-Familja u -Solidarjeta` Soċjali*); Parliamentary Secretariat for the rights of persons with a disability and active ageing (*Segretarju parlamentari għad-drittijiet ta' persuni b'diżabilita' u anzjanita' attiva***)**	Council to Take Action for a Just Society (*Kunsill Azzjoni lejn Soċjeta' Ġusta*)	National Commission for Persons with Disability (*Kummissjoni Nazzjonali Persuni b'Diżabilità*)
NL**			Ministry of Health, Welfare and Sport (*Ministerie van Volksgezondheid, Welzijn en Sport*)		Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*)
PL	2012	No	Ministry of Labour and Social Policy (*Ministerstwo Pracy i Polityki Społecznej*)	Ministry of Labour and Social Policy (*Ministerstwo Pracy i Polityki Społecznej*) and the Team for the implementation of the CRPD provisions (chaired by the Government Plenipotentiary for Persons with Disabilities (*Pełnomocnik Rządu do Spraw Osób Niepełnosprawnych*))	Human Rights Defender (*Rzecznik Praw Obywatelskich*)
PT	2009	Yes	Directorate General of External Policy, Ministry of Foreign Affairs (*Ministério dos Negócios Estrangeiros*); Strategy and Planning Office, Ministry of Solidarity, Employment and Social Security (*Ministério da Solidariedade, Emprego e Segurança Social*)	National Institute for Rehabilitation of the Ministry of Solidarity, Employment and Social Security (*Conselho Nacional para a Reabilitação e Integração das Pessoas com Deficiência*)	National mechanism for monitoring and implementation of the CRPD (*Mecanismo nacional de monitorização da implementação da Convenção*)
RO	2011	No	Department for the Protection of Persons with Disabilities (*Direcția Protecția Persoanelor cu Dizabilități*) within the Ministry of Labour, Family and Social Protection (*Ministerul Muncii, Familiei şi Protecției Sociale*)		Romanian Institute for Human Rights (*Institutul Român pentru Drepturile Omului*)
SE	2008	Yes	Ministry of Health and Social Affairs (*Socialdepartementet*)	High-Level Interministerial Working Group led by the Division for Family and Social Services of the Ministry of Health and Social Affairs (*Socialdepartementet*)	Not established/ designated

SI	2008	Yes	Disability, Veterans and Victims of War Directorate at the Ministry of Labour, Family, Social Affairs and Equal Opportunities (*Ministrstvo za delo, družino, socialne zadeve in enake možnosti, Direktorat za invalide, vojne veteran in žrtve vojnega nasilja*)		Council for Persons with Disabilities of the Republic of Slovenia (*Svet za invalide Republike Slovenije*)
SK	2010	Yes	Department for the Integration of Persons with Disabilities at the Ministry of Labour, Social Affairs and Family (*Odbor integrácie osôb so zdravotným postihnutím, Ministerstvo práce, sociálnych vecí a rodiny*). Secondary focal points in other ministries		Not established/ designated
UK	2009	Yes	Office for Disability Issues, Department of Work and Pensions		Equality and Human Rights Commission (England and Wales); Scottish Human Rights Commission; Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland
EU	2010	No	European Commission	For matters of coordination between the Council, the Member States and the European Commission, see provisions of the Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the EU relating to the CRPD (2010/C 340/08)	European Parliament; European Ombudsman; European Commission; FRA; European Disability Forum

Notes: *Bodies established or appointed in 2014 are highlighted.*

** The Danish Council and the Danish Parliamentary Ombudsperson were not designated, but the explanatory text to Parliamentary Decision B15 of 17 December 2010 provides that they are to be part of the framework.*

*** Finland and the Netherlands have not yet ratified the CRPD; however, as the Article 33 bodies have been identified in the draft ratification legislation, they are included in this table. Ireland had not identified Article 33 bodies by year end and is therefore not included in the table.*

Source: *FRA, 2015*

The year also saw changes in the composition of the EU monitoring framework, which monitors the implementation of the CRPD in areas of EU competence. Following a proposal by its Conference of Presidents in December 2013, the European Parliament was represented in the February 2014 meeting of the framework by the Committee for Employment and Social Affairs, which is to work in close cooperation with the Committee on Civil Liberties, Justice and Home Affairs.[62] With the European Parliament elections of May 2014 delaying further clarification of the parliament's formal representation in the EU framework, this arrangement had not been confirmed by the end of 2014.

Figure 1.3: FRA infographics help to raise awareness of the voting rights of people with disabilities

Source: *FRA 2014*

Aside from the formal meeting in February 2014, the framework's work was carried out through the individual activities of its members, in keeping with the limited mandate set out in the 2012 Council decision establishing the framework.[63] Reflecting its role, FRA, in close cooperation with the European Commission, developed human rights indicators on Article 29 of the CRPD on the right to participation in political and public life. Published ahead of the May 2014 European Parliament elections, the indicators reveal that persons with disabilities continue to face substantial legal, administrative and accessibility-related barriers undermining their ability to participate in elections on an equal basis with others.[64]

"One of the key rights that the CRPD enshrines is the right of persons with disabilities to autonomy and to live in the community: this question is now framed as a human rights issue in international law, not one of social rehabilitation or welfare policy. The most obvious and direct violation of this right is arguably the segregation of persons with disabilities in large institutions; yet, here in Europe we are unfortunately still very far from eradicating such institutions."

Council of Europe, Commissioner for Human Rights (2014), 'One of us? The right of persons with disabilities to live in the community', *Speech at PACE Committee on Equality and Non-discrimination joint hearing with the Committee of Experts on the Rights of Persons with Disabilities, CommDH/Speech(2014)9, 2 October 2014.*

The transition from institutional care to community-based support is taking an increasingly central role in policymaking within the EU and its Member States, particularly in the light of the general ex ante conditionalities discussed earlier in this chapter. FRA started to implement a multi-year project focusing on the transition from institutional to community-based care and support for persons with disabilities.[65]

One key element of this work is building on previous experience to develop, through close cooperation with stakeholders and DPOs, human rights indicators on Article 19 of the CRPD on the right to live independently and be included in the community. By populating these indicators, FRA will be able to develop evidence-based advice to support the EU and its Member States to implement the concluding observations of the CRPD Committee. This evidence will also feed into the review of the European Disability Strategy 2010–2020, which is to take place in 2016.

FRA conclusions

- FRA evidence consistently shows that levels of discrimination remain high, including in areas other than employment. Nevertheless, in 2014, six years after it was first proposed, the Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation has still not been adopted.

For the EU to fulfil its obligation to become a truly inclusive society, EU institutions and Member States should explore every means at their disposal to ensure the adoption of the proposed equal treatment directive.

- The European Structural and Investment Funds (ESIF) are a key instrument in the EU's drive to ensure the inclusion of those most vulnerable to discrimination and unequal treatment, as well as meeting the targets of the Europe 2020 strategy. Member States allocated around 10 % of the overall budget available under ESIF to promote social inclusion, and to combat poverty and any discrimination during the programming period 2014–2020.

EU Member States should ensure that ESIF funds are invested in ways compliant with fundamental rights, leading to sustainable and tangible results with respect to social inclusion. Increased cooperation and coordination of activities between the European Commission, EU bodies and Member States will be needed to assist Member States in meeting their objectives in this field.

- Evidence shows that EU Member States took concrete steps towards fulfilling their obligation to ensure that operational programmes funded under ESIF respect the principle of non-discrimination and the rights of persons with disabilities. This is reflected in steps taken by Member States to meet the five general ex ante conditionalities relating to anti-discrimination and disability before the deadline of 31 December 2016.

Member States are encouraged to continue efforts to meet these conditionalities fully, while engaging relevant public bodies and civil society organisations in committees set up to monitor the disbursement of funds under ESIF, thereby increasing transparency and accountability.

- Reforms to ensure that national legislation meets the requirements of the Convention on the Rights of Persons with Disabilities (CRPD) increasingly take into account the cross-cutting provisions of the convention regarding equality and non-discrimination. These are set out in Article 3 of the CRPD, on general principles, and Article 5, on equality and non-discrimination.

Member States should ensure that they incorporate the principles of equality and non-discrimination when adapting their legal frameworks in line with the human rights-based approach to disability which underpins the convention. All reforms should take

into account the needs of persons with different types of impairments.

- The composition and role of bodies to implement and monitor the CRPD, required under Article 33 of the convention, were not finalised in five Member States at the end of 2014, although the last of these Member States had ratified the convention in 2012.

Those Member States that have not yet designated these bodies should take steps to establish them as soon as possible. All Member States should ensure that Article 33 CRPD bodies have sufficient financial and human resources to carry out their functions, and that disabled persons organisations (DPOs) participate fully in the monitoring process.

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63 Council of the European Union (2012), 3196th Council meeting, 'Transport, telecommunications and energy', Press release, PRES/12/447, Luxembourg, 29 October. See also Council of the European Union (2010), Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the European Union relating to the United Nations Convention on the Rights of Persons with Disabilities, OJ 2010 C 340/08, 15 December 2010.

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UN & CoE

28 January – CoE Parliamentary Assembly (PACE) adopts Resolution 1967 (2014) and Recommendation 2032 (2014) on a strategy to prevent racism and intolerance in Europe, and Resolution 1968 (2014) on tackling racism in the police

January

25 February – CoE European Commission against Racism and Intolerance (ECRI) publishes fifth reports on Belgium and Germany

February

11 March – In *Abdu v. Bulgaria* (No. 26827/08), the ECtHR rules on the failure of authorities to take reasonable steps to investigate a racially motivated violent assault on two Sudanese men, constituting a violation of the provision on prohibition of torture (Article 3) in conjunction with the provision on prohibition of discrimination based on race (Article 14) of the ECHR

13–19 March – CERD publishes concluding observations on Belgium, Luxembourg and Poland

March

April

May

3 June – ECRI publishes conclusions on the implementation of a number of priority recommendations made in its country reports on Cyprus and Lithuania released in 2011

3 June – ECRI publishes fourth report on Romania

June

10 July – ECRI publishes its annual report 2013

July

August

5 September – PACE adopts Resolution 2011 (2014) and Recommendation 2052 (2014) on counteracting manifestations of neo-Nazism and right-wing extremism

16 September – ECRI issues fifth reports on Bulgaria and Slovakia, and fourth report on Slovenia

22 September – UN Committee on the Elimination of Racial Discrimination (CERD) publishes concluding observations on Estonia

September

October

18 November – UN General Assembly adopts Resolution 69/16 on the programme of activities for the implementation of the international decade for people of African descent, to be observed from 2015 to 2024

November

December

EU

17 January – European Commission publishes a report on the application of the Racial Equality Directive (2000/43/EC) and Employment Equality Directive (2000/78/EC)

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

27 January – European Commission publishes a report on the implementation of the Framework Decision on Racism and Xenophobia (2008/913/JHA)

January

February

March

April

May

June

July

August

September

27–28 October – 8th European Commission–Israel seminar on combating racism, xenophobia and antiemitism takes place in Jerusalem

October

4 November – FRA and the Italian Presidency of the Council of the EU host inaugural meeting of the Working Party on hate crime in Rome

November

December

2 Racism, xenophobia and related intolerance

Barriers persist in implementing effectively European Union (EU) legislation that prohibits and penalises manifestations of racism, xenophobia and ethnic discrimination. The sixth year of the economic crisis and turbulent developments in the Middle East and North Africa are raising concerns and considerations for migration and integration policies in the EU. Meanwhile, Europeans are increasingly responsive to parties and movements with xenophobic, anti-immigrant and anti-Muslim agendas. Migrants, refugees, asylum seekers and members of ethnic and religious minorities suffer manifestations of violent hatred and continuous discrimination in many areas of social life. Moreover, the increasing use of internet and social media proliferates some political rhetoric and racist hate speech.

2.1. Implementation of the EU *acquis* in combating racism, xenophobia and ethnic discrimination

More than 10 years after EU Member States were required to implement the Racial Equality Directive (2000/43/EC) into national law, and four years after they had to implement the Framework Decision on Racism and Xenophobia (2008/913/JHA), barriers to the effective implementation of these legal instruments persist.[1]

The European Commission, in its report on the implementation of the Framework Decision on Racism and Xenophobia, addresses hate speech and hate crime by means of criminal law. It found that although the majority of Member States penalise incitement to racist and xenophobic violence and hatred, their legal provisions do not always seem to fully transpose the offences covered by the framework decision. In addition, the report identifies "some gaps [...] in relation to the racist and xenophobic motivation of crimes, the liability of legal persons and jurisdiction".[2] The Commission engaged in bilateral talks with Member States in 2014 to ensure full and correct transposition of the framework decision. A number of Member States, including **Greece, Latvia** and **Germany**,[3] adopted new laws and initiated criminal code amendments.

The **Greek** Parliament amended the previous anti-racist law[4] to punish public incitement, provocation or stirring of hatred or violence either orally or through the press, the internet or any other means, as well as acts of violence or hatred, if committed in relation to a person, group of persons or member of such a group on specific grounds. These grounds include: race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity and disability. The new law increases the minimum penalties for misdemeanours and felonies committed because of hatred or bias, for which the sentence cannot be suspended.

Latvia amended its Criminal Law[5] by extending the list of aggravating circumstances for a criminal offence with national, ethnic or religious motivation in addition to 'racist' motivation. Under the new provision, penalisation of incitement to hatred no longer depends on whether the offender acted intentionally or not.[6]

For the Framework Decision on Racism and Xenophobia, the end of the transition period set out in the Lisbon Treaty means that as of 1 December 2014, the European Commission was empowered to launch

infringement proceedings against Member States regarding this legislation. Beginning at the end of 2014, it sent a number of administrative letters to Member States about gaps in the transposition and implementation of the Framework Decision on Racism and Xenophobia into national law (see also Chapter 7).

Notwithstanding the measures undertaken by Member States, the European Commission stresses in its report on the application of the Equality Directives that "legislation alone is not enough to ensure full equality, so it needs to be combined with appropriate policy action",[7] by increasing awareness of the already existing protection and ensuring better practical implementation and application of the directives. The Commission highlighted the underreporting of incidents of discrimination experienced by migrant and ethnic groups, based on evidence from FRA's EU-wide European Union Minorities and Discrimination survey (EU-MIDIS).[8] The survey results show that equality bodies, as well as other organisations where complaints about discrimination can be filed, need to make vulnerable minority groups aware of how to make a complaint and need to make the process more convenient and accessible and less time-consuming.[9] Accordingly, the Euroepan Commission emphasises that "strengthening the role of the national equality bodies as watchdogs for equality can make a crucial contribution to more effective implementation and application of the Directives".[10]

The **Cypriot** authorities took measures strengthening the mandate of their national equality body. The new law empowers the Ombudsperson to consult with the competent authorities on the implementation of his or her recommendations. If the authorities do not respond, or fail to adopt the Ombudsman's recommendations in a timely fashion, the consultation results can be brought before the Council of Ministers and the Parliament.[11] In December 2014, the **Czech** government also adopted a draft law to extend the powers of the national equality body. Under the proposal, the Ombudsman will have the right to put forward the abolition of a law to the Constitutional Court and to file complaints related to discrimination.[12]

In 2014, the European Commission stressed the importance it attributes to the effective implementation of the Racial Equality Directive. It referred **Finland** to the Court of Justice of the EU (CJEU) because the Finnish equality body had not yet been entrusted with racial equality tasks in the field of employment (Case C-538/14).[13] Similarly, it initiated proceedings in September 2014 against the **Czech Republic** for breaching the Racial Equality Directive by sending a disproportionately high number of Roma children to special schools for children with learning difficulties.[14]

Besides legislation, national and EU funding for awareness-raising is crucial for ensuring tangible improvement in rights awareness throughout the EU.[15] Hence, the European Parliament and the Council of the EU adopted in December 2013 the 'Rights, Equality and Citizenship Programme 2014–2020' to promote the effective implementation of the principle of non-discrimination on different grounds including ethnic origin and to combat racism, xenophobia and related intolerance.[16] In 2014, the European Commission highlighted that one of the priorities of the Rights, Equality and Citizenship Programme is the effective, comprehensive and consistent implementation, application and monitoring of the Framework Decision on Racism and Xenophobia and the Racial Equality Directive.[17]

2.2. Racism, xenophobia and ethnic discrimination persist in the EU

2.2.1. Experiences of racism and ethnic discrimination in social life

Despite the legal safeguards set by the Racial Equality Directive, members of ethnic minorities, migrants and refugees continue to face discrimination in education, employment and access to services including housing and healthcare across the EU, as evidence from national equality bodies and research shows.

Complaints filed with the national equality bodies in a number of Member States, including **Austria**, **Belgium**, **Croatia**, the **Czech Republic**, **Greece**, **Italy**, **Luxembourg**, **Spain** and **Sweden**, show that race, ethnicity and skin colour remain amongst the most common grounds of reported discrimination. However, complaints data are only the tip of the iceberg.

Several research methods including victim surveys[18] and discrimination testing can help to fill in the knowledge gaps and paint a more comprehensive and reliable picture of ethnic discrimination.

Across the EU, there is a lack of comparable and disaggregated data on manifestations of ethnic discrimination, racism and related intolerance, as FRA has repeatedly highlighted. In response, FRA launched in 2014 the second wave of EU-MIDIS, aiming to assess change since the first survey in 2008. This second survey will collect comparable data, interviewing around 25,000 people with an immigrant or ethnic minority background in all 28 EU Member States.[19]

In **Denmark**, the findings of the Copenhagen migration barometer survey show that almost every fourth respondent with an ethnic minority background has experienced discrimination.[20] Similarly, in the

Netherlands, surveys conducted by the municipalities of Amsterdam, Rotterdam[21] and The Hague[22] reveal that people with a migrant background experience more discrimination than 'native' Dutch people. Also in the **Netherlands**, the findings of a representative survey on perceptions of discrimination on different grounds show that between a third and half of people with a migrant background felt that they have been subject to discrimination in public spaces and when looking for work or in the workplace.[23] After the Social and Economic Council of the Netherlands published an advisory report on how to tackle discrimination in the Dutch labour market,[24] the Dutch government incorporated several of its recommendations into a comprehensive action plan to tackle ethnic discrimination in employment.[25]

A **Latvian** survey found that 59 % of all foreign and 45 % of all native local students experienced high rates of ethnic discrimination during their studies.[26] Likewise, a report by the German Federal Commissioner for Migration, Refugees and Integration on the situation of foreigners in **Germany** provides evidence of ethnic discrimination in various areas of social life including vocational education and employment.[27]

In the **Czech Republic**, survey results published in 2014 reveal that foreigners whose ethnic and racial background differ from that of the majority population, such as Vietnamese and Africans, report more negative discrimination experiences than foreigners whose ethnic and racial background does not differ from that of the majority population.[28]

A **Finnish** Ombudsperson for Minorities survey showed that two in three Roma respondents have experienced discrimination in some areas of social life (see Chapter 3 on Roma).[29]

As highlighted in previous FRA Annual reports, discrimination testing is a useful means of countering ethnic discrimination in the field of employment and housing. **Belgium**,[30] the **Czech Republic**,[31] **Germany**,[32] the **Netherlands**,[33] **Slovakia**[34] and **Spain**[35] carried out situation tests that produced evidence of discrimination against ethnic minority groups in access to employment and to services including housing.

2.2.2. Racist violence, crime and fear

The Framework Decision on Racism and Xenophobia penalises two types of particularly serious forms of racism and xenophobia: racist and xenophobic hate speech and hate crime.[36] Still, acts of racist crime occurred regularly across the EU in 2014. Immigrants and members of ethnic and religious minorities, particularly Jews, Muslims and persons of African descent, suffered crimes motivated by racism and extremism, while offering a convenient target to blame for society's problems. These crimes and other manifestations of intolerance, such as anti-Roma marches or mass anti-immigration demonstrations, spread fear and insecurity.

Asylum seekers, refugees and migrants remain a convenient scapegoat for society's ills. In this regard, the **Bulgarian** Ombudsperson underlines in his report that the outbursts of hatred and violence against foreigners and refugees remain a serious problem in Bulgaria, arguing that state responses are inadequate and the responsible institutions are unprepared to meet the needs of arriving refugees and asylum seekers.[37]

In **Greece**, the Racist Violence Recording Network, developed by the United Nations High Commissioner for Refugees (UNHCR) and other civil society organisations, documented 166 racist crimes in 2013, 143 of which were committed against migrants or refugees. In a majority of these crimes, the victim suffered "severe personal injury" caused by a variety of weapons.[38] The **German** government reported that the number of attacks on asylum and refugee shelters increased from 24 in 2012 to 58 in 2013. By 18 November 2014, 95 attacks on refugee shelters had been registered in that year.[39] Refugee support organisations list 113 incidents or racist manifestations against refugee shelters in 2013.[40]

The UN Human Rights Committee expressed concerns about reports of racially motivated violence and racial discrimination against migrants in **Malta** and recommended that authorities systematically investigate, prosecute and punish racially motivated violence.[41]

People of African descent continue to face racism and racist violence in several Member States. The UN expert

Promising practice

Helping schools to counter racist bullying

Following a number of cases of racist bullying in schools in **Cyprus**, the Ministry of Education and Culture launched a code of conduct against racism and a guide for handling and recording racist incidents. The code sets out basic principles of respect. It explains various forms of racial and other types of intolerance and defines concepts such as identity, racism and bullying/threatening. The guide aims to develop a mechanism for recording and reporting racist incidents while allocating specific responsibility to various stakeholders. It also provides step-by-step guidance to handle racist incidents and a nine-step sanction system.

For more information, see: www.moec.gov.cy/agogi_ygeias/pdf/odigoi_ekpaideftikou/kodikas_symperiforas_ratsismou.pdf

Working Group on People of African Descent expressed concerns that in **Sweden** "Afro-Swedes are most exposed to hate crimes, and reports of Afrophobic hate crimes have increased by 24 % since 2008."[42] In **Ireland**, people of African descent filed 78 of the 217 racist incidents reported to the Immigrant Council of Ireland in 2014.[43] A survey in **Austria** on the living conditions of 717 black people shows that one in five of those surveyed were victims of racist attacks at the workplace and about one in seven experienced physical attacks in a public space.[44] Research conducted by the **Finnish** National Research Institute of Legal Policy found that people born in African or Middle Eastern countries suffer the highest rates of racist crime victimisation.[45]

The Framework Decision on Racism and Xenophobia obliges EU Member States to consider racist motivation as an aggravating circumstance, or, alternatively, to ensure that such motivation may be taken into account in determining penalties. In the case of *Abdu v. Bulgaria*, the European Court of Human Rights (ECtHR) ruled that Bulgaria had failed in its obligation to conduct an effective investigation into the racist nature of an attack in which two Bulgarian nationals physically attacked and threatened two Sudanese men as they left a shopping centre.[46] For the ECtHR, this represented a violation of the prohibition of inhuman or degrading treatment (Article 3) taken alone and in conjunction with the prohibition of discrimination (Article 14) of the European Convention on Human Rights.

According to Europol's 2014 Annual report, threatening marches and violent demonstrations took place in areas where Roma live in the **Czech Republic**, **Hungary** and **Slovakia** in 2013.[47] Far-right activists organise these public displays, but the general public often supports them, reinforcing their message of intimidation. (For more information on Roma, see Chapter 3.)

The Council of Europe Commissioner for Human Rights emphasised that the situation in **Hungary** has deteriorated, with anti-Gypsyism being the "most widespread, and blatant form of intolerance in Hungary today".[48] Besides Roma, targets have included Jews and other vulnerable groups such as asylum seekers and refugees. The commissioner also noted that authorities "have often been criticised for failing to identify and respond effectively to hate crimes".[49]

2.2.3. Antisemitism and Islamophobia on display

The security of members of the Jewish community became an important concern after a man allegedly trained in Syria killed four people on 24 May 2014 in the Brussels Jewish Museum. Policy makers in the EU debated the issue of 'foreign fighters', as events occurring beyond the borders of the EU are having a serious impact on the security situation of Jewish and Muslim communities within the EU. Member States reported incidents of violence and hatred against Jews and Muslims in 2014, although these also triggered counter-reactions: solidarity and peaceful demonstrations, interreligious dialogue and condemnation by a number of high-ranking politicians.

FRA's annual overview of available data on antisemitic incidents in EU Member States shows, despite gaps in data collection and high levels of underreporting, that antisemitic incidents persist.[50] The report suggests that the events in the Middle East fuelling anti-Israeli sentiments trigger antisemitic manifestations targeting Jewish people. The findings of the FRA survey on Jewish people in 2013 revealed that two in three respondents said that the Arab–Israeli conflict undermined their sense of safety.[51]

Unofficial data collection shows that the number of recorded antisemitic physical, verbal and internet-based incidents rose in 10 EU Member States after Israel launched a military operation in Gaza in summer 2014.[52] Statistics of the London Mayor's Office for Policing and Crime (MOPAC) in the **United Kingdom** show that "a record number of faith hate offences was recorded in July 2014, 95 % of which were anti-Semitic incidents following Israel's invasion of Gaza".[53] According to the **Swedish** government, "The conflict in Gaza activates antisemitic beliefs and causes them to float to the surface."[54]

Antisemitic sentiments often unleashed during anti-Israeli protests created an atmosphere of distrust between Jewish and Muslim communities. As a response, Muslim and Jewish organisations in **Belgium**, **Germany** and the **United Kingdom** published joint statements and ran campaigns calling for tolerance and peace, and action against both antisemitism and Islamophobia.[55] One such statement made by the Muslim Council of Britain and the Board of Deputies of British Jews argued that: "In spite of the situation in the Middle East, we must continue to work hard for good community relations in the UK. We must not import conflict. We must export peace instead."[56] Research findings in **France** show, however, that the majority population and Muslims in particular hold stereotypical negative views of Jews.[57]

At the same time, research points to a trend in anti-Muslim sentiments: according to the Pew Research Centre survey results, a median of 46 % (ranging from 26 % to 63 %) of respondents in **France**, **Germany**, **Greece**, **Italy**, **Poland**, **Spain** and the **United Kingdom** hold anti-Muslim views. The research also found that the majority population perceives Jews in a more positive way than Muslims.[58] In **France**, the National Consultative Commission on Human Rights noted a 15 % increase in anti-Muslim acts in 2013 compared with 2012,[59] while the Collective against Islamophobia in France reported a 53 % increase in Islamophobic

crimes in 2013 compared with 2012, with women being the primary victims.[60] The **British** organisation Tell MAMA claims that the developments related to the Islamic State in Iraq and the Levant (ISIS) significantly increased the number of hate crimes against Muslims.[61]

"So I say to all those who go to such demonstrations [organised by the Patriotic Europeans against the Islamisation of the West]: Do not follow those who have called the rallies. Because all too often they have prejudice, coldness, even hatred in their hearts."

Angela Merkel, German Chancellor, 31 December 2014

The **German** Chancellor, Angela Merkel, condemned the wave of intolerance triggered by the anti-immigrant and anti-Islam movement Patriotic Europeans against the Islamisation of the West (PEGIDA). PEGIDA was founded in Dresden as a closed Facebook group against "sectarian street wars" (clashes between sympathisers of the Kurds and the Islamic State in some German cities) in October 2014. In a short time, the movement's weekly rallies attracted thousands of supporters and fuelled a heated public debate about national identity, immigration and integration (see also Chapter 4 on asylum, borders, visa, immigration and integration.)

In **Germany**, a rising number of attacks on mosques has been recorded since 2011. Whereas between 2001 and 2011 an average of 22 attacks were committed each year, this number rose to 35 in 2012 and to 36 in 2013.[62] In the **Netherlands**, research by the University of Amsterdam on 70 out of 475 mosques found that of those 70 mosques 47 have experienced 93 incidents of violence, including arson attempts, over the period 2009–2013.[63] In **Sweden**, a series of arson attacks on mosques at the end of 2014 is classified by the police as attempted arson, vandalism and incitement to hatred.[64]

2.2.4. Hate speech in politics

Article 1 (1) of the Framework Decision on Racism and Xenophobia penalises the intentional public incitement to racist violence or hatred.[65] The ongoing scapegoating and intimidation of migrants, refugees and members of ethnic minorities nevertheless continued in the EU in 2014. Politicians were found guilty of incitement to hatred, but they themselves were also targets of verbal racist abuse, including death threats.

"Racist and xenophobic attitudes expressed by opinion leaders may contribute to a social climate that condones racism and xenophobia and may therefore propagate more serious forms of conduct, such as racist violence."

European Commission, 27 January 2014, Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, *p. 9*

The UN High Commissioner for Human Rights warned that anti-immigrant and racist discourse is on the rise across the European political spectrum, and that xenophobic rhetoric from EU politicians could undermine the fight against discrimination. Violent attacks based on religion and ethnicity, such as the one at the Brussels Jewish Museum, "are not unconnected to this climate of extremism".[66]

A report by the European Network against Racism (ENAR) monitoring occurrences of hate speech during the European Parliament election campaign listed 42 cases of hate speech against minorities.[67]

Examples of politicians fomenting hatred include a **British** politician joking that Travellers refusing eviction should be "executed"; he later apologised and resigned.[68] A **Czech** member of parliament described the Lety concentration camp for Roma as a "labour camp for persons who were avoiding proper work", and faced no consequences for the remark.[69] A **Polish** European Parliament member told Parliament that young, unemployed Europeans were the "niggers of Europe", and was fined after the president of the Parliament intervened.[70] In the **Netherlands**, more than 6,400 persons filed a police report concerning allegedly racist remarks against Moroccans by the leader of a political party.[71]

The UN Human Rights Committee called on **Latvian** authorities to counter racist discourse in politics and in the media.[72] The European Commission against Racism and Intolerance (ECRI) recommends that **Romania** amend its Criminal Code so that public insults and defamation against a person or a group of persons on the grounds of their race, colour, language, religion, citizenship or national/ethnic origin be prohibited.[69] ECRI also recommends that **Slovenia** adopt a code of conduct for Members of Parliament which includes provisions expressly banning the use of racist and xenophobic discourse, and enforce such provisions vigorously.[73]

The Commissioner for Human Rights of the Council of Europe notes the high prevalence in **Denmark** of racist speech against Muslims and asylum seekers and migrants in political life and in the media.[74] Similarly, the commissioner expressed his concerns over rhetoric **Hungarian** political leaders, including from mainstream parties, have used to stigmatise Roma, Jews and migrants.[75]

In a number of Member States, politicians and journalists were found guilty of using hate speech. The National Council for Combating Discrimination re-examined a case involving the **Romanian** president, who said that the Roma population was difficult to "integrate in society" because of their alleged unwillingness to work and stealing to make a living. After its re-examination, the Council found that this is direct

discrimination on the ground of ethnicity and breaches the right to dignity of the person. It fined the president €140.[76] In a similar case, the Council fined a renowned Romanian journalist €465 for publishing a newspaper editorial that referred to Roma people as "thieves", "beggars" and "criminals", who "have nothing to do with Romanians".[77]

In **France**, a *Front National* candidate was found guilty of intentional racially motivated offence designed to incite hatred or discrimination against all black people. The candidate committed the racist offence on her Facebook page, targeting France's Minister of Justice, Christiane Taubira. In an unprecedented move, the Court found that the *Front National* was to be considered a co-offender given that "the moral element of the offence consisted in the expressed willingness of the party to lash out at foreigners and more generally at people of different race or origin".[78] In September, a *Front National* member posted an offensive picture of Ms Taubira on his Twitter account and was fined €3,000. In another case, a Correctional Tribunal of Paris fined the director of a French magazine €10,000 for making insulting racist statements in public, after his publication compared Ms Taubira to a monkey.[79] Still in **France**, after the Minister of the Interior intervened, the Council of State cancelled the stand-up comedy show *Le Mur* by Dieudonné M'Bala M'Bala, as it displayed antisemitic sentences. Dieudonné M'Bala M'Bala has been prosecuted more than 35 times for denial of the Holocaust, public defamation, hate speech and racial discrimination.

2.2.5. Hate speech online

Europol notes that the internet remains a critical tool for the distribution of racist and hateful propaganda.[80] In **Poland**, according to a national opinion poll, almost two thirds of young Poles encountered antisemitic speech online and more than one in two read racist statements concerning Muslims and black people on the internet.[81] These findings are in line with the data from the FRA survey on discrimination and hate crimes against Jews from 2013, in which 10 % of respondents had received offensive or threatening antisemitic comments on the internet in the 12 months before the survey, and 73 % believed that online antisemitism had increased in the five years preceding the survey.[82]

The European Commission called on Member States to intervene in cases of online hate speech to comply with Article 9 of the Framework Decision on Racism and Xenophobia: "When establishing jurisdiction over conduct committed within their territory, Member States must ensure that their jurisdiction extends to cases where the conduct is committed through an information system, and the offender or materials hosted in that system are in its territory."[83] To enhance the effective cross-border investigation and prosecution of hate crime online, several Member States made steps towards ratifying the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. The **Czech Republic**, **Luxembourg** and **Spain** ratified this protocol in 2014.[84] Additionally, 21 Member States so far have joined the Council of Europe's 'No Hate Speech' campaign.[85]

In **Poland**, the Prosecutor General issued guidelines under which prosecutors should aim to establish whether a perpetrator intended to insult the victim on the grounds of his or her affiliation to national, ethnic, racial, religious or non-religious group.[86] In **Spain**, the Ministry of the Interior presented the Action Protocol for Security Forces against hate crimes. The protocol instructs police officers to investigate and tackle hate crime on the internet and regulates their doing so.[87]

According to Europol, "Some of the most popular social media companies, including Facebook and Twitter, have taken steps against abusive usage, which has led to many right-wing extremists having their profiles removed after posting offensive content."[88] (See ▶ Chapter 5 on information society and data protection.) In the case of the British politician Luciana Berger, who was subjected to antisemitic abuse on Twitter, British leaders called upon social media companies to take a more proactive stance. The perpetrator was found guilty of religiously aggravated hate crime. Following the trial, however, the threatening antisemitic messages continued.[89]

Promising practice

Empowering children and youths to combat racism and other intolerance

In **Slovakia**, the eSlovensko civic association launched the www.nehejtuj.sk website to raise young people's awareness of racism and intolerance. It also provides assistance to children and young people who have become victims or witnesses of racism and intolerance on the internet. The website's 'Help' section is linked to Unicef, which operates a special hotline for children. Children and young people are encouraged to report illegal content or activities on the internet in the website's 'Report' section. The section is linked to the national online mechanism for reporting illegal content or activities on the internet.

The European Commission co-funded this initiative.

2.2.6. Discriminatory police treatment and ethnic profiling persist

As reflected in FRA's 2013 Annual report, discriminatory ethnic profiling still continues in some Member States. This can undermine the trust persons with an ethnic minority background have in law enforcement officials, since they may find themselves frequently stopped and searched for no other reason than their appearance.

During the implementation of *Mos Maiorum*, a Europe-wide joint police operation aimed at weakening the capacity of organised crime groups facilitating irregular immigration to the EU, the European Parliament[90] and civil society organisations expressed their concern that this operation could lead to discriminatory ethnic profiling. They worried that the police might use racial and ethnic characteristics to single out people for identity or security checks.[91] FRA stressed that fundamental rights should be considered when apprehending irregular migrants during the implementation of the operation, in compliance with its practical guidelines developed jointly with EU Member States.[92] (See also Chapter 4 on asylum, borders, visa, immigration and integration.)

Research in **Austria** revealed that 57 % of 717 black people surveyed were stopped by the police at least once in the 12 months preceding the survey.[93] Similarly, research in the county of Northamptonshire in the **United Kingdom** shows that persons with black and minority ethnic backgrounds were much more likely than the majority population to be stopped and searched.[94]

In **Germany**, the Administrative Court of Koblenz decided in favour of two claimants who had filed a complaint against an identity check in a regional train, claiming that they were chosen only because of their dark skin. The court held that there was no legal basis for the police check, in part because there was no justifiable suspicion that the applicants were illegally on German territory.[95]

International monitoring bodies stressed in 2014 the importance of tackling discriminatory ethnic profiling and discriminatory misconduct by law enforcement officials.

The Council of Europe Parliamentary Assembly called on its Member States to "clearly define racial profiling, ensure its prohibition and provide specific training on identity checks to all police officers".[96] In his report on **Denmark,** the Council of Europe Commissioner for Human Rights raised concerns about ethnic profiling practices and the lack of adequate legal safeguards against ethnic profiling by the police.[97] Similarly, in **Sweden**, UN experts were informed about complaints of racial profiling towards people of African descent in stop and search practices.[98] ECRI recommended that the authorities in **Germany**[99] and **Slovenia**[100] should take steps to prevent ethnic profiling by adopting legislation defining and prohibiting it, and requiring police officers to be trained in the reasonable suspicion standard.

ECRI also called on the **Slovakian**[101] and **Slovenian**[102] authorities to set up bodies, independent of the police, entrusted with the investigation of alleged cases of racial discrimination and police misconduct. Similarly, the UN Committe on the Elimination of Racial Discrimination (CERD) recommended that **Poland**[103] set up an independent body to receive complaints of police violence or abuse and called on **Belgian**[104] authorities to reinforce the independence and effectiveness of the mechanism for lodging complaints against police officers.

In **Spain**, the government passed through Congress a draft citizen security law banning ethnic profiling by the police when it comes to the identification of suspects. However, aspects of the draft law remained controversial during the Congress debates on 11 December 2014.[105]

In the **United Kingdom**, all 43 police forces in England and Wales signed up in August 2014 to a voluntary scheme to reform police use of stop and search powers.[106] The principal aims of the new scheme are to support a more intelligence-led approach, leading to better outcomes, and achieve greater transparency, by publishing stop and search records so that communities can hold forces to account.

In September, the Equality and Human Rights Commission in the **United Kingdom** announced that it would investigate unlawful discrimination, harassment and victimisation of Metropolitan Police Service (the Met)[107] employees after a court ruling found the Met had victimised an employee on sexual and racial grounds in contravention of the Equality Act 2010.[108] The police in the United Kingdom also launched a new code of ethics.[109] The code contains nine policing principles and 10 standards of professional behaviour including equality and diversity that individual constabularies can incorporate into their own values. Similarly, FRA's *Fundamental rights-based police training manual* focuses on diversity and non-discrimination. The manual pays special attention to 'discriminatory ethnic profiling', given its sensitive nature.[110]

A report by the **German** authorities analyses the failures that occurred in the context of the murders perpetrated by members of the right-wing extremist group National Socialist Underground (NSU). It aims to further improve the prevention of crimes with a racist or xenophobic motivation.[111] The upcoming measures include a reform of the Act on the Federal Office for the Protection of the Constitution, the promotion of

intercultural competence among law enforcement agents and training courses on right-wing extremism and racism for police officers and jurists.[112]

Promising practice

Delivering pilot anti-racism training to police officers

In September 2014, the Irish Immigrant Support Centre, Nasc, delivered a pilot anti-racism training course to 20 police officers (*Gardaí*) in Cork, **Ireland**, in cooperation with Cork Community Policing and the Garda Racial, Intercultural and Diversity Office. The training focused on raising awareness and promoting discussion about the impact racism has on migrant and ethnic minority communities and how to prevent discriminatory ethnic profiling. Migrant speakers from Roma, Muslim and African communities shared their experiences and participated in the discussion. Lessons learned from the pilot session will be used to develop a training toolkit that will be rolled out nationally.

For more information, see: www.nascireland.org/latest-news/nasc-deliver-anti-racism-training-to-gardai/

2.3. Improving the recording and encouraging the reporting of hate crime

2.3.1. Working Party on Hate Crime

Building on FRA's 2013 conference on hate crime, the Council of the EU called on FRA "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".[113]

In response, 27 Member States, the European Commission, the OSCE Office for Democratic Institutions and Human Rights (ODIHR), ECRI and FRA set up a working party on combating hate crime in the EU. Its initial thematic areas of work were decided in agreement with Member States, the European Commission and ODIHR on the occasion of a seminar on combating hate crime convened by FRA in April 2014, under the aegis of the Greek Presidency and with the support of the European Economic Area (EEA) and Norway Grants.[114] The continued support and commitment of Member States to address hate crime is illustrated by the fact that the inaugural meeting of the working party took place in November 2014 under the auspices of the Italian Presidency, and the following one occurred in March 2015 in cooperation with the Latvian Presidency of the EU.

The working party will review official recording practices and methods, including the use of monitoring definitions setting out the type of offences and bias motivations that are officially recorded. It will also facilitate the exchange of practices that capture information about hate crime across the law enforcement and criminal justice process, thereby increasing cooperation between relevant agencies, bodies and organisations. Finally, it will identify the training needs of staff employed in law enforcement agencies and in the criminal justice system to enable them to recognise incidents of hate crime. The overall aim is to improve the recording and encourage the reporting of hate crime, to enable victims of hate crime to seek redress (see Chapter 7 on the Victims' Directive).

Promising practice

Tackling hate crime

The Italian Observatory for Security against Acts of Discrimination (*Osservatorio per la sicurezza contro gli atti discriminatori*, OSCAD), established in September 2010, assists victims of crimes with a discriminatory motive to assert their right to equality before the law, and affords them protection against discrimination. A multi-agency body formed by the state police and the carabinieri, and housed in the Department of Public Security at the Ministry of the Interior, OSCAD works closely with civil society organisations such as LGBT rights organisations and Amnesty International Italy.

Citizens, institutions and NGOs can report incidents to OSCAD, which then contacts relevant police services so that cases can be properly investigated. If the reported incidents are not of a criminal nature, they are referred to the national equality body, the National Office against Racial Discrimination *(Ufficio Nazionale Antidiscriminazioni Razziali*, UNAR).

OSCAD is also tasked with preparing training materials on combating discrimination for the police forces. It also participates in training and information programmes with public and private institutions, as well as in the OSCE Training against Hate Crime for Law Enforcement programme.

For more information, contact: oscad@dcpc.interno.it

2.3.2. No progress in improving data collection systems

The Framework Decision on Racism and Xenophobia binds EU Member States to ensure that racist and xenophobic motives of hate crimes are unmasked and adequately addressed. To do so, Member States require strong political commitment and effective policies and measures to identify hate crimes, for

example by comprehensive data collection on such crimes. Availability of data on the characteristics of incidents, victims and perpetrators would also allow further and better-targeted policy responses.

"The existence of reliable, comparable and systematically collected data can contribute to more effective implementation of the Framework Decision. Reported incidents of hate speech and hate crime should always be registered, as well as their case history, in order to assess the level of prosecutions and sentences. Data collection on hate speech and hate crime is not uniform across the EU and consequently does not allow for reliable cross-country comparisons."

European Commission, 27 January 2014, Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, *p. 9*

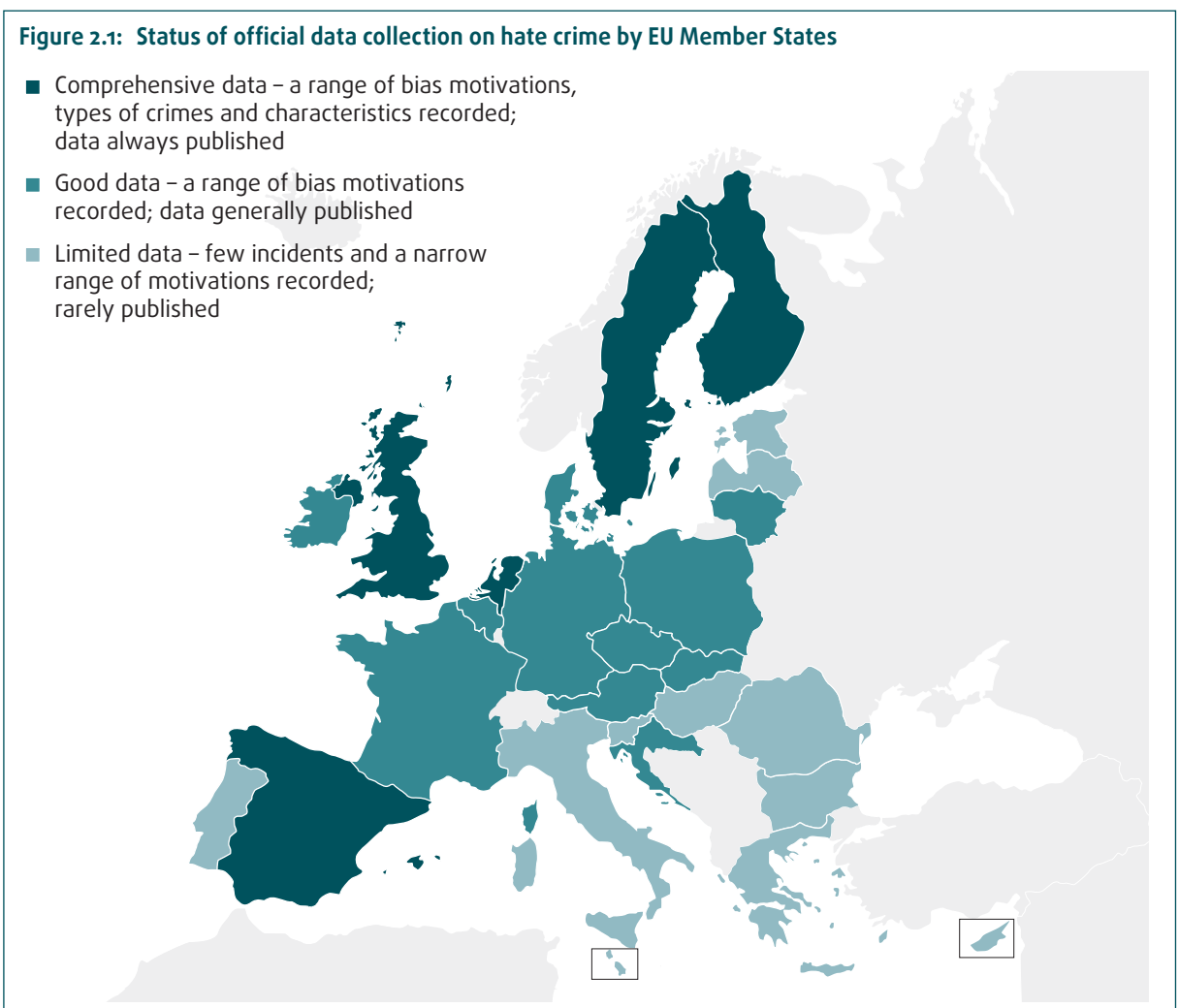
However, the classification of EU Member States on the basis of official data collection mechanisms on hate crimes has not changed from 2013 to 2014. Only five EU Member States collect and publish comprehensive data on hate crimes (Figure 2.1).[115]

2.3.3. Hate crimes need to be reported and recorded in higher numbers

The EU Member States with the most comprehensive data collection mechanisms for recording hate crime developed such mechanisms over time. For example, as reported by FRA in its Annual report 2013, data collection on racist and related crime in **Spain** became comprehensive in 2013 as a result of changes in what data are collected and what training are offered to frontline police officers on how to record racist and related crime.[116] Figure 2.2 shows that the improved data collection system resulted in a 70 % increase in recorded crimes with racist or xenophobic elements.

Member States with comprehensive data collection mechanisms tend to have a range of initiatives to both combat hate crime and assist victims. Higher figures of recorded hate crimes indicate the Member State's commitment to combating hate crimes through enhanced data collection systems.

Figure 2.1: Status of official data collection on hate crime by EU Member States



Source: FRA desk research, December 2014

> *"The Police Service is committed to reducing the under-reporting of hate crime and would view increases in this data as a positive indicator, so long as it reflects an increase in reporting and not an increase in the actual incidence of crime which we strive to reduce."*
>
> *Association of Chief Police Officers, United Kingdom, 2014, www.report-it.org.uk/files/acpo_recorded_hate_crime_201314_as_posted.pdf*

The 28 EU Member States differ on the data they record and publish on crimes motivated by bias. This means that data are not comparable between Member States, and results in gaps in data collections across the EU, as illustrated in Table 2.1.

Variations and gaps between EU Member States could be the result of many factors, including:

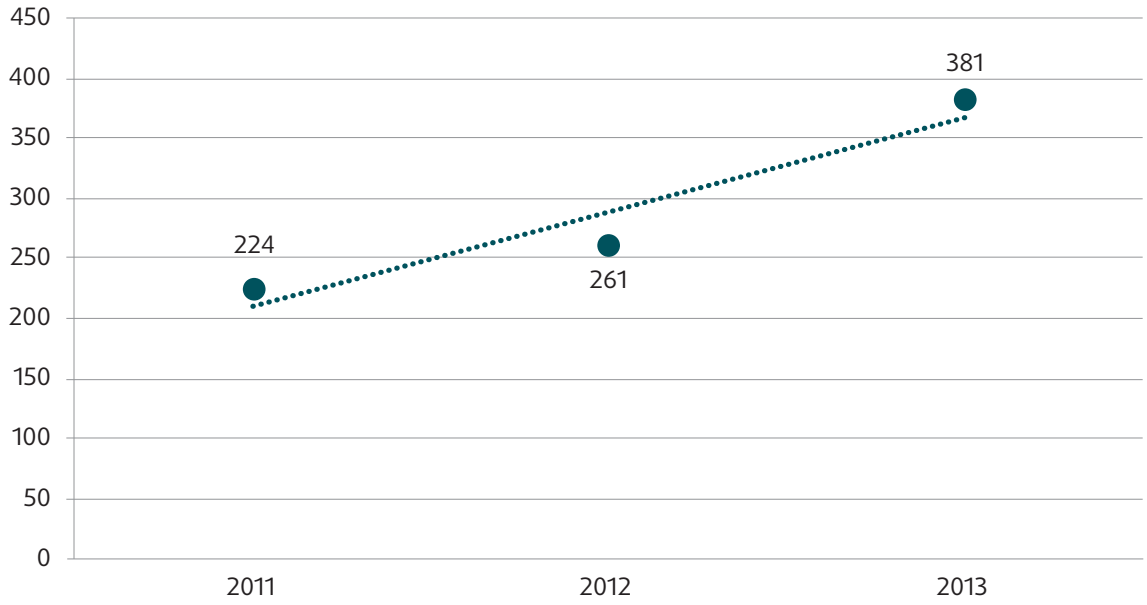
- how these crimes are defined in criminal law;
- how (the characteristics of) incidents are recorded;
- the willingness and ability of victims and/or witnesses to report incidents;
- the awareness of victims of organisations where incidents can be reported;
- the degree of trust victims feel in the authorities to deal with such incidents appropriately;
- the actual occurrence of racist, xenophobic and related crime.

The gaps indicate that official data collection mechanisms often fail to capture the situation on the ground. EU Member States where victims report crimes, law enforcement officials record them, and the criminal justice system prosecutes them, are not necessarily those where most hate crimes are committed. The high numbers of recorded hate crime might simply mean that a comprehensive data recording system is in place: more people report victimisation to the police, and more cases are processed through the criminal justice system.

Table 2.1 should therefore be understood not as a reflection of the prevalence of hate crime in any given EU Member State, but rather as an illustration of the large gaps in data collection on hate crime.

Several Member States adopted strategies and undertook campaigns and initiatives aiming to increase reporting and improve recording of hate crimes in 2014. In the **Czech Republic**, the Agency for Social Inclusion launched a nationwide awareness-raising Campaign against Racism and Hate Crime, aiming to prevent bias-motivated violence.[117] In **Poland**, the Ministry of the Interior runs a multilingual nationwide campaign, 'Racism. Say it to fight it', aiming to increase awareness among foreigners and migrants of how and where to report racism and racist incidents.[118] The Police Service of Northern Ireland in the **United Kingdom** has set up a telephone line to report hate crimes in nearly 50 languages.[119] In **Spain**, an interministerial group was created to advance the systematic collection of data on official complaints

Figure 2.2: Spain: cases with racist or xenophobic elements, 2011–2013



Source: *FRA desk research, December 2014*

Table 2.1: Official data pertaining to hate crime published in 2014 by bias motivation, by EU Member State

EU Member States	Racism	Anti-Roma	Antisemitism	Islamophobia/ anti-Muslims	Religion	Extremism	Sexual orientation	Gender identity	Disability	Other
AT	61		37	12		371				93
BE	798		8				139			77
BG										
CY	8				1		1			
CZ	75	42	15			211				
DE	608		1,275			16,557				
DK										
EE										
EL	166					75	22			
ES	381		3		42		452		290	
FI	1,104		11	11	51		33	6	11	
FR	625		423	226	602	12	90			
HR	34		0							
HU	19				209					96
IE	94		2							
IT										
LT	10				2		55			
LU	29									
LV	20									
MT										
NL	1,346	7	875	150		17				
PL	835	26**	57**	14**	8**	267**				
PT										
RO										
SE	3,999	233	193	327	321	598	625	45		980
SI										
SK	159		2			159				
UK – England, Wales and Northern Ireland	33,856*		318*		2,055*		4,119*	551*	1,853*	
UK – **England and Wales**	37,484*				2,273*		4,622*	555*	1,985*	
UK – **Northern Ireland**	691*				974*		179*	8*	70*	
UK – **Scotland**			9*	48*	587*		890*	25*	154*	203*

Notes: * *Fiscal year (1 April 2013 to 31 March 2014).*
** *Data available for 1 January to 31 July 2014.*
Comparisons between Member States are not possible regarding the number of recorded crimes.
Blank entries: no data are collected or published.

Source: *FRA desk research, December 2014*

and crimes of a discriminatory nature.[120] **Spain** also introduced a new category of recorded crimes, named 'aporophobia', in 2013. The category covers hatred against poor people, and was introduced among the other hate and discrimination crimes in the Statistical System of Criminality.[121]

Authorities in the **United Kingdom** adopted two strategies on tackling hate crime. The MOPAC strategy aims to increase the reporting of hate crime, prevent hate crime and ensure justice for hate crime victims.[122] The Welsh government in its strategy focuses on prevention and awareness raising, training of staff in the statutory and voluntary sectors, supporting victims and improving multi-agency responses.[123] In **Spain**, the Ministry of the Interior created a job description for a 'hate crime police officer'. A member of the state security forces will serve as a channel of communication with different NGOs to prevent and resolve racist or xenophobic incidents.[124]

In **Greece**, a police circular was adopted which requires police officers to investigate possible racist motivations of a crime, whether as an independent motive or as one of multiple motives, and especially when the alleged offenders admit to a racist motivation or there are indications of racist motivation based on evidence or if the alleged offenders and the victims of the crime belong to different racial, religious or social groups.[125]

In **Slovakia**, the Attorney General issued an internal instruction for public prosecutors dealing with racially motivated crimes, crimes of extremism and hooliganism to designate one accredited prosecutor and one of his or her deputies to deal specifically with these crimes.[126] The Prosecution Service of the Republic of **Lithuania** and the Lithuanian Bar Association, in the framework of the Human Rights Eucation for Legal Professionals (HELP) programme funded by the Council of Europe, provided distance-learning courses for prosecutors and attorneys to improve their skills and competences when dealing with hate crime.[127]

The **Hungarian** Ministry of the Interior, together with the police, representatives of civil society and independent experts, set up a cooperation forum aiming to enhance, through multi-agency cooperation, the efficiency of responses to racism, hate crimes and other instances of intolerance.[128] In **France**, to strengthen the coordination of public authorities' actions against racism and antisemitism, the Inter-ministerial Delegation for Combating racism and antisemitism (*Délégué interministériel contre la lutte contre le racisme et l'antisémitisme*, DILCRA) was placed under the prime minister's direct authority. DILCRA will also coordinate the implementation of the national three-year plan against racism and antisemitism.[129]

2.3.4. Assessing effectiveness of data collection systems

EU Member States have different official systems in place for collecting data pertaining to hate crime. It would therefore be misleading to try to compare data or trends in collected data between the Member States. Instead, looking at trends in collected data for individual Member States is a more meaningful and accurate approach. In this way it can be assessed whether reports and records of hate crime are increasing or decreasing on the basis of percentage changes in collected data between years. However, while such trends can indicate an actual increase or decrease in hate crimes, they can also reflect changes in recording procedures.

Based on the official data published by relevant authorities across the EU Member States, FRA developed trend lines for official data pertaining to hate crime between 2011 and 2013. The trends were developed for Member States where more than 50 cases of hate crime were officially recorded and the recording procedures did not change between 2011 and 2013.

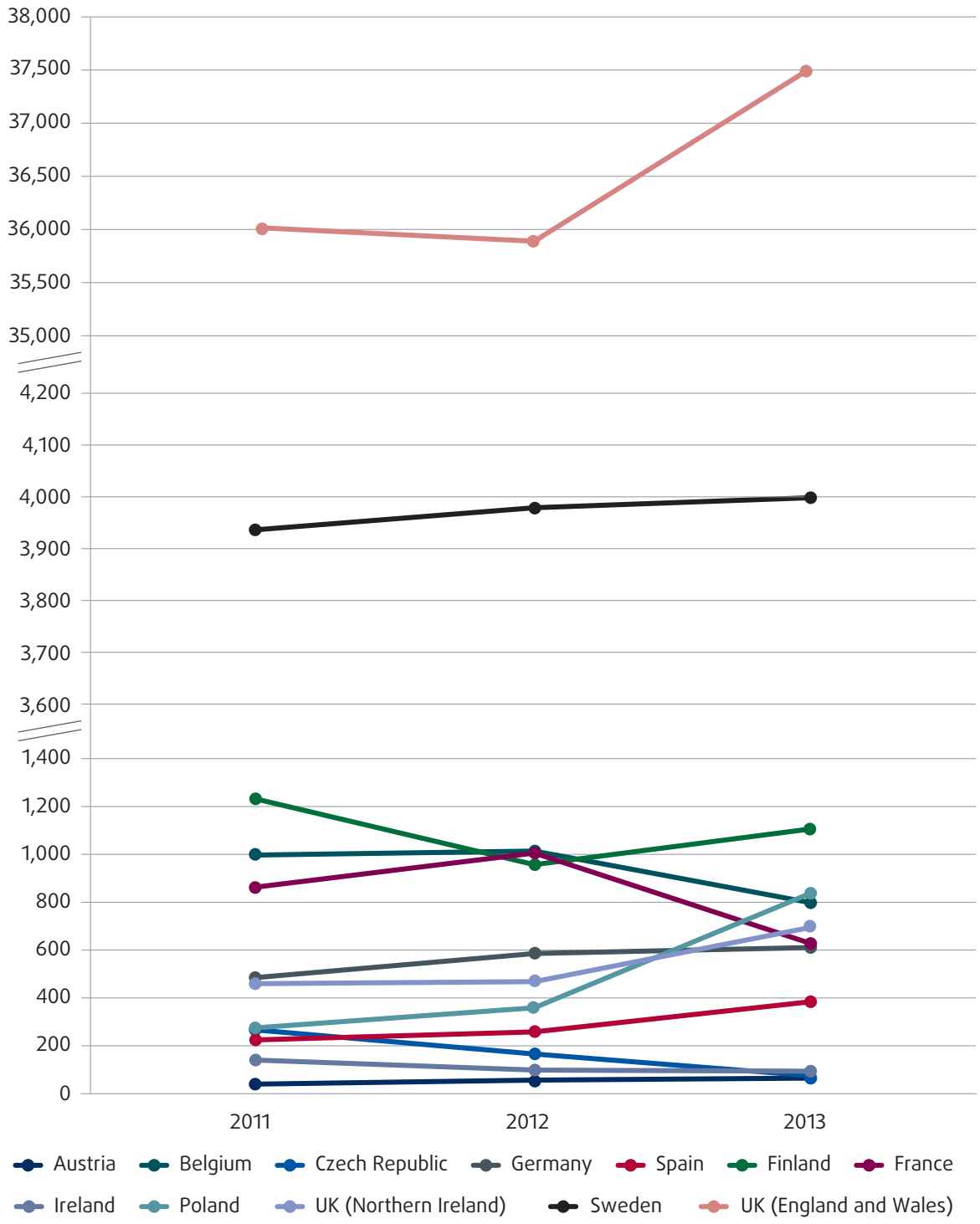
As illustrated in Figure 2.3, trends on recorded racist crime could be developed for 11 Member States. Table 2.2 provides trends that could be developed for other bias motivations: antisemitic and extremist crime for four Member States; crime with sexual orientation and religious bias for three; anti-Roma, Islamophobic/anti-Muslim and gender identity crime for two; and crime with disability bias for one.

Official data mechanisms record incidents that are reported to the authorities by victims of hate crimes. FRA surveys provide data on the extent of unreported racist crime by asking respondents if they have experienced a racist crime and, if so, whether or not they reported it to the police. The second wave of the EU-MIDIS survey (EU-MIDIS II), which is to be implemented in 2015, will provide data in the coming year to identify trends in unreported racist crime when compared with the results of EU-MIDIS I, which was carried out in 2008.

EU Member States that collect sufficiently robust data to allow for a trend analysis for all the other hate crime grounds (besides racism) are included in Table 2.2 below.

Trends in data in recorded crimes motivated by antisemitism, for example, were developed for four EU Member States: **Germany**, **France**, **Sweden** and the **United Kingdom** (England, Wales and Northern Ireland). In **Germany** and **France** there were slight increases (1.4 % and 3.6 %, respectively) in recorded antisemitic incidents between 2011 and 2013. In **Sweden**, a very slight decrease (0.3%) in antisemitic crimes occurred,

Figure 2.3: Trends in official data pertaining to racist hate crime between 2011 and 2013, published in 2014



Notes: *For more details on officially recorded data pertaining to hate crime, please refer to FRA (2012), Making hate crime visible in the European Union: acknowledging victims' rights, Luxembourg, Publications Office, Table 3, and FRA (2013), Fundamental rights: Challenges and achievements in 2012 – Annual report 2012, Luxembourg, Publications Office, Table 6.4, Table 6.5 and Table 6.6.*

Trend analysis was possible only for those Member States where data have been collected without major changes to the recording system or to the definitions used between 2011 and 2013. The assessed time period encompasses the minimum number of years needed for trend analysis. EU Member States with a small number of recorded crimes were excluded from analysis. When the number of recorded crimes is low (in this case, under 50 crimes per year), the direction and magnitude of the trend can be highly susceptible to the changes from one year to the next, making reliable trend analysis difficult.

Source: *FRA desk research, December 2014*

Table 2.2: EU Member States where trends in official data pertaining to hate crimes were identified, by bias motivation (except for racism), data published in 2014

EU Member States	Anti-Roma	Antisemitism	Islamophobia/ anti-Muslim	Religion	Extremism	Sexual orientation	Gender identity	Disability
AT					✓			
BE						✓		
CZ	✓				✓			
DE		✓			✓			
FI				✓				
FR		✓	✓					
HU				✓				
SE	✓	✓	✓	✓	✓	✓	✓	
UK – England, Wales and Northern Ireland		✓		✓		✓	✓	✓
UK – **England and Wales**				✓		✓	✓	✓
UK – **Northern Ireland**				✓		✓		✓
UK – **Scotland**						✓		✓

Source: FRA desk research, December 2014

and in the **United Kingdom** a decrease of 16.0 % in recorded antisemitic crimes was identified. Trend lines on data on anti-Muslim and Islamophobic incidents could be developed for two Member States: **France** and **Sweden**. In **France** an increase of 18.3 % was recorded, and in **Sweden** an increase of 8 %.

No trends could be identified between 2011 and 2013 because of a lack of published data, the low number of recorded crimes, or changes in recording systems or to the definitions used, for the following EU Member States: **Bulgaria**, **Croatia**, **Cyprus**, **Denmark**, **Estonia**, **Greece**, **Italy**, **Latvia**, **Lithuania**, **Luxembourg**, **Malta**, the **Netherlands**, **Portugal**, **Romania**, **Slovakia** and **Slovenia**.

Underreporting and underrecording are the main barriers to effective data collection on hate crime. A key component is whether victims of hate crime feel they can approach the police to report the incident. If the police encourage victims to report incidents and treat them with dignity, victims are more likely to come forward, and the number of recorded incidents is likely to increase. Increases or decreases in data pertaining to hate crimes observed in EU Member States may be the result of many factors, including:

- policies and measures undertaken by state and law enforcement authorities to increase reporting of hate crimes, such as:
  - implementing community policing that can strengthen community relations,
  - increasing trust in the police's ability to respond sensitively to the rights and needs of victims,
  - awareness-raising campaigns among persons at risk of becoming hate crime victims,
  - training of frontline police officers and judicial authorities that will enable them to identify, investigate and prosecute hate crimes effectively;
- initiatives and activities undertaken by NGOs and civil societies aiming to increase reporting;
- avoidance of discriminatory situations by potential victims;
- refraining from reporting by victims who assume that reporting does not help, or may harm them;

- policies and measures undertaken by state and law enforcement authorities to improve recording of hate crimes;
- the actual increase or decrease of racist, xenophobic and related crime.

Figure 2.3 and Table 2.2 illustrate that only a few EU Member States would be able to use their data collection to assess the effectiveness of their policies in countering hate crime. EU Member States need better official data collection that will enable them to accurately reflect the situation on the ground and take appropriate policy actions.

FRA conclusions

- Evidence in 2014 shows that across the EU members of minority ethnic groups, including migrants and refugees, continue to face discrimination in access to key areas of social life, such as employment, education, health and services, including housing.

EU Member States should intensify efforts to implement the Racial Equality Directive fully and effectively, in particular concerning the reporting of discrimination incidents to national equality bodies to combat discrimination more effectively.

- Evidence suggests that underreporting of incidents of discrimination experienced by migrant and ethnic groups persists. Article 10 of the Racial Equality Directive requires Member States to inform persons concerned of their rights to non-discrimination.

In this light, EU Member States should intensify awareness-raising activities targeting such persons effectively, including among bodies that can help to disseminate information such as national equality bodies, NGOs, trade unions and employers.

- Evidence in 2014 shows that incidents of racist, antisemitic and xenophobic hate crime and hate speech persist. Continuous victimisation of members of minority ethnic groups can contribute to feelings of social exclusion and alienation of entire communities, and incite radicalisation.

EU Member States should proceed with the full and correct transposition and effective implementation of the Framework Decision on Racism and Xenophobia. In addition, Member States are encouraged to adopt and implement policies and measures aiming at combating racism and hate crime, as well as deradicalisation programmes.

- Evidence shows that the internet remains a critical tool for spreading hate speech. A number of EU Member States have taken steps to counter hate speech online in 2014.

To prevent the misuse of the internet as an area where hate speech can be committed with impunity, EU Member States should assess if the police and public prosecutors' offices are sufficiently staffed and equipped to investigate and prosecute hate crime on the internet, to address cyber hate as far as necessary to meet Member States' responsibilities and standards of due diligence.

- Although several EU Member States have made efforts to improve the recording and prosecuting of hate crimes in 2014, evidence collected by FRA shows that persistent gaps exist in data collection when it comes to recording of hate crimes.

EU Member States are encouraged to provide law enforcement and judicial authorities with specialist training that will enable them to effectively identify, investigate and prosecute crimes committed with a discriminatory motive. Such specialist training would improve their understanding of the rights and needs of victims of hate crimes, and ensure that such victims are offered assistance and support in compliance with the provisions of the Victims' Directive.

- There is evidence in several EU Member States of incidents involving discriminatory misconduct and discriminatory ethnic profiling by law enforcement officials in 2014. This can undermine trust in law enforcement officials.

EU Member States should consider providing specialist training to law enforcement officials, adopting codes of conduct for the prevention of racism, and consider approaches, such as community policing, that can strengthen community relations and trust in the police's ability to respond sensitively to the rights and needs of victims.

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Endnotes

All hyperlinks accessed on 30 April 2015.

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UN & CoE

January

25 February – CoE European Commission against Racism and Intolerance (ECRI) publishes fifth reports on Belgium and Germany

February

13–19 March – CERD publishes concluding observations on Belgium, Luxembourg and Poland

March

11 April – UN Human Rights Committee issues concluding observations on the third periodic report of Latvia

23 April – CoE Parliamentary Assembly (PACE) adopts Resolution 1927 (2013) on ending discrimination against Roma children

April

May

3 June – ECRI issues fourth report on Romania

3 June – ECRI publishes conclusions on implementation of a number of priority recommendations made in its country reports on Cyprus and Lithuania, which were released in 2011

June

July

August

September – European Roma and Travellers Forum (ERTF) publishes paper on the implementation of 'Council of Europe recommendations on Roma: How do we move forward?'

16 September – ECRI issues fifth reports on Bulgaria and Slovakia, and fourth report on Slovenia

22 September – CERD publishes concluding observations on Estonia

September

October

November

December

EU

January

February

March

2 April – European Commission issues report on implementation of EU Framework for national Roma integration strategy

4 April – European Commission holds third Roma Summit, 'Going local on Roma inclusion both in the EU as well as enlargement countries'

April

May

June

July

August

September

2 October – European Commission holds high-level conference on Roma inclusion on the ground, 'The Romact experience'

16 October – European Economic and Social Committee announces ranking of 2014 Civil Society Prize: winners are organisations that contribute to Roma inclusion in Europe

31 October – European Commission issues report on discrimination against Roma children in education

October

11 November – In *Dano v. Jobcenter Leipzig* (C-333/13), the CJEU rules that economically inactive EU citizens might be refused certain "special non-contributory cash benefits" if no efforts to obtain a job are made after three months after arrival in a host EU Member State

November

December

3 Roma integration

EU Member States continued their efforts to improve Roma integration by implementing their national Roma integration strategies following the Council Recommendation of December 2013 on effective Roma integration measures. FRA supports these efforts by regularly collecting data and working with the Member States to develop monitoring methods that allow for efficient reporting on the situation of Roma in the Member States over time. At the same time, fundamental rights issues affecting Roma continued to make headlines, such as an incident of hate crime against a Roma teenager in France and evictions in Bulgaria and Greece. The European Commission initiated infringement proceedings against the Czech Republic concerning segregation in schooling. This emphasises the importance of the EU's efforts to support national strategies and action that address marginalisation and social exclusion, as well as racism and ethnic discrimination, as these are interlinked phenomena that mutually reinforce each other.

3.1. Moving forward with Roma integration

EU Member States continued in 2014 to put structures and mechanisms in place to implement their national Roma[1] integration strategies or sets of measures. The European Commission assessed these in 2012, 2013 and 2014.[2] In its 2014 report on the implementation of the EU Framework for National Roma Integration Strategies, the European Commission notes that, "three years after the adoption of the EU Framework, progress, although still slow, is beginning to take shape in most Member States".[3] EU Member States, for instance, are establishing structural preconditions indispensable for implementing their strategies, which is a first step. The report, nevertheless, also stresses that progress in the form of tangible change will be achieved when Member States demonstrate the political will to honour their commitments; when legislation is effectively combined with policy and financial measures to form structures and mechanisms that facilitate implementation; and when results are measured realistically through adequate monitoring and evaluation tools.

The implementation of national strategies is expected to intensify when EU funding becomes available through the new European Structural and Investment Funds (ESIF). ESIF partnership agreements were concluded in 2014 and the European Commission is adopting operational programmes relevant to Roma integration actions.[4] Member States continue to implement Roma integration programmes – **Slovakia**, for example, is continuing a 'health mediators' programme, a project on inclusive education and the provision of housing grants for marginalised Roma communities.[5]

> *"For the 2014–2020 period, €343 billion has been allocated to Member States from Structural and Cohesion Funds. At least €80 billion of this will be allocated to investment in human capital, employment and social inclusion through the European Social Fund (ESF). It was decided that in each country, at least 20 % (compared to the current share of around 17 %) of the ESF must be earmarked to fight social exclusion and poverty i.e. about €16 billion. A specific investment priority for the integration of marginalised communities such as the Roma has also been established."*
>
> *European Commission (2014),* Report on the implementation of the EU Framework for National Roma Integration Strategies, *p. 10*

ESIF are a key tool for Roma integration in the core areas of employment, education, health and housing.

In this regard, the ex ante conditionalities that Member States must apply to improve the situation of marginalised communities, such as the Roma, are an important tool in fulfilling their fundamental right to non-discrimination and equal access to these core areas.[6] At the same time, it is also important to effectively address issues of racism and intolerance that affect individuals, as well as community cohesion. Chapter 2 on racism, which presents information about racist incidents involving Roma, shows that these continued to affect Roma individuals and communities in 2014.

"Now it is essential to focus on the full implementation of these [Roma integration] policies, combining legal and financial measures, in order to make a real difference on the ground. Implementation is key for the success of our policies."

European Commission (2014), Speech by President Barroso at the European Roma Summit, Press release, 4 April 2014

On 4 April 2014, the Commission organised the European Roma Summit to take stock of progress made on Roma integration both in the EU as well as in enlargement countries, with a central focus on local activities and outcomes.[7] The presence of the Commission President and Vice-President, the Commissioner for Employment, Social Affairs and Inclusion and the Commissioner for Education, Culture, Multilingualism and Youth, as well as the Romanian President and several ministers from EU Member States and enlargement countries, stresses the political support for Roma integration efforts. At the same time, the major themes of the summit emphasise that the main challenges will be how to make policies inclusive for all Roma at the local level and how to ensure that EU funding reaches local and regional authorities, and that they use it effectively to ensure tangible progress in Roma integration and respect for their fundamental rights.

A number of Member States made explicit efforts to reach the local level. For example, in **Spain**, a 'Technical cooperation working group on Roma population' is expected to improve coordination with regional and local authorities.[8] **Bulgaria** developed municipal-level plans[9] and approved sector-specific action plans for important policy areas, such as on reducing early drop-outs from school. While FRA's research at the local level is ongoing, early findings show the need to focus more on the implementation of policies addressing discrimination, poverty and social exclusion. The findings reveal a number of persisting challenges, which include weaknesses in operational coordination and a lack of expertise and experience in engaging effectively with residents, in particular Roma. When designing and implementing social inclusion actions, the lack of experience in engaging effectively with Roma becomes visible. FRA findings also point to the need for improved monitoring and evaluation at local level. The Commission held national Roma contact point (NRCP) meetings in 2014; discussions there focused also on improving the contact points' capacity to coordinate the relevant actors, including ministries and ESIF managerial authorities, as well as local authorities.

FRA's research at the local level also points to the need to build up trust between Roma and public authorities. Trust may have been undermined by actions that reinforced exclusion, for example evictions from informal housing arrangements or school segregation. Efforts to build up trust, combating stereotypes and racism, can improve community cohesion and contribute to respecting and fulfilling the fundamental rights of Roma. Trust-building local initiatives can therefore usefully complement actions targeting poverty and social exclusion.

The Council of Europe was also active in encouraging member states to take bolder actions on Roma integration. ECRI made a number of recommendations in this regard. It suggests, for instance, that the **Slovenian**[10] authorities enter into discussions with representatives of the different Roma communities to find the best possible composition and functions of an effective Roma community council. ECRI also encourages the **German**[11] authorities to continue developing strategies and to include measures in favour of ethnic, religious and linguistic minorities historically present in Germany, especially Roma and Sinti, in the National Action Plan on Integration. ECRI strongly recommends that the **Romanian**[12] authorities ensure that sufficient funds be allocated and a strong impetus be given to the Strategy for Improving the Situation of the Roma. It also suggests that the **Bulgarian**[13] authorities allocate adequate funding to the National Roma Integration Strategy for it to be effective and that the **Slovak**[14] authorities evaluate, without further delay, the implementation of the National Roma Integration Strategy to measure its impact and redefine its parameters and goals where necessary.

3.1.1. Anti-Roma prejudice: a persisting challenge

Very few comprehensive and comparable EU-wide data exist on anti-Roma sentiments and prejudice. The most recent Eurobarometer survey on anti-Roma prejudice and attitudes was carried out in 2012.[15] There are, however, some data and information on specific countries suggesting that anti-Roma sentiments persist. For example, a survey in the **Czech Republic** mapping the attitudes of the majority population towards 17 ethnic groups living in the country finds that Roma rank very low in the 'antipathies rank table', with an average 'antipathy score' of 4.21 out of 5.[16] Respondents expressed their sympathies or antipathies using a five-point scale, on which 1 meant 'very sympathetic', 2 'rather likeable', 3 'neither likeable

nor unsympathetic', 4 'rather unsympathetic' and 5 'very unsympathetic'.

A survey on attitudes towards Sinti and Roma in **Germany** reveals that 20 % of the respondents would feel uncomfortable with Sinti and Roma living in their immediate neighbourhood and one out of four of the respondents were of the opinion that there are very large or large differences between Roma lifestyle and that of the majority society.[17] The survey findings also show that half of all respondents felt that Sinti and Roma provoke resentment against them through their own behaviour, and 15 % associate criminal behaviour, including theft, with the discriminatory term 'Zigeuner'.

Another **German** survey shows that racist attitudes and anti-Gypsyism are prevalent. Statements of anti-Gypsyism such as "Sinti and Roma should be banished from city centres" and "Sinti and Roma are prone to criminal behaviour" were supported by respectively 47 % and about 56 % of the respondents.[18] Similarly, an attitude survey conducted by the BVA Institute in **France** reveals a "significant increase in explicit racism", especially against Roma, Muslims and Jews.[19] A public opinion poll conducted by the Pew Research Centre in March–April 2014 in seven EU Member States shows that Roma are viewed unfavourably by a median average of about half of those surveyed (**Spain** 41 %, **Germany** 42 %, **Poland** 50 %, **United Kingdom** 50 %, **Greece** 53 %, **France** 66 %, **Italy** 85 %).[20]

Certain political parties continue to exploit anti-Roma prejudice by openly adopting anti-Gypsy rhetoric. As ▶ Chapters 1 and 2 show, a number of EU Member States recorded anti-Roma marches, hate crime and hostile rhetoric. Fragmented and biased stereotypical images of Roma associated with extreme poverty and reliance on social benefits can potentially fuel prejudice. In Member States with advanced and efficient social protection schemes, such as **Germany** and the **United Kingdom**, anti-Roma prejudice can be reinforced by media reports of allegations of misuse of the social welfare systems by foreign nationals, including those with Roma origin, dubbed 'benefit tourism'. The judgment of the Court of Justice of the European Union (CJEU) in the *Dano v. Jobcenter Leipzig* (C-333/13) case is relevant to this sensitive issue since it refers to the right of EU Member States to refuse social benefits to economically inactive EU citizens from abroad who exercise their right to freedom of movement solely to obtain another Member ▶ State's social assistance (see Chapter 2 on racism, xenophobia and related intolerance).

3.1.2. Legal action to tackle discrimination against Roma

In 2014, a number of examples of such legal action were recorded at both national and European level. For example, in September 2014, the European Commission initiated infringement proceedings against the **Czech Republic** under Article 258 of the Treaty on the Functioning of the European Union. The proceedings question in particular the **Czech Republic**'s compliance with its obligations under Article 2 and Article 3 (1) (g) of the Racial Equality Directive,[21] which prohibit discrimination in education on the grounds of race or ethnic origin. The European Court of Human Rights (ECtHR) issued a landmark judgment in *D.H. and Others v. the Czech Republic* in 2007.[22] It held that the practice of placing Roma children in special schools for children with learning difficulties violated Article 14 (prohibition of discrimination) and Article 2 of Protocol No. 1 (right to education) of the European Convention on Human Rights (ECHR).[23] The Czech Republic failed to provide appropriate evidence that Roma children are not discriminated against either in legislation or in practice.[24]

> *"The persistence of segregation of Roma children in special schools or classes remains a key challenge, with no simple and clear-cut solutions."*
>
> *European Commission (2014), Report on the implementation of the EU framework for National Roma Integration Strategies, p. 9*

Unequal access to education takes various forms, for example the practice of placing Roma children in segregated or 'special' schools (schools with simplified curriculum). FRA's Roma survey shows that as many as 23 % of Roma children up to the age of 15 surveyed in the **Czech Republic** attend special school and classes that are mainly for Roma.[25] The corresponding proportions are 20 % in **Slovakia** and 18 % of the *gens du voyage* in **France**.

The Regional Court of Nyíregyháza in **Hungary** took a decision regarding school segregation, which the Regional Court of Appeal of Debrecen upheld on 6 November 2014.[26] The court ordered the city council and the school run by the Greek Catholic Church to stop segregating Roma children and refrain from future violations. Later in 2014, the Hungarian parliament amended the Public Education Law, in accordance with which government decrees may set special conditions to foster equal opportunities in education in case of ethnic minority schools.[27] The government justified this provision with the objective of providing equal access to quality education by defining the extra educational services that must be provided and the regulatory guarantees that are necessary in certain areas. According to critics, however, this means that the government can decide where to allow segregation to continue. The amendment includes a clause in accordance with which the government, when making such a decree, must especially keep in sight the prohibition on illegal segregation.[28]

For housing, the Ombudsperson for Minorities in **Finland** asked the National Discrimination Tribunal

to examine a case of refusal to rent an apartment to a Roma person.[29] The tribunal prohibited the lessor from continuing and repeating such ethnic discrimination.

In the spring of 2014, the European Roma and Travellers Forum (ERTF) submitted a collective complaint against the **Czech Republic** to the European Committee of Social Rights.[30] The ERTF complained that the Czech government did not comply with the European Social Charter provisions in ensuring rights to housing and health for members of the Roma community. Roma are facing spatial segregation and forced evictions, and have difficulties in accessing adequate housing and health provision. The European Committee of Social Rights is expected to deliver its decision in 2015.

3.1.3. "Nothing about us without us": Roma participation

The Common Basic Principles on Roma Inclusion,[31] in particular concerning the participation of Roma, should inform the design and implementation of Roma integration strategies, policies and actions, as noted in the 2011 European Commission communication on the *EU Framework for National Roma Integration strategies up to 2020*.[32] This is necessary to ensure that those who will benefit from these policies and actions are involved in their design and implementation, and also in assessing their impact. Member States are making efforts to achieve this, including through activities of NRCPs. In **Austria** for example, the NRCP regularly hosts meetings of the Roma Dialogue Platform, bringing together representatives of federal, regional and local administrative authorities, academia and Roma civil society organisations. **Croatia** maintains regular contacts with the focal point representatives of the Decade of Roma Inclusion Secretariat and with other Roma representatives and non-governmental organisations (NGOs); the Commission for National Roma Iintegration Strategies Monitoring, presided over by the Vice Prime Minister, consists of equal numbers of representatives of key line ministries and Roma communities (seven each). In **Portugal**, a Consultative Group for the Integration of Roma Communities was created and civil society is part of the group. In **Greece**, the NRCP cooperates with Roma civil society actors and hosts meetings to encourage dialogue.

Civil society organisations are part of working groups in **Belgium**, **Italy** and **Slovakia**. In **Bulgaria**, the Commission for the Implementation of the National Strategy of the Republic of Bulgaria formally cooperates with civil society. In **Spain**, civil society organisations are represented on the Roma State Council, and there are similar bodies at the regional and local level. In **Hungary**, Roma are also involved in two bodies, namely the Roma Coordination Council and the Evaluation Committee of the National Strategy 'Making Things Better for Our Children'. In the **Czech Republic**, Roma civil society representatives participate in the Government Council for Roma Minority Affairs and in the relevant committees of the council where Roma-related policies and documents are discussed. In **Ireland**, the NRCP coordinates the National Traveller Monitoring and Advisory Committee in the Traveller Policy Unit of the Department of Justice and Equality, where civil society is also represented. In **Finland**, the National Advisory Board on Roma Affairs serves as a platform for consultation and dialogue with civil society.

Promising practice

Evaluating Roma integration efforts through 'shadow' monitoring reports

The Decade of Roma Inclusion Secretariat published in 2014 a series of civil society monitoring reports on progress in implementing the National Roma Integration Strategies in 2012 and 2013. The monitoring reports analyse and evaluate the Decade national action plans and the National Roma Integration Strategies.

The Secretariat coordinates civil society monitoring of Roma inclusion efforts together with civil society coalitions, both led by Roma and with Roma engagement. It also receives guidance from the Open Society Foundation's 'Roma Initiatives' Office and the Making the Most of EU Funds for Roma Programme.

For more information, see: Decade of Roma Inclusion Secretariat, Civil society monitoring reports

Civil society has voiced its concerns in various assessments and evaluation reports prepared by national and international organisations. The European Roma Information Office network has published a number of reports on the role of local authorities in integrating Roma better[33] and on the role of equality bodies in protecting Roma against discrimination.[34] The Open Society Institute released a toolkit on programming structural funds for Roma inclusion;[35] it provides guidance on how to design meaningful projects that reach out to those who are most in need.

Local-level engagement through viable community-level structures is an essential element in Roma integration actions. FRA is conducting qualitative action research in several localities across the EU to identify drivers and barriers in the process of Roma integration at local level.[36] As already presented in last year's report,[37] this research examines how local-level stakeholders, including Roma and non-Roma residents and civil society organisations, are engaging with local authorities and other actors in the design, implementation, monitoring and evaluation of local-level inclusion actions, policies and strategies. In 2014, two localities piloted the research: Hrabušice, Slovakia, and Mantua,

Italy. The pilot tested different ways of engaging with local actors in Roma integration activities and identified a number of issues, including the effectiveness of operational coordination between public authorities at different governance levels – national, regional and local –, the issue of trust between local authorities and Roma residents, and the need to combat racist stereotypes and prejudice effectively.

3.2. "What gets measured gets done": towards rights-based indicators on Roma integration

Respect, protection, promotion and fulfilment of fundamental rights are strengthened by applying robust methodologies that can accurately and systematically assess progress. These methodologies need to rely on effective indicators that can measure outcomes and assess the effectiveness of legal and policy measures that aid in understanding the drivers and barriers in policy implementation. Such a complex endeavour requires addressing conceptual challenges and interpretative inconsistencies. Establishing a robust rights-based indicator framework has several positive effects, particularly in strengthening accountability and transparency of the actions of 'duty bearers'.

In response to the request in the 2011 European Commission communication on the EU Framework for national Roma integration strategies and the 2013 Council recommendation on effective Roma integration measures in the Member States,[38] FRA established a working party on Roma integration indicators, as a subgroup of the European Commission's network of NRCPs.[39] Since 2012, FRA has coordinated the working party in close cooperation with the Commission. The number of Member States participating in the working party grew from 13 in 2013 – **Belgium**, **Bulgaria**, the **Czech Republic**, **Croatia**, **Finland**, **France**, **Hungary**, **Italy**, the **Netherlands**, **Romania**, **Slovakia**, **Spain** and the **United Kingdom** – to 17 in 2014, with **Austria**, **Greece**, **Ireland** and **Portugal** joining. The objective of this group is to develop and pilot a rights-based framework of Roma integration indicators (presented in detail in FRA's Annual report 2013) that can comprehensively document progress made in reference to fundamental rights standards. In 2014, the working party set out process indicators that can show progress in implementing the measures outlined in the Council recommendation,[40] and four Member States piloted the indicators.

To populate the indicators with data, the working party exchanged knowledge and experience of ethnically disaggregated data collection – an essential element in tracking progress on Roma integration. The latest round of population censuses, from 2011 in most countries, hints at some progress in this regard. A number of countries with significant Roma populations (**Bulgaria**, **Croatia**, the **Czech Republic**, **Hungary**, **Romania** and **Slovakia**) have included ethnic identifiers in their censuses and have data disaggregated by ethnic origin. Another promising approach is including ethnic identifiers in large-scale sample surveys, such as the EU's Survey on Income and Living Conditions (EU-SILC) or the Labour Force Survey (LFS). Including such ethnic identifiers has been piloted in **Hungary** and is planned in **Bulgaria**.

Promising practices

Using ethnic markers in statistical data collection

To monitor progress in social inclusion, users need statistical information on ethnicity. The **Hungarian** Central Statistical Office therefore included a question on ethnic origin in large sample surveys. The method was tested during the 2011 population census, where Roma accounted for 3.2 % of the total population. The Labour Force Survey covers 68,000 people aged 15–74 years in 38,000 households and uses two questions on ethnicity to measure dual ethnic identity. The sample covered 3,700 Roma people between the first quarter of 2013 and the second quarter of 2014. Only 241 did not answer, and Roma were 3.8 % of the total population. The European Health Interview survey conducted in 2014 used the same method. In 2014, ethnicity was also included in EU-SILC, which covered 20,000 people aged 16 years and over in 10,000 households. The proportion of Roma people in the total survey population was 4.2 %. The information allows the core outcome indicators to be calculated for monitoring the implementation of the national social inclusion strategy as regards Roma.

For more information, see: Központi Statisztikai Hivatal (KSH), Munkaerő-felmérés (MEF) and 'Európai lakossági egészségfelmérés'

Some of the Member States use additional instruments to collect data on Roma. In **Spain**, ad hoc surveys are carried out. The second national survey on Roma health (*Segunda Encuesta Nacional de Salud a Población Gitana 2013–2014*) took place in 2013 and 2014 and the results will be released in March 2015. In the **Czech Republic**, the Ministry of Labour and Social Affairs commissioned an update of the 'socially excluded localities' analysis.[41] The original analysis was prepared in 2006[42] and was used as a source of data for social inclusion work in the country. The current update will serve as a basis for defining the priorities in this area for the new ESIF programming period.

Croatia and **Slovakia** have adopted a different approach, developing versions of an 'Atlas of Roma communities'. In both, data were collected at the level of localities populated by Roma, which were identified on the basis of census data and information from civil society. In **Croatia**,[43] only one county, Medjimurje, was covered. The intention is to extend the exercise to other counties in the future. In **Slovakia**,[44] the atlas covered the entire country and was funded from the national budget. The atlases in both countries have been used to design county-level (**Croatia**) and country-level (**Slovakia**) programming documents for implementing Roma integration actions.

Some Member States intend to use ESIF for monitoring and evaluation. According to its NRCP, **Slovakia**, for example, envisages a national project on monitoring and evaluation of Roma inclusion policies under the European Social Fund (ESF) for 2015–2020.[45] This project will cover four substantive areas: monitoring framework consultation, data collection, analytical work and providing an information portal on the national Roma integration strategy. Similar projects are also planned in **Bulgaria**, **Romania** and **Spain**.

Promising practices

Mapping Roma communities' socio-economic and fundamental rights situation

In November 2014, the Romanian Institute for Research on National Minorities (*Institutul Național pentru Studierea Problemelor Minorităților Naționale*) started a two-year project collecting information on the socio-economic and fundamental rights situation of the Romanian Roma communities. It will generate local-level data on their status in society, needs and priorities, as well as on the available material and human capital. The participation of local residents is an important element of this project, which will develop and train a network of community focal points that will gather real-time, relevant and reliable data on Roma communities.

The Romanian Institute for Research on National Minorities is a government body tasked with conducting research on the national minorities in Romania. The project to establish a 'Socio-graphic mapping of the Roma Communities in Romania for a community-level monitoring of changes with regard to Roma integration' is funded by the EEA and Norwegian Financial Mechanism 2009–2014 as part of the programme 'Poverty alleviation in Romania', which targets local Roma communities, local-level administration and civil society actors.

For more information, see: Romanian Institute for Research on National Minorities, Socio-graphic mapping of the Roma communities in Romania for a community-level monitoring of changes with regard to Roma integration (SocioRoMap)

In 2014, FRA completed the preparatory work for the next wave of its EU-MIDIS survey. It will cover Roma populations where they can be sampled randomly as they were in the previous Roma survey, conducted in 2011. The survey will collect household data on socio-economic characteristics in the areas of employment, education, health and housing. A particular focus will be on educational attainment and reasons for early drop-out. It will further ask respondents about their experiences of discrimination and rights awareness. The results are planned to be released in 2016 and will provide trends over time in comparison with the previous survey findings to identify changes over the past four years.

FRA conclusions

- Evidence shows that, in 2014, efforts by the EU and its Member States to fulfil the fundamental rights of Roma are ongoing, with modest progress in the implementation of NRISs. The Commission's report on the application of the equality directives confirms that there is insufficient use of positive action. Such measures can usefully fight discrimination against Roma.

EU Member States should intensify efforts using the ESIF to speed up the implementation of their national Roma integration strategies. Moreover, they have to make sure to observe obligations flowing from EU legislation, including the Racial Equality Directive.

- FRA research shows that, although structures of cooperation among actors involved in Roma integration are gradually being put in place, their operational coordination remains a challenge. Barriers are also identified in the capacity and willingness of local actors, including Roma, to participate effectively and in a meaningful way.

Member States are encouraged to ensure that their NRCPs are empowered and resourced to coordinate actions, especially by local authorities, more effectively on the ground and to promote the active and meaningful participation of Roma residents in planning, implementing and evaluating relevant local actions.

- Past surveys of Roma households show important differences in the socio-economic and living conditions of Roma and their non-Roma neighbours, which can be influenced by intolerance and discrimination.

Member States are encouraged to include measures specifically addressing intolerance and racism in all actions implementing their National Roma Integration Strategies.

- FRA research, as well as other evidence, shows that building mutual trust and respect fosters community cohesion and is an essential element for successful social integration efforts. These elements can be incorporated in actions implementing national Roma integration strategies on the ground.

Member States should consider incorporating trust-building and community cohesion measures in all actions implementing their National Roma Integration Strategies.

- Given the continuing forms of discrimination, segregation and exclusion, there is a need for comprehensive monitoring of Roma integration efforts, to ensure that they are on track and produce positive results.

The rights-based indicator framework developed by several Member States, FRA and the Commission can be a valuable tool for assessing concrete actions, measures and outcomes against rights standards and EU policy targets. Member States should consider testing and using the rights-based indicator framework developed by the working party on Roma integration indicators.

- There is evidence of continuing segregation of Roma children in education and of Roma women facing particular challenges.

Member States are encouraged to continue their efforts to stop any practice segregating Roma children in education and to secure their fundamental right to equal access to good-quality schooling. Promoting gender equality should be an important priority in the implementation of national Roma integration strategies. Outcomes in this respect should be effectively monitored.

Index of Member State references

Endnotes

All hyperlinks accessed on 30 April 2015.

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UN & CoE

January

7 February – CoE launches communication for integration (C4i) project to combat prejudice, stereotypes and racism

February

March

15 April – UN High Commissioner for Refugees (UNHCR) issues observations on current asylum system in Bulgaria

April

13 May – UNHCR issues 'Central Mediterranean Sea Initiative: EU solidarity for rescue-at-sea and protection of refugees and migrants'

May

24 June – CoE Parliamentary Assembly (PACE) adopts two resolutions on irregular migration crossing the Mediterranean Sea: Resolution 1999 (2014) on the left-to-die boat: actions and reactions and Resolution 2000 (2014) on the large-scale arrivals of mixed migratory flows on Italian shores

25 June – PACE adopts Resolution 2006 (2014) on the integration of migrants: the need for a pro-active, long-term and global policy

June

1 July – In *Conference of European Churches (CEC) v. the Netherlands* (Complaint No. 90/2013), the CoE European Committee of Social Rights rules on the right of irregular migrants to shelter

1 July – In *S.A.S. v. France* (No. 43835/11), the ECHR upholds the face veil ban, as justified under the state's obligation to secure conditions under which individuals can live together in their diversity

24 July – In *Kaplan and others v. Norway* (No. 32504/11), the ECtHR finds disproportionate a five-year entry ban separating a father from his sick daughter

July

August

10 September – CoE promotes new approach to managing increasingly diverse societies based on the concept of 'diversity advantage' through a worldwide contest meant to raise awareness about the benefit of diversity

September

3 October – PACE adopts Resolution 2020 (2014) on the alternatives to immigration detention of children

21 October – In *Sharifi and Others v. Italy and Greece* (No. 16643/09), the ECtHR rules that automatic return to Greece of persons arriving irregularly by boat violates the ECHR

23 October – Office of the High Commissioner for Human Rights (OHCHR) issues recommended principles and guidelines on human rights at international borders

28 October – UNHRC issues General Comment No. 35 on the right to liberty

October

4 November – In *Tarakhel v. Switzerland* (No. 29217/12), the ECtHR rejects transfer under Dublin Regulation of an Afghan family to Italy without obtaining individual guarantees of age-appropriated treatment after transfer

November

10–11 December – UNHCR protection dialogue on 'Protection at sea'

December

EU

16 January – In *Flora May Reyes v. Migrationsverket* (C-423/12), the CJEU defines the concept of dependant in the Free Movement Directive (2004/38/EC)

30 January – European Commission adopts Dublin Implementing Regulation ((EU) 118/2014)

30 January – In *Diakite v. Commissaire général aux réfugiés et aux apatrides* (C-285/12), the CJEU interprets the existence of internal armed conflict required for subsidiary protection

January

4 February – European Parliament adopts a resolution on undocumented women migrants in the EU (2013/2115(INI))

26 February – EU adopts Seasonal Workers Directive (2014/36/EU)

27 February – In *Federaal agentschap voor de opvang van asielzoekers v. Selver Saciri and Others* (C-79/13), the CJEU confirms asylum seekers' right to family housing

February

28 March – European Commission adopts communication on EU return policy

March

3 April – European Commission issues guidance on Family Reunification Directive (2003/86/EC)

16 April – EU adopts Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement

16 April – EU adopts two new funds in the area of migration and home affairs covering 2014–2020: Asylum, Migration and Integration Fund, and Internal Security Fund

April

15 May – EU adopts Regulation ((EU) 656/2014) on Frontex-coordinated sea operations and Intra-Corporate Transfers Directive (2014/66/EU)

22 May – European Commission implementation reports on Blue Card Directive (2009/50/EC) and Employer Sanctions Directive (2009/52/EC) reveal deficiencies in their transpositioninto national law

May

5 June – In *Mahdi* (C-146/14 PPU), the CJEU clarifies various aspects of detention and judicial review of its extension

5–6 June – JHA Council issues conclusions on the integration of third-country nationals

26 June – European Commission proposes to amend the provision on unaccompanied children (Article 8 (4)) of the Dublin Regulation ((EU) 604/2013)

26–27 June – European Council adopts strategic guidelines for legislative and operational planning for the coming years within the area of freedom, security and justice

June

10 July – In *Dogan v. Bundesrepublik Deutschland* (C-138/13), the CJEU interprets language requirements for family reunification

17 July – In *Pham v. Stadt Schweinfurt, Amt für Meldewesen und Statistik* (C-474/13) and *Bero v. Regierungspräsidium Kassel* and *Bouzalmate v. Kreisverwaltung Kleve* (Joined cases C-473/13 and C-514/13), the CJEU rules on special facilities for persons in return procedures

17 July – In *Tahir v. Ministero dell'Interno and Questura di Verona* (C-469/13), the CJEU confirms requirements that family members need to fulfil under the Long-Term Residence Directive; in *Noorzia v. Bundesministerin für Inneres* (C-338/13), the CJEU confirms possibility of minimum age requirement for family reunification of spouses

July

August

4 September – In *Air Baltic v. Valsts robežsardze* (C-575/12), the CJEU rules that a uniform visa affixed to an invalid travel document is not automatically invalidated

10 September – In *Ben Alaya v. Bundesrepublik Deutschland* (C-491/13), the CJEU prohibits imposing requirements for the admission of students additional to those listed in the Students' Directive (2004/114/EC)

September

17 October – European Commission issues mid-term review of EU anti-trafficking strategy and report on application of Directive 2004/81/EC on the residence permit issued to victims of trafficking

October

November

2 December – In *A B and C v. Staatssecretaris van Veiligheid en Justitie* (Joined cases C-148/13 to C-150/13), the CJEU confirms prohibition of methods of assessing credibility of asylum claims based on sexual orientation that infringe human dignity

17 December – European Parliament calls for safe and legal access to EU asylum system

18 December – In *Centre public d'action sociale d'Ottignies-Louvain-La-Neuve v. Abdida* (C-562/13), the CJEU confirms that claims based on serious illness must suspend the removal, as well as EU Member States' obligation to provide basic needs to ensure emergency healthcare until removal

18 December – In *M'Bodj v. Belgian State* (C-542/13), the CJEU clarifies that provision of social welfare and healthcare of Qualification Directive (2011/95/EU) does not apply to persons granted a right to stay on humanitarian grounds based on health considerations

December

4 Asylum, borders, immigration and integration

An estimated 3,280 persons died at sea in 2014 while attempting to reach a haven in Europe, and the number of those rescued or apprehended at sea quadrupled compared with 2013. The number of displaced persons worldwide reached Second World War levels in 2014. Many move on from where they first arrive, with Germany and Sweden together receiving almost half of the asylum applications submitted in the EU. Member States at the external borders are put under pressure to ensure that new arrivals are registered in Eurodac, the EU database set up to assist in determining which Member State is responsible for examining an asylum application under the Dublin Regulation. Migration is one of the 10 priorities of the new European Commission. The equitable participation of migrants and their descendants in society remains a major challenge in many countries. Xenophobia, extremism and racist violence against migrants and refugees persist. Many Member States have policies and measures in place, but there is little evidence that their impact on the ground is effectively monitored.

4.1. Emergency at borders continues

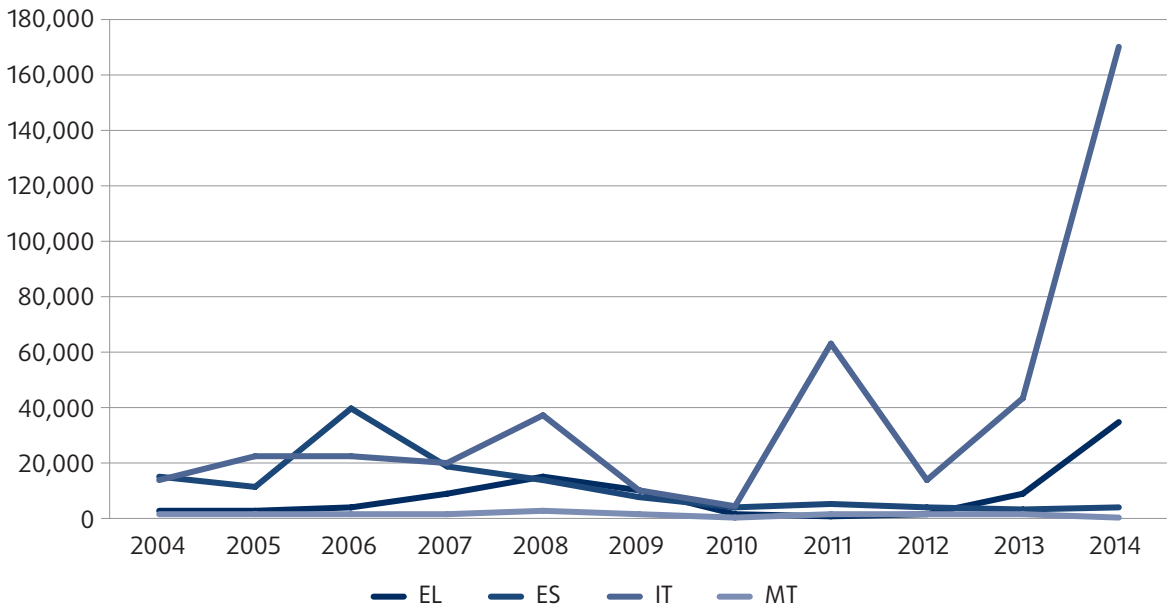
For the first time since the Second World War, the number of refugees, asylum seekers and internally displaced people worldwide exceeded 50 million people in 2013, according to figures released in mid-2014 by the UN High Commissioner for Refugees (UNHCR). In what UNHCR called "the worst humanitarian crisis of our time", Syrians became the largest refugee population.[1] The other countries from which refugees mainly originate are Afghanistan, Somalia and Sudan.[2]

Most refugees find safety in their regions of origin. By December 2014, Iraq, Jordan, Lebanon and Turkey were hosting over 3.6 million Syrian refugees, compared with some 180,000 Syrians who submitted an asylum application in all 28 EU Member States combined from January 2012 to December 2014, according to Eurostat.[3] By December 2014, almost 1,150,000 Syrians had been registered in Lebanon as refugees, thus making up over a quarter of Lebanon's population.

Asylum applications in the 28 EU Member States rose to 625,000 in 2014, from 432,000 in 2013.[4] Almost half of the applications were submitted in **Germany**, where applications doubled compared with 2013, and **Sweden**. As Figure 4.1 illustrates, a substantial number of applicants arrived in southern Europe by crossing the Mediterranean Sea and then moved on, usually without applying for asylum in the EU Member State they reached first. At the point of entry, many of them were not fingerprinted for Eurodac, the EU database set up to assist in determining which Member State is responsible for examining an asylum application under the Dublin Regulation. This triggered a discussion about the possibility and appropriateness of using coercive measures to force third-country nationals to give their fingerprints.[5]

This phenomenon raises further questions about the effectiveness of the Dublin system, which uses a hierarchy of criteria to define the Member State responsible for examining an asylum application. Member States at the EU's external land and sea borders have already questioned the fairness of the system in previous years, since it gives considerable importance to the place where asylum seekers first enter the EU when assigning responsibilities to examine an asylum application.

Figure 4.1: Irregular arrivals of third-country nationals by sea, in four EU Member States, 2004–2014



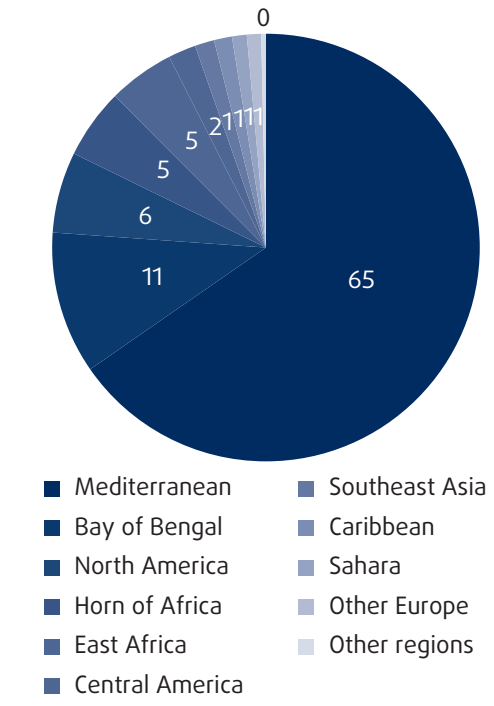
Note: *In addition, 849 persons arrived by sea in an irregular manner to Cyprus in 2014.*

Source: *National police data, 2014*

Because there are limited opportunities to enter the EU lawfully, people in need of protection continued to resort to smuggling networks to reach safety. In the central Mediterranean, irregular arrivals by sea increased substantially – 170,100 persons reached **Italy** alone (Figure 4.1). Most of them were people likely to be in need of protection fleeing countries such as Eritrea or Syria. The majority of them were rescued under the auspices of *Mare Nostrum*, a large rescue at sea operation Italy launched on 18 October 2013 in response to the tragedy near Lampedusa costing the lives of 365 persons.[6] The military vessels deployed by Italy as part of the *Mare Nostrum* operation remained at sea until the end of 2014, although the operation scaled down after the start of the Frontex-coordinated *Triton* operation in November. Unlike *Mare Nostrum*, the main objective of *Triton* is border surveillance and not rescue at sea, although it also contributed to the detection and rescue of significant numbers of people in distress.

The perilous crossing of the Mediterranean Sea resulted in more deaths than ever before. The International Organization for Migration (IOM) estimates that 3,279 people died in the Mediterranean from January to December 2014, accounting for an estimated 65 % of all deaths at borders (Figure 4.2).[7] The increase in fatalities is likely to be the result of the higher number of people attempting to cross the central Mediterranean: almost three times as many as during the Libyan civil war in 2011.

Figure 4.2: Regions in which migrants died at borders worldwide, 2014 (%)



Notes: *N = 5,017.*

Regions generally correspond with UN classifications of regions. East Africa excludes the horn of Africa. Deaths while trying to reach Spanish enclaves are included in totals for the Mediterranean. North America refers to deaths along the United States–Mexico border.

Source: *IOM, 2015*

Irregular arrivals also continued at the EU's land borders. In the last few months of the year, arrivals increased significantly at the **Hungarian** border with Serbia, with most people coming from Kosovo. **Bulgaria** completed the construction of a 30-km fence on parts of its border with Turkey, thereby continuing the trend of building fences around the EU's external borders.

Thousands of migrants tried to reach **Spanish** territory by climbing over the fences around the cities of Ceuta and Melilla, the two Spanish enclaves in North Africa. A new draft law on public safety amending the Aliens Act proposed to legalise the immediate removal of those migrants caught trying to cross the border irregularly. Both the European Commission[8] and the Council of Europe Commissioner for Human Rights[9] criticised this development. At the same time, Spanish authorities also took steps to enable individuals who manage to reach the border-crossing point to apply for asylum.

By the end of 2014, all 30 Schengen states were connected to Eurosur, a tool for the exchange of information on incidents, patrolling assets and other information gathered at the EU's external borders. Eurosur serves to combat irregular migration and cross-border crime, but also to contribute to protecting migrants and saving their lives. Several EU Member States improved information exchange and enhanced cooperation with the Maritime Rescue Coordination Centres. Further efforts are however needed both inside and outside the framework of Eurosur to help protect migrants and prevent fatalities at sea.[10]

In May 2014, the European Parliament and the Council of the EU adopted Regulation (EU) No. 656/2014, setting rules for Frontex-coordinated sea operations.[11] It provides guidance to ensure compliance with the principle of *non-refoulement* during sea operations and addresses the sensitive issue of where migrants intercepted or rescued during sea operations should be disembarked. It also states that migrants intercepted or rescued on the high seas must be disembarked in the EU Member State hosting the Frontex-coordinated operation, whenever practical or legal considerations (thus including the principle of *non-refoulement*) bar disembarkation in a non-EU country. The first annual report of the Frontex Consultative Forum also describes the fundamental rights challenges in sea operations.

Bulgarian border police stand near a barbed wire fence in the Bulgarian-Turkish border, 14 July 2014.

(c) Reuters/Stoyan Nenov

Promising practice

Receiving asylum applications at land border-crossing points

Not many persons claim asylum at land border-crossing points, a 2014 FRA report on fundamental rights at land border crossing points shows. After the wave of demonstrations and civil unrest in Ukraine, **Polish** authorities, however, moved to facilitate access to international protection for asylum seekers at the Ukrainian land border. The Office for Foreigners established a dedicated phone line that people can call for information in Ukrainian on the asylum procedure and assistance in seeking asylum. Asylum information is displayed at border-crossing points and standard operating procedures are in place to handle asylum requests. This resulted in an increase in the number of applications lodged at Polish border-crossing points with a third country: 4,714 persons, mostly Russians and Ukrainians, requested asylum at Polish border-crossing points in 2014. Similarly, **Spain** announced the establishment of asylum offices at the border-crossing points with Morocco in Ceuta and Melilla and, because procedures at those border-crossing points were more accessible between September and December 2014, 399 persons, all from Syria, requested protection.

Sources: FRA (2014), Fundamental rights at land borders: findings from selected European Union border crossing points, *Luxembourg, Publications Office; Polish Ministry of the Interior; Spanish National Police*

Although the EU established new legal safeguards to ensure compliance with the principle of *non-refoulement* in Frontex-coordinated sea operations, the situation at external borders deteriorated in 2014. Various non-governmental organisations (NGOs) reported instances in which persons were pushed or turned back at various sections of the EU external border, particularly in **Bulgaria**, **Greece** and **Spain**. Table 4.1 lists the main NGO reports issued in 2014.

Some reports are particularly sobering, as the interview notes shared by UNHCR show.

Table 4.1: Selected civil society reports on refoulement at the EU's external borders, 2014

ProAsyl (2014)	Pushed back: Systematic human rights violations against refugees in the Aegean Sea and at the Greek–Turkish land border
Platform for International Cooperation on Undocumented Migrants (20 March 2014)	Recommendations for EU policy to address 'push-backs' of migrants' rights in Greece
Amnesty International Greece (29 April 2014)	Greece: Frontier of hope and fear: Migrants and refugees pushed back at Europe's border
Human Rights Watch (29 April 2014)	Containment plan: Bulgaria's pushbacks and detention of Syrian and other asylum seekers and migrants
16 Spanish academics (27 June 2014)	"Expulsiones en caliente": Cuando el Estado actúa al margen de la Ley
Human Rights Watch (18 September 2014)	Bulgaria: New evidence Syrians forced back to Turkey. EU should press Sofia to investigate, provide protection
Human Rights Watch (21 October 2014)	Spain: Excessive force in Melilla. Ensure accountability; halt summary returns
Amnesty International, European Council on Refugees and Exiles, Human Rights Watch, Rights International Spain (6 November 2014)	Joint letter to Commissioner Avramopoulos to express their grave concern in relation to proposed changes to Spanish immigration law that would formalize the documented practice of summary expulsions to Morocco from Spain's enclaves in North Africa
Médecins Sans Frontières (3 December 2014)	EU and Greece turn their backs on refugees arriving at Greek islands

Source: FRA, 2014

"Around midnight a boat [with Syrian refugees] was intercepted by the Greek coast guard. […] The coast guards […] destroyed the motor of the boat and tried to make a hole in the wooden floor. […] One of the persons shouted that he was working for [a human rights organisation, whereupon] the coast guard pulled off. [One person] managed to repair the motor, but when the group started to continue their journey towards the Greek coast, the coast guard vessel came back. They fired in the air, […] threw a rope [and] asked the group to get on board the coast guard vessel. The coast guard vessel departed from the Greek coast line towards the high seas. […] The [coast guard then] asked the group to go back to their own boat [and threw their mobile phones] into the sea. […]. The Greek coast guard again tried to make a hole in the boat [and] left. […] The boat did not have life vessels for everybody. [The Syrians thought] they were left out in the open sea to die. One of the [persons] who managed to hide his mobile called the Turkish Coast Guards and asked them to come and rescue them. […] When […] they could not locate him, he called an emergency number in the UK. Pretending that he was an American citizen, he asked them to locate him through his mobile [and] give the data to the Turkish coast guard. Shortly afterwards a [Turkish coast guard] vessel rescued the group."

Source: Extracts from UNHCR interview notes, 26 October 2014

In two Grand Chamber judgments, the European Court of Human Rights (ECtHR) reaffirmed the need to ensure that intra-EU transfers carried out under the Dublin Regulation are applied in a manner compatible with the European Convention on Human Rights (ECHR). It indicated that the Dublin system could not be used to justify any form of collective or indiscriminate returns. The judgment on *Sharifi and Others v. Italy and Greece* condemned **Italy** for automatically returning persons arriving from Greece at Italian ports. The authorities violated their rights by handing these arrivals over to ferry captains, thus depriving them of access to the asylum procedure or any other remedy.[12] In *Tarakhel v. Switzerland*, the ECtHR ruled that there would be a violation of Article 3 of the ECHR if a family with minor children who applied for international protection were returned to **Italy** under the Dublin Regulation without Switzerland having first obtained the Italian authorities' guarantees that the applicants would be taken charge of in a manner adapted to the children's ages and that the family would be kept together.[13]

Finally, concerning border checks, some EU Member States and the European Parliament expressed concerns about the costs and overall feasibility of certain elements of the European Commission's 2013 proposal for a Smart Borders Package.[14] The proposal includes the Entry–Exit System, under which fingerprints of all third-country nationals entering and exiting the Schengen area for a stay not exceeding

three months would be processed, and the Registered Travellers Programme,[15] a fast-track entry system for pre-vetted and frequent travellers. A pilot project carried out by eu-LISA, the EU Agency for large-scale IT systems, in cooperation with volunteering Member States, will test and provide evidence on the systems' feasibility following a technical study published by the European Commission.[16] The pilot project requested by the European Commission entails capturing biometric data from volunteering travellers from third countries at existing border-crossing points in accordance with data protection rules. It covers aspects such as the choice of biometric identifier to be used (four, eight or 10 fingerprints, facial recognition, iris pattern), the feasibility of using existing equipment to capture biometric data and the information on the processing of personal data to be given to travellers. The pilot project results will contribute to a possible revision of the Smart Borders Package by the European Commission.

4.2. Fundamental rights remain central in return policy discussions

In March 2014, the European Commission published a communication on EU return policy,[17] which noted the considerable gap between the persons issued with a return decision and those who are actually returned. According to Eurostat, 430,230 third-country nationals were ordered to leave the 28 EU Member States in 2013, but only 216,025 were actually returned following the order to leave.[18] Although it is unknown how many of them departed voluntarily or received a permit to stay, a significant number of persons most likely remained in the EU in a situation of legal limbo. This illustrates the importance of finding a solution for those persons who for practical or other reasons – partly based on their refusal to cooperate with the authorities – are neither removed nor granted a right to stay.

The European Commission communication shows positive developments in national law regarding fundamental rights. Examples include stopping detention when there are no reasonable prospects of removing a person; allowing NGOs and international organisations to visit detention centres; and the introduction of forced return monitoring. The communication also identifies shortcomings, for example in relation to certain aspects of immigration detention, and notes scope for improvement in promoting voluntary departures and a more systematic use of alternatives to detention. To promote consistent practices compliant with fundamental rights, the European Commission announced its plan of adopting a legally non-binding handbook on return policy in 2015. This handbook will cover topics such as apprehension practices, alternatives to detention and safeguards concerning the detention of persons in return procedures.

Forced return monitoring under Article 8 (6) of the Return Directive (2008/115/EC) can be taken as an example of how fundamental rights safeguards included in the Return Directive are implemented in practice. Six years after the adoption of the Return Directive and four years after Member States were required to transpose it into national law, FRA calculates that among the EU Member States bound by the directive, eight states have no operational system yet, either because the monitoring body has yet to be appointed or to start work, or because the monitoring system is ad hoc and does not cover the whole country. In addition, two Member States, **Slovakia** and **Sweden**, have a monitoring mechanism implemented by an agency belonging to the branch of government responsible for return. It is thus not sufficiently independent to qualify as 'effective' under Article 8 (6) of the Return Directive. **Ireland** has no monitoring system, as it is not bound by the Return Directive (Table 4.2).

In three EU Member States (**Croatia**, **Slovenia** and **Slovakia**) return monitoring is not yet carried out by or in cooperation with a designated independent organisation. In another five Member States (**Bulgaria**, **Cyprus**, **Greece, Italy** and **Portugal)**, the return monitoring system is still in a preparatory phase pending staff, funding, training and/or other action. In **Germany**, the monitoring system covers only the airports of Berlin-Schönefeld, Frankfurt and Hamburg, and does not include presence on return flights.

Ten Member States (**Croatia**, **Finland**, **France**, **Greece**, **Italy**, the **Netherlands**, **Poland**, **Portugal**, **Romania** and **Slovenia)**, amended their legislation to establish independent monitoring systems in 2014. **Croatia** adopted rules on the treatment of foreigners, requiring the Ministry of the Interior to conclude an agreement with an organisation that would be responsible for the monitoring of forced returns.[19] In **Finland**, an amendment to the Aliens Act entered into force, making it a duty of the Non-Discrimination Ombudsperson to monitor the return process.[20] **France** amended the mandate of the General Inspector of All Places of Deprivation of Liberty to include monitoring forced returns as far as the country of destination.[21] In **Greece**, the Ministry of the Interior and the Ministry for Citizen Protection issued a joint decision regulating the structure and operation of the monitoring system by the Greek Ombudsperson in cooperation with other organisations.[22] **Italy** created a national monitoring authority for persons deprived of liberty; once established, it should also monitor forced returns.[23] In the **Netherlands**, the Integral Returns Monitoring Commission, previously responsible for the monitoring of forced returns, transferred its tasks to the Security and Justice Inspectorate, which

Table 4.2: Effective forced return monitoring systems, 28 EU Member States

EU Member State	Organisation responsible for monitoring forced return	Operational?*	Monitors on board of flights?		Public report?	ERF* funded?
			2013	2014		
AT	Human Rights Association Austria (*Verein Menschenrechte Österreich*)	✓	✓	✓	×	×
BE	General Inspectorate of the General Federal Police and the Local Police (AIG) (*Inspection générale de la police fédérale et de la police locale, Algemene inspectie van de federale politie en van de lokale politie*)	✓	×	✓	×	✓
BG	Ombudsperson (*Омбудсманът*), national and international NGOs	×	–	–	–	–
CY	Office of the Commissioner for Administration (Ombudsman)	×	–	–	–	–
CZ	Public Defender of Rights (PDR) (*Veřejný ochránce práv*, VOP)	✓	✓	×	✓	×
DE	Fora at various airports (Frankfurt, Hamburg, Düsseldorf, Berlin)	(×)	×	×	(✓)	–
DK	Parliamentary Ombudsperson (*Folketingets Ombudsmand*)	✓	✓	✓	✓	×
EE	Estonian Red Cross (*Eesti Punane Rist*)	✓	✓	✓	×	✓
EL	Greek Ombudsperson (*Συνήγορος του Πολίτη*)	×	–	–	–	✓
ES	Ombudsperson (*Defensor del Pueblo*)	✓	✓	✓	✓	✓
FI	Non-Discrimination Ombudsperson (*Yhdenvertaisuusvaltuutettu/ Diskrimineringsombudsmannen*)	✓	×	✓	×	✓
FR	General Inspector of All Places of Deprivation of Liberty (*Contrôleur général des lieux de privation de liberté*)	✓	×	✓	×	×
HR	Not appointed yet	×	–	–	–	–
HU	Hungarian Prosecution Service (*Magyarország ügyészsége*)	✓	✓	✓	×	×
IE**	No monitoring system in law	–	–	–	–	–
IT	National Authority for the Rights of Persons Deprived of Liberty (*Garante nazionale dei diritti delle persone detenute o private della liberta' personale*)	×	–	–	–	–
LT	Lithuanian Red Cross Society (*Lietuvos Raudonojo Kryžiaus draugija*)	✓	✓	✓	×	✓
LU	Luxembourg Red Cross (*Croix-Rouge luxembourgeoise*)	✓	✓	✓	×	✓
LV	Ombudsperson's Office (*Tiesībsarga birojs*)	✓	×	✓	✓	✓
MT	Board of Visitors for Detained Persons (DVB)	✓	×	×	×	–
NL	Security and Justice Inspectorate (*Inspectie Veiligheid en Justitie*)	✓	✓	✓	✓	×
PL	Various NGOs, e.g. the Helsinki Foundation for Human Rights, Rule of Law Institute Foundation, Halina Nieć Legal Aid Centre, MultiOcalenie Foundation	✓	✓	✓	✓	✓
PT	General Inspectorate of Internal Affairs (*Inspecção-geral da Administração Interna*, IGAI)	×	–	–	–	–
RO	Romanian National Council for Refugees (*Consiliul Național Român pentru Refugiați*, CNRR) (NGO)	✓	×	×	×	✓
SE	Swedish Migration Board (*Migrationsverket*)	–	–	–	–	–
SI	Not appointed yet	×	–	–	–	–
SK	Ministry of Interior	–	–	–	–	–
UK**	Her Majesty's Inspector of Prisons (HMIP), Independent Monitoring Boards (IMBs)	✓	✓	✓	✓	×

Notes: ☐ *In Slovakia and Sweden, monitoring is implemented by an agency belonging to the branch of government responsible for return. It is thus not sufficiently independent to qualify as 'effective' under Article 8 (6) of the Return Directive. Therefore, the other fields have not been completed.*

(×) (✓) In Germany, the return monitoring system covers only parts of the country; a public report is available only for Frankfurt airport.

– Information not applicable.

** 'Operational' means that a monitoring entity has been appointed and has carried out some activities in 2013–2014. ERF: European Return Fund.*

*** Ireland and the United Kingdom are not bound by the Return Directive.*

Source: FRA, 2015; see also the online table on 'Forced return monitoring systems – State of play in 28 EU Member States' on the FRA website under asylum, migration and borders

accompanied 21 flights in 2014.[24] In **Poland**, the new Aliens Act entered into force, codifying the existing practice of NGOs monitoring returns. Further agreements on cooperation are planned, to establish a permanent group of monitors.[25] In **Portugal**, the General Inspectorate of Internal Affairs will now conduct the monitoring.[26] **Romania** also introduced a legal basis for monitoring forced removals, ensuring that relevant monitoring organisations are informed of the organisation of returns upon request and that assessment reports are submitted to the Ombudsperson for examination.[27] **Slovenia** introduced a legal basis for independent monitoring;[28] the selection of an independent monitoring organisation was nevertheless still pending a public call at the end of 2014. In **Slovakia**, legal changes detailing the practices to be monitored entered into force.[29] The Ministry of the Interior is still in charge; NGOs and/or the UNHCR may possibly cooperate, but this cooperation has not yet been put into practice.

One of the indicators of an effective monitoring system is the presence of monitors on return flights, particularly on charter flights, rather than just monitoring the preparation and pre-removal phase. In 2014, four more Member States (**Belgium**, **Finland**, **France** and **Latvia)** sent observers aboard return flights.

In 2014, Frontex managed 45 joint return flights with the participation of 21 EU Member States. Monitors were on 27 flights out of 45. This includes monitors from third countries on return flights chartered by Georgia and Albania. Effective national monitoring systems are in principle a prerequisite for organising Frontex-coordinated joint return operations. In 2014, however, five Member States (**France** – until May,[30] **Germany, Greece, Italy** and **Sweden**) that lacked an operational monitoring system carried out by an independent authority (i.e. an authority different from the branch of government responsible for return), according to FRA's assessment, organised 20 return operations. These operations concerned 1,089 of the 2,279 persons returned through Frontex-coordinated flights in 2014. In seven of these 20 operations, however, observers from other states were present. An EU-financed project run by the International Centre for Migration Policy Development (ICMPD) seeks to establish a European pool of monitors which aims to ensure more effective monitoring, particularly for Frontex-coordinated forced removals.[31]

Previous FRA Annual reports examined progress in the introduction of forced return monitoring by Member States. Two conclusions can be drawn: six years after the adoption of the Return Directive, most Member States provide for a monitoring system implemented by an agency different to the branch of government responsible for return; but several of these systems are not yet operational.

In 2014, the CJEU issued six new preliminary rulings providing guidance on different aspects of the Return Directive, all of which directly or indirectly impact on fundamental rights. In *Boudjlida* (C-249/13)[32] and *Mukarubega* (C-166/13),[33] the court clarified the content and limits of the right of third-country nationals to be heard before the adoption of a return decision that affects them. The court also ruled on the obligations of EU Member States concerning the detention of third-country nationals in specialised detention facilities in *Pham* (C-474/14),[34] *Bero* (C-473/13) and *Bouzalmate* (C-514/13),[35] and on procedural requirements for the extension of detention in *Mahdi* (C-146/14).[36] In *Abdida* (C-562/13),[37] the CJEU ruled on the judicial review of removal orders and provided guidance on the application of the Return Directive in case of illnesses requiring special treatment.

FRA released two publications in 2014, which provide fundamental rights guidance for when implementing return policies. A paper on criminalising migration[38] examines the custodial penalties for irregular entry or stay for persons falling under the EU Return Directive, noting that criminal law sanctions should normally not be used for persons in return procedures. The paper also examines the risk that those who help migrants in an irregular situation or rent out accommodation to them are punished for smuggling human beings; it proposes anti-smuggling policies more sensitive to fundamental rights.

In June, FRA released a handbook jointly with the European Commission, to reinforce guardianship systems to cater for the specific needs of child victims of trafficking.[39] Among other things, the handbook describes the role of the guardian in identifying a durable solution in the best interests of the child, notes that the guardian should be a first point of contact for authorities intending to issue a return decision to an unaccompanied child, and lists possible actions guardians can take in relation to return.

The UN Human Rights Committee, the supervisory body of the International Covenant on Civil and Political Rights (ICCPR), issued new guidance on the application of the right to liberty and security of the person, which also covers immigration detention. It also recommends that "any necessary detention should take place in appropriate, sanitary, non-punitive facilities, and should not take place in prisons".[40]

The situation of children in immigration detention remains at the centre of discussions. The International Detention Coalition, a global network of civil society organisations, continued its global campaign to end immigration detention for children. In August, the Inter-American Court released an advisory opinion in which it finds that immigration detention of children is always arbitrary.[41] This was followed by a resolution of the Parliamentary Assembly of the Council of Europe, which calls on states to end immigration detention of children.[42]

4.3. New funds to promote the application of EU law in practice

In 2014, developments took place concerning funding mechanisms. Two new funds were set up on 16 April: the Asylum, Migration and Integration Fund (AMIF, AMIF Regulation (EU) No. 516/2014), with a total of €3.137 billion for 2014–2020, and the Internal Security Fund (ISF), with a total of €3.8 billion for the same seven years. The ISF comprises two instruments: the ISF Borders and Visa Regulation (EU) No. 515/2014 and the ISF Police Regulation (EU) No. 513/2014. the ISF Borders and Visa Regulation lays down general rules for the two funds.

The AMIF is intended to support measures in four areas: asylum, legal migration and integration, return policy, and solidarity with EU Member States most affected by asylum flows. Most funds will be used to support Member State actions with the overarching goal of promoting a common EU approach to asylum and immigration. The AMIF Regulation lists the actions eligible for funding under each of the four objectives. The actions listed under returns (Article 11 and 12) include some measures which are important to promote fundamental rights in the return process, such as alternatives to detention, legal and language assistance, forced return monitoring, assisted voluntary returns and reintegration after return.

The ISF Borders and Visa is intended to promote a high level of security in the Union while facilitating legitimate travel. It will also support the setting up and running of common IT systems at European level. The ISF Police will provide financial support to activities relating to police cooperation, preventing and combating crime, and the enhancement of the capacity of EU Member States and the Union to manage security-related risks and crises effectively. The strategic priorities of the ISF Police include, for example, measures to prevent trafficking in human beings. This was an area in which developments took place in 2014, as the European Commission issued a report on the application of Residence permits for victims of trafficking (Directive 2004/81/EC) and its mid-term review of the EU anti-trafficking strategy, which includes a section on joint activities implemented by EU agencies.[43]

In its 2014 audit of the External Borders Fund, the European Court of Auditors also raised fundamental rights issues in the context of EU funding. The court found that the rental costs of the temporary detention centre at Pagani in **Greece** were included in the national programme, although the unacceptable conditions in this facility were widely known at the time. The European Commission refused to cover these costs when it closed the programme.[44]

4.4. No major changes regarding legal migration

The new European Commission, under President Jean-Claude Juncker, lists migration as one of its 10 priorites and has committed itself to developing a new European policy on regular migration. As part of this commitment, the Commission states the need to promote the legal migration of persons with skills needed in Europe.[45] The main step announced in 2014 concerns the need to review the Blue Card Directive (2009/50/EC).[46]

Meanwhile, the CJEU ruled on a few aspects of legal migration. It made clarifications on language (C-138/13, limited to Turkish workers under the EU–Turkey Association Agreement) and age requirements (C-338/13) for family reunification, and on conditions for admission of third-country nationals as students (C-491/13). The court also clarified the requirements applicable to family members of long-term residents to obtain such status (C-469/13). Three other cases are still pending, concerning integration measures under the Family Reunification Directive (C-153/14), fees for issue and renewal of long-term residence permits (C-309/14) and access of long-term residents to the labour market (C-176/14). Table 4.3 shows the main 2014 policy developments that occurred at EU level on legal migration.

Table 4.3: EU policy developments on legal migration, 2014

Instrument	Legislative changes	CJEU case law	Other policy documents
Seasonal Workers Directive 2014/36/EU	Adopted on 26 February		
Intra-Corporate Transferees Directive 2014/66/EU	Adopted on 15 May		
Blue Card Directive 2009/50/EC			Communication COM(2014) 287 final
Scientific Research Directive 2005/71/EC	Changes pending COM(2013)0151 final		
Students Directive 2004/114/EC	Changes pending COM(2013)0151 final	C-491/13 (10 September 2014)	
Long-term Residents Directive 2003/109/EC, as amended by Directive 2011/51/EU		C-469/13 (17 July 2014) C-309/14 (pending reference) C-176/14 (pending reference)	
Family Reunification Directive 2003/86/EC		C-138/13 (10 July 2014) C-338/13 (17 July 2014) C-153/14 (pending reference)	Commission guidelines

Source: FRA, 2014

4.5. Challenges for migrant integration and the EU as an inclusive society

Many EU societies continue to face challenges in integrating migrants and their descendants, and fear failing in their social inclusion policies. Lack of access to employment opportunities and lower educational achievement, as well as intolerance, xenophobia and racist violence, are some of the issues that influence the integration of migrants and their descendants. FRA collected information on several distinct aspects of social inclusion and migrant integration policies across the EU countries in 2014. Most of these policies target employment and invest in language learning and support, but they rarely address broader issues of social inclusion, community cohesion, respect for human rights or political and civic participation. Although integration measures mainly target newcomers, in the long term they are intertwined and form a continuum with policies and actions for building and strengthening inclusive and diverse societies.

The attacks in Paris in early January 2015 stoked debates about emerging extremist and terrorist threats by fundamentalist organisations and their recruitment of radicalised EU youth. They thus emphasised the need for more effective policies that promote more inclusive societies. The Strategic Guidelines for legislative and policy planning in the area of freedom, security and justice, adopted by the European Council in June 2014, stress that "the Union should support Member States' efforts to pursue active integration policies which foster social cohesion and economic dynamism."[47]

In 2014, political figures in EU countries confronted prejudice and emphasised the EU's commitment to its core values of respect of diversity and pluralist inclusive societies. In his Christmas message, Germany's President Gauck urged Germans not to be afraid of refugees or of the world around them and to "trust in our values, our strengths and our democratic institutions".[48] In her New Year's address,[49] the German Chancellor, Angela Merkel, stressed that when Pegida's supporters shout "we are the people" what they mean is "you are not one of us, because of your skin colour or your religion". She urged all Germans to welcome refugees and reject racism. The French President, François Hollande, inaugurating the first immigration museum,[50] urged the French not to listen to threats of fear, nor to people "who dream of a smaller, spiteful, retreating France – a France that is no longer France". He presented the museum as "our nation's homage to the millions who came to France to give her their best" and emphasised that it would help "remind the French where they come from, what values they carry as French citizens, and what direction we wish to take together".

At the 2014 Fundamental Rights Conference in Rome, FRA initiated a discussion on the different views in the area of migrant integration and collected suggestions for improvement. The participants discussed a wide range of topics, from border issues to inclusion in education. They concluded by suggesting ways to ensure respect for fundamental rights in migrant integration and social inclusion policies, and to help shift the narrative on migration towards achieving more inclusive and pluralist societies. These conclusions point to the fact that Member States need to confront misinformation and negative stereotypes, since racism and intolerance are major barriers to successful integration policies and inclusive societies. To this end, it was stressed that the media need to be actively engaged and encouraged to help increase the participation and visibility of migrants, contributing to a more positive overall narrative. The results of several studies and surveys conducted in 2014 across the EU highlight this need, as they indicate the persistence of intolerant attitudes towards migrants and refugees. In some countries, the majority population blames them for rising unemployment and crime rates. Such experiences of discrimination and xenophobia are presented more extensively in Chapter 2. Some studies, however, show a more complex picture of EU citizens perceiving xenophobia as negative, while still worrying about the high numbers of asylum seekers. Survey findings in various EU Member States warn of community tensions and threats to social cohesion, but also indicate a mixed response of negative and positive attitudes towards diversity.

4.5.1. Survey findings draw mixed picture across the EU

In **Germany**, the results of a survey conducted by the University of Leipzig show that racist, xenophobic and antisemitic attitudes persist in all segments of the population.[51] Some 18 % of the respondents supported xenophobic statements: about 43 % agreed with the statement that "Because of the high number of Muslims I sometimes feel like a stranger in my own country", and 37 % were in favour of the statement that Muslims should be barred from migrating to **Germany**. Similarly, a representative attitude survey conducted by the **French** institute of market research and opinion, BVA, reveals a resurgence of racism in **France**, stemming in particular from a disturbing "significant increase in explicit racism", especially against Muslims, Roma and Jews.[52]

In **Sweden**, the picture is mixed. The results of the annual nationwide attitude survey show that about 60 % of the Swedish population believe that an increase in the number of refugees is 'very' or 'fairly' worrying. This, however, is not necessarily and exclusively a manifestation of intolerance or xenophobia. It may also reflect the pragmatic concern about the pressure caused by the need to welcome high numbers of refugees. In fact, the overwhelming majority, around 80 % of the respondents, believe that increased xenophobia is very or quite worrying.[53] Likewise, the findings of an attitude survey in the **Czech Republic** show that 60 % of Czechs perceive the presence of foreigners who have moved to their country in recent years as a problem. At the same time, only 24 % of respondents believe that the foreigners who live near them constitute a problem. Long-term migrants are seen as responsible for increasing the unemployment rate and the crime rate.[54] Similarly, research conducted in Riga in **Latvia** shows that one out of three respondents express negative attitudes towards migrants. They justify this by blaming migrants for the rise in unemployment. In **Estonia**, 55 % of respondents believe that the migration of refugees is more likely to have a negative impact, while only 8 % see it as positive. At the same time, however, 55 % say that they are willing to participate in activities to facilitate the integration of refugees into the host society.[55]

On the other hand, in **Spain**, the annual survey on attitudes towards immigration,[56] published in 2014, found that 42 % of the Spanish population has a positive perception of immigration, while 34 % has a negative perception. Spanish people approve the granting of rights to established immigrants and their bringing their families to Spain (78 %). They also approve of the fact that immigrants may receive unemployment benefits (87 %) or obtain Spanish citizenship (68 %), or that their own son or daughter could marry an immigrant (65 %). An average of 60 % accepts the presence of immigrant children in schools. Moreover, 82 % consent to work or study with immigrants. Some 66.9 % reject parties with a racist ideology, compared with 18.8 % who approve of them.

This turbulent landscape of increasing concerns, further fuelled by the dramatic events in early January 2015 in **France**, calls for rights-based responses oriented by core values and principles. The EU is duty bound to provide shelter to asylum seekers coming from distressed areas and war zones on the European periphery. At the same time, it is challenged to foster the democratic values of its societies, while preserving and securing social cohesion in inclusive communities. This effort requires the successful implementation of existing EU legal frameworks such as the Racial Equality Directive (2000/43/EC) and the Framework Decision on Racism and Xenophobia (2008/913/JHA), but also concrete social inclusion and social cohesion policies and positive actions. These may offer opportunities and may guarantee that people in the EU live together in diversity based on shared values and mutual respect, developing their human potential irrespective of ethnic, cultural or any other feature of their personality.

4.5.2. Living together in diversity – a debated court case

In its ruling in *S.A.S. v. France*, the ECtHR marks an important and much debated normative development in the field, since it introduces the concept of 'living together' as a principle that may justify restricting freedom of expression, private life and the manifestation of one's religion or belief. For the first time, the court judged that the need of "respect for the minimum requirements of life in society", as an aspect of the "rights and freedoms of others", justified the ban on wearing a particular religious garment.

In the *S.A.S. v. France* case, the ECtHR ruled that the French ban on the public wearing of face veils, such as the niqab or burka, can be justified only under the state's obligation to secure conditions under which individuals can live together in their diversity. The court accepted that a state may give particular weight to the interaction between individuals and consider that such public concealment of the face adversely affects that interaction. Two dissenting judges argued that acknowledging the legitimacy of the French ban could be seen as limiting fundamental rights and as a form of "selective pluralism", meaning that women who are not allowed to wear the full-face veil in public places are actually not as free to express their personal, cultural and religious beliefs as are other women "living together" in the same society.

4.6. EU Member State measures promoting inclusive societies

"Common Basic Principles for Immigrant Integration Policy in the European Union

"Principle 1

"Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States. [...] Member States are encouraged to consider and involve both immigrants and national citizens in integration policy, and to communicate clearly their mutual rights and responsibilities."

Council of the European Union (2004), Press Release, Brussels, 19 November 2004, p. 19

At the Justice and Home Affairs Council in June 2014, the EU Member States reaffirmed their commitment to Common Basic Principles for the Integration of Migrants (2004), 10 years after their adoption.[57] Also on the occasion of the 10th anniversary of the Common Basic Principles, the 11th meeting of the European Integration Forum developed its discussions about the current state of play and the future.

As stressed in the very first Common Basic Principle, effective and successful integration requires that measures promoting social inclusion target the wider community, both migrants and their descendants as well as nationals, to move towards inclusive societies where there is awareness and acceptance of both diversity and shared values.

FRA collected data in 2014 in all 28 EU Member States, focusing on an important aspect of integration policies that serve this purpose: if and how Member States address the needs of the general population in understanding, respecting and welcoming diversity in society. In particular, FRA identified whether Member States address the general population in their national action plans or strategies for the integration of migrants, and which concrete measures they implemented in 2014. In addition, FRA collected data about whether the educational systems and the school curriculums reflect the diversity in society as a core and mainstreamed component.

The relevant EU policy framework for related integration policies and actions aiming for inclusive societies is based on general principles and guidance rather than on legal or normative commitments. Similarly, policies at national level are not directly comparable among countries. In some of them, such policies and objectives may rather be set and implemented at regional or local level. Depending on historical and socio-political context, some Member States may address such needs via their migrant integration policies, while others may refer to social cohesion, civic education or programmes and actions to encourage living alongside minorities. Some Member States address such issues in their national action plans, while others refer to other types of policy documents at different governance levels. This effective fragmentation and multiplicity often serve to address particular needs and societal relations. They highlight the need to collect more data to understand better what works and what does not, and to assess the situation in EU Member States. In this way, important achievements can be probed and shared, and common indicators developed and populated. This effort may function as a multiplier serving to reach more profound knowledge, as well as ways to accomplish the EU policy goals through cooperation and sharing best standards and practices. This is why the FRA data collection for the Annual report 2014 focused on the national documents and their commitment to addressing the objectives set by Common Basic Principle No. 1. The data collected by FRA show that by 2014 most EU Member States (22) also targeted the majority population in their national integration strategy or action plan, as suggested by Common Basic Principle No. 1. This marks notable progress since 2012, when FRA found that only 12 Member States included programmes with majority involvement in their action plans or policy papers.

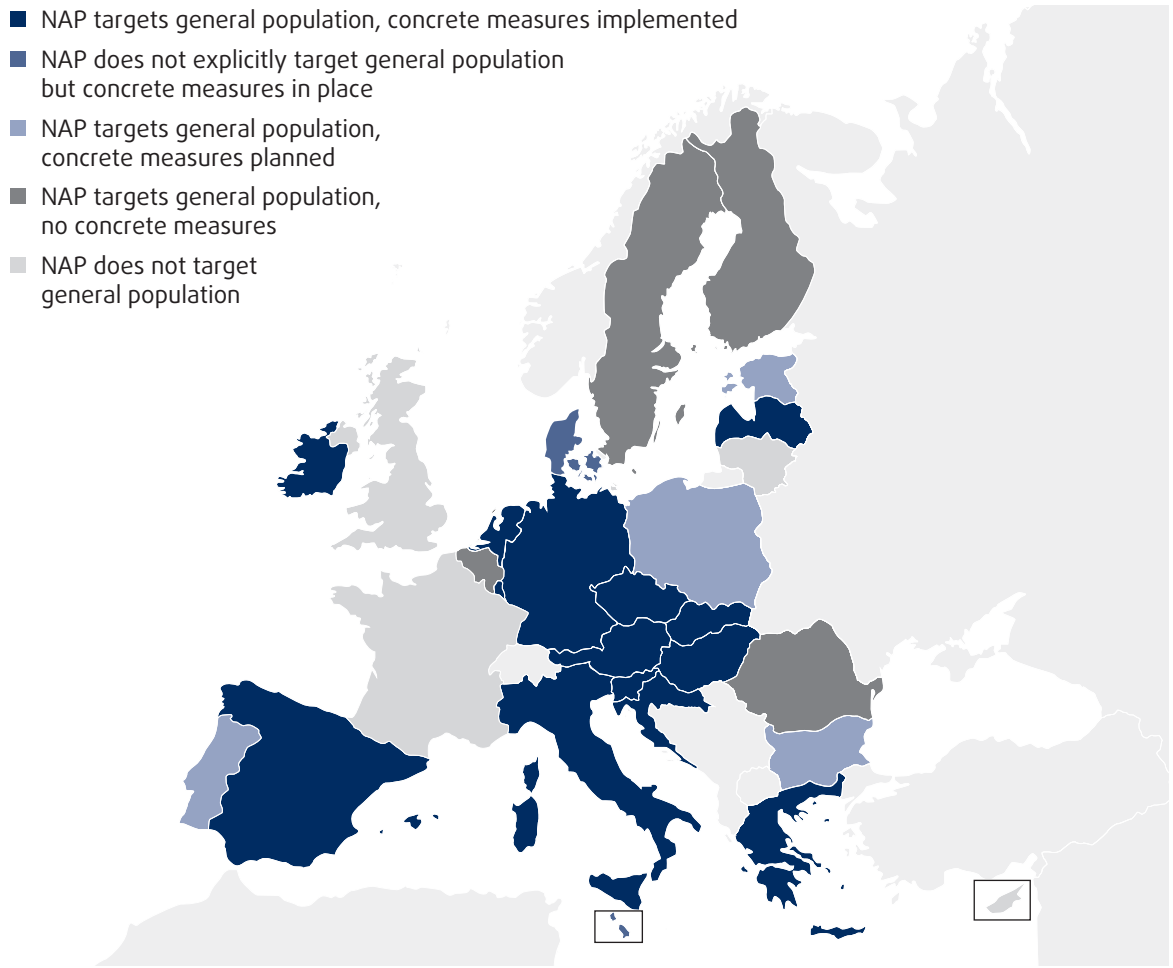
However, turning from policy to practice, fewer Member States adopted and implemented concrete measures, such as training for public officials and civil servants dealing with migrants. **Austria**, **Croatia**, the **Czech Republic**, **Germany**, **Greece**, **Hungary**, **Ireland**, **Italy**, **Latvia**, **Malta**, the **Netherlands** and **Slovenia** did so. **Bulgaria**, **Estonia**, **Poland** and **Portugal** have recently adopted such policies and are planning measures for 2015 and beyond. A very small number of Member States do not address the host society in their national policy documents, although they do implement concrete measures (**Denmark**, **Malta**) (see Figure 4.3).

In addressing the host society regarding the integration of migrants, several EU Member States conduct media and awareness-raising campaigns. Such measures may encompass activities including a 'Day of multicultural activities' to celebrate and promote diversity, during which prominent personalities and live bands endorse the theme of cultural diversity by participating in and presenting the event (**Malta**); a media campaign showing on national television a set of 10 documentary films about the importance of accepting migration as a positive factor for social progress and cohesion (**Slovenia**); or even a press breakfast and discussion to involve the media in the debate on integration (**Latvia**).

Twelve EU Member States (**Austria**, **Croatia**, the **Czech Republic**, **Denmark**, **Germany**, **Greece**, **Ireland**, **Italy**, **Latvia**, **Malta**, the **Netherlands** and **Slovenia**), implement training programmes and capacity building for public administration. They offer these resources to civil servants dealing with migrants. **Croatia**, **Germany**, **Malta**, the **Netherlands**, **Slovenia** and **Spain** implement programmes targeting the private and third sectors, aiming to improve skills in and capacity for managing diversity in professional environments.

However, in the last year, 12 Member States (**Belgium**, **Bulgaria**, **Cyprus**, **Estonia**, **Finland**, **France**, **Lithuania**, **Poland**, **Portugal**, **Romania**, **Sweden** and the **United Kingdom**) have not implemented any concrete measure for migrant integration and inclusion targeting the general population.

Figure 4.3: Common Basic Principle No. 1: National Action Plans (NAPs)



Source: FRA, 2014

FRA research reveals that EU Member States have diverse policies and focuses in designing and implementing integration measures that target the general population. This seems crucial in the current situation in the EU, as xenophobia and intolerance increase and extremism finds fertile ground to threaten social cohesion. However, these social problems and phenomena are attributable to various factors. One of them could be that the general population is not successfully targeted by concrete measures promoting an inclusive society and more effort is needed. As the FRA Fundamental Rights Conference 2014 suggested, greater interaction, coordination, monitoring, closer cooperation, regular exchange of experiences and codification of common best practices are important to achieve successful inclusive integration policies. Policy recommendations at EU level can be operationalised through processes such as the European Semester.

Integration policies are difficult to compare and there is a limited range of legal commitments under EU law for concrete actions or national legislation. Different national contexts correspond to diverse inclusion policies at all governance levels, from national to regional and local, leaving much room for discretion to authorities and competent organisations. However, such data collection is useful because it can populate indicators and support the improvement of policies. Furthermore, it reveals the need for more comprehensive robust evidence of how integration policies respond to the need to also address the general population, and bring nationals together in society with migrants and their descendants. Addressing the need for more robust data and evidence in the area of migrant integration from a fundamental rights perspective, a wide range of research is under way at FRA. This ranges from extensive data collection in all EU Member States to the second wave of the EU-wide EU-MIDIS II survey, concerning the discrimination, victimisation, inclusion and participation experiences of minorities, migrants and their descendants. In addition, and in cooperation with the European Commission, FRA develops fundamental rights indicators for migrant integration. As stressed in the conclusions of the Fundamental Rights Conference 2014, independent monitoring based on robust common indicators that reference fundamental rights standards is needed to develop effective migrant integration policies, in particular in the areas of social inclusion and social cohesion, participation and active citizenship.[58]

4.7. Transforming education, reflecting diversity in society

> *"Common Basic Principles for Immigrant Integration Policy in the European Union*
>
> *"Principle 1*
>
> *"Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States. […] Member States are encouraged to consider and involve both immigrants and national citizens in integration policy, and to communicate clearly their mutual rights and responsibilities."*
>
> *Council of the European Union (2004), Press Release, Brussels, 19 November 2004, p. 19*

The FRA Fundamental Rights Conference 2014 emphasised that civic and citizenship education is vital, and the mainstreaming of migrant integration through education is needed to help young people learn how to live in a society with people from different cultures and religions. Member States were encouraged to better reflect the diversity of society through their educational systems and curricula.

Education builds, grows and nourishes inclusive pluralist societies. EU Member States may address this need by providing curricular and extracurricular activities at school promoting equality, social cohesion and active citizenship. Such measures are important to prepare all children to develop their full human potential and live together in diversity. The key to this process is informing schoolchildren about the different cultures in society, including those of a country's migrant minority ethnic groups. As part of Europe 2020, the EU's growth strategy to become a sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion,[59] this diversity is de facto reshaping European schools. The transformation of the educational systems towards a more systemic, inclusive, community paradigm can be critical to reversing racism and intolerance, supporting economic and social development and recognising diversity as an important asset rather than as a problem or a threat.

FRA has looked into the way Member States respond to this challenge. In particular, data show that the education systems in EU Member States use different ways to inform children about different cultures, although most of them integrate such elements in the school curricula. The absence of programmes designated as 'multicultural' in schools does not necessarily mean that education systems are not addressing the underlying issues in their curricula. Depending on historical context and educational tradition, such needs are addressed differently, and direct comparisons are hardly possible. However, it is necessary to assess

how educational systems tackle this, so FRA collected data about the way they integrate teaching and learning about ethnic and cultural diversity, and about migrants and their descendants, as a central theme, subject or mainstreamed aspect of different subjects in the school curricula. FRA found that diversity and intercultural education are included as core elements in the general principles and objectives of 10 Member States: **Austria**, **Croatia**, **Denmark**, **Finland**, **Germany**, **Latvia**, **Malta**, the **Netherlands**, **Spain** and **Sweden**.

In primary or secondary education, most EU Member States do teach about different cultures in society. It is part of the curriculum in both primary and secondary education in the **Czech Republic**, **Denmark**, **Germany**, **Latvia**, the **Netherlands** and **Poland**. **Austria**, **Ireland**, **Lithuania**, **Malta**, **Slovenia** and the **United Kingdom** include the study of different cultures in either primary or secondary education.

In most cases, such curricular programmes provide information, knowledge and skills enabling pupils to live in community in modern ethnically diverse societies. However, in eight Member States (**Belgium**, **Cyprus**, **Estonia**, **France**, **Greece**, **Hungary**, **Portugal** and **Slovakia**), there are no such elements in the national curriculum. In **Bulgaria**, **Italy** and **Romania**, diversity is addressed in extracurricular activities.

Promising practices

Reflecting diversity in society through education

In the **Netherlands**, primary school pupils learn about the main aspects of the religions which play an important role in Dutch multicultural society, and they learn to treat people's different perspectives respectfully. Secondary school pupils learn about similarities, differences and changes in culture and beliefs in the Netherlands, and how to connect their own and others' ways of life. The also learn to see the significance of respect for each other's ways of life and perspectives for society.

For more information, see: Netherlands, Ministry of Education, Culture and Science (2006), Kerndoelen Primair Onderwijs*, The Hague; and Onderbouw-VO (2006),* Karakteristieken en Kerndoelen voor de Onderbouw*, Zwolle, Onderbouw-VO*

In the **Czech Republic**, the Framework Educational Programme includes multicultural education among the cross-curricular subjects. It familiarises pupils with the diversity of cultures and their traditions and values. On that basis, they can become better aware of their own cultural identity, traditions and values. Members of the majority learn the fundamental characteristics of other nationalities living in the same country, and both groups can thus find common points of reference for mutual respect, joint activities and cooperation.

For more information, see: Jeřábek, J. and Tupý, J. (2007), Framework educational programme for basic education (with amendments as of 1. 9. 2007)*, Prague, Research Institute of Education*

In **Finland**, the Basis of National Core Curriculum for Basic Education states that national minorities and Sami as an indigenous people must be taken into account in basic education. Moreover, the national core curriculum is under reform. The new curriculum, which will be adopted in August 2016, supports the ability of students to grow up as 'world citizens', and its basic values stem from human rights.

For more information, see: Finland, Finnish National Board of Education (2004), Perusopetuksen opetussuunnitelman perusteet 2004*, Vammala; and Global Education Network (2014),* Global Education Network commentaries on the basic education reform 2016*, Global Education Network*

To date, the Evangelical Lutheran Church in Northern **Germany** has held the sole responsibility for 'religious education for everyone'. In the school year of 2014/15, a pilot project will start in two schools in Hamburg: the responsibility for joint religious education for Christians, Muslims and pupils with other religious backgrounds will be shared equally by Lutheran and Muslim educators.

For more information, see: Germany, Evangelisch-Lutherische Kirche in Norddeutschland (2014), 'Hamburg: Breite Zustimmung für übergreifenden Religionsunterricht'*, nordkirche.de, 24 June 2014; and Hasse, E. (2014),* 'Muslime lehren christliche Religion'*, Welt.de, 23 June 2014*

In **Ireland**, secondary school students have to attend the civic, social and political education (CSPE) course, a Junior Certificate course in active citizenship based on human rights and social responsibilities in which students deal with, among other issues, gender equity, racism and xenophobia, interculturalism, minorities, and conflict situations such as that in Northern Ireland.

For more information, see: Ireland, Department of Education and Skills (2014), Civic, Social and Political Education Syllabus*, Junior Certificate*

4.8. Empowering migrants in their path to participation

An important aspect of inclusive policies is that they aim to empower migrants and their descendants and increase their active citizenship and participation. The 2014 Fundamental Rights Conference emphasised that the need to improve the access of migrants, and particularly of their descendants, to citizenship, is of vital importance. A majority of Member States (**Belgium**, **Denmark**, **Estonia**, **Finland**, **Hungary**, **Ireland**, **Lithuania, Luxembourg**, the **Netherlands**, **Portugal**, **Slovakia**, **Slovenia**, **Sweden**, **Spain** and the **United Kingdom**) have granted third-country nationals the right to vote in local elections, for all or some selected nationalities. This example could be followed by others, as political and social participation of migrants and their descendants is key to successful integration. This is particularly important for young people who are descendants of migrants, but were born and raised in an EU Member State. Consideration could be given here to the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level.

FRA, through its data collection, identified a number of promising practices in EU Member States empowering migrant women on their path to integration and encouraging active citizenship and participation.

Promising practices

Mentoring educated immigrant women to explore the labour market

The women's mentoring network Womento encourages immigrant women to explore different opportunities within the **Finnish** labour market. The coordinating NGO (*Väestöliitto*, the Family Federation of Finland) matches suitable pairs of migrants who volunteer to participate and Finnish professionals according to their educational background, profession, future plans and shared field of expertise. For eight to 10 months, each mentoring pair meets around once a month to discuss and share information on the Finnish labour market. They also take part in three group meetings, where they can get to know each other, profit from peer support, set their objectives and finally evaluate the experience and discuss further prospects. The participants are encouraged to use Finnish throughout the process to increase their language skills, especially in their professional field. The impact and effectiveness are easily measured and the involvement of the participants also acts as motivation for volunteering in this project.

Finland, Väestöliitto, Womento: naisten mentoriverkosto

Encouraging young migrants' active citizenship and participation

La Merced Intercultural Community School in **Spain** promotes local integration and a sense of belonging for young migrants. Concretely, it creates space for intercultural relations, trains cross-cultural groups of young people on critical citizenship and encourages group responsibility. The school, funded by the European Fund for Integration and the Spanish Ministry of Labour, also promotes youth volunteering and other experiences of solidarity between young people. The project is designed to facilitate spaces where young people can be an engine of social change and, through active citizenship, respond to social needs and improve intercultural coexistence. The ultimate aim is to gradually change society from multicultural to intercultural, dismantling stereotypes. In the project's first four years, 32 groups of 10 young people from different origins participated, reaching 1,600 indirect beneficiaries and performing 24 social initiatives with local impact.

Spain, Escuela Comunitaria Intercultural La Merced (Fundación La Merced Migraciones, Madrid) (2013), La participación de los jóvenes migrantes como mediadores contra la exclusion*; for more information, see: www.buenaspracticascomunitarias.org/buenas-practicas/41-escuela-comunitaria-intercultural-la-merced-fundacion-la-merced-migraciones-madrid.html*

FRA conclusions

- For the first time since the Second World War, the number of refugees, asylum seekers and internally displaced people worldwide exceeded 50 million in 2013, according to the UNHCR figures released in 2014. More people in need of international protection therefore try to reach safety in Europe. Given that opportunities to enter the EU lawfully are limited, many remain in refugee camps in neighbouring countries, exposed to security and other risks, or try to reach the EU via smuggling networks. This situation raises concerns about fundamental rights and security that the EU and Member States should consider.

A FRA focus paper, released in February 2015,[60] presents a toolbox to promote legal entry channels. EU Member States should offer more legal possibilities for persons in need of international protection to enter the EU, as a viable alternative to risky irregular entry. The European Commission should support

this by proposing common approaches, encouraging Member States to take action and share promising practices, and helping to ensure sufficient solidarity funds are available to Member States for this purpose.

- In March 2014, the European Commission published a communication on EU return policy. The Commission noted positive developments in national law regarding fundamental rights – for example on stopping detention when there are no reasonable prospects of removing a person – but also shortcomings. To promote consistent practices compliant with fundamental rights, the Commission announced the plan to adopt a handbook on return policy in 2015; it will cover topics, such as apprehension practices, alternatives to detention, and safeguards concerning the detention of persons in return procedures. It will also build on the guidance provided by the CJEU.

EU Member States should continue their efforts to implement fundamental rights safeguards included in the EU return **acquis**, *making full use of existing and future guidance and tools issued by UN treaty bodies, the Council of Europe system, and EU institutions and agencies. EU funds in the area of Migration and Home Affairs should be used proactively for this purpose.*

- Two new funding mechanisms were set up to promote the application of EU law in the field of migration in 2014–2020: the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF). The AMIF will support measures in the areas of asylum, legal migration and integration and return, whereas the ISF includes two separate instruments, one to support action in the field of borders and visa and a second for activities relating to police cooperation, preventing and combating crime, and crisis management.

The European Commission and EU Member States should ensure that all actions funded under the EU funds are compatible with the EU Charter of Fundamental Rights. They are encouraged to use such funds to explore innovative ways to implement fundamental rights safeguards included in the EU **acquis**.

- The new European Commission identified migration as one of its 10 priorities and committed itself to developing a new European policy on regular migration. The Commission also expressed the need to promote skilled persons' labour migration to the EU and announced a review of the Blue Card Directive.

As concluded at the FRA Fundamental Rights Conference in November 2014, the EU and its Member States should develop a comprehensive and sustainable migration policy and make efforts to shift the public discourse on migration to show its benefits for economic development and growth. Immigration schemes should also consider the contribution, in terms of talent and skills, that persons in need of international protection can make to society.

- Evidence from 2014 shows that EU societies continue to face challenges in integrating migrants and their descendants. Integration policies normally target employment and language learning, but rarely address broader issues of social inclusion, community cohesion, respect for human rights or political participation. The January 2015 attacks in Paris emphasise the need for such an approach, and the relevance of social inclusion policies that target the wider community (migrants, their descendants and nationals). Most Member States have social inclusion policies and measures that target not just migrants but also the general population, particularly training for public administration and media campaigns.

EU Member States need to address more effectively the challenges of social inclusion for migrants and their descendants, and confront xenophobia, intolerance and prejudice. Existing training programmes, including those targeting the general population, should be systematically monitored to assess their impact on the ground. Efforts to promote social inclusion as a process of mutual accommodation by all – migrants, their descendants and the general population – and based on universal human rights should be further supported.

- Evidence collected by FRA shows that diversity and intercultural education are included as core elements in the general principles and objectives of 10 EU Member States. Most Member States' primary or secondary education teaches about different cultures in society. Eight Member States, however, do not include such elements in the national curriculum, and one Member State addresses diversity in extracurricular activities. Active political and social participation of migrants is also essential for successful integration. This is particularly relevant for women and for young people who are descendants of migrants. As education modules on diversity in society are integrated in school curricula in most Member States, it shows the efforts made to nurture inclusive, participatory and cohesive societies with equal opportunities for all.

EU Member States should ensure that educational systems promote respect for diversity and universal human rights. Education modules on diversity, as exist in many Member States, should be introduced throughout the EU as a core component of education systems.

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UN & CoE

January

February

March

9 April – CoE Parliamentary Assembly adopts Resolution 1986 (2014) on improving user protection and security in cyberspace, as well as Resolution 1987 (2014) on the right to internet access

16 April – CoE Committee of Ministers adopts a recommendation on a 'Guide to human rights for internet users', to help them better understand their human rights online and what they can do when these rights are challenged

April

2 May – CoE Committee of Ministers adopts a recommendation urging member states to protect whistleblowers and journalists

May

26 June – UN Human Rights Council adopts a resolution on the promotion, protection and enjoyment of human rights on the internet

30 June – UN High Commissioner for Human Rights submits a report to the UN General Assembly on the right to privacy in the digital age

June

July

August

18 September – In *Brunet v. France* (No. 13327/04), the ECtHR rules that keeping details recorded in a crime database after the discontinuance of criminal proceedings without the real possibility of deletion violates the right to respect for private and family life (Article 8) of the ECHR

23 September – Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism submits a report to the UN General Assembly on the *Promotion and protection of human rights and fundamental freedoms while countering terrorism*

24 September – UN Security Council adopts Resolution 2178 (2014), dealing with measures to prevent movement and recruitment of foreign fighters and calling in particular on member states to exchange travel information

September

October

November

18 December – UN General Assembly adopts Resolution 69/166 on the right to privacy in the digital age

December

EU

January

12 February – European Commission issues a communication on *Internet policy and governance. Europe's role in shaping the future of internet governance*

20 February – European Data Protection Supervisor adopts an opinion on the European Commission communications *Rebuilding trust in EU–US data flows* and the *Functioning of the safe harbour from the perspective of EU citizens and companies established in the EU*

February

12 March – European Parliament adopts a resolution on the US National Security Agency surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights

12 March – European Parliament approves MEPs' reports endorsing the data protection reform

March

8 April – In *Digital Rights Ireland and Seitlinger and Others* (Joined cases C-293/12 and C-594/12), the CJEU invalidates the Data Retention Directive (2006/24/EC)

8 April – In *European Commission v. Hungary* (C-288/12), the CJEU rules that the government's premature termination of the Hungarian Data Protection Commissioner's term in office breaches EU law

10 April – Article 29 Working Party adopts an opinion on surveillance of electronic communications for intelligence and national security purposes

April

12 May – Council of the EU adopts Guidelines on freedom of expression online and offline

13 May – In *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos* (C-131/12), the CJEU declares that an internet search engine operator is responsible for its processing of personal data that appear on web pages published by third parties

May

June

July

August

September

October

25 November – European Parliament decides to request CJEU to deliver an opinion on the EU–Canada agreement on transfer of passenger name records (PNR)

26 November – Article 29 Working Party adopts guidelines on the implementation of the CJEU judgment in *Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González* (C-131/121)

November

5 December – Article 29 Working Party adopts a working document on surveillance of electronic communications for intelligence and national security purposes

December

5 Information society, privacy and data protection

EU internal security concerns, including the threat of terrorist attacks, have affected the data protection debate, while mass surveillance and government secrecy have continued to be widely discussed. Examples of this shift in attention are renewed calls for an EU directive on passenger name records (PNR) and the discussion of whether there is a need to collect and store considerable data on all air passengers. At the same time, privacy remained top of the agenda; the Court of Justice of the European Union annulled the Data Retention Directive, and, in the Google case, clarified important aspects of EU data protection law.

5.1. Mass surveillance continues to spark global concern

"The hard truth is that the use of mass surveillance technology effectively does away with the right to privacy of communications on the Internet altogether."

United Nations (UN), Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2014), Fourth annual report submitted to the General Assembly, *A/69/397, 23 September 2014*

Following 2013 revelations that the United States and **United Kingdom** intelligence services have been conducting surveillance of global telecommunication and data flows on a previously unimaginable scale,[1] expectations were high that 2014 would bring both better understanding of the actual mass surveillance practices and greater compliance with fundamental rights by those involved.

In April 2014, the Council of Europe Parliamentary Assembly (PACE) Committee on Legal Affairs and Human Rights organised a hearing in which Edward Snowden gave evidence via video link. The hearing took place in the context of a report on mass surveillance that PACE is to adopt in 2015. The Council of Europe Commissioner for Human Rights reiterated his concerns about the internet rule of law at the end of 2014 and made several recommendations, including on the equal application of human rights online and offline, data protection, cybercrime and national security activities.[2]

5.1.1. United Nations

Among international organisations, the United Nations (UN) was by far the most vocal, and its forthright condemnations were particularly noticeable given the relative silence of regional organisations.

The UN made its stance clear, declaring that mass surveillance infringes on the rights to privacy, freedom of expression and association. Mass surveillance cannot be condoned, it found, without proper justification, safeguards to protect those affected and adequate oversight of those carrying it out. These statements were enshrined in several relevant documents that Table 5.1 summarises.

The UN General Assembly expressed its concerns in a second resolution on the right to privacy in the digital age,[3] backed by 65 of the 193 UN member states, 10 more than in 2013. The increased support indicates rising global awareness over the previous year. Supporters did not include the countries that make up the intelligence alliance between Australia, Canada, New Zealand, the **United Kingdom** and the United States.[4]

Table 5.1: Key 2014 UN documents linked to privacy and mass surveillance

Body	Title	Date
Human Rights Committee	Concluding observations on the fourth periodic report of the United States of America, Doc. CCPR/C/USA/CO/4	23 April 2014
Human Rights Council	Resolution on the promotion, protection and enjoyment of human rights on the internet, Doc. A/HRC/26/L.24	20 June 2014
High Commissioner for Human Rights	Report on the right to privacy in the digital age, Doc. A/HRC/27/37	30 June 2014
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism	Fourth Annual Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Doc. A/69/397	23 September 2014
General Assembly	Resolution on the right to privacy in the digital age, Doc. A/RES/69/166	18 December 2014

Source: FRA, 2014

Warning that mass surveillance is "emerging as a dangerous habit rather than an exceptional measure", the UN High Commissioner for Human Rights called for a more robust protection of the human rights enshrined in key international texts. These rights include Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights (ICCPR, ratified by all EU Member States), which both guarantee privacy, as well as regional and national laws.[5]

The Human Rights Committee also raised the principle of extraterritoriality when it required, among other things, that the United States respect its obligations under the ICCPR even for actions abroad when carrying out the collection of signals intelligence.[6] Critics of the principle rejected the requirement, arguing that states that carry out extraterritorial surveillance are only obliged to extend safeguards to their own citizens.[7] Advocates, however, say that the ICCPR establishes an extraterritorial right to privacy, whose jurisdiction extends beyond physical borders. They also note that a failure to adhere to this principle would violate the right of non-discrimination. As the Special Rapporteur put it, when states "exercise regulatory authority over the telecommunications or Internet service providers (ISP) that physically control the data", even when these are overseas, they are also engaging the principle of territorial jurisdiction.[8]

The UN High Commissioner for Human Rights found that there is currently little transparency and that the inadequate oversight in place allows a lack of accountability for arbitrary or unlawful intrusions on the right to privacy. The High Commissioner stated that "the very existence of a mass surveillance programme creates an interference with privacy".[9] These findings were echoed by various UN bodies, which promoted mixed forms of strong, independent and effective oversight (i.e. via the involvement of executive, parliamentary, judiciary and expert bodies) as viable solutions. They also urged states to establish authorities capable of providing binding remedies to those whose rights have been violated.

That states engaging in mass surveillance should prove the effectiveness of their programmes was also a recurrent statement. According to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, "States engaging in mass surveillance have so far failed to provide a detailed and evidence-based public justification for its necessity, and almost no States have enacted explicit domestic legislation to authorize its use."[10] The Special Rapporteur therefore reasoned that, while terrorism might provide a justification for the exercise of mass surveillance, the systematic interference that intelligence services and law enforcement bodies are carrying out must comply with Article 17 of the ICCPR and other international human rights standards. Since these include the principles of necessity and proportionality, the Special Rapporteur implies that states engaging in mass surveillance are thereby violating human rights. Not only does he argue that "it is incompatible with existing concepts of privacy for States to collect all communications or metadata all the time indiscriminately", but his analysis makes clear that the right to privacy may be interfered with only on an exceptional, case-by-case basis.

To become more privacy-friendly, the Human Rights Council urged states to address the security concerns

that have the potential to infringe upon the right to privacy.[11] Further recommendations included that states ensure that their practices are not arbitrary or unlawful by enacting accessible, specific and foreseeable laws (including information-sharing agreements). Since data retention schemes involve the cooperation of telecommunication and internet providers, the private sector was urged to avoid becoming compliant with human rights infringements by omission, that is to say, by failing to require that governmental demands of accessing such data are done in accordance with the right to privacy.

5.1.2. European Union institutions

After the political turmoil that followed the 2013 revelations of the mass surveillance operations by the United States and the United Kingdom, the Council of the European Union did not revisit the issue in 2014.

The European Commission pursued discussions with United States (US) authorities as it assessed Decision 2000/520/EC, the so-called Safe Harbour Decision,[12] which provides the legal basis for the transfer of personal data from the EU to US companies. Simultaneously, theycontinued the negotiations for a data protection umbrella agreement between the EU and the United States.[13]

The European Parliament (EP) also took further action, adopting a resolution based on a report prepared by the Committee on Civil Liberties, Justice and Home Affairs (LIBE).[14] It said that mass surveillance by public authorities is incompatible with the fundamental rights enshrined in the EU Charter of Fundamental Rights (the Charter), and called for a full investigation into the matter. It also urged national governments and parliaments not to remain silent in the face of the revelations.[15] The resolution called for a large number of follow-up actions, including one asking FRA to conduct in-depth research into the effects of mass surveillance on EU citizens' fundamental rights.[16] Furthermore, the EP addressed other EU institutions about their inaction, reminding them that it is the "duty of the European institutions to ensure that EU law is fully implemented for the benefit of European citizens and that the legal force of the EU Treaties is not undermined by a dismissive acceptance of extraterritorial effects of third countries' standards or actions". The newly elected EP did not formally reopen the discussion after the beginning of the legislature in July but work is planned to resume in 2015.

5.1.3. Member States

Member States continued to react to the Snowden revelations in 2014.[17] **Germany** and the **United Kingdom**, for example, held parliamentary inquiries. The German Federal Parliament established a committee of inquiry, which is still collecting information to analyse the US National Security Agency situation.[18] Similarly, the public evidence sessions held by the United Kingdom's Intelligence and Security Committee as part of its Privacy and Security Inquiry heard from a large array of witnesses, from civil society representatives to the Home and Foreign Secretaries, who are responsible for issuing warrants for surveillance within and outside the United Kingdom.[19] The committee had not yet published its findings by the end of 2014. The **French** National Assembly also held a public hearing dealing with surveillance and privacy, touching on the French secret services' current work, the oversight mechanism, data protection safeguards and the planned reforms.[20] This general reflection was supported by a Council of State report on the digital age and fundamental rights, which suggested concrete legal reforms to enhance the fundamental rights compliance of surveillance activities.[21]

In other EU Member States, non-parliamentarian bodies also raised concerns. In **Estonia**, for instance, it was the Chancellor of Justice (the ombudsperson) who reacted, by initiating a legislative amendment to clarify his oversight powers over the intelligence services.[22] The government opposed his proposal, introducing several amendments to the bill to curb the chancellor's oversight powers in this area.[23] The parliament adopted the amendments in December, explicitly recognising that the Chancellor of Justice has the power to investigate complaints made against the intelligence services. However, as the government requested, he does not have the power to access certain types of state secrets and classified foreign information.[24] This exemplifies the difficulties and hurdles in organising oversight mechanisms meant to control intelligence services within the EU. In **Belgium**, the Standing Intelligence Agencies Review Committee started four investigations linked to the Snowden revelations, two of which were discussed in 2014 in the competent senatorial commission; the other two are still pending.[25]

National security concerns, however, continue to be used as a justification for restricting the right to privacy in several countries. Some, such as **France**, have asked for an increase in the human and technical resources of their intelligence services to cope with new challenges. The Parliamentary Delegation on Intelligence tried to balance this by calling for better protection of individual freedoms and better internal control within the intelligence services, and by stating that the work that French intelligence services carry out is drastically different in nature from that of US intelligence services.[26] Others, such as the **United Kingdom**, have called for broader surveillance powers and a ban on the use of encryption in communication, to facilitate the intelligence services' work.[27]

In 2014, only a few cases were brought before national courts. One of these, brought before the UK's

Investigatory Powers Tribunal (IPT) by various NGOs, was dismissed.[28] The claimants alleged that the use of the TEMPORA programme[29] by the British intelligence services, including Government Communications Headquarters (GCHQ), is unlawful. Since the intelligence services adhered to their policy of 'neither confirm nor deny', the tribunal was only able to hypothetically assess whether the legal framework would allow GCHQ to conduct mass surveillance. In its ruling, the tribunal found that the programme is legal in principle, though it did not study the proportionality of its use.

The tribunal also studied the legality of British intelligence services receiving data from, for example, the United States, when those data are based on communications intercepted by controversial mass surveillance programmes such as Prism or Upstream. It concluded that the "sufficient safeguards in place" in the United Kingdom afford individuals suitable protection. Privacy International and its co-claimant, Bytes For All, plan to contest the ruling before the European Court of Human Rights.[30]

A similar case was brought before the District Court of The Hague in the **Netherlands**.[31] The court also ruled that the country's intelligence services may receive data from foreign intelligence and security services, even if their powers are wider than those allowed within the country.

Promising practice

Publishing an annual activity report

Croatia's Security and Intelligence Agency (*Sigurnosno-obavještajna agencija*, SOA) has published an activity report explaining its role, duties, responsibilities and some of its current activities to the public for the first time. Prior to this, information related to SOA was considered classified. The agency launched a series of meetings with various target groups (civil society organisations, students and media) to bring its work closer to the public in 2014.

For more information, see: www.soa.hr

In **Hungary**, before the Constitutional Court, the Commissioner for Fundamental Rights challenged two legal provisions on surveillance.[32] Although Hungarian legislation does not provide for mass surveillance, the court ruling is an example of judicial scrutiny of whether surveillance measures are proportionate and take factors other than security into consideration. The commissioner contested two provisions: one allowing the continuous surveillance of "persons under national security check", the other excluding judicial review of the minister's decision on a complaint against the national security check's final findings. The court ruled that continuous surveillance, especially by secret means, of "persons under national security check" is disproportionate. In so doing, it upheld the commissioner's reasoning, arguing that it is disproportionate because the surveillance covers all those who come into contact with the person under surveillance, such as family members. It also declared unconstitutional and void the exclusion of judicial review of the minister's decision.[33]

5.1.4. Role of data protection authorities

Previous FRA research, and particularly the 2014 report on *Access to data protection remedies in EU Member States*, has stressed the role of data protection authorities (DPAs) as supervisors[34] and as the non-judicial remedial mechanism preferred by individuals who have experienced a data protection violation.[35] FRA has identified the need for improvements, namely further harmonisation and strengthening of the DPAs' powers, as well as the removal of obstacles that affect in practice the exercise of the fundamental right to a remedy.

The revelations on mass surveillance triggered wide-reaching discussion by DPAs globally[36] and at European level.[37] The Article 29 Working Party (A29 WP), which assembles all EU DPAs, analysed the current EU and international legal framework and provided recommendations.[38] It considers that effective oversight of national intelligence services should be carried out by the DPAs or in close collaboration with them. The A29 WP also stressed the need for more transparency of national intelligence services' activities. It called on Member States to respect their obligations under the right to privacy (Article 8 of the European Convention on Human Rights (ECHR)) and to further improve their data protection rules, including in the context of data exchange between national intelligence services. The A29 WP also stressed the full applicability of the EU data protection law when data are processed by private entities, such as electronic communications providers, and subsequently accessed by national intelligence services, or data are transferred by private entities to third countries and accessed by the national intelligence services of those countries.

Given the important role played by DPAs in safeguarding data protection, an assessment of DPAs' power vis-à-vis national intelligence services seemed important. FRA's comparative analysis aims to complement the work DPAs performed in 2014.[39] Table 5.2 on the DPAs' powers over national intelligence services (NIS) provides an overview of the national legal frameworks in place.

According to FRA's findings, in only seven EU Member States do DPAs have the same powers over

Table 5.2: DPAs' powers over national intelligence services, by EU Member State

EU Member State	No powers	Same powers	Limited powers
AT		X	
BE			X
BG		X	
CY			X
CZ	X		
DE			X
DK	X		
EE	X		
EL			X
ES	X		
FI		X	
FR			X
HR		X	
HU		X	
IE			X
IT			X
LT			X
LU	X		
LV	X		
MT	X		
NL	X		
PL			X
PT	X		
RO	X		
SE		X	
SI		X	
SK	X		
UK	X		
TOTAL	**12**	**7**	**9**

Notes: *'No powers' refers to DPAs that have no competence to supervise NIS.*

'Same powers' refers to DPAs that have the exact same powers over NIS as over any other data controller.

'Limited powers' refers to a reduced set of powers (these usually comprise investigatory, advisory, intervention and sanctioning powers) or to additional formal requirements for exercising them.

Source: *FRA, 2014*

national intelligence services as they do over any other data controller.

In 12 Member States, the DPAs have no powers over NIS. They are excluded either expressly by the general data protection law or by specific laws on the functioning of the national intelligence services. In **Latvia**, for instance, the DPA, according to the general data protection law, is not competent to supervise files classified as 'official secrets'. Personal data processed by the national intelligence services fall entirely within that scope, as the investigatory operations law stipulates.[40]

In nine Member States, DPAs have limited powers over NIS. While DPAs retain the power to issue non-binding recommendations on general matters relating to NIS surveillance, limitations observed vary considerably by Member State. Some limitations are formal and do not really affect the DPAs' powers; others are more substantive.

Formal requirements in **Cyprus** or **Greece**, for example, state that an on-site inspection can take place only if the head of the DPA is present.[41] In **Germany,** the law stipulates that, instead of the head, an officer duly authorised in writing may carry out this task.[42] Similarly, only a DPA commissioner who has been a member of the Council of State, the Court of Cassation or the Court of Auditors may carry out an investigation in **France**.[43] In **Belgium**, **France** or **Italy,** for instance, when vested with exercising individuals' right to access their own data, DPAs are permitted to inform the individual only that the necessary checks have been made, but not which data have been processed if such information affects the security of the state.

Other limitations are more substantive. Data-processing activities by NIS may be wholly or partially excluded from the notification requirement to the DPAs (**Belgium**, **France**).[44] Investigatory powers, especially the powers to request and/or access data relating to the data-processing activities and premises relevant for the data-processing activities, are also limited (**France**, **Germany**, **Ireland** and **Poland**).[45] Some DPAs are not endowed with the power to handle complaints by individuals and issue binding decisions (**Belgium**, **Poland**).[46] In **Germany**, regarding postal and electronic communications data, the DPA's power is limited to giving an opinion only if requested to do so by the oversight body (the G-10 Commission, composed of four independent experts elected by parliament).[47] However, even the G-10 Commission cannot initiate an investigation, as the federal and state data protection commissioners pointed out.[48] Finally, according to FRA data, the **Lithuanian** DPA's powers cannot be clearly defined because the wording of the data protection law is debatable in conjunction with the specific law on the national intelligence services.[49] In the absence of legal reform, a judicial interpretation of these acts would clarify the situation.

In some countries, the involvement of DPAs may occur indirectly. In **Luxembourg**, for example, the DPA is not competent to supervise NIS. However, the supervisory authority competent to supervise data processing related to state security, defence and public safety is composed of the Chief State Prosecutor and two members of the DPA.[50]

In this context, various DPAs called for legislative reforms and the implementation of data security measures in 2014, especially of easy-to-use secure encryption tools. In **Germany**, the federal and state data protection commissioners adopted two resolutions suggesting measures for better protection of personal data and privacy. The first resolution related to data security measures for electronic communication service providers. Special attention is paid to the role of secure encryption and easy-to-use tools for the end users, the transfer of personal data only to cloud providers that operate in a trustworthy legal framework and raising citizens' awareness of the potential of new technologies.[51] The second resolution asked parliament to remove the deficiencies of the current oversight system.[52] The initiation of an investigation, for instance, is a necessary power of any DPA and should be provided for by law. It also asked to embed the DPAs in the oversight system, thus taking advantage of their expertise. These calls build on a 2013 Federal Constitutional Court judgment on a standardised national anti-terrorism data file. The court held that, in a surveillance system which is not open to scrutiny by individuals subject to surveillance, there must be an effective oversight system in place, and when there is a data exchange between various intelligence services there must be enhanced cooperation of the supervisory DPAs too.[53]

The **United Kingdom** Information Commissioner's Office (ICO), in its written submissions to the Intelligence and Security Committee of Parliament, points out that the legal framework is fragmented and needs reviewing to ensure effective oversight and redress mechanisms.[54] The ICO also stresses its need to be involved prior to the enactment of legislative measures and during the conduct of privacy impact assessments before and after a legislative measure is taken. The ICO draws a difference between electronic communications surveillance and other surveillance methods, such as closed circuit television (CCTV); the former is easy, intrusive and covert, it emphasises. The ICO strongly recommends the use of encryption and other technological measures by electronic communication providers. Finally, in an effort to clarify the responsibilities of the various oversight bodies and enable their effective cooperation, the ICO began to draw up a roadmap.[55]

Promising practice

Offering open source encryption programmes

The **Portuguese** data protection authority has developed a website proposing both information and software to enhance the online privacy of internet users. The project, called *Pen C3Priv*, consists of a USB memory stick including several open source programs, configured with the maximum levels of privacy, as well as an encryption program that allows the users to save encrypted documents. This memory stick also contains a portable internet browser with many extras to ensure more privacy of personal information. One of the advantages of using these programs is that they are created in open source, which allows scrutiny and eventual detection and correction of security flaws on a transparent basis.

For more information, see: http://c3p.up.pt

5.2. Towards an enhanced data protection regime

5.2.1. Data protection reform package still not adopted

The Council of Europe is finalising its modernisation of the convention on data protection (Convention 108).[56] This was mainly driven by the ever-increasing challenges of information and communication technologies (ICT) and the globalisation of data flows. In December 2014, the intergovernmental Ad Hoc Committee on Data Protection finalised the modernisation proposals. It will submit them to the Council of Europe Committee of Ministers for examination and adoption early in 2015.[57] Convention 108 is the sole legally binding international instrument in the field of data protection and is also open to states that are not members of the Council of Europe. The European Commission obtained a mandate to negotiate, on behalf of the EU, its accession to the Convention and to ensure that the proposed text is compatible with the EU data protection package.[58] The proposed modernisation strengthens the data protection system, including the DPAs' powers. The European Conference of DPAs made specific proposals for enhancement.[59]

Turning to the developments in the EU system, the European Parliament adopted its position on the data protection reform package in March 2014, maintaining the main building blocks of the 2012 European Commission's proposals.[60] It also improved the safeguards in some points, such as the conditions for lawful data transfers to third countries, the DPAs' power to impose dissuasive fines, and cooperation amongst national DPAs in cross-border cases to bring individuals concerned closer to their national DPAs. The European Council, as co-legislator, has not yet completed its work, but it reiterated the need for the adoption of the data protection reform package in 2015.[61] Sixteen national parliamentary delegations also sent a strong call for the adoption of the reform in 2015.[62]

5.2.2. CJEU interpretation strengthens EU data protection regime

The Court of Justice of the European Union (CJEU) has handed down three important judgments in the area of data protection, delivering two on 8 April 2014.

The first elaborates on the notion of DPAs' complete independence. The CJEU has already stressed in a series of judgments that DPAs' full independence is essential to safeguarding the fundamental right to personal data protection. This new case confirms and develops case law covered by previous annual reports.[63] In *Commission v. Hungary*,[64] the CJEU considered that prematurely ending the DPA head's term as a result of a reform of the national data protection system infringes the requirement of full independence, since it can be considered an external political influence.[65]

The second judgment on the validity of the Data Retention Directive (see Section 5.2.3) also addressed the DPAs' oversight powers in the context of data retention for surveillance. In *Digital Rights Ireland and Seitlinger and Others*, the CJEU held that the directive should have made sure that data falling under the scope of the directive is retained within the European Union's territory to enable DPAs to perform their monitoring role.[66] This lack of a safeguard contributed to the annulment of the directive.

The third important case, Google Spain against the Spanish DPA, deals with the so-called 'right to be forgotten', which the CJEU reinforced in its landmark ruling in May 2014.[67] It recognises that individuals have the right to decide whether information linked to their name, and therefore available to anyone who uses a search engine such as Google, should be available to the public; it thus strengthens the right of citizens to have control over their personal data. However, as stated by the court, this right is not absolute. Information may be removed only on the basis that the information is "inadequate, irrelevant or no longer relevant, or excessive in relation to the purposes for which they were processed and in the light of time that has elapsed".

The CJEU established that the operators of search engines are data controllers, within the meaning of the Data Protection Directive, because of the way they collect and process data.[68] Search engine operators are thus more than mediators that simply make

information available on the internet. They must therefore comply with the requirements set out in the directive, including the right to the erasure of inaccurate data – even when published by a third party – and the right to object to the data processing under the conditions set out in the directive.

The CJEU stated, moreover, that these obligations apply to the subsidiaries or "establishments" of the search engines too, when the main undertaking is located in a third country, as long as they have an establishment within the EU which sells advertising space to that Member State "in order to make the service offered by the engine profitable".[69]

Google began complying with the judgment by removing some of the requested information one month later. As newspapers saw links to their articles removed, criticism of the judgment followed. Other search engines such as Yahoo and Bing stated in November that they would also comply with the ruling.[70]

The CJEU is expected to provide further interpretation of DPA powers, since the High Court of **Ireland** referred a case to it in July 2014.[71] The case was reported in last year's annual report. It questions whether DPAs can launch their own investigations, based on developments (such as the mass surveillance revelation and particularly the PRISM programme), or whether they should be bound by a European Commission decision on the adequacy of the data protection level in a third country (presently the adequate level of protection provided by the US companies which have signed up to the Safe Harbour Privacy Principles).[72]

5.2.3. EU Member States react to the invalidation of the 2006 Data Retention Directive

As mentioned in Section 5.2.2, on 8 April 2014 the CJEU handed down a judgment in *Digital Rights Ireland and Seitlinger and Others*. The CJEU ruled that Directive 2006/24/EC on data retention had been null and void from the moment it entered into force on 3 May 2006. As reported in previous annual reports,[73] the transposition of the directive into national law had been delayed and challenged before the highest courts in various Member States.[74]

According to the CJEU, the Data Retention Directive pursued a legitimate aim in the fight against serious crime and therefore contributed to national security. Thus, for the CJEU "the retention of data for the purpose of allowing the competent national authorities to have possible access to those data, as required by Directive 2006/24, genuinely satisfies an objective of general interest".[75] The Data Retention Directive was, however, declared incompatible with Articles 7, 8 and 52 (1) of the Charter and hence declared invalid because of the following shortcomings regarding the principle of proportionality, namely that it did not:

- define the concept of serious crime, which made it difficult to weigh the general interest in combating serious crime against the individual's right to privacy;
- prescribe the exact conditions on which the data can be accessed by the national security authorities;
- include an obligation to distinguish between the data of suspects and those of users without any criminal background or indeed links with the suspects;
- grant the data subjects sufficient remedies or safeguards against misuse of the collected data;
- prescribe the procedural requirements for storing or justify the specified retention period of 6 to 24 months.

The CJEU also considered that, due to improved automated analysis tools, metadata and content data could no longer be strictly distinguished. It stated that:

> *"those data, taken as a whole, may allow very precise conclusions to be drawn concerning the private lives of the persons whose data has been retained, such as the habits of everyday life, permanent or temporary places of residence, daily or other movements, the activities carried out, the social relationships of those persons and the social environments frequented by them."*[76]

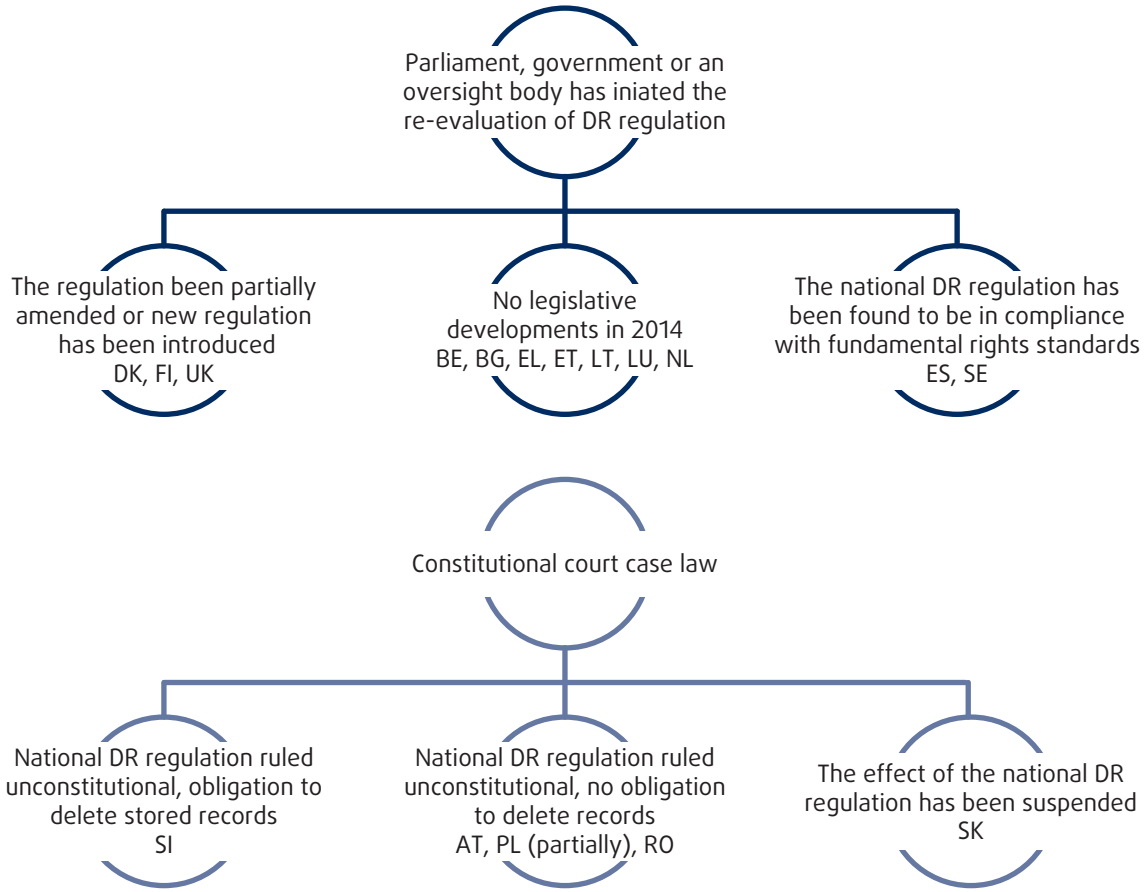
The CJEU also reiterated that the general population was not to be given the impression that it was under constant surveillance.

Although the *Digital Rights Ireland* ruling did not oblige Member States to abolish their national data retention regulations, it nevertheless set forth criteria for assessing their compatibility with fundamental rights standards. As a consequence, Member States are bound to re-evaluate their data retention regulations, and diverse judicial, legislative and private sector developments took place in 2014 after the CJEU's judgment.

Broadly, the impact of the data retention judgment on national data retention legislation and policy can be summarised as follows, showing a diverse pattern of responses at national level (Figure 5.1).

At the time of the CJEU judgment, several higher national courts already had cases pending. The *Digital*

Figure 5.1: Impact of the data retention judgment at national level



Note: *DR = data retention.*
Source: *FRA, 2014*

Rights Ireland case accelerated proceedings in many Member States and established the assessment criteria, which helped guide rulings.

The **Austrian** Constitutional Court was the first, on 27 June 2014,[77] to declare the national data retention laws to be invalid on the ground of inconsistency with the national constitution and Articles 7 and 8 of the Charter and Article 8 of the ECHR. The **Romanian** Constitutional Court followed on 8 July 2014.[78] Just three days later, on 11 July 2014, the **Slovenian** Constitutional Court[79] repealed mandatory data retention and took steps to compel ICT operators to delete stored metadata. All three courts followed the CJEU's argument and reasoning. On 30 July 2014, the **Polish** Constitutional Court ruled that the national provisions concerning the rules of access to and use of telecommunications data by the national security authorities were invalid and contrary to the Polish constitutional law on the right to privacy, and that data retention regulation was invalid principally because it did not lay down any judicial or other external control mechanism over the legality of the requests for electronic metadata made by the intelligence authorities. On 23 April, the **Slovak** Constitutional Court suspended the national data retention regulation until it is amended and brought into conformity with the CJEU judgment.[80] Cases are pending in **Belgium**[81] and **Bulgaria**.[82]

In addition to the constitutional debate, the CJEU judgment also has a direct impact on criminal procedure law. The question arises of whether criminal proceedings have to be invalidated where data obtained via mass storage have been used as evidence. The retroactive effect of the CJEU ruling has been discussed by lawyers in the media and also in courtrooms. In **Cyprus**,[83] **Spain**[84] and the **Netherlands**,[85] defence lawyers have attempted to use the CJEU ruling to overturn convictions in cases where necessary evidence has been collected via mass storage. National courts have, however, found that data retention is a proportionate measure for combating crime. Even when the applied measures have been viewed as excessive in the light of the *Digital Rights Ireland* criteria, the Court of Appeal of the Netherlands explicitly stated that the invalidation of the directive does not automatically make the national legislation unconstitutional.[86]

The CJEU's approach has not entirely determined how Member State authorities have reacted. Some have

drafted regulations widening law enforcement and intelligence institutions' access to telecommunication data. In **Cyprus**[87] the government proposed to parliament draft legislation that obliges telecom companies to register the users of prepaid cards. In **Germany** and **Romania**, draft laws were proposed that, according to the critics, implicitly allowed the reintroduction of data retention. In December 2014, the German government adopted the bill on information technology security, taking these criticisms into account.[88] In Romania, the draft act was also criticised and in December a group of parliamentarians referred it to the Constitutional Court for review.[89] In **Croatia**, a new bill was introduced according to which the intelligence services may ask a network provider to grant them direct access to communication data and which allows the removal of encryption for secret surveillance purposes.[90]

The **United Kingdom** delivered the most notable legislative response to the CJEU judgment, adopting emergency legislation.[91] On 27 July 2014, the Data Retention and Investigatory Powers Act (DRIP) and its annex Data Retention Regulation entered into force. One of the main triggers for adopting DRIP was the fact that many electronic communications service providers were considering deleting the data they had at their disposal. Under DRIP, public telecommunications operators notified by the Secretary of State are required to retain certain data that have been generated or processed in the United Kingdom relating to telephony and internet communications for up to 12 months.

Critics say that, rather than promoting privacy and limiting data retention, DRIP mainly aims to maintain or even expand the measures of blanket surveillance allowed in the Regulation of Investigatory Powers Act of 2000.[92] The foremost concern, expressed by British academics in an open letter to the full House of Commons, is that the new bill expands the investigatory powers of the British intelligence services from national to global level.

The CJEU judgment has also triggered enhanced fundamental rights guarantees. In **Finland**, for example, the new Information Society Act was amended to determine the retention periods of different communications data.[93] In **Denmark**, ISP companies are no longer obliged to store information on users' source and destination internet protocol addresses, port numbers and session types (a practice known as session logging).[94] The **Dutch** Minister of Justice and Security announced that alterations to the Act on Obligatory Retention of Data and the Criminal Procedure Code, entailing more stringent procedures for accessing the stored data, will be presented to parliament.[95]

The legislators in many Member States have suggested defining more precisely the scope of offences that allow the use of retained data for investigatory purposes. The new **Finnish** Information Society Act stipulates that retained data be used in the investigation and prosecution of serious crimes and refers to an exhaustive list provided in the Act of Coercive Measures.[96] In addition, the **Luxembourg** Ministry of Justice recommended that the current penalty threshold of one year should be replaced by an exhaustive list of offences.[97] In **Lithuania**, the discussions relate to the scope of the legislation and in particular the definition of 'serious and very serious crimes'.[98] In some Member States, such as **Bulgaria**,[99] **Estonia**,[100] **Greece**[101] and the **Netherlands**,[102] various organisations produced various legal analyses of the national regulation.

In 2011, the **German** Minister of Justice suggested replacing mandatory blanket retention of data with less invasive data preservation, also known as "quick freeze".[103] Privacy and digital rights activists support this alternative solution.[104] Data preservation differs from retention in that it occurs only when a tribunal orders a service provider to retain (from the date of the preservation order) the data of specified individuals who are suspected of criminal activities. There would, therefore, be no option of non-suspicion-based retroactive policing. The former European Commissioner for Home Affairs Cecilia Malmström, however, argued strongly in favour of mandatory retention, stating that:

> *"we need to address the argument that data retention should be replaced by a system of data freeze, or data preservation. I am not convinced that this would be an effective alternative. Data freeze will never bring back deleted data. Only data retention ensures that data which may one day be decisive – to prosecute or to clear a criminal – are available. I am afraid there are no easy choices or shortcuts here."*[105]

The effectiveness of the proposed alternative will be confirmed or denied by the experience of **Romania**, which has, following *Digital Rights Ireland*, resorted to preservation.

Data retention concerns public and private actors equally. Therefore, the ICT sector has a substantial role to play in the aftermath of the judgment. To date, **Slovenia** is the only Member State that has obliged electronic communications service providers to delete stored communications data.[106] Elsewhere, companies are faced with a dilemma: should they continue storing communication data and thereby risk infringing individuals' fundamental rights, or should they delete the data and thereby breach obligations laid down by national law? So far, the first scenario has not lead to any lawsuits. The **Hungarian** Civil Liberties Union (*Társaság a Szabadságjogokért*), an NGO, plans to sue the two largest mobile telecommunications providers to challenge the data retention rules in

the Act on Electronic Telecommunications before the Constitutional Court.[107]

To avoid potential claims, some **Swedish** ICT operators took the most proactive course by announcing that they had stopped retaining customer data and deleted all the stored files.[108] However, in June the obligation to retain data was restored by the Swedish Post and Telecom Authority after an analysis of the Swedish law found it compatible with the EU court decision. The Swedish legislation is currently under further analysis.

NGOs and the media, the third group of actors in the majority of Member States, have published opinions in support of the CJEU *Digital Rights Ireland* judgment and thus contributed to the general debate over digital rights, surveillance and privacy. The **Belgian** Human Rights League (*Liga voor Mensenrechten/Ligue des Droits de l'Homme*), the Net Users' Rights Protection Association and, most notably, Digital Rights Ireland have also taken direct judicial action. Digital Rights Ireland is continuing the case against data retention in the High Court of Dublin.

A major twist in the discourse on the general necessity of indiscriminate data retention came after the January 2015 terrorist attacks in France. In response to the events, data retention and extensive cyber surveillance are once again considered suitable and proportionate means of fighting against terrorism. As an example of this tendency, **Denmark** is considering reintroducing session logging.[109] In the **United Kingdom**, the Prime Minister has pledged to legislate on internet surveillance powers to allow intelligence services to break into the encrypted communication of suspected terrorists. The question of reintroducing data retention has also been raised in **Austria**, **Germany** and **Romania**.

5.2.4. Passenger name records in the framework of the EU internal security agenda

The CJEU's *Digital Rights Ireland* ruling also played an important part in the political debate on EU passenger name record (PNR) legislation, which drew the European Parliament's and the Council of the European Union's renewed attention to the 2011 legislative proposal.[110] The debate intensified as the perceived threat of a terrorist attack rose, gaining a new sense of urgency after the January 2015 terrorist attacks in France.[111]

PNR data are collected by airlines from passengers during reservation and check-in procedures. These include the passengers' contact and travel details, means of payment and other information. In 2011, the European Commission introduced a proposal for a PNR directive that would allow law enforcement agencies to use the data to combat terrorism and serious crime, complementing the various PNR agreements with third countries. The proposal was, however, stalled in the European Parliament in 2013 on grounds of data protection and proportionality concerns.

The CJEU's *Digital Rights Ireland* ruling reinforced the European Parliament's critical view of the principles underlying the use of PNR data for law enforcement purposes. On 25 November 2014, the European Parliament decided to refer the EU–Canada PNR agreement, signed in June, to the CJEU for an opinion.[112] The opinion could have far-reaching legal implications for all other EU PNR agreements with third countries as well as for the EU draft directive. In his speech in the European Parliament on 3 December 2014, Commissioner Avramopoulos nevertheless called upon the co-legislators to work towards the adoption of the 2011 draft directive as "a matter of realistic choice", encouraging the European Parliament to propose additional safeguards that would make the proposal "more robust from the point of view of fundamental rights guarantees".[113]

The European Commission has also supported Member States in developing their own national PNR systems in 2014. Besides providing financial support to these Member States, it requested that FRA provides practical guidance about the processing of PNR data for law enforcement purposes to promote compliance with fundamental rights. As a result, FRA published, in February, 12 fundamental rights considerations for the attention of Member States' technical experts.[114] This was done in informal consultation with European Commission services and the European Data Protection Supervisor (EDPS) and building on earlier opinions on PNR.[115] The considerations are a non-exhaustive list of 'dos and don'ts' on how to operationalise fundamental rights when establishing national PNR systems. They propose, for example, the introduction of clear and strict limitations on purpose, personal data safeguards and a high level of transparency of the PNR schemes for passengers. These practical considerations do not advocate setting up an EU PNR framework, but they outline key fundamental rights considerations where PNR frameworks do exist.

Discussions on the EU PNR directive gained new impetus from the internal security debate that grew in intensity in 2014. This was driven in part by the possible threat posed by 'foreign fighters' – EU nationals involved in armed conflicts outside the EU. A call for the adoption of the instrument appeared in important policy documents such as the European Council's post-Stockholm programme of 26 and 27 June[116] and the conclusions of the special meeting of the European Council of 30 August, which expressly requested the European Parliament to finalise its work on the proposal by the end of the year.[117] At the global level, the UN Security Council, in

its Resolution 2178 (2014) dealing with measures to prevent the movement and recruitment of foreign fighters, encouraged states to "employ evidence-based traveller risk assessment and screening procedures including collection and analysis of travel data."[118]

These documents set the stage for a clear support for a PNR Directive expressed by Member States in the Justice and Home Affairs Council conclusions of 4 December on the development of a renewed EU Internal Security Strategy. In this key document, the EU Council sets out its strategic priorities in the area of internal security for the upcoming five-year period. It presents "a strong Directive on EU PNR" as one of the tools required to "tackle the current threats, including terrorism". At the same time, however, it underlines the role of fundamental rights in internal security policies and encourages EU institutions and Member States to involve FRA in their design.[119]

> *"Respecting fundamental rights in planning and implementing internal security policies and action has to be seen as a means of ensuring proportionality, and as a tool for gaining citizens' trust and participation."*
>
> *Council of the European Union (2014),* Council conclusions on development of a renewed European Union Internal Security Strategy, *Brussels, 4 December 2014, p. 7*

FRA conclusions

- The EU institutions and Member States have been negotiating the data protection package since January 2012. Despite the evidence that challenges to data protection remain part of today's information society, no political agreement has yet been reached on the legislative proposals.

EU Member States should promptly adopt the data protection package to provide the EU with an enhanced data protection framework that could be complemented with specialised legislation in other areas of EU competence.

- Following the Snowden revelations concerning mass surveillance, the role of intelligence services and the implications of surveillance activities were discussed in the political arena, as well as in courts and by the public. Against this background, a number of EU Member States have engaged in a reform of security and intelligence services, as FRA comparative research shows.

EU Member States should take the opportunity to enhance privacy and data protection guarantees when reforming their services. These could include adequate guarantees against abuse, which entails effective supervision by independent bodies and efficient redress mechanisms. Member States should consider such guarantees in any reforms of intelligence systems.

- Data protection authorities play an important role in safeguarding general data protection legislation. Evidence collected by FRA shows their mandates differ widely. In several EU Member States, DPAs have the legal mandate to play a significant role in supervising security and intelligence services.

Where an EU Member State allows its DPA to supervise security and intelligence services, it should further strengthen the authority's independence and role and ensure that it is supported by adequate financial and human resources.

- In 2014, various revelations concerning mass surveillance highlighted the occurrence of data security breaches. The legal obligations of actors, such as electronic communications service providers, thus moved to the forefront.

EU Member States should ensure that data controllers, such as electronic communications service providers, adhere to their legal obligation as laid down in Article 4 of Directive 2002/58/EC and Article 17 of Directive 95/46/EC: taking into account the risks represented by data processing and the nature of the data involved, service providers have to implement appropriate technical security measures,. The use of secure encryption technologies should be considered in this context, as well as the development of user-friendly encryption tools.

- The CJEU's judgment on the Data Retention Directive spelled out crucial fundamental rights principles and suggested specific safeguards related to, for example, the scope of data retention, its aim and limits to law enforcement agencies' access to the data and the retention time. FRA mapped the Member States' reactions to this core CJEU judgment, identifying a variety of approaches in terms of both judicial and legislative reactions.

When assessing the legal implication of this judgment, the European Commission and Member States should carry out research on data retention's positive impact or lack thereof. If no significant advantages are found, less invasive alternatives should be preferred.

- Discussions on creating an EU framework for acquiring and processing passenger name records played a significant part in the internal security debate in 2014.

The EU co-legislators should ensure that the potential setting up of an EU passenger name records system be accompanied by enhanced fundamental rights safeguards, including limitations on purpose, transparency towards passengers and protection of their personal data.

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January

25 February 2014 – UN Committee on the Rights of the Child issues concluding observations on the periodic reports of Germany and Portugal

February

7 March – PACE adopts Resolution 1980 (2014) on increasing the reporting of suspected sexual abuse of children

13 March – UN Human Rights Council adopts Resolution 25/6 on the rights of the child and access to justice for children

March

11 April – PACE adopts Resolution 1995 (2014) and Recommendation 2044 (2014) on ending child poverty in Europe

14 April – Third Optional Protocol to the Convention on the Rights of the Child (CRC) on a communications procedure enters into force

23 April – PACE adopts Resolution 1927 (2014) on ending discrimination against Roma children

April

30 May – Belgium ratifies Third Optional Protocol to the CRC on a communications procedure

May

27 June – PACE adopts Resolution 2010 (2014) on child-friendly juvenile justice: from rhetoric to reality

June

July

1 August – CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) enters into force

18 August – Latvia ratifies CoE Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Convention)

August

19 September – UN Committee on the Rights of the Child issues concluding observations on the periodic reports of Croatia and Hungary

24 September – Ireland ratifies Third Optional Protocol to the CRC on a communications procedure

September

3 October – PACE adopts Resolution 2020 (2014) on the alternatives to immigration detention of children

24 October – European Network of Ombudspersons for Children issues position statement on children and austerity

October

4 November – UN Committee on the Elimination of Discrimination against Women (CEDAW) and Committee on the Rights of the Child issue joint general recommendation/comment on harmful practices against women and girls, such as female genital mutilation, 'honour-based' crimes and child marriage

November

December

EU

27 January – European Commission initiates infringement procedure against 11 EU Member States for non-communication of national measures implementing Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography

January

February

11 March – European Parliament and the Council adopt Regulation (EU) No. 223/2014 on establishing a fund for European aid to the most deprived

19 March – European Commission issues communication on taking stock of the Europe 2020 strategy for smart, sustainable and inclusive growth

March

10 April – European Commission launches public consultation on EU guidance on integrated child protection systems

April

5 May – European Commission launches public consultation on the Europe 2020 strategy: towards a post-crisis growth strategy for Europe

May

5 June – Council of the European Union adopts conclusions on preventing and combating all forms of violence against women and girls, including female genital mutilation

June

18 July – European Commission launches public consultation on the functioning of Council Regulation (EC) 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility

July

August

25 September – European Commission initiates infringement procedure against the Czech Republic for discriminating against Roma children in schools

September

22 October – European Parliament adopts resolution on the European Semester, suggesting stronger efforts to combat child poverty

October

27 November – European Parliament adopts resolution on the 25th anniversary of the CRC expressing its will to establish an intergroup on rights of the child

November

4 December – EU Justice and Home Affairs Council adopts conclusions on the promotion and protection of the rights of the child and child well-being

10 December – European Parliament Conference of Presidents establishes first intergroup on the rights of the child

December

6 Rights of the child

Europe and the world celebrated the 25th anniversary of the adoption of the Convention on the Rights of the Child in 2014. Despite considerable progress in those 25 years, some old challenges remain and new ones have arisen. The latest data show that 27.6 % of children in Europe – more than 26 million – are at risk of poverty or social exclusion. Many families with children have difficulties paying for their rent or mortgage, heating, school materials and even food. The legal protection of child victims of violence or sexual abuse and children without parental care was significantly reinforced and relevant policies were developed. European Union (EU) Member States have, however, allocated insufficient resources to child protection services. The EU and its Member States are also establishing judicial safeguards for children involved in justice proceedings. Yet, their practical implementation in the day-to-day experiences of children at court remains unconvincing.

6.1. Children living in poverty in Europe

The latest available EU-28 estimates[1] from 2013 indicate that 460,000 fewer children are at risk of poverty or social exclusion than in 2012.[2] Although this is a positive development, the proportion of children at risk of poverty or social exclusion has remained high and relatively unchanging in recent years. According to the earliest available Eurostat data, 28 % of children in the EU were at risk of poverty or social exclusion in 2005 and 27.4 % were at risk in 2010. Children continue to be poorer than adults: 27.6 % of all children in the EU live in poverty, compared with 23.8 % of adults.

A comparison of 2012 and 2013 data, as presented in Figure 6.1, shows diverging trends: some EU Member States have made strides, though they may, like **Croatia** and **Romania**, still have high proportions of children living in poverty or social exclusion; other EU Member States have lost ground. Whereas **Bulgaria** saw a slight reduction in the risk of poverty for children, it is still the country with the highest risk in the EU. In **Croatia**, the proportion of children at risk of poverty or social exclusion decreased from 34.8 % to 29.3 % and in **Romania**, it decreased from 52.2 % to 48.5 %.

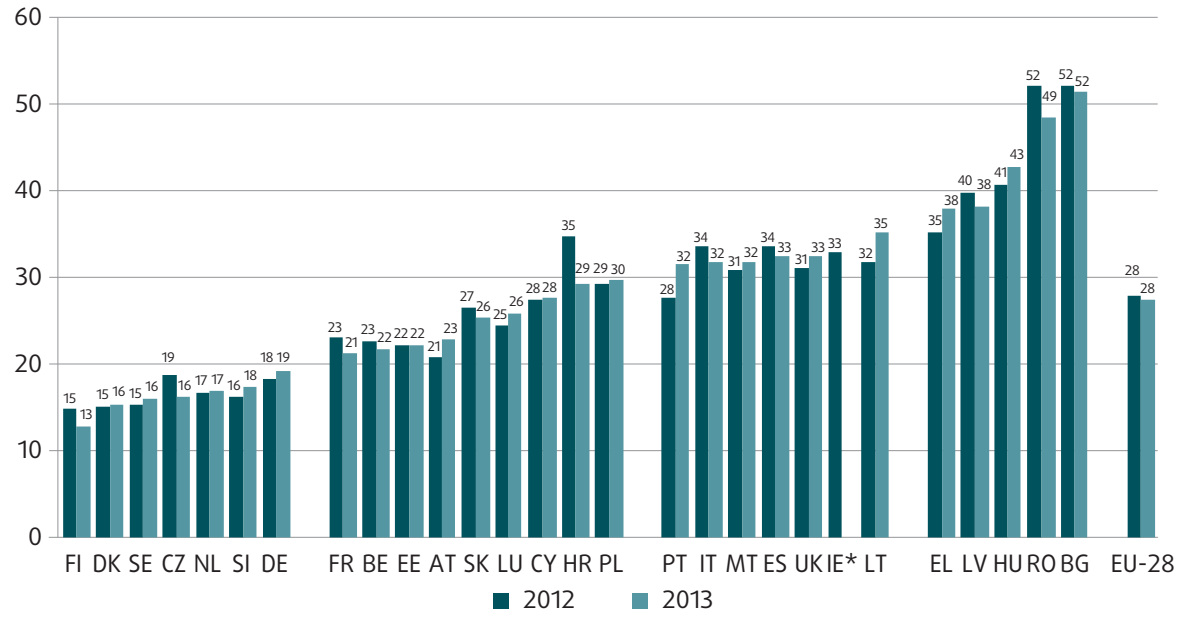
In other Member States, the situation has worsened. In **Lithuania** the proportion of children at risk increased from 31.9 % to 35.4 %, in **Austria** it rose from 20.9 % to 22.9 %, in **Greece** from 35.4 % to 38.1 %, and in **Portugal** from 27.8 % to 31.6 %.

Turning to the impact of the economic crisis on children's well-being, according to a 2014 UNICEF report,[3] children suffer from family downturns in evident ways. They feel anxious and stressed when parents endure unemployment

> *"Children feel anxious and stressed when parents endure unemployment or income loss, and they suffer family downturns in subtle and painfully evident ways. Housing, a large part of every family's budget, is one important indicator of poverty. Evictions, mortgage defaults and foreclosures all spiked in many countries affected by the recession. Such constraints at home have been compounded by weakened safety nets in healthcare, education and nutrition."*
>
> *UNICEF, Office of Research (2014),* Children of the recession: the impact of the economic crisis on child well-being in rich countries*, Florence, Innocenti Report Card 12, p. 2*

One study in the region of Catalonia in **Spain** analysed the impact that living in deprived families has on the mental health of children. The results show not only a rise in the

Figure 6.1: Children at risk of poverty or social exclusion in 2012 and 2013, by EU Member State (%)



Notes: ** EU-28 Eurostat estimation.*
2013 data for Ireland (IE) were not available; the EU-28 average therefore includes an estimate for this country.
Source: *Eurostat, European Union Statistics on Income and Living Conditions (EU-SILC) 2013 (accessed on 16 January 2014)*

number of children with mental health problems, but also the oversubscription of public health services, as fewer people are able to turn to private services.[4]

Children face differing risks of poverty and social exclusion; the risk climbs for those whose parents are poorly educated or foreign-born. An earlier Eurostat report[5] has already shown that children are more often at risk of poverty or social exclusion if their parents have low levels of education, or if at least one parent is foreign-born (more than 30 % compared with less than 20 % if both parents are native-born). The most recent (2013) Eurostat data estimates that 62.2 % of children in Europe whose parent(s) have attained a low level of education (pre-primary, primary or lower secondary education) are at risk of poverty or social exclusion, compared with 10.5 % of those whose parents have attained the highest level of education (first and second stage of tertiary education).[6]

It is well established that education substantially impacts on life chances and hence economic status. In its *Recommendation on investing in children: breaking the cycle of disadvantage* (2013/112/EU)[7], the European Commission suggests improving the quality of education systems so that they can promote equal opportunities and break the cycle of disadvantage. Looking at the latest available data (2011), Member States' expenditure on education ranged from 3.07 % of GDP in **Romania** to 8.75 % of GDP in **Denmark**. The EU-28 average was 5.25 %.[8] Research published in 2014 for **Romania** estimates how much the country is losing by failing to allocate enough resources to education. It estimates that the cost of non-investment in education is equivalent to between 7 % and 9 % of 2015 GDP. The report's authors suggest increasing education expenditure to 6 % of GDP as a tool for achieving the EU 2020 country targets.[9]

Promising practice

Asking children about their school

One way to gather information about the situation of children and the impact of policies on them is to ask children themselves. The European Commission *Recommendation on investing in children: breaking the cycle of disadvantage* (2013/112/EU) asks Member States to put in place mechanisms that promote children's participation in decisions affecting them and in the running of services such as care, healthcare and education.

In 2014, the **Danish** Ministry of Education introduced a mandatory satisfaction survey on Danish schools. The aim of the initiative is to improve the quality of education and the overall satisfaction among students in Denmark, asking those who know most about everyday life in schools and educational institutions. The questions cover issues such as fondness for the school, the school class, teachers and other pupils, feelings of loneliness, occurrence of stress symptoms, ability to concentrate, cooperation, bullying and sanitary conditions.

For more information, see: Danish Centre of Educational Environment

A 2014 survey among 11- to 15-year-old children in **Greece** concerning health behaviour in school-aged children (HBSC)[10] shows that the economic crisis has increased tensions and fights within the family. Pupils' life satisfaction fell by almost 10 % between 2006 and 2014. Almost 30 % of the children report that the family has stopped going on holiday.[11]

6.1.1. EU 2020 targets and the European Semester

The issue of children living in poverty is not specific to the EU but rather part of the wider picture, with child poverty and national budget allocations being discussed in various international forums. The Committee on the Rights of the Child is preparing a general comment on better public spending for children's rights, which is expected to be published in 2016.[12] For its part, the UN Human Rights Council is dedicating its 2015 full-day children's rights meeting to the theme 'towards better investment in the rights of the child'.[13] The OHCHR has prepared a report on the subject with contributions from governments and civil society.[14]

The European Commission Communication taking stock of the Europe 2020 strategy, released in March 2014, acknowledges that the EU is not likely to reach its target of lifting at least 20 million people out of poverty and social exclusion by the year 2020.[15] Europe 2020, the EU's 10-year growth and jobs strategy, sets up five targets. Of these, reducing poverty and tackling early school-leaving both have the potential to change children's lives. Unlike the poverty target, however, the target on early school-leaving is broadly achievable by 2020.[16]

The European Commission recommendation on investing in children,[17] which is seen as a comprehensive and well-defined policy, is starting to play a greater role in the discussions within the European Semester, a monitoring and coordination mechanism to ensure good economic governance and better policy coordination between EU Member States. The main elements of the European Semester are the National Reform Programmes (NRPs) and country-specific recommendations.

The NRPs submitted by Member States to the European Commission in 2014 addressed the EU 2020 targets related to children in different ways, such as recommending the provision of childcare services, early childhood education, family support schemes and addressing child poverty. For example, **Spain's** NRP made specific reference to a new, integrated Child Poverty Plan,[18] while **Romania's**[19] addressed specific considerations relating to the protection of children whose parents work outside the country.

Promising practice

Setting child-specific sub-targets

Recognising the risks and lifelong consequences of child poverty, **Ireland** has established, in its National Policy Framework for Children and Young People 2014–2020, a new, child-specific poverty sub-target, in addition to the national poverty target of the EU 2020 strategy. Under this sub-target, Ireland aims to lift more than 70,000 children out of consistent poverty by 2020, a reduction of at least two thirds on the 2011 level. This target will include reducing the higher risk of consistent poverty for households with children compared with households without children (8.8 % v. 4.2 %) and for children compared with adults (9.3 % v. 6 %).

For more information, see: Ireland, National reform programme, April 2014

After reviewing Member States' NRPs, the European Commission drafts country-specific recommendations, to be endorsed by the Council of the EU. Member States take these recommendations into account when drawing up national budgets for the following year. Like the NRPs, the recommendations cover several issues related to children, children's services, education and child poverty. Civil society has criticised the insufficient inclusion of EU 2020 targets and children's rights in country-specific recommendations.

Table 6.1 shows the countries that received recommendations in 2014, and in which area or areas, as well as the percentage of children at risk of poverty or social exclusion in each EU Member State. Seven countries received recommendations on making education more inclusive, especially for disadvantaged persons, Roma and migrants. There was, however, no reference to greater inclusion of children or persons with disabilities. For more information on persons with disabilities and Roma, see Chapters 1 and 3.

In 2014, 17 EU Member States received one or more country-specific recommendations related to children. Ten Member States (**Belgium**, **Croatia**, **Finland**, **Lithuania**, **Luxembourg**, **Latvia**, **Malta**, the **Netherlands, Portugal** and **Slovenia**) did not receive any child-focused recommendations in the 2014 European Semester.[20]

Seven country-specific recommendations focus on child poverty: these were made to **Bulgaria**, **Hungary**, **Ireland**, **Italy**, **Romania, Spain** and the **United Kingdom**. These seven countries have high proportions of children living in poverty or social exclusion, all above 30 %. The four other countries – **Lithuania**, **Latvia**, **Malta** and **Portugal** – with child poverty over 30 %, however, did not receive any recommendations in this area. Civil society took issue with this apparent arbitrariness,

criticising the lack of clarity in defining the country-specific recommendations.[21] It questioned why certain countries received recommendations on improving their poverty levels but others did not, although, according to Eurostat child poverty data, the countries had similar levels of child poverty. Civil society questioned, for instance, why the **United Kingdom**, which has a child poverty strategy, received a child poverty recommendation while other countries with similarly high poverty levels but no strategy did not. It also claimed that the

Table 6.1: 2014 European Semester – country-specific recommendations (CSRs) including the latest data on children at risk of poverty and social exclusion, by EU Member State

EU Member State	CSRs on care services for children	CSRs on early childhood education	CSRs on inclusive education	CSRs on child poverty	% of children at risk of poverty or social exclusion in 2013
AT	Yes	Yes	No	No	22.9
BE	No	No	No	No	21.9
BG	No	Yes	Yes	Yes	51.5
CZ	Yes	Yes	Yes	No	16.4
CY*	N/A	N/A	N/A	N/A	27.7
DE	Yes	No	No	No	19.4
DK	No	No	Yes	No	15.5
EE	Yes	No	No	No	22.3
EL*	N/A	N/A	N/A	N/A	38.1
ES	No	No	No	Yes	32.6
FI	No	No	No	No	13.0
FR	No	No	Yes	No	21.3
HR	No	No	No	No	29.3
HU	No	No	Yes	Yes	43.0
IE	Yes	No	No	Yes	33.1**
IT	No	No	No	Yes	31.9
LT	No	No	No	No	35.4
LU	No	No	No	No	26.0
LV	No	No	No	No	38.4
MT	No	No	No	No	32.0
NL	No	No	No	No	17.0
PL	Yes	Yes	No	No	29.8
PT	No	No	No	No	31.6
RO	Yes	Yes	No	Yes	48.5
SE	No	No	Yes	No	16.2
SI	No	No	No	No	17.5
SK	Yes	Yes	Yes	No	25.5
UK	Yes	No	No	Yes	32.6
Total	**99**	**6**	**7**	**7**	**27.6**

Notes: Cells highlighted where countries received country-specific recommendations (CSRs).
** No CSRs pursuant to an Economic Adjustment Programme.*
*** IE data are for 2012. Data for 2013 are not available.*

Source: FRA, 2014, and EU-SILC 2013 (Eurostat)

priorities identified in NRPs do not seem to inform the elaboration of country-specific recommendations.

The European Parliament called on the European Commission to tackle child poverty by introducing a guarantee against child poverty. The parliament's resolution on the European Semester also stresses the importance of involving the European Parliament at an early stage of the European Semester. Civil society has repeatedly suggested that this is desirable.

> *"[The European Parliament welcomes] the fact that some CSRs are concerned with the fight against child poverty and with affordable childcare services [...], urges the Member States to follow up the recommendations closely, to deliver on them and to propose specific, targeted measures within their NRPs with a view to tackling poverty, especially homelessness and child poverty [...], calls on the Commission to tackle immediately the alarming increase in child poverty throughout the EU through the introduction of a child guarantee against poverty; believes that such a guarantee is of the utmost importance in order to protect children affected by the consequences of the current economic and social crisis."*
>
> *European Parliament (2014),* European Parliament resolution of 22 October 2014 on the European Semester for economic policy coordination: implementation of 2014 priorities, *Strasbourg, 22 October, paras. 109, 103 and 106*

Civil society has criticised the European Semester generally for the low priority it gives to the Europe 2020 targets. Eurochild, a network of 170 children's rights organisations, recommends including a specific section on child poverty in each Annual Growth Survey and every NRP.[22]

The European Semester Alliance, an NGO network focusing on the policy tool of the European Semester, notes that even when the country-specific recommendations include recommendations on child poverty, minimum income or tax evasion, which it welcomes, these efforts are outweighed by more powerful recommendations based only on short-term financial considerations.[23] It claims that many of the challenges facing Europe are not consequences only of the crisis but also of austerity. The alliance reminds EU Member States about the importance of involving the European Parliament, national parliaments and civil society in the European Semester process.

6.1.2. Member States' measures, including the use of EU funds

EU Member States are targeting child poverty directly by adopting child poverty strategies or action plans, or by including specific objectives within more general anti-poverty policies. To help combat child poverty, the EU and various European funds are increasingly requiring that portions of the funds be used to address overarching priorities, such as poverty.

The new **United Kingdom** Child Poverty Strategy 2014–17 focuses on education for children and adult employment.[24] Several measures are intended to support families in difficult circumstances, providing housing, childcare subsidies, free school meals, free childcare, and reduced fuel and energy costs. The strategy will raise minimum wage and personal tax allowances and provide better access to affordable credit.

A review by the Children's Commissioner for England is critical of the **United Kingdom**'s strategy, claiming that local authorities do not have the resources to provide the early intervention required by the strategy. The Commissioner says that "since 2010, targeted redistribution through the tax and benefits system has been eroded, and attention has shifted from the responsibilities of the state to the responsibilities of families".[25]

Croatia, which, according to Eurostat data, reduced child poverty rates from 34.8 % in 2012 to 29.3 % in 2013,[26] has adopted the National Strategy on the Rights of the Child 2014–2020, with child poverty eradication one of its strategic priorities.[27] It aims to protect children from the risk and consequences of poverty, provide support through social policies and prevent the separation of children from their families for economic reasons. In addition, the Croatian Government adopted an overarching Strategy to Combat Poverty and Social Exclusion 2014–2020[28] and a programme for its implementation in 2014–2016.[29] Other countries, such as **Malta**[30], **Lithuania**[31] and **Poland**,[32] also included measures to address child poverty in their generic national programmes on social inclusion established in 2014.

Promising practice

Coordinating local policies to combat child poverty

The Berlin Senate has established a working group on child poverty formed by staff from various senate departments. It has established four sub-working groups (education, health, social integration and employment), and civil society organisations are also invited to the discussions. The working group is chaired by the senate department for health and social affairs and the senate department for education, youth and science. It aims to develop a coordinated, interdepartmental strategic plan to tackle child poverty, as established in the Berlin Guidelines on Government Politics 2011–2016.

For more information, see: Governing Mayor of Berlin (2011), Richtlinien der Regierungspolitik 2011–2016

The European Commission emphasised the importance of using EU funds to implement child poverty policies in its recommendation on investing in children in 2013.[33]

This link was further operationalised at the end of 2013 through changes to the disbursement of EU funds brought in by Regulation (EU) No. 1303/2013. One of the thematic objectives of the European Structural and Investment Funds for 2014–2020 is "promoting social inclusion, combating poverty and any discrimination". In accordance with Regulation (EU) No. 1304/2013, 20 % of the total resources in each Member State shall be allocated to this thematic objective (for more information on the use of structural funds, see Chapters 1 and 3).

A report by the Network of Independent Experts on Social Inclusion found that countries with high rates of child poverty or social exclusion use structural funds more than those with lower poverty levels, although not all countries with high child poverty rates make use of the funds. **Croatia**, **Greece**, **Hungary**, **Ireland**, **Latvia** and **Spain**, which have high or very high poverty rates, made good use of EU funds. It appears that some countries, such as **Bulgaria**, **Italy**, **Lithuania**, **Romania** and **the United Kingdom**, do not make full use of these EU funds, although they also have high rates of child poverty or social exclusion.[34]

In March 2014, through Regulation (EU) No. 223/2014, the European Commission launched the Fund for European Aid to the Most Deprived, with a budget of €3.8 billion. It aims to provide non-financial assistance to some of the EU's most vulnerable citizens from 2014 to 2020, for example by providing food, clothing and school materials. Member States may also support non-material assistance to the most deprived people, to help them integrate better into society. For example, the programme adopted for **Italy** will disburse €670 million to provide food, support children in deprived families with school materials and provide assistance to homeless people.[35]

6.2. Protection of children, including against violence

To help EU Member States to improve the protection of children across a range of situations, for example protecting victims of violence, victims of trafficking and unaccompanied children, the European Commission is preparing guidance on integrated child protection systems.[36] The guidance, expected to be adopted in 2015, should take stock of the various existing EU instruments relating to the protection of children's rights and suggest how EU Member States can better use or implement those instruments. It should describe good practices in looking after children in cross-border and national contexts and cover all forms of violence as determined by the Convention on the Rights of the Child (CRC).[37]

In preparing its guidance on integrated child protection systems, the European Commission asked FRA to map national child protection systems in the 28 Member States. The research examined the scope and key components of national child protection systems across the EU, focusing on the systems' laws, structures, actors and how the systems function, as well as the human and financial resources required and the degree of accountability that exists. The research, to be published in 2015, identifies legislative and policy gaps and implementation challenges, but also promising practices.[38]

The FRA research findings on child protection systems show that in many Member States, legal, policy and administrative provisions regulating the operation of child protection systems are fragmented. National legislation and policies targeting particular groups of children and/or particular child protection issues, as well as sector-specific laws, are not always aligned with overarching national child protection legislation. The fragmentation of legislation and policies is a major challenge for achieving comprehensive and efficient child protection systems in line with the CRC.

In many Member States, the allocation of financial and human resources to child protection systems may not be sufficient, which is exacerbated by decentralised protection systems. Local authorities may be unable to respond efficiently to ever-increasing responsibilities, and cross-sectoral coordination suffers as a result. In the **Netherlands**, for example, under the 2014 Youth Act,[39] municipalities are responsible for a wide range of services for children and families, ranging from universal and general preventative services to specialised care. The Ombudsman for Children reported that a majority of municipalities lack information about child abuse and its prevention.[40] Although the Transitional Committee Youth System Revision had shared similar concerns in previous reports,[41] in its fifth report the committee considered that the infrastructure in the municipalities was ready for the new tasks.[42] In **France**, a Senate report raised the issue of the limited resources of local child protection monitoring mechanisms.[43]

Ensuring effective monitoring of private institutions working with children remains a challenge in Europe, because of insufficient monitoring mechanisms, a lack of human resources and, more importantly, a lack of clearly defined quality standards for service delivery. The lack of monitoring was raised by the ECtHR in its ruling against **Ireland** for failing to protect a girl who was a victim of sexual abuse by a lay teacher in an Irish National School run by the Catholic Church.[44] As a consequence of this judgment, the **Irish** government has approved an out-of-court settlement scheme for other survivors of child abuse in schools.[45]

"Despite this awareness [of the existence of sexual crimes against children], the Irish State continued to entrust the management of the primary education of the vast majority of young Irish children to privately managed National Schools, without putting in place any mechanism of effective State control."

ECtHR, O'Keeffe v. Ireland, *No. 35810/09, 28 January 2014*

FRA research found that most Member States contract private organisations, whether commercial or non-profit, to provide various types of child protection services. In many Member States, commercial institutions offer alternative care services. Among those countries that have an accreditation system for service providers, some stipulate a review of each accreditation after a specified period, ranging from one to five years, while others do not specify a review period.[46]

The **United Kingdom** Department for Education opened a consultation on a set of draft regulations that would extend the range of children's social care functions that local authorities can delegate to third-party providers. The majority of 1,300 responses received raised concerns about the possibility of 'privatisation' of or 'profit making' in children's services. In view of this, the government amended the drafts to ensure that functions can be delegated only to non-profit making organisations.[47] Concerns remain, however, that commercial companies are taking over certain child protection services.[48] The Children and Families Act 2014 was enacted in March, revising the 1989 Children's Act, and covering several areas of child protection, such as adoption, the family justice system, special education needs, childcare and strengthening the role of the Children's Commissioner.[49]

Estonia also adopted a new Child Protection Act in November 2014.[50] NGOs working on children's rights strongly supported the new law, seeing it as a substantial step forward in the protection of children's rights.[51] Several NGOs, however, have said that the new legislation disproportionately limits the right to privacy and family life, as Article 33 empowers social workers and police officers to remove a child from the home for up to 72 hours without court permission if they believe the child is in danger.[52] The government views the 72-hour limitation as a better guarantee of the rights of the child since, under the previous law, the court had to be informed "without delay", which in practice could mean more than 72 hours.

6.2.1. Allocation of resources to child protection systems

Child protection systems are dependent on sufficient human and financial resources; budget allocation should therefore be transparent. Data collected by FRA show, however, that budgetary allocations to child protection are not visible in the majority of Member States, as these funds are often included in overall social policy or social welfare expenditure. Furthermore, the types of child protection may vary. Typically, they include child allowances or the budget allocated to the responsible child protection authority; in principle, however, it does not cover other ministries' related expenditures.[53]

Research shows the financial benefits of child protection systems based on prevention and community-based and family-like care over those based on institutional care. The Central Union for Child Welfare of **Finland**, for instance, compared the cost of prevention services to community care.[54] It finds that prevention services that ensure a child can be taken care of by his or her family cost much less than community care services (€12,000 per child versus €60,000 per child).

"The cost of child protection reform in Romania equals the costs for the construction of 30 miles of highway."

Stefan Darabus, Director, Hope and Homes for Children Romania, Eurochild Annual Conference, Budapest, November 2014

Past use of EU funds remains contentious in the child protection field. Civil society has often claimed that EU structural funds have been used to institutionalise children, especially children with disabilities and from the Roma community.[55] The European Ombudsman is preparing her own initiative report on the use of structural funds in the previous programming period[56] (see also Chapter 1).

The European Structural and Investment Fund Regulation 2014–2020 (Regulation (EU) No. 1303/2013) imposes conditions on the funds' use, which should encourage Member States to use them for community care rather than institutional care. The regulation establishes that, under the thematic objective 'Promoting social inclusion and combating poverty', "Member States need a national strategy for poverty reduction that, inter alia, includes measures for the shift from residential to community based care".[57] Following this approach, the **Lithuanian** Ministry of Social Security and Labour approved a 2014–2020 action plan that shifts care of children without parental care or with disabilities from institutions to family- and community-based services[58] (see also Chapter 1).

A study in **Romania**, aimed at persuading the government to better use the 2014–2020 EU structural funds, built an economic case for child protection reform.[59] It presents three scenarios for the child protection system: staying with the current system; deinstitutionalising and moving towards family-like residential care; and, finally, investing in prevention to keep children in family care. Recurrent costs are significantly lower in the long term for scenario two and even more so for scenario three.

6.2.2. Protection of child victims of violence

Child protection authorities are responsible for protecting children who are suffering or are at risk of suffering any form of violence. The 2014 FRA survey on violence against women[60] shows that 27 % of women experienced some form of physical abuse in childhood at the hands of an adult, and just over one in 10 women (12 %) experienced some form of sexual abuse by an adult before they were 15 years old (for more information on measures to combat domestic violence and enhance victims' rights, see Chapter 7).

For the first time, two UN committees issued a joint general comment, focusing on states' obligations to prevent and eliminate harmful practices inflicted on women and girls. The Committee on the Rights of the Child and CEDAW issued a comment covering female genital mutilation, underage and/or forced marriage, polygamy and 'honour-based' crimes.[61] EU Member States continued to ratify the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention),[62] with five new ratifications in 2014.[63] These brought the total to eight EU Member State ratifications since the treaty opened for signature in May 2011. It entered into force in August 2014. The Convention on the protection of children against sexual exploitation and abuse (Lanzarote Convention)[64] already has 19 ratifications, with **Latvia** joining in 2014.

The EU made similar expressions of commitment. The protection of girls from violence is a major concern of the European Council's conclusions on preventing and combating all forms of violence against women and girls, including female genital mutilation.[65] The conclusions emphasised the FRA survey findings on violence against women[66] and made a number of recommendations to Member States, including on the lack of reporting, the collection of data, the protection of victims and the use of EU funds.

The effective implementation of the directives on the protection of child victims of trafficking – namely the Human Trafficking Directive (2011/36/EU) and the Directive on combating sexual abuse and sexual exploitation of children and child pornography (2011/93/EU)[67] – as well as the transposition of the Victims' Directive (2012/29/EU; see Chapter 7) should improve the way that national authorities prevent violence and respond to victims.

The transposition deadline for Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography was 18 December 2013. By the end of January 2014, the European Commission had already initiated formal infringement procedures against 11 Member States[68] for non-communication of national measures implementing the directive.

The Commission ended infringement procedures against **Cyprus** in November 2014 because it passed and communicated a new law on preventing and combating sexual exploitation of children and of child pornography.[69] The new law criminalises various forms of sexual violence, including those occurring through electronic means, and establishes a number of guarantees for the protection of the child, including during the investigation and prosecution of the crime. **Greece** has incorporated Directive 2011/93/EU into a law providing for the protection of child victims in criminal investigations and proceedings.[70]

Some other Member States have undertaken or are discussing reforms to civil or criminal child abuse-related legislation, including **Belgium**, **Bulgaria**, **Finland**, **Germany**, **Latvia**, **Lithuania**, **Poland**, **Sweden** and **the United Kingdom**.

In **Germany**, for example, a draft law simplifies the prosecution of genital mutilation committed abroad and changes statutes of limitations in sexual abuse cases.[71] It also expands the definition of child pornography and penalises its production even when there is no intent to distribute.

EU Member States have also taken steps at the policy level, adopting national strategies or action plans to address violence against children generally or within the family context. The **Slovak** government adopted a national strategy to protect children from violence and established a national coordination centre.[72] The **Portuguese** 2014–2017 national action plan against domestic violence includes measures to protect child victims or those at risk of violence,[73] as does **Poland**'s 2014–2020 national program for preventing domestic violence.[74]

The issue of children in situations of vulnerability, such as children with disabilities, is generally neglected or only superficially tackled in policies addressing violence against children. FRA's research on children with disabilities and their experiences of violence indicates that none of the EU Member States has a separate strategy or action plan on violence against children with disabilities.[75] Member States address the issue of violence against children with disabilities in policies dedicated either to the general child population, or to people with disabilities or through policies targeting different types of violence, such as domestic violence. Even though some of these policies recognise the greater vulnerability of children and persons with disabilities to violence, few of them contain specific, targeted measures aimed at preventing and combating it.

The FRA research on child-friendly justice,[76] child victims of trafficking[77] and children with disabilities[78] has shown that professionals often lack guidance, and that having clear guidelines, practical protocols or

handbooks can improve their performance. In 2014, FRA together with the European Commission published a handbook for practitioners on guardianship for children deprived of parental care,[79] focusing in particular on the needs of child victims of trafficking (for more information on trafficking, see Chapter 4).

Member States continued to develop guidance and action protocols targeting different professionals in 2014. The **Croatian** government, for instance, adopted the 2014–2020 National Strategy on the Rights of the Child.[80] One of its specific goals is to develop protocols for different professionals, such as teachers, to allow early detection of children at risk of violence or who are experiencing violence. The Ministry of Health, Social Services and Equality in **Spain** adopted a protocol for intervention in child abuse cases in the family context.[81]

6.3. Access of children to judicial proceedings

Contact with the justice system can be a difficult, even traumatic, experience for children. Despite clear legislative progress over the last years, Member States are far from ensuring that children have access to child-friendly justice. The difficult technical language, the procedural deadlines, the sometimes unclear roles of the different actors, the never-ending court cases, and the repetitive declarations: justice professionals need to adapt the way they work so that justice can be done while ensuring that children are supported in the process. This is one of the aims of the Council of Europe Guidelines on child-friendly justice[82] and the EU Agenda for the rights of the child.[83]

The question of how to adapt justice systems to children has also been the focus of discussions at the international level. The UN Human Rights Council dedicated its annual 2014 full-day meeting on the rights of the child to access to justice for children and adopted a resolution calling on states to take measures to remove barriers to children's access to justice.[84]

Following a civil society advocacy campaign, the General Assembly asked the Secretary General to commission an in-depth global study on children deprived of liberty.[85] The Council of Europe Parliamentary Assembly also passed a resolution asking Member States to take measures in the field of juvenile justice, including using detention only as a measure of last resort.[86]

Turning to the international level, children now have the opportunity to bring cases before the Committee on the Rights of the Child, as the CRC Third Optional Protocol entered into force in April 2014.[87] The protocol, opened for signature since February 2012, has received little support from EU Member States, with a total of only six ratifications; **Belgium** and **Ireland** ratified it in 2014.

6.3.1. Children before courts: laws and standards

In 2014, political consensus emerged[88] in the Council of the European Union with regard to the draft directive on procedural safeguards for children suspected or accused in criminal proceedings.[89] Civil society, however, criticised the weakening of certain safeguards that the original European Commission proposal had included.[90]

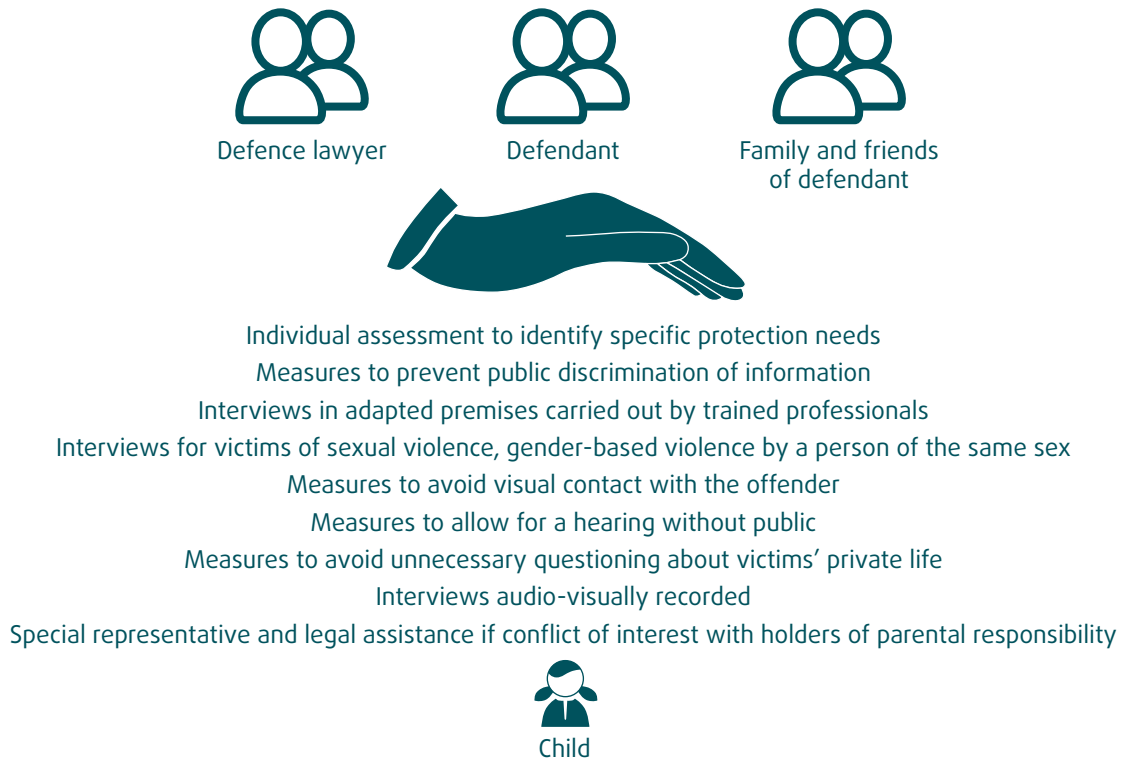
Several EU directives that have already been adopted and that establish procedural safeguards for child victims of crimes are still to be implemented. While infringement proceedings against 10 Member States for non-communication on national measures implementing the Directive on combating sexual abuse and sexual exploitation of children and child pornography are ongoing, the Victims' Directive is approaching its transposition deadline of November 2015. The Victims' Directive establishes special safeguards for children, as shown in Figure 6.2. A 2014 FRA report on victims of crime analyses the extent and nature of support for victims[91] (for more information on victims' rights, see Chapter 7).

In 2014, the European Commission published its first research results on children's involvement in judicial proceedings, focusing on indicators, statistical data and legal safeguards in criminal proceedings. The summary of the criminal judicial proceedings in the 28 Member States,[92] in addition to the 28 national reports already published, provides a legal assessment of the types of procedural safeguards that exist and in which Member State. It analyses different standards and shows, for example, that while a majority of countries have state regulation of the media to protect the child's right to privacy, only a minority of countries have a legal obligation to communicate and explain to a child victim the decision or judgment in a language adapted to the child's level of understanding.

> *"Acting for the interest of the child, is making sure that justice doesn't generate more violence. Which is ambitious. Because the meeting of the child victim with justice is too often violent. Our duty as adults around him/her is to limit to the maximum the violence he/she might suffer during the procedure. The duration can be a form of violence. The way the trial is led can be a form of violence. The lack of information can be a form of violence. I think we can work on that. It's a question of practices."*
>
> *Judge, female, France (FRA, 2013, child-friendly justice project)*

The FRA research, focusing on the views of justice actors in 10 Member States,[93] reinforced the European

Figure 6.2: EU Victims' Directive: protection measures for victims with specific protection needs and all child victims of crime (Articles 21, 22, 23 and 24)



Source: FRA, 2014

Commission's research findings with insight into the actual day-to-day functioning of the safeguards. The Commission's legal analysis, for example, indicates that 17 countries have a requirement to video-record interviews with child victims, and that in 10 countries such recording is optional. The FRA interviews with professionals show that video recordings are not necessarily carried out, however, for example because of inoperable equipment.

> *"Another thing is that I, as a judge, was never trained how to talk with children, so I can only use my private knowledge. And that is one dangerous zone. In my opinion."*
>
> *Judge, female, Croatia (FRA, 2013, child-friendly justice project)*

Clearly, despite legal safeguards, practices differ within Member States, depending on the severity of cases and the approach individual judges adopt. FRA concludes that there tends to be a lack of standardisation. The implementation of national law in specific cases is left to the individual assessments of the professionals involved. FRA recommends developing specific professional guidance, particularly on hearing children and informing them about their rights and the procedures. Many professionals interviewed also highlighted a need for better multi-agency cooperation and training.

Promising practice

Improving police investigations and increasing prosecutions

The **United Kingdom** College of Policing published several guidance documents for police officers in 2014:

- *Police response to concern for a child* deals with the initial response to a call, investigation and the gathering of evidence;
- *Investigating child abuse and safeguarding children* stresses that concerns about children should be investigated and that officers should focus on gathering evidence that does not rely solely on the victim's or suspect's account;
- *Responding to child sexual exploitation* is designed to raise awareness of child sexual exploitation, increase reporting, disrupt offender activity and increase safeguarding measures to help protect children and young people from being sexually exploited.

For more information, see: 'Major investigation and public protection' on the website of the College of Policing

Latvia reformed its law on the protection of children's rights,[94] requiring that professionals working with

children acquire specialised knowledge. At least 50 % of the training programme aimed at prosecutors, judges, prison officers, lawyers and police who work with children should now cover how to communicate with children, including during criminal proceedings. This reform addresses one of the challenges FRA identified in its research: the need for more and better professional training.

EU Member States have taken a number of initiatives since the European Commission's and FRA's legal and social research took place, often in the process of transposing the Victims' Directive. In 2014, **Croatia**, **Cyprus**, **Germany**, **Hungary**, **Latvia**, **Lithuania**, **Malta**, **the Netherlands**, **Spain** and **the United Kingdom** reformed or began reforming their legislation. These reforms mainly relate to legal assistance and legal aid for children who are victims, training, hearing proceedings, guardianship and protection measures.

National courts have ruled on various aspects related to the standing of children in court proceedings. In **Belgium**, for example, the Court of Cassation ruled on the case of a girl who did not want to appear at the hearing and asked to be represented by a lawyer, a request that was rejected by the Court of Appeal. According to the Court of Cassation, the fact that the child does not appear in person at a trial does not deprive the child of her right to be represented by a lawyer at the hearing.

"Noting that the minor, because of the fear that her parents inspired in her, refused to be present with them and asked to be represented by a legal counsel, the judgment considers that the refusal of the minor to appear voluntarily and the desire to be represented by a lawyer are among the rights of the defence and a fundamental element of a fair trial."

Belgium, Hof van Cassatie/Cour de Cassation, No. P.14.0704.F, 4 June 2014

6.3.2. Children before the court: experiences in practice

Many Member States lack comparable information concerning children's involvement in criminal, civil and administrative judicial proceedings.[95] Therefore, in 2013–2014 FRA interviewed 380 children about their direct experiences in nine Member States, employing protection mechanisms to avoid re-traumatisation. The children shared the positive and negative aspects of their experiences during criminal or civil proceedings, answering questions on the same topics as the justice professionals, according to the standards of the Council of Europe Guidelines on child-friendly justice.[96]

"I didn't know when to stand up and then I got yelled at: you should stand up when you talk to a judge!"

Boy, 14 years old, involved in a custody proceeding, Estonia (FRA, 2014, child-friendly justice project)

The professionals spoke at length about the need for child-friendly rooms to hear children. The children themselves, however, seemed more interested in how the person hearing them behaved – whether or not they were respectful, friendly, open and gave them time to answer and ask questions – than in how the hearing environment was set up. Thus, it becomes apparent that much more attention needs to be paid to hearing techniques and the professional behaviour of everybody who is in contact with children.

While professionals tend to view parental involvement critically, children value the support of their parents highly, especially in difficult hearings. Many children said they were scared because their neighbourhood or school knew about their case, or because they might run into the defendant or other parties during trials.

The European Commission's research and FRA's interviews with both professionals and children all lead to the conclusion that one fundamental right – the right to information – is inadequately implemented. Children made clear that receiving information was key to reducing their anxiety and enabling them to express their views openly.

FRA's research shows that generally and no matter how difficult the process was, children were satisfied that they had been heard during the judicial proceeding. Some children even talked positively about the proceedings; in all those cases, children had received consistent support and information.

FRA conclusions

- Child poverty and social exclusion rates have remained entrenched at high levels in recent years, data show.

To address this, at its 2015 mid-term review of the EU 2020 Strategy, the EU should consider adopting a specific child poverty target. The European Semester process could monitor progress towards achieving this target, recommending evidence-based measures to tackle child poverty.

- The 2014–2020 European Structural and Investment Funds – and the legal obligation to ensure that operational programmes funded by these funds fulfil the requirement to respect the principles of gender equality, non-discrimination, the rights of persons with disabilities and Roma inclusion – open a new avenue to address well-being and poverty for all children.

EU Member States, with the engagement of civil society, should make better use of EU funds to ensure the provision of quality services for children, using

the comprehensive approach to child well-being established in the European Commission's recommendation on investing in children. Specifically, efforts should continue to promote the transition from institutional care to family- and community-based care, particularly for children with disabilities. As children suffer disproportionately from poverty, effective monitoring of the use of structural funds to achieve the poverty reduction target of the Europe 2020 Strategy, including child specific actions and the implementation of ex ante conditionalities, is key to enhancing children's well-being and enjoyment of their fundamental rights.

- FRA evidence published in 2014 shows that the level of coordination between central governments and municipalities remains insufficient in the context of decentralised child protection systems. This also affects the way that services are provided in the different municipalities and by different service providers.

EU Member States are encouraged to enhance coordination mechanisms and develop quality standards and monitoring mechanisms to ensure compliance with children's rights by public and private service providers.

- FRA evidence analysed in 2014 shows that, while child-friendly justice is often a well-recognised legal concept in national legal systems, it could be applied more in practice. Protection measures established in the Victims' Directive, such as video recording of child victims' statements, although a legal possibility in most EU Member States, are not widely used.

EU Member States should make sure that the Victims' Directive, which has a transposition deadline of November 2015, is properly transposed and implemented. Moreover, the approval of a new directive on procedural safeguards for children suspected or accused in criminal proceedings will be a step forward in ensuring that all children, including those that have violated the law, are adequately treated by the justice system.

- FRA research on child-friendly justice, children with disabilities and child protection shows that professionals working with children greatly benefit from continuous support and capacity building.

All relevant professionals should take a consistent and rights-compliant approach in their work with children and their families. Competent authorities are thus encouraged to provide specific guidance, training and practical protocols. The EU Guidance on integrated child protection systems is expected to facilitate this process.

Index of Member State references

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UN & CoE

1 January – Rule 47 of the ECtHR rules comes into force, introducing more stringent admissibility criteria

January

February

17–21 March – Sub-Committee on accreditation of the international coordinating committee for national human rights institutions (NHRIs) recommends accrediting the NHRIs in the Netherlands and Slovakia with A and B status respectively

6 March – CoE Commissioner for Human Rights publishes human rights comment: 'Hate speech against women should be specifically tackled'

March

9 April – UN General Assembly adopts Resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system

25 April – Poland ratifies Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) on the abolition of the death penalty, becoming the last EU Member State to ratify the protocol

April

23 May – Poland ratifies Protocol No. 13 to the ECHR concerning the abolition of the death penalty in all circumstances, becoming the last EU Member State to ratify the protocol

May

11 June – ILO adopts new legally binding Protocol on Forced Labour to address gaps in the implementation of the 1930 Forced Labour Convention

26–27 June – CoE holds seminar: 'Tackling the gaps in research and the lack of data disaggregated by sex concerning women's equal access to justice'

June

15 July – UN Human Rights Council adopts Resolution 26/22 on enhancing accountability and access to remedy in cases of business involvement in human rights abuses

July

1 August – CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) comes into effect

August

September

9 October – CEPEJ publishes fifth evaluation report on European judicial systems

15 October – World Future Council (WFC), Inter-Parliamentary Union and UN Women award the CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) with the WFC's Vision Award 2014

16 October – For an initiative concerning online legal aid, the General Council of the Spanish Bar wins the 2014 Crystal Scales of Justice prize for innovative judicial practices

27–31 October – Sub-Committee on accreditation of the international coordinating committee for NHRIs recommends accrediting the NHRIs in Finland and Hungary with A status

October

November

17 December – the Czech Republic is the last of the 28 EU Member States to become party to the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against transnational organized crime (Palermo Protocol)

December

EU

January

February

14 March – Council of the EU adopts Directive 2014/41/EU on the European Investigation Order in criminal matters and Directive 2014/42/EU on freezing and confiscation of proceeds of crime in the EU

March

28–29 April – FRA, in cooperation with the Greek presidency of the Council of the EU, hosts a seminar in Thessaloniki, 'Building trust among victims to combat hate crime effectively: exchanging good practices and identifying ways forward', stressing the need to facilitate reporting by victims or witnesses, including through third-party and anonymous reporting

April

May

6–7 June – Council of the EU adopts conclusions on preventing and combating all forms of violence against women and girls, including female genital mutilation, in which it welcomes the main results of the FRA survey on violence against women launched on 5 March

June

July

August

September

October

November

1 December – transitional period for police and criminal justice measures adopted before the Lisbon Treaty ends, enabling, for example, the European Commission and the CJEU to assess Member States' levels of implementation

18 December – CJEU delivers its opinion on the draft agreement on the EU's accession to the ECHR and identifies problems with its compatibility with EU law

December

7 Access to justice, including rights of crime victims

New strategic guidelines in the area of freedom, security and justice by the European Council placed increasing mutual trust, strengthening the protection of victims and reinforcing the rights of accused persons and suspects high on the EU policy agenda. Many EU Member States adopted new laws or reformed existing laws and policies in this area, while efforts continued at UN, Council of Europe and EU level to strengthen the rule of law, judicial independence and the efficiency of justice systems, as cornerstones of a democratic society. The five-year transition period since the entry into force of the Lisbon Treaty came to an end, enabling the European Commission and the CJEU to fully assess the transposition by the Member States of police and criminal justice measures. The most comprehensive EU-wide and worldwide survey to date on women's experiences of violence revealed alarmingly high rates of violence against women and provided much-needed evidence to help Member States develop legal and policy responses to this issue.

7.1. Efforts to strengthen mutual trust: the rule of law and justice

Strengthening trust in judicial decisions irrespective of the Member State in which they are taken and removing obstacles to EU citizens exercising their right to move freely and live in any EU country are two of the priorities that need to be addressed to further progress towards a fully functioning common European area of justice. The European Commission identified these and other priorities in March 2014 to contribute towards the next EU justice and home affairs policy agenda (following the end of the previous EU programme for justice and home affairs, the Stockholm Programme, in 2014).[1]

At its June summit, the European Council adopted the new five-year strategic guidelines in the area of freedom, security and justice.[2] According to the guidelines, mutual trust between EU Member States in one another's justice systems needs to be further enhanced to ensure a more effective European area of justice with full respect for fundamental rights. A high level of mutual trust is a necessary basis for the proper functioning of many EU legal instruments in this area. The European Arrest Warrant is a good example, which provides for a simplified and improved surrender procedure between EU countries. In this context, the European Council recognised the importance of a sound European justice policy and required further action to: simplify access to justice; strengthen the rights of accused and suspected persons in criminal proceedings; reinforce the protection of victims; and enhance mutual recognition of decisions and judgments. The need to mobilise and draw on the expertise of relevant EU agencies, including FRA, was highlighted.

Access to justice is not just a right in itself; it is also an enabling and empowering right in that it allows individuals to enforce their fundamental rights and obtain redress. Effective and independent justice systems are essential safeguards of the rule of law. The issue of how to further safeguard the rule of law continued to be on the agenda of international and European actors in 2014. The European Commission adopted a new framework for addressing systematic threats to the rule of law in EU Member States.[3] Its purpose is to enable the Commission to find solutions to prevent the emergence of a systematic threat to the rule of law that could develop into a "clear risk of a serious

breach" within the meaning of Article 7 of the Treaty on European Union (TEU).[4] While recognising the importance of this new framework, FRA proposed to broaden the debate and complement the framework with a strategic fundamental rights framework covering all the values mentioned in Article 2 of the TEU. The aim would be to shape an EU internal framework for fundamental rights that mirrors the existing external fundamental rights framework.[5]

In April 2014, the Austrian Presidency of the Committee of Ministers of the Council of Europe held a conference that debated the concept and mechanisms of implementing the rule of law. In this context, FRA underlined the unique role of fundamental rights indicators in monitoring and evaluating such implementation to detect trends in an objective and evidence-based manner (see also the Focus).[6]

Another notable development in 2014 was the presentation of the second edition of the EU Justice Scoreboard.[7] This tool, introduced in 2013, aims to enhance the effective functioning of EU national justice systems by bringing together a variety of data to assist in the identification of any shortcomings, and hence support reforms.[8] Most of the quantitative data used by the scoreboard are provided by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe.[9] In addition to using the same indicators as in 2013 for efficiency, quality and independence, the 2014 scoreboard also provides a comparative overview of how national justice systems are organised to protect judicial independence, for example by looking at specific legal safeguards aimed at protecting judicial independence. It also provides fine-tuned data on the length of judicial proceedings relating to competition law and consumer law. The EU will take the findings of the scoreboard into account when preparing its country-specific analyses of the 2014 European Semester and in the context of the Economic Adjustments Programmes.[10]

7.1.1. New EU legislation on access to justice and judicial cooperation in criminal matters

Turning to legislative developments at EU level, two directives were adopted in the area of criminal justice, namly:

- Directive 2014/41/EU on the European Investigation Order in criminal matters (Ireland and Denmark are not taking part) replaces several existing instruments with a single instrument intended to allow Member States to carry out investigative measures at the request of another Member State on the basis of mutual recognition. Such investigative measures would include, for example, interviewing witnesses, intercepting telecommunications and obtaining information or evidence already in the possession of that Member State. It should be noted that some of the issues raised by various expert bodies, including FRA in its 2011 Opinion on the European Investigation Order (EIO) – for example concerning grounds for refusing the execution of an EIO and some of the fair trial safeguards – have been taken into account in the final instrument;[11]

- Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime (Denmark and the United Kingdom are not taking part) aims to establish minimum common rules on the freezing and confiscation of property in criminal matters. The new directive enables national authorities to quickly and efficiently identify and trace proceeds of cross-border and organised crime, such as drug trafficking, counterfeiting and human trafficking, so as to freeze, manage and confiscate such assets consistently across the EU. Importantly, the directive addresses some of the suggestions made by various expert bodies, including FRA in its 2012 opinion on the subject. These suggestions related, for example, to specific safeguards to ensure access to justice for victims of crime and a provision encouraging the use of confiscated assets for social purposes.[12]

Negotiations on a proposal to establish a European Public Prosecutor's Office (EPPO), mandated to prosecute crimes against the EU's financial interests, such as fraud, continued in 2014.[13] Two elements that were integrated into the proposal are of particular interest:

- the introduction of a collegiate structure of the EPPO;

- concurrent competences for the EPPO and national authorities to investigate and prosecute offences against the Union's financial interests.

The need to ensure the EPPO's efficiency and independence was emphasised and will continue to be discussed in 2015. FRA, in its opinion on one of the earlier versions of the EPPO proposal in February 2014, also raised the need to safeguard the EPPO's independence. FRA further underlined the importance of a judicial review of EPPO activities and raised the issue of where the responsibility for such a review should lie. In addition, it raised a number of other fundamental rights concerns, such as the needs to acknowledge the victim's role in the decision-making process on whether or not to prosecute, to strengthen victims' rights in transaction cases and to introduce specific safeguards to strengthen the effective exercise of defence rights, including access to legal representation and legal aid, the principle of no double jeopardy (*ne bis in idem*) and an effective compensation mechanism for wrongful investigation or prosecutions.[14]

7.1.2. European Courts provide guidance on fair trial and defence rights

The Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) also addressed various issues relating to the right to a fair trial and defence rights in criminal proceedings. For instance, the *Baytar* case concerns the questioning in police custody, without the assistance of an interpreter, of an individual who had insufficient command of the national language.[15] The ECtHR finds that, without interpretation, Ms Baytar has not been in a position to appreciate fully the consequences of waiving her rights to keep silent and to legal assistance. Therefore, the ECtHR finds a violation of Article 6 of the ECHR.

The ECtHR delivered several judgments on the principle of no double jeopardy (*ne bis in idem*) in 2014. The *Grande Stevens* case concerns administrative and criminal proceedings brought against two companies in respect of allegations of market manipulation in Italy.[16] The ECtHR holds that although the initial proceedings are described as administrative in Italian law, the severity of the fines imposed on the applicants means that the proceedings have effectively been criminal in nature. Since the criminal proceedings brought subsequently concern the same conduct, by the same persons and on the same date, the principle of *ne bis in idem* is violated. The ECtHR judgment confirms that where both criminal sanctions and sanctions formally classified as administrative are applied, the latter will not necessarily be immune from challenge under the principle of no double jeopardy.

In *Lucky Dev v. Sweden*,[17] the ECtHR reiterates that the *ne bis in idem* principle is not confined to the right not to be punished twice for the same offence but extended to the right not to be tried twice for the same offence. It concludes that Ms Dev has been tried again for a tax offence of which she has already been finally acquitted, since the tax proceedings against her have not been terminated and the tax surcharges not quashed even when criminal proceedings against her for a related tax offence have become final.

Finally, in proceedings against Finland involving taxation proceedings in which a tax surcharge has been imposed and criminal proceedings for tax fraud initiated (*Glantz v. Finland*, *Häkkä v. Finland*, *Nykänen v. Finland* and *Pirttimäki v. Finland*), the ECtHR confirms that the principle of *ne bis in idem* does not prohibit several concurrent sets of proceedings. In a situation where two parallel sets of proceedings exist, however, the second set of proceedings has to be discontinued after the first set of proceedings has become final.[18]

The CJEU also provided further guidance on *ne bis in idem* in 2014 (see also Chapter 8 on Charter case law). In the *Spasic* case (C-129/14),[19] Mr Spasic has paid a fine of €800 imposed by an Italian court as a sentence for fraud, but he has not served the one-year sentence that was imposed for the same acts. He was being prosecuted in Germany for the same fraud offence. The CJEU Grand Chamber ruled that where a custodial sentence and a fine have been imposed as principal penalties, the payment of the fine alone is insufficient to consider the penalty enforced or in the process of being enforced. Accordingly, custodial and non-custodial penalties are severable for the purpose of applying the double jeopardy rule, which means that paying a fine does not equate to partial satisfaction of a custodial sentence and hence does not exempt the person concerned from being prosecuted in a second Member State. In the *M* case (C-398/12),[20] a suspected perpetrator of sexual violence is subject to parallel investigations in Italy (on the basis of the suspect's nationality) and in Belgium (where the crime was allegedly committed). The CJEU holds that the Belgian authorities' finding that there is no ground to refer the case to a trial court, as there is insufficient evidence, is a decision on the merits of the case and bars further prosecution in Italy or indeed in any other EU Member State.

7.2. EU and Member States progress on the Roadmap on procedural rights in criminal proceedings

The Roadmap for strengthening rights of suspected or accused persons in criminal proceedings (the Roadmap), part of the action plan of the Stockholm Programme, provides a step-by-step approach towards establishing a comprehensive EU catalogue of common minimum procedural rights for suspects and accused persons in criminal proceedings. Work on the proposals presented by the Commission in November 2013 continued in 2014, as the European Parliament and the Council of the EU examined them.[21] Negotiations with the European Parliament and the Council to reach an agreement on the actual wording of proposals concerning legal aid and presumption of innocence (Measure C2) and special safeguards for children suspected or accused in criminal proceedings (Measure E) will commence in early 2015.

The subsequent paragraphs focus on Member State developments in 2014 relating to the first three instruments adopted under the Roadmap. These are Directive 2010/64/EU on the right to interpretation and translation (Measure A), Directive 2012/13/EU on the right to information (Measure B) and

Directive 2013/48/EU on the right of access to a lawyer and communication (Measure C1+D).

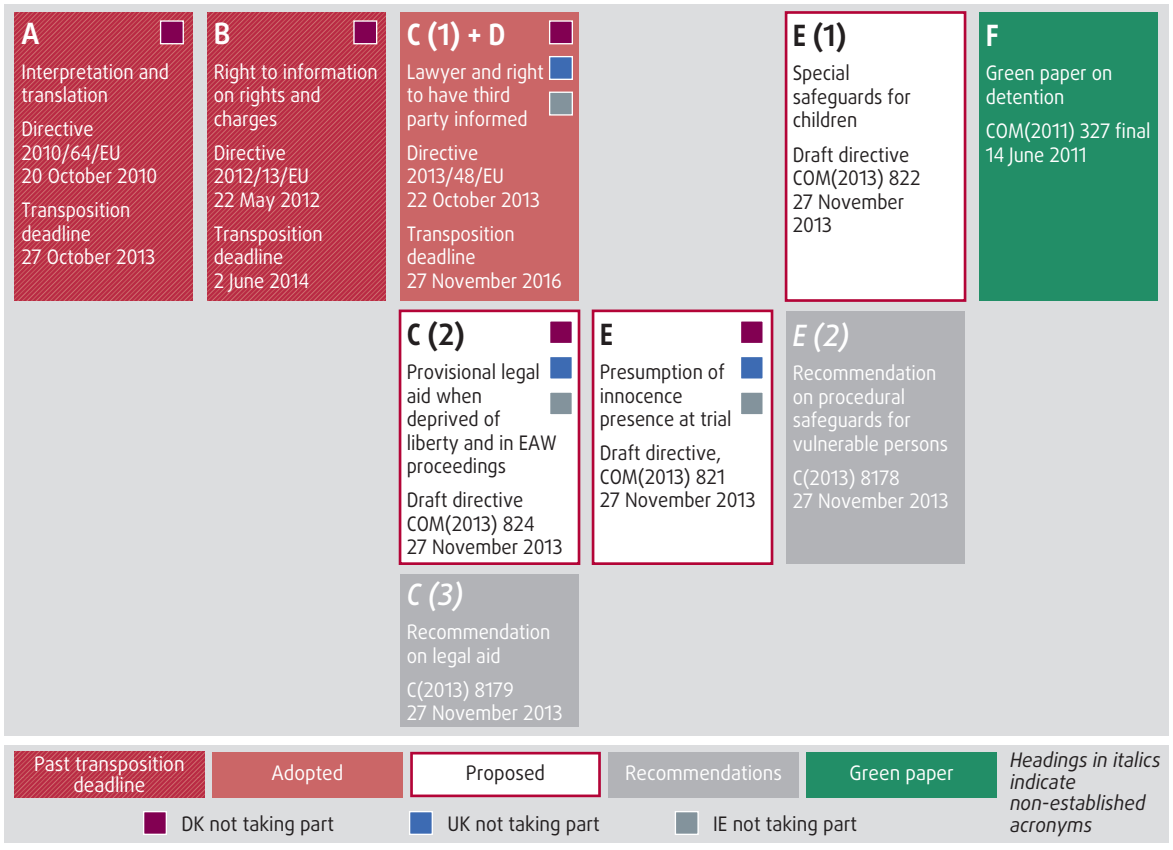
Figure 7.1 provides an overview of the various EU instruments under the Roadmap and their current status and, if applicable, indicates which of the EU Member States are not taking part.

At the national level, many EU Member States adopted various legislative, policy or other measures relating to the two first instruments under the Roadmap, the Directive on the right to interpretation and translation and the Directive on the right to information. These two directives aim to provide common standards of protection to enable suspected and accused persons to follow and actively participate in judicial proceedings, in accordance with existing international standards, in particular those relating to the right to a fair trial guaranteed by Article 47 of the EU Charter and Article 6 of the ECHR.

On the basis of these two instruments, for example, suspects and accused persons have the right to be interviewed, to take part in hearings, to have essential documents and to receive legal advice in their native language or in any other language that they speak or understand during any part of a criminal proceeding, in all courts in the EU. The Member State, and not the suspect or accused person, will have to meet any translation and interpretation costs. Following an arrest, the authorities will also provide the required information about one's rights in writing, in a letter of rights drafted in simple, everyday language; this will be provided to suspects upon arrest in all cases, whether they ask for it or not, and will be translated if necessary.

The EU Member States that proposed or adopted new legislation or amended existing laws with a view to transposing the Directive on the right to information (Denmark is not taking part[22]) in 2014 included **Cyprus**,[23] the **Czech Republic**,[24] **Estonia**,[25] **Finland**,[26] **France**,[27] **Hungary**,[28] **Italy**,[29] **Luxembourg**,[30] **Malta**,[31] the **Netherlands**,[32] **Slovenia**,[33] **Spain**[34] and **Sweden**.[35] In **Lithuania**, the Prosecutor General supplemented the implementing legislation[36] with more detailed guidance on the structure and contents of the information on the suspicion and the explanation of rights to be provided to the suspect.[37] The implementing law in Poland was supplemented with a series of information templates on the rights of suspected and accused persons, adopted by the Minister of Justice in 2014.[38]

Figure 7.1: Roadmap on procedural rights in criminal proceedings*



Note: * *Roadmap for strengthening procedural rights of suspects and accused persons in criminal proceedings, adopted by the Council on 30 November 2009, and incorporated into the Stockholm Programme.*

Source: FRA, 2014

With regard to the Directive on the right to translation and interpretation, its transposition deadline expired in 2013 (Denmark is not taking part[39]). In 2014, several Member States took new policy initiatives to ensure the effective execution of already adopted national implementing laws. In **Finland**, for example, the Working Group on setting up a register for legal interpreters (at the Ministry of Education and Culture) issued a report on 29 August 2014.[40] The working group made suggestions on the required qualifications of legal interpreters. In **Germany**, in light of the directive's requirement, the Federal Ministry of Justice – in cooperation with the state (*Länder*) ministries of justice – revised the information sheets that are provided to arrested persons and made them available in a number of languages.[41] On the initiative of the Ministry of Justice in **Latvia**, 30 interpreters will gradually be hired by the court system to implement the directive and ensure assistance with interpretation as envisaged by the national implementing law.[42]

Despite these positive developments, in 2014 **Spain** faced infringement procedures (initiated by the European Commission) for failing to comply with their transposition obligation under the directive on the right to translation and interpretation.[43] It is also worth noting that the **Slovak** Constitutional Court examined the extent and meaning of the right to interpretation. Basing its decision on the existing ECtHR case law in this area, in particular *Kamasinski v. Austria*[44], the Constitutional Court held that the right for an interpreter did not necessarily guarantee an interpreter speaking one's mother tongue; the interpretation could be into any language that the individual could understand, provided that the individual understood the essence of the accusations, the facts of the case and the information about his or her rights.[45]

Promising practice

Educating legal practitioners on EU defence rights

In November 2014, the NGO Fair Trials International launched a series of innovative e-training courses designed to educate United Kingdom legal practitioners on EU defence rights. The courses provide practical guides on the right to information in criminal proceedings directive, the right to interpretation and translation directive and the role of the CJEU in criminal proceedings. They enable practitioners to focus only on the most relevant areas or to return to particular areas for future reference. Defence lawyers are thus provided with access to practical information and advice they can readily apply to their day-to-day casework.

For more information, see: Fair Trials International (2014), 'Fair Trials launches new defence rights e-training course'

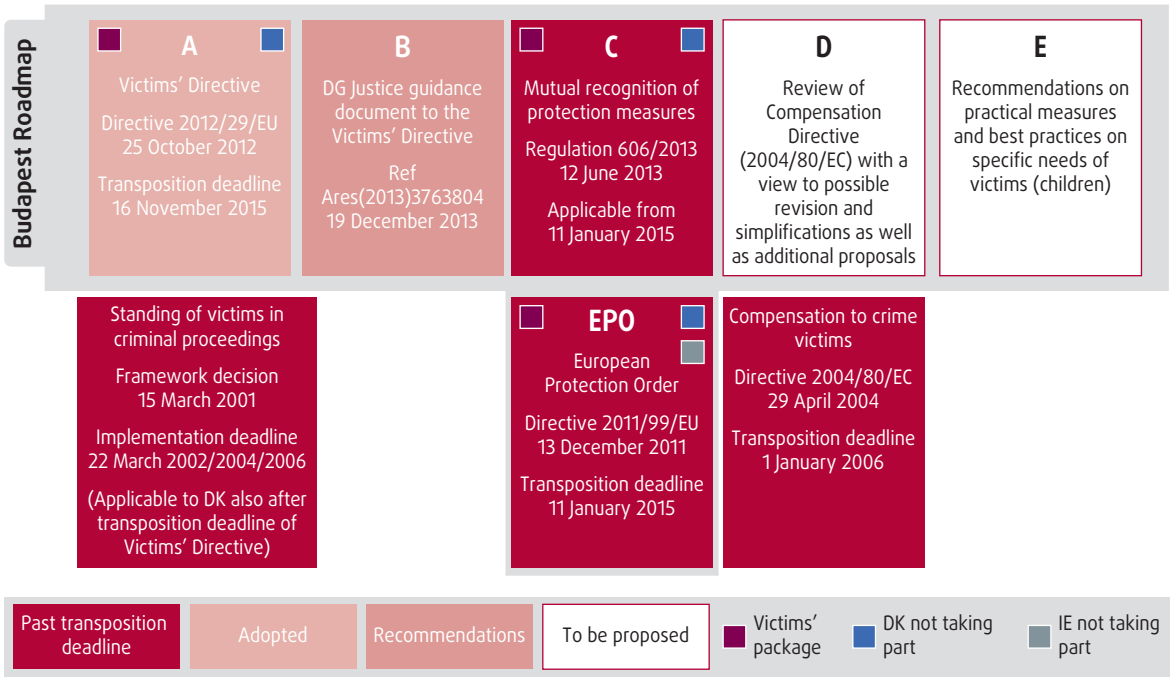
The transposition deadline of the third measure adopted under the Roadmap, the Directive on the right of access to a lawyer and communication, expires only on 27 November 2016 (Denmark is not taking part[46]). In 2014, several Member States took important preliminary legislative steps to ensure the smooth and timely implementation of this directive: the **Czech Republic**,[47] **France**,[48] **Greece**,[49] **Malta**, **Luxembourg**,[50] the **Netherlands**,[51] **Poland**[52] and **Spain**.[53] **Latvia**, meanwhile, established special drafting committees and working groups to ensure effective transposition. Although **Ireland** has not opted in to this particular directive, the Irish Supreme Court delivered noteworthy judgments on 6 March 2014 in the case of *DPP v. Gormley & White*.[54] The court established that persons held by Ireland's National Police Service should not be questioned until they have received legal advice, referring both to the need to reform Irish laws to achieve compliance with EU law in this area and ECHR standards.

On a European Commission request, FRA launched, in December 2014, a new project to further explore promising practices and opportunities across the 28 EU Member States for the application of the rights to interpretation, translation and information in criminal proceedings. The research will also examine the fundamental rights implications for the persons concerned.[55] Preliminary comparative results that will bring insights into these issues are expected in the last quarter of 2015 and/or at the start of 2016.

7.3. Member States' implementation of victims' rights

EU Member States made progress on transposing Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime into national law (Victims' Directive) by the 16 November 2015 deadline. The Victims' Directive, also called the Victims' Rights Directive, is Measure A of the Victim's Package (see Figure 7.2, which depicts the various EU instruments under the Victims' Package and their current status). In January 2015, FRA published the first independent comprehensive assessment of victim support services throughout the EU covering all 28 EU Member States. The agency also published comparative data online, in the form of maps and tables illustrating some of the key aspects of support services for victims of crime.[56] The report, *Victims of crime in the EU: the extent and nature of support for victims*, identifies many promising practices that Member States looking to improve their victim support structures might turn to for inspiration.[57]

Figure 7.2: EU instruments relating to victims of crime, and in particular to support services



Source: FRA, 2014

FRA evidence shows that, despite progress, some Member States are still falling short of meeting the Victims' Directive's requirements and will need to take further legislative and policy steps to ensure that they comply with the directive by the transposition deadline.[58] One particularly challenging aspect is the obligation to provide victims with information about their rights, including their right to support services. This right to information emerges as a vitally important first step towards including victims in proceedings.

Several Member States adopted or initiated legislative changes in 2014 with a view to transposing the directive, and thus took significant steps in advancing the rights of victims in their countries. Some examples of these changes are outlined below. Several other Member States set up working groups to oversee and evaluate the legal changes necessary to implement the Victims' Directive.

Lithuania amended its Criminal Procedure Code to establish additional procedural guarantees for victims, such as the possibility of *in camera* hearings and the introduction of measures to protect child victims and other victims in need of special protection during pre-trial investigations and court hearings (for example, it will be possible for a child to be questioned during a pre-trial investigation by the same person that conducted the primary interrogation and, during court hearings, by the presiding judge, or, if deemed necessary, through a representative).[59] For more information on special safeguards for child victims of crime involved in judicial proceedings, see Section 6.3 on the rights of the child.

A new Code of Criminal Procedure came into force in **Romania** in February 2014.[60] The new law gives crime victims the rights to be informed about their rights; propose evidence, raise exceptions and provide concluding observations; be updated about the criminal investigation; have access to the case file; be heard; challenge a decision not to prosecute; and have access to legal representation. Certain victims can have access to legal aid, for example if they have limited or no legal capacity, or when the judge deems them in need of legal assistance.

Draft amendments to the Criminal Procedure Law in **Latvia**, proposed in May 2014 by the Ministry of Justice, expand victims' rights. Victims have the right to be informed about how to receive state compensation, about conciliation and protection measures, as well as about the case and available support. Amendments also set out particular rights for victims who require special protection, including minors, persons under guardianship, victims of sexual offences, victims of human trafficking, victims of domestic violence, victims of violent crime and victims of crime motivated by racist, national, ethnic or religious hatred.[61]

In **Spain**, new legislative proposals were put forward by the government to ensure the timely transposition of the Victims' Directive.[62] The draft law on crime victims that was submitted to the Parliament in

September 2014 creates new provisions for victims' rights at trial (the rights to supply evidence, to be accompanied at trial, and to a separate waiting area at court), improves cross-border support measures and obliges the law enforcement authorities to provide victims with information from first contact with the enforcement authorities.

The most important changes introduced into a bill to implement the Victims' Directive in the **Netherlands** are an extension of the definition of 'victim' to include surviving family members and persons dependent on the victim, an obligation of the authorities to refer victims to the relevant support services and a guarantee that victims will receive information on their rights without delay (in particular on the important steps in criminal proceedings), the right to legal aid for victims at all stages of proceedings, and the right of victims to translation and interpretation.[63]

7.3.1. Improving information provided to victims

Despite the progress made, transposition and implementation of certain provisions of the Victims' Directive – for example the authorities' obligation to provide victims with information on their rights and the support available to them – are proving challenging in some Member States. As noted in the FRA report *Victims of crime in the EU: the extent and nature of support for victims*, the right to receive information is a vital component of victims' rights at all stages of the proceedings. In addition to requiring access to information on the progress of their case (Article 6 of the Victims' Directive), most victims need information about their rights within the criminal proceedings and how to exercise those rights (Article 4 of the Victims' Directive). Lack of information represents a serious obstacle to victims' access to their rights and discourages them from seeking justice.

FRA evidence shows that while the police are legally obliged to provide victims with information on available support services in only 15 EU Member States, in practice the police provide this information in 21 EU Member States.[64] In some Member States, including Greece, Italy, Lithuania and Spain, the obligation to provide information on available support services applies only to victims of specified offences, such as domestic violence. The provision of information on compensation and on the rights and role of victims in criminal proceedings shows similar patterns. Victims should also understand the information provided; to that end, the availability of information in a variety of languages can be an effective way of reaching more victims in increasingly diverse societies.[65]

Many Member States made significant progress towards improving the provision of information to victims in 2014. In **Germany**, the Draft law on the rights of victims and introducing psychosocial assistance during court proceedings proposes a provision to ensure that victims receive written acknowledgement of their formal complaint and that victims who do not understand or speak German receive a translation of that acknowledgement. In compliance with the Victims' Directive, victims are entitled to a translator or interpreter during police questioning.[66] The obligation of the authorities to provide information to crime victims is also to be restructured and expanded. Information must be systematically provided, for example, about support services and about victims' rights to compensation.[67]

The draft bill adapting **French** criminal procedure to the Victims' Directive[68] introduces an article listing the information that should be provided by a competent authority to the victim on their first contact and an obligation for the police to inform victims about their rights to interpretation and translation. The draft bill also transposes the directive's obligation on individual assessment of victims to identify specific protection needs (Article 22). To ensure effective implementation of this provision, a pilot assessment of victims' needs was carried out across several sites in 2014 in partnership with local NGOs.[69] Following an assessment of the project, individual monitoring of victims will take place nationwide from 2015.[70]

The provision of information remained, however, a challenge in some countries (such as **Finland**, **Ireland**, **Malta** and **Portugal**), and Member States faced other challenges in transposing the directive, such as funding support services (for example in Finland, Ireland and **Slovakia**) and rights of victims at trial (in Malta, Portugal and Slovakia).

According to the President of the Commission for the Protection of Crime Victims in **Portugal**, although the transposition of the Victims' Directive will not entail many changes, there may be room for improvement with regard to specific aspects, such as the authorities' obligation to provide information to crime victims and victims' rights at trial.

In **Finland**, funding victim support services and the provisions relating to cross-border support presented challenges. A partial solution to this funding challenge is the government bill on the victim surcharge that was passed in the Finnish parliament in March 2015 (for further details, see the promising practice on p. 153). Separate waiting areas for victims at court (as stipulated in Article 19 (2) of the Victims' Directive) are not yet systematically available nationwide, although they are being gradually introduced. FRA evidence from the report *Victims of crime in the EU: the extent and nature of support for victims* shows that 14 Member States have separate waiting areas for victims at court.

A report by the Victims' Rights Alliance launched by the **Irish** Minister for Justice and Equality in November[71] identified limited resources and information provision as challenges to the effective implementation of the Victims' Directive.[72]

Malta's main victim support provider, Victim Support Malta, identifies several potential problems with the Maltese draft bill transposing the directive. It published a position paper highlighting issues such as: no definition of 'competent authority', meaning that the bill ascribes duties to (a) vague and abstract entity or entities; the right to information being made conditional by adding the term 'as may be applicable', counter to the corresponding provision in the directive (Article 4.1); and other issues relating to translation, interpretation, the right to access victim support services, rights of victims during trials and the information received by the victim on criminal proceedings.[73]

FRA evidence published in 2014 in *Victims of crime in the EU* gives a comparative overview of victims' rights at trial and shows that the role played by victims in criminal proceedings differs across the EU Member States, depending on the definition of 'victim' in the national legal system. This in turn leads to differences between the rights guaranteed to victims during criminal proceedings. This applies, for example, to victims' right to be heard in court (guaranteed in 22 Member States); the right to supply evidence (22 Member States); the right to be questioned and testify at trial in a protected manner (24 Member States); and the right to be accompanied at trial by support persons (guaranteed in 17 Member States).[74]

Promising practice

Improving victims' rights protection: a project improving access to legal aid in selected Member States

A project carried out in Bulgaria, Italy, Latvia, Poland and Spain aimed to identify common criteria for providing legal aid to victims by analysing these countries' legal frameworks and practices on victims' access to legal aid, highlighting best practices and challenges. Bulgaria, Latvia and Poland were selected as pilot countries to develop conceptual tools for the project, including information tools about victims' rights targeting specific groups of people who typically have less access to information (for example citizens living in rural areas) and training tools for practitioners. The European Commission provided financial support through its Criminal Justice Support Programme.

For publications and more information, including country reports, see: http://victimsrights.eu

The process of implementing the Victims' Directive is seemingly at quite an early stage in **Slovakia**, and its transposition reportedly requires significant systemic changes. Currently, crime victims have a rather weak position and few rights during criminal proceedings. Implementation of the directive requires the establishment of a coherent and stable victim support mechanism, but the only support system that currently exists in Slovakia is run by several NGOs working in difficult conditions and without state financial support. Victims face additional difficulties in obtaining compensation during criminal proceedings. To do this, courts usually refer victims to civil proceedings, but these require financial resources that many victims do not have. There are also problems with victims' rights during trial. For example, victims are often confronted with the perpetrator when waiting for a trial (see the point in this section about separate waiting areas for victims at court).[75]

Some Member States are still in the process of assessing their current compliance with the directive and will focus on finalising the transposition of any missing provisions by the November 2015 deadline.

7.3.2. Building up services and support for victims of crime

Targeted and practical victim support systems are crucial for any strategy to increase trust in the authorities and reporting rates, as highlighted by FRA evidence published in 2014.[76] The need to provide victims with a set of services that enable them to exercise their rights is underlined by FRA research on the reporting of people's experiences of crime.[77] Without such support, provided for in Articles 8 and 9 of the Victims' Directive, it is difficult to improve the investigation and prosecution of crime.[78] Some Member States unveiled plans in 2014 to develop and expand services and support for crime victims in line with the Victims' Directive, including extending the provision of free psychosocial assistance and strengthening victims' rights at trial.

For example, in **Ireland**, new victim support offices are to be established across the country (in each of the 25 police divisions), to improve the flow of information to and support for victims.[79] The decision was made following the successful piloting of two Victim Liaison Offices, in Waterford City and Dublin.

The **German** draft law on the rights of victims proposes introducing a legal right to free psychosocial assistance (on application) for all underage witnesses who have been victims of crime.[80] Such support can also be provided to other categories of victims, for example persons with disabilities, victims of hate crime and victims of human trafficking.[81]

The 2014 draft bill adapting the **French** criminal procedure to EU law (in accordance with Article 20 of the Victims' Directive) contains the general provision under which during criminal investigations victims, at their request, may be accompanied by their legal representative and an adult of their choice, unless a reasoned decision has been made by the judicial authority to the contrary. They are informed about this right by the police.[82]

Promising practice

Providing guidance on victim support

In October 2014, the General Secretariat of the Interministerial Committee for Crime Prevention (SG-CIPD) in France published a guide (with input from numerous victim support NGOs) on victim support and access to rights for victims of domestic violence, child victims of violence, human trafficking victims, the elderly and persons with a disability. The guide provides legal and practical information to professionals working with victims, aiming to help them support victims.

For more information, see: Secrétariat Général du Comité Interministériel de Prévention de la Délinquance (2014), 'Boîte à outils : aide aux victimes et accès au droit'*, SG-CIPD*

Ensuring convicted criminals contribute to the funding of victim support services

As part of its implementation of the Victims' Directive, the Finnish parliament passed a government bill introducing a 'victim surcharge' in March 2015. This initiative introduces a surcharge – €40 or €80 for individual persons, depending on the severity of the crime, and €800 for legal persons – to be paid by convicted persons. The money will go towards funding victim support services, and the fund is expected to generate some €4.5 million annually. Several other Member States are adopting or have already adopted similar schemes, including Belgium, Denmark, Estonia, France, Lithuania, Poland, Portugal, Sweden and the United Kingdom.

For more information, see: FRA (2014), '"Victims of crime funds": contributions by convicted persons'*; and Finland, Ministry of Justice (Justitieministeriet) (2014),* 'Regeringen föreslår införande av brottsofferavgift'

7.3.3. A remaining challenge: measuring implementation of victims' rights

The Victims' Directive does not deal explicitly with quality and performance, as explained in the FRA report *Victims of crime in the EU: the extent and nature of support for victims*. Recital 63 of the directive, however, stresses that

> *"to encourage and facilitate reporting of crimes and to allow victims to break the cycle of repeat victimisation, it is essential that reliable support services are available to victims and that competent authorities are prepared to respond to victims' reports in a respectful, sensitive, professional and non-discriminatory manner".*

To review whether or not such support is indeed in place, Article 28 of the directive requires Member States to share data regularly on how victims have accessed the rights it guarantees. For victim support to be effective and efficient, quality standards need to be at the core of the design, improvement and continued delivery of victim support.

FRA evidence highlights that 14 Member States have developed quality standards for generic victim support services. Quality safeguards in **Belgian** victim support organisations, for instance, concern specific principles and criteria for staff training.[83] Member States develop such standards either as a separate set of norms or as part of obligations under which state-operated or non-state victim support services are provided with instructions and funding. National umbrella organisations and NGOs have also developed standards.

Performance indicators are a particularly valuable aspect of quality standards. For example, FRA evidence shows that in several Member States performance indicators include evidence of victims' satisfaction, gathered through surveys or questionnaires, for example in **France**,[84] **Croatia**, **Finland**, the **Netherlands**, **Portugal** and the **United Kingdom**.[85] The FRA report proposes a range of indicators – based on existing standards – to measure the delivery of victim support services.[86]

7.4. Recognising and responding to women as victims of violence: Europe takes a step forward

In the landmark year of 2014, the Istanbul Convention entered into force, and FRA published the largest-ever international survey on violence against women, interviewing 42,000 women and covering 28 EU Member States. The survey asked about women's experiences of physical, sexual and psychological violence during their lifetime (since the age of 15), and in the 12 months before the survey. Women were also asked detailed questions about their experiences of stalking and sexual harassment, and about their childhood experiences of violence by an adult (regarding this last issue, see Chapter 6 on the rights of the child). The survey asked women about violence by partners

and non-partners, and about the consequences of violence on their lives. Importantly, the survey asked women whether or not they reported violence and abuse, and about their reasons for not reporting and their satisfaction with the reporting process.

A clear picture emerges from the findings: violence against women is widespread throughout the EU, a statement that applies to all the different forms of violence asked about. The survey revealed that more than one in three women across the EU has experienced some form of physical and/or sexual violence since the age of 15. An estimated 13 million women in the EU had experienced physical violence during the 12 months before the interviews, and an estimated 3.7 million women in the EU had experienced sexual violence in the 12 months before the interviews. More specifically, 22 % of women have experienced physical and/or sexual violence by a partner since the age of 15.

These findings represent extensive human rights abuses that the EU cannot afford to overlook. What is more, the findings show that the overwhelming majority of women who are victims of physical and sexual violence do not report the incident or incidents to the police, and when they do bring their abuse to the attention of any service, they typically turn to the health sector (doctors, clinics and hospitals). Depending on the type of violence and perpetrator, FRA evidence shows that 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. This means that the vast majority of cases of violence against women are not reported to the police or other services, which results in a situation in which the perpetrators can continue to act with impunity. FRA opinions in the report on the main results from the survey refer to the need for multi-agency cooperation, involving the police and other service providers, to address violence against women and to encourage women to report violence. They also highlight the requirement for specialist victim support services in line with the Victims' Directive and the Istanbul Convention.[87]

There was a positive uptake of the FRA survey results and opinions throughout the year, with some Member States – for example **Austria**,[88] **Belgium**, **Finland**,[89] the **Netherlands**[90] and **Portugal**[91] – making explicit reference to the results in the area of policy. In addition, on 14 October, the Spanish government's Observatory on Domestic and Gender Violence (*Observatorio de la Violencia de Género*) awarded its annual prize to FRA in recognition of its work on violence against women.

Measures to address violence against women were made at EU level, although responses tended to target specific crimes or specific groups of women, such as victims of female genital mutilation or trafficking for sexual exploitation. Another example of such targeted responses is protection orders that can address abuse in cases of domestic violence. The Victims' Package (see Figure 7.2) contains two pieces of legislation (Measure C) – the European Protection Order (EPO) and the Regulation on mutual recognition of protection measures in civil matters – that address the needs of victims of domestic violence and stalking, ensuring that victims who are granted protection in one EU Member State can enjoy similar protection in another Member State.[92] The Victims' Directive (which covers all crime victims) includes specific references to women as victims of domestic and gender-based violence, but within a framework that also refers to other groups of victims who may be in need of special protection, such as victims of hate crime and victims with a disability.

A major development in 2014 was the entry into force of the Istanbul Convention on 1 August 2014. As of 31 December 2014, eight EU Member States were parties to the convention, up from three at the end of 2013 (the five EU Member States that ratified the Convention in 2014 are **Denmark**, **France**, **Malta**, **Spain** and **Sweden**). An additional 15 EU Member States have signed (three during 2014).[93] The convention stresses the need for coordinated action between policymakers, government agencies and civil society, and emphasises the need to promote the principle of gender equality and legislate against gender-based discrimination. The FRA survey serves to underpin the need for legislative reform and policy action to address all forms of violence against women. To this end, the Council of Europe has been able to use the survey's findings when promoting the convention's ratification. The survey will be of further use during the monitoring of states parties' compliance with the Istanbul Convention, which will begin once the monitoring mechanism has been set up in 2015.[94]

7.4.1. Measures to combat violence against women at Member State level

EU Member States took action to strengthen legislation in the area of violence against women, including implementing the EPO and the Regulation on mutual recognition of protection measures in civil matters, which both apply from 11 January 2015. As of January 2015, seven Member States had legislation in force implementing the EPO (**Austria**, **Estonia**, **Germany**, **Hungary**, **Malta**, **Spain** and the **United Kingdom**) and 15 Member States had draft legislation at various stages of the legislative process.[95]

A new law that regulates the interim measures issued by a court in cases of domestic violence in the **Czech**

Republic entered into force on 1 January 2014.[96] The new measure, issued within 48 hours and without formal proceedings, obliges the perpetrator to leave the home and stay away from the victim for one month (with the possibility of extension).

Amendments to several laws introducing temporary protection measures in **Latvia** entered into force in March. The amendments to the Law on Police extended the competences of the police to intervene in domestic violence cases. The police have a duty to prevent immediate danger until the court considers the question of temporary protection against violence;[97] to enforce the implementation of the decisions of the court or judge regarding temporary protection against violence;[98] to take a decision about separation; and to forward any application for temporary protection to the court.

The **United Kingdom** (Scotland) passed the Victims and Witnesses (Scotland) Act 2014, which introduced new rights for victims of sexual offences, domestic abuse, human trafficking and stalking.[99]

Promising practice

Mapping protection order legislation

The project Protection Orders in the European Member States (POEMS) aims to map protection order legislation and practice in EU Member States, to identify best practices and possible gaps, and to evaluate the level of protection offered to victims, also in the context of the EPO, with the ultimate goal of enhancing the protection provided to victims. The project was led by the Portuguese Association for Victim Support (*Associação Portuguesa de Apoio à Vítima*, APAV) and the International Victimology Institute Tilburg (Intervict) and co-financed by the European Commission under the Daphne III Programme. POEMS will publish a report on its findings in 2015.

For more information, see: http://poems-project.com

Data and measures relating to stalking

Evidence from the FRA survey on violence against women shows that 18 % of women have experienced stalking since the age of 15, with 5 % having experienced it in the 12 months preceding the survey. This corresponds to nine million women in the 28 EU Member States experiencing stalking within a period of 12 months.[100] As of December 2014, 17 Member States have anti-stalking legislation in place, although definitions of the stalking vary widely.[101] This is an area that warrants more effective responses by EU Member States in terms of both law and policy, particularly given the scale of stalking.

Notable developments at Member State level include **Malta**'s new act introducing the specific crime of stalking and an aggravated offence of stalking involving fear of violence, serious alarm or distress.[102] Anti-stalking legislation was also enacted in **Finland** on 1 January 2014. According to a new provision in the Criminal Code, a person is guilty of stalking if they repeatedly threaten, follow, monitor, contact or in some other way stalk another person in such a way that it is likely to cause fear or anxiety.[103] Various political parties in **Portugal** proposed draft bills, which the Parliament discussed. The draft bills propose amending the Criminal Code to explicitly criminalise stalking, sexual harassment and forced marriage.[104]

Data and measures relating to sexual violence and harassment

EU Member States also made progress in tackling sexual violence in 2014. This is another area in which the 2014 FRA survey findings show the prevalence of incidents to be alarmingly high, with 11 % of the 42,000 women interviewed having experienced some form of sexual violence since the age of 15 (either by a partner or someone else), and one in 20 women saying that they have been raped. In the survey, women who have experienced sexual violence describe a number of psychological consequences such as feeling ashamed, embarrassed or guilty about what had happened. These feelings can lead to victims not reporting incidents to the authorities.[105]

With regard to sexual harassment, the FRA findings show that one in two women in the EU has experienced sexual harassment since the age of 15 (meaning, but not limited to: verbal and non-verbal forms of harassment such as unwelcome touching or kissing, sexually suggestive comments or jokes and receipt of unwanted sexually explicit emails or SMS messages). About one in five women (21 %) has experienced sexual harassment in the 12 months preceding the survey. Among women who have experienced sexual harassment at least once since the age of 15, 32 % state that somebody whom they encountered at work – such as a colleague, a boss or a customer – was a perpetrator. The survey also finds that women who were working at the time the interviews took place experienced sexual harassment more frequently than women who have never done paid work or women who were unemployed at the time of the survey. Sexual harassment is also more commonly experienced by women in the highest occupational groups: 75 % of women in the top management category and 74 % of those in the professional category (lawyers, doctors, accountants, etc.) have experienced sexual harassment in their lifetime.

Although **Germany** amended its criminal code in 2014 with a view to ratifying the Istanbul Convention,[106]

several lawyer associations as well as the German Institute for Human Rights have criticised the draft law for failing to make changes to the German criminal law provision on sexual abuse and rape.[107] The draft law reportedly does not comply with Article 36 of the Istanbul Convention, which obliges states to criminalise non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object. The Ministers for Gender Equality and Women adopted a resolution asking the government to ratify the Istanbul Convention swiftly and bring the law in line with the provisions of the convention.[108] The Conference of the Ministers of Justice followed a similar line,[109] and the Federal Minister of Justice has reportedly also declared the need for reform of the Criminal Code.[110]

Amendments to the Criminal Law in **Latvia** entered into force in June, aiming to bring the definitions of rape and sexual violence into line with those in the Istanbul Convention. The legal definition of rape was amended such that sexual violence and rape are punishable in all cases where these acts are conducted against a person's will, with or without physical violence.[111]

Some positive developments could also be identified with regard to legislation on harassment. For instance, in October the **Croatian** government adopted Draft Amendments to the Criminal Code Act, which criminalise psychological violence.[112]

France adopted several measures to combat harassment: a circular on the fight against harassment in public sector was issued in March, and on 15 April the Minister of Defence presented a plan to combat harassment, violence and discrimination against women in the army.[113] In August, a new law on equality between women and men was adopted. It included a definition of moral harassment in the Criminal Code and addressed the matter of harassment by email; it also criminalised complicity in sexual harassment, making it an offence to film acts of sexual harassment or share such images.[114]

Reference to findings from the survey regarding women's experiences of physical, sexual and psychological violence by an adult when they were children can be ▶ found in Chapter 6.

FRA conclusions

- Evidence collected in 2014 shows that EU Member States adopted various measures following the transposition and implementation of the EU directives on the right to translation and interpretation, and to information in criminal proceedings.

For these rights to become a reality, EU Member States are, however, encouraged to further review their existing laws and complement them with relevant policy measures, as well as exchange promising practices in this area to ensure implementation in practice.

- In the run-up to the transposition deadline of November 2015 for the Victims' Directive, legislation on the rights of victims of crime improved in EU Member States. FRA evidence on the extent and nature of support services for victims shows, however, that the actual situation on the ground needs to be strengthened.

EU Member States should adopt further measures to establish comprehensive victim support services and enable victims to access those services, for example by providing clear information to victims, ensuring effective referral of victims – particularly certain groups of victims who may have specific protection needs – and training police officers and legal practitioners in how to establish trust and confidence with victims and support them throughout proceedings. In addition, Member States should strengthen efforts to gather data regularly on how crime victims have accessed their rights, including improving data collection and ensuring the effective use of that data to inform relevant policies aimed at combating crime, supporting victims and empowering them to exercise their rights.

- Evidence collected by the FRA survey on violence against women shows alarmingly high rates of incidents of physical and sexual violence, alongside psychological abuse, harassment and stalking, in all 28 EU Member States. In addition, the survey reveals the significant number of women who have experienced abuse in childhood at the hands of an adult.

EU Member States should review their legislation to ensure that it is in line with the Council of Europe's Istanbul Convention and the EU Victims' Directive, both of which set new standards for responding to victims of gender-based violence. In this context, the need for all EU Member States to ratify the Istanbul Convention at their earliest opportunity is to be highlighted. Going further, Member States should develop and implement national action plans to combat violence against women on the basis of the FRA evidence, alongside other data that draw directly on women's experiences of violence.

Index of Member State references

Endnotes

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

At the end of 2014, the Charter of Fundamental Rights of the European Union celebrated its fifth anniversary. It entered into force as a legally binding document in December 2009. The Charter applies to the European Union (EU) itself and to its Member States when they act in the scope of EU law. Five years on, it is a well-recognised bill of rights that EU institutions draw upon extensively. The Charter has a limited scope of application in national contexts, so it is less used at national level. Still, Member States occasionally refer to it in the legislative process and it is sometimes also referred to in parliamentary debates. Its most prominent use is at the Court of Justice of the European Union, with ever more court decisions reling on the Charter. National courts also make references to the Charter but not always with much relevance for the outcome. Awareness of the Charter remains, nonetheless, limited. Member States' relevant policies hardly focus on increasing knowledge about it amongst practitioners or the general population.

In 2014, the European Union placed further emphasis on its Charter of Fundamental Rights. An example of this is the European Commission's First Vice-President, who is responsible for ensuring that every Commission proposal and initiative complies with the EU Charter of Fundamental Rights.[1]

Experts as well as politicians took a greater interest in the Charter in 2014, exemplified by the publication of an English article-by-article commentary extending over 2,000 pages and a new edition of a flagship commentary in German.[2] Such detailed examinations aside, expert attention[3] continued to focus on the field of application of the Charter,[4] with the United Kingdom and Poland attracting particular interest due to the country-specific protocol on the application of the Charter.[5] The horizontal application of the Charter (between individuals rather than between an individual and a public authority)[6] remained high on the agenda. The fact that 2014 was its fifth anniversary also sparked some more general assessments of the Charter[7] and of how it interacts with national situations.[8]

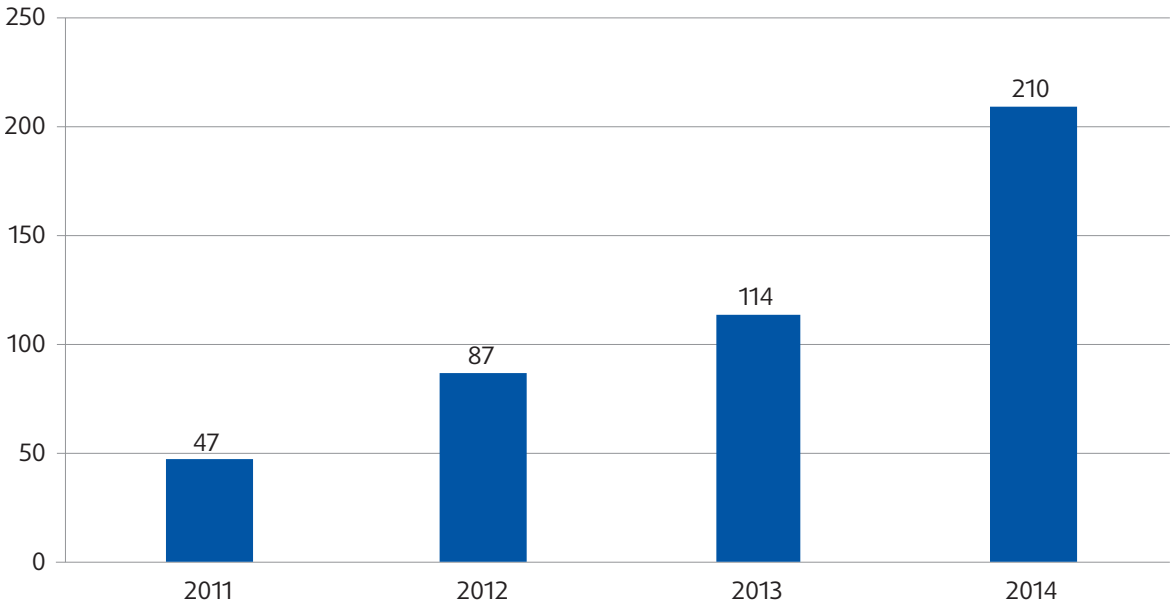
But it is not only in the political arena and expert circles where the Charter aroused interest. It also drew attention from practitioners, with a high-level conference at the end of 2014 on the Charter-related training needs of legal professionals and public officials. The conference, organised by the European Commission, aimed to map training needs, take stock and share existing best practices as well as identify remaining challenges.[9] Moreover, the practical relevance of the Charter is confirmed by the ever-increasing amount of case law before the Court of Justice of the European Union (CJEU) using the EU Charter of Fundamental Rights in the operational part of the decisions (Figure 8.1).

8.1. Guidance provided by the Court of Justice of the European Union

The increase registered in 2014 is all the more remarkable because the overall number of decisions handed down by the CJEU in the course of 2014 increased only marginally from 2013. Nevertheless, the total number of decisions referring to the Charter rose by 84 %, from 114 decisions in 2013 to 210 in 2014.

CJEU rulings in 2014 provided guidance to Member States in various contexts, including clarification of the

Figure 8.1: Number of decisions in which CJEU referred to the Charter in its reasoning, 2011–2014



Note: *CJEU 'decisions' include (here and in the text) judgments, decisions and orders delivered by all court formations at the Luxembourg court.*

Source: *FRA, 2015, based on CJEU data*

material and temporal scope of the Charter's application; its relationship to secondary EU law; and the further clarification of a number of specific Charter rights.[10]

8.1.1. Scope of application of the Charter provisions

The court continued to define the reach of the Charter. It addressed, for instance, the question of when Member States are "implementing EU law" in the sense of Article 51 of the Charter. According to the court's judgment in the case of *Siragusa v. Sicily* (C-206/13), this question can be answered by determining "whether that legislation is intended to implement a provision of EU law; the nature of that legislation and whether it pursues objectives other than those covered by EU law, even if it is capable of indirectly affecting EU law; and also whether there are specific rules of EU law on the matter or capable of affecting it".[11] This line was continued in the case of *Hernández v. Reino de España* (C-198/13).[12] In *Robert Pfleger* (C-390/12), the court added that implementing Union law within the meaning of Article 51 (1) of the Charter also addresses all those situations where Member States use "exceptions provided for by EU law in order to justify an obstruction of a fundamental freedom guaranteed by the Treaty".[13]

Moreover, the court provided a number of examples where the Charter was held not to be applicable, for instance *Dano* (C-333/13), where the court stressed that "when the Member States lay down the conditions for the grant of special non-contributory cash benefits and the extent of such benefits, they are not implementing EU law" (for context see Chapter 3 on Roma inclusion).[14] In *Liivimaa Lihaveis* (C-562/12), the court clarified the application of the Charter in the context of the disbursement of EU funds. The fact that a national body is administering the disbursement of such funds does "not prevent Article 47 [right to an effective remedy and to a fair trial] of the Charter from applying". Since the relevant act by the body – the adoption of the programme manual and the rejection of an application for subsidies – fell within the scope of EU law, "the lack of any remedy against such a rejection decision deprives the applicant of its right to an effective remedy, in breach of Article 47 of the Charter".[15]

In *Kamino International Logistics BV*, the court underlined that, as the Charter of Fundamental Rights of the European Union entered into force on 1 December 2009, it does not apply to proceedings and demands that took place earlier.[16]

8.1.2. The Charter and interpretation of EU secondary law

The CJEU also gave guidance on how national courts should apply EU secondary law in the light of the Charter. For instance, in the case of *Juan Carlos Sánchez Morcillo and María del Carmen Abril García* (C-169/14) concerning consumer protection, the court stressed that Article 7 (1) of the Directive on unfair terms in consumer contracts has to be read in conjunction with

the Charter right to an effective remedy and a fair trial (Article 47). Such a reading excludes a system of enforcement providing that mortgage enforcement proceedings may not be stayed by the court of first instance, whereas the creditor seeking enforcement may bring an appeal against a decision terminating the proceedings or ordering an unfair term to be disregarded.[17] In *Bashir Mohamed Ali Mahdi* (C-146/14 PPU), the court concluded that reading the Return Directive (2008/115/EC) in the light of the provision on the Charter rights to liberty and security (Article 6) and to an effective remedy and a fair trial (Article 47) implies that "any decision adopted by a competent authority, on expiry of the maximum period allowed for the initial detention of a third-country national, on the further course to take concerning the detention must be in the form of a written measure that includes the reasons in fact and in law for that decision".[18]

In a number of cases (C-416/13, C-543/12, C-530/13), the court clarified to national courts that, where both a Charter provision and a provision of secondary law detailing the Charter provision apply, the case is to be solved solely in the light of the relevant piece of EU secondary law.[19] This clarification does not, however, do away with the obligation to interpret secondary law in the light of the Charter.

8.1.3. Interpretation of Charter rights

The CJEU provided guidance by interpreting the reach of specific Charter rights. Of special interest is the right to good administration (Article 41), which according to its wording applies only to "institutions, bodies, offices and agencies of the Union". In a number of judgments, the court confirmed that "it is clear from the wording of Article 41 of the Charter that it is addressed not to the Member States but solely to the institutions, bodies, offices and agencies of the European Union" (C-166/13).[20] In *H. N. v. Minister for Justice, Equality and Law Reform* (C-604/12), the court emphasised, however, that Article 41 of the Charter also reflects a general principle of EU law.

> *"Accordingly, where [...] a Member State implements EU law, the requirements pertaining to the right to good administration, including the right of any person to have his or her affairs handled impartially and within a reasonable period of time, are applicable in a procedure for granting subsidiary protection, such as the procedure in question in the main proceedings, which is conducted by the competent national authorities."*
>
> *CJEU, C-604/12,* H. N. v. Minister for Justice, Equality and Law Reform and others*, 8 May 2014*

Both aspects – Article 41 as a Charter right directed to the EU only and the same right as an expression of a general principle of law also applying to Member States – were also addressed before national courts.

Other rights for whose interpretation the court provided substantial guidance include the presumption of innocence and the right of defence (Article 48) (C-220/13P),[21] the right not to be tried or punished twice in criminal proceedings for the same criminal offence (Article 50, see Chapter 7 on access to justice) and respect for private and family life (Article 7) and dignity (Article 1) (Joined cases C-148/13 to C-150/13).[22] The case regarding the last two rights refers to practices that FRA has already criticised[23] as incompatible with the Charter. In 2014, the court pointed out in *A, B, C v. Staatssecretaris van Veiligheid en Justitie* (Joined cases C-148/13 to C-150/13) that the "submission of the applicants to possible 'tests' in order to demonstrate their homosexuality or even the production by those applicants of evidence such as films of their intimate acts" lacks probative value and by its nature infringes human dignity. Moreover, "interviews in order to determine the facts and circumstances as regards the declared sexual orientation of an applicant for asylum" and "questions concerning details of the sexual practices of that applicant are contrary to the fundamental rights guaranteed by the Charter and, in particular, to the right to respect for private and family life as affirmed in Article 7".[24]

The court addressed the integration of persons with disabilities (Article 26) in *Wolfgang Glatzel v. Freistaat Bayern* (C-356/12).[25] The case concerned the refusal by a German state to grant Mr Glatzel a driving licence for small buses as defined by Directive 2006/126 on the grounds that his eyesight was not as good as required in Annex III of the directive. The national court had argued that the requirements of the directive constitute discrimination on the grounds of disability under Article 21 of the Charter and Article 2 of the United Nations (UN) Convention on the rights of persons with disabilities (CRPD) – the only core international human rights treaty the EU has so far ratified.

In its ruling, the CJEU reiterated that the CRPD is "an integral part of the European Union legal order". Given this, provisions of secondary legislation must, as far as possible, be interpreted in a manner consistent with the convention. However, the court also emphasised that "since the provisions of the convention on disabilities are subject, in their implementation or their effects, to the adoption of subsequent acts of the contracting parties, the provisions of that convention do not constitute, from the point of view of their content, unconditional and sufficiently precise conditions which allow a review of the validity of the measure of EU law in the light of the provisions of that convention". In the court's view, the directive balances the requirements of road safety and the right to non-discrimination of persons with visual impairments in a manner that is proportionate to its objectives; the EU's ratification of the CRPD did not alter the outcome.

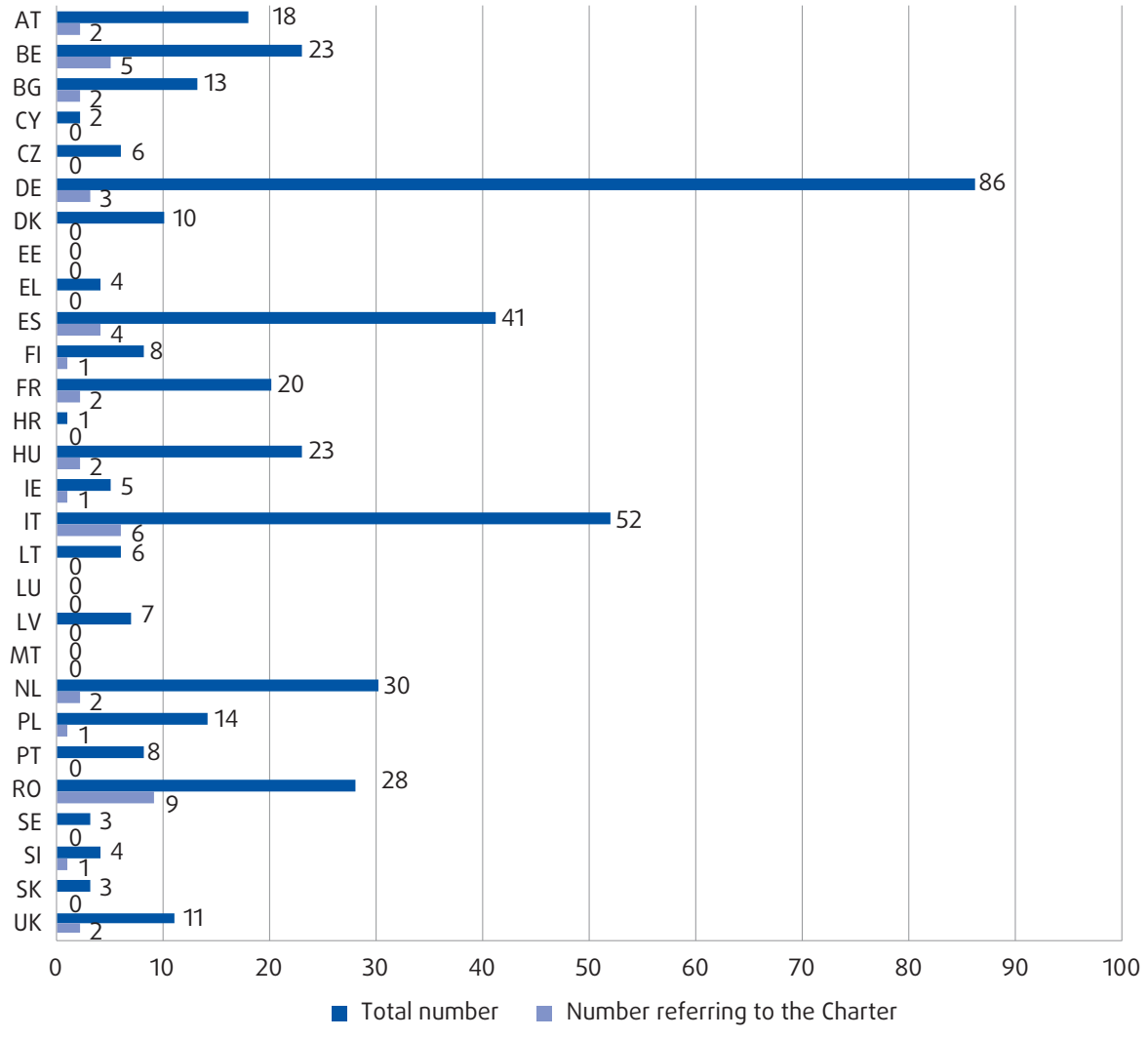
Turning to the Charter, the court stated that,

> *"although Article 26 of the Charter requires the [EU] to respect and recognise the right of persons with disabilities to benefit from integration measures, the principle enshrined by that article does not require the EU legislature to adopt any specific measure. In order for that article to be fully effective, it must be given more specific expression in [EU] or national law. Accordingly, that article cannot by itself confer on individuals a subjective right which they may invoke as such."*[26]

8.1.4. Cooperation between the courts

The overall number of cases in which national courts request the CJEU to provide an interpretation of provisions of EU law (preliminary rulings) varies substantially from one Member State to another. Those with the most requests for preliminary rulings are the same in 2014 as in 2013: **Germany**, **Italy**, **Spain** and the **Netherlands** (Figure 8.2). The relative share of those requests, however, that contain references to the Charter changed considerably. Whereas in 2013 only **Bulgaria** had shown a relatively high share of requests for preliminary rulings using the Charter, 2014 saw relatively high numbers of Charter-related requests in **Romania**, **Ireland**, **Belgium** and **Bulgaria**. In **Romania**, such requests rose from 6 % (2013) to 32 % (2014), and in **Belgium** from 4 % (2013) to 22 % (2014).

Figure 8.2: Requests for preliminary rulings: total number and number referring to the Charter by EU Member State, 2014



Source: FRA 2015, based on CJEU data

Where national courts raise questions related to the Charter, they give the CJEU the opportunity to further clarify the reach of the Charter, as happened in the *Melloni* case (C-399/11, decided on 26 February 2013), the first ever reference the Spanish Constitutional Court made to the CJEU. The request for clarification of the Charter's procedural provisions concerned the possibility to provide higher safeguards stemming from the Spanish Constitution than those guaranteed under the EU law. On 13 February 2014, in line with the CJEU preliminary ruling, the Spanish Constitutional Court handed down its judgment rejecting the appeal by Stefano Melloni.[27]

Of relevance to the cooperation between EU and national courts was the decisions in *A v. B and Others* (C-112/13). The CJEU confirmed that the system of preliminary rulings precludes national legislation under which ordinary courts hearing an appeal or adjudicating at final instance are under a duty, if they consider a national rule to be contrary to the Charter right to an effective remedy and a fair trial (Article 47), to apply to the constitutional court for that statute to be generally struck down. This applies if such a duty to address the national constitutional court first would prevent all other national courts or tribunals from exercising their right or fulfilling their obligation to refer questions to the CJEU for a preliminary ruling.[28]

8.2. The Charter in national legislation and policies

The Charter thus plays a role in courtrooms (Section 8.1.4), and is equally relevant for administration and legislation, as both have to respect the Charter when acting in the scope of EU law. It might also be referred to in specific policies (Section 8.2.5), parliamentary debates (Section 8.2.3) or national legislation (Section 8.2.4). Moreover, the legislature looks at the impact (Section 8.2.2) and the compatibility with fundamental rights (Section 8.2.1) of upcoming legislation and policies; these activities are critical moments when the Charter can potentially play a role.

There are a variety of mechanisms in place at EU level aiming to make sure that EU legislation and policies conform to the Charter. Impact assessments look at the impact different policy options might have on fundamental rights, and compatibility checks look at the compatibility of legislative proposals with the Charter. In 2014, further steps were taken to improve these mechanisms. Following up on the *Digital Rights Ireland* judgment (Joined cases C-293/12 and C-594/12),[29] the Council has updated its guidelines[30] on methodological steps to be taken to check fundamental rights. The guidelines are to ensure that Council preparatory bodies take the methodological steps necessary to identify and deal with fundamental rights issues arising in connection with the proposals under discussion at the given Council preparatory bodies. They provide steps to follow to check for compliance with fundamental rights, as well as a fundamental rights checklist, similar to the one used by the Commission, to help assess compatibility with fundamental rights.

So far, the impacts the services of the European Commission are looking at do not address fundamental rights as a separate category (in addition to economic, environmental and social impacts) but rather try to look at fundamental rights in a horizontal manner when examining other impacts.[31] The European Commission is, however, revising the European Commission's Impact Assessment Guidelines. The revision process will examine, among other aspects, the tools for assessing impacts on fundamental rights.

8.2.1. Assessment of fundamental rights compliance of bills

In most Member States, there is an explicit obligation to check bills against national fundamental rights standards. The European Convention on Human Rights (ECHR), which, in contrast to the Charter, is not limited to situations falling within the scope of EU law, is also often mentioned as an explicit benchmark that bills have to comply with. For instance (please note that here and in the sections below the references to Member States are illustrative), in the **United Kingdom** every bill prepared by the government comes with a written statement about the compatibility of the provisions of the bill with the rights enshrined in the ECHR ('statement of compatibility'). In addition, a number of specific memoranda on the compatibility of specific bills with the ECHR have been presented, including in 2014 one on the Serious Crime Bill, one on the Anti-social Behaviour, Crime and Policing Act and one on the Immigration Bill.[32]

The Charter can enter such national processes when the compatibility of a bill with EU law is examined. In a number of Member States, including **Bulgaria**,[33] **Estonia**[34] and **Slovakia**,[35] procedural rules establish that draft laws come with explicit reasoning, a separate accompanying explanatory report and an opinion or letter analysing the draft's compatibility with EU law. How such procedural norms refer to EU law differs. In **Italy**, bills are assessed through the lens of relevant EU case law, explicitly also referring to pending infringement procedures (known as technical normative analysis).[36] It appears that in most Member States fundamental rights are not explicitly mentioned as part of the EU law check. The **Finnish** procedure, however, explicitly requires examining the bill's compatibility with EU fundamental rights.[37] But even if reference is made to fundamental rights, there might not be an explicit mention of the Charter and its rights;

see, for example, **Romania**,[38] whose procedures do explicitly refer to fundamental rights and freedoms.

Nevertheless, documents accompanying the respective bills occasionally also refer to the Charter. This was the case in 2014 in **Luxembourg**, where one opinion by the Council of State referred to the principles of legality and proportionality (Article 49) of the Charter and another to the right of access to documents (Article 42).[39] In the **Netherlands**, in 2014 the Council of State made nine advisory opinions in which it referred to the Charter.[40] Moreover, explanatory memoranda examined specific Charter articles. The Act on Job Agreement and Quotas for Occupationally Disabled Persons[41] referred to the right to protection of personal data (Article 8 of the Charter) and the Act on Responsible Growth of Dairy Farming,[42] to the Charter right to property (Article 17). In **Estonia**, an explanatory letter to the Child Protection Bill stated that the act shall be enacted in accordance with, among other things, the Charter.[43]

In some Member States, the procedures for checking the compatibility of bills with fundamental rights differ depending on whether the government or parliamentarians have drafted a legislative proposal. For instance, in **France**, bills initiated by members of parliament (*propositions de loi*) do not undergo the assessment that government-proposed bills (*projets de loi*) must go through. This was criticised within the National Assembly.[44]

Promising practice

Providing guidance on Charter implementation

The Dutch National Human Rights Action Plan of December 2013 entailed among other things the preparation of a guide on the implementation of the Charter. The guide, primarily addressing policy and legal officers developing new policies and legislation, was finalised in March 2014. It aims to ensure compliance with the Charter and to draw special attention to those parts of the Charter that add value to other international sources, especially the ECHR. For this purpose, it clusters all Charter provisions into four categories: Charter rights with the same meaning and scope as the corresponding ECHR rights; Charter rights with the same meaning as the corresponding ECHR rights but a wider scope; Charter rights with no corresponding ECHR right, but often with corresponding European Social Charter rights; and Charter rights that are specific to the EU context, such as the right to vote and to stand as a candidate at elections to the European Parliament (Article 39).

For more information, see: ICER-Handleiding nationale toetsing EU-Handvest Grondrechten

Even in Member States where the procedure for scrutinising the legal quality of a bill is the same whether it comes from the government or the parliament, the question remains – just like at EU level – how to assess changes to a bill introduced after the bill was tabled. For instance, in the **Netherlands**, the Council of State – which has the same role vis-à-vis bills deriving from the government and bills deriving from parliament – does not give advice on amendments to a bill.[45] In **Hungary**, the Deputy State Secretary for Pre-legislative Coordination and Public Law Legislation of the Ministry of Justice has to monitor the bills under parliamentary debate and ensure that the bills are constitutional and compatible with fundamental rights standards.[46]

8.2.2. Assessment of fundamental rights impacts

Based on the information FRA received from its expert network, it appears that around a third of EU Member States examine in advance (ex ante) the potential economic, social, environmental or other impacts of the different policy options for a bill in a regular and formal manner. Such an examination typically takes place separately from the examination of the legal compatibility of a bill (with the national constitution and international obligations), as discussed in Section 8.2.1. However, the legal compatibility check and the assessment of impacts are not necessarily done in separate procedures. The **French** impact study (*Étude d'impact*) can assess not only the bill's legal compatibility but also its potential impact. Other countries may deal with the bill's potential impact indirectly as part of the legal scrutiny. The legal proportionality check, for instance, will assess the bill's potential impact to select, from various potential measures, the one that interferes least with the fundamental rights. Some Member States carry out a full-fledged impact assessment only when they expect significant effects. In **Estonia**, for instance, the rules for 'good legislation' envisage an impact assessment when 'significant' impacts are foreseen, such as on economics, security and foreign relations, the environment, regional development or organisation of public administration.[47]

Even where there are specific procedures available for assessing impacts of draft legislation, they often – just like at EU-level – do not look at fundamental rights as a specific category in relation to which the impact of a draft law should be assessed. For instance, in **Croatia** the assessment of impacts includes an analysis of positive and negative effects of regulations on the economy (including financial effects), social welfare and the environment, but the effects on human rights are not explicitly stated. Consultations with the public are, however, conducted simultaneously, and comments, suggestions and opinions are to be taken into consideration. Since NGOs most frequently address and identify impacts related to fundamental rights,

this sort of impact assessment exercise de facto also covers fundamental rights.[48] In the **Slovak Republic**, too, a standardised methodology for the assessment of selected impacts is in place. The potential impacts are divided into seven main thematic areas: public finances, social situation within the country, employment, enterprising entities, functioning of markets, the environment and information technologies in society.[49]

Promising practice

Identifying fundamental rights impacts

In **Finland**, when the legislature looks at societal impacts of bills, it regularly considers potential fundamental rights implications by addressing the following questions:

- Does the bill have an impact on the realisation of fundamental rights and legal protection? Does the bill have an impact, for example, on the realisation of fundamental rights mentioned in Chapter 2 of the constitution regarding an individual person?
- Does the bill have an impact on the mutual relationship between people and the decision-making regarding this relationship?
- Does the bill have an impact on citizens' opportunities to participate in and influence society?
- Does the bill have an impact on equality and the prevention of discrimination?
- Does the bill have an impact on children?
- Does the bill have gender impacts?
- Does the bill have an impact on people's predisposition to commit crimes?
- Does the bill have an impact on security?
- Does the bill have an impact on data protection and information security regarding the citizens and companies?

For more information, see: Finland, Ministry of Justice, Impact assessment guidelines, *as in force at the end of 2014, and http://oikeusministerio.fi/material/attachments/om/toiminta/laitjalainvalmistelunkehittaminen/6FloyjjqR/Vaikutusten_tunnistamisen_tarkistuslista.pdf*

In some cases, such as in the **Czech Republic**, impact assessment procedures refer explicitly to fundamental rights but not to the Charter.[50] This, however, does not imply that the Charter would not be referred to in practice; the Act on Cybercrime[51] and the Amendment to the Act on Railways[52] are examples of acts that refer to it. Again, in other cases certain fundamental rights aspects might be singled out. In **Spain**, for instance, every bill the government proposes has to be accompanied by a report on the gender impact of the proposed legislation.[53]

8.2.3. Parliamentary debates

Based on information collected through FRA's network of experts, it appears that in half of the Member States, the Charter was not referred to in parliamentary debates. Moreover, in many instances Charter references remain rather superficial. For example, a search for "Charter of Fundamental Rights" in the database for parliamentary debates in **Ireland** yields 40 hits, the majority of which lead to Charter references that do not further analyse the Charter's provisions and their impact.[54]

On the other hand, in 2014 there were examples of the Charter playing a role in important debates, some of which had a constitutional nature. Parliamentarians in **Romania**, for example, referred to the Charter in the context of proposed amendments bringing the constitutional equality provision in line with the wording of the Charter's Article 21 on non-discrimination.[55] In **Poland**, the Sejm's Commission on the European Union recommended dismissing the proposal tabled by a group of members of parliament to revoke Protocol 30, which addresses the application of the Charter in the legal systems of Poland and the United Kingdom.[56]

In the **United Kingdom,** the standing of the Charter within the national legal system was debated and was additionally the subject of a parliamentary report. The report published by the European Scrutiny Committee analyses the scope of the Charter's application in the United Kingdom, seeking to clarify its impact. The report concludes on what the Charter does and does not do. The committee urged the government to intervene in CJEU proceedings to limit the Charter's scope in the United Kingdom. Moreover, it proposed amending the European Communities Act 1972 and declaring the Charter not applicable to the United Kingdom, to which the government replied that, as long as the United Kingdom is a member of the European Union, it has a duty to implement all EU law applying to it and any unilateral decision to the contrary would have political, legal and diplomatic consequences.[57]

> *"Protocol 30 [addressing the application of the Charter in Poland and United Kingdom] was designed for comfort rather than protection: it is in no sense an opt-out Protocol; consequently, the Charter is directly effective in the UK with supremacy over inconsistent national law (as it is for all other EU Member States); it does not apply to all areas of national law, however, only those that fall within the scope of EU law, a test which the ECJ has interpreted broadly; it will nonetheless broaden the ambit of EU law and increase human rights litigation in the UK."*
>
> *United Kingdom, House of Commons, European Scrutiny Committee (2014),* The application of the EU Charter of Fundamental Rights in the UK: a state of confusion, Forty-third Report of Session 2013–14

References to the Charter in parliamentary debates appear in diverse contexts. To take **Bulgaria** as an example, a parliamentarian referred to the non-discrimination provision (Article 21) of the Charter, among other Bulgarian and international legal norms, to argue that a bill from the party Ataka calling for imprisonment of one to five years and a fine of BGN 5 to BGN 10.000 for those who manifest publicly their or someone else's homosexual orientation or identity was unacceptable.[58] Another Charter reference concerned the employment status of former collaborators of state security services; a 2011 ruling by the Bulgarian constitutional court was quoted. The court had used the Charter provision on the freedom to choose an occupation (Article 15 (1)) and argued that disproportionate restrictions on the freedom to exercise a profession are inadmissible.[59] The Charter right to vote and to stand at elections to the European Parliament (Article 39) was referred to in **Bulgaria**, in a discussion on a referendum concerning, among other things, the introduction of obligatory and electronic voting.[60] Finally, the need to respect the non-discrimination clause (Article 21) and cultural, religious and linguistic diversity (Article 22) of the Charter was referred to in the context of the deployment of EU funds. [61]

References are more likely where national bills are implementing EU directives. In **France**, for instance, the Senate referred to the Charter when discussing the bill implementing the Directive on the right to information in criminal proceedings (2012/13/EU).[62]

Moreover, references to the Charter in national parliaments are not limited to discussions on bills falling within the scope of EU law. This diversity can be exemplified in **Spain**, where the Charter was referred to when discussing amendments to the legislative proposal on telecommunications,[63] but also when discussing a non-legislative proposal regarding the extension of political rights to EU citizens in national and regional elections in Spain related to the European citizens' initiative 'Let me vote',[64] and several other non-legislative proposals and parliamentary questions on the need to revise the Spanish Code of Civil Procedure.[65]

8.2.4. National legislation

FRA asked its network of experts to identify laws adopted in 2014 that refer to the Charter of Fundamental Rights. For more than half of the Member States, the experts could not identify such legislation.

Generally speaking, references to the Charter are to be found in simple legislation rather than in laws of constitutional rank, apart from a few examples at regional level – some statutes of regions in **Spain**[66] and **Italy** for instance do refer to the Charter.[67] However, in 2014 a **Maltese** act to amend the constitution referred in its reasoning to the Charter, stating that the amendment "brings the protection from discrimination contained in the Constitution in line with the protection contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union, and makes such protection justiciable, thereby empowering victims to seek redress".[68]

The examples of national laws adopted in 2014 referring to the Charter suggest that the national legislatures refer to the Charter in a wide spectrum of policy fields ranging from children's rights to equality and data protection. An example from **Spain**[69] shows that the Charter was referred to in legislation dealing with children. Equality related legislation adopted in **Italy**[70] and **Spain**[71] made Charter references. Legislation in **Belgium**[72] and **Spain**[73] referred to the Charter in the context of data protection and telecommunication. But even an area such as cooperation for development offers examples of Charter references, as an **Italian** law shows.[74]

Most of the examples identified are rather superficial in nature and simply refer to the Charter as one source of inspiration during the legislative process.[75] Sometimes the reference to the Charter may simply result from the fact that the national norm reproduces the text of an EU act, as examples from **Ireland**[76] and **Malta**[77] show.

However, 2014 also saw the Charter being referred to in a more substantial way. For instance, a **Spanish** criminal law not only indicates that it shall be applied in conformity with fundamental rights as enshrined in the Spanish Constitution, EU primary law and the ECHR, but also refers to the violation of the Charter as a ground for refusing recognition and enforcement of decisions relating to an economic sanction.[78] Similarly, a **German** regional law concerning public security refers to the Charter in the context of the cross-border exchange of data and establishes that such an exchange is excluded where it would contravene the rights, freedoms and principles enshrined in the Charter.[79] This corresponds to similar provisions concerning cross-border exchange in other German laws.[80]

8.2.5. National policy measures

FRA's expert network was only able to identify policy measures focusing on the Charter of Fundamental Rights in a third of Member States. **Bulgaria**, **Croatia**, **France**,[81] **Italy**,[82] **Romania** and **Slovakia** provide examples of strategy documents referring to the Charter. In **Bulgaria**, charter references are to be found in ongoing strategies such as the one for Roma integration (2012–2020)[83] as well as in new strategies such as the one on the integration of persons having received international protection (2014–2020).[84] Similarly, the **Croatian** National Programme for the Protection and Promotion

of Human Rights (2013–2016) contains references to the Charter.[85] In **Romania**, the draft government strategy on social inclusion of persons with disabilities refers to a number of Charter articles.[86] Implementing documents on general strategies may also refer to the Charter, as the initial material of **Slovakia's** migrants' rights working group shows.[87] Such references appear to be general in nature. This is not specific to the Charter; references to other international documents, including the ECHR, also remain superficial, if they are to be found at all.

There are, however, examples of more Charter-specific engagement by the Member States. In **Finland,** the government's 2014 human rights report notes the importance of the EU in the promotion of fundamental and human rights within the Union and stresses the importance of making the Charter known among the general public. Although no concrete measures are suggested, the report refers to the Commission's annual report on the application of the Charter. It notes the importance of the Charter in legislative work at the Union level and in the Member States and calls for further development of relevant tools for legislators as well as making good use of such tools.[88]

Promising practice

Clarifying the Charter's relevance at national level

Knowledge about the Charter's scope and effects is not (yet) sufficiently available in legal professions, nor do NGOs, trade unions or other stakeholders of relevance in this regard know how Charter rights can be protected. This was the reason for launching the project 'CFREU – Making the Charter of Fundamental Rights a Living Instrument', which was co-financed by the EU and carried out in **Austria**, **Italy**, **Poland** and **Croatia**. The project resulted in a series of training events informing civil society, NGOs and trade unions on the content and the legal relevance of the Charter. It was carried out by the Ludwig Boltzmann Institute of Human Rights (BIM), Vienna, in cooperation with the Istituto di Studi Giuridici Internazionali (CNR-ISGI), Rome; the Institute for Law and Society (INPRIS), Warsaw; the Faculty of Law of the University of Milan; and the Office for Human Rights, Zagreb, as an associate partner.

For more information, see: the manual and the civil society guidelines: http://bim.lbg.ac.at/en/making-charta-fundamental-rights-living-instrument

Concrete training on the Charter took place, for instance, in **Croatia**, where the government's Office for Human Rights and the Rights of National Minorities organised, among other training, educational programmes on the Charter for judges in Zagreb, Osijek and Split and for public prosecutors in Zagreb. Seminars and panel discussions targeting NGOs, trade unions and other civil society actors also took place. Similar activities were carried out in in **Austria**, **Italy** and **Poland**. These activities were the fruits of a research project that looked into the impact of the Charter on the legal order and practice in these four Member States with a focus on social rights. One of the aims of the project was the development of a European fundamental rights curriculum for judges and legal professionals, which was tested in pilot training programmes and resulted in the publication of a training manual on the Charter intended for judges and judicial officers.

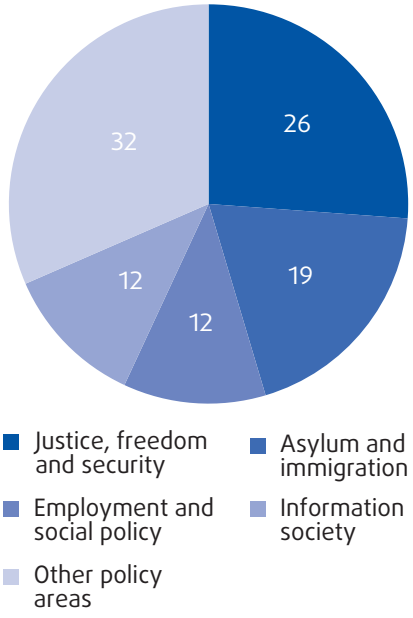
8.3. The Charter before national high courts

The Agency for Fundamental Rights asked its expert network to provide information for each Member State on three cases that were handed down by national high courts in 2014 and in which a reference to the Charter played a role in the court's reasoning. Based on this request, 65 court decisions from 25 Member States were analysed. For **Denmark, Estonia** and **Latvia**, no decisions fulfilling these criteria were identified. The information given below is based on the analysis of these 65 decisions delivered by constitutional, supreme, cassation, high and supreme administrative courts.

8.3.1. Most relevant policy fields and Charter rights

Slightly more than a quarter (26 %) of the national decisions analysed concern the area of justice, freedom and security, often dealing with matters of access to justice. Asylum and immigration come next, accounting for almost 20 %. The prominence of references to the Charter in the context of asylum and immigration was already stressed in last year's annual report chapter on the use of the Charter (14 out of 70 decisions analysed in 2013 fall in this area). The high number of decisions that concern either justice, freedom and security or asylum and immigration reflects the fact that in these policy areas – all especially prone to fundamental rights violations – EU legislation plays a prominent role and Member States are thus bound by the Charter. In 2014, employment and social policy as well as information society were prominently represented in the sample analysed (Figure 8.3). Before the CJEU a similar picture to 2013 emerged, with employment and social policy, competition policy, and common foreign and security policy accounting for well over half of the decisions analysed (Figure 8.4).

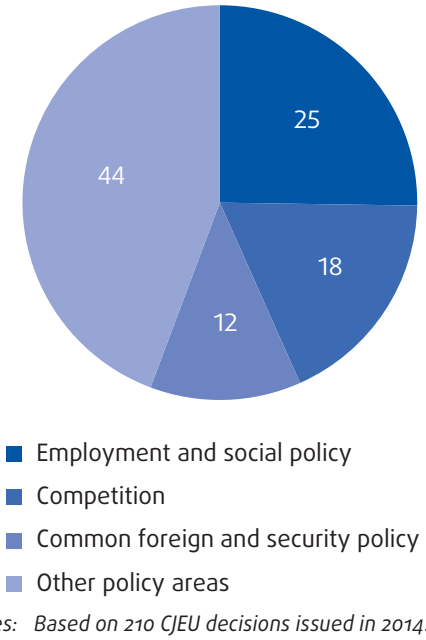
Figure 8.3: National Charter-related decisions, by policy area (%)



Notes: *Based on 65 decisions issued in 25 EU Member States in 2014, Denmark, Estonia and Latvia are not included. Four decisions were each related to two policy areas and thus counted as 0.5 decision per policy area.*
Due to the use of standard rounding, the percentages indicated in the figure may not sum up to exactly 100 %.

Source: *Data provided by FRA's research network, 2014*

Figure 8.4: CJEU Charter-related decisions, by policy area (%)



Notes: *Based on 210 CJEU decisions issued in 2014.*
Due to the use of standard rounding, the percentages indicated in the figure may not sum up to exactly 100 %.

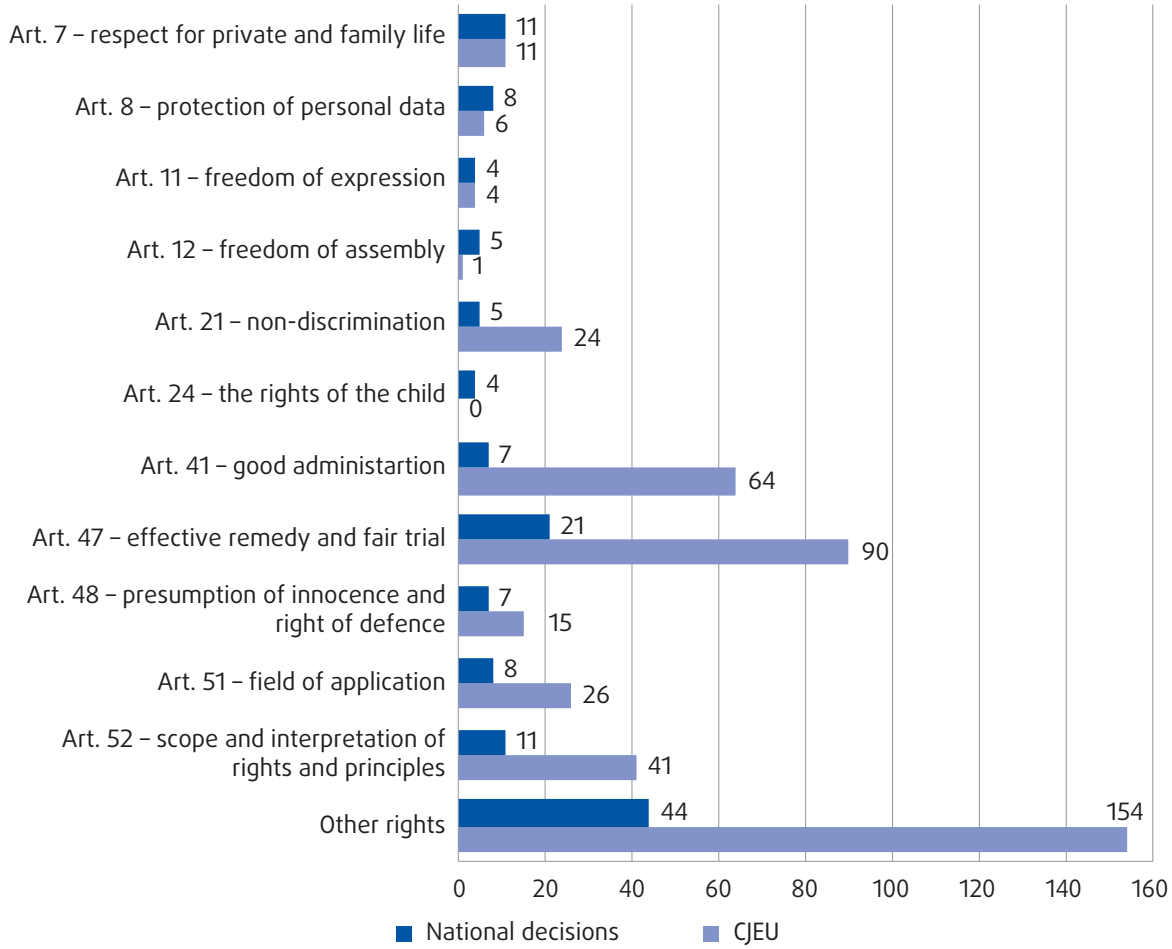
Source: *CJEU, 2014*

Turning to the question of which rights in the Charter were referred to most frequently in the analysed decisions delivered by national courts, the following picture emerges. Among the 65 decisions, the greatest number of references were made to the Charter chapters on Justice (VI) and General Provisions (VII). The right to an effective remedy and to a fair trial (Article 47), the scope and interpretation of rights and principles (Article 52) and the field of application of the Charter (Article 51) make up one third of all the Charter references in the analysed national decisions of 2014. The second prominent category concerns rights that can be clustered together because of their often procedural nature or function: presumption of innocence and right of defence (Article 48), good administration (Article 41), protection of personal data (Article 8) and non-discrimination (Article 21). These constitute one fifth of the Charter references in the analysed decisions. Finally, there is a category of substantial rights that were often referred to, namely respect for private and family life (Article 7) and the rights of the child (Article 24), which were often invoked together with the provisions of other fundamental rights documents, such as national constitutions or international treaties (11 % of all the references to Charter articles in the decisions analysed). Interestingly, these, and also other substantial rights such as freedom of expression (Article 11) or freedom of assembly (Article 12), played a certain role in the national decisions analysed, whereas they are rarely referred to before the CJEU (see Figure 8.5).

Looking back to 2013, the data from the two years are quite similar. Articles 47, 51 and 52 also accounted for almost one third of all Charter references in the national cases considered in 2013. However, whereas protection of personal data (Article 8) was not invoked in any of the national decisions in the 2013 sample, in 2014 it was referred to eight times. This can be explained by this year's judgment by the CJEU in the joined cases *Digital Rights Ireland* (C-293/12 and C-594/12),[89] where the CJEU held the Data Retention Directive (2006/24/EC)[90] to be invalid, thereby providing an incentive to submit national provisions implementing the abovementioned directive to a judicial review (see Chapter 5 on information society, privacy and data protection).

For the CJEU, the right to an effective remedy and fair trial (Article 47), the scope and interpretation of rights and principles (Article 52) and the right to good administration (Article 41) were the most prevalent Charter provisions in 2014. However, unlike in the national courtrooms, the rights of the child (Article 24) and freedom of assembly (Article 12) hardly feature in the decisions of the court. The right to property (Article 17) and the freedom to conduct a business (Article 16) were both repeatedly mentioned in the cases found in the CJEU, but not even once in any of the national decisions analysed.

Figure 8.5: Number of references to Charter articles in selected decisions by national high courts and in CJEU decisions in 2014, by article



Notes: *Based on the total number of references made to the Charter in 65 national decisions in 25 EU Member States (Denmark, Estonia and Latvia are not included) and 210 CJEU decisions in 2014.*

The category 'Other rights' contains different rights for national courts and the CJEU.

Source: *Data provided by FRA's research network, 2014; CJEU, 2014*

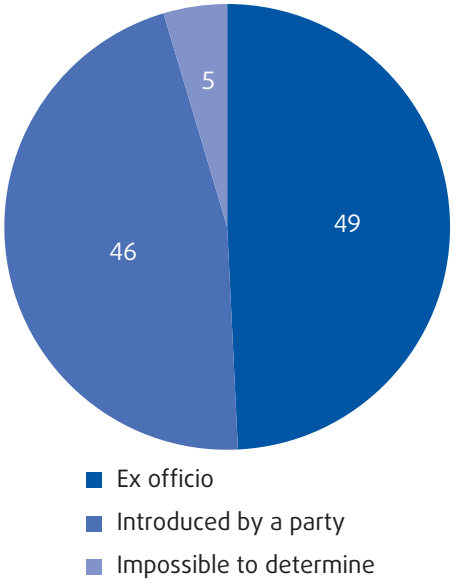
8.3.2. Application field of the Charter

Judges in national courts in 2014 referred to the Charter on their own initiative in almost half of the decisions analysed. In the other half, Charter references built on earlier references made by the parties involved (Figure 8.6). This confirms the picture emerging from the cases analysed in the previous annual report that national courts not only refer to the Charter after it is invoked by the parties but equally rely on it on their own motion.

What also appears to confirm last year's findings is that national courts seldom explicitly address the question of whether or not the Charter applies in the case at hand. Thus, the Charter was often relied on – in many cases alongside national constitutional provisions or other international legal sources – without any explanation of whether or not the Charter legally applies, making it difficult to analyse the concrete impact of the Charter provision in question on the reasoning of the national courts.

This is even true of the Charter right to good administration (Article 41), a special Charter article in that, unlike the Charter's other articles, it applies only to the EU's own institutions and bodies (see, however, *H. N. v. Minister for Justice, Equality and Law Reform* (C-604/12), mentioned in Section 8.1.3). This specific scope of the Charter provision was, for instance, not addressed in a case (Case 370515) before the State Council in **France** which referred to Article 41 and the general clause on the Charter's field of application in Article 51.[91] By mentioning the right to good administration (Article 41) in combination with the right to an effective remedy and to a fair trial (Article 47), courts situate such cases within the general scope of the Charter as defined in Article 51 of the Charter. For instance, the Supreme Administrative

Figure 8.6: References to the Charter introduced by a party/on court's own motion (ex officio) (%)



Note: *Based on 65 decisions issued in 25 Member States in 2014. Member States not included: Denmark, Estonia and Latvia.*

Source: *Data provided by FRA's research network, 2014*

Court of **Lithuania** (in Case A858-47/2014) overruled the decision of the Ministry of Foreign Affairs based on the argument that in certain cases it had the right to enjoy absolute discretion in taking decisions to freeze money. The court disagreed with the ministry's statement and said that Article 41 establishes the right to good administration, one of its components being the duty of administration to give reasons for its decisions. The competent national authority does not enjoy absolute discretion and must exercise its powers in a manner which upholds the rights provided for in Article 47 of the Charter.[92] How the two provisions interact in their impact on the reasoning of the national courts is difficult to assess but in any event Article 41 is considered relevant to national administrations. In another case (Case A822-1265/2014), the Supreme Administrative Court referred to Article 41 of the Charter as an "expression of the common legal heritage" that can serve as an additional source for interpretation of national law.[93]

> *"The CJEU states that the right to be heard in every procedure is currently enshrined not only in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, which ensure respect for the rights to a defence and the right to a fair trial in any court proceedings, but also in Article 41 of the Charter, which guarantees the right to good administration. The aforementioned Article 41, paragraph 2 provides that this right to good administration notably implies the right of every person to be heard when a detrimental individual measure is taken against him/her."*
>
> *Italy, Supreme Court, Joint Civil Chambers, Case 19667, 18 September 2014*

A rather rare example where the scope of application of the Charter was dealt with in detail – including references to the relevant case law of the CJEU and literature – was offered by the **Austrian** Constitutional Court. The case (Case B166/2013) concerned a homosexual couple from the Netherlands who wanted to repeat their marriage in Tyrol. The couple's claim, based on the non-discrimination clause (Article 21) of the Charter, was rejected with the argument that the national non-discrimination provision in question does not have to be in compliance with Article 21 of the Charter, as it does not aim to implement any Union law. Moreover, the national provisions are outside the scope of application of the EU equality directives, so that "there is no provision of Union law which is specific to this area or might influence it". Therefore, the Constitutional Court continued, the Union rules in the present case do not formulate obligations of the Member States and the fundamental rights of the Charter are not applicable regarding the national rules which determine this case.[94]

Another example (Case IEHC 83) is the **Irish** judicial review of decisions made by the Minister of Justice and Equality in relation to R.O.'s asylum claim.[95] R.O. claimed that, as a result of the CJEU's judgment in the case of *Ruiz Zambrano* (C-34/09),[96] **Ireland** was precluded from refusing R.O. a right of residence in Ireland, in so far as that decision would deprive his children of the genuine enjoyment of the substance of their rights to family life. The *Zambrano* line of argument (no deportation of a citizen child's non-national parent if that expulsion deprives the child of its genuine enjoyment of EU citizens' rights) was not accepted, on the basis that the complainant was not the natural father of one of the three children (the only one who is an EU citizen) and neither did a legal relationship exist between the mother and R.O. The Irish High Court held the Charter not to be applicable to this case, also because the deportation at stake was "pursuant to domestic legislation and is not in the course of the implementation of European Union law".

Just as in earlier years, there were examples where the Charter was referred to in contexts where EU law did not appear to apply. In that sense, the reach of the Charter does not necessarily stop short of purely internal situations. In such cases, the Charter is mentioned without the question of applicability and scope being raised. Such references seem more frequent with regard to procedural provisions concerning the right to good administration (Article 41), the right to effective remedy and a fair trial (Article 47) or the presumption of innocence and right of defence (Article 48). These Charter provisions – as interpreted by the CJEU – thus appear, alongside provisions of national constitutional law, to shape national administrative cultures even beyond the scope of EU law.

8.3.3. The Charter and other international instruments in national rulings

As in the past, the court cases analysed show that, when citing the Charter, courts frequently also draw on other provisions of international law, in particular those in the ECHR. In more than half of all the cases analysed, the ECHR was invoked along with the Charter's provisions. Other legal sources of the Council of Europe mentioned this year include the Framework Convention for the Protection of National Minorities and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (each of them referred to in one decision). UN conventions were also referred to alongside the Charter. The instruments most frequently mentioned were the UN International Covenant on Civil and Political Rights, the UN Universal Declaration of Human Rights and the UN Convention on the Rights of the Child (each mentioned in five out of 65 cases analysed), as well as the UN Refugee Convention, which was mentioned in four of the cases analysed.

In the sample of cases analysed, there were examples from most Member States of courts mentioning the ECHR alongside the Charter, but the relationship between these two human rights instruments was seldom addressed. The Supreme Administrative Court in **Poland** (in Case I ONP 1/14), for instance, read the provision on the scope and interpretation of rights and principles (Article 52) of the Charter, stating that the aim of this provision is to provide a cohesive standard preventing discrepancies between Charter and convention standards and the respective case law of the ECtHR and the CJEU. However, the provision would not mean that the ECHR was a part of EU law.[97] In **Belgium**, the Constitutional Court (in Case 1/2014) decided that the right of asylum seekers to an effective remedy guaranteed under Articles 47 and 52 of the Charter should be seen through the lense of the ECHR: "[the right should] be defined with reference to the meaning and scope given by the ECHR. It requires, therefore, also that the appeal is suspensive and that it allows for a strict and complete examination of the applicants' complaints by an authority with full jurisdiction."[98]

In the decision by the Constitutional Court of **Austria** (Case B166/2013) regarding the applicability of the principle of non-discrimination (Article 21) of the Charter mentioned in Section 8.3.2, the Constitutional Court concludes with a hypothetical statement. Building on the case law of the ECtHR, the Constitutional Court states that, even if the Charter were applied in the given case, it would not make any difference to its outcome. As the ECtHR has shown in *Schalk and Kopf* (Case 30141/04)[99] – so the Constitutional Court emphasises – the decision on the question of whether or not homosexual couples have to have the same access to marriage as heterosexual couples presupposes the assessment of societal developments, which might be different in the different Member States of the EU. Returning to the law of the EU, the Court states: "Regarding the question of access to marriage of same sex couples a competence for the Union is missing, therefore [Article 21 of the Charter] is not opposed to the fact that the requirements stemming from the prohibition of discrimination diverge amongst member states, as long was – which is true for the case in question as the quoted jurisprudence of the ECtHR shows – the understanding and scope of the prohibition of discrimination corresponds to Art. 14 ECHR [...]."[100]

Differences in the scope of the Charter and the ECHR were addressed in the context of immigration and asylum procedures. For instance, the Supreme Administrative Court in **Finland** (in Case KHO:2014:114) stated that, according to the provision on the scope and interpretation of rights and principles (Article 52 (3)) of the Charter, "the meaning and scope of fundamental rights in the EU shall be the same as those laid down by the ECHR". The court then referred to the Constitutional Court of Austria (Case U 466/11-18, U 1836/11-13), which "has found that in a matter in which the Charter is applicable, even when this falls outside the scope of Article 6 of the ECHR, an oral hearing shall in principle be held on the same grounds as established in the case law of the ECtHR concerning comparable matters where Article 6 is applicable [...] According to this case law, in many administrative procedure matters there is no absolute obligation to conduct an oral hearing."[101] Aside from reading the Charter in the light of the ECHR in a context where the ECHR as such does not apply (given the limited scope of Article 6 ECHR), the **Finnish** Supreme Administrative Court here provides an example not only of how the two prominent bills of rights interact but also of how an interconstitutional dialogue on EU matters can develop amongst high courts of different Member States.

8.3.4. Role of the Charter in the national legal systems

Where the Charter was (explicitly or implicitly) held to be applicable, it was used to interpret EU or national law or even to serve as a quasi-constitutional benchmark against which national law is checked. An example of the interpretation of EU secondary law comes from **Ireland**, where the High Court dealt in the *Maximillian Schrems* case (Case [2014] IEHC 310) with the question of the obligation to interpret the relevant EU provisions in the light of the Charter. The High Court discussed the applicability of the Charter rights of respect for private and family life (Article 7) and protection of personal data (Article 8), confirming that the right to protection of privacy was interfered with, according to both the Irish national law and the

Charter's fundamental principles.[102] The High Court decided to refer to the CJEU for a preliminary ruling, asking if the interpretation of pre-Lisbon instruments of the EU should be re-evaluated in the light of the subsequent adoption of the Charter of Fundamental Rights. The CJEU has yet to address the reference (see ▶ also Chapter 5).

> *"The position under EU law is equally clear and, indeed, parallels the position under Irish law, albeit perhaps that the safeguards for data protection under the EU Charter of Fundamental Rights thereby afforded are perhaps even more explicit than under our national law."*
>
> *High Court of Ireland, Case IEHC 310,* Maximillian Schrems v. Data Protection Commissioner, *18 June 2014*

The Charter can also be used to interpret national fundamental rights. In the *Melloni* case, the **Spanish** Constitutional Court used the Charter (alongside the ECHR) to define the essential core of fundamental rights as guaranteed by the Spanish constitution. More frequently, national courts use the Charter to interpret national laws, which can result in providing fundamental rights aspects in the reading of certain national provisions. For instance, a court in **Croatia** (in Case VSRH Kž eun5/2014-4) held that although the national law on judicial cooperation in criminal matters did not provide the victim of a crime a right to appeal against a negative decision concerning the execution of a European arrest warrant, this legislation should be interpreted broadly in the light of human rights standards, including the Charter.[103] Similarly, in **Italy**, the Supreme Court (in Case 11404) acknowledged the need to provide a broad interpretation of the expression 'family member' laid down in the national legislative decree. It considered that the expression 'any other family members' can include unconventional relations such as the *kafala* (Islamic adoption/guardianship system) provided that certain conditions are fulfilled.[104]

The interpretation of national law in the light of the Charter can also be accompanied with an interpretation of the Charter itself, and eventually lead to a call on the legislature to adapt legislation in line with the Charter. In **Germany**, the Federal Social Court (in Case B 11 AL 5/14 R) emphasised that equality rights have to be guaranteed not only to unemployed persons with disabilities but also to people with disabilities who have a job and want to make a career change. The court stressed that it is not enough "to allow disabled people to carry out any kind of activity that civil servants regularly exercise". To "meet the requirements of Article 21 and Article 26 of the Charter", the legislator and employer are requested to modify the requirements for access to the civil service.[105] The Constitutional Court in the **Czech Republic** interpreted the right to consumer protection (Article 38) of the Charter and concluded – by also referring to the horizontal consumer protection clause in Article 12 TEU and the policy provision in Article 169 TFEU – that this charter provision does not grant an individual right and is not directly enforceable.

> *"Consumer protection cannot be deemed to be one of the fundamental rights and freedoms guaranteed under the constitution […]; constitutions usually speak not of a subjective right but rather of a constitutionally set goal of State policy […] Article 38/2 [of the Charter] is also not a subjective right enforceable directly by a legal action, but is a principle that EU institutions and Member States reflect when transposing EU legislation, whereas it is possible to claim the principle of consumer protection before the courts only for the purpose of interpretation and to check the legality of these acts, as set out in Article 52, section 2 of the EU Fundamental Rights Charter and explanatory reports to the Charter."*
>
> *Czech Republic, Constitutional Court (Ústavní soud),* Case III. ÚS 3725/13, *10 April 2014*

This example shows that the Charter plays a role not only in the interpretation of national law but also, admittedly more rarely, in checking the legality of national law. As stated in last year's annual report, **Austria** provides the Charter with constitutional status, allowing it to be used as a legal benchmark. In 2014, the Austrian Constitutional Court (in Case G47/2012 ua) examined the constitutionality of the national data retention laws implementing the Data Retention Directive (2006/24/EC).[106] The court stressed once more that within the scope of EU law the Charter rights form benchmarks when checking the legality of national norms.[107] The supremacy of EU law can in this context provide for efficient and directly applicable rights for individuals. Regarding the right to asylum for instance, the Supreme Court of **Ireland** (in Case IESC 29) stressed that because of the Charter, Ireland, along with other Member States, has a duty to grant refugee status to those who qualify as refugees in accordance with the Qualifications Directive (2004/83/EC).[108] This right derives "exclusively from the law of the European Union since the State is obliged to give effect to European law and it cannot, by way of legislation or otherwise, deny or limit the rights conferred by the Charter and the relevant Directives given the primacy which is accorded by the Constitution to the law of the European Union".[109]

The fact that the majority of references to the Charter in the national court decisions analysed did not clearly show what the concrete impact of the Charter on the respective decisions was is also because the Charter tends to be used as one amongst other legal arguments, be they constitutional provisions or references to the ECHR (see also Section 8.3.3). Nevertheless, in conclusion one can say that the Charter clearly plays a relevant role in national case law, as it is used by national high courts to interpret EU legislation as well as national norms, thereby adding an additional fundamental rights perspective to the reasoning of national high courts.

FRA conclusions

- At the end of 2014, the Charter had been in force for over five years, with the strong upward trend of references to the Charter in the Court of Justice of the European Union (CJEU) continuing. In some cases, Member States' high courts also turn to the Charter for guidance and inspiration, sometimes also in cases falling outside the scope of EU law and sometimes not using the full potential of the Charter. Court decisions handed down in 2014 confirm that the Charter plays a role in the cooperation between the CJEU and the national courts. In over a tenth of the cases where national courts ask the CJEU for advice, the Charter is explicitly used.

Given this situation, EU Member States should assess and address training needs among practising lawyers and in the judiciary. It is worth considering positive incentives for practitioners to participate in such training so that the relevant key actors are made aware of both the potential and the limitations of the Charter.

- The evidence available to FRA shows that national courts frequently use the Charter in combination with other prominent human rights sources, such as national constitutional law or international law. In half of the 2014 national court decisions that FRA collected and analysed, the Charter was used in combination with the European Convention on Human Rights (ECHR).

Based on this evidence, EU Member States should make sure that training on the Charter is not offered in isolation but embedded in the wider fundamental rights framework, including the ECHR and the case law of the European Court of Human Rights (ECtHR).

- In only a very small proportion of the total decisions by national courts referring to the Charter is the CJEU asked for a preliminary ruling. National judges are regularly left to their own devices when using the Charter, without having readily available means to easily access the experiences of judges from other EU Member States in this regard.

To foster a shared understanding and interpretation of the Charter, the EU and its Member States could pool forces to allow for increased levels of exchange between and among national judiciaries. Relevant instruments for this would be the extension of existing databases, such as Charterpedia, the extended use of the European Case Law Identifier (ECLI) and the establishing of regular transnational exchanges on the application of the Charter among judges, thereby also enhancing mutual trust.

- The role of the Charter in the national legislative process depends on the respective procedural rules in place. There is a diversity of existing procedures, practices and approaches on how to assess upcoming national legislation's (*de jure*) compliance with and (*de facto*) impacts on fundamental rights. Evidence collected in 2014 shows that these rules not only differ between EU Member States, but may also differ depending on whether governments submitted or parliaments prepared draft legislation. Moreover, assessments of impact and legal scrutiny can be limited to the initial policy options and bills proposed, whereas later changes to those bills might not be subject to such checks.

Based on this variety of experiences, the EU and its Member States should use untapped potential for the exchange of promising practices and mutual learning with regard to Charter checks and Charter impact assessments. Building on earlier discussions in the Council Working Group dealing with fundamental rights (FREMP), FREMP could provide a forum for Member States and EU institutions to exchange experiences of the Charter, allow mutual learning and thereby contribute to making national and EU legislation more fundamental rights friendly.

- As the evidence collected for the annual report shows, the Charter was referred to in various 2014 fundamental rights policy documents at national level, but there appear to be hardly any Charter-specific policies aiming to strengthen knowledge and awareness of the Charter.

EU Member States could consider developing national policies for the implementation of the Charter, including awareness-raising campaigns, training of professionals and enhanced use of the Charter (and the corresponding CJEU case law) in legality checks and impact assessments in government services.

Index of Member State references

Endnotes

All hyperlinks accessed on 30 April 2015.

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9 See European Commission (2014), *High-level international conference: 'The EU Charter of Fundamental Rights: assessing and responding to the training needs of legal professionals and public officials'*, Brussels, 17–18 December 2014, Background Paper.

10 All EU legal instruments and case law are available at: http://eur-lex.europa.eu.

11 Court of Justice of the European Union (CJEU), C-206/13, *Cruciano Siragusa v. regione Sicilia*, 14 March 2014, para. 25.

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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

European Union (EU) Member States and institutions introduced a number of legal and policy measures in 2014 to safeguard fundamental rights in the EU. Notwithstanding these efforts, a great deal remains to be done, and it can be seen that the situation in some areas is alarming: the number of migrants rescued or apprehended at sea as they were trying to reach Europe's borders quadrupled over 2013; more than a quarter of children in the EU are at risk of poverty or social exclusion; and an increasing number of political parties use xenophobic and anti-immigrant rhetoric in their campaigns, potentially increasing some people's vulnerability to becoming victims of crime or hate crime.

In 2014, the EU reassessed its strategy and priorities for the coming years. The new European Commission announced its 10 priorities, among which a new approach to legal migration into the EU was recognised as one of the key aspects of the Commission's agenda on migration. Together with immigration, integration policies were identified as a crucial factor for creating inclusive societies. A new regulation on structural and investment funds that came into force in 2014 is a promising tool to help the EU move towards greater social inclusion and reduce discrimination and unequal treatment. The end of the transition period for the Framework Decision on Combating Racism and Xenophobia will allow the European Commission to launch infringement procedures against EU Member States that do not comply with the provisions of the framework decision. At the same time, in annulling the Data Retention Directive, the Court of Justice of the EU recognised privacy to be a vital right. The year closed with a celebration of the fifth anniversary of the Charter of Fundamental Rights, which is the cornerstone of rights protection for everyone in the EU.

FRA's annual report this year examines fundamental rights-related developments in equality and non-discrimination; racism, xenophobia and related intolerance; Roma integration; asylum, borders, immigration and integration; information society, privacy and data protection; the rights of the child; access to justice including rights of crime victims; and the EU Charter of Fundamental Rights and its use by Member States.

FOCUS

This year's Focus section hones in on fundamental rights indicators – one of the tools that can be used to enhance the fundamental rights commitments of the EU and its Member States. Mainstreaming fundamental rights can help turn words into action, especially if linked to relevant indicators. The Focus thus examines how a rights-based indicator framework could support relevant actors in policy evaluation and design, thus consolidating Europe's fundamental rights culture and helping to guarantee that fundamental rights are upheld in practice.

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