



FRA

EUROPEAN UNION AGENCY
FOR FUNDAMENTAL RIGHTS

FUNDAMENTAL RIGHTS REPORT — 2024

REPORT





— A great deal of information on the European Union Agency for Fundamental Rights is available on the internet. It can be accessed through FRA's website at <https://fra.europa.eu/>.

The *Fundamental Rights Report 2024* is published in English.

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Country abbreviations

AL	Albania	EE	Estonia	IT	Italy	PT	Portugal
AT	Austria	EL	Greece	LT	Lithuania	RO	Romania
BE	Belgium	ES	Spain	LU	Luxembourg	RS	Serbia
BG	Bulgaria	FI	Finland	LV	Latvia	SE	Sweden
CY	Cyprus	FR	France	MK	North Macedonia	SI	Slovenia
CZ	Czechia	HR	Croatia	MT	Malta	SK	Slovakia
DE	Germany	HU	Hungary	NL	Netherlands		
DK	Denmark	IE	Ireland	PL	Poland		

Foreword

2023 was yet another year of unprecedented conflict and hardship for many across the EU. In just the last few years, whole families have been plunged into poverty as living costs shot up. Growing child poverty is especially concerning. Although Member States managed to lower inflation in 2023, many people still struggle to cope.

Antisemitic and anti-Muslim hate also dramatically increased, following the terrorist attacks by Hamas in Israel on 7 October 2023 and Israel's military response in Gaza. Geopolitical conflicts like this have a spillover effect on rising intolerance that is harmful for migrants, refugees, and people of different ethnic backgrounds. Intolerance of all forms threatens safe and inclusive societies.

2023 saw a devastating loss of life at sea, with over 4,000 perishing while attempting to reach Europe. This rising number highlights the ongoing risks that migrants and refugees face. EU Member States also introduced tougher border controls and security measures, making it more difficult for those seeking protection to have access. In parallel, the EU agreed the new asylum pact in 2024 that seeks to improve migration management. The new rules on fundamental rights monitoring, child protection and a clear duty to investigate all substantiated reports of rights violations, offer opportunities to improve compliance with fundamental rights, if fully implemented.

Democracy itself continued to be under threat in 2023. Restrictions on climate protests obstruct people's rights to freedom of assembly. Journalists faced intimidation through lawsuits designed to drain their resources, time and energy. Our rights to freedom of association, peaceful assembly and expression remain at risk.

This year's annual Fundamental Rights Report is a concise analysis of developments in the EU. The re-structured annual report takes a new condensed approach, as decided by FRA's Management Board. Our opening chapter sets out the context for building inclusive societies and looks ahead to 2024. This introduction touches on climate change, rising racism and digitalised societies. The remaining chapters discuss the cost-of-living crisis, migration and democracy. The report concludes with an analysis of how the EU Charter of Fundamental Rights could be even more effective.

As always, the report contains FRA opinions on how to build a more inclusive Europe. The report covers all 27 EU Member States as well as the Republic of Albania, the Republic of North Macedonia (hereafter North Macedonia) and the Republic of Serbia. The FRA opinions will be published in all EU languages, plus Macedonian, Serbian and Albanian.

Our thanks go to FRA's Management Board for overseeing this report throughout from drafting to publication. We are also grateful to the Scientific Committee for ensuring that the report is scientifically sound. We extend a special thanks to the National Liaison Officers, whose input underpins the accuracy of EU Member State information. As ever, we are also grateful to the various institutions, such as the Council of Europe, for providing valuable input.

Jim Clarken
Chairperson of the FRA Management Board

Sirpa Rautio
Director

TOWARDS A DEMOCRACY ANCHORED IN FUNDAMENTAL RIGHTS

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This year's *Fundamental Rights Report 2024* comes at a time when the EU is experiencing threats to democratic values and civic space. Online hatred and disinformation pose serious challenges to fundamental rights. Europe faces rising poverty amid a cost-of-living crisis and continues to grapple with the polarising issue of migration. Necessary action on climate change risks reinforcing existing forms of social and economic marginalisation.

The introductory lead chapter provides a broader view of fundamental rights concerns in 2023. Rising racism against people of different ethnic backgrounds is a worrying trend, alongside an increase in incidents of hate against Jews and Muslims following the terrorist attacks by Hamas in Israel on 7 October 2023 and Israel's military response in Gaza. The rapid growth in the digitalisation of our private and public lives appears unstoppable. Urgent action is needed to tackle climate change without encroaching on the economic rights of marginalised communities.

Progress at the EU policymaking level addresses these inequalities, delivering action plans, strategies and legislation, including on the green transition, digital services and artificial intelligence. Through this chapter, FRA highlights the need for a multifaceted approach to building a more inclusive Europe.



WORKING TOWARDS A MORE INCLUSIVE EUROPE

2024 is a consequential year for democracy worldwide. Europe is no exception, as the European Parliament elections are one of the largest democratic exercises in the world.

Democracy and human rights exist in a relationship of deep complementarity. The European Court of Human Rights (ECtHR) ruled in 1998 that democracy 'appears to be the only political model contemplated by the [European Convention on Human Rights] and, accordingly, the only one compatible with it' (*). This view is deeply embedded within the EU and is reflected in the EU treaties, the EU Charter of Fundamental Rights and EU policies. One of the characteristics of a healthy democracy is its ability to create a legal and political context in which human rights can be realised for everybody.

The European Parliament elections of 2024 therefore offer an important opportunity to assess the context for fundamental rights across the EU, and particularly how people who are discriminated against, marginalised or structurally disadvantaged can live with dignity and safety in our diverse societies.

It is without doubt a challenging context. Europe is confronting a bleak economic outlook, the ongoing impact and threat of the Russian war of aggression against Ukraine and extreme challenges occurring in the context of migration that were exemplified by the death or disappearance in 2023 of more than 4000 people trying to reach Europe by sea. The ensuing chapters will set out the fundamental rights challenges in the areas of rising poverty amid a cost-of-living crisis, threats to democratic values and civic space, and migration. These are all issues on which the European Union Agency for Fundamental Rights (FRA) has reported extensively.

This lead chapter will set the scene by addressing three important policy areas in Europe where there are specific risks to marginalised and vulnerable communities, against a backdrop of growing popular awareness of threats of social exclusion in Europe.

The section '[Confronting racism and related forms of intolerance](#)' focuses on the trend of worsening racism and related forms of intolerance. This has become an increasingly dominant issue in the political landscape of Europe – not only in the often-violent expressions of antisemitic and anti-Muslim hatred towards the end of 2023, but also in the mistreatment of migrants and the ongoing discrimination against people of African descent and Roma. National and local elections in several European countries in 2023 featured successful campaigns that built on overt appeals to intolerance.

More than half of the respondents to a Eurobarometer poll of the general population in April and May 2023 believe that discrimination on the basis of

being Roma, skin colour, ethnic origin and gender identity or sexual orientation is widespread in their country and has increased since 2019 ⁽²⁾. FRA's survey of Roma people in 2021 found that one in four (25 %) report having felt discriminated against in the preceding 12 months, which was almost the same level as that reported in 2016 ⁽³⁾. According to the Eurobarometer survey, the only form of discrimination that respondents believe has become less widespread is discrimination on the basis of religion or belief. However, this was seriously undermined later in the year when there was a sharp increase in incidents of hate against Jews and Muslims following the terrorist attacks by Hamas in Israel on 7 October 2023 and Israel's military response in Gaza.

The sections 'Ensuring inclusive digital societies' and 'Climate change and a just energy transition' shift focus from the overt challenges of racism and related forms of intolerance to two crucial areas of the European policy agenda that raise fundamental rights questions for the wider population but contain specific risks for vulnerable or marginalised people. The transition towards digital societies risks disadvantaging certain groups of people, sometimes in ways that are not immediately apparent. The green energy transition, while necessary, brings with it the risk of reinforcing existing forms of social and economic marginalisation.

CONFRONTING RACISM AND RELATED FORMS OF INTOLERANCE

Racism and related forms of intolerance came into sharp focus in 2023, particularly after the conflict between Israel and Hamas triggered an alarming rise in hate crimes against Jews and Muslims across many parts of Europe. However, this escalation was part of a much broader picture of racism and related forms of intolerance across Europe, which continue to exist and manifest in different ways. New FRA research in 2023 identified a worsening trend of racism against people of African descent, while anti-Roma discrimination continues to be pervasive. FRA also noted the persistence of discrimination, harassment and violence against migrants of African descent ⁽⁴⁾.

This chapter highlights a selection of these challenges, although the sequence in which they are discussed does not imply any order of priority. Racism and related forms of intolerance demand condemnation in all their forms.

Article 21 of the EU Charter prohibits 'any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation'. In the EU, discrimination based on ethnic or racial origin has been prohibited since 2000 by the directive on racial equality ⁽⁵⁾.

The Council of the European Union's framework decision on combating certain forms and expressions of racism and xenophobia by means of criminal law was adopted in 2008 ⁽⁶⁾. In 2020, the European Commission began launching infringement proceedings against Member States that had incorrectly or incompletely transposed the framework decision ⁽⁷⁾. In 2020, as part of its wider Union of Equality package, the European Commission adopted a gender equality strategy ⁽⁸⁾, an anti-racism action plan ⁽⁹⁾, an EU Roma strategic framework ⁽¹⁰⁾, a lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) equality strategy ⁽¹¹⁾, and a strategy on the rights of persons with disabilities ⁽¹²⁾; and, separately, an action plan on integration and inclusion ⁽¹³⁾. In 2021, it adopted a communication to prompt a Council decision to extend the list of EU crimes to hate speech and hate crime, as well as a new strategy on combating antisemitism and fostering Jewish life ⁽¹⁴⁾. In 2022 it also

proposed two directives on common standards for equality bodies. This all provided fresh impetus to the equality and inclusion agenda, emphasising the importance of improving data collection as a sound basis for policies, mainstreaming equality, preventing discrimination, and using targeted measures to support vulnerable groups and victims of discrimination. The message of 2023 was that these efforts needed to be strengthened to make a substantial difference to the lives of those who experience discrimination or hatred.

The situation in Israel and Gaza following the events of 7 October 2023 gave rise to an alarming surge in threats and violence against both Jewish and Muslim people to varying extents across the EU. This was widely reported by the media in several countries, and European Commission Vice-President Margaritis Schinas told the European Parliament on 7 February 2024 that antisemitic and anti-Muslim hate crime had ‘exploded’ across Europe ⁽¹⁵⁾.



These attacks against Jews and Muslims in Europe are not a new phenomenon but have marked an escalation of long-standing patterns of discrimination and violence affecting both communities. FRA has previously noted how antisemitic incidents can peak at times of heightened tension in Israel and Palestine ⁽¹⁶⁾. The 2023 attacks drew strong statements of condemnation from bodies including the European Commission (see below) and the Council of Europe ⁽¹⁷⁾. However, statements need to be backed up with effective action to prevent and address hatred and violence and to foster inclusion for communities whose sense of belonging in Europe has been profoundly shaken.

The rise of antisemitic hatred and violence evoked horrifying memories across the continent ⁽¹⁸⁾. In a 5 November 2023 statement condemning the attacks on Jewish targets, the European Commission noted that they were ‘reminiscent of some of the darkest times in history’ ⁽¹⁹⁾. At the Council of Europe, the European Commission against Racism and Intolerance (ECRI) adopted a statement at its plenary meeting in December 2023 about the sharp rise in antisemitism that can be observed in many European countries, drawing the attention of governments to ECRI’s opinion on ‘the non-legally binding working definition of antisemitism of the International Holocaust Remembrance Alliance (IHRA), in which it also says that this definition should not be used to delegitimise criticism of Israel to the extent that it is held to the same standards as any other state. ECRI reiterates that Jews should not be held collectively responsible for actions of the State of Israel’ ⁽²⁰⁾.

On 6 November 2023, the Special Envoys and Coordinators Combating Antisemitism, which is made up of representatives from the EU and beyond, issued a joint statement calling, in the strongest terms, for the protection of Jewish people and communities ⁽²¹⁾.

The surge in anti-Muslim discrimination and hate crime was less comprehensively reported than that in antisemitism but is no less concerning. National media and non-governmental organisations in several countries covered attacks against mosques and Muslim cemeteries, as well as against individuals and organisations. These included online attacks; one non-governmental organisation reported that it had detected a 43-fold increase in anti-Muslim comments on YouTube globally after 7 October 2023 ⁽²²⁾. As with rising antisemitic violence, the spike in attacks against Muslims has emerged from a troubling history and context, including the perception and treatment of Muslim migrants in the EU. The Fundamental Rights Survey in 2019 asked people about their attitude towards having a Muslim neighbour, with almost a third (32 %) saying they would feel uncomfortable ⁽²³⁾.

Echoing their counterparts on antisemitism, the coordinators, special representatives, envoy and ambassadors on combating anti-Muslim hatred and discrimination, representing the EU and other countries, issued a joint statement on 29 November that expressed deep concern about anti-Muslim hatred and discrimination and reiterated their solidarity with its victims ⁽²⁴⁾. The statement noted that '[a]ntisemitism and anti-Muslim hatred are equally reprehensible' and that people wrongly identified as Muslims (including Arab and Palestinian Christians, as well as Sikhs) were also targets for discrimination and hatred. In its December statement, ECRI also emphasised the need to combat anti-Muslim hatred and all other forms of racism ⁽²⁵⁾.

In December 2023, the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy adopted the joint communication 'No place for hate: A Europe united against hatred', as a call to action against all forms of hatred with a focus on Jewish and Muslim communities ⁽²⁶⁾. It announced the following measures: increased funding for protecting places of worship (particularly Jewish places of worship); the upgrading of the status of coordinators on anti-racism, combating antisemitism and combating anti-Muslim hatred to envoys; and plans to hold a high-level anti-hatred conference in 2024.

The Council of Europe tasked a committee of experts with preparing a draft recommendation on combating hate crime ⁽²⁷⁾, and in November 2023, adopted a study that provided guidance to Member States and other actors on preventing and combating hate speech in times of crisis ⁽²⁸⁾.

While there was a surge in media attention and high-profile statements from European institutions in response to these developments during the final quarter of 2023, there is still a lack of systematic data collection on hate crime, including incitement to antisemitic and anti-Muslim violence or hatred. This



problem is exacerbated by under-reporting by victims, an issue that FRA has repeatedly highlighted ⁽²⁹⁾. This diminishes the prospects for an effective long-term response: as FRA noted in the context of its 2023 report on antisemitism, '[t]he lack of comparable, reliable data makes it difficult to address antisemitism effectively' ⁽³⁰⁾. The same report noted that Member States collect different types of data and apply different definitions of antisemitism in law, which stands in the way of making meaningful comparisons or identifying trends across multiple countries. While FRA has documented anti-Muslim hatred since 2012, the surge of attacks in 2023 underscored the importance of FRA's calls for consistent data collection on anti-Muslim violence at the national level.

FRA has also shown that racism against people of African descent has worsened in Europe. In the context of the UN's International Decade for People of African Descent, which comes to an end in 2024, FRA published a survey-based report in 2023 on the situation of people of African descent in Europe ⁽³¹⁾. Its conclusions were alarming: not only had there been no improvement since the previous survey, carried out in 2016, but also many of the Black people in Europe surveyed actually faced greater levels of discrimination in 2023.

Almost half of the respondents (45 %) report having experienced racial discrimination, up from 39 % in 2016. The report highlights the extent to which discrimination, harassment, violence and racial profiling continue to be routine features of life for Black people in Europe. This plays out in daily experiences of policing, housing, education and employment, among others. As in all FRA surveys, there was a notable problem of under-reporting (only 9 % of those who felt discriminated against had lodged a complaint over the preceding 12 months) and a lack of comparable disaggregated data across the EU.

One of the findings consistent with those of previous surveys was that experiences of racism result in diminishing trust in public institutions. Average levels of trust in the police are significantly lower among those who report having experienced racial discrimination.

Roma people also continued to experience discrimination in 2023. FRA has long documented the social exclusion and marginalisation of many Roma, who often experience greater levels of segregation and poverty and lower life expectancy than the general population. [Chapter 1](#) of this report highlights the heightened vulnerability of Roma to poverty and discrimination ⁽³²⁾. There is an additional gender dimension to their social and economic exclusion; for example, in 2021, only 28 % of Roma women aged 20–64 were in employment, compared with 58 % of men.

The EU's October 2020 strategic framework on Roma set out targets to close the gap between Roma and the general population in several areas of life. It also called for Member States to present national inclusion plans by September 2021 ⁽³³⁾. However, only five Member States submitted them on time, and a European Commission assessment of these plans carried out in January 2023 found many to be lacking in numerous aspects, including measurable indicators and allocated resources ⁽³⁴⁾.

In April 2023, the European Commission referred Slovakia to the Court of Justice of the European Union for failing to effectively tackle the issue of segregation of Roma children in education in breach of the racial equality directive ⁽³⁵⁾. In November 2023, the Parliamentary Assembly of the Council of Europe adopted Resolution 2523 (2023) on 'Institutional racism of law enforcement authorities against Roma and Travellers', calling on Member

States to ensure that offences motivated by antigypsyism and anti-nomadism are covered by criminal law and that anti-discrimination legislation applies to law enforcement authorities (36). Taken together, these manifestations of racism and related forms of intolerance against Jews, Muslims, Black people and Roma, alongside others, suggest a pattern that warrants further policy action at both the EU and Member State levels. Accordingly, in November 2023, FRA called on EU Member States to intensify efforts to prevent polarisation and to ensure the safety and well-being of all communities (37).

FRA has identified four elements that are required to address the challenges, while also noting that the EU's existing legal frameworks and international treaties provide an important foundation for doing so.

The first element is to acknowledge the extent of racism and related forms of intolerance in European societies, including in their systemic and structural forms. The second element is to ensure that the EU and Member States systematically collect comprehensive and reliable fundamental rights data. This remains a challenge across all areas of racism and related forms of intolerance. The third element is that the EU and Member States should engage affected communities in the fight against racism. The fourth element is to take a firm stand against all forms of intolerance and racial discrimination, including hate speech and violence. 'No place for hate' should be an additional asset in this regard.

The fourth element should also include proper enforcement of anti-discrimination legislation, including through the use of effective, proportionate and dissuasive sanctions and by delivering on criminal accountability when criminal acts have been committed. This work, combined with investing in making people aware of their rights and remedies, is essential to address the problem of under-reporting and the corrosion of trust in institutions, including the police, among those who have experienced discrimination or hatred.

Much of this work needs to happen at the national level. This in turn calls for strong national action plans to address racism and related forms of intolerance. Such an approach requires civil society and equality bodies to play a significant role, and disaggregated data to be collected across a range of areas for better monitoring.

Applying the lens of intersectionality is essential. FRA's report *Being Black in the EU* found that the prevalence of discrimination against people of African origin was especially high among those who reported wearing religious clothing in public or those who self-identified as belonging to a minority in terms of disability, gender identity or gender expression, and sexual orientation (38).

Equally, it is important to consider online, as well as offline, dimensions of racism and related forms of intolerance, as will be discussed in the next section. This includes the role of online hatred in creating social exclusion and perpetuating threats of violence or discrimination.

To build a Europe in which everybody can live in safety and dignity, the first item on the agenda should be strengthening actions that are grounded in fundamental rights to address racism and related forms of intolerance. Unless marginalised or vulnerable communities feel safe in their societies, a democracy truly anchored in fundamental rights will remain out of reach.

ENSURING INCLUSIVE DIGITAL SOCIETIES

As the information infrastructure and public services in many societies have increasingly been shifting online, the digital realm has become a crucial arena for addressing social and economic inclusion in Europe. In 2023, the EU continued to play a leading global role in the regulation of technology, including in relation to ensuring inclusivity and in addressing discrimination and the potential for harm. However, this is an area of high risk for fundamental rights – particularly for vulnerable and marginalised people – and so calls for continued scrutiny.

The future of digital societies is a high priority for European citizens. A Eurobarometer poll carried out in March 2023 found that 79 % of respondents believe that digital technologies will be important to their lives in 2030 ⁽³⁹⁾. In terms of human rights, 50 % believe that the EU protects their rights well in a digital environment, although there are significant fluctuations between countries, ranging from 32 % in Greece to 69 % in Ireland. In terms of digital rights, 6 in 10 (60 %) think that such rights are applied well in relation to freedom of expression and access to information online, while 54 % hold this view in relation to access to public services.

The growing pervasiveness of technology in all areas of society continues to bring not only potential benefits but also risks. Technology can facilitate the ‘othering’ of particular groups through disinformation or the spread of online hatred and by creating barriers for vulnerable demographic groups, including children, older people and people with disabilities. Addressing these risks in the course of creating the digital environment of the future is central to building a more inclusive Europe. While EU policy on digitalisation is cognisant of these risks, monitoring these risks and promoting inclusivity, especially for vulnerable or minority groups, will remain important.

The growing use of artificial intelligence (AI) in the delivery of public services poses particular risks related to algorithmic bias against women, racialised groups and minorities, often with little recourse or accountability available to victims. These risks are a significant focus of ‘No place for hate’, which includes commitments to address hate speech online, including by updating the existing code of conduct on countering illegal hate speech online, in light of the Digital Services Act (DSA). Such risks, as well as how to promote equality through the use of AI systems, were extensively assessed in a Council of Europe study published in August 2023 ⁽⁴⁰⁾.



The legislative environment for digital rights in Europe is evolving rapidly. Alongside the Digital Markets Act, the DSA came into force in November 2022. It contains provisions to address disinformation and hate speech for a safe online environment, and to protect fundamental rights online. These provisions include, as paragraph 52 sets out, ‘the right to freedom of expression and of information, the right to respect for private and family life, the right to protection of personal data, the right to non-discrimination and the right to an effective remedy’ for recipients of online services and ‘the right to human dignity, the rights of the child, the right to protection of property, including intellectual property, and the right to non-discrimination’ for those affected by illegal content ⁽⁴¹⁾. In April 2023, the European Commission designated the first batch of online platforms that had to comply with the DSA from August 2023, with a second batch in December 2023.

In the area of regulating AI, the European Parliament reached a provisional agreement with the Council of the European Union in December 2023 on the AI Act ⁽⁴²⁾, which the European Commission proposed in April 2021 ⁽⁴³⁾. The proposal seeks to ensure a high level of protection for fundamental rights and aims to address various sources of risks through a clearly defined risk-based approach. The nature of AI, including its opacity, complexity, dependency on data and autonomous behaviour, can adversely affect a number of fundamental rights enshrined in the Charter. These include the right to human dignity (Article 1), respect for private life and protection of personal data (Articles 7 and 8), non-discrimination (Article 21) and equality between women and men (Article 23), and the rights to freedom of expression (Article 11) and freedom of assembly (Article 12) ⁽⁴⁴⁾.

Furthermore, in December 2023, the Council of Europe’s Committee on Artificial Intelligence published the second iteration of its draft framework convention on AI, human rights, democracy and the rule of law ⁽⁴⁵⁾, which is in preparation for a third and final reading.

Digital rights have a particular salience in the context of election campaigns. The threat that digital technologies pose to the integrity of elections, including through disinformation and cyberattacks, has become a serious concern for people living in the EU. A Eurobarometer survey of the general population carried out in April and May 2023 found that 78 % of respondents are concerned about disinformation influencing people’s voting decisions in EU elections, while 72 % are concerned about elections being manipulated through cyberattacks ⁽⁴⁶⁾.

Looking ahead to the 2024 European Parliament elections, the Commission adopted a ‘defence of democracy’ package in December 2023. Among other elements of the package, the Commission recommendation on inclusive and resilient electoral processes in the EU and enhancing the European nature and efficient conduct of the elections to the European Parliament encouraged Member States, in the context of election observation, ‘to understand how new technologies can be used to engage in information manipulation, interference and the spread of disinformation to the detriment of free and fair elections’ ⁽⁴⁷⁾. On the proactive side, the Commission recommendation on promoting the engagement and effective participation of citizens and civil society organisations in public policymaking processes urged Member States to explore the use of new technologies to strengthen participation in the digital public space and pay due attention to all necessary fundamental rights safeguards ⁽⁴⁸⁾.

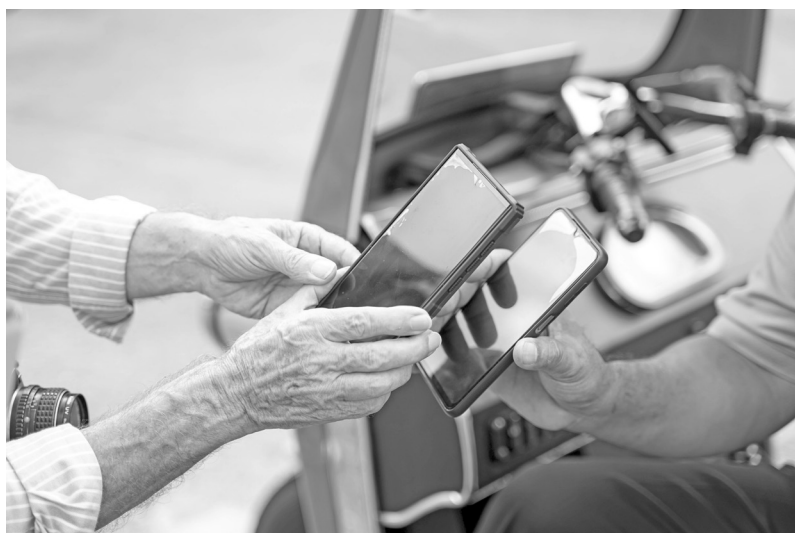
Besides disinformation, the propagation of online hatred remains a significant challenge that requires attention in the context of election campaigns and more generally. In November 2023, FRA published a report assessing online

hate speech against women, people of African descent, Jewish people and Roma ⁽⁴⁹⁾. Women were the most prevalent targets of online hate, including being exposed to hatred of a sexualised nature. The report set out several recommendations for addressing online hatred and strengthening content moderation. One of these was that, in the early stages of implementing the DSA, the very large online platforms that the act covers should pay specific attention to misogyny (or sexist hate) and to protected characteristics among the systemic risks considered in the context of the risk assessment and mitigation measures that the DSA requires.

FRA also called on the European Commission to ensure that risk assessments are independently vetted to ensure their accuracy and diversity, recognising the complexity of identifying and combating online hate. AI systems used to support content moderation should also be monitored, as they are prone to errors and so risk multiplying discrimination. Beyond these measures, FRA called on the European Commission and national governments to foster a wide and diverse network of actors to ensure that different forms of online hate are reliably identified, detected and addressed.

The risks posed to social inclusion in the digital realm are not limited to disinformation and online hatred. In September 2023, FRA reported on the risks of older people being left behind by the digitalisation of public services ⁽⁵⁰⁾. Drawing on Eurostat data, the report highlighted the threat of a 'grey digital divide', whereby people in the 55–64 and 65–74 age brackets face numerous barriers in accessing digitalised public services. One of the reasons for this is that only one in four people aged 65–74 have at least basic digital skills. In line with Eurostat's usual practice, its data excluded people aged 75 or above, but it can be inferred from earlier FRA survey data that the barriers are even more significant for members of this older demographic group ⁽⁵¹⁾.

The FRA report found that only four Member States have legal protections for older people's equal access to digitalised public services, while nine Member States recognise the importance of maintaining offline alternatives. Overall, FRA called for more attention to be paid to securing older people's ability to access digitalised public services. This included a recommendation to ensure that people over 75 years of age are included within systematic data collection so their vulnerabilities can be properly understood and addressed. This is particularly important in the context of an ageing continent, with 20 % of the population projected to be aged 75 or above by 2050.



Exclusion from digitalised public services, especially those related to social protection, also puts other vulnerable groups at risk, including people with disabilities, marginalised communities including Roma, people with low digital skills or without internet access, and homeless people. The Parliamentary Assembly of the Council of Europe, in its Resolution 2510 (2023) on closing the digital divide, also warned against the dangers of digital exclusion, which could deprive those concerned of access to public services and education, among others ⁽⁵²⁾. Accessibility is an important element of digital inclusion, while offline alternatives are crucial to ensure equal access to public services for all vulnerable groups, especially since many are more likely to need social protection.

The growing digitalisation of society, including both public services and the information infrastructure that is fundamental to the functioning of democracy, is a seemingly unstoppable trend. It undoubtedly offers opportunities for participation and transparency; for example, FRA's December 2022 report on bias in algorithms found that AI can be used to identify patterns of discrimination and used to mitigate it ⁽⁵³⁾. But AI also brings distinct new risks across a range of human rights areas, from privacy to non-discrimination and child rights to gender equality. It also threatens to increase the vulnerability of those who are already marginalised or facing discrimination or hatred ⁽⁵⁴⁾. [Chapter 3](#) highlights the risk of discrimination in algorithmically driven travel authorisations, for example.

As FRA highlighted, attention needs to be paid to ensuring that the rapid growth and deployment of AI does not accentuate existing patterns of discrimination or social exclusion and that this risk is monitored carefully. These risks need to be properly understood and taken into account in the process of establishing a regulatory regime for AI, including – as FRA has recommended in relation to addressing online hate – through engaging a wide range of stakeholders in the process.

CLIMATE CHANGE AND A JUST ENERGY TRANSITION

Addressing the profound challenges of climate change is both a global priority and a major preoccupation of the EU. Key to this is an energy transition that protects people and communities at particular risk of economic or other harms.

The popular mandate for action to address climate change is strong. A Eurobarometer survey undertaken in May and June 2023 found that more than three quarters of people in the EU (77 %) believe climate change is a very serious problem, while 58 % believe that the transition to a green economy should be sped up ⁽⁵⁵⁾. The survey also found strong agreement that the cost of the damage caused by climate change outweighs the cost of investment in a green transition.

Action on climate change engages human rights in different ways. There is a trend of addressing climate change through human rights instruments, including through climate litigation based on human rights law and creating new soft-law human rights standards. However, a human-rights-based approach to climate change also calls for significant emphasis on a just energy transition to ensure that people at risk of losing livelihoods or facing other harms arising from the green transition are not left behind. This calls for caution and a good understanding of risks. From a human rights perspective, it is therefore important to strike a balance between compelling decisive action and mitigating harm that could arise from such action.



In a broad sense, climate change is likely to widely affect the enjoyment of human rights in the near future, including in ways that cannot yet be predicted. Moreover, given the progressive worsening of climate change over time, the concept of intergenerational rights has also become an important framework. It is well established that climate change is already having an impact on a wide range of human rights, including the rights to life, water and sanitation, food, health, housing, self-determination, culture and development ⁽⁵⁶⁾. States have an obligation to act to protect and fulfil these and other rights, and inaction may amount to a breach of their obligations. However, the measures that states take in both climate mitigation and adaptation should themselves not violate human rights.

Within the EU, protecting people from the impacts of climate change and environmental degradation is a Charter principle. Article 37 of the Charter provides that 'A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development' ⁽⁵⁷⁾.

Over recent years there has been a growing global emphasis on environmental rights, specifically the right to a clean, healthy and sustainable environment, which the UN Human Rights Council recognised in 2021 and the UN General Assembly recognised in 2022. In January 2022, the Parliamentary Assembly of the Council of Europe launched a network of contact parliamentarians for a healthy environment, which advocates the strengthening of the Council of Europe's legal arsenal with regard to the right to a healthy environment ⁽⁵⁸⁾. The Committee of Ministers of the Council of Europe adopted a recommendation to Member States in September 2022 to consider recognising at the national level the right to a clean, healthy and sustainable environment. It also recommended that Member States consider protecting the rights of those most vulnerable to environmental harm, ensuring the protection of human rights defenders and environmental rights defenders and encouraging businesses to comply with human rights responsibilities vis-à-vis the environment ⁽⁵⁹⁾.

The Council of Europe subsequently hosted a high-level conference in May 2023 to discuss what this right means in practice and the legal form that it would take in Europe ⁽⁶⁰⁾. The 4th Summit of Heads of State and Government of the Council of Europe, held in Reykjavik on 16–17 May 2023, recognised the urgency of additional efforts to protect the environment, as well as to counter the impact of the planetary crises of pollution, climate change and loss of biodiversity on human rights, democracy and the rule of law. It adopted a declaration on ‘The Council of Europe and the environment’ and committed to strengthening work on the human rights aspects of the environment. It also committed to initiating the Reykjavik process of focusing and strengthening the work of the Council of Europe in this field ⁽⁶¹⁾.

In August 2023, the UN Human Rights Committee adopted General Comment No 26 (2023) on children’s rights and the environment, with a special focus on climate change ⁽⁶²⁾.

In April 2023, the UN General Assembly requested an advisory opinion from the International Court of Justice on the obligations of states in respect of climate change ⁽⁶³⁾.

The ECtHR has also become an important focus for innovative climate litigation relying upon human rights law. At the end of 2023, three such cases were pending at the ECtHR, each arguing that human rights had been violated because governments had failed to tackle climate change quickly enough. As this report went to production, on 9 April 2024 the ECtHR established in a Grand Chamber judgment that climate change has a prominent human rights dimension. In its decision on the case *Verein Klimasenioren Schweiz and Others v Switzerland*, the Court ruled that state authorities had failed to comply with their duties under the ECHR and that they had violated the right to respect for private and family life (Article 8 of the ECHR) of the claimants. It found that Article 8 of the ECHR encompasses a right to effective protection by the state authorities from the serious adverse effects of climate change on lives, health, well-being and quality of life ⁽⁶⁴⁾. At the same time, the ECtHR dismissed the other two cases – *Carême v France* and *Duarte Agostinho and Others v Portugal and 32 Others* – on procedural grounds. All three cases have drawn significant media attention and played an important role in establishing the relationship between climate change and human rights ⁽⁶⁵⁾.

Within the broader context of addressing climate change impacts through the lens of human rights and fundamental rights, the concept of protecting the rights of vulnerable people in the energy transition has become increasingly well established. Human rights law offers an important way of assessing what constitutes fairness in this context. It offers clear standards against which states’ acts or omissions, as well as the fairness of climate policy outcomes, can be judged, especially for already marginalised or discriminated groups or for those whose livelihoods are being seriously affected by the loss of industries that are dependent on fossil fuels and the shift towards green jobs.

Chapter 1 sets out this challenge of using a human-rights-based approach to ensure a just transition. Workers’ rights are a central element of this, with gender a particularly important dimension. A 2023 Organisation for Economic Co-operation and Development report highlights this. It states that ‘[w]omen tend to be under-represented in green-task jobs, accounting for only 28 % of them, requiring policy efforts to raise female participation in the green transition’ ⁽⁶⁶⁾.

The EU has begun to address the challenge of protecting women and vulnerable groups in the context of the energy transition. This is based on

a recommendation that the Council of the European Union adopted in June 2022 on ensuring a fair transition towards climate neutrality ⁽⁶⁷⁾. It set out the following ambition.

In line with the principles of the European Green Deal and the European Pillar of Social Rights, this Recommendation aims to ensure that the Union's transition towards a climate neutral and environmentally sustainable economy by 2050 is fair and leaves nobody behind.

The development of the European Green Deal has continued, including with the European Commission's Green Deal industrial plan, presented in February 2023, which recognises the importance of inclusiveness for women and young people in the context of skills development for workers ⁽⁶⁸⁾.

As with the digitalisation of public services (see the previous section), the potential is there for the unfolding energy transition either to accentuate existing inequalities or to contribute towards more equitable and inclusive societies. In 2023, FRA initiated a project to identify the impact of the EU's green transition on social rights and fundamental rights. It aims to assess the provisions of the European Green Deal in terms of the just transition and the European Pillar of Social Rights, and identify risks for vulnerable groups. In-depth case studies are due to be published in 2024. This work will take an intersectional approach to understanding how different forms of vulnerability intersect with each other in this context.

Ongoing monitoring and analysis will be important to ensure that the green transition actively contributes to a more inclusive Europe and mitigates the risk of leaving people behind. [Chapter 1](#) will develop this further.

LOOKING AHEAD TO AN INCLUSIVE FUTURE

2023 marked the 75th anniversary of the Universal Declaration of Human Rights and the 30th anniversary of the Vienna Declaration and Programme of Action. Within the context of increasingly divided societies, to honour these anniversaries is to affirm the profound importance of human rights as the basis for peaceful and inclusive societies. This is a crucial agenda as the elections are held for the European Parliament in 2024 and the Council of the European Union agrees on its strategic agenda for 2024-2029.

The subsequent chapters develop a complex fundamental rights agenda for Europe. They also set it against the backdrop of a challenging policy context. However, one of the overarching lessons from 2023 is that Europe faces serious challenges in building truly inclusive societies. The threats and risks have many different dimensions, including overt violence and hatred against specific groups on the basis of their identity and origin, as well as deeper structural and systemic forms of marginalisation and long-term societal and economic shifts that have the potential to worsen various forms of exclusion.

This chapter has focused substantially on racism and related forms of intolerance, particularly antisemitism and anti-Muslim hatred, but there are also glaring challenges in areas such as the exclusion of women and girls from digital spaces amid worsening online abuse; the situation of migrants; the rights of LGBTIQ people; and the rights of people with disabilities. A full understanding of these challenges requires an intersectional analysis and an awareness of intergenerational aspects. The digital realm and the green transition are two areas of risk and opportunity.

From a human rights perspective, the work of building a more inclusive Europe has multiple dimensions, which FRA has highlighted. These include

an ongoing strengthening of the legal and policy frameworks supported by comprehensive monitoring and the use of disaggregated data to identify trends and patterns. EU policies in areas such as anti-racism need to also be reflected in national action plans across all Member States.

However, securing fundamental rights also requires a whole-society approach and the ongoing work of making a case for societies in which vulnerable and marginalised people are included and treated with dignity. In this regard, human rights education is important, together with community-based interventions, such as through sport ⁽⁶⁹⁾. Securing fundamental rights also involves ensuring that EU funding fosters equality and inclusion, on which FRA issued several recommendations in a new report in December 2023 ⁽⁷⁰⁾.

As elections for the European Parliament take place, it is important to remember that the EU has strong legal and policy foundations on which to build. Civil society also has a crucial role to play and can offer important resources for monitoring fundamental rights, providing support to victims, enabling the sharing of experiences and building pressure for change. The challenges may be significant, but these elements together provide an important source of hope and a basis for concerted action.

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IMPACT OF THE COST-OF-LIVING CRISIS AND RISING POVERTY IN THE EU

1

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EU

3

February

Council of the European Union adopts its recommendation on adequate minimum income (COM/2022/490 final), aiming to ensure active inclusion to combat poverty and social exclusion by promoting adequate income support in line with the active inclusion approach.

1

March

International Women's Day: European Parliament's Committee on Women's Rights and Gender Equality hosts an interparliamentary committee meeting focusing on the impact of rising energy prices on women and potential measures to mitigate it.

16

May

European Parliament and Council of the European Union adopt Regulation (EU) 2023/955 establishing a Social Climate Fund for 2026 to 2032, which introduces new definitions of vulnerable households in relation to energy poverty and of vulnerable transport users.

20

September

European Parliament and Council of the European Union adopt Directive (EU) 2023/1791 on energy efficiency and amending Regulation (EU) 2023/955 (recast), which puts in place a legal definition of energy poverty.

17

20

31

October

Social Protection Committee's annual report focuses on measures taken to tackle the energy and cost of living crisis. The report indicates that despite economic growth slowing down in the EU during 2022, after the launch of Russia's war of aggression against Ukraine employment continued to increase and the level of poverty and social exclusion remained broadly stable at the EU level, compared with 2021.

European Commission sets out good practices for structural improvements that Member States can take to address the root causes of energy poverty through Recommendation (EU) 2023/2407 on energy poverty, accompanied by a detailed staff working document.

European Parliament and Council of the European Union adopt Directive (EU) 2023/2413 amending the renewable energy directive (Directive (EU) 2018/2001), which aims to further increase the 2030 renewable energy target to 45 % and sets out measures to accelerate the promotion of renewables.

14

21

November

EU ministers for housing and urban development, through the Gijon Declaration, make a joint statement on the importance of continuing work to guarantee access to decent and adequate housing.

European Parliament adopts its resolution on reducing inequalities and promoting social inclusion in times of crisis for children and their families.

The European Commission publishes its proposal for a joint employment Report (COM(2023) 904 final) for the 2024 European semester, finding that the share of people at risk of poverty or social exclusion in the EU remained broadly stable since 2019.

7

12

13

14

December

Council and European Parliament reach a provisional agreement on the strengthened energy performance of buildings directive, which aims to fight energy poverty and reduce emissions, energy use and the energy bills of buildings across the EU.

European Parliament adopts a motion for a European Parliament resolution on the gender aspects of the rising cost of living and the impact of the energy crisis (2023/2115(INI)).

European Economic and Social Committee adopts an opinion (SOC/768-EESC-2023) on an EU framework for national homeless strategies based on the 'housing first' principle.

Council and European Parliament reach a provisional agreement to reform the EU's electricity market design, aiming to protect vulnerable consumers and the energy poor from price rises and from ending up without electricity.

Council of Europe and UN

January

24

Parliamentary Assembly of the Council of Europe, in Recommendation 2245 (2023), *The Reykjavik Summit of the Council of Europe – United around values in the face of extraordinary challenges*, stresses that higher living costs and an impending economic recession may contribute to further erosion of trust in democratic political systems and institutions.

February

15

In *Finnish Society of Social Rights v Finland* (Complaint No 172/2018), the European Committee of Social Rights (ECSR) holds that the level of sickness, parental and rehabilitation benefits, basic unemployment allowance and guaranteed pension is manifestly inadequate, in violation of Article 12(1) of the Revised European Social Charter. It holds that the inadequacy of social assistance benefits and aid for integration into the labour market constitutes a violation of Article 13(1) of the Charter.

April

11

In *Simonova v Bulgaria* (application No 30782/16), European Court of Human Rights (ECtHR) finds a violation of Article 8 of the European Convention on Human Rights (the right to respect for private and family life) caused by the implementation of a demolition order on an illegally erected building without assessing the proportionality of the measure or taking steps to secure suitable alternative accommodation and provide social assistance to a family with children becoming homeless.

17

In *European Disability Forum (EDF) and Inclusion Europe v France* (Complaint No 168/2018), ECSR finds, in its conclusions in respect of Article 15(3) of the European Social Charter, that the prevalence of poverty (protected under Article 30) among people with disabilities in a state party is an important indicator of the effectiveness of state efforts to ensure their right to enjoy independence, social integration and participation in the life of the community. The ECSR also holds that the authorities have failed to adopt effective measures within a reasonable time frame to remedy long-standing problems related to access to healthcare services for people with disabilities, in violation of Article 11(1) of the Charter. It holds that the shortage of support services and the lack of accessibility of buildings, facilities and public transport cause many families to live in precarious circumstances. This amounts to a lack of protection of the family, in violation of Article 16 of the Charter.

26

General Assembly of the Conference of International Non-governmental Organisations of the Council of Europe adopts a Recommendation (CONF/AG(2023)REC3) on the right to social protection as a human right. It calls on Member States to act against the 'non-taking up of rights', where people do not use their rights.

September

18–19

2023 Sustainable Development Goals Summit is held in New York, in response to the impact of multiple interlocking crises and focusing on accelerating progress towards the sustainable development goals.

The cost-of-living crisis has affected all Member States. It has largely been driven by the economic consequences of the COVID-19 pandemic and rising energy prices due to the Russian war of aggression against Ukraine.

In 2022, 95.3 million people in the EU were at risk of poverty or social exclusion. This is equivalent to 21.6 % of the EU population. After an increase in 2020 and 2021, the proportion remained stable in 2022, compared with 2019. But poverty and social exclusion have increased among children, affecting 24.7 %. This share represented about 20 million children in 2022, almost 1 million more than in 2019.

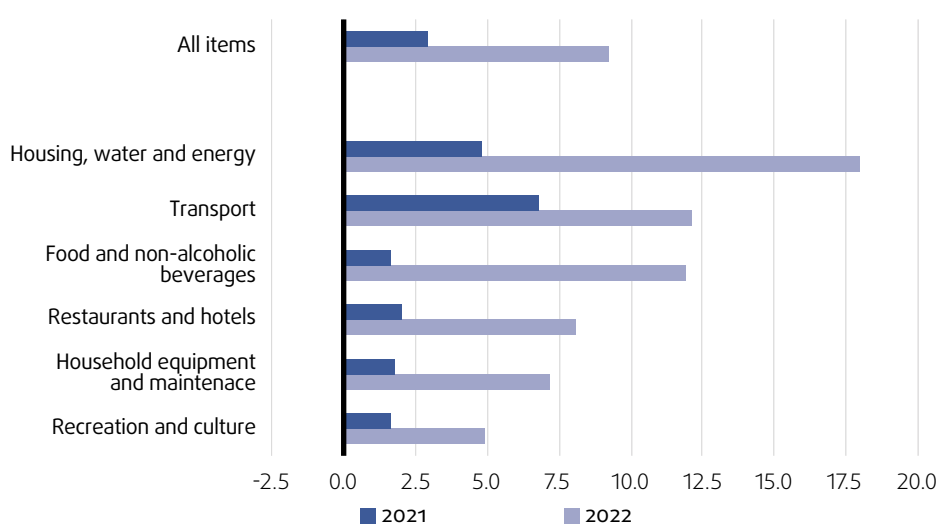
This crisis has had an impact on fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union and by the European Social Charter of the Council of Europe. In 2022 and 2023, the EU and Member States adopted measures to address rising prices and housing issues, and to tackle energy poverty. These have mitigated the negative impacts on poverty and social exclusion on average in the EU population. But such measures were often temporary and did not always reach the most vulnerable. Therefore the long-lasting impacts of inflation remain to be closely monitored.

1.1 COST-OF-LIVING CRISIS AND RISING POVERTY IN THE EU AND THE IMPACT ON FUNDAMENTAL RIGHTS

1.1.1 Inflation and rising prices

Based on the most recent Eurostat data, in 2022 the EU recorded the highest level of inflation since the introduction of the euro (9.2 %). This resulted in a sharp increase in consumer prices for private households (Figure 1.1). Between 2021 and 2022, across the EU, prices for housing, water and energy went up by 18.0 %, transport prices increased by 12.1 % and the price of food and non-alcoholic beverages went up by 11.9 %. Meanwhile, prices for clothing, education and healthcare saw very moderate increases (1).

FIGURE 1.1: INCREASE IN CONSUMER PRICES ACROSS THE EU (%), 2021 AND 2022



Source: Eurostat (*prc_hicp_aind*); data extracted on 10 January 2024.

In January 2023, for household consumption expenditure in the EU, the largest categories were food and non-alcoholic beverages (17.3 %); housing, water and energy (15.1 %); and transport (14.7 %). Together they accounted for close to half (47.1 %) of all expenditure and, at the same time, experienced much higher price increases than the average inflation in 2022 (2).

The European Commission’s annual review of labour market and wage developments for 2023 indicates that, based on data up to September 2023, the decline in real wages has been slowing down as a result of stronger wage growth and moderating inflation. Nevertheless, despite the overall wage growth expected in 2023 (6 %), the decrease in real wages was 0.8 %. The European Commission’s report points out that the outlook is uncertain, but there is a risk that a stronger economic slowdown leading to a decline in labour demand would exert more pressure on wage levels, while higher inflation rates would increase nominal wages, but reduce real wages. The report also highlights the social effects of the cost-of-living crisis, noting that ‘the rate of financial distress among workers has risen significantly and the material and social deprivation rate for workers in the EU has increased sizeably as well’ (3).

As wages, pensions and social benefits are not projected to increase as fast as inflation, the increase in consumer prices has led to a cost-of-living crisis. It has affected the purchasing power of households in the EU, particularly low-income households, which tend to spend higher shares of their income

People are understandably worried about the rising cost of living, as more and more families are struggling to make ends meet. Now is the time for us to deliver; to bring our bills under control, push back inflation and to make our economies grow. We must protect the most vulnerable in our societies.

Source: European Parliament President Roberta Metsola, 12 January 2023.

on food and energy, although middle-income households were affected too. Energy poverty worsened in 2022, particularly among low-income groups, reversing a positive trend in the previous few years (4). At the end of 2022, the rising cost of living was the most pressing worry for 93 % of Europeans, followed by the threat of poverty and social exclusion (82 %) (5). Although annual inflation in the EU decreased in January 2024 to 3.1 %, the social impacts of the crisis and its impact on inequalities may persist and should be closely monitored (6).

According to the spring 2023 Eurobarometer survey, EU citizens were increasingly dissatisfied with how the EU and national governments had addressed the cost-of-living crisis: 65 % of people were not satisfied with the response of national governments to the increases in food and energy prices, while 57 % were unhappy with the EU's response (7).

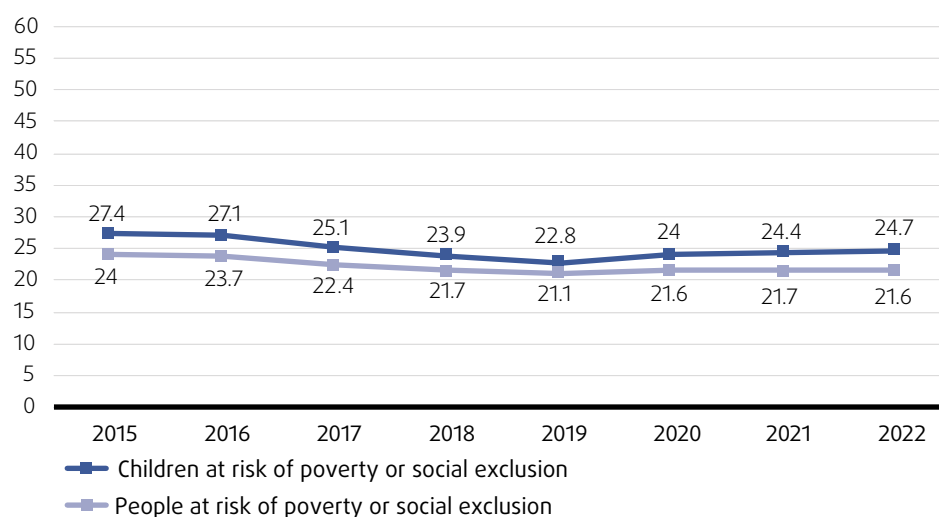
While support measures adopted at the EU and Member State levels prevented a further increase in poverty and social exclusion, the 2023 annual report of the Social Protection Committee of the Council of the European Union called on Member States to continue to take action to mitigate the impact of inflation on households. It also called for them to make greater use of distributional impact assessments to maximise the positive social effects of such measures on poverty and inequality reduction and to use the European semester for mutual learning (8).

1.1.2 Poverty and social exclusion

For over two decades, poverty reduction has been high on the EU agenda, with the number of people at risk of poverty or social exclusion showing a decline between 2015 and 2019 (Figure 1.2). However, the COVID-19 pandemic and rising living costs have slowed progress and risk undermining these achievements.

The latest Eurostat data from 2023 show that, in 2022, 95.3 million people in the EU were at risk of poverty or social exclusion, equivalent to 21.6 % of the EU population. This is similar to the number in 2019 (9). Children (i.e. those below the age of 18) are more vulnerable, with 24.7 % of them (i.e. about 20 million) living in households at risk of poverty or social exclusion in 2022, an increase of roughly 1 million since 2019 (Figure 1.2).

FIGURE 1.2: PROPORTION OF THE EU-27 TOTAL POPULATION AND OF CHILDREN (< 18 YEARS) WHO ARE AT RISK OF POVERTY OR SOCIAL EXCLUSION (%), 2015-2022



► NB: Latest data available.

Source: Eurostat (ilc_pecs01); data extracted on 23 March 2024.

Measures taken in some countries seem to have had a positive effect in reducing poverty. In **Austria, Estonia, Finland, France** and **Slovakia**, there was a clear increase in the proportion of those at risk of poverty or social exclusion between 2019 and 2022. However, in countries with very high initial levels of poverty or social exclusion, such as **Cyprus, Greece, Hungary, Poland** and **Romania**, the positive trend of a reduction in the at-risk-of-poverty rate continued ⁽¹⁰⁾.

At risk of poverty or social exclusion

Being at risk of poverty or social exclusion is the social scoreboard headline indicator used to monitor the EU headline 2030 target on poverty and social exclusion reduction set in the European Pillar of Social Rights. People are considered to be at risk of poverty or social exclusion if they are at risk of poverty (i.e. with income below 60 % of the median disposable income), are severely materially and socially deprived (i.e. unable to afford certain items for adequate living standards) or are living in a household with a very low work intensity (i.e. with working time equal or less than 20 % of total working time potential). The aim is to reduce the number of people at risk of poverty or social exclusion by at least 15 million by 2030, including at least 5 million children.

Source: Eurostat, '*Glossary: At risk of poverty or social exclusion (AROPE)*', 2021.

1.1.3 Rising energy prices exacerbating existing inequalities and causing energy poverty

A new report shows that, in the EU, significantly more of those who are at risk of poverty or social exclusion (20.2 %) experience energy poverty than the general population (9 %). Moreover, disadvantaged groups, such as Roma or homeless people, are more likely to encounter difficulties with energy and transport ⁽¹¹⁾.

Energy poverty

Energy poverty refers to a household's lack of access to essential energy services, namely services that provide basic levels and decent standards of living and health, including adequate heating, hot water, cooling, lighting and energy to power appliances. The term 'energy poverty' is used in national contexts, existing national social policy and other relevant national policies. 'Inability to keep home adequately warm' is one of the key indicators used to measure energy poverty in the EU.

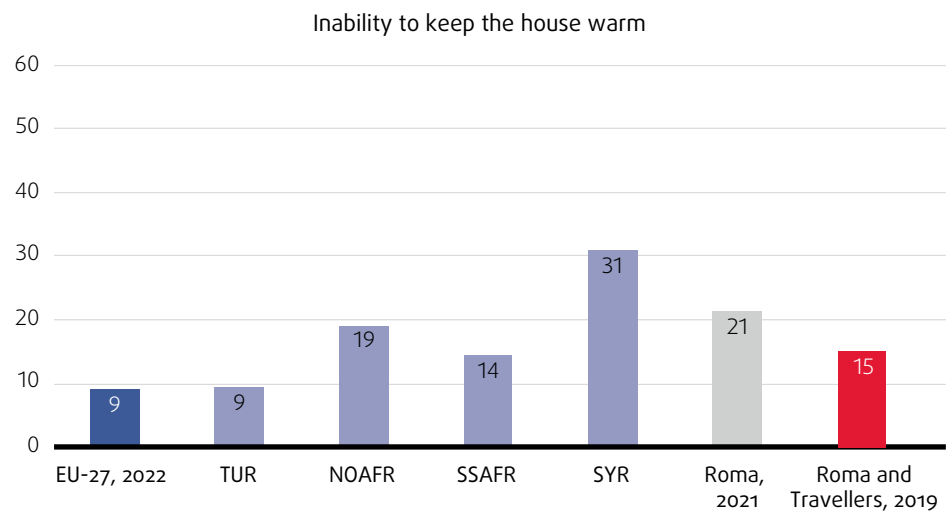
Sources: *Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (OJ L 231, 20.9.2023, p. 1)*; *Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060 (OJ L 130, 16.5.2023, p. 1)*; Eurostat, '*Inability to keep home adequately warm*', 2022.

Data collected between 2019 and 2022 from different FRA surveys on hard-to-reach populations – while not directly comparable – show that immigrants, descendants of immigrants, and Roma and Travellers have a considerably higher risk of experiencing energy poverty than the average in the EU-27. Among immigrants and descendants of immigrants, people of Syrian descent are at the highest risk of energy poverty, with nearly a third (31 %) not being able to keep their home adequately warm, followed by people of North African descent (19 %) (Figure 1.3).

FIGURE 1.3: ENERGY POVERTY IN THE EU-27 AND AMONG PEOPLE OF DIFFERENT ETHNIC OR IMMIGRANT BACKGROUNDS (%)

► NB:

The question that was asked was ‘Can your household afford to keep its home adequately warm?’ NOAFR, North African countries; SSAFR, south of the Saharan African countries; SYR, Syria; TUR, Türkiye.



Sources: EU-27: Eurostat (*prc_hicp_aind*); data extracted on 19 December 2023. Immigrants and descendants of immigrants: FRA, *EU Survey on Immigrants and Descendants of Immigrants, 2022*. Roma: FRA, *Roma Survey, 2021* (conducted in 10 eastern and southern European countries). Roma and Travellers: FRA, *Roma and Travellers Survey, 2019* (conducted in six western European countries).

1.2 FUNDAMENTAL RIGHTS AT STAKE

The EU and its Member States have obligations under EU law to respect, protect and fulfil fundamental rights. The European Social Charter is another source of legal obligations for Member States that have ratified it ⁽¹²⁾. It explicitly recognises the right to protection against poverty and social exclusion ⁽¹³⁾ and the right to housing ⁽¹⁴⁾. In the European Pillar of Social Rights, social protection and inclusion are at the core of one of its three chapters (principles 11-20), and reducing poverty is a 2030 target ⁽¹⁵⁾.

International human rights law ⁽¹⁶⁾ also requires states to take their human rights obligations into account when formulating and implementing policies affecting the lives of people who are living in or at risk of poverty. Moreover, the EU and its Member States have committed themselves to achieving the sustainable development goals by 2030 ⁽¹⁷⁾. The 2030 agenda for sustainable development commits all Member States to eradicating poverty and hunger as its first and second goals, respectively, and emphasises the principle of leaving no one behind ⁽¹⁸⁾. However, the EU progress report on the sustainable development goals ⁽¹⁹⁾ notes that the ongoing climate crisis, in combination with other short-term crises, has created significant hurdles for attaining the sustainable development goals by 2030.

The cost-of-living crisis has potential negative implications for the exercise of several fundamental rights protected by the EU treaties and the EU Charter

of Fundamental Rights, particularly Chapter III on equality ⁽²⁰⁾ and Chapter IV on solidarity ⁽²¹⁾. The erosion of energy security, reduced access to public services and the increased risk of poverty undermine one of the EU's main goals: to promote the well-being of its people ⁽²²⁾. Inflation and rising prices, in particular, threaten the fundamental rights to human dignity ⁽²³⁾, non-discrimination ⁽²⁴⁾, respect for private and family life ⁽²⁵⁾, housing assistance ⁽²⁶⁾ and social security and assistance ⁽²⁷⁾; the right to access services of general economic interest ⁽²⁸⁾; and the rights of people belonging to groups at higher risk of poverty, such as children ⁽²⁹⁾, older people ⁽³⁰⁾ and people with disabilities ⁽³¹⁾.

1.2.1 Tackling energy poverty

Regulating energy costs helps to protect the exercise of several fundamental rights granted in the EU Charter of Fundamental Rights (Articles 21, 34, 36, 37 and 38) and supports principle 20 of the European Pillar of Social Rights,



which provides that everyone has the right to affordable essential services, including water, sanitation, energy, transport, financial services and digital communications ⁽³²⁾. It also reflects the EU's commitment to attaining the sustainable development goals, in particular goal 7 on affordable and clean energy, but also goal 1 on poverty, goal 10 on reduced inequalities, goal 12 on responsible consumption and production and goal 13 on climate action.

According to Eurostat data, over 41 million people in the EU (9.3 % of the population) were unable to keep their home adequately warm in 2022. That is a sharp increase from 2021, when the percentage was 6.9 % ⁽³³⁾.

The EU is committed to addressing energy poverty and ensuring a fair and just transition in Europe, as part of the European Green Deal ⁽³⁴⁾. The impact of climate change and a just energy transition is also discussed in the lead chapter of this report.

In response to the energy crisis following the Russian war of aggression against Ukraine, the EU adopted several temporary regulations ⁽³⁵⁾, which focus on the reduction of Member States' natural gas demand. This has contributed to lowering energy prices (which substantially contributed to the general inflation in the euro area), reducing the EU's dependence on Russian fossil fuels and further advancing the EU's climate objectives. Moreover, the Commission has issued a specific recommendation on energy poverty ⁽³⁶⁾.

The Commission's assessment of national energy and climate plans (37) issued at the end of 2023 reveals that Member States had adopted several measures to address energy poverty. These include providing substantial aid to households and businesses to help them cope with rising energy bills, thus contributing to reducing poverty levels (38). However, these measures lack clear objectives, vulnerability assessment methods and a strong consumer empowerment framework (39). EU energy ministers agreed to extend the application period of three regulations (40) until the end of 2024 or 2025, depending on the regulation (41).

Two related directives were adopted in 2023. Directive (EU) 2023/1791 on energy efficiency (42) defines energy poverty and sets out energy policy requirements to achieve the EU climate targets on tackling and monitoring energy poverty. Directive (EU) 2023/2413 on the promotion of energy from renewable sources (43) explores substitutes for increasing the prices of gas and energy.

In October 2023, the European Commission's Energy Poverty Advisory Hub updated its interactive database, introducing new national indicators on energy poverty and disaggregating data by age, sex, household and dwelling type, urbanity and income status. However, data are not disaggregated for other groups in vulnerable situations, such as racial and ethnic minorities; LGBTIQ people; Roma; and people with disabilities (44).

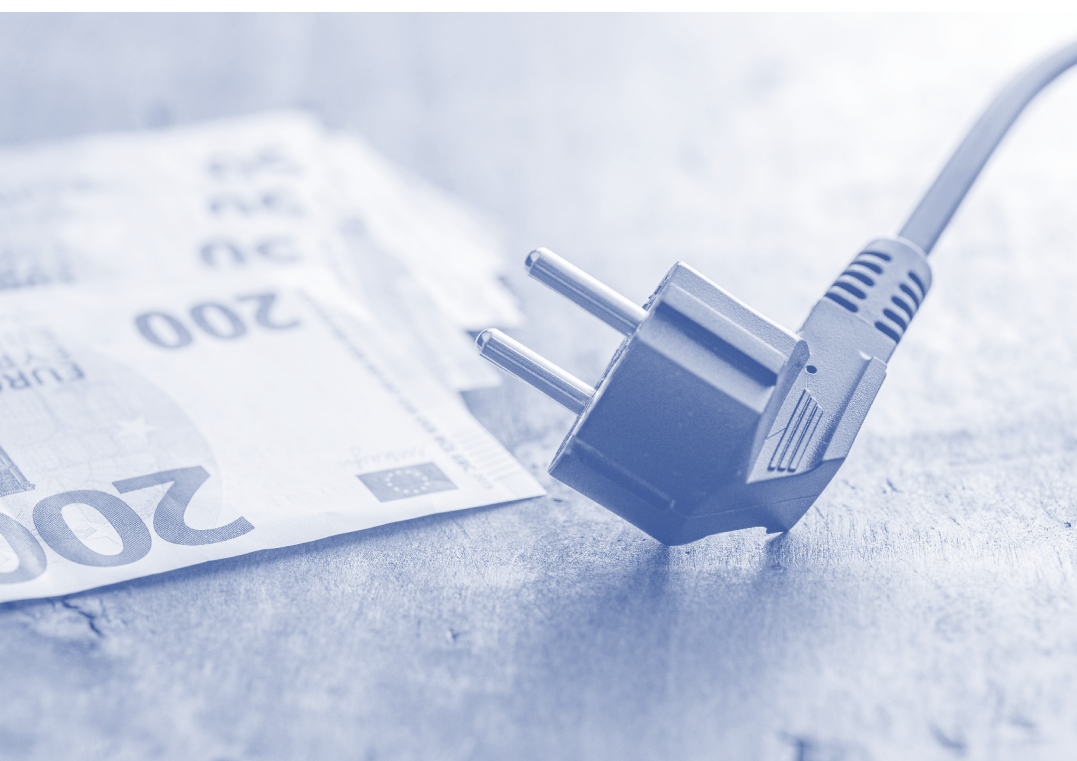
Belgium implemented taxation measures to promote green energy investments, including a reduction in value added tax on solar panels and heat pumps and a pellet premium for households using pellets without a heating allowance or basic gas package (45). Similar approaches were applied in **Latvia** (46) and **Germany** (47).

Albania introduced a law implementing a temporary 'solidarity contribution' for electricity producers during the energy crisis. This measure redistributes surplus earnings to alleviate social impacts. The funds collected are allocated to a state budget for social packages (48).

The regulation on limiting the prices of petroleum products in **Serbia** (49) determines the highest retail prices of petroleum products that the Ministry of Internal and External Commerce can set every Friday.

Energy price caps were introduced in **Croatia** (50), **Czechia** (51), **France** (52), **Greece** (53), **Hungary** (54), **Latvia** (55), the **Netherlands** (56), **Romania** (57), **Serbia**, **Slovakia** (58) and **Slovenia** (59). **Slovenia's** government set a maximum permitted retail price of gas for protected customers (60).

Similarly, maximum prices for heating and related measures were adopted in **Belgium** (61), **Germany**, **Latvia** (62), **Poland** and **Slovenia** (63). For example, **Germany** applied gas and heat price brakes as part of the 'gas and heat price brake', and



there are proposals for price restraints based on recommendations of the Gas and Heat Experts Commission ⁽⁶⁴⁾. The **Polish** government introduced a new mechanism ⁽⁶⁵⁾ to protect vulnerable customers from rising heat supply costs. If heating system costs increase by more than 40 %, companies providing heat will receive special government compensation ⁽⁶⁶⁾.

In addition, legal measures to address the increased energy prices specifically for people at higher risk of energy poverty were adopted in the form of a 'social bonus' or socially targeted energy tax credit in **Belgium, Croatia** ⁽⁶⁷⁾, **France** ⁽⁶⁸⁾, **Italy** ⁽⁶⁹⁾, **Latvia** ⁽⁷⁰⁾, **Luxembourg** ⁽⁷¹⁾ and **Spain** ⁽⁷²⁾.

Another approach focuses on direct payments to those most affected by the rapidly increasing prices of energy, including subventions and allowances to be paid out individually for energy, or targeted to vulnerable groups, such as the energy card introduced in **Romania** ⁽⁷³⁾.

In **Bulgaria**, for example, the newly adopted programme 'Support for vulnerable households – SAFE' ⁽⁷⁴⁾ is expected to support about 320 000 families ⁽⁷⁵⁾. **Finland** passed an act on temporary retroactive compensation for electricity costs for high electricity bills ⁽⁷⁶⁾; the total amount of compensation is EUR 255 million ⁽⁷⁷⁾. **Germany** introduced retroactive support for households using non-grid-bound energies whose prices more than doubled ⁽⁷⁸⁾.

The **Netherlands** has adopted an energy allowance bill ⁽⁷⁹⁾, providing a EUR 1 300 one-off energy supplement for low-income households in 2023 ⁽⁸⁰⁾. This bill follows the implementation of an emergency fund in 2022. The fund approved over 96 000 applications, providing targeted assistance to households with high energy bills and low incomes ⁽⁸¹⁾.

Ireland introduced an energy bill in 2023 that limits electricity generator revenues and redistributes funds to over 2.2 million households ⁽⁸²⁾. **Sweden** provided retroactive support to households due to increased electricity costs, which is estimated to be worth SEK 27 billion ⁽⁸³⁾. **Slovakia** regulated the prices of electricity and gas for vulnerable customers – that is, customers in households ⁽⁸⁴⁾.

Some Member States, including **Belgium** ⁽⁸⁵⁾, **Germany** ⁽⁸⁶⁾, **Greece** ⁽⁸⁷⁾, **Latvia** ⁽⁸⁸⁾, **Lithuania** ⁽⁸⁹⁾, the **Netherlands** ⁽⁹⁰⁾, **Slovakia** ⁽⁹¹⁾ and **Spain** ⁽⁹²⁾ combined price controls and direct subsidies. They did so by implementing price regulations and by introducing allowances and subsidies to support individuals and/or households facing financial challenges because of the rising costs of energy.

The Commission, in its assessment of the national climate and energy plans, stressed in December 2023 that despite these efforts a vast majority of Member States still needed to set out clear objectives and a method for the definition and assessment of vulnerable households and set a target, when needed, to reduce the number of households in energy poverty.⁹³

1.2.2 Adequate and affordable housing

International law recognises the right to adequate housing ⁽⁹⁴⁾ as part of the right to an adequate standard of living ⁽⁹⁵⁾. The EU Charter of Fundamental Rights recognises the right to housing assistance to ensure a decent existence for all those who lack efficient resources ⁽⁹⁶⁾. Principle 19 of the European Pillar of Social Rights recommends that social housing and adequate shelter for the homeless be provided and that vulnerable people be protected from forced eviction ⁽⁹⁷⁾. Parties to the European Social Charter are bound by Article 31 ⁽⁹⁸⁾ to take measures to promote access to adequate housing,



eliminate homelessness and make the price of housing accessible to those without adequate resources ⁽⁹⁹⁾.

The Gijón Declaration ⁽¹⁰⁰⁾ underlined the need for policies to ensure decent housing access that focused on energy poverty reduction and improving housing quality ⁽¹⁰¹⁾. The proposed revision of the directive on the energy performance of buildings aims to ensure a reduction in energy bills and the protection of tenants, while targeting vulnerable consumers and safeguarding tenants against eviction and disproportionate rent increases following a renovation ⁽¹⁰²⁾.

A report by the European Foundation for the Improvement of Living and Working Conditions shows that the cost-of-living crisis, specifically increased bills and rental prices, can lead to homelessness, housing insecurity and inadequacy, and financial strain, as well as young people not leaving their parental home ⁽¹⁰³⁾. A non-governmental organisation (NGO), the European Federation of National Organisations Working with the Homeless, estimates that at least 895 000 ⁽¹⁰⁴⁾ people were homeless in 2023 in the EU ⁽¹⁰⁵⁾. The European Platform on Combatting Homelessness aims to prevent evictions and ensure that no one sleeps rough for lack of emergency accommodation ⁽¹⁰⁶⁾.

Whereas, on average, housing costs took up 19.6 % of the disposable income of European households, according to the latest data in 2022, for households living below the poverty line, these costs took up 37.9 % ⁽¹⁰⁷⁾. The housing cost overburden rate ⁽¹⁰⁸⁾ shows that in 2022 in the EU 10.6 % of the populations of cities lived in a household where total housing costs represent more than 40 % of disposable income, while the corresponding rate for rural areas was 6.6 % ⁽¹⁰⁹⁾. Private rental market tenants are in a particularly precarious situation, with 46 % among them feeling at risk of needing to leave their accommodation in the next three months because they can no longer afford it ⁽¹¹⁰⁾. According to Eurostat data, arrears in mortgages, rent, utility bills and hire purchases have increased since 2019 ⁽¹¹¹⁾.

Rising inflation rates also affected service providers that support people facing homelessness and housing exclusion; for example, in Germany, support service providers are facing an increased number of users, higher electricity bills and service limitations ⁽¹¹²⁾. In addition, in Italy, increased

energy costs are significantly affecting homelessness organisations' budgets ⁽¹¹³⁾.

Housing policies remain within the competence of Member States. Member States implemented legal and policy measures in 2022 and 2023 to protect housing rights, mitigate increased costs and increase energy efficiency in existing and new buildings ⁽¹¹⁴⁾.

For example, **Ireland** committed EUR 90 million of its 2024 budget to the retrofitting of social housing to reduce energy bills ⁽¹¹⁵⁾. The **Greek** 'Exoikonomo 2023' ⁽¹¹⁶⁾ programme offers grants and loan interest subsidies to homeowners for energy-saving interventions, with the aim of renovating 105 000 homes by 2025, while the programme 'My home' ⁽¹¹⁷⁾ grants low interest loans for young people for buying a new home. **Cyprus** announced support measures in October 2023, including the installation of photovoltaic systems for small and medium-sized houses without capital upfront payment ⁽¹¹⁸⁾.

FRA has identified measures that have been specifically adopted to introduce or readjust housing benefits, rent subsidies or tax credits to cover the increasing housing costs in **Croatia** ⁽¹¹⁹⁾, **Czechia** ⁽¹²⁰⁾, **Germany** ⁽¹²¹⁾, **Ireland** ⁽¹²²⁾, **Latvia** ⁽¹²³⁾, **Lithuania** ⁽¹²⁴⁾, **Luxembourg** ⁽¹²⁵⁾, the **Netherlands** ⁽¹²⁶⁾, **Portugal** ⁽¹²⁷⁾, **Slovakia** ⁽¹²⁸⁾, **Slovenia** ⁽¹²⁹⁾ and **Sweden** ⁽¹³⁰⁾. Support from other benefits – such as minimum income, pensions and subsistence benefits – can significantly contribute to housing affordability in Member States that do not have specific housing benefits.

FRA has also identified measures for regulating rental prices through the introduction of caps on rent and limits to rental increases in **Austria** ⁽¹³¹⁾, **Denmark** ⁽¹³²⁾, the **Netherlands**, ⁽¹³³⁾, **Portugal** ⁽¹³⁴⁾ and **Spain** ⁽¹³⁵⁾.

A few EU countries, namely **Cyprus** ⁽¹³⁶⁾, **Ireland** ⁽¹³⁷⁾ and **Italy** and introduced specific housing tax incentives. For example, in **Italy** ⁽¹³⁸⁾, people younger than 31 years with an annual income below EUR 15 000 are given a tax deduction for the first 4 years of a new rental contract ⁽¹³⁹⁾.

FRA has identified additional measures for housing cost relief, for instance the state financing of rental guarantees in **Luxembourg** ⁽¹⁴⁰⁾, the exemption of flat seekers from real estate agents' fees in **Austria** ⁽¹⁴¹⁾ and the compensation of home loan payments in **Estonia** ⁽¹⁴²⁾.

Some EU countries implemented targeted housing measures specifically for vulnerable groups.

For example, the **Swedish** government proposed an extension of the temporary supplementary allowance for families with children within the housing allowance until 30 June 2024, on the previously increased level from 25 % to 40 % of the preliminary housing allowances ⁽¹⁴³⁾. **Slovenia's** government budgeted EUR 18 055 000 to freeze residence hall fees for secondary and higher vocational education students and university students staying in subsidised accommodation ⁽¹⁴⁴⁾. In **Denmark** ⁽¹⁴⁵⁾, **Croatia** ⁽¹⁴⁶⁾, **Lithuania** ⁽¹⁴⁷⁾, the **Netherlands** ⁽¹⁴⁸⁾ and **Portugal** ⁽¹⁴⁹⁾, the beneficiaries of social housing and minimum guaranteed income also benefited from specific housing measures. In **Croatia** ⁽¹⁵⁰⁾, **Cyprus** ⁽¹⁵¹⁾ and **Greece** ⁽¹⁵²⁾, housing support measures were introduced that explicitly target people with disabilities or carers of people with disabilities, while in **Czechia** ⁽¹⁵³⁾ they target beneficiaries of temporary protection from Ukraine.

Although FRA survey data consistently show that the majority of Roma face housing deprivation ⁽¹⁵⁴⁾, only a few EU countries have taken specific measures to address Roma housing needs. For example, **Finland's** third national Roma policy for 2023–2030 aims to tackle discrimination and racist behaviour against Roma in the housing market, improving access to housing advisory services and promoting neighbourhood mediation ⁽¹⁵⁵⁾. In **Croatia**, the annual programme for housing care and improvement of living conditions for members of the Roma national minority recorded a significant decrease (47 %) in the rate of severe material deprivation and housing deprivation. It also saw an improvement in access to in-home drinking water (14 %) for members of the Roma national minority since 2019 ⁽¹⁵⁶⁾.



PROMISING PRACTICE

Luxembourg – regular census of homeless people

Luxembourg's Ministry of Family Affairs, Integration and the Greater Region has commissioned the NGO Inter-Actions to conduct a physical census of homeless people twice a year, involving over 50 social workers, to develop evidence-based measures against homelessness. The first censuses were taken during June and December 2023. The ministry plans to make this action permanent.

*Source: Luxembourg, Ministry of Family Affairs, Integration and the Greater Region, **Deuxième Recensement des Personnes Sans-Abri au Luxembourg**, Luxembourg, 2023.*

Similarly, FRA has identified very few measures specifically targeting migrant and refugee populations in Member States. For more information on these groups, see [Chapter 3](#) of this report.

In 2023, there were several legal and policy developments to prevent and combat homelessness such as increasing the available housing stock and protecting tenants from evictions. For example, in **Austria** ⁽¹⁵⁷⁾ and **Denmark** ⁽¹⁵⁸⁾, measures were adopted to support and provide advice to tenants who are at risk of eviction or loss of their apartment. Similar schemes were also put in place in accordance with newly adopted or continuing local and national strategies to combat homelessness, namely in **Bulgaria** ⁽¹⁵⁹⁾, **Greece** ⁽¹⁶⁰⁾, **Ireland** ⁽¹⁶¹⁾, **Italy** ⁽¹⁶²⁾, **Spain** ⁽¹⁶³⁾, and **Sweden** ⁽¹⁶⁴⁾.

Some Member States discontinued eviction bans that were put in place as a result of the COVID-19 pandemic, despite tenants facing persisting and, in some cases, increasing financial difficulties. For example, in **Italy** in 2022, 100 000 requests for enforced executions were filed, with over 80 % of new judgments on evictions due to being in arrears. In addition, over 30 000 evictions were carried out without social support being provided for those evicted ⁽¹⁶⁵⁾. In **Portugal**, accepted eviction requests increased by 25 % in 2023 compared with 2022 ⁽¹⁶⁶⁾ and, according to media reports, protests were held in several cities ⁽¹⁶⁷⁾.

1.2.3 Right to social security and assistance

According to Article 151 of the Treaty on the Functioning of the European Union (TFEU) and Protocol No 2 annexed to the TFEU, social policy is a shared competence of the EU and its Member States. Social policy includes policies related to the promotion of employment, improved living and working conditions and proper social protection, notably with a view to combating social exclusion. It differs from energy policy, which is part of the internal market policies governed under Article 194 of the TFEU ⁽¹⁶⁸⁾. Article 34 of the EU Charter of Fundamental Rights establishes that the EU and its Member States have an obligation to provide for social security and social assistance when implementing Union law.

The EU has established several new initiatives to mitigate the social impacts of the cost-of-living crisis. For example, a new EU directive on adequate minimum wages requires Member States to adopt the necessary measures by 15 November 2024 ⁽¹⁶⁹⁾. Meanwhile, in January 2023, a Council recommendation on adequate minimum income ⁽¹⁷⁰⁾ was adopted to combat poverty and social exclusion and ensure access to essential services for those with insufficient resources. Additionally, the European Committee of Social Rights noted that, in several states, equal treatment of nationals of other States parties regarding the payment of family benefits is not ensured. This is due to the requirements to be resident for a long time and that family benefits are not covering more than the specified number of families and not applicable to all families.

In September 2023, the Social Protection Committee issued its annual review of the Social Protection Performance Monitor and of developments in social protection policies under the European semester in 2023 ⁽¹⁷¹⁾. The review noted that there has been a substantial policy response to high inflation, in particular through improvements, in terms of adequacy or coverage, to existing social benefits. However, it also pointed out that most of the measures mapped were temporary and most of the temporary measures would be over by the end of 2023.

Moreover, the review notes that some Member States face challenges in identifying and targeting those groups that are in the most vulnerable situations that are in need of support in an emergency. This requires swift policy action, and several Member States have indicated that they will reflect further on how to better target emergency policy measures when needed in the future. This includes relying more on the social benefit system, improving models and data to identify the population to target and smoothening the process of benefit transfers by using automatic procedures.

In January 2023, the Commission published a report on the implementation of the Council Recommendation on access to social protection for workers and the self-employed ⁽¹⁷²⁾. It points to the number of people who, due to their type of employment or self-employment, are left without sufficient access to social protection. There are risks to the welfare of many of these individuals and their families, but also to the economy and society. The report highlights mixed implementation efforts by Member States during the years that followed the adoption of the Council recommendation and the need for further implementation efforts to close existing gaps ⁽¹⁷³⁾.

The 2023 annual review of minimum wages by the European Foundation for the Improvement of Living and Working Conditions also indicates that, despite nominal wage increases, high rates of inflation are preventing increases in minimum wage earners' purchasing power from significantly increasing ⁽¹⁷⁴⁾. The report notes that one of the initial impacts of the minimum wage directive is that the 'indicative reference values' (i.e. 50 %

of average wages and 60 % of median wages) outlined in the directive are increasingly being adopted. These reference values are used explicitly in laws or targets in **Belgium, Bulgaria, Ireland, Slovakia** and **Spain**; are based on actual increases in **Croatia** and **Germany**; and have been adopted as trade union demands in **Czechia, Greece** and the **Netherlands**.

The EU set up the Recovery and Resilience Facility in 2021 to mitigate the impacts of the pandemic and to build more crisis-resilient societies. In its 2023 thematic analysis, the Commission highlights how the Recovery and Resilience Facility contributes to upholding equality and protecting the most vulnerable in a crisis ⁽¹⁷⁵⁾. The analysis shows that the facility's focus is on equality between women and men, disability integration, disadvantaged groups, and migrants' protection and integration. The report also highlights promising practices to foster mutual learning.

The concept of vulnerability is addressed differently in distinct fields of EU law ⁽¹⁷⁶⁾. Some groups face particular vulnerabilities that increase their risk of poverty or social exclusion and require targeted action for their effective protection during a crisis.

Following the implementation of the Council of the European Union's recommendation establishing a European child guarantee ⁽¹⁷⁷⁾, the United Nations Children's Fund issued a research brief in June 2023 underlining the urgency of implementing the child guarantee in view of the cost-of-living crisis ⁽¹⁷⁸⁾. It calls on policymakers to expand child cash benefits, to ensure ring-fencing of child and family benefits when enforcing austerity measures, to provide food and services in schools, and to ensure access to cheap public transport and indoor spaces. In December 2023, a motion tabled in the European Parliament highlighted the gender pay gap (12.7 %), the disproportionate effect of the cost-of-living crisis on women and the over-representation of women in precarious jobs ⁽¹⁷⁹⁾.

Securing the right of people with disabilities to an adequate standard of living is required under Article 28 of the Convention on the Rights of Persons with Disabilities, which has been ratified by the EU and all 27 Member States. People with disabilities should be provided with support to integrate in society ⁽¹⁸⁰⁾ and enjoy an adequate standard of living ⁽¹⁸¹⁾.

The latest Eurostat data (2022) show that people with disabilities face a higher risk of poverty or social exclusion (28.8 %) than people with no limitations (18.3 %) ⁽¹⁸²⁾. It is important to note that people with disabilities are considered to fall under the general category of vulnerable groups/



households. This means that the specific risks they face and their particular needs are not covered in relevant policy initiatives ⁽¹⁸³⁾.

Member States introduced several, mostly temporary, measures to ensure access to essential services and ensure social protection for all. These can be grouped into three categories: (1) indexation of salaries and social benefits, (2) tax reduction and relief and (3) direct subsidies to households and benefits in kind.

The Commission reports that measures with a direct impact on consumer prices constitute around 28 % of the total number of measures implemented, but many measures are untargeted and do not effectively reach vulnerable households ⁽¹⁸⁴⁾. However, many measures have been implemented on a temporary basis, with several having been terminated in 2023 or set to end in 2024. Taxation measures have not systematically been assessed, and only a few available assessments have examined the impact of measures on low-income households and vulnerable groups.

The Austrian Parliament Directorate's Budget Service analysis found that 42 % of relief is allocated to the lowest decile of the income distribution ⁽¹⁸⁵⁾. A study in **Czechia** found that the 'consolidation package' austerity tax changes and rising house prices significantly favour higher-income households ⁽¹⁸⁶⁾.

Direct food supplies were provided in many Member States through both governmental services and charities. For example, **Italy** set up a fund of EUR 1.5 million for 2023 and has set up a fund of EUR 2 million from 2024 onwards for supplying food parcels to people living in extreme poverty ⁽¹⁸⁷⁾. The **Netherlands** allocated, for the first time, EUR 15.8 million from the European Social Fund for food aid, supplies and food banks until 2027 ⁽¹⁸⁸⁾, including free school meals ⁽¹⁸⁹⁾. **Romania** offered food vouchers to vulnerable people every 2 months.

Slovakia has extended its food subsidy for school children and provides food and hygiene packages to those with dependent children in need ⁽¹⁹⁰⁾. **Greece** introduced a pilot project aiming to provide hot meals to schoolchildren ⁽¹⁹¹⁾. In **Sweden** ⁽¹⁹²⁾, the number of visitors to the aid organisation City Mission (Stadsmissionen) seeking food or support increased significantly, as distribution increased by 51 % during the first half of 2023, compared with the same period in 2022. In **Serbia**, prices of flour and bread were regulated in 2023 ⁽¹⁹³⁾. **Hungary** applied price caps to some staple food items between February 2022 and June 2023 ⁽¹⁹⁴⁾. As of September 2022, childcare in **Luxembourg** became free for children aged 4 and above, regardless of household income, with free lunch provided for children in precarious situations ⁽¹⁹⁵⁾.

FRA has identified a range of poverty-reduction measures targeting low-income groups, and measures aimed at helping other groups at risk of social exclusion (e.g. children, people with disabilities, older people, young people, unemployed people, the overindebted, Roma, migrants and refugees). For example, in **Spain**, legislation adopted in April 2023 linked minimum retirement pensions to the at-risk-of-poverty threshold ⁽¹⁹⁶⁾. **Denmark's** finance committee approved funding for 2023 to support civil society organisations supporting vulnerable children ⁽¹⁹⁷⁾. **Sweden** introduced an 'activity card' for children and young people to provide access to and participation in sports, culture and outdoor activities, as well as other social activities ⁽¹⁹⁸⁾.



PROMISING PRACTICE

Czechia – Information website on social benefits

Czechia's government has launched a dedicated website, 'Umbrella against Poverty' ('*Deštník proti drahotě*'), to provide comprehensive and user-friendly information on all of the social benefits available in the country. It targets families and children, beneficiaries of housing assistance, elderly people and other vulnerable groups.

*Source: Czechia, Umbrella against Poverty (*Deštník proti drahotě*).*

FRA's research on child protection systems in 2023 shows that only half of the Member States have taken measures to include child poverty in their strategic policy documents ⁽¹⁹⁹⁾.

State authorities, national human rights organisations and civil society organisations raised concerns regarding the lack of concrete activities and gaps in financial resources to support measures to tackle the cost-of-living crisis for children. For example, NGOs expressed concern about **Austria's** delay in developing a national action plan for implementing the EU child guarantee ⁽²⁰⁰⁾, which was finally adopted in December 2023 ⁽²⁰¹⁾. **Belgium's** Flemish government decided not to index the reformed child benefits automatically any more ⁽²⁰²⁾. The Office of the Ombudsperson for Children in **Croatia** received complaints about lack of income, inability to provide basic food and issues in providing adequate housing conditions ⁽²⁰³⁾.

A lack of proper communication about changes and eligibility criteria ⁽²⁰⁴⁾ and problems resulting from the digitalisation of processes sometimes hindered access to benefits or other extraordinary measures. For example, in **Serbia**, the introduction of a law on electronic social security cards to process the data of beneficiaries for social care rights and services ⁽²⁰⁵⁾ has been controversial. An NGO claimed that, as a result of the implementation of this measure, 35 000 people had lost their social welfare allowance by August 2023 ⁽²⁰⁶⁾.

FRA Opinions

Several studies have underscored the negative impacts on fundamental rights resulting from the cost-of-living crisis – caused by the COVID-19 pandemic and the Russian war of aggression against Ukraine. Inflation, and rising prices in particular, threaten fundamental rights and principles guaranteed by EU law. These include the rights to human dignity and gender equality, to non-discrimination, to respect for private and family life, to housing assistance and to social security and assistance to access services of general economic interest, and the rights of persons belonging to groups at higher risk of poverty.

The cost-of-living crisis continues to affect different groups in distinct ways and to varying degrees. The risks and impacts are not borne equally across societies. Those who are already vulnerable or discriminated against are at greater risk of poverty.

Children, women, young people, racial and ethnic minorities, older persons, LGBTIQ people, Roma and people with disabilities are at the highest risk of experiencing poverty and threats to their fundamental rights. For example, children's risk of poverty or social exclusion has increased significantly, with about 1 million more at risk since 2019.

FRA OPINION 1.1

When planning and implementing policy and legal responses to the cost-of-living crisis, the EU and Member States should take into account that the impact of this crisis is not borne equally. They should also ensure that the responses contribute to fighting poverty and social exclusion.

To do so effectively, such policy and legal measures should be evidence-based using *ex ante* fundamental rights assessments. These should be drawn from robust and reliable data, sufficiently disaggregated to determine their potential impact on the fundamental rights of potentially vulnerable persons such as women, children and young people, ethnic minorities, older people, LGBTIQ people, Roma and people with disabilities.



The EU and its Member States have implemented various legislative and policy measures to address rising prices and the cost-of-living crisis. These include taxation measures, price caps and direct benefits to ensure the right to social security, the right to social assistance, and access to essential goods and services such as energy, housing and food.

However, thorough assessments did not identify any actual impacts of the cost-of-living crisis on the fundamental rights protected by the Charter. In addition, comparable country data on actual needs and measures, and their impact on the rights of vulnerable groups, are limited. Disaggregation of relevant data is often limited to age, sex and income status, with no available disaggregated data for other groups in vulnerable situations, such as people with different ethnic backgrounds, LGBTIQ people, Roma and people with disabilities.

The effectiveness and cost-effectiveness of measures adopted for people in vulnerable situations, including the impact on fundamental rights' enjoyment, remains largely unknown. Initial research indicates that there are significant gaps in implementation. The measures that have been implemented are temporary and untargeted and have not reached vulnerable households. All of this has resulted in leaving some of the most vulnerable groups behind.

The cost-of-living crisis has caused an increase in energy poverty, disproportionately affecting those already at risk of poverty and social exclusion. Disadvantaged groups – such as Roma, immigrants and descendants of immigrants, ethnic minorities, low-income and homeless people – and in particular women in those groups are more likely to encounter difficulties in relation to energy and transport than the general population.

The Council of the European Union calls on Member States to strengthen their responses to high inflation and spiking energy costs. The European Commission has established a set of good practices for structural improvements that Member States can make to address the root causes of energy poverty.

The EU is committed to addressing energy poverty and ensuring a fair and just transition in Europe as part of the European Green Deal. Addressing energy poverty is prioritised in the revised energy efficiency directive (Directive (EU) 2023/1791), which sets out the energy policy requirements to achieve the EU climate targets on tackling and monitoring energy poverty. The European Commission assessment of the national energy and climate plans to implement the European Green Deal shows, that Member States have adopted several measures in relation to energy poverty. But these measures lack clear objectives, vulnerability assessment methods and a strong consumer empowerment framework.



FRA OPINION 1.2

The European Commission should consider including in the next programming period of the European Structural and Investment Funds the appropriate horizontal or thematic enabling conditions to assist in tackling energy poverty.

EU Member States should ensure that policy and legal measures relating to climate targets and energy poverty take into account the fundamental right to social and housing assistance, so as to ensure a decent existence for all those who lack sufficient resources. This would be in accordance with the rules laid down by Community law and national laws and with practices to combat social exclusion and poverty.

When developing revised national climate and energy plans, Member States are invited to take into account the relevant Commission recommendations. This is to respect upholding the central, transformative promise of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs) to 'leave no one behind'.

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ADDRESSING THREATS TO DEMOCRACY AND CIVIC SPACE: PROMOTING PARTICIPATION AND PROTECTING FREEDOMS OF ASSOCIATION, PEACEFUL ASSEMBLY AND EXPRESSION

2

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EU

25

January

In *De Capitani v Council* (T-163/21), General Court annuls a Council decision not to provide an individual with access to documents that formed part of the legislative file. It rejects the Council's arguments that this would undermine negotiations in the legislative procedure.

10

March

Council adopts conclusions on the role of the civic space in protecting and promoting fundamental rights in the EU, inviting Member States to safeguard and promote an enabling environment for civil society organisations and human rights defenders, to protect the civic space, to tackle challenges related to funding and to enable civil society organisations and human rights defenders to contribute at relevant steps of decision-making processes.

16

European Parliament adopts a resolution on the EU guidelines on human rights defenders (2021/2204(INI)), calling for a strengthened and more consistent application of the guidelines to as wide a range of defenders as possible, using all available tools.

15

June

European Parliament completes an investigation into the use of Pegasus and equivalent surveillance spyware and adopts a resolution (2023/2500(RSP)) describing the extent of the issue. The resolution also contains recommendations, based on international standards, for specific EU Member States and for the Commission and Member States in general to take action to deal with the challenges posed by such tools.

5

July

European Commission publishes its annual rule of law report (COM(2023) 800 final). The chapter 'Other institutional issues linked to checks and balances' covers civic space developments.

5

September

European Commission proposes a directive on European cross-border associations, aiming to promote freedom of movement and an enabling environment for civil society by laying down measures for establishing and operating European cross-border associations.

28

November

European Commission proposes new EU rules to combat the facilitation of the unauthorised entry, transit and stay of migrants (COM(2023) 755 final). The proposed directive principally targets criminal conduct (facilitation) for financial or material benefit. The new rules should eliminate the risk of targeting and criminalising humanitarian actors for migrant smuggling in line with international law.

30

European Parliament and Council reach a provisional agreement on a proposed directive on countering abusive lawsuits against public participation (16344/23).

12

December

European Commission presents the Defence of Democracy package, consisting of a directive aimed at improving the transparency of interest representation services (2023/0436), a recommendation on promoting the engagement and effective participation of citizens and civil society organisations in public policymaking processes (C(2023) 8627) and a recommendation on inclusive and resilient electoral processes in the EU and enhancing the European nature and efficient conduct of the elections to the European Parliament (2023/2829).

14

Council and European Parliament reach a provisional deal on the corporate sustainability due diligence directive (15024/1/22), which sets obligations for large companies regarding actual and potential adverse impacts on human rights (including human rights defenders) and the environment with respect to their own operations, those of their subsidiaries and those carried out by their business partners.

15

Council and European Parliament reach a provisional agreement on the European Media Freedom Act, which will require Member States to respect editorial independence, ensure the independent functioning of public service media, guarantee the transparency of media ownership and take other measures to enhance transparency.

Council of Europe and UN

January

27

The Council of Europe Commissioner for Human Rights issues a Human Rights Comment drawing attention to the risks to human rights and democratic societies associated with the unregulated use of highly intrusive spyware and calling on Member States to impose a moratorium until a targeted and human-rights-compliant legal framework is in place.

February

14

In *Halet v Luxembourg* (21884/2018), European Court of Human Rights clarifies its jurisprudence on whistle-blowers, finding a violation of freedom of expression in the case of an individual who had been punished for leaking documents in the context of a tax scandal.

March

16

At the annual meeting of the Global Alliance of National Human Rights Institutions, the UN High Commissioner for Human Rights asks UN member states that have not yet done so to take steps to establish national institutions in line with the Paris Principles and requests that others strengthen and support existing national human rights institutions, including through adequate resources.

April

5

Council of Europe Committee of Ministers adopts Recommendation CM/Rec(2023)4 to Member States on Roma youth participation.

24

Council of Europe Commissioner for Human Rights calls for a 'renewed commitment to human rights' in their annual report. The report highlights that civic space and the space to exercise fundamental freedoms have continued to shrink.

28

Parliamentary Assembly of the Council of Europe Resolution 2498 (2023) on young people and the media emphasises the importance of safe social media use for young people in promoting democratic engagement and protection from harmful content.

May

15

In *Sanchez v France* (45581/15), European Court of Human Rights finds that the decision of the French courts to fine an elected politician for failing to delete anti-Muslim hate comments by third parties from his Facebook wall did not violate freedom of expression.

17

Council of Europe, in its Reykjavik Summit declaration entitled *United around Our Values*, reaffirms that civil society is a prerequisite for a functioning democracy and commits itself to supporting and maintaining a safe and enabling environment in which civil society and human rights defenders can operate free from hindrance, insecurity and violence.

June

2

Council of Europe Commissioner for Human Rights issues a Human Rights Comment entitled *Crackdowns on peaceful environmental protests should stop and give way to more social dialogue*. It calls on member States to ensure that the rights to freedom of peaceful assembly and freedom of expression, which include the right to demonstrate and to protest in defence of the natural environment, can be exercised safely.

5-7

EU and Council of Europe joint project 'CP4Europe: Strengthening National Child Participation Frameworks and Action in Europe' holds its final conference 'NextGen Europe: Unleashing Youth Voices'.

23

Council of Europe Parliamentary Assembly adopts a resolution (RES. 1509) and a recommendation (REC. 2257) on transnational repression as a growing threat to the rule of law and human rights.

4

In *Glukhin v Russia* (11519/20), European Court of Human Rights finds that the conviction of a solo protester in the Moscow underground had violated his freedom of expression and that the investigation into his peaceful expressive act using facial recognition technology had violated his right to privacy.

7

In *Hurbain v Belgium* (57292/16), European Court of Human Rights finds that the right to freedom of expression of a newspaper publisher was not violated because of a court order to remove a newspaper article from 20 years earlier, which mentioned the name of an individual responsible for a fatal accident.

27

UN Special Rapporteur on human rights defenders issues a report entitled *Pathways to Peace: Women human rights defenders in conflict, post-conflict and crisis-affected settings* (A/78/131), including individual cases and recommendations on providing a safe and enabling environment in which defenders can carry out their work.

July

UN Special Rapporteur on freedom of association and assembly issues a report entitled *Importance of the rights to freedom of peaceful assembly and of association in advancing sustainable peace and democratic transitions* (A/78/246), highlighting the role that the rights to freedom of peaceful assembly and of association play in ensuring peace and democratic transition, and the vital contributions by civil society and social movements.

6

Council of Europe Committee of Ministers adopts Recommendation CM/Rec(2023)6 to Member States on deliberative democracy. It provides a set of best practices and guidelines to ensure that where countries make use of citizens' assemblies and similar participatory mechanisms, the processes are properly managed and implemented.

September

5

Council of Europe Committee of Ministers adopts Recommendation CM/Rec(2023)9 to Member States on the active political participation of national minority youth.

10

In *Internationale Humanitäre Hilfsorganisation e. V. v Germany* (11214/19), European Court of Human Rights finds no violation of the freedom of association due to the proscription of the applicant association, entailing its dissolution and asset confiscation, due to considerable financial donations to charitable societies linked to the terrorist organisation Hamas.

11

Council of Europe Parliamentary Assembly adopts Resolution 2513 (2023) on Pegasus and similar spyware and secret state surveillance, condemning state authorities' use of spyware for political purposes and calling for investigations in relevant Member States and measures to prevent the future abuse of such tools.

October

8

Council of Europe steering committee on anti-discrimination, diversity and inclusion published a *Study on preventing and combating hate speech in times of crisis*. It proposes legal and non-legal measures that can be taken to address hate speech and disinformation in line with CM Rec(2022)16 on combating hate speech.

16

Council of Europe Steering Committee for the Rights of the Child (CDENF) approved the report *Children as defenders of human rights: A study on Council of Europe member states*.

29

Council of Europe Steering Committee on Media and Information Society issues a guidance note on countering the spread of online mis- and disinformation through fact-checking and platform design solutions in a human-rights-compliant manner, proposing human-rights-compliant strategies to counter online mis- and disinformation.

November

15

Council of Europe Secretary General presents a roadmap on civil society engagement with the Council of Europe to the Committee of Ministers.

18

In *Associação Sindical dos Profissionais da Polícia (ASPP/PSP) v. Portugal* (C No 179/2019), the European Committee on Social Rights considers that the guarantees provided by domestic law to protect trade union representatives against prejudicial acts, including their transfer, were not effectively implemented in the context of trade union representatives who work within the Special Police Unit on a secondment agreement basis, in violation of Article 28 of the Charter. The committee also held that the situation constituted a violation of Article 5 of the Charter.

December

Meaningful participation of individuals and civil society in public affairs is a crucial tool to ensure full implementation of fundamental rights. It ensures that everyone's rights are considered when drafting laws and policies. Evidence shows, however, that there is often too little time or opportunity for meaningful comment on or engagement with draft legislation. This is particularly the case when accelerated procedures are used or when bills cover multiple issues. The European Commission has issued a new recommendation to address shortcomings in national participation and consultation procedures.

Both attacks by third parties and excessive state interference – in particular against the rights to freedom of association, peaceful assembly and expression – continue to threaten the space for civil society. This includes strategic lawsuits targeting media and civil society organisations, as well as restrictions proposed for or imposed on the freedom of peaceful assembly. The European Commission has acted by proposing EU legislation on lawsuits aimed at intimidating and draining the resources of civil society organisations and media. Moreover, the Commission has proposed legislation both on media freedom and to facilitate associations' cross-border operations.

2.1 PARTICIPATION IN PUBLIC AFFAIRS: A CRUCIAL FUNDAMENTAL RIGHTS TOOL

This chapter analyses the implementation of the right to participation at the national level through the lens of the new European Commission recommendation on participation, which was issued in 2023. It also looks at the implementation of the three main rights that form the core of a vibrant civic space: the freedoms of association, peaceful assembly and expression.

Both effective participation mechanisms and full implementation of the core rights protecting a vibrant civic space are crucial in ensuring that our democracies function well. It is clear from the evidence, however, that much needs to be done to protect civic space and ensure meaningful participation.

This chapter will refer to civil society organisations (CSOs) throughout, in line with the founding regulation of the European Union Agency for Fundamental Rights (FRA), which requires FRA to cooperate with such organisations. FRA's founding regulation defines CSOs as 'non-governmental organisations dealing with human rights, trade unions and employer's organisations, relevant social and professional organisations, churches, religious, philosophical and non-confessional organisations, universities and other qualified experts of European and international bodies and organisations' ⁽¹⁾.

2.1.1 Participation in practice

Citizens may participate in public affairs through elections, either by standing for election or by voting. Articles 39 and 40 of the EU Charter of Fundamental Rights regulate the electoral rights of EU citizens. At the same time, the right to participation in public affairs goes beyond elections. As the UN Human Rights Committee points out regarding Article 25 of the International Covenant on Civil and Political Rights (ICCPR) (i.e. the right to participate in public affairs, voting rights and the right of equal access to public service), 'Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves' ⁽²⁾. The right of persons with disabilities to participation in public and political affairs is also recognised in the UN Convention on the Rights of Persons with Disabilities ⁽³⁾.



At the EU level, the right to public participation is acknowledged in Article 10 of the Treaty on European Union, which guarantees the right to take part in the democratic life of the EU. Article 11 of the Treaty on European Union, in addition, requires giving 'citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action'. A series of Charter rights reinforce this right, such as the right to good administration (Article 41), the right of access to documents (Article 42), the right to refer to the European Ombudsman (Article 43) and the right to petition the European Parliament (Article 44). The EU promotes the rights of the child as stated in Article 3(3) and further developed in the EU Charter of Fundamental Rights (Article 24). The right to be heard has been put into practice with the set-up of the EU Children's Participation Platform.

The EU is also mandated under Article 165(2) of the Treaty on the Functioning of the European Union to take particular measures to promote the participation of young people. This has been implemented in a series of Commission actions, including an EU youth dialogue (4).

A lack of implementation of the right to participate in political life can have a particularly negative effect on the rights of people in situations of vulnerability, such as people with disabilities, young people and members of ethnic or national minority groups, as FRA's 2023 civil society update report outlines (5). Women also remain under-represented in political decision-making. For example, only 33 % of members of national parliaments in the EU are women (6). This limits their impact on policymaking. More broadly, without wide-ranging representation, key issues are not taken into account. This risks potential fundamental rights violations, or opportunities being missed to promote fundamental rights.

This is even more important considering that the EU and its Member States, when acting within the scope of EU law, are obliged not only to respect, but also to promote, the rights and principles listed in the Charter (Article 51). A lack of participation of relevant civil society actors risks, for example, provisions or legislation not adequately taking into account the applicable EU and international human rights law. A new Council of Europe (CoE) recommendation on the active participation of minority youth provides detailed guidance on involving this group. The organisation also created a web platform on child participation with a range of tools, including an assessment tool on child participation (6). A CoE report on children's rights shows that CoE Member States would benefit from technical assistance to strengthen both the legal framework related to child human rights defenders and its implementation (7).

2.1.2 Room for improvement in participation

In its conclusions of March 2023, the Council invites the Commission to (8):

[e]mpower CSOs and human rights defenders by maintaining an open, regular, transparent and inclusive dialogue, and by continuing efforts to create adequate mechanisms and guidelines to enable CSOs and human rights defenders to contribute at relevant steps of decision-making processes, including in initiatives impacting them or fundamental rights.

The European Commission held a series of seminars in 2023, at which around 80 participants made proposals for improving relevant EU policies (see box below). They represented public authorities in the Member States; CSOs from the European, national and grassroots levels; and human rights defenders, EU institutions and agencies, international organisations, national human rights institutions and donors (9).

European Commission seminars on civic space

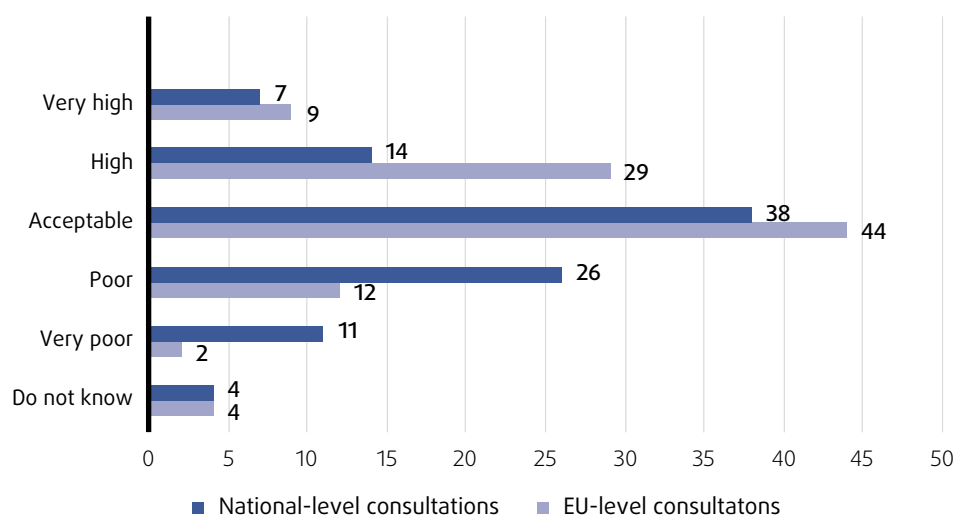
In the European Commission seminars on a thriving civic space for upholding fundamental rights, participants identified the following actions that could improve the participation and consultation of civil society:

- enhance or set up an institutionalised framework that enables CSOs and human rights defenders to contribute effectively / provide effective contributions to public policy and decision-making processes;
- agree on common guidelines on engagement for EU institutions (the European Commission, the Council of the European Union and the European Parliament), ranging from the co-creation and setting of the agenda to a participatory process and proper feedback mechanisms;
- identify, provide resources for and train staff in the European institutions on how to meaningfully engage with stakeholders, including CSOs;
- provide tailored consultations to better enable the participation of smaller, grassroots CSOs in EU policy- and decision-making, in addition to EU networks;
- ensure the wide dissemination of public consultations, including via a more active representation of the Commission in Member States with a view to promoting EU public consultations and calls for evidence;
- ensure adequate financial and technical support for CSOs and human rights defenders specifically to take part in participation, consultation and dialogue opportunities.

Source: *European Commission, Summary Report – A thriving civic space for upholding fundamental rights in the EU: Looking forward, Brussels, 2023.*

The participants in FRA's civic space consultation in 2023 were generally satisfied with EU consultation and participation procedures, although they pointed to the need for improvement in certain areas. However, they were generally more critical of national participation and consultation processes (Figure 2.1).

FIGURE 2.1: QUALITY OF CONSULTATION PROCESSES AT THE NATIONAL AND EU LEVELS, 2023 (%)



Source: FRA civic space consultation in 2023.

◀ NB:
The question that was asked was 'Think about the last consultation process [at the national/EU level] that you participated in. How would you rate its overall quality?'
N = 122 for the national level.
N = 101 for the EU level.

Previous FRA reports have shown both challenges and positive and innovative consultation and participation practices at the Member State level ⁽¹⁰⁾. It is clear that, despite efforts to improve the situation, significant shortcomings continue to be identified, as the European Commission also notes in its rule of law report for 2023 ⁽¹¹⁾.

The Commission sets out a range of ways in which the Member States can enhance their participation and consultation processes in its December 2023 recommendation on promoting the engagement and effective participation of citizens and CSOs in public policymaking processes ⁽¹²⁾. This recommendation forms part of its overall Defence of Democracy package, which aims to 'help build democratic resilience by encouraging citizens and civil society organisations' participation in our democracies' ⁽¹³⁾. It is worth placing some of the CSOs' concerns about national practices in the context of this recommendation to identify areas for improvement.

First, the Commission recommendation (point 5(e)) calls on Member States to:

provide appropriate and necessary information regarding a specific participation exercise in a timely manner and in easily accessible formats, including the context and the type of measures envisaged, the procedures, the timeline for participation, the authority responsible for the exercise and its contact details.

This was an issue in some Member States and accession countries. For example, **Slovakia** amended its environmental impact legislation with the aim of simplifying and optimising investment projects and reducing delays ⁽¹⁴⁾. However, the President of Slovakia and civil society criticised the law for lowering the standards of public consultation, violating international standards, poor drafting and insufficient consultation. The president even vetoed it, although the veto was overridden ⁽¹⁵⁾.

In **Croatia**, the Information Commissioner criticised the general policy of shortening consultations, especially local consultations, and the non-publication of consultation reports and plans. In addition, CSOs criticised what they perceived as often merely a formal process of consultation ⁽¹⁶⁾. The Bar Association of **Slovenia** also noted that it is often given insufficient time to prepare a response to draft laws ⁽¹⁷⁾.

In **Latvia**, the Association of Journalists and the Ombudsman criticised the lack of consultation and the insufficient time given for comment when amending the Freedom of Information Law to reclassify a category of documents as ‘state secrets’ ⁽¹⁸⁾. In **Albania**, public consultations are considered ‘overly formalised and due follow-up on substance is not always ensured through a sufficiently meaningful dialogue’ ⁽¹⁹⁾.

Second, the Commission recommendation stresses that there should only be ‘proportionate and clearly communicated limitations’ to the overall framework on regular participation and consultation processes (point 5(c)). In a number of Member States, the use of urgent procedures can reduce the duration of public consultations or even cancel them. For example, in **Romania**, the government used urgent procedures 129 times in 2023 (down from 192 in 2022 and 145 in 2021). The Ombudsman, with support from CSOs, urged the Constitutional Court to rule on the constitutionality of a new law that allows the government to declare legislation urgent to bypass the regular consultation process ⁽²⁰⁾.

Civil society levelled similar criticism in **Slovenia**, citing as an example the passage of key amendments to the legislation on financing political parties outside the committee procedure ⁽²¹⁾. A non-governmental organisation (NGO) in **Greece** highlights a number of cases of amendments to bills that did not allow sufficient time for public consultation ⁽²²⁾. In **Slovakia**, both CSOs and the president criticised the government for using a fast-track procedure to amend criminal legislation on corruption ⁽²³⁾.

Third, the Commission recommendation calls on Member States to ‘envisage sufficient resources and time to ensure meaningful impact and take into account the holiday seasons in national contexts to allow appropriate participation’ (point 5(h)). Such meaningful participation is further complicated when bills contain a range of different measures.

For example, the **Greek** Parliament’s final bill passed in 2023 includes last-minute provisions for the needs of 13 ministries. It covers amendments to Recovery Fund programmes and comprises 98 articles, each of which regulates different issues ⁽²⁴⁾. Similarly, in **Estonia**, the Chancellor of Justice (the national human rights institution) expressed concerns about the practice of combining amendments to different laws in one bill, which can lead to confusion as to what legal changes are actually being passed, and asked legislators not to accept this practice ⁽²⁵⁾.

2.2 FREEDOMS OF ASSOCIATION, PEACEFUL ASSEMBLY AND EXPRESSION: CORE TOOLS FOR A VIBRANT CIVIC SPACE

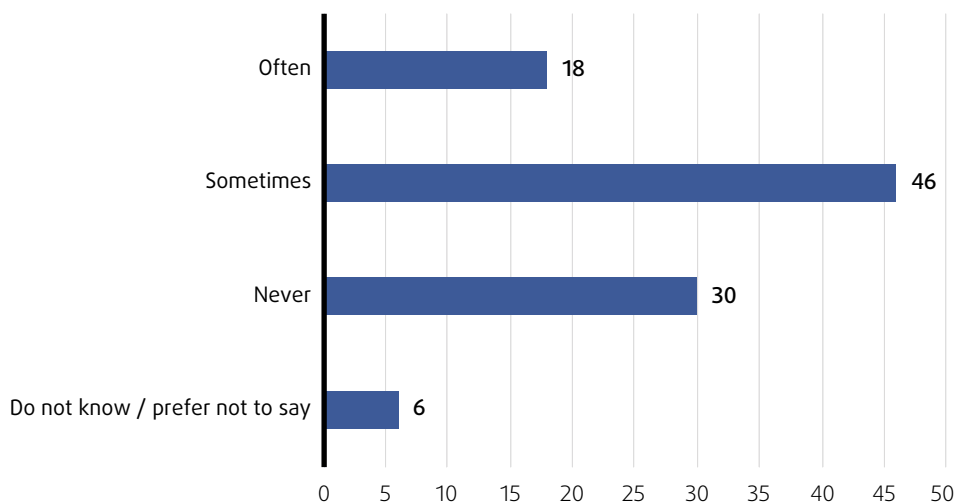
The UN guidance note on the promotion and protection of civic space points out that ‘civic space is the environment that enables people and groups – or “civic space actors” – to participate meaningfully in the political, economic, social and cultural life of their societies’ ⁽²⁶⁾. The Human Rights Committee considers that ‘[t]his participation is supported by ensuring freedom of expression, assembly and association’. The UN Declaration on Human Rights Defenders confirms this approach, as the declaration also places these rights at the centre of the protection of human rights defenders ⁽²⁷⁾.

At the EU level, Articles 11 (freedom of expression and information) and 12 (freedom of assembly and association) of the Charter protect these rights. Since these rights correspond to Articles 10 and 11 of the European Convention on Human Rights (ECHR), the Charter (Article 52) requires that their ‘meaning and scope’ are the same as that of the ECHR.

Barriers and threats remain for civil society organisations

Overall reports on obstacles to human rights activities in FRA's civic space consultation in 2023 are comparable to those in 2022. Among the respondents, 18 % report often facing barriers to their human rights activities and 46 % report sometimes facing such barriers, while 30 % report never facing such barriers (Figure 2.2) ⁽²⁸⁾.

FIGURE 2.2: FREQUENCY OF FACING OBSTACLES TO HUMAN RIGHTS ACTIVITIES, 2023 (%)

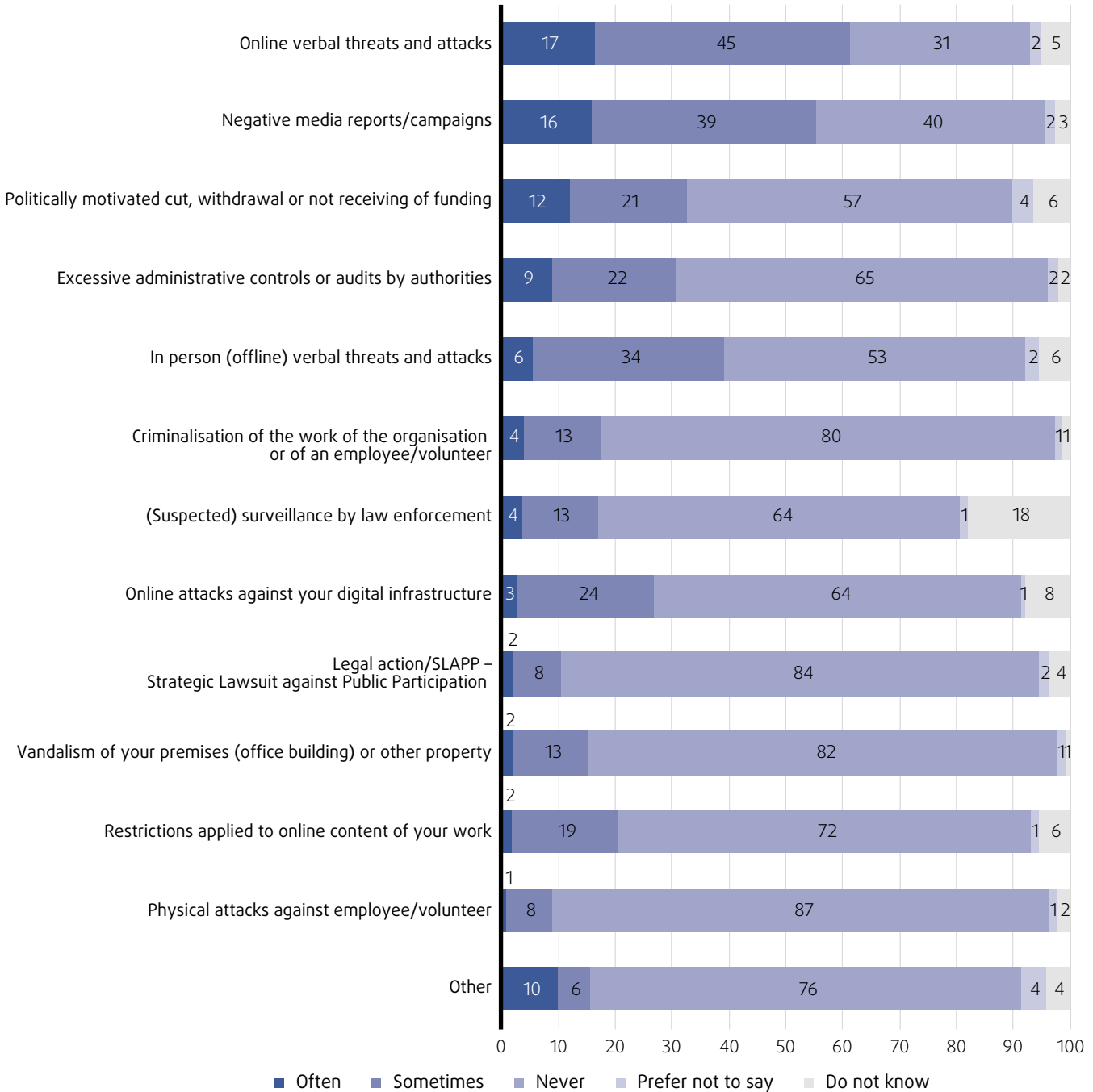


Source: FRA civic space consultation in 2023.

◀ NB:
The question that was asked was 'In the past 12 months, how often did your organisation face any barriers in conducting your activities for human rights?' N = 267.

Moreover, a large proportion of respondents report a range of different forms of threats and attacks, such as negative media reports, online verbal threats or harassment, excessive administrative checks or audits, politically motivated funding cuts and offline verbal threats or harassment. Online threats are up, from 44 % in 2022 to 62 % in 2023 (Figure 2.3) ⁽²⁹⁾.

FIGURE 2.3: CIVIL SOCIETY EXPERIENCES OF THREATS AND ATTACKS IN THE EU IN 2023 (%)



Source: FRA civic space consultation in 2023.

▲ NB:

The question that was asked was 'In the past 12 months, how often did you or any of your employees/volunteers face the following?' N = 217-224, depending on the number of respondents who provided an answer to each item. In addition, 70 organisations answered 'Other'. SLAPP, strategic lawsuit against public participation.

2.2.1 Freedom of association: verbal and physical attacks – legal challenges continue

The freedom of association constitutes 'one of the essential bases of a democratic and pluralist society, inasmuch as it allows citizens to act collectively in fields of mutual interest and in doing so to contribute to the proper functioning of public life' (30). It protects associations of a wide range of types, including NGOs, political parties, trade unions and others (31).

Restrictions should be prescribed by law and necessary for a legitimate aim (Article 11(2) of the ECHR and Article 19(3) of the ICCPR). They should be carefully weighed and based on compelling evidence (32). Associations must



be able to operate without unjustified state interference ⁽³³⁾. Examples of interference that requires justification are measures that limit an association's capacity to receive financial resources or make them subject to obligations of declaration and publication. These can include measures that create a negative image of the association or expose the association to the threat of penalties, such as dissolution ⁽³⁴⁾. The prohibition and banning of associations should be last resorts ⁽³⁵⁾. It should be possible to associate with others without registration ⁽³⁶⁾. The state has a duty to protect associations, for example by protecting them from third-party interference ⁽³⁷⁾. It also has an overall duty to create an enabling environment for both informal and formal associations ⁽³⁸⁾.

Verbal and physical attacks persist

CSOs in the EU continue to face verbal attacks by politicians and third parties and, in some cases, even government officials, as the 2023 FRA update on 'Protecting civil society' describes ⁽³⁹⁾.

The Federal Institute for the Protection and Promotion of Human Rights published a study on threats against CSOs in **Belgium**, concluding that about two thirds of CSOs had received threats, online or offline, in 2021–2022 ⁽⁴⁰⁾. In **Hungary**, some media outlets continued to label certain NGOs as 'Soros' organisations, linking them to the Hungarian-American philanthropist who supports liberal democratic causes, and whom the Hungarian government has opposed and criticised. A major lesbian, gay, bisexual, transgender and intersex (LGBTI) rights organisation was accused of supporting paedophilia ⁽⁴¹⁾. In **Serbia**, a prominent human rights defender was physically attacked, another attack took place on the premises of a major LGBTI organisation and certain politicians branded CSOs as 'traitors' ⁽⁴²⁾.

Concerns persist among CSOs regarding surveillance. A case by the NGO Reporters Without Borders concerning the potential use of surveillance techniques employed by the German federal intelligence services was dismissed by the federal administrative court due to lack of sufficient indicators that the plaintiff was affected by surveillance measures. An application to the Federal Constitutional Court is pending ⁽⁴³⁾. A European Parliament recommendation following up on its investigation into the use of Pegasus and equivalent surveillance spyware concludes that government actors in a number of EU Member States have used spyware against a range of groups, including journalists and CSOs. It also highlights that the 'use of spyware on politicians, civil society and journalists has a chilling effect and severely affects the right to peaceful assembly, freedom of expression and public participation' ⁽⁴⁴⁾. In FRA's online consultation, 17 % of CSOs expressed

FRA ACTIVITY

Institutional protection of fundamental rights in times of crises

On 20 and 21 April 2023, the Swedish Presidency of the Council of the European Union organised a high-level conference on institutional protection of fundamental rights in times of crises, in cooperation with FRA. The outcomes of the conference include the following action points on how to foster an enabling environment for human rights actors:

- promote and strengthen the civic space, including by nurturing and upholding freedom of expression and access to information, as well as media pluralism;
- ensure the effective investigation of any attacks against human rights defenders and journalists and prosecute crimes against them;
- facilitate civil society's access to funding, including for advocacy, monitoring and awareness raising;
- put in place UN Paris Principles-compliant, A-status national human rights institutions, providing them with adequate resources and a broad mandate to promote and protect human rights;
- enlarge the group of human rights cities and promote the idea of upholding the rule of law and human rights, including at the local level;
- publicly promote the independence of the judiciary and human rights structures as essential for the checks and balances in a democracy.

Source: Swedish Presidency of the Council of the European Union, **Outcome of the high-level conference on institutional protection of fundamental rights in times of crises**, Lund, 2023.

concern that law enforcement has undertaken surveillance of their activities, which represents a threat to their work. CSOs working in the sphere of migration also faced continuous pressure, including criminal sanctions for assisting refugees (see [Chapter 3](#)).

On the positive side, **Luxembourg** drafted a new association law that removes the requirement to annually submit a list of members and introduces accounting obligations proportionate to the size of the organisation ⁽⁴⁵⁾.

In 2023, the Commission, in response to calls by the European Parliament and others, proposed a directive on European cross-border associations ⁽⁴⁶⁾. If adopted, this directive will introduce a new legal form, the European cross-border association. This could reduce legal and administrative burdens related to obtaining recognition in other Member States, as such associations would be automatically recognised in all of them ⁽⁴⁷⁾.

Concerns about measures to deal with foreign interference

The European Parliament expressed concern about foreign interference in the 2024 European Parliament elections, including the possibility of covert political funding ⁽⁴⁸⁾. The European Commission addresses the latter, among other issues, in its recommendation on strengthening electoral processes in the EU ⁽⁴⁹⁾. The Commission also addresses the overall issue of transparency of foreign influence in EU politics in a proposed directive establishing harmonised requirements on interest representation on behalf of non-EU / European Economic Area countries ⁽⁵⁰⁾.



The proposal sets out that entities that carry out interest-representation activities on behalf of a non-EU country are to be registered in a new transparency registry or in an adapted national transparency registry. Key elements of the data to be recorded, which will be publicly available, include the annual amounts received (to be published according to broad ranges), the non-EU countries concerned and the main goals of the activities. The draft includes a series of safeguards, such as effective judicial review, a harmonised sanction regime limited to administrative fines, independent supervisory authorities, obligations to prevent stigmatisation, and in particular the need to ensure that no adverse consequences arise from being subject to the transparency rules. The directive envisages full harmonisation of the rules within its scope, which would prevent Member States from imposing additional transparency requirements ⁽⁵¹⁾.

CSOs have criticised the lack of an impact assessment, although one was carried out later. They also criticise the proposal as adding an unnecessary

burden on CSOs that receive foreign funding. They note the risk of its arbitrary application in practice, and warn that it could have a chilling effect on their work ⁽⁵²⁾.

Member States continue to consider or pass legislation on foreign interference. For example, **Hungary** has adopted an amendment to its Fundamental Law, ordering the setting up of an independent body for ‘the protection of constitutional identity’ ⁽⁵³⁾. This body, called the Sovereignty Protection Office, is intended to monitor perceived foreign interventions in Hungarian public life by, among others, investigating private individuals, informal groups and legal entities both inside and outside of Hungary ⁽⁵⁴⁾. Its president claimed that its main powers are not investigative, but lie more in the realm of publicity and transparency ⁽⁵⁵⁾.

Several NGOs, however, consider that this law could have a chilling effect and discourage participation in public life ⁽⁵⁶⁾. They argue that the proposed legislation is framed in vague and broad terms, which would give too much scope for classifying actions as serving foreign interests and posing a threat to Hungary’s sovereignty ⁽⁵⁷⁾. They also express concerns that the legislation could target journalists, companies, churches, trade unions and local governments ⁽⁵⁸⁾.

The parliament of the **Netherlands** continued to debate a bill for the transparency of CSOs that which imposes information and reporting obligations on donations ⁽⁵⁹⁾. After CSOs’ criticism of the law as unnecessary, discriminatory and stigmatising, the new version as revised in 2023 covers all donations, not just those from outside the EU, to avoid the risk of stigmatising foreign donations ⁽⁶⁰⁾.

2.2.2 Freedom of peaceful assembly: new restrictions imposed amid climate protest concerns

The freedom of peaceful assembly protects private and public gatherings with a common purpose ⁽⁶¹⁾. The European Court of Human Rights holds that the right to freedom of assembly ‘is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively’ ⁽⁶²⁾.

States have an obligation not to interfere in an excessive and disproportionate manner in such assemblies, for example by dispersing them ⁽⁶³⁾. Restrictions should not, in principle, be placed on the content of expression, but should be based only on the time, place and manner of assemblies ⁽⁶⁴⁾. Bans on assemblies should be a last resort ⁽⁶⁵⁾.

States have a duty to protect such meetings from interference by other parties, although peaceful counterdemonstration should be facilitated ⁽⁶⁶⁾. Only peaceful assemblies are protected, although sporadic acts of violence by some assembly participants do not mean that an assembly is not protected under this right ⁽⁶⁷⁾. Traffic blockages and other hindrances to third parties do not mean that an assembly is no longer peaceful ⁽⁶⁸⁾. Penalties imposed on individuals for unlawful conduct during or in relation to an assembly should be proportionate so as not to have a chilling effect on the freedom of peaceful assembly ⁽⁶⁹⁾. In EU law, the freedom of peaceful assembly may override, under certain conditions, the free movement of goods ⁽⁷⁰⁾.

Overly restrictive (application of) assembly laws

Freedom of peaceful assembly faced similar pressures in 2023 to those in the previous year ⁽⁷¹⁾. First, there were concerns about excessively restrictive legislation.

FRA ACTIVITY

Protecting human rights defenders at risk

Upon the European Parliament’s request, FRA mapped initiatives in 18 Member States that facilitate the temporary entry and stay in the EU of human rights defenders coming from non-EU countries. The report shows that human rights defenders often face serious difficulties in obtaining visas for the EU. It acknowledges good practices that exist in several Member States and concludes that the EU Visa Code is flexible enough to resolve most of the mobility needs of human rights defenders. However, it notes that more needs to be done to implement existing flexibility provisions in practice.

Source: FRA, Protecting Human Rights Defenders at Risk – EU entry, stay and support, Vienna, 2023.

In **Spain**, the Citizen Security Law contains a wide range of restrictions to freedom of peaceful assembly that the Venice Commission has deemed disproportionate. Efforts to reform it have stalled in what CSOs have referred to as a missed opportunity for human rights (72). The National Consultative Commission on Human Rights in **France** criticised the planned use of automated video surveillance during the Olympic Games in 2024, as video surveillance during this event would report on more than was necessary, for example people walking in the wrong direction, crowd movements or excessive densities of people (73). The commission also criticised a proposal to introduce fixed penalties without trial for certain activities (such as obstructing traffic, entering a sports field and graffitiing), arguing that these are potentially excessive restrictions (74).

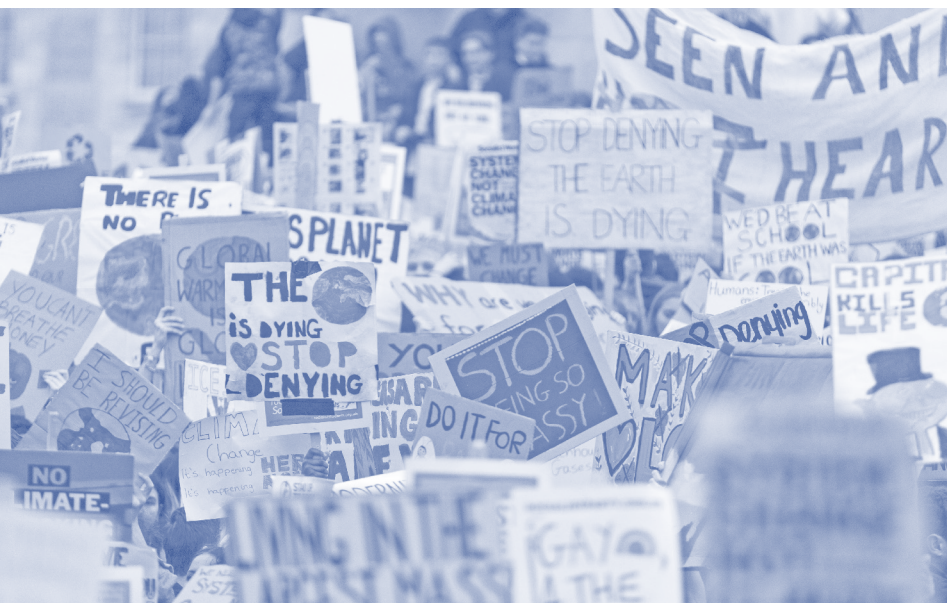
Similarly, in **Italy**, the government proposed that several people together blocking roads or railways should become a criminal offence (75). Also in **Italy**, CSOs criticised a law setting out prison sentences for illegal rave parties, arguing that this is overly broad and disproportionate (76).

Second, there were serious concerns about the application of the law. In the **Netherlands**, reports highlight the practice of regulations and restrictions being imposed on demonstrations (77).

CSOs criticised **German** police for their use of ‘pain grips’ and the practice of ‘kettling’ demonstrators – that is, blocking protesters from leaving protest sites (78). In **Hungary**, it was alleged that the authorities used coercive measures without warning to disperse an assembly of students and charged students with the offence of hiding their faces (79). The Hungarian police noted that they did give such warnings to demonstrators (80). In **France**, the public defender of rights highlighted illegal arrests and the authorities’ disproportionate use of force in protests against pension reforms (81).

Challenge of climate protests: disparate approaches

Climate-related protests also continued and the reaction to such protests differed both in nature and in the assessment of what constitutes a proportional reaction. Authorities took various measures to deal with demonstrations that blocked highways or major traffic arteries. For instance, the authorities in **Germany** placed climate activists under surveillance and carried out home searches (82). Activists were subjected to preventive detention and prison sentences, sometimes of multiple months (83). Authorities also banned specific types of climate protests in advance (84). In **Austria**, a CSO accused the police of using excessive force after they used pepper spray and batons against climate protesters (85).



In the **Netherlands**, large-scale climate protests took place. Police arrested 768 climate activists in one protest on the motorway (86). The public prosecutor’s office imposed various orders on activists to stay away from a particular highway and its surroundings, but a court overturned three such cases, as those activists had not previously engaged in illegal blockades (87).

In one road-blocking case in **Finland**, no punishments were given to protesters and, in a separate incident, a police commander was fined for ordering the use of pepper spray on climate activists (88). In **Czechia**,

a court ruled that protesters can legitimately occupy one lane of a roadway, as this is part of the message being conveyed and would not cause undue disruption⁽⁸⁹⁾. In **Italy**, the Milan first-instance court denied an application for surveillance of a climate activist, noting his peaceful intentions⁽⁹⁰⁾.

2.2.3 Freedom of expression: attacks, lawsuits and state interference

Freedom of expression constitutes 'one of the essential foundations of [democratic] society'⁽⁹¹⁾. It covers the right to hold opinions and to impart and receive information (Article 10 of the ECHR, Article 11 of the Charter and Article 19 of the ICCPR). It applies to the expression and receipt of communications of every form of idea and opinion capable of transmission to others⁽⁹²⁾. It applies not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb⁽⁹³⁾.

Restrictions should be lawful, pursue a legitimate aim and be necessary in a democratic society (Article 10 of the ECHR, Article 11 of the Charter and Article 19 of the ICCPR). For example, defamation laws should be drafted so as not to stifle the freedom of expression⁽⁹⁴⁾. States must also create a favourable environment for participation in public debate and ensure that people can express ideas without fear⁽⁹⁵⁾. This includes taking protective measures against third-party attacks⁽⁹⁶⁾, including attacks on citizen journalists, bloggers and social media activists, and others using new media⁽⁹⁷⁾.

Attacks on and threats against journalists

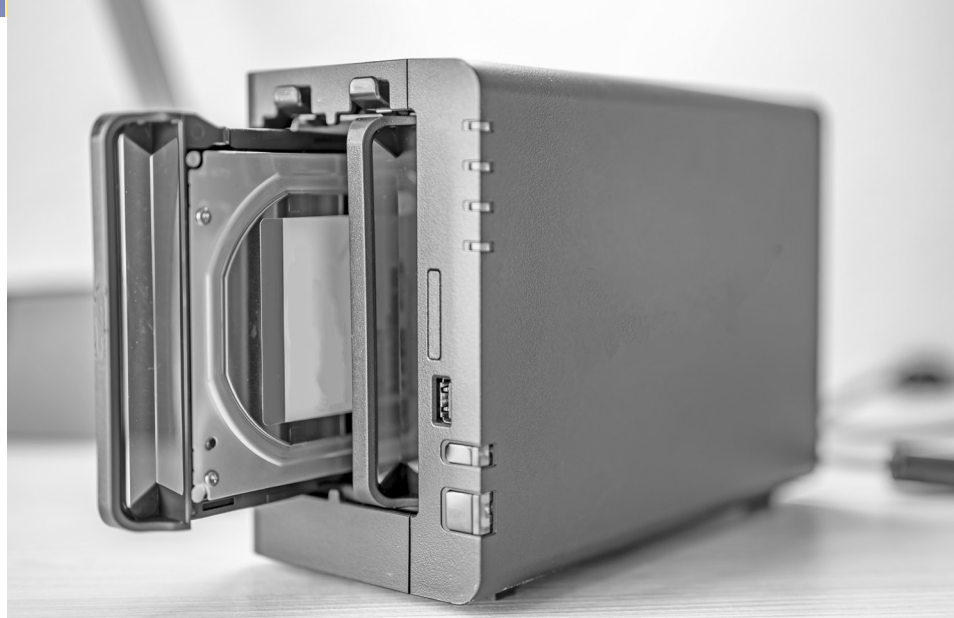
Direct attacks on and threats against journalists occurred in various Member States in 2023; these are tracked on a number of platforms, including the Council of Europe Safety of Journalists Platform⁽⁹⁸⁾.

In an online survey of journalists in **Slovakia**, two thirds of the respondents report having experienced an attack or threat, with 16 % stating that the attack/threat caused them to self-censor⁽⁹⁹⁾. Such attacks include attacks by political parties⁽¹⁰⁰⁾. CSOs claimed that there had not been sufficient state action to protect journalists. The Ministry of Culture also announced measures to improve media freedom, such as training judges and including journalists in Slovakia's crime prevention strategy.

A university study described the particular risks that female journalists in **Ireland** face. These include threats that 'move from the online sphere to real life' and the impact of a spectrum of negative, hostile encounters, including name-calling, unwanted sexual advances, stalking and obsessive behaviour, intimidation and threatening images⁽¹⁰¹⁾. The NGO Reporters Without Borders notes that, although journalists in **Belgium** enjoy a relatively high level of trust, they have been subject to violence during demonstrations and online threats, directed mainly at women. This has led to some events not being covered and even journalists quitting the profession⁽¹⁰²⁾.

Government interference in the work of the media

FRA identified allegations of direct government interference in the work of the media through raids and surveillance. On 19 September 2023, a journalist who reported on the excesses of Franco-Egyptian antiterrorist cooperation was arrested by **French** domestic intelligence police officers at her home. They searched her home and removed the data on her computer⁽¹⁰³⁾. She went through 39 hours of alternating police custody and interrogation,



leading journalists' unions to call her treatment 'an unprecedented attack on the protection of journalists' confidential sources' ⁽¹⁰⁴⁾.

In **Albania**, a journalist's home was raided and equipment was seized. The Special Prosecution against Corruption and Organised Crime interrogated the journalist concerning the leak of the identity of a person who was providing information on a high-profile criminal group that had allegedly killed several people. The journalist published information and conversations that, according to the special prosecution, were evidence in an ongoing investigation and therefore should not have been disclosed ⁽¹⁰⁵⁾.

In **Ireland**, a journalist was asked to hand over his phone following a home repossession incident. The Supreme Court found that the law contained insufficient protection against government actions aimed at obtaining journalists' sources ⁽¹⁰⁶⁾. In **Spain**, media groups expressed concerns about a court sentencing a journalist to 2 years in prison because the journalist had published too much material from a secret investigation report ⁽¹⁰⁷⁾.

Lawsuits against civil society continue: EU takes action

Strategic lawsuits against public participation (SLAPPs) are aimed at intimidating activists and journalists into not reporting by threatening them with legal action, which can incur high costs. Owing to their financial and psychological impact, such lawsuits can have a chilling effect on freedom of expression ⁽¹⁰⁸⁾. Criminal cases (e.g. individuals being charged with defamation) can have a similar effect, although they do not fall under the definition of a SLAPP (which covers only civil cases between two private parties). FRA describes a range of such cases in its civil society update report from 2023 ⁽¹⁰⁹⁾.

A **Bulgarian** CSO highlighted the growing number of SLAPP cases brought in the country and the increasing amounts of compensation sought in many cases ⁽¹¹⁰⁾. In **Italy**, a journalist who had criticised the Prime Minister's rhetoric, portraying it as being anti-immigrant, was charged with aggravated defamation ⁽¹¹¹⁾. In **Serbia**, the Mayor of Belgrade filed two lawsuits against the Balkan Investigative Research Network for articles that it published about his real estate holdings ⁽¹¹²⁾ and another for the network's reporting on alleged corruption ⁽¹¹³⁾. In **Greece**, the former secretary-general of the Prime Minister filed several lawsuits for defamation against news outlets that had reported on a spyware scandal, sparking concerns from media watchdog groups ⁽¹¹⁴⁾.

To reduce their chilling effect, it is crucial that SLAPPs are dismissed early. This has happened in a number of cases. In **Czechia**, a court dismissed a lawsuit that was asking for an apology for a political party being called a 'parliamentary fascist movement', as the defendant had not

disproportionately infringed on the rights of the applicant ⁽¹¹⁵⁾. In **Austria**, a lawsuit filed against a CSO by an international organisation working on migration issues was also dismissed ⁽¹¹⁶⁾. In **Romania**, the Bucharest Court of Appeal dismissed a case brought against investigative journalists who were alleging that sexual abuse was being committed in the Orthodox Church ⁽¹¹⁷⁾.

At the same time, civil society expressed dismay at a court ruling in **North Macedonia** that found that an association that was engaging in investigative journalism was not considered to be part of the media and that the person who published the story was not a journalist. Therefore, they were not covered by the protections afforded to the media and journalists under the freedom of expression. This is despite the fact that journalism is defined functionally (i.e. that anyone carrying out the required activities can be a journalist) ⁽¹¹⁸⁾.

The EU is taking action against SLAPPs. The final text of the proposed directive on SLAPPs, which follows on from a 2022 Commission recommendation for non-cross-border cases, was sent to the Committee of the Permanent Representatives of the Governments of the Member States to the European Union for adoption on 13 December 2023 ⁽¹¹⁹⁾. The directive allows early dismissal of manifestly unfounded cases, requires the claimant in a SLAPP case to provide security for the costs of the proceedings and subjects the SLAPP initiator to penalties, such as the payment of the costs of the proceedings. It also provides for protection from non-EU country judgments, which will not be enforced in the EU if they are considered SLAPPs ⁽¹²⁰⁾.

The Council of Europe also continued its work on the Committee of Ministers recommendation on SLAPPs ⁽¹²¹⁾.

Some Member States took action against SLAPPs, with many cases concerning purely domestic disputes that the EU directive is not likely to cover. For example, the Ministry of Justice of **Bulgaria** responded to the phenomenon by setting up a working group on SLAPPs and drafting a policy note on media freedom, pluralism and SLAPP cases ⁽¹²²⁾. In **Slovenia**, the Ministry of Justice started the process of drafting a law that would cover both domestic and cross-border cases ⁽¹²³⁾. In **Ireland**, a reform of the defamation laws was announced, with the aim of taking greater account of the freedom of expression and the possibility of SLAPPs ⁽¹²⁴⁾.

As a result of the kinds of pressures on the freedoms of association, peaceful assembly and expression described in this chapter, CSOs called for an EU mechanism for the protection of civil society. They argued that it should be built on the model of existing external EU monitoring mechanisms, as well as similar UN and Council of Europe systems ⁽¹²⁵⁾. Such a mechanism currently exists only at the EU level to monitor the situation outside the EU ⁽¹²⁶⁾. An EU-funded and CSO-run internal monitoring mechanism covering EU Member States would provide early warning and direct assistance to human rights defenders at risk and would improve Member States' accountability ⁽¹²⁷⁾.

FRA Opinions

Meaningful participation of human rights actors and of the general population in public affairs at the national level requires appropriate channels and procedures to ensure that human rights considerations efficiently reach law- and policymakers. Facilitating participation in public affairs is a human rights requirement as Article 25 of the International Covenant on Civil and Political Rights shows. Such participation is relevant not only where Member States legislate autonomously but also where their law- and policymaking falls within the scope of EU law – for instance when transposing an EU directive.

When participation is carried out properly, it allows independent human rights bodies and CSOs with relevant fundamental rights expertise to substantially contribute to and comment on lawmaking. In this way, it also provides a crucial tool to ensure that Member States are not violating the Charter in the implementation of EU law. But the evidence collected suggests that Member States do not always have adequate rules for public participation in place. Even if they do, they are sometimes applied in a non-transparent manner, limited in scope or shortened excessively to speed up law- or policymaking processes.

This carries significant risks, as reduced scrutiny of laws or policies can result in a lack of proper consideration of fundamental rights impacts. It may ultimately compromise the quality of national law- and policymaking. When CSOs with expertise in fundamental rights are not sufficiently consulted, there is a higher chance that law- and policymaking will not adequately mainstream fundamental rights. It also means they will not effectively apply the rights and principles laid down in Article 51 of the Charter.



FRA OPINION 2.1

To ensure sufficient fundamental rights scrutiny of legislation and policies within the scope of EU law, Member States should review their legislation to ensure that rules on public participation are clear and sufficiently broad. They should allow CSOs with expertise in fundamental rights and human rights defenders to submit their views.

National law- and policymakers should apply these rules in a consistent and transparent manner. They should widely publicise and promote participation in public consultations, integrating a gender perspective and paying particular attention to reaching out to and including people in vulnerable situations, such as LGBTIQ people, people with disabilities and members of ethnic, racial and religious minorities, as well as CSOs with fundamental rights expertise.

EU Member States should leave sufficient time for civil society to respond to legislative and policy initiatives in a meaningful manner. They should ensure that those who participated in consultations are informed of the outcome.



FRA OPINION 2.2

Following calls by civil society, the European Commission could consider establishing an observatory that monitors the situation of human rights defenders in the EU. Such an observatory should be established in consultation with civil society and relevant existing mechanisms. It should, as a minimum, monitor restrictions on civic space, and attacks on and threats against civil society actors. It should also facilitate exchanges of good practice.

EU Member States should encourage the reporting of actions against CSOs and human rights defenders. Furthermore, they should ensure that such actions are properly recorded, investigated and prosecuted.

Under the Charter and international human rights law, EU Member States are required to take positive measures to ensure that there is a vibrant civic space, namely by fully implementing their obligations under the freedoms of association, peaceful assembly and expression. They should also ensure that restrictions to these rights meet the principles of legality, necessity and proportionality. CSOs, media professionals and media organisations have reported serious verbal and physical threats and other repressive measures. These include strategic lawsuits against public participation and covert surveillance measures.

Significant restrictions – including criminal law sanctions, surveillance measures, the use of force to disperse assemblies and home searches – have been placed on the freedom of peaceful assembly. Such measures have been applied in a range of ways, including during climate protests. The Council of Europe monitors attacks against journalists. There is also a mechanism that covers the situation of human rights defenders outside the EU. However, there is currently no EU-level monitoring of civic space (including but not limited to journalists) inside the EU that would systematically provide the evidence base for policymaking.

Endnotes

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- (³) UN, '**Article 29 – Participation in political and public life**'.
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- (⁶) Council of Europe (2023), **Recommendation CM/Rec (2023)9 of the Committee of Ministers to Member States on the active political participation of national minority youth**; Council of Europe (2023), '**CP4 Europe – Strengthening National child participation frameworks and action in Europe (EU-CoE joint project)**'.
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- (¹¹) **Commission communication – 2023 rule of law report** (COM(2023) 800 final), Brussels, Section 2.4.
- (¹²) **Commission recommendation on promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes** (COM(2023) 8627 final), Brussels.
- (¹³) European Commission, '**Defence of democracy: Questions & answers**', Strasbourg, 2023.
- (¹⁴) Slovakia, National Council of the Slovak Republic, Act of May 10, 2023 on the amending and supplementing of certain laws in the field of environmental protection in connection with the reform of construction legislation, returned by the President of the Slovak Republic for reconsideration by the National Council of the Slovak Republic – wording approved on 20 June 2023, (**Zákon z 10. Mája 2023 o zmene a doplnení niektorých zákonov v oblasti ochrany životného prostredia v súvislosti s reformou stavebnej legislatívy, vrátený prezidentkou Slovenskej republiky na opätovné prerokovanie Národnou radou Slovenskej republiky – znenie schválené 20. Júna 2023**).
- (¹⁵) Slovakia, National Council of the Slovak Republic, Returned law: Act of 10 May 2023 amending and supplementing certain laws in the field of environmental protection in connection with the reform of construction legislation (**Zákon z 10. mája 2023 o zmene a doplnení niektorých zákonov v oblasti ochrany životného prostredia v súvislosti s reformou stavebnej legislatívy – vrátený zákon**), 23 May 2023; Slovakia, Ministry of Environment of the Slovak Republic (Ministerstvo životného prostredia SR), The parliamentary amendments to be approved next year will abolish public control over the construction process and subordinate the protection of the environment to the interests of investors (**Poslanecké pozmeňujúce návrhy, ktoré sa majú schváliť v utorok, zrušia verejnú kontrolu nad stavebným konaním a ochranu životného prostredia podriadiť záujmom investorov**) 2023; Slovakia, Ministry of Environment of the Slovak Republic (Ministerstvo životného prostredia SR), Approval of the proposed construction legislation proposed by *Sme rodina* can mean the end of nature protection in Slovakia (**Schválenie návrhy stavebnej legislatívy z dielne Sme rodina môže znamenať koniec ochrany prírody na Slovensku**), 2023; Via Iuris, 'Let us stop the disastrous reform permitting large constructions together' (**Zastavme spolu katastrofálnu reformu povolenia veľkých stavieb**), 2023.
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MIGRATION: FUNDAMENTAL RIGHTS CONCERNS AT THE EU'S EXTERNAL BORDERS

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EU

1

Croatia joins the Schengen area.

12

In *P.I. v Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos* (C-280/21), Court of Justice of the European Union (CJEU) rules that the concept of 'political opinion' under the qualification directive (Directive 2011/95/EU) must be interpreted broadly and includes non-state actors with connections to the state.

15

Fundamental Rights Officer of the European Union Agency for Law Enforcement Cooperation takes up his role.

26

European Commission opens infringement procedures against Belgium, Finland, Greece, Portugal and Spain for failing to transpose the reception conditions directive (Directive 2013/33/EU) and/or the qualification directive (Directive 2011/95/EU) into national law.

January

9

European Council calls for the EU's external borders to be further secured and for more agreements with non-EU countries, including on returns and readmissions.

15

In *Bundesrepublik Deutschland v GS* (C-484/22), CJEU interprets Article 5(a) and (b) of the return directive (Directive 2008/115/EC) as requiring that both the best interests of the child and family life should be protected in proceedings leading to the adoption of a return decision.

February

14

European Commission publishes the multiannual strategic policy framework for European integrated border management.

30

In *S.S., N.Z., and S.S. v Staatssecretaris van Justitie en Veiligheid* (C-338/21), CJEU rules that the Dublin regulation precludes national legislation from providing that a Dublin transfer is suspended because of a request to review a decision that denies an applicant a residence permit as a victim of trafficking in human beings.

March

18

In *Afrin* (C-1/23 PPU), CJEU clarifies that it is contrary to EU law to require, without exception, the application for family reunification to be conducted in person before a competent diplomatic representation of the Member State concerned.

April

16

European Commission presents second *State of Schengen Report*.

Fundamental Rights Officer of the European Union Agency for Asylum takes up his role.

May

6

European Commission puts forward a toolbox for Member States to combat the smuggling of migrants through commercial means of transport.

22

In *Commission v Hungary* (C-823/21), CJEU finds that Hungary is in breach of the asylum procedures directive (Directive 2013/32/EU) as a result of it making the possibility of applying for international protection dependent on prior submission of a declaration of intent at a designated embassy in a non-EU country.

29

In *TE* (C-829/21) and *EF* (C-129/22) v *Stadt Frankfurt am Main* (C-829/21), CJEU rules that Member States can refuse renewal of resident permits for applicants with long-term residence in that Member State if they have been absent for over 6 years.

June

July

13

In response to the shipwreck off the Greek coast (Pylos) on 14 June, European Parliament adopts a resolution calling for reinforced EU action on search and rescue in the Mediterranean.

16

EU and Tunisia sign a memorandum of understanding, which includes sections on enhancing cooperation on border management and combating irregular migration.

August

11

European Border and Coast Guard Agency (Frontex) and European Union Agency for Asylum jointly publish a practical guide for first-contact officials on access to the asylum procedure. The intention is to support the identification of those who may wish to apply for international protection.

September

6

In *WS v Frontex (T-600/21)*, an action for damages, the applicants claim to have been the victims of *refoulement* when they were summarily returned by air from Greece to Türkiye. General Court rules that Frontex is not to assess the merits of return decisions and dismisses the action.

17

European Commission publishes a '10-point plan for Lampedusa' aimed at reducing and responding effectively to migratory pressure on the island.

21

CJEU rules in *ADDE and Others (C-143/22)* that, for those Member States that have reintroduced internal border controls, the refusal of entry of irregular migrants at internal borders is contrary to EU law if the return directive (Directive 2088/115/EC) is not respected.

27

In *Y.N. v Republika Slovenija (C-58/23)*, CJEU clarifies that the right to an effective remedy precludes a time limit of 3 days to appeal a rejected asylum application as manifestly unfounded.

28

Council of the European Union extends the temporary protection for displaced people from Ukraine by 1 year until 4 March 2025.

October

1

After the EU's ratification in June, Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No 210; Istanbul Convention), which also protects women in the context of migration and asylum, enters into force with respect to the EU.

5

In *Office français de protection des réfugiés et apatrides (OFPRA) v SW (C-294/22)*, CJEU holds that the protection provided by the United Nations Relief and Works Agency for Palestine Refugees in the Near East will cease when it can no longer ensure access to life-saving or essential healthcare and medical treatment to people under its mandate.

18

European Commission publishes its action plan addressing migration along the eastern Mediterranean route.

6

Albania and Italy conclude a protocol on migration management whereby Italy is to set up two reception centres on Albanian territory, where non-EU nationals rescued at sea will undergo asylum and return procedures.

15

European Commission proposes a regulation to establish an EU talent pool and create labour migration pathways to the EU.

28

European Commission adopts a recommendation on the recognition of qualifications of non-EU nationals.

In *ST v Frontex* (T-600/22), General Court declares that the actions for failure to act and for annulment are inadmissible. It finds that the applicant has no personal interest in the termination of Frontex's activities in the Aegean Sea.

November

30

European Commission proposes a new directive to curb the facilitation of unauthorised entry into, transit through and residence in the EU and a regulation to enhance police cooperation to combat migrant smuggling.

In *DG, PP, GE v CZA and Ministero dell'Interno* (C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21), CJEU finds that, in the Dublin procedure, providing the common leaflet and conducting a personal interview are required both upon the first and in the subsequent applications.

In *Ministero dell'Interno, Dipartimento per le libertà civili e l'immigrazione – Unità Dublino* (C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21), CJEU rules that, because of the principle of mutual trust, Member States cannot assess the risk of indirect (chain) refoulement ahead of a Dublin transfer except when systematic flaws exist in the Member State.

5

In *Nordic v Belgium* (C-128/22), CJEU clarifies that COVID-19-related travel restrictions must be properly justified, non-discriminatory and subject to appeal.

7

EU adopts a regulation on the digitalisation of the visa procedure (Regulation (EU) 2023/2667).

13

In *Hamoudi v Frontex* (T-136/22), seeking to establish Frontex's non-contractual liability, General Court finds that there is no evidence that the applicant suffered actual damage or that he was present at the described pushback incident in the Aegean Sea.

30

Council of the European Union decides that Bulgaria and Romania will become full members of the Schengen area, starting with the lifting of controls at air and sea borders in March 2024.

December

Council of Europe and UN

January

17

Daraibou v Croatia (No 84523/17) concerns a pre-removal detention centre where a fire had broken out, in which three detained migrants died and the applicant suffered severe injuries. European Court of Human Rights (ECtHR) concludes that Croatia violated its positive obligations stemming from Article 2 (right to life) of the European Convention on Human Rights (ECHR), given that the staff had been ill-prepared to deal with the outbreak of a fire and the investigations had several shortcomings.

February

2

In *Alhowais v Hungary* (No 59435/17), ECtHR finds violations of Article 2 (right to life) and Article 3 (prohibition of torture and other forms of ill treatment) of the ECHR because the Hungarian authorities failed to protect the life of an asylum seeker who drowned during border controls in the Tisza River and did not conduct an effective investigation into what happened.

9

In *R.M. and Others v Poland* (No 11247/18), ECtHR finds that the detention of a mother and three children following a Dublin transfer from Germany to Poland was in violation of Article 5 (the right to liberty) of the ECHR.

10

Council of Europe publishes its first interim report on the implementation of the action plan on protecting vulnerable persons in the context of migration and asylum in Europe (2021–2025).

March

7

March: Parliamentary Assembly of the Council of Europe adopts Resolution 2536 (2024) on 'Precarious and irregular work situations of migrant seasonal and domestic workers'.

30

In *J.A. and Others v Italy* (No 21329/18), ECtHR finds violations of several ECHR rights due to the unlawful detention of Tunisian nationals in Lampedusa (Article 5), their inhuman treatment due to inadequate detention conditions (Article 3) and their collective expulsion (Article 4 of Protocol No 4 to the ECHR).

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment publishes its general report, covering 2022, which calls on European states to put an end to unlawful pushbacks and ill treatment of non-nationals deprived of their liberty in the context of removals at borders.

April

4

In *A.D. v Greece* (No 55363/19), ECtHR finds that Greece violated Article 3 (prohibition of torture and inhuman and degrading treatment) of the ECHR due to providing inadequate living conditions in the Samos Reception and Identification Centre for a pregnant woman.

20

UN Special Rapporteur on the human rights of migrants publishes a thematic report on how to expand and diversify regularisation mechanisms and programmes to enhance the protection of migrants' human rights.

May

4

In *H.N. v Hungary* (No 26250/15) and *M.M. v Hungary* (No 26819/15), ECtHR rules that Hungary violated Article 5 (1) (right to liberty) of the ECHR for the unlawful detention of an asylum applicant with a residence permit on humanitarian grounds.

16-17

Heads of State and Government of the Council of Europe adopt a declaration on the situation of the children of Ukraine, as part of the Reykjavik Declaration.

13

June

In *H.A and Others v Greece* (Nos 892/18 and 4920/18), ECtHR finds violations of Article 3 (prohibition of torture and other forms of ill treatment) of the ECHR for inhuman living conditions in the Moria refugee camp and of Article 13 (lack of an effective remedy) of the ECHR.

Ministers gathered at the Global Consultation on the Health of Refugees and Migrants – organised by the World Health Organization, the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration – adopt the Rabat Declaration, committing to improving the inclusion of migrant and refugee populations in their national health systems.

14

July

UN Special Rapporteur on the human rights of migrants publishes a report on the protection of migrant workers' labour and human rights.

17

Council of Europe Commissioner for Human Rights emphasises that European states should insist on clear human rights safeguards in any further migration cooperation with Tunisia.

9

August

Following deadly shipwrecks in the Mediterranean Sea over the summer, Office of the United Nations High Commissioner for Refugees, United Nations Children's Fund and International Organization for Migration issue a joint statement to renew their call for Member States to implement coordinated search-and-rescue mechanisms and safer and legal pathways for migration and asylum.

22

UN Committee on the Rights of the Child publishes General Comment No 26, which underlines that, in cases of climate-induced migration, states must take all appropriate action to ensure the rights of the child.

14

26 September to 5 October

27

September

In *Diakité v Italy* (No 44646/17), ECtHR finds a violation of Article 8 (respect for private and family life) of the ECHR because the underage applicant was placed in an adult reception centre based on an X-ray evaluation, despite having submitted a birth certificate showing that he was a child.

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visits Malta, focusing on immigration detention.

Council of Europe Special Representative on Migration and Refugees publishes a report on a fact-finding mission to Hungary, which recognises the efforts to support and protect people from Ukraine and highlights the need to ensure access to education and the labour market for them and to strengthen the asylum procedure for non-Ukrainian nationals as well as vulnerability assessments.

12

17

19

26

October

In *S.S. and Others v Hungary* (Nos 56417/19 and 44245/2), ECtHR finds a violation of Article 4 of Protocol No 4 (prohibition of collective expulsion) to the ECHR after Hungary removed asylum applicants through the border fence to Serbia who had originally reached Hungary by air.

In *A.D. v Malta* (No 12427/22), ECtHR finds violations of Article 3 (prohibition of ill treatment), Article 5 (right to liberty) and Article 13 (right to an effective remedy) of the ECHR by Malta for keeping a person claiming to be a child in detention despite the person being diagnosed with tuberculosis and post-traumatic stress disorder.

In *A.B. v Italy, A.S. v Italy and M.A. v Italy* (Nos 13755/18, 20860/20 and 13110/18), ECtHR finds violations of Article 3 (prohibition of ill treatment) and Article 5 (right to liberty) of the ECHR because of the poor conditions and the arbitrary detention under which the applicants were held in the hotspot in Lampedusa.

UN Committee on Enforced Disappearances publishes General Comment No 1 on enforced disappearance in the context of migration.

November 1

Mr Gehad Madi (Egypt) takes up his role as the newly appointed UN Special Rapporteur on the human rights of migrants.

10

Council of Europe Committee on Legal Cooperation adopts a guide for practitioners on the administrative detention of migrants and asylum seekers.

21 November to 1 December

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visits Greece to examine the treatment of foreign nationals deprived of their liberty under immigration legislation.

23

In *M.B. v Greece* and *M.L. v Greece* (Nos 8389/20 and 8386/20), ECtHR finds Greece to be in violation of Article 3 (prohibition of ill treatment) of the ECHR for inadequate living conditions provided to pregnant women in the Samos Reception and Identification Centre.

In *A.T. and others v Italy* (No 47287/17), ECtHR finds violations of Article 3 (prohibition of ill treatment), Article 5 (right to liberty) and Article 13 (right to an effective remedy) for the applicants' detention in the Taranto hotspot and the poor conditions there.

December 15

2023 Global Refugee Forum adopts a closing summary statement, the objectives of which include easing the pressure on host countries, enhancing refugee self-reliance, expanding access to non-EU-country solutions and supporting conditions in countries of origin for return in safety and dignity.

20

UN human rights special procedures mandate holders write a joint letter to the EU raising various human rights concerns in relation to the deal reached over a number of legislative proposals presented under the EU pact on migration and asylum and also asking for additional information on a number of points.

Many of those seeking international protection or work opportunities do not possess valid travel documents. Some try to reach Europe by sea on unseaworthy boats. In 2023, over 4 000 people died or went missing at sea, the highest number in the last 5 years. To curb irregular migration, states build more fences and borders get increasingly militarised.

The EU is rolling out new information systems to facilitate border checks. Tensions between national legislation regulating access to asylum and EU law continue, as do allegations of ill treatment and other rights violations at borders. Civil society organisations helping migrants and refugees face continuing challenges.

The EU has agreed on a pact on migration and asylum, through which asylum and return procedures should become faster and take place near the border. Some facilities at borders struggle to offer dignified reception conditions to new arrivals. The pact will introduce a duty for states to monitor fundamental rights compliance. As the EU is now a party to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention), EU institutions and agencies will need to take action to prevent and combat violence against women and domestic violence, in the context of migration, including at borders.

This chapter deals with fundamental rights at the borders. It focuses on the EU's external land and sea borders. It looks at policies prior to arrival, border controls themselves and the initial processing of people who enter by avoiding border controls.

3.1 FUNDAMENTAL RIGHTS ISSUES PRIOR TO ARRIVAL

This first section deals with different pre-border issues, including visas, travel authorisations and the plight of migrants and refugees who die while trying to reach Europe by crossing the sea ⁽¹⁾.

3.1.1 Facilitating visas for human rights defenders

Human rights defenders are individuals or groups that promote and protect human rights and fundamental freedoms through peaceful means. In many countries around the world, they face risks and threats, such as killings, detention and harassment ⁽²⁾. Supporting them is a priority of the EU's external relations policy, as the European Parliament stressed again in March 2023 ⁽³⁾.

Human rights defenders who operate in non-EU countries sometimes need to leave their country to do their job. They may also need to visit the EU, for example to attend events or to rest and recover, but also to escape risks to their life, liberty or physical integrity. For this, most of them need a visa. In some circumstances, human rights defenders would need an open multiple-entry visa to visit the EU as preventive protection for unanticipated risk ⁽⁴⁾.

Even if they are under threat, asylum is often not an appropriate solution for human rights defenders. Many of them want to have the possibility to continue their human rights work at home. If they apply for asylum, they must hand in their passport and will not be able to travel any more.

FRA has suggested more a flexible application of EU visa rules ⁽⁵⁾. In 2023, the European Commission started a revision of the *Visa Code Handbook*. It will guide visa officers on how to handle human rights defenders' visa applications flexibly.

3.1.2 Avoiding discrimination when issuing travel authorisations

From mid-2025, to travel to the Schengen area, most non-EU nationals from visa-free countries ⁽⁶⁾ will need a European travel information and authorisation system (ETIAS) travel authorisation ⁽⁷⁾. ETIAS does not apply to Ireland ⁽⁸⁾.

ETIAS will work similarly to the electronic system for travel authorization application, which visitors to the United States will be familiar with ⁽⁹⁾. Applicants will have to enter information about themselves into an online tool.

Applications will be automatically cross-checked against information stored in EU large-scale information technology systems and in European Union Agency for Law Enforcement Cooperation and International Criminal Police Organization databases, and will be run against screening rules. If these checks do not create a 'hit', the applicant receives a travel authorisation. The European Border and Coast Guard Agency (Frontex) is in charge of the ETIAS central system, which will carry out such automated checks. When there is a 'hit' with a database or a screening rule, the application will be manually reviewed first by the ETIAS Central Unit and, in case any hits remain, by the responsible Member State ⁽¹⁰⁾.

In 2023, Frontex and Member States continued to work on the more delicate aspects of the system, namely the ETIAS screening rules. These rules will utilise an algorithm that compares the data in the ETIAS application with specific risk



PROMISING PRACTICE

Detecting fundamental rights issues in real time

The ETIAS Fundamental Rights Guidance Board, which started working in 2023 and of which FRA is a member, advises Member States and Frontex on how to mitigate fundamental rights risks when implementing ETIAS. One of the board's priorities is to mitigate the risk of bias when developing and applying the ETIAS screening rules.

For more information, see Frontex, 'ETIAS Fundamental Rights Guidance Board'.

► (*) For 2023, data from nine EU Member States are missing (Belgium, Croatia, Cyprus, Czechia, Ireland, Malta, the Netherlands, Portugal and Spain). For 2018 and 2019, data do not include the United Kingdom. Other humanitarian admissions (e.g. the evacuation of Afghan nationals in 2021 to the EU) are not included.

indicators to identify individuals who may pose a security, irregular immigration or high epidemic risk. Member States and the ETIAS Central Unit will use past evidence, in the form of statistics, and other factual and evidence-based information to define risks⁽¹¹⁾. The data used to develop the ETIAS screening rules include characteristics that are protected by non-discrimination rules, such as age or sex. For example, abnormal rates of overstay or of refusals of entry for a specific group of travellers will be used to develop rules to spot applicants who may pose an irregular immigration risk.

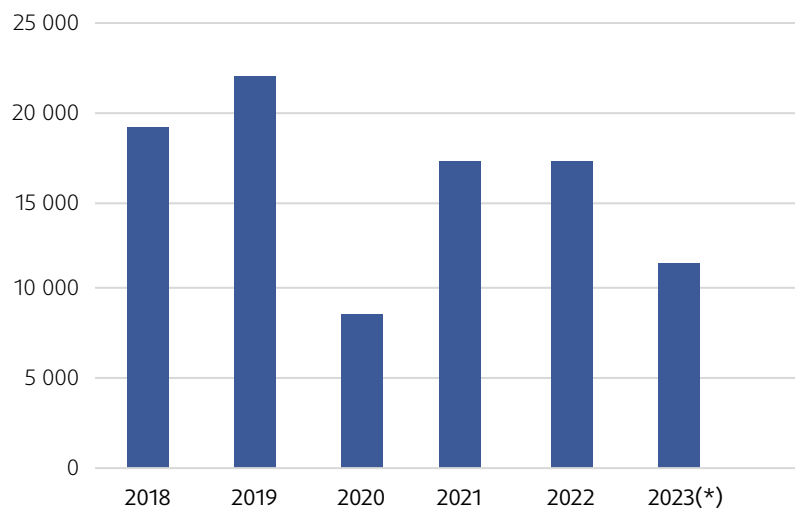
3.1.3 Offering more legal pathways for asylum seekers and refugees

Most people come to the EU lawfully through official border crossing points⁽¹²⁾.

For those fleeing war or persecution, the situation is more complex. Ukrainian nationals with a biometric passport can enter the EU without a visa for stays not exceeding 90 days in any 180-day period⁽¹³⁾. Most displaced Ukrainians have not faced notable issues entering the EU⁽¹⁴⁾.

For those in need of international protection, other than those fleeing the **Russian** war of aggression against **Ukraine**, legal avenues to reach safety in the EU are few⁽¹⁵⁾. Many are not able to receive travel documents or visas. Their main legal pathway to the EU is resettlement, but numbers are small compared with the 2 million people who were in need of resettlement in 2023 (Figure 3.1)⁽¹⁶⁾.

FIGURE 3.1: REFUGEES RESETTLED IN THE EU, 2018–2023



Source: Eurostat (migr_asyresa); data extracted on 10 April 2024.

There are very few alternative legal admission schemes. However, various faith-based organisations established successful programmes providing humanitarian corridors in 2016 in **Belgium, France and Italy**⁽¹⁷⁾. From October 2022 to August 2023, 720 refugees (Afghans, Eritreans and Syrians) came to Italy under these programmes, including women at risk of violence⁽¹⁸⁾.

3.1.4 Addressing deaths at borders

In 2023, the estimated number of people who died or went missing when trying to reach Europe by sea increased by some 37 % compared with 2022.

The International Organization for Migration (IOM) documented 4 064 deaths and disappearances at Europe's sea borders in 2023, excluding those in the

English Channel. Of these, 191 were children. Figure 3.2 shows these figures over the last 5 years.

In 2023, two shipwreck incidents triggered extensive policy discussion. On 26 February 2023, a shipwreck near Cutro (**Italy**) resulted in 98 dead and missing people. Following the incident, Italy adopted a decree to promote legal migration and combat irregular immigration ⁽¹⁹⁾.

The second incident occurred on the night of 13–14 June 2023. Some 600 people died or went missing when an unseaworthy boat that had departed from Libya capsized off the Peloponnese coast (**Greece**). This was one of the deadliest incidents ever in the Mediterranean Sea. The UN Secretary-General called for comprehensive action to save lives at sea and for orderly and safe pathways for people forced to flee ⁽²⁰⁾. The Greek Ombudsman started an investigation into the incident, after the Hellenic Coast Guard indicated that no disciplinary investigation had been opened ⁽²¹⁾.

Frontex’s Fundamental Rights Office also examined these two incidents ⁽²²⁾.

En route from West Africa to the Canary Islands (**Spain**), the two deadliest incidents of 2023 occurred on 6 November (191 estimated fatalities) and 8 November (113 estimated fatalities) ⁽²³⁾.

In 2023, 24 people died or went missing in the English Channel ⁽²⁴⁾ and some 30 000 people crossed the English Channel in small boats ⁽²⁵⁾. In addition, 34 people drowned in their attempt to reach the **French** territory of Mayotte ⁽²⁶⁾.

PROMISING PRACTICE

Italy – Including refugees in labour migration schemes

From 2023 to 2025, Italy has reserved 250 places per year for refugees in its immigration quota for labour migration. In addition, refugees may be admitted beyond the ordinary quota after they have been trained for 6 months in the countries of asylum. By the end of 2023, Italy was working on how to implement these provisions.

Source: Italy, Ministry of Labour and Social Policies (Ministero del Lavoro e delle Politiche Sociali), ‘Flows decree 2023–25 – Quotas in detail’ (‘Decreto flussi 2023–25 – Le quote in dettaglio’).

FRA ACTIVITY

What the EU can do to tackle deaths at sea

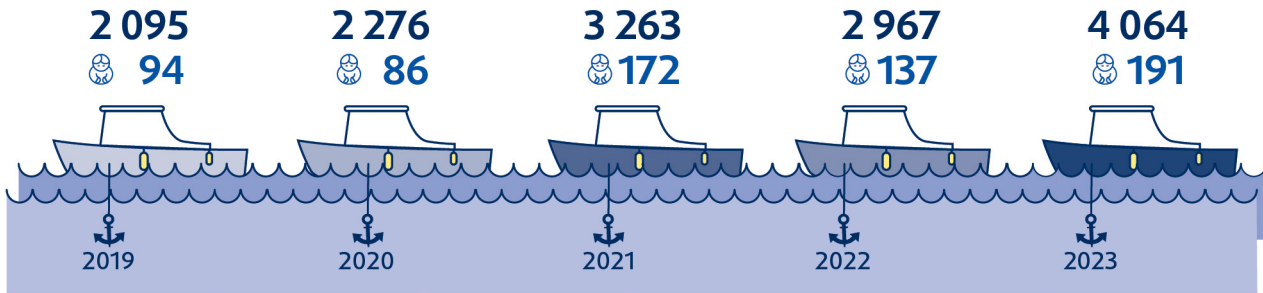
FRA proposes six areas of intervention, suggesting several concrete measures to tackle the increasing death toll at sea:

- prompt, effective and independent investigations;
- improved search and rescue at sea;
- clear disembarkation rules and solidarity for taking charge of rescued people;
- better protection of shipwreck survivors;
- establishing independent border monitoring;
- more accessible legal pathways to the EU.

Source: FRA, Preventing and Responding to Deaths at Sea – What the European Union can do, Vienna, 2023.



FIGURE 3.2: ESTIMATED FATALITIES AT SEA, MEDITERRANEAN AND ATLANTIC ROUTES, 2019–2023



Source: FRA (2023), based on information from the IOM (March 2024).

▲ NB:

Data for 2022 included in the 2023 fundamental rights report have been updated following verification. Fatalities in the English Channel not included. 🧒 Children.

Compared with 2022, fatalities at the **Turkish** land border dropped from 74 to 44 people in 2023 (several died in forest fires in **Greece**)⁽²⁷⁾, but increased at the **Belarus** land border from 10 to 41 (dead or missing) people in 2023, many of whom died from hypothermia⁽²⁸⁾. In **Poland**, Médecins Sans Frontières (MSF) treated over 220 people coming through the **Belarus** border, 10 % of whom needed life-saving referrals⁽²⁹⁾.

In February 2023, the European Court of Human Rights (ECtHR) found that **Hungary** had violated the right to life for not taking reasonable measures to prevent the drowning of a Syrian national who crossed a border river in 2016. The rescue capacities deployed were not adequate for the emergency⁽³⁰⁾.

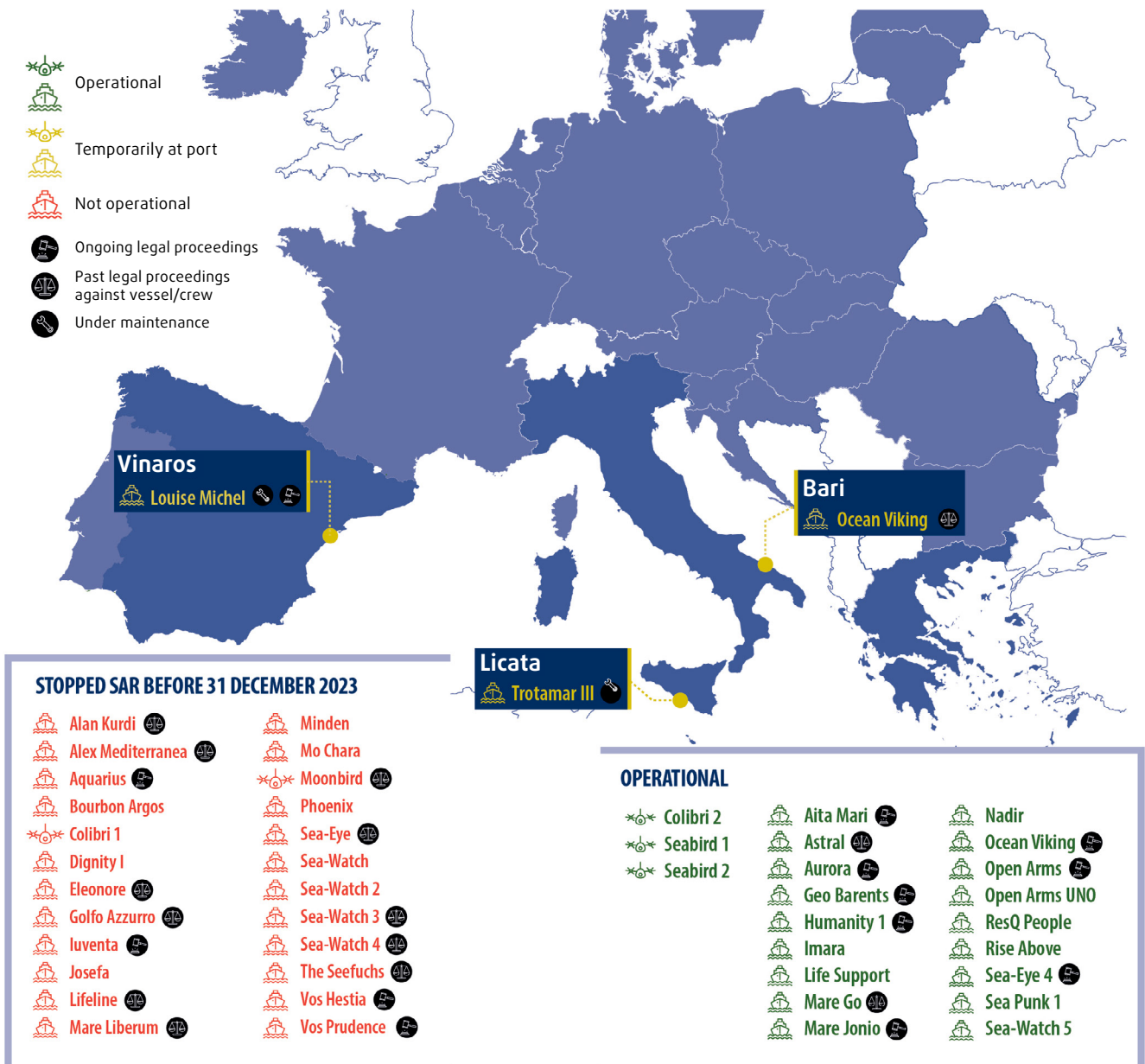
3.1.5 Deploying adequate search-and-rescue capacity

Search-and-rescue operations at sea, in principle, fall outside the scope of EU law. There are, however, two scenarios in which EU law and, therefore, the EU Charter of Fundamental Rights come into play. The first concerns Frontex-coordinated joint operations at sea⁽³¹⁾. The second is when search and rescue is part of European integrated border management⁽³²⁾, which the EU is partly funding. European integrated border management is a shared responsibility between Frontex and the Member States, whereby Frontex provides technical and operational assistance to them in improving their capabilities for saving lives at sea⁽³³⁾. More effective search and rescue could be achieved through a larger presence of adequately equipped naval and aerial assets in maritime areas where shipwrecks are more likely to occur, as the Frontex Fundamental Rights Officer has also pointed out⁽³⁴⁾.

In the central Mediterranean, MSF has identified practices of non-assistance at sea, reporting, for example, that Malta did not provide assistance to a boat in distress for over 38 hours⁽³⁵⁾.

Civil society organisations continue to deploy search-and-rescue vessels. Figure 3.3 shows the state of play at the end of 2023.

FIGURE 3.3: NON-GOVERNMENTAL ORGANISATION ASSETS INVOLVED IN SEARCH-AND-RESCUE OPERATIONS IN THE MEDITERRANEAN SEA, 2016-2023



Source: FRA (2024), based on various sources available in the public domain.

▲ NB: SAR, search and rescue.

In the first half of 2023, civil society actors rescued only 4.2 % of people arriving by sea to Italy (36). In January, Italy adopted new rules whereby vessels must proceed to the assigned port after each rescue operation 'without delay' (37). Port authorities blocked the vessel *Sea-Eye 4*, which was fined three times in 2023 for conducting multiple rescue operations before disembarking (38). The *Ocean Viking*, *Louise Michel*, *Open Arms* and *Humanity 1* were subjected to similar measures (39).

Five non-governmental organisations (NGOs) have complained to the European Commission over the new Italian law ⁽⁴⁰⁾. As Section 3.2 notes, such measures hinder human rights work ⁽⁴¹⁾.

3.2 FUNDAMENTAL RIGHTS DURING BORDER CHECKS AND BORDER SURVEILLANCE

Almost 3 in 10 Europeans (28 %) consider immigration the main concern that the EU is facing. Three out of four Europeans (75 %) are in favour of reinforcing the EU's external borders ⁽⁴²⁾.

This section deals first with checks at border-crossing points; it then analyses fundamental rights challenges linked primarily to border surveillance.

3.2.1 The Entry/Exit System: maximising fundamental rights benefits and reducing risks

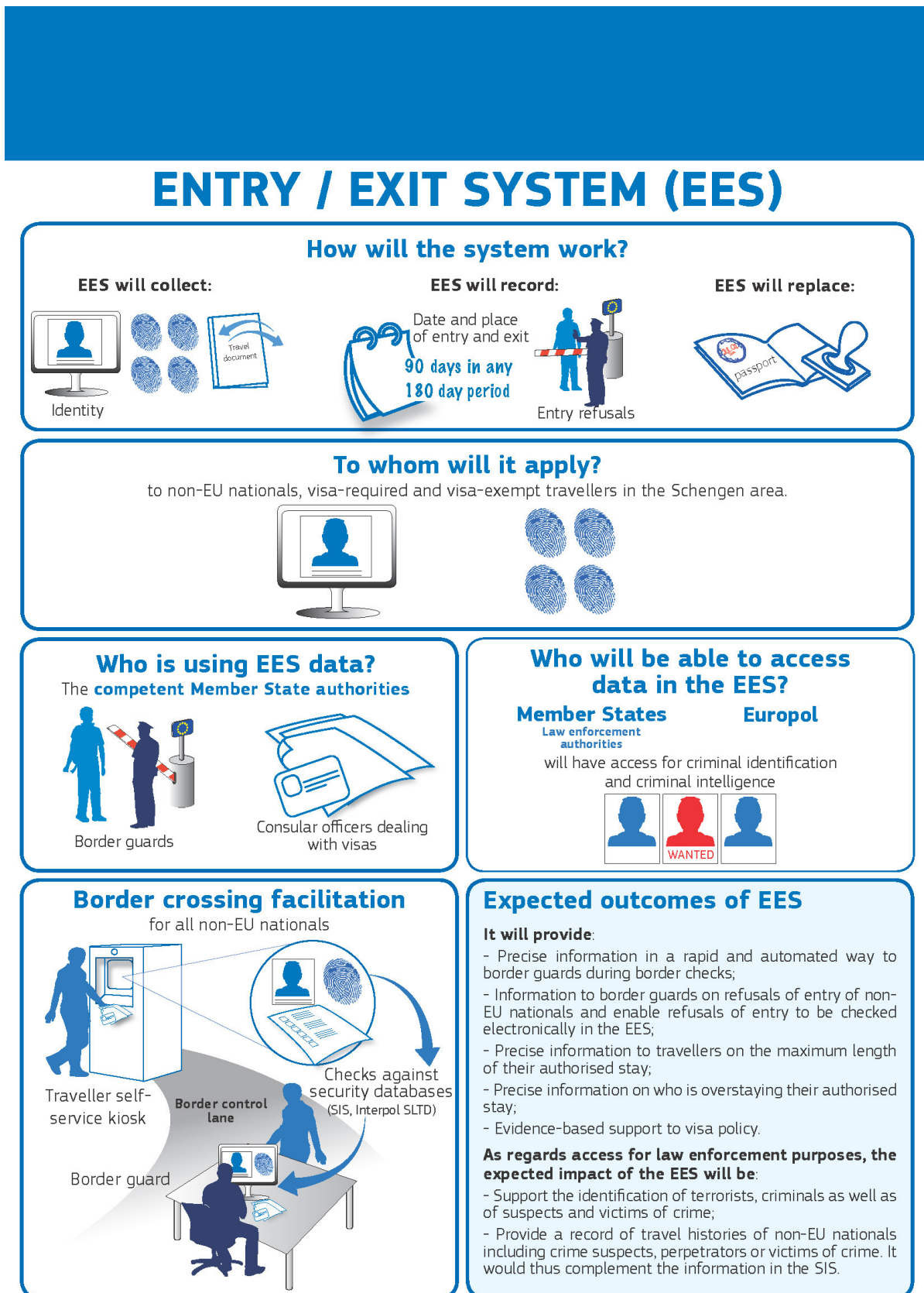
By the end of 2024, most non-EU nationals who visit the EU or the Schengen area will have to give their fingerprints and facial image during border checks upon entry and exit ⁽⁴³⁾.



Together with other identity and passport data, such biometric data will be stored in the Entry/Exit System (EES) ⁽⁴⁴⁾. The EES brings risks and opportunities for fundamental rights, as FRA highlighted in a series of Frontex-organised training events for practitioners run throughout 2023.

The EES will replace the manual stamping of passports and will automatically calculate the duration of the authorised stay of 90 days within any 180-day period ⁽⁴⁵⁾. Beyond calculating the days of an authorised short-term stay in the EU, the EES will produce a list of non-EU nationals who overstay their authorised presence in the EU ⁽⁴⁶⁾. Figure 3.4 illustrates how the system will work.

FIGURE 3.4: THE EES



NB: SIS, Schengen Information System; SLTD, Stolen and Lost Travel Documents

Source: European Commission, **Stronger and Smarter Borders for the European Union – The Entry-Exit System**, Brussels, 2016.

FRA ACTIVITY

Mapping fundamental rights risks to inform the EES roll-out

In 2023, FRA started a project to analyse experiences with processing biometric data at borders. The findings will inform policies and practices in the roll-out of the EES and will provide practical advice for reducing hardships for travellers, for example when collecting facial images of every passenger, including babies.

Source: FRA (2024).

Operating the EES involves a range of fundamental rights risks. When operating the EES, it will be crucial to respect dignity when taking fingerprints and facial images, protect personal data and ensure access to an effective remedy against inaccurate or unlawful data processing.

The EES could also help identify victims of crimes, for example victims of trafficking in human beings (47). The Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) argues that Member States need to do more on this. Four of the six GRETA reports on Member States published in 2023 contain recommendations relating to borders (Table 3.1) (48).

TABLE 3.1: GRETA RECOMMENDATIONS TO PROTECT VICTIMS OF TRAFFICKING AT BORDERS FOR FOUR MEMBER STATES

Member State	Recommendation(s)
Estonia	<ul style="list-style-type: none">Strengthen the detection and referral of victims during border controlUndertake further training of border guards
Spain	Strengthen the proactive detection of victims in Ceuta, Melilla and the Canary Islands
Netherlands	Apply the 'slightest indication' criterion for identifying victims
Poland	<ul style="list-style-type: none">Assess the risks of trafficking or re-trafficking prior to removalStrengthen the systematic training of border guardsGive border guards sufficient resources

Source: GRETA (2023).

3.2.2 Mitigating the effects of militarisation and fences at borders

The use of military language – the 'weaponisation' of migration (49), 'hybrid attacks' (50) and 'frontline Member States' (51) – has become common, particularly when non-EU countries are suspected of facilitating irregular migration towards the EU. Measures taken to address national security concerns at borders and those taken to combat irregular immigration are increasingly interconnected.

At the end of 2023, the EU agreed on new rules to respond to migratory crises. These rules also cover the 'instrumentalisation' of migrants by non-EU countries or hostile non-state actors to destabilise the EU (52).

The focus on geopolitical considerations overshadows the human aspect of what happens at borders. Special measures to counter that phenomenon are prone to creating tensions with EU fundamental rights and asylum law, as **Finland's** experience illustrates (see Section 3.2.4) (53).

At external land borders, to prevent irregular border crossings through fields and forests, Member States are increasingly erecting physical barriers. The length of fences at the external borders of the EU and the Schengen area amounted to 2 048 km in 2022 (54).

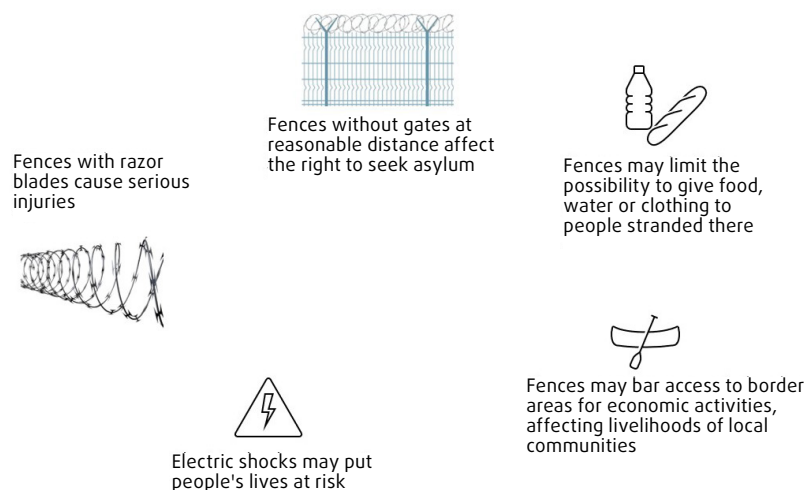
In 2023, **Finland** started to build a fence at the **Russian** border, focusing on an initial 70 km section (55). **Estonia** and **Latvia** have extended their border fences, Latvia by over 100 km in 2023 (56). **Greece** announced that it would extend its existing fence to cover all 140 km of the land (and river) borders with Türkiye, starting work on a 35 km extension in 2023 (57).

After **Croatia's** accession to the Schengen area, **Slovenia** dismantled its border fence (⁵⁸), but **Hungary** has not yet begun demolishing its fence of 60 km along the Croatian land border (⁵⁹).

Border fences, although per se not contrary to EU law, may interfere with various rights, as Figure 3.5 shows.

- Border fences without gates at reasonable distances limit the ability of people who are in need of international protection to seek safety.
- Features such as coil-shaped blades, or wires giving dangerous electric shocks, put people's lives at risk or create a risk of disproportionate harm. In **Poland**, for example, MSF reported that many of the patients it treated at the **Belarus** border had injuries caused by a razor wire fence (⁶⁰).
- Fences may be an obstacle to offering food, water and other essential items to people stranded in between borders (see Section 3.2.7 on the measures taken in **Poland**).
- In some cases, border fences may also have an impact on local communities' livelihoods, for example if the fence impedes access to a border lake or river used for economic activities (e.g. tourism). Border fences could thus potentially affect the freedom to conduct business, provided by Article 16 of the Charter.

FIGURE 3.5: BORDER FENCES AND FUNDAMENTAL RIGHTS



Source: FRA (2024).

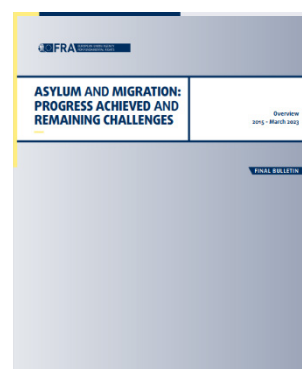
3.2.3 Stopping ill treatment at borders

At some sections of the EU's external land borders, smugglers are becoming increasingly violent. Three people died and one was wounded following shootings between smugglers on the **Serbian** side of the border with **Hungary** in October 2023 (⁶¹). The Hungarian government also reported about smugglers carrying weapons and firing warning shots, and migrants throwing stones and other objects at police patrols, damaging police assets and the fence (⁶²).

Such aggressive behaviour justifies the proportionate use of force to counter migrant smuggling. It does not, however, justify abusive behaviour by law enforcement towards smuggled people.

FRA ACTIVITY

Drawing attention to persistent rights violations at borders



In May 2023, FRA published its most recent periodic migration bulletin – a series that FRA has been issuing since 2015. The most pressing concern relates to fundamental rights at borders. FRA notes that:

- fundamental rights violations are reported from an increasing number of border locations in several Member States;
- several reported incidents involve verbal and physical violence, ill treatment, failure to rescue, stripping people of their clothing, stealing their property, forced separation of families and summary expulsion of those seeking asylum;
- people with vulnerabilities, including unaccompanied children, are also among the victims.

Source: FRA, **Asylum and Migration: Progress achieved and remaining challenges**, Publications Office of the European Union, Luxembourg, 2023.

For 2023, FRA has collected reports of ill treatment and related rights violations at borders from nine Member States.

- In **Bulgaria**, asylum applicants reported police violence, summary removals, family separation and confiscation of phones ⁽⁶³⁾.
- In **Croatia**, allegations of physical abuse and theft of property during apprehensions and summary returns to **Bosnia and Herzegovina** increased in the second half of 2023, according to the Danish Refugee Council ⁽⁶⁴⁾. The authorities denied the accuracy of the allegations ⁽⁶⁵⁾ and clarified that there is zero tolerance for the police's unlawful use of means of coercion ⁽⁶⁶⁾.
- In **Cyprus**, in at least one instance, the authorities summarily returned a group of newly arrived people by sea to **Lebanon** in a commercial vessel lacking basic amenities ⁽⁶⁷⁾.
- In **Greece**, the National Commission for Human Rights analysed testimonies of summary returns between 2020 and 2022. These returns were accompanied by threats, ill treatment, abductions, failure to assist and other serious rights violations ⁽⁶⁸⁾. The authorities note that cases are investigated at the national level and by Frontex ⁽⁶⁹⁾ and that the Hellenic Coast Guard takes into consideration the protection of human life and human rights in their work ⁽⁷⁰⁾. Several cases are pending before the ECtHR ⁽⁷¹⁾. FRA notes that, after July 2023, reports of violent arrests on islands followed by abandonment at sea decreased.
- In a case concerning **Hungary**, the ECtHR found that the border police officers had severely ill-treated a Pakistani man while escorting him back to the border fence with **Serbia**, and that the prosecutor's office failed to carry out effective investigations ⁽⁷²⁾. Two cases of summary expulsion of injured people directly from hospitals are pending ⁽⁷³⁾.
- In **Latvia**, there were allegations of serious ill treatment of people stopped after their irregular crossing of the border ⁽⁷⁴⁾. Three cases in which applicants claimed ill treatment in connection with their removal to Belarus are pending before the ECtHR ⁽⁷⁵⁾.
- In **Lithuania**, migrants remain stranded at the border with **Belarus** and are exposed to serious risks to their life ⁽⁷⁶⁾. In late 2023, a Syrian lost his leg, which had to be amputated because of frostbite ⁽⁷⁷⁾.
- In **Poland**, the UN Special Rapporteur on the human rights of migrants expressed concern about allegations of the use of violence during summary removals, allegations that the authorities denied ⁽⁷⁸⁾.
- In **Romania**, the UN Committee against Torture expressed concern over summary returns accompanied by various forms of ill treatment, including beatings and degrading treatment ⁽⁷⁹⁾.

Border management staff must have a high degree of specialisation and professionalism ⁽⁸⁰⁾. In several Member States, low-ranking staff without full training and military personnel support land border patrols and may be involved in apprehending new arrivals ⁽⁸¹⁾. This increases the risk of inappropriate behaviour. All personnel entrusted with border control functions, and particularly those using coercive means, require sufficient training on fundamental rights and the protection of children, women and people in situations of vulnerability, and adequate oversight.

3.2.4 Respecting the prohibition of *refoulement* and the right to asylum

Worldwide, forced displacement has increased. By mid-2023, the United Nations High Commissioner for Refugees (UNHCR) estimated the number of forcibly displaced people to be 110 million. **Syria** and **Afghanistan** were the top two countries of origin of refugees ⁽⁸²⁾.

In Europe, over 1 million people sought asylum in the EU in 2023 ⁽⁸³⁾. In addition, as of 31 December 2023, over 4.3 million people, mostly women and children, who had fled **Ukraine** following **Russia's** invasion enjoyed temporary protection in the EU ⁽⁸⁴⁾.

Displaced people coming back from short visits to **Ukraine** report difficulties in regaining legal status or social protection benefits ⁽⁸⁵⁾. In September 2023, FRA also highlighted data collection gaps for unaccompanied children ⁽⁸⁶⁾.

Asylum seekers coming from other parts of the world face legal and practical challenges in accessing protection, as UN treaty bodies' concluding observations illustrate. Most of their 2023 reports on the external land and sea borders of Member States contain findings and recommendations relating to ill treatment, access to asylum, *refoulement* and/or collective expulsions (Table 3.2) ⁽⁸⁷⁾.

TABLE 3.2: UN TREATY BODIES' FINDINGS ON REFOULEMENT AND/OR ILL TREATMENT AT BORDERS, 2023

Member State	CAT	CEDAW	CERD	ICESCR	CRC	CRPD	HRC
Bulgaria			✓✓				
Croatia			✓✓				
Cyprus							✓
Finland					✗		
Hungary		[✓]					
Italy			✓				
Lithuania				✓✓			
Romania	✓✓						
Slovakia	✓						
Spain	✓	✗					

NB: The table lists UN treaty bodies' concluding observations published in 2023 in relation to the Member States with external land or sea borders. ✗, report has no findings on refoulement or ill treatment at borders; ✓, report has findings on refoulement; [✓], findings relate more generally to asylum; ✓✓, report has findings on refoulement and ill treatment at borders. CAT, Committee against Torture; CEDAW, Committee on the Elimination of Discrimination against Women; CERD, Committee on the Elimination of Racial Discrimination; CRC, Committee on the Rights of the Child; CRPD, Committee on the Rights of Persons with Disabilities; HRC, Human Rights Committee; ICESCR, International Covenant on Economic, Social and Cultural Rights.

Sources: UN treaty bodies ⁽⁸⁸⁾.

Seven Member States have legislation that restricts access to asylum for people who enter the country in an irregular manner, circumventing border controls. Such tensions between European and national law create legal uncertainty.

FRA ACTIVITY

Offering guidance to better protect children



Together with the European Union Agency for Asylum, FRA published guidance for guardians of unaccompanied children on access to international protection and on asylum procedures.

In December 2023, the Council of Europe and FRA issued a joint note summarising key safeguards of European law as they apply to children in the context of migration at the EU's external borders.

Sources: Council of Europe and FRA, **Children in Migration – Fundamental rights at European borders**, Strasbourg, 2023; FRA and European Union Agency for Asylum, **Practical Tool for Guardians – Introduction to international protection**, Publications Office of the European Union, Luxembourg, 2023; FRA and European Union Agency for Asylum, **Practical Tool for Guardians – The asylum procedure**, Publications Office of the European Union, Luxembourg, 2023.

Hungary continues to escort almost all asylum applicants to the border fence with **Serbia**. Border police redirect them to Hungarian embassies to declare their intention to apply for international protection ⁽⁸⁹⁾. According to Hungarian law, during ‘the state of danger due to mass migration’ (extended until 7 September 2024), in place since 2015 ⁽⁹⁰⁾, individuals must first make a declaration of intent stating their wish to apply for asylum at an embassy outside the EU and receive a special entry permit for that purpose ⁽⁹¹⁾. In June 2023, the Court of Justice of the European Union (CJEU) found this procedure to be in breach of the asylum procedures directive (Directive 2013/32/EU), read in light of Article 18 (the right to asylum) of the Charter ⁽⁹²⁾.

Latvia, Lithuania, Poland and **Spain** (for Ceuta and Melilla) have applied legislation that facilitates the ‘re-direction’ back to the border of people who crossed or attempted to cross the state border circumventing border controls ⁽⁹³⁾. **Latvia** and **Lithuania** have prolonged special regimes triggering the operation of these rules ⁽⁹⁴⁾. The common feature of these provisions is that apprehended people may be accompanied back to the border without an adequate individual examination of barriers to removal flowing from the principle of *non-refoulement*. Safeguards to uphold the right to asylum – such as humanitarian or *refoulement*-related exceptions ⁽⁹⁵⁾ – are weak. There is also a risk of *refoulement* of victims of trafficking in human beings ⁽⁹⁶⁾. Courts in **Poland** have overturned some decisions to remove people to **Belarus** ⁽⁹⁷⁾.

In times of ‘mass immigration and a threat to public order or national security’, **Estonia** allows the authorities not to accept asylum applications from people who entered irregularly, if they could have applied at a border crossing point ⁽⁹⁸⁾. Estonia did not put these rules into practice in 2023.

In **Finland**, amendments to the Border Guard Act adopted in 2022 allow for limiting asylum requests to one or more border crossing points when the number of arrivals is exceptionally high, or entries occurred under the influence of a foreign state or other actor ⁽⁹⁹⁾. Following more arrivals in November 2023 (527 and 341 people in consecutive weeks), Finland temporarily closed most and subsequently all land border crossing points from **Russia** ⁽¹⁰⁰⁾. Those asylum seekers who reached Finland before the border closure were channelled into the national asylum procedure ⁽¹⁰¹⁾.

Besides such legal restrictions, international organisations and human rights bodies have also reported potential violations of the principle of *non-refoulement* from other Member States. On 30 July, based on a bilateral readmission agreement, **Cyprus** summarily returned some 109 Syrians to **Lebanon**, which brought them to a Syrian border crossing point, amounting to chain *refoulement* ⁽¹⁰²⁾. In **Greece**, reports of summary returns to **Türkiye** continued, including informal returns by land to the country of origin, entailing a likely violation of the principle of *non-refoulement* ⁽¹⁰³⁾.

Four national civil society organisations have expressed concern that, when coordinating search-and-rescue operations in its maritime search-and-rescue zone, **Malta** has provided coordinates of people in distress at sea to armed groups operating in eastern Libya. These groups have then intercepted the boats and disembarked the rescued people in Libya, exposing them to gross human rights violations ⁽¹⁰⁴⁾. Disembarkation data for 2023 following search-and-rescue operations in the central Mediterranean illustrate the limited number of people brought to Maltese ports: 157 651 people were rescued and disembarked in **Italy**, 17 190 people disembarked in **Libya** and only 380 people disembarked in **Malta** ⁽¹⁰⁵⁾.

3.2.5 Enhancing investigations

Many rights violations reported at the EU's borders would constitute, if proven, criminal acts. However, national judicial authorities investigate very few cases ⁽¹⁰⁶⁾. For victims, initiating legal proceedings is often not a priority and is – for most – prohibitive, given their lack of legal knowledge, lack of means to bring a case and concerns about negative repercussions should they initiate a complaint. Furthermore, evidence of what happens at night in remote locations is difficult to produce.

The ECtHR continues to play an important role in upholding rights at borders. In 2023, the ECtHR issued at least eight judgments that found a violation of Article 2 and/or Article 3 of the ECHR ⁽¹⁰⁷⁾. At least 30 communicated cases were pending adjudication ⁽¹⁰⁸⁾.

The execution of several ECtHR judgments addressing systemic issues has been delayed ⁽¹⁰⁹⁾.

Two key CJEU judgments on access to asylum at borders were not, or only partly, implemented ⁽¹¹⁰⁾. **Hungary** continued to redirect asylum applicants to Serbia and to require them to submit a declaration of intent at its two designated embassies, even after the CJEU prohibited this in June 2023. **Lithuania** removed the ban on asylum applications from people who circumvent border controls from its aliens law. However, it changed its law on the state border to continue to allow – under certain humanitarian limitations - apprehended people to be redirected to the **Belarus** border when an emergency situation is declared ⁽¹¹¹⁾.

FRA notes that the difficulty for victims to access justice, the two European courts' slow execution of rulings on access to asylum and the tension between national and EU law (as described in Section 3.2.4) create a potential rule of law issue within the meaning of Article 2 of the Treaty on European Union ⁽¹¹²⁾.

3.2.6 Monitoring fundamental rights compliance at borders

Independent fundamental rights monitoring promotes transparency and accountability. It enhances trust in public authorities ⁽¹¹³⁾.

In 2023, the Frontex fundamental rights monitors were fully operational. There were 46 monitors; 6 out of 10 monitors were women, which facilitated the monitoring of gender-specific aspects ⁽¹¹⁴⁾. As shown in Figure 3.6, Frontex spent 1 627 monitoring days in the field, mostly in **Greece, Italy, Spain** and **Romania**. The Frontex Fundamental Rights Office used the findings to propose mitigating measures; however, according to the Frontex Consultative Forum, Frontex has not sufficiently acted upon these proposals ⁽¹¹⁵⁾.

FRA ACTIVITY

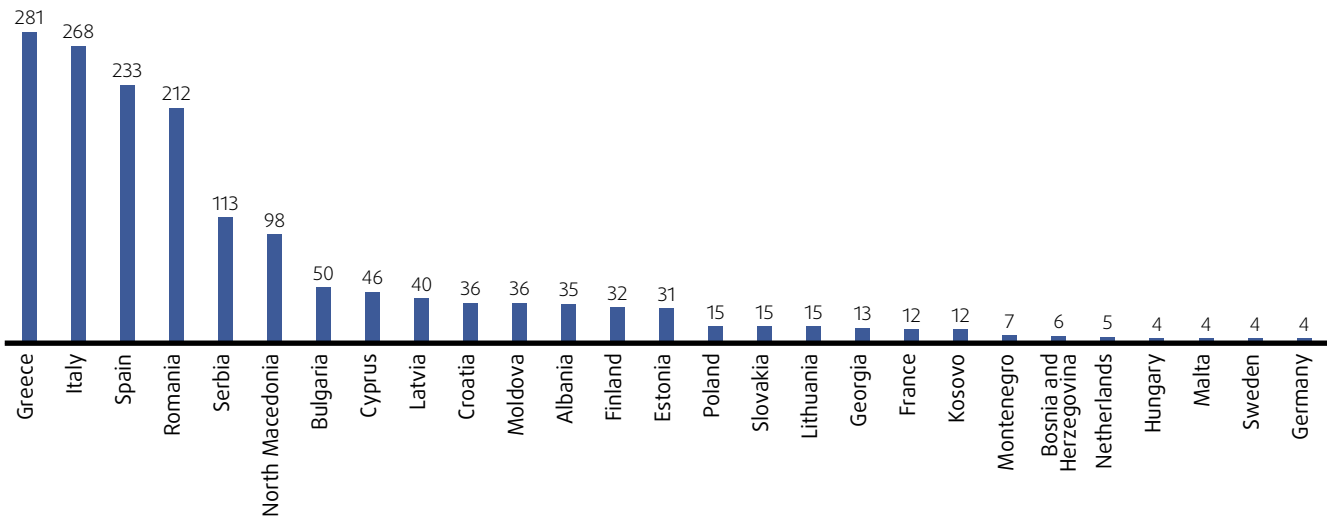
Shedding light on national investigations

In 2023, FRA started to collect data on national judicial and disciplinary investigations of alleged rights violations against migrants and refugees at borders. The report will be published in 2024.

Source: FRA (2024).



FIGURE 3.6: FRONTEX FUNDAMENTAL RIGHTS MONITORING – DAYS SPENT IN THE FIELD BY COUNTRY, 2023



Source: Frontex Fundamental Rights Office (2024).

FRA ACTIVITY

Establishing mechanisms for fundamental rights monitoring

The EU has agreed that the future screening regulation will contain a duty for Member States to set up national independent monitoring mechanisms to observe fundamental rights compliance during the screening process. It also envisages a role for FRA.

Source: Council of the EU, Regulation (EU) 2024/1356 (Screening Regulation), Article 10.

Under EU law, there is no express obligation for Member States to monitor fundamental rights corresponding to Frontex’s fundamental rights monitoring duty ⁽¹¹⁶⁾. However, the European Commission encourages Member States to set up their own national monitoring mechanisms and offers financial support ⁽¹¹⁷⁾.

In **Bulgaria, Croatia, Greece, Poland** and **Spain**, national human rights institutions visit border areas to monitor fundamental rights compliance in their capacity as national preventive mechanisms under the 2002 UN Optional Protocol to the Convention against Torture ⁽¹¹⁸⁾.

In **Croatia**, the new agreement regulating the independent monitoring mechanism extended the scope of the mechanism’s visits in 2023, including visits to border sections outside border crossing points ⁽¹¹⁹⁾. Findings from the 2023 monitoring visits are not yet available.

3.2.7 Preserving space for civil society

The policy environment deters the work of civil society organisations at borders. For example, the European Commission’s 2023 rule of law reports flag specific difficulties for civil society actors defending migrants’ and refugees’ rights in **Greece, Italy, Latvia, Hungary** and **Poland** ⁽¹²⁰⁾. There were some improvements in **Lithuania** ⁽¹²¹⁾. In **Cyprus** and **Malta**, the civil society space in general is narrowed ⁽¹²²⁾.

Lawsuits take up a lot of activists’ time and therefore hinder their human rights work ⁽¹²³⁾.

In November 2023, the European Commission proposed new EU rules to combat the facilitation of migrants’ unauthorised entry, transit and stay. The new rules target facilitation for financial or material benefit and should thus reduce the risk of humanitarian actors being charged with migrant smuggling ⁽¹²⁴⁾.

3.3 FUNDAMENTAL RIGHTS ISSUES AFTER UNAUTHORISED ENTRY

This third section deals with the initial procedures after people enter an EU country. It also describes the pact on migration and asylum and the EU's accession to the Istanbul Convention.

3.3.1 Mitigating risks stemming from faster procedures at borders

Some Member States consider that the EU's asylum policies, combined with a low rate of returns, constitute a 'pull factor' for irregular migration and favour migrant smuggling ⁽¹²⁵⁾.

In 2023, Frontex recorded some 385 000 irregular border crossings by land and sea. This is 18 % more than in 2022. Syrians accounted for over 107 000 irregular crossings ⁽¹²⁶⁾. Sea arrivals increased significantly: in **Italy**, from some 105 000 in 2022 to some 160 000 in 2023 ⁽¹²⁷⁾ and, in the Canary Islands (**Spain**), from some 15 000 in 2022 to almost 40 000 in 2023 ⁽¹²⁸⁾.

The pact on migration and asylum proposes new responses. It consists of various policy and legislative measures, one of which is to speed up asylum and return procedures at borders. Figure 3.7 displays nine legal instruments on which the EU co-legislators agreed in December 2023 ⁽¹²⁹⁾.

FIGURE 3.7: LEGISLATIVE PROPOSALS AGREED THROUGH THE PACT ON MIGRATION AND ASYLUM – KEY ELEMENTS

Screening regulation	Eurodac regulation (revision)	Asylum procedures (revision)	Return border procedure	Asylum and migration management	Crisis and <i>force majeure</i> regulation	Reception conditions directive (revision)	Qualification regulation	Resettlement regulation
<ul style="list-style-type: none"> • New rules to identify new irregular arrivals • Common rules for security, health and vulnerability checks 	<ul style="list-style-type: none"> • Storing more data on new arrivals • Identifying unauthorised movements across the EU 	<ul style="list-style-type: none"> • Speedier asylum procedures at borders • Duty to keep people near the border 	<ul style="list-style-type: none"> • Speedier return procedures at borders 	<ul style="list-style-type: none"> • Common framework to manage asylum and migration • Member State responsible for examining asylum applications • Solidarity rules 	<ul style="list-style-type: none"> • Special rules for large-scale arrivals • Rules in case of 'instrumentalisation' of migrants 	<ul style="list-style-type: none"> • New rules on treatment of asylum seekers • Penalties for asylum seekers who move across the EU without authorisation 	<ul style="list-style-type: none"> • Updated rules on who is entitled to international protection • Rights and duties of international protection beneficiaries 	<ul style="list-style-type: none"> • A framework for the EU to allow refugees in non-EU countries to come legally to the EU • Procedure for resettlement

Source: FRA (2024).

▲ NB:

Proposals marked with 'revision' refer to revisions of existing instruments. The final wording of the legal instruments will be agreed in 2024. Instruments will apply from mid-2026.

The pact revises asylum and return procedures for those who apply for asylum at border crossing points, those rescued at sea and those who apply after having crossed the border in an irregular manner. Member States will no longer have the option of channelling all applications through regular asylum and return procedures. They will have to examine their applications using a faster border procedure in all cases when the applicant has a nationality with an asylum recognition rate below 20 % (in crisis situations this can be increased to 50 %). If the asylum application is rejected, a return decision will have to be issued at the same time ⁽¹³⁰⁾.

The pact does not cover the outsourcing of asylum processing in non-EU countries as envisaged in the protocol concluded between **Albania and Italy** on 6 November 2023 ⁽¹³¹⁾.

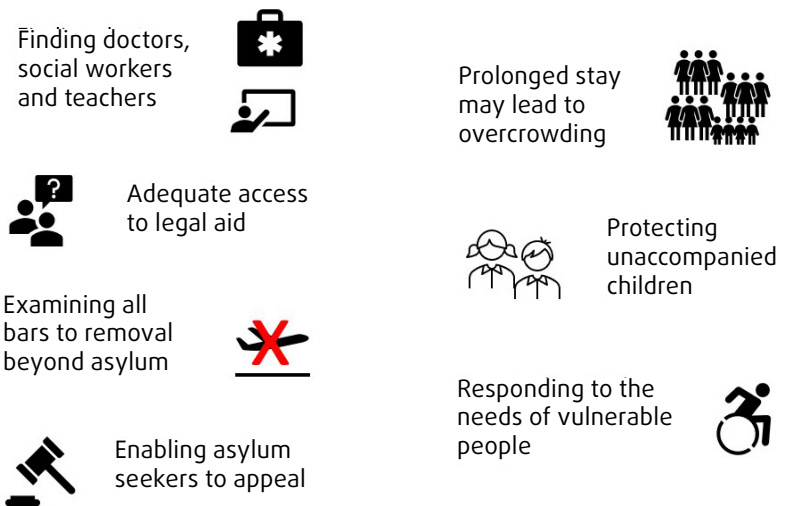
The border procedures for asylum and return must respect strict timelines. The authorities should complete their work within 12 weeks, with judges having an additional 12 weeks to review appeals. In total, the upper time limit is almost 6 months, which can be extended in crisis situations ⁽¹³²⁾.

Since the early 1990s, at least half a dozen European states have enacted special procedures to examine asylum applications submitted at airports ⁽¹³³⁾. Through these procedures, applicants are kept in transit zone facilities for the time limits set in national law. This enables the authorities to call on airlines' duty to take rejected applicants back to the port of departure based on international aviation law ⁽¹³⁴⁾.

Several Member States had border procedures before the pact was presented ⁽¹³⁵⁾. Extensive experience in the application of border procedures comes from the Greek hotspots, where border procedures have been applied since 2016 ⁽¹³⁶⁾. FRA has found that keeping asylum applicants in remote locations brings multiple fundamental rights challenges ⁽¹³⁷⁾.

Creating dignified conditions to host asylum applicants in remote locations is not the only fundamental rights issue stemming from an increased application of border procedures. Figure 3.8 illustrates other possible concerns: difficulties in providing services (e.g. healthcare, schooling and legal aid) in remote locations; the risk of overcrowding; difficulties in responding to the special needs of unaccompanied children, victims of gender-based violence and other people with vulnerabilities; and obstacles to an effective remedy. Finally, when negative asylum decisions are issued together with a return decision, there is a risk that barriers to removal based on general human rights considerations other than international protection needs (e.g. those stemming from the right to respect for family life) may not be adequately assessed.

FIGURE 3.8 BORDER PROCEDURES AND MAIN FUNDAMENTAL RIGHTS RISKS



Source: FRA (2024).

3.3.2 Offering dignified reception at borders

In 2023, some locations had to cater for many new arrivals. Two examples illustrate this.

In Lampedusa (**Italy**), from 11 to 17 September, almost 12 000 people arrived, overstretching the reception capacity of the whole island ⁽¹³⁸⁾. Following a visit to Lampedusa, the President of the European Commission announced a 10-point plan to address arrivals by sea ⁽¹³⁹⁾. The authorities in Lampedusa resolved the emergency through effective onwards movements to Sicily ⁽¹⁴⁰⁾.

In the autumn of 2023, hundreds of migrants, including families with young children, slept in the open in Rhodes (**Greece**), until they were moved to facilities on the nearby islands of Kos and Leros or on the mainland ⁽¹⁴¹⁾. On Kos and Leros, due to new arrivals the centres remained overcrowded until the end of the year in spite of continued efforts by the authorities to decrease the number of residents ⁽¹⁴²⁾. The ECtHR issued interim measures requesting dignified reception for two Afghan single mothers and their five children hosted on Kos ⁽¹⁴³⁾. Many of those who were granted international protection continued to stay in the centres on the Greek islands as they needed time to complete the necessary formalities to start a new life in Greece and to obtain access to integration support ⁽¹⁴⁴⁾.

These examples show the need for flexibility when implementing the new rules under the EU pact on migration and asylum, namely that asylum applicants must stay at or near the border, in transit zones or in other designated locations ⁽¹⁴⁵⁾. The initial reception at borders can work well only if it is part of a sound overall system that – in addition to effective return policies – has sufficient capacity for the second-line reception of asylum applicants and offers integration opportunities to refugees.

3.3.3 Avoiding arbitrary detention

Courts continued to deal with cases of arbitrary detention. In **Lithuania**, the Constitutional Court clarified that asylum seekers benefit from the safeguards against arbitrary detention, and the Supreme Administrative Court concluded that a family with three children should be granted alternatives to detention ⁽¹⁴⁶⁾. The ECtHR found that **Malta** arbitrarily detained an Ivorian national in 2021 for several months, upon their arrival by sea, to avoid spreading a disease – without adequate individual assessment ⁽¹⁴⁷⁾.

Over 50 civil society organisations fear that the pact will ‘normalise the arbitrary use of immigration detention, including for children and families’ ⁽¹⁴⁸⁾. The UNHCR has called for border procedures to be implemented without resorting to de facto detention of asylum applicants ⁽¹⁴⁹⁾.

3.3.4 Addressing gender-based violence in initial reception facilities

The EU approved the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) ⁽¹⁵⁰⁾ in June 2023. It became binding for the EU on 1 October 2023 ⁽¹⁵¹⁾. All Member States except **Bulgaria, Czechia, Hungary, Lithuania** and **Slovakia** have ratified the Istanbul Convention ⁽¹⁵²⁾.

EU law on asylum already contains some provisions to protect women from gender-based violence, for example when they are hosted in reception centres ⁽¹⁵³⁾. The EU will need to implement provisions of the Istanbul Convention falling within its exclusive and shared competence, including on matters relating to asylum and *non-refoulement* ⁽¹⁵⁴⁾.

FRA ACTIVITY

Surveying women from Ukraine who fled Russia's invasion

FRA is conducting a survey to collect the experiences of women from **Ukraine in Czechia, Germany and Poland**. This includes their experiences of violence and other human rights abuses related to the war. The data collected will contribute to efforts to better respond to the needs of women displaced by armed conflict.

Source: FRA, 'Violence and related human rights abuses against women fleeing the war in Ukraine', 2023.

Article 15 of the Istanbul Convention requires the training of professionals on the prevention and detection of gender-based violence. This should include staff working in reception facilities, to allow them to correctly detect women who have suffered violence in their country of origin, during transit or at their destination, including in the reception facility itself. Victims must have access to adequate healthcare and social services (Article 20) and must receive adequate and timely information on available support services and legal measures, in a language they understand (Article 19).

In December, FRA collected information on measures to address and prevent gender-based violence in six initial reception centres: Pournara in **Cyprus**, the closed and controlled centres in Kos and Samos in **Greece**, the Messina and Pozzallo hotspots in **Italy**, and Casa de Madre in the Canary Islands (**Spain**).

Table 3.3 provides an overview of measures related to training, information, vulnerability assessment, women-only spaces, referral systems, and the separation of single women from unrelated single men and of unaccompanied boys from unaccompanied girls. At the time of data collection, the situation was diverse and presented several challenges.

TABLE 3.3: MEASURES TACKLING VIOLENCE AGAINST WOMEN IN SIX INITIAL RECEPTION FACILITIES, DECEMBER 2023

Area of intervention	Facility					
	Pournara, Cyprus	Kos, Greece	Samos, Greece	Hotspot Messina, Italy	Hotspot Pozzallo, Italy	Casa de Madre, Tenerife, Spain
There were awareness-raising activities on gender-based violence for staff in 2023	✘	✓	✘	✘	✓	✓
Newly arrived women receive information on gender-based violence services and asylum claims	✓	✓	✘	✓	✘	✓
There is a dedicated room for women-only meetings	✘	✘	✘	✘	✘	✘
Every newly arrived woman undergoes a vulnerability assessment	✘	✘	✘	✓	✘	✓
The facility has a staff member as a focal point on gender-based violence	✓ (*)	✓	✓ (*)	✘	✘	✘
The facility or reception authorities have adopted referral systems for gender-based violence incidents	✘	✘	✘	✓	✓	✓
Single women are separated from unrelated single men	✓	✘	✘	✓	✓	✘
Unaccompanied girls are accommodated separately from unaccompanied boys	✓	✓ (**)	✓ (**)	✓ (**)	✓	n/a

(*) Vulnerability focal point. (**) Separate rooms but not separate areas.

NB: ✓, yes; ✘, no; n/a, not applicable.

Source: FRA (2024), based on field visits in December 2023.

Vulnerability assessments, even if part of the procedure, as in **Greece**, do not cover every woman at times of large arrivals. This is often due to shortages of medical staff. In the centres that FRA visited, single women are in principle housed separately from single men. This is, however, not always possible when there are large numbers of arrivals, as the space reserved for single women is occupied by others. In **Spain**, the policy is to always accommodate single women in different centres from men and not in the same facility. This is an encouraging preventive measure.

Most of the reception centres visited provide women with safe access to sanitary facilities (with sufficient light, separate from men, within the sight of security personnel, etc.). However, toilets and showers are generally not lockable, which hinders the privacy of women and increases the risk of assault.

In the hotspot in Lampedusa, the national anti-violence network Donne in Rete contro la Violenza provides specialised support to women on gender-based violence. Through this project, women at risk receive crucial information and contacts on gender-based violence upon arrival ⁽¹⁵⁵⁾.

The Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence, in its country monitoring, has expressed concerns in relation to the implementation of the Istanbul Convention. For example, it highlights security risks for women when accessing sanitary facilities in the Mavrovouni reception facility in Lesvos (**Greece**) ⁽¹⁵⁶⁾.

FRA Opinions

Over 4 000 people died or went missing in their attempts to reach Europe by sea in 2023. This is the highest number in the last 5 years. The right to life (Article 2 of the Charter and the European Convention on Human Rights) carries an explicit obligation for states that are legally bound to honour it on land and at sea. EU Member States have operational protocols on search and rescue, which require constant review to reflect best practices and lessons learned. The number of vessels deployed to rescue people in distress at sea does not match the needs.

Reducing the death toll at sea is complex. It requires a comprehensive approach including all relevant states, EU bodies, international organisations and other involved parties. There are, however, important steps that the EU and its Member States can take.

Member States are taking enhanced action to control their borders and stem irregular migration. Some measures have led to arbitrariness, legal uncertainty, restrictions on the work of civil society and ineffective judicial protection against widespread rights violations at borders. Few victims access justice through effective remedies. Case-law of the European Court of Human Rights sets the conditions required for a remedy to be effective in law and in practice. In its contribution to the European Commission's rule of law report, FRA indicates that the lack of access to justice may pose a risk to the respect of the rule of law as a core EU value of Article 2 of the Treaty on European Union.

In future, under the pact on migration and asylum, Member States will have a duty to establish independent mechanisms to monitor fundamental rights during screening at borders and are free to extend the scope of such mechanisms to other aspects. In 2022, FRA issued guidance on how to set up such mechanisms.



FRA OPINION 3.1

EU Member States should review and adjust their search-and-rescue protocols based on best practices to save lives at sea.

When promoting compliance of EU funding with fundamental rights, the European Commission should consider ways to link funding for maritime border management to the adoption of and adherence to operational protocols that ensure timely assistance to people in imminent danger at sea.

Member States and Frontex should collectively ensure that enough appropriately equipped naval assets are deployed in high-sea areas, where risk analysis suggests shipwrecks are more likely to occur.



FRA OPINION 3.2

Member States should make enhanced efforts to protect the fundamental rights of migrant, refugee and asylum-seeking persons at borders. They should do so by promptly and effectively investigating all allegations of fundamental rights violations at borders and in all shipwreck incidents. Furthermore, Member States should respect the procedural requirements established by the ECtHR.

Member States should set up or strengthen national independent mechanisms to monitor fundamental rights compliance at their external borders, building on FRA's expertise and guidance.

FRA OPINION 3.3

Member States should ensure that facilities used to host new arrivals at external borders offer dignified and safe conditions, and do not lead to arbitrary detention. Such facilities should be part of an overall sound migration management system with sufficient capacity to move asylum applicants to regular facilities, when necessary. The system should also have effective, humane procedures for dignified returns and offer workable integration opportunities for international protection beneficiaries.

The European Commission should consider requesting an independent fundamental rights impact assessment, when necessary, to verify the fundamental rights compliance of EU funding under the applicable EU instruments.



FRA OPINION 3.4

When assessing the compliance of EU funding with EU law, Member States and the European Commission should also consider the standards set out in the Council of Europe Istanbul Convention.

In 2023, the Istanbul Convention became binding on the EU itself and not only on those Member States that have ratified it. EU law already contains provisions for protecting women at borders. The new obligations will further expand these. Under the common provision regulation (Regulation (EU) 2021/1060), when Member States make use of EU funding to support their border management, asylum and return policies, they need to put in place arrangements to ensure that EU-funded programmes comply with the Charter and with the United Nations Convention on the Rights of Persons with Disabilities. In its 2023 report, entitled *EU Funds – Ensuring compliance with fundamental rights*, FRA suggests that, in future, the Istanbul Convention should also be considered.

Endnotes

- (¹) This report does not analyse agreements with non-EU countries concluded by the EU, such as the EU-Tunisia memorandum of understanding. See European Commission, **‘Memorandum of understanding on a strategic and global partnership between the European Union and Tunisia’**, press release, 16 July 2023.
- (²) European Union Agency for Fundamental Rights (FRA), **Protecting Human Rights Defenders at Risk – EU entry, stay and support**, Vienna, 2023, Section 2.1.
- (³) **European Parliament resolution of 16 March 2023 on the EU guidelines on human rights defenders** (2021/2204(INI)); European External Action Service (EEAS), **‘EU guidelines on human rights defenders’**, 2016. The guidelines are inspired by UN General Assembly, **Resolution 53/144: Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms**, A/RES/53/144, 1999.
- (⁴) FRA, **Protecting Human Rights Defenders at Risk – EU entry, stay and support**, Vienna, 2023, Section 2.1. See also Chapter 3, Section 3.2.
- (⁵) FRA, **Protecting Human Rights Defenders at Risk – EU entry, stay and support**, Vienna, 2023, Section 2.1.
- (⁶) For a list of visa-free countries, see **Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement** (OJ L 303, 28.11.2018, p. 39), Annex II.
- (⁷) The legal basis for ETIAS is **Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European travel information and authorisation system (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226** (OJ L 236, 19.9.2018, p. 1), recital 71. For the most recent roadmap for the entry into operation of ETIAS, see Council of the European Union, **‘Justice and Home Affairs Council, 19–20 October 2023’**, 2023.
- (⁸) **Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226**, recital 71.
- (⁹) United States Customs and Border Protection, **Electronic system for travel authorisation (ESTA)**.
- (¹⁰) For more information about ETIAS and related fundamental rights issues, see FRA and European Court of Human Rights (ECtHR), **Handbook on European law relating to asylum, borders and immigration – Edition 2020**, Publications Office of the European Union, Luxembourg, 2022, Chapter 2.
- (¹¹) **Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226**, Art. 33.
- (¹²) No official statistics on non-EU nationals crossing the Schengen borders are available. The European Commission has predicted that, in 2025, there will be 887 million regular border crossings, of which around one third are expected to be by non-EU nationals traveling to Schengen countries for a short-term visit. See **Commission staff working document – Impact assessment report on the establishment of an EU entry exit system** (SWD(2016) 115 final), Brussels.
- (¹³) European Commission, **‘European Commission welcomes the Council adoption of visa liberalisation for the citizens of Ukraine’**, 2017. See **Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement** (OJ L 303, 28.11.2018, p. 39), Annex II.
- (¹⁴) FRA, **Fleeing Ukraine – Displaced people’s experiences in the EU**, Publications Office of the European Union, Luxembourg, 2023, Chapter 1. See also **Commission communication – Providing operational guidelines for external border management to facilitate border crossings at the EU-Ukraine borders** (OJ C 104I, 4.3.2022, p. 1) and **Commission communication – Temporary protection for those fleeing Russia’s war of aggression against Ukraine: One year on** (COM(2023) 140 final), Brussels, p. 5.
- (¹⁵) As an illustration, in 2021, the Member States accepted only around 22 000 refugees for resettlement. See Eurostat, **‘Resettled persons – Annual data’** (tps00195); data extracted on 2 February 2023; data for 2022 are not yet available. The data available on Eurostat are different from the data available in

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the Office of the United Nations High Commissioner for Refugees (UNHCR) Resettlement Data Finder. See also FRA, *Legal entry channels to the EU for persons in need of international protection – A toolbox*, Vienna, 2015.

- (16) For global resettlement needs in 2023, see UNHCR, *Projected Global Resettlement Needs – 2023*, Geneva, 2022. For resettlement places pledged, see *Annexes to the Commission communication – Progress report on the implementation of the European agenda on migration* (COM(2018) 301 final), Brussels; *Commission Recommendation (EU) 2020/1364 of 23 September 2020 on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways* (OJ L 317, 1.10.2020, p. 13), annex; *Annexes to the Commission communication on the report on migration and asylum* (COM(2022) 740 final), Brussels, Annex 2; European Commission, *Pledges submitted by the Member States for 2023*.
- (17) See Sant’Egidio, ‘Humanitarian corridors’. For Italy, see also Ministry of Foreign Affairs and International Cooperation (Ministero degli Affari Esteri e della Cooperazione Internazionale), ‘Humanitarian corridors’ (*‘I corridori umanitari’*). For examples of specific arrivals in France, see Sant’Egidio, ‘Five refugee families arrive from Lebanon thanks to the humanitarian corridors’ (*‘Cinq familles de réfugiés arrivent du Liban grâce aux Couloirs humanitaires’*), 2023; and, for Belgium, Sant’Egidio, ‘Welcoming and hope in Belgium: 29 Syrian refugees start a new life thanks to Humanitarian Corridors of Sant’Egidio’, 2023.
- (18) Italy, Ministry of the Interior, *Dossier of the Ministry of the Interior, 15 August 2023 – Activity by the Ministry of the Interior (Dossier Viminale, 15 agosto 2023 – L’attività dell’Ministero dell’interno)*, 2023, p. 33.
- (19) Italy, Law Decree No 20 of 10 March 2023 ‘Urgent provisions regarding legal entry flows of foreign workers and the prevention and fight against irregular immigration’ (*Decreto-legge 10 marzo 2020 n. 20, Disposizioni urgenti in materia di flussi di ingresso legale dei lavoratori stranieri e di prevenzione e contrasto all’immigrazione irregolare*), which, with amendments, became Law No 50 of 5 May 2023 (*Legge 5 maggio 2023, n. 50*).
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- (21) Greek Ombudsmen, ‘The Greek Ombudsman investigates the Pylos shipwreck case’, press release, 2023.
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- (29) MSF, ‘People continue to cross Belarus–Poland border in search of safety in Europe’, press release, 2023. See also Helsinki Foundation for Human Rights, ‘Disappearances on the Polish–Belarusian border – HFHR’s actions’, 2023.
- (30) ECtHR, *Abdullah Mohamed Alhowais v Hungary*, No 59435/17, 2 February 2023.
- (31) *Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union* (OJ L 189, 27.6.2014, p. 93).
- (32) *Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624* (OJ L 295, 14.11.2019, p. 1); see, in particular, Art. 3(b). See also Frontex, *Management Board Decision 30/2023 adopting the technical and operational strategy for European integrated border management 2023–2027*, Warsaw, 2023, appendix, Section 4.2.
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- (34) Frontex, Fundamental Rights Officer, comment provided in March 2024.
- (35) MSF, *Death, Despair and Destitution – The human costs of the EU’s migration policies*, Geneva, 2024, p. 30.
- (36) Italy, Ministry of the Interior (2023), *Dossier of the Ministry of the Interior, 15 August 2023 – Activity by the Ministry of the Interior (Dossier Viminale. 15 agosto 2023, L’attività dell’Ministero dell’interno)*, 2023, p. 30.
- (37) Italy, Law Decree No 1/2023, urgent measures for the management of migratory flows (*Decreto-Legge 2 gennaio 2023, n. 1, Disposizioni urgenti per la gestione dei flussi migratori*), 2 January 2023, amended by Law No 15 (*Legge 24 febbraio 2023, n. 15*), 24 February 2023. See also Association for Juridical Studies on Immigration (Associazione per gli Studi Giuridici sull’Immigrazione), ‘Against the Constitution, NGOs and human rights: The unbearable weakness of Law Decree No 1/2023’ (*‘Contro la Costituzione, le ONG e i diritti umani: l’insostenibile fragilità del decreto legge n.1/2023’*), 2023.
- (38) Open Arms, ‘20-day blockade and sanction on open arms after disembarking 195 rescued people at Italian port’, 2023.
- (39) FRA, *Search and rescue operations in the Mediterranean and fundamental rights*, forthcoming 2024. For an overview of past proceedings, see FRA, *June 2023 Update – Search and rescue operations in the Mediterranean and fundamental rights*, Vienna, 2023, Section 2.
- (40) MSF, *Italian Law 15/2023 and Distant Port Practice – European Commission complaint*, Geneva, 2023.
- (41) For a recent comprehensive analysis, see Rocca, M., ‘Distress at sea – State interference with private rescue operations’, PhD dissertation, University of Padova, 2023.
- (42) European Commission, ‘Standard Eurobarometer 100 – Autumn 2023’, 2023, questions QA5 and QB6.
- (43) For the most recent roadmap for the entry into operation of this EU-wide entry–exit system, see Council of the European Union, ‘Justice and Home Affairs Council, 19–20 October 2023’, 2023.
- (44) *Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of non-EU nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the*

- Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011** (OJ L 327, 9.12.2017, pp. 20). The regulation does not apply to Ireland; see recital 53.
- (45) **Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)** (OJ L 77, 23.3.2016, pp. 1), Art. 6.
- (46) For more information about the EES and related fundamental rights issues, see FRA and ECtHR, *Handbook on European law relating to asylum, borders and immigration – Edition 2020*, Publications Office of the European Union, Luxembourg, 2022, Chapter 2.
- (47) **Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of non-EU nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011** (OJ L 327, 9.12.2017, p. 20), Article 6 (2)(b).
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- (53) For more details on this tension, see Finland, Ministry of the Interior, ‘Government Decision on the temporary closure of border crossing points and centralising the application for international protection’ (*Valtioneuvoston päätös rajanylityspaikkojen väliaikaisesta sulkemisesta ja kansainvälisen suojelun hakemisen keskittämisestä*), 2023. See also Finland, Non-Discrimination Ombudsman, ‘Keeping the Eastern border crossing points closed continues to seriously compromise the right to seek asylum’, news article, 2024.
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- ECtHR, *I.A. and Others v Poland*, No 53181/21, 24 April 2023; ECtHR, *M.A. v Poland*; No 51241/22, 24 April 2023; ECtHR, *A.S. v Poland*, No 15318/22, 24 April 2023; ECtHR, *M.M. and Others v Poland*, No 2509/22, 24 April 2023. The examples are listed in alphabetical order of Member States.
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- (121) **Commission staff working document – Rule of law report: Country chapter on the rule of law situation in Lithuania** (SWD(2023) 815 final), Brussels, pp. 22.
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- ⁽¹⁵⁴⁾ For more details, see **Code of Conduct laying down the internal arrangements regarding the exercise of the rights, and the fulfilment of the obligations, of the European Union and Member States under the Council of Europe Convention on preventing and combating violence against women and domestic violence** (OJ C 194, 2.6.2023, p. 7). For the binding nature of the Istanbul Convention under EU law and its prominent role in interpreting the EU asylum *acquis* by virtue of Art. 78(1) of the Treaty on the Functioning of the European Union, see also judgment of 16 January 2024, **Intervyuirasht organ na DAB pri MS (Femmes victimes de violences domestiques)**, C-621/21, EU:C:2024:47, paragraphs 46–48.
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IMPLEMENTATION AND APPLICATION OF THE EU CHARTER OF FUNDAMENTAL RIGHTS

4

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Ahead of the 2025 midterm review on the implementation of the Charter strategy to strengthen the application of the Charter of Fundamental Rights in the EU and the 25th anniversary of the Charter's proclamation, efforts to implement the 2020 Charter strategy at the national level still lacked a structured process and concrete targets, milestones and timelines.

The Charter continued to strengthen the fundamental rights toolbox in courtrooms, as evidenced by national and European case-law. But persisting challenges in the accessibility of the justice system hindered the effective exercise of the rights enshrined in the Charter, especially for people in vulnerable situations.

National legislators' and authorities' application of the Charter lagged behind that of the judiciary. Of particular note was regional and local authorities' lack of use of the Charter. The Member States have been slowly adopting policy and legal frameworks to implement the Charter-related 'horizontal enabling condition' for the use of EU funds. However, issues remain concerning complaints mechanisms and the participation and required capacity of fundamental rights actors. With national human rights institutions being some of the key advisors of national governments on human rights issues, it remains important for them to develop Charter expertise.

Thanks to dedicated EU funding, especially through the citizens, equality, rights and values programme (CERV), efforts have increased to widen the knowledge and expertise on the Charter. However, differences exist across Member States, national authorities and professions in the extent to which the Charter applies.



4.1 CHARTER AT THE EU LEVEL

EU institutions pushed for stronger and more effective implementation of the Charter in the Member States.

The Council of the European Union adopted conclusions on the application of the Charter and the role of the civic space. It stressed the essential role of civil society organisations and human rights defenders in protecting and promoting the values and rights enshrined in Article 2 of the Treaty on European Union and in the Charter and the importance of ensuring that the Charter is properly applied ⁽¹⁾.

The European Parliament, in its annual report on the situation of fundamental rights for 2022 and 2023 in the EU, called on the Member States to ensure that the Charter was respected in specific areas ⁽²⁾. For instance, it noted that ‘any measures taken on the basis of national security must be necessary and proportionate, and must not undermine the rights guaranteed by the Charter’. This is important, particularly for internal policies such as migration.

In that report, the European Parliament also called for the European Union Agency for Fundamental Rights (FRA) ‘to protect and promote the Charter policies and practices from Union institutions, bodies, offices and agencies, and from Member States when implementing EU law’. The Parliament also stressed the importance for the EU legislator to consult FRA ‘when preparing proposals for legislative acts or recommendations which have an impact on fundamental rights’ ⁽³⁾.

In the 2023 edition of its report on the application of the Charter, the European Commission, considering the vital nature of the right to a fair trial and to a remedy as enshrined in Article 47 of the Charter, decided to focus on effective legal protection and access to justice ⁽⁴⁾. The evidence in the present chapter confirms that the right to a fair trial and to a remedy remains one of the most often used Charter rights.

In its 2023 report on victims' rights, FRA called on Member States to make sure that victims ‘have effective judicial remedies at their disposal if they want to challenge the scope or lack of measures in place to protect them from secondary and repeat victimisation, in accordance with Article 47(1) of the Charter’ ⁽⁵⁾.

The effective legal protection provided under EU law is an illustration of how the EU benefits people's daily lives in a wide range of situations by empowering people to enjoy their fundamental rights under the Charter.

*Source: **Commission report – Effective legal protection and access to justice: 2023 annual report on the application of the EU Charter of Fundamental Rights**, (COM(2023) 786 final), Brussels.*

The objectives of the 2023 proposal for the amendment of the victims' rights directive (Directive 2012/29/EU) were, among other things, to improve the effectiveness of victims' participation in criminal proceedings and to facilitate access to compensation from the offender ⁽⁶⁾. The European Network of National Human Rights Institutions also confirmed that individuals and population groups in situations of vulnerability may face barriers when accessing justice. The network identified barriers confronting people with low incomes; children; women; victims of domestic violence, trafficking and labour exploitation; migrants and applicants for international protection; and ethnic minorities ⁽⁷⁾.

The European Commission's annual report on the application of the Charter highlighted various remaining barriers to accessing justice. These included gaps in the provision of information, in particular on non-judicial remedies; practical difficulties in using e-justice solutions; insufficient arrangements to monitor the rights of the child in judicial proceedings; and varying degrees of inaccessibility to justice among groups in vulnerable situations. All of these barriers can prevent interested parties from accessing legal remedies ⁽⁸⁾. As with the Charter strategy and the Commission's 2022 Charter report, FRA substantially contributed to the Commission's 2023 Charter report by consulting ⁽⁹⁾ members of its fundamental rights platform and by submitting to the European Commission relevant data and analysis from its publications and Case Law Database ⁽¹⁰⁾. For example, FRA's contribution to the 2023 report pointed to difficulties in using digital tools and obtaining relevant information and legal aid when accessing justice. Furthermore, FRA found limited examples of Member States conducting impact assessments and legal scrutiny to analyse the impact of legislative proposals on effective legal protection.

The European Commission continued to provide dedicated funding to promote awareness and capacity building for the implementation of the Charter and for activities on strategic litigation relating to the Charter through the citizens, equality, rights and values (CERV) programme ⁽¹¹⁾. Furthermore, the European Commission's justice programme finances training activities for justice professionals from different EU countries. It includes transnational projects that address training needs related to fundamental rights ⁽¹²⁾.

Using CERV programme funding, the civil society organisation Liberties created a handbook on how to use the Charter for litigation. The handbook was created for civil society organisations and human rights defenders. Its aim was to promote the Charter and EU law as strategic tools for protecting and advancing fundamental rights across the EU.

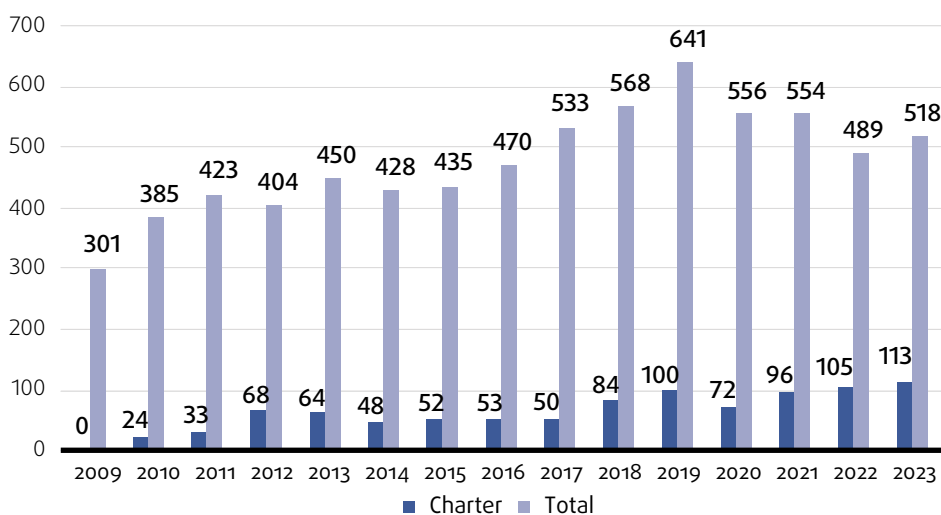
Source: Liberties, 'How to use the Charter of Fundamental Rights of the European Union for litigation: Handbook', 2023.

The Court of Justice of the European Union (CJEU) provided guidance on the interpretation of the Charter, especially with respect to Article 4 (prohibition of torture and inhuman or degrading treatment or punishment), Article 20 (equal treatment) and Article 47 (right to a remedy and to a fair trial) in cases dealing with the European Arrest Warrant⁽¹³⁾. The CJEU’s guidance directly influences the application of the Charter at the national level. This is especially obvious when national judges refer a case to the Luxembourg Court to receive guidance on how to interpret the Charter. Article 47 of the Charter continued to be one of the most frequently considered Charter rights in the CJEU rule-of-law case-law⁽¹⁴⁾.

The European Commission launched infringement proceedings against Belgium and Finland for alleged breaches of Article 47 of the Charter⁽¹⁵⁾.

In 2023, 518 requests for preliminary rulings were brought to the CJEU, and 113 (22 %) of these requests explicitly mentioned the Charter. The proportion of such requests having a Charter dimension has increased over the years (Figure 4.1).

FIGURE 4.1: REQUESTS FOR PRELIMINARY RULINGS, AND NUMBER THAT REFER TO THE CHARTER, 2010–2023



Source: FRA’s calculations based on data received from the CJEU.

4.2 APPLICATION OF THE CHARTER AT THE NATIONAL LEVEL

4.2.1 National courts

National courts play a key role in the enforcement of the Charter when acting within the scope of EU law (Article 51(1)). FRA identified examples of national case-law referring to, analysing or applying the Charter, although it did not identify examples in all Member States. While national courts have been increasingly referring to the Charter, the frequency of such references continues to vary⁽¹⁶⁾.

The role of the Charter in the case-law ranges from symbolic references to decisions in which the Charter has an impact on the overall legal system. When national law does not offer explicit provisions on a specific aspect of fundamental rights guaranteed by the Charter, the Charter tends to become more relevant to deciding a case. For example, in **Bulgaria**, when national law did not recognise same-sex marriages and did not regulate the legal implications of such marriages concluded abroad, the court based its main conclusions on the Charter, and other relevant international legal instruments⁽¹⁷⁾.



In the present case, the entry of the names of two fathers on the birth certificates of the children must be carried out to enable those children to be issued identity documents enabling them to freely exercise their rights under Article 4(3) of Directive 2004/38/EC. ... [This] in no way means that the relationship of descent between the children and their two parents will be recognised for purposes other than the rights which the children derive from EU law. However, to deprive a child of his relationship with one of their parents in the exercise of their right to freedom of movement or to make the exercise of that right impossible or excessively difficult because their parents are of the same sex is contrary to the fundamental rights guaranteed by Articles 7 and 24 of the Charter.

Source: Administrative Court – Sofia City (Административен съд – София-град), N.Z.G. v the Director of the Metropolitan Home for Joyful Rites of Sofia Municipality, **No 6486/2022**, 5 January 2023.

The Charter continued to be a useful tool for interpretation when applying EU legislation. For instance, the Supreme Court of **Cyprus** used Articles 7 (privacy), 8 (data protection), 11 (freedom of expression) and 52(1) (scope and interpretation) of the Charter to interpret the directive on privacy and electronic communications⁽¹⁸⁾. It interpreted this directive as permitting the adoption of measures for combating serious crime, including the general and indiscriminate retention of IP addresses attributed to the source of a connection, subject to proportionality in its duration and to safeguards against abuse⁽¹⁹⁾.

In a case on international protection lodged in **Ireland**, the national courts found that the Minister for Children was in breach of the EU reception conditions directive (Directive 2013/33/EU) and the Charter, in particular Article 1 (dignity), for failure to provide for the basic needs of those seeking international protection⁽²⁰⁾.

In other cases, the Charter's application affected the validity of national law. In **Germany**, confirming earlier case-law, the Federal Constitutional Court held that the lower court had violated the complainant's fundamental right under Article 47(1) of the Charter (the right to a fair trial and to a remedy). This violation was a result of the lower court not verifying compliance with the mandatory minimum information in the European Arrest Warrant regarding the alleged criminal offences and the description of the circumstances underlying these criminal offences. The Federal Constitutional Court noted that, in the application of provisions that are fully harmonised with EU legislation, it is not the fundamental rights under German law that are decisive, but the EU's fundamental rights provisions. In European mutual legal assistance, the principles of mutual trust and recognition apply⁽²¹⁾.

The Constitutional Court in **Italy** annulled a national provision considering Articles 7 (private and family life) and 20 (equality before the law) of the Charter. The provision did not give equal treatment to Italian and EU citizens, on the one hand, and non-EU citizens legally residing in Italy, on the other. The latter were subject to a European Arrest Warrant when Italy was the executing country⁽²²⁾.

In other instances, the Charter may lead to the disapplication of national provisions. For instance, the Court of Cassation in **France**, upholding the direct effect of Article 31 of the Charter (right to paid annual leave), disappplied

national law. Namely, for any employee whose employment contract is suspended because of sick leave due to a non-occupational illness, it made the acquisition of paid leave entitlements subject to the performance of actual work ⁽²³⁾.

As in the past, courts continued to use the Charter in combination with the European Convention on Human Rights (ECHR), rather than as the sole legal basis. This was seen, for instance, in cases in **Belgium** ⁽²⁴⁾ and **Slovakia** ⁽²⁵⁾.

Accessibility of services, information and communication systems in the justice sector is an important consideration in ensuring the rights enshrined in Article 47 of the Charter. In several Member States, however, court buildings are not fully accessible, e-justice solutions are difficult to use due to a lack of digital skills and other issues connected to accessibility affect the use of EU law legal remedies, especially by people in vulnerable situations ⁽²⁶⁾.

4.2.2 Impact assessments and legal scrutiny of legislative proposals

Impact assessments are important documents for initiatives. They tend to analyse the economic, social or environmental impacts of the proposed solutions. The impacts of such initiatives on the fundamental rights provided for in the Charter should also be considered when the Member States' legislators are incorporating EU law into national law. Legal scrutiny brings an additional legal check into the legislative process in relation to the Charter.

FRA found examples of impact assessments and legal scrutiny referring to the Charter in more than half of the Member States.

A detailed analysis of the potential impact of a proposed legislative measure on Charter rights was found, for example, in **Bulgaria**. There, an impact assessment of a proposal regulating the price levels of certain basic food products considered Article 16 of the Charter (freedom to conduct business). It also noted that the freedom to conduct business may be subject to limitations if these limitations meet the criteria laid down in Article 52 of the Charter (scope and interpretation). The Ministry of Economy and Industry concluded that this freedom may be subject to limitations imposed by general public interest, such as a reduction in prices in times of high inflation and the maintenance of the purchasing power of the low- to middle-income population ⁽²⁷⁾.



Furthermore, in **Slovenia**, a legislative proposal incorporating the whistleblowing directive into national law ⁽²⁸⁾ highlighted the impact of the directive on fundamental rights. In particular, the fundamental rights considered were the freedom of expression and the right to information (Article 11 of the Charter); the right to fair and just working conditions (Articles 30 and 31 of the Charter); the rights to respect for private life, protection of personal data, healthcare, environmental protection and consumer protection (Articles 7, 8, 35, 37 and 38 of the Charter, respectively); and the general principle of good administration (Article 41) ⁽²⁹⁾.

Most impact assessments included a general reference to the Charter without a detailed analysis ⁽³⁰⁾. In some cases, the Charter led to an amendment of the bill examined. This was the case in **Belgium**, where a draft decree provided for the inclusion of personal data on patients' care needs (as identified by authorised care workers) in a database managed by the Flemish Care Agency. Owing to the legal scrutiny undertaken by the Data Protection Authority, the decree was amended by introducing an additional requirement for predictability ⁽³¹⁾ and precision of the law in line with Articles 7 (respect for private life) and 52(1) of the Charter ⁽³²⁾.

Furthermore, in **Latvia**, a proposal for a law introducing compulsory military service was amended to include alternative service for people who could not perform the service due to their religious or pacifist beliefs. This happened after the parliament's legal department argued that the proposal should have respected freedom of thought, conscience and religion (Article 10 of the Charter and Article 9 of the ECHR) ⁽³³⁾.

4.2.3 Charter focal points

In the 2020 Charter strategy, the European Commission encourages Member States to appoint a Charter focal point to ease the flow of information and best practices on the Charter and to better coordinate capacity-building efforts ⁽³⁴⁾. The Council of the European Union invited the Member States that had not already done so to 'nominate a Charter focal point or to entrust an existing focal point with the promotion and coordination of capacity building, the exchange of information and raising awareness of the Charter' ⁽³⁵⁾.

In 2023 **Ireland** and **Malta** communicated their Charter focal point nominations to the European Commission. By the end of 2023, 25 Member States had nominated such focal points (Table 4.1). **Slovenia** is the only Member State not to have done so. However, although it has not formally appointed one, **Estonia** participates in the activities of the focal points.

Most focal points are established in the national ministries of justice, followed by those established in other governmental bodies.

TABLE 4.1: 25 MEMBER STATES WITH A CHARTER FOCAL POINT APPOINTED BY THE END OF 2023 AND THEIR POSITIONS IN GOVERNMENT

Ministry of Justice	Ministry of the Interior	Other position
Belgium	Malta (*)	Austria (Federal Chancellery)
Cyprus	Netherlands	Bulgaria (Judiciary)
Denmark		Croatia (Office for Human Rights and Rights of National Minorities)
Estonia		Czechia
Finland		Greece (Ministry of Social Cohesion and Family)
France		Germany (Ministry of Foreign Affairs)
Italy		Hungary (Ministry of European Union Affairs)
Latvia		Ireland (Department of Children, Equality, Disability, Integration and Youth) (*)
Lithuania		Sweden (Ministry of Employment)
Luxembourg		
Portugal		
Romania		
Slovakia		
Spain		

(*) New in 2023.

Source: FRA (2024).

The tasks and the role of the focal point varies from country to country and depends on a variety of factors. These include the number and nature of coordinating mechanisms that already exist in the field of human and fundamental rights.

In **France**, the Charter focal point presented the Charter to the National Agency for Territorial Cohesion. This agency is in charge of implementing EU funds. In 2023, it disseminated FRA's work by sending a quarterly newsletter to the interministerial body ⁽³⁶⁾.

In **Romania**, the Charter focal point participated in several events promoting the application of the Charter, provided submissions to the European Commission's report on the application of the Charter and encouraged national law schools to organise events, courses and lectures on the Charter ⁽³⁷⁾.

At the EU level, the Charter focal points meet under the auspices of the European Commission. Jointly with FRA, the European Commission also invited the Charter focal points to the first annual CharterXchange ⁽³⁸⁾. Through this forum, the Charter focal points had an opportunity to discuss the possible benefits and challenges related to their role as coordinators on the Charter.

4.2.4 Public administration

As in previous years, examples of the use of the Charter by the Member States' public administrations remained scarce. The Ministry of Justice in **Greece** carried out initiatives focusing on the implementation of the Charter and child-friendly justice. They included the establishment of a focal point within the ministry to monitor the implementation of the measures and the establishment of a dedicated working group on the Charter ⁽³⁹⁾. In addition, the Ministry of Migration and Asylum established a complaints mechanism for non-EU nationals for cases of violations of, among other things, the Charter ⁽⁴⁰⁾.

PROMISING PRACTICE

Austria – Networks for communication and exchange

In **Austria**, the Charter focal point serves as a hub of communication and exchange on Charter-related issues within Austria and at the EU level. It functions within the established communication channels of the network of human rights coordinators at the federal and regional levels. This network's mission is to improve human rights mainstreaming and to contribute to raising awareness of, among other things, the Charter. The focal point builds on these well-established structures to perform its tasks. It regularly coordinates Austrian contributions to information requests from the European Commission or FRA and disseminates information related to the Charter from those institutions to the human rights coordinators.

Source: Deputy Human Rights Coordinator of the Federal Chancellery.

In **Luxembourg**, the Ministry of the Economy published a report stressing the need to guarantee the fundamental rights and freedoms of users of digital technologies (as enshrined in the Charter) without any discrimination. The report included a detailed assessment of what this entails and considered specific Charter rights ⁽⁴¹⁾.

In **Latvia**, the State Inspectorate for the Protection of Children's Rights issued guidelines for educational institutions on providing support to children and young people with social behaviour deviations and addiction problems. These guidelines referred to the best interests of the child, as enshrined in Article 24(2) of the Charter ⁽⁴²⁾.

There was still only limited use of the Charter at the regional and local levels. FRA identified two examples of local authorities that explicitly relied on the Charter in their policymaking. In **Romania**, the Bucharest municipality's local council based a proposed decision on setting up centres for adults with disabilities, among other provisions, on Article 26 of the Charter (social integration of people with disabilities) ⁽⁴³⁾. In **Lithuania**, Vilnius relied on the provisions of international and national law and the Charter in its action plan for 2023 to 2025 ⁽⁴⁴⁾.

4.2.5 Charter and the use of EU funds

FRA's 2023 report on EU funds and compliance with fundamental rights ⁽⁴⁵⁾ provided suggestions for Member States' authorities and independent fundamental rights bodies. Specifically, these were on how to mainstream the Charter and the UN Convention on the Rights of Persons with Disabilities (CRPD) in the implementation of funds governed by the common provisions regulation (CPR; Regulation (EU) 2021/1060) for 2021–2027. Since the CPR entered into force in 2021, Member States have had to implement its provisions. This includes 'horizontal enabling conditions', which prominently include fundamental rights. These horizontal enabling conditions also include requirements relating to the effective application and implementation of the Charter and the UN Convention on the Rights of Persons with Disabilities in accordance with Council of the European Union's Decision 2010/48/EC ⁽⁴⁶⁾. Member States must implement the measures outlined in their Charter and convention arrangements, including improving fundamental rights training, raising awareness among all key players in the cycle and ensuring the availability of practical tools to check Charter and CRPD compliance.



The involvement of fundamental rights bodies – such as national human rights institutions (NHRIs), equality bodies (which promote equal treatment by providing independent assistance to victims of discrimination, conducting independent surveys, publishing independent reports and making recommendations on matters relating to discrimination) – and civil society organisations is especially meaningful in the initial stages of the funding cycle. FRA consulted NHRIs in 2020 to determine whether they were engaged in the monitoring of the implementation of EU funds (47). Only three NHRIs reported such involvement. In 2023, of the 26 NHRIs that responded to this question, 13 indicated that they were engaged in the monitoring of fundamental rights compliance in the use of EU funds (48).

Ireland adopted rules on the participation of NHRIs in Charter-compliance monitoring (49). In **Cyprus**, the Ombudsman advises and guides both the managing authority and the intermediate body in determining compatibility with the Charter. For funding programmes that are implemented through public procurement, the intermediate bodies obtain a compatibility certificate from the Ombudsman confirming compliance with fundamental rights and the Charter. As far as Grant Schemes are concerned, the intermediate bodies consult with the Ombudsman to ensure compliance with the guidelines concerning fundamental rights and the Charter before instructions are issued for the implementation of each scheme. Furthermore, the Ombudsman acts as a complaints mechanism in relation to claims submitted during the implementation of co-funded programmes for violations of the provisions of the Charter and participates as an observer in the Monitoring Committee in an advisory role without voting right (50). **Greece** signed a partnership memorandum with the Greek National Commission for Human Rights, according to which the latter will provide advice throughout the programming period and participate in the monitoring committee (51).

In **Slovenia**, the Ombudsman became a member of the working groups coordinating and implementing the Charter arrangements (52). While a multitude of ‘Charter arrangements’, in the sense of the CPR, were put in place, it remains to be seen how they will work in practice.

Fundamental rights actors often do not have the human resources, financial capacity or fundamental rights expertise to get involved and efficiently monitor the programming period (53). Education and training of public officials involved in the implementation of EU-funded programmes are rare. Some examples, however, were found in **Croatia** (54), **Cyprus** (55), **Poland** (56), **Slovakia** (57) and **Slovenia** (58).

To ensure the effective examination of complaints in relation to operations supported by the EU funds, the CPR provides that Member States must put in place arrangements for reporting cases of non-compliance with the Charter and the CRPD to the monitoring committee. Newly established complaints mechanisms were, for instance, identified in **Czechia**, where all managing authorities have set up an email address to which applicants can send complaints about fundamental rights violations. Complaints are handled by the managing authorities, with expert assistance from managers responsible for the implementation of the basic horizontal conditions within the Office of the Government and the Ministry of Labour and Social Affairs. A working group composed of representatives of the managing authority coordinates the process and discusses difficult cases (59).

In **France**, people with an interest in the Border Management and Visa Instrument or the Asylum, Migration and Integration Fund can report breaches of the Charter, either online or by post, to the ethics officer of the Ministry of the Interior and the Overseas or to the French Defender of

PROMISING PRACTICE

Poland – Training on compliance of EU-funded programmes with the Charter

The Office for the Commissioner for Human Rights in **Poland** held the first workshop on the enforcement of the Charter for representatives of management institutions at the Ministry of Funds and Regional Policy. The training was attended by the Charter coordinators from 26 national and regional programmes for 2021–2027 and by the regional commissioners for EU funds. The meeting inaugurated a series of training workshops concerning the compliance of EU-funded programmes with the Charter under the current financial perspective.

Source: Ministry of Funds and Regional Policy.

In **France**, the **National Agency for Territorial Cohesion** coordinates a network of authorities who manage EU funds. The aim of this network is to ensure compliance with the Charter by organising regular coordination, information and training meetings on the Charter. The agency produced a guide to good practice on the Charter of Fundamental Rights. This guide is intended to assist managing authorities in complying with the relevant provisions of the Charter.

Source: France, Ministry of Justice, national liaison officer.

FRA ACTIVITY

Capacity building on applying EU fundamental rights law

The EEA and Norway Grants Fund for Regional Cooperation financed a project that FRA implemented together with the NHRIs from **Bulgaria, Croatia, Cyprus, Latvia, Poland, Slovakia** and **Slovenia** and the European Network of National Human Rights Institutions. The project focused on capacity building as regards the proper application of EU fundamental rights law, with a special focus on the Charter. The relevant NHRIs prepared, among other things, baseline reports and promising practices on the use of the Charter, mapped national human rights structures to help implement Charter rights and prepared a guide on the fundamental-rights-related conditions for the use of EU funds.

Source: FRA, *'Supporting National Human Rights Institutions in monitoring fundamental rights and the fundamental rights aspects of the rule of law'*, 2022.

Rights⁽⁶⁰⁾. In **Slovenia**, cases of non-compliance are sent to the managing authority, which decides who will deal with the complaint based on the existing proceedings for the protection of human rights⁽⁶¹⁾. The managing authority must report cases of non-compliance with the Charter and the CRPD to the monitoring committee, including the measures taken to prevent violations⁽⁶²⁾.

In **Italy**, regions receiving and managing the European Regional Development Fund must identify a contact point. Its job is to ensure and strengthen compliance with the Charter, monitor actions and intervene in cases of non-compliant activities, examine any complaints and, where appropriate, involve the relevant bodies. It should also identify the most effective corrective measures⁽⁶³⁾.

No information was available on cases examined in Member States that already had a complaints mechanism in place. Therefore, it is too early to assess the effectiveness of the available remedies.

4.2.6 National human rights institutions and other bodies

NHRIs and other independent bodies were consulted, or provided recommendations to legislators in relation to the Charter. Examples relate to child sexual abuse and exploitation in **Greece**⁽⁶⁴⁾, biometrics in **Sweden**⁽⁶⁵⁾ and environmental protection and the right to good administration in **Bulgaria**⁽⁶⁶⁾. Some NHRIs analysed national legislation against the Charter provisions, for example in **Belgium**⁽⁶⁷⁾, **Ireland**⁽⁶⁸⁾ and **Lithuania**⁽⁶⁹⁾.

NHRIs and equality bodies also dealt with individual complaints relevant to the implementation of the Charter. For instance, the Ombudsman in **Czechia** used Article 47 of the Charter to point out the contradiction between the Czech legislation on temporary protection and EU law⁽⁷⁰⁾. In **Latvia**, the Ombudsman found a violation of the prohibition of gender discrimination in the use of the structural fund in the field of science⁽⁷¹⁾. In **Romania**, the National Council for Combating Discrimination dealt with a petition against a local authority for hiring only women for the job of cashier. It found that men were discriminated against in the job listing, contrary to Article 23 of the Charter (equality between women and men)⁽⁷²⁾. Furthermore, in **Denmark**, the NHRI assessed the compatibility of prison conditions with the Charter during prison inspections⁽⁷³⁾.

FRA surveyed the NHRIs about their use of the Charter in 2023. The Charter was used most in the context of education/training and awareness raising – 15 NHRIs mentioned these areas. Eleven NHRIs noted that they used the Charter when advising the government, five that they used it in litigation before courts and two that they used it in the context of mediation⁽⁷⁴⁾.

4.3 AWARENESS RAISING AND TRAINING ON THE CHARTER

Charter expertise features among the objectives of the European judicial training strategy for 2021–2024 ⁽⁷⁵⁾. Lawyers, judges, prosecutors, staff of NHRIs and equality bodies, and other justice practitioners should receive dedicated training on the application of the Charter, the scope of its application and its specific rights, and its relationship with national law and the ECHR. The European Commission’s 2023 report on European judicial training pointed to a slight increase in 2022 in fundamental rights training for the judiciary ⁽⁷⁶⁾.

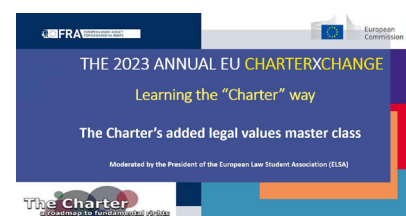
Funding is another important avenue to promote the application of the Charter. With an overall budget of EUR 16 million, the CERV programme funds projects promoting civil society organisations’ awareness raising on and capacity building for the implementation of the Charter ⁽⁷⁷⁾. The justice programme funds capacity building for justice professionals on the application of the Charter ⁽⁷⁸⁾. Educational video clips such as those produced by FRA are another tool for raising awareness of the Charter for the interested public and lawyers ⁽⁷⁹⁾. In 2023, the CJEU made a promotional video on the Charter in several EU languages to promote people’s awareness of the rights enshrined in the Charter ⁽⁸⁰⁾.

Many training and capacity-building activities on the Charter were organised in the Member States for different stakeholders. Judges and prosecutors received training on the Charter in **Austria** ⁽⁸¹⁾, **Belgium** ⁽⁸²⁾, **Bulgaria** ⁽⁸³⁾, **Cyprus** ⁽⁸⁴⁾, **Greece** ⁽⁸⁵⁾, **Hungary** ⁽⁸⁶⁾, the **Netherlands** ⁽⁸⁷⁾, **Portugal** ⁽⁸⁸⁾, **Slovakia** ⁽⁸⁹⁾ and **Slovenia** ⁽⁹⁰⁾.

Lawyers in private practice were trained in **Belgium** ⁽⁹¹⁾, **Croatia** ⁽⁹²⁾, **Cyprus** ⁽⁹³⁾, **Italy** ⁽⁹⁴⁾, **Hungary** ⁽⁹⁵⁾, **Malta** ⁽⁹⁶⁾ and **Portugal** ⁽⁹⁷⁾.

FRA ACTIVITY

New annual event to share knowledge and experience



To explore the current and potential application of the Charter and to increase the exchange of knowledge and experience and foster collaboration among experts, policymakers and stakeholders, FRA, in cooperation with the European Commission, organised the first annual EU CharterXchange. The 2023 CharterXchange included tailored interactive sessions catering to national authorities, parliaments, members of the judiciary and academia, Charter focal points, law students, civil society organisations, NHRIs, equality bodies and partners under the EU enlargement policy.

*Source: FRA and European Commission, **CharterXchange**, 11–13 December 2023.*

FRA ACTIVITY

Human rights courses for legal professionals

A new Council of Europe human rights education for legal professionals course became available. It focuses on the interplay between the ECHR and the Charter and is targeted at EU legal and justice professionals. Funded under the EU’s justice programme (2021–2027), this course was developed in close cooperation with FRA and the European Commission. The topics are elaborated in a practical way by using presentations, interactive screens, knowledge tests and reflective exercises, enabling the users to apply the knowledge and skills gained.

Source: Council of Europe, ‘EU-ECHR interplay: Council of Europe HELP course for EU judges, prosecutors and lawyers’, 2023.

A Charter training course was provided to public administrations in **Austria** ⁽⁹⁸⁾, **Belgium** ⁽⁹⁹⁾, **Bulgaria** ⁽¹⁰⁰⁾, **Cyprus** ⁽¹⁰¹⁾ and **Romania** ⁽¹⁰²⁾. Legal staff of the government and the legislator in the **Netherlands** ⁽¹⁰³⁾, policymakers in **Sweden** ⁽¹⁰⁴⁾ and public administration executives in **Greece** ⁽¹⁰⁵⁾ were also offered a training course on the Charter. In **Finland**, the Charter was discussed in an e-course on legal drafting that targeted civil servants engaged in law drafting; the training course was open to all interested public officials in central government ⁽¹⁰⁶⁾. Local and regional authorities in the **Netherlands** were assisted with queries in relation to EU law and policy ⁽¹⁰⁷⁾.

Journalists in **Croatia** ⁽¹⁰⁸⁾ and trade unions in **Hungary** also received training on the Charter ⁽¹⁰⁹⁾. Civil society organisations from **Greece**, **Cyprus**, **Malta** and **Portugal** built partnerships for capacity building on the Charter in the context of asylum law ⁽¹¹⁰⁾. Civil society organisations received training on the Charter's potential for their work in **Croatia** ⁽¹¹¹⁾ and on the role of the Charter in the context of EU funds in **Poland** ⁽¹¹²⁾.

In **Latvia**, information relating to FRA's newest resources on the Charter was published on the human rights platform civvktiesibas.info ⁽¹¹³⁾. Furthermore, a virtual school containing online materials for both teachers and students contains a subsection that explains the Charter rights ⁽¹¹⁴⁾. In **Italy**, the national coordinator of human rights teachers organised a cycle of training days in high schools in Tuscany. The aim was to promote a culture of fundamental rights and to raise awareness of the EU's functioning and history. The training days were based on group readings and discussions of the Charter ⁽¹¹⁵⁾. In Cyprus, the Ombudsman organised a media campaign on the Charter ⁽¹¹⁶⁾.

FRA Opinions



FRA OPINION 4.1

The European Parliament, the Council of the European Union and the European Commission should further develop and update tools guaranteeing that EU law- and policymaking are in full compliance with the Charter. They should also strengthen their efforts to promote the Charter throughout the EU.

EU Member States are invited to establish a structured process based on concrete targets, milestones and timelines when implementing the conclusions of the Council of the European Union.

Member States are invited to strengthen the capacity of their Charter focal points with adequate human and financial resources to allow them to enhance coordination and cooperation with all relevant actors.

Member States should ensure that the impact of any legislative proposal falling within the scope of EU law is always assessed based on the principles and rights of the Charter. Besides a check against the national human rights standards and the ECHR, rules on impact assessments should explicitly require an effective assessment against the Charter, considering the interpretation given to its provisions by the Court of Justice of the European Union.

Soon it will be 25 years since the Charter was proclaimed. The Charter continues to be frequently used at the EU level, especially in the case-law of the CJEU, but also in EU law- and policymaking (e.g. see the European Commission's tool No 29 and the Council's guidelines). In 2025, the European Commission will report on the midterm implementation of its 2020 strategy to strengthen the application of the Charter of Fundamental Rights in the EU.

At the national level, efforts to implement the Charter strategy still lack a structured procedure and concrete targets, milestones and timelines. Moreover, the Charter is not yet particularly visible in national law- or policymaking that falls within the scope of EU law. National rules on impact assessments still do not explicitly refer to the Charter.

At the same time, 25 Member States appointed a Charter focal point, as envisaged in the Charter strategy and related conclusions of the Council of the European Union. Establishing Charter focal points is an important first step, as these focal points may steer or assist the process of implementing the strategy nationally. However, most of the Charter focal points still need to find their role in the national context to best contribute to an enhanced application of the Charter at the national and local levels.

Legal practitioners often refer to Article 47 of the Charter (right to an effective remedy and to a fair trial). In addition, at the political level, access to justice remains an important topic, as evidenced by the European Commission's 2023 report on the application of the Charter. The report's focus in 2023 was on effective legal protection and access to justice. In line with earlier FRA reports, it concludes that barriers to access to justice remain. They include the insufficient provision of information, in particular on non-judicial remedies; practical difficulties in using e-justice solutions; insufficient arrangements to monitor the rights of the child in judicial proceedings; and varying degrees of inaccessibility of justice for vulnerable groups, including on economic grounds. All of these can prevent interested parties from seizing legal remedies.

FRA's 2023 data suggest a positive trend in terms of training on fundamental rights. Increasingly, training on the Charter is provided not only to the members of the judiciary but also to civil servants, law enforcement, civil society, staff of NHRIs and equality bodies, journalists and students. So far, such training activities do not seem to include regional and local authorities adequately. However, the CERV programme and the justice programme provide opportunities for co-funding relevant training activities.

An important area for Charter expertise is the implementation of EU funds covered by the common provisions regulation (Regulation (EU) 2021/1060). The regulation obliges Member States to make sure that the Charter is respected when implementing EU funds. It also allows NHRIs and equality bodies, as well as CSOs to play an important role in monitoring the respect of fundamental rights when EU funds are used. FRA's 2023 report *EU Funds – Ensuring compliance with fundamental rights* found issues concerning the participation of fundamental rights bodies and civil society in the monitoring process, which appear to lack capacity, resources and Charter expertise.



FRA OPINION 4.2

EU Member States should ensure that children, women, older people, people with disabilities and ethnic minorities who are in a vulnerable situation have access to judicial remedies and are informed of their procedural rights in an accessible manner, as required by EU law.



FRA OPINION 4.3

EU Member States are encouraged to use or promote the use of all available EU funding for Charter-related training, especially the CERV and the justice programmes. These should serve to enhance awareness of the Charter among public officials in national, regional and local authorities.

Member States should ensure the meaningful participation of relevant fundamental rights actors in the monitoring process of relevant EU funds and provide targeted funding to improve their monitoring capacity and expertise.

Member States should ensure that their complaints mechanisms concerning the use of EU funds can identify any violation of the Charter and provide the necessary redress.

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- (¹⁰²) Romania, National Institute for Administration (Institutul Național de Administrație), 'Legal protection of human rights' (**'Protecția Juridică a Drepturilor Omului'**).
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EUROPEAN UNION AGENCY
FOR FUNDAMENTAL RIGHTS

PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU —

FRA's *Fundamental Rights Report 2024* reviews major developments in the field in 2023. Given the backdrop of threats to fundamental rights and freedoms in Europe today, FRA's annual report is a timely review of the most pressing issues. It also presents FRA's opinions on these developments, including a synopsis of the evidence supporting these opinions.

The introductory lead chapter provides a broad view of fundamental rights concerns in 2023. Rising racism is a worrying trend, alongside an increase in incidents of hate against Jews and Muslims. Increasing digitalisation of our societies appears unstoppable and yet has ramifications for fundamental rights protections. Urgent action is needed to tackle climate change without encroaching on the economic rights of marginalised communities. This chapter also highlights the major EU policymaking developments to address these issues.

The remaining chapters focus on three major themes: the cost-of-living crisis, sustained threats to democratic values and civic space, and the complex, polarising issue of migration. The final chapter analyses the application of the EU Charter of Fundamental Rights. Through this report, FRA highlights the need for a multifaceted approach to building a more inclusive Europe.



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