

CORONAVIRUS PANDEMIC IN THE EU – FUNDAMENTAL RIGHTS IMPLICATIONS: FOCUS ON SOCIAL RIGHTS

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Foreword

The dramatic increase in COVID-19 infections across the European Union (EU) in autumn and early winter is a stark reminder that the pandemic – and its impact on fundamental rights – is far from over. While news of successful vaccine trials offer hope, the prospect of prolonged restrictions underlines the extent of the challenge we face in supporting our economies and societies through the crisis.

This situation also brings into sharp relief the importance of social rights. Social rights offer protection across many of the areas that most shape our daily lives. The Charter of Fundamental Rights of the EU – the Union’s own bill of rights – includes legally-binding standards across education, employment and healthcare. These give people in the EU the right to education, to fair and just working conditions, and to access preventive healthcare, among many others.

It is encouraging to see countries apply lessons learned from the first wave to minimise the impact on these rights. Schools have in general stayed open wherever possible. Authorities have stepped up COVID-19 testing in care homes and other institutional settings. Many governments extended income support schemes. This has been enhanced by the work of parliaments, courts, national human rights bodies and civil society organisations to scrutinise government measures. Their monitoring and guidance is invaluable in ensuring that restrictions do not go beyond what is strictly necessary and proportionate.

Older people, people with disabilities, Roma and Travellers, homeless people and migrants, refugees and asylum seekers are just some of those who too often find themselves the object of debates, rather than part of the conversation to find solutions. As evidence continues to mount of how the virus is disproportionately affecting the most vulnerable members of our societies, we all have a responsibility to give voice to those rarely heard in policy discussions.

Michael O’Flaherty
Director

Key findings

This report outlines some of the measures EU Member States have put in place to protect public health as Europe faces the ‘second wave’ of the Coronavirus pandemic. It highlights how these may affect fundamental rights, especially social rights. Where the report mentions specific articles, these refer to the **Charter of Fundamental Rights of the European Union**, which also serves as a proxy for the many other human rights standards that apply at national level.¹

The report covers the period 1 September – 31 October 2020 and focuses on three main areas:

- Measures by governments and public authorities that have an impact on specific freedoms, notably states of emergency (or equivalent measures) and measures affecting the freedom of assembly and the freedom of movement.
- The impact of COVID-19 and measures to contain it on social rights in four key areas of life – health, education, work and housing.
- How COVID-19 and efforts to limit its spread affect the social rights of particular groups in society, namely people in institutional settings, older persons, persons with disabilities, migrants, asylum seekers and refugees, and Roma and Travellers.

The most widespread restrictions on daily life experienced in peacetime in modern Europe affect everyone living in the EU, albeit in different ways. This has implications for the enjoyment across our societies of nearly all the fundamental rights enshrined in the Charter. The following paragraphs outline key findings from FRA’s data collection across the 27 EU Member States.

NOTE ON SOURCES

The evidence presented in this Bulletin is based on information available in the public domain with hyperlinks to the references embedded on the relevant text. For full references, please refer to the respective **Franet country report**.

Measures affecting specific freedoms

Many Member States reintroduced or extended **states of emergency** or other emergency situations as the health situation deteriorated. States of emergency typically allow certain rights to be limited, such as freedom of movement (Article 45 of the Charter), freedom of assembly and of association (Article 12), and private and family life (Article 7). During the reporting period:

- Several Member States declared new states of emergency or other emergency situations, in some cases with different measures applying in different parts of the country. Previously declared states of emergency remained in place in a number of countries.
- Others extended the emergency measures that had earlier replaced states of emergency.
- National human rights bodies and civil society organisations continued to raise concerns about changes to the law-making process and on-going limitations on fundamental rights. In several cases governments acted to address these concerns.
- Courts in a number of Member States assessed the legality, necessity and proportionality of emergency measures, repealing or annulling them in several cases. Parliaments also continued to scrutinise emergency legislation.

In an effort to reduce social contacts, restrictions on **freedom of assembly**, which includes all private or public gatherings with a shared purpose of their participants, increased in all Member States in September and October:

- Member States further tightened limits on the numbers of people who can participate in gatherings, often reducing the allowed numbers of attendees incrementally.
- Nevertheless, all Member States stipulated exceptions to these restrictions, particularly for religious gatherings, demonstrations and political meetings.
- Protests against COVID-19 containment measures occurred in a number of Member States. Civil society organisations in several Member States expressed concerns about police conduct during the protests.

Both the **Council of the European Union** and the **European Commission** continued to recommend the suspension of **non-essential travel to the EU** from many third countries, with some exceptions. The **Council set out a coordinated approach to restrictions of free movement within the EU**. At the same time, many Member States **restricted movement within their national borders**.

- Several Member States required proof of a negative COVID-19 test or self-isolation pending a test upon arrival for travellers coming from outside the EU Member States and Schengen countries.
- Some countries reintroduced border controls or restrictions within the EU, sometimes with exceptions for permanent residents (and their families) or cross-border workers.
- Several Member States declared night-time curfews, either nationwide or in regions with particularly high infection rates. Others restricted freedom of movement around the All Saints holiday, between regions or for particular groups.
- Courts assessed restrictions on freedom of movement implemented in several Member States during spring, finding the measures assessed proportionate to the aim of limiting the spread of the virus.

Impact on social rights in key areas of daily life

Rising infection rates in September and October prompted governments to implement a raft of new measures affecting different areas of daily life. These significantly affected social rights, including: the right to education (Article 14), the right to engage in work (Article 15), the freedom to conduct a business (Article 16), workers' rights to information and consultation (Article 27), the right to protection in the event of unjustified dismissal (Article 30), the right to fair and just working conditions (Article 31), the right to social security and social assistance (Article 34), and the right of access to preventive health care and to benefit from medical treatment (Article 35).

Rising numbers of COVID-19 infections put **healthcare systems** under considerable pressure and resulted in limitations in access to healthcare for both COVID-19 and other conditions.

- Reports emerged in many Member States of a lack of hospital beds, especially in intensive care units, insufficient trained staff and shortages of appropriate equipment, sometimes resulting in delayed hospitalisation and patient deaths.
- The rise in COVID-19 admissions prompted several hospitals to limit access to treatment for other conditions and postpone non-urgent treatment.
- Data pointed to the dramatic impact of the pandemic on the physical and mental wellbeing of healthcare staff, affecting their right to a high level of health protection and safety at work.

Almost all Member States reopened schools after the summer break, allowing in-person teaching to resume. However, rising infections rates meant that many had reinstated distance learning by the end of October, posing challenges to the right to **education and non-discrimination**.

- Authorities in many Member States issued guidelines on avoiding the spread of COVID-19 and dealing with cases in educational facilities, as well on what to do in case of increased infection rates.
- Many countries reinstated distance learning for older students (above 10); in a few Member States this also applies to primary school children.
- Higher education institutions also shifted to remote lectures in many countries. In a few Member States, some universities continued in-person courses in small groups, subject to physical distancing measures.
- Evidence continued to show that children from disadvantaged backgrounds faced challenges accessing the digital tools needed for distance learning, exacerbating inequalities in access to education. Several Member States invested in school digitalisation.

The pandemic continued to have a huge impact on the economies and **labour markets of the Member States**, resulting in rising levels of unemployment. The **tourism, hospitality, arts and entertainment sectors were particularly affected** as several countries entered a second period of 'lockdown' in October. The European Commission disbursed **€ 17 billion in the first instalment** of financial support to Member States in an effort to underpin economies and preserve employment.

- Almost all countries reported increases in the unemployment rate compared to the pre-pandemic period. This especially affected young people under 25. In some Member States, their unemployment rate exceeded 40 %.
- Several Member States extended measures to preserve employment, support the income of workers and compensate businesses affected by the pandemic. Others introduced measures to address youth unemployment.
- Data from some Member States showed that women – especially single mothers – continued to be particularly affected by the negative economic effects of the pandemic.

Challenges in accessing decent and affordable **housing** remained a key area of concern, reflecting the role of adequate housing in protecting against COVID-19. Studies in several Member States indicated a rise in the number of homeless people during the pandemic.

- Governments in some countries sought to address housing issues by extending moratoria on evictions and rent increases.
- Evidence points to homeless people facing additional challenges, including a heightened risk of COVID-19 infection, difficulties accessing testing and healthcare, the risk of being penalised for breaking curfews and visiting bans in shelters. The onset of winter risks making the situation more difficult.

Impact on social rights for particular groups

COVID-19 and the measures adopted to contain it continued to severely affect the **social rights of particular groups**, such as people in institutional settings, older persons, persons with disabilities, migrants, asylum seekers and refugees, and Roma and Travellers.

Challenges in accessing COVID-19 testing and other health services, and the impact of visiting bans on residents' wellbeing, remained grave concerns for **people living in institutions** – disproportionality older persons and persons with disabilities.

- Several Member States established specific testing programmes for staff and residents in institutional settings, given the high rates of infections and deaths in these settings. However, reports of long waiting times for test results also emerged.
- Evidence suggests that people in institutional settings faced challenges accessing other health services, raising concerns about possible discrimination.
- High infection rates prompted many Member States to increase or extend restrictions on visits to institutional settings. Courts in a number of Member States assessed the legality of these restrictions, ruling in several cases that they should be lifted.

Issues around access to medical treatment, employment prospects and the impact of isolation affect **older people's** right to lead a life in dignity and independence, as enshrined in Article 25 of the Charter (alongside many other fundamental rights), and are exacerbated as a result of COVID-19.

- Evidence from a number of Member States suggested that fewer older people are accessing healthcare for both COVID-19 and other conditions.
- Studies continue to show that the pandemic is intensifying feelings of loneliness and psychological distress among older people.
- The prospect of long-term unemployment and challenges associated with using technical tools to work remotely affected older people's employment situation, research indicated.

Persons with disabilities continued to face challenges in everyday life because of the pandemic.

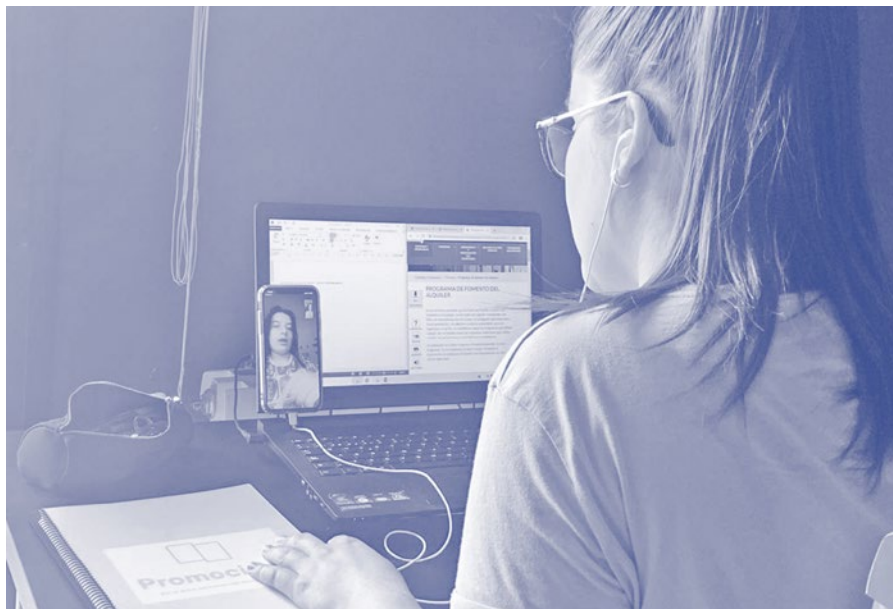
- Support services continued to work below capacity in many Member States, with further restrictions imposed as infection rates rose in September and October. This risked placing an additional burden on family members, who can no longer rely on external support.
- Evidence mounted of significant obstacles in access to education for children with disabilities. Some Member States put in place specific measures to reduce disruption to schooling for children with disabilities.
- National human rights bodies in several Member States looked into complaints of a lack of accommodation of people with disabilities' specific situation in the employment context.

Bulletin #5 showed how overcrowding and poor housing put **Roma and Travellers** at increased risk of contracting COVID-19, and that they are disproportionately affected by measures to contain the virus. Disrupted access to education remained a pressing concern for many Roma and Travellers in September and October.

- Unlike during the first phase of the pandemic, evidence did not indicate restrictive measures that particularly affected areas with predominantly Roma populations.
- Many Roma children lack internet access and the IT equipment necessary to participate in distance learning, increasing their risk of dropping out of school or falling behind in their education.

Migrants, asylum seekers and refugees, often living in overcrowded accommodation with poor hygiene conditions, continued to face increased risk of infection and barriers to accessing health services. The pandemic threatens to increase poverty and social exclusion among these groups.

- Studies in several Member States point to higher rates of COVID-19 infections among migrants, asylum seekers and refugees.
- Reports persisted of poor hygiene conditions and limited access to medical services in reception facilities, as well as difficulties for children living in these settings to access distance learning.
- Evidence from some Member States indicated that these groups face difficulties accessing COVID-19-related employment support schemes, given their often unstable employment conditions, as well as challenges in securing the jobs necessary to extend their residence permits.



Introduction

By 23 November 2020, COVID-19 had infected 10,501,768 people in the EU and 238,453 people had died from it, according to the [European Centre for Disease Prevention and Control \(ECDC\)](#). Infection rates in late summer and early autumn rose well beyond the levels seen in spring across many parts of the EU. Member States thus reintroduced many of the restrictions they had put in place earlier in the year to combat the spread of COVID-19 and protect the health and lives of people in the EU.

In September and October, restrictions on daily life matched or even exceeded those implemented earlier in the year, with limits on social contact, closures of sectors of the economy, restrictions on travel and a return to distance learning for many school pupils. Protecting the rights to life and health – while avoiding further inequalities that may result from measures adopted – remains a priority as the EU faces the prospect of a winter of restrictions prompted by the virus.

Given the speed with which the pandemic and policy responses have unfolded, the Bulletin does not present an in-depth socio-legal analysis of measures and their impact, nor does it offer policy recommendations. Rather, it presents illustrative examples drawn from data collected by FRA's research network Franet (see box). It is beyond the Bulletin's scope to present an analysis of relevant international human rights law since it applies only to the situation in the EU and its Member States.

Bulletin #6 addresses several areas of life affected by the COVID-19 outbreak. While these are all reflected in various articles of the EU Charter of Fundamental Rights, they are not all comprehensively covered by secondary EU law. For example, the Bulletin encompasses core areas affected by measures enacted in response to COVID-19 – such as education. These are, in the main, questions of national competence. But in combination, they might nevertheless have implications in EU law relevant fields such as non-discrimination.

Selected examples of promising practices to mitigate the impact of public health measures on fundamental rights are included throughout. These examples of practices in EU Member States presented in the report do not comprehensively cover the huge number of actions taken across the Member States.

More information on the situation concerning COVID-19 among migrants and refugees at the EU's external borders is available in [FRA's regular reporting on migration](#). In addition, [Bulletin #5](#) looked specifically at the impact of COVID-19 on Roma and Travellers.

This is the sixth FRA Bulletin on how the Coronavirus pandemic affects fundamental rights. It outlines some of the measures EU Member States adopted to mitigate the spread of COVID-19 while protecting their economies. It highlights the impact these measures had on civil, political and – as a particular focus of this Bulletin – socioeconomic rights. The Bulletin starts by looking at declarations of states of emergency, or their equivalent, and restrictions affecting the freedoms of assembly and movement (**Section 1**). It then considers the impact on social rights of measures to contain the virus in important areas of daily life, including education, work, healthcare and housing (**Section 2**). **Section 3** describes the impact of the pandemic and containment measures on the social rights of certain population groups.

BULLETIN #6: COVERAGE AND TIMELINE

Bulletin #6 on COVID-19 documents the situation in the 27 EU Member States from **1 September to 31 October 2020**. It retains the main structure of Bulletins #1, #2, #3, and #4, published on 8 April, 28 May, 30 June 2020 and 30 July, in looking at the impact of COVID-19 on both society as a whole and particular groups within it, with some differences in the specific issues considered. Bulletin #5 looked specifically at the impact of COVID-19 on Roma and Travellers. This edition has a particular focus on how the pandemic has affected social rights.

FRA's multidisciplinary research network, Franet, collected data and information for this Bulletin across all 27 EU Member States. It gathered information from sources that were publicly available at the moment of data collection. The evidence is presented in this Bulletin with hyperlinks to the references embedded on the relevant text. For full references, please refer to the **respective country report**.

FRA's 2021 Fundamental Rights Report, to be published in June 2021, will address the impact of COVID-19 on fundamental rights across the EU in 2020.

1

MEASURES AFFECTING SPECIFIC FREEDOMS



This section outlines the state of play in the EU with respect to states of emergency or other emergency situations introduced during the pandemic. It then looks at how the pandemic is affecting the enjoyment of the freedoms of assembly and movement. In each case, it highlights scrutiny by courts, national human rights bodies and civil society of the impact of restrictive measures on fundamental rights.

1.1 STATES OF EMERGENCY

Amid rapidly rising numbers of COVID-19 infections in September and October, many EU Member States reintroduced or prolonged states of emergency, or other emergency situations, prompting concerns about ongoing limitations on fundamental rights. This report uses the respective national terminology, without prejudice to the specific legal consequences different terms may refer to.

It is a basic principle of international human rights standards that any restrictions to a right must be prescribed by law, proportionate and necessary, and of limited duration. Well-established case law of the European Court of Human Rights, based on Article 15 of the European Convention on Human Rights (ECHR), provides that derogations need to be notified, and should happen only in exceptional circumstances and in a limited and supervised manner to secure certain rights and freedoms under the ECHR. No EU Member State **notified a derogation from the ECHR in times of emergency** during the reporting period.

1.1.1 States of emergency reinstated

As highlighted in previous bulletins, the situation concerning states of emergency – or their equivalent – varied greatly across the EU during the reporting period:

- The state of emergency remained in place in **Lithuania**. It was **extended in Italy** (until 31 January 2021). The **regional emergency ordinances in the Netherlands remained in force**.
- Several Member States extended the measures that had earlier replaced states of emergency (see Bulletins **#3** and **#4**). **Bulgaria extended its emergency epidemic situation** (to 30 November), and **Romania its state of alert** (every 30 days, most recently on 15 October). **Hungary remains in a state of epidemiological preparedness, declared in June, until 18 December**.

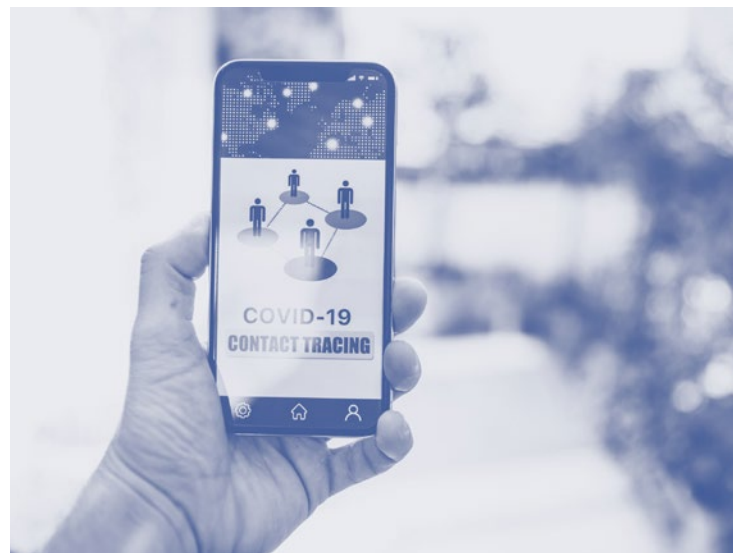
- After states of emergency in place during the ‘first wave’ of the pandemic ended over the summer, new states of emergency were declared in **Czechia (from 5 October, for 30 days, later extended to 20 November)** and **France (from 17 October for an initial period of four weeks)**. The state of emergency declared in **Slovakia (from 1 October, for 45 days)** is broader in scope than **that in place from March-June, which focused on the healthcare system**.
- A number of other Member States did not reintroduce states of emergency, but declared other emergency situations. Spain, where the state of emergency ended on 30 August, **declared a nationwide state of alarm** on 25 October. **Portugal declared a situation of contingency on 15 September** and a **situation of calamity on 15 October**.
- In both cases, these followed measures introduced for regions particularly affected by the pandemic. The **state of alarm applied in nine municipalities in the Autonomous Community of Madrid from 9 October**, before being extended to the rest of Spain. **Specific rules for the workplace applied to Lisbon and Porto in Portugal from 1 October**.

As noted in previous bulletins, around a third of EU Member States did not declare a state of emergency or equivalent during the pandemic period.

Governments in several Member States took steps to address the concerns about the legal basis for states of emergency highlighted in previous FRA bulletins. The **explanatory memorandum to the Dutch Emergency Act on measures against COVID-19**, which will replace the country’s regional emergency ordinances, recognised that the ordinances lack a strong legal foundation for long-term measures (see Bulletins **#3** and **#4**). Before **passing the bill on 13 October**, the **Dutch House of Representatives made several amendments**, including reducing the application of the act from six to three months, requiring the Council of State to give a new opinion on the necessity of the measure prior to any extension, and making an explicit link between subsidiarity and the rule of law for measures restricting rights. They also removed the possibility for the Minister of Health to take other measures not regulated by the law.

Nevertheless, national human rights bodies and civil society organisations continued to raise concerns about the legislative process and ongoing limitations on fundamental rights. Following the reintroduction of the state of health emergency in France, the **Public Defender of Rights published an article** calling for an “increase in tools for democratic and judicial control over the scope and consequences of emergency measures”. The **Hungarian Civil Liberties Union expressed concern** about rapidly changing restrictions, absence of a solid legal basis for some measures, and lack of consistent interpretation of rules, among other issues.

In several cases, this engagement prompted the government to change tack. **Local authorities in Peipsiääre, Estonia, annulled several points of an order** setting out COVID-19 prevention measures after the **Chancellor of Justice issued a note** indicating that the order restricted fundamental rights without a legal basis. The **Portuguese government withdrew a draft law** requiring mandatory use of the ‘Stayaway Covid’ app, reflecting **concerns raised by the National Data Protection Authority** about its impact on privacy and discrimination. After **criticism from the Irish Council for Civil Liberties** about the lack of time allocated for the parliament to debate the extension of the **Emergency Measures Act**, the government allotted another day for discussion.



1.1.2 States of emergency and emergency measures under scrutiny

Courts in a number of Member States continued to scrutinise the legality of emergency measures and limitations on fundamental rights (see previous bulletins). The **Croatian Constitutional Court considered a number of submissions for constitutional review** of legislation and measures adopted to contain the pandemic. Several related to legislative amendments affecting the

Civil Protection Headquarters, including that changes to the Law on the Civil Protection Headquarters transferred to the Headquarters powers exclusive to the Croatian Parliament, the legitimacy and legal basis of the Headquarters' decisions, and whether the Headquarters can adopt decisions restricting certain fundamental rights. Complainants also raised concerns about legislative and judicial control over the Headquarters' decisions. The **court found that the Civil Protection Headquarters is legally entitled** to adopt safety measures for the protection of the population from infectious diseases, but underlined that this does not mean that the decisions are not subject to executive, legislative and judicial scrutiny. As a result, the court decided not to initiate a constitutional review of the legislative amendments.

The Constitutional Court also considered **amendments adopted in April 2020 to the Rules of Procedure of the Croatian Parliament** to apply during pandemics. The applicants (35 members of parliament) argued that the amendments – which included the possibility to shorten time for discussion and breaks, limited the number of parliamentarians present in parliament and suspended the right to reply – disproportionately prevented parliamentarians from performing their functions. The **court concluded that the measures had a legitimate cause, but that the restrictions on representatives' exercise of their rights and duties were not objectively and reasonably justified**. As such, the court repealed the amendment to the rules of procedure.

The **Slovak Office of the General Prosecutor issued a notification** to the Public Health Authority stating that, while the measures it imposed in spring to contain the spread of the coronavirus were necessary and justified, **it did not have the legal authority to issue them**. In the notification, the office suggested that the Public Health Authority should adopt measures to prevent similar violations in the future.

Other courts looked at specific measures. The **Municipal Court in Prague, Czechia, annulled an emergency measure prohibiting university students from being present at universities in the city**, finding that the Prague Public Health Office had failed to justify the necessity of the measure. All **universities in the country moved to online tuition** on 12 October following a government decision (see **Section 3**).

1.2 FREEDOM OF ASSEMBLY

The severity and variety of measures restricting freedom of assembly increased in all Member States in September and October, evidence collected by FRA shows. The broad concept of 'assembly' covers all private or public gatherings with a shared purpose of their participants.²

Member States further tightened limits on the numbers of people who can participate in gatherings, often reducing the allowed numbers of attendees incrementally during the reference period. For example:

- Austria amended the **legal framework** restricting the number of participants at events and other public gatherings six times during the reporting period. **As of 22 October**, events with no fixed seating can take place with six people indoors or with twelve people outdoors, excluding children, organisers and staff. By the end of October, **Belgium, Czechia** and **Malta** also limited the number of participants in gatherings to 10 people or fewer.
- Finland, Germany and Sweden imposed restrictions on a local or state level, leading to regional differences. For example, in Sweden different measures applied in **Uppsala county**, in **Stockholm, Östergötland and Västra Götaland**. **Denmark restricted gatherings to 50 persons** in the capital area from 7 September, and nationwide from **19 September**.
- Ireland restricted all events and private visits, other than funerals and weddings with up to 25 people, from **22 October**.
- Estonia is the only country where **evidence indicated no increase in restrictions**.

These restrictions prompted concerns about their legality and proportionality. Legal experts in Croatia questioned measures **imposing restrictions on private spaces**, for example.

All Member States stipulated exceptions to these restrictions, particularly for religious gatherings, demonstrations and political meetings. In the **Netherlands**, for example, the restrictions do not apply to assemblies and demonstrations covered by the Public Assemblies Act, while exceptions include religious gatherings, various cultural activities, and professional, business or associations' assemblies with up to 100 persons. **Czechia** allows constitutional bodies and courts to assemble with up to 100 participants. **Romania** permits electoral gatherings with up to 50 (indoors) or 100 (outdoors) persons, subject to social distancing and wearing masks. However, restrictions changed following public **criticism**, and **other public gatherings** were permitted as of 15 September.

Austria allowed public worship, while up to 500 persons could attend funerals as of **18 September**, and 100 persons **as of 22 October**. Exceptions in **Portugal** included religious ceremonies of up to 50 guests or corporate events held in adequate spaces. Cyprus permitted religious gatherings in churches, subject to **guidelines** issued by the Health Ministry. In some countries, restrictions on religious services depended on whether social distancing could be implemented, as in **Estonia**. **Slovakia** restricted the number of participants in religious gatherings to one person per 15 square metres.

Many countries also made exceptions for demonstrations. Czechia **limited** protests to 500 participants. Other Member States did not impose limitations on numbers of participants, but required them to wear masks (as in **Hungary**) or apply distancing rules (as in **Germany**). **France** permitted public processions and protests of up to 5,000 people, subject to prior authorisation, social distancing and hygiene measures. In Italy, only static protests **could take place**, subject to social distancing.

Protests against COVID-19 containment measures occurred in a number of Member States, prompting different reactions from law enforcement authorities. Violent clashes occurred at a banned **protest against COVID-19 measures in Czechia** on 18 October, for example. A similar march in Cyprus on 28 October led to **violence and arrests** of protesters for arson and criminal damage; they were later **acquitted**. Police **photographed protesters** to identify and impose fines on those not wearing masks.

Civil society organisations in several Member States expressed concern about police conduct during protests. Several **organisations in Slovenia sent a letter to the head of the police** claiming excessive use of police powers during an anti-government protest on 9 October. They also submitted a complaint to the **Ombuds body, which announced that it would investigate**. In Greece, **parents' organisations** and **teachers' federations** criticised the police's reaction to protests about the lack of COVID-19 safety measures at schools, in particular the arrest and detention of five students.

In some cases, the courts decided whether protests could go ahead. The **Civil Central Court of Lisbon in Portugal rejected a request to ban** an annual event held by the Communist party, arguing that it needed more details on why it would lead to a worsening of the pandemic and noting that the **health authority had issued guidelines** to ensure the event was safe.





1.3 FREEDOM OF MOVEMENT

Amid the second wave, some Member States reintroduced measures that gradually limited free movement, although these were generally less severe than during the spring.

1.3.1 Situation at external borders

On 21 October, the **Council of the EU amended its recommendation on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction**. It stated that Member States should lift such restrictions for people travelling from countries with low COVID-19 infection rates; non-essential travel into the EU from all other third countries should be temporarily suspended. On 28 October, the Commission published **guidance on persons exempted from the temporary restriction on non-essential travel to the EU**. These include citizens of the EU Member States and Schengen countries, and third-country nationals who are long-term residents, as well as their family members, and people with an essential function or need. The Commission also encouraged Member States to facilitate the reunion of people in durable relationships.

Several Member States required proof of a negative COVID-19 test for travellers from outside the EU+ area or self-isolation pending a test upon arrival. In France, for example, persons arriving from countries where the virus is 'actively circulating' need to carry a statement that they do not show symptoms of COVID-19 and were not in contact with a confirmed case in the past 14 days, as well as an '**exceptional travel certificate**'. Travellers showing symptoms have to observe quarantine. Travellers from **countries** with high infection rates are also required to provide **test results** or undertake a test. Travellers to **Croatia, Latvia** and **Ireland** need to complete electronic forms prior to entry.

1.3.2 Situation at internal borders

Following on from several guidelines and communications adopted by the European Commission since March 2020 (see previous bulletins), the Council of the EU adopted a **recommendation on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic** on 13 October. It recalls that any measures restricting free movement to protect public health must be proportionate and non-discriminatory, and be lifted as soon as the epidemiological situation allows. To help coordinated application of these principles, the ECDC should publish a weekly map of EU Member States and regions, marking areas according to 'traffic light' colours (red, orange and green), depending on the COVID-19 infection rates. Member States should neither refuse entry at internal borders nor in other ways restrict the free movement of persons travelling to or from green areas with low COVID-19 transmission. If considered necessary, they may require travellers from non-green areas to undergo quarantine or a test after arrival. Member States should also provide the public with clear, comprehensive and timely information on any restrictions and requirements. A **Factsheet** summarises the relevant rules.

Some countries reintroduced border controls or travel restrictions. Hungary denied **entry to non-Hungarian citizens** as of 1 September. Several exemptions apply, for example to permanent residents or persons participating in sport or cultural events. In addition, **cross-border workers are entitled to enter** Hungary to stay within 30 km of the border for a maximum of 24 hours. Romanian borders **remain closed** to foreigners coming from risk areas, with exceptions for residents from low-risk areas (according to EU guidance) and family members of citizens from EU Member States and Schengen countries with residence in Romania.

1.3.3 Restrictions on movement within Member States

September and October saw many Member States restrict movement within their national borders:

- Several declared curfews, including **Czechia**, **Spain**, Lithuania (from **8 October**, extended on **22 October**). France imposed a curfew on 17 October in some municipalities, extended nationwide on 22 October. Additional **lockdown measures** introduced in France on **30 October** banned mobility between regions and stipulated certain conditions under which people may leave their homes, including for work, urgent family reasons, to help vulnerable persons, medical appointments or exercise for one hour within a 1 km radius. Everyone should carry a justification **form**.
- Some countries implemented regional curfews, for example Italy (in **Lombardy**, **Piedmont**, and **Lazio**), or prohibited travel between regions, which was the case, for example, in **Slovenia** and Portugal. In **Ireland**, people were advised to stay at home, except for exercise within 5 km of their home.
- Some restrictions related to national holidays. **Poland forbade entrance to cemeteries** between 31 October and 2 November, except for funerals. **Portugal banned movement between municipalities** from 30 October to 3 November.
- In some countries, restrictions covered only certain groups. In Czechia, restrictions affected **residents of care facilities**. In Poland, **special measures** targeted persons over 70 years old or younger than 16.

In all countries persons who tested positive for COVID-19 or had close contact with a positive person are subject to mandatory home isolation for 10 to 14 days. Evidence emerged of successful challenges to mandatory isolation. A court in Bulgaria **noted** that in the case at issue, close contact with an infected person had not been proven, for example. It also held that the place of isolation could not be freely chosen.



EMBARKING ON NATIONWIDE TESTING

On 18 October, the **Slovak government approved a proposal to conduct nationwide testing of people over the age of 10 for coronavirus** over the weekends of 31 October – 1 November and 7 – 8 November. The **government hoped that widespread testing would avoid the need for a ‘hard’ lockdown**. While submitting to the antigen test is voluntary, a curfew applies to those not tested. To move freely, people had to carry a certificate **indicating that they tested negative during the testing campaign**.

COURTS SCRUTINISE RESTRICTIONS ON FREEDOM OF MOVEMENT

Courts and other bodies assessed restrictions on freedom of movement implemented in several Member States at the start of the pandemic. In September, the Slovenian **Constitutional Court found** that measures restricting movement between municipalities in spring were proportionate, as the demonstrated probability of the measure’s positive impact on the protection of health and life outweighed the interference with the freedom of movement.

The **Finnish Chancellor of Justice ruled that government decisions to restrict cross-border traffic** at the beginning of the pandemic were proportionate to the aim of curbing the spread of the virus. However, it concluded that the public was not adequately informed about the measures, and their binding character was not clear. In addition, it found inadequate the analysis of the measures and their impact on fundamental rights and on different population groups.

Considering the scope and grounds for the curfew, the **French Council of State noted in its decision of 23 October** that infection occurs mostly in private places and that a curfew seems to have proved effective. It also recalled numerous exceptions and the limited duration of the measure, concluding that the curfew did not violate fundamental rights.

2

IMPACT ON SOCIAL RIGHTS IN KEY AREAS OF DAILY LIFE



This section outlines how COVID-19 and measures to contain it continue to affect social rights in four key areas, namely education, health, employment and social security, and housing. The evidence indicates that, while Member States have improved their planning concerning measures relating to these areas, individuals continue to face significant challenges in all areas.

2.1 HEALTHCARE

The **daily number of COVID-19 infections in the EU** rose rapidly during the reporting period, from 17,663 on 1 September to 201,658 on 31 October. This was dramatically higher than during the first wave of the pandemic, when daily infections peaked at around 30,000 in late March, raising questions about the ability of health systems to cope with an influx of new patients. This posed significant risks to the right to life and to health and long-term care services of good quality, and placed renewed pressure on staff.

2.1.1 Challenges in access to healthcare

Lack of beds, especially in intensive care units; insufficient trained staff; and shortages of appropriate equipment were flagged in **Croatia, Poland, Portugal, Romania, Latvia, Lithuania** and **Malta**. In almost all of these countries, ECDC data point to higher **COVID-19 death rates** in September and October compared to March and April.³ In Romania, **the death of a COVID-19 patient** awaiting treatment prompted the government to increase the capacity of intensive care units. Following the publication of **letter by a Croatian doctor** highlighting the lack of medicines and food in the hospital's respiratory centre, the Croatian Ombudsperson requested an **investigation**. Reports also emerged of older people being deprioritised for admission to hospitals or treatment (see **Section 3**).

The need to treat COVID-19 patients affected access to health for patients with other conditions. To cope with the crisis, several hospitals limited access to non-COVID-19 related care, including non-urgent surgeries. The **Bulgarian Ministry of Health requested hospitals** in 'red zones', where infection rates are highest, to temporarily suspend all planned admissions and surgeries. The sharp rise in COVID-19 admissions pushed one Dutch hospital to **suspend admissions** of COVID-19 patients unless they are in a life-threatening situation, and to scale down **regular healthcare** by 20 %.

Evidence of the long-term consequences of reduced access to healthcare continues to mount. Data from Romania indicate that the number of **hospitalised cancer patients dropped** by 46 % compared to 2019. In Poland,

the transportation of COVID-19 patients between hospitals in search of vacant beds affected the **availability of ambulances** for other patients. Data indicate that, at the end of August, 137,165 patients were waiting to receive **non-urgent specialised healthcare in Finland**.

Governmental responses to increased medical needs concentrated on increasing testing capacities (see box), and in some countries, on financial support to medical staff and institutions. In Sweden, for example, the government proposed to **allocate an extra 4 billion SEK** (€ 388 million) in 2021 and 2022 to support the recovery of regional healthcare systems.

To address staff shortages, several Member States focused on relaxing recruitment procedures and working conditions of medical staff. Two legal acts adopted in Portugal made **labour law** in the area of health more flexible, notably by facilitating **short-term recruitment** of medical workers. Similarly, the Slovak Parliament **amended** the Act on Health Care Providers and Health Care Workers to enable the recruitment of medical students to support testing and provide basic health care under certain conditions. **Slovakia** and **Lithuania** assigned the military to hospitals to support healthcare workers, while **Poland** dispatched the military to support testing procedures.

2.1.2 Healthcare workers under strain

The pandemic has dramatically impacted the physical and mental wellbeing of healthcare staff, affecting their right to a high level of health protection and safety at work. A **WHO report** highlighted that healthcare workers have been the most infected community during the COVID-19 pandemic. Data from EU Member States corroborates this finding: **10 % of all healthcare workers** in Romania have been infected with COVID-19; in Ireland, healthcare workers **exceeded 20 %** of the total number of COVID-19 infections as of the middle of October. Several COVID-19 hospital units in Romania temporarily **suspended their operations** due to the high number of medical workers either sick or in quarantine, while reports of burnout among medical staff emerged in **Latvia**.

2.2 EDUCATION

After the summer break, most Member States sought to keep schools open to minimise the impact of the pandemic on children's education and to facilitate parents to work.

Authorities in many Member States – including **Austria, Bulgaria, Estonia, France, Italy, Malta, Portugal, Romania, Sweden** – issued guidelines on avoiding the spread of COVID-19 and dealing with cases in educational facilities, as well on what to do in case of increased infection rates. These typically included: transitioning from face-to-face to distance learning, when necessary; the obligation to wear masks (with a few countries requiring children as young as six to wear masks); physical distancing; extending the summer and/or autumn holidays; splitting classes into smaller groups; and suspending extra-curricular activities.

In several Member States the specific requirements varied according to the local infection levels, as indicated by the 'traffic light system' established either for the country's general COVID-19 containment measures (in **Austria** and **Poland**, for example) or specifically for schools (as in **Belgium**).

FOCUS ON TESTING

The **WHO** has repeatedly highlighted the importance of regular, large-scale testing to curb the spread of COVID-19. In most Member States, including **Estonia, Finland, Hungary, Latvia** and **Slovakia**, tests are free of charge when recommended by a doctor. In some Member States, access to testing depends on nationality: **Latvia restricts free tests** to Latvian citizens and residence permit holders. The Finnish Ministry for Social Affairs and Health, in contrast, **declared** that testing should also be free of charge for third-country nationals.

By the end of October, several Member States had implemented measures to increase their testing capacities. The Portuguese government adopted an ordinance to **strengthen laboratory capacity**. In **Malta** and **Sweden**, governments announced large increases in the budget allocated to healthcare, including to ensure availability of rapid testing. In other Member States, however, critics highlighted the absence of concrete measures to strengthen testing capacities: the Dutch Health and Youth Care Inspectorate **flagged** that the testing capacity is not ready for the second wave, for example.

In some countries, including **Latvia, Lithuania, Poland**, and **Slovakia**, the shortage of trained healthcare staff put testing capacities at risk, and created long delays in getting results. Staff shortages in **Croatia meant that** infected patients were asked to do their own contact tracing.

PROMISING PRACTICE – SUPPORTING THE MENTAL HEALTH OF HEALTHCARE WORKERS

In **Sweden**, the government acknowledged the substantial strains on the mental health of staff in the health and care sectors prompted by anxiety, long working hours, and heavy workloads associated with the pandemic. To address this, the government allocated 500 million SEK (€ 48 million) for support measures for this group in 2020, including conversational therapy and trauma support.

CLOSURE OF UNIVERSITY DORMITORIES

In some countries, university dormitories suddenly closed, leaving students without accommodation and with very little time to find alternatives.

The **Czech media** reported that students received only two days' notice before their dormitories closed, although the government subsequently introduced exceptions allowing some students to stay. **Slovenian student organisations called on the government** to modify the law and provide exceptions for vulnerable students, such as those who work in their place of study or who cannot return home.



2.2.1 Alternating in-person and distance learning

However, rising numbers of COVID-19 cases meant that, by the end of October, many education systems had reinstated temporary distance learning for some – often older – students. For example, in **Lithuania**, students in grades 5 to 12 (ages 10 to 18) switched to distance learning, while students aged between 10 and 15 in **Czechia** started alternating between distance and in-person learning, and secondary schools switched to complete distance learning. Secondary schools in **Austria, Bulgaria** and **Italy** also adopted measures to switch to complete or partial distance learning.

Higher education institutions also shifted to remote lectures in many countries. Some continued in-person tuition, however. Sweden allowed classes for a maximum of 50 individuals, in line with limits on public gatherings, while **Romania** allowed each university to decide whether to hold courses online or in person, subject to physical distancing measures.

Most countries tried to keep primary schools open, as online learning is particularly difficult for younger children. However, primary schools closed in **Czechia** and in the **Campania region in Italy**. **Slovenia** introduced distance learning for all schools and kindergartens, except for children whose parents are employed and cannot provide care in any other way; **Poland** did so for children from grade 4 of primary school. However, countries allowed schools for children with special needs to continue in-person teaching (see also **Section 3**).

Even where schools remained open, many students saw their education disrupted. Evidence indicates that 50,000 children in **Germany** and 2% of students in Flanders, **Belgium** were in quarantine between September and October. French **media** reported that more than 2,100 classes and 81 schools were closed by mid-September due to corona clusters, although the situation **improved** in October.

These developments prompted different reactions. The **Italian Ministry of Education strongly criticised** the temporary closure of all schools in the Campania region. In Greece, students **protested** against the lack of adequate measures to reduce the number of students in class, recruit additional teaching staff, provide electronic devices for online teaching, and enable sufficient COVID-19 testing in schools. In response, the Ministry of Education and Religious Affairs issued a **decision** requesting teachers to organise mandatory online classes in case the school is closed or inaccessible because of the protests. Students preventing others from attending school cannot take part in online lessons and must be recorded as absent. The **Greek Federation of Secondary Education State School Teachers** and the **Senior Administration of Civil Servants Associations** complained that this decision disproportionately affected the right to education and restricted social rights.

2.2.2 Distance learning challenges persist

Many of the issues with distance learning raised in previous FRA bulletins continued, in particular inadequate computer equipment and internet access for children from socioeconomically disadvantaged families; lack of supplementary measures for students with special educational needs (see **Section 3**); unequal possibilities for parents to participate in the learning process; and lack of guidance from teachers.

The Bulgarian Ombudsperson expressed concern that some 70,000 children did not have computers and internet access, noting that this particularly affects lower income families, unemployed parents, and families with more than one

child. Similarly, a survey conducted by the NGO Save the Children showed that 25 % of all children in Romania do not have access to online education, with this percentage being 10 % higher in rural areas. The Czech NGO EDU found that, although laptops are now more widely available than in the spring, lack of internet connection remains a challenge.

Some countries granted additional funds for obtaining the technical equipment necessary for online learning. The Bulgarian government earmarked approximately € 7 million to purchase 16,000 laptops for public schools. Authorities in Romania completed procurement procedures for the purchase of 190,000 tablets for children from socioeconomically disadvantaged backgrounds. Finland granted € 46 million to support high school and vocational school students who struggled or were difficult to reach during the first period of distance learning in spring. Germany increased its investments in school digitalisation, including devices for teachers, to € 6.5 billion.

Unequal possibilities for parents to participate in the learning process were raised by trade unions in Slovenia. The lack of guidance from teachers in the context of distance learning was raised by parents in Estonia.

For some children living in poverty, the school meal can be the main meal of the day. The Greek government committed to providing a hot lunch to all students at closed primary schools. Hot meals were delivered to children's homes in some regions of Slovenia after schools closed.

2.3 WORK

The pandemic continued to have a huge impact on labour markets in EU Member States as many countries entered a second 'lockdown' in September and October. The tourism, hospitality, arts and entertainment sectors were particularly affected. Rising unemployment, especially among the young, and the particular strain on women – both raised in previous FRA bulletins – persisted. Governments thus continued to provide extensive support to bolster the incomes of businesses and workers.

PROMISING PRACTICE – IMPROVING THE WELLBEING AND MENTAL HEALTH OF STUDENTS

Some Member States took steps to support students' wellbeing while schools were closed. To address the negative psychological effects of school closures on children, the Greek Ministry of Education recruited 2,800 additional psychologists and social workers for schools, for example. The Finnish Ministry of Education and Culture put in place special funding to support the wellbeing and supervision of higher education students during periods of distance learning, for example through counselling to alleviate loneliness.



WOMEN FACE PARTICULAR CHALLENGES

Evidence continues to show that the pandemic disproportionately affects women. They often have to balance providing care and domestic responsibilities with their jobs, and have experienced higher unemployment since the onset of the pandemic (see also Bulletin #4).

Single parents, especially single mothers, face particular challenges. Findings from an online survey of 1,528 single parents (98 % of whom were women) conducted by the Czech NGO Club of Single Mothers show that one-fifth of respondents indicate that they lost their job due to the pandemic. 10 % of those in employment said that they had to take on extra work to make ends meet.

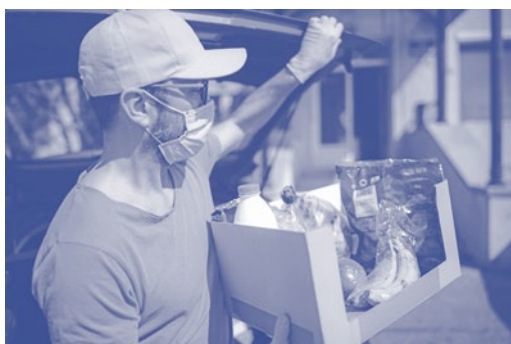
The Austrian government amended legislation on granting special leave for caretaking duties should educational facilities close due to the pandemic, following criticism by the Austrian Trade Union and the NGO Volkshilfe. The Austrian Trade Union stressed that the previous version of the law left the granting of this leave at the discretion of the employer and that this could negatively affect women, who bear the brunt of caretaking obligations. The amendment made the leave of absence for special care a legal entitlement.

ADDRESSING YOUTH UNEMPLOYMENT

Several Member States implemented specific measures to address rising levels of youth unemployment, including among graduates. The **Luxembourg** government put in place **additional training for graduates** who are neither in work nor studying. The Swedish government **extended to the end of 2021 the assignment of the *Delegation for youths and newly arrived persons to work***, which is tasked with helping reduce youth unemployment.

EU SUPPORT TO MEMBER STATES

The **European Commission has disbursed € 17 billion to Italy, Spain and Poland in the first instalment of financial support to Member States under the Support to mitigate unemployment risks in an emergency (SURE) programme**. This support will assist these countries to preserve employment, specifically in the financing of short-time work schemes and other similar measures put in place in response to the pandemic, in particular for the self-employed.



2.3.1 Unemployment continues to rise

Almost all countries reported significant increases in the unemployment rate compared to the pre-pandemic period. This brings potential threats to social rights, such as the right to protection in the event of unjustified dismissal and the right to social security and social assistance in the case of employment loss. Data from **Greece** indicate that the unemployment rate in September 2020 was 13 % higher than in September 2019, for example. Finland reported **315,800 unemployed persons in September 2020**, 89,700 people more than in September 2019.

Young people continue to be particularly affected, with **unemployment among under 25s in the EU rising by 259,000 to 3 million in the year to September 2020**, according to Eurostat. Youth unemployment reached particularly high levels in **Spain** (42 % in September 2020) and **Greece** (almost 40 % in August 2020). Unemployment among people under 30 in **Luxembourg increased by a third between August 2019 and August 2020**.

2.3.2 Funding and support of businesses and workers continue

As many countries entered a second 'lockdown', several Member States extended the measures introduced to support their economies and labour markets during the crisis, with some measures underpinning workers' rights. Previous bulletins reported on these measures.

Several Member States extended measures to support the income of workers. The **French Minister of Labour** declared that it will continue the '*long-term Partial Activity Scheme*' until summer 2021. This scheme allows employees who had their working hours reduced up to 40 % to receive 84 % of their net salary. Similarly, the **Austrian government extended the 'Corona short-term employment' scheme** until March 2021. It enables employees whose working time has been reduced to receive between 80 and 90 % of their original net income. In Ireland workers who have lost their jobs because of the pandemic are entitled to the **COVID-19 Pandemic Unemployment Payment** – which ranges from € 203 to € 350 per week depending on their previous salary – until January 2021.

Many countries also extended compensation for businesses and employers affected by the pandemic, particularly those forced to close due to COVID-19 related restrictions. France announced plans to cover **losses of monthly turnover up to € 10,000** for the period when businesses had to close. The **Italian** government allocated a further € 5.4 billion to businesses affected by the pandemic, which will also serve to pay the salaries to their employees for a further six weeks, for example. The package also includes the suspension of social security contributions for four months, and business rent for three months, for employers particularly hit by the pandemic. The **Netherlands** and **Ireland** established similar compensation and income-support schemes for employers. The Cypriot Ministry of Labour **announced funding to train employees** working in sectors affected by the pandemic. To be eligible, businesses must: employ fewer than a hundred persons; have suffered a decrease in turnover of more than 25 %; not have reduced salaries or implemented unjustified dismissals since March 2020; and not dismiss anyone or reduce salaries for the duration of the scheme.

2.4 HOUSING

Bulletins #1, #2 and #3 highlighted the impact of the COVID-19 pandemic on the right to housing and its severe impact on homeless people. Evidence collected by FRA underlines that this remained an area of concern in September and October.

2.4.1 Access to decent and affordable housing

Evidence from several Member States points to challenges in access to decent and affordable housing, particularly among existing 'at risk' groups.

Calls to the corona helpline of the **NGO Caritas** in Luxembourg suggest that finding quick solutions to affordable rental accommodation is one of the most pressing problems in crisis management, reflecting reports that **housing costs continue to rise** despite the pandemic. Such challenges prompted 18 civil society organisations to organise **a demonstration** on 10 October, calling for the right to decent and affordable housing. In response, the government proposed two pieces of legislation: reform of the **Housing Pact** and a bill on **rental prices**. However, **stakeholders** argued that these proposals **do not go far enough** in guaranteeing tenants' rights.

As reported in **Bulletin #2**, several Member States looked to address housing issues by extending moratoria on evictions and rent increases. The **Spanish government extended the ban on evictions and 'abusive' increases** in housing rents until 31 January 2021. Similarly, the Cypriot parliament **adopted a law** extending the prohibition of fast-track evictions of tenants until 31 December. However, the country's President **referred this law back to parliament**, claiming it amounted to unjustified legislative interference in signed and partly executed agreements, which could not be justified under the current COVID-19 restrictions. The **main opposition party called on parliament to reject the President's referral. The Association of entertainment and restaurant owners also expressed its opposition** to the President's position, arguing that this would further damage sectors already hit hard by the pandemic.

2.4.2 Homeless people face particular challenges

As reported in **Bulletin #3**, the pandemic prompted a rise in the number of homeless people across many EU Member States. A **survey by the Federation of Solidarity Actors and UNICEF France**, published in September, confirms this finding. It found that, in Paris, 93 % of families contacting the 115 hotline to ask for emergency accommodation could not be accommodated. The refusal rate due to a lack of suitable accommodation was 44 % in the rest of France, but rising. Similarly, a **study by the NGO Cáritas** published in October estimates that the number of homeless people in Spain has increased by 25 % since the beginning of the pandemic.

Civil society organisations in several countries sought to raise awareness about the vulnerability of homeless people amid new restrictions on movement and night-time curfews, rising COVID-19 numbers and the onset of winter. **French NGOs called for action to prevent families being evicted** during winter without new housing in place and to ensure appropriate accommodation facilities and shelter for homeless people, as well as for sufficient budget for such measures. Civil society actors in **Hungary** and **Poland** noted that homeless people may have weaker immune systems, and highlighted challenges in ensuring their access to testing and healthcare. In France and **Slovenia**, they called on authorities not to penalise homeless people for staying out beyond the curfew.

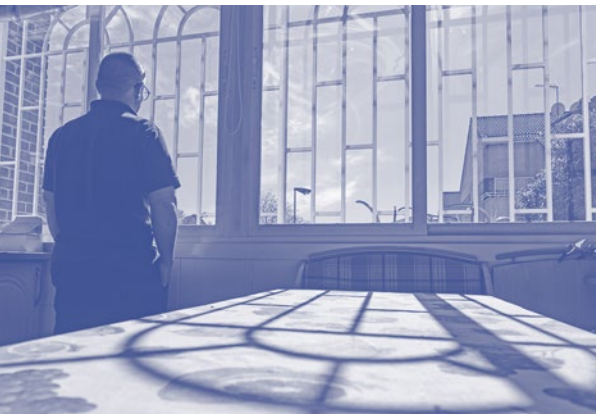
ALLEVIATING THE IMPACT OF THE PANDEMIC ON HOMELESS PEOPLE

The French Minister for Housing on 17 October **announced** a number of measures to alleviate the pandemic's negative impact on homeless people, including:

- Bringing forward by two weeks the entry into force of the winter plan to protect homeless people.
- Maintaining the 28,000 'COVID places' in shelters, bringing the total accommodation capacity to 180,000.
- Keeping in force requirements that no evictions can be enacted without a housing offer and that rental evictions with the help of the police must be accompanied by a housing or accommodation solution.
- Clear instructions for the police to take into account the situation of vulnerable people, particularly homeless people, when monitoring implementation of the curfew.
- Allowing establishments and services receiving people in very vulnerable situations to remain open after the start of the curfew at 21.00.

3

IMPACT ON SOCIAL RIGHTS FOR PARTICULAR GROUPS



This section looks at the implications of COVID-19 for the social rights of certain groups in society, and how governments and other actors have looked to alleviate these challenges. It covers the groups featured most prominently in the country studies, namely:

- People in institutional settings
- Older persons
- Persons with disabilities
- Migrants, asylum seekers and refugees
- Roma and Travellers

3.1 PEOPLE IN INSTITUTIONAL SETTINGS

Two recurring issues highlighted in previous bulletins remained of particular concern for people living in institutional settings during the reporting period: access to preventative testing and other health services, and the impact of visiting bans and restrictions on residents' mental health and wellbeing.

3.1.1 Stepping up access to testing and healthcare

Several Member States established specific testing programmes for institutional settings, reflecting the high rates of COVID-19 infections in institutions (see previous bulletins).

The **second phase of a preventive testing programme** for nursing homes and residential structures for older people in Portugal commenced on 8 October. Staff in nursing homes with 50 or more residents will be tested across the country; in Lisbon and Porto, staff in institutions with more than 30 residents will also be tested. A **resolution of the conference between the German Chancellor and the heads of federal governments** from 28 October stipulates that rapid tests for nursing homes should be prioritised. Coupled with testing measures, Malta set up a **specialised hospital unit** to treat infected residents in institutional settings. In Belgium, however, the **media reported** waiting periods of up to five days for test results in residential care institutions.

Bulletin #3 highlighted wider challenges in access to healthcare during the pandemic for people living in institutional settings. A director of a Belgian care home **testified to the Special commission in charge of evaluating Wallonia's management of COVID-19** that residents were deliberately kept away from hospitals as it was assumed they could not be saved. After criticism of the ethical **guidelines** on triage issued in March and in view of the second wave, the **Belgian Society for**

Gerontology and Geriatrics modified its guidelines to clarify that age can never be a criterion for not admitting a person infected with COVID-19 to hospital. **The Slovenian Equality body** continues to investigate possible discrimination in access to hospital treatment for residents of nursing homes.

3.1.2 Restrictions on visits

Confinement measures and bans on visits to institutional settings have been key components of efforts to reduce infections in institutional settings since the outbreak of the pandemic. Member States including **Bulgaria, Croatia, Finland** and **Portugal** adopted new guidelines to contain the spread of infections and ensure the right to health of all residents during the reporting period. The **Lithuanian Ministry of Health provided training** for care institutions on handling the virus, including on organising visits from outside.

Nevertheless, about half of EU Member States reported rising infections in institutions in September and October, data collected by FRA indicate. National reactions to these outbreaks varied:

- Restrictions on visits remained in place in some **federal states in Germany** and Romania,⁴ for example.
- Some countries lifted the absolute ban on visits, for example **Bulgaria** (since 1 September) and **Sweden** (1 October).
- Others reintroduced absolute bans, and sometimes prevented residents from leaving their building or complex. This is the case in **Hungary** (since 8 September), **Czechia** (9 October) and – in particularly affected municipalities – in **Lithuania** (8 October) and **Portugal** (22 October).

Courts in several Member States have assessed the legality of these restrictions. The **Administrative Court of Eastern Finland highlighted** that bans on visits sometimes do not comply with the legislation in place. **The Administrative Court of Minden** in Germany lifted the isolation of a resident in a nursing home in the state of North Rhine-Westphalia, arguing that the order on which it was based lacked the appropriate legal basis. Both decisions are being appealed.

Some Member States restricted visits by family and friends to sheltered residences in an effort to reduce transmission of the virus. Denmark prolonged the **possibility to impose local visit restrictions** until 1 March 2021. The sheltered residences can limit visits following an assessment of the risks for the residents and employees, the current infection rate and other relevant conditions. **Several municipalities implemented general visit restrictions** for all sheltered residences in the municipality.

Further evidence emerged during the reporting period concerning the impact of visiting bans on the health, particularly mental health, of people in institutional settings, as highlighted in the previous FRA bulletins:

- In Denmark, the **DaneAge Association** reported that older people in institutional settings experienced increased loneliness, symptoms of depression, physical or mental functional impairments, and a sense that life is not worth living.
- The **German Alzheimer's Society** noted that restrictive regulations have a heightened impact on people with cognitive impairments who do not understand the new situation. Restrictions on contact with relatives can lead to restlessness and aggressiveness for people with advanced dementia. This may lead to more frequent use of sedatives and neuroleptics that would otherwise not be necessary.

HIGHLIGHTING THE RIGHTS OF SOCIAL CARE CLIENTS

In a **joint statement**, the Finnish Regional State Administrative Agency and the National Supervisory Authority for Welfare and Health emphasised the need to recognise the fundamental rights of clients in social care when preventing COVID-19 infections. It highlighted the need to follow the principle of proportionality, that only medical doctors in charge of communicable diseases can decide on quarantine and isolation, and that decisions on isolation cannot automatically be extended to an entire residential unit.

DETAINEES

Bulletin #1 highlighted the situation in detention facilities in Italy during the first phase of the pandemic, where widespread revolts linked to restrictive measures led to the death of 12 prisoners. Reflecting similar measures in other Member States (see Bulletins **#2**, **#3** and **#4**), in October Italy took steps to reduce its prison population to avoid the spread of the pandemic in overcrowded facilities and so protect the right to health of detainees and prison staff. **New legislation allows the extension of 'special leaves'** from prison and for detainees with sentences of up to 18 months to serve the sentence in home-custody until 31 December 2020, monitored via electronic bracelets. Exceptions apply to those who are subject to specific surveillance regimes, who have perpetrated severe offences, who do not have a home to stay in, or are detained for specific crimes - such as terrorism.

ASSESSING MEASURES TARGETING VULNERABLE GROUPS

The Slovenian Advocate for the Principle of Equality, the country's equality body, found that a **government measure restricting access to grocery shops** for people aged over 65 to specific time slots **was disproportionate and constituted discrimination on the grounds of age**. The Advocate subsequently issued a **recommendation** on protective measures for vulnerable groups, encouraging the use of dedicated timeslots for these groups, but indicating that they should also be able to shop at other times.

3.2 OLDER PERSONS

The challenges reported in previous Bulletins, especially # 3, persisted during the reporting period. COVID-19-related measures have affected older people's access to medical treatment, psychological wellbeing, and rights related to employment.

Evidence from a number of Member States showed how the pandemic has affected access to healthcare. A **survey** in Belgium showed that, since the lockdown, people over 65 are less likely to consult a doctor (13 %) when compared to younger age groups (for example, 28-29 % of persons aged 25-44). Approximately 19 % of those over 65 have been tested for COVID-19, compared to the survey average of 24 %, the results indicated. Results of a **representative survey covering 1,118 older persons by the Polish National Institute of Senior Economy** showed that one third of respondents had to postpone regular medical treatment due to COVID-19 restrictions, and two-thirds (67 %) declared problems in accessing basic medical services. Moreover, **media** and **civil society organisations** in Bulgaria reported that healthcare facilities refused to hospitalise older persons with COVID-19 symptoms due to insufficient capacity.

Restrictive measures also have a long-term effect on older people's mental wellbeing, with growing evidence of intensified feelings of loneliness and distress. A **study by the Netherlands Institute for Social Research**, covering 2,000 respondents, showed that emotional loneliness among those older than 75 doubled compared to 2019. About twice as many people over 75 missed someone with whom they have an intimate, close relationship. Similarly, about half of the respondents in a **Polish survey**, covering over 1,000 older people, reported feeling lonelier.

The pandemic has also affected older people's employment situation. A **study by the Idea Foundation in Luxembourg** warns that the current crisis could have lasting and severe effects on the employment prospects for older people. This risks exacerbating existing challenges related to the **problem of long-term unemployment** among older people in the country. A **survey conducted by a job portal** in Estonia, among over 1,000 people aged over 55, points to a number of barriers, including the unexpected need to use modern information technology to work from home.

3.3 PERSONS WITH DISABILITIES

Many persons with disabilities continued to face challenges in their everyday life as a result of the pandemic. Evidence collected by FRA shows new limits on support services in many Member States amid the 'second wave' of the pandemic, directly affecting persons with disabilities and their families' social rights. It also indicates that access to and quality of education for children with disabilities remains an important issue.

In addition, data from several Member States shows how the rights of people with disabilities to fair and just working conditions are affected. The Estonian Equality Body, the **Commissioner for Gender Equality and Equal Treatment**, reported several complaints from persons with disabilities prohibited from coming to work or school because they have a chronic disease with COVID-19-like symptoms. The Slovakian Office of the Commissioner for people with disabilities reported cases of people with disabilities being dismissed for not coming to work as they had to self-isolate.⁵



3.3.1 Disruptions to services persist

Several studies point to the impact of the first wave of the coronavirus on access to services. A **survey among the members of Onafhankelijk Leven** – the independent living movement in Flanders, Belgium – showed that 42 % of respondents did not have access to support services for three weeks (period not specified); 64 % indicated that (para)medical care, such as physiotherapy, was much less accessible than usual. Almost half of respondents were no longer able to decide for themselves how care and assistance were organised.

Even when they re-opened during the summer, many community-based services worked at limited capacity due to safety measures, evidence suggests. This became more acute amid rising infections in October. A **survey of 2,054 people with disabilities in the Netherlands** conducted at the beginning of October showed that care, therapies and medical treatments have not been resumed, or not fully. Treatment is again being scaled down to curb the increasing number of infections. Activities in day care centres for persons with disabilities **stopped** in the Raseiniai district municipality in Lithuania, and **restrictions were recommended** in another 20 municipalities under local quarantine in October.

Disruptions to service provision also affect the families of persons with disabilities. The **Irish Special Committee on COVID-19 response** noted in October that there are over 1,250 families in Ireland where the primary carer for an adult with intellectual disabilities is a parent over the age of 70. More than 400 such parents are over 80. The committee highlighted that many of these carers are themselves self-isolating, and noted risks should they themselves become ill. **Gezin en Handicap**, an organisation of families of persons with disabilities in Belgium, reported that parents were left to care for their child without support. More positively, a **regional director of the Portuguese Authority for Working Conditions stressed** the availability of additional resources for parents of children with disabilities such as flexibility in working hours, the possibility of part-time professional activity and family assistance leaves. The regional director called on parents to **inform authorities if they are denied such measures**.

3.3.2 Access to education remains a challenge

Evidence mounted of significant obstacles in access to education for children with disabilities, as reported in previous bulletins. A **survey in the Netherlands** of 2,057 people with disabilities showed that, of those who attend education, 16 % do not or hardly visit an educational institution because of the risk of infection. More than a quarter of those attending education report that the online format of education is insufficient or inaccessible for them. In **Belgium**, many parents of children in special education were told that they should stay home for the rest of the year. The **Bulgarian Ombudsman sent an official letter to the Ministry of Education and Science** calling for special measures to ensure the equal participation in the e-learning process of children with special educational needs.

Despite the challenges, positive initiatives emerged in many Member States. In **Poland**, which suspended in-person teaching in all schools in October (see **Section 2**), principals must organise regular classes at school for children with disabilities or enable the children to take part in remote learning on school premises. The Slovakian State pedagogical institute published a **Methodical guide for the organisation of education for children with special educational needs**, which also covers distance learning. **All teaching materials in Greece**

PROMISING PRACTICE – FINANCIAL SUPPORT FOR PERSONS WITH DISABILITIES

Flanders, Belgium granted persons with a disability using a personalised budget a **25.5 % increase of that budget until the end of 2020**. It aims to compensate additional costs incurred when care facilities are unavailable.

Physical distancing and other hygiene requirements in Flanders meant that school buses took much longer to transport students, with reports of **children with disabilities sitting in buses for over 5 hours a day**. The **Flemish Government allocated an additional € 2 million** to fund extra buses.

Maintaining access to services

To ensure access to adequate social services, the Slovakian Ministry of Labour, Social Affairs and Family issued a **regulation** exempting provision of social services from the country's curfew, which entered into force on 25 October. Similarly, the **curfew in France** – introduced on 17 October in some areas and extended on 22 October – includes exceptions for caring for vulnerable persons and transportation of people with disabilities.

The Romanian National Authority for the Rights of Persons with Disabilities, Children and Adoption worked with the National Institute for Public health to **develop a guide on preventing COVID-19 infections** within social services for children and adults with disabilities.

DIGITAL DIVIDE INCREASES BARRIERS TO SOCIAL RIGHTS FOR PEOPLE WITH DISABILITIES

The final report of the Irish Special Committee on COVID-19 response highlights the worsening digital divide for people with disabilities, who face multiple barriers in accessing technology. These include digital poverty, low digital literacy and difficulties with universal design. This affects a wide range of social rights, including the right to education, the right to reasonable accommodation, the right to preventive health (since many health appointments are held remotely over video), and access to essential services (e.g. financial services).

“Governments are facing huge challenges because of COVID-19 but despite these challenges human rights must always be upheld and those who are confined, out of sight as it were, must not be forgotten.”

UN High Commissioner for Human Rights Michelle Bachelet following an OHCHR mission to Malta

“It’s all about partnership. It’s about partnership between national and local government. It’s partnership of the authorities with the local community. It’s strong partnerships with civil society, be it national civil society or international. It’s about working closely with the EU and EU Agencies, and of course it’s also about cooperation with the UN.”

FRA Director Michael O’Flaherty on the occasion of his visit to the camps on Lesbos, Greece, 18 October

are transcribed into Braille code and sound archives to ensure distance learning is accessible for students with visual impairments. In addition, local **Educational and Counselling Support Units** are tasked with organising remote support for parents of children with disabilities and teaching staff.

3.4 MIGRANTS, ASYLUM SEEKERS AND REFUGEES

As highlighted in previous FRA bulletins (**Bulletin #1** and **2020 Migration Quarterly Bulletin #3**), the pandemic disproportionately affects migrants, asylum seekers and refugees. Overcrowded accommodation, poor hygiene conditions, and limited access to health services continued to increase the risk of infection among these groups. The pandemic has also resulted in job losses and rising poverty and exclusion, and affected children’s right to education (see also **Section 2**).

A **report** published in October showed a higher rate of COVID-19 incidents among people with a ‘non-western’ ethnic origin in Denmark, the majority of whom are migrants. They accounted for 26 % of all COVID-19 cases, while only making up 9 % of the population. A **survey** in France found that migrants, asylum seekers and refugees, in particular those at risk of poverty and social exclusion, are more exposed to COVID-19. The survey was conducted in June among people in food distribution sites, emergency shelters and workers’ residences in Paris and Seine-Saint-Denis. It showed that a high proportion of people tested for COVID-19 antibodies in these locations – who were mostly migrants, asylum seekers and refugees – tested positive with COVID-19. Following a visit to Calais in September, the **French Ombudsman** described migrants’ living conditions as “degrading and inhumane” and stressed that “access to food, water and hygiene under these conditions is difficult and complex”. The Ombudsman pointed out that migrants in Calais had few masks, and that regular hand washing and physical distancing were practically impossible.

Greece never lifted all the **restrictions** on refugee camps and reception facilities adopted at the outset of the pandemic. These included restricting residents’ movement within the limits of the camps and banning or restricting visitors, which affected the provision of social services. Depending on infection rates, many such facilities were under quarantine for certain periods. The Moria camp, for example, was quarantined before it was destroyed by fire in September that left more than 13,000 asylum seekers without accommodation until the new facility was built. **NGOs** reported that people were already living in a heavily overcrowded camp with limited access to sufficient medical care, hygiene products, running water, and testing. The **UN’s Office of the High Commissioner for Human Rights noted similar poor hygienic conditions** and limited access to medical services in reception centres in Malta.

Several Member States took steps to address these challenges. To protect the health of asylum seekers living in “direct provision” accommodation centres, the Irish government **announced** in September a comprehensive programme of COVID-19 testing for staff and residents, on a voluntary basis. Greek authorities continued to **automatically renew** asylum applicants’ residence permits to avoid overcrowding at the Asylum Offices.

More broadly, evidence from many Member States points to increasing poverty and unemployment among migrants, asylum seekers and refugees. **Cypriot NGOs** and available **research findings** point to job losses and rising poverty linked to the pandemic, as well as difficulties in accessing the COVID-19-related employment support schemes. This reflects their often precarious employment

situation, and has led to requests for food assistance and better housing conditions, as many reside in unsuitable and overcrowded accommodation.

To address such difficulties, the Swedish government **proposed** extending the period for young migrants to find a job to support themselves, which is required for renewing their residence permit and obtaining a permanent one. The proposal concerns those who acquired a residence permit for studying in upper secondary education. It would extend from 6 to 12 months the time young migrants have after finishing school to find a job.

The **German Institute for Human Rights** pointed out that the switch to distance learning can limit access to education for children living in reception centres or shared accommodation. In many cases, children living in such facilities have no access to mobile devices and/or adequate space to learn, as common rooms in the facilities are often closed.

3.5 ROMA AND TRAVELLERS

Unlike during the first phase of the pandemic, when cases of entire Roma neighbourhoods being temporarily quarantined emerged, evidence collected by FRA during the current reporting period does not indicate particular restrictive measures affecting areas with predominantly Roma populations.



One exception is **Slovakia**, where entire apartment buildings were **quarantined** after one family tested positive. In response, the **Public Defender of Rights** and the **Commissioner for Roma Communities** called on the government to impose quarantine on entire Roma settlements only as a last resort. The Public Defender of Rights stressed that such measures adversely affect the enjoyment of social rights, such as the rights to healthcare, work and education.

Nevertheless, evidence confirms the findings of **Bulletin #5, which focused on the specific challenges facing Roma and Travellers during the first phase of the pandemic**. Many Roma children lack internet access and the IT equipment necessary to participate in distance learning, increasing their risk of dropping out of school or falling behind in their education.

A **study in Bulgaria** by the Institute for Research in Education, published in October, showed that Roma children were less prepared for the transition to distance learning. It reported significantly lower levels of access to the internet and digital devices among students speaking Romani at home, compared to those speaking Bulgarian. More Romani-speaking children also experienced difficulties using electronic devices (56 %, compared to 24 % of Bulgarian-speaking children). Similarly, the **Institute of Educational Policy in Slovakia published a survey in September** showing that almost 50,000 children – mainly from poor localities, many of them inhabited by Roma – did not participate in distance learning at all during the first wave of the pandemic.

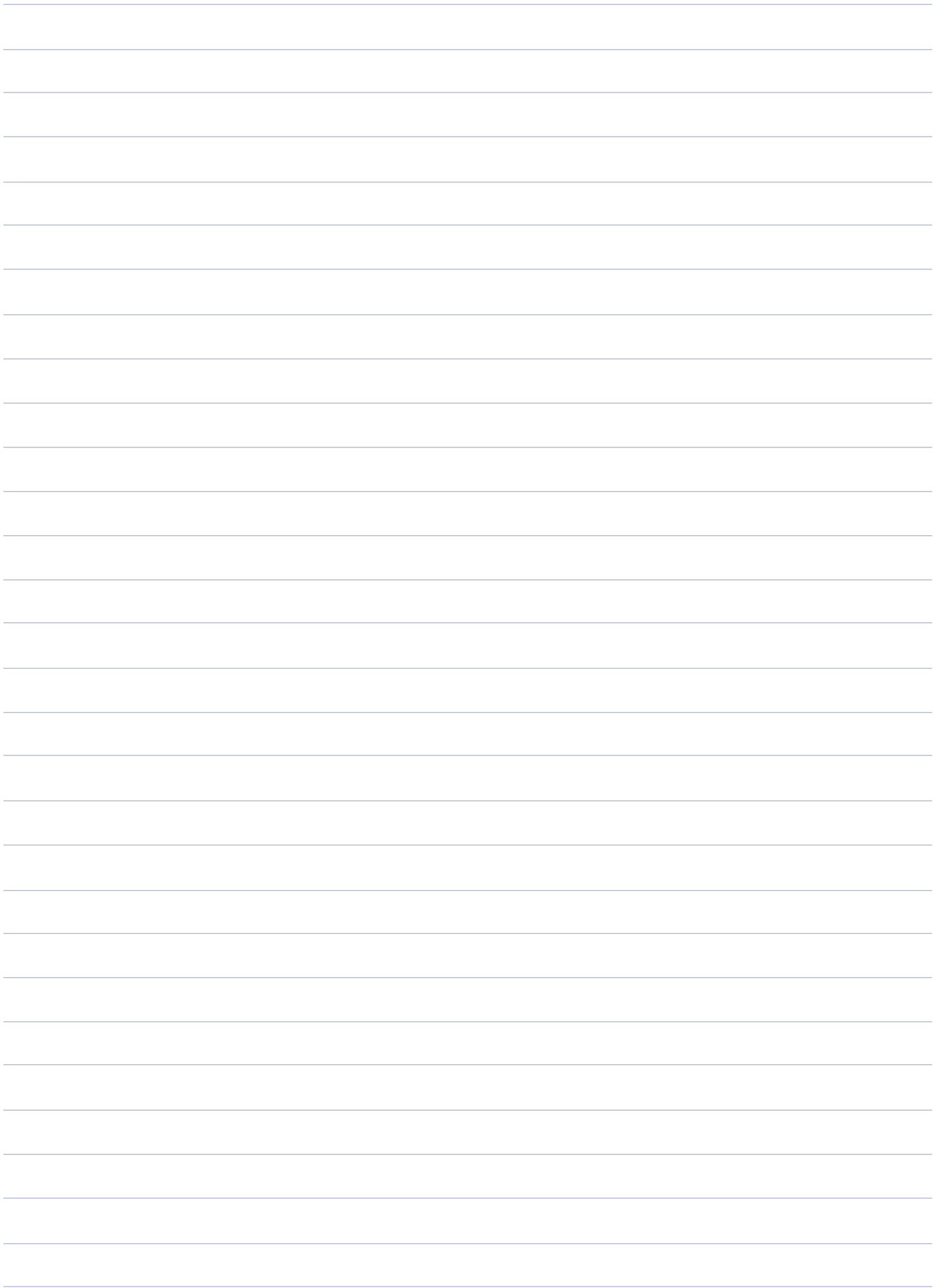
PROMISING PRACTICE – TARGETED INFORMATION MATERIALS AND INVOLVEMENT OF ETHNIC MINORITY GROUPS

The **Danish Health Authority** developed information material on COVID-19 for people with an ethnic minority background, the majority of whom are migrants, to counter higher infection rates among this population. The graphic **materials** are available in 19 languages, with videos available in languages such as Arabic, Somali, Urdu and Farsi. The authorities also published an **English webpage** about COVID-19. In addition, the Authority established an expert group to advise it on how to communicate the new information to ethnic minority groups and help disseminate relevant materials in their network.

Endnotes

- 1** To understand when the Charter applies see: FRA (2018), *Applying the Charter of the European Union in law and policymaking at national level*.
- 2** ECtHR, *Guide on Article 11 of the European Convention on Human Rights*, 31 August 2020, CoE/European Court of Human Rights, 2020, p. 8 et seq.; Lock, T. in Kellerbauer, M. et al (ed.), *The EU Treaties and the Charter of Fundamental Rights*, Oxford Un. Press, 2019 p. 2138
- 3** Based on FRA calculations of **ECDC data**.
- 4** See FRANET country report on Romania.
- 5** Information provided to Franet.







PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU —


This report outlines some of the measures EU Member States have put in place to protect public health as Europe faces the 'second wave' of the Coronavirus pandemic. It highlights how these may affect fundamental rights, especially social rights.

The report focuses on three main areas: states of emergency (or equivalent measures) affecting the freedom of assembly and the freedom of movement; the impact of COVID-19 and measures to contain it on social rights in health, education, work and housing; and how COVID-19 and efforts to limit its spread affect the social rights of particular groups in society, namely people in institutional settings, older persons, persons with disabilities, migrants, asylum seekers and refugees, and Roma and Travellers.

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